

Title 19

BUSINESS REGULATIONS—MISCELLANEOUS

Chapters

- 19.02 Business license center act.
- 19.06 Blind made products—Services.
- 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.
- 19.29A Consumers of electricity.
- 19.30 Farm labor contractors.
- 19.31 Employment agencies.
- 19.34 Washington electronic authentication act.
- 19.36 Contracts and credit agreements requiring writings.
- 19.40 Uniform voidable transactions act.
- 19.48 Hotels, lodging houses, etc.—Restaurants.
- 19.52 Interest—Usury.
- 19.56 Unsolicited goods.
- 19.58 Motion picture fair competition act.
- 19.60 Pawnbrokers and secondhand dealers.
- 19.64 Radio broadcasting.
- 19.68 Rebating by practitioners of healing professions.
- 19.72 Suretyship.
- 19.76 Beverage bottles, etc.—Labeling—Refilling.
- 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.
- 19.91 Unfair cigarette sales below cost act.
- 19.94 Weights and measures.
- 19.98 Farm implements, machinery, parts.
- 19.100 Franchise investment protection.
- 19.105 Camping resorts.
- 19.108 Uniform trade secrets act.
- 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.
- 19.126 Wholesale distributors and suppliers of spirits or malt beverages.
- 19.130 Telephone buyers' protection act.
- 19.134 Credit services organizations act.
- 19.138 Sellers of travel.
- 19.142 Health studio services.
- 19.144 Mortgage lending and homeownership.
- 19.146 Mortgage broker practices act.
- 19.148 Mortgage loan servicing.
- 19.149 Residential mortgage loan closing—Valuation disclosure.
- 19.150 Self-service storage facilities.
- 19.154 Immigration services fraud prevention act.
- 19.158 Commercial telephone solicitation.
- 19.160 Business telephone listings.
- 19.162 Pay-per-call information delivery services.
- 19.166 International student exchange.
- 19.170 Promotional advertising of prizes.
- 19.174 Automated teller machines and night depositories security.
- 19.178 Going out of business sales.
- 19.182 Fair credit reporting act.
- 19.184 Wheelchairs.
- 19.186 Roofing and siding contractors and salespersons.
- 19.188 Electronic media violence.
- 19.190 Commercial electronic mail.
- 19.192 Proof of identity.
- 19.194 Trade-in or exchange of computer hardware.
- 19.200 Automated financial transactions.
- 19.205 Structured settlement protection.
- 19.210 Unused property merchants.
- 19.215 Disposal of personal information.
- 19.220 International matchmaking organizations.
- 19.225 Uniform athlete agents act.
- 19.230 Uniform money services act.
- 19.235 Movie theaters—Unauthorized recording.
- 19.240 Gift certificates.
- 19.245 Automated teller machines.
- 19.250 Disclosure of personal wireless numbers.
- 19.255 Personal information—Notice of security breaches.
- 19.260 Energy efficiency.
- 19.265 Tax refund anticipation loans.
- 19.270 Computer spyware.
- 19.275 Antipyramid promotional scheme act.
- 19.280 Electric utility resource plans.
- 19.285 Energy independence act.
- 19.290 Metal property.
- 19.295 Estate distribution documents.
- 19.300 Electronic communication devices.
- 19.305 Cigarette ignition propensity.
- 19.310 Exchange facilitators.
- 19.315 Consumer rebates.
- 19.320 Human trafficking.
- 19.330 Stolen or misappropriated information technology.
- 19.335 Veterans' benefit-related services.
- 19.340 Pharmacy benefit managers.
- 19.345 Ticket sellers.
- 19.350 Patent infringement—Bad faith assertions.
- 19.355 Locksmith services.
- 19.360 Electronic signatures and records.
- 19.365 Radiology benefit managers.
- 19.370 Performing rights societies.
- 19.375 Biometric identifiers.
- 19.380 Surrogacy brokers.
- 19.385 Open internet access.

*Automobile
dealers licenses: Chapter 46.70 RCW.
driver schools, licensing: Chapter 46.82 RCW.
repair: Chapter 46.71 RCW.*

Banks and trust companies: Title 30A RCW.

Bringing in out-of-state persons to replace employees involved in labor dispute—Penalty: RCW 49.44.100.

Business and occupation tax: Chapter 82.04 RCW.

Business corporations and cooperative associations: Titles 23 and 23B RCW.

Cemeteries, morgues and human remains: Title 68 RCW.

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

Coal mining: Title 78 RCW.

Common carriers: Title 81 RCW.

Consumer leases: Chapter 63.10 RCW.

Consumer loan act: Chapter 31.04 RCW.

Controlled substances, uniform act: Chapter 69.50 RCW.

Credit unions: Chapter 31.12 RCW.

Development credit corporations: Chapter 31.20 RCW.

Discrimination: Chapter 49.60 RCW.

Drugs, uniform controlled substances act: Chapter 69.50 RCW.

Drugs and cosmetics: Chapter 69.04 RCW.

Fish marketing act: Chapter 24.36 RCW.

Fishermen, commercial: Title 77 RCW.

Food and beverage establishment workers' permits: Chapter 69.06 RCW.

Food processing, adulteration, misbranding, standards: Chapter 69.04 RCW.

Forests and forest products: Title 76 RCW.

Fruit: Title 15 RCW.

Gas and hazardous liquid pipelines: Chapter 81.88 RCW.

Hydraulic brake fluid, standards and specifications: RCW 46.37.365.

Livestock marketing and inspection: Chapter 16.57 RCW.

Massachusetts Trust Act: Chapter 23.90 RCW.

Measurement of goods, raw materials and agricultural products, fraud, penalty: RCW 9.45.122 through 9.45.126.

Milk and milk products for animal food: Chapter 15.37 RCW.

Mines, mineral and petroleum: Title 78 RCW.

Monopolies and trusts prohibited: State Constitution Art. 12 § 22.

Partnerships: Title 25 RCW.

Periodicals, postage, purchase by public agencies—Manner of payment: RCW 42.24.035.

Pesticide applicators—Surety bond: Chapter 17.21 RCW.

Pilotage act: Chapter 88.16 RCW.

Poisons, dispensing and sale: Chapter 69.40 RCW.

Professional service corporations: Chapter 18.100 RCW.

Public bodies may retain collection agencies to collect public debts—Fees: RCW 19.16.500.

Public utilities: Title 80 RCW.

Railroads and other common carriers: Title 81 RCW.

Retail installment sales of goods and services: Chapter 63.14 RCW.

Sales of personal property: Title 62A RCW.

Shoefitting devices, X-ray, etc., prohibited: RCW 70.98.170.

Transportation, public: Title 81 RCW.

Vehicle wreckers: Chapter 46.80 RCW.

Warehouses and grain elevators: Title 22 RCW.

Washington fresh fruit sales limitation act: Chapter 15.21 RCW.

Washington savings association act: Title 33 RCW.

Washington savings bank act: Title 32 RCW.

Chapter 19.02 RCW

BUSINESS LICENSE CENTER ACT

Sections

19.02.010	Purpose—Intent.
19.02.020	Definitions.
19.02.030	Business licensing service—Duties—Rules.
19.02.035	Business licensing service to compile and distribute information—Scope.
19.02.050	Participation of state agencies.
19.02.055	Agency duties—Information—Certification.
19.02.070	Issuance of licenses—Scope—Business license application and fees—Action by regulatory agency, when—Agencies provided information.
19.02.075	Business license application handling and renewal fees.
19.02.080	Licensing fees—Disposition of.
19.02.085	Licensing fees—Business license delinquency fee—Rate—Disposition.
19.02.090	Business license—Expiration date—Prorated fees—Conditions of renewal.
19.02.100	Business license—Issuance or renewal—Denial.
19.02.110	Business license—System to include additional licenses.
19.02.115	Licensing information—Authorized disclosure—Penalty.
19.02.210	Business license account.
19.02.300	Contract to issue conditional federal employer identification numbers, credentials, and documents—Issuance in conjunction with license applications.
19.02.310	Performance-based grant program.
19.02.320	Employment of minors.
19.02.800	Business license system—Certain business or professional activity licenses exempt.
19.02.890	Short title.
19.02.920	Construction.

Reviser's note: Throughout chapter 19.02 RCW, the term "this 1977 amendatory act" has been changed to "this chapter." For codification of "this 1977 amendatory act" [1977 ex.s. c 319], see Codification Tables.

19.02.010 Purpose—Intent. (1) Experience under the pilot program of the business coordination act suggests that the number of state licenses required for new businesses and the renewal of existing licenses places an undue burden on business. Studies under this act also show that the state can reduce its costs by coordinating and consolidating application forms, information, and licenses. Therefore, the legislature extends the business coordination act by establishing a business license program and license center to develop and implement the following goals and objectives:

(a) The first goal of this system is to provide a convenient, accessible, and timely one-stop system for the business community to acquire and maintain the necessary state licenses to conduct business. This system must be developed and operated in the most cost-efficient manner for the business community and state. The objectives of this goal are:

(i) To provide a service whereby information is available to the business community concerning all state licensing and regulatory requirements, and to the extent feasible, include local and federal information concerning the same regulated activities;

(ii) To provide a system which enables state agencies to efficiently store, retrieve, and exchange license information with due regard to privacy statutes; to issue and renew business licenses where such licenses are appropriate; and to provide appropriate support services for this objective;

(iii) To provide at designated locations one consolidated application form to be completed by any given applicant; and

(iv) To provide a statewide system of common business identification.

(b) The second goal of this system is to aid business and the growth of business in Washington state by instituting a

business license system that reduces the paperwork burden on business, and promote the elimination of obsolete and duplicative licensing requirements by consolidating existing licenses and applications.

(2) It is the intent of the legislature that the authority for determining if a requested license is issued remains with the agency legally authorized to issue the license.

(3) It is the further intent of the legislature that those licenses which no longer serve a useful purpose in regulating certain business activities should be eliminated. [2013 c 144 § 15; 1982 c 182 § 1; 1977 ex.s. c 319 § 1.]

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

(1) "Business license" means the single document designed for public display issued by the business licensing service, which certifies state agency or local government license approval and which incorporates the endorsements for individual licenses included in the business licensing system, which the state or local government requires for any person subject to this chapter.

(2) "Business license application" means a document incorporating pertinent data from existing applications for licenses covered under this chapter.

(3) "Business licensing service" means the business registration and licensing service established by this chapter and located in and under the administrative control of the department of revenue.

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

(5) "Director" means the director of the department.

(6) "License" means the whole or part of any agency or local government permit, license, certificate, approval, registration, charter, or any form or permission required by law, including agency rule, to engage in any activity.

(7) "License information packet" means a collection of information about licensing requirements and application procedures custom-assembled for each request.

(8) "Participating local government" means a municipal corporation or political subdivision that participates in the business licensing 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 "business licensing system" means the procedure by which business licenses are issued and

(2018 Ed.)

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. [2013 c 144 § 16. Prior: 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.]

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 licensing service—Duties—Rules.

(1) There is located within the department a business licensing service.

(2) The duties of the business licensing service include:

(a) Developing and administering a computerized one-stop business licensing system capable of storing, retrieving, and exchanging license information with due regard to privacy statutes, as well as issuing and renewing business 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 business license renewal dates;

(d) Identifying types of licenses appropriate for inclusion in the business licensing 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 business licensing system. Both the regulatory agency legally authorized to issue the license and the department must agree that the license will be issued through the *master license system in order for the license to be incorporated.

(3) The department may adopt under chapter 34.05 RCW such rules as may be necessary to effectuate the purposes of this chapter. [2013 c 144 § 17; 2013 c 111 § 3; 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.]

Reviser's note: *(1) The term "master license system" changed to "business licensing system" by chapter 144, Laws of 2013.

(2) This section was amended by 2013 c 111 § 3 and by 2013 c 144 § 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—Intent—Agency transfer—Contracting—Effective date—2011 c 298: See notes following RCW 19.02.020.

19.02.035 Business licensing service to compile and distribute information—Scope.

(1) The business licensing service must compile information regarding the regulatory programs associated with each of the licenses obtainable under the business licensing system. This information must include, at a minimum, a listing of the statutes and administrative rules requiring the licenses and pertaining to the regulatory programs that are directly related to the licensure. For example, for pesticide dealers' licenses, the information must include the statutes and rules requiring licensing as well as those pertaining to the subject of registering or distributing pesticides.

(2) The business licensing service must provide information governed by this section to any person requesting it.

Materials used by the business licensing service to describe its services must indicate that this information is available upon request. [2013 c 144 § 18; 1982 c 182 § 4.]

19.02.050 Participation of state agencies. Each of the following agencies must fully participate 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) Liquor and cannabis board;
- (9) Department of health;
- (10) Department of licensing;
- (11) Utilities and transportation commission;
- (12) Board of accountancy;
- (13) Department of archaeology and historic preservation;
- (14) Department of children, youth, and families;
- (15) Department of ecology;
- (16) Department of financial institutions;
- (17) Department of transportation;
- (18) Gambling commission;
- (19) Horse racing commission;
- (20) Office of the insurance commissioner;
- (21) State lottery;
- (22) Student achievement council;
- (23) Washington state patrol;
- (24) Workforce training and education coordinating board; and

(25) Other agencies as determined by the governor. [2018 c 58 § 33; 2013 c 111 § 1; 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.]

Effective date—2018 c 58: See note following RCW 28A.655.080.

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 298: See notes following RCW 19.02.020.

Additional notes found at www.leg.wa.gov

19.02.055 Agency duties—Information—Certification.

(1)(a) Each agency required to fully participate in the implementation of this chapter under RCW 19.02.050 must provide the department with the name of the agency's coordinator for the purposes of implementing the requirements of this section. Using a format designated by the department, each agency must provide the department with the following information:

(i) A listing of each business license issued by the agency;

(ii) A description of the persons and specific activities for which the license is required;

(iii) The time period for which the license is issued and any issuance, renewal, or reissuance requirements; and

(iv) Other information the department determines necessary to implement this section, including links to the licensing information, application, and instructions on the agency's web site, if available.

(b) An agency that issues licenses in accordance with (i) national or federal mandates, requirements, or standards; or (ii) educational standards and an examination, may alternatively comply with this chapter by providing the department with a link to its licensing web site, summary information about the licensing requirements or standards in a format or formats designated by the department, and a designated agency contact.

(2) In addition to the requirements in subsection (1) of this section, each agency, by November 1st of each year, beginning November 1, 2013, must provide the department with certification on a form designated by the department that all business licensing information submitted by the agency is complete and up-to-date. If an agency has not submitted all the business licensing information required under this section, the agency must instead submit a progress report and explanation to the department.

(3) The department must compile the information submitted by each agency, and submit an aggregate report to the governor and the economic development committees of the legislature by January 1st of each year, beginning January 1, 2014. [2013 c 111 § 2.]

19.02.070 Issuance of licenses—Scope—Business license application and fees—Action by regulatory agency, when—Agencies provided information. (1) Any person requiring licenses that have been incorporated into the system must submit a business license application to the department requesting the issuance of the licenses. The business license 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 licensing service 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.

(2018 Ed.)

(5) The department must issue a business 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 business license application for their licensing and regulatory functions. [2013 c 144 § 19; 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 298: See notes following RCW 19.02.020.

Additional notes found at www.leg.wa.gov

19.02.075 Business license application handling and renewal fees. The department must collect a handling fee on each business license 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 business license application, and eleven dollars for each business license renewal application filing, and must be deposited in the business license account. The department may increase handling and renewal fees for the purposes of making improvements in the business licensing service program, including improvements in technology and customer services, expanded access, and infrastructure. [2013 c 144 § 20; 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 298: 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

19.02.080 Licensing fees—Disposition of. All fees collected under the system must be deposited with the state treasurer. Upon issuance or renewal of the business license or supplemental licenses, the department must distribute the fees, except for fees covered under RCW 19.02.210 and for fees covered under RCW 19.80.075, to the appropriate accounts under the applicable statutes for those agencies' licenses. [2013 c 144 § 21; 1992 c 107 § 3; 1982 c 182 § 7.]

Additional notes found at www.leg.wa.gov

19.02.085 Licensing fees—Business license delinquency fee—Rate—Disposition. To encourage timely renewal by applicants, a business license delinquency fee is imposed on licensees who fail to renew by the business license expiration date. The business license delinquency fee must be the lesser of one hundred fifty dollars or fifty percent of a base comprised of the licensee's renewal fee minus corporate licensing taxes, corporation annual report fee, and any interest fees or penalties charged for late taxes or corporate renewals. The business license delinquency fee must be added to the renewal fee and paid by the licensee before a business license is renewed. The delinquency fee must be

deposited in the business license account. [2013 c 144 § 22; 1992 c 107 § 5; 1989 c 170 § 1; 1982 c 182 § 9.]

Additional notes found at www.leg.wa.gov

19.02.090 Business license—Expiration date—Prorated fees—Conditions of renewal. (1) The department must assign an expiration date for each business license. All renewable licenses endorsed on that business license must expire on that date. License fees must be prorated to accommodate the staggering of expiration dates.

(2) All renewable licenses endorsed on a business license must be renewed by the department under conditions originally imposed unless a regulatory agency advises the department of conditions or denials to be imposed before the endorsement is renewed. [2013 c 144 § 23; 1982 c 182 § 8.]

19.02.100 Business license—Issuance or renewal—Denial. (1) The department may refuse to issue or renew a business 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 and the regulatory agency having the authority to approve the issuance or renewal of the license requires, as a condition of such approval, that the person be so registered or not delinquent in fees or penalties owing to the secretary of state; or

(c) The person has not submitted the sum of all fees and deposits required for the requested individual license endorsements, any outstanding business 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. [2013 c 144 § 24; 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 298: 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

19.02.110 Business license—System to include additional licenses. (1) In addition to the licenses processed under the business licensing system prior to April 1, 1982, on July 1, 1982, use of the business licensing system is expanded as provided by this section.

(2) Applications for the following must be filed with the business licensing service and must be processed, and renewals must be issued, under the business licensing system:

(a) Nursery dealer's licenses required by chapter 15.13 RCW;

(b) Seed dealer's licenses required by chapter 15.49 RCW;

(c) Pesticide dealer's licenses required by chapter 15.58 RCW;

(d) Shopkeeper's licenses required by chapter 18.64 RCW;

(e) Egg dealer's licenses required by chapter 69.25 RCW; and

(f) Marijuana-infused edible endorsements required by chapter 69.07 RCW. [2017 c 138 § 3; 2013 c 144 § 25; 2007 c 52 § 1; 2000 c 171 § 43; 1988 c 5 § 3; 1982 c 182 § 11.]

19.02.115 Licensing information—Authorized disclosure—Penalty. (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(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 initial and renewal business license applications, and business licenses.

(c) "Person" has the same meaning as in RCW 82.04.030 and also includes the state and the state's departments and institutions.

(d) "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, or any other person receiving licensing information from the department under this subsection, 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 19.80 or 59.30 RCW, or this chapter 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 business licensing system established in this chapter and their issuance and expiration dates, and the dates of opening of a business. This subsection may not be construed as giving authority to the department to give, sell, or provide access to any list of persons for any commercial purpose;

(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) Notwithstanding anything to the contrary in this section, a state agency or local government agency may disclose licensing information relating to a license issued on its behalf by the department pursuant to this chapter if the disclosure is authorized by another statute, local law, or administrative rule.

(5) The department, any other state agency, or local government 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 or local government and federal government.

(6) 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. [2017 c 323 § 701; 2013 c 144 § 26; 2011 c 298 § 12.]

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 298: See notes following RCW 19.02.020.

19.02.210 Business license account. The business license account is created in the state treasury. Unless otherwise indicated in RCW 19.02.075, all receipts from handling and business license delinquency fees must be deposited into the account. Moneys in the account may be spent only after appropriation beginning in fiscal year 1993. Expenditures from the account may be used only to administer the business licensing service program. During the 2015-2017 fiscal biennium, moneys from the business license account may be used for operations of the department of revenue. [2016 sp.s. c 36 § 916; 2013 c 144 § 27; 1992 c 107 § 4.]

Effective date—2016 sp.s. c 36: See note following RCW 18.20.430.

Additional notes found at www.leg.wa.gov

19.02.300 Contract to issue conditional federal employer identification numbers, credentials, and documents—Issuance in conjunction with license applications.

(1) The director may contract with the federal internal revenue service, or other appropriate federal agency, to issue conditional federal employer identification numbers, or other federal credentials or documents, at specified offices and locations of the agency in conjunction with any application for state licenses under this chapter.

(2) To the extent permitted by any contract entered under subsection (1) of this section, the department may contract, under chapter 39.34 RCW, with any agency of state or local government which is participating in the master licensing program to issue conditional federal employer identification numbers, or other federal credentials or documents, in con-

junction with applications for state licenses under this chapter. [1997 c 51 § 2.]

Intent—1997 c 51: "The legislature intends to simplify the process of registering and licensing businesses in this state by authorizing state agencies to provide consolidated forms, instructions, service locations, and other operations whenever coordination of these functions would benefit individual businesses and the business community of this state. To further this goal, agencies participating in the master business license program should be able to contract with the federal internal revenue service, or other appropriate federal agency, to issue a conditional federal employer identification number, or other federal credentials or documents, at the same time that a business applies for registration or licensing with any state agency." [1997 c 51 § 1.]

19.02.310 Performance-based grant program. (1) Subject to the availability of amounts appropriated for this specific purpose, the department may administer a performance-based grant program that provides funding assistance to public agencies that issue business licenses and that wish to join with the department's business licensing service.

(2) The department may determine among interested grant applicants the order and the amount of the grant. In making grant determinations, consideration must be given, but not limited to, the following criteria: Readiness of the public agency to participate; the number of renewable licenses; and the reduced regulatory impact to businesses subject to licensure relative to the overall investment required by the department.

(3) The department must invite and encourage participation by all Washington city and county governments having interests or responsibilities relating to business licensing.

(4) The total amount of grants provided under this section may not exceed seven hundred fifty thousand dollars in any one fiscal year.

(5) The source of funds for this grant program is the business license account. [2013 c 144 § 28; 2005 c 201 § 1.]

19.02.320 Employment of minors. A person seeking a work permit for the employment of minors under RCW 49.12.121 is not required to complete an entirely new *master application if there are no changes to any other information submitted on the most recent *master application. The person need only complete the parts of a new *master application that identify the employer seeking the minor work permit, including address and contact information, and that indicate the employer plans to employ one or more minors, the duties to be performed by minors, and the estimated number of hours to be worked by minors. [2013 c 156 § 1.]

***Reviser's note:** The term "master application" was changed to "business license application" by chapter 144, Laws of 2013.

19.02.800 Business 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 the business licensing 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. [2013 c 144 § 29; 2011 c 298 § 10; 2000 c 171 § 44; 1982 c 182 § 17.]

***Reviser's note:** Title 30 RCW was recodified and/or repealed pursuant to 2014 c 37, effective January 5, 2015.

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 298: See notes following RCW 19.02.020.

19.02.890 Short title. This chapter may be known and cited as the business licensing service act. [2013 c 144 § 30; 1982 c 182 § 18.]

19.02.920 Construction. The rule of strict construction shall have no application to this chapter and it shall be liberally construed in order to carry out its purposes. [1982 c 182 § 16.]

Chapter 19.06 RCW

BLIND MADE PRODUCTS—SERVICES

Sections

19.06.010	Labels—Contents—Requirements—Prohibited acts.
19.06.020	Governmental agencies shall purchase goods and services—Conditions.
19.06.030	Advertising limitations.
19.06.040	Penalty.

19.06.010 Labels—Contents—Requirements—Prohibited acts. Products made by blind persons and sold or distributed in this state as blind made may bear a label affixed directly to the product reading "MADE BY THE BLIND" and shall show the distributor's or manufacturer's name. Any product bearing such label shall have been made by blind people to the extent of at least seventy-five percent of the labor hours required for its manufacture. No other label, trade name or sales device tending to create the impression that a product is made by blind persons shall be used in connection with the sale or distribution of such product unless the product shall have been made by blind people to the extent of at least seventy-five percent of the labor hours required for its manufacture. [2009 c 549 § 1009; 1961 c 56 § 1; 1959 c 100 § 1.]

19.06.020 Governmental agencies shall purchase goods and services—Conditions. Any board, commission, officer, employee or other person or persons of the state, or any county, city, town, school district or other agency, political subdivision or taxing district of the state, whose duty it is to purchase materials, supplies, goods, wares, merchandise or produce, or to procure services, for the use of any department or institution within the state, shall make such purchases and procure such services whenever available, from any non-profit agency for the blind located within the state which manufactures or distributes blind made products: PROVIDED, That the goods and services made by or offered by such agencies shall be equal in quality and price to those available from other sources. [1961 c 56 § 4; 1959 c 100 § 2.]

19.06.030 Advertising limitations. No advertising of blind made products shall refer to any product which is not blind made, nor shall any such advertising contain or refer to names or pictures of any blind persons or otherwise exploit the blind. [1961 c 56 § 2.]

19.06.040 Penalty. Any violation of this chapter shall be a misdemeanor. [1961 c 56 § 3.]

Chapter 19.09 RCW
CHARITABLE SOLICITATIONS

Sections

19.09.010	Purpose.
19.09.020	Definitions.
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.
19.09.079	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.
19.09.191	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.
19.09.271	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.
19.09.410	Attorney general—Investigations—Powers—Superior court may compel.
19.09.420	Copies of information for attorney general.
19.09.430	Administrative procedure act to govern administration.
19.09.440	Annual report by secretary of state.
19.09.510	Charitable organization education program.
19.09.530	Charitable organization education account.
19.09.541	Tiered financial reporting requirements.
19.09.550	Charitable advisory council.
19.09.560	Reciprocal agreements with other states.
19.09.912	Effective date—1983 c 265.
19.09.913	Effective date—1986 c 230.
19.09.915	Effective date—1993 c 471.
19.09.916	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

Fees—Charitable trusts—Charitable solicitations: RCW 43.07.125.

Telephone, solicitation regulated: RCW 80.36.390.

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

(2018 Ed.)

(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. 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 fund-raiser, 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 cov-enturer, 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 con-

trol 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.

Additional notes found at www.leg.wa.gov

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 24.03.405.

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 24.03.405.

Additional notes found at www.leg.wa.gov

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 24.03.405.

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;

(2018 Ed.)

(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 24.03.405.

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

19.09.191 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.

(2018 Ed.)

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.

[Title 19 RCW—page 15]

(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

19.09.271 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 appro-

priateness 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.]

Additional notes found at www.leg.wa.gov

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

(2018 Ed.)

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 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 24.03.405.

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.]

19.09.410 Attorney general—Investigations—Powers—Superior court may compel. For the purpose of any investigation or proceeding under this chapter, the attorney general or any officer designated by the attorney general may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the attorney general deems relevant or material to the inquiry.

In case of willful failure on the part of a person to comply with a subpoena lawfully issued by the attorney general or on the refusal of a witness to testify to matters regarding which the witness may be lawfully interrogated, the superior court of a county, on application of the attorney general and after satisfactory evidence of willful disobedience, may compel obedience by proceedings for contempt, as in the case of disobedience of a subpoena issued from the court or a refusal to testify therein. [1993 c 471 § 19.]

19.09.420 Copies of information for attorney general. The secretary shall provide the attorney general with copies of or direct electronic access to all registrations, reports, or other information filed under this chapter. [1993 c 471 § 23.]

19.09.430 Administrative procedure act to govern administration. The administrative procedure act, chapter 34.05 RCW, wherever applicable governs the rights, reme-

dies, and procedures respecting the administration of this chapter. [2011 c 199 § 28; 1993 c 471 § 22.]

19.09.440 Annual report by secretary of state. (1) Annually, the secretary of state shall publish a report indicating:

(a) For each charitable organization registered under RCW 19.09.075 the percentage relationship between (i) the total amount of money applied to charitable purposes; and (ii) the dollar value of total expenditures, including the total amount of money applied to charitable purposes, fund-raising costs, and administrative expenses;

(b) For each commercial fund-raiser registered under RCW 19.09.079 the percentage relationship between (i) the amount of money disbursed to charitable organizations for charitable purposes; and (ii) the total value of contributions received on behalf of charitable organizations by the commercial fund-raiser; and

(c) Such other information as the secretary of state deems appropriate.

(2) The secretary of state may use the latest information obtained pursuant to RCW 19.09.075, 19.09.079, or otherwise under chapter 19.09 RCW to prepare the report. [2007 c 471 § 10; 1993 c 471 § 42.]

19.09.510 Charitable organization education program. The secretary may, in conjunction with the attorney general, develop and operate an education program for charitable organizations, their board members, and the general public. To the extent practicable, the secretary shall consult with the nonprofit and charitable sector and the charitable advisory council created in RCW 19.09.550 to develop curriculum and other materials intended to educate charitable organizations, their board members, and the general public. [2007 c 471 § 12.]

19.09.530 Charitable organization education account. The charitable organization education account is created in the state treasury. All receipts from the portion of fees designated in RCW 19.09.062 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 the charitable organization education program authorized in RCW 19.09.510. [2010 1st sp.s. c 29 § 16; 2007 c 471 § 14.]

Intent—2010 1st sp.s. c 29: See note following RCW 24.03.405.

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.]

19.09.550 Charitable advisory council. (1) The secretary is authorized to create a charitable advisory council to consist of at least eleven, but not more than twenty-one, members. Members of a charitable advisory council shall:

(a) Be appointed by the secretary, with all members serving at the pleasure of the secretary and all terms expiring no later than the term of the appointing secretary;

(b) Represent a broad range of charities by size, purpose, geographic region of the state, and general expertise in the management and leadership of charitable organizations; and

(c) Annually vote to elect one of its members to serve as chairperson.

(2) The secretary shall not compensate members of the charitable advisory council but may provide reimbursement to members for expenses that are incurred in the conduct of their official duties.

(3) The charitable advisory council shall advise the secretary in determining training and educational needs of charitable organizations and model policies related to governance and administration of charitable organizations in accordance with fiduciary principles, assist the secretary in identifying emerging issues and trends affecting charitable organizations, and advise the secretary on other related issues at the request of the secretary. [2007 c 471 § 16.]

19.09.560 Reciprocal agreements with other states.

(1) The secretary may enter into reciprocal agreements with the appropriate authority of any other state for the purpose of exchanging information with respect to charitable organizations and commercial fund-raisers.

(2) Pursuant to such agreements the secretary may:

(a) Accept information filed by a charitable organization or commercial fund-raisers with the appropriate authority of another state in lieu of the information required to be filed in accordance with this chapter, if the information is substantially similar to the information required under this chapter; and

(b) Grant exemptions from the requirements for the filing of annual registration statements with the office to charitable organizations organized under the laws of another state having their principal place of business outside this state whose funds are derived principally from sources outside this state and that have been exempted from the filing of registration statements by the statute under whose laws they are organized if such a state has a statute similar in substance to this chapter.

(3) The secretary may adopt rules relating to reciprocal agreements consistent with this section. [2007 c 471 § 17.]

19.09.912 Effective date—1983 c 265. With the exception of section 19 of this act, this act shall take effect January 1, 1984. [1983 c 265 § 21.]

Reviser's note: "Section 19 of this act" is an uncodified appropriation section.

19.09.913 Effective date—1986 c 230. This act shall take effect on January 1, 1987. [1986 c 230 § 21.]

19.09.915 Effective date—1993 c 471. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993. [1993 c 471 § 44.]

19.09.916 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, 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, 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. [2009 c 521 § 51.]

Chapter 19.16 RCW COLLECTION AGENCIES

Sections

19.16.100	Definitions.
19.16.110	License required.
19.16.120	Unprofessional conduct—Support order, noncompliance.
19.16.130	License—Application—Form—Contents.
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.
19.16.240	Licensee—Trust fund account—Exception.
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.
19.16.310	Board—Compensation—Reimbursement of travel expenses.
19.16.320	Board—Territorial scope of operations.
19.16.330	Board—Immunity from suit.
19.16.340	Board—Records.
19.16.351	Additional powers and duties of board.
19.16.390	Personal service of process outside state.
19.16.410	Rules, orders, decisions, etc.
19.16.420	Copy of this chapter, rules and regulations available to licensee.
19.16.430	Violations—Operating agency without a license—Penalty—Return of fees or compensation.
19.16.440	Violations of RCW 19.16.110 and 19.16.250 are unfair and deceptive trade practices under chapter 19.86 RCW.
19.16.450	Violation of RCW 19.16.250—Additional penalty.
19.16.460	Violations may be enjoined.
19.16.470	Violations—Assurance of discontinuance—Effect.
19.16.480	Violation of injunction—Civil penalty.
19.16.500	Public bodies may retain collection agencies to collect public debts—Fees.
19.16.510	Uniform regulation of business and professions act.
19.16.900	Provisions cumulative—Violation of RCW 19.16.250 deemed civil.
19.16.920	Provisions exclusive—Authority of political subdivisions to levy business and occupation taxes not affected.
19.16.930	Effective date—1971 ex.s. c 253.
19.16.940	Short title.
19.16.950	Section headings.
19.16.960	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

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

(1) "Board" means the Washington state collection agency board.

(2) "Claim" means any obligation for the payment of money or thing of value arising out of any agreement or contract, express or implied.

(3) "Client" or "customer" means any person authorizing or employing a collection agency to collect a claim.

(4) "Collection agency" means and includes:

(a) Any person directly or indirectly engaged in soliciting claims for collection, or collecting or attempting to collect claims owed or due or asserted to be owed or due another person;

(b) Any person who directly or indirectly furnishes or attempts to furnish, sells, or offers to sell forms represented to be a collection system or scheme intended or calculated to be used to collect claims even though the forms direct the debtor to make payment to the creditor and even though the forms may be or are actually used by the creditor himself or herself in his or her own name;

(c) Any person who in attempting to collect or in collecting his or her own claim uses a fictitious name or any name other than his or her own which would indicate to the debtor that a third person is collecting or attempting to collect such claim;

(d) Any person or entity that is engaged in the business of purchasing delinquent or charged off claims for collection purposes, whether it collects the claims itself or hires a third party for collection or an attorney for litigation in order to collect such claims;

(e) Any person or entity attempting to enforce a lien under chapter 60.44 RCW, other than the person or entity originally entitled to the lien.

(5) "Collection agency" does not mean and does not include:

(a) Any individual engaged in soliciting claims for collection, or collecting or attempting to collect claims on behalf of a licensee under this chapter, if said individual is an employee of the licensee;

(b) Any individual collecting or attempting to collect claims for not more than one employer, if all the collection efforts are carried on in the name of the employer and if the individual is an employee of the employer;

(c) Any person whose collection activities are carried on in his, her, or its true name and are confined and are directly related to the operation of a business other than that of a collection agency, such as but not limited to: Trust companies; savings and loan associations; building and loan associations; abstract companies doing an escrow business; real estate brokers; property management companies collecting assessments, charges, or fines on behalf of condominium unit owners associations, associations of apartment owners, or homeowners' associations; public officers acting in their official capacities; persons acting under court order; lawyers; insurance companies; credit unions; loan or finance companies; mortgage banks; and banks;

(d) Any person who on behalf of another person prepares or mails monthly or periodic statements of accounts due if all payments are made to that other person and no other collection efforts are made by the person preparing the statements of account;

(e) An "out-of-state collection agency" as defined in this chapter; or

(f) Any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of the person is not the collection of debts.

(6) "Commercial claim" means any obligation for payment of money or thing of value arising out of any agreement or contract, express or implied, where the transaction which is the subject of the agreement or contract is not primarily for personal, family, or household purposes.

(7) "Debtor" means any person owing or alleged to owe a claim.

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

(9) "Licensee" means any person licensed under this chapter.

(10) "Out-of-state collection agency" means a person whose activities within this state are limited to collecting debts from debtors located in this state by means of interstate communications, including telephone, mail, or facsimile transmission, from the person's location in another state on behalf of clients located outside of this state, but does not include any person who is excluded from the definition of the term "debt collector" under the federal fair debt collection practices act (15 U.S.C. Sec. 1692a(6)).

(11) "Person" includes individual, firm, partnership, trust, joint venture, association, or corporation.

(12) "Statement of account" means a report setting forth only amounts billed, invoices, credits allowed, or aged balance due. [2015 c 201 § 3. Prior: 2013 c 148 § 1; 2003 c 203 § 1; prior: 2001 c 47 § 1; 2001 c 43 § 1; 1994 c 195 § 1; 1990 c 190 § 1; 1979 c 158 § 81; 1971 ex.s. c 253 § 1.]

Effective date—2013 c 148 §§ 1 and 3: "Sections 1 and 3 of this act take effect October 1, 2013." [2013 c 148 § 4.]

19.16.110 License required. No person shall act, assume to act, or advertise as a collection agency or out-of-state collection agency as defined in this chapter, except as authorized by this chapter, without first having applied for and obtained a license from the director.

Nothing contained in this section shall be construed to require a regular employee of a collection agency or out-of-state collection agency duly licensed under this chapter to procure a collection agency license. [1994 c 195 § 2; 1971 ex.s. c 253 § 2.]

19.16.120 Unprofessional conduct—Support order, noncompliance. In addition to other provisions of this chapter, and the unprofessional conduct described in RCW 18.235.130, the following conduct, acts, or conditions constitute unprofessional conduct:

(1) If an individual applicant or licensee is less than eighteen years of age or is not a resident of this state.

(2) If an applicant or licensee is not authorized to do business in this state.

(3) If the application or renewal forms required by this chapter are incomplete, fees required under RCW 19.16.140 and 19.16.150, if applicable, have not been paid, and the surety bond or cash deposit or other negotiable security acceptable to the director required by RCW 19.16.190, if applicable, has not been filed or renewed or is canceled.

(4) If any individual applicant, owner, officer, director, or managing employee of a nonindividual applicant or licensee:

(a) Has had any judgment entered against him or her in any civil action involving forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, or conspiracy to defraud and five years have not elapsed since the date of the entry of the final judgment in said action: PROVIDED, That in no event shall a license be issued unless the judgment debt has been discharged;

(b) Has had his or her license to practice law suspended or revoked and two years have not elapsed since the date of such suspension or revocation, unless he or she has been relicensed to practice law in this state;

(c) Has had any judgment entered against such a person under the provisions of RCW 19.86.080 or 19.86.090 involving a violation or violations of RCW 19.86.020 and two years have not elapsed since the entry of the final judgment: PROVIDED, That in no event shall a license be issued unless the terms of such judgment, if any, have been fully complied with: PROVIDED FURTHER, That said judgment shall not be grounds for denial, suspension, nonrenewal, or revocation of a license unless the judgment arises out of and is based on acts of the applicant, owner, officer, director, managing employee, or licensee while acting for or as a collection agency or an out-of-state collection agency;

(d) Has petitioned for bankruptcy, and two years have not elapsed since the filing of the petition;

(e) Is insolvent in the sense that the person's liabilities exceed the person's assets or in the sense that the person cannot meet obligations as they mature;

(f) Has failed to pay any civil, monetary penalty assessed in accordance with RCW 19.16.351 within ten days after the assessment becomes final;

(g) Has failed to comply with, or violated any provisions of this chapter or any rule or regulation issued pursuant to this chapter, and two years have not elapsed since the occurrence of said noncompliance or violation; or

(h) Has been found by a court of competent jurisdiction to have violated the federal fair debt collection practices act, 15 U.S.C. Sec. 1692 et seq., or the Washington state consumer protection act, chapter 19.86 RCW, and two years have not elapsed since that finding.

Except as otherwise provided in this section, any person who is engaged in the collection agency business as of January 1, 1972, shall, upon filing the application, paying the fees, and filing the surety bond or cash deposit or other negotiable security in lieu of bond required by this chapter, be issued a license under this chapter.

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. [2002 c 86 § 266; 1997 c 58 § 847; 1994 c 195 § 3; 1977 ex.s. c 194 § 1; 1973 1st ex.s. c 20 § 1; 1971 ex.s. c 253 § 3.]

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

Additional notes found at www.leg.wa.gov

19.16.130 License—Application—Form—Contents.

Every application for a license shall be in writing, under oath, and in the form prescribed by the director.

Every application shall contain such relevant information as the director may require.

The applicant shall furnish the director with such evidence as the director may reasonably require to establish that the requirements and qualifications for a licensee have been fulfilled by the applicant.

Every application for a license shall state, among other things that may be required, the name of the applicant with the name under which the applicant will do business and the location by street and number, city and state of each office of the business for which the license is sought.

No license shall be issued in any fictitious name which may be confused with or which is similar to any federal, state, county, or municipal governmental function or agency or in any name which may tend to describe any business function or enterprise not actually engaged in by the applicant or in any name which is the same as or so similar to that of any existing licensee as would tend to deceive the public or in any name which would otherwise tend to be deceptive or mis-

leading. The foregoing shall not necessarily preclude the use of a name which may be followed by a geographically descriptive title which would distinguish it from a similar name licensed but operating in a different geographical area. [1971 ex.s. c 253 § 4.]

19.16.140 License—Application—Fees—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.]

19.16.240 Licensee—Trust fund account—Exception. Each licensee, other than an out-of-state collection agency, shall at all times maintain a separate bank account in this state in which all moneys collected by the licensee shall be deposited except that negotiable instruments received may be forwarded directly to a customer. Moneys received must be deposited within ten days after posting to the book of accounts. In no event shall moneys received be disposed of in any manner other than to deposit such moneys in said account or as provided in this section.

The bank account shall bear some title sufficient to distinguish it from the licensee's personal or general checking account, such as "Customer's Trust Fund Account". There shall be sufficient funds in said trust account at all times to pay all moneys due or owing to all customers and no disbursements shall be made from such account except to customers or to remit moneys collected from debtors on assigned claims and due licensee's attorney or to refund over payments except that a licensee may periodically withdraw therefrom such moneys as may accrue to licensee.

Any money in such trust account belonging to a licensee may be withdrawn for the purpose of transferring the same into the possession of licensee or into a personal or general account of licensee. [1994 c 195 § 7; 1971 ex.s. c 253 § 15.]

19.16.245 Financial statement. No licensee shall receive any money from any debtor as a result of the collection of any claim until he, 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 unauthorized 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 dishonored 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 instru-

ments 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) Bring an action or initiate an arbitration proceeding on a claim for any amounts related to a transfer of sale of a vehicle when:

(a) The licensee has been informed or reasonably should know that the department of licensing transfer of sale form was filed in accordance with RCW 46.12.650 (1) through (3);

(b) The licensee has been informed or reasonably should know that the transfer of the vehicle either (i) was not made pursuant to a legal transfer or (ii) was not voluntarily accepted by the person designated as the purchaser/transferee; and

(c) Prior to the commencement of the action or arbitration, the licensee has received from the putative transferee a copy of a police report referencing that the transfer of sale of the vehicle either (i) was not made pursuant to a legal transfer or (ii) was not voluntarily accepted by the person designated as the purchaser/transferee.

(26) 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. [2016 c 86 § 4; 2013 c 148 § 2; 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.]

Additional notes found at www.leg.wa.gov

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 its own claim or 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

(2018 Ed.)

agency or out-of-state collection agency as required by this chapter. [2013 c 148 § 3; 2011 c 336 § 521; 1994 c 195 § 8; 1971 ex.s. c 253 § 17.]

Effective date—2013 c 148 §§ 1 and 3: See note following RCW 19.16.100.

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.]

19.16.310 Board—Compensation—Reimbursement of travel expenses. Each member of the board appointed by the governor shall be compensated in accordance with RCW 43.03.240 and in addition thereto shall be reimbursed for travel expenses incurred while on official business of the board and in attending meetings thereof, in accordance with the provisions of RCW 43.03.050 and 43.03.060. [1984 c 287 § 54; 1975-'76 2nd ex.s. c 34 § 58; 1971 ex.s. c 253 § 22.]

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

Additional notes found at www.leg.wa.gov

19.16.320 Board—Territorial scope of operations. The board may meet, function and exercise its powers and perform its duties at any place within the state. [1971 ex.s. c 253 § 23.]

19.16.330 Board—Immunity from suit. Members of the board shall be immune from suit in any civil action based upon an official act performed in good faith as members of such board. [1971 ex.s. c 253 § 24.]

19.16.340 Board—Records. All records of the board shall be kept in the office of the director. Copies of all records and papers of the board, certified to be true copies by the director, shall be received in evidence in all cases with like effect as the originals. All actions by the board which require publication, or any writing shall be over the signature of the director or his or her designee. [2011 c 336 § 526; 1971 ex.s. c 253 § 25.]

19.16.351 Additional powers and duties of board. The board, in addition to any other powers and duties granted under this chapter and RCW 18.235.030:

(1) May adopt, amend, and rescind rules for its own organization and procedure and other rules as it may deem necessary in order to perform its duties under this chapter.

(2) May inquire into the needs of the collection agency business, the needs of the director, and the matter of the policy of the director in administering this chapter, and make such recommendations with respect thereto as, after consideration, may be deemed important and necessary for the welfare of the state, the welfare of the public, and the welfare and progress of the collection agency business.

(3) Upon request of the director, confer and advise in matters relating to the administering of this chapter.

(4) May consider and make appropriate recommendations to the director in all matters referred to the board.

(5) Upon request of the director, confer with and advise the director in the preparation of any rules to be adopted, amended, or repealed.

(6) May assist the director in the collection of such information and data as the director may deem necessary to the proper administration of this chapter. [2002 c 86 § 267; 1977 ex.s. c 194 § 2; 1973 1st ex.s. c 20 § 8.]

Additional notes found at www.leg.wa.gov

19.16.390 Personal service of process outside state. Personal service of any process in an action under this chapter may be made upon any person outside the state if such person has engaged in conduct in violation of this chapter which has had the impact in this state which this chapter reprehends. Such persons shall be deemed to have thereby submitted themselves to the jurisdiction of the courts of this state within the meaning of RCW 4.28.180 and 4.28.185. A holder of an out-of-state collection agency license is deemed to have appointed the director or the director's designee to be the licensee's true and lawful agent upon whom may be served any legal process against that licensee arising or growing out of any violation of this chapter. [1994 c 195 § 9; 1971 ex.s. c 253 § 30.]

19.16.410 Rules, orders, decisions, etc. The board may adopt rules, make specific decisions, orders, and rulings, including therein demands and findings, and take other necessary action for the implementation and enforcement of the board's duties under this chapter. [2007 c 256 § 4; 1971 ex.s. c 253 § 32.]

19.16.420 Copy of this chapter, rules and regulations available to licensee. On or about the first day of February in each year, the director shall cause to be made available at reasonable expense to a licensee a copy of this chapter, a copy of the current rules and regulations of the director, and board, and such other materials as the director or board prescribe. [1971 ex.s. c 253 § 33.]

19.16.430 Violations—Operating 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.]

19.16.440 Violations of RCW 19.16.110 and 19.16.250 are unfair and deceptive trade practices under chapter 19.86 RCW. The operation of a collection agency or out-of-state collection agency without a license as prohibited by RCW 19.16.110 and the commission by a licensee or an employee of a licensee of an act or practice prohibited by RCW 19.16.250 are declared to be unfair acts or practices or unfair methods of competition in the conduct of trade or commerce for the purpose of the application of the Consumer Protection Act found in chapter 19.86 RCW. [1994 c 195 § 11; 1973 1st ex.s. c 20 § 7; 1971 ex.s. c 253 § 35.]

19.16.450 Violation of RCW 19.16.250—Additional penalty. If an act or practice in violation of RCW 19.16.250 is committed by a licensee or an employee of a licensee in the collection of a claim, neither the licensee, the customer of the licensee, nor any other person who may thereafter legally seek to collect on such claim shall ever be allowed to recover any interest, service charge, attorneys' fees, collection costs, delinquency charge, or any other fees or charges otherwise legally chargeable to the debtor on such claim: PROVIDED, That any person asserting the claim may nevertheless recover from the debtor the amount of the original claim or obligation. [1971 ex.s. c 253 § 36.]

19.16.460 Violations may be enjoined. Notwithstanding any other actions which may be brought under the laws of this state, the attorney general or the prosecuting attorney of any county within the state may bring an action in the name of the state against any person to restrain and prevent any violation of this chapter. [1971 ex.s. c 253 § 37.]

19.16.470 Violations—Assurance of discontinuance—Effect. The attorney general may accept an assurance of discontinuance of any act or practice deemed in violation of this chapter from any person engaging in or who has engaged in such act or practice. Any such assurance shall be in writing and be filed with and subject to the approval of the superior court of the county in which the alleged violator resides or has his, 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.]

(2018 Ed.)

19.16.480 Violation of injunction—Civil penalty.

Any person who violates any injunction issued pursuant to this chapter shall forfeit and pay a civil penalty of not more than twenty-five thousand dollars. For the purpose of this section the superior court issuing any injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the attorney general acting in the name of the state may petition for the recovery of civil penalties. [1971 ex.s. c 253 § 39.]

19.16.500 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.

19.16.510 Uniform regulation of business and professions act. The uniform regulation of business and professions act, chapter 18.235 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [2002 c 86 § 268.]

Additional notes found at www.leg.wa.gov

19.16.900 Provisions cumulative—Violation of RCW 19.16.250 deemed civil. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy available at law: PROVIDED, That the violation of RCW 19.16.250 shall be construed as exclusively civil and not penal in nature. [1971 ex.s. c 253 § 40.]

19.16.920 Provisions exclusive—Authority of political subdivisions to levy business and occupation taxes not affected. (1) The provisions of this chapter relating to the licensing and regulation of collection agencies and out-of-state collection agencies shall be exclusive and no county, city, or other political subdivision of this state shall enact any laws or rules and regulations licensing or regulating collection agencies.

(2) This section shall not be construed to prevent a political subdivision of this state from levying a business and occupation tax upon collection agencies or out-of-state collection agencies maintaining an office within that political subdivision if a business and occupation tax is levied by it upon other types of businesses within its boundaries. [1994 c 195 § 12; 1971 ex.s. c 253 § 42.]

19.16.930 Effective date—1971 ex.s. c 253. This act shall become effective January 1, 1972. [1971 ex.s. c 253 § 44.]

19.16.940 Short title. This chapter shall be known and may be cited as the "Collection Agency Act". [1971 ex.s. c 253 § 45.]

19.16.950 Section headings. Section headings used in this chapter shall not constitute any part of the law. [1971 ex.s. c 253 § 46.]

19.16.960 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, 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, 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. [2009 c 521 § 52.]

Chapter 19.25 RCW

REPRODUCED SOUND RECORDINGS

Sections

19.25.010	Definitions.
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.
19.25.050	Contraband recordings—Disposition, forfeiture, penalty.
19.25.100	Truth in music advertising.
19.25.800	Chapter not applicable to broadcast by commercial or educational radio or television.
19.25.810	Chapter not applicable to certain nonrecorded broadcast use.
19.25.820	Chapter not applicable to defined public record.

19.25.010 Definitions. As used in this chapter:

(1) "Owner" means a person who owns the sounds fixed in a master phonograph record, master disc, master tape, master film, or other recording on which sound is or can be recorded and from which the transferred recorded sounds are directly or indirectly derived.

(2) "Fixed" means embodied in a recording or other tangible medium of expression, by or under the authority of the author, so that the matter embodied is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration.

(3) "Live performance" means a recitation, rendering, or playing of a series of images; musical, spoken or other sounds; or combination of images and sounds.

(4) "Recording" means a tangible medium on which sounds, images, or both are recorded or otherwise stored, including an original phonograph record, disc, tape, audio or video cassette, wire, film, or other medium now existing or developed later on which sounds, images, or both are or can be recorded or otherwise stored or a copy or reproduction that duplicates in whole or in part the original.

(5) "Manufacturer" means the entity authorizing the duplication of the recording in question, but shall not include the manufacturer of the cartridge or casing itself. [1991 c 38 § 1; 1974 ex.s. c 100 § 1.]

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 com-

mercial 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.

19.25.050 Contraband recordings—Disposition, forfeiture, penalty. (1) All recordings which have been fixed transferred, or possessed without the consent of the owner in violation of RCW 19.25.020 or 19.25.030, and any recording which does not contain the true name and address of the manufacturer in violation of RCW 19.25.040 shall be deemed to be contraband. The court shall order the seizure, forfeiture, and destruction or other disposition of such contraband.

(2) The owner or the prosecuting attorney may institute proceedings to forfeit contraband recordings. The provisions of this subsection shall apply to any contraband recording, regardless of lack of knowledge or intent on the part of the possessor, retail seller, manufacturer, or distributor.

(3) Whenever a person is convicted of a violation under this chapter, the court, in its judgment of conviction, shall, in addition to the penalty therein prescribed, order the forfeiture and destruction or other disposition of all contraband recordings and any and all electronic, mechanical, or other devices for manufacturing, reproducing, packaging, or assembling such recordings, which were used to facilitate any violation of this chapter. [1991 c 38 § 5.]

19.25.100 Truth in music advertising. (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Performing group" means a vocal or instrumental group seeking to use the name of another group that has previously released a commercial sound recording under that name.

(b) "Recording group" means a vocal or instrumental group, at least one of whose members has previously released a commercial sound recording under that group's name and in which the member or members have a legal right by virtue of use or operation under the group name without having abandoned the name or affiliation with the group.

(c) "Sound recording" means a work that results from the fixation on a material object of a series of musical, spoken, or other sounds regardless of the nature of the material object, such as a disk, tape, or other phonorecord, in which the sounds are embodied.

(2) A person shall not advertise or conduct a live musical performance or production through the use of a false, deceptive, or misleading affiliation, connection, or association between a performing group and a recording group unless any of the following apply:

(a) The performing group is the authorized registrant and owner of a federal service mark for the group registered in the United States patent and trademark office;

(b) At least one member of the performing group was previously a member of the recording group and has a legal right by virtue of use or operation under the group name without having abandoned the name or affiliation of the group;

(c) The live musical performance or production is identified in all advertising and promotion as a salute or tribute;

(d) The advertising does not relate to a live musical performance or production taking place in this state; or

(e) The performance or production is expressly authorized by the recording group.

(3)(a) A person who violates this section is subject to a civil penalty not less than five thousand dollars or more than fifteen thousand dollars per violation. An action for a civil penalty may be brought by the attorney general or a county or city prosecutor and is enforceable as a civil judgment.

(b) A person who violates this section is subject to the equitable remedies described in chapter 19.86 RCW.

(c) Each performance or production declared unlawful under subsection (2) of this section constitutes a separate violation.

(d) This section does not preclude prosecution of a violation of this section under any other provision of law. [2009 c 109 § 1.]

Short title—2009 c 109: "This act may be known and cited as the truth in music advertising act." [2009 c 109 § 2.]

19.25.800 Chapter not applicable to broadcast by commercial or educational radio or television. This chapter shall not be applicable to any recording that is used or intended to be used only for broadcast by commercial or educational radio or television stations. [1991 c 38 § 6.]

19.25.810 Chapter not applicable to certain nonrecorded broadcast use. This chapter shall not be applicable to any recording that is received in the ordinary course of a broadcast by a commercial or educational radio or television station where no recording is made of the broadcast. [1991 c 38 § 7.]

19.25.820 Chapter not applicable to defined public record. This chapter shall not be applicable to any recording defined as a public record of any court, legislative body, or

proceedings of any public body, whether or not a fee is charged or collected for copies. [1991 c 38 § 8.]

Chapter 19.27 RCW STATE BUILDING CODE

Sections

19.27.010	Short title.
19.27.015	Definitions.
19.27.020	Purposes—Objectives—Standards.
19.27.031	State building code—Adoption—Conflicts—Opinions.
19.27.035	Process for review.
19.27.040	Cities and counties authorized to amend state building code—Limitations.
19.27.042	Cities and counties—Emergency exemptions for housing for indigent persons.
19.27.050	Enforcement.
19.27.060	Local building regulations superseded—Exceptions.
19.27.065	Exemption—Temporary growing structures used for commercial production of horticultural plants.
19.27.067	Temporary worker housing—Exemption—Standards.
19.27.070	State building code council—Established—Membership—Travel expenses.
19.27.074	State building code council—Duties—Public meetings—Timing of code changes.
19.27.076	State building code council—Open public access information technologies.
19.27.080	Chapters of RCW not affected.
19.27.085	Building code council account—Building permit fee.
19.27.087	Building permit and plan review fees—Agricultural structures.
19.27.090	Local jurisdictions reserved.
19.27.095	Building permit application—Consideration—Requirements.
19.27.097	Building permit application—Evidence of adequate water supply—Authority of a county or city to impose additional requirements—Applicability—Exemption—Groundwater withdrawal authorized under RCW 90.44.050.
19.27.100	Cities, towns, counties may impose fees different from state building code.
19.27.110	International fire code—Administration and enforcement by counties, other political subdivisions and municipal corporations—Fees.
19.27.111	RCW 19.27.080 not affected.
19.27.113	Automatic fire-extinguishing systems for certain school buildings.
19.27.120	Buildings or structures having special historical or architectural significance—Exception.
19.27.140	Copy of permit to county assessor.
19.27.150	Report to department of enterprise services.
19.27.160	Counties with populations of from five thousand to less than ten thousand—Ordinance reenactment.
19.27.170	Water conservation performance standards—Testing and identifying fixtures that meet standards—Marking and labeling fixtures.
19.27.175	Recycled materials—Study code and adopt changes.
19.27.180	Residential buildings moved into a city or county—Applicability of building codes and electrical installation requirements.
19.27.190	Indoor air quality—Interim and final requirements for maintenance.
19.27.490	Fish habitat enhancement project.
19.27.500	Nightclubs—Automatic sprinkler system—Building code council shall adopt rules.
19.27.510	"Nightclub" defined.
19.27.520	Building constructed, used, or converted to nightclub—In accordance with chapter.
19.27.530	Carbon monoxide alarms—Requirements—Exemptions—Adoption of rules.
19.27.540	Electric vehicle infrastructure requirements.
19.27.550	Accessible parking space access aisles.
19.27.560	International Wildland Urban Interface Code.
19.27.570	Mass timber products—Building construction.

Building permits: RCW 36.21.070 and 36.21.080.

Counties

*adoption of building, plumbing, electrical codes, etc: RCW 36.32.120(7).
building codes: Chapter 36.43 RCW.*

Energy-related building standards: Chapter 19.27A RCW.

Underground storage tanks: RCW 90.76.020.

19.27.010 Short title. This chapter shall be known as the State Building Code Act. [1974 ex.s. c 96 § 1.]

19.27.015 Definitions. As used in this chapter:

(1) "Agricultural structure" means a structure designed and constructed to house farm implements, hay, grain, poultry, livestock, or other horticultural products. This structure may not be a place of human habitation or a place of employment where agricultural products are processed, treated, or packaged, nor may it be a place used by the public.

(2) "City" means a city or town.

(3) "Commercial building permit" means a building permit issued by a city or a county to construct, enlarge, alter, repair, move, demolish, or change the occupancy of any building not covered by a residential building permit.

(4) "Multifamily residential building" means common wall residential buildings that consist of four or fewer units, that do not exceed two stories in height, that are less than five thousand square feet in area, and that have a one-hour fire-resistive occupancy separation between units.

(5) "Residential building permit" means a building permit issued by a city or a county to construct, enlarge, alter, repair, move, demolish, or change the occupancy of any building containing only dwelling units used for independent living of one or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation, and structures accessory to dwelling units, such as detached garages and storage buildings.

(6) "Temporary growing structure" means a structure that has the sides and roof covered with polyethylene, polyvinyl, or similar flexible synthetic material and is used to provide plants with either frost protection or increased heat retention. [2018 c 207 § 1; 2009 c 362 § 2; 1996 c 157 § 1; 1985 c 360 § 1.]

Effective date—2018 c 207 §§ 1-8: See note following RCW 19.27.070.

Finding—Performance audit—2009 c 362: See notes following RCW 19.27.087.

Additional notes found at www.leg.wa.gov

19.27.020 Purposes—Objectives—Standards. The purpose of this chapter is to promote the health, safety and welfare of the occupants or users of buildings and structures and the general public by the provision of building codes throughout the state. Accordingly, this chapter is designed to effectuate the following purposes, objectives, and standards:

(1) To require minimum performance standards and requirements for construction and construction materials, consistent with accepted standards of engineering, fire and life safety.

(2) To require standards and requirements in terms of performance and nationally accepted standards.

(3) To permit the use of modern technical methods, devices and improvements.

(4) To eliminate restrictive, obsolete, conflicting, duplicating and unnecessary regulations and requirements which could unnecessarily increase construction costs or retard the use of new materials and methods of installation or provide unwarranted preferential treatment to types or classes of materials or products or methods of construction.

(2018 Ed.)

(5) To provide for standards and specifications for making buildings and facilities accessible to and usable by physically disabled persons.

(6) To consolidate within each authorized enforcement jurisdiction, the administration and enforcement of building codes. [1985 c 360 § 6; 1974 ex.s. c 96 § 2.]

19.27.031 State building code—Adoption—Conflicts—Opinions. Except as otherwise provided in this chapter, there shall be in effect in all counties and cities the state building code which shall consist of the following codes which are hereby adopted by reference:

(1)(a) The International Building Code, published by the International Code Council, Inc.;

(b) The International Residential Code, published by the International Code Council, Inc.;

(2) The International Mechanical Code, published by the International Code Council, Inc., except that the standards for liquefied petroleum gas installations shall be NFPA 58 (Storage and Handling of Liquefied Petroleum Gases) and ANSI Z223.1/NFPA 54 (National Fuel Gas Code);

(3) The International Fire Code, published by the International Code Council, Inc., including those standards of the National Fire Protection Association specifically referenced in the International Fire Code: PROVIDED, That, notwithstanding any wording in this code, participants in religious ceremonies shall not be precluded from carrying handheld candles;

(4) Portions of the International Wildland Urban Interface Code, published by the International Code Council Inc., as set forth in RCW 19.27.560;

(5) Except as provided in RCW 19.27.170, the Uniform Plumbing Code and Uniform Plumbing Code Standards, published by the International Association of Plumbing and Mechanical Officials: PROVIDED, That any provisions of such code affecting sewers or fuel gas piping are not adopted;

(6) The rules adopted by the council establishing standards for making buildings and facilities accessible to and usable by individuals with disabilities or elderly persons as provided in RCW 70.92.100 through 70.92.160; and

(7) The state's climate zones for building purposes are designated in RCW 19.27A.020(3) and may not be changed through the adoption of a model code or rule.

In case of conflict among the codes enumerated in subsections (1), (2), (3), (4), and (5) of this section, the first named code shall govern over those following.

The codes enumerated in this section shall be adopted by the council as provided in RCW 19.27.074. The council shall solicit input from first responders to ensure that firefighter safety issues are addressed during the code adoption process.

The council may issue opinions relating to the codes at the request of a local official charged with the duty to enforce the enumerated codes. [2018 c 189 § 1; 2015 c 11 § 2; 2003 c 291 § 2; 1995 c 343 § 1. Prior: 1989 c 348 § 9; 1989 c 266 § 1; 1985 c 360 § 5.]

Finding—Intent—2015 c 11: "The legislature finds that the state building code council adopted by rule changes to the climate zones used in the building codes due to modifications in the 2012 international energy conservation code (IECC). The legislature intends to update the statutes to be more reflective of the national standards." [2015 c 11 § 1.]

Intent—Finding—2003 c 291: "(1) The intent of the adoption of the International Building Code by the legislature is to remain consistent with

state laws regulating construction, including electrical, plumbing, and energy codes established in chapters 19.27, 19.27A, and 19.28 RCW. The International Building Code references the International Residential Code for provisions related to the construction of single and multiple-family dwellings. No portion of the International Residential Code shall supersede or take precedent over provisions in chapter 19.28 RCW, regulating the electrical code; nor provisions in RCW 19.27.031(4), regulating the plumbing code; nor provisions in chapter 19.27A RCW, regulating the energy code.

(2) It is in the state's interest and consistent with the state building code act to have in effect provisions regulating the construction of single and multiple-family residences. It is the legislative intent that the state building code council adopt the International Residential Code through rule making granted in RCW 19.27.074, consistent with state law regulating construction for electrical, plumbing, and energy codes, and other state and federal laws regulating single and multiple-family construction.

(3) In accordance with RCW 19.27.020, the state building code council shall promote fire and life safety in buildings consistent with accepted standards. In adopting the codes for the state of Washington, the state building code council shall consider provisions related to firefighter safety published by nationally recognized organizations. The state building code council shall review all nationally recognized codes as set forth in RCW 19.27.074.

(4) The legislature finds that building codes are an integral component of affordable housing. In accordance with this finding, the state building code council shall consider and review building code provisions related to improving affordable housing." [2003 c 291 § 1.]

Additional notes found at www.leg.wa.gov

19.27.035 Process for review. The building code council shall:

(1) By July 1, 2019, adopt a revised process for the review of proposed statewide amendments to the codes enumerated in RCW 19.27.031; and

(2) Adopt a process for the review of proposed or enacted local amendments to the codes enumerated in RCW 19.27.031 as amended and adopted by the state building code council. [2018 c 207 § 2; 1989 c 266 § 6.]

Effective date—2018 c 207 §§ 1-8: See note following RCW 19.27.070.

19.27.040 Cities and counties authorized to amend state building code—Limitations. The governing body of each county or city is authorized to amend the state building code as it applies within the jurisdiction of the county or city. The minimum performance standards of the codes and the objectives enumerated in RCW 19.27.020 shall not be diminished by any county or city amendments.

Nothing in this chapter shall authorize any modifications of the requirements of chapter 70.92 RCW. [1990 c 2 § 11; 1985 c 360 § 8; 1977 ex.s. c 14 § 12; 1974 ex.s. c 96 § 4.]

Findings—Severability—1990 c 2: See notes following RCW 19.27A.015.

Additional notes found at www.leg.wa.gov

19.27.042 Cities and counties—Emergency exemptions for housing for indigent persons. (1) Effective January 1, 1992, the legislative authorities of cities and counties may adopt an ordinance or resolution to exempt from state building code requirements buildings whose character of use or occupancy has been changed in order to provide housing for indigent persons. The ordinance or resolution allowing the exemption shall include the following conditions:

(a) The exemption is limited to existing buildings located in this state;

(b) Any code deficiencies to be exempted pose no threat to human life, health, or safety;

(c) The building or buildings exempted under this section are owned or administered by a public agency or non-profit corporation; and

(d) The exemption is authorized for no more than five years on any given building. An exemption for a building may be renewed if the requirements of this section are met for each renewal.

(2) By January 1, 1992, the state building code council shall adopt by rule, guidelines for cities and counties exempting buildings under subsection (1) of this section. [1991 c 139 § 1.]

19.27.050 Enforcement. The state building code required by this chapter shall be enforced by the counties and cities. Any county or city not having a building department shall contract with another county, city, or inspection agency approved by the county or city for enforcement of the state building code within its jurisdictional boundaries. [1985 c 360 § 9; 1974 ex.s. c 96 § 5.]

19.27.060 Local building regulations superseded—Exceptions. (1) The governing bodies of counties and cities may amend the codes enumerated in RCW 19.27.031 as amended and adopted by the state building code council as they apply within their respective jurisdictions, but the amendments shall not result in a code that is less than the minimum performance standards and objectives contained in the state building code except as provided in subsection (2) of this section.

(a) Except as provided in subsection (2) of this section, no amendment to a code enumerated in RCW 19.27.031 as amended and adopted by the state building code council that affects single-family or multifamily residential buildings shall be effective unless the amendment is approved by the building code council under RCW 19.27.074(1)(b).

(b) Any county or city amendment to a code enumerated in RCW 19.27.031 which is approved under RCW 19.27.074(1)(b) shall continue to be effective after any action is taken under RCW 19.27.074(1)(a) without necessity of reapproval under RCW 19.27.074(1)(b) unless the amendment is declared null and void by the council at the time any action is taken under RCW 19.27.074(1)(a) because such action in any way altered the impact of the amendment.

(2) The legislative body of a county or city, in exercising the authority provided under subsection (1) of this section to amend the code enumerated in RCW 19.27.031(1)(b), may adopt amendments that eliminate any minimum gross floor area requirement for single-family detached dwellings or that provide a minimum gross floor area requirement below the minimum performance standards and objectives contained in the state building code.

(3) Except as permitted or provided otherwise under this section, the state building code shall be applicable to all buildings and structures including those owned by the state or by any governmental subdivision or unit of local government.

(4) The governing body of each county or city may limit the application of any portion of the state building code to exclude specified classes or types of buildings or structures according to use other than single-family or multifamily residential buildings. However, in no event shall fruits or vegetables of the tree or vine stored in buildings or warehouses

constitute combustible stock for the purposes of application of the uniform fire code. A governing body of a county or city may inspect facilities used for temporary storage and processing of agricultural commodities.

(5) No provision of the uniform fire code concerning roadways shall be part of the state building code: PROVIDED, That this subsection shall not limit the authority of a county or city to adopt street, road, or access standards.

(6) The provisions of the state building code may be preempted by any city or county to the extent that the code provisions relating to the installation or use of sprinklers in jail cells conflict with the secure and humane operation of jails.

(7)(a) Effective one year after July 23, 1989, the governing bodies of counties and cities may adopt an ordinance or resolution to exempt from permit requirements certain construction or alteration of either group R, division 3, or group M, division 1 occupancies, or both, as defined in the uniform building code, 1988 edition, for which the total cost of fair market value of the construction or alteration does not exceed fifteen hundred dollars. The permit exemption shall not otherwise exempt the construction or alteration from the substantive standards of the codes enumerated in RCW 19.27.031, as amended and maintained by the state building code council under RCW 19.27.070.

(b) Prior to July 23, 1989, the state building code council shall adopt by rule, guidelines exempting from permit requirements certain construction and alteration activities under (a) of this subsection. [2018 c 302 § 2; 2015 c 226 § 1; 2002 c 135 § 1. Prior: 1989 c 266 § 2; 1989 c 246 § 1; 1987 c 462 § 12; 1986 c 118 § 15; 1985 c 360 § 10; 1981 2nd ex.s. c 12 § 5; 1980 c 64 § 1; 1975 1st ex.s. c 282 § 2; 1974 ex.s. c 96 § 6.]

Additional notes found at www.leg.wa.gov

19.27.065 Exemption—Temporary growing structures used for commercial production of horticultural plants. The provisions of this chapter do not apply to temporary growing structures used solely for the commercial production of horticultural plants including ornamental plants, flowers, vegetables, and fruits. A temporary growing structure is not considered a building for purposes of this chapter. [1996 c 157 § 2.]

Additional notes found at www.leg.wa.gov

19.27.067 Temporary worker housing—Exemption—Standards. (1) Temporary worker housing shall be constructed, altered, or repaired as provided in chapter 70.114A RCW and chapter 37, Laws of 1998. The construction, alteration, or repair of temporary worker housing is not subject to the codes adopted under RCW 19.27.031, except as provided by rule adopted under chapter 70.114A RCW or chapter 37, Laws of 1998.

(2) For the purpose of this section, "temporary worker housing" has the same meaning as provided in RCW 70.114A.020.

(3) This section is applicable to temporary worker housing as of the date of the final adoption of the temporary worker building code by the department of health under RCW 70.114A.081. [1998 c 37 § 1.]

(2018 Ed.)

19.27.070 State building code council—Established—Membership—Travel expenses. There is hereby established in the department of enterprise services 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 must be a person with a physical disability and shall represent the disability community;

(f) One member, who is not eligible for membership on the council in any other capacity, and who has not previously been nominated or appointed to the council to represent any other group, must represent the general public; and

(g) Seven members must represent the private sector or professional organizations as follows:

(i) One member shall represent general construction, specializing in commercial and industrial building construction;

(ii) One member shall represent general construction, specializing in residential and multifamily building construction;

(iii) One member shall represent the architectural design profession;

(iv) One member shall represent the structural engineering profession;

(v) One member shall represent the mechanical engineering profession;

(vi) One member shall represent the construction building trades;

(vii) One member shall represent manufacturers, installers, or suppliers of building materials and components.

(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 private sector 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 appointed to represent

a specific private sector industry enters into employment outside of the industry, or outside of the private sector, he or she has been appointed to represent, then he or she must 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. The governor shall select appointees to represent private sector industries from a list of three nominations provided by the trade associations representing the industry, unless no names are put forth by the trade associations.

(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) For purposes of this section, a "professional organization" includes an entity whose members are engaged in a particular lawful vocation, occupation, or field of activity of a specialized nature, including but not limited to associations, boards, educational institutions, and nonprofit organizations. [2018 c 207 § 3; 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—2018 c 207 §§ 1-8: "Sections 1 through 8 of this act take effect July 1, 2018." [2018 c 207 § 11.]

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

19.27.074 State building code council—Duties—Public meetings—Timing of code changes. (1) The state building code council shall:

(a) Adopt and maintain the codes to which reference is made in RCW 19.27.031 in a status which is consistent with the state's interest as set forth in RCW 19.27.020. In maintaining these codes, the council shall regularly review updated versions of the codes referred to in RCW 19.27.031 and other pertinent information and shall amend the codes as deemed appropriate by the council;

(b) Approve or deny all county or city amendments to any code referred to in RCW 19.27.031 to the degree the amendments apply to single-family or multifamily residential buildings;

(c) As required by the legislature, develop and adopt any codes relating to buildings; and

(d) Approve a proposed budget for the operation of the state building code council to be submitted by the department

of enterprise services to the office of financial management pursuant to RCW 43.88.090.

(2) The state building code council may:

(a) Appoint technical advisory committees which may include members of the council;

(b) Approve contracts for services; and

(c) Conduct research into matters relating to any code or codes referred to in RCW 19.27.031 or any related matter.

(3) The department of enterprise services, with the advice and input from the members of the building code council, shall:

(a) Employ permanent and temporary staff and contract for services;

(b) Contract with an independent, third-party entity to perform a Washington energy code baseline economic analysis and economic analysis of code proposals; and

(c) Provide all administrative and information technology services required for the building code council.

(4) Rule-making authority as authorized in this chapter resides within the building code council.

(5)(a) All meetings of the state building code council shall be open to the public under the open public meetings act, chapter 42.30 RCW. All actions of the state building code council which adopt or amend any code of statewide applicability shall be pursuant to the administrative procedure act, chapter 34.05 RCW.

(b) All council decisions relating to the codes enumerated in RCW 19.27.031 shall require approval by at least a majority of the members of the council.

(c) All decisions to adopt or amend codes of statewide application shall be made prior to December 1 of any year and shall not take effect before the end of the regular legislative session in the next year. [2018 c 207 § 4; 1989 c 266 § 3; 1985 c 360 § 2.]

Effective date—2018 c 207 §§ 1-8: See note following RCW 19.27.070.

19.27.076 State building code council—Open public access information technologies. The building code council in consultation with the office of the chief information officer shall assess the costs and benefits of the potential acquisition and implementation of open public access information technologies to enhance the council's code adoption process and report back to the appropriate committees of the legislature by November 15, 2018. [2018 c 207 § 6.]

Effective date—2018 c 207 §§ 1-8: See note following RCW 19.27.070.

19.27.080 Chapters of RCW not affected. Nothing in this chapter affects the provisions of chapters 19.27A, 19.28, 43.22, 70.77, 70.79, 70.87, *48.48, 18.20, 18.46, 18.51, 28A.305, 70.41, 70.62, 70.75, 70.108, 71.12, 74.15, 70.94, 76.04, 90.76 RCW, or RCW 28A.195.010, or grants rights to duplicate the authorities provided under chapters 70.94 or 76.04 RCW. [2003 c 291 § 3; 1990 c 33 § 555; 1989 c 346 § 19; 1975 1st ex.s. c 282 § 1; 1974 ex.s. c 96 § 8.]

***Reviser's note:** Chapter 48.48 RCW was recodified in its entirety as chapter 43.44 RCW pursuant to 2006 c 25 § 13.

Intent—Finding—2003 c 291: See note following RCW 19.27.031.

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Additional notes found at www.leg.wa.gov

19.27.085 Building code council account—Building permit fee. (1) There is hereby created the building code council account in the state treasury. Moneys deposited into the account shall be used by the building code council, after appropriation, to perform the purposes of the council.

(2) All moneys collected under subsection (3) of this section shall be deposited into the building code council account. Every four years the state treasurer shall report to the legislature on the balances in the account so that the legislature may adjust the charges imposed under subsection (3) of this section.

(3) There is imposed a fee of six dollars and fifty cents on each residential building permit and a fee of twenty-five dollars for each commercial building permit, issued by a county or a city, plus an additional surcharge of two dollars for each residential unit, but not including the first unit, on each building containing more than one residential unit. Quarterly each county and city shall remit moneys collected under this section to the state treasury; however, no remittance is required until a minimum of fifty dollars has accumulated pursuant to this subsection. [2018 c 207 § 5; 1989 c 256 § 1; 1985 c 360 § 4.]

Effective date—2018 c 207 §§ 1-8: See note following RCW 19.27.070.

19.27.087 Building permit and plan review fees—Agricultural structures. Permitting and plan review fees under this chapter for agricultural structures may only cover the costs to counties, cities, towns, and other municipal corporations of processing applications, inspecting and reviewing plans, preparing detailed statements required by chapter 43.21C RCW, and performing necessary inspections under this chapter. [2009 c 362 § 3.]

Finding—2009 c 362: "The legislature finds that permit and inspection fees for new agricultural structures should not exceed the direct and indirect costs associated with reviewing permit applications, conducting inspections, and preparing specific environmental documents." [2009 c 362 § 1.]

19.27.090 Local jurisdictions reserved. Local land use and zoning requirements, building setbacks, side and rear-yard requirements, site development, property line requirements, requirements adopted by counties or cities pursuant to chapter 58.17 RCW, snow load requirements, wind load requirements, and local fire zones are specifically reserved to local jurisdictions notwithstanding any other provision of this chapter. [1989 c 266 § 5; 1974 ex.s. c 96 § 9.]

19.27.095 Building permit application—Consideration—Requirements. (1) A valid and fully complete building permit application for a structure, that is permitted under the zoning or other land use control ordinances in effect on the date of the application shall be considered under the building permit ordinance in effect at the time of application, and the zoning or other land use control ordinances in effect on the date of application.

(2) The requirements for a fully completed application shall be defined by local ordinance but for any construction project costing more than five thousand dollars the application shall include, at a minimum:

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

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

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

(d) Either:

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

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

(3) The information required on the building permit application by subsection (2)(a) through (d) of this section shall be set forth on the building permit document which is issued to the owner, and on the inspection record card which shall be posted at the construction site.

(4) The information required by subsection (2) of this section and information supplied by the applicant after the permit is issued under subsection (5) of this section shall be kept on record in the office where building permits are issued and made available to any person on request. If a copy is requested, a reasonable charge may be made.

(5) If any of the information required by subsection (2)(d) of this section is not available at the time the application is submitted, the applicant shall so state and the application shall be processed forthwith and the permit issued as if the information had been supplied, and the lack of the information shall not cause the application to be deemed incomplete for the purposes of vesting under subsection (1) of this section. However, the applicant shall provide the remaining information as soon as the applicant can reasonably obtain such information.

(6) The limitations imposed by this section shall not restrict conditions imposed under chapter 43.21C RCW. [1991 c 281 § 27; 1987 c 104 § 1.]

Additional notes found at www.leg.wa.gov

19.27.097 Building permit application—Evidence of adequate water supply—Authority of a county or city to impose additional requirements—Applicability—Exemption—Groundwater withdrawal authorized under RCW 90.44.050. (1)(a) Each applicant for a building permit of a building necessitating potable water shall provide evidence of an adequate water supply for the intended use of the building. Evidence may be in the form of a water right permit from the department of ecology, a letter from an approved water purveyor stating the ability to provide water, or another form sufficient to verify the existence of an adequate water supply. An application for a water right shall not be sufficient proof of an adequate water supply.

(b) In a water resource inventory area with rules adopted by the department of ecology pursuant to RCW 90.94.020 or 90.94.030 and the following water resource inventory areas with instream flow rules adopted by the department of ecology under chapters 90.22 and 90.54 RCW that explicitly reg-

ulate permit-exempt groundwater withdrawals, evidence of an adequate water supply must be consistent with the specific applicable rule requirements: 5 (Stillaguamish); 17 (Quilcene-Snow); 18 (Elwha-Dungeness); 27 (Lewis); 28 (Salmon-Washougal); 32 (Walla Walla); 45 (Wenatchee); 46 (Entiat); 48 (Methow); and 57 (Middle Spokane).

(c) In the following water resource inventory areas with instream flow rules adopted by the department of ecology under chapters 90.22 and 90.54 RCW that do not explicitly regulate permit-exempt groundwater withdrawals, evidence of an adequate water supply must be consistent with RCW 90.94.020, unless the applicant provides other evidence of an adequate water supply that complies with chapters 90.03 and 90.44 RCW: 1 (Nooksack); 11 (Nisqually); 22 (Lower Chehalis); 23 (Upper Chehalis); 49 (Okanogan); 55 (Little Spokane); and 59 (Colville).

(d) In the following water resource inventory areas with instream flow rules adopted by the department of ecology under chapters 90.22 and 90.54 RCW that do not explicitly regulate permit-exempt groundwater withdrawals, evidence of an adequate water supply must be consistent with RCW 90.94.030, unless the applicant provides other evidence of an adequate water supply that complies with chapters 90.03 and 90.44 RCW: 7 (Snohomish); 8 (Cedar-Sammamish); 9 (Duwamish-Green); 10 (Puyallup-White); 12 (Chambers-Clover); 13 (Deschutes); 14 (Kennedy-Goldsborough); and 15 (Kitsap).

(e) In water resource inventory areas 37 (Lower Yakima), 38 (Naches), and 39 (Upper Yakima), the department of ecology may impose requirements to satisfy adjudicated water rights.

(f) Additional requirements apply in areas within water resource inventory area 3 (Lower Skagit-Samish) and 4 (Upper Skagit) regulated by chapter 173-503 WAC, as a result of *Swinomish Indian Tribal Community v. Department of Ecology*, 178 Wn.2d 571, 311 P.3d 6 (2013).

(g) In other areas of the state, physical and legal evidence of an adequate water supply may be demonstrated by the submission of a water well report consistent with the requirements of chapter 18.104 RCW.

(h) For the purposes of this subsection (1), "water resource inventory areas" means those areas described in chapter 173-500 WAC as of January 19, 2018.

(2) In addition to other authorities, the county or city may impose additional requirements, including conditions on building permits requiring connection to an existing public water system where the existing system is willing and able to provide safe and reliable potable water to the applicant with reasonable economy and efficiency.

(3) Within counties not required or not choosing to plan pursuant to RCW 36.70A.040, the county and the state may mutually determine those areas in the county in which the requirements of subsection (1) of this section shall not apply. The departments of health and ecology shall coordinate on the implementation of this section. Should the county and the state fail to mutually determine those areas to be designated pursuant to this subsection, the county may petition the department of enterprise services to mediate or, if necessary, make the determination.

(4) Buildings that do not need potable water facilities are exempt from the provisions of this section. The department of

ecology, after consultation with local governments, may adopt rules to implement this section, which may recognize differences between high-growth and low-growth counties.

(5) Any permit-exempt groundwater withdrawal authorized under RCW 90.44.050 associated with a water well constructed in accordance with the provisions of chapter 18.104 RCW before January 19, 2018, is deemed to be evidence of adequate water supply under this section. [2018 c 1 § 101; 2015 c 225 § 17; 2010 c 271 § 302; 1995 c 399 § 9; 1991 sp.s. c 32 § 28; 1990 1st ex.s. c 17 § 63.]

Intent—2018 c 1: See note following RCW 90.94.010.

Effective date—2018 c 1: See RCW 90.94.900.

Purpose—Effective date—2010 c 271: See notes following RCW 43.330.005.

Additional notes found at www.leg.wa.gov

19.27.100 Cities, towns, counties may impose fees different from state building code. Except for permitting fees for agricultural structures under RCW 19.27.087, nothing in this chapter shall prohibit a city, town, or county of the state from imposing fees different from those set forth in the state building code. [2009 c 362 § 4; 1975 1st ex.s. c 8 § 1.]

Finding—Performance audit—2009 c 362: See notes following RCW 19.27.087.

19.27.110 International fire code—Administration and enforcement by counties, other political subdivisions and municipal corporations—Fees. Each county government shall administer and enforce the International Fire Code in the unincorporated areas of the county: PROVIDED, That any political subdivision or municipal corporation providing fire protection pursuant to RCW 14.08.120 shall, at its sole option, be responsible for administration and enforcement of the International Fire Code on its facility. Any fire protection district or political subdivision may, pursuant to chapter 39.34 RCW, the interlocal cooperation act, assume all or a portion of the administering responsibility and coordinate and cooperate with the county government in the enforcement of the International Fire Code.

It is not the intent of RCW 19.27.110 and 19.27.111 to preclude or limit the authority of any city, town, county, fire protection district, state agency, or political subdivision from engaging in those fire prevention activities with which they are charged.

It is not the intent of the legislature by adopting the state building code or RCW 19.27.110 and 19.27.111 to grant counties any more power to suppress or extinguish fires than counties currently possess under the Constitution or other statutes.

Each county is authorized to impose fees sufficient to pay the cost of inspections, administration, and enforcement pursuant to RCW 19.27.110 and 19.27.111. [2003 c 291 § 4; 1975-'76 2nd ex.s. c 37 § 1.]

Intent—Finding—2003 c 291: See note following RCW 19.27.031.

19.27.111 RCW 19.27.080 not affected. Nothing in RCW 19.27.110 shall affect the provisions of RCW 19.27.080. [1975-'76 2nd ex.s. c 37 § 2.]

19.27.113 Automatic fire-extinguishing systems for certain school buildings. The building code council shall adopt rules by December 1, 1991, requiring that all buildings

classified as E-1 occupancies, as defined in the state building code, except portable school classrooms, constructed after July 28, 1991, be provided with an automatic fire-extinguishing system. Rules adopted by the council shall consider applicable nationally recognized fire and building code standards and local conditions.

By December 15, 1991, the council shall transmit to the superintendent of public instruction, the state board of education, and the fire protection policy board copies of the rules as adopted. The superintendent of public instruction, the state board of education, and the fire protection policy board shall respond to the council by February 15, 1992, with any recommended changes to the rule. If changes are recommended the council shall immediately consider those changes to the rules through its rule-making procedures. The rules shall be effective on July 1, 1992. [1991 c 170 § 1.]

Schools—Standards for fire prevention and safety: RCW 43.44.030.

19.27.120 Buildings or structures having special historical or architectural significance—Exception. (1) Repairs, alterations, and additions necessary for the preservation, restoration, rehabilitation, strengthening, or continued use of a building or structure may be made without conformance to all of the requirements of the codes adopted under RCW 19.27.031, when authorized by the appropriate building official under the rules adopted under subsection (2) of this section, provided:

(a) The building or structure: (i) Has been designated by official action of a legislative body as having special historical or architectural significance, or (ii) is an unreinforced masonry building or structure on the state or the national register of historic places, or is potentially eligible for placement on such registers; and

(b) The restored building or structure will be less hazardous, based on life and fire risk, than the existing building.

(2) The state building code council shall adopt rules, where appropriate, to provide alternative methods to those otherwise required under this chapter for repairs, alterations, and additions necessary for preservation, restoration, rehabilitation, strengthening, or continued use of buildings and structures identified under subsection (1) of this section. [1985 c 360 § 13; 1975-'76 2nd ex.s. c 11 § 1.]

19.27.140 Copy of permit to county assessor. A copy of any permit obtained under the state building code for construction or alteration work of a total cost or fair market value in excess of five hundred dollars, shall be transmitted by the issuing authority to the county assessor of the county where the property on which the construction or alteration work is located. The building permit shall contain the county assessor's parcel number. [1989 c 246 § 5.]

19.27.150 Report to department of enterprise services. Every month a copy of the United States department of commerce, bureau of the census' "report of building or zoning permits issued and local public construction" or equivalent report shall be transmitted by the governing bodies of counties and cities to the department of enterprise services. [2015 c 225 § 18; 2010 c 271 § 303; 1995 c 399 § 10; 1989 c 246 § 6.]

Purpose—Effective date—2010 c 271: See notes following RCW 43.330.005.

(2018 Ed.)

19.27.160 Counties with populations of from five thousand to less than ten thousand—Ordinance reenactment. Any county with a population of from five thousand to less than ten thousand that had in effect on July 1, 1985, an ordinance or resolution authorizing and regulating the construction of owner-built residences may reenact such an ordinance or resolution if the ordinance or resolution is reenacted before September 30, 1989. After reenactment, the county shall transmit a copy of the ordinance or resolution to the state building code council. [1991 c 363 § 16; 1989 c 246 § 7.]

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

19.27.170 Water conservation performance standards—Testing and identifying fixtures that meet standards—Marking and labeling fixtures. (1) The state building code council shall adopt rules under chapter 34.05 RCW that implement and incorporate the water conservation performance standards in subsections (4) and (5) of this section. These standards shall apply to all new construction and all remodeling involving replacement of plumbing fixtures in all residential, hotel, motel, school, industrial, commercial use, or other occupancies determined by the council to use significant quantities of water.

(2) The legislature recognizes that a phasing-in approach to these new standards is appropriate. Therefore, standards in subsection (4) of this section shall take effect on July 1, 1990. The standards in subsection (5) of this section shall take effect July 1, 1993.

(3) No individual, public or private corporation, firm, political subdivision, government agency, or other legal entity may, for purposes of use in this state, distribute, sell, offer for sale, import, install, or approve for installation any plumbing fixtures unless the fixtures meet the standards as provided for in this section.

(4) Standards for water use efficiency effective July 1, 1990.

(a) Standards for waterclosets. The guideline for maximum water use allowed in gallons per flush (gpf) for any of the following waterclosets is the following:

Tank-type toilets	3.5 gpf.
Flushometer-valve toilets	3.5 gpf.
Flushometer-tank toilets	3.5 gpf.
Electromechanical hydraulic toilets	3.5 gpf.

(b) Standard for urinals. The guideline for maximum water use allowed for any urinal is 3.0 gallons per flush.

(c) Standard for showerheads. The guideline for maximum water use allowed for any showerhead is 3.0 gallons per minute.

(d) Standard for faucets. The guideline for maximum water use allowed in gallons per minute (gpm) for any of the following faucets and replacement aerators is the following:

Bathroom faucets	3.0 gpm.
Lavatory faucets	3.0 gpm.
Kitchen faucets	3.0 gpm.
Replacement aerators	3.0 gpm.

(e) Except where designed and installed for use by the physically handicapped, lavatory faucets located in restrooms

intended for use by the general public must be equipped with a metering valve designed to close by spring or water pressure when left unattended (self-closing).

(f) No urinal or watercloset that operates on a continuous flow or continuous flush basis shall be permitted.

(5) Standards for water use efficiency effective July 1, 1993.

(a) Standards for waterclosets. The guideline for maximum water use allowed in gallons per flush (gpf) for any of the following waterclosets is the following:

Tank-type toilets	1.6 gpf.
Flushometer-tank toilets	1.6 gpf.
Electromechanical hydraulic toilets	1.6 gpf.

(b) Standards for urinals. The guideline for maximum water use allowed for any urinal is 1.0 gallons per flush.

(c) Standards for showerheads. The guideline for maximum water use allowed for any showerhead is 2.5 gallons per minute.

(d) Standards for faucets. The guideline for maximum water use allowed in gallons per minute for any of the following faucets and replacement aerators is the following:

Bathroom faucets	2.5 gpm.
Lavatory faucets	2.5 gpm.
Kitchen faucets	2.5 gpm.
Replacement aerators	2.5 gpm.

(e) Except where designed and installed for use by the physically handicapped, lavatory faucets located in restrooms intended for use by the general public must be equipped with a metering valve designed to close by water pressure when unattended (self-closing).

(f) No urinal or watercloset that operates on a continuous flow or continuous basis shall be permitted.

(6) The building code council shall establish methods and procedures for testing and identifying fixtures that meet the standards established in subsection (5) of this section. The council shall use the testing standards designated as American national standards, written under American national standards institute procedures or other widely recognized national testing standards. The council shall either review test results from independent testing laboratories that are submitted by manufacturers of plumbing fixtures or accept data submitted to and evaluated by the international association of plumbing and mechanical officials. The council shall publish and widely distribute a current list of fixtures that meet the standards established in subsection (5) of this section.

(7) The building code council shall adopt rules for marking and labeling fixtures meeting the standards established in subsection (5) of this section.

(8) This section shall not apply to fixtures installed before July 28, 1991, that are removed and relocated to another room or area of the same building after July 28, 1991, nor shall it apply to fixtures, as determined by the council, that in order to perform a specialized function, cannot meet the standards specified in this section.

(9) The water conservation performance standards shall supersede all local government codes. After July 1, 1990, cities, towns, and counties shall not amend the code revisions

and standards established under subsection (4) or (5) of this section. [1991 c 347 § 16; 1989 c 348 § 8.]

Purposes—1991 c 347: See note following RCW 90.42.005.

Additional notes found at www.leg.wa.gov

19.27.175 Recycled materials—Study code and adopt changes. The state building code council, in consultation with the department of ecology and local governments, shall conduct a study of the state building code, and adopt changes as necessary to encourage greater use of recycled building materials from construction and building demolition debris, mixed waste paper, waste paint, waste plastics, and other waste materials. [1991 c 297 § 15.]

19.27.180 Residential buildings moved into a city or county—Applicability of building codes and electrical installation requirements. (1) Residential buildings or structures moved into or within a county or city are not required to comply with all of the requirements of the codes enumerated in chapters 19.27 and 19.27A RCW, as amended and maintained by the state building code council and chapter 19.28 RCW, if the original occupancy classification of the building or structure is not changed as a result of the move.

(2) This section shall not apply to residential structures or buildings that are substantially remodeled or rehabilitated, nor to any work performed on a new or existing foundation.

(3) For the purposes of determining whether a moved building or structure has been substantially remodeled or rebuilt, any cost relating to preparation, construction, or renovation of the foundation shall not be considered. [1992 c 79 § 1; 1989 c 313 § 2.]

Finding—1989 c 313: "The legislature finds that moved buildings or structures can provide affordable housing for many persons of lower income; that many of the moved structures or buildings were legally built to the construction standards of their day; and that requiring the moved building or structure to meet all new construction codes may limit their use as an affordable housing option for persons of lower income.

The legislature further finds that application of the new construction code standards to moved structures and buildings present unique difficulties and that it is the intent of the legislature that any moved structure or building that meets the codes at the time it was constructed does not need to comply with any updated state building code unless the structure is substantially remodeled or rebuilt." [1989 c 313 § 1.]

19.27.190 Indoor air quality—Interim and final requirements for maintenance. (1)(a) Not later than January 1, 1991, the state building code council, in consultation with the *department of community, trade, and economic development, shall establish interim requirements for the maintenance of indoor air quality in newly constructed residential buildings. In establishing the interim requirements, the council shall take into consideration differences in heating fuels and heating system types. These requirements shall be in effect July 1, 1991, through June 30, 1993.

(b) The interim requirements for new electrically space heated residential buildings shall include ventilation standards which provide for mechanical ventilation in areas of the residence where water vapor or cooking odors are produced. The ventilation shall be exhausted to the outside of the structure. The ventilation standards shall further provide for the capacity to supply outside air to each bedroom and the main living area through dedicated supply air inlet locations in walls, or in an equivalent manner. At least one exhaust fan

in the home shall be controlled by a dehumidistat or clock timer to ensure that sufficient whole house ventilation is regularly provided as needed.

(c)(i) For new single-family residences with electric space heating systems, zero lot line homes, each unit in a duplex, and each attached housing unit in a planned unit development, the ventilation standards shall include fifty cubic feet per minute of effective installed ventilation capacity in each bathroom and one hundred cubic feet per minute of effective installed ventilation capacity in each kitchen.

(ii) For other new residential units with electric space heating systems the ventilation standards may be satisfied by the installation of two exhaust fans with a combined effective installed ventilation capacity of two hundred cubic feet per minute.

(iii) Effective installed ventilation capacity means the capability to deliver the specified ventilation rates for the actual design of the ventilation system. Natural ventilation and infiltration shall not be considered acceptable substitutes for mechanical ventilation.

(d) For new residential buildings that are space heated with other than electric space heating systems, the interim standards shall be designed to result in indoor air quality equivalent to that achieved with the interim ventilation standards for electric space heated homes.

(e) The interim requirements for all newly constructed residential buildings shall include standards for indoor air quality pollutant source control, including the following requirements: All structural panel components of the residence shall comply with appropriate standards for the emission of formaldehyde; the back-drafting of combustion by-products from combustion appliances shall be minimized through the use of dampers, vents, outside combustion air sources, or other appropriate technologies; and, in areas of the state where monitored data indicate action is necessary to inhibit indoor radon gas concentrations from exceeding appropriate health standards, entry of radon gas into homes shall be minimized through appropriate foundation construction measures.

(2) No later than January 1, 1993, the state building code council, in consultation with the *department of community, trade, and economic development, shall establish final requirements for the maintenance of indoor air quality in newly constructed residences to be in effect beginning July 1, 1993. For new electrically space heated residential buildings, these requirements shall maintain indoor air quality equivalent to that provided by the mechanical ventilation and indoor air pollutant source control requirements included in the February 7, 1989, Bonneville power administration record of decision for the environmental impact statement on new energy efficient homes programs (DOE/EIS-0127F) built with electric space heating. In residential units other than single-family, zero lot line, duplexes, and attached housing units in planned unit developments, ventilation requirements may be satisfied by the installation of two exhaust fans with a combined effective installed ventilation capacity of two hundred cubic feet per minute. For new residential buildings that are space heated with other than electric space heating systems, the standards shall be designed to result in indoor air quality equivalent to that achieved with the ventilation and source control standards for electric space heated homes. In

establishing the final requirements, the council shall take into consideration differences in heating fuels and heating system types. [1996 c 186 § 501; 1990 c 2 § 7.]

*Reviser's note: The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

Findings—Severability—1990 c 2: See notes following RCW 19.27A.015.

Additional notes found at www.leg.wa.gov

19.27.490 Fish habitat enhancement project. A fish habitat enhancement project meeting the criteria of RCW 77.55.181 is not subject to grading permits, inspections, or fees and shall be reviewed according to the provisions of RCW 77.55.181. [2014 c 120 § 8; 2003 c 39 § 11; 1998 c 249 § 14.]

Findings—Purpose—Report—Effective date—1998 c 249: See notes following RCW 77.55.181.

19.27.500 Nightclubs—Automatic sprinkler system—Building code council shall adopt rules. (1) The building code council shall adopt rules requiring that all nightclubs be provided with an automatic sprinkler system. Rules adopted by the council shall consider applicable nationally recognized fire and building code standards and local conditions and require that the automatic sprinkler systems be installed by December 1, 2009.

(2) The council shall transmit to the fire protection policy board copies of the rules as adopted. The fire protection policy board shall respond to the council within sixty days after receipt of the rules. If changes are recommended by the fire protection policy board the council shall immediately consider those changes to the rules through its rule-making procedures. [2007 c 434 § 1; 2005 c 148 § 1.]

19.27.510 "Nightclub" defined. As used in this chapter:

"Nightclub" means an A-2 occupancy use under the 2006 international building code in which the aggregate area of concentrated use of unfixed chairs and standing space that is specifically designated and primarily used for dancing or viewing performers exceeds three hundred fifty square feet, excluding adjacent lobby areas. "Nightclub" does not include theaters with fixed seating, banquet halls, or lodge halls. [2007 c 434 § 2; 2005 c 148 § 2.]

19.27.520 Building constructed, used, or converted to nightclub—In accordance with chapter. No building shall be constructed for, used for, or converted to, occupancy as a nightclub except in accordance with this chapter. [2005 c 148 § 3.]

19.27.530 Carbon monoxide alarms—Requirements—Exemptions—Adoption of rules. (1) By July 1, 2010, the building code council shall adopt rules requiring that all buildings classified as residential occupancies, as defined in the state building code in chapter 51-54 WAC, but excluding owner-occupied single-family residences legally occupied before July 26, 2009, be equipped with carbon monoxide alarms.

(2)(a) The building code council may phase in the carbon monoxide alarm requirements on a schedule that it determines reasonable, provided that the rules require that by January 1, 2011, all newly constructed buildings classified as residential occupancies will be equipped with carbon monoxide alarms, and all other buildings classified as residential occupancies will be equipped with carbon monoxide alarms by January 1, 2013.

(b) Owner-occupied single-family residences legally occupied before July 26, 2009, are exempt from the requirements of this subsection (2). However, for any owner-occupied single-family residence that is sold on or after July 26, 2009, the seller must equip the residence with carbon monoxide alarms in accordance with the requirements of the state building code before the buyer or any other person may legally occupy the residence following such sale.

(3) The building code council may exempt categories of buildings classified as residential occupancies if it determines that requiring carbon monoxide alarms are unnecessary to protect the health and welfare of the occupants.

(4) The rules adopted by the building code council under this section must (a) consider applicable nationally accepted standards and (b) require that the maintenance of a carbon monoxide alarm in a building where a tenancy exists, including the replacement of batteries, is the responsibility of the tenant, who shall maintain the alarm as specified by the manufacturer.

(5) Real estate brokers licensed under chapter 18.85 RCW shall not be liable in any civil, administrative, or other proceeding for the failure of any seller or other property owner to comply with the requirements of this section or rules adopted by the building code council. [2012 c 132 § 4; 2009 c 313 § 2.]

Findings—2012 c 132: See note following RCW 64.06.020.

Intent—2009 c 313: "The legislature recognizes that carbon monoxide poses a serious threat. According to national statistics from the centers for disease control, carbon monoxide kills more than five hundred people and accounts for an estimated twenty thousand emergency department visits annually. Specifically, Washington state has experienced the dire effects of carbon monoxide poisoning. In the storms that struck Washington in December 2006, it was estimated that over one thousand people in the state were seen at hospital emergency rooms with symptoms of carbon monoxide poisoning, and eight people reportedly died of carbon monoxide exposure. It is the intent of the legislature to implement policies to prevent similar tragedies from occurring in the future." [2009 c 313 § 1.]

19.27.540 Electric vehicle infrastructure requirements. The building code council shall adopt rules for electric vehicle infrastructure requirements. Rules adopted by the state building code council must consider applicable national and international standards and be consistent with rules adopted under RCW 19.28.281. [2009 c 459 § 16.]

Finding—Purpose—2009 c 459: See note following RCW 47.80.090.

Regional transportation planning organizations—Electric vehicle infrastructure: RCW 47.80.090.

19.27.550 Accessible parking space access aisles. (1) In addition to the requirements under RCW 46.61.581, each accessible parking space reserved for a person with a physical disability and designated as "van accessible" under the Americans with disabilities act must have a ninety-six inch or greater adjacent access aisle. The adjacent access aisle space must be in addition to the adjacent van parking space. Two

van accessible parking spaces may share a common adjacent access aisle.

(2) A sign must be erected at the head of each access aisle that prohibits parking in any access aisle located adjacent to an accessible parking space reserved for a person with a physical disability. The sign may include additional language such as, but not limited to, an indication of any penalty for parking in an access aisle.

(3) By January 1, 2018, the building code council shall adopt rules to implement in the building code the access aisle width and access aisle marking requirements of this section. [2017 c 132 § 1.]

Effective date—2017 c 132: "This act takes effect January 1, 2018." [2017 c 132 § 2.]

19.27.560 International Wildland Urban Interface Code. (1) In addition to the provisions of RCW 19.27.031, the state building code shall, upon the completion of state-wide mapping of wildland urban interface areas consist of the following parts of the 2018 International Wildland Urban Interface Code, published by the International Code Council, Inc., which are hereby adopted by reference:

(a) The following parts of section 504 class 1 ignition-resistant construction:

(i)(A) 504.2 Roof covering - Roofs shall have a roof assembly that complies with class A rating when testing in accordance with American society for testing materials E 108 or underwriters laboratories 790. For roof coverings where the profile allows a space between the roof covering and roof decking, the space at the eave ends shall be fire stopped to preclude entry of flames or embers, or have one layer of seventy-two pound mineral-surfaced, nonperforated camp sheet complying with American society for testing materials D 3909 installed over the combustible decking.

(B) The roof covering on buildings or structures in existence prior to the adoption of the wildland urban interface code under this section that are replaced or have fifty percent or more replaced in a twelve month period shall be replaced with a roof covering required for new construction based on the type of ignition-resistant construction specified in accordance with section 503 of the International Wildland Urban Interface Code.

(C) The roof covering on any addition to a building or structure shall be replaced with a roof covering required for new construction based on the type of ignition-resistant construction specified in accordance with section 503 of the International Wildland Urban Interface Code.

(ii) 504.5 Exterior walls - Exterior walls of buildings or structures shall be constructed with one of the following methods:

(A) Materials approved for not less than one hour fire-resistance rated construction on the exterior side;

(B) Approved noncombustible materials;

(C) Heavy timber or log wall construction;

(D) Fire retardant-treated wood on the exterior side. The fire retardant-treated wood shall be labeled for exterior use and meet the requirements of section 2303.2 of the International Building Code; or

(E) Ignition-resistant materials on the exterior side.

Such materials shall extend from the top of the foundation to the underside of the roof sheathing.

(iii)(A) 504.7 Appendages and projections - Unenclosed accessory structures attached to buildings with habitable spaces and projections, such as decks, shall not be less than one hour fire-resistance rated construction, heavy timber construction, or constructed of one of the following:

(I) Approved noncombustible materials;

(II) Fire retardant-treated wood identified for exterior use and meeting the requirements of section 2303.2 of the International Building Code; or

(III) Ignition-resistant building materials in accordance with section 503.2 of the International Wildland Urban Interface Code.

(B) Subsection (1)(a)(iii)(A) of this section does not apply to an unenclosed accessory structure attached to buildings with habitable spaces and projections, such as decks, attached to the first floor of a building if the structure is built with building materials at least two inches nominal depth and the area below the unenclosed accessory structure is screened with wire mesh screening to prevent embers from coming in from underneath.

(b) Section 403.2 Driveways - Driveways shall be provided where any portion of an exterior wall of the first story of the building is located more than one hundred fifty feet from a fire apparatus access road. Driveways in excess of three hundred feet in length shall be provided with turnarounds and driveways in excess of five hundred feet in length and less than twenty feet in width shall be provided with turnouts and turnarounds. The county, city, or town will define the requirements for a turnout or turnaround as required in this subsection.

(2) All counties, cities, and towns may adopt the International Wildland Urban Interface Code, published by the International Code Council, Inc., or any portion thereof.

(3) In adopting and maintaining the code enumerated in subsections (1) and (2) of this section, any amendment to the code as adopted under subsections (1) and (2) of this section may not result in an International Wildland Urban Interface Code that is more than the minimum performance standards and requirements contained in the published model code. [2018 c 189 § 2.]

19.27.570 Mass timber products—Building construction. (1) As used in this section, "mass timber products" means a type of building component or system that uses large panelized wood construction, including:

- (a) Cross-laminated timber;
- (b) Nail laminated timber;
- (c) Glue laminated timber;
- (d) Laminated strand timber;
- (e) Dowel laminated timber;
- (f) Laminated veneer lumber;
- (g) Structural composite lumber; and
- (h) Wood concrete composites.

(2) The building code council shall adopt rules for the use of mass timber products for residential and commercial building construction. Rules adopted for the use of mass timber products by the state building code council must consider applicable national and international standards. [2018 c 29 § 1.]

(2018 Ed.)

Chapter 19.27A RCW

ENERGY-RELATED BUILDING STANDARDS

Sections

- 19.27A.015 State energy code—Minimum and maximum energy code.
- 19.27A.020 State energy code—Adoption by state building code council—Preemption of local residential energy codes.
- 19.27A.025 Nonresidential buildings—Minimum standards—Amendments.
- 19.27A.027 Personal wireless service facilities exempt from building envelope insulation requirements.
- 19.27A.045 Maintaining energy code for residential structures.
- 19.27A.050 State building code council—Construction—Inclusion of successor agency.
- 19.27A.060 Hot water heaters—Temperature regulation.
- 19.27A.070 Intent.
- 19.27A.080 Definitions.
- 19.27A.090 Portable oil-fueled heaters—Sales and use—Approval required.
- 19.27A.100 Portable oil-fueled heaters—Requirements for approval.
- 19.27A.110 Portable oil-fueled heaters—Jurisdiction over approval—Sale and use governed exclusively.
- 19.27A.120 Violations—Penalty.
- 19.27A.130 Finding—2009 c 423.
- 19.27A.140 Definitions.
- 19.27A.150 Strategic plan—Development and implementation.
- 19.27A.160 Residential and nonresidential construction—Energy consumption reduction—Council report.
- 19.27A.170 Qualifying utilities—Maintenance of records of energy consumption data—Disclosure.
- 19.27A.180 Energy performance score—Implementation strategy—Development and recommendations.
- 19.27A.190 Qualifying public agency duties—Energy benchmark—Performance rating—Reports.

State building code: Chapter 19.27 RCW.

19.27A.015 State energy code—Minimum and maximum energy code. Except as provided in *RCW 19.27A.020(7), the Washington state energy code for residential buildings shall be the maximum and minimum energy code for residential buildings in each city, town, and county and shall be enforced by each city, town, and county no later than July 1, 1991. The Washington state energy code for nonresidential buildings shall be the minimum energy code for nonresidential buildings enforced by each city, town, and county. [1990 c 2 § 2.]

***Reviser's note:** RCW 19.27A.020 was amended by 2009 c 423 § 4, changing subsection (7) to subsection (6).

Findings—1990 c 2: "The legislature finds that using energy efficiently in housing is one of the lowest cost ways to meet consumer demand for energy; that using energy efficiently helps protect citizens of the state from negative impacts due to changes in energy supply and cost; that using energy efficiently will help mitigate negative environmental impacts of energy use and resource development; and that using energy efficiently will help stretch our present energy resources into the future. The legislature further finds that the electricity surplus in the Northwest is dwindling as the population increases and the economy expands, and that the region will eventually need new sources of electricity generation.

It is declared policy of the state of Washington that energy be used efficiently. It is the intent of this act to establish residential building standards that bring about the common use of energy efficient building methods, and to assure that such methods remain economically feasible and affordable to purchasers of newly constructed housing." [1990 c 2 § 1.]

Additional notes found at www.leg.wa.gov

19.27A.020 State energy code—Adoption by state building code council—Preemption of local residential energy codes. (1) The state building code council in the department of enterprise services shall adopt rules to be known as the Washington state energy code as part of the state building code.

(2) The council shall follow the legislature's standards set forth in this section to adopt rules to be known as the Washington state energy code. The Washington state energy code shall be designed to:

(a) Construct increasingly energy efficient homes and buildings that help achieve the broader goal of building zero fossil-fuel greenhouse gas emission homes and buildings by the year 2031;

(b) Require new buildings to meet a certain level of energy efficiency, but allow flexibility in building design, construction, and heating equipment efficiencies within that framework; and

(c) Allow space heating equipment efficiency to offset or substitute for building envelope thermal performance.

(3) The Washington state energy code shall take into account regional climatic conditions. One climate zone includes: Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Skamania, Spokane, Stevens, Walla Walla, Whitman, and Yakima counties. The other climate zone includes all other counties not listed in this subsection (3). The assignment of a county to a climate zone may not be changed by adoption of a model code or rule. Nothing in this section prohibits the council from adopting the same rules or standards for each climate zone.

(4) The Washington state energy code for residential buildings shall be the 2006 edition of the Washington state energy code, or as amended by rule by the council.

(5) The minimum state energy code for new nonresidential buildings shall be the Washington state energy code, 2006 edition, or as amended by the council by rule.

(6)(a) Except as provided in (b) of this subsection, the Washington state energy code for residential structures shall preempt the residential energy code of each city, town, and county in the state of Washington.

(b) The state energy code for residential structures does not preempt a city, town, or county's energy code for residential structures which exceeds the requirements of the state energy code and which was adopted by the city, town, or county prior to March 1, 1990. Such cities, towns, or counties may not subsequently amend their energy code for residential structures to exceed the requirements adopted prior to March 1, 1990.

(7) The state building code council shall consult with the department of enterprise services as provided in RCW 34.05.310 prior to publication of proposed rules. The director of the department of enterprise services shall recommend to the state building code council any changes necessary to conform the proposed rules to the requirements of this section.

(8) The state building code council shall evaluate and consider adoption of the international energy conservation code in Washington state in place of the existing state energy code.

(9) The definitions in RCW 19.27A.140 apply throughout this section. [2018 c 207 § 7; 2015 c 11 § 3; 2010 c 271 § 304; 2009 c 423 § 4; 1998 c 245 § 8; 1996 c 186 § 502; 1994 c 226 § 1; 1990 c 2 § 3; 1985 c 144 § 2; 1979 ex.s. c 76 § 3. Formerly RCW 19.27.075.]

Effective date—2018 c 207 §§ 1-8: See note following RCW 19.27.070.

Finding—Intent—2015 c 11: See note following RCW 19.27.031.

Purpose—Effective date—2010 c 271: See notes following RCW 43.330.005.

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

Findings—Severability—1990 c 2: See notes following RCW 19.27A.015.

Additional notes found at www.leg.wa.gov

19.27A.025 Nonresidential buildings—Minimum standards—Amendments. (1) The minimum state energy code for new nonresidential buildings shall be the Washington state energy code, 1986 edition, as amended. The state building code council may, by rule adopted pursuant to chapter 34.05 RCW, amend that code's requirements for new nonresidential buildings provided that:

(a) Such amendments increase the energy efficiency of typical newly constructed nonresidential buildings; and

(b) Any new measures, standards, or requirements adopted must be technically feasible, commercially available, and cost-effective to building owners and tenants.

(2) In considering amendments to the state energy code for nonresidential buildings, the state building code council shall establish and consult with a technical advisory committee including representatives of appropriate state agencies, local governments, general contractors, building owners and managers, design professionals, utilities, and other interested and affected parties.

(3) Decisions to amend the Washington state energy code for new nonresidential buildings shall be made prior to December 15th of any year and shall not take effect before the end of the regular legislative session in the next year. Any disputed provisions within an amendment presented to the legislature shall be approved by the legislature before going into effect. A disputed provision is one which was adopted by the state building code council with less than a two-thirds majority vote. Substantial amendments to the code shall be adopted no more frequently than every three years. [1991 c 122 § 3.]

Findings—Severability—1991 c 122: See notes following RCW 80.04.250.

19.27A.027 Personal wireless service facilities exempt from building envelope insulation requirements.

(1) The state building code council shall exempt equipment shelters of personal wireless service facilities from building envelope insulation requirements.

(2) For the purposes of this section, "personal wireless service facilities" means facilities for the provision of personal wireless services. [1996 c 323 § 4.]

Findings—1996 c 323: See note following RCW 43.70.600.

19.27A.045 Maintaining energy code for residential structures. The state building code council shall maintain the state energy code for residential structures in a status which is consistent with the state's interest as set forth in section 1, chapter 2, Laws of 1990. In maintaining the Washington state energy code for residential structures, beginning in 1996 the council shall review the Washington state energy code every three years. After January 1, 1996, by rule adopted pursuant to chapter 34.05 RCW, the council may amend any provisions of the Washington state energy code to

increase the energy efficiency of newly constructed residential buildings. Decisions to amend the Washington state energy code for residential structures shall be made prior to December 1 of any year and shall not take effect before the end of the regular legislative session in the next year. [1990 c 2 § 5.]

Findings—Severability—1990 c 2: See notes following RCW 19.27A.015.

19.27A.050 State building code council—Construction—Inclusion of successor agency. As used in this chapter, references to the state building code council shall be construed to include any successor agency. [2000 c 171 § 45; 1985 c 144 § 5.]

Additional notes found at www.leg.wa.gov

19.27A.060 Hot water heaters—Temperature regulation. (1) "Hot water heater" means the primary source of hot water for a residence.

(2) The thermostat of a new water heater offered for sale or lease in this state for use in a residential unit, shall be preset by the manufacturer no higher than one hundred twenty degrees Fahrenheit (or forty-nine degrees Celsius) or the minimum setting on any water heater which cannot be set as low as that temperature. Water heating systems may utilize higher reservoir temperature if mixing valves are set or systems are designed to restrict the temperature of water to one hundred twenty degrees Fahrenheit.

(3) Upon occupancy of a new tenant in a residential unit leased or rented in this state, if hot water is supplied from an accessible, individual water heater, the water heater shall be set by the owner or agent at a temperature not higher than one hundred twenty degrees Fahrenheit (forty-nine degrees Celsius) or the minimum setting on any water heater which cannot be set as low as that temperature. Water heating systems may utilize higher reservoir temperature if mixing valves are set or systems are designed to restrict the temperature of water to one hundred twenty degrees Fahrenheit.

(4) Nothing in this section shall prohibit an owner of an owner-occupied residential unit or resident of a leased or rented residential unit from readjusting the temperature setting after occupancy. Any readjustment of the temperature setting by the resident relieves the owner or agent of an individual residential unit and the manufacturer of water heaters from liability for damages attributed to the readjustment by the resident.

(5) The utility providing energy for any water heater under this section shall at least annually, include in its billing a statement:

(a) Recommending that water heaters be set no higher than one hundred twenty degrees Fahrenheit or the minimum setting on a water heater which cannot be set as low as that temperature to prevent severe burns and reduce excessive energy consumption; and

(b) That the thermostat of an individual water heater furnished in a residential unit leased or rented in this state to new tenants shall be set no higher than one hundred twenty degrees Fahrenheit or the minimum setting on a water heater which cannot be set as low as that temperature pursuant to chapter 19.27 RCW.

(2018 Ed.)

(6) The manufacturer of a water heater under this section which is offered for sale or installed after July 24, 1983, shall have a tag attached to the thermostat access plate or immediately adjacent to exposed thermostats. The tag shall state that the thermostat settings above the preset temperature may cause severe burns and consume excessive energy.

(7) Nothing in this section requires or permits any inspections other than those otherwise required or permitted by law.

(8) This section does not apply to multiple-unit residences supplied by central water heater systems. [1985 c 119 § 1; 1983 c 178 § 2. Formerly RCW 19.27.130.]

Findings—1983 c 178: "The legislature recognizes that unnecessarily hot tap or bath water creates an extreme risk of severe burns, especially among the elderly, children, and retarded persons. Annually, numerous persons suffer severe scald burns, some resulting in death, from tap or bath water which is inordinately hot. Excessive tap and bath water temperatures in residential usage is unnecessary for sanitary purposes. Regulation of the setting of water temperatures upon installation can virtually eliminate incidences of dangerous scalding. Further, the legislature finds that projected future shortages of energy in our state could be reduced or prevented by the efficient utilization of existing energy resources. Reducing the temperature settings on thermostats to one hundred twenty degrees Fahrenheit (or forty-nine degrees Celsius) would save energy that is now unnecessarily consumed, reduce homeowners' average utility costs, and promote home safety without any loss of comfort or health." [1983 c 178 § 1.]

19.27A.070 Intent. It is hereby declared that modern, efficient, safety-tested portable oil-fueled heaters may be offered for sale, sold, and used in this state. However, fire hazards and other dangers to the health, safety, and welfare of the inhabitants of this state may exist absent legislation to provide reasonable assurances that portable oil-fueled heaters offered for sale to, sold to, and used by the inhabitants of this state are modern, efficient, and safety-tested. It is the intent of the legislature to set forth standards for the sale and use of approved portable oil-fueled heaters. [1983 c 134 § 1. Formerly RCW 19.27.410.]

19.27A.080 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 19.27A.080 through 19.27A.120.

(1) "Portable oil-fueled heater" means any nonflue-connected, self-contained, self-supporting, oil-fueled, heating appliance equipped with an integral reservoir, designed to be carried from one location to another.

(2) "Oil" means any liquid fuel with a flash point of greater than one hundred degrees Fahrenheit, including but not limited to kerosene.

(3) "Listed" means any portable oil-fueled heater which has been evaluated in accordance with the Underwriters Laboratories, Inc. standard for portable oil-fueled heaters or an equivalent standard and with respect to reasonably foreseeable hazards to life and property by a nationally recognized testing or inspection agency, such as Underwriters Laboratories, Inc., and which has been authorized as being reasonably safe for its specific purpose and shown in a list published by such agency and/or bears the mark, name, and/or symbol of such agency as indication that it has been so authorized. Such evaluation shall include but not be limited to evaluation of the requirements hereinafter set forth.

(4) "Approved" means any listed portable oil-fueled heater which is deemed approved if it satisfies the require-

ments set forth herein or adopted under RCW 19.27A.080 through 19.27A.120 and if the supplier certifies to the authority having jurisdiction over the sale and use of the heater that it is listed and in compliance with RCW 19.27A.080 through 19.27A.120.

(5) "Structure" means any building or completed construction of any kind included in state building code groups M, R-1, R-3, B, F, S-1, S-2, and U occupancies, except sleeping rooms and bathrooms: PROVIDED, HOWEVER, That in B, M, and S-1 occupancies, approved portable oil-fueled heaters shall only be used under permit of the fire chief.

(6) "Supplier" means any party offering to sell to retailers or to the general public approved portable oil-fueled heaters. [1995 c 343 § 2; 1985 c 360 § 15; 1983 c 134 § 2. Formerly RCW 19.27.420.]

19.27A.090 Portable oil-fueled heaters—Sales and use—Approval required. Notwithstanding any other section of the state building code, chapter 19.27 RCW, or any other code adopted by reference in chapter 19.27 RCW, approved portable oil-fueled heaters may be offered for sale, sold, and used as a supplemental heat source in structures in the state. Portable oil-fueled heaters which are not approved may not be offered for sale, sold, or used in this state. Any approved portable oil-fueled heater may be offered for sale, sold, and used in locations other than structures unless specifically prohibited by laws of this state. [1983 c 134 § 3. Formerly RCW 19.27.430.]

19.27A.100 Portable oil-fueled heaters—Requirements for approval. Approved portable oil-fueled heaters must adhere to the following requirements:

(1) Labeling must be affixed to the heater to caution and inform the user concerning:

- (a) The necessity for an adequate source of ventilation when the heater is operating;
- (b) The use of suitable fuel;
- (c) The proper manner of refueling;
- (d) The proper placement and handling of the heater when in operation; and
- (e) The proper procedures for lighting, flame regulation, and extinguishing the heater.

(2) Packaging must include instructions that will inform the purchaser of proper maintenance and operation.

(3) Approved portable oil-fueled heaters must be constructed with a low center of gravity and minimum tipping angle of thirty-three degrees from the vertical with an empty reservoir.

(4) Approved portable oil-fueled heaters must have an automatic safety shut-off device or inherent design feature which eliminates fire hazards in the event of tipover and must otherwise conform with the standards set forth in National Fire Protection Association (NFPA) No. 31.

(5) Approved portable oil-fueled heaters must not produce carbon monoxide at rates creating a hazard when operated as intended and instructed. [1983 c 134 § 4. Formerly RCW 19.27.440.]

19.27A.110 Portable oil-fueled heaters—Jurisdiction over approval—Sale and use governed exclusively. The chief of the Washington state patrol, through the director of

fire protection, is the only authority having jurisdiction over the approval of portable oil-fueled heaters. The sale and use of portable oil-fueled heaters is governed exclusively by RCW 19.27A.080 through 19.27A.120: PROVIDED, That cities and counties may adopt local standards as provided in RCW 19.27.040. [1995 c 369 § 8; 1986 c 266 § 85; 1985 c 360 § 16; 1983 c 134 § 5. Formerly RCW 19.27.450.]

Additional notes found at www.leg.wa.gov

19.27A.120 Violations—Penalty. The penalty for failure to comply with RCW 19.27A.080 through 19.27A.120 is a misdemeanor. [1985 c 360 § 17; 1983 c 134 § 6. Formerly RCW 19.27.460.]

19.27A.130 Finding—2009 c 423. The legislature finds that energy efficiency is the cheapest, quickest, and cleanest way to meet rising energy needs, confront climate change, and boost our economy. More than thirty percent of Washington's greenhouse gas emissions come from energy use in buildings. Making homes, businesses, and public institutions more energy efficient will save money, create good local jobs, enhance energy security, reduce pollution that causes global warming, and speed economic recovery while reducing the need to invest in costly new generation. Washington can spur its economy and assert its regional and national clean energy leadership by putting efficiency first. Washington can accomplish this by: Promoting super efficient, low-energy use building codes; requiring disclosure of buildings' energy use to prospective buyers; making public buildings models of energy efficiency; financing energy saving upgrades to existing buildings; and reducing utility bills for low-income households. [2009 c 423 § 1.]

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 manu-

facture, 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.

19.27A.150 Strategic plan—Development and implementation. (1) To the extent that funding is appropriated specifically for the purposes of this section, the department of commerce shall develop and implement a strategic plan for enhancing energy efficiency in and reducing greenhouse gas emissions from homes, buildings, districts, and neighborhoods. The strategic plan must be used to help direct the future code increases in RCW 19.27A.020, with targets for new buildings consistent with RCW 19.27A.160. The strategic plan will identify barriers to achieving net zero energy use in homes and buildings and identify how to overcome these barriers in future energy code updates and through complementary policies.

(2) The department of commerce must complete and release the strategic plan to the legislature and the council by December 31, 2010, and update the plan every three years.

(3) The strategic plan must include recommendations to the council on energy code upgrades. At a minimum, the strategic plan must:

(a) Consider development of aspirational codes separate from the state energy code that contain economically and technically feasible optional standards that could achieve higher energy efficiency for those builders that elected to follow the aspirational codes in lieu of or in addition to complying with the standards set forth in the state energy code;

(b) Determine the appropriate methodology to measure achievement of state energy code targets using the United States environmental protection agency's target finder program or equivalent methodology;

(c) Address the need for enhanced code training and enforcement;

(d) Include state strategies to support research, demonstration, and education programs designed to achieve a seventy percent reduction in annual net energy consumption as specified in RCW 19.27A.160 and enhance energy efficiency and on-site renewable energy production in buildings;

(e) Recommend incentives, education, training programs and certifications, particularly state-approved training or certification programs, joint apprenticeship programs, or labor-management partnership programs that train workers for energy-efficiency projects to ensure proposed programs are designed to increase building professionals' ability to design, construct, and operate buildings that will meet the seventy percent reduction in annual net energy consumption as specified in RCW 19.27A.160;

(f) Address barriers for utilities to serve net zero energy homes and buildings and policies to overcome those barriers;

(g) Address the limits of a prescriptive code in achieving net zero energy use homes and buildings and propose a transition to performance-based codes;

(h) Identify financial mechanisms such as tax incentives, rebates, and innovative financing to motivate energy consumers to take action to increase energy efficiency and their use of on-site renewable energy. Such incentives, rebates, or financing options may consider the role of government programs as well as utility-sponsored programs;

(i) Address the adequacy of education and technical assistance, including school curricula, technical training, and peer-to-peer exchanges for professional and trade audiences;

(j) Develop strategies to develop and install district and neighborhood-wide energy systems that help meet net zero energy use in homes and buildings;

(k) Identify costs and benefits of energy efficiency measures on residential and nonresidential construction; and

(l) Investigate methodologies and standards for the measurement of the amount of embodied energy used in building materials.

(4) The department of commerce and the council shall convene a work group with the affected parties to inform the initial development of the strategic plan. [2010 c 271 § 306; 2009 c 423 § 3.]

Purpose—Effective date—2010 c 271: See notes following RCW 43.330.005.

19.27A.160 Residential and nonresidential construction—Energy consumption reduction—Council report.

(1) Except as provided in subsection (2) of this section, residential and nonresidential construction permitted under the 2031 state energy code must achieve a seventy percent reduction in annual net energy consumption, using the adopted 2006 Washington state energy code as a baseline.

(2) The council shall adopt state energy codes from 2013 through 2031 that incrementally move towards achieving the seventy percent reduction in annual net energy consumption as specified in subsection (1) of this section. The council shall report its progress by December 31, 2012, and every three years thereafter. If the council determines that economic, technological, or process factors would significantly impede adoption of or compliance with this subsection, the council may defer the implementation of the proposed energy code update and shall report its findings to the legislature by December 31st of the year prior to the year in which those codes would otherwise be enacted. [2009 c 423 § 5.]

19.27A.170 Qualifying utilities—Maintenance of records of energy consumption data—Disclosure.

(1) On and after January 1, 2010, qualifying utilities shall maintain records of the energy consumption data of all nonresidential and qualifying public agency buildings to which they provide service. This data must be maintained for at least the most recent twelve months in a format compatible for uploading to the United States environmental protection agency's energy star portfolio manager.

(2) On and after January 1, 2010, upon the written authorization or secure electronic authorization of a nonresidential building owner or operator, a qualifying utility shall upload

the energy consumption data for the accounts specified by the owner or operator for a building to the United States environmental protection agency's energy star portfolio manager in a form that does not disclose personally identifying information.

(3) In carrying out the requirements of this section, a qualifying utility shall use any method for providing the specified data in order to maximize efficiency and minimize overall program cost. Qualifying utilities are encouraged to consult with the United States environmental protection agency and their customers in developing reasonable reporting options.

(4) Disclosure of nonpublic nonresidential benchmarking data and ratings required under subsection (5) of this section will be phased in as follows:

(a) By January 1, 2011, for buildings greater than fifty thousand square feet; and

(b) By January 1, 2012, for buildings greater than ten thousand square feet.

(5) Based on the size guidelines in subsection (4) of this section, a building owner or operator, or their agent, of a nonresidential building shall disclose the United States environmental protection agency's energy star portfolio manager benchmarking data and ratings to a prospective buyer, lessee, or lender for the most recent continuously occupied twelve-month period. A building owner or operator, or their agent, who delivers United States environmental protection agency's energy star portfolio manager benchmarking data and ratings to a prospective buyer, lessee, or lender is not required to provide additional information regarding energy consumption, and the information is deemed to be adequate to inform the prospective buyer, lessee, or lender regarding the United States environmental protection agency's energy star portfolio manager benchmarking data and ratings for the most recent twelve-month period for the building that is being sold, leased, financed, or refinanced.

(6) Notwithstanding subsections (4) and (5) of this section, nothing in this section increases or decreases the duties, if any, of a building owner, operator, or their agent under this chapter or alters the duty of a seller, agent, or broker to disclose the existence of a material fact affecting the real property. [2009 c 423 § 6.]

19.27A.180 Energy performance score—Implementation strategy—Development and recommendations.

By December 31, 2009, to the extent that funding is appropriated specifically for the purposes of this section, the department of commerce shall develop and recommend to the legislature a methodology to determine an energy performance score for residential buildings and an implementation strategy to use such information to improve the energy efficiency of the state's existing housing supply. In developing its strategy, the department of commerce shall seek input from providers of residential energy audits, utilities, building contractors, mixed use developers, the residential real estate industry, and real estate listing and form providers. [2010 c 271 § 307; 2009 c 423 § 7.]

Purpose—Effective date—2010 c 271: See notes following RCW 43.330.005.

19.27A.190 Qualifying public agency duties—Energy benchmark—Performance rating—Reports. (1) The requirements of this section apply to the department of enterprise services and other qualifying state agencies only to the extent that specific appropriations are provided to those agencies referencing chapter 423, Laws of 2009 or chapter number and this section.

(2) By July 1, 2010, each qualifying public agency shall:

(a) Create an energy benchmark for each reporting public facility using a portfolio manager;

(b) Report to the department of enterprise services, the environmental protection agency national energy performance rating for each reporting public facility included in the technical requirements for this rating; and

(c) Link all portfolio manager accounts to the state portfolio manager master account to facilitate public reporting.

(3) By January 1, 2010, the department of enterprise services shall establish a state portfolio manager master account. The account must be designed to provide shared reporting for all reporting public facilities.

(4) By July 1, 2010, the department of enterprise services shall select a standardized portfolio manager report for reporting public facilities. The department of enterprise services, in collaboration with the United States environmental protection agency, shall make the standard report of each reporting public facility available to the public through the portfolio manager web site.

(5) The department of enterprise services shall prepare a biennial report summarizing the statewide portfolio manager master account reporting data. The first report must be completed by December 1, 2012. Subsequent reporting shall be completed every two years thereafter.

(6) By July 1, 2010, the department of enterprise services shall develop a technical assistance program to facilitate the implementation of a preliminary audit and the investment grade energy audit. The department of enterprise services shall design the technical assistance program to utilize audit services provided by utilities or energy services contracting companies when possible.

(7) For a reporting public facility that is leased by the state with a national energy performance rating score below seventy-five, a qualifying public agency may not enter into a new lease or lease renewal on or after January 1, 2010, unless:

(a) A preliminary audit has been conducted within the last two years; and

(b) The owner or lessor agrees to perform an investment grade audit and implement any cost-effective energy conservation measures within the first two years of the lease agreement if the preliminary audit has identified potential cost-effective energy conservation measures.

(8)(a) Except as provided in (b) of this subsection, for each reporting public facility with a national energy performance rating score below fifty, the qualifying public agency, in consultation with the department of enterprise services, shall undertake a preliminary energy audit by July 1, 2011. If potential cost-effective energy savings are identified, an investment grade energy audit must be completed by July 1, 2013. Implementation of cost-effective energy conservation measures are required by July 1, 2016. For a major facility that is leased by a state agency, college, or university, energy

audits and implementation of cost-effective energy conservation measures are required only for that portion of the facility that is leased by the state agency, college, or university.

(b) A reporting public facility that is leased by the state is deemed in compliance with (a) of this subsection if the qualifying public agency has already complied with the requirements of subsection (7) of this section.

(9) Schools are strongly encouraged to follow the provisions in subsections (2) through (8) of this section.

(10) The director of the department of enterprise services, in consultation with the affected state agencies and the office of financial management, shall review the cost and delivery of agency programs to determine the viability of relocation when a facility leased by the state has a national energy performance rating score below fifty. The department of enterprise services shall establish a process to determine viability.

(11) The department of enterprise services, in consultation with the office of financial management, shall develop a waiver process for the requirements in subsection (7) of this section. The director of the office of financial management, in consultation with the department of enterprise services, may waive the requirements in subsection (7) of this section if the director determines that compliance is not cost-effective or feasible. The director of the office of financial management shall consider the review conducted by the department of enterprise services on the viability of relocation as established in subsection (10) of this section, if applicable, prior to waiving the requirements in subsection (7) of this section.

(12) By July 1, 2011, the department of enterprise services shall conduct a review of facilities not covered by the national energy performance rating. Based on this review, the department of enterprise services shall develop a portfolio of additional facilities that require preliminary energy audits. For these facilities, the qualifying public agency, in consultation with the department of enterprise services, shall undertake a preliminary energy audit by July 1, 2012. If potential cost-effective energy savings are identified, an investment grade energy audit must be completed by July 1, 2013. [2015 c 225 § 20; 2009 c 423 § 8.]

Chapter 19.28 RCW ELECTRICIANS AND ELECTRICAL INSTALLATIONS

Sections

PROVISIONS APPLICABLE TO ELECTRICAL INSTALLATIONS

19.28.006	Definitions.
19.28.010	Electrical wiring requirements—General—Exceptions.
19.28.021	Disputes regarding local regulations—Arbitration—Appeal.
19.28.031	Rules, regulations, and standards.
19.28.041	License required—General or specialty licenses—Fees—Application—Bond or cash deposit.
19.28.051	Examinations—Fees.
19.28.061	Electrical contractors—Designee of firm to take master electrician or administrator's examination—Administrator's certificate—Fee—Certificate duration, denial, renewal, non-transferable—Master electrician or administrator's duties.
19.28.071	Licensee's bond—Action on—Priorities—Cash deposit, payment from.
19.28.081	Actions—Local permits—Proof of licensure.
19.28.091	Licensing—Exemptions.
19.28.095	Equipment repair specialty—Scope of work.

- 19.28.101 Inspections—Notice to repair and change—Disconnection—Entry—Concealment—Accessibility—Connection to utility—Permits, fees—Limitation—Waiver of provisions during state of emergency.
- 19.28.111 Nonconforming installations—Disputes—Reference to board.
- 19.28.121 Board—Request for ruling—Fee—Costs.
- 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.
- 19.28.141 RCW 19.28.101 inapplicable in certain cities and towns, electricity supply agency service areas, and rights-of-way of state highways.
- 19.28.151 RCW 19.28.010 through 19.28.141 and 19.28.311 through 19.28.361 inapplicable to telegraph or telephone companies exercising certain functions.
- 19.28.161 Certification—Apprentices and trainees—Supervision—Ratio of noncertified and certified workers—Trainee hours verification.
- 19.28.171 Electrical trainee hours—Audit—Rules—Confidentiality.
- 19.28.181 Application for certificate of competency.
- 19.28.191 Certificate of competency—Eligibility for examination—Rules.
- 19.28.195 Examination—Exception for equivalent training and experience.
- 19.28.201 Examination—Times—Certification of results—Contents—Fees.
- 19.28.205 In-class education requirements.
- 19.28.211 Certificate of competency—Issuance—Renewal—Continuing education—Fees—Effect.
- 19.28.221 Persons engaged in trade or business on July 16, 1973.
- 19.28.231 Temporary permits.
- 19.28.241 Revocation of certificate of competency—Grounds—Procedure.
- 19.28.251 Powers and duties of director—Administration of RCW 19.28.161 through 19.28.271 by the department.
- 19.28.261 Exemptions from RCW 19.28.161 through 19.28.271.
- 19.28.271 Violations of RCW 19.28.161 through 19.28.271—Schedule of penalties—Appeal.
- 19.28.281 Electric vehicle infrastructure—Rule adoption.
- 19.28.291 Violations of chapter—Issuance of subpoenas—Application.

PROVISIONS APPLICABLE TO ELECTRICAL INSTALLATIONS AND TELECOMMUNICATIONS INSTALLATIONS

- 19.28.301 Application—Subchapter heading.
- 19.28.311 Electrical board.
- 19.28.321 Enforcement—State electrical inspectors—Qualifications—Salaries and expenses.
- 19.28.325 Enforcement—Local authority—Penalties—Appeals.
- 19.28.331 Inspection reports.
- 19.28.341 Revocation or suspension of license—Grounds—Appeal to board—Fee—Costs.
- 19.28.351 Electrical license fund.
- 19.28.361 Liability for injury or damage.
- 19.28.371 Medical device—Installation, maintenance, or repair—Compliance with chapter—Limit of exemption.
- 19.28.381 Denial of renewal of certificate or license for outstanding penalties—Notice—Appeal—Hearing.

PROVISIONS APPLICABLE TO TELECOMMUNICATIONS INSTALLATIONS

- 19.28.400 Definitions.
- 19.28.410 Telecommunications systems installations—Subject to this subchapter.
- 19.28.420 Telecommunications contractor license—Application—Bond—Issuance of license.
- 19.28.430 Administrator's examination—Certificate—Administrator's requirements.
- 19.28.440 Examination for telecommunications administrators' certificates.
- 19.28.450 Local enforcement of subchapter—Enforcement of chapter.
- 19.28.460 Disputes regarding local regulations—Arbitration—Panel.
- 19.28.470 Inspections—Report—Required repairs/changes—Accessibility of telecommunications systems.
- 19.28.480 Unlawful acts—Interpretation of chapter.
- 19.28.490 Violation of chapter—Penalty—Appeal.
- 19.28.501 Insurance/financial responsibility.
- 19.28.511 Individual certification not required.
- 19.28.521 Limitation of action—Proof of valid license required.
- 19.28.531 Unlawful installation/maintenance—Disputed interpretation—Board to determine methods.
- 19.28.541 Entity desiring board decision—Process.
- 19.28.551 Director's authority—Adoption of rules.

19.28.910 Effective date—1963 c 207.

Electrical construction: Chapter 19.29 RCW.

State building code: Chapter 19.27 RCW.

PROVISIONS APPLICABLE TO ELECTRICAL INSTALLATIONS

19.28.006 Definitions. The definitions in this section apply throughout this subchapter.

(1) "Administrator" means a person designated by an electrical contractor to supervise electrical work and electricians in accordance with the rules adopted under this chapter.

(2) "Basic electrical work" means the work classified in (a) and (b) of this subsection as class A and class B basic electrical work:

(a) "Class A basic electrical work" means the like-in-kind replacement of a: Contactor, relay, timer, starter, circuit board, or similar control component; household appliance; circuit breaker; fuse; residential luminaire; lamp; snap switch; dimmer; receptacle outlet; thermostat; heating element; luminaire ballast with an exact same ballast; ten horsepower or smaller motor; or wiring, appliances, devices, or equipment as specified by rule.

(b) "Class B basic electrical work" means work other than class A basic electrical work that requires minimal electrical circuit modifications and has limited exposure hazards. Class B basic electrical work includes the following:

(i) Extension of not more than one branch electrical circuit limited to one hundred twenty volts and twenty amps each where:

(A) No cover inspection is necessary; and

(B) The extension does not supply more than two outlets;

(ii) Like-in-kind replacement of a single luminaire not exceeding two hundred seventy-seven volts and twenty amps;

(iii) Like-in-kind replacement of a motor larger than ten horsepower;

(iv) The following low voltage systems:

(A) Repair and replacement of devices not exceeding one hundred volt-amperes in Class 2, Class 3, or power limited low voltage systems in one and two-family dwellings;

(B) Repair and replacement of the following devices not exceeding one hundred volt-amperes in Class 2, Class 3, or power limited low voltage systems in other buildings, provided the equipment is not for fire alarm or nurse call systems and is not located in an area classified as hazardous by the national electrical code; or

(v) Wiring, appliances, devices, or equipment as specified by rule.

(3) "Board" means the electrical board under RCW 19.28.311.

(4) "Chapter" or "subchapter" means the subchapter, if no chapter number is referenced.

(5) "Department" means the department of labor and industries.

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

(7) "Electrical construction trade" includes, but is not limited to, installing or maintaining electrical wires and equipment that are used for light, heat, or power and install-

ing and maintaining remote control, signaling, power limited, or communication circuits or systems.

(8) "Electrical contractor" means a person, firm, partnership, corporation, or other entity that offers to undertake, undertakes, submits a bid for, or does the work of installing or maintaining wires or equipment that convey electrical current.

(9) "Equipment" means any equipment or apparatus that directly uses, conducts, insulates, or is operated by electricity but does not mean: Plug-in appliances; or plug-in equipment as determined by the department by rule.

(10) "Industrial control panel" means a factory-wired or user-wired assembly of industrial control equipment such as motor controllers, switches, relays, power supplies, computers, cathode ray tubes, transducers, and auxiliary devices. The panel may include disconnect means and motor branch circuit protective devices.

(11) "Journey level electrician" means a person who has been issued a journey level electrician certificate of competency by the department.

(12) "Like-in-kind" means having similar characteristics such as voltage requirements, current draw, and function, and being in the same location.

(13) "Master electrician" means either a master journey level electrician or master specialty electrician.

(14) "Master journey level electrician" means a person who has been issued a master journey level electrician certificate of competency by the department and who may be designated by an electrical contractor to supervise electrical work and electricians in accordance with rules adopted under this chapter.

(15) "Master specialty electrician" means a person who has been issued a specialty electrician certificate of competency by the department and who may be designated by an electrical contractor to supervise electrical work and electricians in accordance with rules adopted under this chapter.

(16) "Specialty electrician" means a person who has been issued a specialty electrician certificate of competency by the department. [2013 c 23 § 27; 2003 c 399 § 101; 2002 c 249 § 1; 2001 c 211 § 1; 2000 c 238 § 103; 1993 c 275 § 1; 1988 c 81 § 1; 1986 c 156 § 1; 1983 c 206 § 1. Formerly RCW 19.28.005.]

Additional notes found at www.leg.wa.gov

19.28.010 Electrical wiring requirements—General—Exceptions. (1) All wires and equipment, and installations thereof, that convey electric current and installations of equipment to be operated by electric current, in, on, or about buildings or structures, except for telephone, telegraph, radio, and television wires and equipment, and television antenna installations, signal strength amplifiers, and coaxial installations pertaining thereto shall be in strict conformity with this chapter, the statutes of the state of Washington, and the rules issued by the department, and shall be in conformity with approved methods of construction for safety to life and property. All wires and equipment that fall within section 90.2(b)(5) of the National Electrical Code, 1981 edition, are exempt from the requirements of this chapter. The regulations and articles in the National Electrical Code, the national electrical safety code, and other installation and safety regulations approved by the national fire protection association,

(2018 Ed.)

as modified or supplemented by rules issued by the department in furtherance of safety to life and property under authority hereby granted, shall be prima facie evidence of the approved methods of construction. All materials, devices, appliances, and equipment used in such installations shall be of a type that conforms to applicable standards or be indicated as acceptable by the established standards of any electrical product testing laboratory which is accredited by the department. Industrial control panels, utilization equipment, and their components do not need to be listed, labeled, or otherwise indicated as acceptable by an accredited electrical product testing laboratory unless specifically required by the National Electrical Code, 1993 edition.

(2) Residential buildings or structures moved into or within a county, city, or town are not required to comply with all of the requirements of this chapter, if the original occupancy classification of the building or structure is not changed as a result of the move. This subsection shall not apply to residential buildings or structures that are substantially remodeled or rehabilitated.

(3) This chapter shall not limit the authority or power of any city or town to enact and enforce under authority given by law, any ordinance, rule, or regulation requiring an equal, higher, or better standard of construction and an equal, higher, or better standard of materials, devices, appliances, and equipment than that required by this chapter. A city or town shall require that its electrical inspectors meet the qualifications provided for state electrical inspectors in accordance with RCW 19.28.321. In a city or town having an equal, higher, or better standard the installations, materials, devices, appliances, and equipment shall be in accordance with the ordinance, rule, or regulation of the city or town.

(4) Incorporated cities and towns where electrical inspections are required by local ordinances may enforce the provisions of RCW 19.28.041(1), 19.28.161, 19.28.271(1), 19.28.420(1), and applicable licensing and certification rules within their respective jurisdictions. Nothing in this subsection diminishes the authority of the department to enforce the provisions of RCW 19.28.041(1), 19.28.161, 19.28.271(1), 19.28.420(1), and applicable licensing and certification rules within any city or town.

(5) Electrical equipment associated with spas, hot tubs, swimming pools, and hydromassage bathtubs shall not be offered for sale or exchange unless the electrical equipment is certified as being in compliance with the applicable product safety standard by bearing the certification mark of an approved electrical products testing laboratory.

(6) Nothing in this chapter may be construed as permitting the connection of any conductor of any electric circuit with a pipe that is connected with or designed to be connected with a waterworks piping system, without the consent of the person or persons legally responsible for the operation and maintenance of the waterworks piping system. [2018 c 240 § 1; 2001 c 211 § 2; 1993 c 275 § 2; 1992 c 79 § 2. Prior: 1986 c 263 § 1; 1986 c 156 § 2; 1983 c 206 § 2; 1965 ex.s. c 117 § 1; 1963 c 207 § 1; 1935 c 169 § 1; RRS § 8307-1. Formerly RCW 19.28.020, 19.28.030, 19.28.040, 19.28.050.]

19.28.021 Disputes regarding local regulations—Arbitration—Appeal. Disputes arising under RCW 19.28.010(3) regarding whether the city or town's electrical

rules, regulations, or ordinances are equal to the rules adopted by the department shall be resolved by arbitration. The department shall appoint two members of the board to serve on the arbitration panel, and the city or town shall appoint two persons to serve on the arbitration panel. These four persons shall choose a fifth person to serve. If the four persons cannot agree on a fifth person, the presiding judge of the superior court of the county in which the city or town is located shall choose a fifth person. A decision of the arbitration panel may be appealed to the superior court of the county in which the city or town is located within thirty days after the date the panel issues its final decision. [2000 c 171 § 46; 1988 c 81 § 2; 1983 c 206 § 3. Formerly RCW 19.28.015.]

19.28.031 Rules, regulations, and standards. (1) Prior to January 1st of each year, the director shall obtain an authentic copy of the national electrical code, latest revision. The department, after consulting with the board and receiving the board's recommendations, shall adopt reasonable rules in furtherance of safety to life and property. All rules shall be kept on file by the department. Compliance with the rules shall be prima facie evidence of compliance with this chapter. The department upon request shall deliver to all persons, firms, partnerships, corporations, or other entities licensed under this chapter a copy of the rules.

(2) The department shall also obtain and keep on file an authentic copy of any applicable regulations and standards of any electrical product testing laboratory which is accredited by the department prescribing rules, regulations, and standards for electrical materials, devices, appliances, and equipment, including any modifications and changes that have been made during the previous year. [1993 c 275 § 3; 1988 c 81 § 3; 1986 c 156 § 3; 1983 c 206 § 4; 1965 ex.s. c 117 § 2; 1935 c 169 § 10; RRS § 8307-10. Formerly RCW 19.28.060.]

19.28.041 License required—General or specialty licenses—Fees—Application—Bond or cash deposit. (1) It is unlawful for any person, firm, partnership, corporation, or other entity to advertise, offer to do work, submit a bid, engage in, conduct, or carry on the business of installing or maintaining wires or equipment to convey electric current, or installing or maintaining equipment to be operated by electric current as it pertains to the electrical industry, without having an unrevoked, unsuspended, and unexpired electrical contractor license, issued by the department in accordance with this chapter. All electrical contractor licenses expire twenty-four calendar months following the day of their issue. The department may issue an electrical contractor license for a period of less than twenty-four months only for the purpose of equalizing the number of electrical contractor licenses that expire each month. Application for an electrical contractor license shall be made in writing to the department, accompanied by the required fee. The application shall state:

(a) The name and address of the applicant; in case of firms or partnerships, the names of the individuals composing the firm or partnership; in case of corporations, the names of the managing officials thereof;

(b) The location of the place of business of the applicant and the name under which the business is conducted;

(c) Employer social security number;

(d) Evidence of workers' compensation coverage for the applicant's employees working in Washington, as follows:

(i) The applicant's industrial insurance account number issued by the department;

(ii) The applicant's self-insurer number issued by the department; or

(iii) For applicants domiciled in a state or province of Canada subject to an agreement entered into under RCW 51.12.120(7), as permitted by the agreement, filing a certificate of coverage issued by the agency that administers the workers' compensation law in the applicant's state or province of domicile certifying that the applicant has secured the payment of compensation under the other state's or province's workers' compensation law;

(e) Employment security department number;

(f) State excise tax registration number;

(g) Unified business identifier (UBI) account number may be substituted for the information required by (d) of this subsection if the applicant will not employ employees in Washington, and by (e) and (f) of this subsection; and

(h) Whether a general or specialty electrical contractor license is sought and, if the latter, the type of specialty. Electrical contractor specialties include, but are not limited to: Residential, pump and irrigation, limited energy system, signs, nonresidential maintenance, restricted nonresidential maintenance, appliance repair, and a combination specialty. A general electrical contractor license shall grant to the holder the right to engage in, conduct, or carry on the business of installing or maintaining wires or equipment to carry electric current, and installing or maintaining equipment, or installing or maintaining material to fasten or insulate such wires or equipment to be operated by electric current, in the state of Washington. A specialty electrical contractor license shall grant to the holder a limited right to engage in, conduct, or carry on the business of installing or maintaining wires or equipment to carry electrical current, and installing or maintaining equipment; or installing or maintaining material to fasten or insulate such wires or equipment to be operated by electric current in the state of Washington as expressly allowed by the license.

(2) The department may verify the workers' compensation coverage information provided by the applicant under subsection (1)(d) of this section, including but not limited to information regarding the coverage of an individual employee of the applicant. If coverage is provided under the laws of another state, the department may notify the other state that the applicant is employing employees in Washington.

(3) The application for an electrical contractor license shall be accompanied by a bond in the sum of four thousand dollars with the state of Washington named as obligee in the bond, with good and sufficient surety, to be approved by the department. The bond shall at all times be kept in full force and effect, and any cancellation or revocation thereof, or withdrawal of the surety therefrom, suspends the license issued to the principal until a new bond has been filed and approved as provided in this section. Upon approval of a bond, the department shall on the next business day deposit the fee accompanying the application in the electrical license fund and shall file the bond in the office. The department shall upon request furnish to any person, firm, partnership,

corporation, or other entity a certified copy of the bond upon the payment of a fee that the department shall set by rule. The fee shall cover but not exceed the cost of furnishing the certified copy. The bond shall be conditioned that in any installation or maintenance of wires or equipment to convey electrical current, and equipment to be operated by electrical current, the principal will comply with the provisions of this chapter and with any electrical ordinance, building code, or regulation of a city or town adopted pursuant to RCW 19.28.010(3) that is in effect at the time of entering into a contract. The bond shall be conditioned further that the principal will pay for all labor, including employee benefits, and material furnished or used upon the work, taxes and contributions to the state of Washington, and all damages that may be sustained by any person, firm, partnership, corporation, or other entity due to a failure of the principal to make the installation or maintenance in accordance with this chapter or any applicable ordinance, building code, or regulation of a city or town adopted pursuant to RCW 19.28.010(3). In lieu of the surety bond required by this section, the license applicant may file with the department a cash deposit or other negotiable security acceptable to the department. If the license applicant has filed a cash deposit, the department shall deposit the funds in a special trust savings account in a commercial bank, mutual savings bank, or savings and loan association and shall pay annually to the depositor the interest derived from the account.

(4) The department shall issue general or specialty electrical contractor licenses to applicants meeting all of the requirements of this chapter. The provisions of this chapter relating to the licensing of any person, firm, partnership, corporation, or other entity including the requirement of a bond with the state of Washington named as obligee therein and the collection of a fee therefor, are exclusive, and no political subdivision of the state of Washington may require or issue any licenses or bonds or charge any fee for the same or a similar purpose. No person, firm, partnership, corporation, or other entity holding more than one specialty contractor license under this chapter may be required to pay an annual fee for more than one such license or to post more than one four thousand dollar bond, equivalent cash deposit, or other negotiable security.

(5) To obtain a general or specialty electrical contractor license, the applicant must designate an individual who currently possesses a valid master journey level electrician's certificate of competency, master specialty electrician's certificate of competency in the specialty for which application has been made, or administrator's certificate as a general electrical contractor administrator or as a specialty electrical contractor administrator in the specialty for which application has been made.

(6) Administrator certificate specialties include, but are not limited to: Residential, pump and irrigation or domestic pump, limited energy system, signs, nonresidential maintenance, restricted nonresidential maintenance, appliance repair, and combination specialty. To obtain an administrator's certificate, an individual must pass an examination as set forth in RCW 19.28.051 unless the applicant was a licensed electrical contractor at any time during 1974. Applicants who were electrical contractors licensed by the state of Washington at any time during 1974 are entitled to receive a general

electrical contractor administrator's certificate without examination if the applicants apply prior to January 1, 1984. The board of electrical examiners shall certify to the department the names of all persons who are entitled to either a general or specialty electrical contractor administrator's certificate.

(7) For a contractor doing domestic water pumping system work as defined by RCW 18.106.010(10)(c), the department shall consider the requirements of subsections (1)(a) through (h), (2), and (3) of this section to have been met to be a pump and irrigation or domestic pump licensed electrical contractor if the contractor has met the contractor registration requirements of chapter 18.27 RCW. The department shall establish a single registration/licensing document for those who qualify for both general contractor registration as defined in chapter 18.27 RCW and a pump and irrigation or domestic pump electrical contractor license as defined by this chapter. [2013 c 23 § 28. Prior: 2006 c 224 § 1; 2006 c 185 § 5; 2002 c 249 § 2; 2001 c 211 § 3; 1998 c 279 § 4; 1992 c 217 § 2; 1986 c 156 § 5; 1983 c 206 § 5; 1975 1st ex.s. c 195 § 1; 1975 1st ex.s. c 92 § 1; 1974 ex.s. c 188 § 1; 1971 ex.s. c 129 § 1; 1969 ex.s. c 71 § 2; 1969 c 30 § 1; prior: 1967 ex.s. c 15 § 1; 1967 c 88 § 2; 1965 ex.s. c 117 § 3; 1963 c 207 § 2; 1959 c 325 § 1; 1935 c 169 § 4; RRS § 8307-4; prior: 1919 c 204 §§ 1, 2. Formerly RCW 19.28.120, 19.28.130, 19.28.140, 19.28.150, 19.28.160, 19.28.170.]

Finding—Intent—1998 c 279: See note following RCW 51.12.120.

Additional notes found at www.leg.wa.gov

19.28.051 Examinations—Fees. It shall be the purpose and function of the board to establish, in addition to a general electrical contractors' license, such classifications of specialty electrical contractors' licenses as it deems appropriate with regard to individual sections pertaining to state adopted codes in this chapter. In addition, it shall be the purpose and function of the board to establish and administer written examinations for general electrical administrators' certificates and the various specialty electrical administrators' certificates. Examinations shall be designed to reasonably ensure that general and specialty electrical administrators' certificate holders are competent to engage in and supervise the work covered by this statute and their respective licenses. The examinations shall include questions from the following categories to ensure proper safety and protection for the general public: (1) Safety, (2) state electrical code, and (3) electrical theory. The department with the consent of the board shall be permitted to enter into a contract with a professional testing agency to develop, administer, and score these examinations, or accept certifications or other appropriate demonstrations established by independent entities that otherwise fulfill the examination requirements of this section. Individuals who can provide evidence to the department, prior to January 1, 2007, that they have been employed as a pump installer in the pump and irrigation or domestic pump business by an appropriately licensed electrical contractor, registered general contractor defined by chapter 18.27 RCW, or appropriate general specialty contractor defined by chapter 18.27 RCW for not less than eight thousand hours in the most recent six calendar years shall be issued the appropriate administrator's certificate by the department upon receiving such documentation and applicable fees. The fee for the examination may be set by the department in its contract with

the professional testing agency. The department may direct that the applicant pay the fee to the professional testing agency. The fee shall cover but not exceed the costs of preparing and administering the examination. It shall be the further purpose and function of this board to advise the director as to the need of additional electrical inspectors and compliance officers to be utilized by the director on either a full-time or part-time employment basis and to carry out the duties enumerated in RCW 19.28.161 through 19.28.271 as well as generally advise the department on all matters relative to RCW 19.28.161 through 19.28.271. [2006 c 185 § 8; 2001 c 211 § 4; 1996 c 147 § 6; 1988 c 81 § 5; 1986 c 156 § 6; 1984 c 287 § 57; 1977 ex.s. c 79 § 1; 1975-'76 2nd ex.s. c 34 § 62; 1975 1st ex.s. c 195 § 2; 1975 1st ex.s. c 92 § 2; 1974 ex.s. c 188 § 2. Formerly RCW 19.28.123.]

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

Additional notes found at www.leg.wa.gov

19.28.061 Electrical contractors—Designee of firm to take master electrician or administrator's examination—Administrator's certificate—Fee—Certificate duration, denial, renewal, nontransferable—Master electrician or administrator's duties. (1) Each applicant for an electrical contractor's license, other than an individual, shall designate a supervisory employee or member of the firm to take the required master electrician's or administrator's examination. Effective July 1, 1987, a supervisory employee designated as the electrical contractor's master electrician or administrator shall be a full-time supervisory employee. This person shall be designated as master electrician or administrator under the license. No person may concurrently qualify as master electrician or administrator for more than one contractor. If the relationship of the master electrician or administrator with the electrical contractor is terminated, the contractor's license is void within ninety days unless another master electrician or administrator is qualified by the board. However, if the master electrician or administrator dies or is otherwise incapacitated, the contractor's license is void within one hundred eighty days unless another master electrician or administrator is qualified by the board. The contractor must notify the department in writing within ten days if the master electrician's or administrator's relationship with the contractor terminates due to the master electrician's or administrator's death or incapacitation.

(2) The department must issue an administrator's certificate to all applicants who have passed the examination as provided in RCW 19.28.051 and this section, and who have complied with the rules adopted under this chapter. The administrator's certificate must bear the date of issuance, expires on the holder's birthday, and is nontransferable. The certificate must be renewed every three years, upon application, on or before the holder's birthday.

(a) If the certificate holder demonstrates to the department that he or she has satisfactorily completed an annual eight-hour continuing education course, the certificate may be renewed by appropriate application without examination unless the certificate has been revoked, suspended, or not renewed within ninety days after the expiration date. For holders of pump and irrigation or domestic pump specialty

administrator certificates, the continuing education may comprise both electrical and plumbing education.

(b) The contents and requirements for satisfactory completion of the continuing education course must be determined by the director and approved by the board.

(c) The department must accept proof of a certificate holder's satisfactory completion of a continuing education course offered in another state as meeting the requirements for maintaining a current Washington state certificate if the department is satisfied the course is comparable in nature to that required in Washington state for maintaining a current certificate.

(3) A fee must be assessed for each administrator's certificate and for each renewal. An individual holding more than one administrator's certificate under this chapter is not required to pay fees for more than one certificate. The department must set the fees by rule for issuance and renewal of a certificate. The fees must cover, but not exceed, the costs of issuing the certificates and of administering and enforcing the administrator certification requirements of this chapter.

(4) The department may deny an application for an administrator's certificate for up to two years if the applicant's previous administrator's certificate has been revoked for a serious violation and all appeals concerning the revocation have been exhausted. For the purposes of this section only, a serious violation is a violation that presents imminent danger to the public. The certificate may be renewed for a three-year period without examination by appropriate application unless the certificate has been revoked, suspended, or not renewed within ninety days after the expiration date. If the certificate is not renewed before the expiration date, the individual shall pay twice the usual fee. A person may take the administrator's examination as many times as necessary to pass without limit.

(5) The designated master electrician or administrator shall:

(a) Be a member of the firm or a supervisory employee and shall be available during working hours to carry out the duties of an administrator under this section;

(b) Ensure that all electrical work complies with the electrical installation laws and rules of the state;

(c) Ensure that the proper electrical safety procedures are used;

(d) Ensure that all electrical labels, permits, and licenses required to perform electrical work are used;

(e) See that corrective notices issued by an inspecting authority are complied with; and

(f) Notify the department in writing within ten days if the master electrician or administrator terminates the relationship with the electrical contractor.

(6) The department shall not by rule change the administrator's duties under subsection (5) of this section. [2006 c 185 § 9; 2002 c 249 § 3; 1996 c 241 § 3; 1988 c 81 § 6; 1986 c 156 § 7; 1983 c 206 § 6; 1975 1st ex.s. c 195 § 3; 1975 1st ex.s. c 92 § 3; 1974 ex.s. c 188 § 4. Formerly RCW 19.28.125.]

Additional notes found at www.leg.wa.gov

19.28.071 Licensee's bond—Action on—Priorities—Cash deposit, payment from. Any person, firm, or corporation sustaining any damage or injury by reason of the princi-

pal's breach of the conditions of the bond required under RCW 19.28.041 may bring an action against the surety named therein, joining in the action the principal named in the bond; the action shall be brought in the superior court of any county in which the principal on the bond resides or transacts business, or in the county in which the work was performed as a result of which the breach is alleged to have occurred; the action shall be maintained and prosecuted as other civil actions. Claims or actions against the surety on the bond shall be paid in full in the following order of priority: (1) Labor, including employee benefits, (2) materials and equipment used upon such work, (3) taxes and contributions due to the state, (4) damages sustained by any person, firm or corporation due to the failure of the principal to make the installation in accordance with the provisions of chapter 19.28 RCW, or any ordinance, building code, or regulation applicable thereto: PROVIDED, That the total liability of the surety on any bond shall not exceed the sum of four thousand dollars and the surety on the bond shall not be liable for monetary penalties; and any action shall be brought within one year from the completion of the work in the performance of which the breach is alleged to have occurred. The surety shall mail a conformed copy of the judgment against the bond to the department within seven days.

In the event that a cash or securities deposit has been made in lieu of the surety bond, and in the event of a judgment being entered against such depositor and deposit, the director shall upon receipt of a certified copy of a final judgment, pay said judgment from such deposit. [2001 c 211 § 5; 1986 c 156 § 8; 1969 ex.s. c 71 § 3; 1965 ex.s. c 117 § 4; 1935 c 169 § 5; RRS § 8307-5. Prior: 1919 c 204 § 4. Formerly RCW 19.28.180.]

19.28.081 Actions—Local permits—Proof of licensure. No person, firm or corporation engaging in, conducting or carrying on the business of installing wires or equipment to convey electric current, or installing apparatus to be operated by said current, shall be entitled to commence or maintain any suit or action in any court of this state pertaining to any such work or business, without alleging and proving that such person, firm or corporation held, at the time of commencing and performing such work, an unexpired, unrevoked and unsuspended license issued under the provisions of this chapter; and no city or town requiring by ordinance or regulation a permit for inspection or installation of such electrical work, shall issue such permit to any person, firm or corporation not holding such license. [1986 c 156 § 9; 1935 c 169 § 6; RRS § 8307-6. Formerly RCW 19.28.190.]

19.28.091 Licensing—Exemptions. (1) No license under the provision of this chapter shall be required from any utility or any person, firm, partnership, corporation, or other entity employed by a utility because of work in connection with the installation, repair, or maintenance of lines, wires, apparatus, or equipment owned by or under the control of a utility and used for transmission or distribution of electricity from the source of supply to the point of contact at the premises and/or property to be supplied and service connections and meters and other apparatus or appliances used in the measurement of the consumption of electricity by the customer.

(2) No license under the provisions of this chapter shall be required from any utility because of work in connection with the installation, repair, or maintenance of the following:

(a) Lines, wires, apparatus, or equipment used in the lighting of streets, alleys, ways, or public areas or squares;

(b) Lines, wires, apparatus, or equipment owned by a commercial, industrial, or public institution customer that are an integral part of a transmission or distribution system, either overhead or underground, providing service to such customer and located outside the building or structure: PROVIDED, That a utility does not initiate the sale of services to perform such work;

(c) Lines and wires, together with ancillary apparatus, and equipment, owned by a customer that is an independent power producer who has entered into an agreement for the sale of electricity to a utility and that are used in transmitting electricity from an electrical generating unit located on premises used by such customer to the point of interconnection with the utility's system.

(3) Any person, firm, partnership, corporation, or other entity licensed under RCW 19.28.041 may enter into a contract with a utility for the performance of work under subsection (2) of this section.

(4) No license under the provisions of this chapter shall be required from any person, firm, partnership, corporation, or other entity because of the work of installing and repairing ignition or lighting systems for motor vehicles.

(5) No license under the provisions of this chapter shall be required from any person, firm, partnership, corporation, or other entity because of work in connection with the installation, repair, or maintenance of wires and equipment, and installations thereof, exempted in RCW 19.28.010.

(6) The department may by rule exempt from licensing requirements under this chapter work performed on premanufactured electric power generation equipment assemblies and control gear involving the testing, repair, modification, maintenance, or installation of components internal to the power generation equipment, the control gear, or the transfer switch.

(7) This chapter does not require an electrical contractor license if: (a) An appropriately certified electrician or a properly supervised certified electrical trainee is performing the installation, repair, or maintenance of wires and equipment for a nonprofit corporation that holds a current tax exempt status as provided under 26 U.S.C. Sec. 501(c)(3) or a nonprofit religious organization; (b) the certified electrician or certified electrical trainee is not compensated for the electrical work; and (c) the value of the electrical work does not exceed thirty thousand dollars.

(8) An entity that currently holds a valid specialty or general plumbing contractor's registration under chapter 18.27 RCW may employ a certified plumber, a certified residential plumber, or a plumber trainee meeting the requirements of chapter 18.106 RCW to perform electrical work that is incidentally, directly, and immediately appropriate to the like-in-kind replacement of a household appliance or other small household utilization equipment that requires limited electric power and limited waste and/or water connections. A plumber trainee must be supervised by a certified plumber or a certified residential plumber while performing electrical work. The electrical work is subject to the permitting and

inspection requirements of this chapter. [2003 c 399 § 301; 2003 c 242 § 1; 2001 c 211 § 6; 1998 c 98 § 1; 1992 c 240 § 1; 1980 c 30 § 15; 1935 c 169 § 11; RRS § 8307-11. Formerly RCW 19.28.200.]

Reviser's note: This section was amended by 2003 c 242 § 1 and by 2003 c 399 § 301, 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

19.28.095 Equipment repair specialty—Scope of work. (1) The scope of work for the equipment repair specialty involves servicing, maintaining, repairing, or replacing utilization equipment or wiring, appliances, devices, or equipment as specified by rule of the department.

(2) "Utilization equipment" means equipment that is: (a) Self-contained on a single skid or frame; (b) factory built to standardized sizes or types; (c) listed or field evaluated by a laboratory or approved by the department under WAC 296-46B-030; and (d) connected as a single unit to a single source of electrical power limited to a maximum of six hundred volts. The equipment may also be connected to a separate single source of electrical control power limited to a maximum of two hundred fifty volts. Utilization equipment does not include devices used for occupant space heating by industrial, commercial, hospital, educational, public, and private commercial buildings, and other end users.

(3) "Servicing, maintaining, repairing, or replacing utilization equipment" includes:

(a) The like-in-kind replacement of the equipment if the same unmodified electrical circuit is used to supply the equipment being replaced;

(b) The like-in-kind replacement or repair of remote control components that are integral to the operation of the equipment;

(c) The like-in-kind replacement or repair of electrical components within the equipment; and

(d) The disconnection, replacement, and reconnection of low-voltage control and line voltage supply whips not over six feet in length provided there are no modifications to the characteristics of the branch circuit.

(4) "Servicing, maintaining, repairing, or replacing utilization equipment" does not include:

(a) The installation, repair, or modification of wiring that interconnects equipment and/or remote components, branch circuit conductors, services, feeders, panelboards, disconnect switches, motor control centers, remote magnetic starters/contactors, or raceway/conductor systems interconnecting multiple equipment or other electrical components;

(b) Any work providing electrical feeds into the power distribution unit or installation of conduits and raceways; or

(c) Any electrical work governed under article(s) 500, 501, 502, 503, 504, 505, 510, 511, 513, 514, 515, or 516 NEC (i.e., classified locations), except for electrical work in sewage pumping stations. [2016 c 198 § 1; 2003 c 399 § 602.]

Additional notes found at www.leg.wa.gov

19.28.101 Inspections—Notice to repair and change—Disconnection—Entry—Concealment—Accessibility—Connection to utility—Permits, fees—Limitation—Waiver of provisions during state of emergency.

(1) The director shall cause an inspector to inspect all wiring, appliances, devices, and equipment to which this chapter applies except for basic electrical work as defined in this chapter. The department may not require an electrical work permit for class A basic electrical work unless deficiencies in the installation or repair require inspection. The department may inspect class B basic electrical work on a random basis as specified by the department in rule. Nothing contained in this chapter may be construed as providing any authority for any subdivision of government to adopt by ordinance any provisions contained or provided for in this chapter except those pertaining to cities and towns pursuant to RCW 19.28.010(3).

(2) Upon request, electrical inspections will be made by the department within forty-eight hours, excluding holidays, Saturdays, and Sundays. If, upon written request, the electrical inspector fails to make an electrical inspection within twenty-four hours, the serving utility may immediately connect electrical power to the installation if the necessary electrical work permit is displayed: PROVIDED, That if the request is for an electrical inspection that relates to a mobile home installation, the applicant shall provide proof of a current building permit issued by the local government agency authorized to issue such permits as a prerequisite for inspection approval or connection of electrical power to the mobile home.

(3) Whenever the installation of any wiring, device, appliance, or equipment is not in accordance with this chapter, or is in such a condition as to be dangerous to life or property, the person, firm, partnership, corporation, or other entity owning, using, or operating it shall be notified by the department and shall within fifteen days, or such further reasonable time as may upon request be granted, make such repairs and changes as are required to remove the danger to life or property and to make it conform to this chapter. The director, through the inspector, is hereby empowered to disconnect or order the discontinuance of electrical service to conductors or equipment that are found to be in a dangerous or unsafe condition and not in accordance with this chapter. Upon making a disconnection the inspector shall attach a notice stating that the conductors have been found dangerous to life or property and are not in accordance with this chapter. It is unlawful for any person to reconnect such defective conductors or equipment without the approval of the department, and until the conductors and equipment have been placed in a safe and secure condition, and in a condition that complies with this chapter.

(4) The director, through the electrical inspector, has the right during reasonable hours to enter into and upon any building or premises in the discharge of his or her official duties for the purpose of making any inspection or test of the installation of new construction or altered electrical wiring, electrical devices, equipment, or material contained in or on the buildings or premises. No electrical wiring or equipment subject to this chapter may be concealed until it has been approved by the inspector making the inspection. At the time of the inspection, electrical wiring or equipment subject to this chapter must be sufficiently accessible to permit the inspector to employ any testing methods that will verify conformance with the national electrical code and any other requirements of this chapter.

(5) Persons, firms, partnerships, corporations, or other entities making electrical installations shall obtain inspection and approval from an authorized representative of the department as required by this chapter before requesting the electric utility to connect to the installations. Electric utilities may connect to the installations if approval is clearly indicated by certification of the electrical work permit required to be affixed to each installation or by equivalent means, except that increased or relocated services may be reconnected immediately at the discretion of the utility before approval if an electrical work permit is displayed. The permits shall be furnished upon payment of the fee to the department.

(6) The director, subject to the recommendations and approval of the board, shall set by rule a schedule of license and electrical work permit fees that will cover the costs of administration and enforcement of this chapter. The rules shall be adopted in accordance with the administrative procedure act, chapter 34.05 RCW. No fee may be charged for plug-in mobile homes, recreational vehicles, or portable appliances.

(7) Nothing in this chapter shall authorize the inspection of any wiring, appliance, device, or equipment, or installations thereof, by any utility or by any person, firm, partnership, corporation, or other entity employed by a utility in connection with the installation, repair, or maintenance of lines, wires, apparatus, or equipment owned by or under the control of the utility. All work covered by the national electric code not exempted by the 1981 edition of the national electric code 90-2(B)(5) shall be inspected by the department.

(8) During a state of emergency declared under RCW 43.06.010(12), the governor may waive or suspend the collection of fees under this section or any portion of this section or under any administrative rule, and issue any orders to facilitate the operation of state or local government or to promote and secure the safety and protection of the civilian population. [2008 c 181 § 201; 2003 c 399 § 201; 1996 c 241 § 4; 1992 c 240 § 2; 1989 c 344 § 1; 1988 c 81 § 7; 1983 c 206 § 7; 1971 ex.s. c 129 § 2; 1969 ex.s. c 71 § 4; 1967 c 88 § 3; 1965 ex.s. c 117 § 5; 1963 c 207 § 3; 1959 c 325 § 2; 1935 c 169 § 8; RRS § 8307-8. Formerly RCW 19.28.210, 19.28.220, 19.28.230, 19.28.240.]

Part headings not law—2008 c 181: See note following RCW 43.06.220.

Adoption of certain regulations proscribed: RCW 36.32.125.

RCW 19.28.101 inapplicable in certain cities, towns, electricity supply agency service areas, and rights-of-way of state highways: RCW 19.28.141.

Additional notes found at www.leg.wa.gov

19.28.111 Nonconforming installations—Disputes—Reference to board. It is unlawful for any person, firm, partnership, corporation, or other entity to install or maintain any electrical wiring, appliances, devices, or equipment not in accordance with this chapter. In cases where the interpretation and application of the installation or maintenance standards prescribed in this chapter is in dispute or in doubt, the board shall, upon application of any interested person, firm, partnership, corporation, or other entity, determine the methods of installation or maintenance or the materials, devices, appliances, or equipment to be used in the particular case

(2018 Ed.)

submitted for its decision. [1988 c 81 § 8; 1983 c 206 § 9; 1935 c 169 § 2; RRS § 8307-2. Formerly RCW 19.28.260.]

19.28.121 Board—Request for ruling—Fee—Costs.

Any person, firm, partnership, corporation, or other entity desiring a decision of the board pursuant to RCW 19.28.111 shall, in writing, notify the director of such desire and shall accompany the notice with a certified check payable to the department in the sum of two hundred dollars. The notice shall specify the ruling or interpretation desired and the contention of the person, firm, partnership, corporation, or other entity as to the proper interpretation or application on the question on which a decision is desired. If the board determines that the contention of the applicant for a decision was proper, the two hundred dollars shall be returned to the applicant; otherwise it shall be used in paying the expenses and per diem of the members of the board in connection with the matter. Any portion of the two hundred dollars not used in paying the per diem and expenses of the board in the case shall be paid into the electrical license fund. [2001 c 211 § 7; 1988 c 81 § 9; 1983 c 206 § 10; 1935 c 169 § 13; RRS § 8307-13. Formerly RCW 19.28.300.]

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 or ten percent of the penalty amount, whichever is less, but in no event less than one hun-

dred 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 amount of the check 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. [2014 c 190 § 2; 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.]

Effective date—2014 c 190: "This act takes effect July 1, 2015." [2014 c 190 § 6.]

19.28.141 RCW 19.28.101 inapplicable in certain cities and towns, electricity supply agency service areas, and rights-of-way of state highways. (1) Except as provided in subsection (2) of this section, the provisions of RCW 19.28.101 shall not apply:

(a) Within the corporate limits of any incorporated city or town which has heretofore adopted and enforced or subsequently adopts and enforces an ordinance requiring an equal, higher or better standard of construction and of materials, devices, appliances and equipment than is required by this chapter.

(b) Within the service area of an electricity supply agency owned and operated by a city or town which is supplying electricity and enforcing a standard of construction and materials outside its corporate limits [on] July 1, 1963. The city, town, or agency shall enforce by inspection within its service area outside its corporate limits the same standards of construction and of materials, devices, appliances and equipment as are enforced by the department of labor and industries under this chapter. Fees charged in connection with such enforcement shall not exceed those established in RCW 19.28.101.

(c) Within the rights-of-way of state highways, provided the state department of transportation maintains and enforces an equal, higher or better standard of construction and of materials, devices, appliances and equipment than is required by RCW 19.28.010 through 19.28.141 and 19.28.311 through 19.28.361.

(2) A city, town, or electrical supply agency is permitted, but not required, to enforce the same permitting and inspection standards applicable to basic electrical work as are enforced by the department of labor and industries. [2003 c 399 § 202; 2001 c 211 § 9; 1986 c 156 § 12; 1967 ex.s. c 97 § 1; 1963 c 207 § 4; 1959 c 325 § 3. Formerly RCW 19.28.360.]

Additional notes found at www.leg.wa.gov

19.28.151 RCW 19.28.010 through 19.28.141 and 19.28.311 through 19.28.361 inapplicable to telegraph or telephone companies exercising certain functions. The

provisions of RCW 19.28.010 through 19.28.141 and 19.28.311 through 19.28.361 shall not apply to the work of installing, maintaining or repairing any and all electrical wires, apparatus, installations or equipment used or to be used by a telegraph company or a telephone company in the exercise of its functions and located outdoors or in a building or buildings used exclusively for that purpose. [2001 c 211 § 10; 2000 c 171 § 47; 1980 c 30 § 17; 1959 c 325 § 4. Formerly RCW 19.28.370.]

19.28.161 Certification—Apprentices and trainees—Supervision—Ratio of noncertified and certified workers—Trainee hours verification. (Effective until July 1, 2023.) (1) No person may engage in the electrical construction trade without having a valid master journey level electrician certificate of competency, journey level electrician certificate of competency, master specialty electrician certificate of competency, or specialty electrician certificate of competency issued by the department in accordance with this chapter. Electrician certificate of competency specialties include, but are not limited to: Residential, pump and irrigation, limited energy system, signs, nonresidential maintenance, restricted nonresidential maintenance, and appliance repair. Until July 1, 2007, the department of labor and industries shall issue a written warning to any specialty pump and irrigation or domestic pump electrician not having a valid electrician certification. The warning will state that the individual must apply for an electrical training certificate or be qualified for and apply for electrician certification under the requirements in RCW 19.28.191(1)(g) within thirty calendar days of the warning. Only one warning will be issued to any individual. If the individual fails to comply with this section, the department shall issue a penalty as defined in RCW 19.28.271 to the individual.

(2) A person who is indentured in an apprenticeship program approved under chapter 49.04 RCW for the electrical construction trade or who is learning the electrical construction trade may work in the electrical construction trade if supervised by a certified master journey level electrician, journey level electrician, master specialty electrician in that electrician's specialty, or specialty electrician in that electrician's specialty. All apprentices and individuals learning the electrical construction trade shall obtain an electrical training certificate from the department. The certificate shall authorize the holder to learn the electrical construction trade while under the direct supervision of a master journey level electrician, journey level electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty. The certificate may include a photograph of the holder. The holder of the electrical training certificate shall renew the certificate biennially. At the time of renewal, the holder shall provide the department with an accurate list of the holder's employers in the electrical construction industry for the previous biennial period and the number of hours worked for each employer. The holder shall also provide proof of sixteen hours of: Approved classroom training covering this chapter, the national electrical code, or electrical theory; or equivalent classroom training taken as part of an approved apprenticeship program under chapter 49.04 RCW or an approved electrical training program under RCW 19.28.191(1)(h). The

number of hours of approved classroom training required for certificate renewal shall increase as follows: (a) Beginning on July 1, 2011, the holder of an electrical training certificate shall provide the department with proof of thirty-two hours of approved classroom training; and (b) beginning on July 1, 2013, the holder of an electrical training certificate shall provide the department with proof of forty-eight hours of approved classroom training. At the request of the chairs of the house of representatives commerce and labor committee and the senate labor, commerce and consumer protection committee, or their successor committees, the department of labor and industries shall provide information on the implementation of the new classroom training requirements for electrical trainees to both committees by December 1, 2012. A biennial fee shall be charged for the issuance or renewal of the certificate. The department shall set the fee by rule. The fee shall cover but not exceed the cost of administering and enforcing the trainee certification and supervision requirements of this chapter. Apprentices and individuals learning the electrical construction trade shall have their electrical training certificates in their possession at all times that they are performing electrical work. They shall show their certificates to an authorized representative of the department at the representative's request.

(3) Any person who has been issued an electrical training certificate under this chapter may work if that person is under supervision. Supervision shall consist of a person being on the same job site and under the control of either a certified master journey level electrician, journey level electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty. Either a certified master journey level electrician, journey level electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty shall be on the same job site as the noncertified individual for a minimum of seventy-five percent of each working day unless otherwise provided in this chapter.

(4) The ratio of noncertified individuals to certified master journey level electricians, journey level electricians, master specialty electricians, or specialty electricians on any one job site is as follows:

(a) When working as a specialty electrician, not more than two noncertified individuals for every certified master specialty electrician working in that electrician's specialty, specialty electrician working in that electrician's specialty, master journey level electrician, or journey level electrician, except that the ratio requirements are one certified master specialty electrician working in that electrician's specialty, specialty electrician working in that electrician's specialty, master journey level electrician, or journey level electrician working as a specialty electrician to no more than four students enrolled in and working as part of an electrical construction program at public community or technical colleges, or not-for-profit nationally accredited trade or technical schools licensed by the workforce training and education coordinating board under chapter 28C.10 RCW. In meeting the ratio requirements for students enrolled in an electrical construction program at a trade school, a trade school may receive input and advice from the electrical board; and

(b) When working as a journey level electrician, not more than one noncertified individual for every certified master journey level electrician or journey level electrician, except that the ratio requirements shall be one certified master journey level electrician or journey level electrician to no more than four students enrolled in and working as part of an electrical construction program at public community or technical colleges, or not-for-profit nationally accredited trade or technical schools licensed by the workforce training and education coordinating board under chapter 28C.10 RCW. In meeting the ratio requirements for students enrolled in an electrical construction program at a trade school, a trade school may receive input and advice from the electrical board.

An individual who has a current training certificate and who has successfully completed or is currently enrolled in an approved apprenticeship program or in an electrical construction program at public community or technical colleges, or not-for-profit nationally accredited technical or trade schools licensed by the workforce training and education coordinating board under chapter 28C.10 RCW, may work without direct on-site supervision during the last six months of meeting the practical experience requirements of this chapter.

(5) For the residential (as specified in WAC 296-46B-920(2)(a)), pump and irrigation (as specified in WAC 296-46B-920(2)(b)), sign (as specified in WAC 296-46B-920(2)(d)), limited energy (as specified in WAC 296-46B-920(2)(e)), nonresidential maintenance (as specified in WAC 296-46B-920(2)(g)), restricted nonresidential maintenance as determined by the department in rule, or other new nonresidential specialties, not including appliance repair, as determined by the department in rule, either a master journey level electrician, journey level electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty must be on the same job site as the noncertified individual for a minimum of seventy-five percent of each working day. Other specialties must meet the requirements specified in *RCW 19.28.191(1)(g)(ii). When the ratio of certified electricians to noncertified individuals on a job site is one certified electrician to three or four noncertified individuals, the certified electrician must:

(a) Directly supervise and instruct the noncertified individuals and the certified electrician may not directly make or engage in an electrical installation; and

(b) Be on the same job site as the noncertified individual for a minimum of one hundred percent of each working day.

(6) The electrical contractor shall accurately verify and attest to the electrical trainee hours worked by electrical trainees on behalf of the electrical contractor. [2013 c 23 § 29; 2010 c 33 § 1; 2009 c 36 § 7. Prior: 2006 c 224 § 2; 2006 c 185 § 6; 2002 c 249 § 4; 1997 c 309 § 1; 1996 c 241 § 6; 1983 c 206 § 13; 1980 c 30 § 2. Formerly RCW 19.28.510.]

*Reviser's note: RCW 19.28.191 was amended by 2014 c 156 § 2, changing subsection (1)(g)(ii) to subsection (1)(g)(i)(B).

Effective date—2010 c 33: "This act takes effect July 1, 2011." [2010 c 33 § 2.]

Finding—Intent—2009 c 36: See note following RCW 18.106.020.

19.28.161 Certification—Apprentices and trainees—Supervision—Ratio of noncertified and certified work-

ers—Trainee hours verification. (Effective July 1, 2023.)

(1) No person may engage in the electrical construction trade without having a valid master journey level electrician certificate of competency, journey level electrician certificate of competency, master specialty electrician certificate of competency, or specialty electrician certificate of competency issued by the department in accordance with this chapter. Electrician certificate of competency specialties include, but are not limited to: Residential, pump and irrigation, limited energy system, signs, nonresidential maintenance, restricted nonresidential maintenance, and appliance repair.

(2)(a) A person who is: (i) Registered in an apprenticeship program approved under chapter 49.04 RCW or equivalent apprenticeship program approved by the department for the electrical construction trade; (ii) learning the electrical construction trade while working in a specialty; or (iii) learning the electrical construction trade in a program described in RCW 19.28.191(1) (e) or (f) for a journey level certificate of competency may work in the electrical construction trade if supervised by a certified master journey level electrician, journey level electrician, master specialty electrician in that electrician's specialty, or specialty electrician in that electrician's specialty.

(b) All apprentices and individuals learning the electrical construction trade shall obtain an electrical training certificate from the department. The certificate shall authorize the holder to learn the electrical construction trade while under the direct supervision of a master journey level electrician, journey level electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty. The certificate may include a photograph of the holder. The holder of the electrical training certificate shall renew the certificate biennially. At the time of renewal, the holder shall provide the department with an accurate list of the holder's employers in the electrical construction industry for the previous biennial period and the number of hours worked for each employer. The holder shall also provide proof of forty-eight hours of: Approved classroom training covering this chapter, the national electrical code, or electrical theory; or equivalent classroom training taken as part of an approved apprenticeship program under chapter 49.04 RCW or an approved electrical training program under RCW 19.28.191(1)(e). A biennial fee shall be charged for the issuance or renewal of the certificate. The department shall set the fee by rule. The fee shall cover but not exceed the cost of administering and enforcing the trainee certification and supervision requirements of this chapter.

(c)(i) Apprentices and individuals learning the electrical construction trade shall have their electrical training certificates in their possession at all times that they are performing electrical work. They shall show their certificates to an authorized representative of the department at the representative's request.

(ii) Unless working in a specialty, apprentices and individuals learning the electrical construction trade must also have in their possession proof of apprenticeship or training program registration. They shall show their apprenticeship or training program registration documents to an authorized representative of the department at the representative's request.

(3) Any person who has been issued an electrical training certificate under this chapter may work: (a) If that person is

under supervision, and is (b) unless working in a specialty, (i) registered in an approved journey level apprenticeship program, as appropriate; or (ii) learning the electrical construction trade in a program described in RCW 19.28.191(1)(e) for a journey level certificate of competency. Supervision shall consist of a person being on the same job site and under the control of either a certified master journey level electrician, journey level electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty. Either a certified master journey level electrician, journey level electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty shall be on the same job site as the noncertified individual for a minimum of seventy-five percent of each working day unless otherwise provided in this chapter.

(4) The ratio of noncertified individuals to certified master journey level electricians, journey level electricians, master specialty electricians, or specialty electricians on any one job site is as follows:

(a) When working as a specialty electrician, not more than two noncertified individuals for every certified master specialty electrician working in that electrician's specialty, specialty electrician working in that electrician's specialty, master journey level electrician, or journey level electrician, except that the ratio requirements are one certified master specialty electrician working in that electrician's specialty, specialty electrician working in that electrician's specialty, master journey level electrician, or journey level electrician working as a specialty electrician to no more than four students enrolled in and working as part of an electrical construction program at public community or technical colleges, or not-for-profit nationally accredited trade or technical schools licensed by the workforce training and education coordinating board under chapter 28C.10 RCW. In meeting the ratio requirements for students enrolled in an electrical construction program at a trade school, a trade school may receive input and advice from the electrical board; and

(b) When working as a journey level electrician, not more than one noncertified individual for every certified master journey level electrician or journey level electrician, except that the ratio requirements shall be one certified master journey level electrician or journey level electrician to no more than four students enrolled in and working as part of an electrical construction program at public community or technical colleges, or not-for-profit nationally accredited trade or technical schools licensed by the workforce training and education coordinating board under chapter 28C.10 RCW. In meeting the ratio requirements for students enrolled in an electrical construction program at a trade school, a trade school may receive input and advice from the electrical board.

An individual who has a current training certificate and who has successfully completed or is currently enrolled in an approved apprenticeship program or in an electrical construction program at public community or technical colleges, or not-for-profit nationally accredited technical or trade schools licensed by the workforce training and education coordinating board under chapter 28C.10 RCW, may work without direct on-site supervision during the last six months of meeting the practical experience requirements of this chapter.

(5) For the residential (as specified in WAC 296-46B-920(2)(a)), pump and irrigation (as specified in WAC 296-46B-920(2)(b)), sign (as specified in WAC 296-46B-920(2)(d)), limited energy (as specified in WAC 296-46B-920(2)(e)), nonresidential maintenance (as specified in WAC 296-46B-920(2)(g)), restricted nonresidential maintenance as determined by the department in rule, or other new nonresidential specialties, not including appliance repair, as determined by the department in rule, either a master journey level electrician, journey level electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty must be on the same job site as the noncertified individual for a minimum of seventy-five percent of each working day. Other specialties must meet the requirements specified in RCW 19.28.191(1)(d)(ii). When the ratio of certified electricians to noncertified individuals on a job site is one certified electrician to three or four noncertified individuals, the certified electrician must:

(a) Directly supervise and instruct the noncertified individuals and the certified electrician may not directly make or engage in an electrical installation; and

(b) Be on the same job site as the noncertified individual for a minimum of one hundred percent of each working day.

(6) The electrical contractor shall accurately verify and attest to the electrical trainee hours worked by electrical trainees on behalf of the electrical contractor. [2018 c 249 § 2; 2013 c 23 § 29; 2010 c 33 § 1; 2009 c 36 § 7. Prior: 2006 c 224 § 2; 2006 c 185 § 6; 2002 c 249 § 4; 1997 c 309 § 1; 1996 c 241 § 6; 1983 c 206 § 13; 1980 c 30 § 2. Formerly RCW 19.28.510.]

Effective date—2018 c 249: See note following RCW 19.28.191.

Effective date—2010 c 33: "This act takes effect July 1, 2011." [2010 c 33 § 2.]

Finding—Intent—2009 c 36: See note following RCW 18.106.020.

19.28.171 Electrical trainee hours—Audit—Rules—Confidentiality. The department may audit the records of an electrical contractor that has verified the hours of experience submitted by an electrical trainee to the department under RCW 19.28.161(2) in the following circumstances: Excessive hours were reported; hours reported outside the normal course of the contractor's business; the type of hours reported do not reasonably match the type of permits purchased; or for other similar circumstances in which the department demonstrates a likelihood of excessive hours being reported. The department shall limit the audit to records necessary to verify hours. The department shall adopt rules implementing audit procedures. Information obtained from an electrical contractor under the provisions of this section is confidential and is not open to public inspection under chapter 42.56 RCW. [2005 c 274 § 234; 2001 c 211 § 11; 1996 c 241 § 2. Formerly RCW 19.28.515.]

19.28.181 Application for certificate of competency. 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 met the qualifications required under RCW 19.28.191 and 19.28.205. An electrician from another jurisdiction applying for a certificate of competency must provide evidence in a

form prescribed by the department affirming that the person has the equivalent qualifications to those required under RCW 19.28.191. [2012 c 32 § 2; 2001 c 211 § 12; 1997 c 309 § 2; 1980 c 30 § 3. Formerly RCW 19.28.520.]

Effective date—2012 c 32: See note following RCW 19.28.205.

19.28.191 Certificate of competency—Eligibility for examination—Rules. (Effective until July 1, 2023.) (1) Upon receipt of the application, the department shall review the application and determine whether the applicant is eligible to take an examination for the master journey level electrician, journey level electrician, master specialty electrician, or specialty electrician certificate of competency.

(a) Before July 1, 2005, an applicant who possesses a valid journey level electrician certificate of competency in effect for the previous four years and a valid general administrator's certificate may apply for a master journey level electrician certificate of competency without examination.

(b) Before July 1, 2005, an applicant who possesses a valid specialty electrician certificate of competency, in the specialty applied for, for the previous two years and a valid specialty administrator's certificate, in the specialty applied for, may apply for a master specialty electrician certificate of competency without examination.

(c) Before December 1, 2003, the following persons may obtain an equipment repair specialty electrician certificate of competency without examination:

(i) A person who has successfully completed an apprenticeship program approved under chapter 49.04 RCW for the machinist trade; and

(ii) A person who provides evidence in a form prescribed by the department affirming that: (A) He or she was employed as of April 1, 2003, by a factory-authorized equipment dealer or service company; and (B) he or she has worked in equipment repair for a minimum of four thousand hours.

(d) To be eligible to take the examination for a master journey level electrician certificate of competency, the applicant must have possessed a valid journey level electrician certificate of competency for four years.

(e) To be eligible to take the examination for a master specialty electrician certificate of competency, the applicant must have possessed a valid specialty electrician certificate of competency, in the specialty applied for, for two years.

(f) To be eligible to take the examination for a journey level certificate of competency, the applicant must have:

(i) Worked in the electrical construction trade for a minimum of eight thousand hours, of which four thousand hours shall be in industrial or commercial electrical installation under the supervision of a master journey level electrician or journey level electrician and not more than a total of four thousand hours in all specialties under the supervision of a master journey level electrician, journey level electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty. Specialty electricians with less than a four thousand hour work experience requirement cannot credit the time required to obtain that specialty towards qualifying to become a journey level electrician; or

(ii) Successfully completed an apprenticeship program approved under chapter 49.04 RCW for the electrical construction trade.

(g)(i) To be eligible to take the examination for a specialty electrician certificate of competency, the applicant must have:

(A) Worked in the residential (as specified in WAC 296-46B-920(2)(a)), pump and irrigation (as specified in WAC 296-46B-920(2)(b)), sign (as specified in WAC 296-46B-920(2)(d)), limited energy (as specified in WAC 296-46B-920(2)(e)), nonresidential maintenance (as specified in WAC 296-46B-920(2)(g)), or other new nonresidential specialties as determined by the department in rule under the supervision of a master journey level electrician, journey level electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty for a minimum of four thousand hours;

(B) Worked in the appliance repair specialty as determined by the department in rule, restricted nonresidential maintenance as determined by the department in rule, the equipment repair specialty as determined by the department in rule, the pump and irrigation specialty other than as defined by (g)(i)(A) of this subsection or domestic pump specialty as determined by the department in rule, or a specialty other than the designated specialties in (g)(i)(A) of this subsection for a minimum of the initial ninety days, or longer if set by rule by the department. The restricted nonresidential maintenance specialty is limited to a maximum of 277 volts and 20 amperes for lighting branch circuits and/or a maximum of 250 volts and 60 amperes for other circuits excluding the replacement or repair of circuit breakers. The department may alter the scope of work for the restricted nonresidential maintenance specialty by rule. The initial period must be spent under one hundred percent supervision of a master journey level electrician, journey level electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty. After this initial period, a person may take the specialty examination. If the person passes the examination, the person may work unsupervised for the balance of the minimum hours required for certification. A person may not be certified as a specialty electrician in the appliance repair specialty or in a specialty other than the designated specialties in (g)(i)(A) of this subsection, however, until the person has worked a minimum of two thousand hours in that specialty, or longer if set by rule by the department; or

(C) Successfully completed an approved apprenticeship program under chapter 49.04 RCW for the applicant's specialty in the electrical construction trade.

(ii) In meeting the training requirements for the pump and irrigation or domestic pump specialties, the individual shall be allowed to obtain the experience required by this section at the same time the individual is meeting the experience required by RCW 18.106.040(1)(c). After meeting the training requirements provided in this section, the individual may take the examination and upon passing the examination, meeting additional training requirements as may still be required for those seeking a pump and irrigation, or a domestic pump specialty certificate as defined by rule, and paying the applicable fees, the individual must be issued the appropriate certificate. The department may include an examina-

tion for specialty plumbing certificate defined in RCW 18.106.010(10)(c) with the examination required by this section. The department, by rule and in consultation with the electrical board, may establish additional equivalent ways to gain the experience requirements required by this subsection. Individuals who are able to provide evidence to the department, prior to January 1, 2007, that they have been employed as a pump installer in the pump and irrigation or domestic pump business by an appropriately licensed electrical contractor, registered general contractor defined by chapter 18.27 RCW, or appropriate general specialty contractor defined by chapter 18.27 RCW for not less than eight thousand hours in the most recent six calendar years shall be issued the appropriate certificate by the department upon receiving such documentation and applicable fees. The department shall establish a single document for those who have received both an electrical specialty certification as defined by this subsection and have also met the certification requirements for the specialty plumber as defined by RCW 18.106.010(10)(c), showing that the individual has received both certifications. No other experience or training requirements may be imposed.

(iii) Before July 1, 2015, an applicant possessing an electrical training certificate issued by the department is eligible to apply one hour of every two hours of unsupervised telecommunications system installation work experience toward eligibility for examination for a limited energy system certificate of competency (as specified in WAC 296-46B-920(2)(e)), if:

(A) The telecommunications work experience was obtained while employed by a contractor licensed under this chapter as a general electrical contractor (as specified in WAC 296-46B-920(1)) or limited energy system specialty contractor (as specified in WAC 296-46B-920(2)(e)); and

(B) Evidence of the telecommunications work experience is submitted in the form of an affidavit prescribed by the department.

(h) Any applicant for a journey level electrician certificate of competency who has successfully completed a two-year program in the electrical construction trade at public community or technical colleges, or not-for-profit nationally accredited technical or trade schools licensed by the workforce training and education coordinating board under chapter 28C.10 RCW, may substitute up to two years of the technical or trade school program for two years of work experience under a master journey level electrician or journey level electrician. The applicant shall obtain the additional two years of work experience required in industrial or commercial electrical installation prior to the beginning, or after the completion, of the technical school program. Any applicant who has received training in the electrical construction trade in the armed service of the United States may be eligible to apply armed service work experience towards qualification to take the examination for the journey level electrician certificate of competency.

(i) An applicant for a specialty electrician certificate of competency who, after January 1, 2000, has successfully completed a two-year program in the electrical construction trade at a public community or technical college, or a not-for-profit nationally accredited technical or trade school licensed by the workforce training and education coordinating board

under chapter 28C.10 RCW, may substitute up to one year of the technical or trade school program for one year of work experience under a master journey level electrician, journey level electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty. Any applicant who has received training in the electrical construction trade in the armed services of the United States may be eligible to apply armed service work experience towards qualification to take the examination for an appropriate specialty electrician certificate of competency.

(j) The department must determine whether hours of training and experience in the armed services or school program are in the electrical construction trade and appropriate as a substitute for hours of work experience. The department must use the following criteria for evaluating the equivalence of classroom electrical training programs and work in the electrical construction trade:

(i) A two-year electrical training program must consist of three thousand or more hours.

(ii) In a two-year electrical training program, a minimum of two thousand four hundred hours of student/instructor contact time must be technical electrical instruction directly related to the scope of work of the electrical specialty. Student/instructor contact time includes lecture and in-school lab.

(iii) The department may not allow credit for a program that accepts more than one thousand hours transferred from another school's program.

(iv) Electrical specialty training school programs of less than two years will have all of the above student/instructor contact time hours proportionately reduced. Such programs may not apply to more than fifty percent of the work experience required to attain certification.

(v) Electrical training programs of less than two years may not be credited towards qualification for journey level electrician unless the training program is used to gain qualification for a four thousand hour electrical specialty.

(k) No other requirement for eligibility may be imposed.

(2) The department shall establish reasonable rules for the examinations to be given applicants for certificates of competency. In establishing the rules, the department shall consult with the board. Upon determination that the applicant is eligible to take the examination, the department shall so notify the applicant, indicating the time and place for taking the examination.

(3) No noncertified individual may work unsupervised more than one year beyond the date when the trainee would be eligible to test for a certificate of competency if working on a full-time basis after original application for the trainee certificate. For the purposes of this section, "full-time basis" means two thousand hours. [2016 c 198 § 2; 2014 c 156 § 2; 2013 c 23 § 30; 2006 c 185 § 7. Prior: 2003 c 399 § 601; 2003 c 211 § 1; 2002 c 249 § 5; 1997 c 309 § 3; 1988 c 81 § 13; 1983 c 206 § 14; 1980 c 30 § 4. Formerly RCW 19.28.530.]

*Reviser's note: Section 501, chapter 399, Laws of 2003 was vetoed by the governor.

Additional notes found at www.leg.wa.gov

19.28.191 Certificate of competency—Eligibility for examination—Rules. (Effective July 1, 2023.) (1) Upon

(2018 Ed.)

receipt of the application, the department shall review the application and determine whether the applicant is eligible to take an examination for the master journey level electrician, journey level electrician, master specialty electrician, or specialty electrician certificate of competency.

(a) To be eligible to take the examination for a master journey level electrician certificate of competency, the applicant must have possessed a valid journey level electrician certificate of competency for four years.

(b) To be eligible to take the examination for a master specialty electrician certificate of competency, the applicant must have possessed a valid specialty electrician certificate of competency, in the specialty applied for, for two years.

(c) To be eligible to take the examination for a journey level certificate of competency, the applicant must have successfully completed an apprenticeship program approved under chapter 49.04 RCW or equivalent apprenticeship program approved by the department for the electrical construction trade in which the applicant worked in the electrical construction trade for a minimum of eight thousand hours. Four thousand of the hours shall be in industrial or commercial electrical installation under the supervision of a master journey level electrician or journey level electrician and not more than a total of four thousand hours in all specialties under the supervision of a master journey level electrician, journey level electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty. Specialty electricians with less than a four thousand hour work experience requirement cannot credit the time required to obtain that specialty towards qualifying to become a journey level electrician. The holder of a specialty electrician certificate of competency with a four thousand hour work experience requirement shall be allowed to credit the work experience required to obtain that certificate towards apprenticeship requirements for qualifying to take the examination for a journey level electrician certificate of competency.

(d) To be eligible to take the examination for a specialty electrician certificate of competency, the applicant must have:

(i) Worked in the residential (as specified in WAC 296-46B-920(2)(a)), pump and irrigation (as specified in WAC 296-46B-920(2)(b)), sign (as specified in WAC 296-46B-920(2)(d)), limited energy (as specified in WAC 296-46B-920(2)(e)), nonresidential maintenance (as specified in WAC 296-46B-920(2)(g)), or other new nonresidential specialties as determined by the department in rule under the supervision of a master journey level electrician, journey level electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty for a minimum of four thousand hours;

(ii) Worked in the appliance repair specialty as determined by the department in rule, restricted nonresidential maintenance as determined by the department in rule, the equipment repair specialty as determined by the department in rule, the pump and irrigation specialty other than as defined by (d)(i) of this subsection or domestic pump specialty as determined by the department in rule, or a specialty other than the designated specialties in (d)(i) of this subsection for a minimum of the initial ninety days, or longer if set by rule by the department. The restricted nonresidential

maintenance specialty is limited to a maximum of 277 volts and 20 amperes for lighting branch circuits and/or a maximum of 250 volts and 60 amperes for other circuits excluding the replacement or repair of circuit breakers. The department may alter the scope of work for the restricted nonresidential maintenance specialty by rule. The initial period must be spent under one hundred percent supervision of a master journey level electrician, journey level electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty. After this initial period, a person may take the specialty examination. If the person passes the examination, the person may work unsupervised for the balance of the minimum hours required for certification. A person may not be certified as a specialty electrician in the appliance repair specialty or in a specialty other than the designated specialties in (d)(i) of this subsection, however, until the person has worked a minimum of two thousand hours in that specialty, or longer if set by rule by the department;

(iii) Successfully completed an approved apprenticeship program under chapter 49.04 RCW for the applicant's specialty in the electrical construction trade; or

(iv) In meeting the training requirements for the pump and irrigation or domestic pump specialties, the individual shall be allowed to obtain the experience required by this section at the same time the individual is meeting the experience required by RCW 18.106.040(1)(c). After meeting the training requirements provided in this section, the individual may take the examination and upon passing the examination, meeting additional training requirements as may still be required for those seeking a pump and irrigation, or a domestic pump specialty certificate as defined by rule, and paying the applicable fees, the individual must be issued the appropriate certificate. The department may include an examination for specialty plumbing certificate defined in RCW 18.106.010(10)(c) with the examination required by this section. The department, by rule and in consultation with the electrical board, may establish additional equivalent ways to gain the experience requirements required by this subsection. The department shall establish a single document for those who have received both an electrical specialty certification as defined by this subsection and have also met the certification requirements for the specialty plumber as defined by RCW 18.106.010(10)(c), showing that the individual has received both certifications. No other experience or training requirements may be imposed.

(e) Any applicant for a journey level electrician certificate of competency who has successfully completed a two-year program in the electrical construction trade at public community or technical colleges, or not-for-profit nationally accredited technical or trade schools licensed by the workforce training and education coordinating board under chapter 28C.10 RCW, may substitute up to two years of the technical or trade school program for two years of work experience under a master journey level electrician or journey level electrician required under the apprenticeship program. The applicant shall obtain the additional two years of work experience required in industrial or commercial electrical installation prior to the beginning, or after the completion, of the technical school program. Any applicant who has received training in the electrical construction trade in the armed ser-

vice of the United States may be eligible to apply armed service work experience towards qualification to complete an apprenticeship and take the examination for the journey level electrician certificate of competency.

(f) An applicant for a specialty electrician certificate of competency who, after January 1, 2000, has successfully completed a two-year program in the electrical construction trade at a public community or technical college, or a not-for-profit nationally accredited technical or trade school licensed by the workforce training and education coordinating board under chapter 28C.10 RCW, may substitute up to one year of the technical or trade school program for one year of work experience under a master journey level electrician, journey level electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty. Any applicant who has received training in the electrical construction trade in the armed services of the United States may be eligible to apply armed service work experience towards qualification to take the examination for an appropriate specialty electrician certificate of competency.

(g) The department must determine whether hours of training and experience in the armed services or school program are in the electrical construction trade and appropriate as a substitute for hours of work experience. The department must use the following criteria for evaluating the equivalence of classroom electrical training programs and work in the electrical construction trade:

(i) A two-year electrical training program must consist of three thousand or more hours.

(ii) In a two-year electrical training program, a minimum of two thousand four hundred hours of student/instructor contact time must be technical electrical instruction directly related to the scope of work of the electrical specialty. Student/instructor contact time includes lecture and in-school lab.

(iii) The department may not allow credit for a program that accepts more than one thousand hours transferred from another school's program.

(iv) Electrical specialty training school programs of less than two years will have all of the above student/instructor contact time hours proportionately reduced. Such programs may not apply to more than fifty percent of the work experience required to attain certification.

(v) Electrical training programs of less than two years may not be credited towards qualification for journey level electrician unless the training program is used to gain qualification for a four thousand hour electrical specialty.

(h) No other requirement for eligibility may be imposed.

(2) The department shall establish reasonable rules for the examinations to be given applicants for certificates of competency. In establishing the rules, the department shall consult with the board. Upon determination that the applicant is eligible to take the examination, the department shall so notify the applicant, indicating instructions for taking the examination.

(3) No noncertified individual may work unsupervised more than one year beyond the date when the trainee would be eligible to test for a certificate of competency if working on a full-time basis after original application for the trainee certificate. For the purposes of this section, "full-time basis"

means two thousand hours. [2018 c 249 § 1; 2016 c 198 § 2; 2014 c 156 § 2; 2013 c 23 § 30; 2006 c 185 § 7. Prior: 2003 c 399 § 601; 2003 c 211 § 1; 2002 c 249 § 5; 1997 c 309 § 3; 1988 c 81 § 13; 1983 c 206 § 14; 1980 c 30 § 4. Formerly RCW 19.28.530.]

Effective date—2018 c 249: "Sections 1 through 4 of this act take effect July 1, 2023." [2018 c 249 § 5.]

***Reviser's note:** Section 501, chapter 399, Laws of 2003 was vetoed by the governor.

Additional notes found at www.leg.wa.gov

19.28.195 Examination—Exception for equivalent training and experience. (Effective July 1, 2023, until July 1, 2025.) (1) The department may permit an applicant who obtained experience and training equivalent to a journey level apprenticeship program to take the examination if the applicant establishes that the applicant has the equivalent training and experience and demonstrates good cause for not completing the required minimum hours of work under standards applicable on July 1, 2023.

(2) This section expires July 1, 2025. [2018 c 249 § 4.]

Effective date—2018 c 249: See note following RCW 19.28.191.

19.28.201 Examination—Times—Certification of results—Contents—Fees. The department, in coordination with the board, shall prepare an examination to be administered to applicants for master journey level electrician, journey level electrician, master specialty electrician, and specialty electrician certificates of competency.

The department, with the consent of the board, may enter into a contract with a professional testing agency to develop, administer, and score electrician certification examinations. The department may set the examination fee by contract with the professional testing agency.

The department must, at least four times annually, administer the examination to persons eligible to take it under RCW 19.28.191. The fee must cover, but not exceed, the costs of preparing and administering the examination.

The department must certify the results of the examination upon the terms and after such a period of time as the department, in cooperation with the board, deems necessary and proper.

(1)(a) The master electrician's certificates of competency examinations must include questions from the following categories to ensure proper safety and protection for the general public: (i) Safety; (ii) the state electrical code; and (iii) electrical theory.

(b) A person may take the master electrician examination as many times as necessary without limit. All applicants must, before taking the examination, pay the required examination fee to the agency administering the examination.

(2) The journey level electrician and specialty electrician examinations shall be constructed to determine:

(a) Whether the applicant possesses varied general knowledge of the technical information and practical procedures that are identified with the status of journey level electrician or specialty electrician; and

(b) Whether the applicant is sufficiently familiar with the applicable electrical codes and the rules of the department pertaining to electrical installations and electricians.

(2018 Ed.)

A person may take the examination as many times as necessary without limit. All applicants must, before taking the examination, pay the required examination fee to the agency administering the examination. [2013 c 23 § 31; 2002 c 249 § 6; 2001 c 211 § 13; 1996 c 147 § 8; 1988 c 81 § 14; 1986 c 156 § 13; 1983 c 206 § 15; 1980 c 30 § 5. Formerly RCW 19.28.540.]

19.28.205 In-class education requirements. (Effective until July 1, 2023.) (1) An applicant for a journey level certificate of competency under RCW 19.28.191(1)(f) or a specialty electrician certificate of competency under RCW 19.28.191(1)(g) must demonstrate to the satisfaction of the department completion of in-class education as follows:

(a) Twenty-four hours of in-class education if two thousand hours or more but less than four thousand hours of work are required for the certificate;

(b) Forty-eight hours of in-class education if four thousand or more but less than six thousand hours of work are required for the certificate;

(c) Seventy-two hours of in-class education if six thousand or more but less than eight thousand hours of work are required for the certificate;

(d) Ninety-six hours of in-class education if eight thousand or more hours of work are required for the certificate.

(2) For purposes of this section, "in-class education" means approved classroom training covering this chapter, the national electric code, or electrical theory; or equivalent classroom training taken as part of an approved apprenticeship program under chapter 49.04 RCW or an approved electrical training program under RCW 19.28.191(1)(h).

(3) Classroom training taken to qualify for trainee certificate renewal under RCW 19.28.161 qualifies as in-class education under this section. [2013 c 23 § 32; 2012 c 32 § 1.]

Effective date—2012 c 32: "This act takes effect July 1, 2013." [2012 c 32 § 4.]

19.28.205 In-class education requirements. (Effective July 1, 2023.) (1) An applicant for a journey level certificate of competency under RCW 19.28.191(1)(c) or a specialty electrician certificate of competency under RCW 19.28.191(1)(d) must demonstrate to the satisfaction of the department completion of in-class education as follows:

(a) Twenty-four hours of in-class education if two thousand hours or more but less than four thousand hours of work are required for the certificate;

(b) Forty-eight hours of in-class education if four thousand or more but less than six thousand hours of work are required for the certificate;

(c) Seventy-two hours of in-class education if six thousand or more but less than eight thousand hours of work are required for the certificate;

(d) Ninety-six hours of in-class education if eight thousand or more hours of work are required for the certificate.

(2) For purposes of this section, "in-class education" means approved classroom training covering this chapter, the national electric code, or electrical theory; or equivalent classroom training taken as part of an approved apprenticeship program under chapter 49.04 RCW or an approved electrical training program under RCW 19.28.191(1)(e).

[Title 19 RCW—page 65]

(3) Classroom training taken to qualify for trainee certificate renewal under RCW 19.28.161 qualifies as in-class education under this section. [2018 c 249 § 3; 2013 c 23 § 32; 2012 c 32 § 1.]

Effective date—2018 c 249: See note following RCW 19.28.191.

Effective date—2012 c 32: "This act takes effect July 1, 2013." [2012 c 32 § 4.]

19.28.211 Certificate of competency—Issuance—Renewal—Continuing education—Fees—Effect. (1) The department shall issue a certificate of competency to all applicants who have passed the examination provided in RCW 19.28.201, met the in-class education requirements of RCW 19.28.205 if applicable, and who have complied with RCW 19.28.161 through 19.28.271 and the rules adopted under this chapter. The certificate may include a photograph of the holder. The certificate shall bear the date of issuance, and shall expire on the holder's birthday. The certificate shall be renewed every three years, upon application, on or before the holder's birthdate. A fee shall be assessed for each certificate and for each annual renewal.

(2) If the certificate holder demonstrates to the department that he or she has satisfactorily completed an annual eight-hour continuing education course, the certificate may be renewed without examination by appropriate application unless the certificate has been revoked, suspended, or not renewed within ninety days after the expiration date. For pump and irrigation or domestic pump specialty electricians, the continuing education course may combine both electrical and plumbing education provided that there is a minimum of four hours of electrical training in the course.

(a) The contents and requirements for satisfactory completion of the continuing education course shall be determined by the director and approved by the board.

(b) The department shall accept proof of a certificate holder's satisfactory completion of a continuing education course offered in another state as meeting the requirements for maintaining a current Washington state certificate of competency if the department is satisfied the course is comparable in nature to that required in Washington state for maintaining a current certificate of competency.

(3) If the certificate is not renewed before the expiration date, the individual shall pay twice the usual fee. The department shall set the fees by rule for issuance and renewal of a certificate of competency. The fees shall cover but not exceed the costs of issuing the certificates and of administering and enforcing the electrician certification requirements of this chapter.

(4) The certificates of competency and temporary permits provided for in this chapter grant the holder the right to work in the electrical construction trade as a master electrician, journey level electrician, or specialty electrician in accordance with their provisions throughout the state and within any of its political subdivisions without additional proof of competency or any other license, permit, or fee to engage in such work. [2013 c 23 § 33; 2012 c 32 § 3; 2009 c 36 § 8; 2006 c 185 § 12; 2002 c 249 § 7; 2001 c 211 § 14; 1996 c 241 § 7; 1993 c 192 § 1; 1986 c 156 § 14; 1983 c 206 § 16; 1980 c 30 § 6. Formerly RCW 19.28.550.]

Effective date—2012 c 32: See note following RCW 19.28.205.

Finding—Intent—2009 c 36: See note following RCW 18.106.020.

19.28.221 Persons engaged in trade or business on July 16, 1973. No examination shall be required of any applicant for a certificate of competency who, on July 16, 1973, was engaged in a bona fide business or trade as a journey level electrician in the state of Washington. Applicants qualifying under this section shall be issued a certificate by the department upon making an application as provided in RCW 19.28.181 and paying the fee required under RCW 19.28.201: PROVIDED, That no applicant under this section shall be required to furnish such evidence as required by RCW 19.28.181. [2013 c 23 § 34; 2001 c 211 § 15; 1980 c 30 § 7. Formerly RCW 19.28.560.]

19.28.231 Temporary permits. The department is authorized to grant and issue temporary permits in lieu of certificates of competency whenever an electrician coming into the state of Washington from another state requests the department for a temporary permit to engage in the electrical construction trade as an electrician during the period of time between filing of an application for a certificate as provided in RCW 19.28.181 and the date the results of taking the examination provided for in RCW 19.28.201 are furnished to the applicant. The temporary permit may include a photograph of the holder. The department is authorized to enter into reciprocal agreements with other states providing for the acceptance of such states' journey level and specialty electrician certificate of competency or its equivalent when such states requirements are equal to the standards set by this chapter. No temporary permit shall be issued to:

(1) Any person who has failed to pass the examination for a certificate of competency, except that any person who has failed the examination for competency under this section shall be entitled to continue to work under a temporary permit for ninety days if the person is enrolled in a journey level electrician refresher course and shows evidence to the department that he or she has not missed any classes. The person, after completing the journey level electrician refresher course, shall be eligible to retake the examination for competency at the next scheduled time.

(2) Any applicant under this section who has not furnished the department with such evidence required under RCW 19.28.181.

(3) Any apprentice electrician. [2013 c 23 § 35; 2009 c 36 § 9; 2001 c 211 § 16; 1986 c 156 § 15; 1983 c 206 § 17; 1980 c 30 § 8. Formerly RCW 19.28.570.]

Finding—Intent—2009 c 36: See note following RCW 18.106.020.

19.28.241 Revocation of certificate of competency—Grounds—Procedure. (1) The department may revoke any certificate of competency upon the following grounds:

(a) The certificate was obtained through error or fraud;

(b) The holder thereof is judged to be incompetent to work in the electrical construction trade as a journey level electrician or specialty electrician;

(c) The holder thereof has violated any of the provisions of RCW 19.28.161 through 19.28.271 or any rule adopted under this chapter; or

(d) The holder thereof has committed a serious violation of this chapter or any rule adopted under this chapter. A serious violation is a violation that presents imminent danger to the public.

(2) The department may deny an application for a certificate of competency for up to two years if the applicant's previous certificate of competency has been revoked.

(3) Before any certificate of competency shall be revoked, the holder shall be given written notice of the department's intention to do so, mailed by registered mail, return receipt requested, to the holder's last known address. The notice shall enumerate the allegations against the holder, and shall give the holder the opportunity to request a hearing before the board. At the hearing, the department and the holder may produce witnesses and give testimony. The hearing shall 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 shall be necessary to render a decision.

(4) 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. [2013 c 23 § 36; 2002 c 249 § 8; 2001 c 211 § 17; 1997 c 58 § 845; 1988 c 81 § 15; 1983 c 206 § 18; 1980 c 30 § 9. Formerly RCW 19.28.580.]

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

Additional notes found at www.leg.wa.gov

19.28.251 Powers and duties of director—Administration of RCW 19.28.161 through 19.28.271 by the department. The director may promulgate rules, make specific decisions, orders, and rulings, including demands and findings, and take other necessary action for the implementation and enforcement of RCW 19.28.161 through 19.28.271. In the administration of RCW 19.28.161 through 19.28.271 the department shall not enter any controversy arising over work assignments with respect to the trades involved in the construction industry. [2001 c 211 § 18; 1983 c 206 § 20; 1980 c 30 § 11. Formerly RCW 19.28.600.]

19.28.261 Exemptions from RCW 19.28.161 through 19.28.271. (1) Nothing in RCW 19.28.161 through 19.28.271 shall be construed to require that a person obtain a license or a certified electrician in order to do electrical work at his or her residence or farm or place of business or on other property owned by him or her unless the electrical work is on the construction of a new building intended for rent, sale, or lease. However, if the construction is of a new residential building with up to four units intended for rent, sale, or lease, the owner may receive an exemption from the requirement to obtain a license or use a certified electrician if he or she provides a signed affidavit to the department stating that he or she will be performing the work and will occupy one of the units as his or her principal residence. The owner shall apply to the department for this exemption and may only receive an exemption once every twenty-four months. It is intended that the owner receiving this exemption shall occupy the unit as

his or her principal residence for twenty-four months after completion of the units.

(2) Nothing in RCW 19.28.161 through 19.28.271 shall be intended to derogate from or dispense with the requirements of any valid electrical code enacted by a city or town pursuant to RCW 19.28.010(3), except that no code shall require the holder of a certificate of competency to demonstrate any additional proof of competency or obtain any other license or pay any fee in order to engage in the electrical construction trade.

(3) RCW 19.28.161 through 19.28.271 shall not apply to common carriers subject to Part I of the *Interstate Commerce Act, nor to their officers and employees.

(4) Nothing in RCW 19.28.161 through 19.28.271 shall be deemed to apply to the installation or maintenance of telephone, telegraph, radio, or television wires and equipment; nor to any electrical utility or its employees in the installation, repair, and maintenance of electrical wiring, circuits, and equipment by or for the utility, or comprising a part of its plants, lines, or systems.

(5) The licensing provisions of RCW 19.28.161 through 19.28.271 shall not apply to:

(a) Persons making electrical installations on their own property or to regularly employed employees working on the premises of their employer, unless the electrical work is on the construction of a new building intended for rent, sale, or lease;

(b) Employees of an employer while the employer is performing utility type work of the nature described in RCW 19.28.091 so long as such employees have registered in the state of Washington with or graduated from a state-approved outside lineworker apprenticeship course that is recognized by the department and that qualifies a person to perform such work;

(c) Any work exempted under RCW 19.28.091(6); and

(d) Certified plumbers, certified residential plumbers, or plumber trainees meeting the requirements of chapter 18.106 RCW and performing exempt work under RCW 19.28.091(8).

(6) Nothing in RCW 19.28.161 through 19.28.271 shall be construed to restrict the right of any householder to assist or receive assistance from a friend, neighbor, relative, or other person when none of the individuals doing the electrical installation hold themselves out as engaged in the trade or business of electrical installations.

(7) Nothing precludes any person who is exempt from the licensing requirements of this chapter under this section from obtaining a journey level or specialty certificate of competency if they otherwise meet the requirements of this chapter. [2013 c 23 § 37; 2007 c 218 § 83; 2003 c 399 § 302; 2001 c 211 § 19; 1998 c 98 § 2; 1994 c 157 § 1; 1992 c 240 § 3; 1986 c 156 § 16; 1983 c 206 § 21; 1980 c 30 § 12. Formerly RCW 19.28.610.]

***Reviser's note:** Interstate Commerce Act, see, now, 49 U.S.C.A. Sec. 10101 et seq.

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Additional notes found at www.leg.wa.gov

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.

19.28.281 Electric vehicle infrastructure—Rule adoption. The director shall adopt by rule standards for the installation of electric vehicle infrastructure, including all wires and equipment that convey electric current and any equipment to be operated by electric current, in, on, or about buildings or structures. The rules must be consistent with rules adopted under RCW 19.27.540. [2009 c 459 § 17.]

Finding—Purpose—2009 c 459: See note following RCW 47.80.090.

Regional transportation planning organizations—Electric vehicle infrastructure: RCW 47.80.090.

19.28.291 Violations of chapter—Issuance of subpoenas—Application. (1) If he or she has reason to believe there has been a violation of this chapter, the director and the director's authorized representatives may issue subpoenas to enforce the production and examination of any information, whether written or electronic, necessary to enforce this chapter. The subpoena must describe the possible violation, cite the relevant sections of this chapter and rules adopted under this chapter, and must explain how the information being subpoenaed is reasonably related to the possible violation.

(2) The subpoena may be issued only if an electrical contractor, administrator, electrician, or other entity or person to which this chapter applies fails to provide the above information when requested by the department. The department's request for information must describe the possible violation, cite the relevant sections of this chapter and rules adopted under this chapter, and must explain how the information being requested is reasonably related to the possible violation.

(3) The superior court has the power to enforce such a subpoena by proper proceedings.

(4) This section applies to all electrical contractors, administrators, electricians, other entities and persons, and electrical work to which this chapter applies. [2010 c 55 § 1.]

PROVISIONS APPLICABLE TO ELECTRICAL INSTALLATIONS AND TELECOMMUNICATIONS INSTALLATIONS

19.28.301 Application—Subchapter heading. (1) RCW 19.28.311 through 19.28.381 apply throughout this chapter.

(2) RCW 19.28.311 through 19.28.381 constitute the subchapter "provisions applicable to electrical installations and telecommunications installations." [2000 c 238 § 1.]

Additional notes found at www.leg.wa.gov

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.]

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

Additional notes found at www.leg.wa.gov

19.28.321 Enforcement—State electrical inspectors—Qualifications—Salaries and expenses. The director of labor and industries of the state of Washington and the officials of all incorporated cities and towns where electrical inspections are required by local ordinances shall have power and it shall be their duty to enforce the provisions of this chapter in their respective jurisdictions. The director of labor and industries shall appoint a chief electrical inspector and may appoint other electrical inspectors as the director deems necessary to assist the director in the performance of the director's duties. The chief electrical inspector, subject to the review of the director, shall be responsible for providing the final interpretation of adopted state electrical standards, rules,

and policies for the department and its inspectors, assistant inspectors, electrical plan examiners, and other individuals supervising electrical program personnel. If a dispute arises within the department regarding the interpretation of adopted state electrical standards, rules, or policies, the chief electrical inspector, subject to the review of the director, shall provide the final interpretation of the disputed standard, rule, or policy. All electrical inspectors appointed by the director of labor and industries shall have not less than: Four years experience as journeyman electricians in the electrical construction trade installing and maintaining electrical wiring and equipment, or two years electrical training in a college of electrical engineering of recognized standing and four years continuous practical electrical experience in installation work, or four years of electrical training in a college of electrical engineering of recognized standing and two years continuous practical electrical experience in electrical installation work; or four years experience as a journeyman electrician performing the duties of an electrical inspector employed by the department or a city or town with an approved inspection program under RCW 19.28.141, except that for work performed in accordance with the national electrical safety code and covered by this chapter, such inspections may be performed by a person certified as an outside journeyman lineworker, under RCW 19.28.261(5)(b), with four years experience or a person with four years experience as a certified outside journeyman lineworker performing the duties of an electrical inspector employed by an electrical utility. Such state inspectors shall be paid such salary as the director of labor and industries shall determine, together with their travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. As a condition of employment, inspectors hired exclusively to perform inspections in accordance with the national electrical safety code must possess and maintain certification as an outside journeyman lineworker. The expenses of the director of labor and industries and the salaries and expenses of state inspectors incurred in carrying out the provisions of this chapter shall be paid entirely out of the electrical license fund, upon vouchers approved by the director of labor and industries. [2007 c 218 § 84; 2001 c 211 § 21; 1997 c 309 § 4; 1986 c 156 § 4; 1975-'76 2nd ex.s. c 34 § 61; 1967 c 88 § 1; 1935 c 169 § 3; RRS § 8307-3. Formerly RCW 19.28.070, 19.28.080, 19.28.090, 19.28.100, 19.28.110.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Additional notes found at www.leg.wa.gov

19.28.325 Enforcement—Local authority—Penalties—Appeals. This chapter shall not limit the authority or power of any city or town where electrical inspections are required by local ordinances to enact and enforce under authority given by law, any ordinance, rule, or regulation enforcing the same requirements of this chapter for having or possessing or displaying a license or a certificate, employing certified individuals, supervision of trainees, or duties of an administrator in their respective jurisdictions. Penalties are to be established within the limits provided in this chapter. No person, firm, partnership, corporation, or other entity may be penalized by both a city or town and the department for the same violation. Each day that a person, firm, partnership, corporation, or other entity violates this chapter is a separate vio-

lation. Penalties upheld through an appellate process of a city or town may be appealed to the board by filing a written notice of appeal to the secretary of the board. All costs of an appeal under this section payable from the electrical license fund shall be reimbursed by the city or town that is party to the matter. The process for service and hearings before the board shall be conducted according to the rules enacted by the department. [2018 c 240 § 2.]

19.28.331 Inspection reports. If any inspection made under this chapter requires any correction or change in the work inspected, a written report of the inspection shall be made by the inspector, in which report the corrections or changes required shall be plainly stated. A copy of the report shall be furnished to the person, firm, partnership, corporation, or other entity doing the installation work, and a copy shall be filed with the department. [1983 c 206 § 8; 1935 c 169 § 9; RRS § 8307-9. Formerly RCW 19.28.250.]

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 certificate 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

19.28.351 Electrical license fund. All sums received from licenses, permit fees, or other sources, herein shall be paid to the state treasurer and placed in a special fund designated as the "electrical license fund," and paid out upon vouchers duly and regularly issued therefor and approved by the director of labor and industries or the director's designee following determination by the board that the sums are necessary to accomplish the intent of chapter 19.28 RCW. The treasurer shall keep an accurate record of payments into, or receipts of, the fund, and of all disbursements therefrom.

During the 2013-2015 biennium, the legislature may transfer moneys from the electrical license fund to the state general fund such amounts as reflect the excess fund balance of the fund. [2013 2nd sp.s. c 4 § 956; 2003 1st sp.s. c 25 § 910; 1988 c 81 § 11; 1979 ex.s. c 67 § 1; 1935 c 169 § 18; RRS § 8307-18. Formerly RCW 19.28.330.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Additional notes found at www.leg.wa.gov

19.28.361 Liability for injury or damage. Nothing contained in this chapter will be construed to relieve from or lessen the responsibility or liability of any person for injury or damage to person or property caused by or resulting from any defect of any nature in any electrical or telecommunications work performed by said person or in any electrical or telecommunications equipment owned, controlled, installed, operated or used by him or her; nor shall the state of Washington, or any officer, agent, or employee thereof incur or be held as assuming any liability by reason or in consequence of any permission, certificate of inspection, inspection or approval authorized herein, or issued or given as herein provided, or by reason of consequence of any things done or acts performed pursuant to any provision of this chapter. [2000 c 238 § 5; 1935 c 169 § 16; RRS § 8307-16. Formerly RCW 19.28.340.]

Additional notes found at www.leg.wa.gov

19.28.371 Medical device—Installation, maintenance, or repair—Compliance with chapter—Limit of exemption. (1) A medical device which is not in violation of the Medical Device Amendments of 1976, Public Law No. 94-295, 90 Stat. 539, as amended from time to time, and as interpreted by the Food and Drug Administration of the United States Department of Health and Human Services or its successor, shall be deemed to be in compliance with all requirements imposed by this chapter.

(2) The installation, maintenance, or repair of a medical device deemed in compliance with this chapter is exempt from licensing requirements under RCW 19.28.091, certification requirements under RCW 19.28.161, and inspection and permitting requirements under RCW 19.28.101. This exemption does not include work providing electrical feeds into the power distribution unit or installation of conduits and raceways. This exemption covers only those factory engi-

neers or third-party service companies with equivalent training who are qualified to perform such service. [2003 c 78 § 1; 1981 c 57 § 1. Formerly RCW 19.28.390.]

19.28.381 Denial of renewal of certificate or license for outstanding penalties—Notice—Appeal—Hearing.

The department may deny renewal of a certificate or license issued under this chapter, if the applicant for renewal owes outstanding penalties for a final judgment under this chapter. The department shall notify the applicant of the denial by registered mail, return receipt requested, 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 or ten percent of the amount of the outstanding penalties, whichever is less, but in no event less than one hundred dollars. The check shall be returned to the applicant if the decision of the department is not upheld by the board. The office of administrative hearings shall conduct the hearing under chapter 34.05 RCW. The electrical board shall review the proposed decision at the next regularly scheduled board meeting. If the board sustains the decision of the department, the amount of the check must be applied to the cost of the hearing. [2014 c 190 § 3; 1996 c 241 § 1. Formerly RCW 19.28.630.]

Effective date—2014 c 190: See note following RCW 19.28.131.

PROVISIONS APPLICABLE TO TELECOMMUNICATIONS INSTALLATIONS

19.28.400 Definitions. The definitions in this section apply throughout this subchapter unless the context clearly requires otherwise.

(1) "Board" means the electrical board under RCW 19.28.311.

(2) "Department" means the department of labor and industries.

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

(4) "Telecommunications administrator" means a person designated by a telecommunications contractor to supervise the installation of telecommunications systems in accordance with rules adopted under this chapter.

(5) "Telecommunications backbone cabling systems" means a system that provides interconnections between telecommunications closets, equipment rooms, and entrance facilities in the telecommunications cabling system structure. Backbone cabling consists of the backbone cables, intermediate and main cross-connects, mechanical terminations, and patch cords or jumpers used for backbone to backbone cross-connection. Backbone cabling also includes cabling between buildings.

(6) "Telecommunications closet" means a room for housing telecommunications equipment, cable terminations, and cross-connect wiring that serve that particular floor. The closet is the recognized transition point between the backbone and horizontal cabling systems.

(7) "Telecommunications contractor" means a person, firm, partnership, corporation, or other entity that advertises, offers to undertake, undertakes, submits a bid for, or does the work of installing or maintaining telecommunications systems.

(8) "Telecommunications horizontal cabling systems" means the portions of the telecommunications cabling system that extend from the work area telecommunications outlet or connector to the telecommunications closet. The horizontal cabling includes the horizontal cables, the telecommunications outlet or connector in the work area, the mechanical termination, and horizontal cross-connections located in the telecommunications closet.

(9) "Telecommunications network demarcation point" means the point or interconnection between the service provider's communications cabling, terminal equipment, and protective apparatus and the customer's premises telecommunications cabling system. The location of this point for regulated carriers is determined by federal and state regulations. The carrier should be contacted to determine the location policies in effect in the area.

(10) "Telecommunications scope of work" means the work of a telecommunications contractor as defined in this section and as specified by rule of the department. This includes, but is not limited to, the installation, maintenance, and testing of telecommunications systems, equipment, and associated hardware, pathway systems, and cable management systems, which excludes cable tray and conduit raceway systems. The scope also includes installation of open wiring systems of telecommunications cables, surface non-metallic raceways designated and used exclusively for telecommunications, optical fiber innerduct raceway, underground raceways designated and used exclusively for telecommunications and installed for additions or extensions to existing telecommunications systems not to exceed fifty feet inside the building, and incidental short sections of circular or surface metal raceway, not to exceed ten feet, for access or protection of telecommunications cabling and installation of cable trays and ladder racks in telecommunications service entrance rooms, spaces, or closets.

(11) "Telecommunications service entrance room or space" means a room or space used as the building serving facility in which the joining of inter-building and intra-building backbone facilities takes place. The service entrance room may also house electronic equipment serving any telecommunications function.

(12) A "telecommunications structured cabling system" is the complete collective configuration of cabling and associated hardware at a given site and installed to perform specific telecommunications functions.

(13) "Telecommunications systems" means structured cabling systems that begin at the demarcation point between the local service provider and the customer's premises structured cabling system or the wiring, appliances, devices, or equipment as specified by rule of the department.

(a) Telecommunications systems include, but are not limited to, all forms of information generation, processing, and transporting of signals conveyed electronically or optically within or between buildings, including voice, data, video, and audio.

(b) Telecommunications systems include, but are not limited to, structured cabling systems, compatible connecting hardware, telecommunications equipment, premises switching equipment providing operational power to the telecommunications device, infrared, fiber optic, radio-frequency, power distribution associated with telecommunications sys-

tems, and other limited-energy interconnections associated with telecommunications systems or appliances.

(c) Telecommunications systems do not include horizontal cabling used for fire protection signaling systems, intrusion alarms, access control systems, patient monitoring systems, energy management control systems, industrial and automation control systems, HVAC/refrigeration control systems, lighting or lighting control systems, and stand-alone amplified sound or public address systems.

(d) Telecommunications systems may interface with other building signal systems including security, alarms, and energy management at cross-connection junctions within telecommunications closets or at extended points of demarcation. Horizontal cabling for a telecommunications outlet, necessary to interface with any of these systems outside of a telecommunications closet, is the work of the telecommunications contractor. Telecommunications systems do not include the installation or termination of premises line voltage service, feeder, or branch circuit conductors or equipment.

(14) "Telecommunications worker" means a person primarily and regularly engaged in the installation and/or maintenance of telecommunications systems, equipment, and infrastructure as defined in this chapter.

(15) "Telecommunications workstation" means a building space where the occupant normally interacts with telecommunications equipment. The telecommunications outlet in the work area is the point at which end user equipment plugs into the building telecommunications utility formed by the pathway, space, and building wiring system. [2016 c 198 § 3. Prior: 2014 c 156 § 1; 2000 c 238 § 204.]

Effective date—2014 c 156 § 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 [March 31, 2014]." [2014 c 156 § 3.]

Additional notes found at www.leg.wa.gov

19.28.410 Telecommunications systems installations—Subject to this subchapter. (1) All installations of wires and equipment defined as telecommunications systems are subject to the requirements of this subchapter. Installations shall be in conformity with approved methods of construction for safety to life and property. The national electrical code, approved standards of the telecommunications industries association, the electronic industries association, the American national standards institute, and other safety standards approved by the department shall be evidence of approved methods of installation.

(2) This chapter may not limit the authority or power of any city or town to enact and enforce under authority given by law in RCW 19.28.141, any ordinance, or rule requiring an equal, higher, or better standard of construction and an equal, higher, or better standard of materials, devices, appliances, and equipment than that required by this chapter. [2000 c 238 § 205.]

Additional notes found at www.leg.wa.gov

19.28.420 Telecommunications contractor license—Application—Bond—Issuance of license. (1) It is unlawful for any person, firm, partnership, corporation, or other entity to advertise, offer to do work, submit a bid, engage in, conduct, or carry on the business of installing or maintaining

telecommunications systems without having a telecommunications contractor license. Electrical contractors licensed as general electrical (01) or specialty electrical (06) contractors under chapter 19.28 RCW and their designated administrators qualify to perform all telecommunications work defined in this chapter. Telecommunications contractors licensed under this chapter are not required to be registered under chapter 18.27 RCW. All telecommunications licenses expire twenty-four calendar months following the day of their issue. A telecommunications contractor license is not required for a licensed specialty electrical contractor to perform telecommunications installations or maintenance integral to the equipment or occupancy limitations of their electrical specialty. A telecommunications contractor license is not required for persons making telecommunications installations or performing telecommunications maintenance on their own property or for regularly employed employees working on the premises of their employer, unless on a new building intended for rent, sale, or lease.

(2) Application for a telecommunications contractor license shall be made in writing to the department accompanied by the required fee. The applications shall state:

(a) The name and address of the applicant. In the case of firms or partnerships, the applications shall state the names of the individuals composing the firm or partnership. In the case of corporations, the applications shall state the names of the corporation's managing officials;

(b) The location of the place of business of the applicant and the name under which the business is conducted;

(c) The employer social security number or tax identification number;

(d) Evidence of workers' compensation coverage for the applicant's employees working in Washington, as follows:

(i) The applicant's industrial insurance account number issued by the department;

(ii) The applicant's self-insurer number issued by the department; or

(iii) For applicants domiciled in a state or province of Canada subject to an agreement entered into under RCW 51.12.120(7), as permitted by the agreement, filing a certificate of coverage issued by the agency that administers the workers' compensation law in the applicant's state or province of domicile certifying that the applicant has secured the payment of compensation under the other state's or province's workers' compensation law;

(e) The employment security department number; and

(f) The state excise tax registration number.

(3) The unified business identifier account number may be substituted for the information required by subsection (2)(d), (e), and (f) of this section if the applicant will not employ employees in Washington.

(4) The department may verify the workers' compensation coverage information provided by the applicant under subsection (2)(d) of this section including, but not limited to, information regarding the coverage of an individual employee of the applicant. If coverage is provided under the laws of another state, the department may notify the other state that the applicant is employing employees in Washington.

(5) To obtain a telecommunications contractor license the applicant must designate an individual who currently pos-

sesses a telecommunications administrator certificate. To obtain an administrator's certificate an individual must pass an examination as set forth in this chapter. Examination criteria will be determined by the board.

(6) No examination may be required of any applicant for an initial telecommunications administrator certificate qualifying under this section. Applicants qualifying under this section shall be issued an administrator certificate by the department upon making an application and paying the required fee. Individuals must apply before July 1, 2001, to qualify for an administrator certificate without examination under this section. The board shall certify to the department the names of all persons entitled to this administrator certificate.

Prior to July 1, 2001, bona fide registered contractors under chapter 18.27 RCW engaged in the business of installing or maintaining telecommunications wiring in this state on or before June 8, 2000, may designate the following number of persons to receive a telecommunications administrator certificate without examination:

(a) One owner or officer of a contractor, registered under chapter 18.27 RCW on or before June 8, 2000, currently engaged in the business of installing telecommunications wiring;

(b) One employee, principal, or officer, with a minimum of two years experience performing telecommunications installations, per registered telecommunication[s] contractor; and

(c) One employee for each one hundred employees, or fraction thereof, with a minimum of two years experience performing telecommunications installations.

(7) The application for a contractor license shall be accompanied by a bond in the sum of four thousand dollars with the state of Washington named as obligee in the bond, with good and sufficient surety, to be approved by the department. The bond shall at all times be kept in full force and effect, and any cancellation or revocation thereof, or withdrawal of the surety therefrom, suspends the license issued to the principal until a new bond has been filed and approved as provided in this section. Upon approval of a bond, the department shall, on the next business day, deposit the fee accompanying the application in the electrical license fund and shall file the bond in the office. The department shall, upon request, furnish to any person, firm, partnership, corporation, or other entity a certified copy of the bond upon the payment of a fee that the department shall set by rule. The fee shall cover but not exceed the cost of furnishing the certified copy. The bond shall be conditioned that the principal will pay for all labor, including employee benefits, and material furnished or used upon the work, taxes and contributions to the state of Washington, and all damages that may be sustained by any person, firm, partnership, corporation, or other entity due to a failure of the principal to make the installation or maintenance in accordance with this chapter. In lieu of the surety bond required by this section the applicant may file with the department a cash deposit or other negotiable security acceptable to the department. If the applicant has filed a cash deposit, the department shall deposit the funds in a special trust savings account in a commercial bank, mutual savings bank, or savings and loan association and shall pay annually to the depositor the interest derived from the account.

(8) Any person, firm, or corporation sustaining any damage or injury by reason of the principal's breach of the conditions of the bond required under this section may bring an action against the surety named therein, joining in the action the principal named in the bond; the action shall be brought in the superior court of any county in which the principal on the bond resides or transacts business, or in the county in which the work was performed as a result of which the breach is alleged to have occurred; the action shall be maintained and prosecuted as other civil actions. Claims or actions against the surety on the bond shall be paid in full in the following order of priority: (a) Labor, including employee benefits, (b) materials and equipment used upon such work, (c) taxes and contributions due to the state, (d) damages sustained by any person, firm, or corporation due to the failure of the principal to make the installation in accordance with this chapter, or any ordinance, building code, or regulation applicable thereto. However, the total liability of the surety on any bond may not exceed the sum of four thousand dollars, and the surety on the bond may not be liable for monetary penalties. Any action shall be brought within one year from the completion of the work in the performance of which the breach is alleged to have occurred. The surety shall mail a conformed copy of the judgment against the bond to the department within seven days. In the event that a cash or securities deposit has been made in lieu of the surety bond, and in the event of a judgment being entered against the depositor and deposit, the director shall upon receipt of a certified copy of a final judgment, pay the judgment from the deposit.

(9) The department shall issue a telecommunications contractor license to applicants meeting all of the requirements of this chapter applicable to electrical and telecommunications installations. The provisions of this chapter relating to the licensing of any person, firm, partnership, corporation, or other entity including the requirement of a bond with the state of Washington named as obligee and the collection of a fee for that bond, are exclusive, and no political subdivision of the state of Washington may require or issue any licenses or bonds or charge any fee for the same or a similar purpose. [2000 c 238 § 206.]

Additional notes found at www.leg.wa.gov

19.28.430 Administrator's examination—Certificate—Administrator's requirements. (1) Each applicant for a telecommunications contractor license shall designate a supervisory employee or member of the firm to take the administrator's examination. This person shall be designated as administrator under the contractor's license and must be a full-time supervisory employee of the applicant. No person may qualify as administrator for more than one contractor. If the relationship of the administrator with the telecommunications contractor is terminated, the contractor's license is void within ninety days unless another administrator is qualified by the board. However, if the administrator dies, the contractor's license is void within one hundred eighty days unless another administrator is qualified by the board.

(2) A certificate issued under this section is valid for two years from the nearest birthdate of the administrator, unless revoked or suspended, and is nontransferable. The certificate may be renewed for a two-year period without examination by appropriate application unless the certificate has been

revoked, suspended, or not renewed within ninety days after the expiration date. If the certificate is not renewed before the expiration date, the individual shall pay twice the usual fee. A person may take the administrator's test as many times as necessary to pass, without limit.

(3) The administrator shall:

(a) Be a member of the firm or a supervisory employee and shall be available during working hours to carry out the duties of an administrator under this section;

(b) Ensure that all telecommunications work complies with the telecommunication[s] installation laws and rules;

(c) Ensure proper permits are required and inspections made;

(d) See that corrective notices issued by an inspecting authority are complied with; and

(e) Notify the department in writing within ten days if the administrator relationship is terminated with the telecommunications contractor. [2000 c 238 § 207.]

Additional notes found at www.leg.wa.gov

19.28.440 Examination for telecommunications administrators' certificates. It is the purpose and function of the board to establish and administer written examinations for telecommunications administrators' certificates. Examinations shall be designed to reasonably ensure that telecommunications administrators' certificate holders are competent to engage in and supervise the work regulated under this subchapter and their respective licenses. The examinations shall include questions to assure proper safety and protection for the general public. The department, with the consent of the board, is permitted to enter into a contract with a professional testing agency to develop, administer, and score these examinations. The fee for the examination may be set by the department in its contract with the professional testing agency. The department may direct that the applicant pay the fee to the professional testing agency. The fee shall cover but not exceed the costs of preparing and administering the examination. [2000 c 238 § 208.]

Additional notes found at www.leg.wa.gov

19.28.450 Local enforcement of subchapter—Enforcement of chapter. (1) The director and the officials of all incorporated cities and towns where electrical inspections are required by local ordinances, allowed by RCW 19.28.141, may require by local ordinance the enforcement of this subchapter in their respective jurisdictions. If an incorporated city or town elects to enforce this subchapter, the city or town has the power and shall enforce the provisions of this subchapter.

(2) The director, through the chief electrical inspector and other inspectors appointed under RCW 19.28.321, shall enforce this chapter. Compliance enforcement may be performed by contractor compliance inspectors appointed under chapter 18.27 RCW. The expenses of the director and the salaries and expenses of state inspectors incurred in carrying out the provisions of this chapter shall be paid entirely out of the electrical license fund, on vouchers approved by the director. [2000 c 238 § 209.]

Additional notes found at www.leg.wa.gov

19.28.460 Disputes regarding local regulations—Arbitration—Panel. Disputes arising under this chapter regarding whether any city or town's telecommunications rules, regulations, or ordinances are equal to the rules adopted by the department shall be resolved by arbitration. The department shall appoint two members of the board to serve on the arbitration panel, and the city or town shall appoint two persons to serve on the arbitration panel. These four persons shall choose a fifth person to serve. If the four persons cannot agree on a fifth person, the presiding judge of the superior court of the county in which the city or town is located shall choose a fifth person. A decision of the arbitration panel may be appealed to the superior court of the county in which the city or town is located within thirty days after the date the panel issues its final decision. [2000 c 238 § 210.]

Additional notes found at www.leg.wa.gov

19.28.470 Inspections—Report—Required repairs/changes—Accessibility of telecommunications systems.

(1) The director shall require permits and require an inspector to inspect all installations of telecommunications systems on the customer side of the network demarcation point for projects greater than ten outlets. However:

(a) All projects penetrating fire barriers, passing through hazardous locations and all backbone installations regardless of size shall be inspected;

(b) All installations in single-family residences, duplex residences, and horizontal cabling systems within apartment residential units, including cooperatives and condominiums, do not require permits or inspections;

(c) No permits or inspections may be required for installation or replacement of cord and plug connected telecommunications equipment or for patch cord and jumper cross-connected equipment;

(d) The chief electrical inspector may allow a building owner or licensed electrical/telecommunications contractor to apply for annual permitting and regularly scheduled inspection of telecommunications installations made by licensed electrical/telecommunications contractors or the building owner for large commercial and industrial installations where:

(i) The building owner or licensed electrical/telecommunications contractor has a full-time telecommunications maintenance staff or a yearly maintenance contract with a licensed electrical/telecommunications contractor;

(ii) The permit is purchased before beginning any telecommunications work; and

(iii) The building owner or licensed electrical/telecommunications contractor assumes responsibility for correcting all installation deficiencies.

(2) Upon request, the department shall make the required inspection within forty-eight hours. The forty-eight hour period excludes holidays, Saturdays, and Sundays.

(3) A written report of the inspection, which plainly and clearly states any corrections or changes required, shall be made by the inspector. A copy of the report shall be furnished to the person or entity doing the installation work, and a copy shall be filed by the department.

(4) Whenever the installation of any telecommunications cabling and associated hardware is not in accordance with this chapter, or is in such a condition as to be dangerous to life

or property, the person, firm, partnership, corporation, or other entity owning, using, or operating it shall be notified by the department and shall within fifteen working days, or such further reasonable time as may upon request be granted, make such repairs and changes as are required to remove the danger to life or property and to make it conform to this chapter. The director, through the inspector, is empowered to disconnect or order the discontinuance of the telecommunications cabling or electrical service to conductors or equipment that are found to be in a dangerous or unsafe condition and not in accordance with this chapter. Upon making a disconnection, the inspector shall attach a notice stating that the conductors have been found dangerous to life or property and are not in accordance with this chapter. It is unlawful for any person to reconnect such defective conductors or equipment without the approval of the department, and until the conductors and equipment have been placed in a safe and secure condition that complies with this chapter.

(5) The director, through the electrical inspector, has the right during reasonable hours to enter into and upon any building or premises in the discharge of his or her official duties related to permitting activities for the purpose of making any inspection or test of the installation of new or altered telecommunications systems contained in or on the buildings or premises. No telecommunications cabling subject to this chapter may be concealed until it has been approved by the inspector making the inspection. At the time of the inspection, wiring or equipment subject to this chapter must be sufficiently accessible to permit the inspector to verify installation conformance with the adopted codes and any other requirements of this chapter. [2000 c 238 § 211.]

Additional notes found at www.leg.wa.gov

19.28.480 Unlawful acts—Interpretation of chapter.

(1) It is unlawful for any person, firm, partnership, corporation, or other entity to install or maintain any telecommunications cabling and associated hardware in violation of this chapter. When the interpretation and application of the installation or maintenance standards provided for in this chapter are in dispute or in doubt, the board shall, upon application of any interested person, firm, partnership, corporation, or other entity, determine the methods of installation or maintenance of the cabling materials and hardware to be used in the case submitted for its decision.

(2) Any person, firm, partnership, corporation, or other entity desiring a decision of the board under this section shall, in writing, notify the director of such desire and shall accompany the notice with a certified check payable to the department in the sum of two hundred dollars. The notice shall specify the ruling or interpretation desired and the contention of the person, firm, partnership, corporation, or other entity as to the proper interpretation or application on the question on which a decision is desired. If the board determines that the contention of the applicant for a decision was proper, the two hundred dollars shall be returned to the applicant; otherwise it shall be used in paying the expenses and per diem of the members of the board in connection with the matter. Any portion of the two hundred dollars not used in paying the per diem and expenses of the board in the case shall be paid into the electrical license fund. [2000 c 238 § 212.]

Additional notes found at www.leg.wa.gov

(2018 Ed.)

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 or ten percent of the penalty amount, whichever is less, but in no event less than one hundred dollars. The check 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 amount of the check 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. [2014 c 190 § 4; 2011 c 301 § 9; 2000 c 238 § 213.]

Effective date—2014 c 190: See note following RCW 19.28.131.

Additional notes found at www.leg.wa.gov

19.28.501 Insurance/financial responsibility. (1) At the time of licensing and subsequent relicensing, the applicant shall furnish insurance or financial responsibility in the form of an assigned account in the amount of twenty thousand dollars for injury or damages to property, fifty thousand dollars for injury or damage including death to any one person, and one hundred thousand dollars for injury or damage including death to more than one person, or financial responsibility to satisfy these amounts.

(2) Failure to maintain insurance or financial responsibility relative to the contractor's activities is cause to suspend or deny the contractor's license.

(3)(a) Proof of financial responsibility authorized in this section may be given by providing, in the amount required by subsection (1) of this section, an assigned account acceptable to the department. The assigned account shall be held by the department to satisfy any execution on a judgment issued against the contractor for damage to property or injury or death to any person occurring in the contractor's contracting operation, according to the provisions of the assigned account agreement. The department shall have no liability for payment in excess of the amount of the assigned account.

(b) The assigned account filed with the director as proof of financial responsibility shall be canceled three years after:

- (i) The contractor's license has expired or been revoked;
- (ii) The contractor has furnished proof of insurance as required by subsection (1) of this section; or
- (iii) No legal action has been instituted against the contractor or on the account at the end of the three-year period.

(c) If a contractor chooses to file an assigned account as authorized in this section, the contractor shall, on a contracting project, notify each person with whom the contractor enters into a contract or to whom the contractor submits a bid, that the contractor has filed an assigned account in lieu of insurance and that recovery from the account for any claim against the contractor for property damage or personal injury or death occurring on the project requires the claimant to obtain a court judgment. [2000 c 238 § 214.]

Additional notes found at www.leg.wa.gov

19.28.511 Individual certification not required. Individual worker certification is not required for work under this subchapter. This subchapter does not preclude any person performing telecommunications work from obtaining a limited energy credit towards an electrical certificate of competency if they otherwise meet the certification requirements under this chapter that are applicable to electrical installations. [2000 c 238 § 215.]

Additional notes found at www.leg.wa.gov

19.28.521 Limitation of action—Proof of valid license required. No person, firm, or corporation engaging in or conducting or carrying on the business of telecommunications installation shall be entitled to commence or maintain any suit or action in any court of this state pertaining to any such work or business, without alleging and proving that such person, firm or corporation held, at the time of commencing and performing such work, an unexpired, unrevoked, and unsuspended license issued under this subchapter; and no city or town requiring by ordinance or regulation a permit for inspection or installation of such telecommunications installation work, shall issue such permit to any person, firm or corporation not holding such license. [2000 c 238 § 216.]

Additional notes found at www.leg.wa.gov

19.28.531 Unlawful installation/maintenance—Disputed interpretation—Board to determine methods. It is unlawful for any person, firm, partnership, corporation, or other entity to install or maintain telecommunications equipment not in accordance with this subchapter. In cases where the interpretation and application of the installation or maintenance standards under this subchapter are in dispute or in doubt, the board shall, upon application of any interested person, firm, partnership, corporation, or other entity, determine the methods of installation or maintenance or the materials, devices, appliances, or equipment to be used in the particular case submitted for its decision. [2000 c 238 § 217.]

Additional notes found at www.leg.wa.gov

19.28.541 Entity desiring board decision—Process. Any person, firm, partnership, corporation, or other entity desiring a decision of the board pursuant to RCW 19.28.531 shall, in writing, notify the director of such desire and shall

accompany the notice with a certified check payable to the department in the sum of two hundred dollars. The notice shall specify the ruling or interpretation desired and the contention of the person, firm, partnership, corporation, or other entity as to the proper interpretation or application on the question on which a decision is desired. If the board determines that the contention of the applicant for a decision was proper, the two hundred dollars shall be returned to the applicant; otherwise it shall be used in paying the expenses and per diem of the members of the board in connection with the matter. Any portion of the two hundred dollars not used in paying the per diem and expenses of the board in the case shall be paid into the electrical license fund. [2000 c 238 § 218.]

Additional notes found at www.leg.wa.gov

19.28.551 Director's authority—Adoption of rules.

(1) The director may adopt rules, make specific decisions, orders, and rulings, including demands and findings, and take other necessary action for the implementation and enforcement of this subchapter after consultation with the board and receiving the board's recommendations. In the administration of this subchapter the department shall not enter any controversy arising over work assignments with respect to the trades involved in the construction industry.

(2) Compliance with the rules adopted under subsection (1) of this section is prima facie evidence of compliance with the subchapter. Copies of all rules shall be maintained by the department and made available upon request. [2000 c 238 § 219.]

Additional notes found at www.leg.wa.gov

19.28.910 Effective date—1963 c 207. This act shall take effect on July 1, 1963. [1963 c 207 § 6.]

**Chapter 19.29 RCW
ELECTRICAL CONSTRUCTION**

Sections

- 19.29.010 Rules for use of electrical apparatus or construction.
- 19.29.020 Copy of chapter to be posted.
- 19.29.030 Time for compliance.
- 19.29.040 Enforcement by director of labor and industries—Change of rules—Violation.
- 19.29.050 Violation of rules by public service company or political subdivision—Penalty.
- 19.29.060 Violation of rules by agent, employee or officer—Penalty.

Electricians, licensing, etc.: Chapter 19.28 RCW.

19.29.010 Rules for use of electrical apparatus or construction. It shall be unlawful from and after the passage of this chapter for any officer, agent, or employee of the state of Washington, or of any county, city, or other political subdivision thereof, or for any other person, firm or corporation, or its officers, agents or employees, to run, place, erect, maintain, or use any electrical apparatus or construction, except as provided in the rules of this chapter.

Rule 1. No wire or cable, 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 drain-

age 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.

19.29.020 Copy of chapter to be posted. A copy of this chapter printed in a legible manner shall be kept posted in a conspicuous place in all electric plants, stations and store-rooms. [1913 c 130 § 2; RRS § 5436.] [1954 SLC-RO-29.]

19.29.030 Time for compliance. All wires, cables, poles, electric fixtures and appliances of every kind being used or operated at the time of the passage of this chapter, shall be changed, and made to conform to the provisions of this chapter, on or before the 1st day of July, 1940: PROVIDED HOWEVER, That the director of labor and industries of Washington shall have power, upon reasonable notice, to order and require the erection of all guards, protective devices, and methods of protection which in the judgment of the director are necessary and should be constructed previous to the expiration of the time fixed in this section: PROVIDED FURTHER, That nothing in this chapter shall apply to manholes already constructed, except the provisions for guards, sanitary conditions, drainage and safety appliances specified in *rules 20, 24, 26, 29, 30, 31 and 32. [1937 c 105 § 1; 1931 c 24 § 1; 1921 c 20 § 1; 1917 c 41 § 1; 1913 c 130 § 3; RRS § 5437.] [1954 SLC-RO-29.]

***Reviser's note:** RCW 19.29.010 was amended by 1987 c 79 § 1, changing rules 20, 24, 26, 29, 31, and 32 to rules 18, 22, 24, 27, 28, and 29, respectively, and deleting rule 30.

19.29.040 Enforcement by director of labor and industries—Change of rules—Violation. It shall be the duty of the director of labor and industries of Washington to enforce all the provisions and rules of this chapter and the director is hereby empowered upon hearing to amend, alter and change any and all rules herein contained, or any part thereof, and to supplement the same by additional rules and requirements, after first giving reasonable public notice and a reasonable opportunity to be heard to all affected thereby: PROVIDED, That no rule amending, altering or changing any rule supplementary to the rules herein contained shall provide a less measure of safety than that provided by the rule amended, altered or changed.

A violation of any rule herein contained or of any rule or requirement made by the director of labor and industries which it is hereby permitted to make shall be deemed a violation of this chapter. [1983 c 4 § 2; 1913 c 130 § 4; RRS § 5438.] [1954 SLC-RO-29.]

19.29.050 Violation of rules by public service company or political subdivision—Penalty. Every public service company, county, city, or other political subdivision of the state of Washington, and all officers, agents and employees of any public service company, county, city, or other political subdivision of the state of Washington, shall obey, observe and comply with every order, rule, direction or requirement made by the commission [director of labor and industries] under authority of this chapter, so long as the

same shall be and remain in force. Any public service company, county, city, or other political subdivision of the state of Washington, which shall violate or fail to comply with any provision of this chapter, or which fails, omits or neglects to obey, observe or comply with any order, rule, or any direction, demand or requirement of the commission [director of labor and industries], pursuant to this chapter, shall be subject to a penalty of not to exceed the sum of one thousand dollars for each and every offense. Every violation of any such order, direction or requirement of this chapter shall be a separate and distinct offense, and in case of a continued violation every day's continuance thereof shall be and be deemed to be a separate and distinct offense. [1913 c 130 § 5; RRS § 5439.] [1954 SLC-RO-29.]

Reviser's note: (1) Duties of the public service commission devolved on director of labor and industries. 1921 c 7 § 80(5) relating to powers and duties of the director of labor and industries reads: "(5) To exercise all the powers and perform all the duties in relation to the enforcement, amendment, alteration, change, and making additions to rules and regulations concerning the operation, placing, erection, maintenance, and use of electrical apparatus, and the construction thereof, now vested in, and required to be performed by, the public service commission;". See also RCW 43.22.050(3).

(2) Name of "public service commission" changed to "utilities and transportation commission" by 1961 c 290 § 1.

19.29.060 Violation of rules by agent, employee or officer—Penalty. Every officer, agent or employee of any public service company, the state of Washington, or any county, city, or other political subdivision of the state of Washington, who shall violate or fail to comply with, or who procures, aids or abets any violation by any public service company, the state of Washington, or any county, city or other political subdivision of the state of Washington, of any provision of this chapter, or who shall fail to obey, observe or comply with any order of the commission [director of labor and industries], pursuant to this chapter, or any provision of any order of the commission [director of labor and industries], or who procures, aids or abets any such public service company, the state of Washington, or any county, city, or other political subdivision of the state of Washington, in its failure to obey, observe and comply with any such order or provision, shall be guilty of a gross misdemeanor. [1913 c 130 § 6; RRS § 5440.] [1954 SLC-RO-29.]

Reviser's note: See note following RCW 19.29.050.

Chapter 19.29A RCW CONSUMERS OF ELECTRICITY

Sections

19.29A.005	Findings—Intent.
19.29A.010	Definitions.
19.29A.020	Disclosures to retail electric customers.
19.29A.030	Notice of disclosures to retail electric customers.
19.29A.040	Exceptions for small utility—Voluntary compliance.
19.29A.050	Annual fuel mix information—Disclosure label—Requirements.
19.29A.060	Fuel mix disclosure—Electricity product categories—Disclosure format.
19.29A.070	Actions required of department—Convene work group—Report to legislature.
19.29A.080	Electricity information coordinator—Selection—Regional entity serving as coordinator, requirements—Retail supplier's information.
19.29A.090	Voluntary option to purchase qualified alternative energy resources—Rates, terms, and conditions—Information maintenance.

19.29A.100	Electric utilities—Customer information—Sale or disclosure—Requirements—Exemptions—Application of consumer protection act.
19.29A.110	Persons—Customer information—Capture, obtain, or disclosure for commercial purpose—Requirements—Application of consumer protection act.
19.29A.120	Exemptions—Energy benchmark programs.
19.29A.900	Construction—1998 c 300.

19.29A.005 Findings—Intent. (1) The legislature finds that:

(a) Electricity is a basic and fundamental need of all residents; and

(b) Currently Washington's consumer-owned and investor-owned utilities offer consumers a high degree of reliability and service quality while providing some of the lowest rates in the country.

(2) The legislature intends to:

(a) Preserve the benefits of consumer and environmental protection, system reliability, high service quality, and low-cost rates;

(b) Ensure that all retail electrical customers have the same level of rights and protections; and

(c) Require the adequate disclosure of the rights afforded to retail electric customers. [1998 c 300 § 1.]

19.29A.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Biomass generation" means electricity derived from burning solid organic fuels from wood, forest, or field residue, or dedicated energy crops that do not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic.

(2) "Bonneville power administration system mix" means a generation mix sold by the Bonneville power administration that is net of any resource specific sales and that is net of any electricity sold to direct service industrial customers, as defined in section 3(8) of the Pacific Northwest electric power planning and conservation act (16 U.S.C. Sec. 839(a)(8)).

(3) "Coal generation" means the electricity produced by a generating facility that burns coal as the primary fuel source.

(4) "Commission" means the utilities and transportation commission.

(5) "Conservation" means an increase in efficiency in the use of energy use that yields a decrease in energy consumption while providing the same or higher levels of service. Conservation includes low-income weatherization programs.

(6) "Consumer-owned utility" means 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, or a mutual corporation or association formed under chapter 24.06 RCW, that is engaged in the business of distributing electricity to more than one retail electric customer in the state.

(7) "Declared resource" means an electricity source specifically identified by a retail supplier to serve retail electric customers. A declared resource includes a stated quantity of electricity tied directly to a specified generation facility or set

of facilities either through ownership or contract purchase, or a contractual right to a stated quantity of electricity from a specified generation facility or set of facilities.

(8) "Department" means the department of commerce.

(9) "Electric meters in service" means those meters that record in at least nine of twelve calendar months in any calendar year not less than two hundred fifty kilowatt-hours per month.

(10) "Electric utility" means a consumer-owned or investor-owned utility as defined in this section.

(11) "Electricity" means electric energy measured in kilowatt-hours, or electric capacity measured in kilowatts, or both.

(12) "Electricity information coordinator" means the organization selected by the department under RCW 19.29A.080 to: (a) Compile generation data in the Northwest power pool by generating project and by resource category; (b) compare the quantity of electricity from declared resources reported by retail suppliers with available generation from such resources; (c) calculate the net system power mix; and (d) coordinate with other comparable organizations in the western interconnection.

(13) "Electricity product" means the electrical energy produced by a generating facility or facilities that a retail supplier sells or offers to sell to retail electric customers in the state of Washington, provided that nothing in this title shall be construed to mean that electricity is a good or product for the purposes of Title 62A RCW, or any other purpose. It does not include electrical energy generated on-site at a retail electric customer's premises.

(14) "Fuel mix" means the actual or imputed sources of electricity sold to retail electric customers, expressed in terms of percentage contribution by resource category. The total fuel mix included in each disclosure shall total one hundred percent.

(15) "Geothermal generation" means electricity derived from thermal energy naturally produced within the earth.

(16) "Governing body" means the council of a city or town, the commissioners of an irrigation district, municipal electric utility, or public utility district, or the board of directors of an electric cooperative or mutual association that has the authority to set and approve rates.

(17) "High efficiency cogeneration" means electricity produced by equipment, such as heat or steam used for industrial, commercial, heating, or cooling purposes, that meets the federal energy regulatory commission standards for qualifying facilities under the public utility regulatory policies act of 1978.

(18) "Hydroelectric generation" means a power source created when water flows from a higher elevation to a lower elevation and the flow is converted to electricity in one or more generators at a single facility.

(19) "Investor-owned utility" means a company owned by investors that meets the definition of RCW 80.04.010 and is engaged in distributing electricity to more than one retail electric customer in the state.

(20) "Landfill gas generation" means electricity produced by a generating facility that uses waste gases produced by the decomposition of organic materials in landfills.

(21) "Natural gas generation" means electricity produced by a generating facility that burns natural gas as the primary fuel source.

(22) "Net system power mix" means the fuel mix in the Northwest power pool, net of: (a) Any declared resources in the Northwest power pool identified by in-state retail suppliers or out-of-state entities that offer electricity for sale to retail electric customers; (b) any electricity sold by the Bonneville power administration to direct service industrial customers; and (c) any resource specific sales made by the Bonneville power administration.

(23) "Northwest power pool" means the generating resources included in the United States portion of the Northwest power pool area as defined by the western systems coordinating council.

(24) "Oil generation" means electricity produced by a generating facility that burns oil as the primary fuel source.

(25) "Private customer information" includes a retail electric customer's name, address, telephone number, and other personally identifying information.

(26) "Proprietary customer information" means: (a) Information that relates to the source, technical configuration, destination, and amount of electricity used by a retail electric customer, a retail electric customer's payment history, and household data that is made available by the customer solely by virtue of the utility-customer relationship; and (b) information contained in a retail electric customer's bill.

(27) "Renewable resources" means electricity generation facilities fueled by: (a) Water; (b) wind; (c) solar energy; (d) geothermal energy; (e) landfill gas; or (f) biomass energy based on solid organic fuels from wood, forest, or field residues, or dedicated energy crops that do not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic.

(28) "Resale" means the purchase and subsequent sale of electricity for profit, but does not include the purchase and the subsequent sale of electricity at the same rate at which the electricity was purchased.

(29) "Retail electric customer" means a person or entity that purchases electricity for ultimate consumption and not for resale.

(30) "Retail supplier" means an electric utility that offers an electricity product for sale to retail electric customers in the state.

(31) "Small utility" means any consumer-owned utility with twenty-five thousand or fewer electric meters in service, or that has an average of seven or fewer customers per mile of distribution line.

(32) "Solar generation" means electricity derived from radiation from the sun that is directly or indirectly converted to electrical energy.

(33) "State" means the state of Washington.

(34) "Waste incineration generation" means electricity derived from burning solid or liquid wastes from businesses, households, municipalities, or waste treatment operations.

(35) "Wind generation" means electricity created by movement of air that is converted to electrical energy. [2015 c 285 § 1; 2000 c 213 § 2; 1998 c 300 § 2.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

19.29A.020 Disclosures to retail electric customers.

Except as otherwise provided in RCW 19.29A.040, each electric utility must provide its retail electric customers with the following disclosures in accordance with RCW 19.29A.030:

(1) An explanation of any applicable credit and deposit requirements, including the means by which credit may be established, the conditions under which a deposit may be required, the amount of any deposit, interest paid on the deposit, and the circumstances under which the deposit will be returned or forfeited.

(2) A complete, itemized listing of all rates and charges for which the customer is responsible, including charges, if any, to terminate service, the identity of the entity responsible for setting rates, and an explanation of how to receive notice of public hearings where changes in rates will be considered or approved.

(3) An explanation of the metering or measurement policies and procedures, including the process for verifying the reliability of the meters or measurements and adjusting bills upon discovery of errors in the meters or measurements.

(4) An explanation of bill payment policies and procedures, including due dates, applicable late fees, and the interest rate charged, if any, on unpaid balances.

(5) An explanation of the payment arrangement options available to customers, including budget payment plans and the availability of home heating assistance from government and private sector organizations.

(6) An explanation of the method by which customers must give notice of their intent to discontinue service, the circumstances under which service may be discontinued by the utility, the conditions that must be met by the utility prior to discontinuing service, and how to avoid disconnection.

(7) An explanation of the utility's policies governing the confidentiality of private and proprietary customer information, including the circumstances under which the information may be disclosed and ways in which customers can control access to the information.

(8) An explanation of the methods by which customers may make inquiries to and file complaints with the utility, and the utility's procedures for responding to and resolving complaints and disputes, including a customer's right to complain about an investor-owned utility to the commission and appeal a decision by a consumer-owned utility to the governing body of the consumer-owned utility.

(9) An annual report containing the following information for the previous calendar year:

(a) A general description of the electric utility's customers, including the number of residential, commercial, and industrial customers served by the electric utility, and the amount of electricity consumed by each customer class in which there are at least three customers, stated as a percentage of the total utility load;

(b) A summary of the average electricity rates for each customer class in which there are at least three customers, stated in cents per kilowatt-hour, the date of the electric utility's last general rate increase or decrease, the identity of the entity responsible for setting rates, and an explanation of how

to receive notice of public hearings where changes in rates will be considered or approved;

(c) An explanation of the amount invested by the electric utility in conservation, nonhydrorenewable resources, and low-income energy assistance programs, and the source of funding for the investments; and

(d) An explanation of the amount of federal, state, and local taxes collected and paid by the electric utility, including the amounts collected by the electric utility but paid directly by retail electric customers. [2015 c 285 § 2; 1998 c 300 § 3.]

19.29A.030 Notice of disclosures to retail electric customers. Except as otherwise provided in RCW 19.29A.040, an electric utility shall:

(1) Provide notice to all of its retail electric customers that the disclosures required in RCW 19.29A.020 are available without charge upon request. Such notice shall be provided at the time service is established and either included as a prominent part of each customer's bill or in a written notice mailed to each customer at least once a year thereafter. Required disclosures shall be provided without charge, in writing using plain language that is understandable to an ordinary customer, and presented in a form that is clear and conspicuous.

(2) Disclose the following information in a prominent manner on all billing statements sent to retail electric customers, or by a separate written notice mailed to all retail electric customers at least quarterly and at the same time as a billing statement: "YOUR BILL INCLUDES CHARGES FOR ELECTRICITY, DELIVERY SERVICES, GENERAL ADMINISTRATION AND OVERHEAD, METERING, TAXES, CONSERVATION EXPENSES, AND OTHER ITEMS." [1998 c 300 § 4.]

19.29A.040 Exceptions for small utility—Voluntary compliance. The provisions of RCW 19.29A.020, 19.29A.030, section 5, chapter 300, Laws of 1998, and RCW 19.29A.090 do not apply to a small utility. However, nothing in this section prohibits the governing body of a small utility from determining the utility should comply with any or all of the provisions of RCW 19.29A.020, 19.29A.030, section 5, chapter 300, Laws of 1998, and RCW 19.29A.090, which governing bodies are encouraged to do. [2001 c 214 § 29; 1998 c 300 § 6.]

Findings—2001 c 214: See note following RCW 39.35.010.

Additional notes found at www.leg.wa.gov

19.29A.050 Annual fuel mix information—Disclosure label—Requirements. (1) Beginning in 2001, each retail supplier shall provide to its existing and new retail electric customers its annual fuel mix information by generation category as required in RCW 19.29A.060.

(2) Disclosures required under subsection (1) of this section shall be provided through a disclosure label presented in a standardized format as required in RCW 19.29A.060(7).

(3) Except as provided in subsection (5) of this section, each retail supplier shall provide the disclosure label:

(a) To each of its new retail electric customers at the time service is established;

(b) To all of its existing retail electric customers, as a bill insert or other mailed publication, not less than semiannually; and

(c) As part of any marketing material, in paper, written, or other media format, that is used primarily to promote the sale of any specific electricity product being advertised, contracted for, or offered for sale to current or prospective retail electric customers.

(4) In addition to the disclosure requirements under subsection (3) of this section, each retail supplier shall provide to each electric customer it serves, at least two additional times per year, a publication that contains either:

- (a) The disclosure label;
- (b) A customer service phone number to request a disclosure label; or
- (c) A reference to an electronic form of the disclosure label.

(5) Small utilities and mutual light and power companies shall provide the disclosure label not less than annually through a publication that is distributed to all their retail electric customers, and have disclosure label information available in their main business office. If a small utility or mutual company engages in marketing a specific electric product new to that utility it shall provide the disclosure label described in subsection (3)(c) of this section. [2000 c 213 § 3.]

Finding—Intent—2000 c 213: "(1) Consumer disclosure ensures that retail electric consumers purchasing electric energy receive basic information about the characteristics associated with their electric product in a form that facilitates consumer understanding of retail electric energy service and the development of new products responsive to consumer preferences.

(2) The legislature finds and declares that there is a need for reliable, accurate, and timely information regarding fuel source, that is consistently collected, for all electricity products offered for retail sale in Washington.

(3) The desirability and feasibility of such disclosure has been clearly established in nutrition labeling, uniform food pricing, truth-in-lending, and other consumer information programs.

(4) The legislature intends to establish a consumer disclosure standard under which retail suppliers in Washington disclose information on the fuel mix of the electricity products they sell. Fundamental to disclosure is a label that promotes consistency in content and format, that is accurate, reliable, and simple to understand, and that allows verification of the accuracy of information reported.

(5) To ensure that consumer information is verifiable and accurate, certain characteristics of electricity generation must be tracked and compared with information provided to consumers." [2000 c 213 § 1.]

19.29A.060 Fuel mix disclosure—Electricity product categories—Disclosure format. (1) Each retail supplier shall disclose the fuel mix of each electricity product it offers to retail electric customers as follows:

(a) For an electricity product comprised entirely of declared resources, a retail supplier shall disclose the fuel mix for the electricity product based on the quantity of electric generation from those declared resources for the previous calendar year and any adjustment, if taken, available under subsection (6) of this section.

(b) For an electricity product comprised of no declared resources, a retail supplier shall report the fuel mix for the electricity product as the fuel mix of net system power for the previous calendar year, as determined by the electricity information coordinator under RCW 19.29A.080.

(c) For an electricity product comprised of a combination of declared resources and the net system power, a retail sup-

plier shall disclose the fuel mix for the electricity product as a weighted average of the megawatt-hours from declared resources and the megawatt-hours from the net system power mix for the previous calendar year according to the proportion of declared resources and net system power contained in the electricity product.

(2) The disclosures required by this section shall identify the percentage of the total electricity product sold by a retail supplier during the previous calendar year from each of the following categories:

- (a) Coal generation;
- (b) Hydroelectric generation;
- (c) Natural gas generation;
- (d) Nuclear generation; and
- (e) Other generation, except that when a component of the other generation category meets or exceeds two percent of the total electricity product sold by a retail supplier during the previous calendar year, the retail supplier shall identify the component or components and display the fuel mix percentages for these component sources, which may include, but are not limited to: (i) Biomass generation; (ii) geothermal generation; (iii) landfill gas generation; (iv) oil generation; (v) solar generation; (vi) waste incineration; or (vii) wind generation. A retail supplier may voluntarily identify any component or components within the other generation category that comprises two percent or less of annual sales.

(3) Retail suppliers may separately report a subcategory of natural gas generation to identify high efficiency cogeneration.

(4) Except as provided in subsection (3) of this section, a retail supplier cannot include in the disclosure label any environmental quality or environmental impact qualifier related to any of the generation categories disclosed.

(5) For the portion of an electricity product purchased from the Bonneville power administration, retail suppliers may disclose the Bonneville power administration system mix.

(6) A retail supplier may adjust its reported fuel mix for known changes in its declared resources for the current year based on any changes in its sources of electricity supply from either generation or contracts. If a retail supplier changes its fuel mix during a calendar year, it shall report those changes to the electricity information coordinator.

(7) Disclosure of the fuel mix information required in this section shall be made in the following uniform format: A tabular format with two columns, where the first column shall alphabetically list each category and the second column shall display the corresponding percentage of the total that each category represents. The percentage shall be reported as a numeric value rounded to the nearest one percent. The percentages listed for the categories identified must sum to one hundred percent with the table displaying such a total. [2000 c 213 § 4.]

Finding—Intent—2000 c 213: See note following RCW 19.29A.050.

19.29A.070 Actions required of department—Convene work group—Report to legislature. The department shall:

(1) Convene a work group of interested parties to suggest modifications, if any, to the disclosure requirements required in RCW 19.29A.060 to improve information content, read-

ability, and consumer understanding, and to suggest modifications, if any, to the responsibilities of the electricity information coordinator required in RCW 19.29A.080 to improve the accuracy and efficiency of the tracking process. If the department serves as the electricity information coordinator, these evaluation and reporting requirements relative to the responsibilities of the electricity information coordinator and the tracking process shall be assigned to an independent third party;

(2) Invite interested parties, including but not limited to representatives from investor-owned utilities, consumer-owned utilities, the commission, the attorney general's office, consumer advocacy groups, and the environmental community to participate in the work group convened in subsection (1) of this section; and

(3) Submit to the legislature no later than December 1, 2003, a report with suggested modifications, if any, to the disclosure requirements and responsibilities of the electricity information coordinator, as referred to in subsection (1) of this section. [2000 c 213 § 5.]

Finding—Intent—2000 c 213: See note following RCW 19.29A.050.

19.29A.080 Electricity information coordinator—Selection—Regional entity serving as coordinator, requirements—Retail supplier's information. (1) For the purpose of selecting the electricity information coordinator, the department shall form a work group of interested parties. The department shall invite interested parties, including, but not limited to, representatives from investor-owned utilities, consumer-owned utilities, the commission, the attorney general's office, consumer advocacy groups, and the environmental community to participate in the work group. In the event an appropriate regional entity is not selected by November 1, 2000, the department shall serve as the electricity information coordinator after notifying the committees of the senate and house of representatives with jurisdiction over energy matters.

(2) The department may receive any lawful gifts, grants, or endowments from public or private sources that are made from time to time, in trust or otherwise, for the use and benefit of the department in implementing this section, and may spend such gifts, grants, or endowments for the purposes of implementing this section.

(3) As a condition for an appropriate regional entity to be selected under this section to serve as the electricity information coordinator, it must agree to compile the following information:

(a) Actual generation by fuel mix in the Northwest power pool for the prior calendar year, expressed in megawatt-hours. This data will be compiled as it becomes available.

(b) Adjustments to the actual generation for the prior calendar year that are known and provided to the electricity information coordinator by the end of January of the current calendar year to reflect known changes in declared resources for the current year and changes due to interconnection of new generating resources or decommissioning or sale of existing resources or contracts. These adjustments shall include supporting documentation.

(c) The amount of electricity from declared resources that retail suppliers will identify in their fuel mix disclosures

during the current calendar year. Retail suppliers shall make this data available by the end of January each year.

(4) Retail suppliers shall make available upon request the following information to support the ownership or contractual rights to declared resources:

(a) Documentation of ownership of declared resources by retail suppliers; or

(b) Documentation of contractual rights by retail suppliers to a stated quantity of electricity from a specific generating facility.

If the documentation referred to in either (a) or (b) of this subsection is not available, the retail supplier may not identify the electricity source as a declared resource and instead must report the net system power mix for the quantity of electric generation from that resource.

(5) If the documentation referred to in either subsection (4)(a) or (b) of this section is not available, the retail supplier may not identify the electricity source as a declared resource and instead must report the net system power mix for the quantity of electric generation from that resource.

(6) As a condition for an appropriate regional entity to be selected under this section to serve as the electricity information coordinator, it must agree to:

(a) Coordinate with comparable entities or organizations in the western interconnection;

(b) On or before May 1st of each year, or as soon thereafter as practicable once the data in subsection (3)(a) of this section is available, calculate and make available the net system power mix as follows:

(i) The actual Northwest power pool generation for the prior calendar year;

(ii) Plus any adjustments to the Northwest power pool generation as made available to the electricity information coordinator by the end of January of the current calendar year pursuant to RCW 19.29A.060(6);

(iii) Less the quantity of electricity associated with declared resources claimed by retail suppliers for the current calendar year;

(iv) Plus other adjustments necessary to ensure that the same resource output is not declared more than once;

(c) To the extent the information is available, verify that the quantity of electricity associated with the declared resources does not exceed the available generation from those resources.

(7) Subsections (3) and (6) of this section apply to the department in the event the department assumes the functions of the electricity information coordinator. [2000 c 213 § 6.]

Finding—Intent—2000 c 213: See note following RCW 19.29A.050.

19.29A.090 Voluntary option to purchase qualified alternative energy resources—Rates, terms, and conditions—Information maintenance. (1) Beginning January 1, 2002, each electric utility must provide to its retail electric [electric] customers a voluntary option to purchase qualified alternative energy resources in accordance with this section.

(2) Each electric utility must include with its retail electric customer's regular billing statements, at least quarterly, a voluntary option to purchase qualified alternative energy resources. The option may allow customers to purchase qualified alternative energy resources at fixed or variable rates

and for fixed or variable periods of time, including but not limited to monthly, quarterly, or annual purchase agreements. A utility may provide qualified alternative energy resource options through either: (a) Resources it owns or contracts for; or (b) the purchase of credits issued by a clearinghouse or other system by which the utility may secure, for trade or other consideration, verifiable evidence that a second party has a qualified alternative energy resource and that the second party agrees to transfer such evidence exclusively to the benefit of the utility.

(3) For the purposes of this section, a "qualified alternative energy resource" means the electricity or thermal energy produced from generation facilities that are fueled by: (a) Wind; (b) solar energy; (c) geothermal energy; (d) landfill gas; (e) wave or tidal action; (f) gas produced during the treatment of wastewater; (g) qualified hydropower; or (h) biomass energy based on animal waste or solid or liquid organic fuels from wood, forest, or field residues, or dedicated energy crops that do not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic.

(4) For the purposes of this section, "qualified hydropower" means the energy produced either: (a) As a result of modernizations or upgrades made after June 1, 1998, to hydropower facilities operating on May 8, 2001, that have been demonstrated to reduce the mortality of anadromous fish; or (b) by run of the river or run of the canal hydropower facilities that are not responsible for obstructing the passage of anadromous fish.

(5) The rates, terms, conditions, and customer notification of each utility's option or options offered in accordance with this section must be approved by the governing body of the consumer-owned utility or by the commission for investor-owned utilities. All costs and benefits associated with any option offered by an electric utility under this section must be allocated to the customers who voluntarily choose that option and may not be shifted to any customers who have not chosen such option. Utilities may pursue known, lawful aggregated purchasing of qualified alternative energy resources with other utilities to the extent aggregated purchasing can reduce the unit cost of qualified alternative energy resources, and are encouraged to investigate opportunities to aggregate the purchase of alternative energy resources by their customers. Aggregated purchases by investor-owned utilities must comply with any applicable rules or policies adopted by the commission related to least-cost planning or the acquisition of renewable resources.

(6) Each consumer-owned utility must maintain and make available upon request of the department and each investor-owned utility must maintain and make available upon request of the commission information describing the option or options it is offering its customers under the requirements of this section, the rate of customer participation, the amount of qualified alternative energy resources purchased by customers, the amount of utility investments in qualified alternative energy resources, and the results of pursuing aggregated purchasing opportunities. The department and the commission shall report the information to the appropriate committees of the legislature upon request. [2014 c 129 § 1; 2012 c 112 § 1. Prior: 2002 c 285 § 6; 2002 c 191 § 1; 2001 c 214 § 28.]

(2018 Ed.)

Findings—2001 c 214: See note following RCW 39.35.010.

Additional notes found at www.leg.wa.gov

19.29A.100 Electric utilities—Customer information—Sale or disclosure—Requirements—Exemptions—Application of consumer protection act. (1) An electric utility may not sell private or proprietary customer information.

(2) An electric utility may not disclose private or proprietary customer information with or to its affiliates, subsidiaries, or any other third party for the purposes of marketing services or product offerings to a retail electric customer who does not already subscribe to that service or product, unless the utility has first obtained the customer's written or electronic permission to do so.

(3) The utility must:

(a) Obtain a retail electric customer's prior permission for each instance of disclosure of his or her private or proprietary customer information to an affiliate, subsidiary, or other third party for purposes of marketing services or products that the customer does not already subscribe to; and

(b) Maintain a record for each instance of permission for disclosing a retail electric customer's private or proprietary customer information.

(4) An electric utility must retain the following information for each instance of a retail electric customer's consent for disclosure of his or her private or proprietary customer information if provided electronically:

(a) The confirmation of consent for the disclosure of private customer information;

(b) A list of the date of the consent and the affiliates, subsidiaries, or third parties to which the customer has authorized disclosure of his or her private or proprietary customer information; and

(c) A confirmation that the name, service address, and account number exactly matches the utility record for such account.

(5)(a) This section does not require customer permission for or prevent disclosure of private or proprietary customer information by an electric utility to a third party with which the utility has a contract where such contract is directly related to conduct of the utility's business, provided that the contract prohibits the third party from further disclosing or selling any private or proprietary customer information obtained from the utility to a party that is not the utility and not a party to the contract with the utility.

(b) The legislature finds that the disclosure or sale of private or proprietary customer information by a third party, when prohibited by a contract under this subsection (5), is a matter vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW, to the third party. Disclosure or sale of private or proprietary customer information by a third party, when prohibited by a contract under this subsection (5), 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.

(6) This section does not prevent disclosure of the essential terms and conditions of special contracts.

(7) This section does not prevent the electric utility from inserting any marketing information into the retail electric customer's billing package.

(8) An electric utility may collect and release retail electric customer information in aggregate form if the aggregated information does not allow any specific customer to be identified.

(9) The statewide minimum privacy policy established in subsections (1) through (8) of this section must, in the case of an investor-owned utility, be enforced by the commission by rule or order.

(10) The statewide minimum privacy policy established in subsections (1) through (8) of this section must, in the case of a consumer-owned utility, be implemented by the utility through a policy adopted by the governing board within one year of October 9, 2015, that includes provisions ensuring compliance with subsections (1) through (8) of this section. The policy must include procedures, consistent with applicable law, for investigation and resolution of complaints by a retail electric customer whose private or proprietary information may have been sold by the consumer-owned utility or disclosed by the utility for the purposes of marketing services or product offerings in violation of this section. [2015 3rd sp.s. c 21 § 1; 2015 c 285 § 3.]

19.29A.110 Persons—Customer information—Capture, obtain, or disclosure for commercial purpose—Requirements—Application of consumer protection act.

(1) A person may not capture or obtain private or proprietary customer information for a commercial purpose unless the person:

(a) Informs the retail electric customer before capturing or obtaining private or proprietary customer information; and

(b) Receives the retail electric customer's written or electronic permission to capture or obtain private or proprietary customer information.

(2) A person who legally possesses private or proprietary customer information that is captured or obtained for a commercial purpose may not sell, lease, or otherwise disclose the private or proprietary customer information to another person unless:

(a) The retail electric customer consents to the disclosure;

(b) The private or proprietary customer information is disclosed to an electric utility or other third party as necessary to effect, administer, enforce, or complete a financial transaction that the retail electric customer requested, initiated, or authorized, provided that the electric utility or third party maintains confidentiality of the private or proprietary customer information and does not further disclose the information except as permitted under this subsection (2); or

(c) The disclosure is required or expressly permitted by a federal statute or by a state statute.

(3) For the purposes of this section, "person" means any individual, partnership, corporation, limited liability company, or other organization or commercial entity, except that "person" does not include an electric utility.

(4) Except as provided in RCW 19.29A.120, the legislature finds that the practices covered by this section are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. A

violation of this section 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. [2015 c 285 § 4.]

19.29A.120 Exemptions—Energy benchmark programs. This chapter does not apply to energy benchmarking programs authorized by: (1) Federal law; (2) state law; or (3) local laws that are consistent with the personally identifying information requirements of RCW 19.27A.170. [2015 c 285 § 5.]

19.29A.900 Construction—1998 c 300. Nothing in chapter 300, Laws of 1998 shall be construed as conferring on any state agency jurisdiction, supervision, or control over any consumer-owned utility. [1998 c 300 § 7.]

**Chapter 19.30 RCW
FARM LABOR CONTRACTORS**

Sections

19.30.010	Definitions—Exceptions from chapter.
19.30.020	License required—Duplicates.
19.30.030	Applicants—Qualifications—Fee—Liability insurance—Farm labor contractor account.
19.30.040	Surety bond—Security.
19.30.045	Claim for wages—Action upon surety bond or security.
19.30.050	License—Grounds for denying.
19.30.060	License—Revocation, suspension, refusal to issue or renew.
19.30.070	License—Contents.
19.30.081	License—Duration—Renewal.
19.30.090	License—Application for renewal.
19.30.110	Farm labor contractor—Duties.
19.30.120	Farm labor contractor—Prohibited acts.
19.30.130	Rules—Adjustment of controversies.
19.30.150	Penalties.
19.30.160	Civil penalty—Hearing—Court action.
19.30.170	Civil actions—Damages, costs, attorney's fees—Actions upon bond or security deposit.
19.30.180	Injunctions—Costs—Attorney fee.
19.30.190	Retaliation against employee prohibited.
19.30.200	Unlicensed farm labor contractors—Liability for services.
19.30.902	Effective date—1985 c 280.

19.30.010 Definitions—Exceptions from chapter. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agricultural employee" means any person who renders personal services to, or under the direction of, an agricultural employer in connection with the employer's agricultural activity.

(2) "Agricultural employer" means any person engaged in agricultural activity, including the growing, producing, or harvesting of farm or nursery products, or engaged in the forestation or reforestation of lands, which includes but is not limited to the planting, transplanting, tubing, precommercial thinning, and thinning of trees and seedlings, the clearing, piling, and disposal of brush and slash, the harvest of Christmas trees, and other related activities.

(3) "Director" as used in this chapter means the director of the department of labor and industries of the state of Washington.

(4) "Farm labor contracting activity" means recruiting, soliciting, employing, supplying, transporting, or hiring agricultural employees.

(5) "Farm labor contractor" means any person, or his or her agent or subcontractor, who, for a fee, performs any farm labor contracting activity. "Farm labor contractor" does not include a person performing farm labor contracting activity solely for a small forest landowner as defined in RCW 76.09.450 who receives services of no more than two agricultural employees at any given time.

(6) "Fee" means:

(a) Any money or other valuable consideration paid or promised to be paid for services rendered or to be rendered by a farm labor contractor.

(b) Any valuable consideration received or to be received by a farm labor contractor for or in connection with any of the services described in subsection (4) of this section, and shall include the difference between any amount received or to be received by him, and the amount paid out by him for or in connection with the rendering of such services.

(7) "Person" includes any individual, firm, partnership, association, corporation, or unit or agency of state or local government.

(8) This chapter shall not apply to employees of the employment security department acting in their official capacity or their agents, nor to any common carrier or full time regular employees thereof while transporting agricultural employees, nor to any person who performs any of the services enumerated in subsection (4) of this section only within the scope of his or her regular employment for one agricultural employer on whose behalf he or she is so acting, unless he or she is receiving a commission or fee, which commission or fee is determined by the number of workers recruited, or to a nonprofit corporation or organization which performs the same functions for its members. Such nonprofit corporation or organization shall be one in which:

(a) None of its directors, officers, or employees are deriving any profit beyond a reasonable salary for services performed in its behalf.

(b) Membership dues and fees are used solely for the maintenance of the association or corporation. [2017 c 253 § 1; 1985 c 280 § 1; 1955 c 392 § 1.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

19.30.020 License required—Duplicates. No person shall act as a farm labor contractor until a license to do so has been issued to him or her by the director, and unless such license is in full force and effect and is in the contractor's possession. The director shall, by regulation, provide a means of issuing duplicate licenses in case of loss of the original license or any other appropriate instances. The director shall issue, on a monthly basis, a list of currently licensed farm labor contractors. [1985 c 280 § 2; 1955 c 392 § 2.]

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

(2018 Ed.)

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;

(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. [2012 c 158 § 1. Prior: 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.

19.30.040 Surety bond—Security. (1) The director shall require the deposit of a surety bond by any person acting as a farm labor contractor under this chapter to insure compli-

ance with the provisions of this chapter. Such bond shall be in an amount specified by the director in accordance with such criteria as the director adopts by rule but shall not be less than five thousand dollars. The bond shall be payable to the state of Washington and be conditioned on payment of sums legally owing under contract to an agricultural employee. The aggregate liability of the surety upon such bond for all claims which may arise thereunder shall not exceed the face amount of the bond.

(2) The amount of the bond may be raised or additional security required by the director, upon his or her own motion or upon petition to the director by any person, when it is shown that the security or bond is insufficient to satisfy the contractor's potential liability for the licensed period.

(3) No surety insurer may provide any bond, undertaking, recognizance, or other obligation for the purpose of securing or guaranteeing any act, duty, or obligation, or the refraining from any act with respect to a contract using the services of a farm labor contractor unless the farm labor contractor has made application for or has a valid license issued under RCW 19.30.030 at the time of issuance of the bond, undertaking, recognizance, or other obligation.

(4) Surety bonds may not be canceled or terminated during the period in which the bond is executed unless thirty days' notice is provided by the surety to the department. The bond is written for a one-year term and may be renewed or extended by continuation certification at the option of the surety.

(5) In lieu of the surety bond required by this section, the contractor may file with the director a deposit consisting of cash or other security acceptable to the director. The deposit shall not be less than five thousand dollars in value. The security deposited with the director in lieu of the surety bond shall be returned to the contractor at the expiration of three years after the farm labor contractor's license has expired or been revoked if no legal action has been instituted against the contractor or on the security deposit at the expiration of the three years.

(6) If a contractor has deposited a bond with the director and has failed to comply with the conditions of the bond as provided by this section, and has departed from this state, service may be made upon the surety as prescribed in RCW 4.28.090. [1987 c 216 § 1; 1986 c 197 § 15; 1985 c 280 § 4; 1955 c 392 § 4.]

19.30.045 Claim for wages—Action upon surety bond or security. (1) Any person, having a claim for wages pursuant to this chapter may bring suit upon the surety bond or security deposit filed by the contractor pursuant to RCW 19.30.040, in any court of competent jurisdiction of the county in which the claim arose, or in which either the claimant or contractor resides.

(2) The right of action is assignable in the name of the director or any other person. [1987 c 216 § 2; 1986 c 197 § 19.]

19.30.050 License—Grounds for denying. A license to operate as a farm labor contractor shall be denied:

(1) To any person who sells or proposes to sell intoxicating liquors in a building or on premises where he or she operates or proposes to operate as a farm labor contractor, or

(2) To a person whose license has been revoked within three years from the date of application. [1985 c 280 § 5; 1955 c 392 § 5.]

19.30.060 License—Revocation, suspension, refusal to issue or renew. Any person may protest the grant or renewal of a license under this section. The director may revoke, suspend, or refuse to issue or renew any license when it is shown that:

(1) The farm labor contractor or any agent of the contractor has violated or failed to comply with any of the provisions of this chapter;

(2) The farm labor contractor has made any misrepresentations or false statements in his or her application for a license;

(3) The conditions under which the license was issued have changed or no longer exist;

(4) The farm labor contractor, or any agent of the contractor, has violated or wilfully aided or abetted any person in the violation of, or failed to comply with, any law of the state of Washington regulating employment in agriculture, the payment of wages to farm employees, or the conditions, terms, or places of employment affecting the health and safety of farm employees, which is applicable to the business activities, or operations of the contractor in his or her capacity as a farm labor contractor;

(5) The farm labor contractor or any agent of the contractor has in recruiting farm labor solicited or induced the violation of any then existing contract of employment of such laborers; or

(6) The farm labor contractor or any agent of the contractor has an unsatisfied judgment against him or her in any state or federal court, arising out of his or her farm labor contracting activities.

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 or a *residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the 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. [1997 c 58 § 846; 1985 c 280 § 6; 1955 c 392 § 6.]

***Reviser's note:** 1997 c 58 § 886 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for non-compliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

Additional notes found at www.leg.wa.gov

19.30.070 License—Contents. Each license shall contain, on the face thereof:

(1) The name and address of the licensee and the fact that he or she is licensed to act as a farm labor contractor for the period upon the face of the license only;

(2) The number, date of issuance, and date of expiration of the license;

(3) The amount of the surety bond deposited by the licensee;

(4) The fact that the license may not be transferred or assigned; and

(5) A statement that the licensee is or is not licensed to transport workers. [1985 c 280 § 7; 1955 c 392 § 7.]

19.30.081 License—Duration—Renewal. Farm labor contractors may hold either a one-year license or a two-year license, at the director's discretion.

The one-year license shall run to and include the 31st day of December next following the date thereof unless sooner revoked by the director. A license may be renewed each year upon the payment of the annual license fee, but the director shall require that evidence of a renewed bond be submitted and that the contractor have a bond in full force and effect.

The two-year license shall run to and include the 31st day of December of the year following the year of issuance unless sooner revoked by the director. This license may be renewed every two years under the same terms as the one-year license, except that a farm labor contractor possessing a two-year license shall have evidence of a bond in full force and effect, and file an application on which he or she shall disclose all information required by *RCW 19.30.030 (1)(b), (4), and (7). [1987 c 216 § 3; 1986 c 197 § 16; 1985 c 280 § 8.]

*Reviser's note: RCW 19.30.030 was amended by 2011 1st sp.s. c 50 § 927, changing the subsection numbering.

19.30.090 License—Application for renewal. All applications for renewal shall state the names and addresses of all persons financially interested either as partners, associates or profit sharers in the operation as a farm labor contractor. [1955 c 392 § 9.]

19.30.110 Farm labor contractor—Duties. Every person acting as a farm labor contractor shall:

(1) Carry a current farm labor contractor's license at all times and exhibit it to all persons with whom the contractor intends to deal in the capacity of a farm labor contractor prior to so dealing.

(2) Disclose to every person with whom he or she deals in the capacity of a farm labor contractor the amount of his or her bond and the existence and amount of any claims against the bond.

(3) File at the United States post office serving the address of the contractor, as noted on the face of the farm labor contractor's license, a correct change of address immediately upon each occasion the contractor permanently moves his or her address, and notify the director within ten days after an address change is made.

(4) Promptly when due, pay or distribute to the individuals entitled thereto all moneys or other things of value entrusted to the contractor by any third person for such purpose.

(5) Comply with the terms and provisions of all legal and valid agreements and contracts entered into between the contractor in the capacity of a farm labor contractor and third persons.

(6) File information regarding work offers with the nearest employment service office, such information to include wages and work to be performed and any other information prescribed by the director.

(7) On a form prescribed by the director, furnish to each worker, at the time of hiring, recruiting, soliciting, or supplying, whichever occurs first, a written statement in English and any other language common to workers who are not fluent or literate in English that contains a description of:

(a) The compensation to be paid and the method of computing the rate of compensation;

(b) The terms and conditions of any bonus offered, including the manner of determining when the bonus is earned;

(c) The terms and conditions of any loan made to the worker;

(d) The conditions of any transportation, housing, board, health, and day care services or any other employee benefit to be provided by the farm labor contractor or by his or her agents, and the costs to be charged for each of them;

(e) The terms and conditions of employment, including the approximate length of season or period of employment and the approximate starting and ending dates thereof, and the crops on which and kinds of activities in which the worker may be employed;

(f) The terms and conditions under which the worker is furnished clothing or equipment;

(g) The place of employment;

(h) The name and address of the owner of all operations, or the owner's agent, where the worker will be working as a result of being recruited, solicited, supplied, or employed by the farm labor contractor;

(i) The existence of a labor dispute at the worksite;

(j) The name and address of the farm labor contractor;

(k) The existence of any arrangements with any owner or agent of any establishment at the place of employment under which the farm labor contractor is to receive a fee or any other benefit resulting from any sales by such establishment to the workers; and

(l) The name and address of the surety on the contractor's bond and the workers' right to claim against the bond.

(8) Furnish to the worker each time the worker receives a compensation payment from the farm labor contractor, a written statement itemizing the total payment and the amount and purpose of each deduction therefrom, hours worked, rate of pay, and pieces done if the work is done on a piece rate basis, and if the work is done under the Service Contract Act (41 U.S.C. Secs. 351 through 401) or related federal or state law, a written statement of any applicable prevailing wage.

(9) With respect to each worker recruited, solicited, employed, supplied, or hired by the farm labor contractor:

(a) Make, keep, and preserve for three years a record of the following information:

(i) The basis on which wages are paid;

(ii) The number of piecework units earned, if paid on a piecework basis;

(iii) The number of hours worked;

(iv) The total pay period earnings;

(v) The specific sums withheld and the purpose of each sum withheld; and

(vi) The net pay; and

(b) Provide to any other farm labor contractor and to any user of farm labor for whom he or she recruits, solicits, supplies, hires, or employs workers copies of all records, with respect to each such worker, which the contractor is required by this chapter to make, keep, and preserve. The recipient of such records shall keep them for a period of three years from the end of the period of employment. When necessary to administer this chapter, the director may require that any farm labor contractor provide the director with certified copies of his or her payroll records for any payment period.

The recordkeeping requirements of this chapter shall be met if either the farm labor contractor or any user of the contractor's services makes, keeps, and preserves for the requisite time period the records required under this section, and so long as each worker receives the written statements specified in subsection (8) of this section. [1985 c 280 § 9; 1955 c 392 § 11.]

19.30.120 Farm labor contractor—Prohibited acts.

No person acting as a farm labor contractor shall:

(1) Make any misrepresentation or false statement in an application for a license.

(2) Make or cause to be made, to any person, any false, fraudulent, or misleading representation, or publish or circulate or cause to be published or circulated any false, fraudulent, or misleading information concerning the terms or conditions or existence of employment at any place or places, or by any person or persons, or of any individual or individuals.

(3) Send or transport any worker to any place where the farm labor contractor knows a strike or lockout exists.

(4) Do any act in the capacity of a farm labor contractor, or cause any act to be done, which constitutes a crime involving moral turpitude under any law of the state of Washington. [1985 c 280 § 10; 1955 c 392 § 12.]

19.30.130 Rules—Adjustment of controversies.

(1) The director shall adopt rules not inconsistent with this chapter for the purpose of enforcing and administering this chapter.

(2) The director shall investigate and attempt to adjust equitably controversies between farm labor contractors and their workers with respect to claims arising under this chapter. [1985 c 280 § 11; 1955 c 392 § 14.]

19.30.150 Penalties. Any person who violates any provisions of this chapter, or who causes or induces another to violate any provisions of this chapter, shall be guilty of a misdemeanor punishable by a fine of not more than five thousand dollars, or imprisonment in the county jail for not more than six months, or both. [1955 c 392 § 13.]

19.30.160 Civil penalty—Hearing—Court action.

(1) In addition to any criminal penalty imposed under RCW 19.30.150, the director may assess against any person who 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 person shall be afforded the opportunity for a hearing, upon request to the director made 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 person 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 agency, the director shall refer the matter to the state attorney general, who shall 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.

(4) Without regard to other remedies provided in this chapter, the department may bring suit upon the surety bond filed by the farm labor contractor on behalf of a worker whose rights under this chapter have been violated by the contractor. The action may be commenced in any court of competent jurisdiction. In any such action, there shall be compliance with the notice and service requirements set forth in RCW 19.30.170. [1987 c 216 § 4; 1986 c 197 § 17; 1985 c 280 § 15.]

19.30.170 Civil actions—Damages, costs, attorney's fees—Actions upon bond or security deposit.

(1) After filing a notice of a claim with the director, in addition to any other penalty provided by law, any person aggrieved by a violation of this chapter or any rule adopted under this chapter may bring suit in any court of competent jurisdiction of the county in which the claim arose, or in which either the plaintiff or respondent resides, without regard to the amount in controversy and without regard to exhaustion of any alternative administrative remedies provided in this chapter. No such action may be commenced later than three years after the date of the violation giving rise to the right of action. In any such action the court may award to the prevailing party, in addition to costs and disbursements, reasonable attorney fees at trial and appeal.

(2) In any action under subsection (1) of this section, if the court finds that the respondent has violated this chapter or any rule adopted under this chapter, it may award damages up to and including an amount equal to the amount of actual damages, or statutory damages of five hundred dollars per plaintiff per violation, whichever is greater, or other equitable relief.

(3) Without regard to other remedies provided in this chapter, a person having a claim against the farm labor contractor for any violation of this chapter may bring suit against the farm labor contractor and the surety bond or security deposit filed by the contractor pursuant to RCW 19.30.040, in any court of competent jurisdiction of the county in which the claim arose, or in which either the claimant or contractor resides.

(4) An action upon the bond or security deposit shall be commenced by serving and filing the summons and complaint within three years from the date of expiration or cancellation of the bond or expiration or cancellation of the license, whichever is sooner, or in the case of a security deposit, within three years of the date of expiration or revocation of the license.

(5) A copy of the summons and complaint in any such action shall be served upon the director at the time of commencement of the action and the director shall maintain a record, available for public inspection, of all suits so com-

menced. Such service shall constitute service on the farm labor contractor and the surety for suit upon the bond and the director shall transmit the complaint or a copy thereof to the contractor at the address listed in his or her application and to the surety within forty-eight hours after it has been received.

(6) The surety upon the bond may, upon notice to the director and the parties, tender to the clerk of the court having jurisdiction of the action an amount equal to the claims or the amount of the bond less the amount of judgments, if any, previously satisfied therefrom and to the extent of such tender the surety upon the bond shall be exonerated.

(7) If the actions commenced and pending at any one time exceed the amount of the bond then unimpaired, the claims shall be satisfied from the bond in the following order:

- (a) Wages, including employee benefits;
- (b) Other contractual damage owed to the employee;
- (c) Any costs and attorneys' fees the claimant may be entitled to recover by contract or statute.

(8) If any final judgment impairs the bond so furnished so that there is not in effect a bond undertaking in the full amount prescribed by the director, the director shall suspend the license of the contractor until the bond liability in the required amount unimpaired by unsatisfied judgment claims has been furnished. If such bond becomes fully impaired, a new bond must be furnished.

(9) A claimant against a security deposit shall be entitled to damages under subsection (2) of this section. If the farm labor contractor has filed other security with the director in lieu of a surety bond, any person having an unsatisfied final judgment against the contractor for any violation of this chapter may execute upon the security deposit held by the director by serving a certified copy of the unsatisfied final judgment by registered or certified mail upon the director. Upon the receipt of service of such certified copy, the director shall pay or order paid from the deposit, through the registry of the court which rendered judgment, towards the amount of the unsatisfied judgment. The priority of payment by the director shall be the order of receipt by the director, but the director shall have no liability for payment in excess of the amount of the deposit. [1987 c 216 § 5; 1986 c 197 § 18; 1985 c 280 § 16.]

19.30.180 Injunctions—Costs—Attorney fee. The director or any other person may bring suit in any court of competent jurisdiction to enjoin any person from using the services of an unlicensed farm labor contractor or to enjoin any person acting as a farm labor contractor in violation of this chapter, or any rule adopted under this chapter, from committing future violations. The court may award to the prevailing party costs and disbursements and a reasonable attorney fee. [1985 c 280 § 12.]

19.30.190 Retaliation against employee prohibited. No farm labor contractor or agricultural employer may discharge or in any other manner discriminate against any employee because:

(1) The employee has made a claim against the farm labor contractor or agricultural employer for compensation for the employee's personal services.

(2) The employee has caused to be instituted any proceedings under or related to RCW 19.30.180.

(2018 Ed.)

(3) The employee has testified or is about to testify in any such proceedings.

(4) The employee has discussed or consulted with anyone concerning the employee's rights under this chapter. [1985 c 280 § 13.]

19.30.200 Unlicensed farm labor contractors—Liability for services. Any person who knowingly uses the services of an unlicensed farm labor contractor shall be personally, jointly, and severally liable with the person acting as a farm labor contractor to the same extent and in the same manner as provided in this chapter. In making determinations under this section, any user may rely upon either the license issued by the director to the farm labor contractor under RCW 19.30.030 or the director's representation that such contractor is licensed as required by this chapter. [2000 c 171 § 48; 1985 c 280 § 14.]

19.30.902 Effective date—1985 c 280. This 1985 act shall take effect January 1, 1986. [1985 c 280 § 19.]

Chapter 19.31 RCW EMPLOYMENT AGENCIES

Sections

19.31.010	Short title.
19.31.020	Definitions.
19.31.030	Records.
19.31.040	Contract between agency and applicant—Contents—Notice.
19.31.050	Approval of contract, fee schedule.
19.31.060	Request from employer for interview required—Information to be furnished applicant.
19.31.070	Administration of chapter—Rules—Investigations—Inspections.
19.31.080	License required—Penalty.
19.31.090	Bond—Cash deposit—Action on bond or deposit—Procedure—Judgment.
19.31.100	Application—Contents—Filing—Qualifications of applicants and licensees—Waiver—Exceptions.
19.31.110	Expiration date of license—Reinstatement.
19.31.120	Transfer of license.
19.31.130	License sanction—Grounds—Support order, noncompliance.
19.31.140	Fees for licensees.
19.31.150	Employment condition precedent to charging fee—Exceptions.
19.31.160	Charging fee or payment contrary to chapter—Return of excess.
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.
19.31.230	Civil penalty.
19.31.240	Service of process outside state.
19.31.245	Registration or licensing prerequisite to suit by employment agency—Action against unregistered or unlicensed employment agency.
19.31.250	Chapter provisions exclusive—Authority of political subdivisions not affected.
19.31.260	Administrative procedure act to govern administration.
19.31.270	Uniform regulation of business and professions act.
19.31.910	Effective date—1969 ex.s. c 228.

19.31.010 Short title. This chapter shall be known and cited as "The Employment Agency Act". [1969 ex.s. c 228 § 1.]

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

(1) "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).

19.31.030 Records. Each employment agency shall keep records of all services rendered employers and applicants. These records shall contain the name and address of the employer by whom the services were solicited; the name and address of the applicant; kind of position ordered by the employer; dates job orders or job listings are obtained; subsequent dates job orders or job listings are verified as still being current; kind of position accepted by the applicant; probable duration of the employment, if known; rate of wage or salary to be paid the applicant; amount of the employment agency's fee; dates and amounts of refund if any, and reason for such refund; and the contract agreed to between the agency and applicant. An employment listing service need not keep records pertaining to the kind of position accepted by applicant and probable duration of employment.

An employment directory shall keep records of all services rendered to applicants. These records shall contain: The name and address of the applicant; amount of the employment directory's fee; dates and amounts of refund if any, and reason for the refund; the contract agreed to between the employment directory and applicant; and the dates of contact with employers made pursuant to RCW 19.31.190(11).

The director shall have authority to demand and to examine, at the employment agency's regular place of business, all books, documents, and records in its possession for inspection. Unless otherwise provided by rules or regulation adopted by the director, such records shall be maintained for a period of three years from the date in which they are made. [1993 c 499 § 2; 1969 ex.s. c 228 § 3.]

19.31.040 Contract between agency and applicant—Contents—Notice. An employment agency shall provide each applicant with a copy of the contract between the applicant and employment agency which shall have printed on it or attached to it a copy of RCW 19.31.170 as now or hereafter amended. Such contract shall contain the following:

- (1) The name, address, and telephone number of the employment agency;
- (2) Trade name if any;
- (3) The date of the contract;
- (4) The name of the applicant;
- (5) The amount of the fee to be charged the applicant, or the method of computation of the fee, and the time and method of payments: PROVIDED, HOWEVER, That if the provisions of the contract come within the definition of a "retail installment transaction", as defined in RCW 63.14.010, the contract shall conform to the requirements of chapter 63.14 RCW, as now or hereafter amended;

(2018 Ed.)

(6) A notice in eight-point bold face type or larger directly above the space reserved in the contract for the signature of the buyer. The caption, "NOTICE TO APPLICANT—READ BEFORE SIGNING" shall precede the body of the notice and shall be in ten-point bold face type or larger. The notice shall read as follows:

"This is a contract. If you accept employment with any employer through [name of employment agency] you will be liable for the payment of the fee as set out above. Do not sign this contract before you read it or if any spaces intended for the agreed terms are left blank. You must be given a copy of this contract at the time you sign it."

The notice for an employment listing service shall read as follows:

"This is a contract. You understand [the employment listing service] provides information on bona fide job listings but does not guarantee you will be offered a job. You also understand you are liable for the payment of the fee when you receive the list or referral. Do not sign this contract before you read it or if any spaces intended for the agreed terms are left blank. You must be given a copy of this contract at the time you sign it."

The notice for an employment directory shall read as follows if the directory is sold in person:

"This is a contract. You understand [the employment directory] provides information on possible employers along with general employment, industry, and geographical information to assist you, but does not list actual job openings or guarantee you will obtain employment through its services. You also understand you are liable for the payment of the fee when you receive the directory. Do not sign this contract before you read it or if any spaces intended for the agreed terms are left blank. You must be given a copy of this contract at the time you sign it."

A verbal notice for an employment directory shall be as follows before accepting a fee if the directory is sold over the telephone:

"You understand [the employment directory] provides information on possible employers along with general employment, industry, and geographical information to assist you, but does not list actual job openings or guarantee you will obtain employment through its services. You also understand you are liable for the payment of the fee when you order the directory."

A copy of the contract must be sent to all applicants ordering by telephone and must specify the following information:

- (a) Name, address, and phone number of employment directory;
- (b) Name, address, and phone number of applicant;
- (c) Date of order;
- (d) Date verbal notice was read to applicant along with a printed statement to read as follows:

"On [date verbal notice was read] and prior to placing this order the following statement was read to you: "You understand [the employment directory] provides information on possible employers along with general employment, industry, and geographical information to assist you, but does not list actual job openings or guarantee you will be offered a job. You also understand you are liable for the payment of the fee when you order the directory."; and

(e) Signature of employment directory representative. [1993 c 499 § 3; 1985 c 7 § 83; 1977 ex.s. c 51 § 2; 1969 ex.s. c 228 § 4.]

19.31.050 Approval of contract, fee schedule. Prior to using any contract or fee schedule in the transaction of its business with applicants, each employment agency shall obtain the director's approval for the use of such contract or fee schedule. [1969 ex.s. c 228 § 5.]

19.31.060 Request from employer for interview required—Information to be furnished applicant. No employment agency shall send any applicant on an interview with a prospective employer without having first obtained, either orally or in writing, a bona fide request from such employer for the interview: PROVIDED, HOWEVER, That, it shall be the duty of every employment agency to give to each applicant for employment, orally or in writing, before being sent on an interview, information as to the name and address of the person to whom the applicant is to apply for such employment, the kind of service to be performed, the anticipated rate of wages or compensation, the agency's fee based on such anticipated wages or compensation, whether such employment is permanent or temporary, and the name and address of the natural person authorizing the interviewing of such applicant. [1977 ex.s. c 51 § 3; 1969 ex.s. c 228 § 6.]

19.31.070 Administration of chapter—Rules—Investigations—Inspections. (1) The director shall administer the provisions of this chapter and shall issue from time to time reasonable rules and regulations for enforcing and carrying out the provisions and purposes of this chapter.

(2) The director shall have supervisory and investigative authority over all employment agencies. Upon receiving a complaint against any employment agency, the director shall have the right to examine all books, documents, or records in its possession. In addition, the director may examine the office or offices where business is or shall be conducted by such agency. [2002 c 86 § 269; 1969 ex.s. c 228 § 7.]

Additional notes found at www.leg.wa.gov

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.]

19.31.100 Application—Contents—Filing—Qualifications of applicants and licensees—Waiver—Exceptions. (1) Every applicant for an employment agency's license or a renewal thereof shall file with the director a written application stating the name and address of the applicant; the street and number of the building in which the business of the employment agency is to be conducted; the name of the person who is to have the general management of the office; the name under which the business of the office is to be carried on; whether or not the applicant is pecuniarily interested in the business to be carried on under the license; shall be signed by the applicant and sworn to before a notary public; and shall identify anyone holding over twenty percent interest in the agency. If the applicant is a corporation, the application shall state the names and addresses of the officers and directors of the corporation, and shall be signed and sworn to by the president and secretary thereof. If the applicant is a partnership, the application shall also state the names and

addresses of all partners therein, and shall be signed and sworn to by all of them. The application shall also state whether or not the applicant is, at the time of making the application, or has at any previous time been engaged in or interested in or employed by anyone engaged in the business of an employment agency.

(2) The application shall require a certification that no officer or holder of more than twenty percent interest in the business has been convicted of a felony within ten years of the application which directly relates to the business for which the license is sought, or had any judgment entered against such person in any civil action involving fraud, misrepresentation, or conversion.

(3) All applications for employment agency licenses shall be accompanied by a copy of the form of contract and fee schedule to be used between the employment agency and the applicant.

(4) No license to operate an employment agency in this state shall be issued, transferred, renewed, or remain in effect, unless the person who has or is to have the general management of the office has qualified pursuant to this section. The director may, for good cause shown, waive the requirement imposed by this section for a period not to exceed one hundred and twenty days. Persons who have been previously licensed or who have operated to the satisfaction of the director for at least one year prior to September 21, 1977 as a general manager shall be entitled to operate for up to one year from such date before being required to qualify under this section. In order to qualify, such person shall, through testing procedures developed by the director, show that such person has a knowledge of this law, pertinent labor laws, and laws against discrimination in employment in this state and of the United States. Said examination shall be given at least once each quarter and a fee for such examination shall be established by the director. Nothing in this chapter shall be construed to preclude any one natural person from being designated as the person who is to have the general management of up to three offices operated by any one licensee.

While employment directories may at the director's discretion be required to show that the person has a knowledge of this chapter, employment directories are exempt from testing on pertinent labor laws, and laws against discrimination in employment in this state and of the United States.

(5) Employment directories shall register with the department and meet all applicable requirements of this chapter but shall not be required to be licensed by the department or pay a licensing fee. [1993 c 499 § 4; 1982 c 227 § 14; 1977 ex.s. c 51 § 5; 1969 ex.s. c 228 § 10.]

Additional notes found at www.leg.wa.gov

19.31.110 Expiration date of license—Reinstatement.

An employment agency license shall expire June 30th. Any such license not renewed may be reinstated if the employment agency can show good cause to the director for renewal of the license and present proof of intent to continue to act as an employment agency: PROVIDED, That no license shall be issued upon such application for reinstatement until all fees and penalties previously accrued under this chapter have been paid. [1977 ex.s. c 51 § 6; 1969 ex.s. c 228 § 11.]

(2018 Ed.)

19.31.120 Transfer of license. No license granted pursuant to this chapter shall be transferable without the consent of the director. No employment agency shall permit any person not mentioned in the license application to become connected with the business as an owner, member, officer, or director without the consent of the director. Consent may be withheld for any reason for which an original application for a license might have been rejected, if the person in question had been mentioned therein. [1969 ex.s. c 228 § 12.]

19.31.130 License sanction—Grounds—Support order, noncompliance. (1) In accordance with the provisions of chapter 34.05 RCW, the director may by order sanction the license of any employment agency under RCW 18.235.110, if the director finds that the applicant or licensee has violated any provisions of this chapter, or failed to comply with any rule or regulation issued by the director pursuant to this chapter.

(2) 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. [2002 c 86 § 270; 1997 c 58 § 848; 1969 ex.s. c 228 § 13.]

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

Additional notes found at www.leg.wa.gov

19.31.140 Fees for licensees. The director shall determine the fees, as provided in RCW 43.24.086, charged to those parties licensed as employment agencies for original applications, renewal per year, branch license, both original and renewal, transfer of license, and approval of amended or new contracts and/or fee schedules. [1985 c 7 § 84; 1975 1st ex.s. c 30 § 92; 1969 ex.s. c 228 § 14.]

19.31.150 Employment condition precedent to charging fee—Exceptions. (1) Except as otherwise provided in subsections (2) and (3) of this section, no employment agency shall charge or accept a fee or other consideration from an applicant without complying with the terms of a written contract as specified in RCW 19.31.040, and then only after such agency has been responsible for referring such job applicant to an employer or such employer to a job applicant and where as a result thereof such job applicant has been employed by such employer.

(2) Employment listing services may charge or accept a fee when they provide the applicant with the job listing or the referral.

(3) An employment directory may charge or accept a fee when it provides the applicant with the directory. [1993 c 499 § 5; 1969 ex.s. c 228 § 15.]

19.31.160 Charging fee or payment contrary to chapter—Return of excess. Any employment agency which collects, receives, or retains a fee or other payment contrary to

the provisions of this chapter or to the rules and regulations adopted pursuant to this chapter shall return the excessive portion of the fee within seven days after receiving a demand therefor from the director. [1969 ex.s. c 228 § 16.]

19.31.170 Limitations on fee amounts—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.]

19.31.230 Civil penalty. Any person who violates the terms of any court order or temporary or permanent injunction issued pursuant to this chapter, shall forfeit and pay a civil penalty of not more than five thousand dollars. For the purpose of this section the superior court issuing any injunction shall retain continuing jurisdiction and in such cases the attorney general and/or the prosecuting attorney acting in the name of the state may petition for the recovery of civil penalties. [1969 ex.s. c 228 § 23.]

19.31.240 Service of process outside state. Personal service of any process in an action under this chapter may be made upon any person outside the state if such person has engaged in conduct in violation of this chapter which conduct has had impact in this state which this chapter reprehends. Such person shall be deemed to have thereby submitted himself 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.]

(2018 Ed.)

19.31.245 Registration or licensing prerequisite to suit by employment agency—Action against unregistered or unlicensed employment agency. (1) No employment agency may bring or maintain a cause of action in any court of this state for compensation for, or seeking equitable relief in regard to, services rendered employers and applicants, unless such agency shall allege and prove that at the time of rendering the services in question, or making the contract therefor, it was registered with the department or the holder of a valid license issued under this chapter.

(2) Any person who shall give consideration of any kind to any employment agency for the performance of employment services in this state when said employment agency shall not be registered with the department or be the holder of a valid license issued under this chapter shall have a cause of action against the employment agency. Any court having jurisdiction may enter judgment therein for treble the amount of such consideration so paid, plus reasonable attorney's fees and costs.

(3) A person performing the services of an employment agency, employment listing service, or employment directory without being registered with the department or holding a valid license shall cease operations or immediately apply for a valid license or register with the department. If the person continues to operate in violation of this chapter the director or the attorney general has a cause of action in any court having jurisdiction for the return of any consideration paid by any person to the agency. The court may enter judgment in the action for treble the amount of the consideration so paid, plus reasonable attorney's fees and costs. [1993 c 499 § 8; 1990 c 70 § 2; 1977 ex.s. c 51 § 10.]

19.31.250 Chapter provisions exclusive—Authority of political subdivisions not affected. (1) The provisions of this chapter relating to the regulation of private employment agencies shall be exclusive.

(2) This chapter shall not be construed to affect or reduce the authority of any political subdivision of the state of Washington to provide for the licensing of private employment agencies solely for revenue purposes. [1969 ex.s. c 228 § 25.]

19.31.260 Administrative procedure act to govern administration. The administration of this chapter shall be governed by the provisions of the administrative procedure act, chapter 34.05 RCW, as now or hereafter amended. [1969 ex.s. c 228 § 26.]

19.31.270 Uniform regulation of business and professions act. The uniform regulation of business and professions act, chapter 18.235 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [2002 c 86 § 271.]

Additional notes found at www.leg.wa.gov

19.31.910 Effective date—1969 ex.s. c 228. This act shall become effective July 1, 1969. [1969 ex.s. c 228 § 28.]

Chapter 19.34 RCW

WASHINGTON ELECTRONIC AUTHENTICATION ACT

Sections

19.34.010	Purpose and construction.
19.34.020	Definitions.
19.34.030	Secretary—Duties.
19.34.040	Secretary—Fees—Disposition.
19.34.100	Certification authorities—Licensure—Qualifications—Revocation and suspension.
19.34.101	Expiration of licenses—Renewal—Rules.
19.34.110	Compliance audits.
19.34.111	Qualifications of auditor signing report of opinion—Compliance audits under state auditor's authority.
19.34.120	Licensed certification authorities—Enforcement—Suspension or revocation—Penalties—Rules—Costs—Procedure—Injunctions.
19.34.130	Certification authorities—Prohibited activities—Statement by secretary advising of certification authorities creating prohibited risks—Protest—Hearing—Disposition—Notice—Procedure.
19.34.200	Licensed certification authorities—Requirements.
19.34.210	Certificate—Issuance—Confirmation of information—Confirmation of prospective subscriber—Standards, statements, plans, requirements more rigorous than chapter—Revocation, suspension—Investigation—Notice—Procedure.
19.34.220	Licensed certification authorities—Warranties, obligations upon issuance of certificate—Notice.
19.34.230	Subscribers—Representations and duties upon acceptance of certificate.
19.34.231	City or county as certification authority.
19.34.240	Private key—Control—Public disclosure exemption.
19.34.250	Suspension of certificate—Evidence—Investigation—Notice—Termination—Limitation or preclusion by contract—Misrepresentation—Penalty—Contracts for regional enforcement by agencies—Rules.
19.34.260	Revocation of certificate—Confirmation—Notice—Release from security duty—Discharge of warranties.
19.34.270	Certificate—Expiration.
19.34.280	Recommended reliance limit—Liability—Damages.
19.34.290	Collection based on suitable guaranty—Proceeds—Attorneys' fees—Costs—Notice—Recovery of qualified right of payment.
19.34.291	Discontinuation of certification authority services—Duties of authority—Continuation of guaranty—Process to maintain and update records—Rules—Costs.
19.34.300	Satisfaction of signature requirements.
19.34.305	Acceptance of digital signature in reasonable manner.
19.34.310	Unreliable digital signatures—Risk.
19.34.311	Reasonableness of reliance—Factors.
19.34.320	Digital message as written on paper—Requirements—Other requirements not affected—Exception from uniform commercial code.
19.34.321	Acceptance of certified court documents in electronic form—Requirements—Rules of court on use in proceedings.
19.34.330	Digital message deemed original.
19.34.340	Certificate as acknowledgment—Requirements—Exception—Responsibility of certification authority.
19.34.350	Adjudicating disputes—Presumptions.
19.34.351	Alteration of chapter by agreement—Exceptions.
19.34.360	Presumptions of validity/limitations on liability—Conformance with chapter.
19.34.400	Recognition of repositories—Application—Discontinuance—Procedure.
19.34.410	Repositories—Liability—Exemptions—Liquidation, limitation, alteration, or exclusion of damages.
19.34.420	Confidentiality of certain records—Limited access to state auditor.
19.34.500	Rule making.
19.34.501	Chapter supersedes and preempts local actions.
19.34.502	Criminal prosecution not precluded—Remedies not exclusive—Injunctive relief availability.
19.34.503	Jurisdiction, venue, choice of laws.
19.34.900	Short title.
19.34.901	Effective date—1996 c 250.

Digital signature violations: RCW 9.38.060.

19.34.010 Purpose and construction. This chapter shall be construed consistently with what is commercially

reasonable under the circumstances and to effectuate the following purposes:

(1) To facilitate commerce by means of reliable electronic messages;

(2) To ensure that electronic signatures are not denied legal recognition solely because they are in electronic form;

(3) To provide a voluntary licensing mechanism for digital signature certification authorities by which businesses, consumers, courts, government agencies, and other entities can reasonably be assured as to the integrity, authenticity, and nonrepudiation of a digitally signed electronic communication;

(4) To establish procedures governing the use of digital signatures for official public business to provide reasonable assurance of the integrity, authenticity, and nonrepudiation of an electronic communication;

(5) To minimize the incidence of forged digital signatures and fraud in electronic commerce;

(6) To implement legally the general import of relevant standards; and

(7) To establish, in coordination with states and other jurisdictions, uniform rules regarding the authentication and reliability of electronic messages. [1999 c 287 § 1; 1996 c 250 § 102.]

Additional notes found at www.leg.wa.gov

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

(1) "Accept a certificate" means to manifest approval of a certificate, while knowing or having notice of its contents. Such approval may be manifested by the use of the certificate.

(2) "Accept a digital signature" means to verify a digital signature or take an action in reliance on a digital signature.

(3) "Asymmetric cryptosystem" means an algorithm or series of algorithms that provide a secure key pair.

(4) "Certificate" means a computer-based record that:

(a) Identifies the certification authority issuing it;

(b) Names or identifies its subscriber;

(c) Contains the subscriber's public key; and

(d) Is digitally signed by the certification authority issuing it.

(5) "Certification authority" means a person who issues a certificate.

(6) "Certification authority disclosure record" means an online, publicly accessible record that concerns a licensed certification authority and is kept by the secretary.

(7) "Certification practice statement" means a declaration of the practices that a certification authority employs in issuing certificates.

(8) "Certify" means to declare with reference to a certificate, with ample opportunity to reflect, and with a duty to apprise oneself of all material facts.

(9) "Confirm" means to ascertain through appropriate inquiry and investigation.

(10) "Correspond," with reference to keys, means to belong to the same key pair.

(11) "Digital signature" means an electronic signature that is a transformation of a message using an asymmetric

cryptosystem such that a person having the initial message and the signer's public key can accurately determine:

(a) Whether the transformation was created using the private key that corresponds to the signer's public key; and

(b) Whether the initial message has been altered since the transformation was made.

(12) "Electronic" means electrical, digital, magnetic, optical, electromagnetic, or any other form of technology that entails capabilities similar to these technologies.

(13) "Electronic record" means a record generated, communicated, received, or stored by electronic means for use in an information system or for transmission from one information system to another.

(14) "Electronic signature" means a signature in electronic form attached to or logically associated with an electronic record, including but not limited to a digital signature.

(15) "Financial institution" means a national or state-chartered commercial bank or trust company, savings bank, savings association, or credit union authorized to do business in the state of Washington and the deposits of which are federally insured.

(16) "Forge a digital signature" means either:

(a) To create a digital signature without the authorization of the rightful holder of the private key; or

(b) To create a digital signature verifiable by a certificate listing as subscriber a person who either:

(i) Does not exist; or

(ii) Does not hold the private key corresponding to the public key listed in the certificate.

(17) "Hold a private key" means to be authorized to utilize a private key.

(18) "Incorporate by reference" means to make one message a part of another message by identifying the message to be incorporated and expressing the intention that it be incorporated.

(19) "Issue a certificate" means the acts of a certification authority in creating a certificate and notifying the subscriber listed in the certificate of the contents of the certificate.

(20) "Key pair" means a private key and its corresponding public key in an asymmetric cryptosystem, keys which have the property that the public key can verify a digital signature that the private key creates.

(21) "Licensed certification authority" means a certification authority to whom a license has been issued by the secretary and whose license is in effect.

(22) "Message" means a digital representation of information.

(23) "Notify" means to communicate a fact to another person in a manner reasonably likely under the circumstances to impart knowledge of the information to the other person.

(24) "Official public business" means any legally authorized transaction or communication among state agencies, tribes, and local governments, or between a state agency, tribe, or local government and a private person or entity.

(25) "Operative personnel" means one or more natural persons acting as a certification authority or its agent, or in the employment of, or under contract with, a certification authority, and who have:

(a) Duties directly involving the issuance of certificates, or creation of private keys;

(b) Responsibility for the secure operation of the trustworthy system used by the certification authority or any recognized repository;

(c) Direct responsibility, beyond general supervisory authority, for establishing or adopting policies regarding the operation and security of the certification authority; or

(d) Such other responsibilities or duties as the secretary may establish by rule.

(26) "Person" means a human being or an organization capable of signing a document, either legally or as a matter of fact.

(27) "Private key" means the key of a key pair used to create a digital signature.

(28) "Public key" means the key of a key pair used to verify a digital signature.

(29) "Publish" means to make information publicly available.

(30) "Qualified right to payment" means an award of damages against a licensed certification authority by a court having jurisdiction over the certification authority in a civil action for violation of this chapter.

(31) "Recipient" means a person who has received a certificate and a digital signature verifiable with reference to a public key listed in the certificate and is in a position to rely on it.

(32) "Recognized repository" means a repository recognized by the secretary under RCW 19.34.400.

(33) "Recommended reliance limit" means the monetary amount recommended for reliance on a certificate under RCW 19.34.280(1).

(34) "Repository" means a system for storing and retrieving certificates and other information relevant to digital signatures.

(35) "Revoke a certificate" means to make a certificate ineffective permanently from a specified time forward. Revocation is effected by notation or inclusion in a set of revoked certificates, and does not imply that a revoked certificate is destroyed or made illegible.

(36) "Rightfully hold a private key" means the authority to utilize a private key:

(a) That the holder or the holder's agents have not disclosed to a person in violation of RCW 19.34.240(1); and

(b) That the holder has not obtained through theft, deceit, eavesdropping, or other unlawful means.

(37) "Secretary" means the secretary of state.

(38) "Subscriber" means a person who:

(a) Is the subject listed in a certificate;

(b) Applies for or accepts the certificate; and

(c) Holds a private key that corresponds to a public key listed in that certificate.

(39) "Suitable guaranty" means either a surety bond executed by a surety authorized by the insurance commissioner to do business in this state, or an irrevocable letter of credit issued by a financial institution authorized to do business in this state, which, in either event, satisfies all of the following requirements:

(a) It is issued payable to the secretary for the benefit of persons holding qualified rights of payment against the licensed certification authority named as the principal of the bond or customer of the letter of credit;

(b) It is in an amount specified by rule by the secretary under RCW 19.34.030;

(c) It states that it is issued for filing under this chapter;

(d) It specifies a term of effectiveness extending at least as long as the term of the license to be issued to the certification authority; and

(e) It is in a form prescribed or approved by rule by the secretary.

A suitable guaranty may also provide that the total annual liability on the guaranty to all persons making claims based on it may not exceed the face amount of the guaranty.

(40) "Suspend a certificate" means to make a certificate ineffective temporarily for a specified time forward.

(41) "Time stamp" means either:

(a) To append or attach a digitally signed notation indicating at least the date, time, and identity of the person appending or attaching the notation to a message, digital signature, or certificate; or

(b) The notation thus appended or attached.

(42) "Transactional certificate" means a valid certificate incorporating by reference one or more digital signatures.

(43) "Trustworthy system" means computer hardware and software that:

(a) Are reasonably secure from intrusion and misuse; and

(b) Conform with the requirements established by the secretary by rule.

(44) "Valid certificate" means a certificate that:

(a) A licensed certification authority has issued;

(b) The subscriber listed in it has accepted;

(c) Has not been revoked or suspended; and

(d) Has not expired.

However, a transactional certificate is a valid certificate only in relation to the digital signature incorporated in it by reference.

(45) "Verify a digital signature" means, in relation to a given digital signature, message, and public key, to determine accurately that:

(a) The digital signature was created by the private key corresponding to the public key; and

(b) The message has not been altered since its digital signature was created. [2000 c 171 § 50; 1999 c 287 § 2; 1997 c 27 § 30; 1996 c 250 § 103.]

Additional notes found at www.leg.wa.gov

19.34.030 Secretary—Duties. (1) The secretary must publish a certification authority disclosure record for each licensed certification authority, and a list of all judgments filed with the secretary, within the previous five years, under RCW 19.34.290.

(2) The secretary may adopt rules consistent with this chapter and in furtherance of its purposes:

(a) To license certification authorities, recognize repositories, certify operative personnel, and govern the practices of each;

(b) To determine the form and amount reasonably appropriate for a suitable guaranty, in light of the burden a suitable guaranty places upon licensed certification authorities and the assurance of quality and financial responsibility it provides to persons who rely on certificates issued by licensed certification authorities;

(c) To specify reasonable requirements for information to be contained in or the form of certificates, including transactional certificates, issued by licensed certification authorities, in accordance with generally accepted standards for digital signature certificates;

(d) To specify reasonable requirements for recordkeeping by licensed certification authorities;

(e) To specify reasonable requirements for the content, form, and sources of information in certification authority disclosure records, the updating and timeliness of the information, and other practices and policies relating to certification authority disclosure records;

(f) To specify the form of and information required in certification practice statements, as well as requirements regarding the publication of certification practice statements;

(g) To specify the procedure and manner in which a certificate may be suspended or revoked, as consistent with this chapter;

(h) To specify the procedure and manner by which the laws of other jurisdictions may be recognized, in order to further uniform rules regarding the authentication and reliability of electronic messages; and

(i) Otherwise to give effect to and implement this chapter.

(3) The secretary may act as a certification authority, and the certificates issued by the secretary shall be treated as having been issued by a licensed certification authority. [1999 c 287 § 4; 1997 c 27 § 1; 1996 c 250 § 104.]

Additional notes found at www.leg.wa.gov

19.34.040 Secretary—Fees—Disposition. The secretary may adopt rules establishing reasonable fees for all services rendered by the secretary under this chapter, in amounts that are reasonably calculated to be sufficient to compensate for the costs of all services under this chapter, but that are not estimated to exceed those costs in the aggregate. All fees recovered by the secretary must be deposited in the state general fund. [1997 c 27 § 2; 1996 c 250 § 105.]

Additional notes found at www.leg.wa.gov

19.34.100 Certification authorities—Licensure—Qualifications—Revocation and suspension. (1) To obtain or retain a license, a certification authority must:

(a) Provide proof of identity to the secretary;

(b) Employ only certified operative personnel in appropriate positions;

(c) File with the secretary an appropriate, suitable guaranty, unless the certification authority is a city or county that is self-insured or the consolidated technology services agency;

(d) Use a trustworthy system;

(e) Maintain an office in this state or have established a registered agent for service of process in this state; and

(f) Comply with all further licensing and practice requirements established by rule by the secretary.

(2) The secretary may by rule create license classifications according to specified limitations, and the secretary may issue licenses restricted according to the limits of each classification.

(3) The secretary may impose license restrictions specific to the practices of an individual certification authority.

The secretary shall set forth in writing and maintain as part of the certification authority's license application file the basis for such license restrictions.

(4) The secretary may revoke or suspend a certification authority's license, in accordance with the administrative procedure act, chapter 34.05 RCW, for failure to comply with this chapter or for failure to remain qualified under subsection (1) of this section. The secretary may order the summary suspension of a license pending proceedings for revocation or other action, which must be promptly instituted and determined, if the secretary includes within a written order a finding that the certification authority has either:

(a) Utilized its license in the commission of a violation of a state or federal criminal statute or of chapter 19.86 RCW; or

(b) Engaged in conduct giving rise to a serious risk of loss to public or private parties if the license is not immediately suspended.

(5) The secretary may recognize by rule the licensing or authorization of certification authorities by other governmental entities, in whole or in part, provided that those licensing or authorization requirements are substantially similar to those of this state. If licensing by another government is so recognized:

(a) RCW 19.34.300 through 19.34.350 apply to certificates issued by the certification authorities licensed or authorized by that government in the same manner as it applies to licensed certification authorities of this state; and

(b) The liability limits of RCW 19.34.280 apply to the certification authorities licensed or authorized by that government in the same manner as they apply to licensed certification authorities of this state.

(6) A certification authority that has not obtained a license is not subject to the provisions of this chapter, except as specifically provided. [2015 3rd sp.s. c 1 § 404; 2015 c 225 § 21; 1999 c 287 § 5; 1998 c 33 § 1; 1997 c 27 § 3; 1996 c 250 § 201.]

Effective date—2015 3rd sp.s. c 1 §§ 401-405, 409, 411, and 412: See note following RCW 2.36.057.

Additional notes found at www.leg.wa.gov

19.34.101 Expiration of licenses—Renewal—Rules.

Licenses issued under this chapter expire one year after issuance, except that the secretary may provide by rule for a longer duration. The secretary shall provide, by rule, for a system of license renewal, which may include requirements for continuing education. [1997 c 27 § 4.]

Additional notes found at www.leg.wa.gov

19.34.110 Compliance audits. (1) A licensed certification authority shall obtain a compliance audit at such times and in such manner as directed by rule of the secretary. If the certification authority is also a recognized repository, the audit must include the repository.

(2) The certification authority shall file a copy of the audit report with the secretary. The secretary may provide by rule for filing of the report in an electronic format and may publish the report in the certification authority disclosure record it maintains for the certification authority. [1999 c 287 § 6; 1997 c 27 § 5; 1996 c 250 § 202.]

Additional notes found at www.leg.wa.gov

(2018 Ed.)

19.34.111 Qualifications of auditor signing report of opinion—Compliance audits under state auditor's authority. (1) An auditor signing a report of opinion as to a compliance audit required by RCW 19.34.110 must:

(a) Be a certified public accountant, licensed under chapter 18.04 RCW or equivalent licensing statute of another jurisdiction; and

(b) Meet such other qualifications as the secretary may establish by rule.

(2) The compliance audits of state agencies and local governments who are licensed certification authorities, and the secretary, must be performed under the authority of the state auditor. The state auditor may contract with private entities as needed to comply with this chapter. [1999 c 287 § 7; 1997 c 27 § 6.]

Additional notes found at www.leg.wa.gov

19.34.120 Licensed certification authorities—Enforcement—Suspension or revocation—Penalties—Rules—Costs—Procedure—Injunctions. (1) The secretary may investigate the activities of a licensed certification authority material to its compliance with this chapter and issue orders to a certification authority to further its investigation and secure compliance with this chapter.

(2) The secretary may suspend or revoke the license of a certification authority for its failure to comply with an order of the secretary.

(3) The secretary may by order impose and collect a civil penalty against a licensed certification authority for a violation of this chapter. The penalty shall not exceed ten thousand dollars per incident, or ninety percent of the recommended reliance limit of a material certificate, whichever is less. In case of a violation continuing for more than one day, each day is considered a separate incident. The secretary may adopt rules setting forth the standards governing the exercise of the secretary's discretion as to penalty amounts. In the case of a state agency authorized by law to be a licensed certification authority, the sole penalty imposed under this subsection shall consist of specific findings of noncompliance and an order requiring compliance with this chapter and the rules of the secretary. Any penalty imposed under this chapter and chapter 34.05 RCW shall be enforceable in any court of competent jurisdiction.

(4) The secretary may order a certification authority, which it has found to be in violation of this chapter, to pay the costs incurred by the secretary in prosecuting and adjudicating proceedings relative to the order, and enforcing it.

(5) The secretary must exercise authority under this section in accordance with the administrative procedure act, chapter 34.05 RCW, and a licensed certification authority may obtain judicial review of the secretary's actions as prescribed by chapter 34.05 RCW. The secretary may also seek injunctive relief to compel compliance with an order. [1999 c 287 § 8; 1997 c 27 § 7; 1996 c 250 § 203.]

Additional notes found at www.leg.wa.gov

19.34.130 Certification authorities—Prohibited activities—Statement by secretary advising of certification authorities creating prohibited risks—Protest—Hearing—Disposition—Notice—Procedure. (1) No certification authority, whether licensed or not, may conduct its

business in a manner that creates an unreasonable risk of loss to subscribers of the certification authority, to persons relying on certificates issued by the certification authority, or to a repository.

(2) The secretary may publish brief statements advising subscribers, persons relying on digital signatures, or other repositories about activities of a certification authority, whether licensed or not, that create a risk prohibited by subsection (1) of this section. The certification authority named in a statement as creating or causing such a risk may protest the publication of the statement by filing a written defense of ten thousand bytes or less. Upon receipt of such a protest, the secretary must publish the protest along with the secretary's statement, and must promptly give the protesting certification authority notice and an opportunity to be heard. Following the hearing, the secretary must rescind the advisory statement if its publication was unwarranted under this section, cancel it if its publication is no longer warranted, continue or amend it if it remains warranted, or take further legal action to eliminate or reduce a risk prohibited by subsection (1) of this section. The secretary must publish its decision in the repository it provides.

(3) In the manner provided by the administrative procedure act, chapter 34.05 RCW, the secretary may issue orders and obtain injunctions or other civil relief to prevent or restrain a certification authority from violating this section, regardless of whether the certification authority is licensed. This section does not create a right of action in a person other than the secretary. [1999 c 287 § 9; 1996 c 250 § 204.]

Additional notes found at www.leg.wa.gov

19.34.200 Licensed certification authorities—Requirements. (1) A licensed certification authority shall use only a trustworthy system to issue, suspend, or revoke certificates. A licensed certification authority shall use a recognized repository to publish or give notice of the issuance, suspension, or revocation of a certificate.

(2) A licensed certification authority shall publish a certification practice statement in accordance with the rules established by the secretary. The secretary shall publish the certification practice statements of licensed certification authorities submitted as part of the licensing process in a manner similar to the publication of the certification authority disclosure record.

(3) A licensed certification authority shall knowingly employ as operative personnel only persons who have not been convicted within the past seven years of a felony and have never been convicted of a crime involving fraud, false statement, or deception. For purposes of this subsection, a certification authority knowingly employs such a person if the certification authority knew of a conviction, or should have known based on information required by rule of the secretary. Operative personnel employed by a licensed certification authority must also be persons who have demonstrated knowledge and proficiency in following the requirements of this chapter. The secretary may provide by rule for the certification of operative personnel, and provide by rule for the manner in which criminal background information is provided as part of the certification process, as well as the manner in which knowledge and proficiency in following the

requirements of this chapter may be demonstrated. [1999 c 287 § 10; 1997 c 27 § 8; 1996 c 250 § 301.]

Additional notes found at www.leg.wa.gov

19.34.210 Certificate—Issuance—Confirmation of information—Confirmation of prospective subscriber—Standards, statements, plans, requirements more rigorous than chapter—Revocation, suspension—Investigation—Notice—Procedure. (1) A licensed certification authority may issue a certificate to a subscriber only after all of the following conditions are satisfied:

(a) The certification authority has received a request for issuance signed by the prospective subscriber; and

(b) The certification authority has confirmed that:

(i) The prospective subscriber is the person to be listed in the certificate to be issued;

(ii) If the prospective subscriber is acting through one or more agents, the subscriber duly authorized the agent or agents to have custody of the subscriber's private key and to request issuance of a certificate listing the corresponding public key;

(iii) The information in the certificate to be issued is accurate;

(iv) The prospective subscriber rightfully holds the private key corresponding to the public key to be listed in the certificate;

(v) The prospective subscriber holds a private key capable of creating a digital signature;

(vi) The public key to be listed in the certificate can be used to verify a digital signature affixed by the private key held by the prospective subscriber; and

(vii) The certificate provides information sufficient to locate or identify one or more repositories in which notification of the revocation or suspension of the certificate will be listed if the certificate is suspended or revoked.

(c) The requirements of this subsection may not be waived or disclaimed by either the licensed certification authority, the subscriber, or both.

(2) In confirming that the prospective subscriber is the person to be listed in the certificate to be issued, a licensed certification authority shall make a reasonable inquiry into the subscriber's identity in light of:

(a) Any statements made by the certification authority regarding the reliability of the certificate;

(b) The reliance limit of the certificate;

(c) Any recommended uses or applications for the certificate; and

(d) Whether the certificate is a transactional certificate or not.

(3) A certification authority shall be presumed to have confirmed that the prospective subscriber is the person to be listed in a certificate where:

(a) The subscriber appears before the certification authority and presents identification documents consisting of at least one of the following:

(i) A current identification document issued by or under the authority of the United States, or such similar identification document issued under the authority of another country;

(ii) A current driver's license issued by a state of the United States; or

(iii) A current personal identification card issued by a state of the United States; and

(b) Operative personnel certified according to law or a notary has reviewed and accepted the identification information of the subscriber.

(4) The certification authority may establish policies regarding the publication of certificates in its certification practice statement, which must be adhered to unless an agreement between the certification authority and the subscriber provides otherwise. If the certification authority does not establish such a policy, the certification authority must publish a signed copy of the certificate in a recognized repository.

(5) Nothing in this section precludes a licensed certification authority from conforming to standards, certification practice statements, security plans, or contractual requirements more rigorous than, but nevertheless consistent with, this chapter.

(6) After issuing a certificate, a licensed certification authority must revoke it immediately upon confirming that it was not issued as required by this section. A licensed certification authority may also suspend a certificate that it has issued for a period not exceeding five business days as needed for an investigation to confirm grounds for revocation under this subsection. The certification authority must give notice to the subscriber as soon as practicable after a decision to revoke or suspend under this subsection.

(7) The secretary may order the licensed certification authority to suspend or revoke a certificate that the certification authority issued, if, after giving any required notice and opportunity for the certification authority and subscriber to be heard in accordance with the administrative procedure act, chapter 34.05 RCW, the secretary determines that:

(a) The certificate was issued without substantial compliance with this section; and

(b) The noncompliance poses a significant risk to persons relying on the certificate.

Upon determining that an emergency requires an immediate remedy, and in accordance with the administrative procedure act, chapter 34.05 RCW, the secretary may issue an order suspending a certificate for a period not to exceed five business days. [1999 c 287 § 11; 1997 c 27 § 9; 1996 c 250 § 302.]

Additional notes found at www.leg.wa.gov

19.34.220 Licensed certification authorities—Warranties, obligations upon issuance of certificate—Notice.

(1) By issuing a certificate, a licensed certification authority warrants to the subscriber named in the certificate that:

(a) The certificate contains no information known to the certification authority to be false;

(b) The certificate satisfies all material requirements of this chapter; and

(c) The certification authority has not exceeded any limits of its license in issuing the certificate.

The certification authority may not disclaim or limit the warranties of this subsection.

(2) Unless the subscriber and certification authority otherwise agree, a certification authority, by issuing a certificate, promises to the subscriber:

(a) To act promptly to suspend or revoke a certificate in accordance with RCW 19.34.250 or 19.34.260; and

(b) To notify the subscriber within a reasonable time of any facts known to the certification authority that significantly affect the validity or reliability of the certificate once it is issued.

(3) By issuing a certificate, a licensed certification authority certifies to all who reasonably rely on the information contained in the certificate, or on a digital signature verifiable by the public key listed in the certificate, that:

(a) The information in the certificate and listed as confirmed by the certification authority is accurate;

(b) All information foreseeably material to the reliability of the certificate is stated or incorporated by reference within the certificate;

(c) The subscriber has accepted the certificate; and

(d) The licensed certification authority has complied with all applicable laws of this state governing issuance of the certificate.

(4) By publishing a certificate, a licensed certification authority certifies to the repository in which the certificate is published and to all who reasonably rely on the information contained in the certificate that the certification authority has issued the certificate to the subscriber. [1997 c 27 § 32; 1996 c 250 § 303.]

Additional notes found at www.leg.wa.gov

19.34.230 Subscribers—Representations and duties upon acceptance of certificate.

(1) By accepting a certificate issued by a licensed certification authority, the subscriber listed in the certificate certifies to all who reasonably rely on the information contained in the certificate that:

(a) The subscriber rightfully holds the private key corresponding to the public key listed in the certificate;

(b) All representations made by the subscriber to the certification authority and material to the information listed in the certificate are true; and

(c) All material representations made by the subscriber to a certification authority or made in the certificate and not confirmed by the certification authority in issuing the certificate are true.

(2) By requesting on behalf of a principal the issuance of a certificate naming the principal as subscriber, the requesting person certifies in that person's own right to all who reasonably rely on the information contained in the certificate that the requesting person:

(a) Holds all authority legally required to apply for issuance of a certificate naming the principal as subscriber; and

(b) Has authority to sign digitally on behalf of the principal, and, if that authority is limited in any way, adequate safeguards exist to prevent a digital signature exceeding the bounds of the person's authority.

(3) No person may disclaim or contractually limit the application of this section, nor obtain indemnity for its effects, if the disclaimer, limitation, or indemnity restricts liability for misrepresentation as against persons reasonably relying on the certificate.

(4) By accepting a certificate, a subscriber undertakes to indemnify the issuing certification authority for loss or damage caused by issuance or publication of a certificate in reliance on:

(a) A false and material representation of fact by the subscriber; or

(b) The failure by the subscriber to disclose a material fact;

if the representation or failure to disclose was made either with intent to deceive the certification authority or a person relying on the certificate, or with negligence. If the certification authority issued the certificate at the request of one or more agents of the subscriber, the agent or agents personally undertake to indemnify the certification authority under this subsection, as if they were accepting subscribers in their own right. The indemnity provided in this section may not be disclaimed or contractually limited in scope. However, a contract may provide consistent, additional terms regarding the indemnification.

(5) In obtaining information of the subscriber material to issuance of a certificate, the certification authority may require the subscriber to certify the accuracy of relevant information under oath or affirmation of truthfulness and under penalty of perjury. [1996 c 250 § 304.]

19.34.231 City or county as certification authority. 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. [2015 c 72 § 9. Prior: 2011 1st sp.s. c 43 § 809; 2011 c 183 § 2; 1999 c 287 § 12; 1997 c 27 § 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

19.34.240 Private key—Control—Public disclosure exemption. (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.

Additional notes found at www.leg.wa.gov

19.34.250 Suspension of certificate—Evidence—Investigation—Notice—Termination—Limitation or preclusion by contract—Misrepresentation—Penalty—Contracts for regional enforcement by agencies—Rules. (1) Unless the certification authority provides otherwise in the certificate or its certification practice statement, the licensed certification authority that issued a certificate that is not a transactional certificate must suspend the certificate for a period not to exceed five business days:

(a) Upon request by a person whom the certification authority reasonably believes to be: (i) The subscriber named

in the certificate; (ii) a person duly authorized to act for that subscriber; or (iii) a person acting on behalf of the unavailable subscriber; or

(b) By order of the secretary under RCW 19.34.210(7).

The certification authority need not confirm the identity or agency of the person requesting suspension. The certification authority may require the person requesting suspension to provide evidence, including a statement under oath or affirmation, regarding the requestor's identity, authorization, or the unavailability of the subscriber. Law enforcement agencies may investigate suspensions for possible wrongdoing by persons requesting suspension.

(2) Unless the certification authority provides otherwise in the certificate or its certification practice statement, the secretary may suspend a certificate issued by a licensed certification authority for a period not to exceed five business days, if:

(a) A person identifying himself or herself as the subscriber named in the certificate, a person authorized to act for that subscriber, or a person acting on behalf of that unavailable subscriber requests suspension; and

(b) The requester represents that the certification authority that issued the certificate is unavailable.

The secretary may require the person requesting suspension to provide evidence, including a statement under oath or affirmation, regarding his or her identity, authorization, or the unavailability of the issuing certification authority, and may decline to suspend the certificate in its discretion. Law enforcement agencies may investigate suspensions by the secretary for possible wrongdoing by persons requesting suspension.

(3) Immediately upon suspension of a certificate by a licensed certification authority, the licensed certification authority must give notice of the suspension according to the specification in the certificate. If one or more repositories are specified, then the licensed certification authority must publish a signed notice of the suspension in all the repositories. If a repository no longer exists or refuses to accept publication, or if no repository is recognized under RCW 19.34.400, the licensed certification authority must also publish the notice in a recognized repository. If a certificate is suspended by the secretary, the secretary must give notice as required in this subsection for a licensed certification authority, provided that the person requesting suspension pays in advance any fee required by a repository for publication of the notice of suspension.

(4) A certification authority must terminate a suspension initiated by request only:

(a) If the subscriber named in the suspended certificate requests termination of the suspension, the certification authority has confirmed that the person requesting suspension is the subscriber or an agent of the subscriber authorized to terminate the suspension; or

(b) When the certification authority discovers and confirms that the request for the suspension was made without authorization by the subscriber. However, this subsection (4)(b) does not require the certification authority to confirm a request for suspension.

(5) The contract between a subscriber and a licensed certification authority may limit or preclude requested suspension by the certification authority, or may provide otherwise

for termination of a requested suspension. However, if the contract limits or precludes suspension by the secretary when the issuing certification authority is unavailable, the limitation or preclusion is effective only if notice of it is published in the certificate.

(6) No person may knowingly or intentionally misrepresent to a certification authority his or her identity or authorization in requesting suspension of a certificate. Violation of this subsection is a gross misdemeanor.

(7) The secretary may authorize other state or local governmental agencies to perform any of the functions of the secretary under this section upon a regional basis. The authorization must be formalized by an agreement under chapter 39.34 RCW. The secretary may provide by rule the terms and conditions of the regional services.

(8) A suspension under this section must be completed within twenty-four hours of receipt of all information required in this section. [2000 c 171 § 51; 1999 c 287 § 13; 1997 c 27 § 12; 1996 c 250 § 306.]

Additional notes found at www.leg.wa.gov

19.34.260 Revocation of certificate—Confirmation—Notice—Release from security duty—Discharge of warranties. (1) A licensed certification authority must revoke a certificate that it issued but which is not a transactional certificate, after:

(a) Receiving a request for revocation by the subscriber named in the certificate; and

(b) Confirming that the person requesting revocation is the subscriber, or is an agent of the subscriber with authority to request the revocation.

(2) A licensed certification authority must confirm a request for revocation and revoke a certificate within one business day after receiving both a subscriber's written request and evidence reasonably sufficient to confirm the identity and any agency of the person requesting the revocation.

(3) A licensed certification authority must revoke a certificate that it issued:

(a) Upon receiving a certified copy of the subscriber's death certificate, or upon confirming by other evidence that the subscriber is dead; or

(b) Upon presentation of documents effecting a dissolution of the subscriber, or upon confirming by other evidence that the subscriber has been dissolved or has ceased to exist, except that if the subscriber is dissolved and is reinstated or restored before revocation is completed, the certification authority is not required to revoke the certificate.

(4) A licensed certification authority may revoke one or more certificates that it issued if the certificates are or become unreliable, regardless of whether the subscriber consents to the revocation and notwithstanding a provision to the contrary in a contract between the subscriber and certification authority.

(5) Immediately upon revocation of a certificate by a licensed certification authority, the licensed certification authority must give notice of the revocation according to the specification in the certificate. If one or more repositories are specified, then the licensed certification authority must publish a signed notice of the revocation in all repositories. If a repository no longer exists or refuses to accept publication, or

(2018 Ed.)

if no repository is recognized under RCW 19.34.400, then the licensed certification authority must also publish the notice in a recognized repository.

(6) A subscriber ceases to certify, as provided in RCW 19.34.230, and has no further duty to keep the private key secure, as required by RCW 19.34.240, in relation to the certificate whose revocation the subscriber has requested, beginning at the earlier of either:

(a) When notice of the revocation is published as required in subsection (5) of this section; or

(b) One business day after the subscriber requests revocation in writing, supplies to the issuing certification authority information reasonably sufficient to confirm the request, and pays any contractually required fee.

(7) Upon notification as required by subsection (5) of this section, a licensed certification authority is discharged of its warranties based on issuance of the revoked certificate, as to transactions occurring after the notification, and ceases to certify as provided in RCW 19.34.220 (2) and (3) in relation to the revoked certificate. [1997 c 27 § 13; 1996 c 250 § 307.]

Additional notes found at www.leg.wa.gov

19.34.270 Certificate—Expiration. (1) A certificate must indicate the date on which it expires.

(2) When a certificate expires, the subscriber and certification authority cease to certify as provided in this chapter and the certification authority is discharged of its duties based on issuance, in relation to the expired certificate. [1996 c 250 § 308.]

19.34.280 Recommended reliance limit—Liability—Damages. (1) By clearly specifying a recommended reliance limit in a certificate and in the certification practice statement, the issuing certification authority recommends that persons rely on the certificate only to the extent that the total amount at risk does not exceed the recommended reliance limit.

(2) Subject to subsection (3) of this section, unless a licensed certification authority waives application of this subsection, a licensed certification authority is:

(a) Not liable for a loss caused by reliance on a false or forged digital signature of a subscriber, if, with respect to the false or forged digital signature, the certification authority complied with all material requirements of this chapter;

(b) Not liable in excess of the amount specified in the certificate as its recommended reliance limit for either:

(i) A loss caused by reliance on a misrepresentation in the certificate of a fact that the licensed certification authority is required to confirm; or

(ii) Failure to comply with RCW 19.34.210 in issuing the certificate;

(c) Not liable for:

(i) Punitive or exemplary damages. Nothing in this chapter may be interpreted to permit punitive or exemplary damages that would not otherwise be permitted by the law of this state; or

(ii) Damages for pain or suffering.

(3) Nothing in subsection (2)(a) of this section relieves a licensed certification authority of its liability for breach of any of the warranties or certifications it gives under RCW

19.34.220 or for its lack of good faith, which warranties and obligation of good faith may not be disclaimed. However, the standards by which the performance of a licensed certification authority's obligation of good faith is to be measured may be determined by agreement or notification complying with subsection (4) of this section if the standards are not manifestly unreasonable. The liability of a licensed certification authority under this subsection is subject to the limitations in subsection (2)(b) and (c) of this section unless the limits are waived by the licensed certification authority.

(4) Consequential or incidental damages may be liquidated, or may otherwise be limited, altered, or excluded unless the limitation, alteration, or exclusion is unconscionable. A licensed certification authority may liquidate, limit, alter, or exclude consequential or incidental damages as provided in this subsection by agreement or by notifying any person who will rely on a certificate of the liquidation, limitation, alteration, or exclusion before the person relies on the certificate. [1999 c 287 § 14; 1997 c 27 § 14; 1996 c 250 § 309.]

Additional notes found at www.leg.wa.gov

19.34.290 Collection based on suitable guaranty—Proceeds—Attorneys' fees—Costs—Notice—Recovery of qualified right of payment. (1)(a) If the suitable guaranty is a surety bond, a person may recover from the surety the full amount of a qualified right to payment against the principal named in the bond, or, if there is more than one such qualified right to payment during the term of the bond, a ratable share, up to a maximum total liability of the surety equal to the amount of the bond.

(b) If the suitable guaranty is a letter of credit, a person may recover from the issuing financial institution only in accordance with the terms of the letter of credit.

Claimants may recover successively on the same suitable guaranty, provided that the total liability on the suitable guaranty to all persons making qualified rights of payment during its term must not exceed the amount of the suitable guaranty.

(2) In addition to recovering the amount of a qualified right to payment, a claimant may recover from the proceeds of the guaranty, until depleted, the attorneys' fees, reasonable in amount, and court costs incurred by the claimant in collecting the claim, provided that the total liability on the suitable guaranty to all persons making qualified rights of payment or recovering attorneys' fees during its term must not exceed the amount of the suitable guaranty.

(3) To recover a qualified right to payment against a surety or issuer of a suitable guaranty, the claimant must:

(a) File written notice of the claim with the secretary stating the name and address of the claimant, the amount claimed, and the grounds for the qualified right to payment, and any other information required by rule by the secretary; and

(b) Append to the notice a certified copy of the judgment on which the qualified right to payment is based.

Recovery of a qualified right to payment from the proceeds of the suitable guaranty is barred unless the claimant substantially complies with this subsection (3).

(4) Recovery of a qualified right to payment from the proceeds of a suitable guaranty are forever barred unless

notice of the claim is filed as required in subsection (3)(a) of this section within three years after the occurrence of the violation of this chapter that is the basis for the claim. Notice under this subsection need not include the requirement imposed by subsection (3)(b) of this section. [1996 c 250 § 310.]

19.34.291 Discontinuation of certification authority services—Duties of authority—Continuation of guaranty—Process to maintain and update records—Rules—Costs. (1) A licensed certification authority that discontinues providing certification authority services shall:

(a) Notify all subscribers listed in valid certificates issued by the certification authority, before discontinuing services;

(b) Minimize, to the extent commercially reasonable, disruption to the subscribers of valid certificates and relying parties; and

(c) Make reasonable arrangements for preservation of the certification authority's records.

(2) A suitable guaranty of a licensed certification authority may not be released until the expiration of the term specified in the guaranty.

(3) The secretary may provide by rule for a process by which the secretary may, in any combination, receive, administer, or disburse the records of a licensed certification authority or a recognized repository that discontinues providing services, for the purpose of maintaining access to the records and revoking any previously issued valid certificates in a manner that minimizes disruption to subscribers and relying parties. The secretary's rules may include provisions by which the secretary may recover costs incurred in doing so. [1997 c 27 § 15.]

Additional notes found at www.leg.wa.gov

19.34.300 Satisfaction of signature requirements. (1) Where a rule of law requires a signature, or provides for certain consequences in the absence of a signature, that rule is satisfied by a digital signature, if:

(a) The digital signature is verified by reference to the public key listed in a valid certificate issued by a licensed certification authority;

(b) The digital signature was affixed by the signer with the intention of signing the message; and

(c) The recipient has no knowledge or notice that the signer either:

(i) Breached a duty as a subscriber; or

(ii) Does not rightfully hold the private key used to affix the digital signature.

(2) Nothing in this chapter:

(a) Precludes a mark from being valid as a signature under other applicable law;

(b) May be construed to obligate a recipient or any other person asked to rely on a digital signature to accept a digital signature or to respond to an electronic message containing a digital signature except as provided in RCW 19.34.321; or

(c) Precludes the recipient of a digital signature or an electronic message containing a digital signature from establishing the conditions under which the recipient will accept a digital signature. [1997 c 27 § 16; 1996 c 250 § 401.]

Additional notes found at www.leg.wa.gov

19.34.305 Acceptance of digital signature in reasonable manner. Acceptance of a digital signature may be made in any manner reasonable in the circumstances. [1997 c 27 § 31.]

Additional notes found at www.leg.wa.gov

19.34.310 Unreliable digital signatures—Risk. Unless otherwise provided by law or contract, the recipient of a digital signature assumes the risk that a digital signature is forged, if reliance on the digital signature is not reasonable under the circumstances. [1997 c 27 § 17; 1996 c 250 § 402.]

Additional notes found at www.leg.wa.gov

19.34.311 Reasonableness of reliance—Factors. The following factors, among others, are significant in evaluating the reasonableness of a recipient's reliance upon a certificate and upon the digital signatures verifiable with reference to the public key listed in the certificate:

(1) Facts which the relying party knows or of which the relying party has notice, including all facts listed in the certificate or incorporated in it by reference;

(2) The value or importance of the digitally signed message, if known;

(3) The course of dealing between the relying person and subscriber and the available indicia of reliability or unreliability apart from the digital signature; and

(4) Usage of trade, particularly trade conducted by trustworthy systems or other computer-based means. [1997 c 27 § 18.]

Additional notes found at www.leg.wa.gov

19.34.320 Digital message as written on paper—Requirements—Other requirements not affected—Exception from uniform commercial code. A message is as valid, enforceable, and effective as if it had been written on paper, if it:

(1) Bears in its entirety a digital signature; and

(2) That digital signature is verified by the public key listed in a certificate that:

(a) Was issued by a licensed certification authority; and

(b) Was valid at the time the digital signature was created.

Nothing in this chapter shall be construed to eliminate, modify, or condition any other requirements for a contract to be valid, enforceable, and effective. No digital message shall be deemed to be an instrument under Title 62A RCW unless all parties to the transaction agree, including financial institutions affected. [1997 c 27 § 19; 1996 c 250 § 403.]

Additional notes found at www.leg.wa.gov

19.34.321 Acceptance of certified court documents in electronic form—Requirements—Rules of court on use in proceedings. (1) A person may not refuse to honor, accept, or act upon a court order, writ, or warrant upon the basis that it is electronic in form and signed with a digital signature, if the digital signature was certified by a licensed certification authority or otherwise issued under court rule. This section applies to a paper printout of a digitally signed document, if the printout reveals that the digital signature was electronically verified before the printout, and in the absence of a finding that the document has been altered.

(2018 Ed.)

(2) Nothing in this chapter shall be construed to limit the authority of the supreme court to adopt rules of pleading, practice, or procedure, or of the court of appeals or superior courts to adopt supplementary local rules, governing the use of electronic messages or documents, including rules governing the use of digital signatures, in judicial proceedings. [1997 c 27 § 20.]

Additional notes found at www.leg.wa.gov

19.34.330 Digital message deemed original. A digitally signed message shall be deemed to be an original of the message. [1999 c 287 § 15; 1996 c 250 § 404.]

Additional notes found at www.leg.wa.gov

19.34.340 Certificate as acknowledgment—Requirements—Exception—Responsibility of certification authority. (1) Unless otherwise provided by law or contract, if so provided in the certificate issued by a licensed certification authority, a digital signature verified by reference to the public key listed in a valid certificate issued by a licensed certification authority satisfies the requirements for an acknowledgment under RCW 42.45.010(1) and for acknowledgment of deeds and other real property conveyances under RCW 64.04.020 if words of an express acknowledgment appear with the digital signature regardless of whether the signer personally appeared before either the certification authority or some other person authorized to take acknowledgments of deeds, mortgages, or other conveyance instruments under RCW 64.08.010 when the digital signature was created, if that digital signature is:

(a) Verifiable by that certificate; and

(b) Affixed when that certificate was valid.

(2) If the digital signature is used as an acknowledgment, then the certification authority is responsible to the same extent as a notary up to the recommended reliance limit for failure to satisfy the requirements for an acknowledgment. The certification authority may not disclaim or limit, other than as provided in RCW 19.34.280, the effect of this section. [2017 c 281 § 38; 1997 c 27 § 21; 1996 c 250 § 405.]

Effective date—2017 c 281: See RCW 42.45.905.

Additional notes found at www.leg.wa.gov

19.34.350 Adjudicating disputes—Presumptions. In adjudicating a dispute involving a digital signature, it is rebuttably presumed that:

(1) A certificate digitally signed by a licensed certification authority and either published in a recognized repository, or made available by the issuing certification authority or by the subscriber listed in the certificate is issued by the certification authority that digitally signed it and is accepted by the subscriber listed in it.

(2) The information listed in a valid certificate and confirmed by a licensed certification authority issuing the certificate is accurate.

(3) If a digital signature is verified by the public key listed in a valid certificate issued by a licensed certification authority:

(a) That digital signature is the digital signature of the subscriber listed in that certificate;

(b) That digital signature was affixed by that subscriber with the intention of signing the message;

(c) The message associated with the digital signature has not been altered since the signature was affixed; and

(d) The recipient of that digital signature has no knowledge or notice that the signer:

(i) Breached a duty as a subscriber; or

(ii) Does not rightfully hold the private key used to affix the digital signature.

(4) A digital signature was created before it was time stamped by a disinterested person utilizing a trustworthy system. [1997 c 27 § 22; 1996 c 250 § 406.]

Additional notes found at www.leg.wa.gov

19.34.351 Alteration of chapter by agreement—Exceptions. The effect of this chapter may be varied by agreement, except:

(1) A person may not disclaim responsibility for lack of good faith, but parties may by agreement determine the standards by which the duty of good faith is to be measured if the standards are not manifestly unreasonable; and

(2) As otherwise provided in this chapter. [1997 c 27 § 34.]

Additional notes found at www.leg.wa.gov

19.34.360 Presumptions of validity/limitations on liability—Conformance with chapter. The presumptions of validity and reasonableness of conduct, and the limitations on liability in this chapter do not apply to electronic records or electronic signatures except for digital signatures created in conformance with all of the requirements of this chapter and rules adopted under this chapter. [1999 c 287 § 3.]

Additional notes found at www.leg.wa.gov

19.34.400 Recognition of repositories—Application—Discontinuance—Procedure. (1) The secretary must recognize one or more repositories, after finding that a repository to be recognized:

(a) Is a licensed certification authority;

(b) Includes, or will include, a database containing:

(i) Certificates published in the repository;

(ii) Notices of suspended or revoked certificates published by licensed certification authorities or other persons suspending or revoking certificates; and

(iii) Other information adopted by rule by the secretary;

(c) Operates by means of a trustworthy system, that may, under administrative rule of the secretary, include additional or different attributes than those applicable to a certification authority that does not operate as a recognized repository;

(d) Contains no significant amount of information that is known or likely to be untrue, inaccurate, or not reasonably reliable;

(e) Keeps a record of certificates that have been suspended or revoked, or that have expired, in accordance with requirements adopted by rule by the secretary; and

(f) Complies with other reasonable requirements adopted by rule by the secretary.

(2) A repository may apply to the secretary for recognition by filing a written request and providing evidence to the secretary sufficient for the secretary to find that the conditions for recognition are satisfied, in accordance with requirements adopted by rule by the secretary.

(3) A repository may discontinue its recognition by filing thirty days' written notice with the secretary, upon meeting any conditions for discontinuance adopted by rule by the secretary. In addition the secretary may discontinue recognition of a repository in accordance with the administrative procedure act, chapter 34.05 RCW, if the secretary concludes that the repository no longer satisfies the conditions for recognition listed in this section or in rules adopted by the secretary. [1999 c 287 § 16; 1997 c 27 § 23; 1996 c 250 § 501.]

Additional notes found at www.leg.wa.gov

19.34.410 Repositories—Liability—Exemptions—Liquidation, limitation, alteration, or exclusion of damages.

(1) Notwithstanding a disclaimer by the repository or a contract to the contrary between the repository, a certification authority, or a subscriber, a repository is liable for a loss incurred by a person reasonably relying on a digital signature verified by the public key listed in a certificate that has been suspended or revoked by the licensed certification authority that issued the certificate, if loss was incurred more than one business day after receipt by the repository of a request from the issuing licensed certification authority to publish notice of the suspension or revocation, and the repository had failed to publish the notice when the person relied on the digital signature.

(2) Unless waived, a recognized repository or the owner or operator of a recognized repository is:

(a) Not liable for failure to record publication of a suspension or revocation, unless the repository has received notice of publication and one business day has elapsed since the notice was received;

(b) Not liable under subsection (1) of this section in excess of the amount specified in the certificate as the recommended reliance limit;

(c) Not liable under subsection (1) of this section for:

(i) Punitive or exemplary damages; or

(ii) Damages for pain or suffering;

(d) Not liable for misrepresentation in a certificate published by a licensed certification authority;

(e) Not liable for accurately recording or reporting information that a licensed certification authority, or court clerk, or the secretary has published as required or permitted in this chapter, including information about suspension or revocation of a certificate;

(f) Not liable for reporting information about a certification authority, a certificate, or a subscriber, if the information is published as required or permitted in this chapter or a rule adopted by the secretary, or is published by order of the secretary in the performance of the licensing and regulatory duties of that office under this chapter.

(3) Consequential or incidental damages may be liquidated, or may otherwise be limited, altered, or excluded unless the limitation, alteration, or exclusion is unconscionable. A recognized repository may liquidate, limit, alter, or exclude damages as provided in this subsection by agreement, or by notifying any person who will rely on a digital signature verified by the public key listed in a suspended or revoked certificate of the liquidation, limitation, alteration, or exclusion before the person relies on the certificate. [1999 c 287 § 17; 1997 c 27 § 33; 1996 c 250 § 502.]

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 public 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.

19.34.500 Rule making. The secretary of state may adopt rules to implement this chapter beginning July 27, 1997, but the rules may not take effect until January 1, 1998. [1997 c 27 § 24; 1996 c 250 § 603.]

Additional notes found at www.leg.wa.gov

19.34.501 Chapter supersedes and preempts local actions. This chapter supersedes and preempts all local laws or ordinances regarding the same subject matter. [1997 c 27 § 25.]

Additional notes found at www.leg.wa.gov

19.34.502 Criminal prosecution not precluded—Remedies not exclusive—Injunctive relief availability. This chapter does not preclude criminal prosecution under other laws of this state, nor may any provision of this chapter be regarded as an exclusive remedy for a violation. Injunctive relief may not be denied to a party regarding conduct governed by this chapter on the basis that the conduct is also subject to potential criminal prosecution. [1997 c 27 § 26.]

Additional notes found at www.leg.wa.gov

19.34.503 Jurisdiction, venue, choice of laws. Issues regarding jurisdiction, venue, and choice of laws for all actions involving digital signatures must be determined according to the same principles as if all transactions had been performed through paper documents. [1997 c 27 § 27.]

Additional notes found at www.leg.wa.gov

19.34.900 Short title. This chapter shall be known and may be cited as the Washington electronic authentication act. [1996 c 250 § 101.]

19.34.901 Effective date—1996 c 250. (1) Sections 101 through 601, 604, and 605, chapter 250, Laws of 1996 take effect January 1, 1998.

(2018 Ed.)

(2) Sections 602 and 603, chapter 250, Laws of 1996 take effect July 27, 1997. [2000 c 171 § 52; 1997 c 27 § 28; 1996 c 250 § 602.]

Additional notes found at www.leg.wa.gov

**Chapter 19.36 RCW
CONTRACTS AND CREDIT AGREEMENTS
REQUIRING WRITINGS**

Sections

- 19.36.010 Contracts, etc., void unless in writing.
- 19.36.020 Deeds, etc., in trust for grantor void as to creditors.
- 19.36.100 "Credit agreement" defined.
- 19.36.110 Enforceability of credit agreements—Effect of oral agreements and partial performance.
- 19.36.120 Exempt agreements.
- 19.36.130 Notice required.
- 19.36.140 Notice—Form and contents.
- 19.36.900 Effective date—Application—1990 c 211.
- 19.36.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

Assignment for benefit of creditors: Chapter 7.08 RCW.

Contracts

by telegraph: RCW 5.52.010.

of minors: Chapters 26.28 and 26.30 RCW.

Conveyances of real property: Chapter 64.04 RCW.

Leases of real property: RCW 59.04.010.

Voidable transactions: Chapter 19.40 RCW.

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.]

19.36.020 Deeds, etc., in trust for grantor void as to creditors. That all deeds of gift, all conveyances, and all transfers or assignments, verbal or written, of goods, chattels or things in action, made in trust for the use of the person making the same, shall be void as against the existing or subsequent creditors of such person. For purposes of this section, a person shall not be treated as having made a disposition in trust for the use of that person by reason of a lapse of a power of withdrawal over the income or corpus of a trust created by another person. For this purpose, notification to the trustee of the trust of an intent not to exercise the power of withdrawal shall not be treated as a release of the power of withdrawal, but shall be treated as a lapse of the power. [2006 c 360 § 14; Code 1881 § 2324; RRS § 5824. Prior: 1863 p 412 § 1; 1860 p 298 § 1; 1854 p 403 § 1.]

Additional notes found at www.leg.wa.gov

19.36.100 "Credit agreement" defined. "Credit agreement" means an agreement, promise, or commitment to lend money, to otherwise extend credit, to forbear with respect to the repayment of any debt or the exercise of any remedy, to modify or amend the terms under which the creditor has lent money or otherwise extended credit, to release any guarantor or cosigner, or to make any other financial accommodation pertaining to a debt or other extension of credit. [2000 c 171 § 53; 1990 c 211 § 1.]

19.36.110 Enforceability of credit agreements—Effect of oral agreements and partial performance. A credit agreement is not enforceable against the creditor unless the agreement is in writing and signed by the creditor. The rights and obligations of the parties to a credit agreement shall be determined solely from the written agreement, and any prior or contemporaneous oral agreements between the parties are superseded by, merged into, and may not vary the credit agreement. Partial performance of a credit agreement does not remove the agreement from the operation of this section. [1990 c 211 § 3.]

19.36.120 Exempt agreements. RCW 19.36.100 through 19.36.140 and 19.36.900 shall not apply to: (1) A promise, agreement, undertaking, document, or commitment relating to a credit card or charge card; or (2) a loan of money or extension of credit to a natural person that is primarily for personal, family, or household purposes and not primarily for investment, business, agricultural, or commercial purposes. [1990 c 211 § 2.]

19.36.130 Notice required. If a notice complying with RCW 19.36.140, is not given simultaneously with or before a credit agreement is made, RCW 19.36.100 through 19.36.140 and 19.36.900 shall not apply to the credit agreement. Notice, once given to a debtor, shall be effective as to all subsequent credit agreements and effective against the debtor, and its guarantors, successors, and assigns. [1990 c 211 § 4.]

19.36.140 Notice—Form and contents. The creditor shall give notice to the other party on a separate document or incorporated into one or more of the documents relating to a credit agreement. The notice shall be in type that is bold face, capitalized, underlined, or otherwise set out from surrounding written materials so it is conspicuous. The notice shall state substantially the following:

Oral agreements or oral commitments to loan money, extend credit, or to forbear from enforcing repayment of a debt are not enforceable under Washington law.

[1990 c 211 § 5.]

19.36.900 Effective date—Application—1990 c 211. RCW 19.36.100 through 19.36.140 shall take effect July 1, 1990, and shall apply only to credit agreements entered into on or after July 1, 1990. [1990 c 211 § 6.]

[Title 19 RCW—page 110]

19.36.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, 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, 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. [2009 c 521 § 53.]

Chapter 19.40 RCW

UNIFORM VOIDABLE TRANSACTIONS ACT

(Formerly: Uniform fraudulent transfer act)

Sections

19.40.011	Definitions.
19.40.021	Insolvency.
19.40.031	Value.
19.40.041	Transfers voidable as to present and future creditors.
19.40.051	Transfers voidable as to present creditors.
19.40.061	When transfer is made or obligation is incurred.
19.40.071	Remedies of creditors.
19.40.081	Defenses, liability, and protection of transferee.
19.40.091	Extinguishment of claim for relief.
19.40.101	Governing law.
19.40.111	Application to series organization.
19.40.121	Relation to electronic signatures in global and national commerce act.
19.40.900	Short title.
19.40.902	Supplementary provisions.
19.40.903	Uniformity of application and construction.
19.40.904	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.
19.40.905	Effect on prior transfers and obligations—2017 c 57.

Assignment for benefit of creditors: Chapter 7.08 RCW.

Conveyances of property to qualify for public assistance: RCW 74.08.331 through 74.08.338.

Disposal of property to defraud creditors, etc.: RCW 9.45.080 through 9.45.100.

19.40.011 Definitions. As used in this chapter:

- (1) "Affiliate" means:
- (a) A person that directly or indirectly owns, controls, or holds with power to vote, twenty percent or more of the outstanding voting securities of the debtor, other than a person that holds the securities:
 - (i) As a fiduciary or agent without sole discretionary power to vote the securities; or
 - (ii) Solely to secure a debt, if the person has not in fact exercised the power to vote;
 - (b) A corporation twenty percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person that directly or indirectly owns, controls, or holds with power to vote, twenty percent or more of the outstanding voting securities of the debtor, other than a person that holds the securities:
 - (i) As a fiduciary or agent without sole discretionary power to vote the securities; or

(ii) Solely to secure a debt, if the person has not in fact exercised the power to vote;

(c) A person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or

(d) A person that operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

(2) "Asset" means property of a debtor, but the term does not include:

(a) Property to the extent it is encumbered by a valid lien; or

(b) Property to the extent it is generally exempt under nonbankruptcy law.

(3) "Claim," except as used in "claim for relief," means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(4) "Creditor" means a person that has a claim.

(5) "Debt" means liability on a claim.

(6) "Debtor" means a person that is liable on a claim.

(7) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(8) "Insider" includes:

(a) If the debtor is an individual:

(i) A relative of the debtor or of a general partner of the debtor;

(ii) A partnership in which the debtor is a general partner;

(iii) A general partner in a partnership described in (a)(ii) of this subsection; or

(iv) A corporation of which the debtor is a director, officer, or person in control;

(b) If the debtor is a corporation:

(i) A director of the debtor;

(ii) An officer of the debtor;

(iii) A person in control of the debtor;

(iv) A partnership in which the debtor is a general partner;

(v) A general partner in a partnership described in (b)(iv) of this subsection; or

(vi) A relative of a general partner, director, officer, or person in control of the debtor;

(c) If the debtor is a partnership:

(i) A general partner in the debtor;

(ii) A relative of a general partner in, or a general partner of, or a person in control of the debtor;

(iii) Another partnership in which the debtor is a general partner;

(iv) A general partner in a partnership described in (c)(iii) of this subsection; or

(v) A person in control of the debtor;

(d) An affiliate, or an insider of an affiliate as if the affiliate were the debtor; and

(e) A managing agent of the debtor.

(9) "Lien" means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a

(2018 Ed.)

judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.

(10) "Organization" means a person other than an individual.

(11) "Person" means an individual, estate, partnership, association, trust, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal or commercial entity.

(12) "Property" means anything that may be the subject of ownership.

(13) "Reasonably equivalent value" includes, without limitation, a transfer or an obligation that is within the range of values for which the transferor would have sold the property or services to, or purchased the property or services from, the transferee in an arm's length transaction at market rates.

(14) "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.

(15) "Relative" means an individual related by consanguinity within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.

(16) "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.

(17) "Transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, license, and creation of a lien or other encumbrance.

(18) "Valid lien" means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings. [2017 c 57 § 1; 1987 c 444 § 1.]

Additional notes found at www.leg.wa.gov

19.40.021 Insolvency. (1) A debtor is insolvent if, at a fair valuation, the sum of the debtor's debts is greater than the sum of the debtor's assets.

(2) A debtor that is generally not paying the debtor's debts as they become due other than as a result of a bona fide dispute is presumed to be insolvent. The presumption imposes on the party against which the presumption is directed the burden of proving that the nonexistence of insolvency is more probable than its existence.

(3) Assets under this section do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under this chapter.

(4) Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset. [2017 c 57 § 2; 1987 c 444 § 2.]

Additional notes found at www.leg.wa.gov

19.40.031 Value. (1) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, prop-

erty is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

(2) For the purposes of RCW 19.40.041(1)(b) and 19.40.051, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement.

(3) A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous. [2017 c 57 § 3; 1987 c 444 § 3.]

Additional notes found at www.leg.wa.gov

19.40.041 Transfers voidable as to present and future creditors. (1) A transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(a) With actual intent to hinder, delay, or defraud any creditor of the debtor; or

(b) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

(i) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(ii) Intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

(2) In determining actual intent under subsection (1)(a) of this section, consideration may be given, among other factors, to whether:

(a) The transfer or obligation was to an insider;

(b) The debtor retained possession or control of the property transferred after the transfer;

(c) The transfer or obligation was disclosed or concealed;

(d) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

(e) The transfer was of substantially all the debtor's assets;

(f) The debtor absconded;

(g) The debtor removed or concealed assets;

(h) The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

(i) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

(j) The transfer occurred shortly before or shortly after a substantial debt was incurred; and

(k) The debtor transferred the essential assets of the business to a lienor that transferred the assets to an insider of the debtor.

(3) A creditor making a claim for relief under subsection (1) of this section has the burden of proving the elements of

the claim for relief by a preponderance of the evidence. [2017 c 57 § 4; 1987 c 444 § 4.]

Additional notes found at www.leg.wa.gov

19.40.051 Transfers voidable as to present creditors.

(1) A transfer made or obligation incurred by a debtor is voidable as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

(2) A transfer made by a debtor is voidable as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

(3) Subject to RCW 19.40.021(2), a creditor making a claim for relief under subsection (1) or (2) of this section has the burden of proving the elements of the claim for relief by a preponderance of the evidence. [2017 c 57 § 5; 1987 c 444 § 5.]

Additional notes found at www.leg.wa.gov

19.40.061 When transfer is made or obligation is incurred. For the purposes of this chapter:

(1) A transfer is made:

(a) With respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good-faith purchaser of the asset from the debtor against which applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and

(b) With respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under this chapter that is superior to the interest of the transferee;

(2) If applicable law permits the transfer to be perfected as provided in subsection (1) of this section and the transfer is not so perfected before the commencement of an action for relief under this chapter, the transfer is deemed made immediately before the commencement of the action;

(3) If applicable law does not permit the transfer to be perfected as provided in subsection (1) of this section, the transfer is made when it becomes effective between the debtor and the transferee;

(4) A transfer is not made until the debtor has acquired rights in the asset transferred; and

(5) An obligation is incurred:

(a) If oral, when it becomes effective between the parties; or

(b) If evidenced by a record, when the record signed by the obligor is delivered to or for the benefit of the obligee. [2017 c 57 § 6; 1987 c 444 § 6.]

Additional notes found at www.leg.wa.gov

19.40.071 Remedies of creditors. (1) In an action for relief against a transfer or obligation under this chapter, a

creditor, subject to the limitations in RCW 19.40.081, may obtain:

(a) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;

(b) An attachment or other provisional remedy against the asset transferred or other property of the transferee if available under applicable law; and

(c) Subject to applicable principles of equity and in accordance with applicable rules of civil procedure:

(i) An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

(ii) Appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or

(iii) Any other relief the circumstances may require.

(2) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds. [2017 c 57 § 7; 2000 c 171 § 54; 1987 c 444 § 7.]

Additional notes found at www.leg.wa.gov

19.40.081 Defenses, liability, and protection of transferee. (1) A transfer or obligation is not voidable under RCW 19.40.041(1) or 19.40.051(1) against a person that took in good faith and for a reasonably equivalent value whether or not given to the debtor or against any subsequent transferee or obligee.

(2) To the extent a transfer is avoidable in an action by a creditor under RCW 19.40.071(1)(a), the following rules apply:

(a) Except as otherwise provided in this section, the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (c) of this section, or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

(i) The first transferee of the asset or the person for whose benefit the transfer was made; or

(ii) An immediate or mediate transferee of the first transferee, other than:

(A) A good-faith transferee that took for value; or

(B) An immediate or mediate good-faith transferee of a person described in (a)(ii)(A) of this subsection.

(b) Recovery pursuant to RCW 19.40.071 (1)(a) or (2) or from the asset transferred or its proceeds, by levy or otherwise, is available only against a person described in (a)(i) or (ii) of this subsection.

(3) If the judgment under subsection (2) of this section is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(4) Notwithstanding voidability of a transfer or an obligation under this chapter, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

(a) A lien on or a right to retain an interest in the asset transferred;

(b) Enforcement of an obligation incurred; or

(c) A reduction in the amount of the liability on the judgment.

(2018 Ed.)

(5) A transfer is not voidable under RCW 19.40.041(1)(b) or 19.40.051 if the transfer results from:

(a) Termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

(b) Enforcement of a security interest in compliance with Article 9A of Title 62A RCW, other than acceptance of collateral in full or partial satisfaction of the obligation it secures.

(6) A transfer is not voidable under RCW 19.40.051(2):

(a) To the extent the insider gave new value to or for the benefit of the debtor after the transfer was made, except to the extent the new value was secured by a valid lien;

(b) If made in the ordinary course of business or financial affairs of the debtor and the insider; or

(c) If made pursuant to a good faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.

(7) The following rules determine the burden of proving matters referred to in this section:

(a) A party that seeks to invoke subsection (1), (4), (5), or (6) of this section has the burden of proving the applicability of that subsection.

(b) Except as otherwise provided in (c) and (d) of this subsection, the creditor has the burden of proving each applicable element of subsection (2) or (3) of this section.

(c) The transferee has the burden of proving the applicability to the transferee of subsection (2)(a)(ii)(A) or (B) of this subsection.

(d) A party that seeks adjustment under subsection (3) of this section has the burden of proving the adjustment.

(8) The standard of proof required to establish matters referred to in this section is preponderance of the evidence. [2017 c 57 § 8; 2001 c 32 § 1; 1987 c 444 § 8.]

Additional notes found at www.leg.wa.gov

19.40.091 Extinguishment of claim for relief. A claim for relief with respect to a transfer or obligation under this chapter is extinguished unless action is brought:

(1) Under RCW 19.40.041(1)(a), not later than four years after the transfer was made or the obligation was incurred or, if later, not later than one year after the transfer or obligation was or could reasonably have been discovered by the claimant;

(2) Under RCW 19.40.041(1)(b) or 19.40.051(1), not later than four years after the transfer was made or the obligation was incurred; or

(3) Under RCW 19.40.051(2), not later than one year after the transfer was made. [2017 c 57 § 9; 1987 c 444 § 9.]

Additional notes found at www.leg.wa.gov

19.40.101 Governing law. (1) In this section, the following rules determine a debtor's location:

(a) A debtor who is an individual is located at the individual's principal residence.

(b) A debtor that is an organization and has only one place of business is located at its place of business.

(c) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(2) A claim for relief in the nature of a claim for relief under this chapter is governed by the local law of the jurisdiction

tion in which the debtor is located when the transfer is made or the obligation is incurred. [2017 c 57 § 10.]

19.40.111 Application to series organization. (1) In this section:

(a) "Protected series" means an arrangement, however denominated, created by a series organization that, pursuant to the law under which the series organization is organized, has the characteristics set forth in (b) of this subsection.

(b) "Series organization" means an organization that, pursuant to the law under which it is organized, has the following characteristics:

(i) The organic record of the organization provides for creation by the organization of one or more protected series, however denominated, with respect to specified property of the organization, and for records to be maintained for each protected series that identify the property of or associated with the protected series.

(ii) Debt incurred or existing with respect to the activities of, or property of or associated with, a particular protected series is enforceable against the property of or associated with the protected series only, and not against the property of or associated with the organization or other protected series of the organization.

(iii) Debt incurred or existing with respect to the activities or property of the organization is enforceable against the property of the organization only, and not against the property of or associated with a protected series of the organization.

(2) A series organization and each protected series of the organization is a separate person for purposes of this chapter, even if for other purposes a protected series is not a person separate from the organization or other protected series of the organization. [2017 c 57 § 11.]

19.40.121 Relation to electronic signatures in global and national commerce act. This chapter modifies, limits, or supersedes the 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). [2017 c 57 § 12.]

19.40.900 Short title. This chapter, which was formerly cited as the uniform fraudulent transfer act, may be cited as the uniform voidable transactions act. [2017 c 57 § 13; 1987 c 444 § 12.]

Additional notes found at www.leg.wa.gov

19.40.902 Supplementary provisions. Unless displaced by the provisions of this chapter, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement its provisions. [1987 c 444 § 10.]

Additional notes found at www.leg.wa.gov

19.40.903 Uniformity of application and construction. This chapter shall be applied and construed to effectu-

[Title 19 RCW—page 114]

ate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it. [1987 c 444 § 11.]

Additional notes found at www.leg.wa.gov

19.40.904 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, 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, 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. [2009 c 521 § 54.]

19.40.905 Effect on prior transfers and obligations—2017 c 57. (1) Chapter 57, Laws of 2017 applies to a transfer made or obligation incurred on or after July 23, 2017.

(2) Chapter 57, Laws of 2017 does not apply to a transfer made or obligation incurred before July 23, 2017.

(3) Chapter 57, Laws of 2017 does not apply to a right of action that has accrued before July 23, 2017.

(4) For the purposes of this section, a transfer is made and an obligation is incurred at the time provided in RCW 19.40.061. [2017 c 57 § 14.]

Chapter 19.48 RCW HOTELS, LODGING HOUSES, ETC.— RESTAURANTS

Sections

19.48.010	Definitions.
19.48.020	Record of guests—Hotels and trailer camps.
19.48.030	Liability for loss of valuables when safe or vault furnished—Limitation.
19.48.070	Liability for loss of baggage and other property—Limitation—Storage—Disposal.
19.48.110	Obtaining hotel, restaurant, lodging house, ski area, etc., accommodations by fraud—Penalty.

Alcoholic beverage control: Title 66 RCW.

Discrimination: Chapter 49.60 RCW, RCW 9.91.010.

Hotel and restaurant safety regulations: Chapter 70.62 RCW.

Lien of hotels and lodging and boarding houses: Chapter 60.64 RCW.

19.48.010 Definitions. Any building held out to the public to be an inn, hotel or public lodging house or place where sleeping accommodations, whether with or without meals, or the facilities for preparing the same, are furnished for hire to transient guests, in which three or more rooms are used for the accommodation of such guests, shall for the purposes of this chapter and chapter 60.64 RCW, or any amendment thereof, only, be defined to be a hotel, and whenever the word hotel shall occur in this chapter and chapter 60.64 RCW, or any amendment thereof, it shall be construed to mean a hotel as herein described. [1999 c 95 § 1; 1929 c 216

(2018 Ed.)

§ 1; 1915 c 190 § 1; 1909 c 29 § 1; RRS § 6860. FORMER PART OF SECTION: 1933 c 114 § 1, part; 1929 c 216 § 2, part; 1915 c 190 § 3, part; 1890 p 95 § 1, part; RRS § 6862, part, now codified in RCW 19.48.030.]

Guest defined: RCW 60.64.010.

19.48.020 Record of guests—Hotels and trailer camps. Every hotel and trailer camp shall keep a record of the arrival and departure of its guests in such a manner that the record will be a permanent one for at least one year from the date of departure: PROVIDED, That this requirement shall not apply with respect to guests of tenants in mobile home parks, as defined in RCW 59.20.030. [1979 ex.s. c 186 § 14; 1955 c 138 § 1; 1915 c 190 § 2; RRS § 6861.]

Additional notes found at www.leg.wa.gov

19.48.030 Liability for loss of valuables when safe or vault furnished—Limitation. Whenever the proprietor, keeper, owner, operator, lessee, or manager of any hotel, lodging house or inn shall provide a safe or vault for the safe-keeping of any money, bank notes, jewelry, precious stones, ornaments, railroad mileage books or tickets, negotiable securities or other valuable papers, bullion, or other valuable property of small compass belonging to the guests, boarders or lodgers of such hotel, lodging house or inn, and shall notify the guests, boarders or lodgers thereof by posting a notice in three or more public and conspicuous places in the office, elevators, public rooms, elevator lobbies, public corridors, halls or entrances, or in the public parlors of such hotel, lodging house or inn, stating the fact that such safe or vault is provided in which such property may be deposited; and if such guests, boarders or lodgers shall neglect to deliver such property to the person in charge of such office, for deposit in the safe or vault, the proprietor, keeper, owner, operator, lessee or manager, whether individual, partnership or corporation, of such hotel, lodging house or inn shall not be liable for any loss or destruction of any such property, or any damage thereto, sustained by such guests, boarders or lodgers, by negligence of such proprietor, keeper, owner, operator, lessee or manager, or his, her, their or its employees, or by fire, theft, burglary, or any other cause whatsoever; but no proprietor, keeper, owner, operator, lessee or manager of any hotel, lodging house or inn, shall be obliged to receive property on deposit for safekeeping exceeding one thousand dollars in value; and if such guests, boarders or lodgers shall deliver such property to the person in charge of said office for deposit in such safe or vault, said proprietor, keeper, owner, operator, lessee, or manager, shall not be liable for the loss or destruction thereof, or damage thereto, sustained by such guests, boarders or lodgers in any such hotel, lodging house, or inn, exceeding the sum of one thousand dollars, notwithstanding said property may be of greater value, unless by special arrangement in writing with such proprietor, keeper, owner, operator, lessee or manager: PROVIDED, HOWEVER, That in case of such deposit of such property, the proprietor, keeper, owner, operator, lessee or manager of such hotel, lodging house, or inn, shall in no event be liable for loss or destruction thereof, or damage thereto, unless caused by the theft or gross negligence of such proprietor, keeper, owner, operator, lessee, or manager, of his, her, their, or its agents, servants or employees. [1933 c 114 § 1; 1929 c 216 §

2; 1915 c 190 § 3; 1890 p 95 § 1; RRS § 6862. Formerly RCW 19.48.010, part, 19.48.030 through 19.48.060.]

19.48.070 Liability for loss of baggage and other property—Limitation—Storage—Disposal. Except as provided for in RCW 19.48.030, the proprietor, keeper, owner, operator, lessee, or manager, whether individual, partnership, or corporation, of a hotel, lodging house, or inn, shall not be liable for the loss or destruction of, or damage to any personal property brought or sent into such hotel, lodging house, or inn, by or for any of the guests, boarders, or lodgers thereof, unless such loss, destruction, or damage is occasioned by the gross negligence of such proprietor, keeper, owner, operator, lessee, or manager, or his, her, their, or its agents, servants, or employees; but in no event shall such liability exceed the sum of two hundred dollars, unless such proprietor, keeper, owner, operator, lessee, or manager, shall have contracted in writing with such guest, boarder, or lodger to assume a greater liability: PROVIDED, HOWEVER, That in no event shall liability of the proprietor, keeper, owner, operator, lessee, or manager, or his, her, their, or its agents, servants or employees, of a hotel, lodging house, or inn exceed the following: For a guest, boarder, or lodger, paying twenty-five cents per day, for lodging, or for any person who is not a guest, boarder, or lodger, the liability for loss, destruction, or damage, shall not exceed the sum of fifty dollars for a trunk and contents, ten dollars for a suitcase or valise and contents, five dollars for a box, bundle, or package, and ten dollars for wearing apparel or miscellaneous effects. For a guest, boarder, or lodger, paying fifty cents a day for lodging, the liability for loss, destruction, or damage shall not exceed seventy-five dollars for a trunk and contents, twenty dollars for a suitcase or valise and contents, ten dollars for a box, bundle, or package and contents, and twenty dollars for wearing apparel and miscellaneous effects. For a guest, boarder, or lodger paying more than fifty cents per day for lodging, the liability for loss, destruction, or damage shall not exceed one hundred fifty dollars for a trunk and contents, fifty dollars for a suitcase or valise and contents, ten dollars for a box, bundle, or package and contents, and fifty dollars for wearing apparel and miscellaneous effects, unless in such case such proprietor, keeper, owner, operator, lessee, or manager of such hotel, lodging house, or inn, shall have consented in writing to assume a greater liability: AND PROVIDED FURTHER, Whenever any person shall suffer his 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.]

19.48.110 Obtaining hotel, restaurant, lodging house, ski area, etc., accommodations by fraud—Penalty. (1)(a) Any person who willfully obtains food, money, credit, use of ski area facilities, lodging or accommodation at any hotel, inn, restaurant, commercial ski area, boarding house or lodging house, without paying therefor, with intent to defraud the proprietor, owner, operator or keeper thereof; or who obtains food, money, credit, use of ski area facilities, lodging or accommodation at such hotel, inn, restaurant, commercial ski area, boarding house or lodging house, by the use of any false pretense; or who, after obtaining food, money, credit, use of ski area facilities, lodging, or accommodation at such hotel, inn, restaurant, commercial ski area, boarding house, or lodging house, removes or causes to be removed from such hotel, inn, restaurant, commercial ski area, boarding house or lodging house, his or her baggage, without the permission or consent of the proprietor, manager or authorized employee thereof, before paying for such food, money, credit, use of ski area facilities, lodging or accommodation, is guilty of a gross misdemeanor, except as provided in (b) of this subsection.

(b) If the aggregate amount of food, money, use of ski area facilities, lodging or accommodation, or credit so obtained is seventy-five dollars or more such person is guilty of a class B felony punishable according to chapter 9A.20 RCW.

(2) Proof that food, money, credit, use of ski area facilities, lodging or accommodation were obtained by false pretense or by false or fictitious show or pretense of any baggage or other property, or that the person refused or neglected to pay for such food, money, credit, use of ski area facilities, lodging or accommodation on demand, or that he or she gave in payment for such food, money, credit, use of ski area facilities, lodging or accommodation, negotiable paper on which payment was refused, or that he or she absconded, or departed from, or left, the premises without paying for such food, money, credit, use of ski area facilities, lodging or accommodation, or that he or she removed, or attempted to remove, or caused to be removed, or caused to be attempted to be removed his or her property or baggage, shall be prima

facie evidence of the fraudulent intent hereinbefore mentioned. [2003 c 53 § 146; 1985 c 129 § 2; 1974 ex.s. c 21 § 1; 1929 c 216 § 6; 1915 c 190 § 7; 1890 p 96 § 2; RRS § 6866. Formerly RCW 19.48.110, 19.48.120.]

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

Legislative findings—1985 c 129: "The legislature finds that commercial ski areas, which contribute significantly to the economic well-being of the state, suffer substantial financial losses from the fraudulent use of their facilities by persons who obtain services without paying for them. It is therefore the intent of the legislature that the law that protects hotels, inns, and restaurants from such fraud be extended to also protect commercial ski areas." [1985 c 129 § 1.]

Leaving restaurant or hotel or motel without paying: RCW 4.24.230.

Chapter 19.52 RCW INTEREST—USURY

Sections

- 19.52.005 Declaration of policy.
- 19.52.010 Rate in absence of agreement—Application to consumer leases.
- 19.52.020 Highest rate permissible—Setup charges.
- 19.52.025 Computation of rates—Publication in the Washington State Register.
- 19.52.030 Usury—Penalty upon suit on contract—Costs and attorneys' fees.
- 19.52.032 Declaratory judgment action to establish usury—Time limitations for commencing.
- 19.52.034 Application of chapter 19.52 RCW to loan or forbearance made outside state.
- 19.52.036 Application of consumer protection act.
- 19.52.060 Interest on charges in excess of published rates.
- 19.52.080 Defense of usury or maintaining action thereon prohibited if transaction primarily agricultural, commercial, investment, or business—Exception.
- 19.52.090 Defense of usury or maintaining action thereon prohibited for certain types of transactions after May 1, 1980, and prior to March 1, 1981.
- 19.52.100 Chapter not applicable to retail installment transactions.
- 19.52.110 Limitations in chapter not applicable to interest charged by broker-dealers—When.
- 19.52.120 Sales contract providing for deferred payment of purchase price not subject to chapter.
- 19.52.130 Charge made by assignee of retail installment contract or charge agreement to seller-assignor not limited by chapter—No agreement between credit card issuing bank and retailer shall prohibit discounts for cash payment.
- 19.52.140 Chapter not applicable to interest, penalties, or costs on delinquent property taxes.
- 19.52.160 Chapter not applicable to mobile homes.
- 19.52.170 Chapter not applicable to certain loans from tax-qualified retirement plan.
- 19.52.900 Application—Construction—1981 c 78.

Interest

rates on pledged property: RCW 19.60.060.

rates on warrants: Chapter 39.56 RCW.

Retail installment sales of goods and services: Chapter 63.14 RCW.

19.52.005 Declaration of policy. RCW 19.52.005, 19.52.020, 19.52.030, 19.52.032, 19.52.034, and 19.52.036 are enacted in order to protect the residents of this state from debts bearing burdensome interest rates; and in order to better effect the policy of this state to use this state's policies and courts to govern the affairs of our residents and the state; and in recognition of the duty to protect our citizens from oppression generally. [1967 ex.s. c 23 § 2.]

Additional notes found at www.leg.wa.gov

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

19.52.020 Highest rate permissible—Setup charges.

(1) Any rate of interest shall be legal so long as the rate of interest does not exceed the higher of: (a) Twelve percent per annum; or (b) four percentage points above the equivalent coupon issue yield (as published by the Board of Governors of the Federal Reserve System) of the average bill rate for twenty-six week treasury bills as determined at the first bill market auction conducted during the calendar month immediately preceding the later of (i) the establishment of the interest rate by written agreement of the parties to the contract, or (ii) any adjustment in the interest rate in the case of a written agreement permitting an adjustment in the interest rate. No person shall directly or indirectly take or receive in money, goods, or things in action, or in any other way, any greater interest for the loan or forbearance of any money, goods, or things in action.

(2)(a) In any loan of money in which the funds advanced do not exceed the sum of five hundred dollars, a setup charge may be charged and collected by the lender, and such setup charge shall not be considered interest hereunder.

(b) The setup charge shall not exceed four percent of the amount of funds advanced, or fifteen dollars, whichever is the lesser, except that on loans of under one hundred dollars a minimum not exceeding four dollars may be so charged.

(3) Any loan made pursuant to a commitment to lend at an interest rate permitted at the time the commitment is made shall not be usurious. Credit extended pursuant to an open-end credit agreement upon which interest is computed on the basis of a balance or balances outstanding during a billing cycle shall not be usurious if on any one day during the bill-

ing cycle the rate at which interest is charged for the billing cycle is not usurious. [1989 c 14 § 3; 1985 c 224 § 1; 1981 c 78 § 1; 1967 ex.s. c 23 § 4; 1899 c 80 § 2; RRS § 7300. Prior: 1895 c 136 § 2; 1893 c 20 § 3; Code 1881 § 2369; 1863 p 433 § 2; 1854 p 380 § 2.]

Interest on judgments: RCW 4.56.110.

Additional notes found at www.leg.wa.gov

19.52.025 Computation of rates—Publication in the Washington State Register.

Each month the state treasurer shall compute the highest rate of interest permissible under RCW 19.52.020(1), and the rate of interest required by RCW 4.56.110(3) and 4.56.115, for the succeeding calendar month. The treasurer shall file these rates with the state code reviser for publication in the next available issue of the Washington State Register in compliance with RCW 34.08.020(8). [2004 c 185 § 4; 1986 c 60 § 1.]

19.52.030 Usury—Penalty upon suit on contract—Costs and attorneys' fees.

(1) If a greater rate of interest than is allowed by statute shall be contracted for or received or reserved, the contract shall be usurious, but shall not, therefore, be void. If in any action on such contract proof be made that greater rate of interest has been directly or indirectly contracted for or taken or reserved, the creditor shall only be entitled to the principal, less the amount of interest accruing thereon at the rate contracted for; and if interest shall have been paid, the creditor shall only be entitled to the principal less twice the amount of the interest paid, and less the amount of all accrued and unpaid interest; and the debtor shall be entitled to costs and reasonable attorneys' fees plus the amount by which the amount the debtor has paid under the contract exceeds the amount to which the creditor is entitled: PROVIDED, That the debtor may not commence an action on the contract to apply the provisions of this section if a loan or forbearance is made to a corporation engaged in a trade or business for the purposes of carrying on said trade or business unless there is also, in connection with such loan or forbearance, the creation of liability on the part of a natural person or that person's property for an amount in excess of the principal plus interest allowed pursuant to RCW 19.52.020. The reduction in principal shall be applied to diminish pro rata each future installment of principal payable under the terms of the contract.

(2) The acts and dealings of an agent in loaning money shall bind the principal, and in all cases where there is usurious interest contracted for by the transaction of any agent the principal shall be held thereby to the same extent as though the principal had acted in person. Where the same person acts as agent of the borrower and lender, that person shall be deemed the agent of the lender for the purposes of this chapter. If the agent of both the borrower and lender, or of the lender only, transacts a usurious loan for a commission or fee, such agent shall be liable to the principal for the amount of the commission or fee received or reserved by the agent, and liable to the lender for the loss suffered by the lender as a result of the application of this chapter. [1989 c 14 § 7; 1967 ex.s. c 23 § 5; 1899 c 80 § 7; RRS § 7304. Prior: 1895 c 136 § 5; 1893 c 20 § 3. Formerly RCW 19.52.030 through 19.52.050.]

Additional notes found at www.leg.wa.gov

19.52.032 Declaratory judgment action to establish usury—Time limitations for commencing. The debtor, if a natural person, or the creditor may bring an action for declaratory judgment to establish whether a loan or forbearance contract is or was usurious, and such an action shall be considered an action on the contract for the purposes of applying the provisions of RCW 19.52.030. Such an action shall be brought against the current creditor or debtor on the contract or, if the loan or debt has been fully repaid, by the debtor against the creditor to whom the debtor was last indebted on the contract. No such an action shall be commenced after six months following the date the final payment becomes due, whether by acceleration or otherwise, nor after six months following the date the principal is fully paid, whichever first occurs. If the debtor commences such an action and fails to establish usury, and if the court finds the action was frivolously commenced, the defendant or defendants may, in the court's discretion, recover reasonable attorney's fees from the debtor. [1967 ex.s. c 23 § 6.]

Additional notes found at www.leg.wa.gov

19.52.034 Application of chapter 19.52 RCW to loan or forbearance made outside state. Whenever a loan or forbearance is made outside Washington state to a person then residing in this state the usury laws found in chapter 19.52 RCW, as now or hereafter amended, shall be applicable in all courts of this state to the same extent such usury laws would be applicable if the loan or forbearance was made in this state. [1967 ex.s. c 23 § 3.]

Additional notes found at www.leg.wa.gov

19.52.036 Application of consumer protection act. Entering into or transacting a usurious contract is hereby declared to be an unfair act or practice in the conduct of commerce for the purpose of the application of the consumer protection act found in chapter 19.86 RCW. [1967 ex.s. c 23 § 7.]

Additional notes found at www.leg.wa.gov

19.52.060 Interest on charges in excess of published rates. Any corporation, partnership or individual who furnishes the public any goods, wares, merchandise, pledge, security, insurance or transportation of which the price, rate or tariff is by law required to be published, shall, when any price, rate or tariff is charged in excess of the existing and established price, rate or tariff, refund to the person, partnership or corporation so overcharge, or to the assignee of such claim, the amount of such overcharge, and on failure so to do, the claim for such overcharge shall bear interest at the rate of eight percent per annum until paid. [1907 c 187 § 1; RRS § 5841.]

19.52.080 Defense of usury or maintaining action thereon prohibited if transaction primarily agricultural, commercial, investment, or business—Exception. Profit and nonprofit corporations, Massachusetts trusts, associations, trusts, general partnerships, joint ventures, limited partnerships, and governments and governmental subdivisions, agencies, or instrumentalities may not plead the defense of usury nor maintain any action thereon or therefor, and persons may not plead the defense of usury nor maintain any

action thereon or therefor if the transaction was primarily for agricultural, commercial, investment, or business purposes: PROVIDED, HOWEVER, That this section shall not apply to a consumer transaction of any amount.

Consumer transactions, as used in this section, shall mean transactions primarily for personal, family, or household purposes. [1981 c 78 § 2; 1975 1st ex.s. c 180 § 1; 1970 ex.s. c 97 § 2; 1969 ex.s. c 142 § 1.]

Additional notes found at www.leg.wa.gov

19.52.090 Defense of usury or maintaining action thereon prohibited for certain types of transactions after May 1, 1980, and prior to March 1, 1981. No person may plead the defense of usury or maintain any action thereon or therefor for the interest charged on the unpaid balance of a contract for the sale and purchase of personal property which was not purchased primarily for personal, family or household use or real property if the purchase was made after May 1, 1980 and prior to March 1, 1981. [1981 c 78 § 9.]

Additional notes found at www.leg.wa.gov

19.52.100 Chapter not applicable to retail installment transactions. This chapter shall not apply to a retail installment transaction, as defined by RCW 63.14.010, whether or not it is construed to be a loan or forbearance of any money, goods, or things in action. [1981 c 78 § 3.]

Additional notes found at www.leg.wa.gov

19.52.110 Limitations in chapter not applicable to interest charged by broker-dealers—When. The interest charged by any broker-dealer registered under chapter 21.20 RCW and under the federal securities and exchange act of 1934, as amended, shall not be subject to the limitations imposed by this chapter if the underlying loans (1) may be paid in full at the option of the borrower and (2) are subject to the credit regulations of the board of governors of the federal reserve system, or its successor. [1981 c 79 § 1.]

19.52.120 Sales contract providing for deferred payment of purchase price not subject to chapter. A sales contract for goods or services providing for the deferred payment of the purchase price shall not be subject to this chapter, regardless of who seeks to enforce the contract, notwithstanding the existence or occurrence of any one or more of the following events:

(1) That the seller may have arranged to sell, pledge, indorse, negotiate, assign, or transfer the obligations thereof to any person, including a financing organization, prior to or subsequent to or concurrently with the making of the sales transaction;

(2) That the amount of the finance charge, however denominated, is determined by reference to charts, computations or information supplied by such person;

(3) That the form or forms of instruments used to evidence the sales transaction have been supplied or prepared by such person;

(4) That the credit standing of the purchaser is or may have been evaluated by such person;

(5) That the sales transaction and the execution of any instrument evidencing the same is negotiated in the presence or with the assistance of a representative of such person;

(6) That the instrument or instruments used to evidence the sales transaction are pledged, indorsed, negotiated, assigned, or transferred by the seller to such person;

(7) That there is an underlying agreement between the seller and such person concerning the pledging, indorsing, negotiation, assigning, or transferring of sales contracts; or

(8) That the financing organization or its affiliates also provide franchising, financing, or other services to the seller-assignor. [1981 c 77 § 7.]

Additional notes found at www.leg.wa.gov

19.52.130 Charge made by assignee of retail installment contract or charge agreement to seller-assignor not limited by chapter—No agreement between credit card issuing bank and retailer shall prohibit discounts for cash payment. (1) Nothing contained in this chapter shall be deemed to limit any charge made by an assignee of a retail installment contract or charge agreement to the seller-assignor upon the sale, transfer, assignment, or discount of the contract or agreement, notwithstanding retention by the assignee of recourse rights and notwithstanding duties retained by the assignee to service delinquencies, perform service or warranty agreements regarding the property which is the subject matter of the assigned or discounted contracts or charge agreements, or to do or perform any other duty with respect to the account or contract assigned or the subject matter of such account or contract.

(2) No agreement between a credit card issuing bank and retailer shall prohibit the retailer from granting general discounts for the payment of cash, not in excess of the percentage allowed by Regulation Z, the Federal Truth in Lending Act. [1981 c 77 § 8.]

Additional notes found at www.leg.wa.gov

19.52.140 Chapter not applicable to interest, penalties, or costs on delinquent property taxes. This chapter does not apply in respect to interest, penalties, or costs imposed on delinquent property taxes under chapter 84.64 RCW. [1981 c 322 § 8.]

19.52.160 Chapter not applicable to mobile homes. This chapter shall not apply to the financing of mobile homes which meets the definition of real property contained in RCW 84.04.090, and which financing is insured by a federal instrumentality. [1985 c 395 § 6.]

19.52.170 Chapter not applicable to certain loans from tax-qualified retirement plan. This chapter does not apply to any loan permitted under applicable federal law and regulations from a tax-qualified retirement plan to a person then a participant or a beneficiary under the plan.

This section affects loans being made, negotiated, renegotiated, extended, renewed, or revised on or after April 20, 1989. [1989 c 138 § 1.]

19.52.900 Application—Construction—1981 c 78. Chapter 78, Laws of 1981 shall apply only to loans or forbearances or transactions which are entered into after May 8, 1981, or to existing loans or forbearances, contracts or agreements which were not primarily for personal, family, or household use to which there is an addition to the principal

(2018 Ed.)

amount of the credit outstanding after May 8, 1981: PROVIDED, HOWEVER, That nothing in chapter 78, Laws of 1981 shall be construed as implying that agricultural or investment purposes are not already included within the meaning of "commercial or business purposes" as used in RCW 19.52.080 as in effect prior to May 8, 1981. [1989 c 8 § 2; 1981 c 78 § 10.]

Additional notes found at www.leg.wa.gov

Chapter 19.56 RCW UNSOLICITED GOODS

Sections

- 19.56.010 Newspaper mailed without authority is gift.
- 19.56.020 Unsolicited goods or services as gifts.
- 19.56.030 Violation—Application of consumer protection act.

Advertising, crimes relating to: Chapter 9.04 RCW.

19.56.010 Newspaper mailed without authority is gift. Whenever any person, company or corporation owning or controlling any newspaper or periodical of any kind, or whenever any editor or proprietor of any such newspaper or periodical shall mail or send any such newspaper or periodical to any person or persons in this state without first receiving an order for said newspaper or periodical from such person or persons to whom said newspaper or periodical is mailed or sent, it shall be deemed to be a gift, and no debt or obligation shall accrue against such person or persons, whether said newspaper or periodical is received by the person or persons to whom it is sent or not. [2000 c 171 § 55; 1890 p 460 § 1; RRS § 5842.]

19.56.020 Unsolicited goods or services as gifts. If unsolicited goods or services are provided to a person, the person has a right to accept the goods or services as a gift only, and is not bound to return the goods or services. Goods or services are not considered to have been solicited unless the recipient specifically requested, in an affirmative manner, the receipt of the goods or services according to the terms under which they are being offered. Goods or services are not considered to have been requested if a person fails to respond to an invitation to purchase the goods or services and the goods or services are provided notwithstanding. If the unsolicited goods or services are either addressed to or intended for the recipient, the recipient may use them or dispose of them in any manner without any obligation to the provider, and in any action for goods or services sold and delivered, or in any action for the return of the goods, it is a complete defense that the goods or services were provided voluntarily and that the defendant did not affirmatively order or request the goods or services, either orally or in writing. [1992 c 43 § 1; 1967 c 57 § 1.]

19.56.030 Violation—Application of consumer protection act. Violation of RCW 19.56.020 is a matter affecting the public interest for the purpose of applying chapter 19.86 RCW. Failure to comply with this chapter is not reasonable in relation to the development and preservation of business. A violation of RCW 19.56.020 constitutes an unfair or deceptive act or practice in trade or commerce for the purposes of applying chapter 19.86 RCW. [1992 c 43 § 2.]

Chapter 19.58 RCW

MOTION PICTURE FAIR COMPETITION ACT

Sections

19.58.010	Purpose.
19.58.020	Definitions.
19.58.030	Blind bidding or blind selling prohibited—Trade screening required—Notice.
19.58.040	Solicitation of bids.
19.58.050	Violation—Civil suit—Attorneys' fees.
19.58.900	Short title.

19.58.010 Purpose. The purpose of this chapter is to establish fair and open procedures for bidding and negotiation for the right to exhibit motion pictures in the state in order to prevent unfair and deceptive acts or practices and unreasonable restraints of trade in the business of motion picture distribution and exhibition within the state; to promote fair and effective competition in that business; and to insure that exhibitors have the opportunity to view a motion picture and know its contents before committing themselves to exhibiting the motion picture in their communities. [1979 ex.s. c 29 § 1.]

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

(1) "Bid" means a written or oral offer or proposal to buy made by an exhibitor to a distributor in response to an invitation to bid for the license or right to exhibit a motion picture, the license stating the terms under which the exhibitor agrees to exhibit the motion picture.

(2) "Blind bidding" means the exhibitor's bidding or negotiating for, or the exhibitor's offering or agreeing to, terms for the license or right to exhibit a feature motion picture at any time either before the feature motion picture has been trade screened within the state or before the feature motion picture has been otherwise made available for viewing within the state by all exhibitors.

(3) "Blind selling" means the practice whereby a distributor licenses a feature motion picture before the exhibitor is afforded an opportunity to view the feature motion picture by trade screening.

(4) "Buying" or "selling" of the right to exhibit a feature motion picture means the licensing of a theater to show the feature motion picture for a certain number of days for a certain price.

(5) "Distributor" means a person engaged in the business of distributing or supplying more than one feature motion picture per year to exhibitors by rental, sale, licensing, or other agreement.

(6) "Exhibit" or "exhibition" means playing or showing a feature motion picture to the public for an admission charge.

(7) "Exhibitor" means a person in the business of operating one or more theaters in which motion pictures are exhibited to the public.

(8) "Feature motion picture" means a motion picture exceeding sixty minutes in duration.

(9) "Invitation to bid" means a written or oral solicitation or invitation by a distributor to one or more exhibitors to bid or negotiate for the license or right to exhibit a feature motion picture.

(10) "Licensing agreement" means a contract, agreement, understanding, or condition between a distributor and an exhibitor relating to the licensing or exhibition of a feature motion picture by the exhibitor.

(11) "Person" means one or more individuals, firms, partnerships, associations, societies, trusts, organizations, or corporations.

(12) "Run" means the continuous exhibition of a feature motion picture in a defined geographic area for a specified period of time. A "first run" is the first exhibition of the feature motion picture in the defined area; a "second run" is the second exhibition; and "subsequent runs" are subsequent exhibitions after the second run. "Exclusive run" is a run limited to a single theater in a defined geographic area and a "nonexclusive run" is a run in more than one theater in a defined geographic area.

(13) "Theater" means an establishment in which feature motion pictures are regularly exhibited to the public for an admission charge.

(14) "Trade screening" means the exhibition of a feature motion picture, prior to its release for public exhibition by a distributor, in the largest city within the state, which is open to all exhibitors from whom the distributor intends to solicit bids or with whom the distributor intends to negotiate for the license or right to exhibit the feature motion picture. [1979 ex.s. c 29 § 2.]

19.58.030 Blind bidding or blind selling prohibited—Trade screening required—Notice. (1) The buying or selling of the right to exhibit a feature motion picture by blind bidding or blind selling is prohibited within the state.

(2) No bids may be returnable, no negotiations for the exhibition or licensing of a motion picture may take place, and no license agreement or any of its terms may be agreed upon, for the exhibition of a feature motion picture within the state before the feature motion picture has either been trade screened or otherwise made available for viewing by all exhibitors within the state.

(3) A distributor shall provide reasonable and uniform notice of the trade screening of feature motion pictures to those exhibitors within the state from whom bids will be solicited or with whom negotiations will be conducted for the license or right to exhibit the feature motion picture.

(4) A purported waiver of the prohibition in this chapter against blind bidding or blind selling is void and unenforceable. [1979 ex.s. c 29 § 3.]

19.58.040 Solicitation of bids. If bids are solicited from exhibitors for the licensing of a feature motion picture within the state, then:

(1) The invitation to bid shall specify: (a) Whether the run for which the bid is being solicited is a first, second, or subsequent run; whether the run is an exclusive or nonexclusive run; and, the geographic area for the run; (b) the names of all exhibitors who are being solicited; (c) the date and hour the invitation to bid expires; and (d) the time, date, and location, including the address, where the bids will be opened, which shall be within the state.

(2) All bids shall be submitted in writing and shall be opened at the same time and in the presence of those exhibi-

tors, or their agents, who submitted bids and who attend the bid opening.

(3) Immediately upon being opened, the bids shall be subject to examination by the exhibitors, or their agents, who submitted bids, and who are present at the opening. Within ten business days after the bids are opened, the distributor shall notify each exhibitor who submitted a bid either the name of the winning bidder or the fact that none of the bids were acceptable.

(4) Once bids are solicited, the distributor shall license the feature motion picture only by bidding and may solicit rebids if none of the submitted bids are acceptable. [1979 ex.s. c 29 § 4.]

19.58.050 Violation—Civil suit—Attorneys' fees.

Any person aggrieved by a violation of this chapter may bring a civil action in superior court to enjoin further violations or to recover the actual damages sustained, or both, together with the costs of the suit. In any such action, the court shall award reasonable attorneys' fees to the prevailing party. [1979 ex.s. c 29 § 5.]

19.58.900 Short title. This chapter may be known and cited as the Washington motion picture fair competition act. [1979 ex.s. c 29 § 6.]

Chapter 19.60 RCW

PAWNBROKERS AND SECONDHAND DEALERS

Sections

19.60.010	Definitions.
19.60.014	Fixed place of business required.
19.60.020	Duty to record information.
19.60.025	Duty to record information—Precious metal property.
19.60.040	Report to chief law enforcement officer.
19.60.042	Report to chief law enforcement officer—Precious metal dealers.
19.60.045	Duties upon notification that property is reported stolen.
19.60.050	Retention of property by pawnbrokers—Inspection.
19.60.055	Retention of property by secondhand dealers—Inspection.
19.60.057	Retention of precious metal property—Inspection.
19.60.060	Rates of interest and other fees—Sale of pledged property.
19.60.061	Pawnbrokers—Sale of pledged property limited—Written document required for transactions.
19.60.062	Attorney fees and costs in action to recover possession or determine title or ownership.
19.60.066	Prohibited acts—Penalty.
19.60.067	Secondhand precious metal dealers—Prohibited acts—Penalty.
19.60.068	Resale agreement to avoid interest and fee restrictions prohibited.
19.60.075	Regulation by political subdivisions.
19.60.077	Precious metal dealers—Licensure required.
19.60.085	Exemptions.
19.60.095	Precious metal sales—Hosted home parties.
19.60.105	Automated kiosks.
19.60.901	Effective date—1984 c 10.

Larceny—Receiving stolen property: RCW 9A.56.140 through 9A.56.170.

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

(1) "Automated kiosk" means a self-serve interactive machine that purchases secondhand electronic devices.

(2) "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.

(3) "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.

(4) "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.

(5) "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.

(6) "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.

(7) "Precious metals" means gold, silver, and platinum.

(8) "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. Secondhand dealer also includes persons or entities operating an automated kiosk.

(9) "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.

(10) "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.

(11) "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. [2017 c 169 § 1. Prior: 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.]

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 tempo-

rary, 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.]

19.60.014 Fixed place of business required. No person may operate as a pawnbroker unless the person maintains a fixed place of business within the state. [1984 c 10 § 4.]

19.60.020 Duty to record information. (1) Every pawnbroker and secondhand 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 date of the transaction;

(c) The name of the person or employee or the identification number of the person or employee conducting the transaction, as required by the applicable chief of police or the county's chief law enforcement officer;

(d) The name, date of birth, sex, height, weight, race, and address and telephone number of the person with whom the transaction is made;

(e) A complete description of the property pledged, bought, or consigned, including the brand name, serial number, model number or name, any initials or engraving, size, pattern, and color or stone or stones, and in the case of firearms, the caliber, barrel length, type of action, and whether it is a pistol, rifle, or shotgun;

(f) The price paid or the amount loaned;

(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. 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 and the name of the person or employee, conducting the transaction, and the location of the property.

(2) This record 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 of any commissioned law enforcement officer of the state or any of its political subdivisions, and shall be maintained wherever that

business is conducted, or at the secondhand dealer's principal place of business if the transaction took place through the use of an automated kiosk, for three years following the date of the transaction. [2017 c 169 § 2; 1991 c 323 § 2; 1984 c 10 § 3; 1909 c 249 § 229; RRS § 2481.]

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.

19.60.040 Report to chief law enforcement officer. (1) Upon request, every pawnbroker and secondhand dealer doing business in the state shall furnish a full, true, and correct transcript of the record of all transactions conducted on the preceding day. These transactions shall be recorded on such forms as may be provided and in such format as may be required by the chief of police or the county's chief law

enforcement officer within a specified time not less than twenty-four hours. This information may be transmitted to the applicable law enforcement agency electronically, by facsimile transmission, or by modem or similar device, or by delivery of computer disk subject to the requirements of, and approval by, the chief of police or the county's chief law enforcement officer.

(2) If a pawnbroker or secondhand dealer has good cause to believe that any property in his or her possession has been previously lost or stolen, the pawnbroker or secondhand dealer shall promptly report that fact to the applicable chief of police or the county's chief law enforcement officer, together with the name of the owner, if known, and the date when, and the name of the person from whom it was received. [1991 c 323 § 3; 1984 c 10 § 6; 1909 c 249 § 231; RRS § 2483.]

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.

19.60.045 Duties upon notification that property is reported stolen. Following notification from a law enforcement agency that an item of property has been reported as stolen, the pawnbroker or secondhand dealer shall hold that property intact and safe from alteration, damage, or commingling. The pawnbroker or secondhand dealer shall place an identifying tag or other suitable identification upon the property so held. Property held shall not be released for one hundred twenty days from the date of police notification unless released by written consent of the applicable law enforcement agency or by order of a court of competent jurisdiction. In cases where the applicable law enforcement agency has placed a verbal hold on an item, that agency must then give written notice within ten business days. If such written notice is not received within that period of time, then the hold order will cease. The pawnbroker or secondhand dealer shall give a twenty-day written notice before the expiration of the one hundred twenty-day holding period to the applicable law enforcement agency about the stolen property. If notice is not given within twenty days, then the hold on the property shall continue for an additional one hundred twenty days. The applicable law enforcement agency may renew the holding period for additional one hundred twenty-day periods as necessary. After the receipt of notification from a pawnbroker or secondhand dealer, if an additional holding period is required, the applicable law enforcement agency shall give the pawnbroker or secondhand dealer written notice, prior to the expiration of the existing hold order. A law enforcement agency shall not place on hold any item of personal property unless that agency reasonably suspects that the item of personal property is a lost or stolen item. Any hold that is placed on an item will be removed as soon as practicable after the item on hold is determined not to be stolen or lost. [1991 c 323 § 4; 1984 c 10 § 5.]

(2018 Ed.)

Receiving stolen property: RCW 9A.56.140 through 9A.56.170.

19.60.050 Retention of property by pawnbrokers—Inspection. Property bought or received in pledge by any pawnbroker shall not be removed from that place of business, except when redeemed by, or returned to the owner, within 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. [1991 c 323 § 5; 1984 c 10 § 8; 1909 c 249 § 232; RRS § 2484.]

Auction of secondhand property, exemption by rule of department of licensing: RCW 18.11.075.

Restoration of stolen property: RCW 9.54.130.

19.60.055 Retention of property by secondhand dealers—Inspection. (1) Property bought or received on consignment by any secondhand dealer with a permanent place of business in the state shall not be removed from that place of business except consigned property returned to the owner, within 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 bought or received on consignment by any secondhand dealer without a permanent place of business in the state, shall be held within the city or county in which the property was received, except consigned property returned to the owner, within 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) Property bought by any secondhand dealer through the use of an automated kiosk must be held for at least thirty days after the secondhand property was accepted by the automated kiosk. To satisfy this requirement the secondhand property may be held inside the automated kiosk or at a secure location maintained by the secondhand dealer. The secondhand property purchased through an automated kiosk must be made available to any commissioned law enforcement officer of the state, or any of its political subdivisions, for inspection within a reasonable time. The cost of transporting the secondhand property to the law enforcement officer must be paid by the secondhand dealer. [2017 c 169 § 3; 1991 c 323 § 6; 1984 c 10 § 7.]

Auction of secondhand property, exemption by rule of department of licensing: RCW 18.11.075.

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 second-

hand 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 property 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.

19.60.060 Rates of interest and other fees—Sale of pledged property. All pawnbrokers are authorized to charge and receive interest and other fees at the following rates for money on the security of personal property actually received in pledge:

(1) The interest for the loan period shall not exceed:

(a) For an amount loaned up to \$9.99 - interest at \$1.00 for each thirty-day period to include the loan date.

(b) For an amount loaned from \$10.00 to \$19.99 - interest at the rate of \$1.25 for each thirty-day period to include the loan date.

(c) For an amount loaned from \$20.00 to \$24.99 - interest at the rate of \$1.50 for each thirty-day period to include the loan date.

(d) For an amount loaned from \$25.00 to \$34.99 - interest at the rate of \$1.75 for each thirty-day period to include the loan date.

(e) For an amount loaned from \$35.00 to \$39.99 - interest at the rate of \$2.00 for each thirty-day period to include the loan date.

(f) For an amount loaned from \$40.00 to \$49.99 - interest at the rate of \$2.25 for each thirty-day period to include the loan date.

(g) For the amount loaned from \$50.00 to \$59.99 - interest at the rate of \$2.50 for each thirty-day period to include the loan date.

(h) For the amount loaned from \$60.00 to \$69.99 - interest at the rate of \$2.75 for each thirty-day period to include the loan date.

(i) For the amount loaned from \$70.00 to \$79.99 - interest at the rate of \$3.00 for each thirty-day period to include the loan date.

(j) For the amount loaned from \$80.00 to \$89.99 - interest at the rate of \$3.25 for each thirty-day period to include the loan date.

(k) For the amount loaned from \$90.00 to \$99.99 - interest at the rate of \$3.50 for each thirty-day period to include the loan date.

(1) For loan amounts of \$100.00 or more - interest at the rate of four percent for each thirty-day period to include the loan date.

(2) The fee for the preparation of loan documents, pledges, or reports required under the laws of the United States of America, the state of Washington, or the counties, cities, towns, or other political subdivisions thereof, shall not exceed:

(a) For the amount loaned up to \$4.99 - the sum of \$1.50.

(b) For the amount loaned from \$5.00 to \$9.99 - the sum of \$3.00.

(c) For the amount loaned from \$10.00 to \$14.99 - the sum of \$4.00.

(d) For the amount loaned from \$15.00 to \$19.99 - the sum of \$4.50.

(e) For the amount loaned from \$20.00 to \$24.99 - the sum of \$5.00.

(f) For the amount loaned from \$25.00 to \$29.99 - the sum of \$5.50.

(g) For the amount loaned from \$30.00 to \$34.99 - the sum of \$6.00.

(h) For the amount loaned from \$35.00 to \$39.99 - the sum of \$6.50.

(i) For the amount loaned from \$40.00 to \$44.99 - the sum of \$7.00.

(j) For the amount loaned from \$45.00 to \$49.99 - the sum of \$7.50.

(k) For the amount loaned from \$50.00 to \$99.99 - fifteen percent of the loan amount.

(l) For the amount loaned from \$100.00 to \$249.99 - thirteen percent of the loan amount.

(m) For the amount loaned from \$250.00 to \$499.99 - ten percent of the loan amount.

(n) For the amount loaned from \$500.00 to \$999.99 - eight percent of the loan amount.

(o) For the amount loaned from \$1000.00 to \$1499.99 - seven and one-half percent of the loan amount.

(p) For the amount loaned from \$1500.00 to \$1999.99 - seven percent of the loan amount.

(q) For the amount loaned of \$2000.00 or more - six percent of the loan amount.

(3) For each thirty-day period, a pawnbroker may charge:

(a) A storage fee of \$5.00; and

(b) An additional fee of \$5.00 for storing a firearm.

(4) Fees under subsection (2) of this section may be charged one time only for each loan period; no additional fees, other than interest allowed under subsection (1) of this section and storage fees allowed under subsection (3) of this section, shall be charged for making the loan.

A copy of this section, set in twelve point type or larger, shall be posted prominently in each premises subject to this chapter. [2015 c 294 § 1; 2007 c 125 § 1; 1995 c 133 § 2; 1991 c 323 § 7; 1984 c 10 § 9; 1973 1st ex.s. c 91 § 1; 1909 c 249 § 234; RRS § 2486.]

Interest—Usury: Chapter 19.52 RCW.

19.60.061 Pawnbrokers—Sale of pledged property limited—Written document required for transactions.

(1) The term of the loan shall be for a period of ninety days to include the date of the loan.

(2) A pawnbroker shall not sell any property received in pledge, until a minimum of ninety days has expired. However, if a pledged article is not redeemed within the ninety-day period of the term of the loan, the pawnbroker shall have all rights, title, and interest of that item of personal property. The pawnbroker shall not be required to account to the pledgor for the proceeds received from the disposition of that item. Any provision of law relating to the foreclosures and the subsequent sale of forfeited pledged items, shall not be applicable to any pledge as defined under this chapter, the title to which is transferred in accordance with this section.

(3) Every loan transaction entered into by a pawnbroker shall be evidenced by a written document, a copy of which shall be furnished to the pledgor. The document shall set forth the term of the loan; the final date on which the loan is due and payable; the loan preparation fee; the storage fee; the firearm fee, if applicable; any other fee allowed under law that is charged; the amount of interest charged every thirty days; the total amount due including the principal amount, the preparation fee, and all interest charges due if the loan is outstanding for the full ninety days allowed by the term; and the annual percentage rate, and shall inform the pledgor of the pledgor's right to redeem the pledge at any time within the term of the loan.

(4) If a person who has entered into a loan transaction with a pawnbroker in this state is unable to redeem and repay the loan on or before the expiration of the term of the loan, and that person wishes to retain his or her rights to use that item by rewriting the loan, and if both parties mutually agree, an existing loan transaction may be rewritten into a new loan, either in person or by mail. All applicable provisions of this chapter shall be followed in rewriting a loan, except that where an existing loan is rewritten by mail RCW 19.60.020(1) (a) and (g) shall not apply. [2007 c 125 § 2; 1995 c 133 § 3; 1991 c 323 § 8; 1984 c 10 § 10.]

19.60.062 Attorney fees and costs in action to recover possession or determine title or ownership. By either party, in an action brought by an owner to recover goods in the possession of a pawnbroker or secondhand dealer, or an action brought by a pawnbroker or secondhand dealer against an owner, or a person claiming ownership, to determine title or ownership of any item, the prevailing party is entitled to reasonable attorney's fees and costs. [1991 c 323 § 9; 1984 c 10 § 11; 1979 ex.s. c 41 § 1.]

19.60.066 Prohibited acts—Penalty. It is a gross misdemeanor under chapter 9A.20 RCW for:

(1) Any person to remove, alter, or obliterate any manufacturer's make, model, or serial number, personal identification number, or identifying marks engraved or etched upon an item of personal property that was purchased, consigned, or received in pledge. In addition an item shall not be accepted for pledge or a secondhand purchase where the manufacturer's make, model, or serial number, personal identification number, or identifying marks engraved or etched upon an item of personal property has been removed, altered, or obliterated;

(2) Any person 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 this chapter;

(3) Any pawnbroker or secondhand dealer to receive any property from any person under the age of eighteen years, any person under the influence of intoxicating liquor or drugs, or any person known to the pawnbroker or secondhand 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;

(4) Any pawnbroker to engage in the business of cashing or selling checks, drafts, money orders, or other commercial paper serving the same purpose unless the pawnbroker complies with the provisions of chapter 31.45 RCW; or

(5) Any person to violate knowingly any other provision of this chapter. [1991 c 355 § 21; 1991 c 323 § 10; 1984 c 10 § 12.]

Reviser's note: This section was amended by 1991 c 323 § 10 and by 1991 c 355 § 21, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Additional notes found at www.leg.wa.gov

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.

19.60.068 Resale agreement to avoid interest and fee restrictions prohibited. A purchase of personal property shall not be made on the condition of selling it back at a stipulated time and price greater than the purchase price, for the purpose of avoiding the interest and fee restrictions of this chapter. [1991 c 323 § 11.]

19.60.075 Regulation by political subdivisions. The regulation of pawnbrokers and secondhand dealers under this chapter is not intended to restrict political subdivisions from enacting ordinances or codes requiring the licensing of pawnbrokers and secondhand dealers or from enacting ordinances or codes which are more restrictive than the provisions of this chapter. [1984 c 10 § 13.]

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.

19.60.105 Automated kiosks. For a secondhand dealer to utilize an automated kiosk to purchase secondhand property in this state, the automated kiosk must have the capability to:

(1) Collect all information required under RCW 19.60.020(1);

(2) Connect with a live customer service representative that can remotely verify the identity of the person engaged in the transaction;

(3) Compare the secondhand property purchased against a state or federal database of stolen items using the serial number, International Mobile Equipment Identity (IMEI), the mobile equipment identifier (MEID), or other unique identifying number assigned to the device by the manufacturer; and

(4) Securely store all secondhand property purchased. [2017 c 169 § 4.]

19.60.901 Effective date—1984 c 10. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect thirty days after it is signed by the governor and filed with the secretary of state. [1984 c 10 § 16.]

Reviser's note: The effective date of this act [1984 c 10] was March 22, 1984.

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.
19.64.900	Saving—1943 c 229.

Radio broadcasting rights as to horse races: RCW 67.16.110.

19.64.010 Liability of owner or operator limited. Where the owner, licensee, or operator of a radio or television broadcasting station, or the agents or employees thereof, has required a person speaking over said station to submit a written copy of his 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.]

19.64.900 Saving—1943 c 229. This chapter shall not be applicable to or affect any cause of action existing at the time this chapter becomes effective. [1943 c 229 § 3.]

Chapter 19.68 RCW
REBATING BY PRACTITIONERS OF HEALING
PROFESSIONS

Sections

19.68.005	Definition.
19.68.010	Rebating prohibited—Disclosure—List of alternative facilities.
19.68.020	Deemed unprofessional conduct.
19.68.030	License may be revoked or suspended.
19.68.040	Declaration of intent.
19.68.900	Construction—Application.

Hearing instrument fitter/dispensers: RCW 18.35.110.

Physicians, surgeons, dentists, ophthalmologists, optometrists, osteopaths, chiropractors, drugless healers, etc.: Title 18 RCW.

19.68.005 Definition. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

"Electronic health record technology" means items and services, in the form of software or information technology and training services, necessary and used predominantly to create, maintain, transmit, or receive electronic health records. [2013 c 297 § 3.]

Findings—Intent—Retroactive application—2013 c 297: See notes following RCW 19.68.900.

19.68.010 Rebating prohibited—Disclosure—List of alternative facilities. (1) It shall be unlawful for any person, firm, corporation or association, whether organized as a cooperative, or for profit or nonprofit, to pay, or offer to pay or allow, directly or indirectly, to any person licensed by the state of Washington to engage in the practice of medicine and surgery, drugless treatment in any form, dentistry, or pharmacy and it shall be unlawful for such person to request, receive or allow, directly or indirectly, a rebate, refund, commission, unearned discount or profit by means of a credit or other valuable consideration in connection with the referral of patients to any person, firm, corporation or association, or in connection with the furnishings of medical, surgical or dental care, diagnosis, treatment or service, on the sale, rental, furnishing or supplying of clinical laboratory supplies or services of any kind, drugs, medication, or medical supplies, or any other goods, services or supplies prescribed for medical diagnosis, care or treatment.

(2) Ownership of a financial interest in any firm, corporation or association which furnishes any kind of clinical laboratory or other services prescribed for medical, surgical, or dental diagnosis shall not be prohibited under this section where (a) the referring practitioner affirmatively discloses to the patient in writing, the fact that such practitioner has a financial interest in such firm, corporation, or association; and (b) the referring practitioner provides the patient with a list of effective alternative facilities, informs the patient that he or she has the option to use one of the alternative facilities, and assures the patient that he or she will not be treated differently by the referring practitioner if the patient chooses one of the alternative facilities.

(3) Any person violating this section is guilty of a misdemeanor. [2003 c 53 § 147; 1993 c 492 § 233; 1973 1st ex.s. c 26 § 1; 1965 ex.s. c 58 § 1. Prior: 1949 c 204 § 1; Rem. Supp. 1949 § 10185-14.]

(2018 Ed.)

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

Findings—Intent—1993 c 492: See notes following RCW 43.20.050. Additional notes found at www.leg.wa.gov

19.68.020 Deemed unprofessional conduct. The acceptance directly or indirectly by any person so licensed of any rebate, refund, commission, unearned discount, or profit by means of a credit or other valuable consideration whether in the form of money or otherwise, as compensation for referring patients to any person, firm, corporation or association as set forth in RCW 19.68.030, constitutes unprofessional conduct. [1965 ex.s. c 58 § 2; 1949 c 204 § 2; Rem. Supp. 1949 § 10185-15.]

19.68.030 License may be revoked or suspended. The license of any person so licensed may be revoked or suspended if he 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.]

19.68.040 Declaration of intent. It is the intent of this chapter, and this chapter shall be so construed, that persons so licensed shall only be authorized by law to charge or receive compensation for professional services rendered if such services are actually rendered by the licensee and not otherwise: PROVIDED, HOWEVER, That it is not intended to prohibit two or more licensees who practice their profession as copartners to charge or collect compensation for any professional services by any member of the firm, or to prohibit a licensee who employs another licensee to charge or collect compensation for professional services rendered by the employee licensee. [2000 c 171 § 57; 1949 c 204 § 4; Rem. Supp. 1949 § 10185-17.]

19.68.900 Construction—Application. (1) Nothing in this chapter may be construed to limit or prohibit the donation of electronic health record technology or other activity by any entity, including a hospital licensed under chapter 70.41 RCW that operates a clinical laboratory, when the donation or other activity is allowed by or otherwise does not violate,

42 U.S.C. Sec. 1320a-7b(b) or the federal rules adopted to implement 42 U.S.C. Sec. 1320a-7b(b).

(2) This section does not apply to any entity which principally operates as a clinical laboratory licensed or certified under section 353 of the public health service act, 42 U.S.C. Sec. 263a, or other applicable Washington state law. [2013 c 297 § 2.]

Findings—Intent—2013 c 297: "(1) The legislature recognizes the complexity of the health care delivery system and the need to provide a clear and consistent regulatory framework to enable health care providers to manage their operations in an efficient and effective manner. The legislature also recognizes that the donation of electronic health records systems reduces health care costs, promotes patient safety, and improves the quality of health care.

(2) To further the important national policy of promoting the widespread adoption of electronic health records systems, the federal antikickback statute and the rules adopted to implement the statute contain a safe harbor that allows the donation of electronic health records systems. The federal statute and rules also contain additional safe harbors to preserve a variety of other activities which, in many cases, improve access to health care. For health care entities other than clinical laboratories, the legality of all of these arrangements is currently in question.

(3) The legislature is adding language to chapter 19.68 RCW to clarify existing law and ensure that, except with respect to arrangements involving an entity which principally operates as a clinical laboratory, it is interpreted in a manner consistent with the federal antikickback statute." [2013 c 297 § 1.]

Retroactive application—2013 c 297: "This act applies retroactively to June 1, 2006, as well as prospectively." [2013 c 297 § 4.]

Chapter 19.72 RCW SURETYSHIP

Sections

19.72.020	Individual sureties—Eligibility.
19.72.030	Individual sureties—Number—Qualification.
19.72.040	Individual sureties—Examination—Approval.
19.72.060	Corporate surety.
19.72.070	Subrogation of surety.
19.72.080	Contribution among sureties.
19.72.090	Default by surety—Indemnity.
19.72.100	Notice to creditor to institute action.
19.72.101	Failure of creditor to proceed—Discharge of surety.
19.72.107	Surety bond—Liability limited.
19.72.109	Release from official's, executor's, licensee's, etc., bond—Definitions.
19.72.110	Release from official's, executor's, licensee's, etc., bond—Notice, service, proof.
19.72.130	Release from official's, executor's, licensee's, etc., bond—Effective date—Failure to give new bond, effect.
19.72.140	Suretyship—Raising issue as defendant.
19.72.141	Suretyship—Order to exhaust principal's property.
19.72.150	Heirs, etc., bound—Exception.
19.72.160	Assets—Safekeeping agreements—Joint control of deposits.
19.72.170	Bonds not to fail for want of form or substance.
19.72.180	Successive recoveries on bond—Limitation.
19.72.900	Application.
19.72.901	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

Bail and appearance bonds: Chapter 10.19 RCW.

Bond of executor or administrator: Chapter 11.28 RCW.

Corporate

seals, effect of absence from instrument: RCW 64.04.105.

surety: Chapter 48.28 RCW.

Official bonds, in general: Chapter 42.08 RCW.

19.72.020 Individual sureties—Eligibility. Whenever any bond or recognizance is required, or permitted, by law to be made, given or filed, conditioned upon the doing or not doing of anything specified therein and to be signed by one or more persons as sureties, each of such sureties shall be a res-

ident of this state; but no attorney-at-law, sheriff, clerk of any court of record, or other officer of such court, shall be permitted to become such surety. [1927 c 162 § 1; RRS § 958-1.]

19.72.030 Individual sureties—Number—Qualification. Each of such sureties shall have separate property worth the amount specified in the bond or recognizance, over and above all debts and liabilities, and exclusive of property exempt from execution, unless the other spouse joins in the execution of the bond, in which case they must have community property of such required value; but in case such bond or recognizance is given in any action or proceeding commenced or pending in any court the judge, on justification, may allow more than two sureties to justify, severally, in amounts less than the amount specified, if the whole justification is equivalent to that of two sufficient sureties. [1987 c 202 § 185; 1973 1st ex.s. c 154 § 22; 1927 c 162 § 2; RRS § 958-2.]

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

Additional notes found at www.leg.wa.gov

19.72.040 Individual sureties—Examination—Approval. In case such bond or recognizance is given in any action or proceeding commenced or pending in any court, the judge or clerk of any court of record or district court, or any party to the action or proceeding for the security or protection of which such bond or recognizance is made may, upon notice, require any of such sureties to attend before the judge at a time and place specified and to be examined under oath touching the surety's qualifications both as to residence and property as such surety, in such manner as the judge, in the judge's discretion, may think proper. If the party demanding the examination require it, the examination shall be reduced to writing and subscribed by the surety. If the judge finds the surety possesses the requisite qualifications and property, the judge shall endorse the allowance thereof on the bond or recognizance, and cause it to be filed as provided by law, otherwise it shall be of no effect. [2000 c 171 § 58; 1987 c 202 § 186; 1927 c 162 § 3; RRS § 958-3. Formerly RCW 19.72.040, 19.72.050.]

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

19.72.060 Corporate surety. See surety insurance: Chapter 48.28 RCW.

19.72.070 Subrogation of surety. When any defendant, surety in a judgment or special bail or replevin or surety in a delivery bond or replevin bond, or any person being surety in any bond whatever, has been or shall be compelled to pay any judgment or any part thereof, or shall make any payment which is applied upon such judgment by reason of such suretyship, or when any sheriff or other officer or other surety upon his 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.]

19.72.080 Contribution among sureties. Any one of several judgment defendants, and any one of several replevin bail having paid and satisfied the plaintiff, shall have the remedy provided in RCW 19.72.070 against the codefendants and cosureties to collect of them the ratable proportion each is equitably bound to pay. [Code 1881 § 649; RRS § 979. Prior: 1877 p 135 § 652; 1869 p 151 § 589; 1854 p 211 § 431.]

19.72.090 Default by surety—Indemnity. No surety or his 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.]

19.72.100 Notice to creditor to institute action. Any person bound as surety upon any contract in writing for the payment of money or the performance of any act, when the right of action has accrued, may require by notice in writing the creditor or obligee forthwith to institute an action upon the contract. [Code 1881 § 644; RRS § 974. Prior: 1877 p 134 § 647; 1869 p 150 § 584; 1854 p 210 § 426. FORMER PART OF SECTION: Code 1881 § 645; RRS § 975, now codified as RCW 19.72.101.]

19.72.101 Failure of creditor to proceed—Discharge of surety. If the creditor or obligee shall not proceed within a reasonable time to bring his 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.]

19.72.107 Surety bond—Liability limited. (1) Except under RCW 19.72.109, surety bond means any form of surety insurance as defined in RCW 48.11.080. A surety bond may not provide any other type of insurance coverage defined in chapter 48.11 RCW. Language in any statute, ordinance, contract, or surety bond to the contrary is void.

(2) A surety bond shall not be liable for damages based upon or arising out of any:

- (a) Tortious injury, including death, to:
 - (i) Any person; or
 - (ii) Any real or personal property; or
- (b) Failure to have any or adequate insurance coverage, even if liability under (a) or (b) of this subsection is imposed on the surety's principal or the surety by contract, surety bond, strict liability, ordinance, statute, or common law. [1992 c 115 § 1.]

19.72.109 Release from official's, executor's, licensee's, etc., bond—Definitions. Unless otherwise (2018 Ed.)

required by the context, words as used in RCW 19.72.110, and 19.72.130 shall mean:

(1) "Bond" shall mean and include any bond, undertaking or writing executed by a principal and surety, required by law from the principal as an official or employee of the state, or any county, municipal corporation or taxing district, or as guardian, executor, administrator, receiver or trustee, or as a licensee or permittee as a condition to the right to receive, hold or exercise any license, permit or franchise;

(2) "Surety" shall mean and include any person, firm or corporation that has executed as surety any bond. [1937 c 145 § 1; RRS § 9942. Formerly RCW 19.72.010.] [SLC-RO-17.]

19.72.110 Release from official's, executor's, licensee's, etc., bond—Notice, service, proof. Any surety upon any bond described in RCW 19.72.109 desiring to be released from subsequent liability and responsibility on any such bond shall serve upon the principal of such bond a written notice that on and after a certain date to be fixed in the notice, which shall be not less than ten days from the date of the service of the notice, the surety will withdraw as surety from such bond and shall serve a copy of such notice upon the official with whom such bond is filed not less than ten days prior to the date fixed in the notice as the date of termination of liability. If such principal is an individual and resides within the state of Washington, or is a corporation doing business in the state of Washington, such notice shall be personally served upon such individual, or if the principal is a firm or a corporation, such notice shall be served personally upon any person upon whom personal service of summons may be made under the existing laws of the state of Washington. If the principal is an individual and is not a resident of the state of Washington, or cannot be found therein, or if the principal is a foreign corporation, such notice shall be mailed by registered mail to the last known address of such principal, if any, which fact shall be shown by affidavit filed with the notice of withdrawal as hereinafter provided, and a copy of such notice shall be published once a week for two consecutive weeks in a newspaper of general circulation in the county of the residence of the official with whom such bond is filed. The date of the last publication of notice shall be not less than twenty days from the date stated therein as the date upon which the surety will withdraw from the bond. Proof of such service or publication shall be made by affidavit and filed with the official with whom the bond is filed at least ten days before the date fixed in the notice of withdrawal. [1937 c 145 § 2; RRS § 9943. Formerly RCW 19.72.110 and 19.72.120.] [SLC-RO-17.]

19.72.130 Release from official's, executor's, licensee's, etc., bond—Effective date—Failure to give new bond, effect. On and after the date fixed in the notice as the termination date the surety shall be released from subsequent liability on such bond; and, unless before the date fixed in such notice as the termination date by the surety, a new bond shall be filed with sufficient and satisfactory surety as required by law under which the bond was originally furnished and filed, the office, position, or trust in the case of a public office, guardian, executor, administrator, receiver, or trustee shall become vacant and a successor shall be

appointed as provided by law; and in case of a license, certificate, permit, or franchise, the same shall become null and void: PROVIDED, HOWEVER, That no surety shall be released on the bond of any guardian, executor, administrator, receiver, or trustee until such fiduciary shall have furnished a new bond with surety approved by the court, or until his 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.]

19.72.140 Suretyship—Raising issue as defendant.

When any action is brought against two or more defendants upon a contract, any one or more of the defendants being surety for the others, the surety may, upon a written complaint to the court, cause the question of suretyship to be tried and determined upon the issues made by the parties at the trial of the cause, or at any time before or after the trial, or at a subsequent term, but such proceedings shall not affect the proceedings of the plaintiff. [Code 1881 § 646; RRS § 976. Prior: 1877 p 134 § 649; 1869 p 150 § 586; 1854 p 210 § 428. FORMER PART OF SECTION: Code 1881 § 647; RRS § 977, now codified as RCW 19.72.141.]

19.72.141 Suretyship—Order to exhaust principal's property. If the finding upon such issue be in favor of the surety, the court shall make an order directing the sheriff to levy the execution upon, and first exhaust the property of the principal before a levy shall be made upon the property of the surety, and the clerk shall indorse a memorandum of the order upon the execution. [Code 1881 § 647; RRS § 977. Prior: 1877 p 134 § 650; 1869 p 151 § 587; 1854 p 211 § 429. Formerly RCW 19.72.140, part.]

19.72.150 Heirs, etc., bound—Exception. The provisions of RCW 19.72.070 through 19.72.101, 19.72.140, 19.72.141 shall extend to heirs, executors, and administrators of deceased persons, but the provisions of RCW 19.72.101 shall not operate against persons under legal disabilities. [Code 1881 § 651; RRS § 981. Prior: 1877 p 135 § 654; 1869 p 151 § 591; 1854 p 211 § 433.]

19.72.160 Assets—Safekeeping agreements—Joint control of deposits. It shall be lawful for any party of whom a bond, undertaking, or other obligation is required, to agree with his 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.]

19.72.170 Bonds not to fail for want of form or substance. No bond required by law, and intended as such bond, shall be void for want of form or substance, recital, or condition; nor shall the principal or surety on such account be discharged, but all the parties thereto shall be held and bound to the full extent contemplated by the law requiring the same, to the amount specified in such bond. In all actions on such defective bond, the plaintiff may state its legal effect, in the same manner as though it were a perfect bond. [Code 1881 § 749; 1854 p 219 § 489; RRS § 777. Formerly RCW 10.19.120, part.] [SLC-RO-10.]

19.72.180 Successive recoveries on bond—Limitation. In the event of the breach of the condition of any bond described in RCW 19.72.109, successive recoveries may be made thereon by any of the obligees thereof: PROVIDED, HOWEVER, That the total amount of all such recoveries, whether by one or more of such obligees, shall not exceed, in the aggregate, the penal sum specified in such bond. [1959 c 113 § 1.]

19.72.900 Application. This chapter applies to all sureties, regardless of whether the sureties are compensated or uncompensated. [1992 c 115 § 2.]

19.72.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, 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, 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. [2009 c 521 § 55.]

Chapter 19.76 RCW BEVERAGE BOTTLES, ETC.—LABELING— REFILLING

Sections

19.76.100	Labels on bottles, etc.—Filing—Publication.
19.76.110	Refilling bottles, etc.—Forbidden.
19.76.120	Refilling bottles, etc.—Possession as evidence.
19.76.130	Refilling bottles, etc.—Penalty.

Trademark registration: Chapter 19.77 RCW.

19.76.100 Labels on bottles, etc.—Filing—Publication. All persons engaged in the manufacture, bottling or selling of ale, porter, lager beer, soda, mineral water, or other beverages in casks, kegs, bottles or boxes, with their names or other marks of ownership stamped or marked thereon, may file in the office of the secretary of state a description of

names or marks so used by them, and publish the same in a newspaper of general circulation in the county, printed in the English language, once a week for six successive weeks, in counties where the articles are manufactured, bottled or sold. [1985 c 469 § 11; 1981 c 302 § 1; 1897 c 38 § 1; RRS § 11546.]

Alcoholic beverage control: Title 66 RCW.

Labeling of spirits, etc.: RCW 66.28.100 through 66.28.120.

Additional notes found at www.leg.wa.gov

19.76.110 Refilling bottles, etc.—Forbidden. It is hereby declared to be unlawful for any person or persons hereafter, without the written consent of the owner or owners thereof, to fill with ale, porter, lager beer or soda, mineral water or other beverages, for sale or to be furnished to customers, any such casks, barrels, kegs, bottles or boxes so marked or stamped, or to sell, dispose of, buy or traffic in, or wantonly destroy any such cask, barrel, keg, bottle or box so marked, stamped, by the owner or owners thereof, after such owner or owners shall have complied with the provisions of RCW 19.76.100. [2003 c 53 § 148; 1897 c 38 § 2; RRS § 11547.]

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

Crimes relating to brands and marks: Chapter 9.16 RCW.

19.76.120 Refilling bottles, etc.—Possession as evidence. The using by any person other than the rightful owner thereof, without such written permission, of any such cask, barrel, keg, bottle or box, for the sale therein of ale, porter, lager beer, soda, mineral waters or other beverages, or to be furnished to customers, or the buying, selling or trafficking in any such barrel, keg, bottle or box, by any person other than the owner, without such written permission, or the fact that any junk dealer or dealers in casks, barrels, kegs, bottles or boxes, shall have in his or her possession any such cask, barrel, keg, bottle or box so marked or stamped and registered as aforesaid, without such written permission, shall and is hereby declared to be prima facie evidence that such use, buying, selling, trafficking in or possession is unlawful within the meaning of RCW 19.76.100 through 19.76.120. [1897 c 38 § 3; RRS § 11548.]

19.76.130 Refilling bottles, etc.—Penalty. Any person who violates RCW 19.76.100 through 19.76.120 is guilty of a misdemeanor, and upon conviction shall be fined five dollars for each and every cask, barrel, keg, or box, and fifty cents for each and every bottle so by him, her, or them filled, bought, sold, used, trafficked in, or wantonly destroyed, together with costs of suit for first offense, and ten dollars for each and every cask, barrel, keg, and box and one dollar for each and every bottle so filled, bought, sold, used, trafficked in, or wantonly destroyed, together with the costs of suit for each subsequent offense. [2003 c 53 § 149.]

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

(2018 Ed.)

**Chapter 19.77 RCW
TRADEMARK REGISTRATION**

Sections

19.77.010	Definitions.
19.77.015	Reservation—Fees—Rules.
19.77.020	Registration of certain trademarks prohibited.
19.77.030	Application for registration—Fee—Rules—Corrections—Amendment for change in categories—Certificates issued in error.
19.77.040	Certificate of registration—Issuance—Contents—Admissibility in evidence.
19.77.050	Duration of certificate—Renewal—Fees—Rules.
19.77.060	Assignment of trademark, registration, or application—Fee—Rules.
19.77.070	Secretary of state to keep records.
19.77.080	Secretary of state must cancel certain registrations.
19.77.090	Actions relating to registration—Service on secretary of state—Assessment—Set by rule.
19.77.115	Classification of goods and services.
19.77.130	Fraudulent registration—Financial liability.
19.77.140	Trademark imitation.
19.77.150	Remedies of registrants.
19.77.160	Injunctive relief for owners of famous marks.
19.77.170	Use of trademark employed by alien person outside of United States—Limitation of damages, relief—Exceptions.
19.77.900	Common law rights preserved prior to registration.
19.77.910	Saving—1955 c 211.
19.77.930	Construction—1989 c 72.
19.77.940	Prospective application—1989 c 72.

Crimes relating to trademarks: Chapter 9.16 RCW.

Materials specifically authorized to be printed and distributed by secretary of state: RCW 43.07.140.

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

(1) "Alien" when used with reference to a person means a person who is not a citizen of the United States.

(2) "Applicant" means the person filing an application for registration of a trademark under this chapter, his or her legal representatives, predecessors, successors, or assigns of record with the secretary of state.

(3) "Domestic" when used with reference to a person means a person who is a citizen of the United States.

(4) The term "colorable imitation" includes any mark which so resembles a registered mark as to be likely to cause confusion or mistake or to deceive.

(5) A "counterfeit" is a spurious mark which is identical with, or substantially indistinguishable from, a registered mark.

(6) "Dilution" means the lessening of the capacity of a famous mark to identify and distinguish goods or services through use of a mark by another person, regardless of the presence or absence of (a) competition between the owner of the famous mark and other parties, or (b) likelihood of confusion, mistake, or deception arising from that use.

(7) "Person" means any individual, firm, partnership, corporation, association, union, or other organization capable of suing and being sued in a court of law.

(8) "Registered mark" means a trademark registered under this chapter.

(9) "Registrant" means the person to whom the registration of a trademark under this chapter is issued, his or her legal representatives, successors, or assigns of record with the secretary of state.

(10) "Trademark" or "mark" means any word, name, symbol, or device or any combination thereof adopted and

used by a person to identify goods made or sold by him or her and to distinguish them from goods made or sold by others, and any word, name, symbol, or device, or any combination thereof, and any title, designation, slogan, character name, and distinctive feature of radio or television programs, used by a person in the sale or advertising of services to identify the services provided by him or her and to distinguish them from the services of others.

(11) A trademark shall be deemed to be "used" in this state when it is placed in the ordinary course of trade and not merely to reserve a right in a mark in any manner on the goods or their containers, or on tabs or labels affixed thereto, or displayed in connection with such goods, and such goods are sold or otherwise distributed in this state, or when it is used or displayed in the sale or advertising of services rendered in this state.

(12) "Trade name" means any name used by a person to identify a business or vocation of such a person.

(13) A mark shall be deemed to be "abandoned":

(a) When its use has been discontinued with intent not to resume such use. Intent not to resume may be inferred from circumstances. Nonuse for three consecutive years shall be prima facie evidence of abandonment; or

(b) When any course of conduct of the registrant, including acts of omission as well as commission, causes the mark to become the generic name for the goods or services or causes the mark to lose its significance as an indication of source or origin. Purchaser motivation shall not be a test for determining abandonment under this subsection. [2003 c 34 § 1; 1994 c 60 § 6; 1989 c 72 § 1; 1955 c 211 § 1.]

Additional notes found at www.leg.wa.gov

19.77.015 Reservation—Fees—Rules. The exclusive right to the use of a trademark may be reserved by:

(1) A person intending to register a trademark under this title; or

(2) A domestic or foreign corporation intending to change its trademark.

The reservation shall be made by filing with the secretary of state an application to reserve a specified trademark or service mark, executed by or on behalf of the applicant, one copy of the trademark artwork, and fees as set by rule by the secretary of state. If the secretary of state finds that the trademark is available for use, the secretary of state shall reserve the trademark for the exclusive use of the applicant for a period of one hundred eighty days. The reservation is limited to one filing. [1994 c 60 § 2.]

19.77.020 Registration of certain trademarks prohibited. (1) A trademark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others shall not be registered if it:

(a) Consists of or comprises immoral, deceptive, or scandalous matter; or

(b) Consists of or comprises matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt or disrepute; or

(c) Consists of or comprises the flag or coat of arms or other insignia of the United States, or of any state or municipality, or of any foreign nation, or any simulation thereof; or

(d) Consists of or comprises the name, portrait, or signature identifying a particular living individual who has not consented in writing to its registration; or

(e) Consists of or comprises a trademark which so resembles a trademark registered in this state, or a trademark or trade name used in this state by another prior to the date of the applicant's or applicant's predecessor's first use in this state and not abandoned, as to be likely, when applied to the goods or services of the applicant, to cause confusion or mistake or to deceive.

(2) Registration under this title does not constitute prima facie evidence that a mark is not merely descriptive, deceptively misdescriptive, or geographically descriptive or deceptively misdescriptive of the goods or services with which it is used, or is not primarily merely a surname, unless the applicant has made substantially exclusive and continuous use thereof as a trademark in this state or elsewhere in the United States for the five years next preceding the date of the filing of the application for registration.

(3) A trade name is not registrable under this chapter. However, if a trade name also functions as a trademark, it is registrable as a trademark.

(4) The secretary of state shall make a determination of registrability by considering the application record and the marks previously registered and subsisting under this chapter. [2003 c 34 § 2; 1989 c 72 § 2; 1955 c 211 § 2.]

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 24.03.405.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

19.77.040 Certificate of registration—Issuance—Contents—Admissibility in evidence. Upon compliance by the applicant with the requirements of this chapter, the secretary of state shall issue a certificate of registration and deliver it to the applicant. The certificate of registration shall be issued under the signature of the secretary of state and the seal of the state, and it shall show the registrant's name and business address and, if the registrant is a corporation, its state of incorporation, the date claimed for the first use of the trademark anywhere, the date claimed for the first use of the trademark in this state, the particular goods or services for which the trademark is used, the class in which such goods

(2018 Ed.)

and services fall, a reproduction of the trademark, the registration date and the term of the registration.

Any certificate of registration issued by the secretary of state under the provisions hereof or a copy thereof duly certified by the secretary of state shall be admissible in any action or judicial proceeding in any court of this state as prima facie evidence of:

(1) The validity of the registration of the trademark;

(2) The registrant's ownership of the trademark; and

(3) The registrant's exclusive right to use the trademark in this state in connection with the goods or services specified in the certificate, subject to any conditions and limitations stated in the certificate.

Registration of a trademark under this chapter shall be constructive notice of the registrant's claim of ownership of the trademark throughout this state. [1989 c 72 § 4; 1955 c 211 § 4.]

19.77.050 Duration of certificate—Renewal—Fees—Rules. Registration of a trademark hereunder shall be effective for a term of five years from the date of registration. Upon application filed within six months prior to the expiration of such term, on a form to be furnished by the secretary of state requiring all the allegations of an application for original registration, the registration may be renewed for successive terms of five years as to the goods or services for which the trademark is still in use in this state. A renewal fee as set by rule by the secretary of state, payable to the secretary of state, shall accompany each application for renewal of the registration.

The secretary of state shall notify registrants of trademarks hereunder or their agents for service of record with the secretary of state of the necessity of renewal within the year, but not less than six months, next preceding the expiration of the unexpired original or renewed term by writing to the last known address of the registrants or their agents according to the files of the secretary of state. Neither the secretary of state's failure to notify a registrant nor the registrant's nonreceipt of a notice under this section shall extend the term of a registration or excuse the registrant's failure to renew a registration. [2003 c 34 § 3; 1994 c 60 § 3; 1989 c 72 § 5; 1982 c 35 § 182; 1955 c 211 § 5.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

19.77.060 Assignment of trademark, registration, or application—Fee—Rules. Any trademark and its registration or application for registration hereunder shall be assignable with the good will of the business in which the trademark is used, or with that part of the good will of the business connected with the use of and symbolized by the trademark. An assignment by an instrument in writing duly executed and acknowledged, or the designation of a legal representative, successor, or agent for service shall be recorded by the secretary of state on request when accompanied by a fee, as set by rule by the secretary of state, payable to the secretary of state. On request, upon recording of the assignment and payment of a further fee of five dollars, the secretary of state shall issue in the name of the assignee a new certificate for the remainder of the unexpired original or renewal term of the registration. An assignment of any registration or application for reg-

istration under this chapter shall be void as against any subsequent purchaser for a valuable consideration without notice, unless it is recorded with the secretary of state within three months after the date thereof or prior to such subsequent purchase. [1994 c 60 § 4; 1982 c 35 § 183; 1955 c 211 § 6.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

19.77.070 Secretary of state to keep records. The secretary of state shall keep for public examination a record of all trademarks registered or renewed under this chapter, and the records specified in RCW 19.77.060. [1955 c 211 § 7.]

19.77.080 Secretary of state must cancel certain registrations. The secretary of state shall cancel from the register:

(1) Any registration concerning which the secretary of state shall receive a voluntary written request for cancellation thereof from the registrant;

(2) All expired registrations not renewed under this chapter;

(3) Any registration concerning which a court of competent jurisdiction has rendered a final judgment against the registrant, which has become unappealable, canceling the registration or finding that:

(a) The registered trademark has been abandoned;

(b) The registrant under this chapter or under a prior act is not the owner of the trademark;

(c) The registration was granted contrary to the provisions of this chapter;

(d) The registration was obtained fraudulently;

(e) The registered trademark has become incapable of serving as a trademark; or

(f) The registered trademark is so similar to a trademark registered by another person in the United States patent and trademark office, prior to the date of the filing of the application for registration by the registrant hereunder, and not abandoned, as to be likely to cause confusion or mistake or to deceive: PROVIDED, That such finding was made on petition of such other person and that should the registrant prove that he or she is the owner of a concurrent registration of the trademark in the United States patent and trademark office covering an area including this state, the registration hereunder shall not be canceled. [1989 c 72 § 6; 1955 c 211 § 8.]

19.77.090 Actions relating to registration—Service on secretary of state—Assessment—Set by rule. The secretary of state shall be the agent for service of process in any action relating to the registration of any registrant who is at the time of such service a nonresident or a foreign firm, corporation, association, union, or other organization without a resident of this state designated as the registrant's agent for service of record with the secretary of state, or who cannot be found in this state, and service of process, pleadings and papers in such action made upon the secretary of state shall be held as due and sufficient process upon the registrant. The secretary of state shall charge and collect an assessment, as set by rule by the secretary of state, at the time of any service of process upon the secretary of state under this section. The assessment may be recovered as taxable costs by the party to the suit or action causing such service to be made if such

party prevails in the suit or action. The assessment shall be deposited in the secretary of state's revolving fund. [1994 c 287 § 5; 1982 c 35 § 184; 1955 c 211 § 9.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

19.77.115 Classification of goods and services. The secretary of state must adopt by rule a classification of goods and services for convenience of administration of this chapter, but not to limit or extend the applicant's or registrant's rights, and a single application for registration of a mark may include any or all goods upon which, or services with which, the mark is actually being used indicating the appropriate class or classes of goods or services. When a single application includes goods or services that fall within multiple classes, the secretary of state may require payment of a fee for each class. To the extent practical, the classification of goods and services should conform to the classification adopted by the United States patent and trademark office. [2003 c 34 § 4.]

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.]

19.77.140 Trademark imitation. (1) Subject to the provisions of RCW 19.77.900 any person who shall:

(a) Use, without the consent of the registrant, any reproduction, counterfeit, copy, or colorable imitation of a trademark registered under this chapter in connection with the sale, offering for sale, or advertising of any goods or services on or in connection with which such use is likely to cause confusion or mistake or to deceive as to the source or origin of such goods or services; or

(b) Reproduce, counterfeit, copy or colorably imitate any such trademark and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in connection with the sale or other distribution of goods or services in this state on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive as to the source or origin of such goods or services shall be liable to a civil action by the registrant for any or all of the remedies provided in RCW 19.77.150, except that under (b) of this subsection the registrant shall not be entitled to recover profits or damages unless the acts have been committed with the intent to cause confusion or mistake or to deceive.

(2) In determining whether, under this chapter, there is a likelihood of confusion, mistake, or deception between marks when used in association with goods or services, the court shall consider all relevant factors, including, but not limited to the following:

- (a) The similarity or dissimilarity of the marks in their entireties to appearance, sound, meaning, connotation, and commercial impression;
- (b) The similarity or dissimilarity of the goods or services and nature of the goods and services;
- (c) The similarity or dissimilarity of trade channels;
- (d) The conditions under which sales are made and buyers to whom sales are made;
- (e) The fame of the marks;
- (f) The number and nature of similar marks in use on similar goods or services;
- (g) The nature and extent of any actual confusion;
- (h) The length of time during and conditions under which there has been concurrent use without evidence of actual confusion;
- (i) The variety of goods or services on which each of the marks is or is not used;
- (j) The nature and extent of potential confusion, i.e., whether de minimis or substantial;
- (k) Any other established fact probative of the effect of use. [2003 c 34 § 5; 1989 c 72 § 9; 1955 c 211 § 14.]

19.77.150 Remedies of registrants. Any registrant may proceed by suit to enjoin the manufacture, use, display, or sale of any counterfeits or colorable imitations of a trademark registered under this chapter, and any court of competent jurisdiction may grant an injunction to restrain such manufacture, use, display, or sale as may be by the said court deemed just and reasonable, and may require the defendants to pay to such registrant all profits derived from and/or all damages suffered by reason of such wrongful manufacture, use, display, or sale; and such court may also order that any such counterfeits or colorable imitations in the possession or under the control of any defendant in such case be delivered to an officer of the court, or to the registrant, to be destroyed. The court, in its discretion, may enter judgment awarding reasonable attorneys' fees and/or an amount not to exceed three times such profits and damages in such cases where the court finds the other party committed the wrongful acts in bad faith or otherwise as according to the circumstances of the case.

The enumeration of any right or remedy herein shall not affect a registrant's right to prosecute under any penal law of this state. [2003 c 34 § 6; 1989 c 72 § 11; 1955 c 211 § 15.]

19.77.160 Injunctive relief for owners of famous marks. (1) The owner of a mark that is famous in this state shall be entitled, subject to the principles of equity and upon such terms as the court deems reasonable, to an injunction against another person's commercial use in this state of a mark, commencing after the mark becomes famous, which causes dilution of the distinctive quality of the mark, and to obtain such other relief as is provided in this section. In determining whether a mark is famous and has distinctive quality, a court shall consider all relevant factors, including, but not limited to the following:

- (a) The degree or inherent or acquired distinctiveness of the mark in this state;
- (b) The duration and extent of use of the mark in connection with the goods or services with which the mark is used;

- (c) The duration and extent of advertising and publicity of the mark in this state;
- (d) The geographical extent of the trading area in which the mark is used;
- (e) The channels of trade for the goods or services with which the mark is used;
- (f) The degree of recognition of the mark in the trading areas and channels of trade in this state used by the mark's owner and the person against whom the injunction is sought;
- (g) The nature and extent of use of the same or similar marks by third parties; and
- (h) Whether the mark is the subject of state registration in this state or United States registration.

(2) The owner shall be entitled only to injunctive relief in an action brought under this section, unless the subsequent user willfully intended to trade on the owner's reputation or to cause dilution of the owner's mark. If such willful intent is proven, the owner shall also be entitled to the remedies set forth in this chapter, subject to the discretion of the court and the principles of equity.

(3) The following are not actionable under this section:

- (a) Fair use of a famous mark by another person in comparative commercial advertising or promotion to identify competing goods or services of the owner of the famous mark;
- (b) Noncommercial use of a famous mark; and
- (c) All forms of reporting and news commentary. [2003 c 34 § 7; 1989 c 72 § 10.]

19.77.170 Use of trademark employed by alien person outside of United States—Limitation of damages, relief—Exceptions. Damages or equitable relief of any nature may not be awarded in any pending or future legal procedure in favor of an alien person against a domestic person on account of the domestic person's use of a trademark or trade name in this state that is employed by the alien person outside of the United States, absent proof that:

- (1) The alien person had commenced to employ the trademark or trade name in connection with the sale of its goods or services within the United States prior to the time the domestic person commenced to use the trademark or trade name in this state; or
- (2) That the trademark was registered by the United States patent and trademark office or reserved by the secretary of state to the alien person at the time the domestic person commenced to use it. This section applies regardless of the nature of the claim asserted and whether the claim upon which any such relief is sought arises by statute, under the common law, or otherwise. [1994 c 60 § 7.]

19.77.900 Common law rights preserved prior to registration. Nothing herein shall adversely affect the rights or the enforcement of rights in trademarks acquired in good faith at common law prior to registration under this chapter; however, during any period subsequent to July 23, 1989, when the registration of a mark under this chapter is in force and the registrant has not abandoned the trademark, no common law rights as against the registrant may be acquired. [1989 c 72 § 12; 1955 c 211 § 16.]

19.77.910 Saving—1955 c 211. As to any pending suit, proceeding or appeal, and for that purpose only, the repeal of prior acts shall be deemed not to be effective until final determination. [1955 c 211 § 17.]

19.77.930 Construction—1989 c 72. It is the intent of the legislature that, in construing this chapter, the courts be guided by the interpretation given by the federal courts to the federal trademark act of 1946, as amended, 15 U.S.C., Sec. 1051, et seq. [1989 c 72 § 13.]

19.77.940 Prospective application—1989 c 72. Chapter 72, Laws of 1989 applies prospectively only and not retroactively. The rights and obligations of chapter 72, Laws of 1989 shall accrue upon July 23, 1989, to all prior trademark registrations then in effect, and the provisions of chapter 72, Laws of 1989 shall not apply to any cause of action arising prior to July 23, 1989. [1989 c 72 § 14.]

Chapter 19.80 RCW TRADE NAMES

Sections

19.80.001	Purposes.
19.80.005	Definitions.
19.80.010	Registration required.
19.80.025	Changes in registration—Filing notice of change.
19.80.040	Failure to file.
19.80.045	Rules—Fees.
19.80.075	Collection and deposit of fees.
19.80.080	Renewal and cancellation.

19.80.001 Purposes. The purposes of this chapter are:
(1) To require each person who is conducting business in the state of Washington under a trade name to disclose the true and real name of each person conducting that business, and
(2) to provide a central registry of businesses operating under a trade name in the state of Washington. [1984 c 130 § 1.]

Additional notes found at www.leg.wa.gov

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 298: 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.

(5) Other business entities: The registration must set forth the entity's name as required by the department. [2013 c 144 § 32; 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 298: 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 298: See notes following RCW 19.02.020.

Additional notes found at www.leg.wa.gov

19.80.040 Failure to file. No person or persons carrying on, conducting, or transacting business under any trade name shall be entitled to maintain any suit in any of the courts of this state until such person or persons have properly completed the registration as provided for in RCW 19.80.010. Failure to complete this registration shall not impair the validity of any contract or act of such person or persons and shall not prevent such person or persons from defending any suit in any court of this state. [1984 c 130 § 7; 1907 c 145 § 5; RRS § 9980. Formerly RCW 19.80.040 and 19.80.050.]

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 298: 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 business license account. [2013 c 144 § 33; 2011 c 298 § 17; 1992 c 107 § 6; 1984 c 130 § 9.]

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 298: See notes following RCW 19.02.020.

Additional notes found at www.leg.wa.gov

19.80.080 Renewal and cancellation. (1) The department may require the renewal of trade names and establish a process for renewing trade names. Any such renewal process may not require renewals of trade names more often than annually and must allow persons to renew their trade name at the same time they are required to renew their business license.

(2) The department may cancel a person's trade name upon request of the person the trade name is registered to or when the person's business license account with the department's business licensing service is inactive. The department may also provide for the cancellation of trade names under circumstances as defined by the department by rule, which may include failure to renew a trade name under a renewal process as may be established by the department under the authority of subsection (1) of this section.

(3)(a) The department must make a reasonable effort to notify a person that the department intends to cancel the person's trade name. This notice is not required when a request

(2018 Ed.)

for cancellation of a trade name is received by the department from the person the trade name was registered to or the person's authorized representative. The department may comply with this subsection either by mailing the notice to the person's last known address on record with the department or by providing the notice electronically instead of by mail. Such electronic notice is not subject to the confidentiality provisions of RCW 19.02.115 and may be sent by email to the person's last known email address on record with the department. However, if the department sends a notice by email and is notified that the email is undeliverable, the department must resend the notice by mail to the person's last known address on record with the department.

(b) The department may cancel a trade name unless, within twenty days of sending the notice required under this subsection, the person notifies the department in writing not to cancel the person's trade name and pays any applicable renewal fee.

(4) The department may remove any canceled trade names from its database of trade names.

(5) "Business license" and "business licensing service" have the same meaning as in RCW 19.02.020. [2013 c 144 § 31.]

Chapter 19.83 RCW TRADING STAMP LICENSES

Sections

19.83.010	License required to use or furnish trading stamps, coupons, or similar devices.
19.83.020	Issuance of license—Fee.
19.83.030	Furnishing or selling trading stamps, coupons, or similar devices geographically limited.
19.83.040	Coupons or similar devices—Exemptions.
19.83.050	Penalty.

Trading stamps and premiums, general provision: Chapter 19.84 RCW.

19.83.010 License required to use or furnish trading stamps, coupons, or similar devices. Every person who uses, or furnishes, or sells to any other person for use, in, with, or for the sale of any goods, any trading stamps, coupons, tickets, certificates, cards or other similar devices which entitle the purchaser to procure any goods free of charge or for less than the retail market price thereof, upon the production of any number of such trading stamps, coupons, tickets, certificates, cards, or other similar devices, shall before so furnishing, selling, or using the same obtain a separate license from the auditor of each county wherein such furnishing or selling or using shall take place for each and every store or place of business in that county, owned or conducted by such person from which such furnishing or selling, or in which such using shall take place. [1913 c 134 § 1; RRS § 8359. Formerly RCW 36.91.010.]

19.83.020 Issuance of license—Fee. In order to obtain such license the person applying therefor shall pay to the county treasurer of the county for which the license is sought the sum of six thousand dollars, and upon such payment being made to the county treasurer he 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.]

19.83.030 Furnishing or selling trading stamps, coupons, or similar devices geographically limited. No person shall furnish or sell to another for use, in, with, or for the sale of any goods, any trading stamps, coupons, tickets, certificates, cards, or other similar devices to be used in any county, city or town in this state other than that in which such furnishing or selling shall take place. [1957 c 221 § 2. Prior: 1939 c 31 § 1, part; 1913 c 134 § 3, part; RRS § 8361, part. Formerly RCW 36.91.030.]

19.83.040 Coupons 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

19.83.050 Penalty. Any person violating any of the provisions of this chapter shall be guilty of a gross misdemeanor. [1913 c 134 § 4; RRS § 8362. Formerly RCW 36.91.050.]

Chapter 19.84 RCW

TRADING STAMPS AND PREMIUMS

Sections

19.84.010 Redeemable cash value to be printed on face.

19.84.020 Must redeem at cash value.

19.84.030 Distributor liable.

19.84.040 Criminal penalty.

Trading stamp licenses: Chapter 19.83 RCW.

19.84.010 Redeemable cash value to be printed on face. No person shall sell or issue any stamps, trading stamp, cash discount stamp, check, ticket, coupon or other similar device, which will entitle the holder thereof, on presentation thereof, either singly or in definite number, to receive, either directly from the vendor or indirectly through any other person, money or goods, wares or merchandise, unless each of said stamps, trading stamps, cash discount stamps, checks, tickets, coupons or other similar devices shall have legibly printed or written upon the face thereof the redeemable value thereof in cents. [1907 c 253 § 1; RRS § 5837.]

19.84.020 Must redeem at cash value. Any person who shall sell or issue to any person engaged in any trade, business or profession, any stamp, trading stamp, cash discount stamp, check, ticket, coupon, or other similar device which will entitle the holder thereof, on presentation thereof either singly or in definite number, to receive either directly from the vendor or indirectly through any other person, money or goods, wares or merchandise, shall, upon presentation, redeem the same either in goods, wares or merchandise, or in cash, good and lawful money of the United States, at the option of the holder thereof, and any number of such stamps, trading stamps, cash discount stamps, checks, tickets, coupons, or other similar devices shall be redeemed as hereinbefore set forth, at the value in cents printed upon the face thereof, and it shall not be necessary for the holder thereof to have any stipulated number of the same before demand for redemption may be made, but they shall be redeemed in any number, when presented, at the value in cents printed upon the face thereof, as hereinbefore provided. [1907 c 253 § 2; RRS § 5838.]

19.84.030 Distributor liable. Any person engaged in any trade, business, or profession who shall distribute, deliver, or present to any person dealing with him 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.]

19.84.040 Criminal penalty. Any person, firm or corporation who shall violate any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and shall be fined not less than one hundred dollars nor more than one thousand dollars for each offense. [1907 c 253 § 4; RRS § 5840.]

Chapter 19.85 RCW REGULATORY FAIRNESS ACT

Sections

19.85.011	Finding.
19.85.020	Definitions.
19.85.025	Application of chapter—Limited.
19.85.030	Agency rules—Small business economic impact statement—Reduction of costs imposed by rule.
19.85.040	Small business economic impact statement—Purpose—Contents.
19.85.050	Agency plan for review of business rules—Scope—Factors applicable to review—Annual list.
19.85.061	Compliance with federal law.
19.85.070	Small business economic impact statement—Notice of proposed rule.

Rules coordinator duties regarding business: RCW 43.17.310.

19.85.011 Finding. The legislature finds that administrative rules adopted by state agencies can have a disproportionate impact on the state's small businesses because of the size of those businesses. This disproportionate impact reduces competition, innovation, employment, and new employment opportunities, and threatens the very existence of some small businesses. The legislature therefore enacts the Regulatory Fairness Act with the intent of reducing the disproportionate impact of state administrative rules on small business. [1994 c 249 § 9.]

Additional notes found at www.leg.wa.gov

19.85.020 Definitions. The definitions in this section apply through this chapter unless the context clearly requires otherwise.

(1) "Industry" means all of the businesses in this state in any one four-digit standard industrial classification as published by the United States department of commerce, or the North American industry classification system as published by the executive office of the president and the office of management and budget. However, if the use of a four-digit standard industrial classification or North American industry classification system would result in the release of data that would violate state confidentiality laws, "industry" means all businesses in a three-digit standard industrial classification or the North American industry classification system.

(2) "Minor cost" means a cost per business that is less than three-tenths of one percent of annual revenue or income, or one hundred dollars, whichever is greater, or one percent of annual payroll. However, for the rules of the department of social and health services "minor cost" means cost per business that is less than fifty dollars of annual cost per client or other appropriate unit of service.

(3) "Small business" means any business entity, including a sole proprietorship, corporation, partnership, or other

(2018 Ed.)

legal entity, that is owned and operated independently from all other businesses, and that has fifty or fewer employees.

(4) "Small business economic impact statement" means a statement meeting the requirements of RCW 19.85.040 prepared by a state agency pursuant to RCW 19.85.030. [2007 c 239 § 2; 2003 c 166 § 1; 1994 c 249 § 10; 1993 c 280 § 34; 1989 c 374 § 1; 1982 c 6 § 2.]

Findings—2007 c 239: "The legislature finds that:

(1) A vibrant and growing small business sector is critical to creating jobs in a dynamic economy;

(2) Small businesses bear a disproportionate share of regulatory costs and burdens;

(3) Fundamental changes that are needed in the regulatory and enforcement culture of state agencies to make them more responsive to small business can be made without compromising the statutory missions of the agencies;

(4) When adopting rules to protect the health, safety, and economic welfare of Washington, state agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on small employers;

(5) Uniform regulatory and reporting requirements can impose unnecessary and disproportionately burdensome demands including legal, accounting, and consulting costs upon small businesses with limited resources;

(6) The failure to recognize differences in the scale and resources of regulated businesses can adversely affect competition in the marketplace, discourage innovation, and restrict improvements in productivity;

(7) Unnecessary regulations create entry barriers in many industries and discourage potential entrepreneurs from introducing beneficial products and processes;

(8) The practice of treating all regulated businesses the same leads to inefficient use of regulatory agency resources, enforcement problems, and, in some cases, to actions inconsistent with the legislative intent of health, safety, environmental, and economic welfare legislation;

(9) Alternative regulatory approaches which do not conflict with the state objective of applicable statutes may be available to minimize the significant economic impact of rules on small businesses; and

(10) The process by which state rules are developed and adopted should be reformed to require agencies to solicit the ideas and comments of small businesses, to examine the impact of proposed and existing rules on such businesses, and to review the continued need for existing rules." [2007 c 239 § 1.]

Additional notes found at www.leg.wa.gov

19.85.025 Application of chapter—Limited. (1) Unless an agency receives a written objection to the expedited repeal of a rule, this chapter does not apply to a rule proposed for expedited repeal pursuant to RCW 34.05.353. If an agency receives a written objection to expedited repeal of the rule, this chapter applies to the rule-making proceeding.

(2) This chapter does not apply to a rule proposed for expedited adoption under RCW 34.05.353, unless a written objection is timely filed with the agency and the objection is not withdrawn.

(3) This chapter does not apply to the adoption of a rule described in RCW 34.05.310(4).

(4) This chapter does not apply to the adoption of a rule if an agency is able to demonstrate that the proposed rule does not affect small businesses.

(5) An agency is not required to prepare a separate small business economic impact statement under RCW 19.85.040 if it prepared an analysis under RCW 34.05.328 that meets the requirements of a small business economic impact statement, and if the agency reduced the costs imposed by the rule on small business to the extent required by RCW 19.85.030(2). The portion of the analysis that meets the requirements of RCW 19.85.040 shall be filed with the code reviser and provided to any person requesting it in lieu of a

separate small business economic impact statement. [2017 c 53 § 1; 1997 c 409 § 212; 1995 c 403 § 401.]

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

Additional notes found at www.leg.wa.gov

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 a proposed rule affects only small businesses, the proposing agency must consider all mitigation options defined in this chapter.

(4) In the absence of sufficient data to calculate disproportionate impacts, an agency whose rule imposes more than minor costs must mitigate the costs to small businesses, where legal and feasible, as defined in this chapter.

(5) 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.

(6)(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. [2017 c 53 § 2; 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

19.85.040 Small business economic impact statement—Purpose—Contents.

(1) A small business economic impact statement must include a brief description of the reporting, recordkeeping, and other compliance requirements of the proposed rule, and the kinds of professional services that a small business is likely to need in order to comply with such requirements. It shall analyze the costs of compliance for businesses required to comply with the proposed rule adopted pursuant to RCW 34.05.320, including costs of equipment, supplies, labor, professional services, and increased administrative costs. It shall consider, based on input received, whether compliance with the rule will cause businesses to lose sales or revenue. To determine whether the proposed rule will have a disproportionate cost impact on small businesses, the impact statement must compare the cost of compliance for small business with the cost of compliance for the ten percent of businesses that are the largest businesses required to comply with the proposed rules using one or more of the following as a basis for comparing costs:

- (a) Cost per employee;
- (b) Cost per hour of labor; or
- (c) Cost per one hundred dollars of sales.

(2) A small business economic impact statement must also include:

(a) A statement of the steps taken by the agency to reduce the costs of the rule on small businesses as required by RCW 19.85.030(2), or reasonable justification for not doing so, addressing the options listed in RCW 19.85.030(2);

(b) A description of how the agency will involve small businesses in the development of the rule;

(c) A list of industries that will be required to comply with the rule. However, this subsection (2)(c) shall not be construed to preclude application of the rule to any business or industry to which it would otherwise apply; and

(d) An estimate of the number of jobs that will be created or lost as the result of compliance with the proposed rule.

(3) To obtain information for purposes of this section, an agency may survey a representative sample of affected businesses or trade associations and should, whenever possible, appoint a committee under RCW 34.05.310(2) to assist in the accurate assessment of the costs of a proposed rule, and the means to reduce the costs imposed on small business. [2007 c 239 § 4; 1995 c 403 § 403; 1994 c 249 § 12. Prior: 1989 c 374 § 3; 1989 c 175 § 73; 1982 c 6 § 4.]

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 in Washington State Register: RCW 34.08.020.

Additional notes found at www.leg.wa.gov

Additional notes found at www.leg.wa.gov

19.85.050 Agency plan for review of business rules—Scope—Factors applicable to review—Annual list. (1) Within one year after June 10, 1982, each agency shall publish and deliver to the office of financial management and to all persons who make requests of the agency for a copy of a plan to periodically review all rules then in effect and which have been issued by the agency which have an economic impact on more than twenty percent of all industries or ten percent of the businesses in any one industry. Such plan may be amended by the agency at any time by publishing a revision to the review plan and delivering such revised plan to the office of financial management and to all persons who make requests of the agency for the plan. The purpose of the review is to determine whether such rules should be continued without change or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize the economic impact on small businesses as described by this chapter. The plan shall provide for the review of all such agency rules in effect on June 10, 1982, within ten years of that date.

(2) In reviewing rules to minimize any significant economic impact of the rule on small businesses as described by this chapter, and in a manner consistent with the stated objectives of applicable statutes, the agency shall consider the following factors:

- (a) The continued need for the rule;
- (b) The nature of complaints or comments received concerning the rule from the public;
- (c) The complexity of the rule;
- (d) The extent to which the rule overlaps, duplicates, or conflicts with other state or federal rules, and, to the extent feasible, with local governmental rules; and
- (e) The degree to which technology, economic conditions, or other factors have changed in the subject area affected by the rule.

(3) Each year each agency shall publish a list of rules which are to be reviewed pursuant to this section during the next twelve months and deliver a copy of the list to the office of financial management and all persons who make requests of the agency for the list. The list shall include a brief description of the legal basis for each rule as described by RCW 34.05.360, and shall invite public comment upon the rule. [1989 c 175 § 74; 1982 c 6 § 5.]

Additional notes found at www.leg.wa.gov

19.85.061 Compliance with federal law. Unless so requested by a majority vote of the joint administrative rules review committee under RCW 19.85.030, an agency is not required to comply with this chapter when adopting any rule solely for the purpose of conformity or compliance, or both, with federal statute or regulations. In lieu of the statement required under RCW 19.85.030, the agency shall file a statement citing, with specificity, the federal statute or regulation with which the rule is being adopted to conform or comply, and describing the consequences to the state if the rule is not adopted. [1995 c 403 § 404.]

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

(2018 Ed.)

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

- 19.86.010 Definitions.
- 19.86.020 Unfair competition, practices, declared unlawful.
- 19.86.023 Violation of RCW 15.86.030 constitutes violation of RCW 19.86.020.
- 19.86.030 Contracts, combinations, conspiracies in restraint of trade declared unlawful.
- 19.86.040 Monopolies and attempted monopolies declared unlawful.
- 19.86.050 Transactions and agreements not to use or deal in commodities or services of competitor declared unlawful when lessens competition.
- 19.86.060 Acquisition of corporate stock by another corporation to lessen competition declared unlawful—Exceptions—Judicial order to divest.
- 19.86.070 Labor not an article of commerce—Chapter not to affect mutual, nonprofit organizations.
- 19.86.080 Attorney general may restrain prohibited acts—Costs—Restoration of property.
- 19.86.085 Establishment of investigation unit—Receipt and use of criminal history information.
- 19.86.090 Civil action for damages—Treble damages authorized—Action by governmental entities.
- 19.86.093 Civil action—Unfair or deceptive act or practice—Claim elements.
- 19.86.095 Request for injunctive relief—Appellate proceeding—Service on the attorney general.
- 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.
- 19.86.115 Materials from a federal agency or other state's attorney general.
- 19.86.120 Limitation of actions—Tolling.
- 19.86.130 Final judgment to restrain is prima facie evidence in civil action—Exceptions.
- 19.86.140 Civil penalties.
- 19.86.145 Penalties—Animals used in biomedical research.
- 19.86.150 Dissolution, forfeiture of corporate franchise for violations.
- 19.86.160 Personal service of process outside state.
- 19.86.170 Exempted actions or transactions—Stipulated penalties and remedies are exclusive.
- 19.86.910 Short title.
- 19.86.920 Purpose—Interpretation—Liberal construction—Saving—1985 c 401; 1983 c 288; 1983 c 3; 1961 c 216.

Adult family homes: Chapter 70.128 RCW.

Advertisement of children for adoption: RCW 26.33.400.

Agriculture—Declarations of "Washington state grown": RCW 15.04.410.

Auctioneers: Chapter 18.11 RCW.

Automotive repair: Chapter 46.71 RCW.

Bail bond agents—Records—Finances—Disposition of security—Application of consumer protection act: RCW 18.185.210.

Business opportunity fraud act: Chapter 19.110 RCW.

Camping resorts: RCW 19.105.405, 19.105.500.
Charitable solicitations, regulation: RCW 19.09.340.
Check cashers and sellers: Chapter 31.45 RCW.
Cigarettes—Sales below cost: RCW 19.91.300.
Collection agencies: RCW 19.16.120, 19.16.440.
Commercial telephone solicitation: Chapter 19.158 RCW.
Consumer leases: RCW 63.10.050.
Contractors: Chapter 18.27 RCW.
Credit—Fair credit reporting act: Chapter 19.182 RCW.
Credit services organization act: RCW 19.134.070.
Debt adjusting: RCW 18.28.185.
Degree-granting institutions: Chapter 28B.85 RCW.
Distressed property conveyances: Chapter 61.34 RCW.
Electronic signatures—Licensed certification authority using license in violation of chapter 19.86 RCW: RCW 19.34.100.
Email—Commercial: Chapter 19.190 RCW.
Embalmers and funeral directors: RCW 18.39.350.
Employment agencies—Enforcement: RCW 19.31.210.
Escrow agents—Advertisement, statement, or reference to existence of financial responsibility requirements prohibited—Referral fees prohibited: RCW 18.44.400, 18.44.450.
Fair credit reporting act: Chapter 19.182 RCW.
Franchise investment protection: RCW 19.100.030, 19.100.160, 19.100.190, 19.100.200.
Funeral and cemetery board—Violation—Penalty—Unfair practice—Other laws applicable: RCW 68.05.330.
Going out of business sales: Chapter 19.178 RCW.
Health studio services: Chapter 19.142 RCW.
Hearing instrument dispensing, advertising, etc.—Application: RCW 18.35.110, 18.35.120, 18.35.180.
Heating oil pollution liability protection act: RCW 70.149.100.
House-to-house sales by minors: RCW 49.12.310.
Immigration services fraud prevention act: RCW 19.154.090.
International student exchange: Chapter 19.166 RCW.
Kosher food products: Chapter 69.90 RCW.
Land development law: RCW 58.19.270.
Law against discrimination: RCW 49.60.030.
Lease-purchase agreements: Chapter 63.19 RCW.
Leases: RCW 62A.2A-104.
Life settlements act: Chapter 48.102 RCW.
Manufactured and mobile home installation service and warranty service standards: RCW 43.22.440.
Mechanics' and materialmen's liens—Acts of coercion: RCW 60.04.035.
Medicaid patient discrimination: RCW 74.42.055.
Mortgage brokers: Chapter 19.146 RCW.
Motor vehicle dealers: Chapter 46.70 RCW.
Motor vehicle subleasing or transfer: Chapter 19.116 RCW.
Motor vehicle warranties: Chapter 19.118 RCW.
Nursing homes—Discrimination against medicaid recipients: RCW 74.42.055.
Offers to alter bids at sales pursuant to deeds of trust: RCW 61.24.135.
On-site sewage additive manufacturers: RCW 70.118.080.
Operator services: RCW 80.36.360, 80.36.400, 80.36.530, 80.36.540.
Pay-per-call information delivery services: Chapter 19.162 RCW.
Private vocational schools: Chapter 28C.10 RCW.
Promotional advertising of prizes: Chapter 19.170 RCW.
Radio communications service companies not regulated by utilities and transportation commission: RCW 80.66.010.
Roofing and siding contractors and salespersons: Chapter 19.186 RCW.

Sellers of travel: Chapter 19.138 RCW.
Telephone buyers' protection act: Chapter 19.130 RCW.
Timeshare act: Chapter 64.36 RCW.
Unsolicited goods or services: Chapter 19.56 RCW.
Usurious contracts: RCW 19.52.036.
Water companies exempt from utilities and transportation commission regulation: RCW 80.04.010.
Weatherization of leased or rented residences: RCW 70.164.060.

19.86.010 Definitions. As used in this chapter:

(1) "Person" shall include, where applicable, natural persons, corporations, trusts, unincorporated associations and partnerships.

(2) "Trade" and "commerce" shall include the sale of assets or services, and any commerce directly or indirectly affecting the people of the state of Washington.

(3) "Assets" shall include any property, tangible or intangible, real, personal, or mixed, and wherever situate, and any other thing of value. [1961 c 216 § 1.]

19.86.020 Unfair competition, practices, declared unlawful. Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful. [1961 c 216 § 2.]

Hearing instrument dispensing, advertising, etc.—Application: RCW 18.35.180.

19.86.023 Violation of RCW 15.86.030 constitutes violation of RCW 19.86.020. Any violation of RCW 15.86.030 shall also constitute a violation under RCW 19.86.020. [1985 c 247 § 7.]

19.86.030 Contracts, combinations, conspiracies in restraint of trade declared unlawful. Every contract, combination, in the form of trust or otherwise, or conspiracy in restraint of trade or commerce is hereby declared unlawful. [1961 c 216 § 3.]

Monopolies and trusts prohibited: State Constitution Art. 12 § 22.

19.86.040 Monopolies and attempted monopolies declared unlawful. It shall be unlawful for any person to monopolize, or attempt to monopolize or combine or conspire with any other person or persons to monopolize any part of trade or commerce. [1961 c 216 § 4.]

19.86.050 Transactions and agreements not to use or deal in commodities or services of competitor declared unlawful when lessens competition. It shall be unlawful for any person to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies, or other commodities, or services, whether patented or unpatented, for use, consumption, enjoyment, or resale, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodity or services of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for such sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce. [1961 c 216 § 5.]

19.86.060 Acquisition of corporate stock by another corporation to lessen competition declared unlawful—Exceptions—Judicial order to divest. It shall be unlawful for any corporation to acquire, directly or indirectly, the whole or any part of the stock or assets of another corporation where the effect of such acquisition may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

In addition to any other remedy provided by this chapter, the superior court may order any corporation to divest itself of the stock or assets held contrary to this section, in the manner and within the time fixed by said order. [1961 c 216 § 6.]

19.86.070 Labor not an article of commerce—Chapter not to affect mutual, nonprofit organizations. The labor of a human being is not a commodity or article of commerce. Nothing contained in this chapter shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof. [1961 c 216 § 7.]

Labor regulations: Title 49 RCW.

19.86.080 Attorney general may restrain prohibited acts—Costs—Restoration of property. (1) The attorney general may bring an action in the name of the state, or as *parens patriae* on behalf of persons residing in the state, against any person to restrain and prevent the doing of any act herein prohibited or declared to be unlawful; and the prevailing party may, in the discretion of the court, recover the costs of said action including a reasonable attorney's fee.

(2) The court may make such additional orders or judgments as may be necessary to restore to any person in interest any moneys or property, real or personal, which may have been acquired by means of any act herein prohibited or declared to be unlawful.

(3) Upon a violation of RCW 19.86.030, 19.86.040, 19.86.050, or 19.86.060, the court may also make such additional orders or judgments as may be necessary to restore to any person in interest any moneys or property, real or personal, which may have been acquired, regardless of whether such person purchased or transacted for goods or services directly with the defendant or indirectly through resellers. The court shall exclude from the amount of monetary relief awarded in an action pursuant to this subsection any amount that duplicates amounts that have been awarded for the same violation. The court should consider consolidation or coordination with other related actions, to the extent practicable, to

(2018 Ed.)

avoid duplicate recovery. [2007 c 66 § 1; 1970 ex.s. c 26 § 1; 1961 c 216 § 8.]

Additional notes found at www.leg.wa.gov

19.86.085 Establishment of investigation unit—Receipt and use of criminal history information. There is established a unit within the office of the attorney general for the purpose of detection, investigation, and prosecution of any act prohibited or declared to be unlawful under this chapter. The attorney general will employ supervisory, legal, and investigative personnel for the program, who must be qualified by training and experience. The attorney general is authorized to receive criminal history record information that includes nonconviction data for any purpose associated with the investigation of any person doing any act herein prohibited or declared to be unlawful under this chapter. Dissemination or use of nonconviction data for purposes other than that authorized in this section is prohibited. [2008 c 74 § 7.]

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

19.86.090 Civil action for damages—Treble damages authorized—Action by governmental entities. Any person who is injured in his or her business or property by a violation of RCW 19.86.020, 19.86.030, 19.86.040, 19.86.050, or 19.86.060, or any person so injured because he or she refuses to accede to a proposal for an arrangement which, if consummated, would be in violation of RCW 19.86.030, 19.86.040, 19.86.050, or 19.86.060, may bring a civil action in superior court to enjoin further violations, to recover the actual damages sustained by him or her, or both, together with the costs of the suit, including a reasonable attorney's fee. In addition, the court may, in its discretion, increase the award of damages up to an amount not to exceed three times the actual damages sustained: PROVIDED, That such increased damage award for violation of RCW 19.86.020 may not exceed twenty-five thousand dollars: PROVIDED FURTHER, That such person may bring a civil action in the district court to recover his or her actual damages, except for damages which exceed the amount specified in RCW 3.66.020, and the costs of the suit, including reasonable attorney's fees. The district court may, in its discretion, increase the award of damages to an amount not more than three times the actual damages sustained, but such increased damage award shall not exceed twenty-five thousand dollars. For the purpose of this section, "person" includes the counties, municipalities, and all political subdivisions of this state.

Whenever the state of Washington is injured, directly or indirectly, by reason of a violation of RCW 19.86.030, 19.86.040, 19.86.050, or 19.86.060, it may sue therefor in superior court to recover the actual damages sustained by it, whether direct or indirect, and to recover the costs of the suit including a reasonable attorney's fee. [2009 c 371 § 1; 2007 c 66 § 2; 1987 c 202 § 187; 1983 c 288 § 3; 1970 ex.s. c 26 § 2; 1961 c 216 § 9.]

Application—2009 c 371: "This act applies to all causes of action that accrue on or after July 26, 2009." [2009 c 371 § 3.]

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

Short title—Purposes—1983 c 288: "This act may be cited as the anti-trust/consumer protection improvements act. Its purposes are to strengthen public and private enforcement of the unfair business practices-consumer protection act, chapter 19.86 RCW, and to repeal the unfair practices act,

chapter 19.90 RCW, in order to eliminate a statute which is unnecessary in light of the provisions and remedies of chapter 19.86 RCW. In repealing chapter 19.90 RCW, it is the intent of the legislature that chapter 19.86 RCW should continue to provide appropriate remedies for predatory pricing and other pricing practices which constitute violations of federal antitrust law." [1983 c 288 § 1.]

Additional notes found at www.leg.wa.gov

19.86.093 Civil action—Unfair or deceptive act or practice—Claim elements. In a private action in which an unfair or deceptive act or practice is alleged under RCW 19.86.020, a claimant may establish that the act or practice is injurious to the public interest because it:

- (1) Violates a statute that incorporates this chapter;
- (2) Violates a statute that contains a specific legislative declaration of public interest impact; or
- (3)(a) Injured other persons; (b) had the capacity to injure other persons; or (c) has the capacity to injure other persons. [2009 c 371 § 2.]

Application—2009 c 371: See note following RCW 19.86.090.

19.86.095 Request for injunctive relief—Appellate proceeding—Service on the attorney general. In any proceeding in which there is a request for injunctive relief under RCW 19.86.090, the attorney general shall be served with a copy of the initial pleading alleging a violation of this chapter. In any appellate proceeding in which an issue is presented concerning a provision of this chapter, the attorney general shall, within the time provided for filing the brief with the appellate court, be served with a copy of the brief of the party presenting such issue. [1983 c 288 § 5.]

Short title—Purposes—1983 c 288: See note following RCW 19.86.090.

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*.

19.86.115 Materials from a federal agency or other state's attorney general. Whenever the attorney general receives documents or other material from:

(1) A federal agency, pursuant to its subpoena or Hart-Scott-Rodino authority; or

(2) Another state's attorney general, pursuant to that state's presuit investigative subpoena powers, the documents or materials are subject to the same restrictions as and may be used for all the purposes set forth in RCW 19.86.110. [1993 c 125 § 2.]

19.86.120 Limitation of actions—Tolling. Any action to enforce a claim for damages under RCW 19.86.090 shall be forever barred unless commenced within four years after the cause of action accrues: PROVIDED, That whenever any

action is brought by the attorney general for a violation of RCW 19.86.020, 19.86.030, 19.86.040, 19.86.050, or 19.86.060, except actions for the recovery of a civil penalty for violation of an injunction or actions under RCW 19.86.090, the running of the foregoing statute of limitations, with respect to every private right of action for damages under RCW 19.86.090 which is based in whole or part on any matter complained of in said action by the attorney general, shall be suspended during the pendency thereof. [1970 ex.s. c 26 § 5; 1961 c 216 § 12.]

Action to enforce claim for civil damages under chapter 19.86 RCW must be commenced within six years. Unfair motor vehicles business practices act: RCW 46.70.220.

Limitation of actions: Chapter 4.16 RCW.

19.86.130 Final judgment to restrain is prima facie evidence in civil action—Exceptions. A final judgment or decree rendered in any action brought under RCW 19.86.080 by the state of Washington to the effect that a defendant has violated RCW 19.86.020, 19.86.030, 19.86.040, 19.86.050, or 19.86.060 shall be prima facie evidence against such defendant in any action brought by any party against such defendant under RCW 19.86.090 as to all matters which said judgment or decree would be an estoppel as between the parties thereto: PROVIDED, That this section shall not apply to consent judgments or decrees where the court makes no finding of illegality. [1970 ex.s. c 26 § 6; 1961 c 216 § 13.]

19.86.140 Civil penalties. Every person who shall violate the terms of any injunction issued as in this chapter provided, shall forfeit and pay a civil penalty of not more than twenty-five thousand dollars.

Every person, other than a corporation, who violates RCW 19.86.030 or 19.86.040 shall pay a civil penalty of not more than one hundred thousand dollars. Every corporation which violates RCW 19.86.030 or 19.86.040 shall pay a civil penalty of not more than five hundred thousand dollars.

Every person who violates RCW 19.86.020 shall forfeit and pay a civil penalty of not more than two thousand dollars for each violation: PROVIDED, That nothing in this paragraph shall apply to any radio or television broadcasting station which broadcasts, or to any publisher, printer or distributor of any newspaper, magazine, billboard or other advertising medium who publishes, prints or distributes, advertising in good faith without knowledge of its false, deceptive or misleading character.

For the purpose of this section the superior court issuing any injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the attorney general acting in the name of the state may petition for the recovery of civil penalties.

With respect to violations of RCW 19.86.030 and 19.86.040, the attorney general, acting in the name of the state, may seek recovery of such penalties in a civil action. [1983 c 288 § 2; 1970 ex.s. c 26 § 7; 1961 c 216 § 14.]

Short title—Purposes—1983 c 288: See note following RCW 19.86.090.

19.86.145 Penalties—Animals used in biomedical research. Any violation of RCW 9.08.070 through 9.08.078 or 16.52.220 constitutes an unfair or deceptive practice in

violation of this chapter. The relief available under this chapter for violations of RCW 9.08.070 through 9.08.078 or 16.52.220 by a research institution shall be limited to only monetary penalties in an amount not to exceed two thousand five hundred dollars. [2003 c 53 § 150; 1989 c 359 § 4.]

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

19.86.150 Dissolution, forfeiture of corporate franchise for violations. Upon petition by the attorney general, the court may, in its discretion, order the dissolution, or suspension or forfeiture of franchise, of any corporation which shall violate RCW 19.86.030 or 19.86.040 or the terms of any injunction issued as in this chapter provided. [1961 c 216 § 15.]

19.86.160 Personal service of process outside state. Personal service of any process in an action under this chapter may be made upon any person outside the state if such person has engaged in conduct in violation of this chapter which has had the impact in this state which this chapter reprobates. Such persons shall be deemed to have thereby submitted themselves to the jurisdiction of the courts of this state within the meaning of RCW 4.28.180 and 4.28.185. [1961 c 216 § 16.]

19.86.170 Exempted actions or transactions—Stipulated penalties and remedies are exclusive. Nothing in this chapter shall apply to actions or transactions otherwise permitted, prohibited or regulated under laws administered by the insurance commissioner of this state, the Washington utilities and transportation commission, the federal power commission or actions or transactions permitted by any other regulatory body or officer acting under statutory authority of this state or the United States: PROVIDED, HOWEVER, That actions and transactions prohibited or regulated under the laws administered by the insurance commissioner shall be subject to the provisions of RCW 19.86.020 and all sections of chapter 216, Laws of 1961 and chapter 19.86 RCW which provide for the implementation and enforcement of RCW 19.86.020 except that nothing required or permitted to be done pursuant to Title 48 RCW shall be construed to be a violation of RCW 19.86.020: PROVIDED, FURTHER, That actions or transactions specifically permitted within the statutory authority granted to any regulatory board or commission established within Title 18 RCW shall not be construed to be a violation of chapter 19.86 RCW: PROVIDED, FURTHER, That this chapter shall apply to actions and transactions in connection with the disposition of human remains.

RCW 9A.20.010(2) shall not be applicable to the terms of this chapter and no penalty or remedy shall result from a violation of this chapter except as expressly provided herein. [1977 c 49 § 1; 1974 ex.s. c 158 § 1; 1967 c 147 § 1; 1961 c 216 § 17.]

Radio communications: RCW 80.04.530.

Telecommunications: RCW 80.36.360.

19.86.910 Short title. This act shall be known and designated as the "Consumer Protection Act." [1961 c 216 § 19.]

19.86.920 Purpose—Interpretation—Liberal construction—Saving—1985 c 401; 1983 c 288; 1983 c 3; 1961 c 216. The legislature hereby declares that the purpose of this act is to complement the body of federal law governing restraints of trade, unfair competition and unfair, deceptive, and fraudulent acts or practices in order to protect the public and foster fair and honest competition. It is the intent of the legislature that, in construing this act, the courts be guided by final decisions of the federal courts and final orders of the federal trade commission interpreting the various federal statutes dealing with the same or similar matters and that in deciding whether conduct restrains or monopolizes trade or commerce or may substantially lessen competition, determination of the relevant market or effective area of competition shall not be limited by the boundaries of the state of Washington. To this end this act shall be liberally construed that its beneficial purposes may be served.

It is, however, the intent of the legislature that this act shall not be construed to prohibit acts or practices which are reasonable in relation to the development and preservation of business or which are not injurious to the public interest, nor be construed to authorize those acts or practices which unreasonably restrain trade or are unreasonable per se. [1985 c 401 § 1; 1983 c 288 § 4; 1983 c 3 § 25; 1961 c 216 § 20.]

Reviser's note: "This act" originally appears in 1961 c 216.

Short title—Purposes—1983 c 288: See note following RCW 19.86.090.

Chapter 19.91 RCW

UNFAIR CIGARETTE SALES BELOW COST ACT

Sections

19.91.300 Cigarettes—Sales below cost prohibited.

19.91.300 Cigarettes—Sales below cost prohibited.

No person licensed to sell cigarettes under chapter 82.24 RCW may sell cigarettes below the actual price paid. Violations of this section constitute unfair or deceptive acts or practices under the consumer protection act, chapter 19.86 RCW. [1986 c 321 § 13.]

Policy—Intent—Savings—Effective date—1986 c 321: See notes following RCW 82.24.500.

Chapter 19.94 RCW

WEIGHTS AND MEASURES

Sections

19.94.005 Findings.
 19.94.010 Definitions—Director may prescribe by rule.
 19.94.015 Commercial use of instrument or device—Registration—Fees.
 19.94.150 Standards recognized.
 19.94.160 State standards.
 19.94.163 Testing by department—Ensuring enforcement—Issuance of seal of approval—Exception.
 19.94.165 Commercial instruments or devices to be correct.
 19.94.175 Registration—Inspection and testing—Fees.
 19.94.185 Deposit of moneys—Weights and measures account—General fund.
 19.94.190 Enforcement—Rules.
 19.94.195 Specifications, tolerances, technical requirements—Adoption—Hearing—Notice.
 19.94.205 Correct and incorrect—Instruments, devices, weights, measures—When deemed.
 19.94.216 Department inspection—City sealer—Agencies, institutions—Fees.
 19.94.220 Investigations.

(2018 Ed.)

19.94.230 Inspections and tests to determine conformity to law—Off sale order—Marks, tags, stamps.
 19.94.240 Stop-use, stop-removal, and removal orders.
 19.94.250 Inspection of instrument or device to determine if correct—Rejection or seizure—Confiscation or destruction—Use of incorrect instrument or device—Notice.
 19.94.255 Correction of rejected weights and measures.
 19.94.258 Service agent—Registration certificate.
 19.94.2582 Service agent—Registration certificate—Fee—Decision—Denial—Notice—Refund.
 19.94.2584 Service agent—Registration certificate—Revocation, suspension, refusal to renew—Appeal.
 19.94.260 Rejection—Seizure for use as evidence—Entry of premises—Search warrant.
 19.94.265 Grievances—Procedure—Notice—Hearing—Rules.
 19.94.280 City sealers and deputies—Appointment, removal—Record, report—Testing of devices and instruments—Seal of approval.
 19.94.310 City sealers and deputies—Duties of governing body—Sealer to have standards comparison made every two years.
 19.94.320 City sealers—Director—General oversight powers, concurrent authority—Powers and duties of chapter are additional.
 19.94.325 Service agent—Inspection and testing of weights and measures—Seal of approval—Fees—Violation—Penalty.
 19.94.340 Sale of commodities—Measurement—Exceptions—Rules to assure good practice and accuracy.
 19.94.350 Packaged commodities in intrastate commerce—Declaration of contents on outside—Rules.
 19.94.360 Declaration of price on outside of package.
 19.94.370 Misleading wrappers, containers of packaged commodities—Standards of fill required.
 19.94.390 Price not to be misleading, deceiving, misrepresented—Fractions—Examination procedure standard—Department may revise—Electronic scanner screen visibility.
 19.94.400 Meat, fish, poultry to be sold by weight—Exceptions.
 19.94.410 Butter, margarine to be sold by weight.
 19.94.420 Fluid dairy products to be packaged for retail sale in certain units.
 19.94.430 Packaged flour to be kept, sold, etc., in certain units.
 19.94.440 Commodities sold in bulk—Delivery tickets.
 19.94.450 Solid fuels to be sold by weight, cubic measure—Delivery tickets.
 19.94.460 Heating oils—Delivery tickets—Statements.
 19.94.470 Berries and small fruit.
 19.94.480 Fractional units as fractional value.
 19.94.485 Contracts—Construction.
 19.94.490 Obstruction of director or sealer in performance of duties—Penalty.
 19.94.500 Impersonation of director or sealer—Penalty.
 19.94.507 Gasoline delivered to service stations—Invoice required.
 19.94.510 Unlawful practices—Penalty.
 19.94.515 Unlawful commercial use of instrument or device—Penalty.
 19.94.517 Incorrect commercial instrument or device to benefit of owner/operator—Penalties—Appeal.
 19.94.520 Injunction against violations.
 19.94.530 Proof of existence of weighing or measuring instrument or device presumed proof of regular use.
 19.94.540 Antifreeze products—Use of aversive agent.
 19.94.542 Antifreeze products—Aversive agents—Limitation of liability.
 19.94.544 Antifreeze products—Aversive agents—Application.
 19.94.900 Chapter cumulative and nonexclusive.
 19.94.920 Effective date—1992 c 237.

19.94.005 Findings. The legislature finds:

(1) The accuracy of weighing and measuring instruments and devices used in commerce in the state of Washington affects every consumer throughout the state and is of vital importance to the public interest.

(2) Fair weights and measures are equally important to business and the consumer.

(3) This chapter safeguards the consuming public and ensures that businesses receive proper compensation for the commodities they deliver. [1995 c 355 § 3; 1992 c 237 § 1.]

Intent—1992 c 237: "Until such time as the study in section 38, chapter 237, Laws of 1992, is completed, it is the intent of the legislature that consumer protection activities of the department of agriculture weights and measures program be funded by the general fund and that device inspection related activities be funded on a fee-for-service basis." [1992 c 237 § 2.]

Additional notes found at www.leg.wa.gov

19.94.010 Definitions—Director may prescribe by rule. (1) Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter and to any rules adopted pursuant to this chapter.

(a) "City" means a first-class city with a population of over fifty thousand persons.

(b) "City sealer" means the person duly authorized by a city to enforce and administer the weights and measures program within such city and any duly appointed deputy sealer acting under the instructions and at the direction of the city sealer.

(c) "Commodity in package form" means a commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale, exclusive, however, of an auxiliary shipping container enclosing packages that individually conform to the requirements of this chapter. An individual item or lot of any commodity not in packaged form, but on which there is marked a selling price based on established price per unit of weight or of measure, shall be construed to be a commodity in package form.

(d) "Consumer package" or "package of consumer commodity" means a commodity in package form that is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by persons, or used by persons for the purpose of personal care or in the performance of services ordinarily rendered in or about a household or in connection with personal possessions.

(e) "Cord" means the measurement of wood intended for fuel or pulp purposes that is contained in a space of one hundred twenty-eight cubic feet, when the wood is ranked and well stowed.

(f) "Department" means the department of agriculture of the state of Washington.

(g) "Director" means the director of the department or duly authorized representative acting under the instructions and at the direction of the director.

(h) "Fish" means any waterbreathing animal, including shellfish, such as, but not limited to, lobster, clam, crab, or other mollusca that is prepared, processed, sold, or intended for sale.

(i) "Net weight" means the weight of a commodity excluding any materials, substances, or items not considered to be part of such commodity. Materials, substances, or items not considered to be part of a commodity shall include, but are not limited to, containers, conveyances, bags, wrappers, packaging materials, labels, individual piece coverings, decorative accompaniments, and coupons.

(j) "Nonconsumer package" or "package of nonconsumer commodity" means a commodity in package form other than a consumer package and particularly a package designed solely for industrial or institutional use or for wholesale distribution only.

(k) "Meat" means and shall include all animal flesh, carcasses, or parts of animals, and shall also include fish, shellfish, game, poultry, and meat food products of every kind and character, whether fresh, frozen, cooked, cured, or processed.

(l) "Official seal of approval" means the seal or certificate issued by the director or city sealer which indicates that a secondary weights and measures standard or a weighing or

measuring instrument or device conforms with the specifications, tolerances, and other technical requirements adopted in RCW 19.94.195.

(m) "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, business trust, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise.

(n) "Poultry" means all fowl, domestic or wild, that is prepared, processed, sold, or intended or offered for sale.

(o) "Service agent" means a person who for hire, award, commission, or any other payment of any kind, installs, tests, inspects, checks, adjusts, repairs, reconditions, or systematically standardizes the graduations of a weighing or measuring instrument or device.

(p) "Ton" means a unit of two thousand pounds avoirdupois weight.

(q) "Weighing or measuring instrument or device" means any equipment or apparatus used commercially to establish the size, quantity, capacity, count, extent, area, heaviness, or measurement of quantities, things, produce, or articles for distribution or consumption, that are purchased, offered or submitted for sale, hire, or award on the basis of weight, measure or count, including any accessory attached to or used in connection with a weighing or measuring instrument or device when such accessory is so designed or installed that its operation affects, or may effect, the accuracy or indication of the device. This definition shall be strictly limited to those weighing or measuring instruments or devices governed by Handbook 44 as adopted under RCW 19.94.195.

(r) "Weight" means net weight as defined in this section.

(s) "Weights and measures" means the recognized standards or units of measure used to indicate the size, quantity, capacity, count, extent, area, heaviness, or measurement of any consumable commodity.

(t) "Secondary weights and measures standard" means the physical standards that are traceable to the primary standards through comparisons, used by the director, a city sealer, or a service agent that under specified conditions defines or represents a recognized weight or measure during the inspection, adjustment, testing, or systematic standardization of the graduations of any weighing or measuring instrument or device.

(2) The director shall prescribe by rule other definitions as may be necessary for the implementation of this chapter. [1995 c 355 § 4; 1992 c 237 § 3; 1969 c 67 § 1.]

Additional notes found at www.leg.wa.gov

19.94.015 Commercial use of instrument or device—Registration—Fees. (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 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 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 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 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 business licensing system under chapter 19.02 RCW. Payment of the registration fee for a weighing or measuring instrument or device under the business licensing 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 must be paid to the department of revenue concurrently with an application for a business license under chapter 19.02 RCW or with the annual renewal of a business license under chapter 19.02 RCW. A weighing or measuring instrument or device must be initially registered with the state at the time the owner applies for a business 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. The department of 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 must notify the department of agriculture at the time such fees are adopted and whenever changes in the fees are adopted. [2013 c 144 § 34. Prior: 2011 c 298 § 19; 2011 c 103 § 38; 1995 c 355 § 1.]

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 298: See notes following RCW 19.02.020.

Purpose—2011 c 103: See note following RCW 15.26.120.

Additional notes found at www.leg.wa.gov

19.94.150 Standards recognized. The system of weights and measures in customary use in the United States and the metric system of weights and measures are jointly recognized, and either one or both of these systems shall be used for all commercial purposes in this state. The definitions of basic units of weight and measure and weights and measures equivalents, as published by the national institute of standards and technology or any successor organization, are recognized and shall govern weighing or measuring instruments or devices used in commercial activities and other transactions involving weights and measures within this state. [1992 c 237 § 4; 1991 sp.s. c 23 § 4; 1969 c 67 § 15.]

Legislative findings—1991 sp.s. c 23: "The legislature finds:

(1) Accurate weights and measures are essential for the efficient operation of commerce in Washington, and weights and measures are important to both consumers and businesses.

(2) Legislation to expand the weights and measures program and fund the program with license fees on weights and measures devices has been considered.

(3) Additional information is necessary before further action can be taken." [1991 sp.s. c 23 § 1.]

(2018 Ed.)

Intent—1991 sp.s. c 23: "It is the intent of the legislature to fund the current weights and measures program only through the first year of the 1991-93 fiscal biennium, and to base funding of the program for the second year of the biennium and ensuing biennia upon the recommendations of the study performed under section 3, chapter 23, Laws of 1991 sp. sess." [1991 sp.s. c 23 § 2.]

19.94.160 State standards. Weights and measures standards that are in conformity with the standards of the United States as have been supplied to the state by the federal government or otherwise obtained by the state for use as state weights and measures standards, shall, when the same shall have been certified as such by the national institute of standards and technology or any successor organization, be the primary standards of weight and measure. The state weights and measures standards shall be kept in a place designated by the director and shall be maintained in such calibration as prescribed by the national institute of standards and technology or any successor organization. [1995 c 355 § 5; 1992 c 237 § 5; 1991 sp.s. c 23 § 5; 1969 c 67 § 16.]

Legislative findings—Intent—1991 sp.s. c 23: See notes following RCW 19.94.150.

Additional notes found at www.leg.wa.gov

19.94.163 Testing by department—Ensuring enforcement—Issuance of seal of approval—Exception.

(1) Except as provided in subsection (3) of this section and RCW 19.94.190(1)(d), the department shall test and inspect each biennium a sufficient number of weighing and measuring instruments and devices to ensure that the provisions of this chapter are enforced.

(2) The department may issue an official seal of approval for each weighing or measuring instrument or device that has been tested and inspected and found to be correct.

(3) Except as provided in RCW 19.94.216, this section does not apply to weighing or measuring instruments or devices located in an area of the state that is within a city that has a city sealer and a weights and measures program pursuant to RCW 19.94.280 unless the city sealer does not possess the equipment necessary to test and inspect the weighing or measuring instrument or device. [1995 c 355 § 2.]

Additional notes found at www.leg.wa.gov

19.94.165 Commercial instruments or devices to be correct. All weighing or measuring instruments or devices used for commercial purposes within this state shall be correct. [1995 c 355 § 6; 1992 c 237 § 6.]

Additional notes found at www.leg.wa.gov

19.94.175 Registration—Inspection and testing—Fees. (1) Pursuant to RCW 19.94.015, the following annual registration fees shall be charged for each weighing or measuring instrument or device used for commercial purposes in this state:

- | | | |
|---|----|-------|
| (a) Weighing devices: | | |
| (i) Small scales "zero to four hundred pounds capacity" | \$ | 10.00 |
| (ii) Intermediate scales "four hundred one pounds to five thousand pounds capacity" | \$ | 40.00 |

(iii) Large scales "over five thousand pounds capacity"	\$	75.00
(iv) Railroad track scales	\$	800.00
(b) Liquid fuel metering devices:		
(i) Motor fuel meters with flows of twenty gallons or less per minute	\$	10.00
(ii) Motor fuel meters with flows of more than twenty but not more than one hundred fifty gallons per minute	\$	32.00
(iii) Motor fuel meters with flows over one hundred fifty gallons per minute	\$	50.00
(c) Liquid petroleum gas meters:		
(i) With one inch diameter or smaller dispensers	\$	25.00
(ii) With greater than one inch diameter dispensers	\$	50.00
(d) Fabric meters	\$	10.00
(e) Cordage meters	\$	10.00
(f) Mass flow meters	\$	200.00
(g) Taxi meters	\$	25.00

(2) With the exception of subsection (3) of this section, no person shall be required to pay more than the annual registration fee for any weighing or measuring instrument or device in any one year.

(3) The department or a city sealer may establish reasonable inspection and testing fees for each type or class of weighing or measuring instrument or device specially requested to be inspected or tested by the device owner. These inspection and testing fees shall be limited to those amounts necessary for the department or city sealer to cover the direct costs associated with such inspection and testing. The fees shall not be set so as to compete with service agents normally engaged in such services. [2006 c 358 § 2; (2006 c 358 § 1 expired July 1, 2007); 1995 c 355 § 7; 1992 c 237 § 7.]

Additional notes found at www.leg.wa.gov

19.94.185 Deposit of moneys—Weights and measures account—General fund. (1) Except as provided in subsection (2) of this section, all moneys collected under this chapter shall be payable to the director and placed in the weights and measures account hereby established in the agricultural local fund. Moneys deposited in this account shall be used solely for the purposes of implementing or enforcing this chapter. No appropriation is required for the disbursement of moneys from the weights and measures account by the director.

(2) Civil penalties collected by the department under RCW 19.94.510, 19.94.515, and 19.94.517 shall be deposited in the state general fund. [1998 c 245 § 9; 1995 c 355 § 8; 1992 c 237 § 8.]

Additional notes found at www.leg.wa.gov

19.94.190 Enforcement—Rules. (1) The director and duly appointed city sealers shall enforce the provisions of this

chapter. The director shall adopt rules for enforcing and carrying out the purposes of this chapter including but not limited to the following:

(a) Establishing state standards of weight, measure, or count, and reasonable standards of fill for any commodity in package form;

(b) The establishment of technical and reporting procedures to be followed, any necessary report and record forms, and marks of rejection to be used by the director and city sealers in the discharge of their official duties as required by this chapter;

(c) The establishment of technical test procedures, reporting procedures, and any necessary record and reporting forms to be used by service agents when testing and inspecting instruments or devices under RCW 19.94.255(3) or when otherwise installing, repairing, inspecting, or standardizing the graduations of any weighing or measuring instruments or devices;

(d) The establishment of exemptions from the marking or tagging requirements of RCW 19.94.250 with respect to weighing or measuring instruments or devices of such character or size that such marking or tagging would be inappropriate, impracticable, or damaging to the apparatus in question;

(e) The establishment of exemptions from the inspection and testing requirements of RCW 19.94.163 with respect to classes of weighing or measuring instruments or devices found to be of such character that periodic inspection and testing is unnecessary to ensure continued accuracy;

(f) The establishment of inspection and approval techniques, if any, to be used with respect to classes of weighing or measuring instruments or devices that are designed specifically to be used commercially only once and then discarded, or are uniformly mass-produced by means of a mold or die and are not individually adjustable; and

(g) The establishment of inspection and testing procedures to be used for classes of weighing or measuring instruments or devices found to be few in number, highly complex, and of such character that differential or special inspection and testing is necessary, including railroad track scales. The department's procedures shall include requirements for the provision, maintenance, and transport of any weight or measure necessary for the inspection and testing at no expense to the state.

(2) These rules shall also include specifications and tolerances for the acceptable range of accuracy required of weighing or measuring instruments or devices and shall be designed to eliminate from use, without prejudice to weighing or measuring instruments or devices that conform as closely as practicable to official specifications and tolerances, those (a) that are of such construction that they are faulty, that is, that are not reasonably permanent in their adjustment or will not repeat their indications correctly, or (b) that facilitate the perpetration of fraud. [1995 c 355 § 9; 1992 c 237 § 9; 1991 sp.s. c 23 § 6; 1989 c 354 § 36; 1977 ex.s. c 26 § 5; 1969 c 67 § 19.]

Legislative findings—Intent—1991 sp.s. c 23: See notes following RCW 19.94.150.

Additional notes found at www.leg.wa.gov

19.94.195 Specifications, tolerances, technical requirements—Adoption—Hearing—Notice. (1) The department shall adopt the specifications, tolerances, and other technical requirements for commercial weighing or measuring instruments or devices, together with amendments thereto, as recommended by the most recent edition of Handbook 44 published by the national institute of standards and technology or any successor organization as the specifications, tolerances, and other technical requirements for commercial weighing or measuring instruments or devices commercially used in this state.

(2)(a) To promote uniformity, any supplements or amendments to Handbook 44 or any similar subsequent publication of the national institute of standards and technology or any successor organization shall be deemed to have been adopted under this section.

(b) The director may, however, within thirty days of the publication or effective date of Handbook 44 or any supplements, amendments, or similar publications give public notice that a hearing will be held to determine if such publications should not be applicable under this section. Any such hearing shall be conducted under chapter 34.05 RCW. [1992 c 237 § 10.]

19.94.205 Correct and incorrect—Instruments, devices, weights, measures—When deemed. For the purposes of this chapter, weighing or measuring instruments or devices and weights and measures standards shall be deemed to be "correct" when they conform to all applicable requirements of this chapter or the requirements of any rule adopted by the department under the authority granted in this chapter; all other weighing or measuring instruments or devices and weights and measures standards shall be deemed to be "incorrect." [1992 c 237 § 11.]

19.94.216 Department inspection—City sealer—Agencies, institutions—Fees. The department shall:

(1) Biennially inspect and test the secondary weights and measures standards of any city for which the appointment of a city sealer is provided by this chapter and shall issue an official seal of approval for same when found to be correct. The department shall, by rule, establish a reasonable fee for this and any other inspection and testing services performed by the department's metrology laboratory. Each such fee shall recover at least seventy-five percent of the laboratory's costs incurred in performing the service governed by the fee on or before June 30, 1998. The fees established under this subsection may be increased in excess of the fiscal growth factor as provided in RCW 43.135.055 for the fiscal year ending 1996, 1997, and 1998. For fiscal year 1999 and thereafter, the fees established under this subsection may not be increased by an amount greater than the fiscal growth factor as provided in RCW 43.135.055.

(2) Biennially inspect and test any weighing or measuring instrument or device used in an agency or institution to which moneys are appropriated by the legislature or of the federal government and shall report any findings in writing to the executive officer of the agency or institution concerned. The department shall collect a reasonable fee, to be set by rule, for testing any such weighing or measuring instrument or device. [1995 c 355 § 10; 1992 c 237 § 12.]

(2018 Ed.)

Additional notes found at www.leg.wa.gov

19.94.220 Investigations. In promoting the general objective of ensuring accuracy of weighing or measuring instruments or devices and the proper representation of weights and measures in commercial transactions, the director or a city sealer shall, upon his or her own initiative and as he or she deems appropriate and advisable, investigate complaints made concerning violations of the provisions of this chapter. [1992 c 237 § 13; 1991 sp.s. c 23 § 8; 1969 c 67 § 22.]

Legislative findings—Intent—1991 sp.s. c 23: See notes following RCW 19.94.150.

19.94.230 Inspections and tests to determine conformity to law—Off sale order—Marks, tags, stamps. (1) The director or a city sealer may, from time to time, inspect and test packages or amounts of commodities kept, offered, exposed for sale, sold, or in the process of delivery to determine whether the same contain the amounts represented and whether they are kept, offered, exposed for sale or sold in accordance with law. When such packages or amounts of commodities are found not to contain the amounts represented or are found to be kept, offered, or exposed for sale or sold in violation of law, the director or city sealer may order them off sale and may mark, tag, or stamp them in a manner prescribed by the department.

(2) In carrying out the provisions of this section, the director or city sealer may employ recognized sampling procedures under which the compliance of a given lot of packages will be determined on the basis of a result obtained on a sample selected from and representative of such lot.

(3) No person shall (a) sell, keep, offer, or expose for sale any package or amount of commodity that has been ordered off sale as provided in this section unless and until such package or amount of commodity has been brought into full compliance with legal requirements or (b) dispose of any package or amount of commodity that has been ordered off sale and that has not been brought into compliance with legal requirements in any manner except with the specific written approval of the director or city sealer who issued such off sale order. [1992 c 237 § 14; 1969 c 67 § 23.]

19.94.240 Stop-use, stop-removal, and removal orders. (1) The director or a city sealer shall have the power to issue stop-use orders, stop-removal orders, and removal orders with respect to weighing or measuring devices being, or susceptible of being, commercially used within this state.

(2) The director or a city sealer shall also have the power to issue stop-removal orders and removal orders with respect to packages or amounts of commodities kept, offered, exposed for sale, sold, or in process of delivery.

(3) The director or a city sealer shall issue such orders whenever in the course of his or her enforcement of the provisions of this chapter or rules adopted hereunder he or she deems it necessary or expedient to issue such orders.

(4) No person shall use, remove from the premises specified, or fail to remove from any premises specified any weighing or measuring instrument or device, commodity in packaged form, or amount of commodity contrary to the terms of a stop-use order, stop-removal order or removal

order, issued under the authority of this section. [1992 c 237 § 15; 1991 sp.s. c 23 § 9; 1969 c 67 § 24.]

Legislative findings—Intent—1991 sp.s. c 23: See notes following RCW 19.94.150.

19.94.250 Inspection of instrument or device to determine if correct—Rejection or seizure—Confiscation or destruction—Use of incorrect instrument or device—Notice. (1) If the director or a city sealer discovers upon inspection that a weighing or measuring instrument or device is "incorrect," but in his or her best judgment is susceptible of satisfactory repair, he or she shall reject and mark or tag as rejected any such weighing or measuring instrument or device.

(2) The director or a city sealer may reject or seize any weighing or measuring instrument or device found to be incorrect that, in his or her best judgment, is not susceptible of satisfactory repair.

(3) Weighing or measuring instruments or devices that have been rejected under subsection (1) of this section may be confiscated and may be destroyed by the director or a city sealer if not corrected as required by RCW 19.94.255 or if used or disposed of contrary to the requirements of that section.

(4) The director or a city sealer shall permit the use of an incorrect weighing or measuring instrument or device, pending repairs, if the device is incorrect to the economic benefit of the consumer and the consumer is not the seller. However, if the director or city sealer finds such an error, the director or city sealer shall notify the owner of the instrument or device, or the owner's representative at the business location, regarding the error. [1995 c 355 § 11; 1992 c 237 § 16; 1991 sp.s. c 23 § 10; 1969 c 67 § 25.]

Legislative findings—Intent—1991 sp.s. c 23: See notes following RCW 19.94.150.

Additional notes found at www.leg.wa.gov

19.94.255 Correction of rejected weights and measures. (1) Weighing or measuring instruments or devices that have been rejected under the authority of the director or a city sealer shall remain subject to the control of the rejecting authority until such time as suitable repair or disposition thereof has been made as required by this section.

(2) The owner of any weighing or measuring instrument or device that has been marked or tagged as rejected by the director or a city sealer shall cause the same to be made correct within thirty days or such longer period as may be authorized by the rejecting authority. In lieu of correction, the owner of such weighing and measuring instrument or device may dispose of the same, but only in the manner specifically authorized by the rejecting authority.

(3) Weighing and measuring instruments or devices that have been rejected shall not again be used commercially until they have been reexamined and found to be correct by the department, city sealer, or a service agent registered with the department.

(4) If a weighing or measuring instrument or device marked or tagged as rejected is placed back into commercial service by a service agent registered with the department, the agent shall provide a signed certification to the owner or operator of the instrument or device so indicating and shall

report to the rejecting authority as provided by rule under RCW 19.94.190(1)(c). [1995 c 355 § 12; 1992 c 237 § 17; 1991 sp.s. c 23 § 14; 1969 c 67 § 33. Formerly RCW 19.94.330.]

Legislative findings—Intent—1991 sp.s. c 23: See notes following RCW 19.94.150.

Additional notes found at www.leg.wa.gov

19.94.258 Service agent—Registration certificate.

(1) Except as authorized by the department, a service agent who intends to provide the examination that permits a weighing or measuring instrument or device to be placed back into commercial service under RCW 19.94.255(3) shall receive an official registration certificate from the director prior to performing such a service. This registration requirement does not apply to the department or a city sealer.

(2) Except as provided in RCW 19.94.2584, a registration certificate is valid for one year. It may be renewed by submitting a request for renewal to the department. [2000 c 171 § 61; 1995 c 355 § 15.]

Additional notes found at www.leg.wa.gov

19.94.2582 Service agent—Registration certificate—Fee—Decision—Denial—Notice—Refund. (1) Each request for an official registration certificate must be in writing, under oath, and on a form prescribed by the department and must contain any relevant information as the director may require, including but not limited to the following:

(a) The name and address of the person, corporation, partnership, or sole proprietorship requesting registration;

(b) The names and addresses of all individuals requesting an official registration certificate from the department; and

(c) The tax registration number as required under RCW 82.32.030 or unified business identifier provided on a business license issued under RCW 19.02.070.

(2) Each individual when submitting a request for an official registration certificate or a renewal of such a certificate must pay a fee to the department in the amount of one hundred sixty dollars per individual.

(3) The department must issue a decision on a request for an official registration certificate within twenty days of receipt of the request. If an individual is denied their request for an official registration certificate, the department must notify that individual in writing stating the reasons for the denial and must refund any payments made by that individual in connection with the request. [2013 c 144 § 35; 2006 c 358 § 5; 1995 c 355 § 16. Formerly RCW 19.94.025.]

Additional notes found at www.leg.wa.gov

19.94.2584 Service agent—Registration certificate—Revocation, suspension, refusal to renew—Appeal. (1) The department shall have the power to revoke, suspend, or refuse to renew the official registration certificate of any service agent for any of the following reasons:

(a) Fraud or deceit in obtaining an official registration certificate under this chapter;

(b) A finding by the department of a pattern of intentional fraudulent or negligent activities in the installation, inspection, testing, checking, adjusting, or systematically

standardizing and approving the graduations of any weighing or measuring instrument or device;

(c) Knowingly placing back into commercial service any weighing or measuring instrument or device that is incorrect;

(d) A violation of any provision of this chapter; or

(e) Conviction of a crime or an act constituting a crime under the laws of this state, the laws of another state, or federal law.

(2) Upon the department's revocation of, suspension of, or refusal to renew an official registration certificate, an individual shall have the right to appeal this decision in accordance with the administrative procedure act, chapter 34.05 RCW. [2000 c 171 § 62; 1995 c 355 § 17. Formerly RCW 19.94.035.]

Additional notes found at www.leg.wa.gov

19.94.260 Rejection—Seizure for use as evidence—Entry of premises—Search warrant. (1) With respect to the enforcement of this chapter and any other acts dealing with weights and measures that he or she is, or may be empowered to enforce, the director or a city sealer may reject or seize for use as evidence incorrect weighing or measuring instruments or devices or packages of commodities to be used, retained, offered, exposed for sale, or sold in violation of the law.

(2) In the performance of his or her official duties conferred under this chapter, the director or a city sealer is authorized at reasonable times during the normal business hours of the person using a weighing or measuring instrument or device to enter into or upon any structure or premises where such weighing or measuring instrument or device is used or kept for commercial purposes. If the director or a city sealer is denied access to any premises or establishment where such access was sought for the purposes set forth in this chapter, the director or a city sealer may apply to any court of competent jurisdiction for a search warrant authorizing access to such premises or establishment for such purposes. The court may, upon such application, issue the search warrant for the purposes requested. [1992 c 237 § 18; 1991 sp.s. c 23 § 11; 1969 c 67 § 26.]

Legislative findings—Intent—1991 sp.s. c 23: See notes following RCW 19.94.150.

19.94.265 Grievances—Procedure—Notice—Hearing—Rules. (1) Any person aggrieved by any official action of the department or a city sealer conferred under this chapter, including but not limited to, "stop-use orders," "stop-removal orders," "removal orders," "condemnation," or "off sale order" may within thirty days after an order is given or any action is taken, petition the director for a hearing to determine the matter. Such proceedings and any appeal therefrom shall be taken in accordance with the administrative procedure act, chapter 34.05 RCW.

(2) The director shall give due notice and hold a hearing within ten days after the confiscation or seizure of any weighing or measuring instrument or device or commodity under RCW 19.94.250 or the seizure of any weighing or measuring instrument or device for evidence under RCW 19.94.260. This hearing shall be for the purposes of determining whether any such weighing or measuring instrument or device or commodity was properly confiscated or seized, to determine

whether or not such weighing or measuring instrument or device or commodity was used for, or is in, violation of any provision of this chapter or to determine the disposition to be made of such weighing or measuring instrument or device or commodity. Such proceedings and any appeal therefrom shall be taken in accordance with the administrative procedure act, chapter 34.05 RCW.

(3) The department may by rule establish procedures for the administration of this section. [1992 c 237 § 19.]

19.94.280 City sealers and deputies—Appointment, removal—Record, report—Testing of devices and instruments—Seal of approval. (1) There may be a city sealer in every city and such deputies as may be required by ordinance of each such city to administer and enforce the provisions of this chapter.

(2) Each city electing to have a city sealer shall adopt rules for the appointment and removal of the city sealer and any deputies required by local ordinance. The rules for appointment of a city sealer and any deputies must include provisions for the advice and consent of the local governing body of such city and, as necessary, any provisions for local civil service laws and regulations.

(3) A city sealer shall keep a complete and accurate record of all official acts performed under the authority of this chapter and shall submit an annual report to the governing body of his or her city and shall make any reports as may be required by the director.

(4) The city sealer shall test and inspect a sufficient number of weighing and measuring instruments and devices to ensure that the provisions of this chapter are enforced in the city. This subsection does not apply to weighing or measuring instruments or devices for which the sealer does not have the necessary testing or inspection equipment or to instruments or devices that are to be inspected by the department under RCW 19.94.216(2).

(5) A city sealer may issue an official seal of approval for each weighing or measuring instrument or device that has been inspected and tested and found to be correct. [1995 c 355 § 13; 1992 c 237 § 20; 1969 c 67 § 28.]

Additional notes found at www.leg.wa.gov

19.94.310 City sealers and deputies—Duties of governing body—Sealer to have standards comparison made every two years. (1) The governing body of each city for which a city sealer has been appointed as provided for by RCW 19.94.280 shall:

(a) Procure at the expense of the city the official weights and measures standards and any field weights and measures standards necessary for the administration and enforcement of the provisions of this chapter or any rule that may be prescribed by the director;

(b) Provide a suitable office for the city sealer and any deputies that have been duly appointed; and

(c) Make provision for the necessary clerical services, supplies, transportation and for defraying contingent expenses incidental to the official activities of the city sealer and his or her deputies in carrying out the provisions of this chapter.

(2) When the acquisition of the official weights and measures standards required under subsection (1)(a) of this sec-

tion has been made and such weights and measures standards have been examined and approved by the director, they shall be the certified weights and measures standards for such city.

(3) In order to maintain field weights and measures standards in accurate condition, the city sealer shall, at least once every two years, compare the field weights and measures standards used within his or her city to the certified weights and measures standards of such city or to the official weights and measures standards of this state. [2000 c 171 § 63; 1992 c 237 § 21; 1969 c 67 § 31.]

19.94.320 City sealers—Director—General oversight powers, concurrent authority—Powers and duties of chapter are additional. (1) In cities for which city sealers have been appointed as provided for in this chapter, the director shall have general oversight powers over city weights and measures programs and may, when he or she deems it reasonably necessary, exercise concurrent authority to carry out the provisions of this chapter.

(2) When the director elects to exercise concurrent authority within a city with a duly appointed city sealer, the director's powers and duties relative to this chapter shall be in addition to the powers granted in any such city by law or charter. [1995 c 355 § 14; 1992 c 237 § 22; 1969 c 67 § 32.]

Additional notes found at www.leg.wa.gov

19.94.325 Service agent—Inspection and testing of weights and measures—Seal of approval—Fees—Violation—Penalty. (1) Except as otherwise provided for in this chapter or in any rule adopted under the authority of this chapter, any person who engages in business within this state as a service agent shall biennially submit to the department for inspection and testing all weights and measures standards used by the service agent, or any agent or employee of the service agent. If the department finds such weights and measures standards to be correct, the director shall issue an official seal of approval for each such standard.

(2) The department may by rule adopt reasonable fees for the inspection and testing services performed by the weights and measures laboratory pursuant to this section.

(3) A service agent shall not use in the installation, inspection, adjustment, repair, or reconditioning of any weighing or measuring instrument or device any weight or measure standard that does not have a valid, official seal of approval from the director. Any service agent who violates this section is subject to a civil penalty of no more than five hundred dollars. [1992 c 237 § 23.]

19.94.340 Sale of commodities—Measurement—Exceptions—Rules to assure good practice and accuracy. (1) Except as provided in subsection (2) of this section, commodities in liquid form shall be sold only by liquid measure or by weight, and, except as otherwise provided in this chapter, commodities not in liquid form shall be sold only by weight, by measure of length or area, or by count.

(2) Liquid commodities may be sold by weight and commodities not in liquid form may be sold by count only if such methods provide accurate information as to the quantity of commodity sold.

(3) The provisions of this section shall not apply to:

- (a) Commodities that are sold for immediate consumption on the premises where sold;
 - (b) Vegetables when sold by the head or bunch;
 - (c) Commodities in containers standardized by a law of this state or by federal law;
 - (d) Commodities in package form when there exists a general consumer usage to express the quantity in some other manner;
 - (e) Concrete aggregates, concrete mixtures, and loose solid materials such as earth, soil, gravel, crushed stone, and the like, when sold by cubic measure; or
 - (f) Unprocessed vegetable and animal fertilizer when sold by cubic measure.
- (4) The director may issue such reasonable rules as are necessary to assure that amounts of commodity sold are determined in accordance with good commercial practice and are so determined and represented to be accurate and informative to all interested parties. [1992 c 237 § 24; 1991 sp.s. c 23 § 15; 1969 c 67 § 34.]

Legislative findings—Intent—1991 sp.s. c 23: See notes following RCW 19.94.150.

19.94.350 Packaged commodities in intrastate commerce—Declaration of contents on outside—Rules. (1) Except as otherwise provided in this chapter, any commodity in package form introduced or delivered for introduction into or received in intrastate commerce, kept for the purpose of sale, offered or exposed for sale or sold in intrastate commerce, shall bear on the outside of the package such definite, plain, and conspicuous declaration of:

- (a) The identity of the commodity contained within the package unless the same can easily be identified through the package;
- (b) The net quantity of the contents in terms of weight, measure or count; and
- (c) In the case of any package not sold on the premises where packed, the name and place of business of the manufacturer, packer, or distributor, as may be prescribed by rule issued by the director.

(2) In connection with the declaration required under subsection (1)(b) of this section, neither the qualifying term "when packed" or any words of similar import, nor any term qualifying a unit of weight, measure, or count (for example, "jumbo", "giant", "full", "or over", and the like) that tends to exaggerate the amount of commodity in a package, shall be used.

(3) With respect to the declaration required under subsection (1)(b) of this section the director shall by rule establish: (a) Reasonable variations to be allowed, (b) exemptions as to small packages, and (c) exemptions as to commodities put up in variable weights or sizes for sale to the consumer intact and either customarily not sold as individual units or customarily weighed or measured at time of sale to the consumer. [1992 c 237 § 25; 1991 sp.s. c 23 § 16; 1969 c 67 § 35.]

Legislative findings—Intent—1991 sp.s. c 23: See notes following RCW 19.94.150.

19.94.360 Declaration of price on outside of package. In addition to the declarations required by RCW 19.94.350, any commodity in package form, the package being one of a

lot containing random weights, measures or counts of the same commodity at the time it is exposed for sale at retail, shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of weight, measure, or count and the total selling price of the package. [1995 c 355 § 18; 1969 c 67 § 36.]

Additional notes found at www.leg.wa.gov

19.94.370 Misleading wrappers, containers of packaged commodities—Standards of fill required. No commodity in package form shall be so wrapped, nor shall it be in a container so made, formed or filled as to mislead the purchaser as to the quantity of the contents of the package, and the contents of a container shall not fall below such reasonable standards of fill as may have been prescribed by the director for the commodity in question. [1992 c 237 § 26; 1969 c 67 § 37.]

19.94.390 Price not to be misleading, deceiving, misrepresented—Fractions—Examination procedure standard—Department may revise—Electronic scanner screen visibility. (1) Whenever any commodity or service is sold, or is offered, exposed, or advertised for sale, by weight, measure, or count, the price shall not be misrepresented, nor shall the price be represented in any manner calculated or tending to mislead or deceive an actual or prospective purchaser. Whenever an advertised, posted or labeled price per unit of weight, measure, or count includes a fraction of a cent, all elements of the fraction shall be prominently displayed and the numeral or numerals expressing the fraction shall be immediately adjacent to, of the same general design and style as, and at least one-half the height and one-half the width of the numerals representing the whole cents.

(2) The examination procedure recommended for price verification by the price verification working group of the laws and regulations committee of the national conference on weights and measures (as reflected in the fourth draft, dated November 1, 1994) for devices such as electronic scanners shall govern such examinations conducted under this chapter. The procedure shall be deemed to be adopted under this chapter. However, the department may revise the procedure as follows: The department shall provide notice of and conduct a public hearing pursuant to chapter 34.05 RCW to determine whether any revisions to this procedure made by the national institute of standards and technology or its successor organization for incorporating the examination procedure into an official handbook of the institute or its successor, or any subsequent revisions of the handbook regarding such procedures shall also be adopted under this chapter. If the department determines that the procedure should be so revised, it may adopt the revisions. Violations of this section regarding the use of devices such as electronic scanners may be found only as provided by the examination procedures adopted by or under this subsection.

(3) Electronic scanner screens installed after January 1, 1996, and used in retail establishments must be visible to the consumer at the checkout line. [2000 c 171 § 64; 1995 c 355 § 20; 1969 c 67 § 39.]

Additional notes found at www.leg.wa.gov

(2018 Ed.)

19.94.400 Meat, fish, poultry to be sold by weight—Exceptions. Except for immediate consumption on the premises where sold or as one of several elements comprising a meal sold as a unit, for consumption elsewhere than on the premises where sold, all meat, meat products, fish and poultry offered or exposed for sale or sold as food, unless otherwise provided for by the laws of the state of Washington, shall be offered or exposed for sale and sold by weight. [1969 c 67 § 40.]

19.94.410 Butter, margarine to be sold by weight. Butter, oleomargarine and margarine shall be offered and exposed for sale and sold by weight. [1995 c 355 § 19; 1988 c 63 § 1; 1969 c 67 § 41.]

Additional notes found at www.leg.wa.gov

19.94.420 Fluid dairy products to be packaged for retail sale in certain units. All fluid dairy products, including but not limited to whole milk, skimmed milk, cultured milk, sweet cream, sour cream and buttermilk and all fluid imitation and fluid substitute dairy products shall be packaged for retail sale only in units as provided by the director of the department of agriculture by rule pursuant to the provisions of chapter 34.05 RCW. [1991 sp.s. c 23 § 17; 1975 1st ex.s. c 51 § 1; 1969 c 67 § 42.]

Legislative findings—Intent—1991 sp.s. c 23: See notes following RCW 19.94.150.

19.94.430 Packaged flour to be kept, sold, etc., in certain units. When in package form and when packed, kept, offered, exposed for sale or sold, flour such as, but not limited to, wheat flour, whole wheat flour, graham flour, self-rising wheat flour, phosphated wheat flour, bromated flour, enriched flour, enriched self-rising flour, enriched bromated flour, corn flour, corn meal and hominy grits shall be packaged only in units of five, ten, twenty-five, fifty and one hundred pounds avoirdupois weight: PROVIDED, That packages in units of less than five pounds or more than one hundred pounds shall be permitted. [1969 c 67 § 43.]

19.94.440 Commodities sold in bulk—Delivery tickets. (1) When a vehicle delivers to an individual purchaser a commodity in bulk, and the commodity is sold in terms of weight units, the delivery must be accompanied by a duplicate delivery ticket with the following information clearly stated, in ink or other indelible marking equipment and, in clarity, equal to type or printing:

- (a) The name and address of the vendor;
- (b) The name and address of the purchaser; and
- (c) The weight of the delivery expressed in pounds, and, if the weight is derived from determinations of gross and tare weights, such gross and tare weights also must be stated in terms of pounds.

(2) One of the delivery tickets shall be retained by the vendor, and the other shall be delivered to the purchaser at the time of delivery of the commodity, or shall be surrendered on demand to the director or the city sealer who, if he or she elects to retain it as evidence, shall issue a weight slip in lieu thereof for delivery to the purchaser.

(3) If the purchaser himself or herself carries away the purchase, the vendor shall be required only to give the purchase,

chaser at the time of sale a delivery ticket stating the number of pounds of commodity delivered. [1992 c 237 § 27; 1991 sp.s. c 23 § 18; 1969 c 67 § 44.]

Legislative findings—Intent—1991 sp.s. c 23: See notes following RCW 19.94.150.

19.94.450 Solid fuels to be sold by weight, cubic measure—Delivery tickets. (1) Except as provided in subsection (2) of this section, all solid fuels such as, but not limited to, coal, coke, charcoal, broiler chips, pressed fuels and briquets shall be sold by weight.

(2) All solid fuels such as hogged fuel, sawdust and similar industrial fuels may be sold or purchased by cubic measure.

(3) Unless a fuel is delivered to the purchaser in package form, each delivery of such fuel to an individual purchaser must be accompanied by a duplicate delivery ticket with the following information clearly stated, in ink or other indelible marking equipment and, in clarity equal to type or printing:

- (a) The name and address of the vendor;
- (b) The name and address of the purchaser; and
- (c) The weight of the delivery and the gross and tare weights from which the weight is computed, each expressed in pounds.

(4) One of the delivery tickets shall be retained by the vendor and the other shall be delivered to the purchaser at the time of delivery of the fuel, or shall be surrendered, on demand, to the director or the city sealer who, if he or she elects to retain it as evidence, shall issue a weight slip in lieu thereof for delivery to the purchaser.

(5) If the purchaser himself or herself carries away the purchase, the vendor shall be required only to give to the purchaser at the time of sale a delivery ticket stating the number of pounds of fuel delivered. [1992 c 237 § 28; 1991 sp.s. c 23 § 19; 1969 c 67 § 45.]

Legislative findings—Intent—1991 sp.s. c 23: See notes following RCW 19.94.150.

19.94.460 Heating oils—Delivery tickets—Statements. (1) All stove and furnace oil shall be sold by liquid measure or by weight in accordance with the provisions of RCW 19.94.340.

(2) Unless such fuel is delivered to the purchaser in package form, each delivery of such fuel in an amount greater than ten gallons in the case of sale by liquid measure or one hundred pounds in the case of sale by weight must be accompanied by a delivery ticket or a written statement on which, in ink or other indelible substance, there shall be clearly and legibly stated:

- (a) The name and address of the vendor;
- (b) The name and address of the purchaser;
- (c) The identity of the type of fuel comprising the delivery;
- (d) The unit price (that is, price per gallon or per pound, as the case may be), of the fuel delivered;

(e) In the case of sale by liquid measure, the liquid volume of the delivery together with any meter readings from which such liquid volume has been computed, expressed in terms of the gallon and its binary or decimal subdivisions; and

(f) In the case of sale by weight, the net weight of the delivery, together with any weighing scale readings from which such net weight has been computed, expressed in terms of tons or pounds avoirdupois.

(3) The delivery ticket required under this section must be delivered at the time of delivery unless an agreement, written or otherwise, between the vendor and the purchaser has been reached regarding the delivery of such delivery ticket. [1992 c 237 § 29; 1969 c 67 § 46.]

19.94.470 Berries and small fruit. Berries and small fruit shall be offered and exposed for sale and sold by weight, or by measure in open containers having capacities of one-half dry pint, one dry pint or one dry quart: PROVIDED, That the marking provisions of RCW 19.94.340 shall not apply to such dry volume containers. [1969 c 67 § 47.]

19.94.480 Fractional units as fractional value. Fractional parts of any unit of weight or measure shall mean like fractional parts of the value of such unit as prescribed in RCW 19.94.150. [1992 c 237 § 30; 1969 c 67 § 48.]

19.94.485 Contracts—Construction. All contracts concerning the sale of commodities and services by weight, measure, or count, will be construed in accordance with the weights and measures adopted under this chapter. [1992 c 237 § 31.]

19.94.490 Obstruction of director or sealer in performance of duties—Penalty. Any person who shall hinder or obstruct in any way the director or a city sealer in the performance of his or her official duties under this chapter is subject to a civil penalty of no more than five hundred dollars. [1992 c 237 § 32; 1969 c 67 § 49.]

19.94.500 Impersonation of director or sealer—Penalty. Any person who shall impersonate in any way the director or a city sealer, by using an official seal of approval without specific authorization to do so or by using a counterfeit seal of approval, or in any other manner, is subject to a civil penalty of no more than one thousand dollars. [1992 c 237 § 33; 1969 c 67 § 50.]

19.94.507 Gasoline delivered to service stations—Invoice required. Persons delivering gasoline to retail service stations shall supply the station with an invoice which shall include the following information: (1) The gross volume of gasoline and the net volume of gasoline at sixty degrees Fahrenheit; (2) the time and temperature of the gasoline as loaded onto the delivery truck; and (3) the time of delivery to the retail service station. [1987 c 42 § 2.]

Intent—1987 c 42: "The legislature finds: That leaking underground storage tanks containing petroleum products may pose a significant and widespread problem to human health and the environment, that current inventory procedures are inadequately suited to identify leaking underground storage tanks, and that new measures are needed to properly determine which tanks may be leaking." [1987 c 42 § 1.]

19.94.510 Unlawful practices—Penalty. (1) Any person who, by himself or herself, by his or her agent or employee, or as the agent or employee of another person, performs any one of the acts enumerated in (a) through (l) of this

subsection is subject to a civil penalty of no more than one thousand dollars:

(a) Use or have in possession for the purpose of using for any commercial purpose a weighing or measuring instrument or device that is intentionally calculated to falsify any weight, measure, or count of any commodity, or to sell, offer, expose for sale or hire or have in possession for the purpose of selling or hiring an incorrect weighing or measuring instrument or device or any weighing or measuring instrument or device calculated to falsify any weight or measure.

(b) Knowingly use or have in possession for current use in the buying or selling of any commodity or thing, for hire or award, or in the computation of any basic charge or payment for services rendered on the basis of weight, measurement, or count, or in the determination of weight, measurement or count, when a charge is made for such determination, any incorrect weighing or measuring instrument or device.

(c) Dispose of any rejected weighing or measuring instrument or device in a manner contrary to law or rule.

(d) Remove from any weighing or measuring instrument or device, contrary to law or rule, any tag, seal, stamp or mark placed thereon by the director or a city sealer.

(e) Sell, offer or expose for sale less than the quantity he or she represents of any commodity, thing or service.

(f) Take more than the quantity he or she represents of any commodity, thing, or service when, as buyer, he or she furnishes the weight, measure, or count by means of which the amount of the commodity, thing or service is determined.

(g) Keep for the purpose of sale, advertise, offer or expose for sale or sell any commodity, thing or service known to be in a condition or manner contrary to law or rule.

(h) Use in retail trade, except in the preparation of packages put up in advance of sale and of medical prescriptions, a weighing or measuring instrument or device that is not so positioned that its indications may be accurately read and the weighing or measuring operation observable from some position which may reasonably be assumed by a customer.

(i) Knowingly approve or issue an official seal of approval for any weighing or measuring instrument or device known to be incorrect.

(j) Find a weighing or measuring instrument or device to be correct under RCW 19.94.255 when the person knows the instrument or device is incorrect.

(k) Fails to disclose to the department or a city sealer any knowledge of information relating to, or observation of, any device or instrument added to or modifying any weighing or measuring instrument or device for the purpose of selling, offering, or exposing for sale, less than the quantity represented of a commodity or calculated to falsify weight or measure, if the person is a service agent.

(1) Violate any other provision of this chapter or of the rules adopted under the provisions of this chapter for which a specific penalty has not been prescribed.

(2) Any person who, by himself or herself, by his or her agent or employee, or as the agent or employee of another person, violates RCW 19.94.390 as determined by the examination procedure adopted by or under RCW 19.94.390(2) is subject to a civil penalty of not more than one thousand dollars.

(3) Any person who, by himself or herself, by his or her agent or employee, or as the agent or employee of another

person, performs any of the following acts is subject to a civil penalty of no more than five thousand dollars:

(a) Knowingly adds to or modifies any weighing or measuring instrument or device by the addition of a device or instrument that would allow the sale, or the offering or exposure for sale, of less than the quantity represented of a commodity or falsification of weight or measure.

(b) Commits as a fourth or subsequent infraction any of the acts listed in subsection (1) or (2) of this section. [1995 c 355 § 21; 1992 c 237 § 35; 1969 c 67 § 51.]

Additional notes found at www.leg.wa.gov

19.94.515 Unlawful commercial use of instrument or device—Penalty. A person who owns a weighing or measuring instrument or device and uses or permits the use of the instrument for commercial purposes in violation of RCW 19.94.015 is subject to a civil penalty of fifty dollars for each such instrument or device used or permitted to be used in violation of RCW 19.94.015. [1995 c 355 § 22.]

Additional notes found at www.leg.wa.gov

19.94.517 Incorrect commercial instrument or device to benefit of owner/operator—Penalties—Appeal. (1) Whenever the department or a city sealer tests or inspects a weighing or measuring instrument or device and finds the instrument or device to be incorrect to the economic benefit of the owner/operator of the weighing or measuring instrument or device and to the economic detriment of the customer, the owner of the weighing or measuring instrument or device may be subject to the following civil penalties:

Device deviations outside the tolerances stated in Handbook 44.

	<u>Penalty</u>
Small weighing or measuring instruments or devices:	
First violation	\$ 50.00
Second or subsequent violation within one year of first violation	\$ 150.00
Medium weighing or measuring instruments or devices:	
First violation	\$ 100.00
Second or subsequent violation within one year of first violation	\$ 300.00
Large weighing or measuring instruments or devices:	
First violation	\$ 200.00
Second or subsequent violation within one year of first violation	\$ 500.00

(2) For the purposes of this section:

(a) The following are small weighing or measuring instruments or devices: Scales of zero to four hundred pounds capacity, liquid fuel metering devices with flows of not more than twenty gallons per minute, liquid petroleum gas meters with one inch in diameter or smaller dispensers, fabric meters, cordage meters, and taxi meters.

(b) The following are medium weighing or measuring instruments or devices: Scales of four hundred one to five thousand pounds capacity, liquid fuel metering devices with flows of more than twenty but not more than one hundred fifty gallons per minute, and mass flow meters.

(c) The following are large weighing or measuring instruments or devices: Liquid petroleum gas meters with greater than one inch diameter dispensers, liquid fuel metering devices with flows over one hundred fifty gallons per minute, and scales of more than five thousand pounds capacity and scales of more than five thousand pounds capacity with supplemental devices.

(3) The director or a city sealer shall issue the appropriate civil penalty concurrently with the conclusion of the test or inspection.

(4) The weighing or measuring instrument or device owner shall have the right to appeal the civil penalty in accordance with the administrative procedure act, chapter 34.05 RCW. [1995 c 355 § 23.]

Additional notes found at www.leg.wa.gov

19.94.520 Injunction against violations. The director is authorized to apply to any court of competent jurisdiction for, and such court upon hearing and for cause shown may grant, a temporary or permanent injunction restraining any person from violating any provision of this chapter. [1969 c 67 § 52.]

19.94.530 Proof of existence of weighing or measuring instrument or device presumed proof of regular use. For the purposes of this chapter, proof of the existence of a weighing or measuring instrument or device in or about any building, enclosure, stand, or vehicle in which or from which it is shown that buying or selling is commonly carried on, shall, in the absence of conclusive evidence to the contrary, be presumptive proof of the regular use of such weighing or measuring instrument or device for commercial purposes and of such use by the person in charge of such building, enclosure, stand or vehicle. [1992 c 237 § 36; 1969 c 67 § 53.]

19.94.540 Antifreeze products—Use of aversive agent. (1) Any engine coolant or antifreeze manufactured or distributed in the state of Washington after January 1, 2010, that contains more than ten percent ethylene glycol shall contain denatonium benzoate at a minimum of thirty parts per million and a maximum of fifty parts per million as an aversive agent so as to render the product unpalatable.

(2) The requirements of this section apply to manufacturers, packagers, distributors, recyclers, or sellers of engine coolant or antifreeze, but not to those who install engine coolant or antifreeze for compensation.

(3) A manufacturer of a product subject to this section and RCW 19.94.542 and 19.94.544 shall maintain a record of the trade name, scientific name, and active ingredients of any aversive used under this section. The manufacturer shall make this information available to the public upon request. [2008 c 68 § 1.]

19.94.542 Antifreeze products—Aversive agents—Limitation of liability. (1) A manufacturer, packager, distributor, recycler, or seller of an engine coolant or antifreeze that is required to contain an aversive agent as required by RCW 19.94.540 shall not be liable for any personal injury, death, property damage, damage to the environment or a natural resource, or economic loss that results from the inclusion of denatonium benzoate in engine coolant or antifreeze.

(2) The limitation of liability provided in subsection (1) of this section does not apply to a particular liability that is not caused or is unrelated to the inclusion of denatonium benzoate in engine coolant or antifreeze. [2008 c 68 § 2.]

19.94.544 Antifreeze products—Aversive agents—Application. The requirements of this section and RCW 19.94.540 and 19.94.542 shall not apply to the sale of a motor vehicle that contains engine coolant or antifreeze. [2018 c 198 § 1; 2008 c 68 § 3.]

19.94.900 Chapter cumulative and nonexclusive. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy available at law. [1969 c 67 § 54.]

19.94.920 Effective date—1992 c 237. This act shall take effect July 1, 1992. [1992 c 237 § 41.]

Chapter 19.98 RCW

FARM IMPLEMENTS, MACHINERY, PARTS

Sections

19.98.008	Definitions.
19.98.010	Cancellation of contract—Parties' duties.
19.98.020	Repurchase payments—Liens and claims.
19.98.030	Prices—How determined.
19.98.040	Failure or refusal to make payments—Civil action.
19.98.100	Findings.
19.98.120	Violations.
19.98.130	Termination, cancellation, or nonrenewal of dealer agreement—Notice.
19.98.140	Actions against suppliers—Remedies.
19.98.150	Successors in interest.
19.98.160	Establishment of new dealership—Supplier's duties.
19.98.170	Warranty claims.
19.98.180	Audit of warranty claims.
19.98.190	Civil action—Award.
19.98.200	Supplier-required work.
19.98.210	Arbitration—Dealer's cause of action against supplier—Remedies not exclusive.
19.98.900	Effective date—1975 1st ex.s. c 277.
19.98.911	Severability—1990 c 124.
19.98.912	Effective date—Application—1990 c 124.
19.98.913	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

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

(1) "Audit" means a review by a supplier of a dealer's warranty claims records.

(2) "Change in competitive circumstances" means to materially impact a specific dealer's ability to compete with similarly situated dealers selling the same brand of equipment.

(3) "Current net price" means the price charged to a dealer for repair parts as listed in the printed price list, catalog, or electronic catalog of the supplier in effect at the time a warranty claim is made and superseded parts listed in current price lists, catalogs, or electronic catalogs when parts had previously been purchased from the supplier and held by the dealer on the date of the cancellation or discontinuance of a dealer agreement or thereafter received by the dealer from the supplier.

(4) "Dealer" means a person primarily engaged in the retail sale and service of farm equipment, including a person

engaged in the retail sale of outdoor power equipment who is primarily engaged in the retail sale and service of farm equipment. Dealer does not include a person primarily engaged in the retail sale of outdoor power equipment or a supplier.

(5) "Dealer agreement" means an oral or written contract or agreement for a definite or indefinite period of time in which a supplier of equipment grants to a dealer permission to use a trade name, service mark, or related characteristic, and where there is a community of interest in the marketing of equipment or services related to the equipment at wholesale, retail, leasing, or otherwise.

(6) "Dealership" means the retail sale business engaged in by a dealer under a dealer agreement.

(7) "Distributor" means a person who sells or distributes new equipment to dealers or who maintains distributor representatives within the state.

(8) "Distributor branch" means a branch office, maintained by a distributor, that sells or distributes new equipment to dealers. "Distributor branch" includes representatives of the branch office.

(9)(a) "Equipment" includes:

(i) Farm equipment. Farm equipment includes but is not limited to tractors, trailers, combines, tillage implements, balers, and other equipment, including attachments and accessories that are used in the planting, cultivating, irrigation, harvesting, and marketing of agricultural, horticultural, or live-stock products.

(ii) Outdoor power equipment. Outdoor power equipment includes self-propelled equipment that is used to maintain commercial, public, or residential lawns and gardens or used in landscape, turf, or golf course maintenance.

(b) "Equipment" does not include motor vehicles designed or intended for use upon public roadways as defined in RCW 46.70.011 or motorcycles as defined in *RCW 46.94.010.

(10) "Factory branch" means a branch office maintained by a manufacturer that makes or assembles equipment for sale to distributors or dealers or that is maintained for directing and supervising the representatives of the manufacturer.

(11) "Factory representative" means a person employed by a manufacturer or by a factory branch for the purpose of selling or promoting the sale of equipment or for supervising, servicing, instructing, or contracting with dealers or prospective dealers.

(12) "Free on board" or "F.O.B." has the same meaning as described in RCW 62A.2-319.

(13) "Geographic market area" means the geographic region for which a particular dealer is responsible for the marketing, selling, leasing, or servicing of equipment pursuant to a dealer agreement.

(14) "Good cause" means failure by a dealer to comply with requirements imposed upon the dealer by the dealer agreement, provided such requirements are not different from those requirements imposed on other similarly situated dealer[s] in the state either by their terms or in the manner of their enforcement.

(15) "Manufacturer" means a person engaged in the business of manufacturing or assembling new and unused equipment.

(16) "Person" includes a natural person, corporation, partnership, trust, or other entity, including any other entity in

which it has a majority interest or of which it has control, as well as the individual officers, directors, or other persons in active control of the activities of each entity.

(17) "Similarly situated dealer" means a dealer of comparable geographic location, volume, and market type.

(18) "Supplier" means a person or other entity engaged in the manufacturing, assembly, or wholesale distribution of equipment or repair parts of the equipment. "Supplier" includes any successor in interest, including a purchaser of assets, stock, or a surviving corporation resulting from a merger, liquidation, or reorganization of the original supplier, or any receiver or any trustee of the original supplier.

(19) "Warranty claim" means a claim for payment submitted by a dealer to a supplier for either service, or parts, or both, provided to a customer under a warranty issued by the supplier.

(20) "Wholesaler" means a person who sells or attempts to sell new equipment exclusively to dealers or to other wholesalers. [2002 c 236 § 1.]

*Reviser's note: RCW 46.94.010 was repealed by 2003 c 354 § 24.

19.98.010 Cancellation of contract—Parties' duties.

Whenever any person, firm, or corporation engaged in the sale of equipment, repair parts, or services therefor enters into a written or oral contract with a supplier of equipment, or repair parts whereby the dealer agrees to maintain a stock of parts and equipment and either party to such contract desires to cancel or discontinue the contract, unless the dealer should desire to keep such parts and equipment the supplier shall pay the dealer for the equipment and reasonable reimbursement for services performed in connection with assembly and pre-delivery inspections of the equipment. The payment shall be in the amount of one hundred percent of the net cost of all unused complete equipment, including transportation charges paid by the dealer. Equipment purchased more than twenty-four months prior to the cancellation or discontinuance of the dealer agreement is subject to a weather allowance adjustment. The supplier assumes ownership of new unused complete equipment F.O.B. the dealer location. The supplier shall pay the dealer in the amount of ninety-five percent of the current net prices on repair parts, including superseded parts listed in current price lists, catalogs, or electronic catalogs which parts had previously been purchased from the supplier and held by the dealer on the date of the cancellation or discontinuance of such contract or thereafter received by the dealer from the supplier. The supplier shall also pay the dealer a sum equal to five percent of the current net price of all parts returned for the handling, packing, and loading of such parts for return, unless the supplier elects to catalog or list the inventory and perform packing and loading of the parts itself. However, the provisions of this section shall apply only to repair parts which are new, unused, and in resalable condition. The provisions of this section do not apply to repair parts that were purchased by the dealer in sets of multiple parts unless the sets are complete and in resalable condition, or to parts the supplier can demonstrate were identified as nonreturnable when ordered by the dealer.

Upon the payment of such amounts, the title to the equipment or repair parts shall pass to the supplier making such payment, and the supplier shall be entitled to the possession of such equipment and repair parts.

All payments or allowances of credit due dealers under this section shall be paid or credited by the supplier within ninety days after the return of the repair parts or the transfer of equipment. After the ninety days, all sums of credits due include interest at the rate of eighteen percent per year. Title to equipment, attachments, and accessories is transferred to the supplier F.O.B. the dealer location.

The provisions of this section shall apply to any part return adjustment agreement made between a dealer and a supplier.

A supplier must repurchase specific data processing and computer communications hardware specifically required by the supplier to meet the supplier's minimum requirements and purchased by the dealer in the prior five years and held by the dealer on the date of termination. The supplier must also purchase software required by and sourced from the supplier, provided that the software is used exclusively to support the dealer's business with the supplier. The purchase price is the original net cost to the dealer, less twenty percent per year.

A supplier must repurchase, and the dealer must sell to the supplier, specialized repair tools. As applied in this section, specialized repair tools are defined as those tools required by the supplier and unique to the diagnosis or repair of the supplier's products. For specialized repair tools that are in new, unused condition and are applicable to the supplier's current products, the purchase price is one hundred percent of the original net cost to the dealer. For all other specialized repair tools, the purchase price is the original net cost to the dealer less twenty percent per year.

A supplier must repurchase, and the dealer must sell to the supplier, current signage. As used in this section, "current signage" means the principal outdoor signage required by the supplier that displays the supplier's current logo or similar exclusive identifier, and that identifies the dealer as representing either the supplier or the supplier's products, or both. The purchase price is the original net cost to the dealer less twenty percent per year, but may in no case be less than fifty percent of the original net cost to the dealer.

The provisions of this section shall be supplemental to any agreement between the dealer and the supplier covering the return of equipment and repair parts so that the dealer can elect to pursue either his or her contract remedy or the remedy provided herein, and an election by the dealer to pursue his or her contract remedy shall not bar his or her right to the remedy provided herein as to equipment and repair parts not affected by the contract remedy.

The provisions of this section shall apply to all contracts now in effect which have no expiration date and are a continuing contract, and all other contracts entered into or renewed after January 1, 1976. Any contract in force and effect on January 1, 1976, which by its own terms will terminate on a date subsequent thereto shall be governed by the law as it existed prior to this chapter: PROVIDED, That no contract covered by this chapter may be canceled by any party without good cause. For the purposes of this section, good cause shall include, but shall not be restricted to, the failure of any party to comply with the lawful provisions of the contract, the adjudication of any party to a contract as a bankrupt, wrongful refusal of the supplier to supply equipment and repair parts therefor. [2002 c 236 § 2; 1975 1st ex.s. c 277 § 1.]

19.98.020 Repurchase payments—Liens and claims.

All repurchase payments to dealers made pursuant to RCW 19.98.010 shall be less amounts owed on any lien or claim then outstanding upon such items covered by this section. Any supplier making repurchase payments covered by this chapter to any dealer shall satisfy such secured liens or claims pursuant to Article 62A.9A RCW less any interest owed to the lienholder arising from the financing of such items which shall be paid to any such secured lienholder by the dealer. In no case shall the supplier, in making payments covered by RCW 19.98.010, pay in excess of those amounts prescribed therein. [2002 c 236 § 3; 2000 c 171 § 66; 1975 1st ex.s. c 277 § 2.]

19.98.030 Prices—How determined. The prices of equipment and repair parts therefor, required to be paid to any dealer as provided in RCW 19.98.010 shall be determined by taking one hundred percent of the net cost of the invoiced price of equipment and ninety-five percent of the current net price of repair parts therefor as shown upon the supplier's price lists, catalogues, or electronic catalogs in effect at the time such contract is canceled or discontinued.

The supplier assumes transfer of ownership of equipment F.O.B. dealer location. [2002 c 236 § 4; 1975 1st ex.s. c 277 § 3.]

19.98.040 Failure or refusal to make payments—Civil action. In the event that any supplier of equipment and repair parts, upon cancellation or discontinuation of a contract by either a dealer or supplier, fails or refuses to make payment to such dealer as is required by RCW 19.98.010, the supplier is liable in a civil action to be brought by the dealer for such payments as are required by RCW 19.98.010. [2002 c 236 § 5; 1975 1st ex.s. c 277 § 4.]

19.98.100 Findings. The legislature of this state finds that the retail distribution and sales of equipment, utilizing independent dealers operating under agreements with suppliers, vitally affects the general economy of the state, public interests, and public welfare and that it is necessary to regulate the business relations between the dealers and the suppliers. [2002 c 236 § 6; 1990 c 124 § 1.]

19.98.120 Violations. It shall be a violation of this chapter for a supplier to:

(1) Require or attempt to require any dealer to order or accept delivery of any equipment or parts that the dealer has not voluntarily ordered;

(2) Require or attempt to require any dealer to enter into any agreement, whether written or oral, supplementary to an existing dealer agreement with the supplier, unless such supplementary agreement is imposed on other similarly situated dealers in the state;

(3) Refuse to deliver in reasonable quantities and within a reasonable time after receipt of the dealer's order, to any dealer having a dealer agreement for the retail sale of new equipment sold or distributed by the supplier, equipment covered by the dealer agreement specifically advertised or represented by the supplier to be available for immediate delivery. However, the failure to deliver any such equipment shall not be considered a violation of this chapter when deliveries are

based on prior ordering histories, the priority given to the sequence in which the orders are received, or manufacturing schedules or if the failure is due to prudent and reasonable restriction on extension of credit by the supplier to the dealer, an act of God, work stoppage or delay due to a strike or labor difficulty, a bona fide shortage of materials, freight embargo, or other cause over which the supplier has no control;

(4) Terminate, cancel, or fail to renew the dealer agreement of any dealer or substantially change the dealer's competitive circumstances, attempt to terminate or cancel, or threaten to not renew the dealer agreement or to substantially change the competitive circumstances without good cause;

(5) Condition the renewal, continuation, or extension of a dealer agreement on the dealer's substantial renovation of the dealer's place of business or on the construction, purchase, acquisition, or rental of a new place of business by the dealer unless: The supplier has advised the dealer in writing of its demand for such renovation, construction, purchase, acquisition, or rental within a reasonable time prior to the effective date of the proposed date of renewal or extensions, but in no case less than one year; the supplier demonstrates the need for such change in the place of business and the reasonableness of the demand with respect to marketing and servicing the supplier's product and any economic conditions existing at the time in the dealer's trade area; and the dealer does not make a good faith effort to complete the construction or renovation plans within one year;

(6) Discriminate in the prices charged for equipment of like grade, quality, and brand sold by the supplier to similarly situated dealers in this state. This subsection does not prevent the use of differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are sold or delivered: PROVIDED, That nothing shall prevent a supplier from offering a lower price in order to meet an equally low price of a competitor, or the services or facilities furnished by a competitor;

(7) Prevent, by contract or otherwise, any equipment dealer from changing the capital structure of the equipment dealership or the means by which the equipment dealership is financed, provided the equipment dealer at all times meets any reasonable capital standards imposed by the supplier or as otherwise agreed to between the equipment dealer and supplier, and provided this change by the equipment dealer does not result in a change of the controlling interest in the executive management or board of directors, or any guarantors of the equipment dealership;

(8) Prevent, by contract or otherwise, any equipment dealer or any officer, member, partner, or stockholder of any equipment dealer from selling or transferring any part of the interest of any of them to any other party or parties. However, no equipment dealer, officer, partner, member, or stockholder has the right to sell, transfer, or assign the equipment dealership or power of management or control of the dealership without the written consent of the supplier. Should a supplier determine that the designated transferee is not acceptable, the supplier shall provide the equipment dealer with written notice of the supplier's objection and specific reasons for withholding its consent;

(9) Withhold consent to a transfer of interest in an equipment dealership unless, with due regard to regional market

conditions and distribution economies, the dealer's area of responsibility or trade area does not afford sufficient sales potential to reasonably support a dealer. In any dispute between a supplier and an equipment dealer, the supplier bears the burden of proving that the dealer's area of responsibility or trade area does not afford sufficient sales potential to reasonably support a dealer. The proof offered must be in writing. The provisions of this subsection do not preclude any other basis for a supplier to withhold consent to a transfer of interest in an equipment dealer;

(10) Fail to compensate a dealer for preparation and delivery of equipment that the supplier sells or leases for use within this state and that the dealer prepares for delivery and delivers;

(11) Require a dealer to assent to a release, assignment, novation, waiver, or estoppel that would relieve any person from liability imposed by this chapter; or

(12)(a) Unreasonably withhold consent, in the event of the death of the dealer or the principal owner of the dealership, to the transfer of the dealer's interest in the dealership to another qualified individual if the qualified individual meets the reasonable financial, business experience, and character standards required by the supplier. Should a supplier determine that the designated qualified individual does not meet those reasonable written standards, it shall provide the dealership, heirs to the dealership, or the estate of the dealer with written notice of its objection and specific reasons for withholding its consent. A supplier shall have sixty days to consider a dealer's request to make a transfer. If the qualified individual reasonably satisfies the supplier's objections within sixty days, the supplier shall approve the transfer. Nothing in this section shall entitle a qualified individual to continue to operate the dealership without the consent of the supplier.

(b) If a supplier and dealer have duly executed an agreement concerning succession rights prior to the dealer's death and the agreement has not been revoked, the agreement shall be observed even if it designates someone other than the surviving spouse or heirs of the decedent as the successor. [2002 c 236 § 7; 1990 c 124 § 3.]

19.98.130 Termination, cancellation, or nonrenewal of dealer agreement—Notice. (1) Except where a grounds for termination or nonrenewal of a dealer agreement or a substantial change in a dealer's competitive circumstances are contained in subsection (2)(a), (b), (c), (d), (e), or (f) of this section, a supplier shall give a dealer ninety days' written notice of the supplier's intent to terminate, cancel, or not renew a dealer agreement or substantially change the dealer's competitive circumstances. The notice shall state all reasons constituting good cause for termination, cancellation, or nonrenewal and shall provide, except for termination pursuant to subsection (2)(a), (b), (c), (d), or (e) of this section, that the dealer has sixty days in which to cure any claimed deficiency. If the deficiency is rectified within sixty days, the notice shall be void. The contractual terms of the dealer agreement shall not expire or the dealer's competitive circumstances shall not be substantially changed without the written consent of the dealer prior to the expiration of at least ninety days following such notice.

(2) As used in RCW 19.98.100 through 19.98.150 and 19.98.911, a termination by a supplier of a dealer agreement shall be with good cause when the dealer:

(a) Has transferred a controlling ownership interest in the dealership without the supplier's consent;

(b) Has made a material misrepresentation to the supplier;

(c) Has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against the dealer which has not been discharged within sixty days after the filing, is in default under the provisions of a security agreement in effect with the supplier, or is insolvent or in receivership;

(d) Has been convicted of a crime, punishable for a term of imprisonment for one year or more;

(e) Has failed to operate in the normal course of business for ten consecutive business days or has terminated the business;

(f) Has relocated the dealer's place of business without supplier's consent;

(g) Has consistently engaged in business practices that are detrimental to the consumer or supplier by way of excessive pricing, misleading advertising, or failure to provide service and replacement parts or perform warranty obligations;

(h) Has inadequately represented the supplier over a measured period causing lack of performance in sales, service, or warranty areas and failed to achieve market penetration at levels consistent with similarly situated dealerships in the state based on available record information;

(i) Has consistently failed to meet building and house-keeping requirements or failed to provide adequate sales, service, or parts personnel commensurate with the dealer agreement;

(j) Has consistently failed to comply with the applicable licensing laws pertaining to the products and services being represented for and on supplier's behalf; or

(k) Has consistently failed to comply with the terms of the dealer agreement.

(3)(a) Notwithstanding the provisions of subsections (1) and (2) of this section, before the termination or nonrenewal of a dealer agreement based upon a supplier's claim that the dealer has failed to meet reasonable marketing criteria or market penetration, the supplier shall provide written notice of its intention at least one year in advance.

(b) Upon the end of the one-year period established in this subsection (3), the supplier may terminate or elect not to renew the dealer agreement only upon written notice specifying the reasons for determining that the dealer failed to meet reasonable marketing criteria or market penetration. The notice must specify that termination or nonrenewal is effective one hundred eighty days from the date of the notice. [2002 c 236 § 8; 1990 c 124 § 4.]

19.98.140 Actions against suppliers—Remedies. Any equipment dealer may bring an action against a supplier in any court of competent jurisdiction for damages sustained by the equipment dealer as a consequence of the supplier's violation including requiring the supplier to repurchase at fair market value any data processing hardware and specialized repair tools and equipment previously purchased pursuant to requirements of the supplier, compensation for any loss of

business, and the actual costs of the action, including reasonable attorneys' fees. The equipment dealer may also be granted injunctive relief against unlawful termination, cancellation, nonrenewal, or substantial change in competitive circumstances. The remedies set forth in this action shall not be deemed exclusive and shall be in addition to any other remedies permitted by law. Nothing in this section is intended to prevent any court from awarding to the supplier actual costs of the action, including reasonable attorney's fees if the action is deemed frivolous. [1990 c 124 § 5.]

19.98.150 Successors in interest. The obligations of any supplier under this chapter are applied to any successor in interest or assignee of the supplier. A successor in interest includes any purchaser of assets or stock, any surviving corporation resulting from merger or liquidation, and any receiver or any trustee of the original supplier. [1990 c 124 § 6.]

19.98.160 Establishment of new dealership—Supplier's duties. When a supplier enters into an agreement to establish a new dealer or dealership or to relocate a current dealer or dealership for a particular product line or make of equipment, the supplier must give written notice of such an agreement by certified mail to all existing dealers or dealerships whose assigned area of responsibility is contiguous to the new dealer or dealership location. If no area of responsibility has been assigned then the supplier must give written notice of such an agreement by certified mail to the dealers or dealerships within a seventy-five mile radius of the new dealer location. The supplier must provide in its written notice the following information about the proposed new or relocated dealer or dealership:

(1) The proposed location;

(2) The proposed date for commencement of operation at the new location; and

(3) The identities of all existing dealers or dealerships whose assigned area of responsibility is contiguous to the new dealer or dealership location. If no area of responsibility has been assigned then the supplier must give written notice of such an agreement by certified mail to the dealers or dealerships located within a seventy-five mile radius of the new dealer location. [2002 c 236 § 9.]

19.98.170 Warranty claims. (1) In the event a warranty claim is submitted by a dealer to a supplier while a dealer agreement is in effect, or after the termination of a dealer agreement, if the claim is for work performed before the effective date of the dealer agreement termination:

(a) A supplier shall fulfill any warranty agreement with each of its dealers for labor and parts relative to repairs of equipment covered by the terms of such an agreement.

(b) The supplier must approve or disapprove, in writing, any claim submitted by a dealer for warranty compensation for labor or parts within thirty days of receipt of such a claim by the supplier.

(c) The supplier must pay to the submitting dealer any approved dealer claim within thirty days following approval of such a claim.

(d) If a supplier disapproves a dealer warranty claim, the supplier must state the specific reasons for rejecting the claim in its written notification required by (b) of this subsection.

(e) A claim that is disapproved by the supplier based upon the dealer's failure to properly follow the procedural or technical requirements for submission of warranty claims may be resubmitted in proper form by the dealer within thirty days of receipt by the dealer of the supplier's notification of such a disapproval.

(f) A claim that is not specifically disapproved, in writing, by the supplier within thirty days following the supplier's receipt of such a claim is conclusively deemed to be approved and must be paid to the submitting dealer within thirty days following expiration of the notification period established in (b) of this subsection.

(g) A supplier may audit warranty claims submitted by its dealers for a period of up to one year following payment of the claims, and may charge back to its dealers any amounts paid based upon claims shown by audit to be false. The supplier has the right to adjust claims for errors discovered during the audit, and if necessary, to adjust claims paid in error.

(2) A supplier must compensate its dealers for warranty claims pursuant to the following schedule:

(a) Reasonable compensation must be made by the supplier for costs associated with diagnostic work, repair service, parts, and labor that are related to warranted repairs;

(b) Time allowances for diagnosis and performance of warranty work and service must be adequate for the work being performed;

(c) The hourly labor rate for which the dealer is compensated may not be less than the rate charged by the dealer for like services provided to nonwarranty customers for nonwarranted service; and

(d) Compensation for parts used in the performance of a warranted repair may not be less than the amount paid by the dealer to obtain the parts, plus a reasonable allowance for shipping and handling.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, a supplier may withhold payment of a warranty claim as setoff against reasonable obligations otherwise owed by the dealer to the supplier.

(4) Notwithstanding the provisions of subsection (2) of this section, a dealer may accept the supplier's reimbursement terms and conditions in lieu of the terms and conditions set forth in subsection (2) of this section. [2002 c 236 § 10.]

19.98.180 Audit of warranty claims. A supplier may not audit a dealer's records with respect to any warranty claim submitted more than one year before the audit, unless a false claim is disclosed. However, the supplier has the right to audit warranty claims submitted more than one year before the audit when the audit discloses a false claim. [2002 c 236 § 11.]

19.98.190 Civil action—Award. (1) In the event that the supplier fails to make payment in accordance with the terms of RCW 19.98.170 or violates any other provisions of RCW 19.98.170 or 19.98.180, a dealer may bring an action in a court of competent jurisdiction to obtain payment of a warranty claim submitted to a supplier.

(2) In the event that the court finds that the supplier has failed to make payment in accordance with the terms of RCW 19.98.170 or has violated any other provisions of RCW 19.98.170 or 19.98.180, the court shall award the dealer costs and reasonable attorneys' fees. [2002 c 236 § 12.]

19.98.200 Supplier-required work. (1) In the event a supplier requires the dealer to work on equipment to enhance the safe operation of the equipment, the supplier must reimburse the dealer for parts, labor, and transportation of equipment or personnel to perform the work on equipment covered by the requirements of the supplier.

(2) In the event a supplier requires the dealer to perform product improvement work on equipment, the supplier must reimburse the dealer for parts and labor.

(3) For purposes of this section, a supplier must compensate its dealers pursuant to the following schedule:

(a) The hourly labor rate for which the dealer is compensated may not be less than the rate charged by the dealer for like services provided; and

(b) Compensation for parts used in the performance of safety enhancements or product improvements as requested by the supplier may not be less than the amount paid by the dealer to obtain the parts, plus a reasonable allowance for shipping and handling.

(4) Notwithstanding the provisions of subsection (3) of this section, a dealer may accept the supplier's reimbursement terms and conditions in lieu of the terms and conditions set forth in subsection (3) of this section. [2002 c 236 § 13.]

19.98.210 Arbitration—Dealer's cause of action against supplier—Remedies not exclusive.

(1) Any party to a dealer agreement aggrieved by the conduct of the other party to the agreement with respect to the provisions of this chapter may seek arbitration of the issues involved in the decision of the other party under the provisions of *RCW 7.04.010 through 7.04.210. The arbitration is pursuant to the commercial arbitration rules of the American arbitration association. The findings and conclusions of the arbitrator or panel of arbitrators is binding upon both parties. Upon demand for arbitration by one party, it is presumed for purposes of the provisions of *RCW 7.04.010 through 7.04.210 that the parties have consented to arbitration, and that the costs of witness fees and other fees in the case, together with reasonable attorneys' fees, must be paid by the losing party.

(2) Notwithstanding subsection (1) of this section, any dealer has a cause of action against a supplier for damages sustained by the dealer as a consequence of the supplier's violation of any provisions of RCW 19.98.120 or 19.98.130, together with the actual costs of such action, including reasonable attorneys' fees.

(3) The dealer may also be granted injunctive relief against unlawful termination, cancellation, nonrenewal, or change in competitive circumstances as determined under subsection (1) of this section or by a court.

(4) The remedies set forth in this section may not be considered exclusive and are in addition to any other remedies permitted by law, unless the parties have chosen binding arbitration under subsection (1) of this section. [2002 c 236 § 14.]

*Reviser's note: RCW 7.04.010 through 7.04.210 were repealed by 2005 c 433 § 50, effective January 1, 2006.

19.98.900 Effective date—1975 1st ex.s. c 277. This act shall take effect on January 1, 1976. [1975 1st ex.s. c 277 § 6.]

19.98.911 Severability—1990 c 124. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1990 c 124 § 7.]

19.98.912 Effective date—Application—1990 c 124. This act shall take effect July 1, 1990, and shall apply to all dealer agreements then in effect that have no expiration date and are a continuing agreement and to all other dealer agreements entered into or renewed on or after July 1, 1990. [1990 c 124 § 9.]

19.98.913 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, 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, 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. [2009 c 521 § 56.]

Chapter 19.100 RCW

FRANCHISE INVESTMENT PROTECTION

Sections

19.100.010	Definitions.
19.100.020	Unlawful in certain instances to sell or offer to sell franchise if unregistered or not exempt.
19.100.030	Exemptions from registration requirements.
19.100.040	Application for registration—Contents—Filing.
19.100.050	Escrow or impoundment of franchise fees as registration condition—Rules or orders—Procedure to rescind.
19.100.060	Registration statement—Effective, when.
19.100.070	Registration—Claim of exemption filing—Duration—Renewal—Supplemental report.
19.100.080	Unlawful acts—Sale of franchise—Terms of franchise agreement.
19.100.090	Filings, registration, or finding of director—Construction.
19.100.100	Advertisements—Copy to be filed.
19.100.110	Advertisements—False or misleading—Notice—Procedure.
19.100.120	Registration statement—Stop order—Grounds.
19.100.130	Registration statement—Stop order—Notice—Hearing—Modification or vacation of order.
19.100.140	Registration of franchise brokers required.
19.100.150	Records and accounts—Reports.
19.100.160	Application of chapter—Jurisdiction—Service of process—Consent.
19.100.170	Violations.
19.100.180	Relation between franchisor and franchisee—Rights and prohibitions.
19.100.184	Terms and conditions from negotiations initiated by franchisee.

19.100.190	Unfair or deceptive acts—Suits for damages—Violations of other acts, use in evidence.
19.100.200	Pendency of other proceedings tolls limitation of action.
19.100.210	Violations—Injunctions—Assurance of discontinuance—Civil and criminal penalties—Chapter nonexclusive.
19.100.220	Exceptions or exemptions—Burden of proof—Waivers of compliance void—Settlement release or waiver—Chapter as fundamental policy.
19.100.230	Referral of evidence to attorney general or prosecuting attorney.
19.100.240	Fees.
19.100.242	Investigations by director.
19.100.243	Subpoena authority—Application—Contents—Notice—Fees.
19.100.245	Investigatory powers—Proceedings for contempt.
19.100.248	Cease and desist orders.
19.100.250	Powers of director as to rules, forms, orders and defining terms—Interpretive opinions.
19.100.252	Denial, suspension, or revocation of franchise broker by director.
19.100.255	Denial, suspension, or revocation of exemption by director.
19.100.260	Applicability of administrative procedure act.
19.100.270	Administrator of securities.
19.100.900	Chapter applicable to existing and future franchises and contracts.
19.100.910	Chapter cumulative and nonexclusive.
19.100.920	Effective date—1971 ex.s. c 252.
19.100.940	Short title.

Reviser's note: Powers, duties, and functions of the department of licensing relating to franchises were transferred to the department of financial institutions by 1993 c 472, effective October 1, 1993. See RCW 43.320.011.

Business opportunity fraud act: Chapter 19.110 RCW.

19.100.010 Definitions. When used in this chapter, unless the context otherwise requires:

(1) "Advertisement" means any written or printed communication or any communication by means of recorded telephone messages or spoken on radio, television, or similar communication media published in connection with an offer or sale of a franchise.

(2) "Affiliate" means a person controlling, controlled by, or under common control with another person, every officer or director of such person, and every person occupying a similar status or performing similar functions.

(3) "Bank credit card plan" means a credit card plan in which the issuer of credit cards is a national bank, state bank, trust company or any other banking institution subject to the supervision of the director of financial institutions of this state or any parent or subsidiary of such bank.

(4) "Director" means the director of financial institutions.

(5) "File," "filed," or "filing," except in the phrase "filed with and subject to the approval of the superior court," means the receipt under this chapter of a record by the director or a designee of the director.

(6) "Franchise" means:

(a) An agreement, express or implied, oral or written, by which:

(i) A person is granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan prescribed or suggested in substantial part by the grantor or its affiliate;

(ii) The operation of the business is substantially associated with a trademark, service mark, trade name, advertising, or other commercial symbol designating, owned by, or licensed by the grantor or its affiliate; and

(iii) The person pays, agrees to pay, or is required to pay, directly or indirectly, a franchise fee.

(b) The following shall not be construed as a franchise within the meaning of this chapter:

(i) The payment of a reasonable service charge to the issuer of a credit card by an establishment accepting or honoring such credit card or any transaction relating to a bank credit card plan;

(ii) Actions or transactions otherwise permitted, prohibited or regulated under laws administered by the insurance commissioner of this state;

(iii) Any motor vehicle dealer franchise subject to the provisions of chapter 46.70 RCW.

(7) "Franchise broker" means a person who directly or indirectly engages in the business of the offer or sale of franchises. The term does not include a franchisor, subfranchisor, or their officers, directors, or employees.

(8) "Franchise fee" means any fee or charge that a franchisee or subfranchisor is required to pay or agrees to pay for the right to enter into a business or to continue a business under a franchise agreement, including, but not limited to, the payment either in lump sum or by installments of an initial capital investment fee, any fee or charges based upon a percentage of gross or net sales whether or not referred to as royalty fees, any payment for the mandatory purchase of goods or services or any payment for goods or services available only from the franchisor, or any training fees or training school fees or charges; however, the following shall not be considered payment of a franchise fee: (a) The purchase or agreement to purchase goods at a bona fide wholesale price; (b) the purchase or agreement to purchase goods by consignment; if, and only if the proceeds remitted by the franchisee from any such sale shall reflect only the bona fide wholesale price of such goods; (c) a bona fide loan to the franchisee from the franchisor; (d) the purchase or agreement to purchase goods at a bona fide retail price subject to a bona fide commission or compensation plan that in substance reflects only a bona fide wholesale transaction; (e) the purchase or lease or agreement to purchase or lease supplies or fixtures necessary to enter into the business or to continue the business under the franchise agreement at their fair market or rental value; (f) the purchase or lease or agreement to purchase or lease real property necessary to enter into the business or to continue the business under the franchise agreement at the fair market or rental value; (g) amounts paid for trading stamps redeemable in cash only; (h) amounts paid for trading stamps to be used as incentives only and not to be used in, with, or for the sale of any goods.

(9) "Franchisee" means a person to whom a franchise is offered or granted.

(10) "Franchisor" means a person who grants a franchise to another person.

(11) "Marketing plan" means a plan or system concerning an aspect of conducting business. A marketing plan may include one or more of the following:

(a) Price specifications, special pricing systems or discount plans;

(b) Sales or display equipment or merchandising devices;

(c) Sales techniques;

(d) Promotional or advertising materials or cooperative advertising;

(e) Training regarding the promotion, operation, or management of the business; or

(f) Operational, managerial, technical, or financial guidelines or assistance.

(12) "Offer" or "offer to sell" includes every attempt or offer to dispose of or solicitation of an offer to buy a franchise or an interest in a franchise.

(13) "Person" means a natural person, corporation, partnership, trust, or other entity and in the case of an entity, it shall include any other entity which has a majority interest in such an entity or effectively controls such other entity as well as the individual officers, directors, and other persons in act of control of the activities of each such entity.

(14) "Prospective franchisee" means any person, including any agent, representative, or employee, who approaches or is approached by a franchise seller to discuss the possible establishment of a franchise relationship.

(15) "Publish" means publicly to issue or circulate by newspaper, mail, radio, or television or otherwise to disseminate to the public.

(16) "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.

(17) "Sale" or "sell" includes every contract of sale, contract to sell, or disposition of a franchise.

(18) "Subfranchise" means an agreement, express or implied, oral or written, by which a person pays or agrees to pay, directly or indirectly, a franchisor or affiliate for the right to grant, sell or negotiate the sale of a franchise.

(19) "Subfranchisor" means a person to whom a subfranchise is granted. [2012 c 121 § 1; 1994 c 92 § 3; 1991 c 226 § 1; 1979 c 158 § 83; 1973 1st ex.s. c 33 § 3; 1972 ex.s. c 116 § 1; 1971 ex.s. c 252 § 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

19.100.020 Unlawful in certain instances to sell or offer to sell franchise if unregistered or not exempt. (1) It is unlawful for any franchisor or subfranchisor to sell or offer to sell any franchise in this state unless the offer of the franchise has been registered under this chapter or exempted under RCW 19.100.030.

(2) For the purpose of this section, an offer to sell a franchise is made in this state when: (a) The offer is directed by the offeror into this state from within or outside this state and is received where it is directed, (b) the offer originates from this state and violates the franchise or business opportunity law of the state or foreign jurisdiction into which it is directed, (c) the prospective franchisee is a resident of this state, or (d) the franchise business that is the subject of the offer is to be located or operated, wholly or partly, in this state.

(3) For the purpose of this section, a sale of any franchise is made in this state when: (a) An offer to sell is accepted in this state, (b) an offer originating from this state is accepted and violates the franchise or business opportunity law of the state or foreign jurisdiction in which it is accepted, (c) the purchaser of the franchise is a resident of this state, or (d) the franchise business that is the subject of the sale is to be located or operated, wholly or partly, in this state.

(4) For the purpose of this section, an offer to sell is not made in this state solely because the offer appears: (a) In a newspaper or other publication of general and regular circulation if the publication has had more than two-thirds of its circulation outside this state during the twelve months before the offer is published, or (b) in a broadcast or transmission originating outside this state. [2012 c 121 § 2; 1991 c 226 § 2; 1971 ex.s. c 252 § 2.]

19.100.030 Exemptions from registration requirements. The registration requirements of this chapter shall not apply to:

(1) The offer or sale or transfer of a franchise by a franchisee who is not an affiliate of the franchisor for the franchisee's own account if the franchisee's entire franchise is sold and the sale is not effected by or through the franchisor. A sale is not effected by or through a franchisor merely because a franchisor has a right to approve or disapprove the sale or requires payment of a reasonable transfer fee. Such right to approve or disapprove the sale shall be exercised in a reasonable manner.

(2) The offer or sale of a franchise by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, conservator, or pursuant to a court-approved offer or sale, on behalf of a person other than the franchisor or the estate of the franchisor.

(3) The offer or sale of a franchise to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit sharing trust, or other financial institution or institutional buyer or to a broker dealer where the purchaser is acting for itself or in some fiduciary capacity.

(4) The offer or sale of a franchise by a franchisor:

(a) Who has delivered in writing to each prospective franchisee, at least fourteen calendar days prior to the execution by the prospective franchisee of any binding franchise or other agreement, or at least fourteen calendar days prior to the receipt of any consideration, whichever occurs first, a disclosure document complying with guidelines adopted by rule of the director. The director shall be guided in adopting such a rule by the guidelines for the preparation of the disclosure document adopted by the federal trade commission or the North American Securities Administrators Association, Inc., or its successor, as such guidelines may be revised from time to time; and

(b) Who either:

(i)(A) Has a net worth on a consolidated basis, according to its most recent audited financial statement, of not less than five million dollars or who has a net worth, according to its most recent audited financial statement, of not less than one million dollars and is at least eighty percent owned by a corporation which has a net worth on a consolidated basis, according to its most recent audited financial statement, of not less than five million dollars; and

(B) Has had at least twenty-five franchisees conducting business at all times during the five-year period immediately preceding the offer or sale or has conducted business which is the subject of the franchise continuously for not less than five years preceding the offer or sale or if any corporation which owns at least eighty percent of the franchisor, has had at least twenty-five franchisees conducting business at all times

during the five-year period immediately preceding the offer or sale or such corporation has conducted business which is the subject of the franchise continuously for not less than five years preceding the offer or sale; and

(C) Requires an initial investment by the franchisee of more than one hundred thousand dollars; and

(D) Files annually with the director a statement prescribed by rule of the director giving notice of such claim, and pays a filing fee as set forth in RCW 19.100.240; or

(ii)(A) Has no outstanding franchises granted for businesses located or to be located outside the state of Washington; and

(B) Has granted and grants no more than three franchises for franchise businesses to be situated within the state of Washington; and

(C) Does not publish an advertisement or engage in general solicitation for the franchise offering; and

(D) The buyer is represented or advised in the transaction by independent legal counsel or certified public accountant; or

(iii) Does not charge a franchise fee, as defined in *RCW 19.100.010(12), in excess of five hundred dollars; and

(c) Who has not been found by a court of competent jurisdiction to have been in violation of this chapter, chapter 19.86 RCW, or any of the various federal statutes dealing with the same or similar matters, within seven years of any sale or offer to sell franchise business under franchise agreement in the state of Washington.

(5) The offer or sale of a franchise to an accredited investor, as defined by rule adopted by the director. The director shall be guided in adopting such a rule by the rules defining accredited investor promulgated by the federal securities and exchange commission.

(6) The offer or sale of an additional franchise to an existing franchisee of the franchisor for the franchisee's own account that is substantially the same as the franchise that the franchisee has operated for at least two years at the time of the offer or sale, provided the prior sale to the franchisee was pursuant to a franchise offering that was registered in the state of Washington. [2012 c 121 § 3; 1991 c 226 § 3; 1972 ex.s. c 116 § 2; 1971 ex.s. c 252 § 3.]

*Reviser's note: RCW 19.100.010 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (12) to subsection (8).

19.100.040 Application for registration—Contents—

Filing. (1) The application for registration of the offer, signed by the franchisor, subfranchisor, or by any person on whose behalf the offering is to be made, must be filed with the director and shall contain:

(a) A copy of the franchisor's or subfranchisor's disclosure document which shall be prepared in compliance with guidelines adopted by rule of the director. The director shall be guided in adopting such rule by the guidelines for the preparation of the disclosure document adopted by the federal trade commission or the North American Securities Administrators Association, Inc., or its successor, as such guidelines may be revised from time to time;

(b) A copy of all agreements to be proposed to franchisees;

(c) A consent to service of process as required by RCW 19.100.160;

(d) The application for registration of a franchise broker, if any;

(e) The applicable filing fee; and

(f) Such other information as the director determines, by rule or order, to be necessary or appropriate to facilitate the administration of this chapter.

(2) The director may require the filing of financial statements of the franchisor or subfranchisor audited by an independent certified public accountant and prepared in accordance with generally accepted accounting principles.

When the person filing the application for registration is a subfranchisor, the application shall also include the same information concerning the subfranchisor as is required from the franchisor pursuant to this section. [2012 c 121 § 4; 1991 c 226 § 4; 1972 ex.s. c 116 § 3; 1971 ex.s. c 252 § 4.]

19.100.050 Escrow or impoundment of franchise fees as registration condition—Rules or orders—Procedure to rescind. The director may by rule or order require as a condition to the effectiveness of the registration the escrow or impound of franchise fees if he 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.]

19.100.060 Registration statement—Effective, when. If no stop order is in effect and no proceeding is pending under RCW 19.100.120, a registration statement becomes effective at 3:00 P.M. Pacific Standard Time on the afternoon of the fifteenth business day after the filing of the registration statement or the last amendment or at such earlier time as the director determines. [1971 ex.s. c 252 § 6.]

19.100.070 Registration—Claim of exemption filing—Duration—Renewal—Supplemental report. (1) A franchise offering shall be deemed duly registered, and a claim of exemption under RCW 19.100.030(4)(b)(i) shall be duly filed, for a period of one year from the effective date of registration or filing unless the director by rule or order specifies a different period.

(2) Registration of a franchise offer may be renewed for additional periods of one year each, unless the director by rule or order specifies a different period, by filing with the director no later than twenty calendar days prior to the expiration thereof a renewal application containing such information as the director may require to indicate any substantial changes in the information contained in the original application or the previous renewal application and payment of the prescribed fee.

(3) If a material adverse change in the condition of the franchisor or the subfranchisor or any material change in the

information contained in its disclosure document should occur the franchisor or subfranchisor shall so amend the registration on file with the director as soon as reasonably possible and in any case, before the further sale of any franchise. [2012 c 121 § 5; 1991 c 226 § 5; 1972 ex.s. c 116 § 5; 1971 ex.s. c 252 § 7.]

19.100.080 Unlawful acts—Sale of franchise—Terms of franchise agreement. (1) It is unlawful for any person to sell a franchise that is registered or required to be registered under this chapter without first furnishing to the prospective franchisee a copy of the franchisor's current disclosure document, as described in RCW 19.100.040 and 19.100.070, at least fourteen calendar days prior to the execution by the prospective franchisee of any binding franchise or other agreement, or at least fourteen calendar days before the prospective franchisee signs a binding agreement with, or makes any payment to, the franchisor or an affiliate in connection with the proposed franchise sale.

(2) It is unlawful for any franchisor to alter unilaterally and materially the terms and conditions of the basic franchise agreement or any related agreements attached to the disclosure document without furnishing the prospective franchisee with a copy of each revised agreement at least seven calendar days before the prospective franchisee signs the revised agreement. Changes to an agreement that arise out of negotiations initiated by the prospective franchisee do not trigger this seven calendar day period. [2012 c 121 § 6; 1991 c 226 § 6; 1972 ex.s. c 116 § 6; 1971 ex.s. c 252 § 8.]

19.100.090 Filings, registration, or finding of director—Construction. (1) Neither (a) the fact that application for registration under this law has been filed nor (b) the fact that such registration has become effective constitutes a finding by the director that any document filed under this law is true, complete, or not misleading. Neither any such fact or the fact that an exemption is available for a transaction means that the director has passed in any way on the merit or qualifications of or recommended or given approval to any person, franchise, or transaction.

(2) It is unlawful to make or cause to be made to any prospective franchisee any representation inconsistent with this section. [2012 c 121 § 7; 1971 ex.s. c 252 § 9.]

19.100.100 Advertisements—Copy to be filed. No person shall publish in this state any advertisements offering a franchise subject to the registration requirements of this law unless a true copy of the advertisement has been filed in the office of the director at least seven days prior to the publication or such shorter period as the director by rule or order may allow. [1991 c 226 § 7; 1971 ex.s. c 252 § 10.]

19.100.110 Advertisements—False or misleading—Notice—Procedure. No person shall publish in this state any advertisement concerning a franchise subject to the registration requirements of this chapter after the director finds that the advertisement contains any statements that are false or misleading or omits to make any statement necessary in order to make the statements made, in the light of the circumstances in which they were made, not misleading and so notifies the person in writing. Such notification may be given

summarily without notice or hearing. At any time after the issuance of a notification under this section the person desiring to use the advertisement may in writing request the order be rescinded. Upon receipt of such a written request, the matter shall be set down for hearing to commence within fifteen days after such receipt unless the person making the request consents to a later date. After such hearing, which shall be conducted in accordance with the provisions of the administrative procedure act, chapter 34.05 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. [1972 ex.s. c 116 § 7; 1971 ex.s. c 252 § 11.]

19.100.120 Registration statement—Stop order—Grounds. The director may issue a stop order denying effectiveness to or suspending or revoking the effectiveness of any registration statement if he 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 twenty calendar 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. [2012 c 121 § 9; 2011 c 336 § 560; 1971 ex.s. c 252 § 13.]

19.100.140 Registration of franchise brokers required. (1) It is unlawful for any franchise broker to offer to sell or sell a franchise in this state unless the franchise broker is registered under this chapter. It is unlawful for any franchisor, subfranchisor, or franchisee to employ a franchise broker unless the franchise broker is registered.

(2) The franchise broker shall apply for registration by filing with the director an application together with a consent to service of process in such form as the director shall prescribe and payment of the fee prescribed in RCW 19.100.240.

(3) The application shall contain whatever information the director requires concerning such matters as:

(a) The applicant's form and place of organization.

(b) The applicant's proposed method of doing business.

(c) The qualifications and business history of the applicant.

(d) Any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony; and

(e) The applicant's financial condition and history. [1991 c 226 § 8; 1972 ex.s. c 116 § 9; 1971 ex.s. c 252 § 14.]

19.100.150 Records and accounts—Reports. Every person offering franchises for sale shall at all times keep and maintain a complete set of books, records, and accounts of such and the disposition of the proceeds thereof and shall thereafter at such times as are required by the director make and file in the office of the director a report setting forth the franchises sold by it, the proceeds derived therefrom, and the disposition thereof. [1971 ex.s. c 252 § 15.]

19.100.160 Application of chapter—Jurisdiction—Service of process—Consent. Any person who is engaged or hereafter engaged directly or indirectly in the sale or offer to sell a franchise or 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.]

19.100.170 Violations. It is unlawful for any person in connection with the offer, sale, or purchase of any franchise or subfranchise in this state directly or indirectly:

(1) To make any untrue statement of a material fact in any application, notice, or report filed with the director under this law or willfully to omit to state in any application, notice or report, any material fact which is required to be stated therein or fails to notify the director of any material change as required by RCW 19.100.070(3).

(2) To sell or offer to sell by means of any written or oral communication which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made in light of the circumstances under which they were made not misleading.

(3) To employ any device, scheme, or artifice to defraud.

(4) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(5) To violate any order of the director. [1991 c 226 § 10; 1971 ex.s. c 252 § 17.]

19.100.180 Relation between franchisor and franchisee—Rights and prohibitions. Without limiting the other provisions of this chapter, the following specific rights and prohibitions shall govern the relation between the franchisor or subfranchisor and the franchisees:

(1) The parties shall deal with each other in good faith.

(2) For the purposes of this chapter and without limiting its general application, it shall be an unfair or deceptive act or practice or an unfair method of competition and therefore unlawful and a violation of this chapter for any person to:

(a) Restrict or inhibit the right of the franchisees to join an association of franchisees.

(b) Require a franchisee to purchase or lease goods or services of the franchisor or from approved sources of supply unless and to the extent that the franchisor satisfies the burden of proving that such restrictive purchasing agreements are reasonably necessary for a lawful purpose justified on

business grounds, and do not substantially affect competition: PROVIDED, That this provision shall not apply to the initial inventory of the franchise. In determining whether a requirement to purchase or lease goods or services constitutes an unfair or deceptive act or practice or an unfair method of competition the courts shall be guided by the decisions of the courts of the United States interpreting and applying the anti-trust laws of the United States.

(c) Discriminate between franchisees in the charges offered or made for royalties, goods, services, equipment, rentals, advertising services, or in any other business dealing, unless and to the extent that the franchisor satisfies the burden of proving that any classification of or discrimination between franchisees is: (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 franchises in the exclusive territory area previously granted to another franchisee.

(g) Require franchisee to assent to a release, assignment, novation, or waiver which would relieve any person from liability imposed by this chapter, 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 nonrenewal and (ii) the franchisor agrees in writing not to enforce any covenant which restrains the franchisee from competing with the franchisor: PROVIDED FURTHER, That a franchisor may offset against amounts owed to a franchisee under this subsection any amounts owed by such franchisee to the franchisor.

(j) Terminate a franchise prior to the expiration of its term except for good cause. Good cause shall include, without limitation, the failure of the franchisee to comply with lawful material provisions of the franchise or other agree-

ment 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.]

19.100.184 Terms and conditions from negotiations initiated by franchisee. This chapter does not preclude negotiation of the terms and conditions of a franchise at the initiative of the franchisee, provided that such negotiated terms and conditions do not violate any provision of this chapter. After the initial offer to a franchisee using the disclosure document required by RCW 19.100.030, 19.100.040, or 19.100.070 a franchisor need not provide an amended disclosure document to that franchisee by reason of a change in the terms and conditions of a franchise being negotiated at the initiative of that franchisee or amend the registration by reason of such change. [2012 c 121 § 8; 1991 c 226 s 12.]

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.]

19.100.200 Pendency of other proceedings tolls limitation of action. The pendency of any civil, criminal, or administrative proceedings against a person brought by the federal or Washington state governments or any of their agencies under the anti-trust laws, the Federal Trade Commission Act, the Consumer Protection Act, or any federal or state act related to anti-trust laws or to franchising, or under this chapter shall toll the limitation of this action if the action is then instituted within one year after the final judgment or order in such proceedings: PROVIDED, That said limitation of actions shall in any case toll the law so long as there is actual concealment on the part of the person. [1972 ex.s. c 116 § 12; 1971 ex.s. c 252 § 20.]

19.100.210 Violations—Injunctions—Assurance of discontinuance—Civil and criminal penalties—Chapter nonexclusive. (1) The attorney general or director may bring an action in the name of the state against any person to restrain and prevent the doing of any act herein prohibited or declared to be unlawful. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The prevailing party may in the discretion of the court recover the costs of such action including a reasonable attorneys' fee.

(2) Every person who shall violate the terms of any injunction issued as in this chapter provided shall forfeit and pay a civil penalty of not more than twenty-five thousand dollars.

(3) Every person who violates RCW 19.100.020, 19.100.080, 19.100.150, and 19.100.170 shall forfeit a civil

penalty of not more than two thousand dollars for each violation.

(4) For the purpose of this section the superior court issuing an injunction shall retain jurisdiction and the cause shall be continued and in such cases the attorney general or director acting in the name of the state may petition for the recovery of civil penalties.

(5) In the enforcement of this chapter, the attorney general or director may accept an assurance of discontinuance with the provisions of this chapter from any person deemed by the attorney general or director in violation hereof. Any such assurance shall be in writing, shall state that the person giving such assurance does not admit to any violation of this chapter or to any facts alleged by the attorney general or director, 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. Proof of failure to comply with the assurance of discontinuance shall be prima facie evidence of a violation of this chapter.

(6) Any person who willfully violates any provision of this chapter or who willfully violates any rule adopted or order issued under this chapter is guilty of a class B felony and shall upon conviction be fined not more than five thousand dollars or imprisoned for not more than ten years or both, but no person may be imprisoned for the violation of any rule or order if he or she proves that he or she had no knowledge of the rule or order. No indictment or information may be returned under this chapter more than five years after the alleged violation.

(7) Nothing in this chapter limits the power of the state to punish any person for any conduct which constitutes a crime by statute or at common law. [2003 c 53 § 151; 1980 c 63 § 2; 1979 ex.s. c 13 § 1; 1972 ex.s. c 116 § 13; 1971 ex.s. c 252 § 21.]

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

19.100.220 Exceptions or exemptions—Burden of proof—Waivers of compliance void—Settlement release or waiver—Chapter as fundamental policy. (1) In any proceeding under this chapter, the burden of proving an exception from a definition or an exemption from registration is upon the person claiming it.

(2) Any agreement, condition, stipulation or provision, including a choice of law provision, purporting to bind any person to waive compliance with any provision of this chapter or any rule or order hereunder is void. A release or waiver executed by any person pursuant to a negotiated settlement in connection with a bona fide dispute between a franchisee and a franchisor, arising after their franchise agreement has taken effect, in which the person giving the release or waiver is represented by independent legal counsel, is not an agreement prohibited by this subsection.

(3) This chapter represents a fundamental policy of the state of Washington. [1991 c 226 s 13; 1972 ex.s. c 116 s 14; 1971 ex.s. c 252 s 22.]

19.100.230 Referral of evidence to attorney general or prosecuting attorney. The director may refer such evidence as may be available concerning violations of this chap-

ter 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.]

19.100.240 Fees. The director shall charge and collect fees fixed by this section. All fees collected under this chapter shall be deposited in the state treasury and shall not be refundable except as herein provided:

(1) The fee for filing an application for registration on the sale of franchise under RCW 19.100.040 is six hundred dollars;

(2) The fee for filing an application for renewal of a registration under RCW 19.100.070 is one hundred dollars;

(3) The fee for filing an amendment to the application filed under RCW 19.100.040 is one hundred dollars;

(4) The fee for registration of a franchise broker shall be fifty dollars for original registration and twenty-five dollars for each annual renewal;

(5) The fee for filing a notice of claim of exemption is one hundred dollars for the original filing and one hundred dollars for each annual renewal. [1991 c 226 § 14; 1971 ex.s. c 252 § 24.]

19.100.242 Investigations by director. The director, in the director's discretion, may: (1) Annually, or more frequently, make such public or private investigations within or without this state as the director deems necessary to determine whether any registration should be granted, denied, revoked, or suspended, or whether any person 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. [1979 ex.s. c 13 § 2.]

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.

19.100.245 Investigatory powers—Proceedings for contempt. For the purpose of any investigation or proceeding under this chapter, the director or any officer designated by the director may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry.

In case of wilful failure on the part of a person to comply with a subpoena lawfully issued by the director, or on the refusal of a witness to testify to matters regarding which the witness may be lawfully interrogated, the superior court of any county, on application of the director and after satisfactory evidence of wilful disobedience, may compel obedience by proceedings for contempt, as in the case of disobedience of a subpoena issued from the court or a refusal to testify therein. [1979 ex.s. c 13 § 3.]

19.100.248 Cease and desist orders. If it appears to the director that a person has engaged or is about to engage in an act or practice constituting a violation of a provision of this chapter or a rule adopted or order issued under this chapter, the director may, in the director's discretion, issue an order directing the person to cease and desist from continuing the act or practice. Reasonable notice of and opportunity for a hearing shall be given. The director may issue a temporary order pending the hearing, which shall remain in effect until ten days after the hearing is held and which shall become final if the person to whom notice is addressed does not request a hearing within twenty calendar days after the receipt of the notice. [2012 c 121 § 10; 1979 ex.s. c 13 § 4.]

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.]

19.100.252 Denial, suspension, or revocation of franchise broker by director. The director may by order deny, suspend, or revoke registration of any franchise broker if the director finds that the order is in the public interest and that the applicant or registrant, or any partner, officer, or director of the applicant or registrant:

(1) Has filed an application for registration as a franchise broker under RCW 19.100.140 which, as of its effective date,

or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(2) Has willfully violated or willfully failed to comply with any provision of this chapter;

(3) Has been convicted, within the past five years of any misdemeanor involving a franchise, or any felony involving moral turpitude;

(4) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any aspect of the franchise industry;

(5) Is the subject of an order of the director denying, suspending, or revoking registration as a franchise broker;

(6) Has engaged in dishonest or unethical practices in the franchise industry;

(7) Is insolvent, either in the sense that his or her liabilities exceed his or her assets or in the sense that he or she cannot meet his or her obligations as they mature.

The director may by order summarily postpone or suspend registration pending final determination of any proceeding under this section. [1991 c 226 § 16.]

19.100.255 Denial, suspension, or revocation of exemption by director. The director may by order deny, suspend, or revoke any exemption from registration otherwise available under RCW 19.100.030 for the offer or sale of the franchise if he or she finds that the order is in the public interest and that:

(1) Any provision of this chapter or any rule or order or condition lawfully imposed under this chapter has been violated or is about to be violated in connection with the offering by 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 controlled by the franchisor, or any franchise broker offering or selling the offering;

(2) The franchise offering is the subject of a permanent or temporary injunction of a court of competent jurisdiction entered under any federal or state act applicable to the offering; but (a) the director may not enter an order of revocation or suspension under this subsection more than one year from the date of the injunction relied on, and (b) the director may not enter an order under this subsection on the basis of an injunction unless that injunction was based on facts that currently constitute a ground for an order under this section;

(3) The franchisor's enterprise or method of business includes or would include activities which are illegal where performed;

(4) The offering has worked or tended to work or would tend to work a fraud on purchasers;

(5) The franchisor has failed to pay the required filing fee for a claim of exemption but the director may enter only a denial order under this subsection and shall vacate such order when the deficiency has been corrected;

(6) The franchisor has made a claim of exemption which is incomplete in a material respect or contains any statement which in the light of the circumstances under which it was made is false or misleading with respect to any material fact. [1991 c 226 § 17.]

19.100.260 Applicability of administrative procedure act. The administrative procedure act, chapter 34.05 RCW, shall wherever applicable herein govern the rights, remedies, and procedures respecting the administration of this chapter. [1971 ex.s. c 252 § 26.]

19.100.270 Administrator of securities. The director shall appoint a competent person to administer this chapter who shall be designated administrator of securities. The director shall delegate to the administrator such powers, subject to the authority of the director, as may be necessary to carry out the provisions of this chapter. The administrator shall hold office at the pleasure of the director. [1971 ex.s. c 252 § 27.]

19.100.900 Chapter applicable to existing and future franchises and contracts. The provisions of this chapter shall be applicable to all franchises and contracts existing between franchisors and franchisees and to all future franchises and contracts. [1971 ex.s. c 252 § 28.]

19.100.910 Chapter cumulative and nonexclusive. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy available at law. [1971 ex.s. c 252 § 29.]

19.100.920 Effective date—1971 ex.s. c 252. This act shall become effective May 1, 1972: PROVIDED, That the director is authorized and empowered to undertake and perform duties and conduct activities necessary for the implementation of this act prior to that date. [1971 ex.s. c 252 § 30.]

19.100.940 Short title. This chapter shall be known and designated as the "Franchise Investment Protection Act". [1971 ex.s. c 252 § 32.]

Chapter 19.105 RCW CAMPING RESORTS

Sections

19.105.300	Definitions.
19.105.310	Unlawful to offer or sell contract unless contract registered—Exemptions.
19.105.320	Registration—Filings required upon application—Waiver.
19.105.325	Exemptions from chapter.
19.105.330	Registration—Effective, when—Completed form of application required.
19.105.333	Signature of operator, trustee, or holder of power of attorney required on application documentation.
19.105.336	Availability of campgrounds to contract purchasers—Blanket encumbrances—Penalty for noncompliance.
19.105.340	Impounding proceeds from contract sales—Conditional release of impounded funds—Funds not subject to lien—No assignment of impounded or reserved assets.
19.105.345	Persons licensed under chapter 18.85 RCW exempt from salesperson registration requirements.
19.105.350	Director may require reserve fund by order—Actions against a registration.
19.105.360	Filing of sales literature, contract form, disclosure supplements.
19.105.365	Advertising promises of free gifts, awards, or prizes—Provision of gift or substitute—Security arrangements after violation—Advance fees placed in trust—Membership referral programs considered promotional programs.
19.105.370	Purchaser to receive written disclosures from operator or department—Exemptions.

(2018 Ed.)

19.105.380	Unprofessional conduct/disciplinary action—Grounds—Liability for administrative and legal costs—Assurances of discontinuance—Support order, noncompliance.
19.105.390	Resort contracts—Purchaser's cancellation—Notice—Statement of right to cancel.
19.105.400	Resort contracts—Voidable—Estoppel.
19.105.405	Purchaser lists—Authorized uses.
19.105.411	Fees.
19.105.420	Resort contracts—Registration, duration—Renewal, amendment—Renewal of prior permits.
19.105.430	Unlawful to act as salesperson without registering—Exemptions.
19.105.440	Registration as salesperson—Application—Unprofessional conduct—Assurances of discontinuance—Renewal of registration—Support order, noncompliance.
19.105.450	Investigations—Scope—Publishing information.
19.105.470	Cease and desist orders—Utilizing temporary order, injunction, restraining order, or writ of mandamus.
19.105.480	Violations—As gross misdemeanors—Statute of limitations.
19.105.490	Violations—Referral to attorney general or prosecuting attorney.
19.105.500	Violations—Application of consumer protection act.
19.105.510	Resort contracts—Nonapplicability of certain laws—County and city powers.
19.105.520	Unlawful to represent director's administrative approval as determination as to merits of resort—Penalty.
19.105.530	Rules, forms, orders—Administration of chapter.
19.105.540	Administrative procedure act application.
19.105.550	Administration.
19.105.560	Uniform regulation of business and professions act.
19.105.570	Military training or experience.
19.105.571	Spouses of military personnel—Registration.
19.105.910	Construction—Chapter as cumulative and nonexclusive.
19.105.930	Effective date—1982 c 69.

Exemption of timeshares from chapter: RCW 64.36.290.

19.105.300 Definitions. As used in this chapter, unless the context clearly requires otherwise:

(1) "Camping resort" means any enterprise, other than one that is tax exempt under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, that has as its primary purpose the ownership, operation, or promotion of campgrounds that includes or will include camping sites.

(2) "Camping resort contract" means an agreement evidencing a purchaser's title to, estate or interest in, or right or license to use for more than thirty days the campground of a camping resort.

(3) "Camping site" means a space designed and promoted for the purpose of locating a trailer, tent, tent trailer, pick-up camper, or other similar device used for land-based portable housing.

(4) "Purchaser" means a person who enters into a camping resort contract and thereby obtains title to, an estate or interest in, or license or the right to use the campground of a camping resort.

(5) "Person" means any individual, corporation, partnership, trust, association, or other organization other than a government or a subdivision thereof.

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

(7) "Camping resort operator" means any person who establishes, promotes, owns, or operates a camping resort.

(8) "Advertisement" means any offer, written, printed, audio, or visual, by general solicitation, including all material used by an operator in a membership referral program.

(9) "Offer" means any solicitation reasonably designed to result in the entering into of a camping resort contract.

(10) "Sale" or "sell" means entering into, or other disposition, of a camping resort contract for value, but the term value does not include a reasonable fee to offset the ministerial costs of transfer of a camping resort contract if, in trans-

ferring the contract or membership, the terms of the original contract or membership are not changed by the camping resort operator.

(11) "Salesperson" means any individual, other than a camping resort operator, who is engaged in obtaining commitments of persons to enter into camping resort contracts by making a sales presentation to, or negotiating sales with, the persons, but does not include members of a camping resort engaged in the referral of persons without making a sales presentation to the persons.

(12) "Affiliate" means any person who, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control of a registrant or camping resort operator.

(13) "Campground" means real property owned or operated by a camping resort that is available for camping or outdoor recreation by purchasers of camping resort contracts.

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

(15) "Resale camping resort contract" means a camping resort contract offered or sold which is not the original offer, transfer, or sale of such contract, and not a forfeited contract being reoffered by an operator.

(16) "Start-up camping resort contract" means a camping resort contract that is being offered or sold for the first time or a forfeited contract being resold by a camping resort operator.

(17) "Blanket encumbrance" means any mortgage, deed of trust, option to purchase, vendor's lien or interest under a contract or agreement of sale, or other material financing lien or encumbrance granted by the camping resort operator or affiliate that secures or evidences the obligation to pay money or to sell or convey any campgrounds made available to purchasers by the camping resort operator or any portion thereof and that authorizes, permits, or requires the foreclosure or other disposition of the campground affected.

(18) "Nondisturbance agreement" means an instrument by which the holder of a blanket encumbrance agrees that: (a) Its rights in any campground made available to purchasers, prior or subsequent to the agreement, by the camping resort operator shall be subordinate to the rights of purchasers from and after the recording of the instrument; (b) the holder and all successors and assignees, and any person who acquires the campground through foreclosure or by deed in lieu of foreclosure of such blanket encumbrance, shall take the campground subject to the use rights of purchasers; and (c) the holder or any successor acquiring the campground through the blanket encumbrance shall not discontinue use, or cause the campground to be used, in a manner which would materially prevent purchasers from using or occupying the campground in a manner contemplated by the purchasers' camping resort contracts. However, the holder has no obligation or liability to assume the responsibilities or obligations of the camping resort operator under camping resort contracts. [1988 c 159 § 1; 1982 c 69 § 1.]

19.105.310 Unlawful to offer or sell contract unless contract registered—Exemptions. Except in transactions exempt under RCW 19.105.325, it is unlawful for any person to market, offer, or sell a camping resort contract in this state or to a Washington state resident unless the camping resort contract is registered and the operator or registrant has

received a permit to market the registered contracts under this chapter. [2005 c 112 § 1; 1988 c 159 § 2; 1982 c 69 § 2.]

19.105.320 Registration—Filings required upon application—Waiver. (1) To apply for registration an applicant shall file with the director:

(a) An application for registration on such a form as may be prescribed by the director. The director may, by rule or order, prescribe the contents of the application to include information (including financial statements) reasonably necessary for the director to determine if the requirements of this chapter have been met, whether any of the grounds for which a registration may be suspended or denied have occurred, and what conditions, if any, should be imposed under RCW 19.105.340, 19.105.350, or 19.105.336 in connection with the registration;

(b) Written disclosures, in any format the director is satisfied accurately, completely, and clearly communicates the required information, which include:

(i) The name and address of the camping resort applicant or operator and any material affiliate and, if the operator or registrant is other than a natural person, the identity of each person owning a ten percent or greater share or interest;

(ii) A brief description of the camping resort applicant's experience in the camping resort business;

(iii) A brief description of the nature of the purchaser's title to, estate or interest in, or right to use the camping resort property or facilities and whether or not the purchaser will obtain an estate, title to, or interest in specified real property;

(iv) The location and a brief description of the significant facilities and recreation services then available for use by purchasers and those which are represented to purchasers as being planned, together with a statement whether any of the resort facilities or recreation services will be available to non-purchasers or the general public;

(v) A brief description of the camping resort's ownership of or other right to use the camping resort properties or facilities represented to be available for use by purchasers, together with a brief description of any material encumbrance, the duration of any lease, real estate contract, license, franchise, reciprocal agreement, or other agreement entitling the camping resort applicant or operator to use the property, and any material provisions of the agreements which restrict a purchaser's use of the property;

(vi) A summary of any local or state health, environmental, subdivision, or zoning requirements or permits that have not been complied with for the resort property or facility represented to purchasers as in or planned for the campground;

(vii) A copy of the articles, bylaws, rules, restrictions, or covenants regulating the purchaser's use of each property, the facilities located on each property, and any recreation services provided;

(viii) A statement of whether and how the articles, declarations, bylaws, rules, restrictions, or covenants used in structuring the project may be changed and whether and how the members may participate in the decision on the changes;

(ix) A brief description of all payments of a purchaser under a camping resort contract, including initial fees and any further fees, charges, or assessments, together with any provisions for changing the payments;

(x) A description of any restraints on the transfer of camping resort contracts;

(xi) A brief description of the policies relating to the availability of camping sites and conditions under which reservations are required and the availability of the sites to guests and family members;

(xii) A disclosure covering the right of the camping resort operator or the registrant and their heirs, assigns, and successors in interest to change, substitute, or withdraw from use all or a portion of the camping resort properties or facilities and the extent to which the operator is obligated to replace camping resort facilities or properties withdrawn;

(xiii) A brief description of any grounds for forfeiture of a purchaser's camping resort contract;

(xiv) A statement concerning the effect upon membership camping resort contracts if there is a foreclosure affecting any of the operator's properties, a bankruptcy, or creditor or lienholder action affecting the operator or the camping resort properties; and

(xv) Any other information deemed necessary by the department for the protection of the public health, safety, and welfare;

(c) The prescribed registration fees;

(d) A statement of the total number of camping resort contracts then in effect, both within and without this state; and a statement of the total number of camping resort contracts intended to be sold, both within and without this state, together with a commitment that the total number will not be exceeded unless disclosed by post-effective amendment to the registration as provided in RCW 19.105.420;

(e) Copies or prototypes of all camping resort contracts, and addendum thereto, and membership certificates, deeds, leases, or other evidences of interest, title, or estate, to be registered;

(f) An irrevocable consent to service of process on the director or the department, effective for the term of the statute of limitations covering the last sale in this state of a camping resort contract by the applicant or operator; and

(g) Any other material information the director deems necessary for the protection of the public health, welfare, or safety, or to effectively conduct an examination of an application.

(2) The director may waive for an applicant any of the information required in this section if it is not needed for the protection of the public health and welfare. [1988 c 159 § 3; 1982 c 69 § 3.]

Administrative procedure act application: RCW 19.105.540.

19.105.325 Exemptions from chapter. (1) The following transactions are exempt from registration under this chapter:

(a) An offer or sale by a government or governmental agency;

(b) A bona fide pledge of a camping resort contract; and

(c) Offerings and dispositions of up to three resale camping resort contracts by purchasers thereof on their own behalf or by third parties brokering on behalf of purchasers, other than resale contracts forfeited by or placed into an operator's sale inventory. All other sales of resale camping resort contracts by any person or business requires registration under this chapter.

(2018 Ed.)

(2) The director may, by rule or order, exempt any person, wholly or partially, from any or all requirements of this chapter if the director finds the requirements are not necessary for the protection of the public health, safety, and welfare. [2005 c 112 § 2; 1988 c 159 § 4.]

19.105.330 Registration—Effective, when—Completed form of application required. (1) Unless an order denying effectiveness under RCW 19.105.380 is in effect, or unless declared effective by order of the director prior thereto, the application for registration shall automatically become effective upon the expiration of the twentieth full business day following a filing with the director in complete and proper form, but an applicant may consent to the delay of effectiveness until such time as the director may by order declare registration effective or issue a permit to market.

(2) An application for registration, renewal of registration, or amendment is not in completed form and shall not be deemed a statutory filing until such time as all required fees, completed application forms, and the information and documents required pursuant to RCW 19.105.320(1) and departmental rules have been filed.

It is the operator's responsibility to see that required filing materials and fees arrive at the appropriate mailing address of the department. Within seven business days, excluding the date of receipt, of receiving an application or initial request for registration and the filing fees, the department shall notify the applicant of receipt of the application and whether or not the application is complete and in proper form. If the application is incomplete, the department shall at the same time inform the applicant what additional documents or information is required.

If the application is not in a completed form, the department shall give immediate notice to the applicant. On the date the application is complete and properly filed, the statutory period for an in-depth examination of the filing, prescribed in subsection (1) of this section, shall begin to run, unless the applicant and the department have agreed to a stay of effectiveness or the department has issued a denial of the application or a permit to market. [2000 c 171 § 68; 1988 c 159 § 5; 1982 c 69 § 4.]

19.105.333 Signature of operator, trustee, or holder of power of attorney required on application documentation. Applications, consents to service, all affidavits required in connection with applications, and all final permits to market shall be signed by the operator, unless a trustee or power of attorney specifically granted such powers has signed on behalf of the operator. If a power of attorney or trustee signature is used, the filing shall contain a copy of the authorization, power of attorney, or trustee authorization. [1988 c 159 § 6.]

19.105.336 Availability of campgrounds to contract purchasers—Blanket encumbrances—Penalty for non-compliance. (1) With respect to every campground located within the state which was not made available to purchasers of camping resort contracts prior to June 20, 1988, and with respect to any new blanket encumbrance placed against any campground in this state or any prior blanket encumbrance against any campground in this state with respect to which

the underlying obligation is refinanced after June 20, 1988, the camping resort operator shall not represent any such campground to be available to purchasers of its camping resort contracts until one of the following events has occurred with regard to each such blanket encumbrance:

(a) The camping resort operator obtains and records as covenants to run with the land a nondisturbance agreement from each holder of the blanket encumbrance. The nondisturbance agreement shall be executed by the camping resort operator and by each holder of the blanket encumbrance and shall include the provisions set forth in RCW 19.105.300(18) and the following:

(i) The instrument may be enforced by individual purchasers of camping resort contracts. If the camping resort operator is not in default under its obligations to the holder of the blanket encumbrance, the agreement may be enforced by the camping resort operator.

(ii) The agreement shall be effective as between each purchaser and the holder of the blanket encumbrance despite any rejection or cancellation of the purchaser's contract during any bankruptcy proceedings of the camping resort operator.

(iii) The agreement shall be binding upon the successors in interest of both the camping resort operator and the holder of the blanket encumbrance.

(iv) A holder of the blanket encumbrance who obtains title or possession or who causes a change in title or possession in a campground by foreclosure or otherwise and who does not continue to operate the campground upon conditions no less favorable to members than existed prior to the change of title or possession shall either:

(A) Offer the title or possession to an association of members to operate the campground; or

(B) Obtain a commitment from another entity which obtains title or possession to undertake the responsibility of operating the campground.

(b) The camping resort operator posts a bond or irrevocable letter of credit with the director in a form satisfactory to the director in the amount of the aggregate principal indebtedness remaining due under the blanket encumbrance.

(c) The camping resort operator delivers an encumbrance trust agreement in a form satisfactory to the director, as provided in subsection (2) of this section.

(d) The camping resort operator delivers other financial assurances reasonably acceptable to the director.

(2) With respect to any campground located within the state other than a campground described in subsection (1) of this section, the camping resort operator shall not represent the campground to be available to purchasers of camping resort contracts after June 20, 1988, until one of the following events has occurred with regard to each blanket encumbrance:

(a) The camping resort operator obtains and records a nondisturbance agreement to run with the land pursuant to subsection (1) of this section from each holder of the blanket encumbrance.

(b) The camping resort operator posts a surety bond or irrevocable letter of credit with the director in a form satisfactory to the director in the amount of the aggregate principal indebtedness remaining due under the blanket encumbrance.

(c) The camping resort operator delivers to the director, in a form satisfactory to the director, an encumbrance trust agreement among the camping resort operator, a trustee (which can be either a corporate trustee licensed to act as a trustee under Washington law, licensed escrow agent, or a licensed attorney), and the director.

(d) The camping resort operator delivers evidence to the director that any financial institution that has made a hypothecation loan to the camping resort operator (the "hypothecation lender") shall have a lien on, or security interest in, the camping resort operator's interest in the campground, and the hypothecation lender shall have executed and recorded a non-disturbance agreement in the real estate records of the county in which the campground is located. Each person holding an interest in a blanket encumbrance superior to the interest held by the hypothecation lender shall have executed and recorded an instrument stating that such person shall give the hypothecation lender notice of, and at least thirty days to cure, any default under the blanket encumbrance before the person commences any foreclosure action affecting the campground. For the purposes of this subsection, a hypothecation loan to a camping resort operator is a loan or line of credit secured by the camping resort contracts receivable arising from the sale of camping resort contracts by the camping resort operator, which exceeds in the aggregate all outstanding indebtedness secured by blanket encumbrances superior to the interest held by the hypothecation lender.

(e) The camping resort operator delivers other financial assurances reasonably acceptable to the director.

(3) Any camping resort operator which does not comply at all times with subsection (1) or (2) of this section with regard to any blanket encumbrance in connection with any applicable campground is prohibited from offering any camping resort contracts for sale in Washington during the period of noncompliance. [1988 c 159 § 7.]

Additional notes found at www.leg.wa.gov

19.105.340 Impounding proceeds from contract sales—Conditional release of impounded funds—Funds not subject to lien—No assignment of impounded or reserved assets.

(1) If the director finds that the applicant or registrant has not by other means assured future availability to and quiet enjoyment of the campgrounds and facilities, as required under this chapter, the director may, notwithstanding the provisions of RCW 19.105.336, require impoundment of the funds or membership receivables, or both, from camping resort contract sales, including the impoundment of periodic dues or assessments required of purchasers under the contracts, or provide other assurances acceptable to the director, until sufficient funds have been impounded or arrangements made to alleviate the inadequacy. The director may, upon finding it reasonable and necessary, for compliance with RCW 19.105.336 and 19.105.365, and not inconsistent with the protection of purchasers or owners of camping resort contracts, provide for release to the applicant, registrant, or others of all or a portion of the impounded funds, membership receivables, or other assets in the impound. The director may take appropriate measures to assure that the impounded funds will be applied as required by this chapter.

(2) Funds placed in impounds under this section or reserve accounts under RCW 19.105.350 are not subject to

lien, attachment, or the possession of lenders or creditors of the operator, trustees in bankruptcy, receivers, or other third parties. In instances of bankruptcy, foreclosure, attachment, or other contingency where the ownership or beneficiary status of funds in depositories, or the receivables and funds to be collected from receivables, may be at issue, the purchasers of contracts under this chapter, as a class, shall be deemed the beneficiary. No individual purchaser or group of purchasers, other than the purchasers as a class, have any right to possession, attachment, lien, or right of partition of funds or receivables in the impound or reserve.

(3) It is unlawful for an operator or other person to assign, hypothecate, sell, or pledge any contract or other asset placed into an impound or reserve under this chapter without the express written approval of the director or a court of competent jurisdiction. [1988 c 159 § 8; 1982 c 69 § 5.]

19.105.345 Persons licensed under chapter 18.85 RCW exempt from salesperson registration requirements. Persons licensed under chapter 18.85 RCW are exempt from the camping resort salesperson registration requirements of this chapter for camping resort contracts offered through the licensed brokerage. [1988 c 159 § 9.]

19.105.350 Director may require reserve fund by order—Actions against a registration. (1) If the purchaser will own or acquire title to specified real property or improvements to be acquired by the camping resort, the director may by order require to the extent necessary to protect the interests of the purchasers or owners of camping resort contracts, that an appropriate portion of the proceeds paid under those camping resort contracts be placed in a separate reserve fund to be set aside and applied toward the purchase price of the real property, improvements, or facilities.

(2) The director may take any of the actions authorized in RCW 18.235.110 against a registration in which the registrant is advertising or offering annual or periodic dues or assessments by members that the director finds would result in the registrant's future inability to fund operating costs. [2002 c 86 § 272; 1988 c 159 § 10; 1982 c 69 § 6.]

Additional notes found at www.leg.wa.gov

19.105.360 Filing of sales literature, contract form, disclosure supplements. The camping resort operator or other registrant of offerings of camping resort contracts shall file with the director at least five business days prior to the first use thereof in the state of Washington (1) the proposed text of all advertisements and sales promotion literature, (2) its proposed form of camping resort contract, and (3) the text of any supplements or amendments to the written disclosures required to be furnished prospective purchasers under RCW 19.105.370: PROVIDED, That if the text in lieu of definitive copies of any materials are filed, definitive copies shall be filed with the director within five business days following the date of first use of the materials. [1988 c 159 § 11; 1982 c 69 § 7.]

19.105.365 Advertising promises of free gifts, awards, or prizes—Provision of gift or substitute—Security arrangements after violation—Advance fees placed in trust—Membership referral programs considered pro-

motional programs. (1) It is unlawful for a camping resort operator or other person, in connection with an advertisement or offer for sale of a camping resort contract in this state, to promise or offer a free gift, award, prize, or other item of value if the operator or person knows or has reason to know that the offered item is unavailable in a sufficient quantity based upon the reasonably anticipated response to the advertisement or offer.

(2) A person who responds to an advertisement or offer in the manner specified, who performs all stated requirements, and who meets the qualifications disclosed shall receive the offered item subject to chapter 19.170 RCW.

(3) The director may, upon making a determination that a violation of subsection (1) or (2) of this section has occurred, require any person, including an operator or other registrant found in violation, who continues, or proposes to continue, offering a free gift, award, prize, or other item of value in this state for purposes of advertising a camping resort or inducing persons to purchase a camping resort contract, to provide evidence of the ability to deliver on promised gifts, prizes, or awards by means such as bonds, irrevocable letters of credit, cash deposits, or other security arrangements acceptable to the director.

(4) The director may require that any fees or funds of any description collected in advance from persons for purposes of obtaining promised gifts, awards, prizes, or other items of value, be placed in trust in a depository in this state until after delivery of the promised gift, prize, award, or other item of value.

(5) Operators or other registrants or persons promising gifts, prizes, awards, or other items of consideration as part of a membership referral program shall be considered to be offering or selling promotional programs.

(6) Chapter 19.170 RCW applies to free gifts, awards, or prizes regulated under this chapter. [1991 c 227 § 9; 1988 c 159 § 12.]

19.105.370 Purchaser to receive written disclosures from operator or department—Exemptions. Except in a transaction exempt under RCW 19.105.325, any operator who offers or sells camping resort contracts in this state shall provide the prospective purchaser with the written disclosures required to be filed under RCW 19.105.320(1)(b) in a form that is materially accurate and complete before the prospective purchaser signs a camping resort contract or gives any item of value for the purchase of a camping resort contract. The department may provide its own disclosures, supplementing those of the operator, in any format it deems appropriate. The department shall not be held liable for any alleged failure to disclose information or for deficiencies in the content of its disclosures when such disclosures are based upon information provided by the operator or a registrant. [1988 c 159 § 13; 1982 c 69 § 8.]

19.105.380 Unprofessional conduct/disciplinary action—Grounds—Liability for administrative and legal costs—Assurances of discontinuance—Support order, noncompliance. (1) In addition to the unprofessional conduct in RCW 18.235.130, the director may take disciplinary action for the following conduct, acts, or conditions:

(a) The applicant, registrant, or affiliate has failed to file copies of the camping resort contract form under RCW 19.105.360;

(b) The applicant, registrant, or affiliate has failed to comply with any provision of this chapter;

(c) The applicant's, registrant's, or affiliate's offering of camping resort contracts has worked or would work a fraud upon purchasers or owners of camping resort contracts;

(d) The camping resort operator or any officer, director, or affiliate of the camping resort operator has been enjoined from or had any civil penalty assessed for a finding of dishonest dealing or fraud in a civil suit, or been found to have engaged in any violation of any act designed to protect consumers, or has been engaged in dishonest practices in any industry involving sales to consumers;

(e) The applicant or registrant has represented or is representing to purchasers in connection with the offer or sale of a camping resort contract that a camping resort property, facility, amenity camp site, or other development is planned, promised, or required, and the applicant or registrant has not provided the director with a security or assurance of performance as required by this chapter;

(f) The applicant or registrant has not provided or is no longer providing the director with the necessary security arrangements to ensure future availability of titles or properties as required by this chapter or agreed to in the permit to market;

(g) The applicant or registrant is or has been employing unregistered salespersons or offering or proposing a membership referral program not in compliance with this chapter;

(h) The applicant or registrant has breached any escrow, impound, reserve account, or trust arrangement or the conditions of an order or permit to market required by this chapter;

(i) The applicant or registrant has filed or caused to be filed with the director any document or affidavit, or made any statement during the course of a registration or exemption procedure with the director, that is materially untrue or misleading;

(j) The applicant or registrant has engaged in a practice of failing to provide the written disclosures to purchasers or prospective purchasers as required under this chapter;

(k) The applicant, registrant, or any of its officers, directors, or employees, if the operator is other than a natural person, have willfully done, or permitted any of their salespersons or agents to do, any of the following:

(i) Engage in a pattern or practice of making untrue or misleading statements of a material fact, or omitting to state a material fact;

(ii) Employ any device, scheme, or artifice to defraud purchasers or members;

(iii) Engage in a pattern or practice of failing to provide the written disclosures to purchasers or prospective purchasers as required under this chapter;

(l) The applicant or registrant has failed to provide a bond, letter of credit, or other arrangement to ensure delivery of promised gifts, prizes, awards, or other items of consideration, as required under this chapter, breached such a security arrangement, or failed to maintain such a security arrangement in effect because of a resignation or loss of a trustee, impound, or escrow agent;

(m) The applicant or registrant has engaged in a practice of selling contracts using material amendments or codicils that have not been filed or are the consequences of breaches or alterations in previously filed contracts;

(n) The applicant or registrant has engaged in a practice of selling or proposing to sell contracts in a ratio of contracts to sites available in excess of that filed in the affidavit required by this chapter;

(o) The camping resort operator has withdrawn, has the right to withdraw, or is proposing to withdraw from use all or any portion of any camping resort property devoted to the camping resort program, unless:

(i) Adequate provision has been made to provide within a reasonable time thereafter a substitute property in the same general area that is at least as desirable for the purpose of camping and outdoor recreation;

(ii) The property is withdrawn because, despite good faith efforts by the camping resort operator, a nonaffiliate of the camping resort has exercised a right of withdrawal from use by the camping resort (such as withdrawal following expiration of a lease of the property to the camping resort) and the terms of the withdrawal right have been disclosed in writing to all purchasers at or prior to the time of any sales of camping resort contracts after the camping resort has represented to purchasers that the property is or will be available for camping or recreation purposes;

(iii) The specific date upon which the withdrawal becomes effective has been disclosed in writing to all purchasers and members prior to the time of any sales of camping resort contracts after the camping resort has represented to purchasers that the property is or will be available for camping or recreation purposes;

(iv) The rights of members and owners of the camping resort contracts under the express terms of the camping resort contract have expired, or have been specifically limited, upon the lapse of a stated or determinable period of time, and the director by order has found that the withdrawal is not otherwise inconsistent with the protection of purchasers or the desire of the majority of the owners of camping resort contracts, as expressed in their previously obtained vote of approval;

(p) The format, form, or content of the written disclosures provided therein is not complete, full, or materially accurate, or statements made therein are materially false, misleading, or deceptive;

(q) The applicant or registrant has failed to file an amendment for a material change in the manner or at the time required under this chapter or its implementing rules;

(r) The applicant or registrant has filed voluntarily or been placed involuntarily into a federal bankruptcy or is proposing to do so; or

(s) A camping resort operator's rights or interest in a campground has been terminated by foreclosure or the operations in a camping resort have been terminated in a manner contrary to contract provisions.

(2) An operator, registrant, or applicant against whom administrative or legal proceedings have been filed shall be responsible for and shall reimburse the state, by payment into the business and professions account created in RCW 43.24.150, for all administrative and legal costs actually incurred by the department in issuing, processing, and con-

ducting any such administrative or legal proceeding authorized under this chapter that results in a final legal or administrative determination of any type or degree in favor of the department.

(3) The director may enter into assurances of discontinuance in lieu of issuing a statement of charges or a cease and desist order or conducting a hearing under this chapter. The assurances shall consist of a statement of the law in question and an agreement not to violate the stated provision. The applicant or registrant shall not be required to admit to any violation of the law, nor shall the assurance be construed as such an admission. Violating or breaching an assurance under this subsection is grounds for suspension or revocation of registration or imposition of a fine.

(4) 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. [2005 c 25 § 3; 2002 c 86 § 273; 1997 c 58 § 850; 1988 c 159 § 14; 1982 c 69 § 9.]

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

Additional notes found at www.leg.wa.gov

19.105.390 Resort contracts—Purchaser's cancellation—Notice—Statement of right to cancel. Any camping resort contract may be canceled at the option of the purchaser, if the purchaser sends notice of the cancellation by certified mail (return receipt requested) to the camping resort operator at the address contained in the camping resort contract and if the notice is postmarked not later than midnight of the third business day following the day on which the contract is signed. In addition to this cancellation right, any purchaser who signs a camping resort contract of any description required to be registered with the department without having received the written disclosures required by this chapter has cancellation rights until three business days following eventual receipt of the written disclosures. Purchasers shall request cancellation of contracts by sending the notice of cancellation by certified mail (return receipt requested), postmarked not later than midnight of the third business day following the day on which the contract is signed or the day on which the disclosures were actually received, whichever event is later to the camping resort operator at the address contained in the camping resort contract. In computing the number of business days, the day on which the contract was signed shall not be included as a "business day," nor shall Saturday, Sunday, or legal holidays be included. Within three business days following receipt of timely and proper notice of cancellation from the purchaser, the camping resort operator shall provide evidence that the contract has been canceled. Thereafter, any money or other consideration paid by the purchaser shall be promptly refunded.

Every camping resort contract, other than those being offered and registered as resales, shall include the following

statement in at least ten-point bold-face type immediately prior to the space for the purchaser's signature:

"Purchaser's right to cancel: You may cancel this contract without any cancellation fee or other penalty, or stated reason for doing so, by sending notice of cancellation by certified mail, return receipt requested, to (insert name and address of camping resort operator). The notice must be postmarked by midnight of the third business day following the day on which the contract is signed. In computing the three business days, the day on which the contract is signed shall not be included as a "business day," nor shall Saturday, Sunday, or legal holidays be included."

If the purchaser has not inspected a camping resort property or facility at which camping resort sites are located or planned, the notice must contain the following additional language:

"If you sign this contract without having inspected a property at which camping sites are located or planned, you may cancel this contract by giving this notice within six (6) business days following the day on which you signed the contract." [1988 c 159 § 15; 1982 c 69 § 10.]

19.105.400 Resort contracts—Voidable—Estoppel.

Any camping resort contract entered into in violation of this chapter may be voided by the purchaser and the purchaser's entire consideration recovered at the option of the purchaser, but no suit under this section may be brought after two years from the date the contract is signed. [1988 c 159 § 16; 1982 c 69 § 11.]

19.105.405 Purchaser lists—Authorized uses. (1) The legislature recognizes the proprietary interest camping resort operators have in purchaser lists. The legislature also recognizes that purchasers of camping resort contracts have a legitimate interest in being able to contact other resort purchasers for the purpose of forming a members' association. In balancing these competing interests, the legislature believes that purchaser lists can be made available to camping resort purchasers with reasonable restrictions on the dissemination of those lists.

(2) Upon request of a purchaser, the camping resort operator shall provide to the purchaser a list of the names, addresses, and unit, site, or purchaser number of all purchasers. The camping resort operator may charge for the reasonable costs for preparing the list. The operator shall require the purchaser to sign an affidavit agreeing not to use the list for any commercial purpose.

(3) It is a violation of this chapter and chapter 19.86 RCW for any person to use a membership list for commercial purposes unless authorized to do so by the operator.

(4) It is a violation of this chapter and chapter 19.86 RCW for a camping resort operator to fail to provide a list of purchasers as provided in this section. [1988 c 159 § 17.]

19.105.411 Fees. Applicants or registrants under this chapter shall pay fees determined by the director as provided in RCW 43.24.086. The fees shall be prepaid and the director may determine fees for the following activities or events:

(1) A fee for the initial application and an additional fee for each camping resort contract registered;

(2) Renewals of camping resort registrations and an additional fee for each additional camping resort contract registered;

(3) An initial and annual fee for processing and administering any required impound, trust, reserve, or escrow arrangement and security arrangements for such programs;

(4) The review and processing of advertising or promotional materials;

(5) Registration and renewal of registrations of salespersons;

(6) The transfer of a salesperson's permit from one operator to another;

(7) Administering examinations for salespersons;

(8) Amending the registration or the public offering statement;

(9) Conducting site inspections;

(10) Granting exemptions under this chapter;

(11) Penalties for registrants in any situation where a registrant has failed to file an amendment to the registration or the public offering statement in a timely manner for material changes, as required in this chapter and its implementing rules. [1988 c 159 § 18.]

19.105.420 Resort contracts—Registration, duration—Renewal, amendment—Renewal of prior permits.

A registration of camping resort contracts shall be effective for a period of one year and may, upon application, be renewed for successive periods of one year each, unless the director prescribes a shorter period for a permit or registration. A camping resort contract registration shall be amended if there is to be an increase in inventory or consolidation to the number of camping resort contracts registered, or in instances in which new contract forms are to be offered. Consolidations, new contract forms, the adding of resorts to the program, or amendments for material changes shall become effective in the manner provided by RCW 19.105.330. The written disclosures required to be furnished prospective purchasers under RCW 19.105.370 shall be supplemented by amendment request in writing as necessary to keep the required information reasonably current and reflective of material changes. Amendments shall be filed with the director as provided in RCW 19.105.360. The foregoing notwithstanding, however, the camping resort operator or registrant shall file an amendment to the registration disclosing any event which will have a material effect on the conduct of the operation of the camping resort, the financial condition of the camping resort, or the future availability of the camping resort properties to purchasers. The amendment shall be filed within thirty days following the event. The amendment shall be treated as an original application for registration, except that until the director has acted upon the application for amendment the applicant's registration shall continue to be deemed effective for the purposes of RCW 19.105.310.

Any permit to sell camping resort memberships issued prior to November 1, 1982, shall be deemed a camping resort registration subject to the renewal provisions of this chapter upon the anniversary date of the issuance of the original permit. [1988 c 159 § 19; 1982 c 69 § 13.]

19.105.430 Unlawful to act as salesperson without registering—Exemptions. Unless the transaction is exempt

under RCW 19.105.325, it is unlawful for any person to act as a camping resort salesperson in this state without first registering under this chapter as a salesperson or being licensed as a salesperson under chapter 18.85 RCW or a broker licensed under that chapter. [1988 c 159 § 20; 1982 c 69 § 14.]

19.105.440 Registration as salesperson—Application—Unprofessional conduct—Assurances of discontinuance—Renewal of registration—Support order, non-compliance. (1) A salesperson may apply for registration by filing in a complete and readable form with the director an application form provided by the director that includes the following:

(a) A statement whether or not the applicant has been found to have engaged in any violation of any act designed to protect consumers and whether the applicant is qualified for licensure under RCW 18.235.130;

(b) A statement fully describing the applicant's employment history for the past five years and whether or not any termination of employment was the result of any theft, fraud, or act of dishonesty;

(c) A consent to service comparable to that required of operators under this chapter; and

(d) Required filing fees.

(2) In addition to the unprofessional conduct specified in RCW 18.235.130, the director may take disciplinary action against a camping resort salesperson's registration or application for registration under this chapter or the person's license or application under chapter 18.85 RCW for any of the following conduct, acts, or conditions:

(a) Violating any of the provisions of this chapter or any lawful rules adopted by the director pursuant thereto;

(b) Making, printing, publishing, distributing, or causing, authorizing, or knowingly permitting the making, printing, publication, or distribution of false statements, descriptions, or promises of such character as to reasonably induce any person to act thereon, if the statements, descriptions, or promises purport to be made or to be performed by either the applicant or registrant and the applicant or registrant then knew or, by the exercise of reasonable care and inquiry, could have known, of the falsity of the statements, descriptions, or promises;

(c) Knowingly committing, or being a party to, any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme, or device whereby any other person lawfully relies upon the work, representation, or conduct of the applicant or registrant;

(d) Continuing to sell camping resort contracts in a manner whereby the interests of the public are endangered, if the director has, by order in writing, stated objections thereto;

(e) Misrepresentation of membership in any state or national association; or

(f) Discrimination against any person in hiring or in sales activity on the basis of race, color, creed, or national origin, or violating any state or federal antidiscrimination law.

(3) The director, subsequent to any complaint filed against a salesperson or pursuant to an investigation to determine violations, may enter into stipulated assurances of discontinuances in lieu of issuing a statement of charges or a cease and desist order or conducting a hearing. The assurance shall consist of a statement of the law in question and an

agreement not to violate the stated provision. The salesperson shall not be required to admit to any violation of the law, nor shall the assurance be construed as such an admission. Violation of an assurance under this subsection is grounds for disciplinary action.

(4) The director may by rule require such further information or conditions for registration as a camping resort salesperson, including qualifying examinations and fingerprint cards prepared by authorized law enforcement agencies, as the director deems necessary to protect the interests of purchasers.

(5) Registration as a camping resort salesperson shall be effective for a period of one year unless the director specifies otherwise or the salesperson transfers employment to a different registrant. Registration as a camping resort salesperson shall be renewed annually, or at the time of transferring employment, whichever occurs first, by the filing of a form prescribed by the director for that purpose.

(6) It is unlawful for a registrant of camping resort contracts to employ or a person to act as a camping resort salesperson covered under this section unless the salesperson has in effect with the department and displays a valid registration in a conspicuous location at each of the sales offices at which the salesperson is employed. It is the responsibility of both the operator and the salesperson to notify the department when and where a salesperson is employed, his or her responsibilities and duties, and when the salesperson's employment or reported duties are changed or terminated.

(7) 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. [2002 c 86 § 274; 1997 c 58 § 851; 1988 c 159 § 21; 1982 c 69 § 15.]

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

Additional notes found at www.leg.wa.gov

19.105.450 Investigations—Scope—Publishing information. The director may make such public or private investigations or may make such requests for information, within or without this state, as the director deems necessary to determine whether any registration should be granted, denied, suspended, or revoked, or a fine imposed, or whether any person has violated or is about to violate any of the provisions of this chapter or any rule, order, or permit under this chapter, or to aid in the enforcement of this chapter or in prescribing of rules and forms under, and amendments to, this chapter and may publish information concerning any violation of this chapter or any rule or order under this chapter. [1988 c 159 § 22; 1982 c 69 § 16.]

19.105.470 Cease and desist orders—Utilizing temporary order, injunction, restraining order, or writ of mandamus. (1) Whenever it appears to the director that any person has engaged or is about to engage in any act or prac-

tice constituting a violation of any provision of this chapter, any withdrawal of a camping resort property in violation of RCW 19.105.380(1)(o), or any rule, order, or permit issued under this chapter, the director may in his or her discretion issue an order directing the person to cease and desist from continuing the act or practice. The procedures in RCW 18.235.150 apply to these cease and desist orders. However, the director may issue a temporary order pending the hearing which shall be effective immediately upon delivery to the person affected and which shall remain in effect until ten days after the hearing is held and which shall become final if the person to whom notice is addressed does not request a hearing.

(2) If it appears necessary in order to protect the interests of members and purchasers, whether or not the director has issued a cease and desist order, the attorney general in the name of the state, the director, the proper prosecuting attorney, an affiliated members' common-interest association, or a group of members as a class, may bring an action in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with this chapter or any rule, order, or permit under this chapter. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant, for the defendant's assets, or to protect the interests or assets of a members' common-interest association or the members of a camping resort as a class. The state, the director, a members' common-interest association, or members as a class shall not be required to post a bond in such proceedings. [2002 c 86 § 275; 2000 c 171 § 69; 1988 c 159 § 23; 1982 c 69 § 18.]

Additional notes found at www.leg.wa.gov

19.105.480 Violations—As gross misdemeanors—Statute of limitations. (1) Any person who willfully fails to register an offering of camping resort contracts under this chapter is guilty of a gross misdemeanor.

(2) It is a gross misdemeanor for any person in connection with the offer or sale of any camping resort contracts willfully and knowingly:

(a) To make any untrue or misleading statement of a material fact, or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading;

(b) To employ any device, scheme, or artifice to defraud;

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

(d) To file, or cause to be filed, with the director any document which contains any untrue or misleading information;

(e) To breach any impound, escrow, trust, or other security arrangement provided for by this chapter;

(f) To cause the breaching of any trust, escrow, impound, or other arrangement placed in a registration for compliance with RCW 19.105.336; or

(g) To employ unlicensed salespersons or permit salespersons or employees to make misrepresentations or violate this chapter.

(3) No indictment or information may be returned under this chapter more than five years after the date of the event

alleged to have been a violation. [2003 c 53 § 152; 1988 c 159 § 24; 1982 c 69 § 19.]

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

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.]

19.105.500 Violations—Application of consumer protection act. For the purposes of application of the consumer protection act, chapter 19.86 RCW, any material violation of the provisions of this chapter shall be construed to constitute an unfair or deceptive act or practice or unfair method of competition in the conduct of trade or commerce. [1982 c 69 § 21.]

19.105.510 Resort contracts—Nonapplicability of certain laws—County and city powers. Camping resort contracts registered under this chapter are exempt from the provisions of chapters 21.20 and 58.19 RCW and any act in this state regulating the offer and sale of land developments, real estate cooperatives, or time shares. Nothing in this chapter prevents counties or cities from enacting ordinances or resolutions setting platting or subdivision requirements solely for camping resorts or for camping resorts as subdivisions or binding site plans if appropriate to chapter 58.17 RCW or local ordinances. [1988 c 159 § 25; 1982 c 69 § 22.]

19.105.520 Unlawful to represent director's administrative approval as determination as to merits of resort—Penalty. (1) Neither the fact that an application for registration nor the written disclosures required by this chapter have been filed, nor the fact that a camping resort contract offering has been effectively registered or exempted, constitutes a finding by the director that the offering or any document filed under this chapter is true, complete, and not misleading, nor does the fact mean that the director has determined in any way the merits or qualifications of or recommended or given approval to any person, camping resort operator, or camping resort contract transaction.

(2) It is a gross misdemeanor to make or cause to be made to any prospective purchaser any representation inconsistent with this section. [2003 c 53 § 153; 1988 c 159 § 26; 1982 c 69 § 24.]

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

19.105.530 Rules, forms, orders—Administration of chapter. (1) The director may make, amend, and repeal rules, forms, and orders when necessary to carry out the provisions of this chapter.

(2) The director may appoint those persons within the department deemed necessary to administer this chapter. The director may delegate to such persons any powers, subject to the authority of the director, that may be necessary to carry

out this chapter, including the issuance and processing of administrative proceedings and entering into stipulations under RCW 19.105.380. [1988 c 159 § 27; 1982 c 69 § 25.]

19.105.540 Administrative procedure act application. Chapter 34.05 RCW shall apply to any administrative procedures carried out by the director under this chapter unless otherwise provided in this chapter. [1982 c 69 § 26.]

19.105.550 Administration. This chapter shall be administered by the director of licensing. [1982 c 69 § 27.]

19.105.560 Uniform regulation of business and professions act. The uniform regulation of business and professions act, chapter 18.235 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [2002 c 86 § 276.]

Additional notes found at www.leg.wa.gov

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.]

19.105.571 Spouses of military personnel—Registration. The director shall develop rules consistent with RCW 18.340.020 for the registration of spouses of military personnel. [2011 2nd sp.s. c 5 § 5.]

Implementation—2011 2nd sp.s. c 5: See note following RCW 18.340.010.

19.105.910 Construction—Chapter as cumulative and nonexclusive. Except as specifically provided in RCW 19.105.510, the provisions of this chapter are cumulative and nonexclusive and do not affect any other remedy available at law. [1982 c 69 § 23.]

19.105.930 Effective date—1982 c 69. This act shall take effect on November 1, 1982. [1982 c 69 § 32.]

Chapter 19.108 RCW

UNIFORM TRADE SECRETS ACT

Sections

- 19.108.010 Definitions.
- 19.108.020 Remedies for misappropriation—Injunction, royalty.
- 19.108.030 Remedies for misappropriation—Damages.
- 19.108.040 Award of attorney's fees.
- 19.108.050 Court orders to preserve secrecy of alleged trade secrets.
- 19.108.060 Actions for misappropriation—Time limitation.
- 19.108.900 Effect of chapter on other law.
- 19.108.910 Construction of uniform act.
- 19.108.920 Short title.
- 19.108.930 Effective date—Application—1981 c 286.

Requiring assignment of employee's rights to inventions: RCW 49.44.140, 49.44.150.

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

(1) "Improper means" includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means;

(2) "Misappropriation" means:

(a) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(b) Disclosure or use of a trade secret of another without express or implied consent by a person who:

(i) Used improper means to acquire knowledge of the trade secret; or

(ii) At the time of disclosure or use, knew or had reason to know that his or her knowledge of the trade secret was (A) derived from or through a person who had utilized improper means to acquire it, (B) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use, or (C) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

(iii) Before a material change of his or her position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

(3) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process that:

(a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. [1981 c 286 § 1.]

19.108.020 Remedies for misappropriation—Injunction, royalty. (1) Actual or threatened misappropriation may be enjoined. Upon application to the court, an injunction shall be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.

(2) If the court determines that it would be unreasonable to prohibit future use, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time the use could have been prohibited.

(3) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order. [1981 c 286 § 2.]

19.108.030 Remedies for misappropriation—Damages. (1) In addition to or in lieu of injunctive relief, a complainant may recover damages for the actual loss caused by misappropriation. A complainant also may recover for the unjust enrichment caused by misappropriation that is not taken into account in computing damages for actual loss.

(2) If wilful and malicious misappropriation exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (1). [1981 c 286 § 3.]

(2018 Ed.)

19.108.040 Award of attorney's fees. If a claim of misappropriation is made in bad faith, a motion to terminate an injunction is made or resisted in bad faith, or wilful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party. [1981 c 286 § 4.]

19.108.050 Court orders to preserve secrecy of alleged trade secrets. In an action under this chapter, a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in-camera hearings, sealing the records of the action, and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval. [1981 c 286 § 5.]

19.108.060 Actions for misappropriation—Time limitation. An action for misappropriation must be brought within three years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered. For the purposes of this section, a continuing misappropriation constitutes a single claim. [1981 c 286 § 6.]

19.108.900 Effect of chapter on other law. (1) This chapter displaces conflicting tort, restitutionary, and other law of this state pertaining to civil liability for misappropriation of a trade secret.

(2) This chapter does not affect:

(a) Contractual or other civil liability or relief that is not based upon misappropriation of a trade secret; or

(b) Criminal liability for misappropriation of a trade secret. [1981 c 286 § 7.]

Theft of trade secrets: RCW 9A.56.010(6), 9A.56.020.

19.108.910 Construction of uniform act. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it. [1981 c 286 § 8.]

19.108.920 Short title. This chapter may be known and cited as the uniform trade secrets act. [1981 c 286 § 9.]

19.108.930 Effective date—Application—1981 c 286. This chapter takes effect on January 1, 1982, and does not apply to misappropriation occurring prior to the effective date. [1981 c 286 § 12.]

Chapter 19.110 RCW

BUSINESS OPPORTUNITY FRAUD ACT

Sections

19.110.010	Legislative declaration.
19.110.020	Definitions.
19.110.030	Sale or lease of business opportunity—Offer to sell or lease business opportunity—Occurrence in Washington.
19.110.040	Application of chapter.
19.110.050	Persons proposing to sell or lease business opportunity—Registration required—Application—Renewal—Denial, suspension, or revocation of registration.
19.110.060	Registration fees.
19.110.070	Disclosure document required—Contents.
19.110.075	Business opportunity fraud—Penalties.
19.110.080	Disclosure document—Director authorized to accept alternative.

- 19.110.090 Persons proposing to sell or lease business opportunity—Service of process.
- 19.110.100 Seller to provide surety bond or trust account—Action by state or injured person—Damages.
- 19.110.110 Business opportunity contract—Content—Cancellation period.
- 19.110.120 Unlawful acts.
- 19.110.130 Liability of seller for violation of chapter—Remedies—Damages.
- 19.110.140 Director authorized to investigate violations—Authority to subpoena witnesses or require production of documents.
- 19.110.143 Subpoena authority—Application—Contents—Notice—Fees.
- 19.110.150 Order to cease and desist—Hearing—Notice.
- 19.110.160 Actions by attorney general or prosecuting attorney to enjoin violations—Injunction—Appointment of receiver or conservator—Civil penalties.
- 19.110.170 Violations constitute unfair practice.
- 19.110.180 Authority of director to issue rules, forms, orders, interpretive opinions.
- 19.110.190 Appointment of administrator—Delegation of powers.
- 19.110.900 Chapter cumulative and nonexclusive.
- 19.110.910 Short title.
- 19.110.930 Effective date—1981 c 155.

Reviser's note: Powers, duties, and functions of the department of licensing relating to business opportunities were transferred to the department of financial institutions by 1993 c 472, effective October 1, 1993. See RCW 43.320.011.

19.110.010 Legislative declaration. The legislature finds and declares that the widespread and unregulated sale of business opportunities has become a common area of investment problems and deceptive practices in the state of Washington. As a result, the provisions of this chapter are necessary to counteract the potential negative impact of the sale of business opportunities upon the economy of the state. [1981 c 155 § 1.]

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

(1) "Business opportunity" means the sale or lease of any product, equipment, supply, or service which is sold or leased to enable the purchaser to start a business; and:

(a) The seller represents that the seller will provide locations or assist the purchaser in finding locations, on premises neither owned nor leased by the purchaser or seller, for the use or operation of vending machines, display racks, cases, or similar devices or coin-operated amusement machines or similar devices; or

(b) The seller represents that the seller will purchase any product made, produced, fabricated, assembled, modified, grown, or bred by the purchaser using, in whole or part, any product, equipment, supply, or service sold or leased to the purchaser by the seller; or

(c) The seller guarantees that the purchaser will earn an income greater than or equal to the price paid for the business opportunity; or

(d) The seller represents that if the purchaser pays a fee exceeding three hundred dollars directly or indirectly for the purpose of the seller providing a sales or marketing program, the seller will provide such a program which will enable the purchaser to derive income from the business opportunity which exceeds the price paid for the business opportunity.

(2) "Person" includes an individual, corporation, partnership, joint venture, or any business entity.

(3) "Seller" means a person who sells or leases a business opportunity.

(4) "Purchaser" means a person who buys or leases a business opportunity.

(5) "Director" means the director of financial institutions.

(6) "Guarantee" means an undertaking by the seller to refund all or a portion of the purchase price paid for the business opportunity. [1994 c 92 § 4; 1981 c 155 § 2.]

19.110.030 Sale or lease of business opportunity—Offer to sell or lease business opportunity—Occurrence in Washington. (1) An offer to sell or offer to lease a business opportunity occurs in Washington when:

(a) The offer is made in Washington; or

(b) The purchaser resides in Washington at the time of the offer and the business opportunity is or will be located, in whole or in part, in the state of Washington; or

(c) The offer originates from Washington; or

(d) The business opportunity is or will be, in whole or in part, located in Washington.

(2) An offer does not occur in Washington if a seller advertises only in a newspaper having more than two-thirds of its circulation outside the state of Washington, or on a radio or television program originating outside the state and does not sell or lease business opportunities in Washington.

(3) A sale or lease of a business opportunity occurs in Washington when:

(a) The sale or lease is made in Washington; or

(b) The purchaser resides in Washington at the time of the sale or lease, and the business opportunity is or will be located, in whole or in part, in Washington; or

(c) The business opportunity is or will be located in Washington. [1981 c 155 § 3.]

19.110.040 Application of chapter. Nothing in this chapter applies to:

(1) A radio station, television station, publisher, printer, or distributor of a newspaper, magazine, billboard, or other advertising medium which accepts advertising in good faith without knowledge of its violation of any provision of this chapter;

(2) A franchise subject to the provisions of chapter 19.100 RCW;

(3) A security subject to the provisions of chapter 21.20 RCW;

(4) A newspaper distribution system;

(5) The sale, lease, or transfer of a business opportunity by a purchaser if the purchaser sells only one business opportunity in any twelve-month period;

(6) The not-for-profit sale of sales demonstration equipment, materials, or samples where the total cost does not exceed five hundred dollars;

(7) A marketing program made in conjunction with licensing of a registered trademark or service mark for which no consideration is paid. Any consideration paid in conjunction with the purchase of goods at a bona fide wholesale price does not constitute consideration under this subsection; or

(8) A transaction regulated pursuant to chapter 18.85 RCW. [1981 c 155 § 4.]

19.110.050 Persons proposing to sell or lease business opportunity—Registration required—Application—

Renewal—Denial, suspension, or revocation of registration. (1) Any person who proposes to sell or lease a business opportunity must register prior to advertising, soliciting, or making any offer, sale, or lease in this state.

(2) Any person proposing to sell or lease a business opportunity must apply for registration by filing with the director:

(a) A copy of the disclosure document required by RCW 19.110.070;

(b) An irrevocable consent to service of process;

(c) The prescribed registration fee; and

(d) Copies of all advertisements intended to be used in connection with the offer and sale of the business opportunity.

(3) If the application meets the requirements for registration, the director shall issue a registration number to the applicant. The applicant must include the number in every advertisement in this state.

(4) Registration is effective for one year. An applicant must renew registration annually unless the director extends the duration of registration in order to stagger renewal periods. The renewal application must contain:

(a) Any new information necessary to comply with the disclosure requirements of RCW 19.110.070;

(b) The prescribed renewal fee; and

(c) Copies of any and all advertisements intended to be used in connection with the offer and sale of the business opportunity.

(5) The applicant must amend the registration whenever there is any material change in the required information.

(6) The applicant must file copies of all advertisements offering business opportunities seven days before their intended use.

(7) The director may issue an order denying, suspending, or revoking any applicant's registration if the director finds that the order is in the public interest and that:

(a) The registration application is incomplete or contains any statement which is false or misleading with respect to any material fact; or

(b) Any provision of this chapter or any rule or order lawfully imposed under this chapter has been violated; or

(c) The business opportunity includes or would include activities which are illegal; or

(d) The business opportunity has worked or tended to work a fraud on purchasers or would so operate.

(8) The director shall promptly notify the applicant of any order denying, suspending, or revoking registration. The applicant may request a hearing within fifteen days of notification. If the applicant does not request a hearing, the order remains in effect until the director modifies or vacates it. The applicant shall be notified of the right to request a hearing within fifteen days. [1981 c 155 § 5.]

19.110.060 Registration fees. The director shall charge and collect the fees specified by this section. All fees are non-refundable and shall be deposited in the state treasury.

(1) The registration fee is two hundred dollars.

(2) The renewal fee is one hundred twenty-five dollars.

(3) The amendment fee is thirty dollars. [1981 c 155 § 6.]

(2018 Ed.)

19.110.070 Disclosure document required—Contents. The seller shall provide the purchaser a written disclosure document at least forty-eight hours before the purchaser signs a business opportunity contract. The cover sheet of the disclosure document shall be entitled: "DISCLOSURES REQUIRED BY THE STATE OF WASHINGTON." The following statement shall appear under the title: "The state of Washington has not reviewed and does not approve, recommend, endorse, or sponsor any business opportunity. The information contained in this disclosure has not been verified by the state. If you have any questions about this investment, see an attorney before you sign a contract." The cover sheet shall contain only the required title and statement, and both shall be in at least ten point type. The disclosure document shall include at least the following information:

(1) The official name, address, and principal place of business of the seller and of any parent or affiliated company, or any predecessors;

(2) The names, addresses, and titles of the seller's officers, directors, trustees, general partners, general managers, principal executives, and any other persons responsible for the seller's business opportunity activities;

(3) A statement disclosing which, if any, of the persons listed in subsections (1) or (2) of this section:

(a) Has, at any time during the previous ten years, been convicted of a felony or pleaded nolo contendere to a felony charge if the felony involved fraud (including violation of any franchise or business opportunity law or unfair or deceptive practices law), embezzlement, fraudulent conversion, misappropriation of property, or restraint of trade;

(b) Has, at any time during the previous ten years, been held liable in a civil action resulting in a final judgment or has settled out of court any civil action or is a party to any civil action involving allegations of fraud (including violation of any franchise or business opportunity law or unfair or deceptive practices law), embezzlement, fraudulent conversion, misappropriation of property, or restraint of trade, or any civil action which was brought by a present or former purchaser or purchasers and which involves or involved the business opportunity;

(c) Is subject to any currently effective state or federal agency or court injunctive or restrictive order, or is a party to a proceeding currently pending in which such order is sought, relating to or affecting business opportunities activities or the business opportunity seller-purchaser relationship, or involving fraud (including violation of any franchise or business opportunity law or unfair or deceptive practices law), embezzlement, fraudulent conversion, misappropriation of property, or restraint of trade.

The statement shall include the identity and location of the court or agency, the date of conviction, judgment, or decision, the penalty imposed, the damages assessed, the terms of settlement or the terms of the order, and the date, nature, terms, and conditions of each such order or ruling;

(4) A statement disclosing which, if any, of the persons listed in subsections (1) and (2) of this section has, at any time during the previous ten years:

(a) Filed in bankruptcy; or

(b) Been adjudged bankrupt; or

(c) Been reorganized due to insolvency; or

(d) Been a principal, director, executive officer, or partner of any other person who has filed in bankruptcy, been adjudged bankrupt, or been reorganized due to insolvency;

(5) A statement of when, where, and how long the seller has:

(a) Offered, sold, or leased business opportunity plans; and

(b) Offered, sold, or leased the specific business opportunity plan offered to the purchaser; and

(c) Operated a business of the type offered to the purchaser;

(6) A statement disclosing:

(a) The total number of business opportunities which the seller has sold or leased; and

(b) The number of failures of business opportunities which the seller has sold or leased;

(7) The terms and conditions of payment, including the initial payment, downpayment, and any additional or recurring payments;

(8) A copy of any statement concerning estimated or projected sales or earnings, the data on which the estimations or projections are based, and an explanation of the extent to which the data relates to the actual operations of the business opportunity offered to the purchaser;

(9) A copy of the bond or written notice of the depository, the name of the trustee, and account number of the trust account, if the seller is required by RCW 19.110.100 to establish either a bond or trust account;

(10) A copy of the seller's current (not more than three months old) financial statement and any amendments necessary to reflect material changes in the seller's financial condition;

(11) An unexecuted copy of any business opportunity contract or agreement which the purchaser may be required to sign;

(12) Any additional information which the director requires by rule or order. [1981 c 155 § 7.]

19.110.075 Business opportunity fraud—Penalties.

(1) Any person who violates RCW 19.110.050 or 19.110.070 is guilty of a gross misdemeanor.

(2) Any person who knowingly violates RCW 19.110.050 or 19.110.070 is guilty of a class B felony punishable according to chapter 9A.20 RCW.

(3) No indictment or information for a felony may be returned under this chapter more than five years after the alleged violation. [2003 c 53 § 156.]

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

19.110.080 Disclosure document—Director authorized to accept alternative. The director may, by rule or order:

(1) Accept any disclosure document filed with agencies of the United States or any other state; or

(2) Accept any disclosure document compiled in accordance with any rule or regulation of any agency of the United States or any other state; or

(3) Waive disclosure of information which is inapplicable or unnecessary for protection of purchasers. [1981 c 155 § 8.]

19.110.090 Persons proposing to sell or lease business opportunity—Service of process. Every person who proposes to sell or lease a business opportunity in this state through any person acting on an agency basis in the common law sense shall file with the director, in such form as the director by rule prescribes, an irrevocable consent appointing the director or the director's successor in office to be the attorney of the applicant to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant or the applicant's successor, executor, or administrator which arises under this chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed a consent in connection with a previous registration need not file another. Service may be made by leaving a copy of the process in the office of the director, but it is not effective unless (1) the plaintiff, who may be the director in a suit, action, or proceeding instituted by him or her, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at the last address of the respondent or defendant on file with the director, and (2) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows. [1981 c 155 § 9.]

19.110.100 Seller to provide surety bond or trust account—Action by state or injured person—Damages. (1) If the seller makes any guarantee described in RCW 19.110.020(1)(c), the seller shall have a surety bond issued by a surety company authorized to do business in Washington or a trust account with a licensed and insured bank or savings institution located in the state of Washington. The trustee shall be acceptable to the director. The bond or the trust account shall be at least fifty thousand dollars. The director may, by rule or order, establish procedures for the initiation, operation, or termination of any bond or trust account required under this section.

(2) The bond or trust account shall be in the name of the state of Washington. It shall be for the benefit of the state and any person injured by any violation of this chapter, or by the seller's breach of any business opportunity contract or obligation arising from a business opportunity contract. The state may bring an action against the bond or trust account to recover penalties. The state or an injured person may bring an action against the bond or trust account for damages to the injured person. The liability of the surety or trustee shall be only for actual damages and shall not exceed the amount of the bond or trust account. [1981 c 155 § 10.]

19.110.110 Business opportunity contract—Content—Cancellation period. (1) Every business opportunity contract shall be in writing and shall be dated and signed by the purchaser.

(2) The seller shall provide the purchaser with a copy of the completed contract at the time the purchaser signs the contract.

(3) The seller may not receive any consideration before the purchaser signs a business opportunity contract.

(4) The contract shall include the following notifications, in ten point type, immediately above the space for the purchaser's signature:

(a) "Do not sign this contract if any of the spaces for agreed terms are blank."

(b) "Do not sign this contract unless you received a written disclosure document from the seller at least forty-eight hours before signing."

(c) "You are entitled to a copy of this contract at the time you sign it."

(d) "You have seven days exclusive of Saturday, Sunday, and holidays to cancel this contract for any reason by sending written notice to the seller by certified mail, return receipt requested. Notice of cancellation should be mailed to:

.....
(seller's name and business street address)

The notice must be postmarked before midnight of the seventh day exclusive of Saturday, Sunday, and holidays after you sign the contract.

The seller shall return all deposits and payments within ten days after receipt of your cancellation notice.

You must make available to the seller all equipment, products, and supplies provided by the seller within ten days after receipt of all refunded deposits and payments." [1981 c 155 § 11.]

19.110.120 Unlawful acts. (1) It is unlawful for any person to:

(a) Make any untrue or misleading statement of a material fact or to omit to state a material fact in connection with the offer, sale, or lease of any business opportunity in the state; or

(b) Employ any device, scheme, or artifice to defraud; or

(c) Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person; or

(d) Knowingly file or cause to be filed with the director any document which contains any untrue or misleading information; or

(e) Knowingly violate any rule or order of the director.

(2) A violation of this section is a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 154; 1981 c 155 § 12.]

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

19.110.130 Liability of seller for violation of chapter—Remedies—Damages. Any seller who violates any provision of this chapter is liable to the purchaser. The purchaser may sue for actual damages, or an injunction, or rescission, or other relief.

In addition, the purchaser may sue for costs of suit, including a reasonable attorney's fee. The court may increase the amount of damages awarded up to three times the amount of actual damages. [1981 c 155 § 13.]

19.110.140 Director authorized to investigate violations—Authority to subpoena witnesses or require production of documents. The director may make public or pri-

(2018 Ed.)

vate investigations within or outside the state of Washington to determine whether any person has violated or is about to violate any provision of this chapter or any rule or order issued under this chapter. The director, or any officer designated by the director, may administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant to the inquiry.

If any person fails to comply with a lawful subpoena, or refuses to testify under lawful interrogation, or refuses to produce documents and records, the director may apply to the superior court of any county for relief. After satisfactory evidence of wilful disobedience, the court may compel obedience by proceedings for contempt. [1981 c 155 § 14.]

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.

(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.

19.110.150 Order to cease and desist—Hearing—Notice. (1) The director may order any person to cease and desist from an act or practice if it appears that the person is violating or is about to violate any provision of this chapter or any rule or order issued under this chapter.

(2) Reasonable notice of and opportunity for a hearing shall be given. The director may issue a temporary order to cease and desist pending the hearing. The temporary order shall remain in effect until ten days after the hearing. If a person does not request a hearing within fifteen days of receiving an order to cease and desist, the order becomes final. Any person who is named in the order to cease and desist shall be notified of the right to request a hearing within fifteen days. [1981 c 155 § 15.]

19.110.160 Actions by attorney general or prosecuting attorney to enjoin violations—Injunction—Appointment of receiver or conservator—Civil penalties. (1)(a) The attorney general, in the name of the state or the director, or the proper prosecuting attorney may bring an action to enjoin any person from violating any provision of this chapter. Upon proper showing, the superior court shall grant a permanent or temporary injunction, restraining order, or writ of mandamus.

The court may make such additional orders or judgments as may be necessary to restore to any person in interest and money or property, real or personal, which may have been acquired by means of an act prohibited or declared unlawful by this chapter.

The prevailing party may recover costs of the action, including a reasonable attorney's fee.

(b) The superior court issuing an injunction shall retain jurisdiction. Any person who violates the terms of an injunction shall pay a civil penalty of not more than twenty-five thousand dollars.

(2) The attorney general, in the name of the state or the director, or the proper prosecuting attorney may apply to the superior court to appoint a receiver or conservator for any person, or the assets of any person, who is subject to a cease and desist order, permanent or temporary injunction, restraining order, or writ of mandamus.

(3) Any person who violates any provision of this chapter except as provided in subsection (1)(b) of this section, is subject to a civil penalty not to exceed two thousand dollars for each violation. Civil penalties authorized by this subsection may be imposed in any civil action brought by the attorney general or proper prosecuting attorney under this chapter and shall be deposited in the state treasury. Any action for recovery of such civil penalty shall be commenced within five years.

(4) The director may refer evidence concerning violations of this chapter to the attorney general or proper prosecuting attorney. The prosecuting attorney, or the attorney general pursuant to authority granted by RCW 10.01.190, 43.10.230, 43.10.232, and 43.10.234 may, with or without such reference, institute appropriate criminal proceedings. [2003 c 53 § 155; 1981 c 155 § 16.]

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

19.110.170 Violations constitute unfair practice. Any violation of this chapter is declared to be an unfair act or practice or unfair method of competition in the conduct of trade or commerce for the purpose of application of the Consumer Protection Act, chapter 19.86 RCW. [1981 c 155 § 20.]

19.110.180 Authority of director to issue rules, forms, orders, interpretive opinions. The director may make, amend, and repeal rules, forms, and orders as necessary to carry out the provisions of this chapter. The director may honor requests for interpretive opinions. [1981 c 155 § 17.]

19.110.190 Appointment of administrator—Delegation of powers. The director shall appoint a competent person to administer this chapter. The director shall delegate to

an administrator such powers, subject to the authority of the director, as may be necessary to carry out the provisions of this chapter. The administrator will hold office at the pleasure of the director. [1981 c 155 § 18.]

19.110.900 Chapter cumulative and nonexclusive. The provisions of this chapter are cumulative and nonexclusive and do not affect any other remedy available at law. [1981 c 155 § 19.]

19.110.910 Short title. This chapter may be known and cited as the Business Opportunity Fraud Act. [1981 c 155 § 22.]

19.110.930 Effective date—1981 c 155. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1981. [1981 c 155 § 25.]

Chapter 19.112 RCW MOTOR FUEL QUALITY ACT

Sections

19.112.005	Purpose.
19.112.010	Definitions.
19.112.020	Administration of chapter—Standards—Testing laboratory.
19.112.030	Director's authority.
19.112.040	Motor fuel registration.
19.112.050	Unlawful acts.
19.112.060	Penalties.
19.112.070	Injunctive relief.
19.112.080	Chapter in addition to chapter 19.94 RCW.
19.112.090	Air pollution reduction—Variances from ASTM.
19.112.100	Methyl tertiary-butyl ether.
19.112.110	Special fuel licensees—Required sales of biodiesel or renewable diesel fuel—Rules.
19.112.120	Motor vehicle fuel licensees—Required sales of denatured ethanol—Rules—Limitation of section.
19.112.130	Information submitted under RCW 19.112.110 or 19.112.120—Limitation on release.
19.112.140	Standards for biodiesel fuel/fuel blended with biodiesel fuel—Rules.
19.112.150	Biofuels advisory committee.
19.112.160	Governor's authority to suspend certain minimum renewable fuel content requirements.
19.112.170	Determination of the supply of certain fuels—Notification—Declaration concerning the applicability of RCW 19.112.110 or 19.112.120.
19.112.180	Goals under RCW 19.112.170—Report—Executive request legislation.
19.112.900	Short title.
19.112.902	Effective date—1990 c 102.
19.112.903	Effective date—2006 c 338.

19.112.005 Purpose. It is desired that there should be uniformity among the requirements of the several states. This chapter provides for the establishment of quality specifications for all liquid motor fuels, except aviation fuel, marine fuel, and liquefied petroleum gases, and establishes a sampling, testing, and enforcement program. [1990 c 102 § 1.]

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

(1) "Alcohol fuel" means any alcohol made from a product other than petroleum or natural gas that is used alone or in combination with gasoline or other petroleum products for use as a fuel in self-propelled motor vehicles.

(2) "Alternative fuel" means all products or energy sources used to propel motor vehicles, other than conventional gasoline, diesel, or reformulated gasoline. Alternative fuel includes, but is not limited to, liquefied petroleum gas, liquefied natural gas, compressed natural gas, biodiesel fuel, E85 motor fuel, fuels containing seventy percent or more by volume of alcohol fuel, fuels that are derived from biomass, hydrogen fuel, anhydrous ammonia fuel, nonhazardous motor fuel, or electricity, excluding onboard electric generation.

(3) "Biodiesel fuel" means the monoalkyl esters of long chain fatty acids derived from plant or animal matter that meet the registration requirements for fuels and fuel additives established by the federal environmental protection agency and standards established by the American society of testing and materials.

(4) "Diesel" means special fuel as defined in RCW 82.38.020, and diesel fuel dyed in accordance with the regulations in 26 C.F.R. Sec. 48.4082-1T as of October 24, 2005.

(5) "Director" means the director of agriculture.

(6) "E85 motor fuel" means an alternative fuel that is a blend of ethanol and hydrocarbon of which the ethanol portion is nominally seventy-five to eighty-five percent denatured fuel ethanol by volume that complies with the most recent version of American society of testing and materials specification D 5798.

(7) "Motor fuel" means any liquid product used for the generation of power in an internal combustion engine used for the propulsion of a motor vehicle upon the highways of this state, and any biodiesel fuel. Motor fuels containing ethanol may be marketed if either (a) the base motor fuel meets the applicable standards before the addition of the ethanol or (b) the resultant blend meets the applicable standards after the addition of the ethanol.

(8) "Nonhazardous motor fuel" means any fuel of a type distributed for use in self-propelled motor vehicles that does not contain a hazardous liquid as defined in RCW 19.122.020.

(9) "Renewable diesel" means a diesel fuel substitute produced from nonpetroleum renewable sources, including vegetable oils and animal fats, that meets the registration requirements for fuels and fuel additives established by the federal environmental protection agency in 40 C.F.R. Part 79 (2008) and meets the requirements of American society of testing and materials specification D 975. [2009 c 132 § 1; 2007 c 309 § 1; 2006 c 338 § 15; 1991 c 145 § 1; 1990 c 102 § 2.]

Findings—Intent—2006 c 338: See note following RCW 19.112.110.

19.112.020 Administration of chapter—Standards—Testing laboratory. (1) This chapter shall be administered by the director or his or her authorized agent. For the purpose of administering this chapter, for motor fuel except biodiesel fuel, the standards set forth in the Annual Book of ASTM Standards and supplements thereto, and revisions thereof, are adopted, together with applicable federal environmental protection agency standards. If a conflict exists between federal environmental protection agency standards, ASTM standards, or state standards, for purposes of uniformity, federal environmental protection agency standards shall take precedence over ASTM standards. Any state standards adopted

(2018 Ed.)

must be consistent with federal environmental protection agency standards and ASTM standards not in conflict with federal environmental protection agency standards.

(2) The director may establish a fuel testing laboratory or may contract with a laboratory for testing. The director may also adopt rules on false and misleading advertising, labeling and posting of prices, and the standards for, and identity of, motor fuels. The director shall require fuel pumps offering an ethanol blend to be identified by a label stating the percentage of ethanol and fuel pumps offering a biodiesel blend of up to and including five percent to be identified by a label that states "may contain up to five percent biodiesel." Biodiesel blends above five percent shall be identified by a label stating the percentage of biodiesel being offered.

(3) The rules adopted under RCW 19.112.140 shall also provide that the diesel refiner is responsible for meeting the ASTM standards required by chapter 338, Laws of 2006 when providing diesel fuel into the distribution system. [2010 c 96 § 1; 2006 c 338 § 8; 1990 c 102 § 3.]

Findings—Intent—2006 c 338: See note following RCW 19.112.110.

19.112.030 Director's authority. The director may:

(1) Enforce and administer this chapter by inspections, analyses, and other appropriate actions;

(2) Have access during normal business hours to all places where motor fuels are marketed for the purpose of examination, inspection, taking of samples, and investigation. If access is refused by the owner or agent or other persons leasing the same, the director or his or her agent may obtain an administrative search warrant from a court of competent jurisdiction;

(3) Collect or cause to be collected, samples of motor fuels marketed in this state, and cause such samples to be tested or analyzed for compliance with this chapter;

(4) Issue a stop-sale order for any motor fuel found not to be in compliance and rescind the stop-sale order if the motor fuel is brought into compliance with this chapter;

(5) Refuse, revoke, or suspend the registration of a motor fuel;

(6) Delegate to authorized agents any of the responsibilities for the proper administration of this chapter;

(7) Establish a motor fuel testing laboratory. [1990 c 102 § 4.]

19.112.040 Motor fuel registration. All motor fuel shall be registered by the name, brand, or trademark under which it will be sold at the terminal. Registration shall include:

(1) The name and address of the person registering the motor fuel;

(2) The antiknock index or cetane number, as appropriate, at which the motor fuel is to be marketed;

(3) A certification, declaration, or affidavit that each individual grade or type of motor fuel shall conform to this chapter. [1990 c 102 § 5.]

19.112.050 Unlawful acts. It is unlawful to:

(1) Market motor fuels in any manner that may deceive or tend to deceive the purchaser as to the nature, price, quantity, and quality of a motor fuel;

(2) Fail to register a motor fuel;

(3) Submit incorrect, misleading, or false information regarding the registration of a motor fuel;

(4) Hinder or obstruct the director, or his or her authorized agent, in the performance of his or her duties;

(5) Market a motor fuel that is contrary to this chapter. [1990 c 102 § 6.]

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.

19.112.070 Injunctive relief. The director may apply to any court of competent jurisdiction for a temporary or permanent injunction restraining any person from violating any provision of this chapter. [1990 c 102 § 8.]

19.112.080 Chapter in addition to chapter 19.94 RCW. This chapter is in addition to any requirements under chapter 19.94 RCW. [1990 c 102 § 9.]

19.112.090 Air pollution reduction—Variances from ASTM. The directors of the departments of ecology and agriculture may grant a variance from ASTM motor fuel specifications if necessary to produce lower emission motor fuels. [1991 c 199 s 231.]

Finding—1991 c 199: See note following RCW 70.94.011.

Additional notes found at www.leg.wa.gov

19.112.100 Methyl tertiary-butyl ether. Methyl tertiary-butyl ether may not be intentionally added to any gasoline, motor fuel, or clean fuel produced for sale or use in the state of Washington after December 31, 2003. In no event may methyl tertiary-butyl ether be knowingly mixed in gasoline above fifteen one-hundredths of one percent by volume. [2007 c 310 § 1; 2001 c 218 § 1.]

19.112.110 Special fuel licensees—Required sales of biodiesel or renewable diesel fuel—Rules. (1) Special fuel licensees under chapter 82.38 RCW, as determined by the department of licensing, must provide evidence to the department of licensing that at least two percent of the total annual diesel fuel sold in Washington is biodiesel or renewable diesel fuel, following the earlier of: (a) November 30, 2008; or (b) when a determination is made by the director, published in the Washington State Register, that feedstock grown in Washington state can satisfy a two-percent requirement.

(2) Special fuel licensees under chapter 82.38 RCW, as determined by the department of licensing, must provide evidence to the department of licensing that at least five percent of total annual diesel fuel sold in Washington is biodiesel or renewable diesel fuel, when the director determines, and publishes this determination in the Washington State Register, that both in-state oil seed crushing capacity and feedstock grown in Washington state can satisfy a three-percent requirement.

(3) The requirements of subsections (1) and (2) of this section may take effect no sooner than one hundred eighty days after the determination has been published in the Washington State Register.

(4) The director and the director of licensing must each adopt rules, in coordination with each other, for enforcing and carrying out the purposes of this section. [2013 c 225 § 601; 2009 c 132 § 2; 2006 c 338 § 2.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Findings—Intent—2006 c 338: "The legislature finds that it is in the public interest to establish a market for alternative fuels in Washington. By requiring a growing percentage of our fuel supply to be renewable biofuel that meets appropriate fuel quality standards, we will reduce our dependence on imports of foreign oil, improve the health and quality of life for Washingtonians, and stimulate the creation of a new industry in Washington that benefits our farmers and rural communities. The legislature finds that it is in the public interest for the state to play a central role in spurring the market by purchasing an increasing amount of alternative fuels produced in Washington. The legislature finds that we must act now and that the time available before the requirements of this act take effect is sufficient for feedstock and fuel providers to prepare for successful implementation.

The legislature intends for consumers to have a choice of fuels and to encourage and promote the development, availability, and use of a diversity of renewable fuels and fuel blends ranging from fuels composed of no renewable content to completely renewable fuels." [2006 c 338 § 1.]

19.112.120 Motor vehicle fuel licensees—Required sales of denatured ethanol—Rules—Limitation of section. (1) By December 1, 2008, motor vehicle fuel licensees under chapter 82.38 RCW, as determined by the department of licensing, must provide evidence to the department of licensing that at least two percent of total gasoline sold in Washington, measured on a quarterly basis, is denatured ethanol.

(2) If the director of ecology determines that ethanol content greater than two percent of the total gasoline sold in Washington will not jeopardize continued attainment of the federal clean air act's national ambient air quality standard for ozone pollution in Washington and the director of agriculture determines and publishes this determination in the Washington State Register that sufficient raw materials are available within Washington to support economical production of ethanol at higher levels, the director of agriculture may require by rule that licensees provide evidence to the department of licensing that denatured ethanol comprises between two percent and at least ten percent of total gasoline sold in Washington, measured on a quarterly basis.

(3) The requirements of subsections (1) and (2) of this section may take effect no sooner than one hundred eighty days after the determination has been published in the Washington State Register.

(4) The director and the director of licensing must each adopt rules, in coordination with each other, for enforcing and carrying out the purposes of this section.

(5) Nothing in this section is intended to prohibit the production, sale, or use of motor fuel for use in federally designated flexibly fueled vehicles capable of using E85 motor fuel. Nothing in this section is intended to limit the use of high octane gasoline not blended with ethanol for use in aircraft. [2013 c 225 § 602; 2007 c 309 § 2; 2006 c 338 § 3.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Findings—Intent—2006 c 338: See note following RCW 19.112.110.

19.112.130 Information submitted under RCW 19.112.110 or 19.112.120—Limitation on release. The department of licensing shall not publicly release, unless pursuant to an order of a court of competent jurisdiction, information submitted as evidence 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. [2006 c 338 § 4.]

Findings—Intent—2006 c 338: See note following RCW 19.112.110.

19.112.140 Standards for biodiesel fuel/fuel blended with biodiesel fuel—Rules. (1) The director shall adopt rules for maintaining standards for biodiesel fuel or fuel blended with biodiesel fuel by adopting all or part of the standards set forth in the Annual Book of ASTM Standards and supplements, amendments, or revisions thereof, all or part of the standards set forth in the National Institute of Standards and Technology (NIST) Handbook 130, Uniform Laws and Regulations in the areas of legal metrology and engine fuel quality rules, and any supplements, amendments, or revisions thereof, together with applicable federal environmental protection agency standards. The rules shall provide that the biodiesel refiner is responsible for meeting the ASTM standards required by chapter 338, Laws of 2006 when providing biodiesel fuel into the distribution system. If a conflict exists between federal environmental protection agency standards, ASTM standards, or NIST standards, for purposes of uniformity, federal environmental protection agency standards shall take precedence over ASTM and NIST standards. The department of agriculture shall not exceed ASTM standards for diesel.

(2) The rules adopted under subsection (1) of this section shall be updated to provide for fuel stability standards when national or international fuel stability standards have been adopted. [2006 c 338 § 7.]

Findings—Intent—2006 c 338: See note following RCW 19.112.110.

19.112.150 Biofuels advisory committee. The director shall establish a biofuels advisory committee to advise the director on implementing or suspending the minimum renewable fuel content requirements. The committee shall advise the director on applicability to all users; logistical, technical, and economic issues of implementation, including the potential for credit trading, compliance and enforcement provisions, and tracking and reporting requirements; and how the use of renewable fuel blends greater than two percent and renewable fuels other than biodiesel or ethanol could achieve the goals of chapter 338, Laws of 2006. In addition, the committee shall make recommendations to the legislature and governor on the potential to use alternatives to biodiesel, which are produced from nonpetroleum renewable sources

(inclusive of vegetable oils and animal fats), to meet the minimum renewable fuel content requirement. The director shall make recommendations to the legislature and the governor on the implementation or suspension of chapter 338, Laws of 2006 by September 1, 2007. [2006 c 338 § 9.]

Findings—Intent—2006 c 338: See note following RCW 19.112.110.

19.112.160 Governor's authority to suspend certain minimum renewable fuel content requirements. The governor, by executive order, may suspend all or portions of the minimum renewable fuel content requirements in RCW 19.112.110 or 19.112.120, or 43.19.642, based on a determination that such requirements are temporarily technically or economically infeasible, or pose a significant risk to public safety. [2006 c 338 § 11.]

Findings—Intent—2006 c 338: See note following RCW 19.112.110.

19.112.170 Determination of the supply of certain fuels—Notification—Declaration concerning the applicability of RCW 19.112.110 or 19.112.120. (1) By November 30, 2008, the director shall determine whether the state's diesel fuel supply is comprised of at least ten percent biodiesel made predominantly from Washington feedstock.

(2) By November 30, 2008, the director shall determine whether the state's gasoline fuel supply is comprised of at least twenty percent ethanol made predominantly from Washington feedstock, without jeopardizing continued attainment of the federal clean air act's national ambient air quality standard for ozone pollution.

(3) By December 1, 2008, the director shall notify the governor and the legislature of the findings in subsections (1) and (2) of this section.

(4) If the findings from the director indicate that the goals of subsection (1) or (2) of this section, or both, have been achieved, then the governor shall issue an executive order declaring that RCW 19.112.110 or 19.112.120, or both, are no longer applicable. [2006 c 338 § 13.]

Findings—Intent—2006 c 338: See note following RCW 19.112.110.

19.112.180 Goals under RCW 19.112.170—Report—Executive request legislation. (1) If either or both of the goals in RCW 19.112.170 are not achieved by November 30, 2008, the director shall monitor the state's diesel and gasoline fuel supply until such time as those goals, or either of them, is met.

(2) The director shall report to the governor and the legislature regarding the goals in RCW 19.112.170 by November 30th of the year in which a goal is met.

(3) Following notification under this section that a goal has been met, the governor shall prepare executive request legislation repealing RCW 19.112.110 or 19.112.120, or both, as applicable. [2006 c 338 § 14.]

Findings—Intent—2006 c 338: See note following RCW 19.112.110.

19.112.900 Short title. RCW 19.112.005 through 19.112.080 shall constitute a new chapter in Title 19 RCW and may be cited as the motor fuel quality act. [1990 c 102 § 11.]

19.112.902 Effective date—1990 c 102. This act shall take effect on July 1, 1990. [1990 c 102 § 12.]

19.112.903 Effective date—2006 c 338. This act takes effect July 1, 2006. [2006 c 338 § 16.]

Chapter 19.116 RCW
MOTOR VEHICLE SUBLEASING OR TRANSFER

Sections

- 19.116.005 Finding.
- 19.116.010 Public interest—Finding.
- 19.116.020 Definitions.
- 19.116.030 Application of consumer protection act.
- 19.116.040 Violations of chapter.
- 19.116.050 Unlawful transfer of motor vehicle—Conditions.
- 19.116.060 Unlawful subleasing of motor vehicle—Conditions.
- 19.116.070 Nonparties assisting, causing, or arranging unlawful assignment or transfer.
- 19.116.080 Unlawful subleasing or transfer—Class C felony.
- 19.116.090 Violations—Criminal profiteering.
- 19.116.100 Persons who may bring action—Damages.
- 19.116.110 Transfer or assignment of interest by persons with motor vehicles under lease contract or security agreement not subject to prosecution—Enforceability of contract or agreement not affected.
- 19.116.120 Penalties in addition to other remedies or penalties.

19.116.005 Finding. The legislature finds that the practices of unlawful subleasing or unlawful transfer of an ownership interest in motor vehicles have a substantial negative impact on the state's financial institutions and other businesses engaged in the financing and leasing of motor vehicles. [1990 c 44 § 1.]

19.116.010 Public interest—Finding. The legislature finds that the practice of unlawful subleasing or unlawful transfer of an ownership interest in motor vehicles is a matter vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. [1990 c 44 § 2.]

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.]

***Reviser's note:** RCW 62A.1-201 was amended by 2012 c 214 § 109, changing subsection (37) to subsection (35).

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

19.116.030 Application of consumer protection act. Unlawful subleasing or unlawful transfer of an ownership interest in motor vehicles is not reasonable in relation to the development and preservation of business. A violation of this chapter is an unfair or deceptive act in trade or commerce for the purpose of applying the consumer protection act, chapter 19.86 RCW. [2000 c 171 § 70; 1990 c 44 § 4.]

19.116.040 Violations of chapter. (1) It is a violation of this chapter for a vehicle dealer, as defined in *RCW 46.70.011(3), to engage in the unlawful transfer of an ownership interest in motor vehicles.

(2) It is a violation of this chapter for a person to engage in the unlawful subleasing of motor vehicles. [1990 c 44 § 5.]

***Reviser's note:** RCW 46.70.011 was amended by 2006 c 364 § 1, changing subsection (3) to subsection (4). RCW 46.70.011 was subsequently alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (4) to subsection (17), effective July 1, 2011.

19.116.050 Unlawful transfer of motor vehicle—Conditions. A dealer engages in an act of unlawful transfer of ownership interest in motor vehicles when all of the following circumstances are met:

(1) The dealer does not pay off any balance due to the secured party on a vehicle acquired by the dealer, no later than the close of the second business day after the acquisition date of the vehicle; and

(2) The dealer does not obtain a certificate of title under RCW 46.70.124 for each used vehicle kept in his or her possession unless that certificate is in the possession of the person holding a security interest in the dealer's inventory; and

(3) The dealer does not transfer the certificate of title after the transferee has taken possession of the motor vehicle. [2010 c 161 § 1101; 2000 c 171 § 71; 1990 c 44 § 6.]

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.

19.116.060 Unlawful subleasing of motor vehicle—Conditions. A person engages in an act of unlawful subleasing of a motor vehicle if all of the following conditions are met:

(1) The motor vehicle is subject to a lease contract or security agreement the terms of which prohibit the transfer or assignment of any right or interest in the motor vehicle or under the lease contract or security agreement; and

(2) The person is not a party to the lease contract or security agreement; and

(3) The person transfers or assigns or purports to transfer or assign any right or interest in the motor vehicle or under the lease contract or security agreement to any person who is not a party to the lease contract or security agreement; and

(4) The person does not obtain, before the transfer or assignment described in subsection (3) of this section, written consent to the transfer or assignment from the motor vehicle lessor in connection with a lease contract or from the secured party in connection with a security agreement; and

(5) The person receives compensation or some other consideration for the transfer or assignment described in subsection (3) of this section. [1990 c 44 § 7.]

19.116.070 Nonparties assisting, causing, or arranging unlawful assignment or transfer. (1) A person engages in an act of unlawful subleasing of a motor vehicle when the person is not a party to the lease contract or security agreement, and assists, causes, or arranges an actual or purported assignment as described in RCW 19.116.060.

(2) A dealer engages in an act of unlawful transfer of an ownership interest in a motor vehicle when the dealer is not a party to the security agreement, and assists, causes, or

arranges an actual or purported transfer as described in RCW 19.116.050. [1990 c 44 § 8.]

19.116.080 Unlawful subleasing or transfer—Class C felony. (1) Unlawful subleasing of a motor vehicle is a class C felony punishable under chapter 9A.20 RCW.

(2) Unlawful transfer of an ownership interest in a motor vehicle is a class C felony punishable under chapter 9A.20 RCW. [2003 c 53 § 157; 1990 c 44 § 9.]

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

19.116.090 Violations—Criminal profiteering. A violation of this chapter constitutes an act of criminal profiteering, as defined in RCW 9A.82.010. [1990 c 44 § 10.]

19.116.100 Persons who may bring action—Damages. (1) Any one or more of the following persons who suffers damage proximately resulting from one or more acts of unlawful motor vehicle subleasing or unlawful transfer of an ownership interest in a motor vehicle may bring an action against the person who has engaged in those acts:

- (a) A secured party;
- (b) A debtor;
- (c) A lessor;
- (d) A lessee;
- (e) An actual or purported transferee or assignee;
- (f) A guarantor of a lease or security agreement or a guarantor of a purported transferee or assignee.

(2) In an action for unlawful subleasing or unlawful transfer of an ownership interest in a motor vehicle the court may award actual damages; equitable relief, including, but not limited to an injunction and restitution of money and property; reasonable attorneys' fees and costs; and any other relief that the court deems proper. [1990 c 44 § 11.]

19.116.110 Transfer or assignment of interest by persons with motor vehicles under lease contract or security agreement not subject to prosecution—Enforceability of contract or agreement not affected. (1) The actual or purported transfer or assignment, or the assisting, causing, or arranging of an actual or purported transfer or assignment, of any right or interest in a motor vehicle or under a lease contract or security agreement, by an individual who is a party to the lease contract or security agreement is not an act of unlawful subleasing of or unlawful transfer of an ownership interest in a motor vehicle and is not subject to prosecution.

(2) This chapter does not affect the enforceability of any provision of a lease contract or security agreement by a party thereto. [1990 c 44 § 12.]

19.116.120 Penalties in addition to other remedies or penalties. The penalties under this chapter are in addition to any other remedies or penalties provided by law for the conduct proscribed by this chapter. [1990 c 44 § 13.]

Chapter 19.118 RCW MOTOR VEHICLE WARRANTIES

Sections

19.118.005 Legislative intent.

(2018 Ed.)

- 19.118.010 Motor vehicle manufacturers—Express warranties—Service and repair facilities.
- 19.118.021 Definitions.
- 19.118.031 Manufacturers and new motor vehicle dealers—Responsibilities to consumers—Extension of eligibility period.
- 19.118.041 Replacement or repurchase of nonconforming new motor vehicle—Reasonable number of attempts—Notice by consumer regarding motor home nonconformity—Liabilities and rights of parties—Application of consumer protection act.
- 19.118.061 Vehicle with nonconformities or out of service—Notification of correction—Resale or transfer of title—Issuance of new title—Disclosure to buyer—Intervening transferor.
- 19.118.070 Remedies.
- 19.118.080 New motor vehicle arbitration boards—Arbitration proceedings—Prerequisite to filing action in superior court.
- 19.118.090 Request for arbitration—Eligibility—Manufacturer's response—Defenses—Remedies—Acceptance or appeal.
- 19.118.095 Arbitration decision—Compliance—Accomplishment—Dispute—Failure—Fine—Costs—Attorneys' fees.
- 19.118.100 Trial de novo—Posting security—Recovery.
- 19.118.110 Arbitration fee—New motor vehicle arbitration account—Report by attorney general.
- 19.118.120 Application of consumer protection act.
- 19.118.130 Waivers, limitations, disclaimers—Void.
- 19.118.140 Other rights and remedies not precluded.
- 19.118.150 Informal dispute resolution settlement procedure.
- 19.118.160 Arbitration program—When established by attorney general.
- 19.118.170 History of vehicle—Availability to owner.
- 19.118.900 Effective dates—1987 c 344.
- 19.118.904 Effective date—1989 c 347.

19.118.005 Legislative intent. The legislature recognizes that a new motor vehicle is a major consumer purchase and that a defective motor vehicle is likely to create hardship for, or may cause injury to, the consumer. The legislature further recognizes that good cooperation and communication between a manufacturer and a new motor vehicle dealer will considerably increase the likelihood that a new motor vehicle will be repaired within a reasonable number of attempts. It is the intent of the legislature to ensure that the consumer is made aware of his or her rights under this chapter and is not refused information, documents, or service that would otherwise obstruct the exercise of his or her rights.

In enacting these comprehensive measures, it is the intent of the legislature to create the proper blend of private and public remedies necessary to enforce this chapter, such that a manufacturer will be sufficiently induced to take necessary steps to improve quality control at the time of production or provide better warranty service for the new motor vehicles that it sells in this state. [1987 c 344 § 1.]

19.118.010 Motor vehicle manufacturers—Express warranties—Service and repair facilities. Every manufacturer of motor vehicles sold in this state and for which the manufacturer has made an express warranty shall maintain in this state sufficient service and repair facilities reasonably close to all areas in which its motor vehicles are sold to carry out the terms of the warranties or designate and authorize in this state as service and repair facilities independent repair or service facilities reasonably close to all areas in which its motor vehicles are sold to carry out the terms of the warranties. As a means of complying with this section, a manufacturer may enter into warranty service contracts with independent service and repair facilities. [1983 c 240 § 1.]

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

(1) "Board" means new motor vehicle arbitration board.

(2) "Collateral charges" means any sales or lease related charges including but not limited to sales tax, use tax, arbitration service fees, unused license fees, unused registration fees, unused title fees, finance charges, prepayment penalties, credit disability and credit life insurance costs not otherwise refundable, any other insurance costs prorated for time out of service, transportation charges, dealer preparation charges, or any other charges for service contracts, undercoating, rust-proofing, or factory or dealer installed options.

(3) "Condition" means a general problem that results from a defect or malfunction of one or more parts, or their improper installation by the manufacturer, its agents, or the new motor vehicle dealer.

(4) "Consumer" means any person who has entered into an agreement or contract for the transfer, lease, or purchase of a new motor vehicle, other than for purposes of resale or sub-lease, during the duration of the eligibility period defined under this section.

(5) "Court" means the superior court in the county where the consumer resides, except if the consumer does not reside in this state, then the superior court in the county where an arbitration hearing or determination was conducted or made pursuant to this chapter.

(6) "Eligibility period" means the period ending two years after the date of the original delivery to the consumer of a new motor vehicle, or the first twenty-four thousand miles of operation, whichever occurs first.

(7) "Incidental costs" means any reasonable expenses incurred by the consumer in connection with the repair of the new motor vehicle, including any towing charges and the costs of obtaining alternative transportation.

(8) "Manufacturer" means any person engaged in the business of constructing or assembling new motor vehicles or engaged in the business of importing new motor vehicles into the United States for the purpose of selling or distributing new motor vehicles to new motor vehicle dealers. "Manufacturer" includes to the extent the modification affects the use, value, or safety of a new motor vehicle, a postmanufacturing modifier of a new motor vehicle that modifies or has a modification done to a new motor vehicle before the initial retail sale or lease of a new motor vehicle, except as provided in this chapter. "Manufacturer" does not include any person engaged in the business of set-up of motorcycles as an agent of a new motor vehicle dealer if the person does not otherwise construct or assemble motorcycles.

(9) "Motorcycle" means any motorcycle as defined in RCW 46.04.330 which has an engine displacement of at least seven hundred fifty cubic centimeters.

(10) "Motor home" means a vehicular unit designed to provide temporary living quarters for recreational, camping, or travel use, built on or permanently attached to a self-propelled motor vehicle chassis or on a chassis cab or van that is an integral part of the completed vehicle.

(11) "Motor home manufacturer" means the first stage manufacturer, the component manufacturer, and the final stage manufacturer.

(a) "First stage manufacturer" means a person who manufactures incomplete new motor vehicles such as chassis, chassis cabs, or vans, that are directly warranted by the first

stage manufacturer to the consumer, and are completed by a final stage manufacturer into a motor home.

(b) "Component manufacturer" means a person who manufactures components used in the manufacture or assembly of a chassis, chassis cab, or van that is completed into a motor home and whose components are directly warranted by the component manufacturer to the consumer.

(c) "Final stage manufacturer" means a person who assembles, installs, or permanently affixes a body, cab, or equipment to an incomplete new motor vehicle such as a chassis, chassis cab, or van provided by a first stage manufacturer, to complete the vehicle into a motor home.

(12) "New motor vehicle" means any new self-propelled vehicle, including a new motorcycle, primarily designed for the transportation of persons or property over the public highways that was originally purchased or leased at retail from a new motor vehicle dealer or leasing company in this state, but does not include vehicles purchased or leased by a business as part of a fleet of ten or more vehicles at one time or under a single purchase or lease agreement. This chapter shall apply to a motor vehicle purchased or leased with a manufacturer written warranty by a member of the armed forces regardless of in which state the vehicle was purchased or leased, if the vehicle otherwise meets the definition of a new motor vehicle and the consumer is a member of the armed forces stationed or residing in this state at the time the consumer submits a request for arbitration to the attorney general. If the motor vehicle is a motor home, this chapter shall apply to the self-propelled vehicle and chassis, but does not include those portions of the vehicle designated, used, or maintained primarily as a mobile dwelling, office, or commercial space. The term "new motor vehicle" does not include trucks with nineteen thousand pounds or more gross vehicle weight rating. The term "new motor vehicle" includes a demonstrator or lease-purchase vehicle as long as a manufacturer's warranty was issued as a condition of sale.

(13) "New motor vehicle dealer" means a person who holds a dealer agreement with a manufacturer for the sale of new motor vehicles, who is engaged in the business of purchasing, selling, servicing, exchanging, or dealing in new motor vehicles, and who is licensed or required to be licensed as a vehicle dealer by the state of Washington.

(14) "Nonconformity" means a defect, serious safety defect, or condition that substantially impairs the use, value, or safety of a new motor vehicle, but does not include a defect or condition that is the result of abuse, neglect, or unauthorized modification or alteration of the new motor vehicle.

(15) "Purchase price" means the cash price of the new motor vehicle appearing in the sales agreement or contract.

(a) "Purchase price" in the instance of a lease means the actual written capitalized cost disclosed to the consumer contained in the lease agreement. If there is no disclosed capitalized cost in the lease agreement the "purchase price" is the manufacturer's suggested retail price including manufacturer installed accessories or items of optional equipment displayed on the manufacturer label, required by 15 U.S.C. Sec. 1232.

(b) "Purchase price" in the instance of both a vehicle purchase or lease agreement includes any allowance for a trade-in vehicle but does not include any manufacturer-to-consumer rebate appearing in the agreement or contract that the

consumer received or that was applied to reduce the purchase or lease cost.

Where the consumer is a subsequent transferee and the consumer selects repurchase of the motor vehicle, "purchase price" means the consumer's subsequent purchase price. Where the consumer is a subsequent transferee and the consumer selects replacement of the motor vehicle, "purchase price" means the original purchase price.

(16) "Reasonable offset for use" means the definition provided in RCW 19.118.041(1)(c).

(17) "Reasonable number of attempts" means the definition provided in RCW 19.118.041.

(18) "Replacement motor vehicle" means a new motor vehicle that is identical or reasonably equivalent to the motor vehicle to be replaced, as the motor vehicle to be replaced existed at the time of original purchase or lease, including any service contract, undercoating, rustproofing, and factory or dealer installed options.

(19) "Serious safety defect" means a life-threatening malfunction or nonconformity that impedes the consumer's ability to control or operate the new motor vehicle for ordinary use or reasonable intended purposes or creates a risk of fire or explosion.

(20) "Subsequent transferee" means a consumer who acquires a motor vehicle, within the eligibility period, as defined in this section, with an applicable manufacturer's written warranty and where the vehicle otherwise met the definition of a new motor vehicle at the time of original retail sale or lease.

(21) "Substantially impair" means to render the new motor vehicle unreliable, or unsafe for ordinary use, or to diminish the resale value of the new motor vehicle below the average resale value for comparable motor vehicles.

(22) "Warranty" means any implied warranty, any written warranty of the manufacturer, or any affirmation of fact or promise made by the manufacturer in connection with the sale of a new motor vehicle that becomes part of the basis of the bargain. The term "warranty" pertains to the obligations of the manufacturer in relation to materials, workmanship, a modification by a new motor vehicle dealer installing the new motor vehicle manufacturer's authorized parts or their equivalent for the specific new motor vehicle pursuant to the manufacturer approved specifications, and fitness of a new motor vehicle for ordinary use or reasonably intended purposes throughout the duration of the eligibility period as defined under this section. [2009 c 351 § 1; 2007 c 425 § 1; 1998 c 298 § 2; 1995 c 254 § 1; 1990 c 239 § 1; 1989 c 347 § 1; 1987 c 344 § 2.]

Application—2009 c 351: "This act is remedial in nature and applies retroactively to July 26, 2009." [2009 c 351 § 10.]

Additional notes found at www.leg.wa.gov

19.118.031 Manufacturers and new motor vehicle dealers—Responsibilities to consumers—Extension of eligibility period. (1) The manufacturer shall publish an owner's manual and provide it to the new motor vehicle dealer or leasing company. The owner's manual shall include a list of the addresses and phone numbers for the manufacturer's customer assistance division, or zone or regional offices. A manufacturer shall provide to the new motor vehicle dealer or leasing company all applicable manufacturer's

written warranties. The dealer or leasing company shall transfer to the consumer, at the time of original retail sale or lease, the owner's manual and applicable written warranties as provided by a manufacturer.

(2) At the time of purchase, the new motor vehicle dealer shall provide the consumer with a written statement that explains the consumer's rights under this chapter. The written statement shall be prepared and supplied by the attorney general and shall contain a toll-free number that the consumer can contact for information regarding the procedures and remedies under this chapter. In the event a consumer requests modification of the new motor vehicle in a manner which may partially or completely void the manufacturer's implied or express warranty, and which becomes part of the basis of the bargain of the initial retail sale or lease of the vehicle, a new motor vehicle dealer shall provide a clear and conspicuous written disclosure, independently signed and dated by the consumer, stating "Your requested modification may void all or part of a manufacturer warranty and a resulting defect or condition may not be subject to remedies afforded by the motor vehicle warranties act, chapter 19.118 RCW." A dealer who obtains a signed written disclosure under circumstances where the warranty may be void is not subject to this chapter as a manufacturer to the extent the modification affects the use, value, or safety of a new motor vehicle. Failure to provide the disclosure specified in this subsection does not constitute a violation of chapter 19.86 RCW.

(3) For the purposes of this chapter, if a new motor vehicle does not conform to the warranty and the consumer reports the nonconformity during the term of the eligibility period or the period of coverage of the applicable manufacturer's written warranty, whichever is less, to the manufacturer, its agent, or the new motor vehicle dealer who sold the new motor vehicle, the manufacturer, its agent, or the new motor vehicle dealer shall make repairs as are necessary to conform the vehicle to the warranty, regardless of whether such repairs are made after the expiration of the eligibility period. Any corrections or attempted repairs undertaken by a new motor vehicle dealer under this chapter shall be treated as warranty work and billed by the dealer to the manufacturer in the same manner as other work under the manufacturer's written warranty is billed. For purposes of this subsection, the manufacturer's written warranty shall be at least one year after the date of the original delivery to the consumer of the vehicle or the first twelve thousand miles of operation, whichever occurs first.

(4) Upon request from the consumer, the manufacturer or new motor vehicle dealer shall provide a copy of any report or computer reading compiled by the manufacturer's field or zone representative regarding inspection, diagnosis, or test-drive of the consumer's new motor vehicle, or shall provide a copy of any technical service bulletin issued by the manufacturer regarding the year and model of the consumer's new motor vehicle as it pertains to any material, feature, component, or the performance thereof.

(5) The new motor vehicle dealer shall provide to the consumer each time the consumer's vehicle is returned from being diagnosed or repaired under the warranty, a fully itemized, legible statement or repair order indicating any diagnosis made, and all work performed on the vehicle including but not limited to, a general description of the problem reported

by the consumer or an identification of the defect or condition, parts and labor, the date and the odometer reading when the vehicle was submitted for repair, and the date when the vehicle was made available to the consumer.

(6) No manufacturer, its agent, or the new motor vehicle dealer may refuse to diagnose or repair any nonconformity covered by the warranty for the purpose of avoiding liability under this chapter.

(7) For purposes of this chapter, consumers shall have the rights and remedies, including a cause of action, against manufacturers as provided in this chapter.

(8) The eligibility period and thirty-day out-of-service period, and sixty-day out-of-service period in the case of a motor home, shall be extended by any time that repair services are not available to the consumer as a direct result of a strike, war, invasion, fire, flood, or other natural disaster. [2009 c 351 § 2; 1998 c 298 § 3; 1995 c 254 § 2; 1987 c 344 § 3.]

Application—2009 c 351: See note following RCW 19.118.021.

Additional notes found at www.leg.wa.gov

19.118.041 Replacement or repurchase of nonconforming new motor vehicle—Reasonable number of attempts—Notice by consumer regarding motor home nonconformity—Liabilities and rights of parties—Application of consumer protection act. (1) If the manufacturer, its agent, or the new motor vehicle dealer is unable to conform the new motor vehicle to the warranty by repairing or correcting any nonconformity after a reasonable number of attempts, the manufacturer, within forty calendar days of a consumer's written request to the manufacturer's corporate, dispute resolution, zone, or regional office address shall, at the option of the consumer, replace or repurchase the new motor vehicle.

(a) The replacement motor vehicle shall be identical or reasonably equivalent to the motor vehicle to be replaced as the motor vehicle to be replaced existed at the time of original purchase or lease, including any service contract, undercoating, rustproofing, and factory or dealer installed options. Where the manufacturer supplies a replacement motor vehicle, the manufacturer shall be responsible for sales tax, license, registration fees, and refund of any incidental costs. Compensation for a reasonable offset for use shall be paid by the consumer to the manufacturer in the event that the consumer accepts a replacement motor vehicle.

(b) When repurchasing the new motor vehicle, the manufacturer shall refund to the consumer the purchase price, all collateral charges, and incidental costs, less a reasonable offset for use. When repurchasing the new motor vehicle, in the instance of a lease, the manufacturer shall refund to the consumer all payments made by the consumer under the lease including but not limited to all lease payments, trade-in value or inception payment, security deposit, all collateral charges and incidental costs less a reasonable offset for use. The manufacturer shall make such payment to the lessor and/or lienholder of record as necessary to obtain clear title to the motor vehicle and upon the lessor's and/or lienholder's receipt of that payment and payment by the consumer of any late payment charges, the consumer shall be relieved of any future obligation to the lessor and/or lienholder.

(c) The reasonable offset for use shall be computed by multiplying the number of miles that the vehicle traveled directly attributable to use by the consumer during the time between the original purchase, lease, or in-service date and the date beginning the first attempt to diagnose or repair a nonconformity which ultimately results in the repurchase or replacement of the vehicle multiplied times the purchase price, and dividing the product by one hundred twenty thousand, except in the case of a motor home, in which event it shall be divided by ninety thousand or in the case of a motorcycle, it shall be divided by twenty-five thousand. However, the reasonable offset for use calculation total for a motor home is subject to modification by the board by decreasing or increasing the offset total up to a maximum of one-third of the offset total. The board may modify the offset total in those circumstances where the board determines that the wear and tear on those portions of the motor home designated, used, or maintained primarily as a mobile dwelling, office, or commercial space are significantly greater or significantly less than that which could be reasonably expected based on the mileage attributable to the consumer's use of the motor home. Except in the case of a motor home, where a manufacturer repurchases or replaces a vehicle solely due to accumulated days out of service by reason of diagnosis or repair of one or more nonconformities, "the number of miles that the vehicle traveled directly attributable to use by the consumer" shall be limited to the period between the original purchase, lease, or in-service date and the date of the fifteenth cumulative calendar day out of service. Where the consumer is a second or subsequent purchaser, lessee, or transferee of the motor vehicle and the consumer selects repurchase of the motor vehicle, "the number of miles that the vehicle traveled" directly attributable to use by the consumer shall be limited to the period between the date of purchase, lease by, or transfer to the consumer and the date of the consumer's initial attempt to obtain diagnosis or repair of a nonconformity which ultimately results in the repurchase or replacement of the vehicle or which adds to thirty or more cumulative calendar days out of service. Where the consumer is a second or subsequent purchaser, lessee, or transferee of the motor vehicle and the consumer selects replacement of the motor vehicle, "the number of miles that the vehicle traveled" directly attributable to use by the consumer shall be calculated from the date of the original purchase, lease, or in-service date and the first attempt to diagnose or repair a nonconformity which ultimately results in the replacement of the vehicle. Except in the case of a motor home, where the consumer is a second or subsequent purchaser, lessee, or transferee of the motor vehicle and the manufacturer replaces the vehicle solely due to accumulated days out of service by reason of diagnosis or repair of one or more nonconformities, "the number of miles that the vehicle traveled" directly attributable to use by the consumer shall be calculated from the date of the original purchase, lease, or in service date and the date of the fifteenth cumulative calendar day out of service.

(d) In the case of a motor vehicle that is a motor home, where a manufacturer repurchases or replaces a motor home from the first purchaser, lessee, or transferee or from the second or subsequent purchaser, lessee, or transferee solely due to accumulated days out of service by reason of diagnosis or repair of one or more nonconformities, "the number of miles

that a motor home traveled directly attributable to use by the consumer" shall be limited to the period between the original purchase, lease, or in-service date and the date of the thirtieth cumulative calendar day out-of-service.

(2) Reasonable number of attempts, except in the case of a new motor vehicle that is a motor home, shall be deemed to have been undertaken by the manufacturer, its agent, or the new motor vehicle dealer to conform the new motor vehicle to the warranty within the eligibility period, if: (a) The same serious safety defect has been subject to diagnosis or repair two or more times, at least one of which is during the period of coverage of the applicable manufacturer's written warranty, and the serious safety defect continues to exist; (b) the same nonconformity has been subject to diagnosis or repair four or more times, at least one of which is during the period of coverage of the applicable manufacturer's written warranty, and the nonconformity continues to exist; (c) the vehicle is out of service by reason of diagnosis or repair of one or more nonconformities for a cumulative total of thirty calendar days, at least fifteen of them during the period of the applicable manufacturer's written warranty; or (d) within a twelve-month period, two or more different serious safety defects, each of which have been subject to diagnosis or repair one or more times, where at least one attempt for each serious safety defect occurs during the period of coverage of the applicable manufacturer's written warranty and within the eligibility period. For purposes of this subsection, the manufacturer's written warranty shall be at least one year after the date of the original delivery to the consumer of the vehicle or the first twelve thousand miles of operation, whichever occurs first. A new motor vehicle is deemed to have been "subject to diagnose or repair" when a consumer presents the new motor vehicle for warranty service at a service and repair facility authorized, designated, or maintained by a manufacturer to provide warranty services or a facility to which the manufacturer or an authorized facility has directed the consumer to obtain warranty service. A new motor vehicle has not been "subject to diagnose or repair" if the consumer refuses to allow the facility to attempt or complete a recommended warranty repair, or demands return of the vehicle to the consumer before an attempt to diagnose or repair can be completed.

(3)(a) In the case of a new motor vehicle that is a motor home, a reasonable number of attempts shall be deemed to have been undertaken by the motor home manufacturers, their respective agents, or their respective new motor vehicle dealers to conform the new motor vehicle to the warranty within the eligibility period, if: (i) The same serious safety defect has been subject to diagnosis or repair one or more times during the period of coverage of the applicable motor home manufacturer's written warranty, plus a final attempt to repair the vehicle as provided for in (b) of this subsection, and the serious safety defect continues to exist; (ii) the same nonconformity has been subject to repair three or more times, at least one of which is during the period of coverage of the applicable motor home manufacturer's written warranty, plus a final attempt to repair the vehicle as provided for in (b) of this subsection, and the nonconformity continues to exist; (iii) the vehicle is out of service by reason of diagnosis or repair of one or more nonconformities, including a safety evaluation, for a cumulative total of sixty calendar days

aggregating all motor home manufacturer days out of service, and the motor home manufacturers have had at least one opportunity to coordinate and complete an inspection and any repairs of the vehicle's nonconformities after receipt of notification from the consumer as provided for in (c) of this subsection; or (iv) within a twelve-month period, two or more different serious safety defects covered by the same manufacturer warranty have been each subject to diagnosis or repair one or more times, where at least one attempt for each serious safety defect occurs during the period of coverage of the applicable manufacturer's written warranty and within the eligibility period. Notice of manifestation of one or more serious safety defects to a manufacturer must be provided in writing by the consumer to the motor home manufacturer whose warranty covers the defect or all manufacturers of the motor home. The consumer shall send notices to the manufacturers in writing at their respective corporate, zone, or regional office addresses to allow the motor home manufacturers, their respective agents, or their respective new motor vehicle dealers an opportunity to coordinate and complete a comprehensive safety evaluation of the motor home. Notice of the manifestation of one or more serious safety defects should be made by the consumer as a unique notice to the manufacturers. The notice may be met by any written notification under this subsection of the need to repair a defect or condition identified by the consumer as relating to the safety of the motor home with or without a consumer's specific reference to whether the defect is a serious safety defect. Any notice of the manifestation of one or more serious safety defects shall be considered by a manufacturer as a consumer's request for a safety evaluation of the motor home. If the manufacturer, at its option, performs a safety evaluation, the manufacturers must provide a written report to the consumer of the evaluation of the motor home's safety in a timely manner. For purposes of this subsection, each motor home manufacturer's written warranty must be at least one year after the date of the original delivery to the consumer of the vehicle or the first twelve thousand miles of operation, whichever occurs first.

(b) In the case of a new motor vehicle that is a motor home, after one attempt has been made to repair a serious safety defect, or after three attempts have been made to repair the same nonconformity, the consumer shall give written notification of the need to repair the nonconformity to each of the motor home manufacturers at their respective corporate, zone, or regional office addresses to allow the motor home manufacturers to coordinate and complete a final attempt to cure the nonconformity. The motor home manufacturers each have fifteen days, commencing upon receipt of a notification under this subsection (3)(b), to respond and inform the consumer of the location of the facility where the vehicle will be repaired or evaluated. If the vehicle is unsafe to drive due to a serious safety defect, or to the extent the repair facility is more than one hundred miles from the motor home location, the motor home manufacturers are responsible for the cost of transporting the vehicle to and from the repair facility. The motor home manufacturers have a cumulative total of thirty days, commencing upon delivery of the vehicle to the designated repair facility by the consumer, to conform the vehicle to the applicable motor home manufacturer's written warranty. This time period may be extended if the consumer

agrees in writing. If a motor home manufacturer fails to respond to the consumer or perform the repairs within the time period prescribed, that motor home manufacturer is not entitled to a final attempt to cure the nonconformity.

(c) In the case of a new motor vehicle that is a motor home, if the vehicle is out of service by reason of diagnosis or repair of one or more nonconformities, including any safety evaluation, by the motor home manufacturers, their respective agents, or their respective new motor vehicle dealers for a cumulative total of thirty or more days aggregating all motor home manufacturer days out of service, the consumer shall so notify each motor home manufacturer in writing at their respective corporate, zone, or regional office addresses to allow the motor home manufacturers, their respective agents, or their respective new motor vehicle dealers an opportunity to coordinate and complete an inspection and any repairs of the vehicle's nonconformities. The motor home manufacturers have fifteen days, commencing upon receipt of the notification, to respond and inform the consumer of the location of the facility where the vehicle will be repaired or evaluated. If the vehicle is unsafe to drive due to a serious safety defect, or to the extent the repair facility is more than one hundred miles from the motor home location, the motor home manufacturers are responsible for the cost of transporting the vehicle to and from the repair facility. Once the buyer delivers the vehicle to the designated repair facility, the inspection and repairs must be completed by the motor home manufacturers either (i) within ten days or (ii) before the vehicle is out of service by reason of diagnosis or repair of one or more nonconformities for sixty days, whichever time period is longer. This time period may be extended if the consumer agrees in writing. If a motor home manufacturer fails to respond to the consumer or perform the repairs within the time period prescribed, that motor home manufacturer is not entitled to at least one opportunity to inspect and repair the vehicle's nonconformities after receipt of notification from the buyer as provided for in this subsection (3)(c).

(4) No new motor vehicle dealer may be held liable by the manufacturer for any collateral charges, incidental costs, purchase price refunds, or vehicle replacements. Manufacturers shall not have a cause of action against dealers under this chapter. A violation of any responsibilities expressly imposed upon dealers under this chapter is a per se violation of chapter 19.86 RCW. Except in the limited circumstances of a dealer becoming a manufacturer due to a postmanufacturing modification of a new motor vehicle as defined in RCW 19.118.021(8), consumers shall not have a cause of action against dealers under this chapter. Consumers may pursue rights and remedies against dealers under any other law, including chapters 46.70 and 46.71 RCW. Manufacturers and consumers may not make dealers parties to arbitration board proceedings under this chapter. [2009 c 351 § 3; 2007 c 426 § 1; 1998 c 298 § 4; 1995 c 254 § 3; 1989 c 347 § 2; 1987 c 344 § 4.]

Application—2009 c 351: See note following RCW 19.118.021.

Additional notes found at www.leg.wa.gov

19.118.061 Vehicle with nonconformities or out of service—Notification of correction—Resale or transfer of title—Issuance of new title—Disclosure to buyer—Intervening transferor. (1) A manufacturer is prohibited from

reselling any motor vehicle determined or adjudicated as having a serious safety defect unless the serious safety defect has been corrected and the manufacturer warrants upon the first subsequent resale that the defect has been corrected.

(2) Before any sale or transfer of a motor vehicle that has been replaced or repurchased by the manufacturer after a determination, adjudication, or settlement of a claim under this chapter, the manufacturer must:

(a) Notify the attorney general upon receipt of the motor vehicle;

(b) Submit a title application to the department of licensing in this state for title to the motor vehicle in the name of the manufacturer within sixty days; and

(c) Notify the attorney general and the department of licensing if the nonconformity in the motor vehicle is corrected.

(3) Before the first subsequent resale, either at wholesale or retail, or transfer of title of a motor vehicle previously returned after a final determination, adjudication, or settlement under this chapter or under a similar statute of any other state, the manufacturer, its agent, or a motor vehicle dealer, as defined in *RCW 46.70.011(4), who has actual knowledge of said final determination, adjudication, or settlement must:

(a) Obtain from the attorney general and attach to the motor vehicle a resale window display disclosure notice. Only the retail purchaser may remove the resale window display disclosure notice after execution of the resale disclosure form required under this subsection; and

(b) Obtain from the attorney general, execute, and deliver to the buyer before sale or other transfer of title a resale disclosure form setting forth information identifying the nonconformity and a title brand.

(4)(a) When a manufacturer reacquires a vehicle under this chapter, the department of licensing must issue a new title with a title brand indicating the motor vehicle was returned under this chapter and information that the nonconformity has not been corrected.

(b) Upon receipt of the manufacturer's notification under subsection (2) of this section that the nonconformity has been corrected and the manufacturer's application for title in the name of the manufacturer under this section, the department of licensing must issue a new title with a title brand indicating the motor vehicle was returned under this chapter and information that the nonconformity has been corrected. Upon the first subsequent resale, either at wholesale or retail, or transfer of title of a motor vehicle, as provided under this section, the manufacturer shall warrant upon the resale that the nonconformity has been corrected.

(c) When the department of licensing receives a title application that complies with the department's requirements and procedures for a motor vehicle previously titled in another state and that has a title brand or other documentation indicating the motor vehicle was reacquired by a manufacturer under a similar law, the department of licensing must issue a new title with a title brand indicating the motor vehicle was returned under a similar law of another state.

(5) After a manufacturer's receipt of a motor vehicle under this chapter and prior to a motor vehicle's first subsequent retail transfer by resale or lease, any intervening transferor of a motor vehicle subject to the requirements of this section who has received the resale disclosure form and

resale window display disclosure notice provided by the attorney general under this section must deliver the resale disclosure form and resale window display disclosure notice with the motor vehicle to the next transferor, purchaser, or lessee to ensure proper and timely notice and disclosure. Any intervening transferor who fails to comply with this subsection must, at the option of the subsequent transferor or first subsequent retail purchaser or lessee: (a) Indemnify any subsequent transferor or first subsequent retail purchaser for all damages caused by such violation; or (b) repurchase the motor vehicle at the full purchase price including all fees, taxes, and costs incurred for goods and services which were included in the subsequent transaction. [2010 c 31 § 1; 2009 c 351 § 4; 1998 c 298 § 5; 1995 c 254 § 4; 1989 c 347 § 3; 1987 c 344 § 5.]

***Reviser's note:** RCW 46.70.011 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (4) to subsection (17), effective July 1, 2011.

Application—2009 c 351: See note following RCW 19.118.021.

Additional notes found at www.leg.wa.gov

19.118.070 Remedies. The remedies provided under this chapter are cumulative and are in addition to any other remedies provided by law. [1983 c 240 § 7.]

19.118.080 New motor vehicle arbitration boards—Arbitration proceedings—Prerequisite to filing action in superior court. (1) Except as provided in RCW 19.118.160, the attorney general shall contract with one or more entities to conduct arbitration proceedings in order to settle disputes between consumers and manufacturers as provided in this chapter, and each entity shall constitute a new motor vehicle arbitration board for purposes of this chapter. The entities shall not be affiliated with any manufacturer or new motor vehicle dealer and shall have available the services of persons with automotive technical expertise to assist in resolving disputes under this chapter. No entity or its officers or employees conducting board proceedings and no arbitrator presiding at such proceedings shall be directly involved in the manufacture, distribution, sale, or warranty service of any motor vehicle. Payment to the entities for the arbitration services shall be made from the new motor vehicle arbitration account.

(2) The attorney general shall adopt rules for the uniform conduct of the arbitrations by the boards whether conducted by an entity or by the attorney general pursuant to RCW 19.118.160, which rules shall include but not be limited to the following procedures:

(a) At all arbitration proceedings, the parties are entitled to present oral and written testimony, to present witnesses and evidence relevant to the dispute, to cross-examine witnesses, and to be represented by counsel.

(b) A dealer, manufacturer, or other persons shall produce records and documents requested by a party which are reasonably related to the dispute. If a dealer, manufacturer, or other person refuses to comply with such a request, a party may present a request for the attorney general to issue a subpoena.

The subpoena shall be issued only for the production of records and documents which the attorney general has determined are reasonably related to the dispute, including but not

limited to documents described in RCW 19.118.031 (4) or (5).

If a party fails to comply with the subpoena, the arbitrator may at the outset of the arbitration hearing impose any of the following sanctions: (i) Find that the matters which were the subject of the subpoena, or any other designated facts, shall be taken to be established for purposes of the hearing in accordance with the claim of the party which requested the subpoena; (ii) refuse to allow the disobedient party to support or oppose the designated claims or defenses, or prohibit that party from introducing designated matters into evidence; (iii) strike claims or defenses, or parts thereof; or (iv) render a decision by default against the disobedient party.

If a nonparty fails to comply with a subpoena and upon an arbitrator finding that without such compliance there is insufficient evidence to render a decision in the dispute, the attorney general may enforce such subpoena in superior court and the arbitrator shall continue the arbitration hearing until such time as the nonparty complies with the subpoena or the subpoena is quashed.

(c) A party may obtain written affidavits from employees and agents of a dealer, a manufacturer or other party, or from other potential witnesses, and may submit such affidavits for consideration by the board.

(d) Records of the board proceedings shall be open to the public. The hearings shall be open to the public to the extent practicable.

(e) A single arbitrator may be designated to preside at such proceedings.

(3) A consumer shall exhaust the new motor vehicle arbitration board remedy or informal dispute resolution settlement procedure under RCW 19.118.150 before filing any superior court action.

(4) The attorney general shall maintain records of each dispute submitted to the new motor vehicle arbitration board, including an index of new motor vehicles by year, make, and model.

(5) The attorney general shall compile aggregate annual statistics for all disputes submitted to, and decided by, the new motor vehicle arbitration board, as well as annual statistics for each manufacturer that include, but shall not be limited to, the number and percent of: (a) Replacement motor vehicle requests; (b) purchase price refund requests; (c) replacement motor vehicles obtained in prehearing settlements; (d) purchase price refunds obtained in prehearing settlements; (e) replacement motor vehicles awarded in arbitration; (f) purchase price refunds awarded in arbitration; (g) board decisions neither complied with during the forty calendar day period nor petitioned for appeal within the thirty calendar day period; (h) board decisions appealed categorized by consumer or manufacturer; (i) the nature of the court decisions and who the prevailing party was; (j) appeals that were held by the court to be brought without good cause; and (k) appeals that were held by the court to be brought solely for the purpose of harassment. The statistical compilations shall be public information.

(6) The attorney general shall adopt rules to implement this chapter. Such rules shall include uniform standards by which the boards shall make determinations under this chapter, including but not limited to rules which provide:

(a) A board shall find that a nonconformity exists if it determines that the consumer's new motor vehicle has a defect, serious safety defect, or condition that substantially impairs the use, value, or safety of the vehicle.

(b) A board shall find that a reasonable number of attempts to repair a nonconformity have been undertaken if the history of attempts to diagnose or repair defects or conditions in the new motor vehicle meets or exceeds those identified in RCW 19.118.041.

(c) A board shall find that a manufacturer has failed to comply with RCW 19.118.041 if it finds that the manufacturer, its agent, or the new motor vehicle dealer has failed to correct a nonconformity after a reasonable number of attempts and the manufacturer has failed, within forty days of the consumer's written request, to repurchase the vehicle or replace the vehicle with a vehicle identical or reasonably equivalent to the vehicle being replaced.

(7) The attorney general shall provide consumers with information regarding the procedures and remedies under this chapter. [2009 c 351 § 5; 1998 c 245 § 7; 1995 c 254 § 5; 1989 c 347 § 4; 1987 c 344 § 6.]

Application—2009 c 351: See note following RCW 19.118.021.

Additional notes found at www.leg.wa.gov

19.118.090 Request for arbitration—Eligibility—Manufacturer's response—Defenses—Remedies—Acceptance or appeal. (1) A consumer may request arbitration under this chapter by submitting the request to the attorney general. Within ten days after receipt of an arbitration request, the attorney general shall make a reasonable determination of the cause of the request for arbitration and provide necessary information to the consumer regarding the consumer's rights and remedies under this chapter. The attorney general shall accept a request for arbitration, except where it clearly appears from the materials submitted by the consumer that the dispute is not eligible because it is lacking a statement of a claim, incomplete, untimely, frivolous, fraudulent, filed in bad faith, *res judicata*, or beyond the authority established in this chapter. A dispute found to be ineligible for arbitration because it lacks a statement of a claim or is incomplete may be reconsidered by the attorney general upon the submission of other information or documents regarding the dispute.

(2) After a dispute is accepted, the attorney general shall assign the dispute to the board. From the date the consumer's request for arbitration is assigned by the attorney general, the board shall have forty-five calendar days to have an arbitrator hear the dispute and sixty days for the board to submit a decision to the attorney general. If the board determines that additional information is necessary to make a fair and reasoned decision, the arbitrator may continue the arbitration proceeding on a subsequent date within ten calendar days of the initial hearing. The board may require a party to submit additional information or request that the attorney general issue a subpoena to a nonparty for documents and records for a continued hearing.

(3) Manufacturers shall submit to arbitration if such arbitration is requested by the consumer within thirty months from the date of the original delivery of the new motor vehicle to a consumer at retail and if the consumer's dispute is accepted for arbitration by the attorney general. In the case of

a motor home, the thirty-month period will be extended by the amount of time it takes the motor home manufacturers to complete the final repair attempt at the designated repair facility as provided for in RCW 19.118.041(3)(b).

(4) The manufacturer shall complete a written manufacturer response to the consumer's request for arbitration. The manufacturer shall provide a response to the consumer and the attorney general within ten calendar days from the date of the manufacturer's receipt of notice of the attorney general's assignment of a dispute for arbitration. The manufacturer response shall include all issues and affirmative defenses related to the nonconformities identified in the consumer's request for arbitration that the manufacturer intends to raise at the arbitration hearing.

(5) It is an affirmative defense to any claim under this chapter that: (a) The alleged nonconformity does not substantially impair the use, value, or safety of the new motor vehicle; or (b) the alleged nonconformity is the result of abuse, neglect, or unauthorized modifications or alterations of the new motor vehicle.

(6) The arbitration decision must contain a written finding of whether the new motor vehicle should be repurchased or replaced pursuant to the standards set forth under this chapter.

(a) The board shall award the remedies under this chapter if a finding is made pursuant to RCW 19.118.041 that one or more nonconformities have been subject to a reasonable number of attempts.

(b) If the board awards remedies under this chapter after a finding is made pursuant to RCW 19.118.041 that one or more nonconformities have been subject to a reasonable number of attempts, the board shall award reasonable costs and attorneys' fees incurred by the consumer where the manufacturer has been directly represented by counsel: (i) in dealings with the consumer in response to a request to repurchase or replace under RCW 19.118.041; (ii) in settlement negotiations; (iii) in preparation of the manufacturer's statement; or (iv) at an arbitration hearing or other arbitration proceeding. In the case of an arbitration involving a motor home, the board may allocate liability among the motor home manufacturers.

(c) The decision of the board shall be submitted to the attorney general who shall deliver it by certified mail, electronic mail confirmed by an electronic notice of delivery status or similar confirmation, or personal service to the consumer and the manufacturer.

(7) The consumer may accept or reject the arbitration board decision. Upon acceptance by the consumer, the arbitration board decision shall become final. The consumer shall send written notification of acceptance or rejection to the attorney general within sixty days of receiving the decision and the attorney general shall immediately deliver a copy of the consumer's acceptance to the manufacturer by certified mail, return receipt requested, electronic mail confirmed by an electronic notice of delivery status or similar confirmation, or by personal service. Failure of the consumer to respond to the attorney general within sixty calendar days of receiving the decision shall be considered a rejection of the decision by the consumer.

(8) Where a consumer rejects an arbitration decision, the consumer may appeal to superior court pursuant to RCW

19.118.100. The consumer shall have one hundred twenty calendar days from the date of rejection to file a petition of appeal in superior court. At the time the petition of appeal is filed, the consumer shall deliver, by certified mail or personal service, a conformed copy of such petition to the attorney general.

(9) Upon receipt of the consumer's acceptance, the manufacturer shall have forty calendar days to comply with the arbitration board decision or thirty calendar days to file a petition of appeal in superior court. At the time the petition of appeal is filed, the manufacturer shall deliver, by certified mail or personal service, a conformed copy of such petition to the attorney general. If the attorney general receives no notice of petition of appeal after forty calendar days, the attorney general shall contact the consumer to verify compliance. [2009 c 351 § 6; 1998 c 298 § 6; 1995 c 254 § 6; 1989 c 347 § 5; 1987 c 344 § 7.]

Application—2009 c 351: See note following RCW 19.118.021.

Additional notes found at www.leg.wa.gov

19.118.095 Arbitration decision—Compliance—Accomplishment—Dispute—Failure—Fine—Costs—Attorneys' fees. (1) Compliance with an arbitration board decision under this chapter must be accomplished at a time, place, and in a manner to be determined by the mutual agreement of the consumer and manufacturer.

(a) The consumer shall make the motor vehicle available to the manufacturer free of damage other than that related to any nonconformity, defect, or condition to which a warranty applied, or that can reasonably be expected in the use of the vehicle for ordinary or reasonably intended purposes and in consideration of the miles traveled by the vehicle. Any insurance claims or settlement proceeds for repair of damage to the vehicle due to fire, theft, vandalism, or collision must be assigned to the manufacturer or, at the consumer's option, the repair must be completed before return of the vehicle to the manufacturer.

The consumer may not remove any equipment or option that was included in the original purchase or lease of the vehicle or that is otherwise included in the repurchase or replacement award. In removing any equipment not included in the original purchase or lease, the consumer shall exercise reasonable care to avoid further damage to the vehicle but is not required to return the vehicle to original condition.

(b) At the time of compliance with an arbitration board decision that awards repurchase, the manufacturer shall make full payment to the consumers and either the lessor or lienholder, or both, or provide verification to the consumer of prior payment to either the lessor or lienholder, or both.

At the time of compliance with an arbitration board decision that awards replacement, the manufacturer shall provide the replacement vehicle together with any refund of incidental costs.

(c) At any time before compliance a party may request the attorney general to resolve disputes regarding compliance with the arbitration board decision including but not limited to time and place for compliance, condition of the vehicle to be returned, clarification or recalculation of refund amounts under the award, or a determination if an offered vehicle is reasonably equivalent to the vehicle being replaced. The attorney general may resolve the dispute or refer compliance-

(2018 Ed.)

related disputes to the board pursuant to RCW 19.118.160 for a compliance dispute hearing and decision. In resolving compliance disputes the attorney general or board may not review, alter, or otherwise change the findings of a decision or extend the time for compliance beyond the time necessary to resolve the dispute.

(d) Failure of the consumer to make the vehicle available within sixty calendar days in response to a manufacturer's unconditional tender of compliance is considered a rejection of the arbitration decision by the consumer, except as provided in (c) of this subsection or subsection (2) of this section.

(2) If, at the end of the forty calendar day period, neither compliance with nor a petition to appeal the board's decision has occurred, the attorney general may impose a fine of up to one thousand dollars per day until compliance occurs or a maximum penalty of one hundred thousand dollars accrues unless the manufacturer can provide clear and convincing evidence that any delay or failure was beyond its control or was acceptable to the consumer as evidenced by a written statement signed by the consumer. If the manufacturer fails to provide the evidence or fails to pay the fine, the attorney general may initiate proceedings against the manufacturer for failure to pay any fine that accrues until compliance with the board's decision occurs or the maximum penalty of one hundred thousand dollars results. If the attorney general prevails in an enforcement action regarding any fine imposed under this subsection, the attorney general is entitled to reasonable costs and attorneys' fees. Fines and recovered costs and fees shall be returned to the new motor vehicle arbitration account. [2009 c 351 § 7; 1995 c 254 § 8.]

Application—2009 c 351: See note following RCW 19.118.021.

Additional notes found at www.leg.wa.gov

19.118.100 Trial de novo—Posting security—Recovery. (1) The consumer or the manufacturer may request a trial de novo of the arbitration decision, including a rejection, in superior court.

(2) If the manufacturer appeals, the court may require the manufacturer to post security for the consumer's financial loss due to the passage of time for review.

(3) If the consumer prevails, recovery shall include the monetary value of the award, attorneys' fees and costs incurred in the superior court action, and, if the board awarded the consumer replacement or repurchase of the vehicle and the manufacturer did not comply, continuing damages in the amount of twenty-five dollars per day for all days beyond the forty calendar day period following the manufacturer's receipt of the consumer's acceptance of the board's decision in which the manufacturer did not provide the consumer with the free use of a comparable loaner replacement motor vehicle. If it is determined by the court that the party that appealed acted without good cause in bringing the appeal or brought the appeal solely for the purpose of harassment, the court may triple, but at least shall double, the amount of the total award. [1989 c 347 § 6; 1987 c 344 § 8.]

19.118.110 Arbitration fee—New motor vehicle arbitration account—Report by attorney general. If the new motor vehicle will be registered in the state of Washington, a three-dollar arbitration fee shall be collected by either the

new motor vehicle dealer or vehicle lessor from the consumer upon execution of a retail sale or lease agreement. The fee shall be forwarded to the department of licensing at the time of title application for deposit in the new motor vehicle arbitration account hereby created in the state treasury. Moneys in the account shall be used for the purposes of this chapter, subject to appropriation. During the 1995-97 fiscal biennium, the legislature may transfer moneys from the account to the extent that the moneys are not necessary for the purposes of this chapter.

At the end of each fiscal year, the attorney general shall prepare a report listing the annual revenue generated and the expenses incurred in implementing and operating the arbitration program under this chapter.

During the 2017-2019 fiscal biennium, the legislature may direct the state treasurer to make transfers of moneys in the new motor vehicle arbitration account to the state general fund. [2017 3rd sp.s. c 1 § 951; 2008 c 93 § 1; 1995 2nd sp.s. c 18 § 910; 1995 c 254 § 7; 1989 c 347 § 7; 1987 c 344 § 9.]

Effective date—2017 3rd sp.s. c 1: See note following RCW 43.41.455.

Additional notes found at www.leg.wa.gov

19.118.120 Application of consumer protection act.

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. [2009 c 351 § 8; 1987 c 344 § 10.]

Application—2009 c 351: See note following RCW 19.118.021.

19.118.130 Waivers, limitations, disclaimers—Void.

Any agreement entered into by a consumer for the purchase of a new motor vehicle that waives, limits, or disclaims the rights set forth in RCW 19.118.021 through 19.118.140 shall be void as contrary to public policy. Said rights shall extend to a subsequent transferee of such new motor vehicle. [1987 c 344 § 11.]

19.118.140 Other rights and remedies not precluded.

Nothing in this chapter limits the consumer from pursuing other rights or remedies under any other law. [1987 c 344 § 12.]

19.118.150 Informal dispute resolution settlement procedure. If a manufacturer has established an informal dispute resolution settlement procedure which substantially complies with the applicable provision of Title 16, Code of Federal Regulations Part 703, as from time to time amended, a consumer may choose to first submit a dispute under this chapter to the informal dispute resolution settlement procedure. [1989 c 347 § 8; 1987 c 344 § 14.]

19.118.160 Arbitration program—When established by attorney general. If the attorney general is unable to contract with one or more entities to conduct arbitrations, the attorney general shall establish an arbitration program and

conduct arbitrations under the procedures and standards established in this chapter. [2009 c 351 § 9; 1989 c 347 § 9; 1987 c 344 § 15.]

Application—2009 c 351: See note following RCW 19.118.021.

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

19.118.900 Effective dates—1987 c 344. (1) Section 9 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 1, 1987.

(2) Sections 2 through 8, 10 through 12, and 14 through 16 of this act shall take effect January 1, 1988, except that the attorney general may take such actions as are necessary to ensure the new motor vehicle arbitration boards are established and operational. [1987 c 344 § 22.]

19.118.904 Effective date—1989 c 347. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect June 1, 1989. [1989 c 347 § 11.]

Chapter 19.120 RCW

GASOLINE DEALER BILL OF RIGHTS ACT

Sections

- 19.120.010 Definitions.
- 19.120.020 Sale of franchise to third party.
- 19.120.030 Sale of franchise to corporation.
- 19.120.040 Franchise considered personal property—Designated successor in interest.
- 19.120.050 Purchase of real estate and improvements owned by refiner-supplier—Retailer given right of first refusal—Notice to retailer.
- 19.120.060 Refiner-suppliers—Prohibited conduct.
- 19.120.070 Offers, sales, or purchases of franchises—Unlawful acts.
- 19.120.080 Refiner-supplier and retailer relationship—Rights and prohibitions.
- 19.120.090 Action for damages, rescission, or other relief.
- 19.120.100 Limitation period tolled.
- 19.120.110 Civil actions by retailers—Attorneys' fees.
- 19.120.120 Civil actions by attorney general—Attorneys' fees—Criminal actions not limited by chapter.
- 19.120.130 Exception or exemption—Burden of proof—Waiver of provisions of chapter void.
- 19.120.900 Short title.
- 19.120.901 Application of chapter.
- 19.120.902 Intent—Interpretation consistent with chapter 19.100 RCW.
- 19.120.903 Liberal construction.
- 19.120.905 Effective date—1986 c 320.
- 19.120.906 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

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

(1) "Advertisement" means any written or printed communication or any communication by means of recorded telephone messages or spoken on radio, television, or similar communication media published in connection with an offer or sale of a franchise.

(2) "Affiliate" means any person, firm, or corporation who controls or is controlled by any motor fuel refiner-supplier, and includes any subsidiary or affiliated corporation in which the motor fuel refiner-supplier or its shareholders, officers, agents, or employees hold or control more than twenty-five percent of the voting shares.

(3) "Community interest" means a continuing financial interest between the motor fuel refiner-supplier and motor fuel retailer in the operation of the franchise business.

(4) "Motor fuel" means gasoline or diesel fuel of a type distributed for use in self-propelled motor vehicles and includes gasohol.

(5) "Motor fuel franchise" means any oral or written contract, either expressed or implied, between a motor fuel refiner-supplier and motor fuel retailer under which the motor fuel retailer is supplied motor fuel for resale to the public under a trademark owned or controlled by the motor fuel refiner-supplier or for sale on commission or for a fee to the public, or any agreements between a motor fuel refiner-supplier and motor fuel retailer under which the retailer is permitted to occupy premises owned, leased, or controlled by the refiner-supplier for the purpose of engaging in the retail sale of motor fuel under a trademark owned or controlled by the motor fuel refiner-supplier supplied by the motor fuel refiner-supplier.

(6) "Motor fuel refiner-supplier" means any person, firm, or corporation, including any affiliate of the person, firm, or corporation, engaged in the refining of crude oil into petroleum who supplies motor fuel for sale, consignment, or distribution through retail outlets.

(7) "Motor fuel retailer" means a person, firm, or corporation that resells motor fuel entirely at one or more retail motor fuel outlets pursuant to a motor fuel franchise entered into with a refiner-supplier.

(8) "Offer or offer to sell" includes every attempt or offer to dispose of or solicitation of an offer to buy a franchise or an interest in a franchise.

(9) "Person" means a natural person, corporation, partnership, trust, or other entity and in the case of an entity, it shall include any other entity which has a majority interest in such an entity or effectively controls such other entity as well as the individual officers, directors, and other persons in act of control of the activities of each such entity.

(10) "Price" means the net purchase price, after adjustment for commission, brokerage, rebate, discount, services or facilities furnished, or other such adjustment.

(11) "Publish" means publicly to issue or circulate by newspaper, mail, radio, or television or otherwise to disseminate to the public.

(12) "Retail motor fuel outlet" means any location where motor fuel is distributed for purposes other than resale.

(13) "Sale or sell" includes every contract of sale, contract to sell, or disposition of a franchise.

(14) "Trademark" means any trademark, trade name, service mark, or other identifying symbol or name. [1989 c 11 § 3; 1986 c 320 § 1.]

(2018 Ed.)

Additional notes found at www.leg.wa.gov

19.120.020 Sale of franchise to third party. Notwithstanding the terms of any motor fuel franchise, a motor fuel refiner-supplier shall not absolutely prohibit or unreasonably withhold its consent to any sale, assignment, or other transfer of the motor fuel franchise by a motor fuel retailer to a third party without fairly compensating the motor fuel retailer for the fair market value, at the time of expiration of the franchise, of the motor fuel retailer's inventory, supplies, equipment, and furnishings purchased from the motor fuel refiner-supplier, and good will, exclusive of personalized materials which have no value to the motor fuel refiner-supplier, and inventory, supplies, equipment, and furnishings not reasonably required in the conduct of the franchise business. A motor fuel refiner-supplier may offset against amounts owed to a motor fuel retailer under this section any amounts owed by the motor fuel retailer to the motor fuel refiner-supplier. [1986 c 320 § 3.]

19.120.030 Sale of franchise to corporation. Notwithstanding the terms of any motor fuel franchise, no motor fuel refiner-supplier may prohibit or prevent the sale, assignment, or other transfer of the motor fuel franchise to a corporation in which the motor fuel retailer has and maintains a controlling interest if the motor fuel retailer offers in writing personally to guarantee the performance of the obligations under the motor fuel franchise. [1986 c 320 § 4.]

19.120.040 Franchise considered personal property—Designated successor in interest. Notwithstanding the terms of any motor fuel franchise, the interest of a motor fuel retailer under such an agreement shall be considered personal property and shall devolve on the death of the motor fuel retailer to a designated successor in interest of the retailer, limited to the retailer's spouse, adult child, or adult stepchild or, if no successor in interest is designated, to the retailer's spouse, if any. The designation shall be made, witnessed in writing by at least two persons, and delivered to the motor fuel refiner-supplier during the term of the franchise. The designation may be revised at any time by the motor fuel retailer and shall be substantially in the following form:

"I (motor fuel retailer name) at the service station located at, in the City of, Washington, designate as my successor in interest under RCW 19.120.030 and as my alternate successor if the originally designated successor is unable or unwilling so to act.

I so specify this . . . day of, (year)"

The motor fuel refiner-supplier shall assist the designated successor in interest temporarily in the day-to-day operation of the service station to insure continued operation of the service station. [2016 c 202 § 22; 1986 c 320 § 5.]

19.120.050 Purchase of real estate and improvements owned by refiner-supplier—Retailer given right of first refusal—Notice to retailer. Notwithstanding the terms of any motor fuel franchise, the motor fuel retailer shall be given the right of first refusal to purchase the real estate and/or improvements owned by the refiner-supplier at the franchise location, and at least thirty days' advance notice

within which to exercise this right, prior to any sale thereof to any other buyer. [1986 c 320 § 6.]

19.120.060 Refiner-suppliers—Prohibited conduct. Notwithstanding the terms of any motor fuel franchise, no motor fuel refiner-supplier may:

(1) Require any motor fuel retailer to meet mandatory minimum sales volume requirements for fuel or other products unless the refiner-supplier proves that its price to the motor fuel retailer has been sufficiently low to enable the motor fuel retailer reasonably to meet the mandatory minimum;

(2) Alter, or require the motor fuel retailer to consent to the alteration of, any provision of the motor fuel franchise during its effective term without mutual consent of the motor fuel retailer;

(3) Interfere with any motor fuel retailer's right to assistance of counsel on any matter or to join or be active in any trade association; and

(4) Set or compel, directly or indirectly, the retail price at which the motor fuel retailer sells motor fuel or other products to the public. [1986 c 320 § 7.]

19.120.070 Offers, sales, or purchases of franchises—Unlawful acts. It is unlawful for any person in connection with the offer, sale, or purchase of any motor fuel franchise directly or indirectly:

(1) To sell or offer to sell a motor fuel franchise in this state by means of any written or oral communication which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made in light of the circumstances under which they were made not misleading.

(2) To employ any device, scheme, or artifice to defraud.

(3) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person. [1986 c 320 § 8.]

19.120.080 Refiner-supplier and retailer relationship—Rights and prohibitions. Without limiting the other provisions of this chapter, the following specific rights and prohibitions shall govern the relation between the motor fuel refiner-supplier and the motor fuel retailers:

(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) Require a motor fuel retailer to purchase or lease goods or services of the motor fuel refiner-supplier or from approved sources of supply unless and to the extent that the motor fuel refiner-supplier satisfies the burden of proving that such restrictive purchasing agreements are reasonably necessary for a lawful purpose justified on business grounds, and do not substantially affect competition: PROVIDED, That this provision shall not apply to the initial inventory of the motor fuel 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.

(b) Discriminate between motor fuel retailers 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 motor fuel refiner-supplier satisfies the burden of proving that any classification of or discrimination between motor fuel retailers is reasonable, is based on motor fuel franchises granted at materially different times and such discrimination is reasonably related to such difference in time or on other proper and justifiable distinctions considering the purposes of this chapter, and is not arbitrary.

(c) Sell, rent, or offer to sell to a motor fuel retailer any product or service for more than a fair and reasonable price.

(d) Require a motor fuel retailer to assent to a release, assignment, novation, or waiver which would relieve any person from liability imposed by this chapter. [2000 c 171 § 72; 1986 c 320 § 9.]

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.]

19.120.100 Limitation period tolled. The pendency of any civil, criminal, or administrative proceedings against a person brought by the federal or Washington state governments or any of their agencies under the anti-trust laws, the Federal Trade Commission Act, or any federal or state act related to anti-trust laws or to franchising, or under this chapter shall toll the limitation of this action if the action is then instituted within one year after the final judgment or order in such proceedings: PROVIDED, That said limitation of

actions shall in any case toll the law so long as there is actual concealment on the part of the person. [1986 c 320 § 11.]

19.120.110 Civil actions by retailers—Attorneys' fees. Any motor fuel retailer who is injured in his or her business by the commission of any act prohibited by this chapter, or any motor fuel retailer injured because of his or her refusal to accede to a proposal for an arrangement which, if consummated, would be in violation of this chapter may bring a civil action in superior court to enjoin further violations, to recover the actual damages sustained by him or her, or both, together with the costs of the suit, including reasonable attorney's fees. [1986 c 320 § 12.]

19.120.120 Civil actions by attorney general—Attorneys' fees—Criminal actions not limited by chapter. (1) The attorney general may bring an action in the name of the state against any person to restrain and prevent the doing of any act herein prohibited or declared to be unlawful. The prevailing party may in the discretion of the court recover the costs of such action including a reasonable attorneys' fee.

(2) Nothing in this chapter limits the power of the state to punish any person for any conduct which constitutes a crime by statute or at common law. [1986 c 320 § 13.]

19.120.130 Exception or exemption—Burden of proof—Waiver of provisions of chapter void. In any proceeding under this chapter, the burden of proving an exception or an exemption from definition is upon the person claiming it. Any condition, stipulation or provision purporting to bind any person acquiring a motor fuel franchise at the time of entering into a motor fuel franchise or other agreement to waive compliance with any provision of this chapter or any rule or order hereunder is void. [1986 c 320 § 14.]

19.120.900 Short title. This chapter shall be known as the "gasoline dealer bill of rights act." [1986 c 320 § 19.]

19.120.901 Application of chapter. The provisions of this chapter apply to any motor fuel franchise or contract entered into or renewed on or after June 30, 1986, between a motor fuel refiner-supplier and a motor fuel retailer. [1986 c 320 § 15.]

19.120.902 Intent—Interpretation consistent with chapter 19.100 RCW. It is the intent of the legislature that this chapter be interpreted consistent with chapter 19.100 RCW. [1986 c 320 § 17.]

19.120.903 Liberal construction. This chapter shall be liberally construed to effectuate its beneficial purposes. [1986 c 320 § 18.]

19.120.905 Effective date—1986 c 320. (1) Sections 20 and 21 are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions and shall take effect immediately.

(2) Sections 1 through 19, 22 and 23 of this act shall take effect June 30, 1986. [1986 c 320 § 24.]

(2018 Ed.)

19.120.906 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, 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, 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. [2009 c 521 § 57.]

Chapter 19.122 RCW UNDERGROUND UTILITIES

Sections

19.122.010	Intent.
19.122.020	Definitions.
19.122.027	One-number locator services—Single statewide toll-free telephone number.
19.122.030	Excavator and facility operator duties before excavation.
19.122.031	Exempted activities.
19.122.033	Notice of excavation to pipeline companies.
19.122.035	Pipeline company duties after notice of excavation—Examination—Information of damage—Notification of local first responders.
19.122.040	Underground facilities identified in bid or contract—Excavator's duty of reasonable care—Liability for damages—Attorneys' fees.
19.122.045	Exemption from liability.
19.122.050	Damage to underground facility—Notification by excavator—Repairs or relocation of facility.
19.122.053	Report of damage to underground facility.
19.122.055	Failure to notify one-number locator service—Civil penalty, if damages.
19.122.070	Civil penalties—Treble damages—Existing remedies not affected.
19.122.075	Damage or removal of permanent marking—Civil penalty.
19.122.080	Waiver of notification and marking requirements.
19.122.090	Excavation without a valid excavation confirmation code—Penalty.
19.122.100	Violation of RCW 19.122.090—Affirmative defense.
19.122.110	False excavation confirmation code—Penalty.
19.122.120	One-number locator service to provide excavation confirmation code.
19.122.130	Commission to contract with nonprofit entity—Safety committee—Review of violations of chapter.
19.122.140	Commission authority—Receipt of notification of violation of chapter—Referral to attorney general.
19.122.150	Commission authority—Violations of chapter—Imposition of penalties.
19.122.160	Damage prevention account.
19.122.170	Damage prevention account—Use of funds.
19.122.180	Damage prevention account—Deposit of penalties.
19.122.901	Short title—2011 c 263.

19.122.010 Intent. 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—2012 c 96; 2011 c 263: "Except for section 18 of this act (chapter 263, Laws of 2011), this act takes effect January 1, 2013." [2012 c 96 § 2; 2011 c 263 § 27.]

19.122.020 Definitions. 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, stormwater, 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. (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. (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. (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. (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. (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 report-

(2018 Ed.)

able 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 practical 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. (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.

19.122.045 Exemption from liability. Excavators who comply with the requirements of this chapter are not liable for any damages arising from contact or damage to an underground fiber optics facility other than the cost to repair the facility. [1988 c 99 § 2.]

19.122.050 Damage to underground facility—Notification by excavator—Repairs or relocation of facility. (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 appropriate 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. (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. (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.

19.122.070 Civil penalties—Treble damages—Existing remedies not affected. (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. 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. 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.

19.122.090 Excavation without a valid excavation confirmation code—Penalty. Any excavator who excavates, without a valid excavation confirmation code when required under this chapter, within thirty-five feet of a transmission pipeline is guilty of a misdemeanor. [2005 c 448 § 5.]

19.122.100 Violation of RCW 19.122.090—Affirmative defense. 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. 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.

19.122.120 One-number locator service to provide excavation confirmation code. Upon receipt, during normal

(2018 Ed.)

business hours, of notice of an intended excavation, the one-number locator service shall provide an excavation confirmation code. [2005 c 448 § 8.]

19.122.130 Commission to contract with nonprofit entity—Safety committee—Review of violations of chapter.

(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.

(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 training 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)(a) 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:

- (i) Local governments;
- (ii) A natural gas utility subject to regulation under Titles 80 and 81 RCW;
- (iii) Contractors;
- (iv) Excavators;
- (v) An electric utility subject to regulation under Title 80 RCW;

(vi) A consumer-owned utility, as defined in RCW 19.27A.140;

- (vii) A pipeline company;
- (viii) The insurance industry;
- (ix) The commission; and
- (x) A telecommunications company.

(b) The safety committee may pass bylaws and provide for those organizational processes that are necessary to complete the safety committee's tasks.

(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 occurring on or after January 1, 2013.

(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. [2017 c 20 § 1; 2012 c 96 § 1; 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. (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. [2017 c 20 § 2; 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. (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. [2017 c 20 § 3; 2011 c 263 § 21.]

Report—Effective date—2011 c 263: See notes following RCW 19.122.010.

19.122.160 Damage prevention account. 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. 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. 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. 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 19.126 RCW

WHOLESALE DISTRIBUTORS AND SUPPLIERS OF SPIRITS OR MALT BEVERAGES

Sections

19.126.010	Purpose.
19.126.020	Definitions.
19.126.030	Suppliers' protections.
19.126.040	Distributors' protections.
19.126.050	Suppliers' prohibited acts.
19.126.060	Attorney's fees—Costs.
19.126.070	Suspension or cancellation of license or certificate.
19.126.080	Civil actions—Injunctive relief.
19.126.900	Short title.

19.126.010 Purpose. (1) The legislature recognizes that both suppliers and wholesale distributors of malt beverages and spirits are interested in the goal of best serving the public interest through the fair, efficient, and competitive distribution of such beverages. The legislature encourages them to achieve this goal by:

(a) Assuring the wholesale distributor's freedom to manage the business enterprise, including the wholesale distributor's right to independently establish its selling prices; and

(b) Assuring the supplier and the public of service from wholesale distributors who will devote their best competitive efforts and resources to sales and distribution of the supplier's products which the wholesale distributor has been granted the right to sell and distribute.

(2) This chapter governs the relationship between suppliers of malt beverages and spirits and their wholesale distributors to the full extent consistent with the Constitution and laws of this state and of the United States. [2012 c 2 § 212 (Initiative Measure No. 1183, approved November 8, 2011); 2003 c 59 § 1; 1984 c 169 § 1.]

Finding—Application—Rules—Effective date—Contingent effective date—2012 c 2 (Initiative Measure No. 1183): See notes following RCW 66.24.620.

Additional notes found at www.leg.wa.gov

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

(1) "Agreement of distributorship" means any contract, agreement, commercial relationship, license, association, or any other arrangement, for a definite or indefinite period, between a supplier and distributor.

(2) "Authorized representative" has the same meaning as "authorized representative" as defined in RCW 66.04.010.

(3) "Brand" means any word, name, group of letters, symbol, or combination thereof, including the name of the distiller or brewer if the distiller's or brewer's name is also a significant part of the product name, adopted and used by a supplier to identify specific spirits or a specific malt beverage product and to distinguish that product from other spirits or malt beverages produced by that supplier or other suppliers.

(4) "Distributor" means any person, including but not limited to a component of a supplier's distribution system constituted as an independent business, importing or causing to be imported into this state, or purchasing or causing to be purchased within this state, any spirits or malt beverages for sale or resale to retailers licensed under the laws of this state, regardless of whether the business of such person is con-

ducted under the terms of any agreement with a distiller or malt beverage manufacturer.

(5) "Importer" means any distributor importing spirits or beer into this state for sale to retailer accounts or for sale to other distributors designated as "subjobbers" for resale.

(6) "Malt beverage manufacturer" means every brewer, fermenter, processor, bottler, or packager of malt beverages located within or outside this state, or any other person, whether located within or outside this state, who enters into an agreement of distributorship for the resale of malt beverages in this state with any wholesale distributor doing business in the state of Washington.

(7) "Person" means any natural person, corporation, partnership, trust, agency, or other entity, as well as any individual officers, directors, or other persons in active control of the activities of such entity.

(8) "Spirits manufacturer" means every distiller, processor, bottler, or packager of spirits located within or outside this state, or any other person, whether located within or outside this state, who enters into an agreement of distributorship for the resale of spirits in this state with any wholesale distributor doing business in the state of Washington.

(9) "Successor distributor" means any distributor who enters into an agreement, whether oral or written, to distribute a brand of spirits or malt beverages after the supplier with whom such agreement is made or the person from whom that supplier acquired the right to manufacture or distribute the brand has terminated, canceled, or failed to renew an agreement of distributorship, whether oral or written, with another distributor to distribute that same brand of spirits or malt beverages.

(10) "Supplier" means any spirits or malt beverage manufacturer or importer who enters into or is a party to any agreement of distributorship with a wholesale distributor. "Supplier" does not include: (a) Any distiller licensed under RCW 66.24.140 or 66.24.145 and producing less than one hundred fifty thousand proof gallons of spirits annually or any brewery or microbrewery licensed under RCW 66.24.240 and producing less than two hundred thousand barrels of malt liquor annually; (b) any brewer or manufacturer of malt liquor producing less than two hundred thousand barrels of malt liquor annually and holding a certificate of approval issued under RCW 66.24.270; or (c) any authorized representative of distillers or malt liquor manufacturers who holds an appointment from one or more distillers or malt liquor manufacturers which, in the aggregate, produce less than two hundred thousand barrels of malt liquor or one hundred fifty thousand proof gallons of spirits.

(11) "Terminated distribution rights" means distribution rights with respect to a brand of malt beverages which are lost by a terminated distributor as a result of termination, cancellation, or nonrenewal of an agreement of distributorship for that brand.

(12) "Terminated distributor" means a distributor whose agreement of distributorship with respect to a brand of spirits or malt beverages, whether oral or written, has been terminated, canceled, or not renewed. [2014 c 92 § 3; 2012 c 2 § 213 (Initiative Measure No. 1183, approved November 8, 2011). Prior: 2009 c 155 § 1; 2004 c 160 § 19; 2003 c 59 § 2; 1997 c 321 § 41; 1984 c 169 § 2.]

Finding—Application—Rules—Effective date—Contingent effective date—2012 c 2 (Initiative Measure No. 1183): See notes following RCW 66.24.620.

Additional notes found at www.leg.wa.gov

19.126.030 Suppliers' protections. Suppliers are entitled to the following protections which are deemed to be incorporated into every agreement of distributorship:

(1) Agreements between suppliers and wholesale distributors shall be in writing;

(2) A wholesale distributor shall maintain the financial and competitive capability necessary to achieve efficient and effective distribution of the supplier's products;

(3) A wholesale distributor shall maintain the quality and integrity of the supplier's product in the manner set forth by the supplier;

(4) A wholesale distributor shall exert its best efforts to sell the product of the supplier and shall merchandise such products in the stores of its retail customers as agreed between the wholesale distributor and supplier;

(5) The supplier may cancel or otherwise terminate any agreement with a wholesale distributor immediately and without notice if the reason for such termination is fraudulent conduct in any of the wholesale distributor's dealings with the supplier or its products, insolvency, the occurrence of an assignment for the benefit of creditors, bankruptcy, or suspension in excess of fourteen days or revocation of a license issued by the *state liquor board;

(6) A wholesale distributor shall give the supplier prior written notice, of not less than ninety days, of any material change in its ownership or management and the supplier has the right to reasonable prior approval of any such change; and

(7) A wholesale distributor shall give the supplier prior written notice, of not less than ninety days, of the wholesale distributor's intent to cancel or otherwise terminate the distributorship agreement. [2009 c 155 § 2; 1984 c 169 § 3.]

*Reviser's note: The "state liquor control board" was renamed the "state liquor and cannabis board" by 2015 c 70 § 3.

19.126.040 Distributors' protections. Wholesale distributors are entitled to the following protections which are deemed to be incorporated into every agreement of distributorship:

(1) Agreements between wholesale distributors and suppliers must be in writing;

(2) A supplier must give the wholesale distributor at least sixty days prior written notice of the supplier's intent to cancel or otherwise terminate the agreement, unless such termination is based on a reason set forth in RCW 19.126.030(5) or results from a supplier acquiring the right to manufacture or distribute a particular brand and electing to have that brand handled by a different distributor. The notice must state all the reasons for the intended termination or cancellation. Upon receipt of notice, the wholesale distributor has sixty days in which to rectify any claimed deficiency. If the deficiency is rectified within this sixty-day period, the proposed termination or cancellation is null and void and without legal effect;

(3) The wholesale distributor may sell or transfer its business, or any portion thereof, including the agreement, to successors in interest upon prior approval of the transfer by

the supplier. No supplier may unreasonably withhold or delay its approval of any transfer, including wholesaler's rights and obligations under the terms of the agreement, if the person or persons to be substituted meet reasonable standards imposed by the supplier;

(4) If an agreement of distributorship is terminated, canceled, or not renewed for any reason other than for cause, failure to live up to the terms and conditions of the agreement, or a reason set forth in RCW 19.126.030(5), the wholesale distributor is entitled to compensation from the successor distributor for the laid-in cost of inventory and for the fair market value of the terminated distribution rights. For purposes of this section, termination, cancellation, or nonrenewal of a distributor's right to distribute a particular brand constitutes termination, cancellation, or nonrenewal of an agreement of distributorship whether or not the distributor retains the right to continue distribution of other brands for the supplier. In the case of terminated distribution rights resulting from a supplier acquiring the right to manufacture or distribute a particular brand and electing to have that brand handled by a different distributor, the affected distribution rights will not transfer until such time as the compensation to be paid to the terminated distributor has been finally determined by agreement or arbitration;

(5) When a terminated distributor is entitled to compensation under subsection (4) of this section, a successor distributor must compensate the terminated distributor for the fair market value of the terminated distributor's rights to distribute the brand, less any amount paid to the terminated distributor by a supplier or other person with respect to the terminated distribution rights for the brand. If the terminated distributor's distribution rights to a brand of spirits or malt beverages are divided among two or more successor distributors, each successor distributor must compensate the terminated distributor for the fair market value of the distribution rights assumed by that successor distributor, less any amount paid to the terminated distributor by a supplier or other person with respect to the terminated distribution rights assumed by the successor distributor. A terminated distributor may not receive total compensation under this subsection that exceeds the fair market value of the terminated distributor's distribution rights with respect to the affected brand. Nothing in this section may be construed to require any supplier or other third person to make any payment to a terminated distributor;

(6) For purposes of this section, the "fair market value" of distribution rights as to a particular brand means the amount that a willing buyer would pay and a willing seller would accept for such distribution rights when neither is acting under compulsion and both have knowledge of all facts material to the transaction. "Fair market value" is determined as of the date on which the distribution rights are to be transferred in accordance with subsection (4) of this section;

(7) In the event the terminated distributor and the successor distributor do not agree on the fair market value of the affected distribution rights within thirty days after the terminated distributor is given notice of termination, the matter must be submitted to binding arbitration. Unless the parties agree otherwise, such arbitration must be conducted in accordance with the American arbitration association commercial arbitration rules with each party to bear its own costs and attorneys' fees;

(8) Unless the parties otherwise agree, or the arbitrator for good cause shown orders otherwise, an arbitration conducted pursuant to subsection (7) of this section must proceed as follows: (a) The notice of intent to arbitrate must be served within forty days after the terminated distributor receives notice of terminated distribution rights; (b) the arbitration must be conducted within ninety days after service of the notice of intent to arbitrate; and (c) the arbitrator or arbitrators must issue an order within thirty days after completion of the arbitration;

(9) In the event of a material change in the terms of an agreement of distribution, the revised agreement must be considered a new agreement for purposes of determining the law applicable to the agreement after the date of the material change, whether or not the agreement of distribution is or purports to be a continuing agreement and without regard to the process by which the material change is effected. [2012 c 2 § 214 (Initiative Measure No. 1183, approved November 8, 2011); 2009 c 155 § 3; 1984 c 169 § 4.]

Finding—Application—Rules—Effective date—Contingent effective date—2012 c 2 (Initiative Measure No. 1183): See notes following RCW 66.24.620.

19.126.050 Suppliers' prohibited acts. No supplier may:

(1) Coerce or induce, or attempt to induce or coerce, any wholesale distributor to engage in any illegal act or course of conduct;

(2) Require a wholesale distributor to assent to any unreasonable requirement, condition, understanding, or term of an agreement which prohibits a wholesaler from selling the product of any other supplier or suppliers;

(3) Require a wholesale distributor to accept delivery of any product or any other item or commodity which was not ordered by the wholesale distributor; or

(4) Fail or refuse to enter into an agreement of distributorship with a wholesale distributor that handles the supplier's products. [1985 c 440 § 1; 1984 c 169 § 5.]

19.126.060 Attorney's fees—Costs. In any action or arbitration brought by a wholesale distributor or a supplier pursuant to this chapter, other than an arbitration to determine the compensation due to a terminated distributor under RCW 19.126.040(4), the prevailing party shall be awarded its reasonable attorney's fees and costs. [2009 c 155 § 4; 1984 c 169 § 6.]

19.126.070 Suspension or cancellation of license or certificate. Continued violation of this chapter constitutes grounds, in the discretion of the *state liquor control board, for suspension or cancellation under RCW 66.24.010 of any license or certificate held by a supplier or its agent. [1985 c 440 § 2.]

*Reviser's note: The "state liquor control board" was renamed the "state liquor and cannabis board" by 2015 c 70 § 3.

19.126.080 Civil actions—Injunctive relief. A person injured by a violation of this chapter, other than a person seeking only a determination of the compensation due to a terminated distributor under RCW 19.126.040(4), may bring a civil action in a court of competent jurisdiction to enjoin

(2018 Ed.)

further violations. Injunctive relief may be granted in an action brought under this chapter without the injured party being required to post bond if, in the opinion of the court, there exists a likelihood that the injured party will prevail on the merits. [2009 c 155 § 5; 1985 c 440 § 3.]

19.126.900 Short title. This chapter may be known and cited as the wholesale distributor/supplier equity agreement act. [1984 c 169 § 7.]

Chapter 19.130 RCW

TELEPHONE BUYERS' PROTECTION ACT

Sections

19.130.010	Legislative findings.
19.130.020	Sales of new or reconditioned telephone equipment—Disclosure of certain information.
19.130.030	Certain advertising media—Application of chapter.
19.130.040	Certain radio equipment—Application of chapter.
19.130.050	Equipment not intended for connection to telephone network and used equipment located on customer's premises—Application of chapter.
19.130.060	Violations—Application of consumer protection act.
19.130.900	Chapter cumulative.
19.130.901	Short title.

19.130.010 Legislative findings. The legislature finds that the federal deregulation of the telephone industry provides telephone users with the opportunity to purchase and use telephone and other telecommunications equipment suited to their needs. The legislature finds that competitive markets function optimally when potential buyers have adequate information about the capabilities and reliability of the equipment offered for sale. The legislature further finds that disclosure of certain product information will benefit both buyers and sellers of telephone and other telecommunications equipment and is in the public interest. [1984 c 275 § 1.]

19.130.020 Sales of new or reconditioned telephone equipment—Disclosure of certain information. Any person offering for sale or selling new or reconditioned telephone handsets or keysets, private branch exchanges, or private automatic branch exchanges of not more than a twenty-station capacity, shall clearly disclose prior to sale by methods which may include posting of notice or printing on the equipment package the following:

(1) Whether the equipment uses pulse, tone, pulse-or-tone, or other signaling methods, and a general description of the services that can be accessed through the equipment;

(2) Whether the equipment is registered with the federal communications commission under the applicable federal regulations;

(3) The person responsible for repair of the equipment;

(4) Standard repair charges, if any; and

(5) The terms of any written warranty offered with the equipment. [1984 c 275 § 2.]

19.130.030 Certain advertising media—Application of chapter. Nothing in this chapter applies to a radio station, television station, publisher, printer, or distributor of a newspaper, magazine, billboard, or other advertising medium which accepts advertising in good faith without knowledge of

its violation of any provision of this chapter. [1984 c 275 § 3.]

19.130.040 Certain radio equipment—Application of chapter. This chapter shall not apply to radio equipment used for land, marine, or air mobile service, or any like service, whether or not such equipment is capable of interconnection by manual or automatic means to a telephone line. [1984 c 275 § 4.]

19.130.050 Equipment not intended for connection to telephone network and used equipment located on customer's premises—Application of chapter. This chapter shall not apply to equipment not intended for connection to the telephone network, nor to used equipment located on the customer's premises. [1984 c 275 § 5.]

19.130.060 Violations—Application of consumer protection act. Violation of this chapter constitutes a violation of chapter 19.86 RCW, the consumer protection act. It shall be presumed that damages to the consumer are equal to the purchase price of any telephone equipment sold in violation of this chapter up to one hundred dollars. Additional damages must be proved. [1984 c 275 § 7.]

19.130.900 Chapter cumulative. The rights, obligations, and remedies under this chapter are in addition to any rights, obligations, or remedies under federal statutes or regulations or other state statutes or rules. [1984 c 275 § 6.]

19.130.901 Short title. This chapter may be known and cited as the telephone buyers' protection act. [1984 c 275 § 8.]

Chapter 19.134 RCW

CREDIT SERVICES ORGANIZATIONS ACT

Sections

19.134.010	Definitions.
19.134.020	Prohibited conduct.
19.134.030	Surety bond and trust account—Exception to requirement.
19.134.040	Information statement—Prerequisite to contract or payment—File maintained.
19.134.050	Information statement—Contents.
19.134.060	Contract for purchase of services—Contents—Notice of cancellation—Buyer's copy.
19.134.070	Waiver of rights—Violations—Enforcement—Unfair business practice.
19.134.080	Damages—Attorney's fees.
19.134.900	Short title.

19.134.010 Definitions. As used in this chapter:

(1) "Buyer" means any individual who is solicited to purchase or who purchases the services of a credit services organization.

(2)(a) "Credit services organization" means any person who, with respect to the extension of credit by others, sells, provides, performs, or represents that he or she can or will sell, provide, or perform, in return for the payment of money or other valuable consideration any of the following services:

(i) Improving, saving, or preserving a buyer's credit record, history, or rating;

(ii) Obtaining an extension of credit for a buyer;

(iii) Stopping, preventing, or delaying the foreclosure of a deed of trust, mortgage, or other security agreement; or

(iv) Providing advice or assistance to a buyer with regard to either (a)(i), (a)(ii), or (a)(iii) of this subsection.

(b) "Credit services organization" does not include:

(i) Any person authorized to make loans or extensions of credit under the laws of this state or the United States who is subject to regulation and supervision by this state or the United States or a lender approved by the United States secretary of housing and urban development for participation in any mortgage insurance program under the national housing act;

(ii) Any bank, savings bank, or savings and loan institution whose deposits or accounts are eligible for insurance by the federal deposit insurance corporation or the federal savings and loan insurance corporation, or a subsidiary of such bank, savings bank, or savings and loan institution;

(iii) Any credit union, federal credit union, or out-of-state credit union doing business in this state under chapter 31.12 RCW;

(iv) Any nonprofit organization exempt from taxation under section 501(c)(3) of the internal revenue code;

(v) Any person licensed as a real estate broker by this state if the person is acting within the course and scope of that license;

(vi) Any person licensed as a collection agency pursuant to chapter 19.16 RCW if acting within the course and scope of that license;

(vii) Any person licensed to practice law in this state if the person renders services within the course and scope of his or her practice as an attorney;

(viii) Any broker-dealer registered with the securities and exchange commission or the commodity futures trading commission if the broker-dealer is acting within the course and scope of that regulation;

(ix) Any consumer reporting agency as defined in the federal fair credit reporting act, 15 U.S.C. Secs. 1681 through 1681t; or

(x) Any mortgage broker as defined in RCW 19.146.010 if acting within the course and scope of that definition.

(3) "Extension of credit" means the right to defer payment of debt or to incur debt and defer its payment offered or granted primarily for personal, family, or household purposes. [1989 c 303 § 1; 1986 c 218 § 2.]

19.134.020 Prohibited conduct. A credit services organization, its salespersons, agents, and representatives, and independent contractors who sell or attempt to sell the services of a credit services organization may not do any of the following:

(1) Charge or receive any money or other valuable consideration prior to full and complete performance of the services the credit services organization has agreed to perform for the buyer, unless the credit services organization has obtained a surety bond of ten thousand dollars issued by a surety company admitted to do business in this state and established a trust account at a federally insured bank or savings and loan association located in this state. The surety bond shall run to the state of Washington and the buyers. The surety bond shall be issued on the condition that the principal comply with all provisions of this chapter and fully perform

on all contracts entered into with buyers. The surety bond shall be continuous until canceled and shall remain in full force and unimpaired at all times to comply with this section. The surety's liability for all claims in the aggregate against the continuous bond shall not exceed the penal sum of the bond. An action on the bond may be brought by the state or by any buyer by filing a complaint in a court of competent jurisdiction, including small claims court, within one year of cancellation of the surety bond. A complaint may be mailed by registered or certified mail, return receipt requested, to the surety and shall constitute good and sufficient service on the surety;

(2) Charge or receive any money or other valuable consideration solely for referral of the buyer to a retail seller who will or may extend credit to the buyer if the credit that is or will be extended to the buyer is upon substantially the same terms as those available to the general public;

(3) Make or counsel or advise any buyer to make any statement that is untrue or misleading or that should be known by the exercise of reasonable care to be untrue or misleading, to a credit reporting agency or to any person who has extended credit to a buyer or to whom a buyer is applying for an extension of credit with respect to a buyer's creditworthiness, credit standing, or credit capacity;

(4) Make or use any untrue or misleading representations in the offer or sale of the services of a credit services organization or engage, directly or indirectly, in any act, practice, or course of business that operates or would operate as fraud or deception upon any person in connection with the offer or sale of the services of a credit services organization. [1989 c 303 § 2; 1986 c 218 § 3.]

19.134.030 Surety bond and trust account—Exception to requirement. If a credit services organization is in compliance with RCW 19.134.020(1), the salesperson, agent, or representative who sells the services of that organization is not required to obtain a surety bond and establish a trust account. [1986 c 218 § 4.]

19.134.040 Information statement—Prerequisite to contract or payment—File maintained. Before the execution of a contract or agreement between the buyer and a credit services organization or before the receipt by the credit services organization of any money or other valuable consideration, whichever occurs first, the credit services organization shall provide the buyer with a statement in writing, containing all the information required by RCW 19.134.050. The credit services organization shall maintain on file for a period of two years an exact copy of the statement, personally signed by the buyer, acknowledging receipt of a copy of the statement. [1986 c 218 § 5.]

19.134.050 Information statement—Contents. The information statement required under RCW 19.134.040 shall include all of the following:

(1)(a) A complete and accurate statement of the buyer's right to review any file on the buyer maintained by any consumer reporting agency, as provided under the federal Fair Credit Reporting Act, 15 U.S.C. Secs. 1681 through 1681t;

(b) A statement that the buyer may review his or her consumer reporting agency file at no charge if a request is made

to the consumer credit reporting agency within thirty days after receiving notice that credit has been denied; and

(c) The approximate price the buyer will be charged by the consumer reporting agency to review his or her consumer reporting agency file;

(2) A complete and accurate statement of the buyer's right to dispute the completeness or accuracy of any item contained in any file on the buyer maintained by any consumer reporting agency;

(3) A complete and detailed description of the services to be performed by the credit services organization for the buyer and the total amount the buyer will have to pay, or become obligated to pay, for the services;

(4) A statement asserting the buyer's right to proceed against the bond or trust account required under RCW 19.134.020; and

(5) The name and address of the surety company that issued the bond, or the name and address of the depository and the trustee and the account number of the trust account. [1986 c 218 § 6.]

19.134.060 Contract for purchase of services—Contents—Notice of cancellation—Buyer's copy. (1) Each contract between the buyer and a credit services organization for the purchase of the services of the credit services organization shall be in writing, dated, signed by the buyer, and include all of the following:

(a) A conspicuous statement in bold face type, in immediate proximity to the space reserved for the signature of the buyer, as follows: "You, the buyer, may cancel this contract at any time prior to midnight of the fifth day after the date of the transaction. See the attached notice of cancellation form for an explanation of this right";

(b) The terms and conditions of payment, including the total of all payments to be made by the buyer, whether to the credit services organization or to some other person;

(c) A full and detailed description of the services to be performed by the credit services organization for the buyer, including all guarantees and all promises of full or partial refunds, and the estimated date by which the services are to be performed, or estimated length of time for performing the services;

(d) The credit services organization's principal business address and the name and address of its agent in the state authorized to receive service of process;

(2) The contract shall be accompanied by a completed form in duplicate, captioned "Notice of Cancellation" that shall be attached to the contract, be easily detachable, and contain in bold face type the following statement written in the same language as used in the contract.

"Notice of Cancellation

You may cancel this contract, without any penalty or obligation within five days from the date the contract is signed.

If you cancel any payment made by you under this contract, it will be returned within ten days following receipt by the seller of your cancellation notice.

To cancel this contract, mail or deliver a signed dated copy of this cancellation notice, or any other

written notice to (name of seller) at (address of seller) (place of business) not later than midnight (date)

I hereby cancel this transaction,

(date)

(purchaser's signature) "

The credit services organization shall give to the buyer a copy of the completed contract and all other documents the credit services organization requires the buyer to sign at the time they are signed. [1986 c 218 § 7.]

19.134.070 Waiver of rights—Violations—Enforcement—Unfair business practice. (1) Any waiver by a buyer of any part of this chapter is void. Any attempt by a credit services organization to have a buyer waive rights given by this chapter is a violation of this chapter.

(2) In any proceeding involving this chapter, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

(3) Any person who violates this chapter is guilty of a gross misdemeanor. Any district court of this state has jurisdiction in equity to restrain and enjoin the violation of this chapter.

(4) This section does not prohibit the enforcement by any person of any right provided by this or any other law.

(5) A violation of this chapter by a credit services organization is an unfair business practice as provided in chapter 19.86 RCW. [1986 c 218 § 8.]

19.134.080 Damages—Attorney's fees. (1) Any buyer injured by a violation of this chapter may bring any action for recovery of damages. Judgment shall be entered for actual damages, but in no case less than the amount paid by the buyer to the credit services organization, plus reasonable attorney's fees and costs. An award may also be entered for punitive damages.

(2) The remedies provided under this chapter are in addition to any other procedures or remedies for any violation or conduct provided for in any other law. [1986 c 218 § 9.]

19.134.900 Short title. This chapter may be known and cited as the "credit services organizations act." [1986 c 218 § 1.]

Chapter 19.138 RCW SELLERS OF TRAVEL

Sections

19.138.010	Legislative finding and declaration.
19.138.021	Definitions.
19.138.030	Advertising—Restrictions—Records.
19.138.040	Written statement by seller of travel—Contents.
19.138.050	Cancellation—Refund—Material misrepresentation—Exception.
19.138.090	Application of chapter to public charter operators.
19.138.100	Registration—Number posting, use—Duplicates—Fee—Assignment, transfer—New owner—Exemption.
19.138.110	Registration—Application—Form—Rules—Report.
19.138.120	Registration—Renewal—Refusal—Notice—Hearing.
19.138.130	Unprofessional conduct—Grounds—Registration—Revocation and reinstatement—Support order, noncompliance.
19.138.140	Trust account—Filing—Notice of change—Other funds or accounts—Rules—Exceptions.
19.138.150	Standard of duties, care.

19.138.160	Nonresident seller of travel—Director as attorney if none appointed—Service of process—Notice.
19.138.170	Director—Powers and duties.
19.138.1701	Reimbursement of appropriated funds—Fees.
19.138.180	Director—Investigations—Publication of violation.
19.138.200	Director or individuals acting on director's behalf—Immunity.
19.138.240	Violations—Civil penalties—Failure to pay.
19.138.250	Violation—Restitution assessed by director.
19.138.260	Registration prerequisite to suit.
19.138.270	Violations—Giving false information—Criminal penalties.
19.138.280	Action for damages—Costs, attorneys' fees—No limitation of consumer protection act.
19.138.290	Violations—Application of consumer protection act.
19.138.310	Filing public records—Making information public for public interest.
19.138.320	Contract for sale of travel-related benefits—Cancellation—Process—Seven calendar days—Written disclosure required.
19.138.330	Uniform regulation of business and professions act.
19.138.340	Restrictions regarding promoting prostitution, commercial sexual abuse of a minor, or other commercial sex acts.
19.138.901	Effective date—1986 c 283.
19.138.903	Effective date—1994 c 237.
19.138.904	Implementation—1994 c 237.

19.138.010 Legislative finding and declaration. The legislature finds and declares that advertising, sales, and business practices of certain sellers of travel have worked financial hardship upon the people of this state; that the travel business has a significant impact upon the economy and well-being of this state and its people; that problems have arisen regarding certain sales of travel; and that the public welfare requires registration of sellers of travel in order to eliminate unfair advertising, sales and business practices. The legislature further finds it necessary to establish standards that will safeguard the people against financial hardship and to encourage fair dealing and prosperity in the travel business. [1994 c 237 § 1; 1986 c 283 § 1.]

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

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

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

(3) "Sale of travel-related benefits" means the sale of travel services if the travel services are not identified at the time of the sale with respect to dates, price, or location and includes:

(a) Sales of travel club memberships;

(b) Sales of vacation certificates or other documents that purport to grant the holder of the certificate or other document the ability to obtain future travel services, with or without additional consideration; or

(c) Sales of travel-industry member benefits including those through either or both the issuance and sale or the consulting with or advising for consideration of persons in connection with the obtaining of international airlines travel agent network identification cards or memberships.

(4) "Travel club" means a seller of travel that sells memberships to consumers, where the initial membership or maintenance dues are at least twice the amount of the annual membership or maintenance dues.

(5) "Seller of travel-related benefits" means a person, firm, or corporation that transacts business with Washington consumers for the sale of travel-related benefits.

(6) "Seller of travel" means a person, firm, or corporation both inside and outside the state of Washington, who transacts business with Washington consumers.

(a) "Seller of travel" includes a travel agent and any person who is an independent contractor or outside agent for a travel agency or other seller of travel whose principal duties include consulting with and advising persons concerning travel arrangements or accommodations in the conduct or administration of its business. If a seller of travel is employed by a seller of travel who is registered under this chapter, the employee need not also be registered.

(b) "Seller of travel" does not include:

(i) An air carrier;

(ii) An owner or operator of a vessel, including an ocean common carrier as defined in 46 U.S.C. App. 1702(18), an owner or charterer of a vessel that is required to establish its financial responsibility in accordance with the requirements of the federal maritime commission, 46 U.S.C. App. 817 (e), and a steamboat company whether or not operating over and upon the waters of this state;

(iii) A motor carrier;

(iv) A rail carrier;

(v) A charter party carrier of passengers as defined in RCW 81.70.020;

(vi) An auto transportation company as defined in RCW 81.68.010;

(vii) A hotel or other lodging accommodation;

(viii) An affiliate of any person or entity described in (i) through (vii) of this subsection (6)(b) that is primarily engaged in the sale of travel services provided by the person or entity. For purposes of this subsection (6)(b)(viii), an "affiliate" means a person or entity owning, owned by, or under common ownership, with "owning," "owned," and "ownership" referring to equity holdings of at least eighty percent;

(ix) Direct providers of transportation by air, sea, or ground, or hotel or other lodging accommodations who do not book or arrange any other travel services.

(7) "Travel services" includes transportation by air, sea, or ground, hotel or any lodging accommodations, package tours, or vouchers or coupons to be redeemed for future travel or accommodations for a fee, commission, or other valuable consideration.

(8) "Advertisement" includes, but is not limited to, a written or graphic representation in a card, brochure, newspaper, magazine, directory listing, or display, and oral, written, or graphic representations made by radio, television, or cable transmission that relates to travel services.

(9) "Transacts business with Washington consumers" means to directly offer or sell travel services or travel-related benefits to Washington consumers, including the placement of advertising in media based in the state of Washington or that is primarily directed to Washington residents. Advertising placed in national print or electronic media alone does not constitute "transacting business with Washington consumers." Those entities who only wholesale travel services are not "transacting business with Washington consumers" for the purposes of this chapter. [2001 c 44 § 1; 2000 c 171 § 73; 1996 c 180 § 1; 1994 c 237 § 2.]

Additional notes found at www.leg.wa.gov

(2018 Ed.)

19.138.030 Advertising—Restrictions—Records. A seller of travel shall not advertise that any travel services are or may be available unless he or she has, prior to the advertisement, determined that the product advertised was available at the time the advertising was placed. This determination can be made by the seller of travel either by use of an airline computer reservation system, or by written confirmation from the vendor whose program is being advertised.

It is the responsibility of the seller of travel to keep written or printed documentation of the steps taken to verify that the advertised offer was available at the time the advertising was placed. These records are to be maintained for at least one year after the placement of the advertisement. [1999 c 238 § 1; 1996 c 180 § 2; 1994 c 237 § 10; 1986 c 283 § 3.]

Additional notes found at www.leg.wa.gov

19.138.040 Written statement by seller of travel—Contents. At or prior to the time of full or partial payment for any travel services, the seller of travel shall furnish to the person making the payment a written statement conspicuously setting forth the information contained in subsections (1) through (6) of this section. However, if payment is made other than in person, the seller of travel shall transmit to the person making the payment the written statement required by this section within three business days of receipt or processing of the payment. The written statement shall contain the following information:

(1) The name and business address and telephone number of the seller of travel.

(2) The amount paid, the date of such payment, the purpose of the payment made, and an itemized statement of the balance due, if any.

(3) The registration number of the seller of travel required by this chapter.

(4) The name of the vendor with whom the seller of travel has contracted to provide travel arrangements for a consumer and all pertinent information relating to the travel as known by the seller of travel at the time of booking. The seller of travel will make known further details as soon as received from the vendor. All information will be provided with final documentation.

(5) An advisory regarding the penalties that would be charged in the event of a cancellation or change by the customer. This may contain either: (a) The specific amount of cancellation and change penalties; or (b) the following statement: "Cancellation and change penalties apply to these arrangements. Details will be provided upon request."

(6) A statement in eight-point boldface type in substantially the following form:

"If transportation or other services are canceled by the seller of travel, all sums paid to the seller of travel for services not performed in accordance with the contract between the seller of travel and the purchaser will be refunded within thirty days of receiving the funds from the vendor with whom the services were arranged, or if the funds were not sent to the vendor, the funds shall be returned within fourteen days after cancellation by the seller of travel to the purchaser unless the purchaser requests the seller of travel to apply the money to another travel product and/or date." [1999 c 238 § 2; 1996 c 180 § 3; 1994 c 237 § 11; 1986 c 283 § 4.]

Additional notes found at www.leg.wa.gov

[Title 19 RCW—page 219]

19.138.050 Cancellation—Refund—Material misrepresentation—Exception. (1) If the transportation or other services contracted for are canceled, or if the money is to be refunded for any reason, the seller of travel shall refund to the person with whom it contracts for travel services, the money due the person within thirty days of receiving the funds from the vendor with whom the services were arranged. If the funds were not sent to the vendor and remain in the possession of the seller of travel, the funds shall be refunded within fourteen days.

(2) Any material misrepresentation with regard to the transportation and other services offered shall be deemed to be a cancellation necessitating the refund required by this section.

(3) When travel services are paid to a vendor and charged to a consumer's credit card by the seller of travel, and the arrangements are subsequently canceled by the consumer, the vendor, or the seller of travel, any refunds to the consumer's credit card must be applied for within ten days from the date of cancellation.

(4) The seller of travel shall not be obligated to refund any cancellation penalties imposed by the vendor with whom the services were arranged if these penalties were disclosed in the statement required under RCW 19.138.040. [1994 c 237 § 12; 1986 c 283 § 5.]

19.138.090 Application of chapter to public charter operators. This chapter does not apply to the sale of public transportation by a public charter operator who is complying with regulations of the United States department of transportation. [1986 c 283 § 9.]

19.138.100 Registration—Number posting, use—Duplicates—Fee—Assignment, transfer—New owner—Exemption. No person, firm, or corporation may act or hold itself out as a seller of travel unless, prior to engaging in the business of selling or advertising to sell travel services or travel-related benefits, the person, firm, or corporation registers with the director under this chapter and rules adopted under this chapter.

(1) The registration number must be conspicuously posted in the place of business and must be included in all advertisements. Sellers of travel are not required to include registration numbers on institutional advertising. For the purposes of this subsection, "institutional advertising" is advertising that does not include prices or dates for travel services.

(2) The director shall issue duplicate registrations upon payment of a duplicate registration fee to valid registration holders operating more than one office. The duplicate registration fee for each office shall be an amount equal to the original registration fee.

(3) No registration is assignable or transferable.

(4) If a registered seller of travel sells his or her business, when the new owner becomes responsible for the business, the new owner must comply with all provisions of this chapter, including registration.

(5) If a seller of travel is employed by or under contract as an independent contractor or an outside agent of a seller of travel who is registered under this chapter, the employee, independent contractor, or outside agent need not also be registered if:

(a) The employee, independent contractor, or outside agent is conducting business as a seller of travel in the name of and under the registration of the registered seller of travel; and

(b) All money received for travel services by the employee, independent contractor, or outside agent is collected in the name of the registered seller of travel and processed by the registered seller of travel as required under this chapter. [2001 c 44 § 4; 1999 c 238 § 3; 1996 c 180 § 4; 1994 c 237 § 3.]

Additional notes found at www.leg.wa.gov

19.138.110 Registration—Application—Form—Rules—Report. An application for registration as a seller of travel shall be submitted in the form prescribed by rule by the director, and shall contain but not be limited to the following:

(1) The name, address, and telephone number of the seller of travel;

(2) Proof that the seller of travel holds a valid business license in the state of its principal state of business;

(3) A registration fee in an amount determined under RCW 43.24.086;

(4) The names, business addresses, and business phone numbers of all employees, independent contractors, or outside agents who sell travel and are covered by the seller of travel's registration. This subsection shall not apply to the out-of-state employees of a corporation that issues a class of equity securities registered under section 12 of the securities exchange act of 1934, and any subsidiary, the majority of voting stock of which is owned by the corporation;

(5) A report prepared and signed by a bank officer, licensed public accountant, or certified public accountant or other report, approved by the director, that verifies that the seller of travel maintains a trust account at a federally insured financial institution located in Washington state, or other approved account, the location and number of that trust account or other approved account, and verifying that the account exists as required by RCW 19.138.140. The director, by rule, may permit alternatives to the report that provides for at least the same level of verification. [1996 c 180 § 5; 1994 c 237 § 4.]

Additional notes found at www.leg.wa.gov

19.138.120 Registration—Renewal—Refusal—Notice—Hearing. (1) Each seller of travel shall renew its registration on or before July 1st of every year or as otherwise determined by the director.

(2) Renewal of a registration is subject to the same provisions covering disciplinary action as a registration originally issued.

(3) The director may refuse to renew a registration for any of the grounds set out under RCW 19.138.130 and 18.235.130, and where the past conduct of the applicant affords reasonable grounds for belief that the applicant will not carry out the applicant's duties in accordance with law and with integrity and honesty. The director shall promptly notify the applicant in writing by certified mail of its intent to refuse to renew the registration. The registrant may request a hearing on the refusal as provided in RCW 18.235.050. The director may permit the registrant to honor commitments already made to its customers, but no new commitments may

be incurred, unless the director is satisfied that all new commitments are completely bonded or secured to ensure that the general public is protected from loss of money paid to the registrant. [2002 c 86 § 277; 1999 c 238 § 4; 1994 c 237 § 5.]

Additional notes found at www.leg.wa.gov

19.138.130 Unprofessional conduct—Grounds—Registration—Revocation and reinstatement—Support order, noncompliance. (1) In addition to the unprofessional conduct described in RCW 18.235.130, the director may take disciplinary action based on the following conduct, acts, or conditions if the applicant or registrant:

(a) Was previously the holder of a registration issued under this chapter, and the registration was revoked for cause and never reissued by the director, or the registration was suspended for cause and the terms of the suspension have not been fulfilled;

(b) Suffers a judgment in a civil action involving willful fraud, misrepresentation, or conversion;

(c) Has violated this chapter or failed to comply with a rule adopted by the director under this chapter; or

(d) Has failed to display the registration as provided in this chapter.

(2) If the seller of travel is found in violation of this chapter or in violation of the consumer protection act, chapter 19.86 RCW, by the entry of a judgment or by settlement of a claim, the director may revoke the registration of the seller of travel, and the director may reinstate the registration at the director's discretion.

(3) 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. [2002 c 86 § 278; 1999 c 238 § 5; 1997 c 58 § 852; 1996 c 180 § 6; 1994 c 237 § 6.]

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

Additional notes found at www.leg.wa.gov

19.138.140 Trust account—Filing—Notice of change—Other funds or accounts—Rules—Exceptions. (1) A seller of travel shall deposit in a trust account maintained in a federally insured financial institution located in Washington state, or other account approved by the director, all sums held for more than five business days that are received from a person or entity, for retail travel services offered by the seller of travel. This subsection does not apply to travel services sold by a seller of travel, when payments for the travel services are made through the airlines reporting corporation.

(2) The trust account or other approved account required by this section shall be established and maintained for the benefit of any person or entity paying money to the seller of travel. The seller of travel shall not in any manner encumber the amounts in trust and shall not withdraw money from the account except the following amounts may be withdrawn at any time:

(a) Partial or full payment for travel services to the entity directly providing the travel service;

(b) Refunds as required by this chapter;

(c) The amount of the sales commission;

(d) Interest earned and credited to the trust account or other approved account;

(e) Remaining funds of a purchaser once all travel services have been provided or once tickets or other similar documentation binding upon the ultimate provider of the travel services have been provided; or

(f) Reimbursement to the seller of travel for agency operating funds that are advanced for a customer's travel services.

(3) The seller of travel may deposit noncustomer funds into the trust account as needed in an amount equal to a deficiency resulting from dishonored customer payments made by check, draft, credit card, debit card, or other negotiable instrument.

(4) At the time of registration, the seller of travel shall file with the department the account number and the name of the financial institution at which the trust account or other approved account is held as set forth in RCW 19.138.110. The seller of travel shall notify the department of any change in the account number or location within one business day of the change.

(5) The director, by rule, may allow for the use of other types of funds or accounts only if the protection for consumers is no less than that provided by this section.

(6) The seller of travel need not comply with the requirements of this section if all of the following apply, except as exempted in subsection (1) of this section:

(a) The payment is made by credit card;

(b) The seller of travel does not deposit, negotiate, or factor the credit card charge or otherwise seek to obtain payment of the credit card charge to any account over which the seller of travel has any control; and

(c) If the charge includes transportation, the carrier that is to provide the transportation processes the credit card charge, or if the charge is only for services, the provider of services processes the credit card charges.

(7) The seller of travel need not maintain a trust account nor comply with the trust account provisions of this section if the seller of travel:

(a)(i) Files and maintains a surety bond approved by the director in an amount of not less than ten thousand nor more than fifty thousand dollars, as determined by rule by the director based on the gross income of business conducted for Washington state residents by the seller of travel during the prior year. The bond shall be executed by the applicant as obligor by a surety company authorized to transact business in this state naming the state of Washington as obligee for the benefit of any person or persons who have suffered monetary loss by reason of the seller of travel's violation of this chapter or a rule adopted under this chapter. The bond shall be conditioned that the seller of travel will conform to and abide by this chapter and all rules adopted under this chapter, and shall reimburse any person or persons who suffer monetary loss by reason of a violation of this chapter or a rule adopted under this chapter.

(ii) The bond must be continuous and may be canceled by the surety upon the surety giving written notice to the director of the surety's intent to cancel the bond. The cancel-

lation is effective thirty days after the notice is received by the director.

(iii) The applicant may obtain the bond directly from the surety or through other bonding arrangement as approved by the director.

(iv) In lieu of a surety bond, the applicant may, upon approval by the director, file with the director a certificate of deposit, an irrevocable letter of credit, or such other instrument as is approved by the director by rule, drawn in favor of the director for an amount equal to the required bond.

(v) Any person or persons who have suffered monetary loss by any act which constitutes a violation of this chapter or a rule adopted under this chapter may bring a civil action in court against the seller of travel and the surety upon such bond or approved alternate security of the seller of travel who committed the violation of this chapter or a rule adopted under this chapter or who employed the seller of travel who committed such violation. A civil action brought in court pursuant to the provisions of this section must be filed no later than one year following the later of the alleged violation of this chapter or a rule adopted under this chapter or completion of the travel by the customer; or

(b) Is a member in good standing in a professional association, such as the United States tour operators association or national tour association, that is approved by the director and that provides or requires a member to provide a minimum of one million dollars in errors and professional liability insurance and provides a surety bond or equivalent protection in an amount of at least two hundred fifty thousand dollars for its member companies.

(8) If the seller of travel maintains its principal place of business in another state and maintains a trust account or other approved account in that state consistent with the requirement of this section, and if that seller of travel has transacted business within the state of Washington in an amount exceeding five million dollars for the preceding year, the out-of-state trust account or other approved account may be substituted for the in-state account required under this section. [2003 c 38 § 1; 1999 c 238 § 6; 1996 c 180 § 7; 1994 c 237 § 8.]

Additional notes found at www.leg.wa.gov

19.138.150 Standard of duties, care. A seller of travel shall perform its duties reasonably and with ordinary care in providing travel services. [1994 c 237 § 9.]

19.138.160 Nonresident seller of travel—Director as attorney if none appointed—Service of process—Notice.

(1) A nonresident seller of travel soliciting business or selling travel in the state of Washington, by mail, telephone, or otherwise, either directly or indirectly, is deemed, absent any other appointment, to have appointed the director to be the seller of travel's true and lawful attorney upon whom may be served any legal process against that nonresident arising or growing out of a transaction involving travel services or the sale of travel-related benefits. That solicitation signifies the nonresident's agreement that process against the nonresident that is served as provided in this chapter is of the same legal force and validity as if served personally on the nonresident seller of travel.

[Title 19 RCW—page 222]

(2) Service of process upon a nonresident seller of travel shall be made by leaving a copy of the process with the director. The fee for the service of process shall be determined by the director by rule. That service is sufficient service upon the nonresident if the plaintiff or plaintiff's attorney of record sends notice of the service and a copy of the process by certified mail before service or immediately after service to the defendant at the address given by the nonresident in a solicitation furnished by the nonresident, and the sender's post office receipt of sending and the plaintiff's or plaintiff's attorney's affidavit of compliance with this section are returned with the process in accordance with Washington superior court civil rules. Notwithstanding the foregoing requirements, however, once service has been made on the director as provided in this section, in the event of failure to comply with the requirement of notice to the nonresident, the court may order that notice be given that will be sufficient to apprise the nonresident. [2001 c 44 § 5; 1994 c 237 § 14.]

19.138.170 Director—Powers and duties. The director has the following powers and duties:

(1) To adopt, amend, and repeal rules to carry out the purposes of this chapter;

(2) To establish fees;

(3) Upon receipt of a complaint, to inspect and audit the books and records of a seller of travel. The seller of travel shall immediately make available to the director those books and records as may be requested at the seller of travel's place of business or at a location designated by the director. For that purpose, the director shall have full and free access to the office and places of business of the seller of travel during regular business hours. When ten or more complaints have been received by either the department or the attorney general on a seller of travel within a period of ninety days, the department shall inspect and audit books and records of the seller of travel; and

(4) To do all things necessary to carry out the functions, powers, and duties set forth in this chapter. [2002 c 86 § 279; 1999 c 238 § 7; 1994 c 237 § 13.]

Additional notes found at www.leg.wa.gov

19.138.1701 Reimbursement of appropriated funds—Fees. Any state funds appropriated to the department of licensing for implementation of chapter 237, Laws of 1994 for the biennium ending June 30, 1995, shall be reimbursed by June 30, 1997, by an assessment of fees sufficient to cover all costs of implementing chapter 237, Laws of 1994. [1994 c 237 § 30.]

19.138.180 Director—Investigations—Publication of violation. The director, in the director's discretion, may:

(1) Annually, or more frequently, make public or private investigations within or without this state as the director deems necessary to determine whether a registration should be subject to disciplinary action, or whether a person has violated or is about to violate this chapter or a 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 of this chapter;

(2018 Ed.)

(2) Publish information concerning a violation of this chapter or a rule adopted or order issued under this chapter; and

(3) Investigate complaints concerning practices by sellers of travel for which registration is required by this chapter. [2002 c 86 § 280; 1994 c 237 § 15.]

Additional notes found at www.leg.wa.gov

19.138.200 Director or individuals acting on director's behalf—Immunity. The director or individuals acting on the director's behalf are immune from suit in any action, civil or criminal, based on acts performed in the course of their duties in the administration and enforcement of this chapter. [2002 c 86 § 281; 1994 c 237 § 20.]

Additional notes found at www.leg.wa.gov

19.138.240 Violations—Civil penalties—Failure to pay. (1) A civil penalty shall be imposed by the court for each violation of this chapter in an amount not less than five hundred dollars nor more than two thousand dollars per violation.

(2) If a person 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 director may recover the amount assessed by action in the appropriate superior court. In the action, the validity and appropriateness of the final order imposing the penalty shall not be subject to review. [2002 c 86 § 282; 1994 c 237 § 21.]

Additional notes found at www.leg.wa.gov

19.138.250 Violation—Restitution assessed by director. The director may assess against a person or organization that violates this chapter, or a rule adopted under this chapter, the full amount of restitution as may be necessary to restore to a person an interest in money or property, real or personal, that may have been acquired by means of an act prohibited by or in violation of this chapter. [1994 c 237 § 22.]

19.138.260 Registration prerequisite to suit. In order to maintain or defend a lawsuit, a seller of travel must be registered with the department as required by this chapter and rules adopted under this chapter. [1994 c 237 § 23.]

19.138.270 Violations—Giving false information—Criminal penalties. (1) Each person who knowingly violates this chapter or who knowingly gives false or incorrect information to the director, attorney general, or county prosecuting attorney in filing statements required by this chapter, whether or not the statement or report is verified, is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW.

(2) A person who violates this chapter or who gives false or incorrect information to the director, attorney general, or county prosecuting attorney in filing statements required by this chapter, whether or not the statement or report is verified, is guilty of a misdemeanor punishable under chapter 9A.20 RCW. [1994 c 237 § 24.]

19.138.280 Action for damages—Costs, attorneys' fees—No limitation of consumer protection act. In addition to any other penalties or remedies under chapter 19.86 RCW, a person who is injured by a violation of this chapter

(2018 Ed.)

may bring an action for recovery of actual damages, including court costs and attorneys' fees. No provision in this chapter shall be construed to limit any right or remedy provided under chapter 19.86 RCW. [1994 c 237 § 28.]

19.138.290 Violations—Application of consumer protection act. The legislature finds that the practices governed by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Any violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair and deceptive act or practice and unfair method of competition in the conduct of trade or commerce in violation of RCW 19.86.020. Remedies provided by chapter 19.86 RCW are cumulative and not exclusive. [1994 c 237 § 27.]

19.138.310 Filing public records—Making information public for public interest. All information, documents, and reports filed with the director under this chapter are matters of public record and shall be open to public inspection, subject to reasonable regulation. The director may make public, on a periodic or other basis, the information as may be necessary or appropriate in the public interest concerning the registration, reports, and information filed with the director or any other matters to the administration and enforcement of this chapter. [1994 c 237 § 26.]

19.138.320 Contract for sale of travel-related benefits—Cancellation—Process—Seven calendar days—Written disclosure required. (1) A contract for the sale of travel-related benefits may be canceled at the option of the purchaser if the purchaser sends notice of the cancellation by certified mail, return receipt requested, to the seller of travel-related benefits at the address contained in the contract and if the notice is postmarked not later than midnight of the seventh calendar day following the day on which the contract is signed or any membership card and all membership materials are received by the purchaser, whichever is later. In addition to this cancellation right, a purchaser who signs a contract for the sale of travel-related benefits of any description from a seller of travel-related benefits without having received the written disclosures required in subsection (2) of this section has cancellation rights until seven calendar days after the receipt of the written disclosures. A purchaser must request cancellation of a contract by sending the notice of cancellation by certified mail, return receipt requested, postmarked not later than midnight of the seventh calendar day following the day on which the contract is signed, any membership card and all membership materials are received by the purchaser, or the day on which the disclosures were actually received, whichever is later, to the seller of travel-related benefits at the address contained in the contract. The purchaser may use the cancellation form prescribed in subsection (2) of this section, however, notice of cancellation is sufficient if it indicates the intention of the purchaser not to be bound by the contract. The purchaser's right of cancellation of a contract for the sale of travel-related benefits may not be waived.

(2) A contract for the sale of travel-related benefits must include the following statement in at least ten-point bold-face

type immediately before the space for the purchaser's signature:

"Purchaser's right to cancel: You may cancel this contract without any cancellation fee or other penalty, or stated reason for doing so, by sending notice of cancellation by certified mail, return receipt requested, to . . . (insert name of the seller of travel-related benefits) at the address indicated below. The notice must be postmarked by midnight of the seventh calendar day following the day on which this contract is signed by you or the day any membership card and all membership materials are received by you, whichever is later. The day on which the contract was signed is not included as a "calendar day," and if the seventh calendar day falls on a Sunday or legal holiday, then the right to cancel this contract expires on the day immediately following that Sunday or legal holiday.

TO CANCEL THIS CONTRACT, SEND A COPY OF THIS NOTICE OF CANCELLATION OR OTHER WRITTEN NOTICE OF CANCELLATION TO:

.....
(Name of Seller)

.....
(Address of Seller)

(Date)

I HEREBY CANCEL THIS CONTRACT

(Date)

.....
(Purchaser's Signature)

.....
(Printed Name)

.....
(Purchaser's Address)"

(3) Within seven calendar days following timely receipt of notice of cancellation from the purchaser, the seller of travel-related benefits shall provide evidence that the contract has been canceled and return any money or other consideration paid by the purchaser. However, the seller of travel-related benefits may retain payments made for specific travel services utilized by the purchaser. [2001 c 44 § 2.]

19.138.330 Uniform regulation of business and professions act. The uniform regulation of business and professions act, chapter 18.235 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [2002 c 86 § 283.]

Additional notes found at www.leg.wa.gov

19.138.340 Restrictions regarding promoting prostitution, commercial sexual abuse of a minor, or other commercial sex acts. (1) No seller of travel shall engage in any of the following:

- (a) Promoting travel for prostitution or promoting travel for commercial sexual abuse of a minor;
- (b) Selling, advertising, or otherwise offering to sell travel services or facilitate travel:
 - (i) For the purposes of engaging in a commercial sex act;

- (ii) That consists of tourism packages or activities using and offering sexual acts as an enticement for tourism; or
- (iii) That provides, purports to provide access to, or facilitates the availability of sex escorts or sexual services.

(2) For the purposes of this section:

(a) "Commercial sex act" means any sexual contact, as defined in chapter 9A.44 RCW, for which anything of value is given to or received by any person.

(b) "Sexual act" means any sexual contact as defined in chapter 9A.44 RCW. [2007 c 368 § 6; 2006 c 250 § 3.]

Finding—2006 c 250: See note following RCW 9A.88.085.

19.138.901 Effective date—1986 c 283. This act shall take effect January 1, 1987. [1986 c 283 § 12.]

19.138.903 Effective date—1994 c 237. Sections 1 through 29 of this act shall take effect January 1, 1996. [1994 c 237 § 33.]

19.138.904 Implementation—1994 c 237. The director of licensing, beginning July 1, 1995, may take such steps as are necessary to ensure that this act is implemented on its *effective date[s]. [1994 c 237 § 35.]

***Reviser's note:** 1994 c 237 has different effective dates. The effective date for sections 1 through 29 is January 1, 1996, and the effective date for the remainder of the act is June 9, 1994.

Chapter 19.142 RCW HEALTH STUDIO SERVICES

Sections

- 19.142.005 Findings and declaration.
- 19.142.010 Definitions.
- 19.142.020 Membership plans—Special offers—Misrepresentations prohibited.
- 19.142.030 Written contract required.
- 19.142.040 Contents of contract.
- 19.142.050 Notice of cancellation—Refund.
- 19.142.060 Trust account—Written receipt—Record of deposits—Buyers' claims.
- 19.142.070 Surety bond in lieu of trust account.
- 19.142.080 Failure to comply with bond or trust account requirements—Class C felony.
- 19.142.090 Waivers of this chapter—Contracts not in compliance with this chapter—Void and unenforceable.
- 19.142.100 Violations—Application of consumer protection act.
- 19.142.110 Attorneys' fees.
- 19.142.900 Chapter cumulative and nonexclusive.
- 19.142.901 Prospective application of chapter.

19.142.005 Findings and declaration. The legislature finds that there exist in connection with a substantial number of contracts for health studio services certain practices and business methods which have worked undue financial hardship upon some of the citizens of the state and that existing legal remedies are inadequate to correct existing problems in the industry. The legislature declares that it is a matter of public interest that the citizens of our state be assured reasonable protection when contracting for health studio services. [1987 c 317 § 1.]

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

(1) "Business day" means any day except a Sunday or a legal holiday.

(2) "Buyer" or "member" means a person who purchases health studio services.

(3) "Health studio" includes any person or entity engaged in the sale of instruction, training, assistance or use of facilities which purport to assist patrons to improve their physical condition or appearance through physical exercise, body building, weight loss, figure development, the martial arts, or any other similar activity. For the purposes of this chapter, "health studio" does not include: (a) Public common schools, private schools approved under RCW 28A.195.010, and public or private institutions of higher education; (b) persons providing professional services within the scope of a person's license under Title 18 RCW; (c) bona fide nonprofit organizations which have been granted tax-exempt status by the Internal Revenue Service, the functions of which as health studios are only incidental to their overall functions and purposes; (d) a person or entity which offers physical exercise, body building, figure development or similar activities as incidental features of a plan of instruction or assistance relating to diet or control of eating habits; (e) bona fide nonprofit corporations organized under chapter 24.03 RCW which have members and whose members have meaningful voting rights to elect and remove a board of directors which is responsible for the operation of the health club and corporation; and (f) a preexisting facility primarily offering aerobic classes, where the initiation fee is less than fifty dollars and no memberships are sold which exceed one year in duration. For purposes of this subsection, "preexisting facility" means an existing building used for health studio services covered by the fees collected.

(4) "Health studio services" means instruction, services, privileges, or rights offered for sale by a health studio. "Health studio services" do not include: (a) Instruction or assistance relating to diet or control of eating habits not involving substantial on-site physical exercise, body building, figure development, or any other similar activity; or (b) recreational or social programs which either involve no physical exercise or exercise only incidental to the program.

(5) "Initiation or membership fee" means a fee paid either in a lump sum or in installments within twelve months of execution of the health studio services contract on a one-time basis when a person first joins a health studio for the privilege of belonging to the health studio.

(6) "Special offer or discount" means any offer of health studio services at a reduced price or without charge to a prospective member.

(7) "Use fees or dues" means fees paid on a regular periodic basis for use of a health studio. This does not preclude prepayment of use fees at the buyer's option. [1990 c 55 § 1; 1990 c 33 § 556; 1987 c 317 § 2.]

Reviser's note: This section was amended by 1990 c 33 § 556 and by 1990 c 55 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

19.142.020 Membership plans—Special offers—Misrepresentations prohibited. (1) Each health studio shall prepare and provide to each prospective buyer a written comprehensive list of all membership plans of health studio ser-

vices offered for sale by the health studio. The list shall contain a description and the respective price of each membership plan of health studio services offered.

(2) A health studio is prohibited from selling a membership plan of health studio services not included in the list.

(3) A health studio is prohibited from making a special offer or offering a discount unless such special offer or discount is made in writing and available to all prospective members: PROVIDED, That a special offer or discount offered to groups need not be available to all similarly-situated prospective members.

(4) A health studio is prohibited from making any misrepresentation to any prospective buyer or current member regarding qualifications of staff, availability or quality of facilities or services, or results obtained through exercise, body building, figure development, or weight loss programs, or the present or maximum number of customers who may contract to use the facilities or services. [1987 c 317 § 3.]

19.142.030 Written contract required. A contract for the sale of health studio services shall be in writing. A copy of the contract, as well as the rules of the health studio if not stated in the contract, shall be given to the buyer when the buyer signs the contract. [1987 c 317 § 4.]

19.142.040 Contents of contract. A contract for health studio services shall include all of the following:

(1) The name and address of the health studio facilities operator;

(2) The date the buyer signed the contract;

(3) A description of the health studio services and general equipment to be provided, or acknowledgment in a conspicuous form that the buyer has received a written description of the health studio services and equipment to be provided. If any of the health studio services or equipment are to be delivered at a planned facility, at a facility under construction, or through substantial improvements to an existing facility, the description shall include a date for completion of the facility, construction, or improvement. Health studio services must begin within twelve months from the date the contract is signed unless the completion of the facility, construction, or improvement is delayed due to war, or fire, flood, or other natural disaster;

(4) A statement of the duration of the contract. No contract for health studio services may require payments or financing by the buyer over a period in excess of thirty-six months from the date of the contract, nor may any contract term be measured by or be for the life of the buyer;

(5) The use fees or dues to be paid by the buyer and if such fees are subject to periodic adjustment. Use fees or dues may not be raised more than once in any calendar year;

(6) A complete statement of the rules of the health studio or an acknowledgment in a conspicuous form that the buyer has received a copy of the rules;

(7) Clauses which notify the buyer of the right to cancel:
(a) If the buyer dies or becomes totally disabled. The contract may require that the disability be confirmed by an examination of a physician agreeable to the buyer and the health studio;

(b)(i) Subject to (b)(ii) of this subsection, if the buyer moves his or her permanent residence to a location more than

twenty-five miles from the health studio or an affiliated health studio offering the same or similar services and facilities at no additional expense to the buyer and the buyer cancels after one year from signing the contract if the contract extends for more than one year. The health studio may require reasonable evidence of relocation;

(ii) If at the time of signing the contract requiring payment of an initiation or membership fee the buyer lived more than twenty-five miles from the health studio, the buyer may cancel under (7)(b)(i) of this section only if the buyer moves an additional five miles or more from the health studio.

(c) If a contract extends for more than one year, the buyer may cancel the contract for any reason upon thirty days' written notice to the health studio;

(d) If the health studio facilities are permanently closed and comparable facilities owned and operated by the seller are not made available within a ten-mile radius of the closed facility;

(e) If a facility, construction, or improvement is not completed by the date represented by the contract;

(f) If the contract for health studio services was sold prior to the opening of the facility, the buyer may cancel within the first five business days the facility opens for use of the buyer and the health studio begins to provide the agreed upon health studio services;

(8) Clauses explaining the buyer's right to a refund and relief from future payment obligations after cancellation of the contract;

(9) A provision under a conspicuous caption in capital letters and boldface type stating substantially the following:

"BUYER'S RIGHT TO CANCEL

If you wish to cancel this contract without penalty, you may cancel it by delivering or mailing a written notice to the health studio. The notice must say that you do not wish to be bound by the contract and must be delivered or mailed before midnight of the third business day after you sign this contract. The notice must be mailed to (insert name and mailing address of health studio). If you cancel within the three days, the health studio will return to you within thirty days all amounts you have paid."

[1990 c 55 § 2; 1987 c 317 § 5.]

19.142.050 Notice of cancellation—Refund. After receipt of a written notice of cancellation, the health studio shall provide a refund to the buyer within thirty days. The health studio may require the buyer to return any membership card or other materials which evidence membership in the health studio. The buyer is entitled to a refund and relief from future obligations for payments of initiation or membership fees and use fees or dues as follows:

(1) The buyer is entitled to a refund of the unused portion of any prepaid use fees or dues and relief from future obligations to pay use fees or dues concerning use after the date of cancellation.

(2)(a) Subject to (b) of this subsection, if a contract includes a one-time only initiation or membership fee and the buyer cancels pursuant to RCW 19.142.040(7)(a), the buyer is entitled to a pro rata refund of the fee less a predetermined

amount not to exceed one-half of the initial initiation or membership fee if the contract clearly states what percentage of the fee is nonrefundable or refundable.

(b) If a contract includes a one-time only initiation or membership fee and the buyer cancels pursuant to RCW 19.142.040(7)(a) three years or more after the signing of the contract requiring payment of such fee, such fee is nonrefundable.

(3) If a contract includes an initiation or membership fee and the buyer cancels pursuant to RCW 19.142.040(7) (b) or (c), the buyer is entitled to a pro rata refund of the fee less a predetermined amount not to exceed one-half of the initial initiation or membership fee unless the following clause is contained in the contract and signed separately by the buyer. The clause shall be placed under a conspicuous caption in capital letters and bold face type stating the following:

NONREFUNDABLE AMOUNT

I UNDERSTAND THAT I HAVE PAID OR AM OBLIGATED TO PAY AS AN INITIATION OR MEMBERSHIP FEE, AND THAT UNDER NO CIRCUMSTANCES IS ANY PORTION OF THIS AMOUNT REFUNDABLE.

.....
(Buyer's Signature)

(4) If a contract includes a one-time only initiation or membership fee and the buyer cancels pursuant to RCW 19.142.040(7)(d), the buyer is entitled to a pro rata refund of the fee.

(5) If a contract includes a one-time only initiation or membership fee and the buyer cancels pursuant to RCW 19.142.040(7) (e) or (f), the buyer is entitled to a full refund of the fee.

If a buyer is entitled to a pro rata refund under this section, the amount shall be computed by dividing the contract price by the number of weeks in the contract term and multiplying the result by the number of weeks remaining in the contract term. If no term is stated in the contract, a term of thirty-six months shall be used. [1990 c 55 § 3; 1987 c 317 § 6.]

19.142.060 Trust account—Written receipt—Record of deposits—Buyers' claims.

(1) All moneys paid to a health studio prior to the opening of the facility shall immediately be deposited in a trust account of a federally insured financial institution located in this state. The trust account shall be designated and maintained for the benefit of health studio members. Moneys maintained in the trust account shall be exempt from execution, attachment, or garnishment. A health studio shall not in any way encumber the corpus of the trust account or commingle any other operating funds with trust account funds. Withdrawals from the trust account shall be made no sooner than thirty days after the opening of the entire facility.

(2) The health studio shall within seven days of the first deposit notify the office of the attorney general in writing, of the name, address, and location of the depository and any subsequent change thereof.

(3) The health studio shall provide the buyer with a written receipt for the money and shall provide written notice of

the name, address, and location of the depository and any subsequent change thereof.

(4) The health studio shall maintain a record of each trust account deposit, including the name and address of each member whose funds are being deposited, the amount paid and the date of the deposit. Upon request of the attorney general's office, upon five days' notice, such records shall be produced for inspection.

(5) If prior to the opening of the facility the status of the health studio is transferred to another, any sums in the trust account affected by the transfer shall simultaneously be transferred to an equivalent trust account of the successor, and the successor shall promptly notify the buyer and the office of the attorney general of the transfer and of the name, address, and location of the new depository.

(6) The buyer's claim to any money under this section is prior to that of any creditor of the health studio, including a trustee in bankruptcy or receiver.

(7) After the health studio receives a notice of cancellation of the contract, or if the health studio fails to open a facility at the stated date of completion and if the buyer so requests, then the health studio shall provide a refund within thirty days. [1987 c 317 § 7.]

19.142.070 Surety bond in lieu of trust account. The requirements of RCW 19.142.060 do not apply to any health studios which, prior to any preopening sales, have provided a bond guaranteeing the completion or opening of any facility for which contracts for health studio services were sold prior to the opening of the facility. The bond shall be drawn upon a surety in the amount of one hundred fifty thousand dollars, running to the state of Washington. An action on the bond may be brought by the office of the attorney general or by any buyer of a contract for health studio services sold prior to the opening of the facility. [1987 c 317 § 8.]

19.142.080 Failure to comply with bond or trust account requirements—Class C felony. Failure to furnish a bond as required by RCW 19.142.070 or to maintain a trust account as required by RCW 19.142.060 shall constitute a class C felony punishable as provided in chapter 9A.20 RCW. [1987 c 317 § 9.]

19.142.090 Waivers of this chapter—Contracts not in compliance with this chapter—Void and unenforceable. A health studio shall not request a buyer to waive any provision of this chapter. Any contract for health studio services which does not comply with the provisions of this chapter or in which a buyer waives any provision of this chapter is void and unenforceable as contrary to public policy. [1987 c 317 § 10.]

19.142.100 Violations—Application of consumer protection act. A violation of this chapter constitutes an unfair or deceptive act or practice and is a per se violation of the consumer protection act, chapter 19.86 RCW. [1987 c 317 § 11.]

19.142.110 Attorneys' fees. Buyers who prevail in any cause of action under this chapter are entitled to reasonable attorneys' fees. [1987 c 317 § 12.]

(2018 Ed.)

19.142.900 Chapter cumulative and nonexclusive.

The provisions of this chapter are cumulative and nonexclusive and do not affect any other remedy available at law. [1987 c 317 § 13.]

19.142.901 Prospective application of chapter. The provisions of this chapter shall not apply to any contracts for health studio services entered into before July 26, 1987. [1987 c 317 § 14.]

Chapter 19.144 RCW

MORTGAGE LENDING AND HOMEOWNERSHIP

Sections

19.144.005	Findings—2008 c 108.
19.144.010	Definitions.
19.144.020	Disclosure requirements—Department duties.
19.144.030	Interagency guidance on nontraditional mortgage product risks and the statement on subprime mortgage lending.
19.144.040	Prepayment penalty or fee—Limitation.
19.144.050	Negative amortization—Limitation.
19.144.060	Risk grade determination.
19.144.070	Rule-making authority.
19.144.080	Unlawful actions—Fraud, misrepresentation, deceptive practices.
19.144.090	Criminal penalties—Dates of limitation—Venue—Civil penalties and damages—Correction of public record.
19.144.100	Unlawful actions—Proceeds and interest in real property—Criminal penalties.
19.144.110	Civil and administrative penalties.
19.144.120	Director—Powers—Enforcement of chapter.

19.144.005 Findings—2008 c 108. The legislature finds that responsible mortgage lending and homeownership are important to the citizens of the state of Washington. The legislature declares that protecting our residents and our economy from the threat of widespread foreclosures and providing homeowners with access to residential mortgage loans on fair and equitable terms is in the public interest. The legislature further finds that chapter 108, Laws of 2008 is necessary to encourage responsible lending, protect borrowers, and preserve access to credit in the residential real estate lending market. [2008 c 108 § 1.]

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

(1) "Adjustable rate mortgage" or "ARM" means a payment option ARM or a hybrid ARM (commonly known as a 2/28 or 3/27 loan).

(2) "Application" means the same as in Regulation X, Real Estate Settlement Procedures, 24 C.F.R. Sec. 3500, as used in an application for a residential mortgage loan.

(3) "Borrower" means any person who consults with or retains a person subject to this chapter in an effort to seek information about obtaining a residential mortgage loan, regardless of whether that person actually obtains such a loan.

(4) "Department" means the department of financial institutions.

(5) "Director" means the director of the department of financial institutions.

(6) "Financial institution" means commercial banks and alien banks subject to regulation under Title 30A RCW, savings banks subject to regulation under Title 32 RCW, savings

associations subject to regulation under Title 33 RCW, credit unions subject to regulation under chapter 31.12 RCW, consumer loan companies subject to regulation under chapter 31.04 RCW, and mortgage brokers and lenders subject to regulation under chapter 19.146 RCW.

(7) "Fully indexed rate" means the index rate prevailing at the time a residential mortgage loan is made, plus the margin that will apply after the expiration of an introductory interest rate.

(8) "Mortgage lending process" means the process through which a person seeks or obtains a residential mortgage loan or residential mortgage loan modification including, but not limited to, solicitation, application, or origination; negotiation of terms; third-party provider services; underwriting; signing and closing; and funding of the loan. Documents involved in the mortgage lending process include, but shall not be limited to, uniform residential loan applications or other loan applications, appraisal reports, settlement statements, supporting personal documentation for loan applications such as W-2 forms, verifications of income and employment, bank statements, tax returns, payroll stubs, and any required disclosures.

(9) "Negative amortization" means an increase in the principal balance of a loan caused when the loan agreement allows the borrower to make payments less than the amount needed to pay all the interest that has accrued on the loan. The unpaid interest is added to the loan balance and becomes part of the principal.

(10) "Person" means individuals, partnerships, associations, limited liability companies, limited liability partnerships, trusts, corporations, and all other legal entities.

(11) "Residential mortgage loan" means an extension of credit secured by residential real property located in this state upon which is constructed or intended to be constructed, a single-family dwelling or multiple-family dwelling of four or less units. It does not include a reverse mortgage or a borrower credit transaction that is secured by rental property. It does not include a bridge loan. It does not include loans to individuals making or acquiring a residential mortgage loan solely with his or her own funds for his or her own investment. For purposes of this subsection, a "bridge loan" is any temporary loan, having a maturity of one year or less, for the purpose of acquisition or construction of a dwelling intended to become the borrower's principal dwelling.

(12) "Residential mortgage loan modification" means a change in one or more of a residential mortgage loan's terms or conditions. Changes to a residential mortgage loan's terms or conditions include, but are not limited to, forbearances; repayment plans; changes in interest rates, loan terms, or loan types; capitalizations of arrearages; or principal reductions.

(13) "The interagency guidance on nontraditional mortgage product risks" means the guidance document issued in September 2006 by the office of the comptroller of the currency, the board of governors of the federal reserve system, the federal deposit insurance corporation, the office of thrift supervision, and the national credit union administration, and the guidance on nontraditional mortgage product risks released in November 2006 by the conference of state bank supervisors and the American association of residential mortgage regulators.

(14) "The statement on subprime mortgage lending" means the guidance document issued in June 2007 by the office of the comptroller of the currency, the board of governors of the federal reserve system, the federal deposit insurance corporation, the office of thrift supervision, and the national credit union administration, and the statement on subprime mortgage lending released in July 2007 by the conference of state bank supervisors, the American association of residential mortgage regulators, and the national association of consumer credit administrators. [2015 c 229 § 2; 2008 c 108 § 2.]

19.144.020 Disclosure requirements—Department duties. (1) In addition to any other requirements under federal or state law, a residential mortgage loan may not be made unless a disclosure summary of all material terms, as adopted by the department in subsection (2) of this section, is placed on a separate sheet of paper and has been provided by a financial institution to the borrower within three business days following receipt of a loan application. If any material terms of the residential mortgage loan change before closing, a new disclosure summary must be provided to the borrower within three days of any such change or at least three days before closing, whichever is earlier.

(2) The department shall adopt, by rule, a disclosure summary form with a content and format containing simple, plain-language terms that are reasonably understandable to the average person without the aid of third-party resources and shall include, but not be limited to, the following items: Fees and discount points on the loan; interest rates of the loan; broker fees; the broker's yield spread premium as a dollar amount; whether the loan contains prepayment penalties; whether the loan contains a balloon payment; whether the property taxes and property insurance are escrowed; whether the loan payments will adjust at the fully indexed rates; and whether there is a price added or premium charged because the loan is based on reduced documentation.

(3) The director may, at his or her discretion, require by rule other information relating to a residential mortgage loan to be included in the disclosure summary if the director determines that it is necessary to protect consumers. The director may adopt rules creating a standard form of disclosure summary to be used as a guide by financial institutions in fulfilling the requirements of this section.

(4) Disclosure in compliance with the real estate settlement procedures act, 12 U.S.C. Sec. 2601, and Regulation X, 24 C.F.R. Sec. 3500, as it exists on June 7, 2012, shall be deemed to comply with the disclosure requirements of this section. If needed, the director may adopt rules to implement and incorporate other changes in the disclosure summary as necessary due to federal law. [2012 c 17 § 18; 2008 c 108 § 3.]

19.144.030 Interagency guidance on nontraditional mortgage product risks and the statement on subprime mortgage lending. (1) The department shall apply the interagency guidance on nontraditional mortgage product risks and the statement on subprime mortgage lending to financial institutions.

(2)(a) Financial institutions subject to this chapter shall adopt and adhere to internal policies and procedures that are

reasonably intended to achieve the objectives set forth in the interagency guidance on nontraditional mortgage product risks and the statement on subprime mortgage lending.

(b) The department shall adopt rules as required to implement this section. [2008 c 108 § 4.]

19.144.040 Prepayment penalty or fee—Limitation.

A financial institution may not make or facilitate the origination of a residential mortgage loan that includes a prepayment penalty or fee that extends beyond sixty days prior to the initial reset period of an adjustable rate mortgage. [2008 c 108 § 5.]

19.144.050 Negative amortization—Limitation.

A financial institution may not make or facilitate a residential mortgage loan that includes any provisions that impose negative amortization and which are subject to the interagency guidance on nontraditional mortgage product risks and the statement on subprime mortgage lending. [2008 c 108 § 6.]

19.144.060 Risk grade determination.

A person licensed or subject to licensing, or otherwise subject to regulation pursuant to chapter 19.146 RCW, or a consumer loan company licensed or subject to licensing under chapter 31.04 RCW may not steer, counsel, or direct any borrower to accept a residential mortgage loan product with a risk grade less favorable than the risk grade that the borrower would qualify for based on the licensee or other regulated person's then current underwriting guidelines, prudently applied, considering the information available to the licensee or other regulated person, including the information provided by the borrower. A licensee or other regulated person has not violated this requirement if the risk grade determination applied to a borrower is reasonably based on the licensee or other regulated person's underwriting guidelines for the borrower's appropriate risk grade category and the borrower is offered choices of residential mortgage loan products within the borrower's appropriate risk grade category. [2008 c 108 § 7.]

19.144.070 Rule-making authority.

The department may adopt rules necessary to implement this chapter, including but not limited to the authority to identify which sections of chapter 108, Laws of 2008 apply to open-end credit plans. [2008 c 108 § 8.]

19.144.080 Unlawful actions—Fraud, misrepresentation, deceptive practices. (1) It is unlawful for any person in connection with the mortgage lending process to directly or indirectly:

(a)(i) Employ any scheme, device, or artifice to defraud or materially mislead any borrower during the lending process; (ii) defraud or materially mislead any lender, defraud or materially mislead any person, or engage in any unfair or deceptive practice toward any person related to the mortgage lending process; or (iii) obtain property by fraud or material misrepresentation during the mortgage lending process;

(b) Knowingly make any misstatement, misrepresentation, or omission related to the mortgage lending process knowing that it may be relied on by a mortgage lender, borrower, or any other party related to the mortgage lending process;

(c) Use or facilitate the use of any misstatement, misrepresentation, or omission, knowing the same to contain a misstatement, misrepresentation, or omission, related to the mortgage lending process with the intention that it be relied on by a mortgage lender, borrower, or any other party related to the mortgage lending process;

(d) Receive any proceeds or anything of value in connection with a residential mortgage closing that such person knew resulted from a violation of subsection (1), (2), or (3) of this section [(a), (b), or (c) of this subsection];

(e) File or cause to be filed with the county recorder or the official registrar of deeds of any county of this state any document such person knows to contain a material misstatement, misrepresentation, or omission;

(f) Violate RCW 31.04.297(3); or

(g) Knowingly alter, destroy, shred, mutilate, or conceal a record, document, or other object, or attempt to do so, with the intent to impair the investigation and prosecution of this crime.

(2) Each crime prosecuted under this section shall be punished separately under chapter 9.94A RCW, unless it is the same criminal conduct as any other crime under RCW 9.94A.589.

(3) Every person who, in the commission of mortgage fraud as described in this section, commits any other crime may be punished for that other crime in addition to mortgage fraud, and may be prosecuted for each crime separately. [2015 c 229 § 3; 2010 c 35 § 12; 2008 c 108 § 9.]

Effective date—2010 c 35: See RCW 31.04.904.

19.144.090 Criminal penalties—Dates of limitation—Venue—Civil penalties and damages—Correction of public record.

(1) Any person who knowingly violates RCW 19.144.080 or who knowingly aids or abets in the violation of RCW 19.144.080 is guilty of a class B felony punishable under RCW 9A.20.021(1)(b). Mortgage fraud is a serious level III offense per chapter 9.94A RCW.

(2) No information may be returned more than (a) five years after the violation, or (b) three years after the actual discovery of the violation, whichever date of limitation is later.

(3) For purposes of venue under this chapter, any violation of RCW 19.144.080 and 31.04.297(3), is considered to have been committed: (a) In the county in which the residential property for which a residential mortgage loan is being sought is located; (b) in any county in which any act was performed in furtherance of the violation; or (c) in any county in which a document containing a misstatement, misrepresentation, or omission of a material fact is filed with the county recorder or the official registrar of deeds.

(4) Any person who violates this chapter is subject to civil forfeiture statutes.

(5) Any person who violates RCW 19.144.080 or 31.04.297(3) is liable for civil damages of five thousand dollars or actual damages, whichever is greater, including costs to repair the victim's credit record and quiet title on the residential property that is involved in the prosecution, and reasonable attorneys' fees as determined by the court.

(6) In a proceeding under RCW 19.144.080 in which there has been a conviction, the sentencing court may issue such orders as necessary to correct a public record that con-

tains false information resulting from a violation of the referenced sections. [2015 c 229 § 4; 2008 c 108 § 10.]

19.144.100 Unlawful actions—Proceeds and interest in real property—Criminal penalties. (1)(a) It is unlawful for a person to use or invest proceeds, or any part of proceeds, knowing that the proceeds, or any part of the proceeds, were derived, directly or indirectly, from a pattern of mortgage fraud activity, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.

(b) A violation of this subsection is a class B felony.

(2)(a) It is unlawful for a person to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property knowing the interest or control was obtained through a pattern of mortgage fraud.

(b) A violation of this subsection is a class B felony.

(3)(a) It is unlawful for a person to knowingly conspire or attempt to violate subsection (1) or (2) of this section.

(b) A violation of this subsection is a class C felony. [2008 c 108 § 11.]

19.144.110 Civil and administrative penalties. Any penalty imposed for violation of this chapter is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law. [2008 c 108 § 12.]

19.144.120 Director—Powers—Enforcement of chapter. The director or the director's designee may, at his or her discretion, take such actions as provided for in Titles *30, 32, and 33 RCW, and chapters 31.12, 31.04, and 19.146 RCW, to enforce, investigate, or examine persons covered by this chapter. [2008 c 108 § 13.]

*Reviser's note: Title 30 RCW was recodified and/or repealed pursuant to 2014 c 37, effective January 5, 2015.

Chapter 19.146 RCW

MORTGAGE BROKER PRACTICES ACT

Sections

19.146.005	Findings and declaration.
19.146.010	Definitions.
19.146.020	Exemptions from chapter.
19.146.0201	Loan originator, mortgage broker—Prohibitions—Requirements.
19.146.030	Written disclosure of fees and costs—Rules—Contents—Lock-in agreement terms—Excess fees limited.
19.146.040	Written contract required—Contract entered by loan originator binding on mortgage broker—Written loan broker agreement required.
19.146.050	Moneys for third-party provider services deemed in trust—Deposit of moneys in trust account—Use of trust account—Rules—Tax treatment.
19.146.060	Accounting requirements.
19.146.070	Fee, commission, or compensation—When permitted.
19.146.080	Borrowers unable to obtain loans—Mortgage broker to provide copies of certain documents—Conditions—Exceptions.
19.146.085	Duties—Generally.
19.146.095	Fiduciary duties.
19.146.100	Violations of chapter—Application of consumer protection act.
19.146.103	Financial interest in a mortgage broker—Prohibited practices.
19.146.110	Criminal penalty.
19.146.200	Mortgage broker or loan originator—License required—Suit or action for collection of compensation—Designated broker required.
19.146.205	License—Application—Applicant to furnish information establishing identity—Background check—Fee—Bond or alternative.

19.146.210	License—Requirements for issuance—Denial—Validity—Surrender—Interim license—Rules.
19.146.215	Continuing education—Rules.
19.146.218	Informal settlement of complaints or enforcement actions—Director's discretion.
19.146.220	Director—Powers and duties—Violations as separate violations—Rules.
19.146.221	Action by director—Hearing—Sanction.
19.146.223	Director—Administration and interpretation.
19.146.225	Director—Rule-making powers.
19.146.226	Director—Licensing rules and interim procedures.
19.146.227	Cease and desist order—Action to enjoin and enforce.
19.146.228	Fees—Exception.
19.146.230	Administrative procedure act application.
19.146.233	Subpoena authority—Application—Contents—Notice—Fees.
19.146.235	Director's authority to conduct investigations and examinations—Rules—Penalty.
19.146.237	Director—Powers under chapter 19.144 RCW.
19.146.240	Violations—Claims against bond or alternative.
19.146.245	Violations—Liability.
19.146.250	Authority restricted to person named in license—Exceptions.
19.146.260	Registered agent for brokers without physical office in state—Venue.
19.146.265	Branch offices—Fee—Licenses—Rules.
19.146.300	Loan originator license—Application—Applicant to furnish information establishing identification—Background check—Fees—Rules.
19.146.310	Loan originator license—Requirements for issuance—Denial—Validity—Expiration—Surrender—Interim license.
19.146.320	Loan originator license—Not assignable.
19.146.325	Loan originator license—Test.
19.146.340	Loan originator applicants.
19.146.350	Loan originators—Continuing education—Requirements.
19.146.353	Residential mortgage loan modification services—Written fee agreement—Limitation on fees—Rules.
19.146.355	Third-party residential mortgage loan modification services providers—Duties—Restrictions.
19.146.357	Mortgage loan originator—License required—Nationwide mortgage licensing system and registry.
19.146.360	Director's duty—Process to challenge information—Nationwide mortgage licensing system and registry.
19.146.370	Disclosure of information—Privilege—Confidentiality—Exceptions.
19.146.380	Director's authority to contract—Records and fees.
19.146.390	Mortgage brokers—Call reports—Licensing system and registry.
19.146.400	Director's authority—Violation and enforcement reporting.
19.146.900	Short title.
19.146.903	Effective dates—1994 c 33.
19.146.904	Implementation of act—2006 c 19.
19.146.905	Effective date—2006 c 19.

19.146.005 Findings and declaration. The legislature finds and declares that the brokering of residential real estate loans substantially affects the public interest, requiring that all actions in mortgage brokering be actuated by good faith, and that mortgage brokers, designated brokers, loan originators, and other persons subject to this chapter abstain from deception, and practice honesty and equity in all matters relating to their profession. The practices of mortgage brokers and loan originators have had significant impact on the citizens of the state and the banking and real estate industries. It is the intent of the legislature to establish a state system of licensure in addition to rules of practice and conduct of mortgage brokers and loan originators to promote honesty and fair dealing with citizens and to preserve public confidence in the lending and real estate community. [2008 c 108 § 21; 2006 c 19 § 1; 1994 c 33 § 1; 1993 c 468 § 1; 1987 c 391 § 1.]

Findings—2008 c 108: See RCW 19.144.005.

Additional notes found at www.leg.wa.gov

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

(1) "Affiliate" means any person who directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with another person.

(2) "Borrower" means any person who consults with or retains a mortgage broker or loan originator in an effort to obtain or seek advice or information on obtaining or applying to obtain a residential mortgage loan, or a residential mortgage loan modification, for himself, herself, or persons including himself or herself, regardless of whether the person actually obtains such a loan.

(3) "Computer loan information systems" or "CLI system" means a real estate mortgage financing information system that facilitates the provision of information to consumers by a mortgage broker, loan originator, lender, real estate agent, or other person regarding interest rates and other loan terms available from different lenders.

(4) "Department" means the state department of financial institutions.

(5) "Designated broker" means an individual designated as the person responsible for activities of the licensed mortgage broker in conducting the business of a mortgage broker under this chapter and who meets the experience and examination requirements set forth in RCW 19.146.210(1)(e).

(6) "Director" means the director of financial institutions.

(7) "Employee" means an individual who has an employment relationship with a mortgage broker, and the individual is treated as an employee by the mortgage broker for purposes of compliance with federal income tax laws.

(8) "Federal banking agencies" means the board of governors of the federal reserve system, comptroller of the currency, director of the office of thrift supervision, national credit union administration, and federal deposit insurance corporation.

(9) "License" means a single license issued under the authority of this chapter.

(10) "Licensee" means a person to whom one or more licenses have been issued. "Licensee" also means any person, whether located within or outside of this state, who fails to obtain a license required by this chapter.

(11)(a) "Loan originator" means an individual who for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain (i) takes a residential mortgage loan application, or (ii) offers or negotiates terms of a residential mortgage loan. "Loan originator" also includes a person who holds themselves out to the public as able to perform any of these activities. "Loan originator" does not mean persons performing purely administrative or clerical tasks for a mortgage broker. For the purposes of this subsection, "administrative or clerical tasks" means the receipt, collection, and distribution of information common for the processing of a loan in the mortgage industry and communication with a borrower to obtain information necessary for the processing of a residential mortgage loan. A person who holds himself or herself out to the public as able to obtain a residential mortgage loan is not performing administrative or clerical tasks.

(b) "Loan originator" also includes an individual who for direct or indirect compensation or gain or in the expectation of direct or indirect compensation or gain performs residential mortgage loan modification services or holds himself or

herself out as being able to perform residential mortgage loan modification services.

(c) "Loan originator" does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such a lender, mortgage broker, or other mortgage loan originator. For purposes of this chapter, the term "real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:

(i) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

(ii) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(iii) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to such a transaction;

(iv) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and

(v) Offering to engage in any activity, or act in any capacity, described in (c)(i) through (iv) of this subsection.

(d) "Loan originator" does not include a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in section 101(53D) of Title 11, United States Code.

(e) This subsection does not apply to employees of a housing counseling agency approved by the United States department of housing and urban development unless the employees of a housing counseling agency are required under federal law to be licensed individually as loan originators.

(12) "Loan processor" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing, under this chapter.

(13) "Lock-in agreement" means an agreement with a borrower made by a mortgage broker or loan originator, in which the mortgage broker or loan originator agrees that, for a period of time, a specific interest rate or other financing terms will be the rate or terms at which it will make a residential mortgage loan available to that borrower.

(14) "Mortgage broker" means any person who for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain (a) assists a person in obtaining or applying to obtain a residential mortgage loan or performs residential mortgage loan modification services or (b) holds himself or herself out as being able to assist a person in obtaining or applying to obtain a residential mortgage loan or provide residential mortgage loan modification services.

(15) "Mortgage loan originator" has the same meaning as "loan originator."

(16) "Nationwide mortgage licensing system and registry" means a mortgage licensing system developed and maintained by the conference of state bank supervisors for licensing and registration.

(17) "Person" means an individual, corporation, company, limited liability company, partnership, association, and all other legal entities.

(18) "Principal" means any person who controls, directly or indirectly through one or more intermediaries, or alone or in concert with others, a ten percent or greater interest in a partnership, company, association, corporation, limited liability company, and the owner of a sole proprietorship.

(19) "Residential mortgage loan" means any loan primarily for personal, family, or household use secured by a mortgage, deed of trust or other consensual security interest on a dwelling as defined in the truth in lending act, or residential real estate upon which is constructed or intended to be constructed a dwelling.

(20) "Residential mortgage loan modification" means a change in one or more of a residential mortgage loan's terms or conditions. Changes to a residential mortgage loan's terms or conditions include but are not limited to forbearances; repayment plans; changes in interest rates, loan terms, or loan types; capitalizations of arrearages; or principal reductions.

(21) "Residential mortgage loan modification services" includes negotiating, attempting to negotiate, arranging, attempting to arrange, or otherwise offering to perform a residential mortgage loan modification. "Residential mortgage loan modification services" also includes the collection of data for submission to any entity performing mortgage loan modification services.

(22) "S.A.F.E. act" means the secure and fair enforcement for mortgage licensing act of 2008, or Title V of the housing and economic recovery act of 2008 ("HERA"), P.L. 110-289, effective July 30, 2008, codified at 12 U.S.C. Sec. 5101 et seq.

(23) "Third-party provider" means any person other than a mortgage broker or lender who provides goods or services to the mortgage broker in connection with the preparation of the borrower's residential mortgage loan and includes, but is not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, or escrow companies.

(24) "Third-party residential mortgage loan modification services" means residential mortgage loan modification services offered or performed by any person other than the owner or servicer of the loan.

(25) "Unique identifier" means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry. [2015 c 229 § 5; 2013 c 30 § 1; 2010 c 35 § 13; 2009 c 528 § 1; 2008 c 78 § 3; 2006 c 19 § 2; 1997 c 106 § 1; 1994 c 33 § 3; 1993 c 468 § 2; 1987 c 391 § 3.]

Effective date—2010 c 35: See RCW 31.04.904.

Effective date—License requirement—2009 c 528: "(1) In order to facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, sections 4, 6 through 9, 11, 12, 14, and 17 [of this act] are effective January 1, 2010.

(2) In order to facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, mortgage loan originators who were previously exempt as exclusive agents under RCW 19.146.020(1)(a)(ii) must obtain a mortgage loan originator license under this chapter before July 1, 2010." [2009 c 528 § 19.]

Implementation—2009 c 528: "The director of financial institutions or the director's designee may take the actions necessary to ensure this act is implemented on July 1, 2010." [2009 c 528 § 20.]

Severability—2008 c 78: See note following RCW 31.04.025.

Additional notes found at www.leg.wa.gov

19.146.020 Exemptions from chapter. (1) The following are exempt from all provisions of this chapter:

(a) Any person doing business under the laws of the state of Washington or the United States, and any federally insured depository institution doing business under the laws of any other state, relating to commercial banks, bank holding companies, savings banks, trust companies, savings and loan associations, credit unions, insurance companies, or real estate investment trusts as defined in 26 U.S.C. Sec. 856 and the affiliates, subsidiaries, and service corporations thereof;

(b) Any person doing business under the consumer loan act is exempt from this chapter only for that business conducted under the authority and coverage of the consumer loan act;

(c) An attorney licensed to practice law in this state. However, (i) all mortgage broker or loan originator services must be performed by the attorney while engaged in the practice of law; (ii) all mortgage broker or loan originator services must be performed under a business that is publicly identified and operated as a law practice; and (iii) all funds associated with the transaction and received by the attorney must be deposited in, maintained in, and disbursed from a trust account to the extent required by rules enacted by the Washington supreme court regulating the conduct of attorneys;

(d) Any person doing any act under order of any court, except for a person subject to an injunction to comply with any provision of this chapter or any order of the director issued under this chapter;

(e) A real estate broker or salesperson licensed by the state who obtains financing for a real estate transaction involving a bona fide sale of real estate in the performance of his or her duties as a real estate broker and who receives only the customary real estate broker's or salesperson's commission in connection with the transaction;

(f) The United States of America, the state of Washington, any other state, and any Washington city, county, or other political subdivision, and any agency, division, or corporate instrumentality of any of the entities in this subsection (1)(f);

(g) A real estate broker who provides only information regarding rates, terms, and lenders in connection with a CLI system, who receives a fee for providing such information, who conforms to all rules of the director with respect to the providing of such service, and who discloses on a form approved by the director that to obtain a loan the borrower must deal directly with a mortgage broker or lender. However, a real estate broker shall not be exempt if he or she does any of the following:

(i) Holds himself or herself out as able to obtain a loan from a lender;

(ii) Accepts a loan application, or submits a loan application to a lender;

(iii) Accepts any deposit for third-party services or any loan fees from a borrower, whether such fees are paid before, upon, or after the closing of the loan;

(iv) Negotiates rates or terms with a lender on behalf of a borrower; or

(v) Provides the disclosure required by RCW 19.146.030(1);

(h) Registered mortgage loan originators, or any individual required to be registered;

(i) A manufactured or modular home retailer employee who performs purely administrative or clerical tasks and who receives only the customary salary or commission from the employer in connection with the transaction; and

(j) Nonprofit housing organizations brokering residential mortgage loans 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, repairing, or otherwise providing housing for low-income Washington state residents.

(2) Any person otherwise exempted from the licensing provisions of this chapter may voluntarily submit an application to the director for a mortgage broker's license. The director shall review such application and may grant or deny licenses to such applicants upon the same grounds and with the same fees as may be applicable to persons required to be licensed under this chapter.

(a) Upon receipt of a license under this subsection, the licensee is required to continue to maintain a valid license, is subject to all provisions of this chapter, and has no further right to claim exemption from the provisions of this chapter except as provided in (b) of this subsection.

(b) Any licensee under this subsection who would otherwise be exempted from the requirements of licensing by this section may apply to the director for exemption from licensing. The director shall adopt rules for reviewing such applications and shall grant exemptions from licensing to applications which are consistent with those rules and consistent with the other provisions of this chapter. [2015 c 229 § 6; 2013 c 30 § 2; 2009 c 528 § 2; 2006 c 19 § 3; 1997 c 106 § 2; 1994 c 33 § 5; 1994 c 33 § 4; 1993 c 468 § 3; 1987 c 391 § 4.]

Effective date—License requirement—Implementation—2009 c 528: See notes following RCW 19.146.010.

Additional notes found at www.leg.wa.gov

19.146.0201 Loan originator, mortgage broker—Prohibitions—Requirements. It is a violation of this chapter for loan originators, mortgage brokers, officers, directors, employees, 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 borrowers or lenders or to defraud 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 mortgage broker may earn a fee or commission through the mortgage broker'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 from a person exempt from licensing under RCW 19.146.020(1)(f) or a lender with whom the

mortgage broker maintains a written correspondent or loan broker agreement under RCW 19.146.040;

(6) Fail to make disclosures to loan applicants and non-institutional investors as required by RCW 19.146.030 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 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) Advertise any rate of interest without conspicuously disclosing the annual percentage rate implied by such rate of interest;

(11) Fail to comply with state and federal laws applicable to the activities governed by this chapter;

(12) Fail to pay third-party providers no later than thirty days after the recording of the loan closing documents or ninety days after completion of the third-party service, whichever comes first, unless otherwise agreed or unless the third-party service provider has been notified in writing that a bona fide dispute exists regarding the performance or quality of the third-party service;

(13) Collect, charge, attempt to collect or charge or use or propose any agreement purporting to collect or charge any fee prohibited by RCW 19.146.030 or 19.146.070;

(14)(a) Except when complying with (b) and (c) of this subsection, act as a loan originator in any transaction (i) in which the loan originator acts or has acted as a real estate broker or salesperson or (ii) in which another person doing business under the same licensed real estate broker acts or has acted as a real estate broker or salesperson;

(b) Prior to providing mortgage services to the borrower, a loan originator, in addition to other disclosures required by this chapter and other laws, must provide to the borrower the following written disclosure:

THIS IS TO GIVE YOU NOTICE THAT I OR ONE OF MY ASSOCIATES HAVE/HAS ACTED AS A REAL ESTATE BROKER OR SALESPERSON REPRESENTING THE BUYER/SELLER IN THE SALE OF THIS PROPERTY TO YOU. I AM ALSO A LOAN ORIGINATOR, AND WOULD LIKE TO PROVIDE MORTGAGE SERVICES TO YOU IN CONNECTION WITH YOUR LOAN TO PURCHASE THE PROPERTY.

YOU ARE NOT REQUIRED TO USE ME AS A LOAN ORIGINATOR IN CONNECTION WITH THIS TRANSACTION. YOU ARE FREE TO COMPARISON SHOP WITH OTHER MORTGAGE BROKERS AND LENDERS, AND TO SELECT ANY MORTGAGE BROKER OR LENDER OF YOUR CHOOSING; and

(c) A real estate broker or salesperson licensed under chapter 18.85 RCW who also acts as a mortgage broker must

carry on such mortgage broker business activities and must maintain such person's mortgage broker business records separate and apart from the real estate broker activities conducted pursuant to chapter 18.85 RCW. Such activities are separate and apart even if they are conducted at an office location with a common entrance and mailing address, so long as each business is clearly identified by a sign visible to the public, each business is physically separated within the office facility, and no deception of the public as to the separate identities of the broker business firms results. This subsection (14)(c) does not require a real estate broker or salesperson licensed under chapter 18.85 RCW who also acts as a mortgage broker to maintain a physical separation within the office facility for the conduct of its real estate and mortgage broker activities where the director determines that maintaining such physical separation would constitute an undue financial hardship upon the mortgage broker and is unnecessary for the protection of the public;

(15) Fail to comply with any provision of RCW 19.146.030 through 19.146.080 or any rule adopted under those sections;

(16) Originate loans from any unlicensed location;

(17) Solicit or accept from any borrower at or near the time a loan application is taken, and in advance of any foreclosure of the borrower's existing residential mortgage loan or loans, any instrument of conveyance of any interest in the borrower's primary dwelling that is the subject of the residential mortgage loan or loans; or

(18) Make a residential mortgage loan unless the loan is table funded. [2015 c 229 § 7; 2013 c 30 § 3; 2009 c 528 § 3; 2006 c 19 § 4; 1997 c 106 § 3; 1994 c 33 § 6; 1993 c 468 § 4.]

Effective date—License requirement—Implementation—2009 c 528: See notes following RCW 19.146.010.

Additional notes found at www.leg.wa.gov

19.146.030 Written disclosure of fees and costs—Rules—Contents—Lock-in agreement terms—Excess fees limited. (1) Within three business days following receipt of a loan application from a borrower, a mortgage broker or loan originator must provide to the borrower a full written disclosure containing an itemization and explanation of all fees and costs that the borrower is required to pay in connection with obtaining a residential mortgage loan, and specifying the fee or fees which inure to the benefit of the mortgage broker and other such disclosures as may be required by rule. A good faith estimate of a fee or cost must be provided if the exact amount of the fee or cost is not determinable.

(2) The written disclosure must contain the following information:

(a) The annual percentage rate, finance charge, amount financed, total amount of all payments, number of payments, amount of each payment, amount of points or prepaid interest and the conditions and terms under which any loan terms may change between the time of disclosure and closing of the loan; and if a variable rate, the circumstances under which the rate may increase, any limitation on the increase, the effect of an increase, and an example of the payment terms resulting from an increase. Disclosure in compliance with the requirements of the truth in lending act, 15 U.S.C. Sec. 1601 and Regulation Z, 12 C.F.R. Part 1026, as now or hereafter

amended, is in compliance with the disclosure requirements of this subsection;

(b) The itemized costs of any credit report, appraisal, title report, title insurance policy, mortgage insurance, escrow fee, property tax, insurance, structural or pest inspection, and any other third-party provider's costs associated with the residential mortgage loan. Disclosure through good faith estimates of settlement services and special information booklets in compliance with the requirements of the real estate settlement procedures act, 12 U.S.C. Sec. 2601, and Regulation X, 24 C.F.R. Part 1024, as now or hereafter amended, is in compliance with the disclosure requirements of this subsection;

(c) If applicable, the cost, terms, duration, and conditions of a lock-in agreement and whether a lock-in agreement has been entered, and whether the lock-in agreement is guaranteed by the mortgage broker or lender, and if a lock-in agreement has not been entered, disclosure in a form acceptable to the director that the disclosed interest rate and terms are subject to change;

(d) If applicable, a statement that if the borrower is unable to obtain a loan for any reason, the mortgage broker must, within five days of a written request by the borrower, give copies of any appraisal, title report, or credit report paid for by the borrower to the borrower, and transmit the appraisal, title report, or credit report to any other mortgage broker or lender to whom the borrower directs the documents to be sent;

(e) Whether and under what conditions any lock-in fees are refundable to the borrower; and

(f) A statement providing that moneys paid by the borrower to the mortgage broker for third-party provider services are held in a trust account and any moneys remaining after payment to third-party providers will be refunded.

(3) If subsequent to the written disclosure being provided under this section, a mortgage broker or loan originator enters into a lock-in agreement with a borrower or represents to the borrower that the borrower has entered into a lock-in agreement, then no less than three business days thereafter including Saturdays, the mortgage broker or loan originator must deliver or send by first-class mail to the borrower a written confirmation of the terms of the lock-in agreement, which must include a copy of the disclosure made under subsection (2)(c) of this section.

(4) A mortgage broker or loan originator on behalf of a mortgage broker must not charge any fee that inures to the benefit of the mortgage broker if it exceeds the fee disclosed on the written disclosure pursuant to this section, unless (a) the need to charge the fee was not reasonably foreseeable at the time the written disclosure was provided and (b) the mortgage broker or loan originator on behalf of a mortgage broker has provided to the borrower, no less than three business days prior to the signing of the loan closing documents, a clear written explanation of the fee and the reason for charging a fee exceeding that which was previously disclosed. However, if the borrower's closing costs on the final settlement statement, excluding prepaid escrowed costs of ownership as defined by rule, does not exceed the total closing costs in the most recent good faith estimate, excluding prepaid escrowed costs of ownership as defined by rule, no other disclosures are required by this subsection. [2015 c 229 § 8; 2006 c 19 §

5; 1997 c 106 § 4; 1994 c 33 § 18; 1993 c 468 § 12; 1987 c 391 § 5.]

Additional notes found at www.leg.wa.gov

19.146.040 Written contract required—Contract entered by loan originator binding on mortgage broker—Written loan broker agreement required. (1) Every contract between a mortgage broker, or a loan originator, and a borrower must be in writing and contain the entire agreement of the parties.

(2) Any contract under this section entered by a loan originator is binding on the mortgage broker.

(3) A mortgage broker must have a written loan broker agreement with a lender before any solicitation of, or contracting with, the public. [2015 c 229 § 9; 2006 c 19 § 6; 1994 c 33 § 19; 1987 c 391 § 6.]

19.146.050 Moneys for third-party provider services deemed in trust—Deposit of moneys in trust account—Use of trust account—Rules—Tax treatment. (1) All moneys received by a mortgage broker from a borrower for payment of third-party provider services shall be deemed as held in trust immediately upon receipt by the mortgage broker. A mortgage broker shall deposit, prior to the end of the third business day following receipt of such trust funds, all such trust funds in a trust account of a federally insured financial institution located in this state. All trust account funds collected under this chapter must remain on deposit in a trust account in the state of Washington until disbursement. The trust account shall be designated and maintained for the benefit of borrowers. Moneys maintained in the trust account shall be exempt from execution, attachment, or garnishment. A mortgage broker shall not in any way encumber the corpus of the trust account or commingle any other operating funds with trust account funds. Withdrawals from the trust account shall be only for the payment of bona fide services rendered by a third-party provider or for refunds to borrowers.

(2) The director shall make rules which: (a) Direct mortgage brokers how to handle checks and other instruments that are received by the broker and that combine trust funds with other funds; and (b) permit transfer of trust funds out of the trust account for payment of other costs only when necessary and only with the prior express written permission of the borrower.

(3) Any interest earned on the trust account shall be refunded or credited to the borrowers at closing.

(4) Trust accounts that are operated in a manner consistent with this section and any rules adopted by the director, are not considered gross receipts taxable under chapter 82.04 RCW.

(5) A person violating this section is guilty of a class C felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 158; 1998 c 311 § 1; 1997 c 106 § 5; 1987 c 391 § 7.]

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

Intent—Retroactive application—1998 c 311: "The intent of sections 1 and 3 of this act is to clarify the original intent of sections 5 and 21, chapter 106, Laws of 1997 and shall not be construed otherwise. Therefore, sections 1 and 3 of this act apply retroactively to July 27, 1997." [1998 c 311 § 30.]

Additional notes found at www.leg.wa.gov

(2018 Ed.)

19.146.060 Accounting requirements. (1) A mortgage broker shall use generally accepted accounting principles.

(2) Except as otherwise provided in subsection (3) of this section, a mortgage broker shall maintain accurate and current books and records which shall be readily available at a location available to the director until at least three years have elapsed following the effective period to which the books and records relate.

(3) Where a mortgage broker's usual business location is outside of the state of Washington, the mortgage broker shall, as determined by the director by rule, either maintain its books and records at a location in this state, or reimburse the director for his or her expenses, including but not limited to transportation, food, and lodging expenses, relating to any examination or investigation resulting under this chapter.

(4) "Books and records" includes but is not limited to:

(a) Copies of all advertisements placed by or at the request of the mortgage broker which mention rates or fees. In the case of radio or television advertisements, or advertisements placed on a telephonic information line or other electronic source of information including but not limited to a computer database or electronic bulletin board, a mortgage broker shall keep copies of the precise script for the advertisement. All advertisement records shall include for each advertisement the date or dates of publication and name of each periodical, broadcast station, or telephone information line which published the advertisement or, in the case of a flyer or other material distributed by the mortgage broker, the dates, methods, and areas of distribution; and

(b) Copies of all documents, notes, computer records if not stored in printed form, correspondence or memoranda relating to a borrower from whom the mortgage broker has accepted a deposit or other funds, or accepted a residential mortgage loan application or with whom the mortgage broker has entered into an agreement to assist in obtaining a residential mortgage loan. [2013 c 30 § 4; 2006 c 19 § 7; 1997 c 106 § 6; 1994 c 33 § 20; 1987 c 391 § 8.]

Additional notes found at www.leg.wa.gov

19.146.070 Fee, commission, or compensation—When permitted. (1) Except as otherwise permitted by this section, a mortgage broker must not receive a fee, commission, or compensation of any kind in connection with the preparation, negotiation, and brokering of a residential mortgage loan unless a borrower actually obtains a loan from a lender on the terms and conditions agreed upon by the borrower and mortgage broker. A loan originator may not accept a fee, commission, or compensation of any kind from borrowers in connection with the preparation, negotiation, and brokering of a residential mortgage loan.

(2) A mortgage broker may:

(a) If the mortgage broker has obtained for the borrower a written commitment from a lender for a loan on the terms and conditions agreed upon by the borrower and the mortgage broker, and the borrower fails to close on the loan through no fault of the mortgage broker, charge a fee not to exceed three hundred dollars for services rendered, preparation of documents, or transfer of documents in the borrower's file which were prepared or paid for by the borrower if the fee is not otherwise prohibited by the truth in lending act, 15

U.S.C. Sec. 1601, and Regulation Z, 12 C.F.R. Part 1026, as now or hereafter amended; or

(b) Solicit or receive fees for third party provider goods or services in advance. Fees for any goods or services not provided must be refunded to the borrower and the mortgage broker may not charge more for the goods and services than the actual costs of the goods or services charged by the third party provider.

(3) A loan originator may not solicit or receive fees for a third-party provider of goods or services except that a loan originator may transfer funds from a borrower to a licensed mortgage broker, exempt mortgage broker, or third-party provider, if the loan originator does not deposit, hold, retain, or use the funds for any purpose other than the payment of bona fide fees to third-party providers. [2015 c 229 § 10; 2006 c 19 § 8; 1993 c 468 § 13; 1987 c 391 § 9.]

Additional notes found at www.leg.wa.gov

19.146.080 Borrowers unable to obtain loans—Mortgage broker to provide copies of certain documents—Conditions—Exceptions. Except as otherwise required by the United States Code or the Code of Federal Regulations, now or as amended, if a borrower is unable to obtain a loan for any reason and the borrower has paid for an appraisal, title report, or credit report in full, the mortgage broker shall give a copy of the appraisal, title report, or credit report to the borrower and transmit the originals to any other mortgage broker or lender to whom the borrower directs that the documents be transmitted. Regardless of whether the borrower has obtained a loan, the mortgage broker must provide the copies or transmit the documents within five days after the borrower has made the request in writing. [1997 c 106 § 7; 1987 c 391 § 10.]

Additional notes found at www.leg.wa.gov

19.146.085 Duties—Generally. The activities of a mortgage broker affect the public interest, and require that all actions of mortgage brokers, designated brokers, loan originators, and other persons subject to this chapter be actuated by good faith, abstain from deception, and practice honesty and equity in all matters related to their profession. The duty of preserving the integrity of the mortgage broker business rests upon the mortgage broker, designated broker, loan originator, and other persons subject to this chapter. [2008 c 108 § 20.]

Findings—2008 c 108: See RCW 19.144.005.

19.146.095 Fiduciary duties. (1) A mortgage broker has a fiduciary relationship with the borrower. For the purposes of this section, the fiduciary duty means that the mortgage broker has the following duties:

(a) A mortgage broker must act in the borrower's best interest and in the utmost good faith toward the borrower, and shall disclose any and all interests to the borrower including, but not limited to, interests that may lie with the lender that are used to facilitate a borrower's request. A mortgage broker shall not accept, provide, or charge any undisclosed compensation or realize any undisclosed remuneration that inures to the benefit of the mortgage broker on an expenditure made for the borrower;

(b) A mortgage broker must carry out all lawful instructions provided by the borrower;

(c) A mortgage broker must disclose to the borrower all material facts of which the mortgage broker has knowledge that might reasonably affect the borrower's rights, interests, or ability to receive the borrower's intended benefit from the residential mortgage loan;

(d) A mortgage broker must use reasonable care in performing duties; and

(e) A mortgage broker must provide an accounting to the borrower for all money and property received from the borrower.

(2) A mortgage broker may contract for or collect a fee for services rendered if the fee is disclosed to the borrower in advance of the provision of those services.

(3) The fiduciary duty in this section does not require a mortgage broker to offer or obtain access to loan products and services other than those that are available to the mortgage broker at the time of the transaction.

(4) The director must adopt rules to implement this section. [2008 c 109 § 1.]

19.146.100 Violations of chapter—Application of consumer protection act. The legislature finds that the practices governed by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Any violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act or practice and unfair method of competition in the conduct of trade or commerce in violation of RCW 19.86.020. Remedies provided by chapter 19.86 RCW are cumulative and not exclusive. [1994 c 33 § 25; 1987 c 391 § 12.]

19.146.103 Financial interest in a mortgage broker—Prohibited practices. (1) A mortgage broker, loan originator, officer or employee of any mortgage broker, or person who has a financial interest in a mortgage broker shall not, directly or indirectly, give any fee, kickback, payment, or other thing of value to any person as an inducement, reward for placing business, referring business, or causing title insurance business to be given to a title insurance agent in which the mortgage broker, loan originator, or person having a financial interest in the mortgage broker also has a financial interest.

(2) A mortgage broker, loan originator, or person who has a financial interest in a mortgage broker shall not either solicit or accept, or both, anything of value from: A title insurance company, a title insurance agent, or the employees or representatives of a title insurance company or title insurance agent, that a title insurance company or title insurance agent is not permitted by law or rule to give to the mortgage broker, loan originator, or person who has a financial interest in the mortgage broker.

(3) A mortgage broker, loan originator, or person who has a financial interest in a mortgage broker shall not prevent or deter a title insurance company, title insurance agent, or their employees or representatives from delivering to a mortgage broker or loan originator or its employees, independent contractors, and clients printed promotional material concerning only title insurance services as long as:

(a) The material is business appropriate and is not misleading or false;

(b) The material does not malign the mortgage broker or loan originator, its employees, independent contractors, or affiliates;

(c) The delivery of the materials is limited to those areas of the mortgage broker or loan originator's physical office reserved for unrestricted public access; and

(d) The conduct of the employees or representatives is appropriate for a business setting and does not threaten the safety or health of anyone in the mortgage broker's or loan originator's office.

(4) A mortgage broker or loan originator shall not require a consumer, as a condition of providing loans or real estate settlement services, to obtain title insurance from a title insurance agent in which the mortgage broker or loan originator has a financial interest. [2008 c 110 § 12.]

19.146.110 Criminal penalty. Any person who violates any provision of this chapter other than RCW 19.146.050 or any rule or order of the director is guilty of a misdemeanor punishable under chapter 9A.20 RCW. [2003 c 53 § 159; 1993 c 468 § 20; 1987 c 391 § 13.]

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

Additional notes found at www.leg.wa.gov

19.146.200 Mortgage broker or loan originator—License required—Suit or action for collection of compensation—Designated broker required. (1) A person, unless specifically exempted from this chapter under RCW 19.146.020, may not engage in the business of a mortgage broker or loan originator without first obtaining and maintaining a license under this chapter.

(2) A person may not bring a suit or action for the collection of compensation in connection with a residential mortgage loan unless the plaintiff alleges and proves that he or she was a duly licensed mortgage broker, or exempt from the license requirement of this chapter, at the time of offering to perform or performing any such an act or service regulated by this chapter.

(3) Every licensed mortgage broker must at all times have a designated broker responsible for all activities of the mortgage broker in conducting the business of a mortgage broker. A designated broker, principal, or owner who has supervisory authority over a mortgage broker is responsible for a licensee's, employee's, or independent contractor's violations of this chapter and its rules if:

(a) The designated broker, principal, or owner directs or instructs the conduct or, with knowledge of the specific conduct, approves or allows the conduct; or

(b) The designated broker, principal, or owner who has supervisory authority over the licensed mortgage broker knows or by the exercise of reasonable care and inquiry should have known of the conduct, at a time when its consequences can be avoided or mitigated and fails to take reasonable remedial action. [2012 c 17 § 12; 2006 c 19 § 9; 1997 c 106 § 8; 1994 c 33 § 7; 1993 c 468 § 5.]

Additional notes found at www.leg.wa.gov

(2018 Ed.)

19.146.205 License—Application—Applicant to furnish information establishing identity—Background check—Fee—Bond or alternative. (1) Application for a mortgage broker license under this chapter must be made to the nationwide mortgage licensing system and registry and in the form prescribed by the director. The application must contain at least the following information:

(a) The name, address, date of birth, and social security number of the applicant, and any other names, dates of birth, or social security numbers previously used by the applicant, unless waived by the director;

(b) If the applicant is a partnership, association, or limited liability company the name, address, date of birth, and social security number of each general partner, principal, or member of the association, and any other names, dates of birth, or social security numbers previously used by the members, unless waived by the director;

(c) If the applicant is a corporation, the name, address, date of birth, and social security number of each officer, director, registered agent, and each principal stockholder, and any other names, dates of birth, or social security numbers previously used by the officers, directors, registered agents, and principal stockholders unless waived by the director;

(d) The street address, county, and municipality where the principal business office is to be located;

(e) The name, address, date of birth, and social security number of the applicant's designated broker, and any other names, dates of birth, or social security numbers previously used by the designated broker and a complete set of the designated broker's fingerprints taken by an authorized law enforcement officer; and

(f)(i) Such other information regarding the applicant's or designated broker's background, financial responsibility, experience, character, and general fitness as the director may require by rule.

(ii) The director may waive one or more requirements of this section or permit an applicant to submit other information in lieu of the required information.

(2) As a part of or in connection with an application for any license under this section, or periodically upon license renewal, the applicant must furnish information concerning his or her identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, the nationwide mortgage licensing system and registry, or any governmental agency or entity authorized to receive this information for a state and national criminal history background check; personal history; experience; business record; purposes; and other pertinent facts, as the director may reasonably require. As part of or in connection with an application for a license under this chapter, the director is authorized to receive criminal history record information that includes nonconviction data as defined in RCW 10.97.030. The department may only disseminate nonconviction data obtained under this section to criminal justice agencies. This section does not apply to financial institutions regulated under chapters 31.12 and 31.13 RCW and Titles 30A, 32, and 33 RCW.

(3) In order to reduce the points of contact which the federal bureau of investigation may have to maintain, the director may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information

from and distributing information to the department of justice or any governmental agency.

(4) In order to reduce the points of contact which the director may have to maintain, the director may use the nationwide mortgage licensing system and registry as a channeling agent for requesting and distributing information to and from any source so directed by the director.

(5) At the time of filing an application for a license under this chapter, each applicant must pay to the director through the nationwide mortgage licensing system and registry the appropriate application fee in an amount determined by rule of the director in accordance with RCW 43.24.086 to cover, but not exceed, the cost of processing and reviewing the application. The director must deposit the moneys in the financial services regulation fund, unless the consumer services account is created as a dedicated, nonappropriated account, in which case the director must deposit the moneys in the consumer services account.

(6)(a) Except as provided in (b) of this subsection, each applicant for a mortgage broker's license must file and maintain a surety bond, in an amount which the director deems adequate to protect the public interest, executed by the applicant as obligor and by a surety company authorized to do a surety business in this state as surety. The bonding requirement as established by the director must take the form of a range of bond amounts which vary according to the annual loan origination volume of the licensee. The bond must run to the state of Washington as obligee, and must run first to the benefit of the borrower and then to the benefit of the state and any person or persons who suffer loss by reason of the applicant's or its loan originator's violation of any provision of this chapter or rules adopted under this chapter. The bond must be conditioned that the obligor as licensee will faithfully conform to and abide by this chapter and all rules adopted under this chapter, and must reimburse all persons who suffer loss by reason of a violation of this chapter or rules adopted under this chapter. Borrowers must be given priority over the state and other persons. The state and other third parties must be allowed to receive distribution pursuant to a valid claim against the remainder of the bond. In the case of claims made by any person or entity who is not a borrower, no final judgment may be entered prior to one hundred eighty days following the date the claim is filed. The bond must be continuous and may be canceled by the surety upon the surety giving written notice to the director of its intent to cancel the bond. The cancellation must be effective thirty days after the notice is received by the director. Whether or not the bond is renewed, continued, reinstated, reissued, or otherwise extended, replaced, or modified, including increases or decreases in the penal sum, it is considered one continuous obligation, and the surety upon the bond is not liable in an aggregate or cumulative amount exceeding the penal sum set forth on the face of the bond. In no event is the penal sum, or any portion thereof, at two or more points in time be added together in determining the surety's liability. The bond is not be [is not] liable for any penalties imposed on the licensee, including, but not limited to, any increased damages or attorneys' fees, or both, awarded under RCW 19.86.090. The applicant may obtain the bond directly from the surety or through a group bonding arrangement involving a professional organization comprised of mortgage brokers if the

arrangement provides at least as much coverage as is required under this subsection.

(b) If the director determines that the bond required in (a) of this subsection is not reasonably available, the director must waive the requirements for such a bond. The mortgage recovery fund account is created in the custody of the state treasurer. The director is authorized to charge fees to fund the account. All fees charged under this section, except those retained by the director for administration of the account, must be deposited into the mortgage recovery fund account. Expenditures from the account may be used only for the same purposes as the surety bond as described in (a) of this subsection. Only the director 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. A person entitled to receive payment from the mortgage recovery account may only receive reimbursement after a court of competent jurisdiction has determined the actual damages caused by the licensee. The director may determine by rule the procedure for recovery; the amount each mortgage broker must pay through the nationwide mortgage licensing system and registry for deposit in the mortgage recovery account; and the amount necessary to administer the account. [2015 c 229 § 11; 2009 c 528 § 4; 2006 c 19 § 10; 2001 c 177 § 4; 1997 c 106 § 9; 1994 c 33 § 8; 1993 c 468 § 6.]

Effective date—License requirement—Implementation—2009 c 528: See notes following RCW 19.146.010.

Additional notes found at www.leg.wa.gov

19.146.210 License—Requirements for issuance—Denial—Validity—Surrender—Interim license—Rules.

(1) The director shall issue and deliver a mortgage broker license to an applicant if, after investigation, the director makes the following findings:

- (a) The applicant has paid the required license fees;
- (b) The applicant has complied with RCW 19.146.205;
- (c) Neither the applicant, any of its principals, or the designated broker have had a license issued under this chapter or any similar state statute suspended or revoked within five years of the filing of the present application;
- (d) Neither the applicant, any of its principals, or the designated broker have been convicted of a gross misdemeanor involving dishonesty or financial misconduct or a felony within seven years of the filing of the present application;
- (e) The designated broker: (i) Has at least two years of experience in the residential mortgage loan industry; and (ii) has passed a written examination whose content shall be established by rule of the director;
- (f) The applicant, its principals, and the designated broker have demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a belief that the business will be operated honestly, fairly, and efficiently within the purposes of this chapter;
- (g) Neither the applicant, any of its principals, or the designated broker have been found to be in violation of this chapter or rules; and
- (h) Neither the applicant, any of its principals, nor the designated broker have provided unlicensed residential mort-

gage loan modification services in this state in the five years prior to the filing of the present application.

(2) If the director does not find the conditions of subsection (1) of this section have been met, the director shall not issue the license. The director shall notify the applicant of the denial and return to the applicant the bond or approved alternative and any remaining portion of the license fee that exceeds the department's actual cost to investigate the license.

(3) A license issued pursuant to this section expires on the date one year from the date of issuance which, for license renewal purposes, is also the renewal date. The director shall adopt rules establishing the process for renewal of licenses.

(4) A licensee may surrender a license by delivering to the director written notice of surrender, but the surrender does not affect the licensee's civil or criminal liability or any administrative actions arising from acts or omissions occurring before such surrender.

(5) To prevent undue delay in the issuance of a license and to facilitate the business of a mortgage broker, an interim license with a fixed date of expiration may be issued when the director determines that the mortgage broker has substantially fulfilled the requirements for licensing as defined by rule. [2010 c 35 § 14; 2006 c 19 § 11; 1997 c 106 § 10; 1994 c 33 § 10; 1993 c 468 § 7.]

Effective date—2010 c 35: See RCW 31.04.904.

Additional notes found at www.leg.wa.gov

19.146.215 Continuing education—Rules. The designated broker of every licensee shall complete an annual continuing education requirement. The director shall establish standards in rule for approval of professional organizations offering continuing education to designated brokers. The director may approve continuing education taken by designated brokers in other states if the director is satisfied that such continuing education meets the requirements of the continuing education required by this chapter. [2006 c 19 § 12; 1997 c 106 § 11; 1994 c 33 § 11.]

Additional notes found at www.leg.wa.gov

19.146.218 Informal settlement of complaints or enforcement actions—Director's discretion. Except to the extent prohibited by another statute, the director may engage in informal settlement of complaints or enforcement actions including, but not limited to, payment to the department for purposes of financial literacy and education programs authorized under RCW 43.320.150. If any person subject to this chapter makes a payment to the department under this section, the person may not advertise such payment. [2012 c 17 § 13.]

19.146.220 Director—Powers and duties—Violations as separate violations—Rules. (1) The director may enforce all laws and rules relating to the licensing of mortgage brokers and loan originators, grant or deny licenses to mortgage brokers and loan originators, and hold hearings.

(2) The director may impose fines and order restitution and refunds against licensees, employees, independent contractors, agents of licensees, and other persons subject to this chapter, and may deny, condition, suspend, decline to renew, decline to reactivate, or revoke licenses for:

(a) Violations of orders, including cease and desist orders;

(b) False statements or omission of material information on the application that, if known, would have allowed the director to deny the application for the original license;

(c) Failure to pay a fee required by the director or maintain the required bond;

(d) Failure to comply with any directive, order, or subpoena of the director; or

(e) Any violation of this chapter.

(3) The director may issue orders directing a licensee, its employee, loan originator, independent contractor, agent, or other person subject to this chapter to cease and desist from conducting business or take such other affirmative action as is necessary to comply with this chapter.

(4) The director may issue orders removing from office or prohibiting from participation in the conduct of the affairs of a licensed mortgage broker, or both, any officer, principal, employee, or loan originator of any licensed mortgage broker or any person subject to licensing under this chapter for:

(a) Any violation of this chapter;

(b) False statements or omission of material information on the application that, if known, would have allowed the director to deny the application for the original license;

(c) Conviction of a gross misdemeanor involving dishonesty or financial misconduct or a felony after obtaining a license; or

(d) Failure to comply with any directive or order of the director.

(5) Each day's continuance of a violation or failure to comply with any directive or order of the director is a separate and distinct violation or failure.

(6) The statute of limitations on actions not subject to RCW 4.16.160 that are brought under this chapter by the director is five years.

(7) The director must establish by rule standards for licensure of applicants licensed in other jurisdictions.

(8) The director 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 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. [2015 c 229 § 12; 2014 c 36 § 2; 2013 c 30 § 5; 2006 c 19 § 13. Prior: 1997 c 106 § 12; 1997 c 58 § 879; 1996 c 103 § 1; 1994 c 33 § 12; 1993 c 468 § 8.]

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

Additional notes found at www.leg.wa.gov

19.146.221 Action by director—Hearing—Sanction. (1) The director may, at his or her discretion, take any action as provided for in this chapter to enforce this chapter. If the person subject to such action does not appear in person or by counsel at the time and place designated for any administrative hearing that may be held on the action then the person shall be deemed to consent to the action. If the person subject to the action consents, or if after hearing the director finds by

a preponderance of the evidence that any grounds for sanctions under this chapter exist, then the director may impose any sanction authorized by this chapter.

(2) The director may recover the state's costs and expenses for prosecuting violations of this chapter including staff time spent preparing for and attending administrative hearings and reasonable attorneys' fees unless, after a hearing, the director determines no violation occurred. [2015 c 229 § 13; 1994 c 33 § 13.]

19.146.223 Director—Administration and interpretation. The director shall have the power and broad administrative discretion to administer and interpret the provisions of this chapter to fulfill the intent of the legislature as expressed in RCW 19.146.005. [1994 c 33 § 2.]

19.146.225 Director—Rule-making powers. In accordance with the administrative procedure act, chapter 34.05 RCW, the director may issue rules under this chapter only for the purpose of governing the activities of licensed mortgage brokers, loan originators, and other persons subject to this chapter. [2010 1st sp.s. c 7 § 70; 2006 c 19 § 14; 1994 c 33 § 15; 1993 c 468 § 9.]

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

19.146.226 Director—Licensing rules and interim procedures. For the purposes of implementing an orderly and efficient licensing process, the director may establish licensing rules and interim procedures for licensing and acceptance of applications. For previously registered or licensed individuals, the director may establish expedited review and licensing procedures. [2009 c 528 § 13.]

Effective date—License requirement—Implementation—2009 c 528: See notes following RCW 19.146.010.

19.146.227 Cease and desist order—Action to enjoin and enforce. Whenever the director determines that the public is likely to be substantially injured by delay in issuing a cease and desist order, the director may immediately issue a temporary cease and desist order. The order may direct the licensee to discontinue any violation of this chapter and take such affirmative action as is necessary to comply with this chapter, may include a summary suspension of the licensee's license, and may order the licensee to immediately cease the conduct of business under this chapter. The order becomes effective at the time specified in the order. Every temporary cease and desist order must include a provision that a hearing will be held, within fourteen days unless otherwise specified in chapter 34.05 RCW, upon request to determine whether the order will become permanent.

If it appears that a person has engaged in an act or practice constituting a violation of a provision of this chapter, or a rule or order under this chapter, the director, with or without prior administrative proceedings, may bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter or any rule or order under this chapter. Upon proper showing, injunctive relief or temporary restraining orders must be granted. The director is not

required to post a bond in any court proceedings. [2015 c 229 § 14; 1994 c 33 § 14.]

19.146.228 Fees—Exception. The director must establish fees sufficient to cover, but not exceed, the costs of administering this chapter. These fees may include:

(1) An annual assessment paid by each licensee on or before a date specified by rule;

(2) An investigation fee to cover the costs of any investigation of the books and records of a licensee or other person subject to this chapter; and

(3) An application fee to cover the costs of processing applications made to the director under this chapter.

Mortgage brokers, loan originators, and any person subject to licensing under this chapter must not be charged investigation fees for the processing of complaints when the investigation determines that no violation of this chapter occurred or when the mortgage broker or loan originator provides a remedy satisfactory to the complainant and the director and no order of the director is issued. All moneys, fees, and penalties collected under the authority of this chapter must be deposited into the financial services regulation fund, unless the consumer services account is created as a dedicated, non-appropriated account, in which case all moneys, fees, and penalties collected under this chapter must be deposited in the consumer services account. [2015 c 229 § 15; 2009 c 528 § 5; 2006 c 19 § 15; 2001 c 177 § 5; 1997 c 106 § 13; 1994 c 33 § 9.]

Effective date—License requirement—Implementation—2009 c 528: See notes following RCW 19.146.010.

Additional notes found at www.leg.wa.gov

19.146.230 Administrative procedure act application. The proceedings for denying license applications, issuing cease and desist orders, suspending or revoking licenses, and imposing civil penalties or other remedies issued pursuant to this chapter and any appeal therefrom or review thereof shall be governed by the provisions of the administrative procedure act, chapter 34.05 RCW. [1994 c 33 § 16; 1993 c 468 § 10.]

Additional notes found at www.leg.wa.gov

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 approv-

ing 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.

19.146.235 Director's authority to conduct investigations and examinations—Rules—Penalty. The director or a designee has authority to conduct investigations and examinations as provided in this section.

(1) For the purposes of investigating violations or complaints arising under this chapter, the director or his or her designee may make an investigation of the operations of any mortgage broker or loan originator as often as necessary in order to carry out the purposes of this chapter.

(2) Every mortgage broker shall make available to the director or a designee its books and records relating to its operations.

(a) For the purpose of examinations, the director or his or her designee may have access to such books and records during normal business hours and interview the officers, principals, loan originators, employees, independent contractors, and agents of the licensee concerning their business.

(b) For the purposes of investigating violations or complaints arising under this chapter, the director may at any time, either personally or by a designee, investigate the business, including but not limited to the books, accounts, records, and files used therein, of every licensee and of every person engaged in the business of mortgage brokering, whether such a person acts or claims to act under, or without the authority of, this chapter.

(c) The director or designated person may direct, subpoena, or order the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of any such examination or investigation, and may direct, subpoena, or order such person to produce books, accounts, records, files, and any other documents the director or designated person deems relevant to the inquiry.

(3) The director may visit, either personally or by designee, the licensee's place or places of business to conduct an examination. The scope of the examination is limited to documents and information necessary to determine compliance with this chapter and attendant rules. In general, the examination scope may include:

(a) A review for trust accounting compliance;

(b) Loan file review to determine the mortgage broker's compliance with this chapter and applicable federal regulations covering the business of mortgage brokering and lending;

(c) Interviews for the purpose of understanding business and solicitation practices, transactional events, disclosure compliance, complaint resolution, or determining specific compliance with this chapter and the attendant rules; and

(2018 Ed.)

(d) A review of general business books and records, including employee records, for the purpose of determining specific compliance with this chapter and the attendant rules.

(4) The purpose of an examination is to make certain that licensees are conducting business in compliance with the law. Therefore, protocols for examination findings and corrective action directed from an examination must be established by rule of the director. To accomplish this purpose, these protocols must include the following:

(a) A reporting mechanism from the director to the licensee;

(b) A process for clear notification of violations and an opportunity for response by the licensee; and

(c) The criteria by which the frequency of examinations will be determined.

(5) If the examination findings clearly identify the need to expand the scope of the examination, the director or a designee, upon five days' written notification to the licensee with an explanation of the need, may:

(a) Expand the examination review to locations other than the examined location regardless of the number of years a location has held a license; or

(b) Expand the time period of the examination beyond the five-year period of licensing, provided the expansion of time does not exceed a date certain identified in the written notification in this subsection.

(6) The director or a designee may consider reports made by independent certified professionals for the mortgage broker covering the same general subject matter as the examination. The director or a designee may incorporate all or part of the report in the report of the examination.

(7) The director may retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations. The cost of these services for investigations only must be billed in accordance with RCW 19.146.228.

(8) The director may establish by rule travel costs for examination of out-of-state entities.

(9)(a) No person subject to examination or investigation under this chapter may knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

(b) A person who commits an act under (a) of this subsection is guilty of a class B felony punishable under RCW 9A.20.021(1)(b) or punishable by a fine of not more than twenty thousand dollars, or both. [2009 c 528 § 6; 2006 c 19 § 16; 1997 c 106 § 14; 1994 c 33 § 17; 1993 c 468 § 11.]

Effective date—License requirement—Implementation—2009 c 528: See notes following RCW 19.146.010.

Additional notes found at www.leg.wa.gov

19.146.237 Director—Powers under chapter 19.144 RCW. The director or the director's designee may take such action as provided for in this chapter to enforce, investigate, or examine persons covered by chapter 19.144 RCW. [2008 c 108 § 14.]

Findings—2008 c 108: See RCW 19.144.005.

19.146.240 Violations—Claims against bond or alternative. (1) The director or any person injured by a violation

of this chapter may bring an action against the surety bond or approved alternative of the licensed mortgage broker who committed the violation or who employed or engaged the loan originator who committed the violation.

(2)(a) The director or any person who is damaged by the licensee's or its loan originator's violation of this chapter, or rules adopted under this chapter, may bring suit upon the surety bond or approved alternative in the superior court of any county in which jurisdiction over the licensee may be obtained. Jurisdiction shall be exclusively in the superior court. Except as provided in subsection (2)(b) of this section, in the event valid claims of borrowers against a bond or deposit exceed the amount of the bond or deposit, each borrower claimant shall only be entitled to a pro rata amount, based on the amount of the claim as it is valid against the bond or deposit, without regard to the date of filing of any claim or action. If, after all valid borrower claims are paid, valid claims by nonborrower claimants exceed the remaining amount of the bond or deposit, each nonborrower claimant shall only be entitled to a pro rata amount, based on the amount of the claim as it is valid against the bond or deposit, without regard to the date of the filing or any claim or action. A judgment arising from a violation of this chapter or rule adopted under this chapter shall be entered for actual damages and in no case be less than the amount paid by the borrower to the licensed mortgage broker plus reasonable attorneys' fees and costs. In no event shall the surety bond or approved alternative provide payment for any trebled or punitive damages.

(b) Borrowers shall be given priority over the director and other persons in distributions in actions against the surety bond. The director and other third parties shall then be entitled to distribution to the extent of their claims as found valid against the remainder of the bond. In the case of claims made by any person or entity who is not a borrower, no final judgment may be entered prior to one hundred eighty days following the date the claim is filed. This provision regarding priority shall not restrict the right of any claimant to file a claim.

(3) The remedies provided under this section are cumulative and nonexclusive and do not affect any other remedy available at law. [2013 c 30 § 6; 1997 c 106 § 15; 1994 c 33 § 21; 1993 c 468 § 14.]

Additional notes found at www.leg.wa.gov

19.146.245 Violations—Liability. A licensed mortgage broker is liable for any conduct violating this chapter by the designated broker, a loan originator, or other licensed mortgage broker while employed or engaged by the licensed mortgage broker. [1997 c 106 § 16; 1994 c 33 § 22; 1993 c 468 § 15.]

Additional notes found at www.leg.wa.gov

19.146.250 Authority restricted to person named in license—Exceptions. No license issued under the provisions of this chapter shall authorize any person other than the person to whom it is issued to do any act by virtue thereof nor to operate in any other manner than under his or her own name except:

(1) A licensed mortgage broker may operate or advertise under a name other than the one under which the license is

issued by obtaining the written consent of the director to do so; and

(2) A broker may establish one or more branch offices under a name or names different from that of the main office if the name or names are approved by the director, so long as each branch office is clearly identified as a branch or division of the main office. Both the name of the branch office and of the main office must clearly appear on the sign identifying the office, if any, and in any advertisement or on any letterhead of any stationery or any forms, or signs used by the mortgage firm on which either the name of the main or branch offices appears. [1997 c 106 § 17; 1993 c 468 § 16.]

Additional notes found at www.leg.wa.gov

19.146.260 Registered agent for brokers without physical office in state—Venue. Every licensed mortgage broker that does not maintain a physical office within the state must maintain a registered agent within the state to receive service of any lawful process in any judicial or administrative noncriminal suit, action, or proceeding against the licensed mortgage broker which arises under this chapter or any rule or order under this chapter, with the same force and validity as if served personally on the licensed mortgage broker. Service upon the registered agent shall not be effective unless the plaintiff, who may be the director in a suit, action, or proceeding instituted by him or her, no later than the next business day sends notice of the service and a copy of the process by registered mail to the defendant or respondent at the last address of the respondent or defendant on file with the director. In any judicial action, suit, or proceeding arising under this chapter or any rule or order adopted under this chapter between the department or director and a licensed mortgage broker who does not maintain a physical office in this state, venue shall be exclusively in the superior court of Thurston county. [2000 c 171 § 74; 1997 c 106 § 18; 1994 c 33 § 23; 1993 c 468 § 17.]

Additional notes found at www.leg.wa.gov

19.146.265 Branch offices—Fee—Licenses—Rules. A licensed mortgage broker may apply to the director for authority to establish one or more branch offices under the same or different name as the main office upon the payment of a fee as prescribed by the director by rule. The applicant must be in good standing with the department, as defined in rule by the director, and the director must promptly issue a license for each of the branch offices showing the location of the main office and the particular branch. [2015 c 229 § 16; 1997 c 106 § 19; 1994 c 33 § 24; 1993 c 468 § 18.]

Additional notes found at www.leg.wa.gov

19.146.300 Loan originator license—Application—Applicant to furnish information establishing identification—Background check—Fees—Rules. (1) Application for a loan originator license under this chapter must be made to the nationwide mortgage licensing system and registry and in the form prescribed by the director. The application must contain at least the following information:

(a) The name, address, date of birth, and social security number of the loan originator applicant, and any other names, dates of birth, or social security numbers previously used by

the loan originator applicant, unless waived by the director; and

(b) Such other information regarding the loan originator applicant's background, experience, character, and general fitness as the director may require by rule or as deemed necessary by the nationwide mortgage licensing system and registry.

(2)(a) As part of or in connection with an application for any license under this section, or periodically upon license renewal, the loan originator applicant must furnish information concerning his or her identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, the nationwide mortgage licensing system and registry, or any governmental agency or entity authorized to receive this information for a state and national criminal history background check; personal history; experience; business record; purposes; and other pertinent facts, as the director may reasonably require. As part of or in connection with an application for a license under this chapter, or periodically upon license renewal, the director is authorized to receive criminal history record information that includes non-conviction data as defined in RCW 10.97.030. The department may only disseminate nonconviction data obtained under this section to criminal justice agencies. This section does not apply to financial institutions regulated under chapters 31.12 and 31.13 RCW and Titles 30A, 32, and 33 RCW.

(b) In order to reduce the points of contact which the federal bureau of investigation may have to maintain, the director may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information from and distributing information to the department of justice or any governmental agency.

(c) In order to reduce the points of contact which the director may have to maintain, the director may use the nationwide mortgage licensing system and registry as a channeling agent for requesting and distributing information to and from any source so directed by the director.

(d) As part of or in connection with an application for a license under this section, the loan originator applicant must furnish to the nationwide mortgage licensing system and registry personal history and experience in a form prescribed by the nationwide mortgage licensing system and registry, including the submission of authorization for the nationwide mortgage licensing system and registry and the director to obtain:

(i) An independent credit report obtained from a consumer reporting agency described in section 603(p) of the federal fair credit reporting act; and

(ii) Information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

(3) At the time of filing an application for a license under this chapter, each loan originator applicant must pay to the director the appropriate application fee in an amount determined by rule of the director in accordance with RCW 19.146.228 to cover the cost of processing and reviewing the application. The director must deposit the moneys in the financial services regulation fund.

(4) The director must establish by rule procedures for accepting and processing incomplete applications. [2015 c 229 § 17; 2009 c 528 § 9; 2006 c 19 § 19.]

(2018 Ed.)

Effective date—License requirement—Implementation—2009 c 528: See notes following RCW 19.146.010.

19.146.310 Loan originator license—Requirements for issuance—Denial—Validity—Expiration—Surrender—Interim license. (1) The director shall issue and deliver a loan originator license if, after investigation, the director makes the following findings:

(a) The loan originator applicant has paid the required license fees;

(b) The loan originator applicant has met the requirements of RCW 19.146.300;

(c) The loan originator applicant has never had a license issued under this chapter or any similar state statute revoked except that, for the purposes of this subsection, a subsequent formal vacation of a revocation is not a revocation;

(d)(i) The loan originator applicant has not been convicted of a gross misdemeanor involving dishonesty or financial misconduct or has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court within seven years of the filing of the present application; and

(ii) The loan originator applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court at any time preceding the date of application if the felony involved an act of fraud, dishonesty, breach of trust, or money laundering;

(e) The loan originator applicant has passed a written examination whose content shall be established by rule of the director;

(f) The loan originator applicant has not been found to be in violation of this chapter or rules;

(g) The loan originator applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a belief that the business will be operated honestly and fairly within the purposes of this chapter. For the purposes of this section, an applicant has not demonstrated financial responsibility when the applicant shows disregard in the management of his or her financial condition. A determination that an individual has shown disregard in the management of his or her financial condition may include, but is not limited to, an assessment of: Current outstanding judgments, except judgments solely as a result of medical expenses; current outstanding tax liens or other government liens and filings; foreclosures within the last three years; or a pattern of seriously delinquent accounts within the past three years;

(h) The loan originator licensee has completed, during the calendar year preceding a licensee's annual license renewal date, a minimum of eight hours of continuing education as established by rule of the director; and

(i) Neither the applicant, any of its principals, nor the designated broker have provided unlicensed residential mortgage loan modification services in this state in the five years prior to the filing of the present application.

(2) If the director does not find the conditions of subsection (1) of this section have been met, the director shall not issue the loan originator license. The director shall notify the loan originator applicant of the denial and return to the loan originator applicant any remaining portion of the license fee

that exceeds the department's actual cost to investigate the license.

(3) The director shall issue a new loan originator license under this chapter to any licensee that has a valid license and is otherwise in compliance with this chapter.

(4) A loan originator license issued under this section expires on the date one year from the date of issuance which, for license renewal purposes, is also the renewal date. The director shall establish rules regarding the loan originator license renewal process created under this chapter.

(5) A loan originator licensee may surrender a license by delivering to the director written notice of surrender, but the surrender does not affect the loan originator licensee's civil or criminal liability or any administrative actions arising from acts or omissions occurring before such surrender.

(6) To prevent undue delay in the issuance of a loan originator license and to facilitate the business of a loan originator, an interim loan originator license with a fixed date of expiration may be issued when the director determines that the loan originator has substantially fulfilled the requirements for loan originator licensing as defined by rule. [2010 c 35 § 15; 2009 c 528 § 10; 2006 c 19 § 20.]

Effective date—2010 c 35: See RCW 31.04.904.

Effective date—License requirement—Implementation—2009 c 528: See notes following RCW 19.146.010.

19.146.320 Loan originator license—Not assignable.

A loan originator license, or the authority granted under such a license, is not assignable and cannot be transferred, sold, or franchised by contract or any other means. [2006 c 19 § 21.]

19.146.325 Loan originator license—Test. (1) To obtain a loan originator license, an individual must pass a test developed by the nationwide mortgage licensing system and registry and administered by a test provider approved by the nationwide mortgage licensing system and registry based upon reasonable standards.

(2) An individual is not considered to have passed a test unless the individual achieves a test score of not less than seventy-five percent correct answers to questions.

(a) An individual may retake a test three consecutive times with each consecutive taking occurring at least thirty days after the preceding test.

(b) After failing three consecutive tests, an individual must wait at least six months before taking the test again.

(c) A licensed mortgage loan originator who fails to maintain a valid license for a period of five years or longer must retake the test, not taking into account any time during which that individual is a registered mortgage loan originator.

(3) This section does not prohibit a test provider approved by the nationwide mortgage licensing system and registry from providing a test at the location of the employer of the loan originator applicant or any subsidiary or affiliate of the employer of the applicant, or any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator. [2009 c 528 § 8.]

Effective date—License requirement—Implementation—2009 c 528: See notes following RCW 19.146.010.

19.146.340 Loan originator applicants. (1) Each loan originator applicant shall complete at least twenty hours of

prelicensing education approved by the nationwide mortgage licensing system and registry. The prelicensing education shall include at least three hours of federal law and regulations; three hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; two hours of training related to lending standards for the nontraditional mortgage product marketplace; and at least two hours of training specifically related to Washington law.

(2) A loan originator applicant having successfully completed the prelicensing education requirements approved by the nationwide mortgage licensing system and registry for any state shall be accepted as credit towards completion of prelicensing education requirements in this state.

(3) This chapter does not preclude any prelicensing education course, as approved by the nationwide mortgage licensing system and registry, that is provided by the employer of the loan originator applicant or an entity which is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of such an employer or entity. Prelicensing education may be offered either in a classroom, online, or by any other means approved by the nationwide mortgage licensing system and registry. [2009 c 528 § 7.]

Effective date—License requirement—Implementation—2009 c 528: See notes following RCW 19.146.010.

19.146.350 Loan originators—Continuing education—Requirements.

(1) A licensed mortgage loan originator must complete a minimum of eight hours of continuing education, eight of which is approved by the nationwide mortgage licensing system and registry which must include at least three hours of federal law and regulations; two hours of ethics, which must include instruction on fraud, consumer protection, and fair lending issues; and two hours of training related to lending standards for the nontraditional mortgage product marketplace. Additionally, the director may require at least one hour of continuing education on Washington law provided by and administered through an approved provider.

(2) The nationwide mortgage licensing system and registry must review and approve continuing education courses. Review and approval of a continuing education course must include review and approval of the course provider.

(3) A licensed mortgage loan originator may only receive credit for a continuing education course in the year in which the course is taken, and may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(4) A licensed mortgage loan originator who is an instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of two hours credit for every one hour taught.

(5) A person having successfully completed the education requirements approved by the nationwide mortgage licensing system and registry for any state must have their credits accepted as credit towards completion of continuing education requirements in this state.

(6) This section does not preclude any education course, as approved by the nationwide mortgage licensing system and registry, that is provided by the employer of the mortgage loan originator or an entity which is affiliated with the mortgage loan originator by an agency contract, or any subsidiary

or affiliate of such employer or entity. Continuing education may be offered either in a classroom, online, or by any other means approved by the nationwide mortgage licensing system and registry. [2009 c 528 § 11.]

Effective date—License requirement—Implementation—2009 c 528: See notes following RCW 19.146.010.

19.146.353 Residential mortgage loan modification services—Written fee agreement—Limitation on fees—Rules. (1) In addition to any other requirements under federal or state law, an advance fee may not be collected for residential mortgage loan modification services unless a written disclosure summary of all material terms, in the format adopted by the department under subsection (2) of this section, has been provided to the borrower.

(2) The department shall adopt by rule a model written fee agreement, and any other rules necessary to implement this section. This may include, but is not limited to, usual and customary fees for residential mortgage loan modification services. [2010 c 35 § 16.]

Effective date—2010 c 35: See RCW 31.04.904.

19.146.355 Third-party residential mortgage loan modification services providers—Duties—Restrictions. (1) In addition to complying with all requirements for loan originators under this chapter, third-party residential mortgage loan modification services providers must:

(a) Provide a written fee disclosure summary as described in RCW 19.146.353 before accepting any advance fee;

(b) Not receive an advance fee greater than seven hundred fifty dollars;

(c) Not charge total fees in excess of usual and customary charges, or total fees that are not reasonable in light of the service provided; and

(d) Immediately inform the borrower in writing if the owner of the loan requires additional information from the borrower, or if it becomes apparent that a residential mortgage loan modification is not possible.

(2) As a condition for providing a loan modification or loan modification services, third-party residential mortgage loan modification services providers and individuals servicing a residential mortgage loan must not require or encourage a borrower to:

(a) Sign a waiver of his or her legal defenses, counterclaims, and other legal rights against the servicer for future acts;

(b) Sign a waiver of his or her right to contest a future foreclosure;

(c) Waive his or her right to receive notice before the owner or servicer of the loan initiates foreclosure proceedings;

(d) Agree to pay charges not enumerated in any agreement between the borrower and the lender, servicer, or owner of the loan; or

(e) Cease communication with the lender, investor, or loan servicer.

(3) Failure to comply with subsection (1) of this section is a violation of RCW 19.144.080. [2010 c 35 § 17.]

Effective date—2010 c 35: See RCW 31.04.904.

(2018 Ed.)

19.146.357 Mortgage loan originator—License required—Nationwide mortgage licensing system and registry. An individual defined as a mortgage loan originator may not engage in the business of a mortgage loan originator without first obtaining and maintaining annually a license under this chapter. Each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry. [2010 c 35 § 18.]

Effective date—2010 c 35: See RCW 31.04.904.

19.146.360 Director's duty—Process to challenge information—Nationwide mortgage licensing system and registry. The director shall establish a process whereby mortgage loan originators may challenge information entered into the nationwide mortgage licensing system and registry by the director. [2009 c 528 § 12.]

Effective date—License requirement—Implementation—2009 c 528: See notes following RCW 19.146.010.

19.146.370 Disclosure of information—Privilege—Confidentiality—Exceptions. (1) Except as otherwise provided in section 1512 of the S.A.F.E. act, the requirements under any federal law or chapter 42.56 RCW regarding the privacy or confidentiality of any information or material provided to the nationwide mortgage licensing system and registry, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to that information or material, continues to apply to the information or material after the information or material has been disclosed to the nationwide mortgage licensing system and registry. Information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or state law.

(2) For the purposes under subsection (1) of this section, the director is authorized to enter agreements or sharing arrangements with other governmental agencies, the conference of state bank supervisors, the American association of residential mortgage regulators, or other associations representing governmental agencies as established by rule, regulation, or order of the director.

(3) Information or material that is subject to a privilege or confidentiality under subsection (1) of this section is not subject to:

(a) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(b) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process unless, with respect to any privilege held by the nationwide mortgage licensing system and registry with respect to that information or material, the person to whom the information or material pertains waives, in whole or in part, in the discretion of that person, that privilege.

(4) Chapter 42.56 RCW relating to the disclosure of confidential supervisory information or any information or material described in subsection (1) of this section that is inconsis-

tent with subsection (1) of this section is superseded by the requirements of this section.

(5) This section does not apply to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators that is included in the nationwide mortgage licensing system and registry for access by the public. [2009 c 528 § 15.]

Effective date—License requirement—Implementation—2009 c 528: See notes following RCW 19.146.010.

19.146.380 Director's authority to contract—Records and fees. In order to fulfill the purposes of chapter 528, Laws of 2009, the director is authorized to establish relationships or contracts with the nationwide mortgage licensing system and registry or other entities designated by the nationwide mortgage licensing system and registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this chapter. [2009 c 528 § 16.]

Effective date—License requirement—Implementation—2009 c 528: See notes following RCW 19.146.010.

19.146.390 Mortgage brokers—Call reports—Licensing system and registry. Each mortgage broker licensee must submit call reports through the nationwide mortgage licensing system and registry in a form and containing the information as prescribed by the director or as deemed necessary by the nationwide mortgage licensing system and registry. [2015 c 229 § 18; 2009 c 528 § 17.]

Effective date—License requirement—Implementation—2009 c 528: See notes following RCW 19.146.010.

19.146.400 Director's authority—Violation and enforcement reporting. The director is authorized to regularly report violations of chapter 528, Laws of 2009, as well as enforcement actions and other relevant information, to the nationwide mortgage licensing system and registry. [2009 c 528 § 18.]

Effective date—License requirement—Implementation—2009 c 528: See notes following RCW 19.146.010.

19.146.900 Short title. This act shall be known and cited as the "mortgage broker practices act." [1987 c 391 § 2.]

19.146.903 Effective dates—1994 c 33. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 21, 1994], except section 5 of this act which shall take effect June 1, 1994. [1994 c 33 § 29.]

19.146.904 Implementation of act—2006 c 19. The director of the department of financial institutions or the director's designee may take such steps as are necessary to ensure that chapter 19, Laws of 2006 is implemented on January 1, 2007. [2006 c 19 § 23.]

19.146.905 Effective date—2006 c 19. This act takes effect January 1, 2007. [2006 c 19 § 24.]

Chapter 19.148 RCW MORTGAGE LOAN SERVICING

Sections

19.148.010	Finding—Purpose.
19.148.020	Definitions.
19.148.030	Disclosure requirements—Action for damages.
19.148.900	Effective date—1989 c 98.

19.148.010 Finding—Purpose. The ability of individuals to obtain information relating to their residential mortgage loans is vital to the financial needs of mortgagors in Washington. The public interest is adversely affected when a residential mortgage loan's servicing is sold or transferred with insufficient notification given to the mortgagor. In addition, mortgagors may experience difficulty in obtaining various mortgage loan information including information concerning mortgage loan prepayments, reserve accounts, and adjustments to monthly payments. The legislature finds that the legitimate interests of mortgagors and mortgage loan servicers are served if the disclosure of the potential sale of loan servicing is made to the mortgagor, reasonable notification of a residential mortgage loan servicing's sale is made, and continued mortgagor access to information regarding the mortgage loan is promoted. [1989 c 98 § 1.]

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

(1) "Lender" shall mean any person in the business of making a loan.

(2) "Loan" shall mean any loan used to finance the acquisition of a one-to-four family owner occupied residence located in this state.

(3) "Purchasing servicing agent" is any person who purchases, receives through transfer or assignment, or otherwise acquires the responsibility of the servicing for a loan.

(4) "Person" shall include an individual, firm, association, partnership, business, trust, corporation, or any other legal entity whether resident or nonresident. [1989 c 98 § 2.]

19.148.030 Disclosure requirements—Action for damages. (1) If the servicing for the loan is subject to sale, transfer, or assignment, a lender shall so disclose in writing at the time of or prior to loan closing and shall also disclose in the same writing that when such servicing is sold, transferred, or assigned, the purchasing servicing agent is required to provide notification to the mortgagor. If a lender, which has not provided the notice required by this subsection, consolidates with, merges with or is acquired by another institution, and thereafter loan servicing becomes subject to sale, transfer, or assignment, that institution shall within thirty days of such transaction make the disclosure in writing to the obligor primarily responsible for repaying each loan according to the records of the lender.

(2) If the servicing of a loan is sold, assigned, transferred, or otherwise acquired by another person, the purchasing servicing agent shall:

(a)(i) Issue corrected coupon or payment books, if used and necessary;

(ii) Provide notification to the mortgagor at least thirty days prior to the due date of the first payment to the purchas-

ing servicing agent, of the name, address, and telephone number of the division from whom the mortgage can receive information regarding the servicing of the loan; and

(iii) Inform the mortgagor of changes made regarding the servicing requirements including, but not limited to, interest rate, monthly payment amount, and escrow balance; and

(b) Respond within fifteen business days upon receipt of a written request for information from a mortgagor. A written response must include the telephone number of the company division who can assist the mortgagor.

(3) Any person injured by a violation of this chapter may bring an action for actual damages and reasonable attorneys' fees and costs incurred in bringing the action. [1989 c 98 § 3.]

19.148.900 Effective date—1989 c 98. This act shall take effect on January 1, 1990. [1989 c 98 § 5.]

Chapter 19.149 RCW

RESIDENTIAL MORTGAGE LOAN CLOSING— VALUATION DISCLOSURE

Sections

- 19.149.010 Definitions.
19.149.020 Purchase money residential mortgage loans—Provision to borrower of documents used by lender to evaluate value—Written waiver.

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

(1) "Lender" means any person doing business under the laws of this state or the United States relating to banks, savings banks, trust companies, savings and loan associations, credit unions, consumer loan companies, insurance companies, real estate investment trusts as defined in 26 U.S.C. Sec. 856 and the affiliates, subsidiaries, and service corporations thereof, and all other persons who make residential mortgage loans.

(2) "Residential mortgage loan" means any loan used for the purchase of a single-family dwelling or multiple-family dwelling of four or less units secured by a mortgage or deed of trust on the residential real estate. [1994 c 295 § 1.]

19.149.020 Purchase money residential mortgage loans—Provision to borrower of documents used by lender to evaluate value—Written waiver. A lender shall provide to the borrower, prior to the closing of a residential mortgage loan, true and complete copies of all appraisals or other documents relied upon by the lender in evaluating the value of the dwelling to be financed. A borrower may waive in writing the lender's duty to provide the appraisals or other documents prior to closing. This written waiver may not be construed to in any way limit the lender's duty to provide the information to the borrower at a reasonable later date. This section shall only apply to purchase money residential mortgage loans. [1994 c 295 § 2.]

(2018 Ed.)

Chapter 19.150 RCW

SELF-SERVICE STORAGE FACILITIES

Sections

- 19.150.010 Definitions.
19.150.020 Lien on personal property.
19.150.030 Unpaid rent—Denial of access to storage space.
19.150.040 Unpaid rent—Termination of occupant's rights—Notice.
19.150.050 Form of notice.
19.150.060 Attachment of lien—Final notice of lien sale or notice of disposal.
19.150.070 Sale of property.
19.150.080 Manner of sale—Who may not acquire property—Interest on excess proceeds.
19.150.090 Claim by persons with a security interest.
19.150.100 Payment prior to sale by persons claiming a right to the property.
19.150.110 Good faith purchasers.
19.150.120 Contract for storage space—Alternative address for notice.
19.150.130 Owner not obligated to provide insurance.
19.150.140 Other rights not impaired.
19.150.150 Late fees.
19.150.160 Occupant in default—Vehicle, watercraft, trailer, recreational vehicle, or camper removal.
19.150.170 Limit on value of personal property—Liability.
19.150.900 Short title.
19.150.901 Application of chapter.
19.150.902 Existing rental agreements not affected.
19.150.903 Chapter not applicable to owner subject to Article 62A.7 RCW.

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

(1) "Commercially reasonable manner" means a public sale of the personal property in the self-storage space. The personal property may be sold in the owner's discretion on or off the self-service storage facility site as a single lot or in parcels. If five or more bidders are in attendance at a public sale of the personal property, the proceeds received are deemed to be commercially reasonable.

(2) "Costs of the sale" means reasonable costs directly incurred by the delivering or sending of notices, advertising, accessing, inventorying, auctioning, conducting a public sale, removing, and disposing of property stored in a self-service storage facility.

(3) "Last known address" means that address provided by the occupant in the latest rental agreement, or the address provided by the occupant in a subsequent written notice of a change of address.

(4) "Late fee" means a fee or charge assessed by an owner of a self-service storage facility as an estimate of any loss incurred by an owner for an occupant's failure to pay rent when due. A late fee is not a penalty, interest on a debt, nor is a late fee a reasonable expense that the owner may incur in the course of collecting unpaid rent in enforcing the owner's lien rights pursuant to RCW 19.150.020 or enforcing any other remedy provided by statute or contract.

(5) "Occupant" means a person, or his or her sublessee, successor, or assign, who is entitled to the use of the storage space at a self-service storage facility under a rental agreement, to the exclusion of others.

(6) "Owner" means the owner, operator, lessor, or sublessor of a self-service storage facility, his or her agent, or any other person authorized by him or her to manage the facility, or to receive rent from an occupant under a rental agreement.

(7) "Personal property" means movable property not affixed to land, and includes, but is not limited to, goods, merchandise, furniture, and household items.

(8) "Reasonable manner" means to dispose of personal property by donation to a not-for-profit charitable organization, removal of the personal property from the self-service storage facility by a trash hauler or recycler, or any other method that in the discretion of the owner is reasonable under the circumstances.

(9) "Rental agreement" means any written agreement or lease which establishes or modifies the terms, conditions, rules[,] or any other provision concerning the use and occupancy of a self-service storage facility.

(10) "Self-service storage facility" means any real property designed and used for the purpose of renting or leasing individual storage space to occupants who are to have access to the space for the purpose of storing and removing personal property on a self-service basis, but does not include a garage or other storage area in a private residence. No occupant may use a self-service storage facility for residential purposes.

(11) "Verified mail" means any method of mailing that is offered by the United States postal service that provides evidence of mailing. [2015 c 13 § 1; 2008 c 61 § 1; 2007 c 113 § 1; 1988 c 240 § 2.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

19.150.020 Lien on personal property. The owner of a self-service storage facility and his or her heirs, executors, administrators, successors, and assigns have a lien upon all personal property located at a self-service storage facility for rent, labor, late fees, and costs of the sale, present or future, incurred pursuant to the rental agreement, and for expenses necessary for the preservation, sale, or disposition of personal property subject to this chapter. The lien may be enforced consistent with this chapter. However, any lien on a motor vehicle or boat which has attached and is set forth in the documents of title to the motor vehicle or boat shall have priority over any lien created pursuant to this chapter. [2008 c 61 § 3; 1988 c 240 § 3.]

19.150.030 Unpaid rent—Denial of access to storage space. When any part of the rent or other charges due from an occupant remains unpaid for six consecutive days, and the rental agreement so provides, an owner may deny the occupant access to the storage space at a self-service storage facility. [1988 c 240 § 4.]

19.150.040 Unpaid rent—Termination of occupant's rights—Notice. (1) When any part of the rent or other charges due from an occupant remains unpaid for fourteen consecutive days, an owner may terminate the right of the occupant to the use of the storage space at a self-service storage facility by sending a preliminary lien notice to the occupant's last known address, and to the alternative address specified in RCW 19.150.120(2), by first-class mail, postage prepaid, or electronic mail [email] address, containing all of the following:

(a) An itemized statement of the owner's claim showing the sums due at the time of the notice and the date when the sums become due.

(b) A statement that the occupant's right to use the storage space will terminate on a specified date (not less than fourteen days after the notice is sent) unless all sums due and to become due by that date are paid by the occupant prior to the specified date.

(c) A notice that the occupant may be denied or continue to be denied, as the case may be, access to the storage space after the termination date if the sums are not paid, and that an owner's lien, as provided for in RCW 19.150.020 may be imposed thereafter.

(d) The name, street address, and telephone number of the owner, or his or her designated agent, whom the occupant may contact to respond to the notice.

(2) The owner may not send by electronic mail [email] the notice required under this section to the occupant's last known address or alternative address unless:

(a) The occupant expressly agrees to notice by electronic mail [email];

(b) The rental agreement executed by the occupant specifies in bold type that notices will be given to the occupant by electronic mail [email];

(c) The owner provides the occupant with the electronic mail [email] address from which notices will be sent and directs the occupant to modify his or her email settings to allow electronic mail [email] from that address to avoid any filtration systems; and

(d) The owner notifies the occupant of any change in the electronic mail [email] address from which notices will be sent prior to the address change. [2015 c 13 § 2; 2007 c 113 § 2; 1988 c 240 § 5.]

19.150.050 Form of notice. A notice in substantially the following form shall satisfy the requirements of RCW 19.150.040:

"PRELIMINARY LIEN NOTICE

to (occupant)
(address)
(state)

You owe and have not paid rent and/or other charges for the use of storage (space number) at (name and address of self-service storage facility)

Charges that have been due for more than fourteen days and accruing on or before (date) are itemized as follows:

DUE DATE	DESCRIPTION	AMOUNT
		TOTAL \$ ____

IF this sum is not paid in full before (date at least fourteen days from mailing), your right to use the storage space will terminate, you may be denied, or continue to be denied, access and an owner's lien on any stored property will be imposed. You may pay the sum due and contact the owner at:

(Name)
(Address)
(State)
(Telephone)
(Date)

(Owner's Signature) "

[1988 c 240 § 6.]

19.150.060 Attachment of lien—Final notice of lien sale or notice of disposal. (1) If a notice has been sent, as required by RCW 19.150.040, and the total sum due has not been paid as of the date specified in the preliminary lien notice, the lien proposed by this notice attaches as of that date and the owner may deny an occupant access to the space, enter the space, inventory the goods therein, and remove any property found therein to a place of safe keeping. The owner must provide the occupant a notice of final lien sale or final notice of disposition by personal service, verified mail, or email to the occupant's last known address and alternative address or email address. If the owner sends notice required under this section to the occupant's last known email address and does not receive a reply or receipt of delivery, the owner must send a second notice to the occupant's last known postal address by verified mail. The notice required under this section must state all of the following:

(a) That the occupant's right to use the storage space has terminated and that the occupant no longer has access to the stored property.

(b) That the stored property is subject to a lien, and the amount of the lien accrued and to accrue prior to the date required to be specified in (c) of this subsection.

(c) That all the property, other than personal papers and personal photographs, may be sold to satisfy the lien after a specified date which is not less than fourteen days from the last date of sending of the final lien sale notice, or a minimum of forty-two days after the date when any part of the rent or other charges due from the occupants remain unpaid, whichever is later, unless the amount of the lien is paid. The owner is not required to sell the personal property within a maximum number of days of when the rent or other charges first became due. If the total value of property in the storage space is less than three hundred dollars, the owner may, instead of sale, dispose of the property in any reasonable manner, subject to the restrictions of RCW 19.150.080(4). After the sale or other disposition pursuant to this section has been completed, the owner shall provide an accounting of the disposition of the proceeds of the sale or other disposition to the occupant at the occupant's last known address and at the alternative address.

(d) That any stored vehicles, watercraft, trailers, recreational vehicles, or campers may be towed or removed from the self-service storage facility in lieu of sale pursuant to RCW 19.150.160.

(e) That any excess proceeds of the sale or other disposition under RCW 19.150.080(2) over the lien amount and reasonable costs of sale will be retained by the owner and may be reclaimed by the occupant, or claimed by another person, at any time for a period of six months from the sale and that thereafter the proceeds will be turned over to the state as abandoned property as provided in RCW 63.29.165.

(f) That any personal papers and personal photographs will be retained by the owner and may be reclaimed by the occupant at any time for a period of six months from the sale or other disposition of property and that thereafter the owner may dispose of the personal papers and photographs in a rea-

sonable manner, subject to the restrictions of RCW 19.150.080(3).

(g) That the occupant has no right to repurchase any property sold at the lien sale.

(2) The owner may not send by email the notice required under this section to the occupant's last known address or alternative address unless:

(a) The occupant expressly agrees to notice by email;

(b) The rental agreement executed by the occupant specifies in bold type that notices will be given to the occupant by email;

(c) The owner provides the occupant with the email address from which notices will be sent and directs the occupant to modify his or her email settings to allow email from that address to avoid any filtration systems; and

(d) The owner notifies the occupant of any change in the email address from which notices will be sent prior to the address change. [2016 sp.s. c 6 § 1; 2015 c 13 § 3; 2007 c 113 § 3; 1996 c 220 § 1; 1993 c 498 § 5; 1988 c 240 § 7.]

Additional notes found at www.leg.wa.gov

19.150.070 Sale of property. The owner, subject to RCW 19.150.090 and 19.150.100, may sell the property, other than personal papers and personal photographs, upon complying with the requirements set forth in RCW 19.150.080. [2007 c 113 § 4; 1988 c 240 § 8.]

19.150.080 Manner of sale—Who may not acquire property—Interest on excess proceeds. (1) After the expiration of the time given in the final notice of lien sale pursuant to RCW 19.150.060, the property, other than personal papers and personal photographs, may be sold or disposed of in a reasonable manner as provided in this section.

(2)(a) If the property has a value of three hundred dollars or more, the sale shall be conducted in a commercially reasonable manner, and, after applying the proceeds to costs of the sale and then to the amount of the lien, the owner shall retain any excess proceeds of the sale on the occupant's behalf. The occupant, or any other person having a court order or other judicial process against the property, may claim the excess proceeds, or a portion thereof sufficient to satisfy the particular claim, at any time within six months of the date of sale.

(b) If the property has a value of less than three hundred dollars, the property may be disposed of in a reasonable manner.

(3) Personal papers and personal photographs that are not reclaimed by the occupant within six months of a sale under subsection (2)(a) of this section or other disposition under subsection (2)(b) of this section may be disposed of in a reasonable manner.

(4) No employee or owner, or family member of an employee or owner, may acquire, directly or indirectly, the property sold pursuant to subsection (2)(a) of this section or disposed of pursuant to subsection (2)(b) of this section, or personal papers and personal photographs disposed of under subsection (3) of this section.

(5) The owner is entitled to retain any interest earned on the excess proceeds until the excess proceeds are claimed by another person or are turned over to the state as abandoned

property pursuant to RCW 63.29.165. [2007 c 113 § 5; 1996 c 220 § 2; 1993 c 498 § 6; 1988 c 240 § 9.]

Additional notes found at www.leg.wa.gov

19.150.090 Claim by persons with a security interest.

Any person who has a perfected security interest under *Article 62A.9 RCW of the uniform commercial code may claim any personal property subject to the security interest and subject to a lien pursuant to this chapter by paying the total amount due, as specified in the lien notices, for the storage of the property. Upon payment of the total amount due, the owner shall deliver possession of the particular property subject to the security interest to the person who paid the total amount due. The owner shall not be liable to any person for any action taken pursuant to this section if the owner has fully complied with RCW 19.150.050 and 19.150.060. [1988 c 240 § 10.]

*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.

19.150.100 Payment prior to sale by persons claiming a right to the property.

Prior to any sale pursuant to RCW 19.150.080, any person claiming a right to the personal property may pay the amount necessary to satisfy the lien and one month's rent in advance. In that event, the personal property may not be sold, but must be retained by the owner pending a court order directing the disposition of the personal property. If such an order is not obtained within thirty days of the original payment, the claimant must pay the monthly rental charge for the space where the personal property is stored. If rent is not paid, the owner may sell or dispose of the personal property in accordance with RCW 19.150.080. The owner has no liability to a claimant who fails to secure a court order in a timely manner or pay the required rental charge for any sale or other disposition of the personal property. [2007 c 113 § 6; 1988 c 240 § 11.]

19.150.110 Good faith purchasers. A purchaser in good faith of goods disposed of pursuant to RCW 19.150.080(2) takes the goods free of any rights of persons against whom the lien was claimed, despite noncompliance by the owner of the storage facility with this chapter. [1996 c 220 § 3; 1988 c 240 § 12.]

Additional notes found at www.leg.wa.gov

19.150.120 Contract for storage space—Alternative address for notice.

(1) Each contract for the rental or lease of individual storage space in a self-service storage facility shall be in writing and shall contain, in addition to the provisions otherwise required or permitted by law to be included, a statement requiring the occupant to disclose any lienholders or secured parties who have an interest in the property that is or will be stored in the self-service storage facility, a statement that the occupant's property will be subject to a claim of lien and may even be sold to satisfy the lien if the rent or other charges due remain unpaid for fourteen consecutive days, and that such actions are authorized by this chapter.

(2) The lien authorized by this chapter shall not attach, unless the rental agreement requests, and provides space for, the occupant to give the name and address of another person

to whom the preliminary lien notice and subsequent notices required to be given under this chapter may be sent. Notices sent pursuant to RCW 19.150.040 or 19.150.060 shall be sent to the occupant's address and the alternative address, if both addresses are provided by the occupant. Failure of an occupant to provide an alternative address shall not affect an owner's remedies under this chapter or under any other provision of law. [1988 c 240 § 13.]

19.150.130 Owner not obligated to provide insurance. Any insurance protecting the personal property stored within the storage space against fire, theft, or damage is the responsibility of the occupant. The owner is under no obligation to provide insurance. [1988 c 240 § 14.]

19.150.140 Other rights not impaired. Nothing in this chapter may be construed to impair or affect the right of the parties to create additional rights, duties, and obligations which do not conflict with the provisions of this chapter. The rights provided by this chapter shall be in addition to all other rights provided by law to a creditor against his or her debtor. [1988 c 240 § 15.]

19.150.150 Late fees. Any late fee charged by the owner shall be provided for in the rental agreement. No late fee shall be collected unless it is written in the rental agreement or as an addendum to such agreement. An owner may impose a reasonable late fee for each month an occupant does not pay rent when due. A late fee of twenty dollars or twenty percent of the monthly rental amount, whichever is greater, for each late rental payment shall be deemed reasonable, and shall not constitute a penalty. [2008 c 61 § 2.]

19.150.160 Occupant in default—Vehicle, watercraft, trailer, recreational vehicle, or camper removal.

(1) If an occupant is in default for sixty or more days and the personal property stored in the leased space is a vehicle, watercraft, trailer, recreational vehicle, or camper, the owner may have the personal property towed or removed from the self-service storage facility in lieu of a sale. Prior to having the vehicle, watercraft, trailer, recreational vehicle, or camper towed, the owner must provide notice to the occupant stating the name, address, and contact information of the towing company.

(2) The owner is not liable for any damage to the personal property towed or removed from the self-service storage facility once the property is in the possession of a third party. [2016 sp.s. c 6 § 2; 2015 c 13 § 4.]

19.150.170 Limit on value of personal property—

Liability. If a rental agreement contains a condition on [the] occupant's use of the space that specifies a limit on the value of personal property that may be stored, that limit is the maximum value of the stored personal property in the occupant's space for the purposes of the [self-service] storage facility owner's liability only. [2015 c 13 § 5.]

19.150.900 Short title. This chapter shall be known as the "Washington self-service storage facility act." [1988 c 240 § 1.]

19.150.901 Application of chapter. This chapter shall only apply to rental agreements entered into, automatically extended, or automatically renewed after June 9, 1988. Rental agreements entered into before June 9, 1988, which provide for monthly rental payments but providing no specific termination date shall be subject to this chapter on the first monthly rental payment date next succeeding June 9, 1988. [2008 c 61 § 4; 1988 c 240 § 16.]

19.150.902 Existing rental agreements not affected. All rental agreements entered into before June 9, 1988, and not automatically extended or automatically renewed after that date, or otherwise made subject to this chapter pursuant to RCW 19.150.901, and the rights, duties, and interests flowing from them, shall remain valid, and may be enforced or terminated in accordance with their terms or as permitted by any other statute or law of this state. [2008 c 61 § 5; 1988 c 240 § 17.]

19.150.903 Chapter not applicable to owner subject to Article 62A.7 RCW. If an owner issues any warehouse receipt, bill of lading, or other document of title for the personal property stored, the owner and the occupant are subject to Article 62A.7 RCW (commencing with RCW 62A.7-101) of the uniform commercial code and this chapter does not apply. [1988 c 240 § 18.]

Chapter 19.154 RCW IMMIGRATION SERVICES FRAUD PREVENTION ACT

(Formerly: Immigration assistant practices act)

Sections

19.154.010	Findings.
19.154.020	Definitions.
19.154.060	Prohibited practices—Assistance with immigration matters.
19.154.065	Immigration-related services not prohibited.
19.154.090	Unfair and deceptive act—Unfair method of competition—Civil remedy.
19.154.100	Penalty.
19.154.800	Application.
19.154.900	Short title.

19.154.010 Findings. 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

(2018 Ed.)

[The secretary of state has determined that the effective date of this act is October 20, 2011.] [2011 c 244 § 11.]

19.154.020 Definitions. 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—2011 c 244: See note following RCW 19.154.010.

19.154.060 Prohibited practices—Assistance with immigration matters. (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 42.45 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 42.45 RCW shall constitute unprofessional conduct under the uniform regulation of business and professions act, chapter 18.235 RCW. [2017 c 281 § 39; 2011 c 244 § 3; 1989 c 117 § 6.]

Effective date—2017 c 281: See RCW 42.45.905.

Effective date—2011 c 244: See note following RCW 19.154.010.

19.154.065 Immigration-related services not prohibited. 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—2011 c 244: See note following RCW 19.154.010.

19.154.090 Unfair and deceptive act—Unfair method of competition—Civil remedy. (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—2011 c 244: See note following RCW 19.154.010.

19.154.100 Penalty. A violation of this chapter shall be punished as a gross misdemeanor according to chapter 9A.20 RCW. [1989 c 117 § 10.]

19.154.800 Application. 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—2011 c 244: See note following RCW 19.154.010.

19.154.900 Short title. This chapter shall be known and cited as the "immigration services fraud prevention act." [2011 c 244 § 8; 1989 c 117 § 11.]

Effective date—2011 c 244: See note following RCW 19.154.010.

Chapter 19.158 RCW

COMMERCIAL TELEPHONE SOLICITATION

Sections

- 19.158.010 Findings.
- 19.158.020 Definitions.
- 19.158.030 Violation an unfair or deceptive act.
- 19.158.040 Unprofessional conduct.
- 19.158.050 Registration requirements—Unprofessional conduct—Suspension of license or certificate for noncompliance with support order—Reinstatement.
- 19.158.070 Appointment of agent to receive process.
- 19.158.080 Duties of director.
- 19.158.090 Injunctive relief—Other applicable law.
- 19.158.100 Requiring payment by credit card prohibited.
- 19.158.110 Commercial telephone solicitor—Duties and prohibited acts—Notice to customers.
- 19.158.120 Cancellation of purchases—Requirements—Notice—Voidable contracts.
- 19.158.130 Damages, costs, attorneys' fees—Remedies not limited.
- 19.158.140 Civil penalties.
- 19.158.150 Registration required—Penalty.
- 19.158.160 Penalties.
- 19.158.170 Uniform regulation of business and professions act.
- 19.158.901 Effective date—1989 c 20.

Automatic dialing and announcing devices prohibited: RCW 80.36.400.

Commercial and nonprofit telephone solicitation: RCW 80.36.390.

19.158.010 Findings. The use of telephones for commercial solicitation is rapidly increasing. This form of communication offers unique benefits, but entails special risks and poses potential for abuse. The legislature finds that the widespread practice of fraudulent commercial telephone solicitation is a matter vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. For the general welfare of the public and in order to protect the integrity of the telemarketing industry, the commercial use of telephones must be regulated by law. [1989 c 20 § 1.]

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

(1) A "commercial telephone solicitor" is any person who engages in commercial telephone solicitation, including service bureaus.

(2) "Commercial telephone solicitation" means:

(a) An unsolicited telephone call to a person initiated by a salesperson and conversation for the purpose of inducing the person to purchase or invest in property, goods, or services;

(b) Other communication with a person where:

(i) A free gift, award, or prize is offered to a purchaser who has not previously purchased from the person initiating the communication; and

(ii) A telephone call response is invited; and

(iii) The salesperson intends to complete a sale or enter into an agreement to purchase during the course of the telephone call;

(c) Other communication with a person which misrepresents the price, quality, or availability of property, goods, or services and which invites a response by telephone or which is followed by a call to the person by a salesperson;

(d) For purposes of this section, "other communication" means a written or oral notification or advertisement transmitted through any means.

(3) A "commercial telephone solicitor" does not include any of the following:

(a) A person engaging in commercial telephone solicitation where:

(i) The solicitation is an isolated transaction and not done in the course of a pattern of repeated transactions of like nature; or

(ii) Less than sixty percent of such person's prior year's sales were made as a result of a commercial telephone solicitation as defined in this chapter. Where more than sixty percent of a seller's prior year's sales were made as a result of commercial telephone solicitations, the service bureau contracting to provide commercial telephone solicitation services to the seller shall be deemed a commercial telephone solicitor;

(b) A person making calls for religious, charitable, political, or other noncommercial purposes;

(c) A person soliciting business solely from purchasers who have previously purchased from the business enterprise for which the person is calling;

(d) A person soliciting:

(i) Without the intent to complete or obtain provisional acceptance of a sale during the telephone solicitation; and

(ii) Who does not make the major sales presentation during the telephone solicitation; and

(iii) Who only makes the major sales presentation or arranges for the major sales presentation to be made at a later face-to-face meeting between the salesperson and the purchaser;

(e) A person selling a security which is exempt from registration under RCW 21.20.310;

(f) A person licensed under *RCW 18.85.090 when the solicited transaction is governed by that law;

(g) A person registered under RCW 18.27.060 when the solicited transaction is governed by that law;

(h) A person licensed under RCW 48.17.150 when the solicited transaction is governed by that law;

(i) Any person soliciting the sale of a franchise who is registered under RCW 19.100.140;

(j) A person primarily soliciting the sale of a newspaper of general circulation, a magazine or periodical, or contractual plans, including book or record clubs: (i) Under which the seller provides the consumer with a form which the consumer may use to instruct the seller not to ship the offered merchandise; and (ii) which is regulated by the federal trade commission trade regulation concerning "use of negative option plans by sellers in commerce";

(k) Any supervised financial institution or parent, subsidiary, or affiliate thereof. As used in this section, "supervised financial institution" means any commercial bank, trust company, savings and loan association, mutual savings banks, credit union, industrial loan company, personal property broker, consumer finance lender, commercial finance lender, or insurer, provided that the institution is subject to supervision by an official or agency of this state or the United States;

(l) A person soliciting the sale of a prearrangement funeral service contract registered under RCW 18.39.240 and 18.39.260;

(m) A person licensed to enter into prearrangement contracts under RCW 68.05.155 when acting subject to that license;

(n) A person soliciting the sale of services provided by a cable television system operating under authority of a franchise or permit;

(o) A person or affiliate of a person whose business is regulated by the utilities and transportation commission or the federal communications commission;

(p) A person soliciting the sale of agricultural products, as defined in RCW 20.01.010 where the purchaser is a business;

(q) An issuer or subsidiary of an issuer that has a class of securities that is subject to section 12 of the securities exchange act of 1934 (**15 U.S.C. Sec. 781) and that is either registered or exempt from registration under paragraph (A), (B), (C), (E), (F), (G), or (H) of subsection (g) of that section;

(r) A commodity broker-dealer as defined in RCW 21.30.010 and registered with the commodity futures trading commission;

(s) A business-to-business sale where:

(i) The purchaser business intends to resell the property or goods purchased, or

(ii) The purchaser business intends to use the property or goods purchased in a recycling, reuse, remanufacturing or manufacturing process;

(t) A person licensed under RCW 19.16.110 when the solicited transaction is governed by that law;

(u) A person soliciting the sale of food intended for immediate delivery to and immediate consumption by the purchaser;

(v) A person soliciting the sale of food fish or shellfish when that person is licensed pursuant to the provisions of Title 77 RCW.

(4) "Purchaser" means a person who is solicited to become or does become obligated to a commercial telephone solicitor.

(5) "Salesperson" means any individual employed, appointed, or authorized by a commercial telephone solicitor, whether referred to by the commercial telephone solicitor as an agent, representative, or independent contractor, who attempts to solicit or solicits a sale on behalf of the commercial telephone solicitor.

(6) "Service bureau" means a commercial telephone solicitor who contracts with any person to provide commercial telephone solicitation services.

(7) "Seller" means any person who contracts with any service bureau to purchase commercial telephone solicitation services.

(8) "Person" includes any individual, firm, association, corporation, partnership, joint venture, sole proprietorship, or any other business entity.

(9) "Free gift, award, or prize" means a gratuity which the purchaser believes of a value equal to or greater than the value of the specific product, good, or service sought to be sold to the purchaser by the seller.

(10) "Solicit" means to initiate contact with a purchaser for the purpose of attempting to sell property, goods or services, where such purchaser has expressed no previous interest in purchasing, investing in, or obtaining information regarding the property, goods, or services attempted to be sold. [2003 c 39 § 12; 1989 c 20 § 3.]

Reviser's note: *(1) RCW 18.85.090 was recodified as RCW 18.85.101 pursuant to 2008 c 23 § 49, effective July 1, 2010.

***(2) The reference to 15 U.S.C. Sec. 781 appears to be erroneous. 15 U.S.C. Sec. 781 was apparently intended.

19.158.030 Violation an unfair or deceptive act.

Unfair and deceptive telephone solicitation is not reasonable in relation to the development and preservation of business. A violation of this chapter is an unfair or deceptive act in trade or commerce for the purpose of applying the consumer protection act, chapter 19.86 RCW. [1989 c 20 § 2.]

19.158.040 Unprofessional conduct. In addition to the unprofessional conduct described in RCW 18.235.130, the director of the department of licensing may take disciplinary action for any of the following conduct, acts, or conditions:

(1) It shall be unlawful for any person to engage in unfair or deceptive commercial telephone solicitation.

(2) A commercial telephone solicitor shall not place calls to any residence which will be received before 8:00 a.m. or after 9:00 p.m. at the purchaser's local time.

(3) A commercial telephone solicitor may not engage in any conduct the natural consequence of which is to harass, intimidate, or torment any person in connection with the telephone call. [2002 c 86 § 284; 1989 c 20 § 4.]

Additional notes found at www.leg.wa.gov

19.158.050 Registration requirements—Unprofessional conduct—Suspension of license or certificate for noncompliance with support order—Reinstatement. (1) In order to maintain or defend a lawsuit or do any business in this state, a commercial telephone solicitor must be registered with the department of licensing. Prior to doing business in

this state, a commercial telephone solicitor shall register with the department of licensing. Doing business in this state includes both commercial telephone solicitation from a location in Washington and solicitation of purchasers located in Washington.

(2) The department of licensing, in registering commercial telephone solicitors, shall have the authority to require the submission of information necessary to assist in identifying and locating a commercial telephone solicitor, including past business history, prior judgments, and such other information as may be useful to purchasers.

(3) The department of licensing shall issue a registration number to the commercial telephone solicitor.

(4) In addition to the unprofessional conduct described in RCW 18.235.130, the director of the department of licensing may take disciplinary action for any of the following conduct, acts, or conditions:

(a) Failing to maintain a valid registration;

(b) Advertising that one is registered as a commercial telephone solicitor or representing that such registration constitutes approval or endorsement by any government or governmental office or agency;

(c) Representing that a person is registered or that such person has a valid registration number when such person does not.

(5) An annual registration fee shall be assessed by the department of licensing, the amount of which shall be determined at the discretion of the director of the department of licensing, and which shall be reasonably related to the cost of administering the provisions of this chapter.

(6) The department shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order. 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. [2002 c 86 § 285; 1997 c 58 § 853; 1989 c 20 § 5.]

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

Additional notes found at www.leg.wa.gov

19.158.070 Appointment of agent to receive process.

Each commercial telephone solicitor shall appoint the director of the department of licensing as an agent to receive civil process under this chapter if the commercial telephone solicitor has no properly registered agent, if the agent has resigned, or if the agent cannot, after reasonable diligence, be found. [1989 c 20 § 7.]

19.158.080 Duties of director. The director of the department of licensing may make rules, create forms, and issue orders as necessary to carry out the provisions of this chapter, pursuant to chapter 34.05 RCW. [1989 c 20 § 8.]

19.158.090 Injunctive relief—Other applicable law. The director of the department of licensing may refer such evidence as may be available concerning violations of this

chapter or of any rule or order hereunder to the attorney general or the proper prosecuting attorney, who may in his or her 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 herein prohibited or declared unlawful: PROVIDED, That this chapter shall be considered in conjunction with chapters 9.04 and 19.86 RCW and the powers and duties of the attorney general and the prosecuting attorney as they may appear in chapters 9.04 and 19.86 RCW shall apply against all persons subject to this chapter. [1989 c 20 § 9.]

19.158.100 Requiring payment by credit card prohibited. It is a violation of this chapter for a commercial telephone solicitor to require that payment be by credit card authorization or otherwise to announce a preference for that method of payment over any other for unfair or deceptive reasons. [1989 c 20 § 10.]

19.158.110 Commercial telephone solicitor—Duties and prohibited acts—Notice to customers. (1) Within the first minute of the telephone call, a commercial telephone solicitor or salesperson shall:

(a) Identify himself or herself, the company on whose behalf the solicitation is being made, the property, goods, or services being sold; and

(b) Terminate the telephone call within ten seconds if the purchaser indicates he or she does not wish to continue the conversation.

(2) If at any time during the telephone contact, the purchaser states or indicates that he or she does not wish to be called again by the commercial telephone solicitor or wants to have his or her name and individual telephone number removed from the telephone lists used by the commercial telephone solicitor:

(a) The commercial telephone solicitor shall not make any additional commercial telephone solicitation of the called party at that telephone number within a period of at least one year; and

(b) The commercial telephone solicitor shall not sell or give the called party's name and telephone number to another commercial telephone solicitor: PROVIDED, That the commercial telephone solicitor may return the list, including the called party's name and telephone number, to the company or organization from which it received the list.

(3) The utilities and transportation commission shall by rule ensure that telecommunications companies inform their residential customers of the provisions of this section. The notification may be made by:

(a) Annual inserts in the billing statements mailed to residential customers; or

(b) Conspicuous publication of the notice in the consumer information pages of local telephone directories.

(4) If a sale or an agreement to purchase is completed, the commercial telephone solicitor must inform the purchaser of his or her cancellation rights as enunciated in this chapter, state the registration number issued by the department of licensing, and give the street address of the seller.

(5) If, at any time prior to sale or agreement to purchase, the commercial telephone solicitor's registration number is requested by the purchaser, it must be provided.

(6) All oral disclosures required by this section shall be made in a clear and intelligible manner. [1989 c 20 § 11.]

19.158.120 Cancellation of purchases—Requirements—Notice—Voidable contracts. (1) A purchase of property, goods, or services ordered as a result of a commercial telephone solicitation as defined in this chapter, if not followed by a written confirmation, is not final. The confirmation must contain an explanation of the consumer's rights under this section and a statement indicating where notice of cancellation should be sent. The purchaser may give notice of cancellation to the seller in writing within three business days after receipt of the confirmation. If the commercial telephone solicitor has not provided an address for receipt of such notice, cancellation is effective by mailing the notice to the department of licensing.

(2) Notice of cancellation shall be given by certified mail, return receipt requested, and shall be effective when mailed. Notice of cancellation given by the purchaser need not take a particular form and is sufficient if it indicates by any form of written expression the name, address, and telephone number of the purchaser and the purchaser's stated intention not to be bound by the sale.

(3) If a commercial telephone solicitor or a seller, if different, violates this chapter in making a sale, or fails to deliver an item within forty-two calendar days, the contract is voidable by giving written notice to the seller and the purchaser is entitled to a return from the seller within fourteen days of all consideration paid. Upon receipt by the purchaser of the consideration paid to the seller, the purchaser shall make available to the seller, at a reasonable time and place, the items received by the purchaser. Any cost of returning the items received by the purchaser shall be borne by the seller, by providing or guaranteeing payment for return shipping. If such payment is not provided or guaranteed, the purchaser may keep without further obligation the items received.

(4) Any contract, agreement to purchase, or written confirmation executed by a seller which purports to waive the purchaser's rights under this chapter is against public policy and shall be unenforceable: PROVIDED, That an agreement between a purchaser and seller to extend the delivery time of an item to more than forty-two days shall be enforceable if the seller has a reasonable basis to expect that he or she will be unable to ship the item within forty-two days and if the agreement is included in the terms of the written confirmation.

(5) Where a contract or agreement to purchase confers on a purchaser greater rights to cancellation, refund, or return than those enumerated in this chapter, such contract shall be enforceable, and not in violation of this chapter: PROVIDED, That all rights under such a contract or agreement to purchase must be specifically stated in a written confirmation sent pursuant to this section.

(6) The provisions of this section shall not reduce, restrict, or eliminate any existing rights or remedies available to purchasers. [1989 c 20 § 12.]

19.158.130 Damages, costs, attorneys' fees—Remedies not limited. In addition to any other penalties or remedies under chapter 19.86 RCW, a person who is injured by a violation of this chapter may bring an action for recovery of actual damages, including court costs and attorneys' fees. No provision in this chapter shall be construed to limit any right or remedy provided under chapter 19.86 RCW. [1989 c 20 § 13.]

19.158.140 Civil penalties. A civil penalty shall be imposed by the court for each violation of this chapter in an amount not less than five hundred dollars nor more than two thousand dollars per violation. [1989 c 20 § 14.]

19.158.150 Registration required—Penalty. No salesperson shall solicit purchasers on behalf of a commercial telephone solicitor who is not currently registered with the department of licensing pursuant to this chapter. Any salesperson who violates this section is guilty of a misdemeanor. [1989 c 20 § 15.]

19.158.160 Penalties. (1) Except as provided in RCW 19.158.150, any person who knowingly violates any provision of this chapter or who knowingly, directly or indirectly employs any device, scheme or artifice to deceive in connection with the offer or sale by any commercial telephone solicitor is guilty of the following:

(a) If the value of a transaction made in violation of RCW 19.158.040(1) is less than fifty dollars, the person is guilty of a misdemeanor;

(b) If the value of a transaction made in violation of RCW 19.158.040(1) is fifty dollars or more, then the person is guilty of a gross misdemeanor; and

(c) If the value of a transaction made in violation of RCW 19.158.040(1) is two hundred fifty dollars or more, then the person is guilty of a class C felony.

(2) When any series of transactions which constitute a violation of this section would, when considered separately, constitute a series of misdemeanors or gross misdemeanors because of the value of the transactions, and the series of transactions are part of a common scheme or plan, the transactions may be aggregated in one count and the sum of the value of all the transactions shall be the value considered in determining whether the violations are to be punished as a class C felony or a gross misdemeanor. [2003 c 53 § 160; 1989 c 20 § 16.]

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

19.158.170 Uniform regulation of business and professions act. The uniform regulation of business and professions act, chapter 18.235 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [2002 c 86 § 286.]

Additional notes found at www.leg.wa.gov

19.158.901 Effective date—1989 c 20. The effective date of this act shall be January 1, 1990. [1989 c 20 § 20.]

Chapter 19.160 RCW BUSINESS TELEPHONE LISTINGS

Sections

- 19.160.010 Definitions.
- 19.160.020 Finding—Application of consumer protection act.
- 19.160.030 Floral or ornamental products or services—Misrepresentation of geographic location—Penalty—Exemptions.

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

(1) "Local telephone directory" means a publication listing telephone numbers for various businesses in a certain geographic area and distributed free of charge to some or all telephone subscribers in that area.

(2) "Local telephone number" means a specific telephone number, area code and prefix, assigned for the purpose of completing local calls between a calling party or station and any other party or station within a designated exchange or all of its designated local calling areas. The term "local telephone number" does not include long distance telephone numbers or any toll-free telephone numbers listed in a local telephone directory.

(3) "Person" means an individual, partnership, limited liability partnership, corporation, or limited liability corporation. [2015 c 168 § 1; 1999 c 156 § 1.]

19.160.020 Finding—Application of consumer protection act. The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Violations of this chapter are not reasonable in relation to the development and preservation of business. A violation of this chapter is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW. [1999 c 156 § 3.]

19.160.030 Floral or ornamental products or services—Misrepresentation of geographic location—Penalty—Exemptions. (1) For purposes of this section, "floral or ornamental products or services" means floral arrangements, cut flowers, floral bouquets, potted plants, balloons, floral designs, and related products and services.

(2) It is a violation for a provider or vendor of floral or ornamental products or services to misrepresent the geographic location of its business by doing either of the following:

(a) Listing a local telephone number in any advertisement or listing, unless the advertisement or listing identifies the true physical address, including the city, of the provider's or vendor's business; or

(b) Listing a fictitious business name or an assumed business name in any advertisement or listing if both of the following criteria are met:

(i) The name of the business misrepresents the provider's or vendor's geographic location; and

(ii) The advertisement or listing does not identify the true physical address, including the city and state, of the provider's or vendor's business.

(3) A violation of this section is punishable, exclusively, by a fine not to exceed two hundred fifty dollars.

(4) This section does not create or impose any duty or obligation on a person other than a vendor or provider of floral or ornamental products or services.

(5) This section does not apply to any of the following:

(a) A publisher of a telephone directory or other publication or a provider of a directory assistance service publishing or providing information about another business.

(b) An internet web site that aggregates and provides information about other businesses.

(c) An owner or publisher of a print advertising medium providing information about other businesses.

(d) An internet service provider.

(e) An internet service that displays or distributes advertisements for other businesses. [2015 c 168 § 2; 1999 c 156 § 2.]

Chapter 19.162 RCW

PAY-PER-CALL INFORMATION DELIVERY SERVICES

Sections

19.162.010	Application of consumer protection act—Scope.
19.162.020	Definitions.
19.162.030	Program message preamble.
19.162.040	Advertisement of services.
19.162.050	Services directed at children.
19.162.060	Nonpayment of charges.
19.162.070	Violations—Action for damages.

Information delivery services through exclusive number prefix or service access code: RCW 80.36.500.

19.162.010 Application of consumer protection act—Scope. (1) The legislature finds that the deceptive use of pay-per-call information delivery services is a matter vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW.

(2) The deceptive use of pay-per-call information delivery services is not reasonable in relation to the development and preservation of business. A violation of this chapter is an unfair or deceptive act in trade or commerce for the purpose of applying the consumer protection act, chapter 19.86 RCW, and constitutes an act of deceptive pay-per-call information delivery service.

(3) This chapter applies to a communication made by a person in Washington or to a person in Washington. [1991 c 191 § 1.]

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

(1) "Person" means an individual, corporation, the state or its subdivisions or agencies, business trust, estate, trust, partnership, association, cooperative, or any other legal entity.

(2) "Information delivery services" means telephone-recorded messages, interactive programs, or other information services that are provided for a charge to a caller through an exclusive telephone number prefix or service access code.

(3) "Information provider" means the person who provides the information, prerecorded message, or interactive

program for the information delivery service. The information provider generally receives a portion of the revenue from the calls. "Information provider" does not include the medium for advertising information delivery services.

(4) "Interactive program" means a program that allows an information delivery service caller, once connected to the information provider's delivery service, to use the caller's telephone device to access more specific information or further information or to talk to other callers during the call.

(5) "Telecommunications company" includes every corporation, company, association, joint stock association, partnership, and person, their lessees, trustees, or receivers appointed by any court whatsoever, and every city or town owning, operating, or managing any facilities used to provide telecommunications for hire, sale, or resale to the general public within the state of Washington.

(6) "Interexchange carrier" means a carrier providing transmissions between local access and transport areas interstate or intrastate.

(7) "Billing services" means billing and collection services provided to information providers whether by the local exchange company or the interexchange carrier.

(8) "Program message" means the information that a caller hears or receives upon placing a call to an information provider.

(9) "Advertisement" includes all radio, television, or other broadcast, video, newspaper, magazine, or publication, billboard, direct mail, print media, telemarketing, or any promotion of an information delivery service, program, or number, and includes brochures, pamphlets, fliers, coupons, promotions, or the labeling of products or in-store communications circulated or distributed in any manner whatsoever. "Advertisement" does not include any listing in a white page telephone directory. In a yellow page telephone directory, "advertisement" includes only yellow page display advertising.

(10) "Subscriber" means the person in whose name an account is billed.

(11) "Does business in Washington" includes providing information delivery services to Washington citizens, advertising information delivery services in Washington, entering into a contract for billing services in Washington, entering into a contract in Washington with a telecommunications company or interexchange carrier for transmission services, or having a principal place of business in Washington. [1991 c 191 § 2.]

19.162.030 Program message preamble. (1) An information provider that does business in Washington must include a preamble in all program messages for:

(a) Programs costing more than five dollars per minute; or

(b) Programs having a total potential cost of greater than ten dollars.

(2) The preamble must:

(a) Accurately describe the service that will be provided by the program;

(b) Advise the caller of the price of the call, including:

(i) Any per minute charge;

(ii) Any flat rate charge; and

(iii) Any minimum charge;

(c) State that billing will begin shortly after the end of the introductory message; and

(d) Be clearly articulated, at a volume equal to that of the program message, in plain English or the language used to promote the information delivery service, and spoken in a normal cadence.

(3) Mechanisms that provide for the option of bypassing the preamble are only permitted when:

(a) The caller has made use of the information provider's service in the past, at which time the preamble required by this section was part of the program message; and

(b) The cost of the call has not changed during the thirty-day period before the call.

(4) When an information provider's program message consists of a polling application that permits the caller to register an opinion or vote on a matter by completing a call, this section does not apply. [1991 c 191 § 3.]

19.162.040 Advertisement of services. An information provider that does business in Washington shall comply with the following provisions in its advertisement of information delivery services:

(1) Advertisements for information delivery services that are broadcast by radio or television, contained in home videos, or that appear on movie screens must include a voice-over announcement that is clearly audible and articulates the price of the service provided. The announcement must be made at a volume equal to that used to announce the telephone number, spoken in a normal cadence, and in plain English or the language used in the advertisement.

(2) Advertisements for information delivery services that are broadcast by television, contained in home videos, or that appear on movie screens must include, in clearly visible letters and numbers, the cost of calling the advertised number. This visual disclosure of the cost of the call must be displayed adjacent to the number to be called whenever the number is shown in the advertisement, and the lettering of the visual disclosure of the cost must be in the same size and typeface as that of the number to be called.

(3)(a) Except as otherwise provided in (b) of this subsection, advertisements for information delivery services that appear in print must include, in clearly visible letters and numbers, the cost of calling the advertised number. The printed disclosure of the cost of the call must be displayed adjacent to the number to be called wherever the number is shown in the advertisement.

(b) In telephone directory yellow page display advertising and in printed materials published not more than three times a year, instead of disclosing the cost of the service, advertisements for information delivery services, shall include the conspicuous disclosure that the call is a pay-per-call service.

(4) The advertised price or cost of the information delivery service must include:

(a) Any per minute charge;

(b) Any flat rate charge; and

(c) Any minimum charge. [1991 c 191 § 4.]

19.162.050 Services directed at children. An information provider that does business in the state of Washington shall not direct information delivery services to children

under the age of twelve years unless the information provider complies with the following provisions:

(1) Interactive calls where children under the age of twelve years can speak to other children under the age of twelve years are prohibited.

(2) Programs directed to children under the age of twelve where the children are asked to provide their names, addresses, telephone numbers, or other identifying information are prohibited.

(3) Advertisements for information delivery services that are directed to children under the age of twelve years must contain a visual disclosure that clearly and conspicuously in the case of print and broadcast advertising, and audibly in the case of broadcast advertising, states that children under the age of twelve years must obtain parental consent before placing a call to the advertised number.

(4) Program messages that encourage children under the age of twelve years to make increased numbers of calls in order to obtain progressively more valuable prizes, awards, or similarly denominated items are prohibited.

(5) Advertisements for information delivery services that are directed to children under the age of twelve years must contain, in age-appropriate language, an accurate description of the services being provided. In the case of print advertising, the information must be clear and conspicuous and in the case of broadcast advertising, it must be visually displayed clearly and conspicuously and verbally disclosed in an audible, clearly articulated manner.

(6) Program messages that are directed to children under the age of twelve years that employ broadcast advertising where an electronic tone signal is emitted during the broadcast of the advertisement that automatically dials the program message are prohibited. [1991 c 191 § 5.]

19.162.060 Nonpayment of charges. An information provider's failure to substantially comply with any of the provisions of RCW 19.162.030 through 19.162.050 is a defense to the nonpayment of charges accrued as a result of using the information provider's services, billed by any entity, including but not limited to telecommunications companies and interexchange carriers. [1991 c 191 § 6.]

19.162.070 Violations—Action for damages. A person who suffers damage from a violation of this chapter may bring an action against an information provider. In an action alleging a violation of this chapter, the court may award the greater of three times the actual damages sustained by the person or five hundred dollars; equitable relief, including but not limited to an injunction and restitution of money and property; attorneys' fees and costs; and any other relief that the court deems proper. For purposes of this section, a telecommunications company or interexchange carrier is a person. [1991 c 191 § 7.]

Chapter 19.166 RCW

INTERNATIONAL STUDENT EXCHANGE

Sections

19.166.010 Intent.

19.166.020 Definitions.

19.166.030 Organization registration.

- 19.166.040 Organization application for registration—Suspension of license or certificate for noncompliance with support order—Reinstatement.
- 19.166.050 Standards.
- 19.166.060 Rules—Fee.
- 19.166.070 Informational document.
- 19.166.080 Complaints.
- 19.166.090 Violations—Misdemeanor.
- 19.166.100 Violations—Consumer protection act.
- 19.166.901 Effective date—1991 c 128.

19.166.010 Intent. It is the intent of the legislature to:

- (1) Promote the health, safety, and welfare of international student exchange visitors in Washington in accordance with uniform national standards;
- (2) Promote quality education and living experiences for international student exchange visitors living in Washington;
- (3) Promote international awareness among Washington residents, by encouraging Washington residents to interact with international student exchange visitors;
- (4) Encourage public confidence in international student exchange visitor placement organizations operating in Washington;
- (5) Encourage and assist with compliance with United States information agency regulations and nationally established standards; and
- (6) Promote the existence and quality of international student visitor exchange programs operating in Washington. [1991 c 128 § 1.]

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

(1) "International student exchange visitor placement organization" or "organization" means a person, partnership, corporation, or other entity that regularly arranges the placement of international student exchange visitors for the purpose, in whole or in part, of allowing the student an opportunity to attend school in the United States.

(2) "International student exchange visitor" or "student" means any person eighteen years of age or under, or up to age twenty-one if enrolled or to be enrolled in high school in this state, placed by an international student exchange visitor placement organization, who enters the United States with a nonimmigrant visa. [1991 c 128 § 2.]

19.166.030 Organization registration. (1) All international student exchange visitor placement organizations that place students in public schools in the state shall register with the secretary of state.

(2) Failure to register is a violation of this chapter.

(3) Information provided to the secretary of state under this chapter is a public record.

(4) Registration shall not be considered or be represented as an endorsement of the organization by the secretary of state or the state of Washington.

(5) On a date established by rule by the secretary of state, the secretary of state shall provide annually to the superintendent of public instruction a list of all currently registered international student placement organizations. The superintendent of public instruction shall distribute annually the list of all currently registered international student placement organizations to all Washington state school districts. [1995 c 60 § 1; 1991 c 128 § 3.]

(2018 Ed.)

19.166.040 Organization application for registration—Suspension of license or certificate for noncompliance with support order—Reinstatement. (1) An application for registration as an international student exchange visitor placement organization shall be submitted in the form prescribed by the secretary of state. The application shall include:

(a) Evidence that the organization meets the standards established by the secretary of state under RCW 19.166.050;

(b) The name, address, and telephone number of the organization, its chief executive officer, and the person within the organization who has primary responsibility for supervising placements within the state;

(c) The organization's unified business identification number, if any;

(d) The organization's United States Information Agency number, if any;

(e) Evidence of council on standards for international educational travel listing, if any;

(f) Whether the organization is exempt from federal income tax; and

(g) A list of the organization's placements in Washington for the previous academic year including the number of students placed, their home countries, the school districts in which they were placed, and the length of their placements.

(2) The application shall be signed by the chief executive officer of the organization and the person within the organization who has primary responsibility for supervising placements within Washington. If the secretary of state determines that the application is complete, the secretary of state shall file the application and the applicant is registered.

(3) International student exchange visitor placement organizations that have registered shall inform the secretary of state of any changes in the information required under subsection (1) of this section within thirty days of the change.

(4) Registration shall be renewed annually as established by rule by the office of the secretary of state.

(5) The office of the secretary of state shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a *residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the office of the secretary of state's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order. [1997 c 58 § 854; 1995 c 60 § 2; 1991 c 128 § 5.]

***Reviser's note:** 1997 c 58 § 886 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for noncompliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

Additional notes found at www.leg.wa.gov

19.166.050 Standards. The secretary of state shall adopt standards for international student exchange visitor placement organizations. In adopting the standards, the secre-

tary of state shall strive to adopt standards established by the United States Information Agency and the council on standards for international educational travel and strive to achieve uniformity with national standards. The secretary of state may incorporate standards established by the United States Information Agency or the council on standards for international educational travel by reference and may accept an organization's designation by the United States Information Agency or acceptance for listing by the council on standards for international educational travel as evidence of compliance with such standards. [1991 c 128 § 4.]

19.166.060 Rules—Fee. The secretary of state may adopt rules as necessary to carry out its duties under this chapter. The rules may include providing for a reasonable registration fee, not to exceed fifty dollars, to defray the costs of processing registrations. [1991 c 128 § 6.]

19.166.070 Informational document. International student exchange organizations that have agreed to provide services to place students in the state shall provide an informational document, in English, to each student, host family, and superintendent of the school district in which the student is being placed. The document shall be provided before placement and shall include the following:

(1) An explanation of the services to be performed by the organization for the student, host family, and school district;

(2) A summary of this chapter prepared by the secretary of state;

(3) Telephone numbers that the student, host family, and school district may call for assistance. The telephone numbers shall include, at minimum, an in-state telephone number for the organization, and the telephone numbers of the organization's national headquarters, if any, the United States Information Agency, and the office of the secretary of state. [1991 c 128 § 7.]

19.166.080 Complaints. The secretary of state may, upon receipt of a complaint regarding an international student exchange organization, report the matter to the organization involved, the United States Information Agency, or the council on standards for international education travel, as he or she deems appropriate. [1991 c 128 § 8.]

19.166.090 Violations—Misdemeanor. Any person who violates any provision of this chapter or who willfully and knowingly gives false or incorrect information to the secretary of state, 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. [2000 c 171 § 75; 1991 c 128 § 9.]

19.166.100 Violations—Consumer protection act. The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Violations of this chapter are not reasonable in relation to the development and preservation of business. A violation of this chapter is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of

applying the consumer protection act, chapter 19.86 RCW. [1991 c 128 § 10.]

19.166.901 Effective date—1991 c 128. Sections 1 through 11 and 13 through 16 of this act shall take effect January 1, 1992. [1991 c 128 § 17.]

Chapter 19.170 RCW

PROMOTIONAL ADVERTISING OF PRIZES

Sections

19.170.010	Finding—Violations—Consumer protection act—Application.
19.170.020	Definitions.
19.170.030	Disclosures required.
19.170.040	Disclosures—Prizes awarded—Rain checks.
19.170.050	Simulated checks—Continuing obligation checks—Notice.
19.170.060	Damages—Penalties.
19.170.070	Violation—Penalty.
19.170.080	Remedies not exclusive.

19.170.010 Finding—Violations—Consumer protection act—Application. (1) The legislature finds that deceptive promotional advertising of prizes is a matter vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW.

(2) Deceptive promotional advertising of prizes is not reasonable in relation to the development and preservation of business. A violation of this chapter is an unfair or deceptive act in trade or commerce for the purpose of applying the consumer protection act, chapter 19.86 RCW, and constitutes an act of deceptive promotional advertising.

(3) This chapter applies to a promotion offer:

(a) Made to a person in Washington;

(b) Used to induce or invite a person to come to the state of Washington to claim a prize, attend a sales presentation, meet a promoter, sponsor, salesperson, or their agent, or conduct any business in this state; or

(c) Used to induce or invite a person to contact by any means a promoter, sponsor, salesperson, or their agent in this state. [1991 c 227 § 1.]

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.

19.170.030 Disclosures required. (1) The offer must identify the name and address of the promoter and the sponsor of the promotion.

(2) The offer must state the verifiable retail value of each prize offered in it.

(2018 Ed.)

(3)(a) If an element of chance is involved, each offer must state the odds the participant has of being awarded each prize. The odds must be expressed in Arabic numerals, in ratio form, based on the total number of prizes to be awarded and the total number of offers distributed.

(b) If the promotion identified in the offer is part of a collective promotion with more than one participating sponsor, that fact must be clearly and conspicuously disclosed.

(c) The odds must be stated in a manner that will not deceive or mislead a person about that person's chance of being awarded a prize.

(4) The verifiable retail value and odds for each prize must be stated in immediate proximity on the same page with the first listing of each prize in type at least as large as the typeface used in the standard text of the offer.

(5) If a person is required or invited to view, hear, or attend a sales presentation in order to claim a prize that has been awarded, may have been awarded, or will be awarded, the requirement or invitation must be conspicuously disclosed under subsection (7) of this section to the person in the offer in bold-face type at least as large as the typeface used in the standard text of the offer.

(6) No item in an offer may be denominated a prize, gift, award, premium, or similar term that implies the item is free if, in order to receive the item or use the item for its intended purpose the intended recipient is required to spend any sum of money, including but not limited to shipping fees, deposits, handling fees, payment for one item in order to receive another at no charge, or the purchase of another item or the expenditure of funds in order to make meaningful use of the item awarded in the promotion. The payment of any applicable state or federal taxes by a recipient directly to a government entity is not a violation of this section.

(7) If the receipt of the prize is contingent upon certain restrictions or qualifications that the recipient must meet, or if the use or availability of the prize is restricted or qualified in any way, including, but not limited to restrictions on travel dates, travel times, classes of travel, airlines, accommodations, travel agents, or tour operators, the restrictions or qualifications must be disclosed on the offer in immediate proximity on the same page with the first listing of the prize in type at least as large as the typeface used in the standard text of the offer or, in place thereof, the following statement printed in direct proximity to the prize or prizes awarded in type at least as large as the typeface used in the standard text of the offer:

"Details and qualifications for participation in this promotion may apply."

This statement must be followed by a disclosure, in the same size type as the statement, indicating where in the offer the restrictions may be found. The restrictions must be printed in type at least as large as the typeface used in the standard text of the offer.

(8) If a prize will not be awarded or given unless a winning ticket, the offer itself, a token, number, lot, or other device used to determine winners in a particular promotion is presented to a promoter or a sponsor, this fact must be clearly stated on the first page of the offer. [1999 c 31 § 1; 1991 c 227 § 3.]

19.170.040 Disclosures—Prizes awarded—Rain checks. (1) Before a demonstration, seminar, or sales presentation begins, the promoter shall inform the person of the prize, if any, the person will receive.

(2) A prize or a voucher, certificate, or other evidence of obligation given instead of a prize shall be given to a person at the time the person is informed of the prize, if any, the person will receive.

(3) A copy of the offer shall be returned to the person receiving the prize at the time the prize is awarded.

(4) It is a violation of this chapter for a promoter or sponsor to include a prize in an offer when the promoter or sponsor knows or has reason to know that the prize will not be available in a sufficient quantity based upon the reasonably anticipated response to the offer.

(5)(a) If the prize is not available for immediate delivery to the recipient, the recipient shall be given, at the promoter or sponsor's option, a rain check for the prize, the verifiable retail value of the prize in cash, or a substitute item of equal or greater verifiable retail value.

(b) If the rain check cannot be honored within thirty days, the promoter or sponsor shall mail to the person a valid check or money order for the verifiable retail value of the prize described in this chapter.

(6) A sponsor shall fulfill the rain check within thirty days if the person named as being responsible fails to honor it.

(7) The offer shall contain the following clear and conspicuous statement of recipients' rights printed in type at least as large as the typeface used in the standard text of the offer:

"If you receive a rain check in lieu of the prize, you are entitled by law to receive the prize, an item of equal or greater value, or the cash equivalent of the offered prize within thirty days of the date on which you claimed the prize."

(8) It is a violation of this chapter to misrepresent the quality, type, value, or availability of a prize. [1991 c 227 § 4.]

19.170.050 Simulated checks—Continuing obligation checks—Notice. (1) No person may produce, advertise, offer for sale, sell, distribute, or otherwise transfer for use in this state a simulated check unless the document bears the phrase "THIS IS NOT A CHECK," diagonally printed in type at least as large as the predominant typeface in the simulated check on the front of the check itself.

(2) No person, other than a financial institution, may produce, advertise, offer for sale, sell, distribute, or otherwise transfer for use in this state a continuing obligation check unless the document bears the phrase "THIS IS A LOAN" or "CASHING THIS REQUIRES REPAYMENT," diagonally printed in type at least as large as the predominant typeface in the continuing obligation check on the front of the check itself. [1991 c 227 § 5.]

19.170.060 Damages—Penalties. (1) A person who suffers damage from an act of deceptive promotional advertising may bring an action against the sponsor or promoter of the advertising, or both. Damages include, but are not limited to, fees paid in violation of RCW 19.170.030(6) and the dol-

lar value of a prize represented to be awarded to a person, but not received by that person.

(2) In an action for deceptive promotional advertising, the court may award the greater of five hundred dollars or three times the actual damages sustained by the person, not to exceed ten thousand dollars; equitable relief, including, but not limited to an injunction and restitution of money and property; attorneys' fees and costs; and any other relief that the court deems proper. [1991 c 227 § 6.]

19.170.070 Violation—Penalty. A person who knowingly violates any provision of this chapter is guilty of a gross misdemeanor. [1991 c 227 § 7.]

19.170.080 Remedies not exclusive. The remedies prescribed in this chapter do not limit or bar any existing remedies at law or equity. [1991 c 227 § 8.]

Chapter 19.174 RCW

AUTOMATED TELLER MACHINES AND NIGHT DEPOSITORIES SECURITY

Sections

19.174.010	Intent.
19.174.020	Definitions.
19.174.030	Safety procedures—Requirements.
19.174.040	Lighting requirements—Compliance.
19.174.050	Lighting requirements.
19.174.060	Notice to customer.
19.174.070	Exceptions.
19.174.080	Chapter supersedes local government actions.
19.174.090	Compliance evidence of adequate safety measures.
19.174.900	Effective date—1993 c 324.

19.174.010 Intent. The intent of the legislature in enacting this chapter is to enhance the safety of consumers using automated teller machines and night deposit facilities in Washington without discouraging the siting of automated teller machines and night deposit facilities in locations convenient to consumers' homes and workplaces. Because decisions concerning safety at automated teller machines and night deposit facilities are inherently subjective, the legislature establishes as the standard of care applicable to operators of automated teller machines and night deposit facilities, in connection with user safety, compliance with the objective standards and information requirements of this chapter. It is not the intent of the legislature in enacting this chapter to impose a duty to relocate or modify automated teller machines or night deposit facilities upon the occurrence of a particular event or circumstance, but rather to establish a means for the evaluation of all automated teller machines and night deposit facilities as provided in this chapter. The legislature further recognizes the need for uniformity as to the establishment of safety standards for automated teller machines and night deposit facilities and intends with this chapter to supersede and preempt a rule, regulation, code, or ordinance of a city, county, municipality, or local agency regarding customer safety at automated teller machines and night deposit facilities in Washington. [1993 c 324 § 2.]

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

(1) "Access area" means a paved walkway or sidewalk that is within fifty feet of an automated teller machine or night deposit facility. "Access area" does not include publicly maintained sidewalks or roads.

(2) "Access device" means:

(a) "Access device" as defined in federal reserve board Regulation E, 12 C.F.R. Part 205, promulgated under the Electronic Fund Transfer Act, 15 U.S.C. Sec. 1601, et seq.; or

(b) A key or other mechanism issued by a banking institution to its customer to give the customer access to the banking institution's night deposit facility.

(3) "Automated teller machine" means an electronic information processing device located in this state that accepts or dispenses cash in connection with a credit, deposit, or convenience account. "Automated teller machine" does not include a device used primarily to facilitate check guarantees or check authorizations, used in connection with the acceptance or dispensing of cash on a person-to-person basis such as by a store cashier, or used for payment of goods and services.

(4) "Banking institution" means a state or federally chartered bank, trust company, savings bank, savings and loan association, and credit union.

(5) "Candle-foot power" means a light intensity of candles on a horizontal plane at thirty-six inches above ground level and five feet in front of the area to be measured.

(6) "Control of an access area or defined parking area" means to have the present authority to determine how, when, and by whom it is to be used, and how it is to be maintained, lighted, and landscaped.

(7) "Defined parking area" means that portion of a parking area open for customer parking that is:

(a) Contiguous to an access area with respect to an automated teller machine or night deposit facility;

(b) Regularly, principally, and lawfully used for parking by users of the automated teller machine or night deposit facility while conducting transactions during hours of darkness; and

(c) Owned or leased by the operator of the automated teller machine or night deposit facility or owned or controlled by the party leasing the automated teller machine or night deposit facility site to the operator. "Defined parking area" does not include a parking area that is not open or regularly used for parking by users of the automated teller machine or night deposit facility who are conducting transactions during hours of darkness. A parking area is not open if it is physically closed to access or if conspicuous signs indicate that it is closed. If a multiple level parking area satisfies the conditions of this subsection (7)(c) and would therefore otherwise be a defined parking area, only the single parking level deemed by the operator of the automated teller machine and night deposit facility to be the most directly accessible to the users of the automated teller machine and night deposit facility is a defined parking area.

(8) "Hours of darkness" means the period that commences thirty minutes after sunset and ends thirty minutes before sunrise.

(9) "Night deposit facility" means a receptacle that is provided by a banking institution for the use of its customers in delivering cash, checks, and other items to the banking institution.

(10) "Operator" means a banking institution or other business entity or a person who operates an automated teller machine or night deposit facility. [2000 c 171 § 76; 1993 c 324 § 1.]

19.174.030 Safety procedures—Requirements. On or before July 1, 1994, with respect to an existing installed automated teller machine and night deposit facility in this state, and an automated teller machine or night deposit facility installed after July 1, 1994, the operator shall adopt procedures for evaluating the safety of the automated teller machine or night deposit facility. These procedures must pertain to the following:

(1) The extent to which the lighting for the automated teller machine or night deposit facility complies or will comply with the standards required by RCW 19.174.050;

(2) The presence of landscaping, vegetation, or other obstructions in the area of the automated teller machine or night deposit facility, the access area, and the defined parking area; and

(3) The incidence of crimes of violence in the immediate neighborhood of the automated teller machine or night deposit facility, as reflected in the records of the local law enforcement agency and of which the operator has actual knowledge. [1993 c 324 § 3.]

19.174.040 Lighting requirements—Compliance. (1) An operator of an automated teller machine or night deposit facility installed on or after July 1, 1994, shall comply with RCW 19.174.050 beginning on the date the automated teller machine or night deposit facility is installed. Compliance with RCW 19.174.050 by an operator as to an automated teller machine and night deposit facility existing as of July 1, 1994, is optional until July 1, 1996, and mandatory thereafter. This section applies to an operator of an automated teller machine or night deposit facility only to the extent that the operator controls the access area or defined parking area to be lighted.

(2) If an access area or a defined parking area is not controlled by the operator of an automated teller machine or night deposit facility, and if the person who leased the automated teller machine or night deposit facility site to the operator controls the access area or defined parking area, the person who controls the access area or defined parking area shall comply with RCW 19.174.050 for an automated teller machine or night deposit facility installed on or after July 1, 1994, beginning on the date the automated teller machine or night deposit facility is installed and for an automated teller machine or night deposit facility existing as of July 1, 1994, by or on July 1, 1996. [1993 c 324 § 4.]

19.174.050 Lighting requirements. The operator, owner, or other person responsible for an automated teller machine or night deposit facility shall provide lighting during hours of darkness with respect to an open and operating automated teller machine or night deposit facility and a defined parking area, access area, and the exterior of an enclosed automated teller machine or night deposit facility installation according to the following standards:

(1) There must be a minimum of ten candle-foot power at the face of the automated teller machine or night deposit

facility and extending in an unobstructed direction outward five feet;

(2) There must be a minimum of two candle-foot power within fifty feet from all unobstructed directions from the face of the automated teller machine or night deposit facility. In the event the automated teller machine or night deposit facility is located within ten feet of the corner of the building and the automated teller machine or night deposit facility is generally accessible from the adjacent side, there must be a minimum of two candle-foot power along the first forty unobstructed feet of the adjacent side of the building; and

(3) There must be a minimum of two candle-foot power in that portion of the defined parking area within fifty feet of the automated teller machine or night deposit facility. [1993 c 324 § 5.]

19.174.060 Notice to customer. The issuer of an access device shall furnish a customer receiving the device with a notice of basic safety precautions that the customer should employ while using an automated teller machine or night deposit facility. This information must be furnished by personally delivering or by mailing the information to each customer whose mailing address is in this state for the account to which the access device relates. This information must be furnished for an access device issued on or after July 1, 1994, at or before the time the customer is furnished with his or her access device. For a customer to whom an access device was issued before July 1, 1994, the information must be delivered or mailed to the customer on or before December 31, 1994. Only one notice must be furnished per household, and if an access device is furnished to more than one customer for a single account or set of accounts or on the basis of a single application or other request for the access devices, only a single notice must be furnished in satisfaction of the notification responsibilities as to all those customers. The information may be included with other disclosures related to the access device furnished to the customer, such as with an initial or periodic disclosure statement furnished under the Electronic Fund Transfer Act, 15 U.S.C. Sec. 1601, et seq. [1993 c 324 § 6.]

19.174.070 Exceptions. This chapter does not apply to an automated teller machine or night deposit facility that is:

(1) Located inside of a building, unless it is a freestanding installation that exists for the sole purpose of providing an enclosure for the automated teller machine or night deposit facility;

(2) Located inside a building, except to the extent a transaction can be conducted from outside the building; or

(3) Located in an area, including an access area, building, enclosed space, or parking area that is not controlled by the operator. [1993 c 324 § 7.]

19.174.080 Chapter supersedes local government actions. This chapter supersedes and preempts all rules, regulations, codes, statutes, or ordinances of all cities, counties, municipalities, and local agencies regarding customer safety at automated teller machines or night deposit facilities located in this state. [1993 c 324 § 8.]

19.174.090 Compliance evidence of adequate safety measures. Compliance with the objective standards and information requirements of this chapter is prima facie evidence that the operator of the automated teller machine or night deposit facility in question has provided adequate measures for the safety of users of the automated teller machine or night depository. [1993 c 324 § 9.]

19.174.900 Effective date—1993 c 324. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 12, 1993]. [1993 c 324 § 15.]

Chapter 19.178 RCW GOING OUT OF BUSINESS SALES

Sections

19.178.010	Definitions.
19.178.020	Notice—Recording—Display—Service on attorney general.
19.178.030	Notice—Recording—Procedure.
19.178.040	Inventory list—Compilation of purchase orders.
19.178.050	Business identification number—Ownership interest purposes limited—Application of consumer protection act.
19.178.060	Time limit.
19.178.070	Merchandise—Consigned or not owned by seller—Transfer—Additional.
19.178.080	Continuing business prohibited—Exception.
19.178.090	Means for continuation of closing business location prohibited.
19.178.100	Advertising—Moving sale.
19.178.110	Violations—Application of consumer protection act.
19.178.120	Violation—False or incorrect notice—Penalty.
19.178.130	Proceedings instituted by attorney general or prosecuting attorney.
19.178.140	State preemption.
19.178.900	Application of chapter—Exceptions.

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

(1) "Affiliated business" means a business or business location that is directly or indirectly controlled by or under common control with the business location or locations listed in the notice of the sale or that has a common ownership interest in the merchandise to be sold with the business location or locations listed in the notice of the sale.

(2) "Going out of business sale" means a sale or auction advertised or held out to the public as the disposal of merchandise in anticipation of cessation of business. This includes but is not limited to a sale or auction advertised or held out to the public as a "going out of business sale," a "closing out sale," a "quitting business sale," a "loss of lease sale," a "must vacate sale," a "liquidation sale," a "bankruptcy sale," a "sale to prevent bankruptcy," or another description suggesting price reduction due to the imminent closure of the business.

(3) "Merchandise" means goods, wares, or other property or services capable of being the object of a sale regulated under this chapter.

(4) "Moving sale" means a sale or auction advertised or held out to the public in anticipation of a relocation of the business to within a thirty-mile radius of its existing location.

(5) "Person" means, where applicable, natural persons, corporations, trusts, unincorporated associations, partnerships, or other legal entities. [1993 c 456 § 2.]

19.178.020 Notice—Recording—Display—Service on attorney general. (1) It is unlawful for a person to sell, offer for sale, or advertise for sale merchandise at a going out of business sale without first recording a notice of the going out of business sale and executing an affidavit of inventory under this chapter.

(2) The notice of the sale must be displayed in a prominent place on the premises where a going out of business sale is being conducted.

(3) Where a going out of business sale is part of a bankruptcy, receivership, or other court-ordered action, a person required by this chapter to record a notice of the sale shall serve a copy of the petition, motion, proposed order, or other pleading requesting court approval of the sale on the attorney general no less than seven days before the date on which an action may be taken related to the conduct of the sale by a court. [1993 c 456 § 3.]

19.178.030 Notice—Recording—Procedure. (1) A person conducting a going out of business sale shall record a notice of the sale with the county auditor at least fourteen days before the beginning date of the sale.

(2) The notice must be signed under oath and acknowledged and must require, and the person signing the notice shall set forth, the following facts and information regarding the sale:

(a) The name, address, telephone number, and Washington state business identification number of the owner of the merchandise to be sold. If the owner is a corporation, trust, unincorporated association, partnership, or other legal entity, the person signing the notice must be an officer of the entity and must identify his or her title;

(b) The name, address, and telephone number of the person who will be in charge and responsible for the conduct of the sale;

(c) The descriptive name, location or locations, and beginning and ending dates of the sale;

(d) Whether a person who has an ownership interest in the business or in the merchandise to be sold has conducted a going out of business sale within one year of recording the notice;

(e) Whether a person who has an ownership interest in the business or in the merchandise to be sold established or acquired an ownership interest in the business within six months of recording the notice; and

(f) A statement that:

(i) The merchandise ordered during the thirty days before recording the notice consists only of bona fide orders made in the usual course of business and does not contain merchandise taken on consignment or otherwise;

(ii) No merchandise transferred from an affiliated business was transferred in contemplation of conducting the sale;

(iii) No merchandise will be ordered, taken on consignment, or transferred from an affiliated business after the notice is recorded or during the sale;

(iv) No person who has an ownership interest in the business or in the merchandise to be sold established or acquired an interest in the business or in the merchandise to be sold solely or principally for the purpose of conducting a going out of business sale;

(v) The business will be discontinued after the ending date of the sale and no merchandise held out for sale will be subsequently offered for sale to the public by anyone who had an ownership interest in the business or in the merchandise offered for sale; and

(vi) No person who has an ownership interest in the business or in the merchandise to be sold is subject to a court order resulting from a civil enforcement action under the consumer protection act for a violation of this chapter or the type of conduct prohibited by this chapter. [1993 c 456 § 5.]

19.178.040 Inventory list—Compilation of purchase orders. (1) A person conducting a going out of business sale shall, before recording the notice, make either an inventory list of the merchandise to be sold or a compilation of purchase orders issued by the business in the thirty days before recording the notice of the sale.

(2) If a person elects to make an inventory list:

(a) The inventory list must identify the merchandise and include the quantity of each item and the price at which each item was offered for sale within one week of recording the notice;

(b) The inventory list must identify items ordered within thirty days of recording the notice but not yet received by the business;

(c) The inventory list must be permanently attached to an affidavit executed by the person recording the notice of the sale stating that the inventory list is a true and correct inventory of merchandise owned by the business conducting the sale as of the date the affidavit is executed; and

(d) No item may be offered for sale at a going out of business sale unless the item is included in the inventory list for the sale.

(3) If a person elects to make a purchase order compilation, the compilation must be permanently attached to an affidavit executed by the person recording the notice of the sale stating that the compilation is a true and correct compilation of the purchase orders issued by the business in the thirty days before recording the notice of the sale.

(4) The affidavit must be signed under oath and acknowledged before a notary public. Each page of the inventory list or purchase order compilation must be marked in some form by a notary public to verify its identity as part of the inventory list or purchase order compilation for the going out of business sale.

(5) A person conducting a going out of business sale shall maintain possession of the affidavit and attached inventory list or purchase order compilation for three years after the ending date of the sale. The inventory list or purchase order compilation is admissible evidence of compliance or noncompliance with this chapter. [1993 c 456 § 6.]

19.178.050 Business identification number—Ownership interest purposes limited—Application of consumer protection act. (1) No person may conduct a going out of business sale except a person with a valid Washington state business identification number.

(2) No person may conduct a going out of business sale if a person who has an ownership interest in the business or in the merchandise to be sold established or acquired an ownership interest in the business solely or principally for the pur-

pose of conducting a going out of business sale. A person who has either conducted a going out of business sale within one year or established or acquired an interest in the business conducting the sale within six months of recording the notice is presumed to have established or acquired an interest in the business solely or principally for the purpose of conducting a going out of business sale.

(3) No person may conduct a going out of business sale if a person who has an ownership interest in the business or in the merchandise to be sold is subject to a court order resulting from a civil enforcement action under the consumer protection act for a violation of this chapter or the type of conduct prohibited by this chapter. [1993 c 456 § 7.]

19.178.060 Time limit. No person may conduct a going out of business sale for more than sixty days from the beginning date of the sale. [1993 c 456 § 8.]

19.178.070 Merchandise—Consigned or not owned by seller—Transfer—Additional. (1) No person may sell consigned merchandise or other merchandise not owned by the person signing the notice at a going out of business sale. Merchandise ordered within thirty days of recording the notice of the sale may consist only of bona fide orders made in the usual course of business and may contain no merchandise taken on consignment or otherwise.

(2) No person in contemplation of conducting a going out of business sale may transfer merchandise from an affiliated business or business location to the location or locations of the sale.

(3) No person, after recording the notice of a going out of business sale, may buy or order merchandise, take merchandise on consignment, or receive a transfer of merchandise from an affiliated business or business location for the purpose of selling it at the sale or sell the merchandise in a going out of business sale. [1993 c 456 § 9.]

19.178.080 Continuing business prohibited—Exception. (1) No person may continue to conduct a going out of business sale beyond the ending date listed in the notice of the sale.

(2) No person after conducting a going out of business sale may remain in business under any of the same ownership, or under the same or substantially the same trade name, or continue to offer for sale the same type of merchandise for a period of one year after the ending date of the sale unless the continuing business location was in operation before recording the notice for the closing business location.

(3) For the purposes of this section, if a business entity that is prohibited from continuing a business under this section reformulates itself as a new entity or as an individual, whether by sale, merger, acquisition, bankruptcy, dissolution, or other transaction, for the purpose of continuing the business or profiting from the business, the successor entity or individual is considered the same person as the original entity. If an individual who is prohibited from continuing a business under this section forms a new business entity to continue the business, participate in the business, or profit from the business, that entity is considered the same person as the individual. [1993 c 456 § 10.]

19.178.090 Means for continuation of closing business location prohibited. No person may conduct a going out of business sale if any means have been established for continuation of the closing business location by the same owner, directly or indirectly, by corporation, trust, unincorporated association, partnership, or other legal entity under the same name or under a different name. [1993 c 456 § 11.]

19.178.100 Advertising—Moving sale. (1) No person may advertise a going out of business sale more than fourteen days before the beginning date of the sale. All advertising of the sale must state the beginning date and must clearly and prominently state the ending date of the sale. Except as provided in subsection (2) of this section, all advertising must be confined to or refer to the address or addresses and place or places of business specified in the notice as going out of business and may not state that other locations or affiliated businesses are cooperating with or participating in the sale unless the other locations or affiliated businesses are included in the notice.

(2) Advertising broadcast on radio is not required to refer to the address or addresses of the business specified in the notice as going out of business, but must meet all other conditions of this section.

(3) No advertising may contain false, misleading, or deceptive statements regarding the nature, duration, merchandise, or other terms of a going out of business sale.

(4) Representations in advertising regarding price savings or discounts on sale merchandise must be bona fide and substantiated.

(5) A moving sale may not be advertised for more than ninety days and may not occur more than once within a twenty-four month period. [1993 c 456 § 12.]

19.178.110 Violations—Application of consumer protection act. The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Violations of this chapter are not reasonable in relation to the development and preservation of business. A violation of this chapter is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW. [1993 c 456 § 1.]

19.178.120 Violation—False or incorrect notice—Penalty. A person who knowingly violates this chapter or who knowingly gives false or incorrect information in a notice required by this chapter is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW. [1993 c 456 § 13.]

19.178.130 Proceedings instituted by attorney general or prosecuting attorney. The attorney general or the proper prosecuting attorney may institute proceedings under this chapter. [1993 c 456 § 14.]

19.178.140 State preemption. The state of Washington fully occupies and preempts the entire field of regulating going out of business sales. [1993 c 456 § 15.]

19.178.900 Application of chapter—Exceptions. (1)

This chapter shall apply only to persons who engage in the retail sale of merchandise in their regular course of business.

(2) This chapter does not apply to:

(a) Persons acting in accordance with their powers and duties as public officers, such as county sheriffs;

(b) Bulk transfers as defined in *RCW 62A.6-102; or

(c) Moving sales, except for RCW 19.178.100(5).

(3) Going out of business sales of perishable merchandise or merchandise damaged by fire, smoke, or water are exempt from the requirement that the notice of the sale be recorded at least fourteen days before the beginning date of the sale. [1993 c 456 § 4.]

*Reviser's note: RCW 62A.6-102 was repealed by 1993 c 395 § 6-101.

Chapter 19.182 RCW FAIR CREDIT REPORTING ACT

Sections

19.182.005	Findings—Declaration.
19.182.010	Definitions.
19.182.020	Consumer report—Furnishing—Procuring.
19.182.030	Consumer report—Credit action not initiated by consumer—Exclusion by consumer.
19.182.040	Consumer report—Prohibited information—Exceptions.
19.182.050	Investigative consumer report—Procurement, preparation—Disclosure—Use—Liability—Record.
19.182.060	Consumer report—Procedures for compliance—Information for governmental agency—Record.
19.182.070	Disclosures to consumer.
19.182.080	Disclosures to consumer—Procedures.
19.182.090	Consumer file—Dispute—Procedure—Notice—Statement of dispute—Toll-free information number.
19.182.100	Consumer reporting agency—Consumer fees and charges for required information—Exceptions.
19.182.110	Adverse action based on report—Procedure—Notice.
19.182.120	Limitation on action—Exception.
19.182.130	Obtaining information under false pretenses—Penalty.
19.182.140	Provision of information to unauthorized person—Penalty.
19.182.150	Application of consumer protection act—Limitation—Awards—Penalties—Attorneys' fees.
19.182.160	Block of information appearing as result of identity theft.
19.182.170	Victim of identity theft—Security freeze.
19.182.180	Security freeze—Changes to information—Written confirmation required.
19.182.190	Security freeze—RCW 19.182.170 not applicable to certain consumer reporting agencies.
19.182.200	Security freeze—Exempt entities.
19.182.210	Information furnished to a governmental agency.
19.182.220	Security freeze—Protected consumers—Definitions.
19.182.230	Security freeze—Protected consumers—Placement and removal—Fees—Exceptions.
19.182.800	Report on credit freezes.
19.182.900	Short title—1993 c 476.
19.182.902	Effective date—1993 c 476.

19.182.005 Findings—Declaration. The legislature finds and declares that consumers have a vital interest in establishing and maintaining creditworthiness. The legislature further finds that an elaborate mechanism using credit reports has developed for investigating and evaluating a consumer's creditworthiness, credit capacity, and general reputation and character. As such, credit reports are used for evaluating credit card, loan, mortgage, and small business financing applications, as well as for decisions regarding employment and the rental or leasing of dwellings. Moreover, financial institutions and other creditors depend upon fair and accurate credit reports to efficiently and accurately evaluate creditworthiness. Unfair or inaccurate reports under-

(2018 Ed.)

mine both public and creditor confidences in the reliability of credit granting systems.

Therefore, this chapter is necessary to assure accurate credit data collection, maintenance, and reporting on the citizens of the state. It is the policy of the state that credit reporting agencies maintain accurate credit reports, resolve disputed reports promptly and fairly, and adopt reasonable procedures to promote consumer confidentiality and the proper use of credit data in accordance with this chapter. [1993 c 476 § 1.]

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

(1)(a) "Adverse action" includes:

(i) Denial of, increase in any charge for, or reduction in the amount of insurance for personal, family, or household purposes;

(ii) Denial of employment or any other decision for employment purposes that adversely affects a current or prospective employee;

(iii) Action or determination with respect to a consumer's application for credit that is adverse to the interests of the consumer; and

(iv) Action or determination with respect to a consumer's application for the rental or leasing of residential real estate that is adverse to the interests of the consumer.

(b) "Adverse action" does not include:

(i) A refusal to extend additional credit under an existing credit arrangement if:

(A) The applicant is delinquent or otherwise in default with respect to the arrangement; or

(B) The additional credit would exceed a previously established credit limit; or

(ii) A refusal or failure to authorize an account transaction at a point of sale.

(2) "Attorney general" means the office of the attorney general.

(3) "Consumer" means an individual.

(4)(a) "Consumer report" means a written, oral, or other communication of information by a consumer reporting agency bearing on a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living that is used or expected to be used or collected in whole or in part for:

(i) The purpose of serving as a factor in establishing the consumer's eligibility for credit or insurance to be used primarily for personal, family, or household purposes;

(ii) Employment purposes; or

(iii) Other purposes authorized under RCW 19.182.020.

(b) "Consumer report" does not include:

(i) A report containing information solely as to transactions or experiences between the consumer and the person making the report;

(ii) An authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device;

(iii) A report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his or her decision with respect to the request, if the third party advises the consumer

of the name and address of the person to whom the request was made and the person makes the disclosures to the consumer required under RCW 19.182.070;

(iv) A list compiled by a consumer reporting agency to be used by its client for direct marketing of goods or services not involving an offer of credit;

(v) A report solely conveying a decision whether to guarantee a check in response to a request by a third party; or

(vi) A report furnished for use in connection with a transaction that consists of an extension of credit to be used for a commercial purpose.

(5) "Consumer reporting agency" means a person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the business of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and who uses any means or facility of commerce for the purpose of preparing or furnishing consumer reports. "Consumer reporting agency" does not include a person solely by reason of conveying a decision whether to guarantee a check in response to a request by a third party or a person who obtains a consumer report and provides the report or information contained in it to a subsidiary or affiliate of the person.

(6) "Credit transaction that is not initiated by the consumer" does not include the use of a consumer report by an assignee for collection or by a person with which the consumer has an account, for purposes of (a) reviewing the account, or (b) collecting the account. For purposes of this subsection "reviewing the account" includes activities related to account maintenance and monitoring, credit line increases, and account upgrades and enhancements.

(7) "Direct solicitation" means the process in which the consumer reporting agency compiles or edits for a client a list of consumers who meet specific criteria and provides this list to the client or a third party on behalf of the client for use in soliciting those consumers for an offer of a product or service.

(8) "Employment purposes," when used in connection with a consumer report, means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment, or retention as an employee.

(9) "File," when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.

(10) "Investigative consumer report" means a consumer report or portion of it in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom the consumer is acquainted or who may have knowledge concerning any items of information. However, the information does not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when the information was obtained directly from a creditor of the consumer or from the consumer.

(11) "Medical information" means information or records obtained, with the consent of the individual to whom

it relates, from a licensed physician or medical practitioner, hospital, clinic, or other medical or medically related facility.

(12) "Person" includes an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal or commercial entity.

(13) "Prescreening" means the process in which the consumer reporting agency compiles or edits for a client a list of consumers who meet specific credit criteria and provides this list to the client or a third party on behalf of the client for use in soliciting those consumers for an offer of credit. [1993 c 476 § 3.]

19.182.020 Consumer report—Furnishing—Procuring. (1) A consumer reporting agency may furnish a consumer report only under the following circumstances:

(a) In response to the order of a court having jurisdiction to issue the order;

(b) In accordance with the written instructions of the consumer to whom it relates; or

(c) To a person that the agency has reason to believe:

(i) Intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer;

(ii) Intends to use the information for employment purposes;

(iii) Intends to use the information in connection with the underwriting of insurance involving the consumer;

(iv) Intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(v) Otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer.

(2)(a) Subject to (c) of this subsection, a person may not procure a consumer report, or cause a consumer report to be procured, for employment purposes with respect to any consumer who is not an employee at the time the report is procured or caused to be procured unless:

(i) A clear and conspicuous disclosure has been made in writing to the consumer before the report is procured or caused to be procured that a consumer report may be obtained for purposes of considering the consumer for employment. The disclosure may be contained in a written statement contained in employment application materials; or

(ii) The consumer authorizes the procurement of the report.

(b) A person may not procure a consumer report, or cause a consumer report to be procured, for employment purposes with respect to any employee unless the employee has received, at any time after the person became an employee, written notice that consumer reports may be used for employment purposes. A written statement that consumer reports may be used for employment purposes that is contained in employee guidelines or manuals available to employees or included in written materials provided to employees constitutes written notice for purposes of this subsection. This sub-

section does not apply with respect to a consumer report of an employee who the employer has reasonable cause to believe has engaged in specific activity that constitutes a violation of law.

(c) As applied to (a) and (b) of this subsection, a person may not procure a consumer report for employment purposes where any information contained in the report bears on the consumer's creditworthiness, credit standing, or credit capacity, unless the information is either:

(i) Substantially job related and the employer's reasons for the use of such information are disclosed to the consumer in writing; or

(ii) Required by law.

(d) In using a consumer report for employment purposes, before taking any adverse action based in whole or part on the report, a person shall provide to the consumer to whom the report relates: (i) The name, address, and telephone number of the consumer reporting agency providing the report; (ii) a description of the consumer's rights under this chapter pertaining to consumer reports obtained for employment purposes; and (iii) a reasonable opportunity to respond to any information in the report that is disputed by the consumer. This subsection applies to job applicants and current employees. [2007 c 93 § 1; 1993 c 476 § 4.]

19.182.030 Consumer report—Credit action not initiated by consumer—Exclusion by consumer. (1) A consumer reporting agency may provide a consumer report relating to a consumer under RCW 19.182.020(1)(c)(i) in connection with a credit transaction that is not initiated by the consumer only if:

(a) The consumer authorized the consumer reporting agency to provide the report to such a person; or

(b) The consumer has not elected in accordance with subsection (3) of this section to have the consumer's name and address excluded from such transactions.

(2) A consumer reporting agency may provide only the following information under subsection (1) of this section:

(a) The name and address of the consumer; and

(b) Information pertaining to a consumer that is not identified or identifiable with particular accounts or transactions of the consumer.

(3)(a) A consumer may elect to have his or her name and address excluded from any list provided by a consumer reporting agency through prescreening under subsection (1) of this section or from any list provided by a consumer reporting agency for direct solicitation transactions that are not initiated by the consumer by notifying the consumer reporting agency. The notice must be made in writing through the notification system maintained by the consumer reporting agency under subsection (4) of this section and must state that the consumer does not consent to any use of consumer reports relating to the consumer in connection with any transaction that is not initiated by the consumer.

(b) An election of a consumer under (a) of this subsection is effective with respect to a consumer reporting agency and any affiliate of the consumer reporting agency, within five business days after the consumer reporting agency receives the consumer's notice.

(4) A consumer reporting agency that provides information intended to be used in a prescreened credit transaction or

(2018 Ed.)

direct solicitation transaction that is not initiated by the consumer shall:

(a) Maintain a notification system that facilitates the ability of a consumer in the agency's database to notify the agency to promptly withdraw the consumer's name from lists compiled for prescreened credit transactions and direct solicitation transactions not initiated by the consumer; and

(b) Publish at least annually in a publication of general circulation in the area served by the agency, the address for consumers to use to notify the agency of the consumer's election under subsection (3) of this section.

(5) A consumer reporting agency that maintains consumer reports on a nationwide basis shall establish a system meeting the requirements of subsection (4) of this section on a nationwide basis, and may operate such a system jointly with any other consumer reporting agencies.

(6) Compliance with the requirements of this section by any consumer reporting agency constitutes compliance by the agency's affiliates. [1993 c 476 § 5.]

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.]

*Reviser's note: RCW 13.50.010 was amended by 2015 c 265 § 2, changing subsection (1)(c) to subsection (1)(d).

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.]

19.182.050 Investigative consumer report—Procurement, preparation—Disclosure—Use—Liability—Record. (1) A person may not procure or cause to be prepared an investigative consumer report on a consumer unless:

(a) It is clearly and accurately disclosed to the consumer that an investigative consumer report including information as to the consumer's character, general reputation, personal characteristics, and mode of living, whichever are applicable, may be made, and the disclosure:

(i) Is made in a writing mailed, or otherwise delivered, to the consumer not later than three days after the date on which the report was first requested; and

(ii) Includes a statement informing the consumer of the consumer's right to request the additional disclosures provided for under subsection (2) of this section and the written summary of the rights of the consumer prepared under RCW 19.182.080(7); or

(b) The report is to be used for employment purposes for which the consumer has not specifically applied.

(2) A person who procures or causes to be prepared an investigative consumer report on a consumer shall make, upon written request made by the consumer within a reasonable period of time after the receipt by the consumer of the disclosure required in subsection (1)(a) of this section, a complete and accurate disclosure of the nature and scope of the investigation requested. This disclosure must be made in a writing mailed, or otherwise delivered, to the consumer not later than the latter of five days after the date on which the request for the disclosure was either received from the consumer or the report was first requested.

(3) No person may be held liable for a violation of subsection (1) or (2) of this section if the person shows by a preponderance of the evidence that at the time of the violation the person maintained reasonable procedures to assure compliance with subsection (1) or (2) of this section.

(4) A consumer reporting agency shall maintain a detailed record of:

(a) The identity of the person to whom an investigative consumer report or information from a consumer report is provided by the consumer reporting agency; and

(b) The certified purpose for which an investigative consumer report on a consumer, or any other information relating to a consumer, is requested by the person.

For purposes of this subsection, "person" does not include an individual who requests the report unless the individual obtains the report or information for his or her own individual purposes. [1993 c 476 § 7.]

19.182.060 Consumer report—Procedures for compliance—Information for governmental agency—Record.

(1) A consumer reporting agency shall maintain reasonable procedures designed to avoid violations of RCW 19.182.040 and to limit the furnishing of consumer reports to the purposes listed under RCW 19.182.020. These procedures must require that prospective users of the information identify themselves, certify the purposes for which the information is sought, and certify that the information will be used for no other purpose. A consumer reporting agency shall make a reasonable effort to verify the identity of a new prospective user and the uses certified by the prospective user before furnishing the user a consumer report. No consumer reporting agency may furnish a consumer report to a person if the agency has reasonable grounds for believing that the consumer report will not be used for a purpose listed in RCW 19.182.020.

(2) Whenever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.

(3) Notwithstanding RCW 19.182.020, a consumer reporting agency may furnish identifying information about a consumer, limited to the consumer's name, address, former addresses, places of employment, or former places of employment, to a governmental agency.

(4) A consumer reporting agency shall maintain a detailed record of:

(a) The identity of any person to whom a consumer report or information from a consumer report is provided by the consumer reporting agency; and

(b) The certified purpose for which a consumer report on a consumer, or any other information relating to a consumer, is requested by any person.

For purposes of this subsection, "person" does not include an individual who requests the report unless the individual obtains the report or information for his or her own purposes. [1993 c 476 § 8.]

19.182.070 Disclosures to consumer. A consumer reporting agency shall, upon request by the consumer, clearly and accurately disclose:

(1) All information in the file on the consumer at the time of request, except that medical information may be withheld. The agency shall inform the consumer of the existence of medical information, and the consumer has the right to have that information disclosed to the health care provider of the consumer's choice. Nothing in this chapter prevents, or authorizes a consumer reporting agency to prevent, the health care provider from disclosing the medical information to the consumer. The agency shall inform the consumer of the right to disclosure of medical information at the time the consumer requests disclosure of his or her file.

(2) All items of information in its files on that consumer, including disclosure of the sources of the information, except that sources of information acquired solely for use in an investigative report may only be disclosed to a plaintiff under appropriate discovery procedures.

(3) Identification of (a) each person who for employment purposes within the two-year period before the request, and

(b) each person who for any other purpose within the six-month period before the request, procured a consumer report.

(4) A record identifying all inquiries received by the agency in the six-month period before the request that identified the consumer in connection with a credit transaction that is not initiated by the consumer.

(5) An identification of a person under subsection (3) or (4) of this section must include (a) the name of the person or, if applicable, the trade name under which the person conducts business; and (b) upon request of the consumer, the address of the person. [1993 c 476 § 9.]

19.182.080 Disclosures to consumer—Procedures.

(1) A consumer reporting agency shall make the disclosures required under RCW 19.182.070 during normal business hours and on reasonable notice.

(2) The consumer reporting agency shall make the disclosures required under RCW 19.182.070 to the consumer:

(a) In person if the consumer appears in person and furnishes proper identification;

(b) By telephone if the consumer has made a written request, with proper identification, for telephone disclosure and the toll charge, if any, for the telephone call is prepaid by or charged directly to the consumer; or

(c) By any other reasonable means that are available to the consumer reporting agency if that means is authorized by the consumer.

(3) A consumer reporting agency shall provide trained personnel to explain to the consumer, information furnished to the consumer under RCW 19.182.070.

(4) The consumer reporting agency shall permit the consumer to be accompanied by one other person of the consumer's choosing, who shall furnish reasonable identification. A consumer reporting agency may require the consumer to furnish a written statement granting permission to the consumer reporting agency to discuss the consumer's file in the other person's presence.

(5) If a credit score is provided by a consumer reporting agency to a consumer, the agency shall provide an explanation of the meaning of the credit score.

(6) Except as provided in RCW 19.182.150, no consumer may bring an action or proceeding in the nature of defamation, invasion of privacy, or negligence with respect to the reporting of information against a consumer reporting agency or a user of information, based on information disclosed under this section or RCW 19.182.070, except as to false information furnished with malice or willful intent to injure the consumer. Except as provided in RCW 19.182.150, no consumer may bring an action or proceeding against a person who provides information to a consumer reporting agency in the nature of defamation, invasion of privacy, or negligence for unintentional error.

(7)(a) A consumer reporting agency must provide to a consumer, with each written disclosure by the agency to the consumer under RCW 19.182.070, a written summary of all rights and remedies the consumer has under this chapter.

(b) The summary of the rights and remedies of consumers under this chapter must include:

(i) A brief description of this chapter and all rights and remedies of consumers under this chapter;

(ii) An explanation of how the consumer may exercise the rights and remedies of the consumer under this chapter; and

(iii) A list of all state agencies, including the attorney general's office, responsible for enforcing any provision of this chapter and the address and appropriate phone number of each such agency. [1993 c 476 § 10.]

19.182.090 Consumer file—Dispute—Procedure—Notice—Statement of dispute—Toll-free information number.

(1) If the completeness or accuracy of an item of information contained in a consumer's file at a consumer reporting agency is disputed by the consumer and the consumer notifies the agency directly of the dispute, the agency shall reinvestigate without charge and record the current status of the disputed information before the end of thirty business days, beginning on the date the agency receives the notice from the consumer.

(2) Before the end of the five business-day period beginning on the date a consumer reporting agency receives notice of a dispute from a consumer in accordance with subsection (1) of this section, the agency shall notify any person who provided an item of information in dispute.

(3)(a) Notwithstanding subsection (1) of this section, a consumer reporting agency may terminate a reinvestigation of information disputed by a consumer under subsection (1) of this section if the agency determines that the dispute by the consumer is frivolous or irrelevant, including by reason of a failure of the consumer to provide sufficient information.

(b) Upon making a determination in accordance with (a) of this subsection that a dispute is frivolous or irrelevant, a consumer reporting agency shall notify the consumer within five business days of the determination. The notice shall be made in writing or any other means authorized by the consumer that are available to the agency, but the notice shall include the reasons for the determination and a notice of the consumer's rights under subsection (6) of this section.

(4) In conducting a reinvestigation under subsection (1) of this section with respect to disputed information in the file of any consumer, the consumer reporting agency shall review and consider all relevant information submitted by the consumer in the period described in subsection (1) of this section with respect to the disputed information.

(5)(a) If, after a reinvestigation under subsection (1) of this section of information disputed by a consumer, the information is found to be inaccurate or cannot be verified, the consumer reporting agency shall promptly delete the information from the consumer's file.

(b)(i) If information is deleted from a consumer's file under (a) of this subsection, the information may not be reinserted in the file after the deletion unless the person who furnishes the information verifies that the information is complete and accurate.

(ii) If information that has been deleted from a consumer's file under (a) of this subsection is reinserted in the file in accordance with (b)(i) of this subsection, the consumer reporting agency shall notify the consumer of the reinsertion within thirty business days. The notice shall be in writing or any other means authorized by the consumer that are available to the agency.

(6) If the reinvestigation does not resolve the dispute or if the consumer reporting agency determines the dispute is frivolous or irrelevant, the consumer may file a brief statement setting forth the nature of the dispute. The consumer reporting agency may limit these statements to not more than one hundred words if it provides the consumer with assistance in writing a clear summary of the dispute.

(7) After the deletion of information from a consumer's file under this section or after the filing of a statement of dispute under subsection (6) of this section, the consumer reporting agency shall, at the request of the consumer, furnish notification that the item of information has been deleted or that item of information is disputed. In the case of disputed information, the notification shall include the statement filed under subsection (6) of this section. The notification shall be furnished to any person specifically designated by the consumer, who has, within two years before the deletion or filing of a dispute, received a consumer report concerning the consumer for employment purposes, or who has, within six months of the deletion or the filing of the dispute, received a consumer report concerning the consumer for any other purpose, if these consumer reports contained the deleted or disputed information.

(8)(a) Upon completion of the reinvestigation under this section, a consumer reporting agency shall provide notice, in writing or by any other means authorized by the consumer, of the results of a reinvestigation within five business days.

(b) The notice required under (a) of this subsection must include:

- (i) A statement that the reinvestigation is completed;
- (ii) A consumer report that is based upon the consumer's file as that file is revised as a result of the reinvestigation;
- (iii) A description or indication of any changes made in the consumer report as a result of those revisions to the consumer's file;
- (iv) If requested by the consumer, a description of the procedure used to determine the accuracy and completeness of the information shall be provided to the consumer by the agency, including the name, business address, and telephone number of any person contacted in connection with the information;
- (v) If the reinvestigation does not resolve the dispute, a summary of the consumer's right to file a brief statement as provided in subsection (6) of this section; and
- (vi) If information is deleted or disputed after reinvestigation, a summary of the consumer's right to request notification to persons who have received a consumer report as provided in subsection (7) of this section.

(9) In the case of a consumer reporting agency that compiles and maintains consumer reports on a nationwide basis, the consumer reporting agency must provide to a consumer who has undertaken to dispute the information contained in his or her file a toll-free telephone number that the consumer can use to communicate with the agency. A consumer reporting agency that provides a toll-free number required by this subsection shall also provide adequately trained personnel to answer basic inquiries from consumers using the toll-free number. [1993 c 476 § 11.]

19.182.100 Consumer reporting agency—Consumer fees and charges for required information—Exceptions.

(1) Except as provided in subsections (2) and (3) of this section, a consumer reporting agency may charge the following fees to the consumer:

(a) For making a disclosure under RCW 19.182.070 and 19.182.080, the consumer reporting agency may charge a fee not exceeding eight dollars. Beginning January 1, 1995, the eight-dollar charge may be adjusted on January 1st of each year based on corresponding changes in the consumer price index with fractional changes rounded to the nearest half dollar.

(b) For furnishing a notification, statement, or summary to a person under RCW 19.182.090(7), the consumer reporting agency may charge a fee not exceeding the charge that the agency would impose on each designated recipient for a consumer report. The amount of any charge must be disclosed to the consumer before furnishing the information.

(2) A consumer reporting agency shall make all disclosures under RCW 19.182.070 and 19.182.080 and furnish all consumer reports under RCW 19.182.090 without charge, if requested by the consumer within sixty days after receipt by the consumer of a notification of adverse action under RCW 19.182.110 or of a notification from a debt collection agency affiliated with that consumer reporting agency stating that the consumer's credit rating may be or has been adversely affected.

(3) A consumer reporting agency shall not impose any charge for (a) providing notice to a consumer required under RCW 19.182.090, or (b) notifying a person under RCW 19.182.090(7) of the deletion of information that is found to be inaccurate or that can no longer be verified, if the consumer designates that person to the agency before the end of the thirty-day period beginning on the date of notice under RCW 19.182.090(8). [1993 c 476 § 12.]

19.182.110 Adverse action based on report—Procedure—Notice. If a person takes an adverse action with respect to a consumer that is based, in whole or in part, on information contained in a consumer report, the person shall:

- (1) Provide written notice of the adverse action to the consumer, except verbal notice may be given by a person in an adverse action involving a business regulated by the Washington utilities and transportation commission if such verbal notice does not impair a consumer's ability to obtain a credit report without charge under RCW 19.182.100(2); and
- (2) Provide the consumer with the name, address, and telephone number of the consumer reporting agency that furnished the report to the person. [2012 c 41 § 4; 1993 c 476 § 13.]

Finding—2012 c 41: See note following RCW 59.18.257.

19.182.120 Limitation on action—Exception. An action to enforce a liability created under this chapter is permanently barred unless commenced within two years after the cause of action accrues, except that where a defendant has materially and willfully misrepresented information required under this chapter to be disclosed to an individual and the information so misrepresented is material to the establishment of the defendant's liability to that individual under this chapter, the action may be brought at any time within two

years after discovery by the individual of the misrepresentation. [1993 c 476 § 14.]

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.

19.182.150 Application of consumer protection act—Limitation—Awards—Penalties—Attorneys' fees. The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Violations of this chapter are not reasonable in relation to the development and preservation of business. A violation of this chapter is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW. The burden of proof in an action alleging a violation of this chapter shall be by a preponderance of the evidence, and the applicable statute of limitation shall be as set forth in RCW 19.182.120. For purposes of a judgment awarded pursuant to an action by a consumer under chapter 19.86 RCW, the consumer shall be awarded actual damages and costs of the action together with reasonable attorney's fees as determined by the court. However, where there has been willful failure to comply with any requirement imposed under this chapter, the consumer shall be awarded actual damages, a monetary penalty of one thousand dollars, and the costs of the action together with reasonable attorneys' fees as determined by the court. [1993 c 476 § 17.]

19.182.160 Block of information appearing as result of identity theft. (1) Within thirty days of receipt of proof of the consumer's identification and a copy of a police report, filed by the consumer, evidencing the consumer's claim to be a victim of a violation of RCW 9.35.020, a consumer reporting agency shall permanently block reporting any information the consumer identifies on his or her consumer report is a result of a violation of RCW 9.35.020, so that the information cannot be reported, except as provided in subsection (2) of this section. The consumer reporting agency shall promptly notify the furnisher of the information that a police report has been filed, that a block has been requested, and the effective date of the block.

(2) A consumer reporting agency may decline to block or may rescind any block of consumer information if, in the

exercise of good faith and reasonable judgment, the consumer reporting agency believes:

(a) The information was blocked due to a misrepresentation of fact by the consumer relevant to the request to block under this section;

(b) The consumer agrees that the blocked information or portions of the blocked information were blocked in error; or

(c) The consumer knowingly obtained possession of goods, services, or moneys as a result of the blocked transaction or transactions or the consumer should have known that he or she obtained possession of goods, services, or moneys as a result of the blocked transaction or transactions.

(3) If the block of information is declined or rescinded under this section, the consumer shall be notified promptly in the same manner as consumers are notified of the reinsertion of information pursuant to section 611 of the fair credit reporting act, 15 U.S.C. Sec. 1681i, as amended. The prior presence of the blocked information in the consumer reporting agency's file on the consumer is not evidence of whether the consumer knew or should have known that he or she obtained possession of any goods, services, or moneys.

(4) In order to facilitate the exercise of a consumer's right to block information in his or her consumer report, all police and sheriff's departments in Washington state shall provide to the consumer, at the consumer's request, a copy of any police report, filed by the consumer, evidencing the consumer's claim to be a victim of a violation of RCW 9.35.020.

Nothing in this section shall be construed to require a law enforcement agency to investigate reports claiming identity theft. [2005 c 366 § 1; 2001 c 217 § 6.]

Additional notes found at www.leg.wa.gov

19.182.170 Victim of identity theft—Security freeze.

(1) A consumer, who is a resident of this state, may elect to place a security freeze on his or her credit report by making a request to a consumer reporting agency. "Security freeze" means a prohibition, consistent with this section, on a consumer reporting agency's furnishing of a consumer's credit report to a third party intending to use the credit report to determine the consumer's eligibility for credit. If a security freeze is in place, information from a consumer's credit report may not be released to a third party without prior express authorization from the consumer. This subsection does not prevent a consumer reporting agency from advising a third party that a security freeze is in effect with respect to the consumer's credit report.

(2) For purposes of this section and RCW 19.182.180 through 19.182.210:

(a) "Victim of identity theft" means a person who has a police report evidencing their claim to be a victim of a violation of RCW 9.35.020 and which report will be produced to a consumer reporting agency, upon such consumer reporting agency's request.

(b) "Credit report" means a consumer report, as defined in 15 U.S.C. Sec. 1681a, that is used or collected to serve as a factor in establishing a consumer's eligibility for credit for personal, family, or household purposes.

(c) "Normal business hours" means Sunday through Saturday, between the hours of 6:00 a.m. and 9:30 p.m. Pacific time.

(3) A consumer reporting agency shall place a security freeze on a consumer's credit report no later than five business days after receiving a request from the consumer.

(4) The consumer reporting agency shall send a confirmation of the security freeze to the consumer within ten business days and shall provide the consumer with a unique personal identification number or password to be used by the consumer when providing authorization for the release of his or her credit report for a specific party or period of time.

(5) If the consumer wishes to allow his or her credit report to be accessed for a specific period of time while a freeze is in place, he or she shall contact the consumer reporting agency, request that the freeze be temporarily lifted, and provide the following:

(a) Proper identification, which means that information generally deemed sufficient to identify a person. Only if the consumer is unable to sufficiently identify himself or herself, may a consumer reporting agency require additional information concerning the consumer's employment and personal or family history in order to verify his or her identity;

(b) The unique personal identification number or password provided by the consumer reporting agency under subsection (4) of this section; and

(c) The proper information regarding the time period for which the report is available to users of the credit report.

(6) A consumer reporting agency that receives a request from a consumer to temporarily lift a freeze on a credit report under subsection (5) of this section shall comply with the request within:

(a) Three business days of receiving the request by mail; or

(b) Fifteen minutes of receiving the request from the consumer through the electronic contact method chosen by the consumer reporting agency in accordance with subsection (8) of this section, if the request:

(i) Is received during normal business hours; and

(ii) Includes the consumer's proper identification and correct personal identification number or password.

(7) A consumer reporting agency is not required to remove a security freeze within the time provided in subsection (6)(b) of this section if:

(a) The consumer fails to meet the requirements of subsection (5) of this section; or

(b) The consumer reporting agency's ability to remove the security freeze within fifteen minutes is prevented by:

(i) An act of God, including fire, earthquakes, hurricanes, storms, or similar natural disasters or phenomena;

(ii) Unauthorized or illegal acts by a third party, including terrorism, sabotage, riot, vandalism, labor strikes, or disputes disrupting operations, or similar occurrences;

(iii) An interruption in operations, including electrical failure, unanticipated delay in equipment or replacement part delivery, computer hardware or software failures inhibiting response time, or similar disruptions;

(iv) Governmental action, including emergency orders or regulations, judicial or law enforcement action, or similar directives;

(v) Regularly scheduled maintenance of, or updates to, the consumer reporting agency's systems outside of normal business hours;

(vi) Commercially reasonable maintenance of, or repair to, the consumer reporting agency's systems that is unexpected or unscheduled; or

(vii) Receipt of a removal request outside of normal business hours.

(8) A consumer reporting agency may develop procedures involving the use of telephone, fax, the internet, or other electronic media to receive and process a request from a consumer to temporarily lift a freeze on a credit report under subsection (5) of this section in an expedited manner.

(9) A consumer reporting agency shall remove or temporarily lift a freeze placed on a consumer's credit report only in the following cases:

(a) Upon consumer request, under subsection (5) or (12) of this section; or

(b) When the consumer's credit report was frozen due to a material misrepresentation of fact by the consumer. When a consumer reporting agency intends to remove a freeze upon a consumer's credit report under this subsection, the consumer reporting agency shall notify the consumer in writing prior to removing the freeze on the consumer's credit report.

(10) When a third party requests access to a consumer credit report on which a security freeze is in effect, and this request is in connection with an application for credit or any other use, and the consumer does not allow his or her credit report to be accessed for that period of time, the third party may treat the application as incomplete.

(11) When a consumer requests a security freeze, the consumer reporting agency shall disclose the process of placing and temporarily lifting a freeze, and the process for allowing access to information from the consumer's credit report for a specific period of time while the freeze is in place.

(12) A security freeze remains in place until the consumer requests that the security freeze be removed. A consumer reporting agency shall remove a security freeze within three business days of receiving a request for removal from the consumer, who provides all of the following:

(a) Proper identification, as defined in subsection (5)(a) of this section; and

(b) The unique personal identification number or password provided by the consumer reporting agency under subsection (4) of this section.

(13) A consumer reporting agency may not charge a fee for any service under this section including, but not limited to, placing a security freeze, assigning a unique personal identification number or password, temporarily lifting a security freeze, or removing a security freeze.

(14) This section does not apply to the use of a consumer credit report by any of the following:

(a) A person or entity, or a subsidiary, affiliate, or agent of that person or entity, or an assignee of a financial obligation owing by the consumer to that person or entity, or a prospective assignee of a financial obligation owing by the consumer to that person or entity in conjunction with the proposed purchase of the financial obligation, with which the consumer has or had prior to assignment an account or contract, including a demand deposit account, or to whom the consumer issued a negotiable instrument, for the purposes of reviewing the account or collecting the financial obligation owing for the account, contract, or negotiable instrument. For

purposes of this subsection, "reviewing the account" includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements;

(b) Any federal, state, or local entity, including a law enforcement agency, court, or their agents or assigns;

(c) Any person acting under a court order, warrant, or subpoena;

(d) A child support agency acting under Title IV-D of the social security act (42 U.S.C. Sec. 651 et seq.);

(e) The department of social and health services acting to fulfill any of its statutory responsibilities;

(f) The internal revenue service acting to investigate or collect delinquent taxes or unpaid court orders or to fulfill any of its other statutory responsibilities;

(g) The use of credit information for the purposes of pre-screening as provided for by the federal fair credit reporting act;

(h) Any person or entity administering a credit file monitoring subscription service to which the consumer has subscribed;

(i) Any person or entity for the purpose of providing a consumer with a copy of his or her credit report upon the consumer's request; and

(j) A mortgage broker or loan originator required to be licensed under chapter 19.146 RCW.

(15) Liability may not result to the consumer reporting agency if through inadvertence or mistake the consumer reporting agency releases credit report information to a person or entity purporting to be a mortgage broker or loan originator under subsection (14) of this section that is, in fact, not a mortgage broker or loan originator.

(16) The consumer's request for a security freeze does not prohibit the consumer reporting agency from disclosing the consumer's credit report for other than credit-related purposes.

(17) A violation of subsection (6) of this section does not provide a private cause of action under RCW 19.86.090. A violation of subsection (6) of this section shall be enforced exclusively by the attorney general. A violation of subsection (6) of this section is subject to all other remedies and penalties available under this chapter. [2018 c 54 § 1; 2007 c 499 § 1; 2005 c 342 § 1.]

Additional notes found at www.leg.wa.gov

19.182.180 Security freeze—Changes to information—Written confirmation required. If a security freeze is in place, a consumer reporting agency may not change any of the following official information in a consumer credit report without sending a written confirmation of the change to the consumer within thirty days of the change being posted to the consumer's file: Name, date of birth, social security number, and address. Written confirmation is not required for technical modifications of a consumer's official information, including name and street abbreviations, complete spellings, or transposition of numbers or letters. In the case of an address change, the written confirmation shall be sent to both the new address and to the former address. [2005 c 342 § 2.]

19.182.190 Security freeze—RCW 19.182.170 not applicable to certain consumer reporting agencies. A consumer reporting agency is not required to place a security

freeze in a consumer credit report under RCW 19.182.170 if it acts only as a reseller of credit information by assembling and merging information contained in the database of another consumer reporting agency or multiple consumer reporting agencies, and does not maintain a permanent database of credit information from which new consumer credit reports are produced. However, a consumer reporting agency must honor any security freeze placed on a consumer credit report by another consumer reporting agency. [2005 c 342 § 3.]

19.182.200 Security freeze—Exempt entities. The following entities are not required to place a security freeze in a consumer credit report under RCW 19.182.170:

(1) A check services or fraud prevention services company, which issues reports on incidents of fraud or authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payments; and

(2) A deposit account information service company, which issues reports regarding account closures due to fraud, substantial overdrafts, ATM abuse, or similar negative information regarding a consumer, to inquiring banks or other financial institutions for use only in reviewing a consumer request for a deposit account at the inquiring bank or financial institution. [2005 c 342 § 4.]

19.182.210 Information furnished to a governmental agency. A consumer reporting agency may furnish to a governmental agency a consumer's name, address, former address, places of employment, or former places of employment. [2005 c 342 § 5.]

19.182.220 Security freeze—Protected consumers—Definitions. The definitions in this section apply throughout this section and RCW 19.182.230 and 70.58.098 unless the context clearly requires otherwise.

(1) "Credit report" means a consumer report, as defined in 15 U.S.C. Sec. 1681a, that is used or collected to serve as a factor in establishing a consumer's eligibility for credit for personal, family, or household purposes.

(2) "Normal business hours" means Sunday through Saturday, between the hours of 6:00 a.m. and 9:30 p.m. Pacific time.

(3) "Protected consumer" means an individual who is:

(a) Under the age of sixteen years old at the time a request for the placement of a security freeze is made pursuant to RCW 19.182.230; or

(b) Incapacitated and for whom a guardian or limited guardian has been appointed.

(4) "Record" means a compilation of information that:

(a) Identifies a protected consumer;

(b) Is created by a consumer reporting agency solely for the purpose of complying with RCW 19.182.230; and

(c) May not be created or used to consider the protected consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living for any purpose listed in RCW 19.182.020.

(5) "Representative" means a person who provides to a consumer reporting agency sufficient proof of authority to act on behalf of a protected consumer.

(6) "Security freeze" means:

(a) If a consumer reporting agency does not have a file pertaining to a protected consumer, a restriction that:

(i) Is placed on the protected consumer's record in accordance with RCW 19.182.230; and

(ii) Prohibits the consumer reporting agency from releasing the protected consumer's record except as provided in RCW 19.182.230; or

(b) If a consumer reporting agency has a file pertaining to the protected consumer, a restriction that:

(i) Is placed on the protected consumer's consumer report in accordance with RCW 19.182.230; and

(ii) Prohibits the consumer reporting agency from releasing the protected consumer's consumer report or any information derived from the protected consumer's consumer report except as provided in RCW 19.182.230.

(7) "Sufficient proof of authority" means documentation that shows a representative has authority to act on behalf of a protected consumer, including:

(a) An order issued by a court of law;

(b) A lawfully executed and valid power of attorney; and

(c) A written, notarized statement signed by a representative that expressly describes the authority of the representative to act on behalf of a protected consumer.

(8) "Sufficient proof of identification" means information or documentation that identifies a protected consumer or a representative of a protected consumer, including:

(a) A social security number or a copy of a social security card issued by the social security administration;

(b) A certified or official copy of a birth certificate issued by the entity authorized to issue the birth certificate;

(c) A copy of a driver's license, an identicaid issued under RCW 46.20.117, or any other government-issued identification; or

(d) A copy of a bill, including a bill for telephone, sewer, septic tank, water, electric, oil, or natural gas services, that shows a name and home address. [2016 c 135 § 1.]

Effective date—2016 c 135: "This act takes effect January 1, 2017." [2016 c 135 § 4.]

19.182.230 Security freeze—Protected consumers—Placement and removal—Fees—Exceptions. (1) A consumer reporting agency shall place a security freeze for a protected consumer if:

(a) The consumer reporting agency receives a request from the protected consumer's representative for the placement of the security freeze under this section; and

(b) The protected consumer's representative:

(i) Submits the request to the consumer reporting agency at the address or other point of contact and in the manner specified by the consumer reporting agency;

(ii) Provides to the consumer reporting agency sufficient proof of identification of the protected consumer and the representative; and

(iii) Provides to the consumer reporting agency sufficient proof of authority to act on behalf of the protected consumer.

(2) If a consumer reporting agency does not have a file pertaining to a protected consumer when the consumer reporting agency receives a request under subsection (1)(a) of this section, the consumer reporting agency shall create a record for the protected consumer.

(3) Within thirty days after receiving a request that meets the requirements of subsection (1) of this section, a consumer reporting agency shall place a security freeze for the protected consumer.

(4) Unless a security freeze for a protected consumer is removed in accordance with subsection (6) or (9) of this section, a consumer reporting agency may not release the protected consumer's consumer report, any information derived from the protected consumer's consumer report, or any record created for the protected consumer.

(5) A security freeze for a protected consumer placed in accordance with this section shall remain in effect until:

(a) The protected consumer or the protected consumer's representative requests the consumer reporting agency to remove the security freeze in accordance with subsection (6) of this section; or

(b) The security freeze is removed in accordance with subsection (9) of this section.

(6) If a protected consumer or a protected consumer's representative wishes to remove a security freeze for the protected consumer, the protected consumer or the protected consumer's representative shall:

(a) Submit a request for the removal of the security freeze to the consumer reporting agency at the address or other point of contact and in the manner specified by the consumer reporting agency;

(b) Provide to the consumer reporting agency:

(i) In the case of a request by the protected consumer:

(A) Proof that the sufficient proof of authority for the protected consumer's representative to act on behalf of the protected consumer is no longer valid; and

(B) Sufficient proof of identification of the protected consumer; and

(ii) In the case of a request by the representative of a protected consumer:

(A) Sufficient proof of identification of the protected consumer and the representative; and

(B) Sufficient proof of authority to act on behalf of the protected consumer.

(7) Within thirty days after receiving a request that meets the requirements of subsection (6) of this section, the consumer reporting agency shall remove the security freeze for the protected consumer.

(8) A consumer reporting agency may not charge a fee for any service performed under this section.

(9) A consumer reporting agency may remove a security freeze for a protected consumer or delete a record of a protected consumer if the security freeze was placed or the record was created based on a material misrepresentation of fact by the protected consumer or the protected consumer's representative.

(10) A violation of this section is enforced in accordance with RCW 19.182.170(17).

(11) This section does not apply to:

(a) Persons or transactions described in RCW 19.182.170(14)(b), (c), (d), (e), (f), (h), or (i);

(b) Persons or transactions described in RCW 19.182.190;

(c) Persons or transactions described in RCW 19.182.200; or

(d) A person or entity that maintains, or a database used solely for, the following:

- (i) Criminal record information;
- (ii) Personal loss history information;
- (iii) Fraud prevention or detection;
- (iv) Employment screening; or
- (v) Tenant screening. [2018 c 54 § 2; 2016 c 135 § 2.]

Effective date—2016 c 135: See note following RCW 19.182.220.

19.182.800 Report on credit freezes. The office of cybersecurity, the office of privacy and data protection, and the attorney's general office must work with stakeholders to evaluate the impact to consumers and the consumer reporting agencies regarding the modifications in chapter 54, Laws of 2018. The report must include trends in data breaches including the frequency and nature of security breaches, best practices for preventing cybersecurity attacks, identity theft mitigation services available to consumers, and identity theft mitigation protocols recommended by the federal trade commission, the consumer financial protection bureau, and other relevant federal or state agencies. The report must be submitted to the house of representatives committee on business and financial services and the senate committee on financial institutions and insurance by December 1, 2020. [2018 c 54 § 3.]

19.182.900 Short title—1993 c 476. This chapter shall be known as the Fair Credit Reporting Act. [1993 c 476 § 2.]

19.182.902 Effective date—1993 c 476. This act takes effect January 1, 1994. [1993 c 476 § 20.]

Chapter 19.184 RCW WHEELCHAIRS

Sections

19.184.010	Definitions.
19.184.020	Warranty—Implied.
19.184.030	Failure to conform with warranty—Remedy—Disclosure of returned wheelchair.
19.184.040	Rights or remedies not limited.
19.184.050	Consumer waiver void.
19.184.060	Action for damages—Pecuniary loss doubled—Costs, disbursements, attorneys' fees, equitable relief.

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

(1) "Collateral costs" means expenses incurred by a consumer in connection with the repair of a nonconformity, including the costs of obtaining an alternative wheelchair or other device assisting mobility.

(2) "Consumer" means any of the following:

(a) The purchaser of a wheelchair, if the wheelchair was purchased from a wheelchair dealer or manufacturer for purposes other than resale;

(b) A person to whom a wheelchair is transferred for purposes other than resale, if the transfer occurs before the expiration of an express warranty applicable to the wheelchair;

(c) A person who may enforce a warranty on a wheelchair; or

(d) A person who leases a wheelchair from a wheelchair lessor under a written lease.

(2018 Ed.)

(3) "Demonstrator" means a wheelchair used primarily for the purpose of demonstration to the public.

(4) "Early termination cost" means an expense or obligation that a wheelchair lessor incurs as a result of both the termination of a written lease before the termination date set forth in the lease and the return of a wheelchair to a manufacturer under RCW 19.184.030(2)(b). "Early termination cost" includes a penalty for prepayment under a finance arrangement.

(5) "Early termination savings" means an expense or obligation that a wheelchair lessor avoids as a result of both the termination of a written lease before the termination date set forth in the lease and the return of a wheelchair to a manufacturer under RCW 19.184.030(2)(b). "Early termination savings" includes an interest charge that the wheelchair lessor would have paid to finance the wheelchair or, if the wheelchair lessor does not finance the wheelchair, the difference between the total amount for which the lease obligates the consumer during the period of the lease term remaining after the early termination and the present value of that amount at the date of the early termination.

(6) "Manufacturer" means a person who manufactures or assembles wheelchairs and agents of the person, including an importer, a distributor, factory branch, distributor branch, and a warrantor of the manufacturer's wheelchairs, but does not include a wheelchair dealer.

(7) "Nonconformity" means a condition or defect that substantially impairs the use, value, or safety of a wheelchair, and that is covered by an express warranty applicable to the wheelchair or to a component of the wheelchair, but does not include a condition or defect that is the result of abuse, neglect, or unauthorized modification or alteration of the wheelchair by a consumer.

(8) "Reasonable attempt to repair" means any of the following occurring within the term of an express warranty applicable to a new wheelchair or within one year after first delivery of a wheelchair to a consumer, whichever is sooner:

(a) An attempted repair by the manufacturer, wheelchair lessor, or the manufacturer's authorized dealer is made to the same warranty nonconformity at least four times and the nonconformity continues; or

(b) The wheelchair is out of service for an aggregate of at least thirty days because of warranty nonconformity.

(9) "Wheelchair" means a wheelchair, including a demonstrator, that a consumer purchases or accepts transfer of in this state.

(10) "Wheelchair dealer" means a person who is in the business of selling wheelchairs.

(11) "Wheelchair lessor" means a person who leases a wheelchair to a consumer, or who holds the lessor's rights, under a written lease. [1995 c 14 § 1; 1994 c 104 § 1.]

19.184.020 Warranty—Implied. A manufacturer who sells a wheelchair to a consumer, either directly or through a wheelchair dealer, shall furnish the consumer with an express warranty for the wheelchair. The duration of the express warranty must be for at least one year after the first delivery of the wheelchair to the consumer. If the manufacturer fails to furnish an express warranty as required under this section, the wheelchair is covered by an implied warranty as if the manu-

facturer had furnished an express warranty to the consumer as required under this section. [1995 c 14 § 2; 1994 c 104 § 2.]

19.184.030 Failure to conform with warranty—Remedy—Disclosure of returned wheelchair. (1) If a new wheelchair does not conform to an applicable express warranty and the consumer reports the nonconformity to the manufacturer, the wheelchair lessor, or any of the manufacturer's authorized wheelchair dealers and makes the wheelchair available for repair before one year after first delivery of the wheelchair to the consumer, the nonconformity must be repaired.

(2) If, after a reasonable attempt to repair, the nonconformity is not repaired, the manufacturer shall do one of the following, whichever is appropriate:

(a) At the direction of a consumer described under RCW 19.184.010(2) (a), (b), or (c), do one of the following:

(i) Accept return of the wheelchair and replace the wheelchair with a comparable new wheelchair and refund any collateral costs; or

(ii) Accept return of the wheelchair and refund to the consumer and to a holder of a perfected security interest in the consumer's wheelchair, as their interest may appear, the full purchase price plus any finance charge, amount paid by the consumer at the point of sale, and collateral costs, less a reasonable allowance for use. Under this subsection (2)(a)(ii), a reasonable allowance for use may not exceed the amount obtained by multiplying the full purchase price of the wheelchair by a fraction, the denominator of which is one thousand eight hundred twenty-five and the numerator of which is the number of days that the wheelchair was driven before the consumer first reported the nonconformity to the wheelchair dealer; or

(b)(i) For a consumer described in RCW 19.184.010(2)(d), accept return of the wheelchair, refund to the wheelchair lessor and to a holder of a perfected security interest in the wheelchair, as their interest may appear, the current value of the written lease and refund to the consumer the amount that the consumer paid under the written lease plus any collateral costs, less a reasonable allowance for use.

(ii) Under this subsection (2)(b), the current value of the written lease equals the total amount for which the lease obligates the consumer during the period of the lease remaining after its early termination, plus the wheelchair dealer's early termination costs and the value of the wheelchair at the lease expiration date if the lease sets forth the value, less the wheelchair lessor's early termination savings.

(iii) Under this subsection (2)(b), a reasonable allowance for use may not exceed the amount obtained by multiplying the total amount for which the written lease obligates the consumer by a fraction, the denominator of which is one thousand eight hundred twenty-five and the numerator of which is the number of days that the consumer drove the wheelchair before first reporting the nonconformity to the manufacturer, wheelchair lessor, or wheelchair dealer.

(3) To receive a comparable new wheelchair or a refund due under subsection (2)(a) of this section, a consumer described under RCW 19.184.010(2) (a), (b), or (c) shall offer to the manufacturer of the wheelchair having the nonconformity to transfer possession of the wheelchair to the manufacturer. Within thirty days after the offer, the manufac-

turer shall provide the consumer with a comparable new wheelchair or a refund. When the manufacturer provides a new wheelchair or refund under this subsection, the consumer shall return to the manufacturer the wheelchair having the nonconformity.

(4)(a) To receive a refund due under subsection (2)(b) of this section, a consumer described under RCW 19.184.010(2)(d) shall offer to return the wheelchair having the nonconformity to its manufacturer. Within thirty days after the offer, the manufacturer shall provide the refund to the consumer. When the manufacturer provides the refund, the consumer shall return to the manufacturer the wheelchair having the nonconformity.

(b) To receive a refund due under subsection (2)(b) of this section, a wheelchair lessor shall offer to transfer possession of the wheelchair having the nonconformity to the manufacturer. Within thirty days after the offer, the manufacturer shall provide a refund to the wheelchair lessor. When the manufacturer provides the refund, the wheelchair lessor shall provide to the manufacturer the endorsements necessary to transfer legal possession to the manufacturer.

(c) A person may not enforce the lease against the consumer after the consumer receives a refund due under subsection (2)(b) of this section.

(5) A person may not sell or lease again in this state a wheelchair returned by a consumer or wheelchair lessor in this state under subsection (2) of this section or by a consumer or wheelchair lessor in another state under a similar law of that state, unless full disclosure of the reasons for return is made to a prospective buyer or lessee. [1995 c 14 § 3; 1994 c 104 § 3.]

19.184.040 Rights or remedies not limited. This chapter does not limit rights or remedies available under other law to a consumer. [1994 c 104 § 4.]

19.184.050 Consumer waiver void. A waiver by a consumer of rights under this section is void. [1994 c 104 § 5.]

19.184.060 Action for damages—Pecuniary loss doubled—Costs, disbursements, attorneys' fees, equitable relief. In addition to pursuing another remedy, a consumer may bring an action to recover damages caused by a violation of this chapter. The court shall award a consumer who prevails in an action under this section twice the amount of pecuniary loss, together with costs, disbursements, reasonable attorneys' fees, and equitable relief that the court determines is appropriate. [1994 c 104 § 6.]

Chapter 19.186 RCW ROOFING AND SIDING CONTRACTORS AND SALESPERSONS

Sections

19.186.005	Findings—Intent.
19.186.010	Definitions.
19.186.020	Written contract—Requirements—Right to rescind—Notice.
19.186.030	Waiting period to begin work if customer obtaining loan—Effect.
19.186.040	Liability of contract purchaser or assignee—Notice.
19.186.050	Violation—Consumer protection act.
19.186.060	Liability for failure to comply with chapter.

19.186.005 Findings—Intent. The legislature finds that many homeowners are solicited by siding and roofing contractors to purchase home improvements. Some contractors misrepresent the financing terms or the cost of the improvements, preventing the homeowner from making an informed decision about whether the improvements are affordable. The result is that many homeowners face financial hardship including the loss of their homes through foreclosure. The legislature declares that this is a matter of public interest. It is the intent of the legislature to establish rules of business practice for roofing and siding contractors to promote honesty and fair dealing with homeowners. [1994 c 285 § 1.]

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

(1) "Roofing or siding contract" means an agreement between a roofing or siding contractor or salesperson and a homeowner that includes, in part, an agreement to install, repair or replace residential roofing or siding for a total cost including labor and materials in excess of one thousand dollars.

This chapter does not apply to the following contracts:

(a) Residential remodel or repair contracts where the cost specified for roofing or siding is less than twenty percent of the total contract price;

(b) Contracts where the roofing or siding is part of a contract to build a new dwelling or an addition that provides additional living space;

(c) Contracts for emergency repairs made necessary by a natural disaster such as an earthquake, windstorm, or hurricane, or after a fire in the dwelling;

(d) Homes being prepared for resale; or

(e) Roofing or siding contracts in which the homeowner was not directly solicited by a roofing or siding contractor or salesperson. If a roofing or siding contractor or roofing or siding salesperson generally does business by soliciting, it shall be a rebuttable presumption that any roofing or siding contract entered into with a homeowner shall have been the result of a solicitation.

(2) "Roofing or siding contractor" means a person who owns or operates a contracting business that purports to install, repair, or replace or subcontracts to install, repair, or replace residential roofing or siding.

(3) "Roofing or siding salesperson" means a person who solicits, negotiates, executes, or otherwise endeavors to procure a contract with a homeowner to install, repair, or replace residential roofing or siding on behalf of a roofing or siding contractor.

(4) "Residential roofing or siding" means roofing or siding installation, repair or replacement for an existing single-family dwelling or multiple-family dwelling of four or less units, provided that this does not apply to a residence under construction.

(5) "Person" includes an individual, corporation, company, partnership, joint venture, or a business entity.

(6) "Siding" means material used to cover the exterior walls of a residential dwelling, excluding paint application.

(7)(a) "Solicit" means to initiate contact with the homeowner for the purpose of selling or installing roofing or siding by one of the following methods:

(i) Door-to-door contact;

(ii) Telephone contact;

(iii) Flyers left at a residence; or

(iv) Other promotional advertisements which offer gifts, cash, or services if the homeowner contacts the roofing or siding contractor or salesperson, except for newspaper advertisements which offer a seasonal discount.

(b) "Solicit" does not include:

(i) Calls made in response to a request or inquiry by the homeowner; or

(ii) Calls made to homeowners who have prior business or personal contact with the residential roofing or siding contractor or salesperson. [1994 c 285 § 2.]

19.186.020 Written contract—Requirements—Right to rescind—Notice. A roofing or siding contract shall be in writing. A copy of the contract shall be given to the homeowner at the time the homeowner signs the contract. The contract shall be typed or printed legibly and contain the following provisions:

(1) An itemized list of all work to be performed;

(2) The grade, quality, or brand name of materials to be used;

(3) The dollar amount of the contract;

(4) The name and address of the roofing or siding salesperson;

(5) The name, address, and contractor's registration number of the roofing or siding contractor;

(6) A statement as to whether all or part of the work is to be subcontracted to another person;

(7) The contract shall require the homeowner to disclose whether he or she intends to obtain a loan in order to pay for all or part of the amount due under the contract;

(8) If the customer indicates that he or she intends to obtain a loan to pay for a portion of the roofing or siding contract, the homeowner shall have the right to rescind the contract within three business days of receiving truth-in-lending disclosures or three business days of receiving written notification that the loan application was denied, whichever date is later; and

(9) The contract shall provide the following notice in ten-point boldface type in capital letters:

"CUSTOMER'S RIGHT TO CANCEL

IF YOU HAVE INDICATED IN THIS CONTRACT THAT YOU INTEND TO OBTAIN A LOAN TO PAY FOR ALL OR PART OF THE WORK SPECIFIED IN THE CONTRACT, YOU HAVE THE RIGHT TO CHANGE YOUR MIND AND CANCEL THIS CONTRACT WITHIN THREE DAYS OF THE DATE WHEN THE LENDER PROVIDES YOU WITH YOUR TRUTH-IN-LENDING DISCLOSURE STATEMENT OR THE DATE WHEN YOU RECEIVE WRITTEN NOTIFICATION THAT YOUR LOAN WAS DENIED.

BE SURE THAT ALL PROMISES MADE BY YOUR CONTRACTOR ARE PUT IN WRITING BEFORE YOU SIGN THIS CONTRACT."

[1994 c 285 § 3.]

19.186.030 Waiting period to begin work if customer obtaining loan—Effect. If the customer indicates that he or she intends to obtain a loan to pay for all or part of the cost of the roofing or siding contract, the roofing or siding contractor shall not begin work until after the homeowner's rescission rights provided in RCW 19.186.020(9) have expired. If the roofing or siding contractor commences work under the contract before the homeowner's rescission rights have expired, the roofing or siding contractor or salesperson shall be prohibited from enforcing terms of the contract, including claims for labor or materials, in a court of law and shall terminate any security interest or statutory lien created under the transaction within twenty days of receiving written rescission of the contract from the customer. [1994 c 285 § 4.]

19.186.040 Liability of contract purchaser or assignee—Notice. A person who purchases or is otherwise assigned a roofing or siding contract shall be subject to all claims and defenses with respect to the contract that the homeowner could assert against the siding or roofing contractor or salesperson. A person who sells or otherwise assigns a roofing or siding contract shall include a prominent notice of the potential liability under this section. [1994 c 285 § 5.]

19.186.050 Violation—Consumer protection act. The legislature finds and declares that a 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 under chapter 19.86 RCW. [1994 c 285 § 6.]

19.186.060 Liability for failure to comply with chapter. A roofing or siding contractor or salesperson who fails to comply with the requirements of this chapter shall be liable to the homeowner for any actual damages sustained by the person as a result of the failure. Nothing in this section shall limit any cause of action or remedy available under RCW 19.186.050 or chapter 19.86 RCW. [1994 c 285 § 7.]

**Chapter 19.188 RCW
ELECTRONIC MEDIA VIOLENCE**

Sections

19.188.010	Finding.
19.188.020	Television time/channel locks.
19.188.030	Library access policies.
19.188.040	Video game rating system—Video game retailers shall post signs—Location—Information.

19.188.010 Finding. The legislature finds that, to the extent that electronic media, including television, motion pictures, video games, and entertainment uses of virtual reality are conducive to increased violent behaviors, especially in children, the state has a duty to protect the public health and safety.

Many parents, educators, and others are concerned about protecting children and youth from the negative influences of the media, and want more information about media content and more control over media contact with their children. [1994 sp.s. c 7 § 801.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

19.188.020 Television time/channel locks. All new televisions sold in this state after January 1, 1995, shall be equipped with a time/channel lock or shall be sold with an offer to the customer to purchase a channel blocking device, or other device that enables a person to regulate a child's access to unwanted television programming. All cable television companies shall make available to all customers at the company's cost the opportunity to purchase a channel blocking device, or other device that enables a person to regulate a child's access to unwanted television programming. The commercial television sellers and cable television companies shall offer time/channel locks to their customers, when these devices are available. Notice of this availability shall be clearly made to all existing customers and to all new customers at the time of their signing up for service. [1994 sp.s. c 7 § 803.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

19.188.030 Library access policies. The legislature finds that, as a matter of public health and safety, access by minors to violent videos and violent video games is the responsibility of parents and guardians.

Public libraries, with the exception of university, college, and community college libraries, shall establish policies on minors' access to violent videos and violent video games. Libraries shall make their policies known to the public in their communities.

Each library system shall formulate its own policies, and may, in its discretion, include public hearings, consultation with community networks as defined under chapter 70.190 RCW, or consultation with the Washington library association in the development of its policies. [1994 sp.s. c 7 § 806.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

19.188.040 Video game rating system—Video game retailers shall post signs—Location—Information. (1) The definitions in this subsection apply throughout this section.

(a) "Video game" means an object or device that stores recorded data or instructions, receives data or instructions generated by a person who uses it, and, by processing the data or instructions, creates an interactive game capable of being played, viewed, or experienced on or through a computer, gaming system, console, or other technology.

(b) "Video game retailer" means a person who sells or rents video games to the public.

(c) "Point of sale" means the location in the retail establishment at which a transaction occurs resulting in the sale or rental of a video game.

(2) Every video game retailer shall post signs providing information to consumers about the existence of a nationally

recognized video game rating system, or notifying consumers that a rating system is available, to aid in the selection of a game if such a rating system is in existence.

(3) The signs shall be posted within the retail establishment in prominent areas near the video game displays and points of sale. The signs and lettering shall be clearly visible to consumers at these locations.

(4) A video game retailer shall make available to consumers, upon request, information that explains the video game rating system. [2005 c 230 § 1.]

Chapter 19.190 RCW

COMMERCIAL ELECTRONIC MAIL

Sections

19.190.010	Definitions.
19.190.020	Unpermitted or misleading electronic mail—Prohibition.
19.190.030	Unpermitted or misleading electronic mail—Violation of consumer protection act.
19.190.040	Violations—Damages.
19.190.050	Blocking of commercial electronic mail by interactive computer service—Immunity from liability.
19.190.060	Commercial electronic text message—Prohibition on initiation or assistance—Violation of consumer protection act.
19.190.070	Commercial electronic text message—When allowed.
19.190.080	Personally identifying information—Violation of chapter.
19.190.090	Civil actions.
19.190.100	Violation—Consumer protection act.
19.190.110	Intent—Preemption of local laws.

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

(1) "Assist the transmission" means actions taken by a person to provide substantial assistance or support which enables any person to formulate, compose, send, originate, initiate, or transmit a commercial electronic mail message or a commercial electronic text message when the person providing the assistance knows or consciously avoids knowing that the initiator of the commercial electronic mail message or the commercial electronic text message is engaged, or intends to engage, in any practice that violates the consumer protection act. "Assist the transmission" does not include any of the following: (a) Activities of an electronic mail service provider or other entity who provides intermediary transmission service in sending or receiving electronic mail, or provides to users of electronic mail services the ability to send, receive, or compose electronic mail; or (b) activities of any entity related to the design, manufacture, or distribution of any technology, product, or component that has a commercially significant use other than to violate or circumvent this section.

(2) "Commercial electronic mail message" means an electronic mail message sent for the purpose of promoting real property, goods, or services for sale or lease. It does not mean an electronic mail message to which an interactive computer service provider has attached an advertisement in exchange for free use of an electronic mail account, when the sender has agreed to such an arrangement.

(3) "Commercial electronic text message" means an electronic text message sent to promote real property, goods, or services for sale or lease.

(4) "Electronic mail address" means a destination, commonly expressed as a string of characters, to which electronic mail may be sent or delivered.

(5) "Electronic mail message" means an electronic message sent to an electronic mail address and a reference to an internet domain, whether or not displayed, to which an electronic mail message can be sent or delivered.

(6) "Electronic text message" means a text message sent to a cellular telephone or pager equipped with short message service or any similar capability, whether the message is initiated as a short message service message or as an electronic mail message.

(7) "Initiate the transmission" refers to the action by the original sender of an electronic mail message or an electronic text message, not to the action by any intervening interactive computer service or wireless network that may handle or retransmit the message, unless such intervening interactive computer service assists in the transmission of an electronic mail message when it knows, or consciously avoids knowing, that the person initiating the transmission is engaged, or intends to engage, in any act or practice that violates the consumer protection act.

(8) "Interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the internet and such systems operated or services offered by libraries or educational institutions.

(9) "Internet" means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, that comprise the interconnected worldwide network of networks that employ the transmission control protocol/internet protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.

(10) "Internet domain name" refers to a globally unique, hierarchical reference to an internet host or service, assigned through centralized internet naming authorities, comprising a series of character strings separated by periods, with the right-most string specifying the top of the hierarchy.

(11) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency or instrumentality, public corporation, or any other legal or commercial entity.

(12) "Personally identifying information" means an individual's: (a) Social security number; (b) driver's license number; (c) bank account number; (d) credit or debit card number; (e) personal identification number; (f) automated or electronic signature; (g) unique biometric data; (h) account passwords; or (i) any other piece of information that can be used to access an individual's financial accounts or to obtain goods or services.

(13) "Web page" means a location, with respect to the world wide web, that has a single uniform resource locator or other single location with respect to the internet. [2005 c 378 § 1; 2003 c 137 § 2; 1999 c 289 § 1; 1998 c 149 § 2.]

Intent—2003 c 137: See note following RCW 19.190.060.

Additional notes found at www.leg.wa.gov

19.190.020 Unpermitted or misleading electronic mail—Prohibition. (1) No person may initiate the transmission, conspire with another to initiate the transmission, or assist the transmission, of a commercial electronic mail message from a computer located in Washington or to an electronic mail address that the sender knows, or has reason to know, is held by a Washington resident that:

(a) Uses a third party's internet domain name without permission of the third party, or otherwise misrepresents or obscures any information in identifying the point of origin or the transmission path of a commercial electronic mail message; or

(b) Contains false or misleading information in the subject line.

(2) For purposes of this section, a person knows that the intended recipient of a commercial electronic mail message is a Washington resident if that information is available, upon request, from the registrant of the internet domain name contained in the recipient's electronic mail address. [1999 c 289 § 2; 1998 c 149 § 3.]

19.190.030 Unpermitted or misleading electronic mail—Violation of consumer protection act. (1) It is a violation of the consumer protection act, chapter 19.86 RCW, to conspire with another person to initiate the transmission or to initiate the transmission of a commercial electronic mail message that:

(a) Uses a third party's internet domain name without permission of the third party, or otherwise misrepresents or obscures any information in identifying the point of origin or the transmission path of a commercial electronic mail message; or

(b) Contains false or misleading information in the subject line.

(2) It is a violation of the consumer protection act, chapter 19.86 RCW, to assist in the transmission of a commercial electronic mail message, when the person providing the assistance knows, or consciously avoids knowing, that the initiator of the commercial electronic mail message is engaged, or intends to engage, in any act or practice that violates the consumer protection act.

(3) 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. [1999 c 289 § 3; 1998 c 149 § 4.]

19.190.040 Violations—Damages. (1) Damages to the recipient of a commercial electronic mail message or a commercial electronic text message sent in violation of this chapter are five hundred dollars, or actual damages, whichever is greater.

(2) Damages to an interactive computer service resulting from a violation of this chapter are one thousand dollars, or actual damages, whichever is greater. [2003 c 137 § 5; 1998 c 149 § 5.]

Intent—2003 c 137: See note following RCW 19.190.060.

19.190.050 Blocking of commercial electronic mail by interactive computer service—Immunity from liability. (1) An interactive computer service may, upon its own initiative, block the receipt or transmission through its service of any commercial electronic mail that it reasonably believes is, or will be, sent in violation of this chapter.

(2) No interactive computer service may be held liable for any action voluntarily taken in good faith to block the receipt or transmission through its service of any commercial electronic mail which it reasonably believes is, or will be, sent in violation of this chapter. [1998 c 149 § 6.]

19.190.060 Commercial electronic text message—Prohibition on initiation or assistance—Violation of consumer protection act. (1) No person conducting business in the state may initiate or assist in the transmission of an electronic commercial text message to a telephone number assigned to a Washington resident for cellular telephone or pager service that is equipped with short message capability or any similar capability allowing the transmission of text messages.

(2) The legislature finds that the practices covered by this section are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. A violation of this section 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. [2003 c 137 § 3.]

Intent—2003 c 137: "The legislature recognizes that the number of unsolicited commercial text messages sent to cellular telephones and pagers is increasing. This practice is raising serious concerns on the part of cellular telephone and pager subscribers. These unsolicited messages often result in costs to the cellular telephone and pager subscribers in that they pay for use when a message is received through their devices. The limited memory of these devices can be exhausted by unwanted text messages resulting in the inability to receive necessary and expected messages.

The legislature intends [intends] to limit the practice of sending unsolicited commercial text messages to cellular telephone or pager numbers in Washington." [2003 c 137 § 1.]

19.190.070 Commercial electronic text message—When allowed. (1) It is not a violation of RCW 19.190.060 if:

(a) The commercial electronic text message is transmitted at the direction of a person offering cellular telephone or pager service to the person's existing subscriber at no cost to the subscriber unless the subscriber has indicated that he or she is not willing to receive further commercial text messages from the person; or

(b) The unsolicited commercial electronic text message is transmitted by a person to a subscriber and the subscriber has clearly and affirmatively consented in advance to receive these text messages.

(2) No person offering cellular or pager service may be held liable for serving merely as an intermediary between the sender and the recipient of a commercial electronic text message sent in violation of this chapter unless the person is assisting in the transmission of the commercial electronic text message. [2003 c 137 § 4.]

Intent—2003 c 137: See note following RCW 19.190.060.

19.190.080 Personally identifying information—Violation of chapter. It is a violation of this chapter to solicit, request, or take any action to induce a person to provide personally identifying information by means of a web page, electronic mail message, or otherwise using the internet by representing oneself, either directly or by implication, to be another person, without the authority or approval of such other person. [2005 c 378 § 2.]

Additional notes found at www.leg.wa.gov

19.190.090 Civil actions. (1) A person who is injured under this chapter may bring a civil action in the superior court to enjoin further violations, and to seek up to five hundred dollars per violation, or actual damages, whichever is greater. A person who seeks damages under this subsection may only bring an action against a person or entity that directly violates RCW 19.190.080.

(2) A person engaged in the business of providing internet access service to the public, an owner of a web page, or trademark owner who is adversely affected by reason of a violation of RCW 19.190.080, may bring an action against a person who violates RCW 19.190.080 to:

- (a) Enjoin further violations of RCW 19.190.080; and
- (b) Recover the greater of actual damages or five thousand dollars per violation of RCW 19.190.080.

(3) In an action under subsection (2) of this section, a court may increase the damages up to three times the damages allowed by subsection (2) of this section if the defendant has engaged in a pattern and practice of violating this section. The court may award costs and reasonable attorneys' fees to a prevailing party. [2005 c 378 § 3.]

Additional notes found at www.leg.wa.gov

19.190.100 Violation—Consumer protection act. 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. [2005 c 378 § 4.]

Additional notes found at www.leg.wa.gov

19.190.110 Intent—Preemption of local laws. It is the intent of the legislature that this chapter is a matter of statewide concern. This chapter supersedes and preempts all rules, regulations, codes, ordinances, and other laws adopted by a city, county, city and county, municipality, or local agency regarding the practices covered by this chapter and notices to consumers from computer software providers regarding information collection. [2005 c 378 § 5.]

Additional notes found at www.leg.wa.gov

Chapter 19.192 RCW PROOF OF IDENTITY

Sections

- 19.192.010 Identification cards—Distinguishing official and not official proofs of identification—Penalties.
- 19.192.020 Verification of identity by merchant/retailer—Prohibition on verification void.

(2018 Ed.)

19.192.010 Identification cards—Distinguishing official and not official proofs of identification—Penalties.

(1) Any person or entity, other than those listed in subsection (2) of this section, issuing an identification card that purports to identify the holder as a resident of this or any other state and that contains at least a name, photograph, and date of birth, must label the card "not official proof of identification" in fluorescent yellow ink, on the face of the card, and in not less than fourteen-point font. The background color of the card must be a color other than the color used for official Washington state driver's licenses and identicards.

(2) This section does not apply to the following persons and entities:

- (a) Department of licensing;
- (b) Any federal, state, or local government agency;
- (c) The Washington *state liquor control board;
- (d) Private employers issuing cards identifying employees;
- (e) Banks and credit card companies issuing credit, debit, or bank cards containing a person's photograph; and
- (f) Retail or wholesale stores issuing membership cards containing a person's photograph.

(3) Failure to comply with this section is a class 1 civil infraction. [1998 c 24 § 1.]

*Reviser's note: The "state liquor control board" was renamed the "state liquor and cannabis board" by 2015 c 70 § 3.

19.192.020 Verification of identity by merchant/retailer—Prohibition on verification void.

(1) Any provision of a contract between a merchant or retailer and a credit or debit card issuer, financial institution, or other person that prohibits the merchant or retailer from verifying the identity of a customer who offers to pay for goods or services with a credit or debit card by requiring or requesting that the customer present additional identification is void for violation of public policy.

(2) Nothing in this section shall be interpreted as: (a) Compelling merchants or retailers to verify identification; or (b) interfering with the ability of the owner or manager of a retail store or chain to make and enforce its own policies regarding verification of identification. [2003 c 89 § 2.]

Findings—2003 c 89: "The legislature finds that financial fraud is too common, and that it threatens the safety and well-being of the public by driving up the costs of goods and services and unduly burdening the law enforcement community. Further, the legislature finds that financial fraud can be deterred by allowing retailers to verify the identity of persons who seek to pay for goods or services with a credit or debit card. Finally, the legislature finds that some retailers are deterred from verifying their customers' identity by contractual arrangements with credit card issuers. The legislature declares that such contracts violate the public policy that all citizens should be able to take reasonable steps to prevent themselves and their communities from falling victim to crime." [2003 c 89 § 1.]

Chapter 19.194 RCW

TRADE-IN OR EXCHANGE OF COMPUTER HARDWARE

Sections

- 19.194.010 Recordkeeping by retail establishments—Contents—Inspection—Definitions.
- 19.194.020 Record of transactions—Provided upon request—Forms and format—Lost or stolen hardware.
- 19.194.030 Prohibited acts—Gross misdemeanor.
- 19.194.040 Application.

[Title 19 RCW—page 283]

19.194.010 Recordkeeping by retail establishments—Contents—Inspection—Definitions. (1) Any retail establishment doing business in this state that accepts for trade-in or exchange any computer hardware for the purchase of other computer hardware of greater value shall maintain, at the time of each transaction, a record of the following information:

- (a) The signature of the person with whom the transaction is made;
- (b) The date of the transaction;
- (c) The name of the person or employee or the identification number of the person or employee conducting the transaction; and
- (d) The name, date of birth, and address and telephone number of the person with whom the transaction is made.

(2) This record is open to the inspection of any commissioned law enforcement officer of the state or any of its political subdivisions, and will be maintained for a period of one year following the date of the transaction.

(3) As used in this section:

(a) "Computer" means a programmable electronic machine that performs high-speed mathematical or logical operation or that assembles, stores, correlates, or otherwise processes information.

(b) "Computer hardware" means a computer and the associated physical equipment involved in the performance of data processing or communications functions. The term does not include computer software. [1998 c 134 § 1.]

19.194.020 Record of transactions—Provided upon request—Forms and format—Lost or stolen hardware.

(1) Upon request, every retailer doing business in this state that accepts for trade-in or exchange computer hardware shall furnish a full, true, and correct transcript of the record of all transactions conducted, under RCW 19.194.010, on the proceeding [preceding] day. These transactions shall be recorded on such forms as may be provided and in such format as may be required by the chief of police or the county's chief law enforcement officer within a specified time but not less than twenty-four hours.

(2) If a retailer has good cause to believe that any computer hardware in their possession has been previously lost or stolen, the retailer shall promptly report that fact to the applicable chief of police or the county's chief law enforcement officer, together with the name of the owner, if known, and the date when, and the name of the person from whom, it was received. [1998 c 134 § 2.]

19.194.030 Prohibited acts—Gross misdemeanor. It is a gross misdemeanor under chapter 9A.20 RCW for:

(1) Any person to remove, alter, or obliterate any manufacturer's make, model, or serial number, personal identification number, or identifying marks engraved or etched upon the computer hardware that is received as a trade-in or in exchange on the purchase of other computer hardware of greater value. In addition a retailer shall not accept any computer hardware as a trade-in or in exchange on the purchase of other computer hardware of greater value where the manufacturer's make, model, or serial number, personal identification number, or identifying marks engraved or etched upon

the computer hardware has been removed, altered, or obliterated;

(2) Any person 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 this chapter; or

(3) Any person to knowingly violate any other provision of this chapter. [1998 c 134 § 3.]

19.194.040 Application. RCW 19.194.010 through 19.194.030 do not apply to trade-in or exchange of computers, or computer hardware, between consumers and retailers, or their branch facilities, when the computer or computer hardware was originally purchased from that same retailer. [1998 c 134 § 4.]

Chapter 19.200 RCW

AUTOMATED FINANCIAL TRANSACTIONS

Sections

19.200.010 Findings—Intent—Restrictions on credit and debit card receipts—Application—Definitions.

19.200.901 Effective date—2000 c 163.

19.200.010 Findings—Intent—Restrictions on credit and debit card receipts—Application—Definitions. (1)

The legislature finds that credit and debit cards are important tools for consumers in today's economy. The legislature also finds that unscrupulous persons often fraudulently use the card accounts of others by stealing the card itself or by obtaining the necessary information to fraudulently charge the purchase of goods and services to another person's account. The legislature intends to provide some protection for consumers from the latter by limiting the information that can appear on a card receipt.

(2) No person that accepts credit or debit cards for the transaction of business shall print more than the last five digits of the card account number or print the card expiration date on a credit or debit card receipt. This includes all receipts kept by the person or provided to the cardholder.

(3) This section shall apply only to receipts that are electronically printed and shall not apply to transactions in which the sole means of recording the card number is by handwriting or by an imprint or copy of the credit or debit card.

(4) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(a) "Credit card" means a card or device existing for the purpose of obtaining money, property, labor, or services on credit.

(b) "Debit card" means a card or device used to obtain money, property, labor, or services by a transaction that debits a cardholder's account, rather than extending credit. [2009 c 382 § 1; 2000 c 163 § 1.]

19.200.901 Effective date—2000 c 163. This act takes effect July 1, 2001. [2000 c 163 § 4.]

Chapter 19.205 RCW

STRUCTURED SETTLEMENT PROTECTION

Sections

19.205.010	Definitions.
19.205.020	Disclosure statement—Content.
19.205.030	Structured settlement payment rights—Transfer—Order—Express findings.
19.205.040	Posttransfer of rights—Liabilities—Requirements.
19.205.050	Application/approval of transfer—Notice—Content.
19.205.060	Transfer agreements—Further provisions.
19.205.900	Short title.
19.205.901	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

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

(1) "Annuity issuer" means an insurer that has issued a contract to fund periodic payments under a structured settlement.

(2) "Dependents" means a payee's spouse and minor children and all other persons for whom the payee is legally obligated to provide support, including alimony.

(3) "Discounted present value" means the present value of future payments determined by discounting such payments to the present using the most recently published applicable federal rate for determining the present value of an annuity, as issued by the United States internal revenue service.

(4) "Gross advance amount" means the sum payable to the payee or for the payee's account as consideration for a transfer of structured settlement payment rights before any reductions for transfer expenses or other deductions to be made from such consideration.

(5) "Independent professional advice" means advice of an attorney, certified public accountant, actuary, or other licensed professional adviser.

(6) "Interested parties" means, with respect to any structured settlement, the payee, any beneficiary irrevocably designated under the annuity contract to receive payments following the payee's death, the annuity issuer, the structured settlement obligor, and any other party that has continuing rights or obligations under such structured settlement.

(7) "Net advance amount" means the gross advance amount less the aggregate amount of the actual and estimated transfer expenses required to be disclosed under RCW 19.205.020(5).

(8) "Payee" means an individual who is receiving tax-free payments under a structured settlement and proposes to make a transfer of payment rights thereunder.

(9) "Periodic payments" means (a) recurring payments and (b) scheduled future lump sum payments.

(10) "Qualified assignment agreement" means an agreement providing for a qualified assignment within the meaning of section 130 of the United States internal revenue code (26 U.S.C. Sec. 130), as amended.

(11) "Responsible administrative authority" means, with respect to a structured settlement, any government authority vested by law with exclusive jurisdiction over the settled claim resolved by such structured settlement.

(12) "Settled claim" means the original tort claim or workers' compensation claim resolved by a structured settlement.

(13) "Structured settlement" means an arrangement for periodic payment of compensation for injuries or sickness as described in 26 U.S.C. Sec. 104(a)(1) or (2), as amended, or an arrangement for periodic payment of benefits under a special needs trust as described in 42 U.S.C. Sec. 1396p(d)(4), as amended.

(14) "Structured settlement agreement" means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement.

(15) "Structured settlement obligor" means, with respect to any structured settlement, the party that has the continuing obligation to make periodic payments to the payee under a structured settlement agreement or a qualified assignment agreement.

(16) "Structured settlement payment rights" means rights to receive periodic payments under a structured settlement, whether from the structured settlement obligor or the annuity issuer, if:

(a) The payee is domiciled in, or the domicile or principal place of business of the structured settlement obligor or the annuity issuer is located in, this state;

(b) The structured settlement agreement was approved by a court or responsible administrative authority in this state; or

(c) The structured settlement agreement is expressly governed by the laws of this state.

(17) "Terms of the structured settlement" means, with respect to any structured settlement, the terms of the structured settlement agreement, the annuity contract, any qualified assignment agreement and any order or other approval of any court or responsible administrative authority or other government authority that authorized or approved such structured settlement.

(18) "Transfer" means any sale, assignment, pledge, hypothecation or other alienation or encumbrance of structured settlement payment rights made by a payee for consideration. However, "transfer" does not mean the creation or perfection of a security interest in structured settlement payment rights under a blanket security agreement entered into with an insured depository institution, in the absence of any action to redirect the structured settlement payments to such insured depository institution, or an agent or successor in interest thereof, or otherwise to enforce such blanket security interest against the structured settlement payment rights.

(19) "Transfer agreement" means the agreement providing for a transfer of structured settlement payment rights.

(20) "Transfer expenses" means all expenses of a transfer that are required under the transfer agreement to be paid by the payee or deducted from the gross advance amount, including, without limitation, court filing fees, attorneys' fees, escrow fees, lien recordation fees, judgment and lien search fees, finders' fees, commissions, and other payments to a broker or other intermediary. "Transfer expenses" does not mean preexisting obligations of the payee payable for the payee's account from the proceeds of a transfer.

(21) "Transferee" means a party acquiring or proposing to acquire structured settlement payment rights through a transfer. [2001 c 178 § 2.]

19.205.020 Disclosure statement—Content. Not less than three days prior to the date on which a payee signs a

transfer agreement, the transferee shall provide to the payee a separate disclosure statement, in bold type no smaller than fourteen points, setting forth:

- (1) The amounts and due dates of the structured settlement payments to be transferred;
- (2) The aggregate amount of such payments;
- (3) The discounted present value of the payments to be transferred, which shall be identified as the "calculation of current value of the transferred structured settlement payments under federal standards for valuing annuities," and the amount of the applicable federal rate used in calculating such discounted present value;
- (4) The gross advance amount;
- (5) An itemized listing of all applicable transfer expenses, other than attorneys' fees and related disbursements payable in connection with the transferee's application for approval of the transfer, and the transferee's best estimate of the amount of any such fees and disbursements;
- (6) The net advance amount;
- (7) The amount of any penalties or liquidated damages payable by the payee in the event of any breach of the transfer agreement by the payee; and
- (8) A statement that the payee has the right to cancel the transfer agreement, without penalty or further obligation, not later than the third business day after the date the agreement is signed by the payee. [2001 c 178 § 3.]

19.205.030 Structured settlement payment rights—Transfer—Order—Express findings. A direct or indirect transfer of structured settlement payment rights is not effective and a structured settlement obligor or annuity issuer is not required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been approved in advance in a final court order or order of a responsible administrative authority based on express findings by such court or responsible administrative authority that:

- (1) The transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents;
- (2) The payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received such advice or knowingly waived such advice in writing; and
- (3) The transfer does not contravene any applicable statute or the order of any court or other government authority. [2001 c 178 § 4.]

19.205.040 Posttransfer of rights—Liabilities—Requirements. Following a transfer of structured settlement payment rights under this chapter:

- (1) The structured settlement obligor and the annuity issuer shall, as to all parties except the transferee, be discharged and released from any and all liability for the transferred payments;
- (2) The transferee shall be liable to the structured settlement obligor and the annuity issuer:
 - (a) If the transfer contravenes the terms of the structured settlement, for any taxes incurred by such parties as a consequence of the transfer; and

(b) For any other liabilities or costs, including reasonable costs and attorneys' fees, arising from compliance by such parties with the order of the court or responsible administrative authority or arising as a consequence of the transferee's failure to comply with this chapter;

(3) Neither the annuity issuer nor the structured settlement obligor may be required to divide any periodic payment between the payee and any transferee or assignee or between two, or more, transferees or assignees; and

(4) Any further transfer of structured settlement payment rights by the payee may be made only after compliance with all of the requirements of this chapter. [2001 c 178 § 5.]

19.205.050 Application/approval of transfer—Notice—Content. (1) An application under this chapter for approval of a transfer of structured settlement payment rights shall be made by the transferee and may be brought in the county in which the payee resides, in the county in which the structured settlement obligor or the annuity issuer maintains its principal place of business, or in any court or before any responsible administrative authority which approved the structured settlement agreement.

(2) Not less than twenty days prior to the scheduled hearing on any application for approval of a transfer of structured settlement payment rights under RCW 19.205.030, the transferee shall file with the court or responsible administrative authority and serve on all interested parties a notice of the proposed transfer and the application for its authorization, including with such notice:

- (a) A copy of the transferee's application;
- (b) A copy of the transfer agreement;
- (c) A copy of the disclosure statement required under RCW 19.205.020;
- (d) A listing of each of the payee's dependents, together with each dependent's age;
- (e) Notification that any interested party is entitled to support, oppose, or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or responsible administrative authority or by participating in the hearing; and
- (f) Notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed, which may not be less than fifteen days after service of the transferee's notice, in order to be considered by the court or responsible administrative authority. [2001 c 178 § 6.]

19.205.060 Transfer agreements—Further provisions. (1) The provisions of this chapter may not be waived by any payee.

(2) Any transfer agreement entered into on or after July 22, 2001, by a payee who resides in this state shall provide that disputes under such transfer agreement, including any claim that the payee has breached the agreement, shall be determined in and under the laws of this state. Such a transfer agreement may not authorize the transferee or any other party to confess judgment or consent to entry of judgment against the payee.

(3) Transfer of structured settlement payment rights do not extend to any payments that are life contingent unless, prior to the date on which the payee signs the transfer agree-

ment, the transferee has established and has agreed to maintain procedures reasonably satisfactory to the annuity issuer and the structured settlement obligor for (a) periodically confirming the payee's survival, and (b) giving the annuity issuer and the structured settlement obligor prompt written notice in the event of the payee's death.

(4) No payee who proposes to make a transfer of structured settlement payment rights may incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee or any assignee based on any failure of such a transfer to satisfy the conditions of this chapter.

(5) This chapter does not authorize any transfer of structured settlement payment rights in contravention of any law, nor does it imply that any transfer under a transfer agreement entered into prior to July 22, 2001, is valid or invalid.

(6) Compliance with the requirements set forth in RCW 19.205.020 and fulfillment of the conditions set forth in RCW 19.205.030 is the sole responsibility of the transferee in any transfer of structured settlement payment rights, and neither the structured settlement obligor nor the annuity issuer bear any responsibility for, or any liability arising from, non-compliance with the requirements or failure to fulfill the conditions. [2001 c 178 § 7.]

19.205.900 Short title. This chapter may be known and cited as the structured settlement protection act. [2001 c 178 § 1.]

19.205.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, 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, 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. [2009 c 521 § 58.]

Chapter 19.210 RCW

UNUSED PROPERTY MERCHANTS

Sections

19.210.010	Definitions.
19.210.020	Prohibited sales.
19.210.030	Chapter not applicable—Trade show, certain persons.
19.210.040	Penalties.

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

(1) "Baby food" or "infant formula" means any food manufactured, packaged, and labeled specifically for sale for consumption by a child under the age of two years.

(2) "Medical device" means any instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, tool, or other similar or related article, including any component part or accessory, which is required under federal law to bear the label "caution: federal law requires dispensing by or on the order of a physician"; or which is defined by federal law as a medical device and is intended for use in the diagnosis of disease or other conditions or in the cure, mitigation, treatment, or prevention of disease in human beings or animals or is intended to affect the structure or any function of the body of human beings or animals, which does not achieve any of its principal intended purposes through chemical action within or on the body of human beings or animals and which is not dependent upon being metabolized for achievement of any of its principal intended purposes.

(3) "Nonprescription drug," which may also be referred to as an over-the-counter drug, means any nonnarcotic medicine or drug that may be sold without a prescription and is prepackaged for use by the consumer, prepared by the manufacturer or producer for use by the consumer, and required to be properly labeled and unadulterated in accordance with the requirements of the state food and drug laws and the federal food, drug, and cosmetic act. "Nonprescription drug" does not include herbal products, dietary supplements, botanical extracts, or vitamins.

(4)(a) "Unused property market" means any event:

(i) At which two or more persons offer personal property for sale or exchange and at which (A) these persons are charged a fee for sale or exchange of personal property or (B) prospective buyers are charged a fee for admission to the area at which personal property is offered or displayed for sale or exchange; or

(ii) Regardless of the number of persons offering or displaying personal property or the absence of fees, at which personal property is offered or displayed for sale or exchange if the event is held more than six times in any twelve-month period.

(b) "Unused property market" is interchangeable with and applicable to swap meet, indoor swap meet, flea market, or other similar terms, regardless of whether these events are held inside a building or outside in the open. The primary characteristic is that these activities involve a series of sales sufficient in number, scope, and character to constitute a regular course of business.

(c) "Unused property market" does not include:

(i) An event that is organized for the exclusive benefit of any community chest, fund, foundation, association, or corporation organized and operated for religious, educational, or charitable purposes, provided that no part of any admission fee or parking fee charged vendors or prospective purchasers or the gross receipts or net earnings from the sale or exchange of personal property, whether in the form of a percentage of the receipts or earnings, as salary, or otherwise, inures to the benefit of any private shareholder or person participating in the organization or conduct of the event; or

(ii) An event at which all of the personal property offered for sale or displayed is new, and all persons selling or exchanging personal property, or offering or displaying personal property for sale or exchange, are manufacturers or authorized representatives of manufacturers or distributors.

(5) "Unused property merchant" means any person, other than a vendor or merchant with an established retail store in the county, who transports an inventory of goods to a building, vacant lot, or other unused property market location and who, at that location, displays the goods for sale and sells the goods at retail or offers the goods for sale at retail, except a person who offers five or fewer items of the same new and unused merchandise for sale or exchange at an unused property market. [2009 c 549 § 1010; 2001 c 160 § 1.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

19.210.020 Prohibited sales. No unused property merchant shall offer at an unused property market for sale or knowingly permit the sale of baby food, infant formula, cosmetics, nonprescription drugs, or medical devices. This section does not apply to a person who keeps available for public inspection a written authorization identifying that person as an authorized representative of the manufacturer or distributor of such product, as long as the authorization is not false, fraudulent, or fraudulently obtained. [2001 c 160 § 2.]

19.210.030 Chapter not applicable—Trade show, certain persons. This chapter does not apply to:

(1) Business conducted in any industry or association trade show; or

(2) Anyone who sells by sample, catalog, or brochure for future delivery. [2001 c 160 § 3.]

19.210.040 Penalties. (1) A first violation of this chapter is a misdemeanor.

(2) A second violation of this chapter within five years is a gross misdemeanor.

(3) A third or subsequent violation of this chapter within five years is a class C felony. [2001 c 160 § 4.]

Chapter 19.215 RCW

DISPOSAL OF PERSONAL INFORMATION

Sections

19.215.005	Finding.
19.215.010	Definitions.
19.215.020	Destruction of information—Liability—Exception—Civil action.
19.215.030	Compliance with federal regulations.

19.215.005 Finding. The legislature finds that the careless disposal of personal information by commercial, governmental, or other entities poses a significant threat of identity theft, thus risking a person's privacy, financial security, and other interests. The alarming increase in identity theft crimes and other problems associated with the improper disposal of personal information can be traced, in part, to disposal policies and methods that make it easy for unscrupulous persons to obtain and use that information to the detriment of the public. Accordingly, the legislature declares that all organizations and individuals have a continuing obligation to ensure the security and confidentiality of personal information during the process of disposing of that information. [2002 c 90 § 1.]

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

(1) "Entity" includes a sole proprietor, partnership, corporation, limited liability company, trust, association, financial institution, governmental entity, other than the federal government, and any other individual or group, engaged in a trade, occupation, enterprise, governmental function, or similar activity in this state, however organized and whether organized to operate at a profit.

(2) "Destroy personal information" means shredding, erasing, or otherwise modifying personal information in records to make the personal information unreadable or undecipherable through any reasonable means.

(3) "Individual" means a natural person, except that if the individual is under a legal disability, "individual" includes a parent or duly appointed legal representative.

(4) "Personal financial" and "health information" mean information that is identifiable to an individual and that is commonly used for financial or health care purposes, including account numbers, access codes or passwords, information gathered for account security purposes, credit card numbers, information held for the purpose of account access or transaction initiation, or information that relates to medical history or status.

(5) "Personal identification number issued by a government entity" means a tax identification number, social security number, driver's license or permit number, state identification card number issued by the department of licensing, or any other number or code issued by a government entity for the purpose of personal identification that is protected and is not available to the public under any circumstances.

(6) "Record" includes any material, regardless of the physical form, on which information is recorded or preserved by any means, including in written or spoken words, graphically depicted, printed, or electromagnetically transmitted. "Record" does not include publicly available directories containing information an individual has voluntarily consented to have publicly disseminated or listed, such as name, address, or telephone number. [2002 c 90 § 2.]

19.215.020 Destruction of information—Liability—Exception—Civil action. (1) An entity must take all reasonable steps to destroy, or arrange for the destruction of, personal financial and health information and personal identification numbers issued by government entities in an individual's records within its custody or control when the entity is disposing of records that it will no longer retain.

(2) An entity is not liable under this section for records it has relinquished to the custody and control of the individual to whom the records pertain.

(3) This subsection [section] does not apply to the disposal of records by a transfer of the records, not otherwise prohibited by law, to another entity, including a transfer to archive or otherwise preserve public records as required by law.

(4) An individual injured by the failure of an entity to comply with subsection (1) of this section may bring a civil action in a court of competent jurisdiction. The court may:

(a) If the failure to comply is due to negligence, award a penalty of two hundred dollars or actual damages, whichever is greater, and costs and reasonable attorneys' fees; and

(b) If the failure to comply is willful, award a penalty of six hundred dollars or damages equal to three times actual damages, whichever is greater, and costs and reasonable attorneys' fees. However, treble damages may not exceed ten thousand dollars.

(5) An individual having reason to believe that he or she may be injured by an act or failure to act that does not comply with subsection (1) of this section may apply to a court of competent jurisdiction to enjoin the act or failure to act. The court may grant an injunction with terms and conditions as the court may deem equitable.

(6) The attorney general may bring a civil action in the name of the state for damages, injunctive relief, or both, against an entity that fails to comply with subsection (1) of this section. The court may award damages that are the same as those awarded to individual plaintiffs under subsection (4) of this section.

(7) The rights and remedies provided under this section are in addition to any other rights or remedies provided by law. [2002 c 90 § 3.]

19.215.030 Compliance with federal regulations.

Any bank, financial institution, health care organization, or other entity that is subject to the federal regulations under the interagency guidelines establishing standards for safeguarding customer information (12 C.F.R. 208 Appendix D-2, 12 C.F.R. 364 Appendix B, 12 C.F.R. 30 Appendix B, 12 C.F.R. 570 Appendix B); the guidelines for safeguarding member information (12 C.F.R. 748 Appendix A); and the standards for privacy of individually identifiable health information (45 C.F.R. 160 and 164), and which is in compliance with these federal guidelines, is in compliance with the requirements of this chapter. [2002 c 90 § 4.]

Chapter 19.220 RCW

INTERNATIONAL MATCHMAKING ORGANIZATIONS

Sections

19.220.005	Intent.
19.220.010	Dissemination of information—Definitions.
19.220.020	Jurisdiction.
19.220.030	Finding—Consumer protection act—Application to chapter.
19.220.900	Effective date—2002 c 115.
19.220.901	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

19.220.005 Intent. The legislature intends to provide increased consumer awareness on the part of persons living abroad regarding Washington residents who utilize international matchmaking services for purposes of establishing relationships with those living abroad. The legislature recognizes that persons living abroad are already required to provide background information to the federal government during visa applications, but, unlike residents of the United States, are unlikely to have the means to access and fully verify personal history information about prospective spouses residing in the United States. The legislature does not intend to impede the ability of any person to establish a marital or

romantic relationship, but rather to increase the ability of persons living abroad to make informed decisions about Washington residents.

The legislature does not intend to adversely impact in any way those businesses who offer international matchmaking services on a not for fee basis. [2002 c 115 § 1.]

19.220.010 Dissemination of information—Definitions.

(1) Each international matchmaking organization doing business in Washington state shall disseminate to a recruit, upon request, state background check information and personal history information relating to any Washington state resident about whom any information is provided to the recruit, in the recruit's native language. The organization shall notify all recruits that background check and personal history information is available upon request. The notice that background check and personal history information is available upon request shall be in the recruit's native language and shall be displayed in a manner that separates it from other information, is highly noticeable, and in lettering not less than one-quarter of an inch high.

(2) If an international matchmaking organization receives a request for information from a recruit pursuant to subsection (1) of this section, the organization shall notify the Washington state resident of the request. Upon receiving notification, the Washington state resident shall obtain from the state patrol and provide to the organization the complete transcript of any background check information provided pursuant to RCW 43.43.760 based on a submission of fingerprint impressions and provided pursuant to RCW 43.43.838 and shall provide to the organization his or her personal history information. The organization shall require the resident to affirm that personal history information is complete and accurate. The organization shall refrain from knowingly providing any further services to the recruit or the Washington state resident in regards to facilitating future interaction between the recruit and the Washington state resident until the organization has obtained the requested information and provided it to the recruit.

(3) This section does not apply to a traditional matchmaking organization of a religious nature that otherwise operates in compliance with the laws of the countries of the recruits of such organization and the laws of the United States nor to any organization that does not charge a fee to any party for the service provided.

(4) As used in this section:

(a) "International matchmaking organization" means a corporation, partnership, business, or other legal entity, whether or not organized under the laws of the United States or any state, that does business in the United States and for profit offers to Washington state residents, including aliens lawfully admitted for permanent residence and residing in Washington state, dating, matrimonial, or social referral services involving citizens of a foreign country or countries who are not residing in the United States, by: (i) An exchange of names, telephone numbers, addresses, or statistics; (ii) selection of photographs; or (iii) a social environment provided by the organization in a country other than the United States.

(b) "Personal history information" means a declaration of the person's current marital status, the number of previous marriages, annulments, and dissolutions for the person, and

whether any previous marriages occurred as a result of receiving services from an international matchmaking organization; founded allegations of child abuse or neglect; and any existing orders under chapter 7.90, 10.14, 10.99, or 26.50 RCW. Personal history information shall include information from the state of Washington and any information from other states or countries.

(c) "Recruit" means a noncitizen, nonresident person, recruited by an international matchmaking organization for the purpose of providing dating, matrimonial, or social referral services. [2006 c 138 § 24; 2003 c 268 § 1; 2002 c 115 § 2.]

Additional notes found at www.leg.wa.gov

19.220.020 Jurisdiction. For purposes of establishing personal jurisdiction under chapter 115, Laws of 2002, an international matchmaking organization is deemed to be doing business in Washington and therefore subject to specific jurisdiction if it contracts for matchmaking services with a Washington resident or if it is considered to be doing business under any other provision or rule of law. [2002 c 115 § 3.]

19.220.030 Finding—Consumer protection act—Application to chapter. 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. [2002 c 115 § 4.]

19.220.900 Effective date—2002 c 115. This act takes effect September 1, 2002. [2002 c 115 § 7.]

19.220.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, 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, 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. [2009 c 521 § 59.]

Chapter 19.225 RCW UNIFORM ATHLETE AGENTS ACT

Sections

- 19.225.010 Definitions.
- 19.225.020 Service of process.
- 19.225.030 Athlete agents—Delivery of disclosure form required.

- 19.225.040 Athlete agent disclosure form—Requirements.
- 19.225.050 Disqualifications.
- 19.225.060 Form of contract.
- 19.225.070 Notice to educational institution.
- 19.225.080 Student athlete's right to cancel.
- 19.225.090 Required records—Retention.
- 19.225.100 Prohibited acts.
- 19.225.110 Criminal/civil penalties.
- 19.225.120 Civil remedies—Application of consumer protection act.
- 19.225.900 Short title.
- 19.225.901 Application—Construction—2002 c 131.
- 19.225.904 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.
- 19.225.905 Relation to electronic signatures in global and national commerce act.

19.225.010 Definitions. In this chapter:

(1) "Agency contract" means an agreement in which a student athlete authorizes a person to negotiate or solicit on behalf of the athlete a professional-sports-services contract or an endorsement contract.

(2)(a) "Athlete agent" means an individual who:

(i) Directly or indirectly, recruits or solicits a student athlete to enter into an agency contract or, for compensation, procures employment or offers, promises, attempts, or negotiates to obtain employment for a student athlete as a professional athlete or member of a professional sports team or organization;

(ii) For compensation or in anticipation of compensation related to a student athlete's participation in athletics:

(A) Serves the athlete in an advisory capacity on a matter related to finances, business pursuits, or career management decisions, unless the individual is an employee of an educational institution acting exclusively as an employee of the institution for the benefit of the institution; or

(B) Manages the business affairs of the athlete by providing assistance with bills, payments, contracts, or taxes; or

(iii) In anticipation of representing a student athlete for a purpose related to the athlete's participation in athletics:

(A) Gives consideration to the student athlete or another person;

(B) Serves the athlete in an advisory capacity on a matter related to finances, business pursuits, or career management decisions; or

(C) Manages the business affairs of the athlete by providing assistance with bills, payments, contracts, or taxes.

(b) "Athlete agent" does not include an individual who:

(i) Acts solely on behalf of a professional sports team or organization; or

(ii) Is a licensed, registered, or certified professional and offers or provides services to a student athlete customarily provided by members of the profession, unless the individual:

(A) Also recruits or solicits the athlete to enter into an agency contract;

(B) Also, for compensation, procures employment or offers, promises, attempts, or negotiates to obtain employment for the athlete as a professional athlete or member of a professional sports team or organization; or

(C) Receives consideration for providing the services calculated using a different method than for an individual who is not a student athlete.

(3) "Athletic director" means the individual responsible for administering the overall athletic program of an educational institution or, if an educational institution has separately administered athletic programs for male students and

female students, the athletic program for males or the athletic program for females, as appropriate.

(4) "Contact" means a communication, direct or indirect, between an athlete agent and a student athlete, to recruit or solicit the student athlete to enter into an agency contract.

(5) "Educational institution" includes a public or private elementary school, secondary school, technical or vocational school, community college, college, and university.

(6) "Endorsement contract" means an agreement under which a student athlete is employed or receives consideration to use on behalf of the other party any value that the student athlete may have because of publicity, reputation, following, or fame obtained because of athletic ability or performance.

(7) "Enrolled" means registered for courses and attending athletic practice or class. "Enrolls" has a corresponding meaning.

(8) "Intercollegiate sport" means a sport played at the collegiate level for which eligibility requirements for participation by a student athlete are established by a national association that promotes or regulates collegiate athletics.

(9) "Interscholastic sport" means a sport played between educational institutions that are not community colleges, colleges, or universities.

(10) "Licensed, registered, or certified professional" means an individual licensed, registered, or certified as an attorney, dealer in securities, financial planner, insurance agent, real estate broker or sales agent, tax consultant, accountant, or member of a profession, other than that of athlete agent, who is licensed, registered, or certified by the state or a nationally recognized organization that licenses, registers, or certifies members of the profession on the basis of experience, education, or testing.

(11) "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(12) "Professional-sports-services contract" means an agreement under which an individual is employed as a professional athlete or agrees to render services as a player on a professional sports team or with a professional sports organization.

(13) "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.

(14) "Recruit or solicit" means the attempt to influence the choice of an athlete agent by a student athlete or, if the athlete is a minor, a parent or guardian of the athlete. The term does not include giving advice on the selection of a particular athlete agent in a family, coaching, or social situation unless the individual giving the advice does so because of the receipt or anticipated receipt of an economic benefit, directly or indirectly, from the athlete agent.

(15) "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.

(16) "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.

(17) "Student athlete" means an individual who is eligible to attend an educational institution and engages in, is eligible to engage in, or may be eligible in the future to engage in, any interscholastic or intercollegiate sport. The term does not include an individual permanently ineligible to participate in a particular interscholastic or intercollegiate sport for that sport. [2016 sp.s. c 13 § 1; 2002 c 131 § 2.]

19.225.020 Service of process. By acting as an athlete agent in this state, a nonresident individual appoints the secretary of state as the individual's agent for service of process in any civil action in this state related to acting as an athlete agent in this state. [2016 sp.s. c 13 § 2; 2002 c 131 § 3.]

19.225.030 Athlete agents—Delivery of disclosure form required. (1) Except as otherwise provided in subsection (2) of this section, an individual may not act as an athlete agent in this state unless on the day of initial contact with any student athlete the athlete agent delivers to the student athlete the athlete agent disclosure form as required by RCW 19.225.040.

(2) An individual may act as an athlete agent before delivering an athlete agent disclosure form for all purposes except signing an agency contract if:

(a) A student athlete or another person acting on behalf of the athlete initiates communication with the individual; and

(b) Not later than seven days after an initial act as an athlete agent, the individual delivers an athlete agent disclosure form to the student athlete.

(3) An agency contract resulting from conduct in violation of this section is void, and the athlete agent shall return any consideration received under the contract. [2016 sp.s. c 13 § 3; 2002 c 131 § 4.]

19.225.040 Athlete agent disclosure form—Requirements. (1) The athlete agent disclosure form must be in a record executed in the name of an individual and signed by the athlete agent under penalty of perjury and, except as otherwise provided in subsection (2) of this section, must contain at least the following:

(a) The name of the athlete agent and the following contact information for the agent:

(i) The address of the athlete agent's principal place of business;

(ii) Work and mobile telephone numbers; and

(iii) Any means of communicating electronically, including a facsimile number, email address, and personal and business or employer web sites;

(b) The name of the athlete agent's business or employer, if applicable, including for each business or employer, its mailing address, telephone number, organization form, and nature of the business;

(c) Each social media account with which the athlete agent or the agent's business or employer is affiliated;

(d) Each business or occupation in which the athlete agent engaged within five years before the date of execution of the athlete agent disclosure form, including self-employment and employment by others, and any professional or occupational license, registration, or certification held by the agent during that time;

- (e) A description of the athlete agent's:
 - (i) Formal training as an athlete agent;
 - (ii) Practical experience as an athlete agent; and
 - (iii) Educational background relating to the athlete agent's activities as an athlete agent;
- (f) The name of each student athlete for whom the athlete agent acted as an athlete agent within the five years before the date of execution of the athlete agent disclosure form or, if the individual is a minor, the name of the parent or guardian of the minor, together with the athlete's sport and last-known team;
- (g) The names and addresses of each person that:
 - (i) Is a partner, member, officer, manager, associate, or profit sharer or directly or indirectly holds an equity interest of five percent or greater of the athlete agent's business if it is not a corporation; and
 - (ii) Is an officer or director of a corporation employing the athlete agent or a shareholder having an interest of five percent or greater in the corporation;
- (h) A description of the status of any application by the athlete agent, or any person named under (g) of this subsection, for a state or federal business, professional, or occupational license, other than as an athlete agent, from a state or federal agency, including any denial, refusal to renew, suspension, withdrawal, or termination of the license and any reprimand or censure related to the license;
 - (i) Whether the athlete agent or any other person named pursuant to (g) of this subsection has pleaded guilty or no contest to, has been convicted of, or has charges pending for, a felony or other crime involving moral turpitude, and, if so, identification of:
 - (i) The crime;
 - (ii) The law enforcement agency involved; and
 - (iii) If applicable, the date of the conviction and the fine or penalty imposed;
 - (j) Whether, within fifteen years before the date of execution of the athlete agent disclosure form, the athlete agent, or any person named under (g) of this subsection, has been a defendant or respondent in a civil proceeding, including a proceeding seeking an adjudication of legal incompetence and, if so, the date and a full explanation of each proceeding;
 - (k) Whether the athlete agent, or any person named under (g) of this subsection, has an unsatisfied judgment or a judgment of continuing effect, including maintenance or a domestic order in the nature of child support, which is not current at the date of execution of the athlete agent disclosure form;
 - (l) Whether, within ten years before the execution of the athlete agent disclosure form, the athlete agent, or any person named under (g) of this subsection, was adjudicated bankrupt or was an owner of a business that was adjudicated bankrupt;
 - (m) Whether there has been any administrative or judicial determination that the athlete agent, or any other person named under (g) of this subsection, made a false, misleading, deceptive, or fraudulent representation;
 - (n) Each instance in which the conduct of the athlete agent, or any other person named under (g) of this subsection, resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic, intercollegiate, or professional athletic event on a student athlete or a sanction on an educational institution;

- (o) Each sanction, suspension, or disciplinary action taken against the athlete agent, or any other person named under (g) of this subsection, arising out of occupational or professional conduct;
- (p) Whether there has been a denial of an application for, suspension or revocation of, refusal to renew, or abandonment of, the registration of the athlete agent, or any other person named under (g) of this subsection, as an athlete agent in any state;
- (q) Each state in which the applicant currently is registered as an athlete agent or has applied to be registered as an athlete agent; and
- (r) If the athlete agent is certified or registered by a professional league or players association:
 - (i) The name of the league or association;
 - (ii) The date of certification or registration, and the date of expiration of the certification or registration, if any; and
 - (iii) If applicable, the date of any denial of an application for, suspension or revocation of, refusal to renew, withdrawal of, or termination of, the certification or registration or any reprimand or censure related to the certification or registration.
- (2) Instead of delivering an athlete agent disclosure form pursuant to subsection (1) of this section, an individual who is registered or licensed as an athlete agent in another state may deliver:
 - (a) A copy of the application for registration or licensure in the other state;
 - (b) A statement that identifies any material change in the information on the application or verifies there is no material change in the information, signed under penalty of perjury; and
 - (c) A copy of the valid certificate of registration or licensure from the other state. [2016 sp.s. c 13 § 4; 2002 c 131 § 5.]

19.225.050 Disqualifications. No person may engage in the business of an athlete agent who has:

- (1) Pled guilty or no contest to, has been convicted of, or has charges pending for, a felony or other crime involving moral turpitude;
- (2) Made a materially false, misleading, deceptive, or fraudulent representation as an athlete agent or in the application for licensure or registration as an athlete agent in another state;
- (3) Engaged in conduct prohibited by RCW 19.225.100;
- (4) Had a registration or licensure as an athlete agent suspended, revoked, or denied in any state;
- (5) Been refused renewal of registration as an athlete agent in any state; or
- (6) Engaged in conduct resulting in imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic, intercollegiate, or professional athletic event on a student athlete or a sanction on an educational institution. [2016 sp.s. c 13 § 5; 2002 c 131 § 6.]

19.225.060 Form of contract. (1) An agency contract must be in a record signed by the parties.

- (2) An agency contract must contain:
 - (a) The amount and method of calculating the consideration to be paid by the student athlete for services to be pro-

vided by the athlete agent under the contract and any other consideration the athlete agent has received or will receive from any other source for entering into the contract or for providing the services;

(b) The name of any person other than the athlete agent who will be compensated because the student athlete signed the contract;

(c) A description of any expenses the student athlete agrees to reimburse;

(d) A description of the services to be provided to the athlete;

(e) The duration of the contract; and

(f) The date of execution.

(3) Subject to subsection (7) of this section, an agency contract must contain a conspicuous notice in boldface type and in substantially the following form:

**WARNING TO STUDENT ATHLETE
IF YOU SIGN THIS CONTRACT:**

(a) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT ATHLETE IN YOUR SPORT;

(b) BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR, IF YOU HAVE AN ATHLETIC DIRECTOR, AT LEAST SEVENTY-TWO HOURS PRIOR TO ENTERING INTO AN AGENCY CONTRACT THAT YOU INTEND TO ENTER INTO THIS CONTRACT AND PROVIDE THE NAME AND CONTACT INFORMATION OF THE ATHLETE AGENT AND AGAIN WITHIN SEVENTY-TWO HOURS AFTER ENTERING INTO AN AGENCY CONTRACT THAT YOU HAVE ENTERED INTO THIS CONTRACT AND PROVIDE THE NAME AND CONTACT INFORMATION OF THE ATHLETE AGENT; AND

(c) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY AS A STUDENT ATHLETE IN YOUR SPORT.

(4) An agency contract must be accompanied by a separate record signed by the student athlete or, if the athlete is a minor, the parent or guardian of the athlete acknowledging that signing the contract may result in the loss of the athlete's eligibility to participate in the athlete's sport.

(5) A student athlete or, if the athlete is a minor, the parent or guardian of the athlete may void an agency contract that does not conform to this section. If the contract is voided, any consideration received from the athlete agent under the contract to induce entering into the contract is not required to be returned.

(6) At the time an agency contract is executed, the athlete agent shall give the student athlete or, if the athlete is a minor, the parent or guardian of the athlete a copy in a record of the contract and the separate acknowledgment required in subsection (4) of this section.

(7) If a student athlete is a minor, an agency contract must be signed by the parent or guardian of the minor and the notice required by subsection (3) of this section must be revised accordingly. [2016 sp.s. c 13 § 6; 2002 c 131 § 7.]

(2018 Ed.)

19.225.070 Notice to educational institution. (1) In this section, "communicating or attempting to communicate" means contacting or attempting to contact by an in-person meeting, a record, or any other method that conveys or attempts to convey a message.

(2) Not later than seventy-two hours prior to entering into an agency contract and again not later than seventy-two hours after entering into an agency contract, or before the next scheduled athletic event in which the student athlete may participate, whichever occurs first, the athlete agent shall give notice in a record of the existence of the contract to the athletic director of the educational institution at which the athlete is enrolled or at which the athlete agent has reasonable grounds to believe the athlete intends to enroll.

(3) Not later than seventy-two hours prior to entering into an agency contract and again not later than seventy-two hours after entering into an agency contract or before the next scheduled athletic event in which the student athlete may participate, whichever occurs first, the athlete shall inform the athletic director of the educational institution at which the athlete is enrolled that the athlete has entered into an agency contract and the name and contact information of the athlete agent.

(4) If an athlete agent enters into an agency contract with a student athlete and the athlete subsequently enrolls at an educational institution, the athlete agent shall notify the athletic director of the institution of the existence of the contract not later than seventy-two hours after the athlete agent knew or should have known the athlete enrolled.

(5) If an athlete agent has a relationship with a student athlete before the athlete enrolls in an educational institution and receives an athletic scholarship from the institution, the athlete agent shall notify the institution of the relationship not later than ten days after the enrollment if the athlete agent knows or should have known of the enrollment and:

(a) The relationship was motivated in whole or part by the intention of the athlete agent to recruit or solicit the athlete to enter an agency contract in the future; or

(b) The athlete agent directly or indirectly recruited or solicited the athlete to enter an agency contract before the enrollment.

(6) An athlete agent shall give notice in a record to the athletic director of any educational institution at which a student athlete is enrolled before the athlete agent communicates or attempts to communicate with:

(a) The athlete or, if the athlete is a minor, a parent or guardian of the athlete, to influence the athlete or parent or guardian to enter into an agency contract; or

(b) Another individual to have that individual influence the athlete or, if the athlete is a minor, the parent or guardian of the athlete to enter into an agency contract.

(7) If a communication or attempt to communicate with an athlete agent is initiated by a student athlete or another individual on behalf of the athlete, the athlete agent shall notify in a record the athletic director of any educational institution at which the athlete is enrolled. The notification must be made not later than ten days after the communication or attempt.

(8) An educational institution that becomes aware of a violation of chapter 13, Laws of 2016 sp. sess. by an athlete agent shall notify any professional league or players associa-

tion with which the institution is aware the athlete agent is licensed or registered of the violation. [2016 sp.s. c 13 § 7; 2002 c 131 § 8.]

19.225.080 Student athlete's right to cancel. (1) A student athlete or, if the athlete is a minor, the parent or guardian of the athlete may cancel an agency contract by giving notice in a record of cancellation to the athlete agent not later than fourteen days after the contract is signed.

(2) A student athlete or, if the athlete is a minor, the parent or guardian of the athlete may not waive the right to cancel an agency contract.

(3) If a student athlete, parent, or guardian cancels an agency contract, the athlete, parent, or guardian is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to influence the athlete to enter into the contract. [2016 sp.s. c 13 § 8; 2002 c 131 § 9.]

19.225.090 Required records—Retention. (1) An athlete agent shall create and retain for five years records of the following:

(a) The name and address of each individual represented by the athlete agent;

(b) Each agency contract entered into by the athlete agent; and

(c) The direct costs incurred by the athlete agent in the recruitment or solicitation of each student athlete to enter into an agency contract.

(2) Records described in subsection (1) of this section are subject to subpoena in a judicial proceeding. [2016 sp.s. c 13 § 9; 2002 c 131 § 10.]

19.225.100 Prohibited acts. (1) An athlete agent, with the intent to influence a student athlete or, if the athlete is a minor, a parent or guardian of the athlete to enter into an agency contract, may not take any of the following actions or encourage any other individual to take or assist any other individual in taking any of the following actions on behalf of the athlete agent:

(a) Give materially false or misleading information or make a materially false promise or representation;

(b) Furnish anything of value to the athlete before the athlete enters into the contract; or

(c) Furnish anything of value to an individual other than the athlete or another registered athlete agent.

(2) An athlete agent may not intentionally do any of the following or encourage any other individual to do any of the following on behalf of the agent:

(a) Initiate contact, directly or indirectly, with a student athlete or, if the athlete is a minor, a parent or guardian of the athlete, to recruit or solicit the athlete, parent, or guardian to enter an agency contract unless providing the athlete with the athlete agent disclosure form as provided in RCW 19.225.030;

(b) Refuse or willfully fail to retain or produce in response to subpoena the records required by RCW 19.225.090;

(c) Fail to disclose information required by RCW 19.225.040;

(d) Provide materially false or misleading information in an athlete agent disclosure form;

(e) Predate or postdate an agency contract;

(f) Fail to notify a student athlete or, if the athlete is a minor, a parent or guardian of the athlete, before the athlete, parent, or guardian signs an agency contract for a particular sport that the signing may make the athlete ineligible to participate as a student athlete in that sport;

(g) Ask or allow a student athlete to waive or attempt to waive rights under this chapter;

(h) Fail to give notice required under RCW 19.225.070; or

(i) Engage in the business of an athlete agent in this state:

(A) At any time after conviction under RCW 19.225.110; or

(B) within five years of entry of a civil judgment under RCW 19.225.120. [2016 sp.s. c 13 § 10; 2002 c 131 § 11.]

19.225.110 Criminal/civil penalties. The commission of any act prohibited by RCW 19.225.100 by an athlete agent is a class C felony punishable according to chapter 9A.20 RCW. In addition to any criminal penalties, the court may assess a civil penalty of up to ten thousand dollars for a violation of RCW 19.225.100. [2002 c 131 § 12.]

19.225.120 Civil remedies—Application of consumer protection act. (1) An educational institution or student athlete may bring an action for damages against an athlete agent if the institution or athlete is adversely affected by an act or omission of the agent in violation of this chapter. An educational institution or student athlete is adversely affected by an act or omission of the athlete agent only if, because of the act or omission, the institution or an individual who was a student athlete at the time of the act or omission and enrolled in the institution:

(a) Is suspended or disqualified from participation in an interscholastic or intercollegiate sport event by or under the rules of a state or national federation or association that promotes or regulates interscholastic or intercollegiate sports; or

(b) Suffers financial damage.

(2) A plaintiff that prevails in an action under this section may recover actual damages and costs, and reasonable attorneys' fees. An athlete agent found liable under this section forfeits any right of payment for anything of benefit or value provided to the student athlete and shall refund any consideration paid to the athlete agent by or on behalf of the athlete.

(3) 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 and commerce and an unfair method of competition for the purposes of applying the consumer protection act, chapter 19.86 RCW. [2016 sp.s. c 13 § 11; 2002 c 131 § 13.]

19.225.900 Short title. This chapter may be cited as the uniform athlete agents act. [2002 c 131 § 1.]

19.225.901 Application—Construction—2002 c 131. 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 of this chapter among states that enact it. [2002 c 131 § 14.]

19.225.904 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, 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, 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. [2009 c 521 § 60.]

19.225.905 Relation to electronic signatures in global and national commerce act. Chapter 13, Laws of 2016 sp. sess. modifies, limits, or supersedes the 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). [2016 sp.s. c 13 § 12.]

Chapter 19.230 RCW UNIFORM MONEY SERVICES ACT

Sections

19.230.005	Intent.
19.230.010	Definitions.
19.230.020	Application of chapter—Exclusions.
19.230.030	Money transmitter license required.
19.230.033	Multistate licensing system—Director's discretion.
19.230.040	Application for a money transmitter license.
19.230.050	Money transmitters—Surety bond.
19.230.055	Online currency exchangers—Surety bond.
19.230.060	Tangible net worth for money transmitter.
19.230.070	Issuance of money transmitter license.
19.230.080	Currency exchange license required.
19.230.090	Application for a currency exchange license.
19.230.100	Issuance of a currency exchange license—Surrender of license.
19.230.110	Annual assessment and annual report.
19.230.120	Relationship between licensee and authorized delegate.
19.230.130	Authority to conduct examinations and investigations.
19.230.133	Subpoena authority—Application—Contents—Notice—Fees.
19.230.140	Examinations—Joint and concurrent examinations.
19.230.150	Reports.
19.230.152	Reports—Nationwide licensing system.
19.230.160	Change of control.
19.230.170	Records.
19.230.180	Money laundering reports.
19.230.190	Confidentiality.
19.230.200	Maintenance of permissible investments.
19.230.210	Types of permissible investments.
19.230.220	Administrative proceedings.
19.230.230	License suspension, revocation—Receivership.
19.230.233	Informal settlement of complaints or enforcement actions.
19.230.240	Suspension and revocation of authorized delegates.
19.230.250	Unlicensed persons.
19.230.260	Temporary orders to cease and desist.
19.230.270	Consent orders.
19.230.280	Violations—Liability.
19.230.290	Civil penalties.
19.230.300	Criminal penalties.
19.230.303	Statute of limitations.
19.230.310	Administration and rule-making powers.
19.230.320	Fees.
19.230.330	Money transmitter delivery, receipts, and refunds.

19.230.340	Prohibited practices.
19.230.350	Third-party account administrators—Licensure required—Requirements.
19.230.360	Third-party account administrators—Record maintenance.
19.230.370	Virtual currency licensees—Disclosures.
19.230.900	Short title.
19.230.901	Effective date—2003 c 287.
19.230.902	Implementation.
19.230.903	Uniformity of application and construction.

19.230.005 Intent. It is the intent of the legislature to establish a state system of licensure and regulation to ensure the safe and sound operation of money transmission and currency exchange businesses, to ensure that these businesses are not used for criminal purposes, to promote confidence in the state's financial system, and to protect the public interest. [2003 c 287 § 2.]

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

(1) "Affiliate" means any person who directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, another person.

(2) "Annual assessment due date" means the date specified in rule by the director upon which the annual assessment is due.

(3) "Applicant" means a person that files an application for a license under this chapter, including the applicant's proposed responsible individual and executive officers, and persons in control of the applicant.

(4) "Authorized delegate" means a person a licensee designates to provide money services on behalf of the licensee. A person that is exempt from licensing under this chapter cannot have an authorized delegate.

(5) "Board director" means a natural person who is a member of the applicant's or licensee's board of directors if the applicant is a corporation or limited liability company, or a partner if the applicant or licensee is a partnership.

(6) "Closed loop prepaid access" means prepaid access that can only be redeemed for a limited universe of goods, intangibles, services, or other items provided by the issuer of the prepaid access, its affiliates, or others involved in transactions functionally related to the issuer or its affiliates.

(7) "Control" means:

(a) Ownership of, or the power to vote, directly or indirectly, at least twenty-five percent of a class of voting securities or voting interests of a licensee or applicant, or person in control of a licensee or applicant;

(b) Power to elect a majority of executive officers, managers, directors, trustees, or other persons exercising managerial authority of a licensee or applicant, or person in control of a licensee or applicant; or

(c) Power to exercise directly or indirectly, a controlling influence over the management or policies of a licensee or applicant, or person in control of a licensee or applicant.

(8) "Currency exchange" means exchanging the money of one government for money of another government, or holding oneself out as able to exchange the money of one government for money of another government. The following persons are not considered currency exchangers:

(a) Affiliated businesses that engage in currency exchange for a business purpose other than currency exchange;

(b) A person who provides currency exchange services for a person acting primarily for a business, commercial, agricultural, or investment purpose when the currency exchange is incidental to the transaction;

(c) A person who deals in coins or a person who deals in money whose value is primarily determined because it is rare, old, or collectible; and

(d) A person who in the regular course of business chooses to accept from a customer the currency of a country other than the United States in order to complete the sale of a good or service other than currency exchange, that may include cash back to the customer, and does not otherwise trade in currencies or transmit money for compensation or gain.

(9) "Currency exchanger" means a person that is engaged in currency exchange.

(10) "Director" means the director of financial institutions.

(11) "Executive officer" means a president, chairperson of the executive committee, chief financial officer, responsible individual, or other individual who performs similar functions.

(12) "Financial institution" means any person doing business under the laws of any state or the United States relating to commercial banks, bank holding companies, savings banks, savings and loan associations, trust companies, or credit unions.

(13) "Licensee" means a person licensed under this chapter. "Licensee" also means any person, whether located within or outside of this state, who fails to obtain a license required by this chapter.

(14) "Material litigation" means litigation that according to generally accepted accounting principles is significant to an applicant's or a licensee's financial health and would be required to be disclosed in the applicant's or licensee's annual audited financial statements, report to shareholders, or similar records.

(15) "Mobile location" means a vehicle or movable facility where money services are provided.

(16) "Money" means a medium of exchange that is authorized or adopted by the United States or a foreign government or other recognized medium of exchange. "Money" includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more governments.

(17) "Money services" means money transmission or currency exchange.

(18) "Money transmission" means receiving money or its equivalent value (equivalent value includes virtual currency) to transmit, deliver, or instruct to be delivered to another location, inside or outside the United States, by any means including but not limited to by wire, facsimile, or electronic transfer. "Money transmission" includes selling, issuing, or acting as an intermediary for open loop prepaid access and payment instruments, but not closed loop prepaid access. "Money transmission" does not include: The provision solely of connection services to the internet, telecommunications services, or network access; units of value that are issued in

affinity or rewards programs that cannot be redeemed for either money or virtual currencies; and units of value that are used solely within online gaming platforms that have no market or application outside of the gaming platforms.

(19) "Money transmitter" means a person that is engaged in money transmission.

(20) "Open loop prepaid access" means prepaid access redeemable at multiple, unaffiliated merchants or service providers, or automated teller machines.

(21) "Outstanding money transmission" means the value of all money transmissions reported to the licensee for which the money transmitter has received money or its equivalent value from the customer for transmission, but has not yet completed the money transmission by delivering the money or monetary value to the person designated by the customer.

(22) "Payment instrument" means a check, draft, money order, or traveler's check for the transmission or payment of money or its equivalent value, whether or not negotiable. "Payment instrument" does not include a credit card voucher, letter of credit, or instrument that is redeemable by the issuer in goods or services.

(23) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture; government, governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(24) "Prepaid access" means access to money that has been paid in advance and can be retrieved or transferred through an electronic device or vehicle, such as a card, code, electronic serial number, mobile identification number, or personal identification number.

(25) "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.

(26) "Responsible individual" means an individual who is employed by a licensee and has principal managerial authority over the provision of money services by the licensee in this state.

(27) "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.

(28) "Tangible net worth" means the physical worth of a licensee, calculated by taking a licensee's assets and subtracting its liabilities and its intangible assets, such as copyrights, patents, intellectual property, and goodwill.

(29) "Unsafe or unsound practice" means a practice or conduct by a licensee or an authorized delegate which creates the likelihood of material loss, insolvency, or dissipation of the licensee's assets, or otherwise materially prejudices the financial condition of the licensee or the interests of its customers.

(30) "Virtual currency" means a digital representation of value used as a medium of exchange, a unit of account, or a store of value, but does not have legal tender status as recognized by the United States government. "Virtual currency" does not include the software or protocols governing the transfer of the digital representation of value or other uses of virtual distributed ledger systems to verify ownership or authenticity in a digital capacity when the virtual currency is

not used as a medium of exchange. [2017 c 30 § 1; 2013 c 106 § 1. Prior: 2010 c 73 § 1; 2003 c 287 § 3.]

19.230.020 Application of chapter—Exclusions. This chapter does not apply to:

- (1) The United States or a department, agency, or instrumentality thereof;
- (2) The United States postal service or a contractor on behalf of the United States postal service;
- (3) A state, county, city, or a department, agency, or instrumentality thereof;
- (4) A financial institution or its subsidiaries, affiliates, and service corporations, or any office of an international banking corporation, branch of a foreign bank, or corporation organized pursuant to the Bank Service Corporation Act (12 U.S.C. Sec. 1861-1867) or a corporation organized under the Edge Act (12 U.S.C. Sec. 611-633);
- (5) Electronic funds transfer of governmental benefits for a federal, state, county, or governmental agency by a contractor on behalf of the United States or a department, agency, or instrumentality thereof, or a state or governmental subdivision, agency, or instrumentality thereof;
- (6) A board of trade designated as a contract market under the federal Commodity Exchange Act (7 U.S.C. Sec. 1-25) or a person that, in the ordinary course of business, provides clearance and settlement services for a board of trade to the extent of its operation as, or for, a board of trade;
- (7) A registered futures commission merchant under the federal commodities laws to the extent of its operation as such a merchant;
- (8) A person that provides clearance or settlement services under a registration as a clearing agency, or an exemption from that registration granted under the federal securities laws, to the extent of its operation as such a provider;
- (9) A person:
 - (a) Operating a payment system that provides processing, clearing, or settlement services, between or among persons who are all excluded by this section, in connection with wire transfers, credit card transactions, debit card transactions, prepaid access transactions, automated clearinghouse transfers, or similar funds transfers;
 - (b) Who is a contracted service provider of an entity in subsection (4) of this section that provides processing, clearing, or settlement services in connection with wire transfers, credit card transactions, debit card transactions, prepaid access transactions, automated clearinghouse transfers, or similar funds transfers; or
 - (c) That facilitates payment for goods or services (not including money transmission itself) or bill payment through a clearance and settlement process using bank secrecy act regulated institutions pursuant to a written contract with the payee and either payment to the person facilitating the payment processing satisfies the payor's obligation to the payee or that obligation is otherwise extinguished;
- (10) A person registered as a securities broker-dealer or investment advisor under federal or state securities laws to the extent of its operation as such a broker-dealer or investment advisor;
- (11) An insurance company, title insurance company, or escrow agent to the extent that such an entity is lawfully authorized to conduct business in this state as an insurance

(2018 Ed.)

company, title insurance company, or escrow agent and to the extent that they engage in money transmission or currency exchange as an ancillary service when conducting insurance, title insurance, or escrow activity;

(12) The issuance, sale, use, redemption, or exchange of closed loop prepaid access or of payment instruments by a person licensed under chapter 31.45 RCW;

(13) An attorney, to the extent that the attorney is lawfully authorized to practice law in this state and to the extent that the attorney engages in money transmission or currency exchange as an ancillary service to the practice of law;

(14) A seller or issuer of prepaid access when the funds are covered by federal deposit insurance immediately upon sale or issue;

(15) A person that transmits wages, salaries, or employee benefits on behalf of employers when the money transmission or currency exchange is an ancillary service in a suite of services that may include, but is not limited to, the following: Facilitate the payment of payroll taxes to state and federal agencies, make payments relating to employee benefit plans, make distribution of other authorized deductions from an employees' wages or salaries, or transmit other funds on behalf of an employer in connection with transactions related to employees; or

(16) The lawful business of bookkeeping or accounting to the extent the money transmission or currency exchange is an ancillary service.

The director may, at his or her discretion, waive applicability of the licensing provisions of this chapter when the director determines it necessary to facilitate commerce and protect consumers. The burden of proving the applicability of an exclusion or exception from licensing is upon the person claiming the exclusion or exception. The director may adopt rules to implement this section. [2017 c 30 § 2; 2013 c 106 § 2; 2010 c 73 § 2; 2003 c 287 § 4.]

19.230.030 Money transmitter license required. (1) A person may not engage in the business of money transmission, or advertise, solicit, or hold itself out as providing money transmission, unless the person is:

- (a) Licensed as a money transmitter under this chapter;
 - (b) An authorized delegate of a person licensed as a money transmitter under this chapter; or
 - (c) Excluded under RCW 19.230.020.
- (2) A money transmitter license is not transferable or assignable. [2017 c 30 § 3; 2003 c 287 § 5.]

19.230.033 Multistate licensing system—Director's discretion. Applicants may be required to make application through a multistate licensing system as prescribed by the director. Existing licensees may be required to transition onto a multistate licensing system as prescribed by the director. [2012 c 17 § 17.]

19.230.040 Application for a money transmitter license. (1) A person applying for a money transmitter license under this chapter shall do so in a form and in a medium prescribed in rule by the director. The application must state or contain:

(a) The legal name, business addresses, and residential address, if applicable, of the applicant and any fictitious or trade name used by the applicant in conducting its business;

(b) The legal name, residential and business addresses, date of birth, social security number, employment history for the five-year period preceding the submission of the application of the applicant's proposed responsible individual, and documentation that the proposed responsible individual is a citizen of the United States or has obtained legal immigration status to work in the United States. In addition, the applicant shall provide the fingerprints of the proposed responsible individual upon the request of the director;

(c) For the ten-year period preceding submission of the application, a list of any criminal convictions of the proposed responsible individual of the applicant, any material litigation in which the applicant has been involved, and any litigation involving the proposed responsible individual relating to the provision of money services;

(d) A description of any money services previously provided by the applicant and the money services that the applicant seeks to provide to persons in Washington state;

(e) A list of the applicant's proposed authorized delegates and the locations where the applicant and its authorized delegates will engage in the provision of money services to persons in Washington state on behalf of the licensee;

(f) A list of other states in which the applicant is licensed to engage in money transmission, or provide other money services, and any license revocations, suspensions, restrictions, or other disciplinary action taken against the applicant in another state;

(g) A list of any license revocations, suspensions, restrictions, or other disciplinary action taken against any money services business involving the proposed responsible individual;

(h) Information concerning any bankruptcy or receivership proceedings involving or affecting the applicant or the proposed responsible individual;

(i) A sample form of contract for authorized delegates, if applicable;

(j) A description of the source of money and credit to be used by the applicant to provide money services; and

(k) Any other information regarding the background, experience, character, financial responsibility, and general fitness of the applicant, the applicant's responsible individual, or authorized delegates that the director may require in rule.

(2) If an applicant is a corporation, limited liability company, partnership, or other entity, the applicant shall also provide:

(a) The date of the applicant's incorporation or formation and state or country of incorporation or formation;

(b) If applicable, a certificate of good standing from the state or country in which the applicant is incorporated or formed;

(c) A brief description of the structure or organization of the applicant, including any parent or subsidiary of the applicant, and whether any parent or subsidiary is publicly traded;

(d) The legal name, any fictitious or trade name, all business and residential addresses, date of birth, social security number, and employment history in the ten-year period preceding the submission of the application for each executive

officer, board director, or person that has control of the applicant;

(e) If the applicant or its corporate parent is not a publicly traded entity, the director may request the fingerprints of each executive officer, board director, or person that has control of the applicant;

(f) A list of any criminal convictions, material litigation, and any litigation related to the provision of money services, in the ten-year period preceding the submission of the application in which any executive officer, board director, or person in control of the applicant has been involved;

(g) A copy of the applicant's audited financial statements for the most recent fiscal year or, if the applicant is a wholly owned subsidiary of another corporation, the most recent audited consolidated annual financial statement of the parent corporation or the applicant's most recent audited consolidated annual financial statement, and in each case, if available, for the two-year period preceding the submission of the application;

(h) A copy of the applicant's unconsolidated financial statements for the current fiscal year, whether audited or not, and, if available, for the two-year period preceding the submission of the application;

(i) If the applicant is publicly traded, a copy of the most recent report filed with the United States securities and exchange commission under section 13 of the federal Securities Exchange Act of 1934 (15 U.S.C. Sec. 78m);

(j) If the applicant is a wholly owned subsidiary of:

(i) A corporation publicly traded in the United States, a copy of audited financial statements for the parent corporation for the most recent fiscal year or a copy of the parent corporation's most recent report filed under section 13 of the federal Securities Exchange Act of 1934 (15 U.S.C. Sec. 78m); or

(ii) A corporation publicly traded outside the United States, a copy of similar documentation filed with the regulator of the parent corporation's domicile outside the United States;

(k) If the applicant has a registered agent in this state, the name and address of the applicant's registered agent in this state; and

(l) Any other information that the director may require in rule regarding the applicant, each executive officer, or each board director to determine the applicant's background, experience, character, financial responsibility, and general fitness.

(3) A nonrefundable application fee and an initial license fee, as determined in rule by the director, must accompany an application for a license under this chapter. The initial license fee must be refunded if the application is denied.

(4) As part of or in connection with an application for any license under this section, or periodically upon license renewal, each officer, director, responsible individual, and owner applicant shall furnish information concerning his or her identity, including fingerprints for submission to the Washington state patrol or the federal bureau of investigation for a state and national criminal history background check, personal history, experience, business record, purposes, and other pertinent facts, as the director may reasonably require. As part of or in connection with an application for a license under this chapter, or periodically upon license renewal, the director is authorized to receive criminal history record infor-

mation that includes nonconviction data as defined in RCW 10.97.030. The department may only disseminate nonconviction data obtained under this section to criminal justice agencies. This section does not apply to financial institutions regulated under chapters 31.12 and 31.13 RCW and Titles 32 and 33 RCW. The requirements of this subsection do not apply when the applicant or its corporate parents are publicly traded entities.

(5) For business models that store virtual currency on behalf of others, the applicant must provide a third-party security audit of all electronic information and data systems acceptable to the director.

(6) The director or the director's designated representative may deny an application for a proposed license or trade name if the proposed license or trade name is similar to a currently existing licensee name, including trade names.

(7) The director may waive one or more requirements of this section or permit an applicant to submit other information in lieu of the required information. [2017 c 30 § 4; 2013 c 106 § 3; 2003 c 287 § 6.]

19.230.050 Money transmitters—Surety bond. (1) Each money transmitter licensee shall maintain a surety bond in an amount based on the previous year's money transmission dollar volume; and the previous year's payment instrument dollar volume. The minimum surety bond must be at least ten thousand dollars, and not to exceed five hundred fifty thousand dollars. The director may adopt rules to implement this section.

(2) The surety bond shall run to the state of Washington as obligee, and shall run to the benefit of the state and any person or persons who suffer loss by reason of a licensee's or licensee's authorized delegate's violation of this chapter or the rules adopted under this chapter. A claimant against a money transmitter licensee may maintain an action on the bond, or the director may maintain an action on behalf of the claimant.

(3) The surety bond shall be continuous and may be canceled by the surety upon the surety giving written notice to the director of its intent to cancel the bond. The cancellation is effective thirty days after the notice of cancellation is received by the director or the director's designee. Whether or not the bond is renewed, continued, replaced, or modified, including increases or decreases in the penal sum, it is considered one continuous obligation, and the surety upon the bond is not liable in an aggregate or cumulative amount exceeding the penal sum set forth on the face of the bond. In no event may the penal sum, or any portion thereof, at two or more points in time, be added together in determining the surety's liability.

(4) A surety bond must cover claims for at least five years after the date of a money transmitter licensee's violation of this chapter, or at least five years after the date the money transmitter licensee ceases to provide money services in this state, whichever is longer. However, the director may permit the amount of the surety bond to be reduced or eliminated before the expiration of that time to the extent the amount of the licensee's obligations outstanding in this state are reduced.

(5) In the event that a money transmitter licensee does not maintain a surety bond in the amount required under sub-

section (1) of this section, the director may issue a temporary cease and desist order under RCW 19.230.260.

(6) The director may increase the amount of the bond required up to a maximum of one million dollars based on the nature and volume of business activities, the financial health of the company, and other criteria specified by the director in rule. [2017 c 30 § 5; 2010 c 73 § 3; 2003 c 287 § 7.]

19.230.055 Online currency exchangers—Surety bond. (1) Each online currency exchanger licensee shall maintain a surety bond in an amount based on the previous year's currency exchange dollar volume. The minimum surety bond must be at least ten thousand dollars, and not to exceed fifty thousand dollars. The director may adopt rules to implement this section.

(2) The surety bond shall run to the state of Washington as obligee, and shall run to the benefit of the state and any person or persons who suffer loss by reason of a licensee's violation of this chapter or the rules adopted under this chapter. A claimant against the bond may maintain an action on the bond, or the director may maintain an action on behalf of the claimant.

(3) The surety bond must be continuous and may be canceled by the surety upon the surety giving written notice to the director of its intent to cancel the bond. The cancellation is effective thirty days after the notice of cancellation is received by the director or the director's designee. Whether or not the bond is renewed, continued, replaced, or modified, including increases or decreases in the penal sum, it is considered one continuous obligation, and the surety upon the bond is not liable in an aggregate or cumulative amount exceeding the penal sum set forth on the face of the bond. In no event may the penal sum, or any portion thereof, at two or more points in time, be added together in determining the surety's liability.

(4) A surety bond must cover claims for at least one year after the date of an online currency exchanger licensee's violation of this chapter, or at least one year after the date the online currency exchanger licensee ceases to provide online currency exchange services in this state, whichever is longer. However, the director may permit the amount of the surety bond to be reduced or eliminated before the expiration of that time to the extent the amount of the licensee's obligations outstanding in this state are reduced.

(5) In the event that an online currency exchanger licensee does not maintain a surety bond in the amount required under subsection (1) of this section, the director may issue a temporary cease and desist order under RCW 19.230.260.

(6) The director may increase the amount of the bond required up to a maximum of one million dollars based on the nature and volume of the business activities, the financial health of the company, and other criteria specified by the director in rule. [2017 c 30 § 7.]

19.230.060 Tangible net worth for money transmitter. A money transmitter licensed under this chapter shall maintain a tangible net worth, determined in accordance with generally accepted accounting principles, as determined in rule by the director. The director shall require a tangible net worth of at least ten thousand dollars and not more than three

million dollars. In the event that a licensee's tangible net worth, as determined in accordance with generally accepted accounting principles, falls below the amount required in rule, the director or the director's designee may initiate action under RCW 19.230.230 and 19.230.260. The licensee may request a hearing on such an action under chapter 34.05 RCW. [2010 c 73 § 4; 2003 c 287 § 8.]

19.230.070 Issuance of money transmitter license.

(1) When an application for a money transmitter license is filed under this chapter, the director or the director's designee shall investigate the applicant's financial condition and responsibility, financial and business experience, competence, character, and general fitness. The director or the director's designee may conduct an on-site investigation of the applicant, the cost of which must be paid by the applicant as specified in RCW 19.230.320 or rules adopted under this chapter. The director shall issue a money transmitter license to an applicant under this chapter if the director or the director's designee finds that all of the following conditions have been fulfilled:

(a) The applicant has complied with RCW 19.230.040, 19.230.050, and 19.230.060;

(b) The financial condition and responsibility, financial and business experience, competence, character, and general fitness of the applicant; and the competence, financial and business experience, character, and general fitness of the executive officers, proposed responsible individual, board directors, and persons in control of the applicant; indicate that it is in the interest of the public to permit the applicant to engage in the business of providing money transmission services; and

(c) Neither the applicant, nor any executive officer, nor person who exercises control over the applicant, nor the proposed responsible individual is listed on the specially designated nationals and blocked persons list prepared by the United States department of the treasury or department of state under Presidential Executive Order No. 13224.

(2) The director may for good cause extend the application review period or condition the issuance of the license.

(3) An applicant whose application is denied by the director under this chapter may appeal under chapter 34.05 RCW.

(4) A money transmitter license issued under this chapter is valid from the date of issuance and remains in effect with no fixed date of expiration unless otherwise suspended or revoked by the director or unless the license expires for non-payment of the annual assessment and any late fee, if applicable.

(5) A money transmitter licensee may surrender a license by providing the director with a written notice of surrender through the nationwide licensing system. The written notice of surrender must include notice of where the records of the licensee will be stored and the name, address, telephone number, and other contact information of a responsible party who is authorized to provide access to the records. The surrender of a license does not reduce or eliminate the licensee's civil or criminal liability arising from acts or omissions occurring prior to the surrender of the license, including any administrative actions undertaken by the director or the director's designee to revoke or suspend a license, to assess fines, to

order payment of restitution, or to exercise any other authority authorized under this chapter. [2017 c 30 § 6; 2010 c 73 § 5; 2003 c 287 § 9.]

19.230.080 Currency exchange license required. (1)

A person may not engage in the business of currency exchange or advertise, solicit, or hold itself out as able to engage in currency exchange for which the person receives revenue equal to or greater than five percent of total revenues, unless the person is:

(a) Licensed to provide currency exchange under this chapter;

(b) Licensed for money transmission under this chapter; or

(c) An authorized delegate of a person licensed under this chapter.

(2) A license under this chapter is not transferable or assignable. [2003 c 287 § 10.]

19.230.090 Application for a currency exchange license. (1) A person applying for a currency exchange license under this chapter shall do so in a form and in a medium prescribed in rule by the director. The application must state or contain:

(a) The legal name, business addresses, and residential address, if applicable, of the applicant and any fictitious or trade name used by the applicant in conducting its business, and the legal name, residential and business addresses, date of birth, social security number, employment history for the five-year period preceding the submission of the application; and upon request of the director, fingerprints of the applicant's proposed responsible individual and documentation that the proposed responsible individual is a citizen of the United States or has obtained legal immigration status to work in the United States;

(b) For the ten-year period preceding the submission of the application, a list of any criminal convictions of the proposed responsible individual of the applicant, any material litigation in which the applicant has been involved, and any litigation involving the proposed responsible individual relating to the provision of money services;

(c) A description of any money services previously provided by the applicant and the money services that the applicant seeks to provide in this state;

(d) A list of the applicant's proposed authorized delegates and the locations in this state where the applicant and its authorized delegates propose to engage in currency exchange;

(e) A list of other states in which the applicant engages in currency exchange or provides other money services and any license revocations, suspensions, restrictions, or other disciplinary action taken against the applicant in another state;

(f) A list of any license revocations, suspensions, restrictions, or other disciplinary action taken against any money services business involving the proposed responsible individual;

(g) Information concerning any bankruptcy or receivership proceedings involving or affecting the applicant or the proposed responsible individual;

(h) A sample form of contract for authorized delegates, if applicable;

(i) A description of the source of money and credit to be used by the applicant to provide currency exchange; and

(j) Any other information regarding the background, experience, character, financial responsibility, and general fitness of the applicant, the applicant's responsible individual, or authorized delegates that the director may require in rule.

(2) If an applicant is a corporation, limited liability company, partnership, or other entity, the applicant shall also provide:

(a) The date of the applicant's incorporation or formation and state or country of incorporation or formation;

(b) If applicable, a certificate of good standing from the state or country in which the applicant is incorporated or formed;

(c) A brief description of the structure or organization of the applicant, including any parent or subsidiary of the applicant, and whether any parent or subsidiary is publicly traded;

(d) The legal name, any fictitious or trade name, all business and residential addresses, date of birth, social security number, and employment history in the ten-year period preceding the submission of the application for each executive officer, board director, or person that has control of the applicant;

(e) If the applicant or its corporate parent is not a publicly traded entity, the director may request the fingerprints for each executive officer, board director, or person that has control of the applicant; and

(f) A list of any criminal convictions, material litigation, and any litigation related to the provision of money services, in which any executive officer, board director, or person in control of the applicant has been involved in the ten-year period preceding the submission of the application.

(3) A nonrefundable application fee and an initial license fee, as determined in rule by the director, must accompany an application for a currency exchange license under this chapter. The license fee must be refunded if the application is denied.

(4) The director may waive one or more requirements of subsection (1) or (2) of this section or permit an applicant to submit other information in lieu of the required information. [2003 c 287 § 11.]

19.230.100 Issuance of a currency exchange license—Surrender of license. (1) When an application for a currency exchange license is filed under this chapter, the director or the director's designee shall investigate the applicant's financial condition and responsibility, financial and business experience, competence, character, and general fitness. The director or the director's designee may conduct an on-site investigation of the applicant, the cost of which must be paid by the applicant as specified in RCW 19.230.320 or rules adopted under this chapter. The director shall issue a currency exchange license to an applicant under this chapter if the director or the director's designee finds that all of the following conditions have been fulfilled:

(a) The applicant has complied with RCW 19.230.090;

(b) The financial and business experience, competence, character, and general fitness of the applicant; and the competence, financial and business experience, character, and general fitness of the executive officers, proposed responsible individual, board directors, and persons in control of the

applicant indicate that it is in the interest of the public to permit the applicant to engage in the business of providing currency exchange; and

(c) Neither the applicant, nor any executive officer, nor person who exercises control over the applicant, nor the proposed responsible individual are listed on the specially designated nationals and blocked persons list prepared by the United States department of treasury or department of state under Presidential Executive Order No. 13224.

(2) The director may for good cause extend the application review period.

(3) An applicant whose application is denied by the director under this chapter may appeal under chapter 34.05 RCW.

(4) A currency exchange license issued under this chapter is valid from the date of issuance and remains in effect with no fixed date of expiration unless otherwise suspended or revoked by the director, or unless the license expires for nonpayment of the annual assessment and any late fee, if applicable.

(5) A currency exchange licensee may surrender a license by providing the director with a written notice of surrender through the nationwide licensing system. The written notice of surrender must include notice of where the records of the licensee will be stored and the name, address, telephone number, and other contact information of a responsible party who is authorized to provide access to the records. The surrender of a license does not reduce or eliminate the licensee's civil or criminal liability arising from acts or omissions occurring prior to the surrender of the license, including any administrative actions undertaken by the director or the director's designee to revoke or suspend a license, to assess fines, to order payment of restitution, or to exercise any other authority authorized under this chapter. [2017 c 30 § 8; 2003 c 287 § 12.]

19.230.110 Annual assessment and annual report.

(1) A licensee shall pay an annual assessment as established in rule by the director no later than the annual assessment due date or, if the annual assessment due date is not a business day, on the next business day. A licensee shall pay an annual assessment based on the previous year's Washington dollar volume of: (a) Money transmissions; (b) payment instruments; (c) currency exchanges; and (d) prepaid access sales. The total minimum assessment must be one thousand dollars per year, and the maximum assessment may not exceed one hundred thousand dollars per year.

(2) A licensee shall submit an accurate annual report with the annual assessment, in a form and in a medium prescribed by the director in rule. The annual report must state or contain:

(a) If the licensee is a money transmitter, a copy of the licensee's most recent audited annual financial statement or, if the licensee is a wholly owned subsidiary of another corporation, the most recent audited consolidated annual financial statement of the parent corporation or the licensee's most recent audited consolidated annual financial statement;

(b) A description of each material change, as defined in rule by the director, to information submitted by the licensee in its original license application which has not been previously reported to the director on any required report;

(c) If the licensee is a money transmitter, a list of the licensee's permissible investments and a certification that the licensee continues to maintain permissible investments according to the requirements set forth in RCW 19.230.200 and 19.230.210;

(d) If the licensee is a money transmitter, proof that the licensee continues to maintain an adequate bond as required by RCW 19.230.050; and

(e) A list of the locations where the licensee or an authorized delegate of the licensee engages in or provides money services to persons in Washington state.

(3) If a licensee does not file an annual report or pay its annual assessment by the annual assessment due date, the director or the director's designee shall send the licensee a notice of suspension and assess the licensee a late fee not to exceed twenty-five percent of the annual assessment as established in rule by the director. The licensee's annual report and payment of both the annual assessment and the late fee must arrive in the department's offices by 5:00 p.m. on the thirtieth day after the assessment due date or any extension of time granted by the director, unless that date is not a business day, in which case the licensee's annual report and payment of both the annual assessment and the late fee must arrive in the department's offices by 5:00 p.m. on the next occurring business day. If the licensee's annual report and payment of both the annual assessment and late fee do not arrive by such date, the expiration of the licensee's license is effective at 5:00 p.m. on the thirtieth day after the assessment due date, unless that date is not a business day, in which case the expiration of the licensee's license is effective at 5:00 p.m. on the next occurring business day. The director, or the director's designee, may reinstate the license if, within twenty days after its effective date, the licensee:

(a) Files the annual report and pays both the annual assessment and the late fee; and

(b) Did not engage in or provide money services during the period its license was expired. [2017 c 30 § 9; 2013 c 106 § 4; 2010 c 73 § 6; 2003 c 287 § 13.]

19.230.120 Relationship between licensee and authorized delegate. (1) In this section, "remit" means to make direct payments of money to a licensee or its representative authorized to receive money or to deposit money in a bank in an account specified by the licensee.

(2) A contract between a licensee and an authorized delegate must require the authorized delegate to operate in full compliance with this chapter and the rules adopted under this chapter.

(3) Neither the licensee nor an authorized delegate may authorize subdelegates.

(4) An authorized delegate shall remit all money owing to the licensee in accordance with the terms of the contract between the licensee and the authorized delegate.

(5) If a license is suspended or revoked or a licensee surrenders its license, the director shall notify all of the licensee's authorized delegates whose names are filed with the director, at the address of record with the director, of the suspension, revocation, or surrender and shall publish the name of the licensee. An authorized delegate shall immediately cease to provide money services as a delegate of the licensee upon receipt of notice, or after publication is made,

that the licensee's license has been suspended, revoked, or surrendered.

(6) An authorized delegate may not provide money services other than those allowed the licensee under its license. In addition, an authorized delegate may not provide money services outside the scope of activity permissible under the contract between the authorized delegate and the licensee, except activity in which the authorized delegate is authorized to engage under RCW 19.230.030 or 19.230.080. [2013 c 106 § 5; 2003 c 287 § 14.]

19.230.130 Authority to conduct examinations and investigations. (1) For the purpose of discovering violations of this chapter or rules adopted under this chapter, discovering unsafe and unsound practices, or securing information lawfully required under this chapter, the director may at any time, either personally or by designee, investigate or examine the business and, wherever located, the books, accounts, records, papers, documents, files, and other information used in the business of every licensee or its authorized delegates, and of every person who is engaged in the business of providing money services, whether the person acts or claims to act under or without the authority of this chapter. For these purposes, the director or designated representative shall have free access to the offices and places of business, books, accounts, papers, documents, other information, records, files, safes, and vaults of all such persons. The director or the director's designee may require the attendance of and examine under oath all persons whose testimony may be required about the business or the subject matter of any investigation, examination, or hearing and may require such person to produce books, accounts, papers, documents, records, files, and any other information the director or designated person declares is relevant to the inquiry. The director may require the production of original books, accounts, papers, documents, records, files, and other information; may require that such original books, accounts, papers, documents, records, files, and other information be copied; or may make copies himself or herself or by designee of such original books, accounts, papers, documents, records, files, or other information. The director or designated person may issue a directive, subpoena, or subpoena duces tecum requiring attendance or compelling production of the books, accounts, papers, documents, records, files, or other information.

(2) The licensee, applicant, or person subject to licensing under this chapter shall pay the cost of examinations and investigations as specified in RCW 19.230.320 or rules adopted under this chapter.

(3) Information obtained during an examination or investigation under this chapter may be disclosed only as provided in RCW 19.230.190. [2017 c 30 § 10; 2003 c 287 § 15.]

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.

19.230.140 Examinations—Joint and concurrent examinations. (1) The director may: Conduct an on-site examination, participate in a joint or concurrent examination with other state or federal agencies, or investigate the books, accounts, records, papers, documents, files, and other information used in the business of every licensee or its authorized delegates in conjunction with representatives of other state agencies or agencies of another state or of the federal government. The director may accept an examination report or an investigation report of an agency of this state or of another state or of the federal government.

(2) A joint or concurrent examination or investigation, or an acceptance of an examination or investigation report, does not preclude the director from conducting an examination or investigation under this chapter. A joint report or a report accepted under this section is an official report of the director for all purposes. [2017 c 30 § 11; 2003 c 287 § 16.]

19.230.150 Reports. (1) A licensee shall file with the director within thirty days any material changes in information provided in a licensee's application as prescribed in rule by the director. If this information indicates that the licensee is no longer in compliance with this chapter, the director may take any action authorized under this chapter to ensure that the licensee operates in compliance with this chapter.

(2) A licensee shall report all licensee branch locations and all authorized delegates to the nationwide licensing system within thirty days of the contractual agreement with the licensee to provide money services in Washington. Accurate records must be maintained within the licensing system as prescribed in rule.

(3) A licensee shall file a report with the director within one business day after the licensee has reason to know of the occurrence of any of the following events:

(a) The filing of a petition by or against the licensee, or any authorized delegate of the licensee, under the United States Bankruptcy Code (11 U.S.C. Sec. 101-110) for bankruptcy or reorganization;

(2018 Ed.)

(b) The filing of a petition by or against the licensee, or any authorized delegate of the licensee, for receivership, the commencement of any other judicial or administrative proceeding for its dissolution or reorganization, or the making of a general assignment for the benefit of its creditors;

(c) The commencement of a proceeding to revoke, suspend, restrict, or condition its license, or otherwise discipline or sanction the licensee, in a state or country in which the licensee engages in business or is licensed;

(d) The cancellation or other impairment of the licensee's bond;

(e) A charge or conviction of the licensee or of an executive officer, responsible individual, board director of the licensee, or person in control of the licensee, for a felony; or

(f) A charge or conviction of an authorized delegate for a felony. [2017 c 30 § 12; 2013 c 106 § 6; 2003 c 287 § 17.]

19.230.152 Reports—Nationwide licensing system. Each licensee shall submit reports of condition through a nationwide licensing system which must be in the form and must contain the information as the director may require. [2017 c 30 § 13; 2014 c 36 § 4.]

19.230.160 Change of control. (1) A licensee shall:
 (a) Provide the director with written notice of a proposed change of control within fifteen days after learning of the proposed change of control and at least thirty days prior to the proposed change of control;

(b) Request approval of the change of control by submitting the information required in rule by the director; and

(c) Submit, with the notice, a nonrefundable fee as prescribed in rule by the director.

(2) After review of a request for approval under subsection (1) of this section, the director may require the licensee to provide additional information concerning the licensee's proposed persons in control. The additional information must be limited to the same types required of the licensee, or persons in control of the licensee, as part of its original license application.

(3) The director shall approve a request for change of control under subsection (1) of this section if, after investigation, the director determines that the person, or group of persons, requesting approval meets the criteria for licensing set forth in RCW 19.230.070 and 19.230.100 and that the public interest will not be jeopardized by the change of control.

(4) Subsection (1) of this section does not apply to a public offering of securities.

(5) Before filing a request for approval to acquire control of a licensee, or person in control of a licensee, a person may request in writing a determination from the director as to whether the person would be considered a person in control of a licensee upon consummation of a proposed transaction. If the director determines that the person would not be a person in control of a licensee, the director shall respond in writing to that effect and the proposed person and transaction is not subject to the requirements of subsections (1) through (3) of this section.

(6) The director may exempt by rule any person from the requirements of subsection (1)(a) of this section, if it is in the public interest to do so. [2003 c 287 § 18.]

19.230.170 Records. (1) A licensee shall maintain the following records for determining its compliance with this chapter for at least five years:

- (a) A general ledger posted at least monthly containing all assets, liabilities, capital, income, and expense accounts;
- (b) Bank statements and bank reconciliation records;
- (c) Monthly reports about permissible investments;
- (d) A list of the last known names and addresses of all of the licensee's authorized delegates;
- (e) Copies of all currency transaction reports and suspicious activity reports filed in compliance with RCW 19.230.180; and
- (f) Any other records required in rule by the director.

(2) The items specified in subsection (1) of this section may be maintained in any form of record that is readily accessible to the director or the director's designee upon request.

(3) Records may be maintained outside this state if they are made accessible to the director on seven business days' notice that is sent in writing.

(4) All records maintained by the licensee are open to inspection by the director or the director's designee. [2010 c 73 § 7; 2003 c 287 § 19.]

19.230.180 Money laundering reports. Every licensee and its authorized delegates shall file all reports required by federal currency reporting, recordkeeping, and suspicious transaction reporting requirements with the appropriate federal agency as set forth in 31 U.S.C. Sec. 5311, 31 C.F.R. Part 1022, and other federal and state laws pertaining to money laundering. Every licensee and its authorized delegates shall maintain copies of these reports in its records in compliance with RCW 19.230.170. [2017 c 30 § 14; 2010 c 73 § 8; 2003 c 287 § 20.]

19.230.190 Confidentiality. (1) Except as otherwise provided in subsection (2) of this section, all information or reports obtained by the director from an applicant, licensee, or authorized delegate and all information contained in, or related to, examination, investigation, operating, or condition reports prepared by, on behalf of, or for the use of the director, or financial statements, balance sheets, or authorized delegate information, are confidential and are not subject to disclosure under chapter 42.56 RCW.

(2) The director may disclose information not otherwise subject to disclosure under subsection (1) of this section to representatives of state or federal agencies who agree in writing to maintain the confidentiality of the information; or if the director finds that the release is reasonably necessary for the protection of the public and in the interests of justice.

(3) This section does not prohibit the director from disclosing to the public a list of persons licensed or reported with the department as authorized delegates under this chapter or the aggregated financial data concerning those licensees. [2017 c 30 § 15; 2005 c 274 § 237; 2003 c 287 § 21.]

19.230.200 Maintenance of permissible investments. (1)(a) A money transmitter licensee must maintain, at all times, permissible investments that have a market value computed in accordance with generally accepted accounting principles of not less than the amount of the licensee's average daily transmission liability. Average daily transmission lia-

bility means the sum of the daily amounts of a licensee's outstanding money transmissions, as computed each day of the month divided by the number of days in the month.

(b) A licensee transmitting virtual currencies must hold like-kind virtual currencies of the same volume as that held by the licensee but which is obligated to consumers in lieu of the permissible investments required in (a) of this subsection.

(c) A licensee transmitting both money and virtual currency must maintain applicable levels and types of permissible investments as described in (a) and (b) of this subsection.

(2) The director, with respect to any money transmitter licensee, may limit the extent to which a type of investment within a class of permissible investments may be considered a permissible investment, except for money, time deposits, savings deposits, demand deposits, and certificates of deposit issued by a federally insured financial institution. The director may prescribe in rule, or by order allow, other types of investments that the director determines to have a safety substantially equivalent to other permissible investments. [2017 c 30 § 16; 2013 c 106 § 7; 2010 c 73 § 9; 2003 c 287 § 22.]

19.230.210 Types of permissible investments. (1) Except to the extent otherwise limited by the director under RCW 19.230.200, the following investments are permissible for a money transmitter licensee under RCW 19.230.200:

(a) Cash on hand. Time deposits, savings deposits, demand deposits, certificates of deposit, or senior debt obligations of an insured depository institution as defined in section 3 of the federal Deposit Insurance Act (12 U.S.C. Sec. 1813) or as defined under the federal Credit Union Act (12 U.S.C. Sec. 1781);

(b) Banker's acceptance or bill of exchange that is eligible for purchase upon endorsement by a member bank of the federal reserve system and is eligible for purchase by a federal reserve bank;

(c) An investment bearing a rating of one of the three highest grades as defined by a nationally recognized organization that rates securities;

(d) An investment security that is an obligation of the United States or a department, agency, or instrumentality thereof; an investment in an obligation that is guaranteed fully as to principal and interest by the United States; or an investment in an obligation of a state or a governmental subdivision, agency, or instrumentality thereof;

(e) Receivables that are payable to a licensee from its authorized delegates, in the ordinary course of business, pursuant to contracts which are not past due or doubtful of collection, if the aggregate amount of receivables under this subsection (1)(e) does not exceed thirty percent of the total permissible investments of a licensee and the licensee does not hold, at one time, receivables under this subsection (1)(e) in any one person aggregating more than ten percent of the licensee's total permissible investments; and

(f) A share or a certificate issued by an open-end management investment company that is registered with the United States securities and exchange commission under the Investment Companies Act of 1940 (15 U.S.C. Sec. 80(a)(1) through (64), and whose portfolio is restricted by the management company's investment policy to investments specified in (a) through (d) of this subsection.

(2) The following investments are permissible under RCW 19.230.200, but only to the extent specified as follows:

(a) An interest-bearing bill, note, bond, or debenture of a person whose equity shares are traded on a national securities exchange or on a national over-the-counter market, if the aggregate of investments under this subsection (2)(a) does not exceed twenty percent of the total permissible investments of a licensee and the licensee does not, at one time, hold investments under this subsection (2)(a) in any one person aggregating more than ten percent of the licensee's total permissible investments;

(b) A share of a person traded on a national securities exchange or a national over-the-counter market or a share or a certificate issued by an open-end management investment company that is registered with the United States securities and exchange commission under the Investment Companies Act of 1940 (15 U.S.C. Sec. 80(a)(1) through (64), and whose portfolio is restricted by the management company's investment policy to shares of a person traded on a national securities exchange or a national over-the-counter market, if the aggregate of investments under this subsection (2)(b) does not exceed twenty percent of the total permissible investments of a licensee and the licensee does not, at one time, hold investments under this subsection (2)(b) in any one person aggregating more than ten percent of the licensee's total permissible investments;

(c) A demand-borrowing agreement made to a corporation or a subsidiary of a corporation whose securities are traded on a national securities exchange, if the aggregate of the amount of principal and interest outstanding under demand-borrowing agreements under this subsection (2)(c) does not exceed twenty percent of the total permissible investments of a licensee and the licensee does not, at one time, hold principal and interest outstanding under demand-borrowing agreements under this subsection (2)(c) with any one person aggregating more than ten percent of the licensee's total permissible investments; and

(d) Any other investment the director designates, to the extent specified in rule by the director.

(3) The aggregate of investments under subsection (2) of this section may not exceed fifty percent of the total permissible investments of a licensee.

(4) A licensee may not use any portion of a restricted asset as a permissible investment. Restricted assets include, but are not limited to, surety bonds or any other assets pledged to other persons or entities. The director may establish by rule other restricted assets. [2017 c 30 § 17; 2010 c 73 § 10; 2003 c 287 § 23.]

19.230.220 Administrative proceedings. All administrative proceedings under this chapter must be conducted in accordance with the administrative procedure act, chapter 34.05 RCW. Any licensee or authorized delegate subject to a statement of charges and order of intent from the director shall be provided with an opportunity for a hearing as provided for in the administrative procedure act. Unless the person subject to the order appears in person or is represented by counsel at the hearing, the person has consented to issuance of the order. If after a hearing, the director finds by a preponderance of the evidence that grounds for sanctions under this chapter exist, then the director may impose any sanctions

(2018 Ed.)

authorized by this chapter in a final order. As provided for in RCW 19.230.260, a temporary order to cease and desist is effective upon service upon the licensee or authorized delegate, and remains effective pending a hearing to determine if the order shall become permanent. [2003 c 287 § 24.]

19.230.230 License suspension, revocation—Receivership. (1) The director may issue an order to suspend, revoke, or condition a license, place a licensee in receivership, revoke the designation of an authorized delegate, compel payment of restitution by a licensee to damaged parties, require affirmative actions as are necessary by a licensee to comply with this chapter or rules adopted under this chapter, or remove from office or prohibit from participation in the affairs of any authorized delegate or any licensee, or both, any responsible individual, executive officer, person in control, or employee of the licensee, if:

(a) The licensee violates this chapter or a rule adopted or an order issued under this chapter or is convicted of a violation of a state or federal money laundering or terrorism statute;

(b) The licensee does not cooperate with an examination, investigation, or subpoena lawfully issued by the director or the director's designee;

(c) The licensee engages in fraud, intentional misrepresentation, or gross negligence;

(d) An authorized delegate is convicted of a violation of a state or federal money laundering statute, or violates this chapter or a rule adopted or an order issued under this chapter as a result of the licensee's willful misconduct or deliberate avoidance of knowledge;

(e) The financial condition and responsibility, competence, experience, character, or general fitness of the licensee, authorized delegate, person in control of a licensee, or responsible individual of the licensee or authorized delegate indicates that it is not in the public interest to permit the person to provide money services;

(f) The licensee engages in an unsafe or unsound practice, or an unfair and deceptive act or practice;

(g) The licensee is insolvent, fails to maintain the required net worth, suspends payment of its obligations, or makes a general assignment for the benefit of its creditors;

(h) The licensee does not remove an authorized delegate after the director issues and serves upon the licensee a final order including a finding that the authorized delegate has violated this chapter; or

(i) The licensee, its responsible individual, or any of its executive officers or other persons in control of the licensee are listed or become listed on the specially designated nationals and blocked persons list prepared by the United States department of the treasury as a potential threat to commit terrorist acts or to finance terrorist acts.

(2) In determining whether a licensee or other person subject to this chapter is engaging in an unsafe or unsound practice, the director may consider the size and condition of the licensee's money transmission services, the magnitude of the loss or potential loss to consumers or others, the gravity of the violation of this chapter, any action against the licensee by another state or the federal government, and the previous conduct of the person involved.

(3) The director shall immediately suspend any certification of licensure issued under this chapter if the holder of the certificate 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 certification during the suspension, reissuance of the certificate of licensure shall be automatic upon the director's receipt of a release issued by the department of social and health services stating that the person is in compliance with the order. [2003 c 287 § 25.]

19.230.233 Informal settlement of complaints or enforcement actions. Except to the extent prohibited by another statute, the director may engage in informal settlement of complaints or enforcement actions including, but not limited to, payment to the department for purposes of financial literacy and education programs authorized under RCW 43.320.150. [2012 c 17 § 16.]

19.230.240 Suspension and revocation of authorized delegates. (1) The director may issue an order to suspend, revoke, or condition the designation of an authorized delegate, impose civil penalties, require payment of restitution to damaged parties, require affirmative actions as are necessary to comply with this chapter or the rules adopted under this chapter, or remove from office or prohibit from participation in the affairs of the authorized delegate or licensee, or both, any executive officer, person in control, or employee of the authorized delegate if the director finds that:

- (a) The authorized delegate violated this chapter or a rule adopted or an order issued under this chapter;
- (b) The authorized delegate does not cooperate with an examination, investigation, or subpoena lawfully issued by the director or the director's designee;
- (c) The authorized delegate engaged in fraud, intentional misrepresentation, or gross negligence;
- (d) The authorized delegate is convicted of a violation of a state or federal money laundering or terrorism statute;
- (e) The competence, experience, character, or general fitness of the authorized delegate or a person in control of the authorized delegate indicates that it is not in the public interest to permit the authorized delegate to provide money services;
- (f) The authorized delegate engaged in or is engaging in an unsafe or unsound practice, or unfair and deceptive act or practice; or
- (g) The authorized delegate, or any of its executive officers or other persons in control of the authorized delegate, are listed or become listed on the specially designated nationals and blocked persons list prepared by the United States department of the treasury as a potential threat to commit terrorist acts or to finance terrorist acts.

(2) In determining whether an authorized delegate is engaging in an unsafe or unsound practice, the director may consider the size and condition of the authorized delegate's provision of money services, the magnitude of the loss or potential loss to consumers or others, the gravity of the violation of this chapter or a rule adopted or order issued under this chapter, any action against the authorized delegate taken by

another state or the federal government, and the previous conduct of the authorized delegate. [2003 c 287 § 26.]

19.230.250 Unlicensed persons. (1) If the director has reason to believe that a person has violated or is violating RCW 19.230.030 or 19.230.080, the director or the director's designee may conduct an examination or investigation as authorized under RCW 19.230.130.

(2) If as a result of such investigation or examination, the director finds that a person has violated RCW 19.230.030 or 19.230.080, the director may issue a temporary cease and desist order as authorized under RCW 19.230.260.

(3) If as a result of such an investigation or examination, the director finds that a person has violated RCW 19.230.030 or 19.230.080, the director may issue an order to prohibit the person from continuing to engage in providing money services, to compel the person to pay restitution to damaged parties, to impose civil money penalties on the person, which may include the costs and expenses to investigate and prosecute violations of this chapter, and to prohibit from participation in the affairs of any licensee or authorized delegate, or both, any executive officer, person in control, or employee of the person.

(4) The director may petition the superior court for the issuance of a temporary restraining order under the rules of civil procedure. [2017 c 30 § 18; 2003 c 287 § 27.]

19.230.260 Temporary orders to cease and desist. (1) If the director determines that a violation of this chapter or of a rule adopted or an order issued under this chapter by a licensee, authorized delegate, or other person subject to this chapter is likely to cause immediate and irreparable harm to the licensee, its customers, or the public as a result of the violation, or cause insolvency or significant dissipation of the assets of the licensee, the director may issue a temporary order to cease and desist requiring the licensee, authorized delegate, or other person subject to this chapter to cease and desist from conducting business in this state or to cease and desist from the violation or undertake affirmative actions as are necessary to comply with this chapter, any rule adopted under this chapter, or order issued by the director under this chapter. The order is effective upon service upon the licensee, authorized delegate, or other person subject to this chapter.

(2) A temporary order to cease and desist remains effective and enforceable pending the completion of an administrative proceeding under chapter 34.05 RCW. If, after a hearing, the director finds that by a preponderance of the evidence, all or any part of the order is supported by the facts, the director may make the temporary order to cease and desist permanent under chapter 34.05 RCW.

(3) A licensee, an authorized delegate, or other person subject to this chapter that is served with a temporary order to cease and desist may petition the superior court for a judicial order setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of an administrative proceeding under chapter 34.05 RCW. [2003 c 287 § 28.]

19.230.270 Consent orders. The director may enter into a consent order at any time with a person to resolve a matter arising under this chapter or a rule adopted or order

issued under this chapter. A consent order must be signed by the person to whom it is issued or by the person's authorized representative, and must indicate agreement with the terms contained in the order. [2003 c 287 § 29.]

19.230.280 Violations—Liability. (1) A licensee is liable for any conduct violating this chapter or rules adopted under this chapter committed by employees of the licensee.

(2) A licensee that commits willful misconduct in its supervision of its authorized delegate or willfully avoids knowledge of its authorized delegate's business activities may be subjected to administrative sanctions for any violations of this chapter or rules adopted under this chapter by the licensee's authorized delegates.

(3) The responsible individual is responsible under the license and may be subjected to administrative sanctions for any violations of this chapter or rules adopted under this chapter committed by the licensee or, if the responsible individual commits willful misconduct in supervising an authorized delegate or willfully avoids knowledge of an authorized delegate's business activities, violations committed by the licensee's authorized delegates. [2003 c 287 § 30.]

19.230.290 Civil penalties. The director may assess a civil penalty against a licensee, responsible individual, authorized delegate, or other person that violates this chapter or a rule adopted or an order issued under this chapter in an amount not to exceed one hundred dollars per violation per day for each day the violation is outstanding, plus this state's costs and expenses for the investigation and prosecution of the matter, including reasonable attorneys' fees. [2017 c 30 § 19; 2003 c 287 § 31.]

19.230.300 Criminal penalties. (1) A person that intentionally makes a false statement, misrepresentation, or false certification in a record filed or required to be maintained under this chapter or that intentionally makes a false entry or omits a material entry in that record is guilty of a class C felony under chapter 9A.20 RCW.

(2) A person that knowingly engages in an activity for which a license is required under this chapter without being licensed under this chapter and who receives more than five hundred dollars in compensation within a thirty-day period from this activity is guilty of a gross misdemeanor under chapter 9A.20 RCW.

(3) A person that knowingly engages in an activity for which a license is required under this chapter without being licensed under this chapter and who receives no more than five hundred dollars in compensation within a thirty-day period from this activity is guilty of a misdemeanor under chapter 9A.20 RCW. [2003 c 287 § 32.]

19.230.303 Statute of limitations. The statute of limitations on actions not subject to RCW 4.16.160 that are brought under this chapter by the director is five years. [2014 c 36 § 3.]

19.230.310 Administration and rule-making powers. The director has the authority and administrative discretion to administer and interpret this chapter to fulfill the intent of the legislature as expressed in RCW 19.230.005. In accordance

(2018 Ed.)

with chapter 34.05 RCW, the director may issue rules under this chapter that are clearly required to govern the activities of licensees and other persons subject to this chapter. [2013 c 106 § 8; 2003 c 287 § 33.]

19.230.320 Fees. (1) The director shall establish fees by rule sufficient to cover the costs of administering this chapter. The director may establish different fees for each type of license authorized under this chapter. These fees may include:

(a) An annual assessment specified in rule by the director paid by each licensee on or before the annual assessment due date;

(b) A late fee for late payment of the annual assessment as specified in rule by the director;

(c) An hourly investigation fee to cover the costs of any investigation of the books and records of a licensee or other person subject to this chapter;

(d) A nonrefundable application fee to cover the costs of processing license applications made to the director under this chapter;

(e) An initial license fee to cover the period from the date of licensure to the end of the calendar year in which the license is initially granted; and

(f) A transaction fee or set of transaction fees to cover the administrative costs associated with processing changes in control, changes of address, and other administrative changes as specified in rule by the director.

(2) The director shall ensure that when an examination or investigation, or any part of the examination or investigation, of any licensee applicant or person subject to licensing under this chapter, requires travel and services outside this state by the director or designee, the licensee applicant or person subject to licensing under this chapter that is the subject of the examination or investigation shall pay the actual travel expenses incurred by the director or designee conducting the examination or investigation.

(3) All moneys, fees, and penalties collected under this chapter shall be deposited into the financial services regulation account.

(4) The director or designee may waive all or a portion of the fees and assessments under this chapter. [2017 c 30 § 20; 2010 c 73 § 11; 2003 c 287 § 34.]

19.230.330 Money transmitter delivery, receipts, and refunds. (1)(a) Every money transmitter licensee and its authorized delegates shall transmit the monetary equivalent of all money or equivalent value received from a customer for transmission, net of any fees, or issue instructions committing the money or its monetary equivalent, to the person designated by the customer within ten business days after receiving the money or equivalent value, unless otherwise ordered by the customer or when the transmission is for the payment of goods or services or unless the licensee or its authorized delegate has reason to believe that a crime has occurred, is occurring, or may occur as a result of transmitting the money. For purposes of this subsection, money is considered to have been transmitted when it is available to the person designated by the customer and a reasonable effort has been made to inform this designated person that the money is available, whether or not the designated person has taken possession of

the money. As used in this subsection, "monetary equivalent," when used in connection with a money transmission in which the customer provides the licensee or its authorized delegate with the money of one government, and the designated recipient is to receive the money of another government, means the amount of money, in the currency of the government that the designated recipient is to receive, as converted at the retail exchange rate offered by the licensee or its authorized delegate to the customer in connection with the transaction.

(b) A money transmitter licensee that accepts money or its equivalent from consumers purchasing goods or services from third-party merchants and transmits the money or its equivalent to those merchants selling the goods or services to the consumer must:

(i) Transmit the money or its equivalent to the merchant within the time frame agreed upon in the merchant's agreement with the money transmitter licensee; and

(ii) Conspicuously disclose to the merchant in the agreement the money transmitter licensee's authority to place a hold or delay in transmittal of consumer money or its equivalent for more than ten business days and the general circumstances under which the merchant may be subject to a hold or delay.

(2)(a) Every money transmitter licensee and its authorized delegates shall provide a receipt to the customer that clearly states the amount of money presented for transmission and the total of any fees charged by the licensee. If the rate of exchange for a money transmission to be paid in the currency of another country is fixed by the licensee for that transaction at the time the money transmission is initiated, then the receipt provided to the customer shall disclose the rate of exchange for that transaction, and the duration, if any, for the payment to be made at the fixed rate of exchange so specified. If the rate of exchange for a money transmission to be paid in the currency of another country is not fixed at the time the money transmission is sent, the receipt provided to the customer shall disclose that the rate of exchange for that transaction will be set at the time the recipient of the money transmission picks up the funds in the foreign country. The receipt shall also contain the licensee name, address, and phone number. As used in this section, "fees" does not include revenue that a licensee or its authorized delegate generates, in connection with a money transmission, in the conversion of the money of one government into the money of another government.

(b) Licensees acting as payment processors not excluded from this chapter do not have to comply with (a) of this subsection if they have no control over receipts issued by merchants or other parties having interactions with the consumer.

(3) Every money transmitter licensee and its authorized delegates shall refund to the customer all moneys received for transmittal within ten days of receipt of a written request for a refund unless any of the following occurs:

(a) The moneys have been transmitted and delivered to the person designated by the customer prior to receipt of the written request for a refund;

(b) Instructions have been given committing an equivalent amount of money to the person designated by the customer prior to receipt of a written request for a refund;

(c) The licensee or its authorized delegate has reason to believe that a crime has occurred, is occurring, or may potentially occur as a result of transmitting the money as requested by the customer or refunding the money as requested by the customer; or

(d) The licensee is otherwise barred by law from making a refund. [2017 c 30 § 22; 2014 c 206 § 1; 2010 c 73 § 12; 2003 c 287 § 35.]

19.230.340 Prohibited practices. It is a violation of this chapter for any licensee, executive officer, responsible individual, or other person subject to this chapter in connection with the provision of money services to:

(1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead any person, including but not limited to engaging in bait and switch advertising or sales practices;

(2) Directly or indirectly engage in any unfair or deceptive act or practice toward any person, including but not limited to any false or deceptive statement about fees or other terms of a money transmission or currency exchange;

(3) Directly or indirectly obtain property by fraud or misrepresentation;

(4) Knowingly make, publish, or disseminate any false, deceptive, or misleading information in the provision of money services;

(5) Knowingly receive or take possession for personal use of any property of any money services business, other than in payment for services rendered, and with intent to defraud, omit to make, or cause or direct to omit to make, a full and true entry thereof in the books and accounts of the business;

(6) Make or concur in making any false entry, or omit or concur in omitting any material entry, in the books or accounts of the business;

(7) Knowingly make or publish to the director or director's designee, or concur in making or publishing to the director or director's designee any written report, exhibit, or statement of its affairs or pecuniary condition containing any material statement which is false, or omit or concur in omitting any statement required by law to be contained therein; or

(8) Fail to make any report or statement lawfully required by the director or other public official. [2003 c 287 § 36.]

19.230.350 Third-party account administrators—Licensure required—Requirements. (1) A third-party account administrator must be licensed as a money transmitter under this chapter and comply with the following additional requirements:

(a) A debtor's funds must be held in an account at an insured financial institution;

(b) A debtor owns the funds held in the account and must be paid accrued interest on the account, if any;

(c) A third-party account administrator may not be owned or controlled by, or in any way affiliated with, a debt adjuster;

(d) A third-party account administrator may not give or accept any money or other compensation in exchange for referrals of business involving a debt adjuster;

(e) A debtor may withdraw from the service provided by a third-party account administrator at any time without penalty and must receive all funds in the account, other than funds earned by a debt adjuster in compliance with chapter 18.28 RCW, within seven business days of the debtor's request; and

(f) A contract between a third-party account administrator and a debtor must disclose in precise terms the rate and amount of all charges and fees. In addition, the contract must include a statement that is substantially similar to the following: "Under the Washington Debt Adjusting Act, the total fees you are charged for debt adjusting services may not exceed fifteen percent of the total amount of debt you listed on your contract with the debt adjuster. This includes fees charged by a debt adjuster, a third-party account administrator, and a financial institution." The disclosures required by this subsection (1)(f) must be on the front page of the contract and must be in at least twelve-point type.

(2) The legislature finds and declares that any violation of this section substantially affects the public interest and is an unfair and deceptive act or practice and [an] unfair method of competition in the conduct of trade or commerce as set forth in RCW 19.86.020. In addition to all remedies available in chapter 19.86 RCW, a person injured by a violation of this section may bring a civil action to recover the actual damages proximately caused by a violation of this section, or one thousand dollars, whichever is greater.

(3) For purposes of this section and RCW 19.230.360:

(a) "Debt adjuster" has the same meaning as defined in RCW 18.28.010;

(b) "Third-party account administrator" means an independent entity that holds or administers a dedicated bank account for fees and payments to creditors, debt collectors, debt adjusters, or debt adjusting agencies in connection with the renegotiation, settlement, reduction, or other alteration of the terms of payment or other terms of a debt. "Third-party account administrator" does not include an entity that is otherwise exempt from this chapter under RCW 19.230.020. [2012 c 56 § 3.]

Information—Report—2012 c 56: "(1) Any person or entity that provides debt adjusting services, as defined in RCW 18.28.010, in this state shall provide the following information to the department of financial institutions by September 1, 2012:

(a) The percentage of Washington debtors for whom the debt adjuster provides or provided debt adjusting services in the previous three years who canceled, terminated, or otherwise stopped using the debt adjuster's services without settlement of all of the debtor's debts;

(b) The total fees collected from Washington debtors during the previous three years; and

(c) For each debtor for whom the debt adjuster provides debt adjusting services:

(i) The number of debts included in the contract between the debt adjuster and the debtor;

(ii) The principal amount of each debt at the time the contract was signed;

(iii) Whether each debt is active, terminated, or settled;

(iv) If a debt has been settled, the settlement amount of the debt and the savings amount; and

(v) The total fees charged to the debtor and how the fees were calculated.

(2) The department of financial institutions shall submit a report to the appropriate committees of the legislature summarizing the information received under subsection (1) of this section by December 1, 2012." [2012 c 56 § 5.]

(2018 Ed.)

19.230.360 Third-party account administrators—Record maintenance. (1) A third-party account administrator shall maintain the following records for at least five years:

(a) All contracts the third-party account administrator has entered into with debtors and debt adjusters;

(b) Account statements identifying and itemizing deposits, transfers, disbursements, and fees; and

(c) Any other records required in rule by the director.

(2) All records maintained by the third-party account administrator are open to inspection by the director or the director's designee. [2012 c 56 § 4.]

Information—Report—2012 c 56: See note following RCW 19.230.350.

19.230.370 Virtual currency licensees—Disclosures. (1) Virtual currency licensees must provide to any person seeking to use the licensee's products or services the disclosures required by subsection (2) of this section.

(2) As applicable, virtual currency licensees must make the following disclosures:

(a) A schedule of all fees and charges the licensee may assess on a transaction, how the fees and charges will be calculated if not set in advance and disclosed, and the timing of the fees and charges.

(b) Whether the product or service provided is insured or guaranteed by an agency of the United States, such as the federal deposit insurance corporation or the securities investor protection corporation or by private insurance against theft or loss, including cybertheft or theft by other means.

(c) A notice that the transfer of virtual currency or digital units is irrevocable and any exception to the irrevocability of transfer.

(d) A notice describing the licensee's liability for unauthorized, mistaken, or accidental transfers and, describing the user's responsibility for providing notice of such mistake to the licensee and of general error-resolution rights applicable to any transaction.

(3) Licensees must provide any additional disclosures the director may require as set forth in rule.

(4) Disclosures required by this section must be made separately from any other information provided by the licensee and in a clear and conspicuous manner. [2017 c 30 § 21.]

19.230.900 Short title. This chapter may be known and cited as the uniform money services act. [2003 c 287 § 1.]

19.230.901 Effective date—2003 c 287. This act takes effect October 1, 2003. [2003 c 287 § 37.]

19.230.902 Implementation. The director or the director's designee may take such steps as are necessary to ensure that chapter 287, Laws of 2003 is implemented on October 1, 2003. In particular, the director or the director's designee shall conduct outreach to small businesses and immigrant communities to enhance awareness of and compliance with state and federal laws governing money transmission and currency exchange, and to provide technical assistance in applying for a license under this chapter and understanding the requirements of this chapter. [2003 c 287 § 38.]

19.230.903 Uniformity of application and construction. In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [2003 c 287 § 39.]

Chapter 19.235 RCW MOVIE THEATERS—UNAUTHORIZED RECORDING

Sections

19.235.010 Motion picture—Unauthorized recording—Penalty.

19.235.010 Motion picture—Unauthorized recording—Penalty. (1) Whoever, without the consent of the owner or lessee of the motion picture exhibition facility and the licensor of the motion picture being exhibited, knowingly operates an audiovisual recording function of a device in a motion picture exhibition facility is guilty of a gross misdemeanor.

(2) The owner or lessee of a motion picture exhibition facility where a motion picture is being exhibited, or the authorized agent or employee of such owner or lessee, or the licensor of the motion picture being exhibited or his or her agent or employee, who alerts law enforcement authorities of an alleged violation of this section shall not be liable in any civil action arising out of measures taken by such owner, lessee, licensor, agent, or employee in the course of subsequently detaining a person that the owner, lessee, licensor, agent, or employee in good faith believed to have violated this section while awaiting the arrival of law enforcement authorities, unless the plaintiff can show by clear and convincing evidence that such measures were manifestly unreasonable or the period of detention was unreasonably long.

(3) This section does not prevent any lawfully authorized investigative, law enforcement protective, or intelligence gathering employee or agent, of the state or federal government, from operating any audiovisual recording device in any motion picture exhibition facility where a motion picture is being exhibited, as part of lawfully authorized investigative, protective, law enforcement, or intelligence gathering activities.

(4) For the purposes of this section:

(a) "Audiovisual recording function" means the capability of a device to record or transmit a motion picture or any part thereof by means of any technology now known or later developed.

(b) "Motion picture exhibition facility" means any theater, screening room, indoor or outdoor screening venue, auditorium, ballroom, or other premises where motion pictures are publicly exhibited, regardless of whether an admission fee is charged, but does not include a personal residence or retail establishment. [2004 c 119 § 1.]

Chapter 19.240 RCW GIFT CERTIFICATES

Sections

19.240.005 Intent.
19.240.010 Definitions.
19.240.020 Unlawful actions—Remaining value—Lost/stolen gift certificates.

19.240.030 Expiration date allowed, when.
19.240.040 Dormancy or inactivity charge allowed, when.
19.240.050 Expiration date allowed—Donation to charitable organization.
19.240.060 Expiration date—Artistic and cultural organizations.
19.240.070 Format of statement or expiration date.
19.240.080 Abandoned gift certificates.
19.240.090 Value of gift certificate held in trust by issuer—Bankruptcy.
19.240.100 Gift certificates issued by financial institutions—Application of chapter.
19.240.110 Agreement in violation of chapter.
19.240.900 Application—2004 c 168 §§ 1-12.

19.240.005 Intent. It is the intent of the legislature to relieve businesses from the obligation of reporting gift certificates as unclaimed property. In order to protect consumers, the legislature intends to prohibit acts and practices of retailers that deprive consumers of the full value of gift certificates, such as expiration dates, service fees, and dormancy and inactivity charges, on gift certificates. The legislature does not intend that chapter 168, Laws of 2004 be construed to apply to cards or other payment instruments issued for payment of wages or other intangible property. To that end, the legislature intends that chapter 168, Laws of 2004 should be liberally construed to benefit consumers and that any ambiguities should be resolved by applying the uniform unclaimed property act to the intangible property in question. [2004 c 168 § 1.]

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.]

*Reviser's note: RCW 19.230.010 was amended by 2017 c 30 § 1, changing the definition of "closed loop stored value" to "closed loop prepaid access."

19.240.020 Unlawful actions—Remaining value—Lost/stolen gift certificates. (1) Except as provided in RCW 19.240.030 through 19.240.070, it is unlawful for any person or entity to issue, or to enforce against a bearer, a gift certificate that contains:

- (a) An expiration date;
- (b) Any fee, including a service fee; or
- (c) A dormancy or inactivity charge.

(2) If a gift certificate is issued with the sale of tangible personal property or services, the gift certificate is subject to subsection (1) of this section.

(3) If a purchase is made with a gift certificate for an amount that is less than the value of the gift certificate, the issuer must make the remaining value available to the bearer in cash or as a gift certificate at the option of the issuer. If after the purchase the remaining value of the gift certificate is less than five dollars, the gift certificate must be redeemable in cash for its remaining value on demand of the bearer. A gift certificate is valid until redeemed or replaced.

(4) This section does not require, unless otherwise required by law, the issuer of a gift certificate to replace a lost or stolen gift certificate. [2004 c 168 § 3.]

19.240.030 Expiration date allowed, when. (1) It is lawful to issue, and to enforce against the bearer, a gift certificate containing an expiration date if:

(a) The gift certificate is issued pursuant to an awards or loyalty program or in other instances where no money or other thing of value is given in exchange for the gift certificate.

(b) The gift certificate is donated to a charitable organization without any money or other thing of value being given in exchange for the gift certificate if the gift certificate is used by a charitable organization solely to provide charitable services.

(2) The expiration date must be disclosed clearly and legibly on any gift certificate described in subsection (1) of this section. [2004 c 168 § 4.]

19.240.040 Dormancy or inactivity charge allowed, when. It is lawful to issue, and to enforce against the bearer, a gift card containing a dormancy or inactivity charge if:

(1) A statement is printed on the gift card in at least six-point font stating the amount of the charge, how often the charge will occur, and that the charge is triggered by inactivity of the gift card. The statement may appear on the front or back of the gift card, but shall appear in a location where it is visible to any purchaser before the purchase of the gift card;

(2) The remaining value of the gift card is five dollars or less each time the charge is assessed;

(3) The charge does not exceed one dollar per month;

(4) The charge can only be assessed when there has been no activity on the gift card for twenty-four consecutive months, including but not limited to, purchases, the adding of value, or balance inquiries;

(5) The bearer may reload or add value to the gift card; and

(2018 Ed.)

(6) After a dormancy or inactivity charge is assessed, the remaining value of the gift certificate is redeemable in cash on demand. [2004 c 168 § 5.]

19.240.050 Expiration date allowed—Donation to charitable organization. It is lawful to issue, and to enforce against the bearer, a gift certificate containing an expiration date if:

(1) The gift certificate is donated to a charitable organization and is used for fund-raising activities of a charitable organization, without any money or other thing of value being given in exchange for the gift certificate by the charitable organization;

(2) The expiration date is clearly and legibly printed on the front or face of the gift certificate, or printed on the back of the certificate in at least ten-point font; and

(3) The expiration date is at least one year from the date the gift certificate is issued by the charitable organization. [2004 c 168 § 6.]

19.240.060 Expiration date—Artistic and cultural organizations. It is lawful to issue, and to enforce against the bearer, a gift certificate containing an expiration date if:

(1) The gift certificate is redeemable solely for goods or services provided in the state of Washington by artistic and cultural organizations;

(2) The expiration date is clearly and legibly printed on the front or face of the gift certificate, or printed on the back of the certificate in at least ten-point font;

(3) The expiration date is at least three years from the date the gift certificate is issued by the artistic and cultural organizations; and

(4) The unused value of the gift certificate at the time of expiration accrues solely to the benefit of artistic and cultural organizations. [2004 c 168 § 7.]

19.240.070 Format of statement or expiration date. A requirement under RCW 19.240.030 through 19.240.060 that a statement or expiration date be printed on a gift certificate is satisfied if the statement appears as otherwise required on a sticker permanently affixed to the gift certificate. [2004 c 168 § 8.]

19.240.080 Abandoned gift certificates. An issuer is not required to honor a gift certificate presumed abandoned under RCW 63.29.110, reported, and delivered to the department of revenue in the dissolution of a business association. [2004 c 168 § 9.]

19.240.090 Value of gift certificate held in trust by issuer—Bankruptcy. (1) A gift certificate constitutes value held in trust by the issuer of the gift certificate on behalf of the beneficiary of the gift certificate. The value represented by the gift certificate belongs to the beneficiary, or to the legal representative of the beneficiary to the extent provided by law, and not to the issuer.

(2) An issuer of a gift certificate who is in bankruptcy shall continue to honor a gift certificate issued before the date of the bankruptcy filing on the grounds that the value of the gift certificate constitutes trust property of the beneficiary.

(3) The terms of a gift certificate may not make its redemption or other use invalid in the event of a bankruptcy.

(4) This section does not require, unless otherwise required by law, the issuer of a gift certificate to:

- (a) Redeem a gift certificate for cash;
- (b) Replace a lost or stolen gift certificate; or
- (c) Maintain a separate account for the funds used to purchase the gift certificate.

(5) This section does not create an interest in favor of the beneficiary of the gift certificate in any specific property of the issuer.

(6) This section does not create a fiduciary or quasi-fiduciary relationship between the beneficiary of the gift certificate and the issuer unless otherwise provided by law.

(7) The issuer of a gift certificate has no obligation to pay interest on the value of a gift certificate held in trust under this section, unless otherwise provided by law. [2004 c 168 § 10.]

19.240.100 Gift certificates issued by financial institutions—Application of chapter. This chapter does not apply to gift certificates issued by financial institutions as defined in *RCW 30.22.041 or their operating subsidiaries that are usable with multiple unaffiliated sellers of goods or services. [2004 c 168 § 11.]

*Reviser's note: RCW 30.22.041 was recodified as RCW 30A.22.041 pursuant to 2014 c 37 § 4, effective January 5, 2015.

19.240.110 Agreement in violation of chapter. An agreement made in violation of the provisions of this chapter is contrary to public policy and is void and unenforceable against the bearer. [2004 c 168 § 12.]

19.240.900 Application—2004 c 168 §§ 1-12. Sections 1 through 12 of this act apply to:

- (1) Gift certificates issued on or after July 1, 2004; and
- (2) Those gift certificates presumed abandoned on or after July 1, 2004, and not reported as provided in RCW 63.29.170(4). [2004 c 168 § 18.]

Chapter 19.245 RCW

AUTOMATED TELLER MACHINES

Sections

19.245.010 Automated teller machine—Access fee or surcharge.

19.245.010 Automated teller machine—Access fee or surcharge. (1) The owner of an automated teller machine may charge an access fee or surcharge to a customer conducting a transaction using an account from a financial institution that is located outside of the United States.

(2) "Automated teller machine" means the same as defined in RCW 19.174.020.

(3) "Financial institution" means the same as defined in *RCW 30.22.040. [2005 c 98 § 1.]

*Reviser's note: RCW 30.22.040 was recodified as RCW 30A.22.040 pursuant to 2014 c 37 § 4, effective January 5, 2015.

[Title 19 RCW—page 312]

Chapter 19.250 RCW DISCLOSURE OF PERSONAL WIRELESS NUMBERS

Sections

19.250.005 Definitions.
19.250.010 Wireless subscriber must opt-in to any directory database—Disclosure requirement.
19.250.020 Reasonable investigation required—Consent.
19.250.030 Removal from directory—Reverse phone number search services.
19.250.040 Violation—Application of chapter 19.86 RCW.
19.250.050 Violations—Penalties—Attorney general may enforce—Limitation of liability.
19.250.070 Application of chapter—Limitations.

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

(1) "Directory" or "directory form" means a categorized list or compilation of phone numbers, or a single phone number, in written, audio, electronic, digital, or any other format.

(2) "Directory provider" means any person in the business of marketing, selling, or sharing the phone number of any subscriber in directory form for commercial purposes.

(3) "Radio communications service company" has the same meaning as in RCW 80.04.010.

(4) "Reverse phone number search services" means a service that provides the name of a subscriber associated with a phone number when the phone number is supplied.

(5) "Subscriber" means a person who resides in the state of Washington and subscribes to radio communications services, radio paging, or cellular communications service with a Washington state area code.

(6) "Wireless phone number" means a phone number unique to the subscriber that permits the subscriber to receive radio communications, radio paging, or cellular communications from others. [2009 c 401 § 1; 2008 c 271 § 2.]

Findings—2008 c 271: "The legislature finds that the right to privacy is a personal and fundamental right protected by Article I, section 7 of the state Constitution. The legislature also finds that, in the vast majority of cases, subscribers pay for both incoming and outgoing calls, and that subscribers purchase cell phone service with an expectation that their numbers will not be made public. Therefore, the legislature recognizes that a subscriber's cell phone number should be kept private, unless that subscriber knowingly provides their express, opt-in consent to have that number made available in a public directory." [2008 c 271 § 1.]

19.250.010 Wireless subscriber must opt-in to any directory database—Disclosure requirement. (1) A radio communications service company or any direct or indirect affiliate or agent of a radio communications service company shall not include the wireless phone number of any subscriber for inclusion in any directory of any form, nor shall it sell the contents of any directory database, without first obtaining the express, opt-in consent of that subscriber. The subscriber's consent must be obtained either in writing or electronically, and a receipt must be provided to the subscriber. The consent shall be a separate document or located on a separate screen or web page that has the sole purpose of authorizing a radio communications service company to include the subscriber's wireless phone number in a publicly available directory assistance database.

(2) In obtaining the subscriber's consent, the radio communications service company or direct or indirect affiliate or agent of a radio communications service company shall

(2018 Ed.)

unambiguously disclose that, by consenting, the subscriber agrees to the following:

(a) That the subscriber's wireless phone number may be sold or licensed as part of a list of subscribers and that the wireless phone number may be included in a publicly available directory assistance database;

(b) That the subscriber may incur additional charges for receiving unsolicited calls or text messages; and

(c) That the subscriber's express, opt-in consent will be construed as consent for the subsequent publication of the wireless phone number to and by third parties in other directories or databases. [2008 c 271 § 3; 2005 c 322 § 1.]

Findings—2008 c 271: See note following RCW 19.250.005.

19.250.020 Reasonable investigation required—Consent. (1) A directory provider shall not include any phone number that belongs to a Washington state resident in any directory of any form, or sell the contents of any directory database, without first undertaking a reasonable ongoing investigation as to whether the phone number is a wireless phone number. An investigation under this section is presumed reasonable if the directory provider compares the phone number at least every thirty days against: (a) A commercially available list of central office code assignment records offered through the North American numbering plan administration or other similar service; or (b) a commercially available list of intermodal ports of telephone numbers between wireline-to-wireless ports and wireless-to-wireline ports. A directory provider also has a duty to continually use up-to-date, commercially available technology when conducting its investigation of a phone number. If an investigation reveals that the phone number is a wireless phone number, the directory provider shall not include the number in any directory of any form, or sell the contents of any directory database without first obtaining the subscriber's express, opt-in consent. The subscriber's consent must be obtained either in writing or electronically, and a receipt must be provided to the subscriber. The consent must be a separate document or located on a separate screen or web page that has the sole purpose of authorizing a directory provider to include the subscriber's wireless phone number in a publicly available directory assistance database.

(2) In obtaining the subscriber's consent, the directory provider shall unambiguously disclose that, by consenting, the subscriber agrees to the following:

(a) That the subscriber's wireless phone number may be sold or licensed as part of a list of subscribers and that the wireless phone number may be included in a publicly available directory assistance database;

(b) That the subscriber may incur additional charges for receiving unsolicited calls or text messages; and

(c) That the subscriber's express, opt-in consent will be construed as consent for the subsequent publication of the wireless phone number to and by third parties in other directories or databases.

(3) This section does not preclude a directory provider from providing a reverse phone number search service. However, a subscriber whose wireless phone number is contained in a reverse phone number search service may utilize the opt-out provisions set forth in *RCW 19.250.030. [2008 c 271 § 4.]

(2018 Ed.)

***Reviser's note:** RCW 19.250.030 was amended by 2009 c 401 § 2, removing the language "opt out."

Findings—2008 c 271: See note following RCW 19.250.005.

19.250.030 Removal from directory—Reverse phone number search services. (1) A subscriber may request that a directory provider or a radio communications service company remove their wireless phone number from a directory of any form at any time. A radio communications service company or a directory provider shall, at no cost to the subscriber, comply with the subscriber's request to remove their wireless phone number from a directory of any form within a reasonable period of time, not to exceed sixty days for printed directories and not to exceed thirty days for online or other directories.

(2) At the subscriber's request, a provider of a reverse phone number search service must allow a subscriber to perform a reverse phone number search free of charge to determine whether the subscriber's wireless phone number is listed in the reverse phone number search service. If the subscriber finds that his or her wireless phone number is contained in the reverse phone number search service, the subscriber may request that his or her wireless phone number be removed from the reverse phone number search service at any time. The provider of the reverse phone number search service must, at no cost to the subscriber, comply with the subscriber's request within a reasonable period of time, not to exceed thirty days. [2009 c 401 § 2; 2008 c 271 § 5.]

Findings—2008 c 271: See note following RCW 19.250.005.

19.250.040 Violation—Application of chapter 19.86 RCW. The legislature finds that allowing a subscriber to opt out of a reverse phone number search service vitally affects the public interest for the purpose of applying chapter 19.86 RCW. A violation of RCW 19.250.030 by a provider of a reverse phone number search service 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 chapter 19.86 RCW. [2008 c 271 § 6.]

Findings—2008 c 271: See note following RCW 19.250.005.

19.250.050 Violations—Penalties—Attorney general may enforce—Limitation of liability. (1) Every knowing violation of RCW 19.250.010 is punishable by a fine of not less than two thousand dollars and no more than fifty thousand dollars for each violation.

(2) Including a wireless phone number in a directory without a subscriber's express, opt-in consent pursuant to RCW 19.250.020 is a violation of this chapter and is punishable by a fine of up to fifty thousand dollars unless the directory provider first conducted a reasonable investigation as required in RCW 19.250.020 and was unable to determine if the published number was a wireless phone number.

(3) Failure to remove a wireless phone number from a directory of any form within a reasonable period of time as required in RCW 19.250.030 is a violation of this chapter and is punishable by a fine of up to fifty thousand dollars.

(4) The attorney general may bring actions to enforce compliance with this section. For the first violation by any company, organization, or person under this chapter, the

attorney general may notify the company, organization, or person with a letter of warning that this chapter has been violated.

(5) A telecommunications company or directory provider, or any official or employee of a telecommunications company or directory provider, is not subject to criminal or civil liability for the release of customer information as authorized by this chapter. [2009 c 401 § 4; 2008 c 271 § 7.]

Findings—2008 c 271: See note following RCW 19.250.005.

19.250.070 Application of chapter—Limitations. (1)

The provision or maintenance of a subscriber's wireless phone number is not prohibited by this chapter when the number is provided or maintained by:

(a) Any law enforcement agency, fire protection agency, public health agency, public environmental health agency, city or county emergency services planning agency, or corporation operating under contract with, and at the direction of, one or more of these agencies, when carrying out official duties;

(b) A person carrying out a lawful order or process issued under state or federal law;

(c) A telecommunications company providing service between service areas for the provision of telephone services to the subscriber between service areas, or to third parties for the limited purpose of providing billing services;

(d) A telecommunications company to effectuate a customer's request to transfer the customer's assigned telephone number from the customer's existing provider of telecommunications services to a new provider of telecommunications services;

(e) The utilities and transportation commission pursuant to its jurisdiction and control over telecommunications companies;

(f) A sales agent to provide the subscriber's wireless phone numbers to the radio communications service company for the limited purpose of billing and customer service;

(g) A directory provider via a directory that is obtained directly from a radio communications service company and that radio communications service company has obtained the required express, opt-in consent for including in any directory the subscriber's wireless phone number as specified in RCW 19.250.010;

(h) A person via a directory where the subscriber pays a fee to have the number published for commercial purposes;

(i) A person who ported the number from listed wireline service to wireless service within the previous fifteen months;

(j) A person for uses permitted or authorized under the federal fair credit reporting act (15 U.S.C. Sec. 1681(b)), or for uses permitted or authorized under Title V of the Gramm-Leach-Bliley Act (15 U.S.C. Sec. 6801, et seq.); and

(k) A person in comprehensive reports or public records when the public record is not altered from its original form. For purposes of this subsection, a comprehensive report means law enforcement investigations, risk and security analysis for employment or vendor evaluation, legal research and case management, legal compliance analysis, and academic research.

(2) The provision of a subscriber's wireless phone number is not prohibited by this chapter when the number is pro-

vided to any law enforcement agency, fire protection agency, public health agency, public environmental health agency, city or county emergency services planning agency, or corporation operating under contract with, and at the direction of, one or more of these agencies, when carrying out official duties. Information or records provided to a corporation pursuant to this section must be held in confidence by that corporation and by any individual employed by or associated with that corporation. Such information or records are not open to examination for any purpose not directly connected with carrying out an agency's official duties. [2009 c 401 § 3; 2008 c 271 § 9.]

Findings—2008 c 271: See note following RCW 19.250.005.

Chapter 19.255 RCW

PERSONAL INFORMATION—NOTICE OF SECURITY BREACHES

Sections

19.255.010 Disclosure, notice—Definitions—Rights, remedies.

19.255.020 Liability of processors, businesses, and vendors.

19.255.010 Disclosure, notice—Definitions—Rights, remedies. (1) Any person or business that conducts business in this state and that owns or licenses data that includes personal information shall disclose any breach of the security of the system following discovery or notification of the breach in the security of the data to any resident of this state whose personal information was, or is reasonably believed to have been, acquired by an unauthorized person and the personal information was not secured. Notice is not required if the breach of the security of the system is not reasonably likely to subject consumers to a risk of harm. The breach of secured personal information must be disclosed if the information acquired and accessed is not secured during a security breach or if the confidential process, encryption key, or other means to decipher the secured information was acquired by an unauthorized person.

(2) Any person or business that maintains data that includes personal information that the person or business does not own shall notify the owner or licensee of the information of any breach of the security of the data immediately following discovery, if the personal information was, or is reasonably believed to have been, acquired by an unauthorized person.

(3) The notification required by this section may be delayed if the data owner or licensee contacts a law enforcement agency after discovery of a breach of the security of the system and a law enforcement agency determines that the notification will impede a criminal investigation. The notification required by this section shall be made after the law enforcement agency determines that it will not compromise the investigation.

(4) For purposes of this section, "breach of the security of the system" means unauthorized acquisition of data that compromises the security, confidentiality, or integrity of personal information maintained by the person or business. Good faith acquisition of personal information by an employee or agent of the person or business for the purposes of the person or business is not a breach of the security of the

system when the personal information is not used or subject to further unauthorized disclosure.

(5) For purposes of this section, "personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements:

(a) Social security number;

(b) Driver's license number or Washington identification card number; or

(c) Account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account.

(6) For purposes of this section, "personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

(7) For purposes of this section, "secured" means encrypted in a manner that meets or exceeds the national institute of standards and technology (NIST) standard or is otherwise modified so that the personal information is rendered unreadable, unusable, or undecipherable by an unauthorized person.

(8) For purposes of this section and except under subsections (9) and (10) of this section, "notice" may be provided by one of the following methods:

(a) Written notice;

(b) Electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in 15 U.S.C. Sec. 7001; or

(c) Substitute notice, if the person or business demonstrates that the cost of providing notice would exceed two hundred fifty thousand dollars, or that the affected class of subject persons to be notified exceeds five hundred thousand, or the person or business does not have sufficient contact information. Substitute notice shall consist of all of the following:

(i) Email notice when the person or business has an email address for the subject persons;

(ii) Conspicuous posting of the notice on the web site page of the person or business, if the person or business maintains one; and

(iii) Notification to major statewide media.

(9) A person or business that maintains its own notification procedures as part of an information security policy for the treatment of personal information and is otherwise consistent with the timing requirements of this section is in compliance with the notification requirements of this section if the person or business notifies subject persons in accordance with its policies in the event of a breach of security of the system.

(10) A covered entity under the federal health insurance portability and accountability act of 1996, 42 U.S.C. Sec. 1320d et seq., is deemed to have complied with the requirements of this section with respect to protected health information if it has complied with section 13402 of the federal health information technology for economic and clinical health act, Public Law 111-5 as it existed on July 24, 2015. Covered entities shall notify the attorney general pursuant to subsection (15) of this section in compliance with the timeliness of notification requirements of section 13402 of the fed-

eral health information technology for economic and clinical health act, Public Law 111-5 as it existed on July 24, 2015, notwithstanding the notification requirement in subsection (16) of this section.

(11) A financial institution under the authority of the office of the comptroller of the currency, the federal deposit insurance corporation, the national credit union administration, or the federal reserve system is deemed to have complied with the requirements of this section with respect to "sensitive customer information" as defined in the interagency guidelines establishing information security standards, 12 C.F.R. Part 30, Appendix B, 12 C.F.R. Part 208, Appendix D-2, 12 C.F.R. Part 225, Appendix F, and 12 C.F.R. Part 364, Appendix B, and 12 C.F.R. Part 748, Appendices A and B, as they existed on July 24, 2015, if the financial institution provides notice to affected consumers pursuant to the interagency guidelines and the notice complies with the customer notice provisions of the interagency guidelines establishing information security standards and the interagency guidance on response programs for unauthorized access to customer information and customer notice under 12 C.F.R. Part 364 as it existed on July 24, 2015. The entity shall notify the attorney general pursuant to subsection (15) of this section in addition to providing notice to its primary federal regulator.

(12) Any waiver of the provisions of this section is contrary to public policy, and is void and unenforceable.

(13)(a) Any consumer injured by a violation of this section may institute a civil action to recover damages.

(b) Any person or business that violates, proposes to violate, or has violated this section may be enjoined.

(c) The rights and remedies available under this section are cumulative to each other and to any other rights and remedies available under law.

(14) Any person or business that is required to issue notification pursuant to this section shall meet all of the following requirements:

(a) The notification must be written in plain language; and

(b) The notification must include, at a minimum, the following information:

(i) The name and contact information of the reporting person or business subject to this section;

(ii) A list of the types of personal information that were or are reasonably believed to have been the subject of a breach; and

(iii) The toll-free telephone numbers and addresses of the major credit reporting agencies if the breach exposed personal information.

(15) Any person or business that is required to issue a notification pursuant to this section to more than five hundred Washington residents as a result of a single breach shall, by the time notice is provided to affected consumers, electronically submit a single sample copy of that security breach notification, excluding any personally identifiable information, to the attorney general. The person or business shall also provide to the attorney general the number of Washington consumers affected by the breach, or an estimate if the exact number is not known.

(16) Notification to affected consumers and to the attorney general under this section must be made in the most

expedient time possible and without unreasonable delay, no more than forty-five calendar days after the breach was discovered, unless at the request of law enforcement as provided in subsection (3) of this section, or due to any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

(17) The attorney general may bring an action in the name of the state, or as *parens patriae* on behalf of persons residing in the state, to enforce this section. For actions brought by the attorney general to enforce this section, the legislature finds that the practices covered by this section are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. For actions brought by the attorney general to enforce this section, a violation of this section 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 purposes of applying the consumer protection act, chapter 19.86 RCW. An action to enforce this section may not be brought under RCW 19.86.090. [2015 c 64 § 2; 2005 c 368 § 2.]

Intent—2015 c 64: "The legislature recognizes that data breaches of personal information can compromise financial security and be costly to consumers. The legislature intends to strengthen the data breach notification requirements to better safeguard personal information, prevent identity theft, and ensure that the attorney general receives notification when breaches occur so that appropriate action may be taken to protect consumers. The legislature also intends to provide consumers whose personal information has been jeopardized due to a data breach with the information needed to secure financial accounts and make the necessary reports in a timely manner to minimize harm from identity theft." [2015 c 64 § 1.]

Similar provision: RCW 42.56.590.

19.255.020 Liability of processors, businesses, and vendors. (1) For purposes of this section:

(a) "Account information" means: (i) The full, unencrypted magnetic stripe of a credit card or debit card; (ii) the full, unencrypted account information contained on an identification device as defined under RCW 19.300.010; or (iii) the unencrypted primary account number on a credit card or debit card or identification device, plus any of the following if not encrypted: Cardholder name, expiration date, or service code.

(b) "Breach" has the same meaning as "breach of the security of the system" in RCW 19.255.010.

(c) "Business" means an individual, partnership, corporation, association, organization, government entity, or any other legal or commercial entity that processes more than six million credit card and debit card transactions annually, and who provides, offers, or sells goods or services to persons who are residents of Washington.

(d) "Credit card" has the same meaning as in RCW 9A.56.280.

(e) "Debit card" has the same meaning as in RCW 9A.56.280 and for the purposes of this section, includes a payroll debit card.

(f) "Encrypted" means enciphered or encoded using standards reasonable for the breached business or processor taking into account the business or processor's size and the number of transactions processed annually.

(g) "Financial institution" has the same meaning as in *RCW 30.22.040.

(h) "Processor" means an individual, partnership, corporation, association, organization, government entity, or any other legal or commercial entity, other than a business as defined under this section, that directly processes or transmits account information for or on behalf of another person as part of a payment processing service.

(i) "Service code" means the three or four digit number in the magnetic stripe or on a credit card or debit card that is used to specify acceptance requirements or to validate the card.

(j) "Vendor" means an individual, partnership, corporation, association, organization, government entity, or any other legal or commercial entity that manufactures and sells software or equipment that is designed to process, transmit, or store account information or that maintains account information that it does not own.

(2) Processors, businesses, and vendors are not liable under this section if (a) the account information was encrypted at the time of the breach, or (b) the processor, business, or vendor was certified compliant with the payment card industry data security standards adopted by the payment card industry security standards council, and in force at the time of the breach. A processor, business, or vendor will be considered compliant, if its payment card industry data security compliance was validated by an annual security assessment, and if this assessment took place no more than one year prior to the time of the breach. For the purposes of this subsection (2), a processor, business, or vendor's security assessment of compliance is nonrevocable. The nonrevocability of a processor, business, or vendor's security assessment of compliance is only for the purpose of determining a processor, business, or vendor's liability under this subsection (2).

(3)(a) If a processor or business fails to take reasonable care to guard against unauthorized access to account information that is in the possession or under the control of the business or processor, and the failure is found to be the proximate cause of a breach, the processor or business is liable to a financial institution for reimbursement of reasonable actual costs related to the reissuance of credit cards and debit cards that are incurred by the financial institution to mitigate potential current or future damages to its credit card and debit card holders that reside in the state of Washington as a consequence of the breach, even if the financial institution has not suffered a physical injury in connection with the breach. In any legal action brought pursuant to this subsection, the prevailing party is entitled to recover its reasonable attorneys' fees and costs incurred in connection with the legal action.

(b) A vendor, instead of a processor or business, is liable to a financial institution for the damages described in (a) of this subsection to the extent that the damages were proximately caused by the vendor's negligence and if the claim is not limited or foreclosed by another provision of law or by a contract to which the financial institution is a party.

(4) Nothing in this section may be construed as preventing or foreclosing any entity responsible for handling account information on behalf of a business or processor from being made a party to an action under this section.

(5) Nothing in this section may be construed as preventing or foreclosing a processor, business, or vendor from asserting any defense otherwise available to it in an action

including, but not limited to, defenses of contract, or of contributory or comparative negligence.

(6) In cases to which this section applies, the trier of fact shall determine the percentage of the total fault which is attributable to every entity which was the proximate cause of the claimant's damages.

(7) The remedies under this section are cumulative and do not restrict any other right or remedy otherwise available under law, however a trier of fact may reduce damages awarded to a financial institution by any amount the financial institution recovers from a credit card company in connection with the breach, for costs associated with access card reissuance. [2010 c 151 § 2.]

***Reviser's note:** RCW 30.22.040 was recodified as RCW 30A.22.040 pursuant to 2014 c 37 § 4, effective January 5, 2015.

Intent—2010 c 151: "The legislature recognizes that data breaches of credit and debit card information contribute to identity theft and fraud and can be costly to consumers. The legislature also recognizes that when a breach occurs, remedial measures such as reissuance of credit or debit cards affected by the breach can help to reduce the incidence of identity theft and associated costs to consumers. Accordingly, the legislature intends to encourage financial institutions to reissue credit and debit cards to consumers when appropriate, and to permit financial institutions to recoup data breach costs associated with the reissuance from large businesses and card processors who are negligent in maintaining or transmitting card data." [2010 c 151 § 1.]

Effective date—2010 c 151: "This act takes effect July 1, 2010." [2010 c 151 § 3.]

Application—2010 c 151: "This act applies prospectively only. This act applies to any breach occurring on or after July 1, 2010." [2010 c 151 § 4.]

Chapter 19.260 RCW ENERGY EFFICIENCY

Sections

19.260.010	Findings.
19.260.020	Definitions.
19.260.030	Application of chapter.
19.260.040	Minimum efficiency standards.
19.260.050	Limit on sale or installation of products required to meet or exceed standards in RCW 19.260.040.
19.260.060	Department recommended updates to standards.
19.260.070	Manufacturers must test products—Certification—Rules—Identification of products—Complaints—Penalty.

19.260.010 Findings. The legislature finds that:

(1) According to estimates of the *department of community, trade, and economic development, the efficiency standards set forth in chapter 298, Laws of 2005 will save nine hundred thousand megawatt-hours of electricity, thirteen million therms of natural gas, and one billion seven hundred million gallons of water in the year 2020, fourteen years after the standards have become effective, with a total net present value to buyers of four hundred ninety million dollars in 2020.

(2) Efficiency standards for certain products sold or installed in the state assure consumers and businesses that such products meet minimum efficiency performance levels thus saving money on utility bills.

(3) Efficiency standards save energy and reduce pollution and other environmental impacts associated with the production, distribution, and use of electricity and natural gas.

(4) Efficiency standards contribute to the economy of Washington by helping to better balance energy supply and demand, thus reducing pressure for higher natural gas and

(2018 Ed.)

electricity prices. By saving consumers and businesses money on energy bills, efficiency standards help the state and local economy, since energy bill savings can be spent on local goods and services.

(5) Efficiency standards can make electricity systems more reliable by reducing the strain on the electricity grid during peak demand periods. Furthermore, improved energy efficiency can reduce or delay the need for new power plants, power transmission lines, and power distribution system upgrades. [2005 c 298 § 1.]

***Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

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

(1) "Automatic commercial ice cube machine" means a factory-made assembly, not necessarily shipped in one package, consisting of a condensing unit and ice-making section operating as an integrated unit with means for making and harvesting ice cubes. It may also include integrated components for storing or dispensing ice, or both.

(2) "Bottle-type water dispenser" means a water dispenser that uses a bottle or reservoir as the source of potable water.

(3) "Commercial hot food holding cabinet" means a heated, fully enclosed compartment, with one or more solid or partial glass doors, that is designed to maintain the temperature of hot food that has been cooked in a separate appliance. "Commercial hot food holding cabinet" does not include heated glass merchandising cabinets, drawer warmers, or cook and hold appliances.

(4)(a) "Commercial refrigerators and freezers" means refrigerators, freezers, or refrigerator-freezers designed for use by commercial or institutional facilities for the purpose of storing or merchandising food products, beverages, or ice at specified temperatures that: (i) Incorporate most components involved in the vapor-compression cycle and the refrigerated compartment in a single cabinet; and (ii) may be configured with either solid or transparent doors as a reach-in cabinet, pass-through cabinet, roll-in cabinet, or roll-through cabinet.

(b) "Commercial refrigerators and freezers" does not include: (i) Products with 85 cubic feet or more of internal volume; (ii) walk-in refrigerators or freezers; (iii) consumer products that are federally regulated pursuant to 42 U.S.C. Sec. 6291 et seq.; (iv) products without doors; or (v) freezers specifically designed for ice cream.

(5) "Compensation" means money or any other valuable thing, regardless of form, received or to be received by a person for services rendered.

(6) "Cook and hold appliance" means a multiple mode appliance intended for cooking food that may be used to hold the temperature of the food that has been cooked in the same appliance.

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

(8) "Drawer warmer" means an appliance that consists of one or more heated drawers and that is designed to hold hot food that has been cooked in a separate appliance at a specified temperature.

(9) "Heated glass merchandising cabinet" means an appliance with a heated cabinet constructed of glass or clear

plastic doors which, with seventy percent or more clear area, is designed to display and maintain the temperature of hot food that has been cooked in a separate appliance.

(10) "Hot water dispenser" means a small electric water heater that has a measured storage volume of no greater than one gallon.

(11) "Mini-tank electric water heater" means a small electric water heater that has a measured storage volume of more than one gallon and a rated storage volume of less than twenty gallons.

(12) "Pass-through cabinet" means a commercial refrigerator or freezer with hinged or sliding doors on both the front and rear of the unit.

(13) "Point-of-use water dispenser" means a water dispenser that uses a pressurized water utility connection as the source of potable water.

(14) "Pool heater" means an appliance designed for heating nonpotable water contained at atmospheric pressure for swimming pools, spas, hot tubs, and similar applications.

(15) "Portable electric spa" means a factory-built electric spa or hot tub, supplied with equipment for heating and circulating water.

(16) "Reach-in cabinet" means a commercial refrigerator or freezer with hinged or sliding doors or lids, but does not include roll-in or roll-through cabinets or pass-through cabinets.

(17) "Residential pool pump" means a pump used to circulate and filter pool water in order to maintain clarity and sanitation.

(18)(a) "Roll-in cabinet" means a commercial refrigerator or freezer with hinged or sliding doors that allow wheeled racks of product to be rolled into the unit.

(b) "Roll-through cabinet" means a commercial refrigerator or freezer with hinged or sliding doors on two sides of the cabinet that allow wheeled racks of product to be rolled through the unit.

(19) "Showerhead" means a device through which water is discharged for a shower bath.

(20) "Showerhead tub spout diverter combination" means a group of plumbing fittings sold as a matched set and consisting of a control valve, a tub spout diverter, and a showerhead.

(21) "State-regulated incandescent reflector lamp" means a lamp that is not colored or designed for rough or vibration service applications, has an inner reflective coating on the outer bulb to direct the light, an E26 medium screw base, a rated voltage or voltage range that lies at least partially within 115 to 130 volts, and falls into one of the following categories:

(a) A bulged reflector or elliptical reflector bulb shape and which has a diameter which equals or exceeds 2.25 inches; or

(b) A reflector, parabolic aluminized reflector, or similar bulb shape and which has a diameter of 2.25 to 2.75 inches.

(22) "Tub spout diverter" means a device designed to stop the flow of water into a bathtub and to divert it so that the water discharges through a showerhead.

(23) "Wine chillers designed and sold for use by an individual" means refrigerators designed and sold for the cooling and storage of wine by an individual. [2009 c 565 § 18; 2009 c 501 § 1; 2006 c 194 § 1; 2005 c 298 § 2.]

Reviser's note: This section was amended by 2009 c 501 § 1 and by 2009 c 565 § 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).

19.260.030 Application of chapter. (1) This chapter applies to the following types of new products sold, offered for sale, or installed in the state:

- (a) Automatic commercial ice cube machines;
- (b) Commercial refrigerators and freezers;
- (c) State-regulated incandescent reflector lamps;
- (d) Wine chillers designed and sold for use by an individual;
- (e) Hot water dispensers and mini-tank electric water heaters;
- (f) Bottle-type water dispensers and point-of-use water dispensers;
- (g) Pool heaters, residential pool pumps, and portable electric spas;
- (h) Tub spout diverters; and
- (i) Commercial hot food holding cabinets.

(2) This chapter applies equally to products whether they are sold, offered for sale, or installed as stand-alone products or as components of other products.

(3) This chapter does not apply to:

- (a) New products manufactured in the state and sold outside the state;
- (b) New products manufactured outside the state and sold at wholesale inside the state for final retail sale and installation outside the state;
- (c) Products installed in mobile manufactured homes at the time of construction; or
- (d) Products designed expressly for installation and use in recreational vehicles. [2009 c 501 § 2; 2006 c 194 § 2; 2005 c 298 § 3.]

19.260.040 Minimum efficiency standards. The minimum efficiency standards specified in this section apply to the types of new products set forth in RCW 19.260.030.

(1)(a) Automatic commercial ice cube machines must have daily energy use and daily water use no greater than the applicable values in the following table:

Equipment type	Type of cooling	Harvest rate (lbs. ice/24 hrs.)	Maximum energy use (kWh/100 lbs.)	Maximum condenser water use (gallons/100 lbs. ice)
Ice-making head	water	<500	7.80 - .0055H	200 - .022H
		>=500<1436	5.58 - .0011H	200 - .022H
		>=1436	4.0	200 - .022H

Equipment type	Type of cooling	Harvest rate (lbs. ice/24 hrs.)	Maximum energy use (kWh/100 lbs.)	Maximum condenser water use (gallons/100 lbs. ice)
Ice-making head	air	450	10.26 - .0086H	Not applicable
		>=450	6.89 - .0011H	Not applicable
Remote condensing but not remote compressor	air	<1000	8.85 - .0038	Not applicable
		>=1000	5.10	Not applicable
Remote condensing and remote compressor	air	<934	8.85 - .0038H	Not applicable
		>=934	5.3	Not applicable
Self-contained models	water	<200	11.40 - .0190H	191 - .0315H
		>=200	7.60	191 - .0315H
Self-contained models	air	<175	18.0 - .0469H	Not applicable
		>=175	9.80	Not applicable

Where H= harvest rate in pounds per twenty-four hours which must be reported within 5% of the tested value. "Maximum water use" applies only to water used for the condenser.

(b) For purposes of this section, automatic commercial ice cube machines shall be tested in accordance with the ARI 810-2003 test method as published by the air-conditioning and refrigeration institute. Ice-making heads include all automatic commercial ice cube machines that are not split system ice makers or self-contained models as defined in ARI 810-2003.

(2)(a) Commercial refrigerators and freezers must meet the applicable requirements listed in the following table:

Equipment Type	Doors	Maximum Daily Energy Consumption (kWh)
Reach-in cabinets, pass-through cabinets, and roll-in or roll-through cabinets that are refrigerators	Solid	0.10V+ 2.04
	Transparent	0.12V+ 3.34
Reach-in cabinets, pass-through cabinets, and roll-in or roll-through cabinets that are "pulldown" refrigerators	Transparent	.126V+ 3.51
Reach-in cabinets, pass-through cabinets, and roll-in or roll-through cabinets that are freezers	Solid	0.40V+ 1.38
	Transparent	0.75V+ 4.10
Reach-in cabinets that are refrigerator-freezers with an AV of 5.19 or higher	Solid	0.27AV - 0.71

kWh= kilowatt-hours

V= total volume (ft³)

AV= adjusted volume= [1.63 x freezer volume (ft³)]+ refrigerator volume (ft³)

(b) For purposes of this section, "pulldown" designates products designed to take a fully stocked refrigerator with beverages at 90 degrees Fahrenheit and cool those beverages to a stable temperature of 38 degrees Fahrenheit within 12 hours or less. Daily energy consumption shall be measured in accordance with the American national standards institute/American society of heating, refrigerating and air-conditioning engineers test method 117-2002, except that the back-loading doors of pass-through and roll-through refrigerators and freezers must remain closed throughout the test, and except that the controls of all appliances must be adjusted to obtain the following product temperatures.

Product or compartment type	Integrated average product temperature in degrees Fahrenheit
Refrigerator	38± 2
Freezer	0± 2

(3)(a) The lamp electrical power input of state-regulated incandescent reflector lamps shall meet the minimum average lamp efficacy requirements for federally regulated incandescent reflector lamps specified in 42 U.S.C. Sec. 6295(i)(1)(A)-(B).

(b) The following types of incandescent lamps are exempt from these requirements:

- (i) Lamps rated at fifty watts or less of the following types: BR 30, ER 30, BR 40, and ER 40;
- (ii) Lamps rated at sixty-five watts of the following types: BR 30, BR 40, and ER 40; and
- (iii) R 20 lamps of forty-five watts or less.

(4)(a) Wine chillers designed and sold for use by an individual must meet requirements specified in the California Code of Regulations, Title 20, section 1605.3 in effect as of July 26, 2009.

(b) Wine chillers designed and sold for use by an individual shall be tested in accordance with the method specified in the California Code of Regulations, Title 20, section 1604 in effect as of July 26, 2009.

(5)(a) The standby energy consumption of bottle-type water dispensers, and point-of-use water dispensers, dispensing both hot and cold water, manufactured on or after January 1, 2010, shall not exceed 1.2 kWh/day.

(b) The test method for water dispensers shall be the environmental protection agency energy star program requirements for bottled water coolers version 1.1.

(6)(a) The standby energy consumption of hot water dispensers and mini-tank electric water heaters manufactured on or after January 1, 2010, shall be not greater than 35 watts.

(b) This subsection does not apply to any water heater:

(i) That is within the scope of 42 U.S.C. Sec. 6292(a)(4) or 6311(1);

(ii) That has a rated storage volume of less than 20 gallons; and

(iii) For which there is no federal test method applicable to that type of water heater.

(c) Hot water dispensers shall be tested in accordance with the method specified in the California Code of Regulations, Title 20, section 1604 in effect as of July 26, 2009.

(d) Mini-tank electric water heaters shall be tested in accordance with the method specified in the California Code of Regulations, Title 20, section 1604 in effect as of July 26, 2009.

(7) The following standards are established for pool heaters, residential pool pumps, and portable electric spas:

(a) Natural gas pool heaters shall not be equipped with constant burning pilots.

(b) Residential pool pump motors manufactured on or after January 1, 2010, must meet requirements specified in the California Code of Regulations, Title 20, section 1605.3 in effect as of July 26, 2009.

(c) Portable electric spas manufactured on or after January 1, 2010, must meet requirements specified in the California Code of Regulations, Title 20, section 1605.3 in effect as of July 26, 2009.

(d) Portable electric spas must be tested in accordance with the method specified in the California Code of Regulations, Title 20, section 1604 in effect as of July 26, 2009.

(8)(a) The leakage rate of tub spout diverters shall be no greater than the applicable requirements shown in the following table:

Appliance	Testing Conditions	Maximum Leakage Rate
		Effective January 1, 2009
Tub spout diverters	When new	0.01 gpm
	After 15,000 cycles of diverting	0.05 gpm

(b) Showerhead tub spout diverter combinations shall meet both the federal standard for showerheads established pursuant to 42 U.S.C. Sec. 6291 et seq. and the standard for tub spout diverters specified in this section.

(9)(a) The idle energy rate of commercial hot food holding cabinets manufactured on or after January 1, 2010, shall be no greater than 40 watts per cubic foot of measured interior volume.

(b) The idle energy rate of commercial hot food holding cabinets shall be determined using ANSI/ASTM F2140-01 standard test method for the performance of hot food holding cabinets (test for idle energy rate dry test). Commercial hot food holding cabinet interior volume shall be calculated using straight line segments following the gross interior dimensions of the appliance and using the following equation: Interior height x interior width x interior depth. Interior volume shall not account for racks, air plenums, or other interior parts. [2009 c 501 § 3; 2006 c 194 § 3; 2005 c 298 § 4.]

19.260.050 Limit on sale or installation of products required to meet or exceed standards in RCW 19.260.040.

(1) No new commercial refrigerator or freezer or state-regulated incandescent reflector lamp manufactured on or after January 1, 2007, may be sold or offered for sale in the state unless the efficiency of the new product meets or exceeds the efficiency standards set forth in RCW 19.260.040. No new automatic commercial ice cube machine manufactured on or after January 1, 2008, may be sold or offered for sale in the state unless the efficiency of the new product meets or exceeds the efficiency standards set forth in RCW 19.260.040.

(2) On or after January 1, 2008, no new commercial refrigerator or freezer or state-regulated incandescent reflector lamp manufactured on or after January 1, 2007, may be installed for compensation in the state unless the efficiency of the new product meets or exceeds the efficiency standards set forth in RCW 19.260.040. On or after January 1, 2009, no new automatic commercial ice cube machine manufactured on or after January 1, 2008, may be installed for compensation in the state unless the efficiency of the new product meets or exceeds the efficiency standards set forth in RCW 19.260.040.

(3) Standards for state-regulated incandescent reflector lamps are effective on the dates specified in subsections (1) and (2) of this section.

(4) The following products, if manufactured on or after January 1, 2010, may not be sold or offered in the state unless the efficiency of the new product meets or exceeds the efficiency standards set forth in RCW 19.260.040:

(a) Wine chillers designed and sold for use by an individual;

(b) Hot water dispensers and mini-tank electric water heaters;

(c) Bottle-type water dispensers and point-of-use water dispensers;

(d) Pool heaters, residential pool pumps, and portable electric spas;

(e) Tub spout diverters; and

(f) Commercial hot food holding cabinets.

(5) The following products, if manufactured on or after January 1, 2010, may not be installed for compensation in the state on or after January 1, 2011, unless the efficiency of the new product meets or exceeds the efficiency standards set forth in RCW 19.260.040:

- (a) Wine chillers designed and sold for use by an individual;
- (b) Hot water dispensers and mini-tank electric water heaters;
- (c) Bottle-type water dispensers and point-of-use water dispensers;
- (d) Pool heaters, residential pool pumps, and portable electric spas;
- (e) Tub spout diverters; and
- (f) Commercial hot food holding cabinets. [2009 c 501 § 4; 2006 c 194 § 4; 2005 c 298 § 5.]

19.260.060 Department recommended updates to standards. The department may recommend updates to the energy efficiency standards and test methods for products listed in RCW 19.260.030. The department may also recommend establishing state standards for additional nonfederally covered products. In making its recommendations, the department shall use the following criteria: (1) Multiple manufacturers produce products that meet the proposed standard at the time of recommendation, (2) products meeting the proposed standard are available at the time of recommendation, (3) the products are cost-effective to consumers on a life-cycle cost basis using average Washington resource rates, (4) the utility of the energy efficient product meets or exceeds the utility of the comparable product available for purchase, and (5) the standard exists in at least two other states in the United States. For recommendations concerning commercial clothes washers, the department must also consider the fiscal effects on the low-income, elderly, and student populations. Any recommendations shall be transmitted to the appropriate committees of the legislature sixty days before the start of any regular legislative session. [2005 c 298 § 6.]

19.260.070 Manufacturers must test products—Certification—Rules—Identification of products—Complaints—Penalty. (1) The manufacturers of products covered by this chapter must test samples of their products in accordance with the test procedures under this chapter or those specified in the state building code.

(2) Manufacturers of new products covered by RCW 19.260.030, except for *single-voltage external AC to DC power supplies, shall certify to the department that the products are in compliance with this chapter. This certification must be based on test results unless this chapter does not specify a test method. The department shall establish rules governing the certification of these products and may coordinate with the certification programs of other states and federal agencies with similar standards.

(3) Manufacturers of new products covered by RCW 19.260.030 shall identify each product offered for sale or installation in the state as in compliance with this chapter by means of a mark, label, or tag on the product and packaging at the time of sale or installation. The department shall establish rules governing the identification of these products and packaging, which shall be coordinated to the greatest practical extent with the labeling programs of other states and federal agencies with equivalent efficiency standards.

(4) The department may test products covered by RCW 19.260.030. If products so tested are found not to be in compliance with the minimum efficiency standards established

under RCW 19.260.040, the department shall: (a) Charge the manufacturer of the product for the cost of product purchase and testing; and (b) make information available to the public on products found not to be in compliance with the standards.

(5) The department shall obtain in paper form the test methods specified in RCW 19.260.040, which shall be available for public use at the department's energy policy offices.

(6) The department shall investigate complaints received concerning violations of this chapter. Any manufacturer or distributor who violates this chapter shall be issued a warning by the director of the department for any first violation. Repeat violations are subject to a civil penalty of not more than two hundred fifty dollars a day. Penalties assessed under this subsection are in addition to costs assessed under subsection (4) of this section.

(7) The department may adopt rules as necessary to ensure the proper implementation and enforcement of this chapter.

(8) The proceedings relating to this chapter are governed by the administrative procedure act, chapter 34.05 RCW. [2005 c 298 § 7.]

*Reviser's note: RCW 19.260.020 was amended by 2009 c 501 § 1, deleting the definition of "single-voltage external AC to DC power supply."

Chapter 19.265 RCW TAX REFUND ANTICIPATION LOANS

Sections

19.265.010	Definitions.
19.265.020	Registration of facilitators.
19.265.030	Required disclosure.
19.265.040	Borrower may rescind loan—Manner.
19.265.050	Facilitators—Unlawful activities.
19.265.060	Violation of chapter—Penalty.
19.265.070	Finding—Application of chapter 19.86 RCW.
19.265.900	Short title.

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

(1) "Borrower" means a taxpayer who receives the proceeds of a refund anticipation loan.

(2) "Department" means the department of financial institutions.

(3) "Director" means the director of the department of financial institutions.

(4) "Facilitator" means a person who receives or accepts for delivery an application for a refund anticipation loan, delivers a check in payment of refund anticipation loan proceeds, or in any other manner acts to allow the making of a refund anticipation loan. "Facilitator" does not include a bank, thrift, savings association, industrial bank, or credit union, operating under the laws of the United States or this state, an affiliate that is a servicer for such an entity, or any person who acts solely as an intermediary and does not deal with a taxpayer in the making of the refund anticipation loan.

(5) "Lender" means a person who extends credit to a borrower in the form of a refund anticipation loan.

(6) "Person" means an individual, a firm, a partnership, an association, a corporation, or other entity.

(7) "Refund anticipation loan" means a loan borrowed by a taxpayer from a lender based on the taxpayer's anticipated federal income tax refund.

(8) "Refund anticipation loan fee" means the charges, fees, or other consideration imposed by the lender for a refund anticipation loan. This term does not include any charge, fee, or other consideration usually imposed by the facilitator in the ordinary course of business for nonloan services, such as fees for tax return preparation and fees for electronic filing of tax returns.

(9) "Refund anticipation loan fee schedule" means a listing or table of refund anticipation loan fees charged by the facilitator or the lender for three or more representative refund anticipation loan amounts. The schedule shall list separately each fee or charge imposed, as well as a total of all fees imposed, related to the making of refund anticipation loans. The schedule shall also include, for each representative loan amount, the estimated annual percentage rate calculated under the guidelines established by the federal truth in lending act, 15 U.S.C. Sec. 1601 et seq.

(10) "Taxpayer" means an individual who files a federal income tax return. [2005 c 471 § 2.]

19.265.020 Registration of facilitators. (1) No person may individually, or in conjunction or cooperation with another person act as a facilitator unless that person is:

(a) A tax preparer or works for a person that engages in the business of tax preparation;

(b) Accepted by the internal revenue service as an authorized IRS e-file provider; and

(c) Registered with the department as a facilitator. The director may prescribe the registration form.

(2) A person is registered as a facilitator by providing the department, on or before December 31st of each year with:

(a) A list of authorized IRS e-file providers in the state of Washington for the current tax filing year; and

(b) A thirty-five dollar processing fee for each authorized e-file provider on the list.

(3) After the December 31st deadline, a facilitator may amend the registration required in subsection (2) of this section to reflect additions or deletions of office locations or e-file providers authorized by the internal revenue service.

(4) The department shall make available to the public a list of all facilitators registered under this section.

(5) This section does not apply to a person doing business as a bank, thrift, savings association, industrial bank, or credit union, operating under the laws of the United States or this state, an affiliate that is a servicer for such an entity, or any person who acts solely as an intermediary and does not deal with a taxpayer in the making of the refund anticipation loan.

(6) This chapter shall preempt and be exclusive of all local acts, statutes, ordinances, and regulations relating to refund anticipation loans. This subsection shall be given retroactive and prospective effect. [2005 c 471 § 3.]

19.265.030 Required disclosure. (1) For all refund anticipation loans, a facilitator must provide clear disclosure to the borrower prior to the borrower's completion of the application. The disclosure must contain the following:

(a) The refund anticipation loan fee schedule; and

(b) A written statement, in a minimum of ten-point type, containing the following elements:

(i) That a refund anticipation loan is a loan, and is not the borrower's actual income tax refund;

(ii) That the taxpayer can file an income tax return electronically without applying for a refund anticipation loan;

(iii) The average times according to the internal revenue service within which a taxpayer who does not obtain a refund anticipation loan can expect to receive a refund if the taxpayer's return is (A) filed electronically and the refund is directly deposited to the taxpayer's bank account or mailed to the taxpayer, and (B) mailed to the internal revenue service and the refund is directly deposited to the taxpayer's bank account or mailed to the taxpayer;

(iv) That the internal revenue service does not guarantee that it will pay the full amount of the anticipated refund and it does not guarantee a specific date that a refund will be deposited into a taxpayer's financial institution account or mailed to a taxpayer;

(v) That the borrower is responsible for repayment of the loan and related fees in the event that the tax refund is not paid or paid in full;

(vi) The estimated time within which the loan proceeds will be paid to the borrower if the loan is approved;

(vii) The fee that will be charged, if any, if the borrower's loan is not approved; and

(viii) The borrower's right to rescind the refund anticipation loan transaction as provided in RCW 19.265.040.

(2) The following additional information must be provided to the borrower of a refund anticipation loan before consummation of the loan transaction:

(a) The estimated total fees for obtaining the refund anticipation loan; and

(b) The estimated annual percentage rate for the borrower's refund anticipation loan, using the guidelines established under the federal truth in lending act (15 U.S.C. Sec. 1601 et seq.). [2005 c 471 § 4.]

19.265.040 Borrower may rescind loan—Manner. A borrower may rescind a loan, on or before the close of business on the next day of business, by either returning the original check issued for the loan or providing the amount of the loan in cash to the lender or the facilitator. The facilitator may not charge the borrower a fee for rescinding the loan or a refund anticipation loan fee if the loan is rescinded but may charge the borrower the administrative cost of establishing a bank account to electronically receive the refund. [2005 c 471 § 5.]

19.265.050 Facilitators—Unlawful activities. It is unlawful for a facilitator of a refund anticipation loan to engage in any of the following activities:

(1) Misrepresent a material factor or condition of a refund anticipation loan;

(2) Fail to process the application for a refund anticipation loan promptly after the consumer applies for the loan;

(3) Engage in any dishonest, fraudulent, unfair, unconscionable, or unethical practice or conduct in connection with a refund anticipation loan;

(4) Arrange for a creditor to take a security interest in any property of the consumer other than the proceeds of the consumer's tax refund and the account into which that tax refund is deposited to secure payment of the loan; and

(5) Offer a refund anticipation loan that, including any refund anticipation loan fee or any other fee related to the loan or tax preparation, exceeds the amount of the anticipated tax refund. [2005 c 471 § 6.]

19.265.060 Violation of chapter—Penalty. Any person who knowingly and willfully violates this chapter is guilty of a misdemeanor and shall be fined up to five hundred dollars for each offense. [2005 c 471 § 7.]

19.265.070 Finding—Application of chapter 19.86 RCW. 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. [2005 c 471 § 8.]

19.265.900 Short title. This chapter may be known and cited as the tax refund anticipation loan act. [2005 c 471 § 1.]

Chapter 19.270 RCW COMPUTER SPYWARE

Sections

19.270.010	Definitions.
19.270.020	Unlawful activities—Unauthorized transmission of software.
19.270.040	Unlawful activities—Installation or execution of software component—Deceptive misrepresentation.
19.270.050	Application and construction of RCW 19.270.020 (5) through (11) or 19.270.040.
19.270.060	Who may bring an action—Damages—Attorneys' fees—Limit of damages.
19.270.070	Intent—Chapter preempts local laws.
19.270.080	Chapter 19.86 RCW not affected.

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

(1) "Advertisement" means a communication, the primary purpose of which is the commercial promotion of a commercial product or service, including a communication on an internet web site that is operated for a commercial purpose.

(2) "Computer software" means a sequence of instructions written in any programming language that is executed on a computer. "Computer software" does not include computer software that is a web page, or are data components of web pages that are not executable independently of the web page.

(3) "Damage" means any significant impairment to the integrity or availability of data, computer software, a system, or information.

(4) "Deceptive" means: (a) A materially false or fraudulent statement; or (b) a statement or description that omits or misrepresents material information in order to deceive an owner or operator.

(5) "Execute" means the performance of the functions or the carrying out of the instructions of the computer software.

(6) "Internet" means the global information system that is logically linked together by a globally unique address space based on the internet protocol (IP), or its subsequent extensions, and that is able to support communications using the transmission control protocol/internet protocol (TCP/IP) suite, or its subsequent extensions, or other IP-compatible protocols, and that provides, uses, or makes accessible, either publicly or privately, high level services layered on the communications and related infrastructure described in this subsection.

(7) "Owner or operator" means the owner or lessee of a computer, or someone using such computer with the owner's or lessee's authorization. "Owner or operator" does not include any person who owns a computer before the first retail sale of such computer.

(8) "Person" means any individual, partnership, corporation, limited liability company, or other organization, or any combination thereof.

(9) "Personally identifiable information" means any of the following with respect to an individual who is an owner or operator:

(a) First name or first initial in combination with last name;

(b) A home or other physical address including street name;

(c) An electronic mail address;

(d) A credit or debit card number, bank account number, or a password or access code associated with a credit or debit card or bank account;

(e) Social security number, tax identification number, driver's license number, passport number, or any other government-issued identification number; or

(f) Any of the following information in a form that personally identifies an owner or operator:

(i) Account balances;

(ii) Overdraft history; or

(iii) Payment history.

(10) "Procure" means to knowingly, or with conscious avoidance of knowledge, pay or provide other consideration to, or induce, another person to transmit on one's behalf.

(11) "Transmit" means to knowingly, or with conscious avoidance of knowledge, transfer, send, or make available computer software, or any component thereof, via the internet or any other medium, including local area networks of computers, other nonwire transmission, and disc or other data storage device. "Transmit" does not include any action by a person providing:

(a) The internet connection, telephone connection, or other means of transmission capability through which the software was made available;

(b) The storage or hosting of the software program or a web page through which the software was made available, unless the person providing the storage or hosting services knows or reasonably should know there is or will be a violation of this chapter, and participates in or ratifies the actions constituting the violation; or

(c) An information location tool, such as a directory, index reference, pointer, or hypertext link, through which the user of the computer located the software, unless such person receives a direct economic benefit from the execution of such software on the computer. [2008 c 66 § 1; 2005 c 500 § 1.]

19.270.020 Unlawful activities—Unauthorized transmission of software. It is unlawful for a person, without the authorization of the owner or operator, to transmit, or procure the transmission of, software to the owner or operator's computer with actual knowledge or conscious avoidance of actual knowledge that the software does any of the following:

(1) Modifies, through deceptive means, settings that control any of the following:

(a) The page that appears when an owner or operator launches an internet browser or similar computer software used to access and navigate the internet;

(b) The default provider or web proxy the owner or operator uses to access or search the internet;

(c) The owner or operator's list of bookmarks used to access web pages; or

(d) The toolbars or buttons of the owner or operator's internet browser or similar computer software used to access and navigate the internet;

(2) Collects, through intentionally deceptive means, personally identifiable information through the use of a key-stroke-logging function or through extracting the information from the owner or operator's hard drive;

(3) Prevents, through intentionally deceptive means, an owner or operator's reasonable efforts to block the installation or execution of, or to disable, computer software;

(4) Misrepresents that computer software will be uninstalled or disabled by an owner or operator's action;

(5) Through intentionally deceptive means, removes, disables, or renders inoperative security, antispyware, or anti-virus computer software installed on the computer, or through intentionally deceptive means disables the ability of such computer software to update automatically;

(6) Accesses or uses the modem or internet service for such computer to cause damage to the computer or cause an owner or operator to incur financial charges for a service that is not authorized by the owner or operator;

(7) Opens multiple, sequential, stand-alone advertisements in the owner or operator's computer without the authorization of the owner or operator and that a reasonable computer user cannot close without turning off the computer or closing the internet browser;

(8) Uses the owner or operator's computer as part of an activity performed by a group of computers for the purpose of causing damage to another computer or person including, but not limited to, launching a denial of service attack;

(9) Transmits or relays commercial electronic mail or a computer virus from the owner or operator's computer, where the transmission or relaying is initiated by a person other than the owner or operator;

(10) Modifies any of the following settings related to the computer's access to, or use of, the internet:

(a) Settings that protect information about the owner or operator in order to make unauthorized use of the owner or operator's personally identifiable information; or

(b) Security settings in order to cause damage to a computer; or

(11) Prevents an owner or operator's reasonable efforts to block the installation of, or to disable, computer software by doing any of the following:

(a) Presenting the owner or operator with an option to decline installation of computer software and with knowl-

edge or conscious avoidance of knowledge that when the option is selected the installation nevertheless proceeds; or

(b) Falsely representing that computer software has been disabled. [2008 c 66 § 2; 2005 c 500 § 2.]

19.270.040 Unlawful activities—Installation or execution of software component—Deceptive misrepresentation. It is unlawful for a person who is not an owner or operator to do any of the following with regard to the owner or operator's computer:

(1) Induce an owner or operator to install a computer software component onto the computer by deceptively misrepresenting the extent to which installing the software is necessary for maintenance, update, or repair of the computer or computer software, for security or privacy reasons, for the proper operation of the computer, in order to open, view, or play a particular type of content; or

(2) Induce an owner or operator to install a computer software component onto the computer by displaying a pop-up, web page, or other message that deceptively misrepresents the source of the message; or

(3) Deceptively cause the execution on the computer of a computer software component that causes the owner or operator to use the component in a manner that violates any other provision of this section. [2008 c 66 § 3; 2005 c 500 § 4.]

19.270.050 Application and construction of RCW 19.270.020 (5) through (11) or 19.270.040. (1) Neither RCW 19.270.020 (5) through (11) nor 19.270.040 apply to any monitoring of, or interaction with, a subscriber's internet or other network connection or service, or a computer, by a telecommunications carrier, cable operator, computer hardware or software provider, or provider of information service or interactive computer service for network or computer security purposes, diagnostics, technical support, maintenance, repair, authorized updates of software or system firmware, authorized remote system management, or detection or prevention of the unauthorized use of or fraudulent or other illegal activities in connection with a network, service, or computer software, including scanning for and removing software under this chapter.

(2) This section shall not be construed to provide a defense to liability under the common law or any other state or federal law, nor shall it be construed as an affirmative grant of authority to engage in any of the activities listed in this section. [2008 c 66 § 4; 2005 c 500 § 5.]

19.270.060 Who may bring an action—Damages—Attorneys' fees—Limit of damages. (1) In addition to any other remedies provided by this chapter or any other provision of law, the attorney general, or a provider of computer software or owner of a web site or trademark who is adversely affected by reason of a violation of this chapter, and whose action arises directly out of such person's status as a provider or owner, may bring an action against a person who violates this chapter to enjoin further violations and to recover either actual damages or one hundred thousand dollars per violation, whichever is greater.

(2) In an action under subsection (1) of this section, a court may increase the damages up to three times the damages allowed under subsection (1) of this section if the defen-

dant has engaged in a pattern and practice of violating this chapter. The court may also award costs and reasonable attorneys' fees to the prevailing party.

(3) The amount of damages determined under subsection (1) or (2) of this section may not exceed two million dollars. [2008 c 66 § 5; 2005 c 500 § 6.]

19.270.070 Intent—Chapter preempts local laws. It is the intent of the legislature that this chapter is a matter of statewide concern. This chapter supersedes and preempts all rules, regulations, codes, ordinances, and other laws adopted by a city, county, city and county, municipality, or local agency regarding spyware and notices to consumers from computer software providers regarding information collection. [2005 c 500 § 7.]

19.270.080 Chapter 19.86 RCW not affected. Chapter 500, Laws of 2005 does not add to, contract, alter, or amend any cause of action allowed under chapter 19.86 RCW and does not affect in any way the application of chapter 19.86 RCW to any future case or fact pattern. [2005 c 500 § 8.]

Chapter 19.275 RCW

ANTIPYRAMID PROMOTIONAL SCHEME ACT

Sections

19.275.010	Findings.
19.275.020	Definitions.
19.275.030	Pyramid scheme—Prohibition.
19.275.040	Application of the consumer protection act.
19.275.900	Short title—2006 c 65.

19.275.010 Findings. The legislature finds that pyramid schemes, chain letters, and related illegal schemes are enterprises:

(1) That finance returns to participants through sums taken from newly attracted participants;

(2) In which new participants are promised large returns for their investment or contribution; and

(3) That involve unfair and deceptive sales tactics, including: Misrepresentations of sustainability, profitability and legality of the scheme, and false statements that the scheme is legal or approved by governmental agencies. [2006 c 65 § 1.]

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

(1) "Compensation" means payment, regardless of how it is characterized, of money, financial benefit, or thing of value. "Compensation" does not include payment based on the sale of goods or services to anyone who is purchasing the goods or services for actual use or consumption.

(2) "Consideration" means the payment, regardless of how it is characterized, of cash or the purchase of goods, services, or intangible property. "Consideration" does not include:

(a) The purchase of goods or services furnished at cost to be used in making sales and not for resale;

(b) The purchase of goods or services subject to a bona fide repurchase agreement as defined in subsection (5) of this section; or

(2018 Ed.)

(c) Time and effort spent in pursuit of sales or recruiting activities.

(3) "Person" means natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, or any other legal entity.

(4) "Pyramid schemes" means any plan or operation in which a person gives consideration for the right or opportunity to receive compensation that is derived primarily from the recruitment of other persons as participants in the plan or operation, rather than from the bona fide sale of goods, services, or intangible property to a person or by persons to others.

(5)(a) "Repurchase agreement" means an enforceable agreement by the seller to repurchase, at the buyer's written request, all currently marketable inventory within one year from its date of purchase; and the refund must not be less than ninety percent of the original net cost, less any consideration received by the buyer when he or she bought the products being returned.

(b) Products shall not be considered currently marketable if returned for repurchase after the products' commercially reasonable usable or shelf life has passed, or if it has been clearly disclosed to the buyer that the products are seasonal, discontinued, or special promotion products that are not subject to the repurchase obligation. [2006 c 65 § 2.]

19.275.030 Pyramid scheme—Prohibition. (1) No person may establish, promote, operate, or participate in any pyramid scheme.

(2) A limitation as to the number of persons who may participate, or the presence of additional conditions affecting eligibility for the opportunity to receive compensation under the scheme, does not change the identity of the scheme as a pyramid scheme.

(3) It is not a defense under chapter 65, Laws of 2006 that a person, on giving consideration, obtains goods, services, or intangible property in addition to the right to receive compensation, nor is it a defense to designate the consideration a gift, donation offering, or other word of similar meaning. [2006 c 65 § 3.]

19.275.040 Application of the consumer protection act. 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. [2006 c 65 § 4.]

19.275.900 Short title—2006 c 65. This act may be cited as the "antipyramid promotional scheme act." [2006 c 65 § 5.]

Chapter 19.280 RCW

ELECTRIC UTILITY RESOURCE PLANS

Sections

19.280.010	Intent—Finding.
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- 19.280.020 Definitions.
- 19.280.030 Development of a resource plan—Requirements of a resource plan.
- 19.280.040 Investor-owned utilities submit integrated resource plans to the commission—Rules.
- 19.280.050 Consumer-owned utilities.
- 19.280.060 Department's duties—Report to the legislature.
- 19.280.070 Combined heat and power systems—Valuation—Assessment.
- 19.280.080 Combined heat and power systems—Power purchase agreements.
- 19.280.090 Combined heat and power systems—Report to the legislature.

19.280.010 Intent—Finding. It is the intent of the legislature to encourage the development of new safe, clean, and reliable energy resources to meet demand in Washington for affordable and reliable electricity. To achieve this end, the legislature finds it essential that electric utilities in Washington develop comprehensive resource plans that explain the mix of generation and demand-side resources they plan to use to meet their customers' electricity needs in both the short term and the long term. The legislature intends that information obtained from integrated resource planning under this chapter will be used to assist in identifying and developing: (1) New energy generation; (2) conservation and efficiency resources; (3) methods, commercially available technologies, and facilities for integrating renewable resources, including addressing any overgeneration event; and (4) related infrastructure to meet the state's electricity needs. [2013 c 149 § 1; 2006 c 195 § 1.]

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

(1) "Combined heat and power" means the sequential production of electricity and useful thermal energy from a common fuel source where, under normal operating conditions, the facility has a useful thermal energy output of no less than thirty-three percent of the total energy output.

(2) "Commission" means the utilities and transportation commission.

(3) "Conservation and efficiency resources" means any reduction in electric power consumption that results from increases in the efficiency of energy use, production, transmission, or distribution.

(4) "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.

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

(6) "Electric utility" means a consumer-owned or investor-owned utility.

(7) "Full requirements customer" means an electric utility that relies on the Bonneville power administration for all power needed to supply its total load requirement other than that served by nondispatchable generating resources totaling no more than six megawatts or renewable resources.

(8) "Governing body" means the elected board of directors, city council, commissioners, or board of any consumer-owned utility.

(9) "Integrated resource plan" means an analysis describing the mix of generating resources, conservation, methods, technologies, and resources to integrate renewable resources and, where applicable, address overgeneration events, and efficiency resources that will meet current and projected needs at the lowest reasonable cost to the utility and its ratepayers and that complies with the requirements specified in RCW 19.280.030(1).

(10) "Investor-owned utility" means a corporation owned by investors that meets the definition in RCW 80.04.010 and is engaged in distributing electricity to more than one retail electric customer in the state.

(11) "Lowest reasonable cost" means the lowest cost mix of generating resources and conservation and efficiency resources determined through a detailed and consistent analysis of a wide range of commercially available resources. At a minimum, this analysis must consider resource cost, market-volatility risks, demand-side resource uncertainties, resource dispatchability, resource effect on system operation, the risks imposed on the utility and its ratepayers, public policies regarding resource preference adopted by Washington state or the federal government, and the cost of risks associated with environmental effects including emissions of carbon dioxide.

(12) "Overgeneration event" means an event within an operating period of a balancing authority when the electricity supply, including generation from intermittent renewable resources, exceeds the demand for electricity for that utility's energy delivery obligations and when there is a negatively priced regional market.

(13) "Plan" means either an "integrated resource plan" or a "resource plan."

(14) "Renewable resources" means electricity generation facilities fueled by: (a) Water; (b) wind; (c) solar energy; (d) geothermal energy; (e) landfill gas; (f) biomass energy utilizing animal waste, solid or liquid organic fuels from wood, forest, or field residues or dedicated energy crops that do not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic; (g) by-products of pulping or wood manufacturing processes, including but not limited to bark, wood chips, sawdust, and lignin in spent pulping liquors; (h) ocean thermal, wave, or tidal power; or (i) gas from sewage treatment facilities.

(15) "Resource plan" means an assessment that estimates electricity loads and resources over a defined period of time and complies with the requirements in RCW 19.280.030(2). [2015 3rd sp.s. c 19 § 8; 2013 c 149 § 2; 2009 c 565 § 19; 2006 c 195 § 2.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Finding—Intent—2015 3rd sp.s. c 19: See note following RCW 39.35.010.

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 condi-

tions 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 or longer, of projected customer demand which takes into account econometric data and customer usage;

(b) An assessment of commercially available conservation and efficiency resources. Such assessment may include, as appropriate, opportunities for development of combined heat and power as an energy and capacity resource, 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) An assessment of methods, commercially available technologies, or facilities for integrating renewable resources, and addressing overgeneration events, if applicable to the utility's resource portfolio;

(f) 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, including mitigating overgeneration events, at the lowest reasonable cost and risk to the utility and its ratepayers; and

(g) 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: (i) Renewable resources; (ii) methods, commercially available technologies, or facilities for integrating renewable resources, including addressing any overgeneration event; or (iii) conservation and efficiency resources, why such a decision was made.

(3) Assessments for demand side resources included in an integrated resource plan may include combined heat and power systems as one of the measures in a conservation supply curve. The value of recoverable waste heat resulting from combined heat and power must be reflected in analyses of cost-effectiveness under this subsection.

(4) An electric utility that is required to develop a resource plan under this section must complete its initial plan by September 1, 2008.

(2018 Ed.)

(5) Resource plans developed under this section must be updated on a regular basis, at a minimum on intervals of two years.

(6) Plans shall not be a basis to bring legal action against electric utilities.

(7) 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. [2015 3rd sp.s. c 19 § 9; 2013 c 149 § 3; 2011 c 180 § 305; 2006 c 195 § 3.]

Finding—Intent—2015 3rd sp.s. c 19: See note following RCW 39.35.010.

Findings—Purpose—2011 c 180: See note following RCW 80.80.010.

19.280.040 Investor-owned utilities submit integrated resource plans to the commission—Rules. (1) Investor-owned utilities shall submit integrated resource plans to the commission. The commission shall establish by rule the requirements for preparation and submission of integrated resource plans.

(2) The commission may adopt additional rules as necessary to clarify the requirements of RCW 19.280.030 as they apply to investor-owned utilities. [2006 c 195 § 4.]

19.280.050 Consumer-owned utilities. (1) The governing body of a consumer-owned utility that develops a plan under this chapter shall encourage participation of its consumers in development of the plans and progress reports and approve the plans and progress reports after it has provided public notice and hearing.

(2) Each consumer-owned utility shall transmit a copy of its plan to the department by September 1, 2008, and transmit subsequent progress reports or plans to the department at least every two years thereafter. The department shall develop, in consultation with utilities, a common cover sheet that summarizes the essential data in their plans or progress reports.

(3) Consumer-owned utilities may develop plans of a similar type jointly with other consumer-owned utilities. Data and assessments included in joint reports must be identifiable to each individual utility.

(4) To minimize duplication of effort and maximize efficient use of utility resources, in developing their plans under RCW 19.280.030, consumer-owned utilities are encouraged to use resource planning concepts, techniques, and information provided to and by organizations such as the United States department of energy, the Northwest planning and conservation council, Pacific Northwest utility conference committee, and other state, regional, national, and international entities, and, for the 2008 plan, as appropriate, are encouraged to use and be consistent with relevant determinations required under Title XII - Electricity; Subtitle E, Sections 1251 - 1254 of the federal energy policy act of 2005. [2006 c 195 § 5.]

19.280.060 Department's duties—Report to the legislature. The department shall review the plans of consumer-owned utilities and investor-owned utilities, and data available from other state, regional, and national sources, and prepare an electronic report to the legislature aggregating the data and assessing the overall adequacy of Washington's

electricity supply. The report shall include a statewide summary of utility load forecasts, load/resource balance, and utility plans for the development of thermal generation, renewable resources, conservation and efficiency resources, and an examination of assessment methods used by utilities to address overgeneration events. The commission shall provide the department with data summarizing the plans of investor-owned utilities for use in the department's statewide summary. The department shall submit any reports it receives of existing and potential combined heat and power facilities as reported by utilities to the Washington State University extension energy program for analysis. The department may submit its report within the biennial report required under RCW 43.21F.045. [2015 3rd sp.s. c 19 § 10; 2013 c 149 § 4; 2006 c 195 § 6.]

Finding—Intent—2015 3rd sp.s. c 19: See note following RCW 39.35.010.

19.280.070 Combined heat and power systems—Valuation—Assessment. (1) The legislature finds that combined heat and power systems provide both energy and capacity resources. Failure to assess the electric output of combined heat and power systems as both an energy and a capacity resource may result in a failure to account for the total benefits of that output in its posted price.

(2) Electric utilities with over twenty-five thousand customers in the state of Washington must value, pursuant to RCW 19.280.030, combined heat and power as having both energy and capacity value by December 31, 2016, for the purposes of setting the value of power under the federal public utility regulatory policies act, establishing rates for power purchase agreements, and integrated resource planning only if an assessment of combined heat and power identifies opportunities for combined heat and power that are dispatchable and that may provide capacity value. [2015 3rd sp.s. c 19 § 6.]

Finding—Intent—2015 3rd sp.s. c 19: See note following RCW 39.35.010.

19.280.080 Combined heat and power systems—Power purchase agreements. (1) The legislature finds that power purchase agreements of a minimum of fifteen years for the electric output of combined heat and power systems may be advantageous to both electric utilities and the owners or operators of combined heat and power systems.

(2) Electric utilities with over twenty-five thousand customers in the state of Washington are encouraged to offer a minimum term of fifteen years for new power purchase agreements for the electric output of combined heat and power systems beginning December 31, 2016.

(3) The commission may authorize recovery of the actual cost of fuel incurred by an electrical company under a power purchase agreement for the electric output of a combined heat and power system.

(4) The governing body of a consumer-owned utility that offers a fifteen-year minimum term for a power purchase agreement for the electric output of a combined heat and power system may, every five years after signing the agreement, initiate a fuel cost adjustment process in order to recover the actual cost of fuel incurred by the consumer-

owned utility under a power purchase agreement under this section. [2015 3rd sp.s. c 19 § 7.]

Finding—Intent—2015 3rd sp.s. c 19: See note following RCW 39.35.010.

19.280.090 Combined heat and power systems—Report to the legislature. The Washington State University extension energy program may electronically submit an annual report to the appropriate legislative committees on the planned and completed combined heat and power facilities in the state, including but not limited to the following information: Number, size, and customer base of combined heat and power installations in the state; projects that have been publicly considered but have not been developed; and recommendations to further attain the goal of improving thermal energy efficiency. [2015 3rd sp.s. c 19 § 11.]

Finding—Intent—2015 3rd sp.s. c 19: See note following RCW 39.35.010.

Chapter 19.285 RCW ENERGY INDEPENDENCE ACT

Sections

19.285.010	Intent.
19.285.020	Declaration of policy.
19.285.030	Definitions.
19.285.040	Energy conservation and renewable energy targets.
19.285.045	Energy conservation and renewable energy targets—Analysis and advisory opinion.
19.285.050	Resource costs.
19.285.060	Accountability and enforcement—Energy independence act special account.
19.285.070	Reporting and public disclosure.
19.285.080	Rule making.
19.285.900	Construction—2007 c 1 (Initiative Measure No. 937).
19.285.902	Short title—2007 c 1 (Initiative Measure No. 937).

19.285.010 Intent. This chapter concerns requirements for new energy resources. This chapter requires large utilities to obtain fifteen percent of their electricity from new renewable resources such as solar and wind by 2020 and undertake cost-effective energy conservation. [2007 c 1 § 1 (Initiative Measure No. 937, approved November 7, 2006).]

19.285.020 Declaration of policy. Increasing energy conservation and the use of appropriately sited renewable energy facilities builds on the strong foundation of low-cost renewable hydroelectric generation in Washington state and will promote energy independence in the state and the Pacific Northwest region. Making the most of our plentiful local resources will stabilize electricity prices for Washington residents, provide economic benefits for Washington counties and farmers, create high-quality jobs in Washington, provide opportunities for training apprentice workers in the renewable energy field, protect clean air and water, and position Washington state as a national leader in clean energy technologies. [2007 c 1 § 2 (Initiative Measure No. 937, approved November 7, 2006).]

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

(1) "Attorney general" means the Washington state office of the attorney general.

(2) "Auditor" means: (a) The Washington state auditor's office or its designee for qualifying utilities under its jurisdiction that are not investor-owned utilities; or (b) an independent auditor selected by a qualifying utility that is not under the jurisdiction of the state auditor and is not an investor-owned utility.

(3)(a) "Biomass energy" includes: (i) Organic by-products of pulping and the wood manufacturing process; (ii) animal manure; (iii) solid organic fuels from wood; (iv) forest or field residues; (v) untreated wooden demolition or construction debris; (vi) food waste and food processing residuals; (vii) liquors derived from algae; (viii) dedicated energy crops; and (ix) yard waste.

(b) "Biomass energy" does not include: (i) Wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic; (ii) wood from old growth forests; or (iii) municipal solid waste.

(4) "Coal transition power" has the same meaning as defined in RCW 80.80.010.

(5) "Commission" means the Washington state utilities and transportation commission.

(6) "Conservation" means any reduction in electric power consumption resulting from increases in the efficiency of energy use, production, or distribution.

(7) "Cost-effective" has the same meaning as defined in RCW 80.52.030.

(8) "Council" means the Washington state apprenticeship and training council within the department of labor and industries.

(9) "Customer" means a person or entity that purchases electricity for ultimate consumption and not for resale.

(10) "Department" means the department of commerce or its successor.

(11) "Distributed generation" means an eligible renewable resource where the generation facility or any integrated cluster of such facilities has a generating capacity of not more than five megawatts.

(12) "Eligible renewable resource" means:

(a) Electricity from a generation facility powered by a renewable resource other than freshwater that commences operation after March 31, 1999, where: (i) The facility is located in the Pacific Northwest; or (ii) the electricity from the facility is delivered into Washington state on a real-time basis without shaping, storage, or integration services;

(b) Incremental electricity produced as a result of efficiency improvements completed after March 31, 1999, to hydroelectric generation projects owned by a qualifying utility and located in the Pacific Northwest where the additional generation does not result in new water diversions or impoundments;

(c) Hydroelectric generation from a project completed after March 31, 1999, where the generation facility is located in irrigation pipes, irrigation canals, water pipes whose primary purpose is for conveyance of water for municipal use, and wastewater pipes located in Washington where the generation does not result in new water diversions or impoundments;

(d) Qualified biomass energy;

(e) For a qualifying utility that serves customers in other states, electricity from a generation facility powered by a renewable resource other than freshwater that commences

operation after March 31, 1999, where: (i) The facility is located within a state in which the qualifying utility serves retail electrical customers; and (ii) the qualifying utility owns the facility in whole or in part or has a long-term contract with the facility of at least twelve months or more; or

(f)(i) Incremental electricity produced as a result of a capital investment completed after January 1, 2010, that increases, relative to a baseline level of generation prior to the capital investment, the amount of electricity generated in a facility that generates qualified biomass energy as defined under subsection (18)(c)(ii) of this section and that commenced operation before March 31, 1999.

(ii) Beginning January 1, 2007, the facility must demonstrate its baseline level of generation over a three-year period prior to the capital investment in order to calculate the amount of incremental electricity produced.

(iii) The facility must demonstrate that the incremental electricity resulted from the capital investment, which does not include expenditures on operation and maintenance in the normal course of business, through direct or calculated measurement.

(13) "Investor-owned utility" has the same meaning as defined in RCW 19.29A.010.

(14) "Load" means the amount of kilowatt-hours of electricity delivered in the most recently completed year by a qualifying utility to its Washington retail customers.

(15)(a) "Nonpower attributes" means all environmentally related characteristics, exclusive of energy, capacity reliability, and other electrical power service attributes, that are associated with the generation of electricity from a renewable resource, including but not limited to the facility's fuel type, geographic location, vintage, qualification as an eligible renewable resource, and avoided emissions of pollutants to the air, soil, or water, and avoided emissions of carbon dioxide and other greenhouse gases.

(b) "Nonpower attributes" does not include any aspects, claims, characteristics, and benefits associated with the on-site capture and destruction of methane or other greenhouse gases at a facility through a digester system, landfill gas collection system, or other mechanism, which may be separately marketable as greenhouse gas emission reduction credits, offsets, or similar tradable commodities. However, these separate avoided emissions may not result in or otherwise have the effect of attributing greenhouse gas emissions to the electricity.

(16) "Pacific Northwest" has the same meaning as defined for the Bonneville power administration in section 3 of the Pacific Northwest electric power planning and conservation act (94 Stat. 2698; 16 U.S.C. Sec. 839a).

(17) "Public facility" has the same meaning as defined in RCW 39.35C.010.

(18) "Qualified biomass energy" means electricity produced from a biomass energy facility that: (a) Commenced operation before March 31, 1999; (b) contributes to the qualifying utility's load; and (c) is owned either by: (i) A qualifying utility; or (ii) an industrial facility that is directly interconnected with electricity facilities that are owned by a qualifying utility and capable of carrying electricity at transmission voltage.

(19) "Qualifying utility" means an electric utility, as the term "electric utility" is defined in RCW 19.29A.010, that

serves more than twenty-five thousand customers in the state of Washington. The number of customers served may be based on data reported by a utility in form 861, "annual electric utility report," filed with the energy information administration, United States department of energy.

(20) "Renewable energy credit" means a tradable certificate of proof of at least one megawatt-hour of an eligible renewable resource where the generation facility is not powered by freshwater. The certificate includes all of the non-power attributes associated with that one megawatt-hour of electricity, and the certificate is verified by a renewable energy credit tracking system selected by the department.

(21) "Renewable resource" means: (a) Water; (b) wind; (c) solar energy; (d) geothermal energy; (e) landfill gas; (f) wave, ocean, or tidal power; (g) gas from sewage treatment facilities; (h) biodiesel fuel as defined in *RCW 82.29A.135 that is not derived from crops raised on land cleared from old growth or first-growth forests where the clearing occurred after December 7, 2006; or (i) biomass energy.

(22) "Rule" means rules adopted by an agency or other entity of Washington state government to carry out the intent and purposes of this chapter.

(23) "Year" means the twelve-month period commencing January 1st and ending December 31st. [2017 c 315 § 1; 2014 c 45 § 1. Prior: 2013 c 158 § 1; 2013 c 99 § 1; 2013 c 61 § 1; prior: 2012 c 22 § 2; 2009 c 565 § 20; 2007 c 1 § 3 (Initiative Measure No. 937, approved November 7, 2006).]

*Reviser's note: RCW 82.29A.135 was amended by 2018 c 164 § 9, deleting the definition of "biodiesel fuel."

Findings—Intent—2012 c 22: "(1) The legislature finds that: (a) Pulp and paper mills can be used to reduce harmful pollution and produce electricity and thermal energy that enables pulp and paper facilities to be highly energy efficient; (b) biomass facilities and pulp and paper mills are typically located in communities that are disproportionately affected by economic downturns; (c) mill closures have occurred throughout the state for more than a decade and the remaining ones have become all the more dependent on selling wood residuals, which are used for electricity generation, in order to sustain their economic viability; (d) employment at pulp and paper mills in the state has also declined significantly, most recently in Grays Harbor and Snohomish counties; (e) wood derived biomass is a renewable fuel for generating electricity and considered carbon-neutral under the laws of the state of Washington; and (f) using food processing residues, food waste, and yard waste to generate renewable electricity can benefit rural economies, decrease the amount of solid waste that requires disposal, and reduce greenhouse gas emissions that result from organic decay.

(2) The legislature declares that, by promoting the generation of renewable energy from biomass, particularly in economically distressed communities, it intends to ensure greater economic stability for the communities that have suffered heavy job losses and chronic unemployment.

(3) The legislature further declares that: (a) The owners of qualified biomass energy facilities that must comply with the renewable energy standards under the energy independence act of 2006, either as a matter of law or contractual obligation, should be permitted to use qualified biomass energy credits to meet their obligations; and (b) electricity that is generated by a biomass energy facility that entered commercial operation after March 31, 1999, from the combustion of organic by-products of pulping and the wood manufacturing process should be treated as an eligible renewable resource." [2012 c 22 § 1.]

19.285.040 Energy conservation and renewable energy targets. (1) Each qualifying utility shall pursue all available conservation that is cost-effective, reliable, and feasible.

(a) By January 1, 2010, using methodologies consistent with those used by the Pacific Northwest electric power and conservation planning council in the most recently published

regional power plan as it existed on June 12, 2014, or a subsequent date as may be provided by the department or the commission by rule, each qualifying utility shall identify its achievable cost-effective conservation potential through 2019. Nothing in the rule adopted under this subsection precludes a qualifying utility from using its utility specific conservation measures, values, and assumptions in identifying its achievable cost-effective conservation potential. At least every two years thereafter, the qualifying utility shall review and update this assessment for the subsequent ten-year period.

(b) Beginning January 2010, each qualifying utility shall establish and make publicly available a biennial acquisition target for cost-effective conservation consistent with its identification of achievable opportunities in (a) of this subsection, and meet that target during the subsequent two-year period. At a minimum, each biennial target must be no lower than the qualifying utility's pro rata share for that two-year period of its cost-effective conservation potential for the subsequent ten-year period.

(c)(i) Except as provided in (c)(ii) and (iii) of this subsection, beginning on January 1, 2014, cost-effective conservation achieved by a qualifying utility in excess of its biennial acquisition target may be used to help meet the immediately subsequent two biennial acquisition targets, such that no more than twenty percent of any biennial target may be met with excess conservation savings.

(ii) Beginning January 1, 2014, a qualifying utility may use single large facility conservation savings in excess of its biennial target to meet up to an additional five percent of the immediately subsequent two biennial acquisition targets, such that no more than twenty-five percent of any biennial target may be met with excess conservation savings allowed under all of the provisions of this section combined. For the purposes of this subsection (1)(c)(ii), "single large facility conservation savings" means cost-effective conservation savings achieved in a single biennial period at the premises of a single customer of a qualifying utility whose annual electricity consumption prior to the conservation savings exceeded five average megawatts.

(iii) Beginning January 1, 2012, and until December 31, 2017, a qualifying utility with an industrial facility located in a county with a population between ninety-five thousand and one hundred fifteen thousand that is directly interconnected with electricity facilities that are capable of carrying electricity at transmission voltage may use cost-effective conservation from that industrial facility in excess of its biennial acquisition target to help meet the immediately subsequent two biennial acquisition targets, such that no more than twenty-five percent of any biennial target may be met with excess conservation savings allowed under all of the provisions of this section combined.

(d) In meeting its conservation targets, a qualifying utility may count high-efficiency cogeneration owned and used by a retail electric customer to meet its own needs. High-efficiency cogeneration is the sequential production of electricity and useful thermal energy from a common fuel source, where, under normal operating conditions, the facility has a useful thermal energy output of no less than thirty-three percent of the total energy output. The reduction in load due to high-efficiency cogeneration shall be: (i) Calculated as the

ratio of the fuel chargeable to power heat rate of the cogeneration facility compared to the heat rate on a new and clean basis of a best-commercially available technology combined-cycle natural gas-fired combustion turbine; and (ii) counted towards meeting the biennial conservation target in the same manner as other conservation savings.

(e) The commission may determine if a conservation program implemented by an investor-owned utility is cost-effective based on the commission's policies and practice.

(f) The commission may rely on its standard practice for review and approval of investor-owned utility conservation targets.

(2)(a) Except as provided in (j) of this subsection, each qualifying utility shall use eligible renewable resources or acquire equivalent renewable energy credits, or any combination of them, to meet the following annual targets:

(i) At least three percent of its load by January 1, 2012, and each year thereafter through December 31, 2015;

(ii) At least nine percent of its load by January 1, 2016, and each year thereafter through December 31, 2019; and

(iii) At least fifteen percent of its load by January 1, 2020, and each year thereafter.

(b) A qualifying utility may count distributed generation at double the facility's electrical output if the utility: (i) Owns or has contracted for the distributed generation and the associated renewable energy credits; or (ii) has contracted to purchase the associated renewable energy credits.

(c) In meeting the annual targets in (a) of this subsection, a qualifying utility shall calculate its annual load based on the average of the utility's load for the previous two years.

(d) A qualifying utility shall be considered in compliance with an annual target in (a) of this subsection if: (i) The utility's weather-adjusted load for the previous three years on average did not increase over that time period; (ii) after December 7, 2006, the utility did not commence or renew ownership or incremental purchases of electricity from resources other than coal transition power or renewable resources other than on a daily spot price basis and the electricity is not offset by equivalent renewable energy credits; and (iii) the utility invested at least one percent of its total annual retail revenue requirement that year on eligible renewable resources, renewable energy credits, or a combination of both.

(e) The requirements of this section may be met for any given year with renewable energy credits produced during that year, the preceding year, or the subsequent year. Each renewable energy credit may be used only once to meet the requirements of this section.

(f) In complying with the targets established in (a) of this subsection, a qualifying utility may not count:

(i) Eligible renewable resources or distributed generation where the associated renewable energy credits are owned by a separate entity; or

(ii) Eligible renewable resources or renewable energy credits obtained for and used in an optional pricing program such as the program established in RCW 19.29A.090.

(g) Where fossil and combustible renewable resources are cofired in one generating unit located in the Pacific Northwest where the cofiring commenced after March 31, 1999, the unit shall be considered to produce eligible renew-

(2018 Ed.)

able resources in direct proportion to the percentage of the total heat value represented by the heat value of the renewable resources.

(h)(i) A qualifying utility that acquires an eligible renewable resource or renewable energy credit may count that acquisition at one and two-tenths times its base value:

(A) Where the eligible renewable resource comes from a facility that commenced operation after December 31, 2005; and

(B) Where the developer of the facility used apprenticeship programs approved by the council during facility construction.

(ii) The council shall establish minimum levels of labor hours to be met through apprenticeship programs to qualify for this extra credit.

(i) A qualifying utility shall be considered in compliance with an annual target in (a) of this subsection if events beyond the reasonable control of the utility that could not have been reasonably anticipated or ameliorated prevented it from meeting the renewable energy target. Such events include weather-related damage, mechanical failure, strikes, lockouts, and actions of a governmental authority that adversely affect the generation, transmission, or distribution of an eligible renewable resource under contract to a qualifying utility.

(j)(i) Beginning January 1, 2016, only a qualifying utility that owns or is directly interconnected to a qualified biomass energy facility may use qualified biomass energy to meet its compliance obligation under this subsection.

(ii) A qualifying utility may no longer use electricity and associated renewable energy credits from a qualified biomass energy facility if the associated industrial pulping or wood manufacturing facility ceases operation other than for purposes of maintenance or upgrade.

(k) An industrial facility that hosts a qualified biomass energy facility may only transfer or sell renewable energy credits associated with qualified biomass energy generated at its facility to the qualifying utility with which it is directly interconnected with facilities owned by such a qualifying utility and that are capable of carrying electricity at transmission voltage. The qualifying utility may only use an amount of renewable energy credits associated with qualified biomass energy that are equivalent to the proportionate amount of its annual targets under (a)(ii) and (iii) of this subsection that was created by the load of the industrial facility. A qualifying utility that owns a qualified biomass energy facility may not transfer or sell renewable energy credits associated with qualified biomass energy to another person, entity, or qualifying utility.

(3) Utilities that become qualifying utilities after December 31, 2006, shall meet the requirements in this section on a time frame comparable in length to that provided for qualifying utilities as of December 7, 2006. [2017 c 315 § 2; 2014 c 26 § 1; 2013 c 158 § 2; 2012 c 22 § 3; 2007 c 1 § 4 (Initiative Measure No. 937, approved November 7, 2006).]

Findings—Intent—2012 c 22: See note following RCW 19.285.030.

19.285.045 Energy conservation and renewable energy targets—Analysis and advisory opinion. (1) When requested by a consumer-owned qualifying utility or by a person proposing an electric generation project or conserva-

tion resource, the department is authorized to and shall provide analysis and an advisory opinion on whether a proposed electric generation project or conservation resource qualifies to meet a target under RCW 19.285.040. The advisory opinion must include a legal analysis. When forming its advisory opinion, the department must: (a) Consider, and may rely on, previous opinions issued by the I-937 technical working group established by the commission and the department; and (b) solicit and consider comments from interested parties, including staff of the requesting utility. The department must give priority to any application regarding an electric generation project or conservation resource that previously received an affirmative advisory opinion from the I-937 technical working group.

(2) Consumer-owned qualifying utilities and persons proposing electric generation projects or conservation resources may apply for an advisory opinion from the department. The application must be in writing and must include information that accurately describes the proposed project or resource. Within ninety days of receiving an application, the director of the department must issue a signed advisory opinion on whether the proposed project or resource qualifies to meet a target under RCW 19.285.040. The governing board of the consumer-owned utility that will use the resource or project must either adopt or reject the advisory opinion after public notice and hearing. Under its responsibilities in RCW 19.285.060, the auditor shall consider any project or resource reviewed and adopted under the process in this section as being in compliance with RCW 19.285.040 and 19.285.060, but only if: (a) The advisory opinion affirmatively qualifies the project or resource; (b) the governing board of the consumer-owned utility that will use the project or resource adopts the advisory opinion after public notice and hearing; and (c) the project or resource is built or acquired as proposed.

(3) The department may require an applicant to pay an application fee to cover the cost of reviewing the project and preparing an advisory opinion.

(4) An electric generation project reviewed and adopted under this section may produce renewable energy credits as defined in RCW 19.285.030.

(5) The department may adopt rules to implement this section.

(6) Nothing in this section preempts the authority of any governing board of a consumer-owned utility from making a determination, independent of the process in this section, on whether a proposed electric generation project or conservation resource may qualify to meet a target under RCW 19.285.040. [2012 c 254 § 1.]

19.285.050 Resource costs. (1)(a) A qualifying utility shall be considered in compliance with an annual target created in RCW 19.285.040(2) for a given year if the utility invested four percent of its total annual retail revenue requirement on the incremental costs of eligible renewable resources, the cost of renewable energy credits, or a combination of both, but a utility may elect to invest more than this amount.

(b) The incremental cost of an eligible renewable resource is calculated as the difference between the levelized delivered cost of the eligible renewable resource, regardless

of ownership, compared to the levelized delivered cost of an equivalent amount of reasonably available substitute resources that do not qualify as eligible renewable resources, where the resources being compared have the same contract length or facility life.

(2) An investor-owned utility is entitled to recover all prudently incurred costs associated with compliance with this chapter. The commission shall address cost recovery issues of qualifying utilities that are investor-owned utilities that serve both in Washington and in other states in complying with this chapter. [2007 c 1 § 5 (Initiative Measure No. 937, approved November 7, 2006).]

19.285.060 Accountability and enforcement—Energy independence act special account. (1) Except as provided in subsection (2) of this section, a qualifying utility that fails to comply with the energy conservation or renewable energy targets established in RCW 19.285.040 shall pay an administrative penalty to the state of Washington in the amount of fifty dollars for each megawatt-hour of shortfall. Beginning in 2007, this penalty shall be adjusted annually according to the rate of change of the inflation indicator, gross domestic product-implicit price deflator, as published by the bureau of economic analysis of the United States department of commerce or its successor.

(2) A qualifying utility that does not meet an annual renewable energy target established in RCW 19.285.040(2) is exempt from the administrative penalty in subsection (1) of this section for that year if the commission for investor-owned utilities or the auditor for all other qualifying utilities determines that the utility complied with RCW 19.285.040(2) (d) or (i) or 19.285.050(1).

(3) A qualifying utility must notify its retail electric customers in published form within three months of incurring a penalty regarding the size of the penalty and the reason it was incurred.

(4) The commission shall determine if an investor-owned utility may recover the cost of this administrative penalty in electric rates, and may consider providing positive incentives for an investor-owned utility to exceed the targets established in RCW 19.285.040.

(5) Administrative penalties collected under this chapter shall be deposited into the energy independence act special account which is hereby created. All receipts from administrative penalties collected under this chapter must be deposited into the account. Expenditures from the account may be used only for the purchase of renewable energy credits or for energy conservation projects at public facilities, local government facilities, community colleges, or state universities. The state shall own and retire any renewable energy credits purchased using moneys from the account. Only the director of enterprise services 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.

(6) For a qualifying utility that is an investor-owned utility, the commission shall determine compliance with the provisions of this chapter and assess penalties for noncompliance as provided in subsection (1) of this section.

(7) For qualifying utilities that are not investor-owned utilities, the auditor is responsible for auditing compliance

with this chapter and rules adopted under this chapter that apply to those utilities and the attorney general is responsible for enforcing that compliance. [2015 c 225 § 22; 2007 c 1 § 6 (Initiative Measure No. 937, approved November 7, 2006).]

19.285.070 Reporting and public disclosure. (1) On or before June 1, 2012, and annually thereafter, each qualifying utility shall report to the department on its progress in the preceding year in meeting the targets established in RCW 19.285.040, including expected electricity savings from the biennial conservation target, expenditures on conservation, actual electricity savings results, the utility's annual load for the prior two years, the amount of megawatt-hours needed to meet the annual renewable energy target, the amount of megawatt-hours of each type of eligible renewable resource acquired, the type and amount of renewable energy credits acquired, and the percent of its total annual retail revenue requirement invested in the incremental cost of eligible renewable resources and the cost of renewable energy credits. For each year that a qualifying utility elects to demonstrate alternative compliance under RCW 19.285.040(2) (d) or (i) or 19.285.050(1), it must include in its annual report relevant data to demonstrate that it met the criteria in that section. A qualifying utility may submit its report to the department in conjunction with its annual obligations in chapter 19.29A RCW.

(2) A qualifying utility that is an investor-owned utility shall also report all information required in subsection (1) of this section to the commission, and all other qualifying utilities shall also make all information required in subsection (1) of this section available to the auditor.

(3) A qualifying utility shall also make reports required in this section available to its customers. [2007 c 1 § 7 (Initiative Measure No. 937, approved November 7, 2006).]

19.285.080 Rule making. (1) The commission may adopt rules to ensure the proper implementation and enforcement of this chapter as it applies to investor-owned utilities.

(2) The department shall adopt rules concerning only process, timelines, and documentation to ensure the proper implementation of this chapter as it applies to qualifying utilities that are not investor-owned utilities. Those rules include, but are not limited to, rules associated with a qualifying utility's development of conservation targets under RCW 19.285.040(1); a qualifying utility's decision to pursue alternative compliance in RCW 19.285.040(2) (d) or (i) or 19.285.050(1); the format and content of reports required in RCW 19.285.070; and the development of a methodology for calculating baseline levels of generation under RCW 19.285.030(12)(f). Nothing in this subsection may be construed to restrict the rate-making authority of the commission or a qualifying utility as otherwise provided by law.

(3) The commission and department may coordinate in developing rules related to process, timelines, and documentation that are necessary for implementation of this chapter.

(4) Pursuant to the administrative procedure act, chapter 34.05 RCW, rules needed for the implementation of this chapter must be adopted by December 31, 2007. These rules may be revised as needed to carry out the intent and purposes of this chapter. [2017 c 315 § 3; 2007 c 1 § 8 (Initiative Measure No. 937, approved November 7, 2006).]

(2018 Ed.)

19.285.900 Construction—2007 c 1 (Initiative Measure No. 937). The provisions of this chapter are to be liberally construed to effectuate the intent, policies, and purposes of this chapter. [2007 c 1 § 9 (Initiative Measure No. 937, approved November 7, 2006).]

19.285.902 Short title—2007 c 1 (Initiative Measure No. 937). This chapter may be known and cited as the energy independence act. [2007 c 1 § 11 (Initiative Measure No. 937, approved November 7, 2006).]

Chapter 19.290 RCW METAL PROPERTY

Sections

19.290.010	Definitions.
19.290.020	Private metal property or nonferrous metal property—Records required.
19.290.030	Metal property and metallic wire—Requirements for transactions.
19.290.040	Scrap metal businesses—Record of commercial accounts.
19.290.050	Reports to law enforcement—Records exempt from public disclosure—Private civil liability.
19.290.060	Stolen metal property—Preserving evidence.
19.290.070	Violations—Penalty.
19.290.080	Civil penalties.
19.290.090	Exemptions from chapter.
19.290.100	Scrap metal license—Penalties.
19.290.110	Scrap metal license—Application, renewal—Required information.
19.290.120	Scrap metal license application—Department of licensing to issue license—Display of certificate.
19.290.130	Scrap metal license—Surety bond—Action for recovery.
19.290.140	Scrap metal license—Renewal—Surrender of license.
19.290.150	License plates—Fee.
19.290.160	Uniform regulation of business and professions act.
19.290.170	Cancellation of scrap metal license—Refusal of issuance.
19.290.180	Director of licensing authorized to adopt rules and regulations, set license and renewal fees.
19.290.190	Inspection of licensed premises and records—Certificate of inspection.
19.290.200	State preemption.
19.290.210	Subpoenas.
19.290.220	Scrap theft alert system.
19.290.230	Seizure and forfeiture.
19.290.240	Chapter to be liberally construed.
19.290.250	No-buy list database program—Scrap metal business to determine if customer is listed.

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

(1) "Commercial account" means a relationship between a scrap metal business and a commercial enterprise that is ongoing and properly documented under RCW 19.290.030.

(2) "Commercial enterprise" means a corporation, partnership, limited liability company, association, state agency, political subdivision of the state, public corporation, or any other legal or commercial entity.

(3) "Commercial metal property" means: Utility access covers; street light poles and fixtures; road and bridge guardrails; highway or street signs; water meter covers; traffic directional and control signs; traffic light signals; any metal property marked with the name of a commercial enterprise, including but not limited to a telephone, commercial mobile radio services, cable, electric, water, natural gas, or other utility, or railroad; unused or undamaged building construction materials consisting of copper pipe, tubing, or wiring, or aluminum wire, siding, downspouts, or gutters; aluminum or stainless steel fence panels made from one inch tubing, forty-

two inches high with four-inch gaps; aluminum decking, bleachers, or risers; historical markers; statue plaques; grave markers and funeral vases; or agricultural irrigation wheels, sprinkler heads, and pipes.

(4) "Engage in business" means conducting more than twelve transactions in a twelve-month period.

(5) "Nonferrous metal property" means metal property for which the value of the metal property is derived from the property's content of copper, brass, aluminum, bronze, lead, zinc, nickel, and their alloys. "Nonferrous metal property" does not include precious metals.

(6) "Person" means an individual, domestic or foreign corporation, limited liability corporation, partnership, trust, unincorporated association, or other entity; an affiliate or associate of any such person; or any two or more persons acting as a partnership, syndicate, or other group for the purpose of acquiring, holding, or dispersing of securities of a domestic or foreign corporation.

(7) "Precious metals" means gold, silver, and platinum.

(8) "Private metal property" means catalytic converters, either singly or in bundles, bales, or bulk, that have been removed from vehicles for sale as a specific commodity.

(9) "Record" means a paper, electronic, or other method of storing information.

(10) "Scrap metal business" means a scrap metal supplier, scrap metal recycler, and scrap metal processor.

(11) "Scrap metal processor" means a person with a current business license that conducts business from a permanent location, that is engaged in the business of purchasing or receiving private metal property, nonferrous metal property, and commercial metal property for the purpose of altering the metal in preparation for its use as feedstock in the manufacture of new products, and that maintains a hydraulic bailer, shearing device, or shredding device for recycling.

(12) "Scrap metal recycler" means a person with a current business license that is engaged in the business of purchasing or receiving private metal property, nonferrous metal property, and commercial metal property for the purpose of aggregation and sale to another scrap metal business and that maintains a fixed place of business within the state.

(13) "Scrap metal supplier" means a person with a current business license that is engaged in the business of purchasing or receiving private metal property or nonferrous metal property for the purpose of aggregation and sale to a scrap metal recycler or scrap metal processor and that does not maintain a fixed business location in the state.

(14) "Transaction" means a pledge, or the purchase of, or the trade of any item of private metal property or nonferrous metal property by a scrap metal business from a member of the general public. "Transaction" does not include donations or the purchase or receipt of private metal property or nonferrous metal property by a scrap metal business from a commercial enterprise, from another scrap metal business, or from a duly authorized employee or agent of the commercial enterprise or scrap metal business. [2013 c 322 § 4; 2008 c 233 § 1; 2007 c 377 § 1.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

19.290.020 Private metal property or nonferrous metal property—Records required. (1) At the time of a

transaction, every scrap metal business doing business in this state shall produce wherever that business is conducted an accurate and legible record of each transaction involving private metal property or nonferrous metal property. This record must be written in the English language, documented on a standardized form or in electronic form, and contain the following information:

(a) The signature of the person with whom the transaction is made;

(b) The time, date, location, and value of the transaction;

(c) The name of the employee representing the scrap metal business in the transaction;

(d) The name, street address, and telephone number of the person with whom the transaction is made;

(e) The license plate number and state of issuance of the license plate on the motor vehicle used to deliver the private metal property or nonferrous metal property subject to the transaction;

(f) A description of the motor vehicle used to deliver the private metal property or nonferrous metal property subject to the transaction;

(g) The current driver's license number or other government-issued picture identification card number of the seller or a copy of the seller's government-issued picture identification card; and

(h) A description of the predominant types of private metal property or nonferrous metal property subject to the transaction, utilizing the institute of scrap recycling industries' generally accepted terminology, and including weight, quantity, or volume.

(2) For every transaction that involves private metal property or nonferrous metal property, every scrap metal business doing business in the state shall require the person with whom a transaction is being made to sign a declaration. The declaration may be included as part of the transactional record required under subsection (1) of this section, or on a receipt for the transaction. The declaration must state substantially the following:

"I, the undersigned, affirm under penalty of law that the property that is subject to this transaction is not to the best of my knowledge stolen property."

The declaration must be signed and dated by the person with whom the transaction is being made. An employee of the scrap metal business must witness the signing and dating of the declaration and sign the declaration accordingly before any transaction may be consummated.

(3) The record and declaration required under this section must be open to the inspection of any commissioned law enforcement officer of the state or any of its political subdivisions at all times during the ordinary hours of business, or at reasonable times if ordinary hours of business are not kept, and must be maintained wherever that business is conducted for five years following the date of the transaction. [2013 c 322 § 5; 2008 c 233 § 2; 2007 c 377 § 2.]

19.290.030 Metal property and metallic wire—Requirements for transactions. (1) No scrap metal business may enter into a transaction to purchase or receive private metal property or nonferrous metal property from any person who cannot produce at least one piece of current gov-

ernment-issued picture identification, including a valid driver's license or identification card issued by any state.

(2) No scrap metal business may purchase or receive private metal property or commercial metal property unless the seller: (a) Has a commercial account with the scrap metal business; (b) can prove ownership of the property by producing written documentation that the seller is the owner of the property; or (c) can produce written documentation that the seller is an employee or agent authorized to sell the property on behalf of a commercial enterprise.

(3) No scrap metal business may enter into a transaction to purchase or receive metallic wire that was burned in whole or in part to remove insulation unless the seller can produce written proof to the scrap metal business that the wire was lawfully burned.

(4)(a) No transaction involving private metal property or nonferrous metal property may be made in cash or with any person who does not provide a street address under the requirements of RCW 19.290.020 except as described in (b) of this subsection. The person with whom the transaction is being made may only be paid by a nontransferable check, mailed by the scrap metal business to a street address provided under RCW 19.290.020, no earlier than three days after the transaction was made. A transaction occurs on the date provided in the record required under RCW 19.290.020.

(b) A scrap metal business that is in compliance with this chapter that digitally captures: (i) A copy of one piece of current government-issued picture identification, including a current driver's license or identification card issued by any state and (ii) either a picture or video of either the material subject to the transaction in the form received or the material subject to the transaction within the vehicle which the material was transported to the scrap metal business, may pay up to a maximum of thirty dollars in cash, stored value device, or electronic funds transfer. The balance of the value of the transaction may be made by nontransferable check, stored value device, or electronic funds transfer at the time the transaction is made. A scrap metal business's usage of video surveillance shall be sufficient to comply with this subsection (4)(b)(ii) as long as the video captures the material subject to the transaction. A digital image or picture taken under this subsection must be available for two years from the date of transaction, while a video recording must be available for thirty days.

(5) No scrap metal business may purchase or receive beer kegs from anyone except a manufacturer of beer kegs or licensed brewery. [2013 c 322 § 6; 2008 c 233 § 3; 2007 c 377 § 3.]

19.290.040 Scrap metal businesses—Record of commercial accounts. (1) Every scrap metal business must create and maintain a permanent record with a commercial enterprise, including another scrap metal business, in order to establish a commercial account. That record, at a minimum, must include the following information:

(a) The full name of the commercial enterprise or commercial account;

(b) The business address and telephone number of the commercial enterprise or commercial account; and

(c) The full name of the person employed by the commercial enterprise who is authorized to deliver private metal

(2018 Ed.)

property, nonferrous metal property, and commercial metal property to the scrap metal business.

(2) The record maintained by a scrap metal business for a commercial account must document every purchase or receipt of private metal property, nonferrous metal property, and commercial metal property from the commercial enterprise. The record must be maintained for three years following the date of the transfer or receipt. The documentation must include, at a minimum, the following information:

(a) The time, date, and value of the property being purchased or received;

(b) A description of the predominant types of property being purchased or received; and

(c) The signature of the person delivering the property to the scrap metal business. [2013 c 322 § 7; 2008 c 233 § 4; 2007 c 377 § 4.]

19.290.050 Reports to law enforcement—Records exempt from public disclosure—Private civil liability. (1)

Upon request by any commissioned law enforcement officer of the state or any of its political subdivisions, every scrap metal business shall furnish a full, true, and correct transcript of the records from the purchase or receipt of private metal property, nonferrous metal property, and commercial metal property involving only a specified individual, vehicle, or item of private metal property, nonferrous metal property, or commercial metal property. This information may be transmitted within a specified time of not less than two business days to the applicable law enforcement agency electronically, by facsimile transmission, or by modem or similar device, or by delivery of computer disk subject to the requirements of, and approval by, the chief of police or the county's chief law enforcement officer.

(2) Any records created or produced under this section are exempt from disclosure under chapter 42.56 RCW.

(3) If the scrap metal business has good cause to believe that any private metal property, nonferrous metal property, or commercial metal property in his or her possession has been previously lost or stolen, the scrap metal business shall promptly report that fact to the applicable commissioned law enforcement officer of the state, the chief of police, or the county's chief law enforcement officer, together with the name of the owner, if known, and the date when and the name of the person from whom it was received.

(4) Compliance with this section shall not give rise to or form the basis of private civil liability on the part of a scrap metal business or scrap metal recycler. [2013 c 322 § 8; 2008 c 233 § 5; 2007 c 377 § 5.]

19.290.060 Stolen metal property—Preserving evidence. (1) Following notification in writing from a commissioned law enforcement officer of the state or any of its political subdivisions that an item of private metal property, nonferrous metal property, or commercial metal property has been reported as stolen, a scrap metal business shall hold that property intact and safe from alteration, damage, or commingling, and shall place an identifying tag or other suitable identification upon the property. The scrap metal business shall hold the property for a period of time as directed by the applicable law enforcement agency up to a maximum of ten business days.

(2) A commissioned law enforcement officer of the state or any of its political subdivisions shall not place on hold any item of private metal property, nonferrous metal property, or commercial metal property unless that law enforcement agency reasonably suspects that the property is a lost or stolen item. Any hold that is placed on the property must be removed within ten business days after the property on hold is determined not to be stolen or lost and the property must be returned to the owner or released. [2013 c 322 § 9; 2008 c 233 § 6; 2007 c 377 § 6.]

19.290.070 Violations—Penalty. It is a gross misdemeanor under chapter 9A.20 RCW for:

(1) Any person to deliberately remove, alter, or obliterate any manufacturer's make, model, or serial number, personal identification number, or identifying marks engraved or etched upon an item of private metal property, nonferrous metal property, or commercial metal property in order to deceive a scrap metal business;

(2) Any scrap metal business to enter into a transaction to purchase or receive any private metal property, nonferrous metal property, or commercial metal property where the manufacturer's make, model, or serial number, personal identification number, or identifying marks engraved or etched upon the property have been deliberately and conspicuously removed, altered, or obliterated;

(3) Any person 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 this chapter;

(4) Any scrap metal business to enter into a transaction to purchase or receive private metal property, nonferrous metal property, or commercial metal property from any person under the age of eighteen years or any person who is discernibly under the influence of intoxicating liquor or drugs;

(5) Any scrap metal business to enter into a transaction to purchase or receive private metal property, nonferrous metal property, or commercial metal property with anyone whom the scrap metal business has been informed by a law enforcement agency to have been convicted of a crime involving drugs, burglary, robbery, theft, or possession of or receiving stolen property, manufacturing, delivering, or possessing with intent to deliver methamphetamine, or possession of ephedrine or any of its salts or isomers or salts of isomers, pseudoephedrine or any of its salts or isomers or salts of isomers, or anhydrous ammonia with intent to manufacture methamphetamine within the past four years whether the person is acting in his or her own behalf or as the agent of another;

(6) Any person to sign the declaration required under RCW 19.290.020 knowing that the private metal property or nonferrous metal property subject to the transaction is stolen. The signature of a person on the declaration required under RCW 19.290.020 constitutes evidence of intent to defraud a scrap metal business if that person is found to have known that the private metal property or nonferrous metal property subject to the transaction was stolen;

(7) Any scrap metal business to possess private metal property or commercial metal property that was not lawfully purchased or received under the requirements of this chapter;

(8) Any scrap metal business to engage in a series of transactions valued at less than thirty dollars with the same seller for the purposes of avoiding the requirements of RCW 19.290.030(4); or

(9) Any person to knowingly make a false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, with the intent to deceive a scrap metal business as to the actual seller of the scrap metal. [2013 c 322 § 10; 2008 c 233 § 7; 2007 c 377 § 7.]

19.290.080 Civil penalties. (1) Each violation of the requirements of this chapter that are not subject to the criminal penalties under RCW 19.290.070 shall be punishable, upon conviction, by a fine of not more than one thousand dollars.

(2) Within two years of being convicted of a violation of any of the requirements of this chapter that are not subject to the criminal penalties under RCW 19.290.070, each subsequent violation shall be punishable, upon conviction, by a fine of not more than two thousand dollars. [2007 c 377 § 8.]

19.290.090 Exemptions from chapter. The provisions of this chapter do not apply to transactions involving metal from the components of vehicles acquired by vehicle wreckers, hulk haulers, or scrap processors licensed under chapter 46.79 or 46.80 RCW, and acquired in accordance with those laws or transactions conducted by the following:

(1) Motor vehicle dealers licensed under chapter 46.70 RCW;

(2) Persons in the business of operating an automotive repair facility as defined under RCW 46.71.011; and

(3) Persons in the business of buying or selling empty food and beverage containers, including metal food and beverage containers. [2013 c 322 § 11; 2008 c 233 § 8; 2007 c 377 § 9.]

19.290.100 Scrap metal license—Penalties. (1) It is unlawful for a person to engage in the business of a scrap metal processor, scrap metal recycler, or scrap metal supplier without having first applied for and received a scrap metal license.

(2)(a) Except as provided in (b) of this subsection, a person or firm engaged in the unlawful activity described in this section is guilty of a gross misdemeanor.

(b) A second or subsequent offense is a class C felony. [2013 c 322 § 12.]

Effective date—2013 c 322 §§ 12-23: "Sections 12 through 23 of this act take effect January 1, 2014." [2013 c 322 § 35.]

Implementation—2013 c 322 §§ 12-23: "The director of the department of licensing may take the necessary steps to ensure that sections 12 through 23 of this act are implemented on January 1, 2014." [2013 c 322 § 36.]

19.290.110 Scrap metal license—Application, renewal—Required information. Application for a scrap metal license or renewal of a scrap metal license shall be made on a form for this purpose, furnished by the department of licensing, and shall be signed by the license holder or his or her authorized agent and shall include the following information:

(1) Name and address of the person, firm, partnership, association, limited liability company, or corporation under which name the business is to be conducted;

(2) Names and residence address of all persons having an interest in the business or, if the owner is a corporation, the names and addresses of the officers thereof;

(3) Certificate of approval of the chief executive officer or chief of police, or a designee, if the application is for a license within an incorporated city or town or, in any unincorporated area, the county legislative authority, the sheriff, or a designee, certifying that:

(a) The applicant has an established place of business at the address shown on the application;

(b) There are no known environmental, building code, zoning, or other land use regulation violations associated with the business being located at the address; and

(c) In the case of a renewal of a scrap metal license, the applicant is in compliance with this chapter: PROVIDED, That an authorized representative of the department of licensing may make the certification described in this section in any instance;

(4) Any other information that the department of licensing may require. [2013 c 322 § 13.]

Effective date—Implementation—2013 c 322 §§ 12-23: See notes following RCW 19.290.100.

19.290.120 Scrap metal license application—Department of licensing to issue license—Display of certificate. The application, together with the required fee, shall be forwarded to the department of licensing. Upon receipt of the application the department shall, if the application is in order, issue a scrap metal license authorizing the processor, recycler, or supplier to do business as such and forward the fee to the state treasurer. Upon receiving the certificate, the owner shall cause it to be prominently displayed in the place of business, where it may be inspected by an investigating officer at any time. Every license must be issued in the name of the applicant and the holder thereof may not allow any other person to use the license. [2013 c 322 § 14.]

Effective date—Implementation—2013 c 322 §§ 12-23: See notes following RCW 19.290.100.

19.290.130 Scrap metal license—Surety bond—Action for recovery. Before issuing a scrap metal license to a scrap metal processor or scrap metal recycler, the department of licensing shall require the applicant to file with the department a surety bond in the amount of ten thousand dollars, running to the state of Washington, and executed by a surety company authorized to do business in the state of Washington. The bond shall be approved as to form by the attorney general and conditioned upon the licensee conducting the business in conformity with the provisions of this chapter. Except as prohibited elsewhere in this chapter, any person who has suffered loss or damage by reason of fraud or gross negligence, or an intentional or reckless violation of the terms of this chapter, or misrepresentation on the part of the scrap metal processor or recycler, may institute an action for recovery against the licensee and surety upon the bond. However, the aggregate liability of the surety to all persons shall in no event exceed the amount of the bond. [2013 c 322 § 15.]

(2018 Ed.)

Effective date—Implementation—2013 c 322 §§ 12-23: See notes following RCW 19.290.100.

19.290.140 Scrap metal license—Renewal—Surrender of license. A license issued on the scrap metal license application remains in force until suspended or revoked and may be renewed annually upon reapplication and upon payment of the required fee. A licensee who fails or neglects to renew the license before the assigned expiration date shall pay the fee for an original scrap metal license as provided in this chapter.

Whenever a scrap metal processor, recycler, or supplier ceases to do business as such or the license has been suspended or revoked, the licensee shall immediately surrender the license to the department of licensing. [2013 c 322 § 16.]

Effective date—Implementation—2013 c 322 §§ 12-23: See notes following RCW 19.290.100.

19.290.150 License plates—Fee. The licensee shall obtain a special set of license plates in addition to the regular licenses and plates required for the operation of such vehicles. The special plates must be displayed on vehicles owned and/or operated by the licensee and used in the conduct of the business. The fee for these plates shall be five dollars for the original plates and two dollars for each additional set of plates bearing the same license number. A licensee with more than one licensed location in the state may use special plates bearing the same license number for vehicles operated out of any of the licensed locations. [2013 c 322 § 17.]

Effective date—Implementation—2013 c 322 §§ 12-23: See notes following RCW 19.290.100.

19.290.160 Uniform regulation of business and professions act. The uniform regulation of business and professions act, chapter 18.235 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [2013 c 322 § 18.]

Effective date—Implementation—2013 c 322 §§ 12-23: See notes following RCW 19.290.100.

19.290.170 Cancellation of scrap metal license—Refusal of issuance. If a person whose scrap metal license has previously been canceled for cause by the department of licensing files an application for a license to conduct business as a scrap metal processor, recycler, or supplier, or if the department is of the opinion that the application is not filed in good faith or that the application is filed by some person as a subterfuge for the real person in interest whose license has previously been canceled for cause, the department may refuse to issue the person a license to conduct business as a scrap metal processor, recycler, or supplier. [2013 c 322 § 19.]

Effective date—Implementation—2013 c 322 §§ 12-23: See notes following RCW 19.290.100.

19.290.180 Director of licensing authorized to adopt rules and regulations, set license and renewal fees. (1) The director of licensing is hereby authorized to adopt reasonable rules and regulations not in conflict with provisions hereof for the proper operation and enforcement of this chapter.

(2) The director shall set all license and renewal fees in accordance with RCW 43.24.086. [2013 c 322 § 20.]

Effective date—Implementation—2013 c 322 §§ 12-23: See notes following RCW 19.290.100.

19.290.190 Inspection of licensed premises and records—Certificate of inspection. The chiefs of police, the county sheriffs, and the Washington state patrol may make periodic inspection of the licensee's licensed premises and records provided for in this chapter during normal business hours, and furnish a certificate of inspection to the department of licensing in such manner as may be determined by the department. In any instance, an authorized representative of the department may make the inspection. Licensees are subject to unannounced periodic inspections, as described in this section. [2013 c 322 § 21.]

Effective date—Implementation—2013 c 322 §§ 12-23: See notes following RCW 19.290.100.

19.290.200 State preemption. The state of Washington hereby fully occupies and preempts the entire field of regulation of scrap metal processors, recyclers, or suppliers within the boundaries of the state. Any political subdivision in this state may enact or enforce only those laws and ordinances relating to the regulation of scrap metal processors, recyclers, or suppliers that are specifically authorized by state law and are consistent with this chapter. Nothing in this chapter is intended to limit the authority of any political subdivision to impose generally applicable zoning, land use, permitting, general business licensing, environmental, and health and safety requirements or authorized business taxes upon scrap metal processors, recyclers, or suppliers within their jurisdictions. Local ordinances pertaining specifically to scrap metal processors, recyclers, or suppliers shall have the same or lesser penalty as provided for by state law. Local scrap metal laws and ordinances that are inconsistent with, more restrictive than, or exceed the requirements of state law shall not be enacted and are hereby preempted and repealed, regardless of the code, charter, or home rule status of such political subdivision. [2013 c 322 § 22.]

Effective date—Implementation—2013 c 322 §§ 12-23: See notes following RCW 19.290.100.

19.290.210 Subpoenas. (1) In addition to the powers granted in chapter 18.235 RCW, the department of licensing or its authorized agent may examine or subpoena any persons, books, papers, records, data, vehicles, or metal property bearing upon the investigation or proceeding under this chapter.

(2) The persons subpoenaed may be required to testify and produce any books, papers, records, data, vehicles, or metal property that the director of licensing deems relevant or material to the inquiry.

(3) The director of the department of licensing or an authorized agent may administer an oath to the person required to testify, and a person giving false testimony after the administration of the oath is guilty of perjury in the first degree under RCW 9A.72.020.

(4)(a) Any authorized representative of the director of the department of licensing 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:

(i) State that an order is sought pursuant to this subsection;

(ii) Adequately specify the records, documents, or testimony; and

(iii) Declare 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 or testimony are reasonably related to an investigation within the department's authority.

(b) Where the application under this subsection 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.

(c) Any authorized representative of the director of the department of licensing 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.

(5) Any records created or produced under this section are exempt from disclosure under chapter 42.56 RCW. [2013 c 322 § 23.]

Effective date—Implementation—2013 c 322 §§ 12-23: See notes following RCW 19.290.100.

19.290.220 Scrap theft alert system. (1) Law enforcement agencies may register with the scrap theft alert system that is maintained and provided at no charge to users by the institute of scrap recycling industries, incorporated, or its successor organization, to receive alerts regarding thefts of private, nonferrous, or commercial metal property in the relevant geographic area.

(2) Any business licensed under this chapter shall:

(a) Sign up with the scrap theft alert system that is maintained and provided at no charge to users by the institute of scrap recycling industries, incorporated, or its successor organization, to receive alerts regarding thefts of private, nonferrous, or commercial metal property in the relevant geographic area;

(b) Download the scrap metal theft alerts generated by the scrap theft alert system on a daily basis;

(c) Use the alerts to identify potentially stolen commercial metal property, nonferrous metal property, and private metal property; and

(d) Maintain for ninety days copies of any theft alerts received and downloaded pursuant to this section. [2013 c 322 § 25.]

19.290.230 Seizure and forfeiture. (1) The following personal property is subject to seizure and forfeiture and no property right exists in them: All personal property including, but not limited to, any item, object, tool, substance, device, weapon, machine, vehicle of any kind, money, security, or negotiable instrument, which the seizing agency proves by a preponderance of the evidence was used or intended to be used by its owner or the person in charge to knowingly or intentionally facilitate the commission of, or to knowingly or intentionally abet the commission of, a crime involving theft, trafficking, or unlawful possession of commercial metal

property, or which the seizing agency proves by a preponderance of the evidence was knowingly or intentionally furnished or was intended to be furnished by any person in the commission of, as a result of, or as compensation for the commission of, a crime involving theft, trafficking, or the unlawful possession of commercial metal property, or which the property owner acquired in whole or in part with proceeds traceable to a knowing or intentional commission of a crime involving the theft, trafficking, or unlawful possession of commercial metal property provided that such activity is not less than a class C felony; except that:

(a) No vehicle used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless the seizing agency proves by a preponderance of the evidence that the owner or other person in charge of the vehicle is a consenting party or is privy to any crime involving theft, trafficking, or the unlawful possession of commercial metal property;

(b) A forfeiture of property encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had actual or constructive knowledge of nor consented to the commission of any crime involving the theft, trafficking, or unlawful possession of commercial metal property; and

(c) A property owner's property is not subject to seizure if an employee or agent of that property owner uses the property owner's property to knowingly or intentionally facilitate the commission of, or to knowingly or intentionally aid and abet the commission of, a crime involving theft, trafficking, or unlawful possession of commercial metal property, in violation of that property owner's instructions or policies against such activity, and without the property owner's knowledge or consent.

(2) The following real property is subject to seizure and forfeiture and no property right exists in them: All real property, including any right, title, and interest in the whole of any lot or tract of land, and any appurtenances or improvements, that the seizing agency proves by a preponderance of the evidence are being used with the knowledge of the owner for the intentional commission of any crime involving the theft, trafficking, or unlawful possession of commercial metal property, or which have been acquired in whole or in part with proceeds traceable to the commission of any crime involving the trafficking, theft, or unlawful possession of commercial metal, if such activity is not less than a class C felony and a substantial nexus exists between the commission of the violation or crime and the real property. However:

(a) No property may be forfeited pursuant to this subsection (2), to the extent of the interest of an owner, by reason of any act or omission committed or omitted without the owner's actual or constructive knowledge; and further, a property owner's real property is not subject to seizure if an employee or agent of that property owner uses the property owner's real property to knowingly or intentionally facilitate the commission of, or to knowingly or intentionally aid and abet the commission of, a crime involving theft, trafficking, or unlawful possession of commercial metal property, in violation of that property owner's instructions or policies against such activity, and without the property owner's knowledge or consent; and

(b) A forfeiture of real property encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party, neither had actual or constructive knowledge, nor consented to the act or omission.

(3) Property subject to forfeiture under this chapter may be seized by any law enforcement officer of this state upon process issued by any superior court having jurisdiction over the property. Seizure of real property shall include the filing of a lis pendens by the seizing agency. Real property seized under this section shall not be transferred or otherwise conveyed until ninety days after seizure or until a judgment of forfeiture is entered, whichever is later: PROVIDED, That real property seized under this section may be transferred or conveyed to any person or entity who acquires title by foreclosure or deed in lieu of foreclosure of a security interest. Seizure of personal property without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant; or

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding.

(4) In the event of seizure pursuant to this section, proceedings for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, including any community property interest, of the seizure and intended forfeiture of the seized property. Service of notice of seizure of real property shall be made according to the rules of civil procedure. However, the state may not obtain a default judgment with respect to real property against a party who is served by substituted service absent an affidavit stating that a good faith effort has been made to ascertain if the defaulted party is incarcerated within the state, and that there is no present basis to believe that the party is incarcerated within the state. The notice of seizure of personal property may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen-day period following the seizure. Notice of seizure in the case of property subject to a security interest that has been perfected by filing a financing statement in accordance with chapter 62A.9A RCW, or a certificate of title shall be made by service upon the secured party or the secured party's assignee at the address shown on the financing statement or the certificate of title.

(5) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (1) of this section within forty-five days of the seizure in the case of personal property and ninety days in the case of real property, the item seized shall be deemed forfeited. The community property interest in real property of a person whose spouse or domestic partner committed a violation giving rise to seizure of the real property may not be forfeited if the person did not participate in the violation.

(6) If a person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of the seized property within forty-five days of

the seizure in the case of personal property and ninety days in the case of real property, the law enforcement agency shall give the person or persons a reasonable opportunity to be heard as to the claim or right. The hearing shall be before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee, except where the seizing agency is a state agency as defined in RCW 34.12.020(4), the hearing shall be before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction. Removal may only be accomplished according to the rules of civil procedure. The person seeking removal of the matter must serve process against the state, county, political subdivision, or municipality that operates the seizing agency, and any other party of interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-five days after the person seeking removal has notified the seizing law enforcement agency of the person's claim of ownership or right to possession. The court to which the matter is to be removed shall be the district court when the aggregate value of the property is within the jurisdictional limit set forth in RCW 3.66.020. A hearing before the seizing agency and any appeal therefrom shall be under Title 34 RCW. In a court hearing between two or more claimants to the property involved, the prevailing party shall be entitled to a judgment for costs and reasonable attorneys' fees. The burden of producing evidence shall be upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the property.

(7) At the hearing, the seizing agency has the burden of proof to establish by a preponderance of the evidence that seized property is subject to forfeiture, and that the use or intended use of the seized property in connection with a crime pursuant to this section occurred with the owner's actual or constructive knowledge or consent. The person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the property has the burden of proof to establish by a preponderance of the evidence that the person owns or has a right to possess the seized property. The possession of bare legal title is not sufficient to establish ownership of seized property if the seizing agency proves by a preponderance of the evidence that the person claiming ownership or right to possession is a nominal owner and did not actually own or exert a controlling interest in the property.

The seizing law enforcement agency shall promptly return the property to the claimant upon a determination by the administrative law judge or court that the claimant is the present lawful owner or is lawfully entitled to possession of the property.

(8) When property is forfeited under this chapter, after satisfying any court-ordered victim restitution, the seizing law enforcement agency may:

(a) Retain it for official use or, upon application by any law enforcement agency of this state, release such property to such agency; or

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public.

(9)(a) Within one hundred twenty days after the entry of an order of forfeiture, each seizing agency shall remit to, if

known, the victim of the crime involving the seized property, an amount equal to fifty percent of the net proceeds of any property forfeited.

(b) Retained property and net proceeds not required to be paid to victims shall be retained by the seizing law enforcement agency exclusively for the expansion and improvement of law enforcement activity. Money retained under this section may not be used to supplant preexisting funding sources.

(c) The net proceeds of forfeited property is the value of the forfeitable interest in the property after deducting the cost of satisfying any bona fide security interest to which the property is subject at the time of seizure; and in the case of sold property, after deducting the cost of sale, including reasonable fees or commissions paid to independent selling agents, and the cost of any valid landlord's claim for damages.

(d) The value of sold forfeited property is the sale price. The value of retained forfeited property is the fair market value of the property at the time of seizure, determined when possible by reference to an applicable commonly used index, such as the index used by the department of licensing for valuation of motor vehicles. A seizing agency may use, but need not use, an independent qualified appraiser to determine the value of retained property. If an appraiser is used, the value of the property appraised is net of the cost of the appraisal. The value of destroyed property and retained firearms or illegal property is zero.

(10) Upon the entry of an order of forfeiture of real property, the court shall forward a copy of the order to the assessor of the county in which the property is located. Orders for the forfeiture of real property shall be entered by the superior court, subject to court rules. Such an order shall be filed by the seizing agency in the county auditor's records in the county in which the real property is located. [2013 c 322 § 27.]

19.290.240 Chapter to be liberally construed. The provisions of this chapter shall be liberally construed to the end that traffic in stolen private metal property or nonferrous metal property may be prevented, and irresponsible, unreliable, or dishonest persons may be prevented from engaging in the business of processing, recycling, or supplying scrap metal in this state and reliable persons may be encouraged to engage in businesses of processing, recycling, or supplying scrap metal in this state. [2013 c 322 § 28.]

19.290.250 No-buy list database program—Scrap metal business to determine if customer is listed. A scrap metal business shall, before completing any transaction under this chapter, determine whether such customer is listed in the Washington association of sheriffs and police chiefs no-buy list database program established and made available under RCW 43.43.885. [2013 c 322 § 32.]

Chapter 19.295 RCW

ESTATE DISTRIBUTION DOCUMENTS

Sections

19.295.005 Findings—Intent.
19.295.010 Definitions.

- 19.295.020 Marketing of estate distribution documents—Exemptions from chapter.
 19.295.030 Violations—Application of consumer protection act.

19.295.005 Findings—Intent. The legislature finds the practice of using "living trusts" as a marketing tool by persons who are not authorized to practice law, who are not acting directly under the supervision of a person authorized to practice law, who are not a financial institution, or who are not properly credentialed and regulated professionals as specified under RCW 19.295.020 (5) and (6) for purposes of gathering information for the preparation of an estate distribution document to be a deceptive means of obtaining personal asset information and of developing and generating leads for sales to senior citizens. The legislature further finds that this practice endangers the financial security of consumers and may frustrate their estate planning objectives. Therefore, the legislature intends to prohibit the marketing of services related to preparation of estate distribution documents by persons who are not authorized to practice law or who are not a financial institution.

This chapter is not intended to limit consumers from obtaining legitimate estate planning documents, including "living trusts," from those authorized to practice law; but is intended to prohibit persons not licensed to engage in the practice of law from the unscrupulous practice of marketing legal documents as a means of targeting senior citizens for financial exploitation. [2009 c 113 § 1; 2007 c 67 § 1.]

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

(1) "Estate distribution document" means any one or more of the following documents, instruments, or writings prepared, or intended to be prepared, for a specific person or as marketing materials for distribution to any person, other than documents, instruments, writings, or marketing materials relating to a payable on death account established under *RCW 30.22.040(9) or a transfer on death account established under chapter 21.35 RCW:

(a) Last will and testament or any writing, however designated, that is intended to have the same legal effect as a last will and testament, and any codicil thereto;

(b) Revocable and irrevocable inter vivos trusts and any instrument which purports to transfer any of the trustor's current and/or future interest in real or personal property thereto;

(c) Agreement that fixes the terms and provisions of the sale of a decedent's interest in any real or personal property at or following the date of the decedent's death.

(2) "Financial institution" means a bank holding company registered under federal law, a bank, trust company, mutual savings bank, savings bank, savings and loan association or credit union organized under state or federal law, or any affiliate, subsidiary, officer, or employee of a financial institution.

(3) "Gathering information for the preparation of an estate distribution document" means collecting data, facts, figures, records, and other particulars about a specific person or persons for the preparation of an estate distribution document, but does not include the collection of such information for clients in the customary and usual course of financial, tax,

(2018 Ed.)

and associated planning by a certificate holder or licensee regulated under chapter 18.04 RCW.

(4) "Market" or "marketing" includes every offer, contract, or agreement to prepare or gather information for the preparation of, or to provide, individualized advice about an estate distribution document.

(5) "Person" means any natural person, corporation, partnership, limited liability company, firm, or association. [2009 c 113 § 2; 2008 c 161 § 1; 2007 c 67 § 2.]

Reviser's note: *(1) RCW 30.22.040 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (9) to subsection (18). RCW 30.22.040 was recodified as RCW 30A.22.040 pursuant to 2014 c 37 § 4, effective January 5, 2015.

(2) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

19.295.020 Marketing of estate distribution documents—Exemptions from chapter. (1) Except as provided in subsection (2) of this section, it is unlawful for a person to market estate distribution documents, directly or indirectly, in or from this state unless the person is authorized to practice law in this state.

(2) A person employed by someone authorized to practice law in this state may gather information for, or assist in the preparation of, estate distribution documents as long as that person does not provide any legal advice.

(3) This chapter applies to any person who markets estate distribution documents in or from this state. Marketing occurs in this state, whether or not either party is then present in this state, if the offer originates in this state or is directed into this state or is received or accepted in this state.

(4) This chapter does not apply to any financial institution.

(5) This chapter does not apply to a certificate holder or licensee regulated under chapter 18.04 RCW for purposes of gathering information for the preparation of an estate distribution document.

(6) This chapter does not apply to an individual who is an enrolled agent enrolled to practice before the internal revenue service pursuant to Treasury Department Circular No. 230 for purposes of gathering information for the preparation of an estate distribution document. [2009 c 113 § 3; 2007 c 67 § 3.]

19.295.030 Violations—Application of consumer protection act. 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 purposes of applying the consumer protection act, chapter 19.86 RCW. [2007 c 67 § 4.]

Chapter 19.300 RCW

ELECTRONIC COMMUNICATION DEVICES

Sections

- 19.300.010 Definitions.
 19.300.020 Identity theft or fraud—Penalty.
 19.300.030 Prohibited practices—Exceptions—Application of consumer protection act.

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

(1) "Affiliate" means any company that controls, is controlled by, or is under common control with another company. Affiliate may also include a supplier, distributor, business partner, or any entity that effects, administers, or enforces a government or business transaction.

(2) "Identification device" means an item that uses radio frequency identification technology or facial recognition technology.

(3) "Issued" means either:

(a) To have provided the identification device to a person; or

(b) To have placed, requested the placement, or be the intended beneficiary of the placement of, the identification device in a product, product packaging, or product inventory mechanism.

(4) "Person" means a natural person who resides in Washington.

(5) "Personal information" has the same meaning as in RCW 19.255.010.

(6) "Radio frequency identification" means the use of electromagnetic radiating waves or reactive field coupling in the radio frequency portion of the spectrum to communicate to or from a tag through a variety of modulation and encoding schemes to uniquely read the identity of a radio frequency tag or other data stored on it.

(7) "Remotely reading" means that no physical contact is required between the identification device and the mechanical device that captures data.

(8) "Unique personal identifier number" means a randomly assigned string of numbers or symbols that is encoded on the identification device and is intended to identify the identification device. [2009 c 66 § 1; 2008 c 138 § 2.]

Severability—2009 c 66: "If any provision of this act is found to be in conflict with federal law or regulations, the conflicting provision of this act is declared to be inoperative solely to the extent of the conflict, and that finding or determination shall not affect the operation of the remainder of this act." [2009 c 66 § 4.]

Findings—2008 c 138: "The legislature finds that Washington state, from its inception, has recognized the importance of maintaining individual privacy. The legislature further finds that protecting the confidentiality and privacy of an individual's personal information, especially when collected from the individual without his or her knowledge or consent, is critical to maintaining the safety and well-being of its citizens. The legislature recognizes that inclusion of identification devices that broadcast data or enable data or information to be collected or scanned either secretly or remotely, or both, may greatly magnify the potential risk to individual privacy, safety, and economic well-being that can occur from unauthorized interception and use of personal information. The legislature further recognizes that these types of technologies, whether offered by the private sector or issued by the government, can be pervasive." [2008 c 138 § 1.]

Severability—2008 c 138: "If any provision of this act is found to be in conflict with federal law or regulations, the conflicting provision of this act is declared to be inoperative solely to the extent of the conflict, and that finding or determination shall not affect the operation of the remainder of this act." [2008 c 138 § 4.]

19.300.020 Identity theft or fraud—Penalty. A person that intentionally scans another person's identification device remotely, without that person's prior knowledge and prior consent, for the purpose of fraud, identity theft, or for any other illegal purpose, shall be guilty of a class C felony. [2008 c 138 § 3.]

Findings—Severability—2008 c 138: See notes following RCW 19.300.010.

19.300.030 Prohibited practices—Exceptions—Application of consumer protection act. (1) Except as provided in subsection (2) of this section, a governmental or business entity may not remotely read an identification device using radio frequency identification technology for commercial purposes, unless that governmental or business entity, or one of their affiliates, is the same governmental or business entity that issued the identification device.

(2) This section does not apply to the following:

(a) Remotely reading or storing data from an identification device as part of a commercial transaction initiated by the person in possession of the identification device;

(b) Remotely reading or storing data from an identification device for triage or medical care during a disaster and immediate hospitalization or immediate outpatient care directly relating to a disaster;

(c) Remotely reading or storing data from an identification device by an emergency responder or health care professional for reasons relating to the health or safety of that person;

(d) Remotely reading or storing data from a person's identification device issued to a patient for emergency purposes;

(e) Remotely reading or storing data from an identification device of a person pursuant to court-ordered electronic monitoring;

(f) Remotely reading or storing data from an identification device of a person who is incarcerated in a correctional institution, juvenile detention facility, or mental health facility;

(g) Remotely reading or storing data from an identification device by law enforcement or government personnel who need to read a lost identification device when the owner is unavailable for notice, knowledge, or consent, or those parties specifically authorized by law enforcement or government personnel for the limited purpose of reading a lost identification device when the owner is unavailable for notice, knowledge, or consent;

(h) Remotely reading or storing data from an identification device by law enforcement personnel who need to read a person's identification device after an accident in which the person is unavailable for notice, knowledge, or consent;

(i) Remotely reading or storing data from an identification device by a person or entity that in the course of operating its own identification device system collects data from another identification device, provided that the inadvertently received data comports with all of the following:

(i) The data is not disclosed to any other party;

(ii) The data is not used for any purpose; and

(iii) The data is not stored or is promptly destroyed;

(j) Remotely reading or storing data from a person's identification device in the course of an act of good faith security research, experimentation, or scientific inquiry including, but not limited to, activities useful in identifying and analyzing security flaws and vulnerabilities;

(k) Remotely reading or storing data from an identification device by law enforcement personnel who need to scan a

person's identification device pursuant to a search warrant; and

(1) Remotely reading or storing data from an identification device by a business if it is necessary to complete a transaction.

(3) The legislature finds that the practices covered by this section 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. [2009 c 66 § 2.]

Severability—2009 c 66: See note following RCW 19.300.010.

Chapter 19.305 RCW CIGARETTE IGNITION PROPENSITY

Sections

19.305.010	Definitions.
19.305.020	Testing of cigarettes—Performance standard—Records—Exceptions.
19.305.030	Certification—Fee.
19.305.040	Markings—Requirements.
19.305.050	Violations—Civil penalties.
19.305.060	Rule making—Inspection of cigarettes.
19.305.070	Enforcement of chapter—Authority.
19.305.080	Reduced cigarette ignition propensity account.
19.305.090	Exemptions.
19.305.100	Federal preemption.
19.305.110	Local conflicts or preemption prohibited.
19.305.900	Effective date—2008 c 239.

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

(1) "Agent" means any person licensed by the department of revenue to purchase and affix adhesive or meter stamps on packages of cigarettes.

(2) "Cigarette" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, when the roll has a wrapper or cover made of paper or any material, except when the wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state.

(3) "Manufacturer" means:

(a) Any entity that manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced anywhere that the manufacturer intends to be sold in this state, including cigarettes intended to be sold in the United States through an importer;

(b) The first purchaser anywhere that intends to resell in the United States cigarettes manufactured anywhere that the original manufacturer or maker does not intend to be sold in the United States; or

(c) Any entity that becomes a successor of an entity described in (a) or (b) of this subsection.

(4) "Quality control and quality assurance program" means the laboratory procedures implemented to ensure that operator bias, systematic and nonsystematic methodological errors, and equipment-related problems do not affect the results of the testing. Such a program ensures that the testing

repeatability remains within the required repeatability values stated in RCW 19.305.020(1)(f) for all test trials used to certify cigarettes in accordance with this chapter.

(5) "Repeatability" means the range of values within which the repeat results of cigarette test trials from a single laboratory will fall ninety-five percent of the time.

(6) "Retail dealer" means any person, other than a manufacturer or wholesale dealer, engaged in selling cigarettes or tobacco products.

(7) "Sale" or "sell" means any transfer of title of cigarettes for consideration, exchange, barter, gift, offer for sale, or distribution, in any manner or by any means.

(8) "Wholesale dealer" means any person who sells cigarettes or tobacco products to retail dealers or other persons for purposes of resale, and any person who owns, operates, or maintains one or more cigarette or tobacco product vending machines in, at, or upon premises owned or occupied by any other person. [2008 c 239 § 1.]

19.305.020 Testing of cigarettes—Performance standard—Records—Exceptions. (1) Except as provided in subsection (7) of this section, cigarettes may not be sold or offered for sale in this state or offered for sale or sold to persons located in this state unless the cigarettes have been tested in accordance with the test method and meet the performance standard specified in this section, a written certification has been filed by the manufacturer with the state director of fire protection in accordance with RCW 19.305.030, and the cigarettes have been marked in accordance with RCW 19.305.040.

(a) Testing of cigarettes shall be conducted in accordance with the American society of testing and materials (ASTM) standard E2187-04, "standard test method for measuring the ignition strength of cigarettes."

(b) Testing shall be conducted on ten layers of filter paper.

(c) No more than twenty-five percent of the cigarettes tested in a test trial in accordance with this section may exhibit full-length burns. Forty replicate tests comprise a complete test trial for each cigarette tested.

(d) The performance standard required by (c) of this subsection may only be applied to a complete test trial.

(e) Written certifications shall be based upon testing conducted by a laboratory that has been accredited pursuant to standard ISO/IEC 17025 of the international organization for standardization (ISO), or other comparable accreditation standard required by the state director of fire protection.

(f) Laboratories conducting testing in accordance with this section shall implement a quality control and quality assurance program that includes a procedure that determines the repeatability of the testing results. The repeatability value may be no greater than 0.19.

(g) This section does not require additional testing if cigarettes are tested consistent with this chapter for any other purpose.

(h) Testing performed or sponsored by the state director of fire protection to determine a cigarette's compliance with the performance standard required must be conducted in accordance with this section.

(2) Each cigarette listed in a certification submitted pursuant to RCW 19.305.030 that uses lowered permeability

bands in the cigarette paper to achieve compliance with the performance standard set forth in this section must have at least two nominally identical bands on the paper surrounding the tobacco column. At least one complete band must be located at least fifteen millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there must be at least two bands fully located at least fifteen millimeters from the lighting end and ten millimeters from the filter end of the tobacco column, or ten millimeters from the labeled end of the tobacco column for non-filtered cigarettes.

(3) A manufacturer of a cigarette that the state director of fire protection determines cannot be tested in accordance with the test method prescribed in subsection (1)(a) of this section shall propose a test method and performance standard for the cigarette to the state director of fire protection. Upon approval of the proposed test method and a determination by the state director of fire protection that the performance standard proposed by the manufacturer is equivalent to the performance standard prescribed in subsection (1)(c) of this section, the manufacturer may employ that test method and performance standard to certify the cigarette pursuant to RCW 19.305.030. If the state director of fire protection determines that another state has enacted reduced cigarette ignition propensity standards that include a test method and performance standard that are the same as those contained in this chapter, and the state director of fire protection finds that the officials responsible for implementing those requirements have approved the proposed alternative test method and performance standard for a particular cigarette proposed by a manufacturer as meeting the fire safety standards of that state's law or regulation under a legal provision comparable to this section, then the state director of fire protection shall authorize that manufacturer to employ the alternative test method and performance standard to certify that cigarette for sale in this state, unless the state director of fire protection demonstrates a reasonable basis why the alternative test should not be accepted under this chapter. All other applicable requirements of this section apply to the manufacturer.

(4) Each manufacturer shall maintain copies of the reports of all tests conducted on all cigarettes offered for sale for a period of three years, and shall make copies of these reports available to the state director of fire protection and the attorney general upon written request. Any manufacturer who fails to make copies of these reports available within sixty days of receiving a written request is subject to a civil penalty not to exceed ten thousand dollars for each day after the sixtieth day that the manufacturer does not make the copies available.

(5) The state director of fire protection may adopt a subsequent ASTM standard test method for measuring the ignition strength of cigarettes upon a finding that the subsequent method does not result in a change in the percentage of full-length burns exhibited by any tested cigarette when compared to the percentage of full-length burns the same cigarette would exhibit when tested in accordance with ASTM standard E2187-04 and the performance standard in subsection (1)(c) of this section.

(6) Beginning in 2012, the state director of fire protection shall review the effectiveness of this section and report every three years to the legislature the state director of fire

protection's findings and, if appropriate, recommendations for legislation to improve the effectiveness of this section. The report and legislative recommendations shall be submitted no later than July 1st of each three-year reporting period.

(7) The requirements of subsection (1) of this section do not prohibit wholesale or retail dealers from selling their existing inventory of cigarettes on or after August 1, 2009, if the wholesale or retailer dealer can establish that state tax stamps were affixed to the cigarettes prior to August 1, 2009, and if the wholesale or retail dealer can establish that the inventory was purchased prior to August 1, 2009, in comparable quantity to the inventory purchased during the same period of the prior year.

(8) The implementation and substance of the New York fire safety standards for cigarettes, New York Executive Law section 156-c, Fire Safety Standards for Cigarettes, shall be persuasive authority in the implementation of this chapter. [2008 c 239 § 2.]

19.305.030 Certification—Fee. (1) Each manufacturer shall submit to the state director of fire protection a written certification attesting that:

(a) Each cigarette listed in the certification has been tested in accordance with RCW 19.305.020; and

(b) Each cigarette listed in the certification meets the performance standard set forth in RCW 19.305.020(1)(c).

(2) Each cigarette listed in the certification shall be described with the following information:

(a) Brand or trade name on the package;

(b) Style, such as light or ultra light;

(c) Length in millimeters;

(d) Circumference in millimeters;

(e) Flavor, such as menthol or chocolate, if applicable;

(f) Filter or nonfilter;

(g) Package description, such as soft pack or box;

(h) Marking approved in accordance with RCW 19.305.040;

(i) The name, address, and telephone number of the laboratory, if different than the manufacturer that conducted the test; and

(j) The date the testing occurred.

(3) The certifications must be made available to the attorney general for purposes consistent with this chapter and the department of revenue for the purposes of ensuring compliance with this section.

(4) Each cigarette certified under this section must be recertified every three years.

(5) For each cigarette listed in a certification, a manufacturer shall pay to the state director of fire protection a fee of two hundred fifty dollars. The state director of fire protection is authorized to annually adjust this fee to ensure it defrays the actual costs of the processing, testing, enforcement, and oversight activities required by this chapter.

(6) If a manufacturer has certified a cigarette under this section, and thereafter makes any change to that cigarette that is likely to alter its compliance with the reduced cigarette ignition propensity standards required by this chapter, that cigarette may not be sold or offered for sale in this state until the manufacturer retests the cigarette in accordance with the testing standards set forth in RCW 19.305.020 and maintains records of that retesting as required by RCW 19.305.020.

Any altered cigarette which does not meet the performance standard set forth in RCW 19.305.020 may not be sold in this state. [2008 c 239 § 3.]

19.305.040 Markings—Requirements. (1) Cigarettes that are certified by a manufacturer in accordance with RCW 19.305.030 must be marked to indicate compliance with the requirements of RCW 19.305.020. The marking must be in eight-point type or larger and consist of:

(a) Modification of the universal product code to include a visible mark printed at or around the area of the code. The mark may consist of alphanumeric or symbolic characters permanently stamped, engraved, embossed, or printed in conjunction with the universal product code; or

(b) Any visible combination of alphanumeric or symbolic characters permanently stamped, engraved, or embossed upon the cigarette package or cellophane wrap; or

(c) Printed, stamped, engraved, or embossed text that indicates that the cigarettes meet the standards of this chapter.

(2) A manufacturer shall use only one marking, and shall apply this marking uniformly for all packages, including but not limited to packs, cartons, and cases, and brands marketed by that manufacturer.

(3) The state director of fire protection must be notified as to the marking that is selected.

(4) Prior to the certification of any cigarette, a manufacturer shall present its proposed marking to the state director of fire protection for approval. Upon receipt of the request, the state director of fire protection shall approve or disapprove the marking offered, except that the state director of fire protection shall (a) approve the letters "FSC," which signify fire standards compliant; and (b) give preference to any packaging marking in use and approved for that cigarette in New York pursuant to New York Executive Law section 156-c, Fire Safety Standards for Cigarettes, unless the state director of fire protection demonstrates a reasonable basis why that marking should not be approved under this chapter. Proposed markings are deemed approved if the state director of fire protection fails to act within ten business days of receiving a request for approval.

(5) A manufacturer shall not modify its approved marking unless the modification has been approved by the state director of fire protection in accordance with this section.

(6) Manufacturers certifying cigarettes in accordance with RCW 19.305.030 shall provide a copy of the certifications to all wholesale dealers and agents to which they sell cigarettes, and shall also provide sufficient copies of an illustration of the package marking utilized by the manufacturer under this section for each retail dealer to which the wholesale dealers or agents sell cigarettes. Wholesale dealers and agents shall provide a copy of these package markings received from manufacturers to all retail dealers to which they sell cigarettes. Wholesale dealers, agents, and retail dealers shall permit the state director of fire protection, the department of revenue, the attorney general, and their employees to inspect markings of cigarette packaging marked in accordance with this section. [2008 c 239 § 4.]

19.305.050 Violations—Civil penalties. (1) A manufacturer, wholesale dealer, agent, or any other person or entity who knowingly sells or offers to sell cigarettes, other

than through retail sale, in violation of RCW 19.305.020, for a first offense is liable to a civil penalty not to exceed ten thousand dollars per each sale of the cigarettes, and for a subsequent offense is liable to a civil penalty not to exceed twenty-five thousand dollars per each sale of the cigarettes. However, in no case may the penalty against such a person or entity exceed one hundred thousand dollars during any thirty-day period.

(2)(a) A retail dealer who knowingly sells cigarettes in violation of RCW 19.305.020 is:

(i) For a first offense liable to a civil penalty not to exceed five hundred dollars, and for a subsequent offense is liable to a civil penalty not to exceed two thousand dollars, per each sale or offer for sale of cigarettes, if the total number of cigarettes sold or offered for sale does not exceed one thousand cigarettes; or

(ii) For a first offense liable to a civil penalty not to exceed one thousand dollars, and for a subsequent offense is liable to a civil penalty not to exceed five thousand dollars, per each sale or offer for sale of cigarettes, if the total number of cigarettes sold or offered for sale exceeds one thousand cigarettes.

(b) A penalty under this subsection may not exceed twenty-five thousand dollars during a thirty-day period.

(3) In addition to any penalty prescribed by law, any corporation, partnership, sole proprietor, limited partnership, or association engaged in the manufacture of cigarettes that knowingly makes a false certification under RCW 19.305.030 is, for a first offense, liable to a civil penalty of at least seventy-five thousand dollars, and for a subsequent offense a civil penalty not to exceed two hundred fifty thousand dollars for each false certification.

(4) Any person violating any other provision in this chapter is liable to a civil penalty for a first offense not to exceed one thousand dollars, and for a subsequent offense is liable to a civil penalty not to exceed five thousand dollars, for each violation.

(5) Any cigarettes that have been sold or offered for sale that do not comply with the performance standard required by RCW 19.305.020 are subject to forfeiture under RCW 82.24.130. However, prior to the destruction of any cigarette seized under this subsection, the true holder of the trademark rights in the cigarette brand must be permitted to inspect the cigarette.

(6) In addition to any other remedy provided by law, the state director of fire protection or attorney general may initiate an appropriate civil action in superior court for a violation of this chapter, including petitioning for injunctive relief or to recover any costs or damages suffered by the state because of a violation of this chapter, including enforcement costs relating to the specific violation and attorneys' fees. Each violation of this chapter or of rules adopted under this chapter constitutes a separate civil violation for which the state director of fire protection or attorney general may obtain relief. [2008 c 239 § 5.]

19.305.060 Rule making—Inspection of cigarettes.

(1) The state director of fire protection may adopt rules necessary to implement this chapter.

(2) The department of revenue in the regular course of conducting inspections of wholesale dealers, agents, and

retail dealers, as authorized under chapter 82.24 RCW, may inspect cigarettes to determine if the cigarettes are marked as required by RCW 19.305.040. If the cigarettes are not marked as required, the department of revenue shall notify the state director of fire protection. [2008 c 239 § 6.]

19.305.070 Enforcement of chapter—Authority. To enforce this chapter, the attorney general and the state director of fire protection are authorized to examine the books, papers, invoices, and other records of any person in possession, control, or occupancy of any premises where cigarettes are placed, stored, sold, or offered for sale, as well as the stock of cigarettes on the premises. Every person in the possession, control, or occupancy of any premises where cigarettes are placed, sold, or offered for sale, is required to give the attorney general and the state director of fire protection the means, facilities, and opportunity for the examinations authorized by this section. [2008 c 239 § 7.]

19.305.080 Reduced cigarette ignition propensity account. The reduced cigarette ignition propensity account is created in the custody of the state treasurer. All receipts from the payment of certification fees under RCW 19.305.030 and from the imposition of civil penalties under RCW 19.305.050 must be deposited into the account. Expenditures from the account may be used only for fire safety, enforcement, and prevention programs. Only the state director of fire protection 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. [2008 c 239 § 8.]

19.305.090 Exemptions. This chapter does not prohibit any person or entity from manufacturing or selling cigarettes that do not meet the requirements of RCW 19.305.020 if the cigarettes are or will be stamped for sale in another state or are packaged for sale outside the United States and that person or entity has taken reasonable steps to ensure that the cigarettes will not be sold or offered for sale to persons located in this state. [2008 c 239 § 10.]

19.305.100 Federal preemption. If a federal reduced cigarette ignition propensity standard that preempts chapter 239, Laws of 2008 is adopted and becomes effective, the state director of fire protection shall prepare and submit to the legislature the necessary legislation to repeal this chapter. [2008 c 239 § 11.]

19.305.110 Local conflicts or preemption prohibited. The local governmental units of this state may neither enact nor enforce any ordinance or other local law or regulation conflicting with, or preempted by, any provision of this chapter or with any policy of this state expressed by this chapter, whether that policy is expressed by inclusion of a provision in this chapter or by exclusion of that subject from this chapter. [2008 c 239 § 12.]

19.305.900 Effective date—2008 c 239. This act takes effect August 1, 2009. [2008 c 239 § 14.]

Chapter 19.310 RCW EXCHANGE FACILITATORS

Sections

19.310.005	Finding—Purpose.
19.310.010	Definitions.
19.310.020	Actions for collection of compensation—Requirements.
19.310.030	Notice of change in control—Exceptions.
19.310.040	Duties of exchange facilitator—Fidelity bonds.
19.310.050	Claims on fidelity bonds—Remedies.
19.310.060	Duties of exchange facilitator—Errors and omissions policies.
19.310.070	Claims on errors and omissions policies—Remedies.
19.310.080	Exchange funds—Prudent investor standard—Violations— Not subject to execution or attachment.
19.310.090	Administration of places of business—Direct management.
19.310.100	Prohibited practices.
19.310.110	Deposit of client funds—Written notice.
19.310.120	Prima facie evidence of fraud—Violations—Penalty—Cure for violations.
19.310.130	Violations—Misdemeanor.
19.310.150	Violation of chapter—Civil suit—Damages.
19.310.160	Application of consumer protection act.
19.310.900	Application of chapter 21.20 RCW.

19.310.005 Finding—Purpose. The legislature finds that there are no statutory requirements pertaining to persons who facilitate like-kind exchanges pursuant to section 1031 of the internal revenue code and associated treasury regulations. The purpose of this chapter is to create a statutory framework that provides some consumer protections to those who entrust money or property to persons acting as exchange facilitators. [2009 c 70 § 1.]

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

(1) A person or entity "affiliated" with a specific person or entity, means a person or entity who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person or entity specified.

(2) "Client" means the taxpayer with whom the exchange facilitator enters into an agreement as described in subsection (4)(a)(i) of this section.

(3) "Covered dishonest act" means a crime involving fraud, embezzlement, misappropriation of funds, robbery, or other theft of property.

(4)(a) "Exchange facilitator" means a person who:

(i)(A) Facilitates, for a fee, an exchange of like-kind property by entering into an agreement with a taxpayer by which the exchange facilitator acquires from the taxpayer the contractual rights to sell the taxpayer's relinquished property located in this state and transfer a replacement property to the taxpayer as a qualified intermediary, as defined under treasury regulation section 1.1031(k)-1(g)(4); (B) enters into an agreement with a taxpayer to take title to a property in this state as an exchange accommodation titleholder, as defined in internal revenue service revenue procedure 2000-37; or (C) enters into an agreement with a taxpayer to act as a qualified trustee or qualified escrow holder, as both terms are defined under treasury regulation section 1.1031(k)-1(g)(3); or

(ii) Maintains an office in this state for the purpose of soliciting business as an exchange facilitator.

(b) "Exchange facilitator" does not include:

(i) A taxpayer or a disqualified person, as defined under treasury regulation section 1.1031(k)-1(k), seeking to qualify

for the nonrecognition provisions of section 1031 of the internal revenue code of 1986, as amended;

(ii) A financial institution that is (A) acting as a depository for exchange funds and is not facilitating an exchange or (B) acting solely as a qualified escrow holder or qualified trustee, as both terms are defined under treasury regulation section 1.1031(k)-1(g)(3), and is not facilitating an exchange;

(iii) A title insurance company, underwritten title company, or escrow company that is acting solely as a qualified escrow holder or qualified trustee, as both terms are defined under treasury regulation section 1.1031(k)-1(g)(3), and is not facilitating an exchange;

(iv) A person that advertises for and teaches seminars or classes, or otherwise makes a presentation, to attorneys, accountants, real estate professionals, tax professionals, or other professionals, when the primary purpose is to teach the professionals about tax-deferred exchanges or to train them to act as exchange facilitators;

(v) A qualified intermediary, as defined under treasury regulation section 1.1031(k)-1(g)(4), who holds exchange funds from the disposition of relinquished property located outside of this state; or

(vi) An affiliated entity that is used by the exchange facilitator to facilitate exchanges or to take title to property in this state as an exchange accommodation titleholder.

(c) For the purposes of this subsection, "fee" means compensation of any nature, direct or indirect, monetary or in kind, that is received by a person or related person, as defined in section 267(b) or 707(b) of the internal revenue code, for any services relating to or incidental to the exchange of like-kind property.

(5) "Financial institution" means a state chartered or federally chartered bank, credit union, savings and loan association, savings bank, or trust company whose accounts are insured by the full faith and credit of the United States, the federal deposit insurance corporation, the national credit union share insurance fund, or other similar or successor programs.

(6) "Person" means an individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust, or any other form of a legal entity, and includes the agents and employees of that person.

(7) "Prudent investor standard" means the standard for investment as described under RCW 11.100.020. [2013 c 228 § 1; 2009 c 70 § 2.]

19.310.020 Actions for collection of compensation—Requirements. An exchange facilitator may not bring a suit or action for the collection of compensation in connection with duties performed as an exchange facilitator unless the exchange facilitator alleges and proves that he or she was fully in compliance with this chapter at the time of the offering to perform or performing an act or service regulated under this chapter. [2009 c 70 § 3.]

19.310.030 Notice of change in control—Exceptions. (1) Except as provided under subsection (2) of this section, a person who engages in business as an exchange facilitator shall notify all existing exchange clients whose relinquished property is located in this state, or whose replacement property held under a qualified exchange accommodation agree-

ment is located in this state, of any change in control of the exchange facilitator. Notification must be provided within ten business days of the effective date of the change in control by hand delivery, facsimile, electronic mail, overnight mail, or first-class mail, and must be posted on the exchange facilitator's internet web site for at least ninety days following the change in control. The notification must set forth the name, address, and other contact information of the transferees.

(2) If an exchange facilitator is a publicly traded company or wholly owned subsidiary of the publicly traded company and remains a publicly traded company or wholly owned subsidiary of the publicly traded company after a change in control, the publicly traded company or wholly owned subsidiary of the publicly traded company is not required to notify its existing clients of the change in control.

(3) For purposes of this section, "change in control" means any transfer of more than fifty percent of the assets or ownership interests, directly or indirectly, of the exchange facilitator. [2009 c 70 § 4.]

19.310.040 Duties of exchange facilitator—Fidelity bonds. (1) A person who engages in business as an exchange facilitator must:

(a)(i) Maintain a fidelity bond or bonds in an amount of not less than one million dollars executed by an insurer authorized to do business in this state for the benefit of a client of the exchange facilitator that suffers a direct financial loss as a result of the exchange facilitator's covered dishonest act. Such fidelity bond must cover the acts of employees of an exchange facilitator and owners of a nonpublicly traded exchange facilitator; or

(ii) Deposit all exchange funds in a qualified escrow account or qualified trust, as both terms are defined under treasury regulation section 1.1031(k)-1(g)(3), with a financial institution. If an exchange facilitator deposits exchange funds in a qualified escrow account or qualified trust:

(A) A withdrawal of exchange funds requires the exchange facilitator and the client to independently authenticate a record, as defined under RCW 62A.9A-102, of the transaction; and

(B) The client of the exchange facilitator must receive independently from the depository financial institution, by any commercially reasonable means, a current statement for verification of the deposited exchange funds; and

(b) Disclose on the company web site and contractual agreement the following statement in large, bold, or otherwise conspicuous typeface calculated to draw the eye: "Washington state law, RCW 19.310.040, requires an exchange facilitator to either maintain a fidelity bond in an amount of not less than one million dollars that protects clients against losses caused by criminal acts of the exchange facilitator, or to hold all client funds in a qualified escrow account or qualified trust that requires your consent for withdrawals. All exchange funds must be deposited in a separately identified account using your taxpayer identification number. You must receive written notification of how your exchange funds have been deposited. Your exchange facilitator is required to provide you with written directions of how to independently verify the deposit of the exchange funds. Exchange facilitation services are not regulated by any

agency of the state of Washington or of the United States government. It is your responsibility to determine that your exchange funds will be held in a safe manner." If recommending other products or services, the exchange facilitator must disclose to the client that the exchange facilitator may receive a financial benefit, such as a commission or referral fee, as a result of such recommendation. The exchange facilitator must not recommend or suggest to a client the use of services of another organization or business entity in which the exchange facilitator has a direct or indirect interest without full disclosure of such interest at the time of recommendation or suggestion.

(2) An exchange facilitator must provide evidence to each client that the requirements of this section are satisfied before entering into an exchange agreement.

(3) Upon request of a current or prospective client, or the attorney general under chapter 19.86 RCW, the exchange facilitator must offer evidence proving that the requirements of this section are satisfied at the time of the request. [2013 c 228 § 2; 2012 c 34 § 2; 2009 c 70 § 5.]

Findings—2012 c 34: "The legislature finds that exchange facilitators are a specialized business in Washington state that involves the transfer of certain assets of citizens for investment purposes. In 2009 legislation was passed that provided enhanced reporting requirements, as well as civil and criminal penalties, to serve as additional protections for citizens involved in these types of transactions. The legislature finds that current law is still inadequate to protect those who trust these companies with assets they may have spent a lifetime accumulating. Additional protections are required to properly regulate the companies engaged in these transactions." [2012 c 34 § 1.]

19.310.050 Claims on fidelity bonds—Remedies. (1) A person who claims to have sustained damages by reason of the fraudulent act or covered dishonest act of an exchange facilitator or an exchange facilitator's employee may file a claim on the fidelity bond.

(2) The remedies provided under this section are cumulative and nonexclusive and do not affect any other remedy available at law. [2013 c 228 § 3; 2009 c 70 § 6.]

19.310.060 Duties of exchange facilitator—Errors and omissions policies. (1) A person who engages in business as an exchange facilitator shall:

(a) Maintain a policy of errors and omissions insurance in an amount of not less than two hundred fifty thousand dollars executed by an insurer authorized to do business in this state; or

(b) Deposit an amount of cash or securities or irrevocable letters of credit in an amount of not less than two hundred fifty thousand dollars into an interest-bearing deposit account or a money market account with the financial institution of the exchange facilitator's choice. Interest on that amount accrues to the exchange facilitator.

(2) A person who engages in business as an exchange facilitator may maintain insurance or deposit an amount of cash or securities or irrevocable letters of credit in excess of the minimum required amounts under this section.

(3) The requirements under subsection (1)(a) of this section are satisfied if the person engaging in business as an exchange facilitator is listed as a named insured on one or more errors and omissions policies that have an aggregate total of at least two hundred fifty thousand dollars.

(4) An exchange facilitator must provide evidence to each client that the requirements of this section are satisfied before entering into an exchange agreement.

(5) Upon request of a current or prospective client, or the attorney general under chapter 19.86 RCW, the exchange facilitator must offer evidence proving that the requirements of this section are satisfied at the time of the request. [2009 c 70 § 7.]

19.310.070 Claims on errors and omissions policies—Remedies. (1) A person who claims to have sustained damages by reason of an unintentional error or omission of an exchange facilitator or an exchange facilitator's employee may file a claim on the errors and omissions insurance policy or approved alternative described in RCW 19.310.060 to recover the damages.

(2) The remedies provided under this section are cumulative and nonexclusive and do not affect any other remedy available at law. [2009 c 70 § 8.]

19.310.080 Exchange funds—Prudent investor standard—Violations—Not subject to execution or attachment.

(1) A person who engages in business as an exchange facilitator shall act as a custodian for all exchange funds, including money, property, other consideration, or instruments received by the exchange facilitator from, or on behalf of, the client, except funds received as the exchange facilitator's compensation. The exchange facilitator shall hold the exchange funds in a manner that provides liquidity and preserves both principal and any earned interest, and if invested, shall invest those exchange funds in investments that meet a prudent investor standard and satisfy investment goals of liquidity and preservation of principal and any earned interest. For purposes of this section, a violation of the prudent investor standard includes, but is not limited to, a transaction in which:

(a) Exchange funds are knowingly commingled by the exchange facilitator with the operating accounts of the exchange facilitator, except that the exchange facilitator's fee may be deposited as part of the exchange transaction into the same account as that containing exchange funds, in which event the exchange facilitator must promptly withdraw the fee;

(b) Exchange funds are loaned or otherwise transferred to any person or entity, other than a financial institution, that is affiliated with or related to the exchange facilitator, except that this subsection (1)(b) does not apply to the transfer of funds from an exchange facilitator to an exchange accommodation titleholder in accordance with an exchange contract;

(c) Exchange funds are invested in a manner that does not provide sufficient liquidity to meet the exchange facilitator's contractual obligations to its clients, unless insufficient liquidity occurs as the result of: (i) Events beyond the prediction or control of the exchange facilitator including, but not limited to, failure of a financial institution; or (ii) an investment specifically requested by the client; or

(d) Exchange funds are invested in a manner that does not preserve the principal of the exchange funds, unless loss of principal occurs as the result of: (i) Events beyond the prediction or control of the exchange facilitator; or (ii) an investment specifically requested by the client.

(2) Exchange funds are not subject to execution or attachment on any claim against the exchange facilitator. [2013 c 228 § 4; 2009 c 70 § 9.]

19.310.090 Administration of places of business—Direct management. A person who engages in business as an exchange facilitator must administer each of his, her, or its places of business under the direct management of an officer or an employee who is either:

- (1) An attorney or certified public accountant admitted to practice in any state or territory of the United States; or
- (2) A person who has passed a test specific to the subject matter of exchange facilitation. [2009 c 70 § 10.]

19.310.100 Prohibited practices. A person who engages in business as an exchange facilitator shall not, with respect to a like-kind exchange transaction:

- (1) Make a false, deceptive, or misleading material representation, directly or indirectly, concerning a like-kind transaction;
- (2) Make a false, deceptive, or misleading material representation, directly or indirectly, in advertising or by any other means, concerning a like-kind transaction;
- (3) Engage in any unfair or deceptive practice toward any person;
- (4) Obtain property by fraud or misrepresentation;
- (5) Fail to account for any moneys or property belonging to others that may be in the possession or under the control of the exchange facilitator;
- (6) Commingle funds held for a client in any account that holds the exchange facilitator's own funds, except as provided in RCW 19.310.080(1)(a);
- (7) Loan or otherwise transfer exchange funds to any person or entity, other than a financial institution, that is affiliated with or related to the exchange facilitator, except for the transfer of funds from an exchange facilitator to an exchange accommodation title holder in accordance with an exchange contract;
- (8) Keep, or cause to be kept, any money in any bank, credit union, or other financial institution under a name designating the money as belonging to the client of any exchange facilitator, unless that money belongs to that client and was entrusted to the exchange facilitator by that client;
- (9) Fail to fulfill its contractual duties to the client to deliver property or funds to the taxpayer in a material way unless such a failure is due to: (a) Events beyond the prediction or control of the exchange facilitator; or (b) an investment specifically requested by the client;
- (10) Commit, including commission by its owners, officers, directors, employees, agents, or independent contractors, any crime involving fraud, misrepresentation, deceit, embezzlement, misappropriation of funds, robbery, or other theft of property;
- (11) Fail to make disclosures required by any applicable state law; or
- (12) Make any false statement or omission of material fact in connection with any reports filed by an exchange facilitator or in connection with any investigation conducted by the department of financial institutions. [2013 c 228 § 5; 2009 c 70 § 11.]

(2018 Ed.)

19.310.110 Deposit of client funds—Written notice.

(1) An exchange facilitator must deposit all client funds in a separately identified account, as defined in treasury regulation section 1.468B-6(c)(ii), for the particular client or client's matter, and the client must receive all the earnings credited to the separately identified account.

(2) An exchange facilitator must provide the client with written notification of how the exchange proceeds have been invested or deposited. [2013 c 228 § 6; 2009 c 70 § 12.]

19.310.120 Prima facie evidence of fraud—Violations—Penalty—Cure for violations. (1) Failure to fulfill the requirements under RCW 19.310.040 constitutes prima facie evidence that the exchange facilitator intended to defraud a client who suffered a subsequent loss of the asset entrusted to the exchange facilitator.

(2) A person who engages in business as an exchange facilitator and who knowingly violates RCW 19.310.100 (1) through (9) or fails to comply with the requirements under RCW 19.310.040 is guilty of a class B felony under chapter 9A.20 RCW. However, an exchange facilitator is not guilty of a class B felony for failure to comply with the requirements under RCW 19.310.040 if: (a) Failure to comply is due to the cancellation or amendment of the fidelity bond by the bond issuer; and (b) the exchange facilitator:

- (i) Within thirty days, takes all reasonable steps to comply with the requirements under RCW 19.310.040; and
- (ii) Deposits any new exchange funds into a qualified escrow account or qualified trust until a fidelity bond is obtained that meets the requirements under RCW 19.310.040(1)(a)(i). [2013 c 228 § 7; 2012 c 34 § 4; 2009 c 70 § 13.]

Findings—2012 c 34: See note following RCW 19.310.040.

19.310.130 Violations—Misdemeanor. A person who engages in business as an exchange facilitator and who violates RCW 19.310.100 (11) or (12) is guilty of a misdemeanor under chapter 9A.20 RCW. [2009 c 70 § 14.]

19.310.150 Violation of chapter—Civil suit—Damages. (1) A person who violates this chapter is subject to civil suit in a court of competent jurisdiction.

(2) Damages awarded to a current client for a civil suit filed for a violation of the requirements under RCW 19.310.040 include treble damages and attorneys' fees. [2012 c 34 § 5; 2009 c 70 § 16.]

Findings—2012 c 34: See note following RCW 19.310.040.

19.310.160 Application of consumer protection act. 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 purposes of applying the consumer protection act, chapter 19.86 RCW. [2009 c 70 § 17.]

19.310.900 Application of chapter 21.20 RCW. This chapter does not affect the application of chapter 21.20 RCW. [2009 c 70 § 18.]

Chapter 19.315 RCW
CONSUMER REBATES

Sections

- 19.315.010 Definitions.
19.315.020 Time for redemption—Transmittal of rebate—Application.
19.315.030 Application of the consumer protection act.

19.315.010 Definitions. As used in this chapter:

(1) "Person" has the same meaning as in RCW 19.86.010.

(2) "Rebate" means an offer to provide cash, credit, or credit towards future purchases, that is offered to consumers who acquire or purchase a specified product or service and that is conditioned upon the customer submitting a request for redemption after satisfying the terms and conditions of the offer. "Rebate" does not include: Any discount from the purchase price that is taken at the time of purchase; any discount, cash, credit, or credit towards a future purchase that is automatically provided to a consumer without the need to submit a request for redemption; or any refund that may be given to a consumer in accordance with a company's return, guarantee, adjustment, or warranty policies, or any company's frequent shopper customer reward program. [2009 c 374 § 1.]

19.315.020 Time for redemption—Transmittal of rebate—Application. (1) Any person who offers a consumer rebate shall allow a minimum of fourteen days from the date the consumer purchases the product, or becomes eligible for the rebate upon satisfying the terms and conditions of the offer, for the submission of a request for redemption by the customer.

(2) Upon receipt of a request for redemption meeting the terms and conditions of the rebate offer, the person offering the rebate shall transmit the rebate funds to the consumer within ninety days.

(3) If a rebate is sent to a consumer as a check, the check must be mailed in a manner that identifies the piece of mail as the expected rebate check.

(4) This section applies only to the person offering the rebate, which is the person who provides the cash, credit, or credit towards future purchases to the consumer. This section does not apply to a person who processes a rebate or who provides consumers with instructions or materials related to a rebate. [2009 c 374 § 2.]

19.315.030 Application of the consumer protection act. 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. [2009 c 374 § 3.]

Chapter 19.320 RCW
HUMAN TRAFFICKING

Sections

- 19.320.010 Definitions.
19.320.020 Disclosure statement.
19.320.030 Personal jurisdiction.
19.320.040 Liability.
19.320.050 Assistance information.

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

(1) "Any person" means adults and children of any nationality.

(2) "Domestic employers of foreign workers" or "domestic employer" means a person or persons residing in the state of Washington who recruit or employ a foreign worker to perform work in Washington state.

(3) "Forced labor" means all work or service which is exacted from any person under the menace of any penalty and to which the person has not offered himself or herself voluntarily.

(4) "Foreign worker" or "worker" means a person who is not a citizen of the United States, who comes to Washington state based on an offer of employment, and who holds a non-immigrant visa for temporary visitors.

(5) "Human trafficking" or "trafficking" means an act conducted for the purpose of exploitation, including forced labor, by particular means, for example threat of use of force or other forms of coercion, abduction, fraud or deception, abuse of power, or abuse of position of vulnerability.

(6) "International labor recruitment agency" means a corporation, partnership, business, or other legal entity, whether or not organized under the laws of the United States or any state, that does business in the United States and offers Washington state entities engaged in the employment or recruitment of foreign workers, employment referral services involving citizens of a foreign country or countries by acting as an intermediary between these foreign workers and Washington employers.

(7) "Menace of any penalty" means all forms of criminal sanctions and other forms of coercion, including threats, violence, retention of identity documents, confinement, nonpayment or illegal deduction of wages, or debt bondage.

(8) "Work or service" means all types of work, employment, or occupation, whether legal or not. [2016 c 4 § 1; 2010 c 142 § 1; 2009 c 492 § 1.]

19.320.020 Disclosure statement. (1) Except as provided in subsection (4) of this section, domestic employers of foreign workers and international labor recruitment agencies must provide a disclosure statement as described in this section to foreign workers who have been referred to or hired by a Washington employer on or after June 10, 2010.

(2) The disclosure statement must:

(a) Be provided in English or, if the worker is not fluent or literate in English, another language that is understood by the worker;

(b) State that the worker may be considered an employee under the laws of the state of Washington and is subject to state worker health and safety laws and may be eligible for

workers' compensation insurance and unemployment insurance;

(c) State that the worker may be subject to both state and federal laws governing overtime and work hours, including the minimum wage act under chapter 49.46 RCW;

(d) Include an itemized listing of any deductions the employer intends to make from the worker's pay for food and housing;

(e) Include an itemized listing of the international labor recruitment agency's fees;

(f) State that the worker has the right to control over his or her travel and labor documents, including his or her visa, at all times and that the employer may not require the employee to surrender those documents to the employer or to the international labor recruitment agency while the employee is working in the United States, except as otherwise required by law or regulation or for use as supporting documentation in visa applications;

(g) Include a list of services or a hotline a worker may contact if he or she thinks that he or she may be a victim of trafficking.

(3) The department of labor and industries may create a model disclosure form and post the model form on its web site so that domestic employers of foreign workers and international labor recruitment agencies may download the form, or mail the form upon request. The disclosure statement must be given to the worker no later than the date that the worker arrives at the place of employment in Washington.

(4) If a foreign worker has been provided an informational pamphlet developed under the William Wilberforce trafficking victims protection reauthorization act of 2008, the domestic employer or international labor recruitment agency is not required to provide the disclosure statement under this section. For the purposes of this subsection a worker is presumed to have been provided an informational pamphlet so long as the William Wilberforce trafficking victims protection reauthorization act is in effect and he or she holds an A-3, G-5, NATO-7, H, J, or B-1 personal or domestic servant visa. [2010 c 142 § 2; 2009 c 492 § 2.]

19.320.030 Personal jurisdiction. For purposes of establishing personal jurisdiction under this chapter, an international labor recruitment agency or a domestic employer of a foreign worker is deemed to be doing business in Washington and is subject to the jurisdiction of the courts of Washington state if the agency or employer contracts for employment services with a Washington resident or is considered to be doing business under any other provision or rule of law. [2009 c 492 § 3.]

19.320.040 Liability. Any domestic employer or international labor recruitment agency which fails to complete the requirements of this chapter with respect to any foreign worker is liable to that foreign worker in a civil action by the foreign worker. The court shall award to a foreign worker who prevails in an action under this section an amount between two hundred dollars and five hundred dollars, or actual damages, whichever is greater. The court may also award other equitable relief. A foreign worker who prevails in an action under this section must be awarded court costs and attorneys' fees. [2010 c 142 § 3.]

19.320.050 Assistance information. The department of labor and industries shall integrate information on assisting victims of human trafficking in posters and brochures, as deemed appropriate by the department. The information shall include the toll-free telephone number of the national human trafficking resource center and the Washington state office of crime victims advocacy. [2010 c 142 § 4.]

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 misappropri-

ates 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 violate 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 section 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 affirmative 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 mis-

appropriated 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.]

Chapter 19.335 RCW

VETERANS' BENEFIT-RELATED SERVICES

Sections

19.335.005	Findings—Intent.
19.335.010	Definitions.
19.335.020	Prohibited acts or practices.
19.335.030	Advertising or promotion disclosures.
19.335.040	Application of chapter.
19.335.050	Application of consumer protection act.
19.335.900	Short title.

19.335.005 Findings—Intent. The legislature finds and declares that the practice of persons using the allure of untapped benefits from the United States department of veterans affairs to market products and services substantially affects the public interest. This practice may impact the ability of veterans or their surviving spouses to appropriately plan their finances or care. The legislature further finds that the lack of regulation of persons who provide advice related to veterans' benefits is inadequate to address unfair and deceptive practices that exist in the marketplace and has contributed to the unauthorized practice of law and the use and marketing of financial planning options that are potentially

detrimental to the veteran, their spouse, and family. It is the intent of the legislature, through this chapter, to restrict how individuals receive compensation and remuneration for providing assistance with veterans' benefit-related services and to encourage certain disclosures from individuals offering veterans' benefit-related services. [2014 c 67 § 1.]

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

(1) "Compensation" means money, property, or anything else of value, which includes, but is not limited to, exclusive arrangements or agreements for the provision of services or the purchase of products.

(2) "Person" includes, where applicable, natural persons, corporations, trusts, unincorporated associations, and partnerships.

(3) "Trade or commerce" includes the marketing or sale of assets, goods, or services, or any commerce directly or indirectly affecting the people of the state of Washington.

(4) "Veterans' benefit matter" means any preparation, presentation, or prosecution of a claim affecting a person who has filed or has expressed an intention to file an application for determination of payment, service, commodity, function, or status, entitlement to which is determined under laws administered by the United States department of veterans affairs or the Washington state department of veterans affairs pertaining to veterans, dependents, and survivors. [2014 c 67 § 2.]

19.335.020 Prohibited acts or practices. A person may not engage in the following acts or practices:

(1) Receiving compensation for advising or assisting another person with a veterans' benefit matter, except as permitted under Title 38 of the United States Code;

(2) Using financial or other personal information gathered in order to prepare documents for, or otherwise represent the interests of, another in a veterans' benefit matter for purposes of trade or commerce;

(3) Receiving compensation for referring another person to a person accredited by the United States department of veterans affairs;

(4) Representing, either directly or by implication, either orally or in writing, that the receipt of a certain level of veterans' benefits is guaranteed. [2014 c 67 § 3.]

19.335.030 Advertising or promotion disclosures. (1) It is unlawful for any person to advertise or promote any event, presentation, seminar, workshop, or other public gathering regarding veterans' benefits or entitlements that does not include the following disclosure: "This event is not sponsored by, or affiliated with, the United States Department of Veterans Affairs, the Washington State Department of Veterans Affairs, or any other congressionally chartered or recognized organization of honorably discharged members of the Armed Forces of the United States or any of their auxiliaries. Products or services that may be discussed at this event are not necessarily endorsed by those organizations. You may qualify for benefits other than or in addition to the benefits discussed at this event."

(2) The disclosure required by subsection (1) of this section must be in the same type size and font as the term "veteran" or any variation of that term as used in the event advertisement or promotional materials.

(3) The disclosure required by subsection (1) of this section must be disseminated, both orally and in writing, at the beginning of any event, presentation, seminar, workshop, or other public gathering regarding veterans' benefits or entitlements.

(4) The disclosure required by subsection (1) of this section does not apply where the United States department of veterans affairs, the Washington state department of veterans affairs, or any other congressionally chartered or recognized organization of honorably discharged members of the armed forces of the United States or any of their auxiliaries have granted written permission to the advertiser or promoter for the use of its name, symbol, or insignia to advertise or promote such events, presentations, seminars, workshops, or other public gatherings. The disclosure required by subsection (1) of this section also does not apply where the event, presentation, seminar, workshop, or gathering is part of an accredited continuing legal education course. [2014 c 67 § 4.]

19.335.040 Application of chapter. Nothing in this chapter applies to officers, employees, or volunteers of the state, of any county, city, or other political subdivision, or of a federal agency of the United States, who are acting in their official capacity. [2014 c 67 § 5.]

19.335.050 Application of consumer protection act. 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 purposes of applying the consumer protection act, chapter 19.86 RCW. [2014 c 67 § 6.]

19.335.900 Short title. This chapter may be known and cited as the "pension poacher prevention act." [2014 c 67 § 8.]

Chapter 19.340 RCW

PHARMACY BENEFIT MANAGERS

Sections

19.340.010	Definitions.
19.340.020	Definitions applicable to RCW 19.340.040 through 19.340.090.
19.340.030	Pharmacy benefit managers—Registration—Renewal.
19.340.040	Auditing of claims—Requirements—Prohibited practices.
19.340.050	Basis of finding of claim.
19.340.060	Contract with third party—Prohibited practices.
19.340.070	Evidence of validation of claim.
19.340.080	Preliminary audit report—Dispute or denial of claim—Final audit report—Recoupment of disputed funds.
19.340.090	Application.
19.340.100	Predetermination of reimbursement costs—Appeals—Review by commissioner.
19.340.110	Enforcement—Disputes—Civil penalties.

(2018 Ed.)

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

(1) "Claim" means a request from a pharmacy or pharmacist to be reimbursed for the cost of filling or refilling a prescription for a drug or for providing a medical supply or service.

(2) "Commissioner" means the insurance commissioner established in chapter 48.02 RCW.

(3) "Insurer" has the same meaning as in RCW 48.01.050.

(4) "Pharmacist" has the same meaning as in RCW 18.64.011.

(5) "Pharmacy" has the same meaning as in RCW 18.64.011.

(6)(a) "Pharmacy benefit manager" means a person that contracts with pharmacies on behalf of an insurer, a third-party payor, or the prescription drug purchasing consortium established under RCW 70.14.060 to:

(i) Process claims for prescription drugs or medical supplies or provide retail network management for pharmacies or pharmacists;

(ii) Pay pharmacies or pharmacists for prescription drugs or medical supplies; or

(iii) Negotiate rebates with manufacturers for drugs paid for or procured as described in this subsection.

(b) "Pharmacy benefit manager" does not include a health care service contractor as defined in RCW 48.44.010.

(7) "Third-party payor" means a person licensed under RCW 48.39.005. [2016 c 210 § 3; 2014 c 213 § 1.]

19.340.020 Definitions applicable to RCW 19.340.040 through 19.340.090. As used in this section and RCW 19.340.040 through 19.340.090:

(1) "Audit" means an on-site or remote review of the records of a pharmacy by or on behalf of an entity.

(2) "Clerical error" means a minor error:

(a) In the keeping, recording, or transcribing of records or documents or in the handling of electronic or hard copies of correspondence;

(b) That does not result in financial harm to an entity; and

(c) That does not involve dispensing an incorrect dose, amount or type of medication, or dispensing a prescription drug to the wrong person.

(3) "Entity" includes:

(a) A pharmacy benefit manager;

(b) An insurer;

(c) A third-party payor;

(d) A state agency; or

(e) A person that represents or is employed by one of the entities described in this subsection.

(4) "Fraud" means knowingly and willfully executing or attempting to execute a scheme, in connection with the delivery of or payment for health care benefits, items, or services, that uses false or misleading pretenses, representations, or promises to obtain any money or property owned by or under the custody or control of any person. [2014 c 213 § 3.]

19.340.030 Pharmacy benefit managers—Registration—Renewal. (1) To conduct business in this state, a phar-

macy benefit manager must register with the office of the insurance commissioner and annually renew the registration.

(2) To register under this section, a pharmacy benefit manager must:

(a) Submit an application requiring the following information:

- (i) The identity of the pharmacy benefit manager;
- (ii) The name, business address, phone number, and contact person for the pharmacy benefit manager; and
- (iii) Where applicable, the federal tax employer identification number for the entity; and

(b) Pay a registration fee established in rule by the commissioner. The registration fee must be set to allow the registration and oversight activities to be self-supporting.

(3) To renew a registration under this section, a pharmacy benefit manager must pay a renewal fee established in rule by the commissioner. The renewal fee must be set to allow the renewal and oversight activities to be self-supporting.

(4) All receipts from registrations and renewals collected by the commissioner must be deposited into the insurance commissioner's regulatory account created in RCW 48.02.190. [2016 c 210 § 1; 2014 c 213 § 2.]

Effective date—2016 c 210 § 1: "Section 1 of this act takes effect January 1, 2017." [2016 c 210 § 8.]

19.340.040 Auditing of claims—Requirements—Prohibited practices. An entity that audits claims or an independent third party that contracts with an entity to audit claims:

(1) Must establish, in writing, a procedure for a pharmacy to appeal the entity's findings with respect to a claim and must provide a pharmacy with a notice regarding the procedure, in writing or electronically, prior to conducting an audit of the pharmacy's claims;

(2) May not conduct an audit of a claim more than twenty-four months after the date the claim was adjudicated by the entity;

(3) Must give at least fifteen days' advance written notice of an on-site audit to the pharmacy or corporate headquarters of the pharmacy;

(4) May not conduct an on-site audit during the first five days of any month without the pharmacy's consent;

(5) Must conduct the audit in consultation with a pharmacist who is licensed by this or another state if the audit involves clinical or professional judgment;

(6) May not conduct an on-site audit of more than two hundred fifty unique prescriptions of a pharmacy in any twelve-month period except in cases of alleged fraud;

(7) May not conduct more than one on-site audit of a pharmacy in any twelve-month period;

(8) Must audit each pharmacy under the same standards and parameters that the entity uses to audit other similarly situated pharmacies;

(9) Must pay any outstanding claims of a pharmacy no more than forty-five days after the earlier of the date all appeals are concluded or the date a final report is issued under RCW 19.340.080(3);

(10) May not include dispensing fees or interest in the amount of any overpayment assessed on a claim unless the

overpaid claim was for a prescription that was not filled correctly;

(11) May not recoup costs associated with:

(a) Clerical errors; or

(b) Other errors that do not result in financial harm to the entity or a consumer; and

(12) May not charge a pharmacy for a denied or disputed claim until the audit and the appeals procedure established under subsection (1) of this section are final. [2014 c 213 § 4.]

19.340.050 Basis of finding of claim. An entity's finding that a claim was incorrectly presented or paid must be based on identified transactions and not based on probability sampling, extrapolation, or other means that project an error using the number of patients served who have a similar diagnosis or the number of similar prescriptions or refills for similar drugs. [2014 c 213 § 5.]

19.340.060 Contract with third party—Prohibited practices. An entity that contracts with an independent third party to conduct audits may not:

(1) Agree to compensate the independent third party based on a percentage of the amount of overpayments recovered; or

(2) Disclose information obtained during an audit except to the contracting entity, the pharmacy subject to the audit, or the holder of the policy or certificate of insurance that paid the claim. [2014 c 213 § 6.]

19.340.070 Evidence of validation of claim. For purposes of RCW 19.340.020 and 19.340.040 through 19.340.090, an entity, or an independent third party that contracts with an entity to conduct audits, must allow as evidence of validation of a claim:

(1) An electronic or physical copy of a valid prescription if the prescribed drug was, within fourteen days of the dispensing date:

(a) Picked up by the patient or the patient's designee;

(b) Delivered by the pharmacy to the patient; or

(c) Sent by the pharmacy to the patient using the United States postal service or other common carrier;

(2) Point of sale electronic register data showing purchase of the prescribed drug, medical supply, or service by the patient or the patient's designee; or

(3) Electronic records, including electronic beneficiary signature logs, electronically scanned and stored patient records maintained at or accessible to the audited pharmacy's central operations, and any other reasonably clear and accurate electronic documentation that corresponds to a claim. [2014 c 213 § 7.]

19.340.080 Preliminary audit report—Dispute or denial of claim—Final audit report—Recoupment of disputed funds. (1)(a) After conducting an audit, an entity must provide the pharmacy that is the subject of the audit with a preliminary report of the audit. The preliminary report must be received by the pharmacy no later than forty-five days after the date on which the audit was completed and must be sent:

(i) By mail or common carrier with a return receipt requested; or

(ii) Electronically with electronic receipt confirmation.

(b) An entity shall provide a pharmacy receiving a preliminary report under this subsection no fewer than forty-five days after receiving the report to contest the report or any findings in the report in accordance with the appeals procedure established under RCW 19.340.040(1) and to provide additional documentation in support of the claim. The entity shall consider a reasonable request for an extension of time to submit documentation to contest the report or any findings in the report.

(2) If an audit results in the dispute or denial of a claim, the entity conducting the audit shall allow the pharmacy to resubmit the claim using any commercially reasonable method, including facsimile, mail, or electronic mail.

(3) An entity must provide a pharmacy that is the subject of an audit with a final report of the audit no later than sixty days after the later of the date the preliminary report was received or the date the pharmacy contested the report using the appeals procedure established under RCW 19.340.040(1). The final report must include a final accounting of all moneys to be recovered by the entity.

(4) Recoupment of disputed funds from a pharmacy by an entity or repayment of funds to an entity by a pharmacy, unless otherwise agreed to by the entity and the pharmacy, shall occur after the audit and the appeals procedure established under RCW 19.340.040(1) are final. If the identified discrepancy for an individual audit exceeds forty thousand dollars, any future payments to the pharmacy may be withheld by the entity until the audit and the appeals procedure established under RCW 19.340.040(1) are final. [2014 c 213 § 8.]

19.340.090 Application. RCW 19.340.020 and 19.340.040 through 19.340.090 do not:

(1) Preclude an entity from instituting an action for fraud against a pharmacy;

(2) Apply to an audit of pharmacy records when fraud or other intentional and willful misrepresentation is indicated by physical review, review of claims data or statements, or other investigative methods; or

(3) Apply to a state agency that is conducting audits or a person that has contracted with a state agency to conduct audits of pharmacy records for prescription drugs paid for by the state medical assistance program. [2014 c 213 § 9.]

19.340.100 Predetermination of reimbursement costs—Appeals—Review by commissioner. (1) As used in this section:

(a) "List" means the list of drugs for which predetermined reimbursement costs have been established, such as a maximum allowable cost or maximum allowable cost list or any other benchmark prices utilized by the pharmacy benefit manager and must include the basis of the methodology and sources utilized to determine multisource generic drug reimbursement amounts.

(b) "Multiple source drug" means a therapeutically equivalent drug that is available from at least two manufacturers.

(c) "Multisource generic drug" means any covered outpatient prescription drug for which there is at least one other drug product that is rated as therapeutically equivalent under the food and drug administration's most recent publication of "Approved Drug Products with Therapeutic Equivalence Evaluations;" is pharmaceutically equivalent or bioequivalent, as determined by the food and drug administration; and is sold or marketed in the state during the period.

(d) "Network pharmacy" means a retail drug outlet licensed as a pharmacy under RCW 18.64.043 that contracts with a pharmacy benefit manager.

(e) "Therapeutically equivalent" has the same meaning as in RCW 69.41.110.

(2) A pharmacy benefit manager:

(a) May not place a drug on a list unless there are at least two therapeutically equivalent multiple source drugs, or at least one generic drug available from only one manufacturer, generally available for purchase by network pharmacies from national or regional wholesalers;

(b) Shall ensure that all drugs on a list are readily available for purchase by pharmacies in this state from national or regional wholesalers that serve pharmacies in Washington;

(c) Shall ensure that all drugs on a list are not obsolete;

(d) Shall make available to each network pharmacy at the beginning of the term of a contract, and upon renewal of a contract, the sources utilized to determine the predetermined reimbursement costs for multisource generic drugs of the pharmacy benefit manager;

(e) Shall make a list available to a network pharmacy upon request in a format that is readily accessible to and usable by the network pharmacy;

(f) Shall update each list maintained by the pharmacy benefit manager every seven business days and make the updated lists, including all changes in the price of drugs, available to network pharmacies in a readily accessible and usable format;

(g) Shall ensure that dispensing fees are not included in the calculation of the predetermined reimbursement costs for multisource generic drugs.

(3) A pharmacy benefit manager must establish a process by which a network pharmacy may appeal its reimbursement for a drug subject to predetermined reimbursement costs for multisource generic drugs. A network pharmacy may appeal a predetermined reimbursement cost for a multisource generic drug if the reimbursement for the drug is less than the net amount that the network pharmacy paid to the supplier of the drug. An appeal requested under this section must be completed within thirty calendar days of the pharmacy submitting the appeal. If after thirty days the network pharmacy has not received the decision on the appeal from the pharmacy benefit manager, then the appeal is considered denied.

The pharmacy benefit manager shall uphold the appeal of a pharmacy with fewer than fifteen retail outlets, within the state of Washington, under its corporate umbrella if the pharmacy or pharmacist can demonstrate that it is unable to purchase a therapeutically equivalent interchangeable product from a supplier doing business in Washington at the pharmacy benefit manager's list price.

(4) A pharmacy benefit manager must provide as part of the appeals process established under subsection (3) of this section:

(a) A telephone number at which a network pharmacy may contact the pharmacy benefit manager and speak with an individual who is responsible for processing appeals; and

(b) If the appeal is denied, the reason for the denial and the national drug code of a drug that has been purchased by other network pharmacies located in Washington at a price that is equal to or less than the predetermined reimbursement cost for the multisource generic drug. A pharmacy with fifteen or more retail outlets, within the state of Washington, under its corporate umbrella may submit information to the commissioner about an appeal under subsection (3) of this section for purposes of information collection and analysis.

(5)(a) If an appeal is upheld under this section, the pharmacy benefit manager shall make a reasonable adjustment on a date no later than one day after the date of determination.

(b) If the request for an adjustment has come from a critical access pharmacy, as defined by the state health care authority by rule for purposes related to the prescription drug purchasing consortium established under RCW 70.14.060, the adjustment approved under (a) of this subsection shall apply only to critical access pharmacies.

(6) Beginning July 1, 2017, if a network pharmacy appeal to the pharmacy benefit manager is denied, or if the network pharmacy is unsatisfied with the outcome of the appeal, the pharmacy or pharmacist may dispute the decision and request review by the commissioner within thirty calendar days of receiving the decision.

(a) All relevant information from the parties may be presented to the commissioner, and the commissioner may enter an order directing the pharmacy benefit manager to make an adjustment to the disputed claim, deny the pharmacy appeal, or take other actions deemed fair and equitable. An appeal requested under this section must be completed within thirty calendar days of the request.

(b) Upon resolution of the dispute, the commissioner shall provide a copy of the decision to both parties within seven calendar days.

(c) The commissioner may authorize the office of administrative hearings, as provided in chapter 34.12 RCW, to conduct appeals under this subsection (6).

(d) A pharmacy benefit manager may not retaliate against a pharmacy for pursuing an appeal under this subsection (6).

(e) This subsection (6) applies only to a pharmacy with fewer than fifteen retail outlets, within the state of Washington, under its corporate umbrella.

(7) This section does not apply to the state medical assistance program.

(8) A pharmacy benefit manager shall comply with any requests for information from the commissioner for purposes of the study of the pharmacy chain of supply conducted under section 7, chapter 210, Laws of 2016. [2016 c 210 § 4; 2014 c 213 § 10.]

19.340.110 Enforcement—Disputes—Civil penalties.

(1) The commissioner shall have enforcement authority over this chapter and shall have authority to render a binding decision in any dispute between a pharmacy benefit manager, or third-party administrator of prescription drug benefits, and a pharmacy arising out of an appeal under RCW 19.340.100(6) regarding drug pricing and reimbursement.

(2) Any person, corporation, third-party administrator of prescription drug benefits, pharmacy benefit manager, or business entity which violates any provision of this chapter shall be subject to a civil penalty in the amount of one thousand dollars for each act in violation of this chapter or, if the violation was knowing and willful, a civil penalty of five thousand dollars for each violation of this chapter. [2016 c 210 § 2.]

Chapter 19.345 RCW TICKET SELLERS

Sections

19.345.005	Intent.
19.345.010	Definitions.
19.345.020	Prohibited acts—Application of consumer protection act.

19.345.005 Intent. It is the intent of the legislature to protect consumers and ticket sellers from software that simulates the action of a human being purchasing tickets from a ticket seller in order to evade controls and measures on a ticket seller's web site. The legislature is concerned by the use of software, commonly referred to as BOTs (web robots), to interfere with the operation of ticket sales over the internet, gaining unauthorized priority access to purchasing tickets, and thereby reducing access to the general public of online ticket sales at the intended original price. In order to protect consumers and ticket sellers, the legislature intends to prohibit acts and practices of persons that use or sell software to circumvent, thwart, interfere with, or evade a security measure, access control system, or other control or measure on a ticket seller's internet web site. It is not the intent of the legislature to interrupt the online ticket buying process established by the authorized ticket seller, including the distribution of tickets to season ticket holders. [2015 c 129 § 1.]

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

(1) "Admission ticket" means evidence of a right of entry to a venue or an entertainment event.

(2) "Affinity group" means an identifiable group of people who are members of the same organization, or who are customers of the same person, and who enjoy special privileges.

(3) "Event" means a concert, theatrical performance, sporting event, exhibition, show, or other similar activity held in this state.

(4) "Initial sale" means the first sale of an admission ticket by the ticket seller. "Initial sale" also includes the distribution of admission tickets under an agreement between the ticket seller and the recipient.

(5) "Person" means any individual, partnership, corporation, limited liability company, other organization, or any combination thereof.

(6) "Place of entertainment" means any privately or publicly owned or operated entertainment facility within this state, such as a theater, stadium, museum, arena, park, race-track, or other place where concerts, theatrical performances, sporting events, exhibitions, shows, or other similar activities are held and for which an entry fee is charged.

(7) "Presale" means a sale of admission tickets at or below the price printed on the ticket by, or with the permission of, a ticket seller, prior to their release to the general public.

(8) "Promoter" means a person who organizes financing and publicity for an entertainment event.

(9) "Ticket seller" means a person that makes admission tickets available, directly or indirectly, at an initial presale or sale to the general public, and may include an owner or operator of a place of entertainment, a sponsor or promoter of an event, a sports team participating in an event, a fan club or affinity group, a theater company, a musical group, or similar participant in an event, or an employee or agent of any such person. [2015 c 129 § 2.]

19.345.020 Prohibited acts—Application of consumer protection act. (1) A person may not:

(a) Use software to circumvent, thwart, interfere with, or evade a security measure, access control system, or other control or measure on a ticket seller's internet web site; or

(b) Sell software that is advertised for profit with the express purpose to circumvent, thwart, interfere with, or evade a security measure, access control system, or other control or measure on a ticket seller's internet web site.

(2) The use or sale of software as described in subsection (1) of this section only violates this section if the user or seller knows or should know that the purpose of the software is to circumvent, thwart, interfere with, or evade a security measure, access control system, or other control or measure on a ticket seller's internet web site.

(3) The legislature finds that the conduct described in subsection (1) of this section vitally affects the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Using or selling software to circumvent, thwart, or evade a control or measure, which is used on a ticket seller's internet web site to ensure an equitable distribution of tickets, 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 purposes of applying the consumer protection act, chapter 19.86 RCW. [2015 c 129 § 3.]

Chapter 19.350 RCW

PATENT INFRINGEMENT—BAD FAITH ASSERTIONS

Sections

19.350.005	Finding.
19.350.010	Definitions.
19.350.020	Bad faith assertions prohibited—Evidence of bad faith—Evidence of good faith—Exemptions.
19.350.030	Enforcement of chapter—Application of consumer protection act.
19.350.900	Short title.

19.350.005 Finding. The legislature finds that abusive patent litigation, and especially the assertion of bad faith infringement claims, can harm Washington's economy. A person or business that receives a demand asserting such claims faces the threat of expensive and protracted litigation and may determine that it has no choice but to settle and to pay a licensing fee, even if the claim is meritless. This is

(2018 Ed.)

especially so for small and medium-sized entities and non-profits lacking adequate resources to investigate and defend themselves against the infringement claims. Not only do bad faith patent infringement claims impose a significant burden on individual Washington businesses and other entities, they also undermine Washington's efforts to attract and nurture information technology and knowledge-based businesses. Resources expended to avoid the threat of bad faith litigation are no longer available to invest, develop and produce new products, expand, or hire new workers, thereby harming Washington's economy. Through this legislation, the legislature seeks to protect Washington's economy from abusive and bad faith assertions of patent infringement, while not interfering with federal law or legitimate patent enforcement actions. [2015 c 108 § 1.]

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

(1) "Assertion of patent infringement" means:

(a) Sending or delivering a demand to a target;

(b) Threatening a target with litigation asserting, alleging, or claiming that the target has engaged in patent infringement;

(c) Sending or delivering a demand to the customers of a target; or

(d) Otherwise making claims or allegations, other than those made in litigation against a target, that a target has engaged in patent infringement or that a target should obtain a license to a patent in order to avoid litigation.

(2) "Claim" means the scope of the patent owner's exclusive rights to the use and control of the patent owner's invention.

(3) "Demand" means a letter, an email, or any other communication asserting that a person has engaged in patent infringement.

(4) "Person" means any individual, corporation, partnership, limited liability company, government, governmental subdivision, institution of higher education, or any other legal or commercial entity.

(5) "Target" means a person:

(a) Who has received a demand or against whom an assertion of patent infringement has been made;

(b) Who has been threatened with litigation or against whom a lawsuit has been filed alleging patent infringement; or

(c) Who has at least one customer who has received a demand letter asserting that the person's product, service, or technology has infringed a patent. [2015 c 108 § 2.]

19.350.020 Bad faith assertions prohibited—Evidence of bad faith—Evidence of good faith—Exemptions.

(1) A person may not make assertions of patent infringement in bad faith.

(2) A court may consider the following nonexclusive factors as evidence that a person has made an assertion of patent infringement in bad faith:

(a) The demand does not contain:

(i) The patent number or numbers issued by the United States patent office or foreign agency;

(ii) The name and address of the patent owner or owners or assignee or assignees, if any; and

(iii) Factual allegations relating to the specific areas in which the target's product, service, or technology infringes the patent or is covered by the claims in the patent;

(b) The target requested the information described in (a) of this subsection, and the person failed to provide the information within a reasonable time;

(c) Before making a demand, the person did not conduct any analysis comparing the claims in the patent to the target's product, service, or technology;

(d) The person threatens legal action that cannot legally be taken;

(e) The assertion of patent infringement contains false, misleading, or deceptive information;

(f) The person, or a subsidiary or an affiliate of the person, has previously filed or threatened to file one or more lawsuits based on the same or substantially equivalent assertion of patent infringement, and a court found the person's assertion to be without merit or found the assertion contains false, misleading, or deceptive information; or

(g) Any other factor the court determines to be relevant.

(3) Nothing in the demand letter or patent assertion may be used to move for declaratory judgment in underlying patent infringement litigation.

(4) A court may consider the following factors as evidence that a person has made an assertion of patent infringement in good faith:

(a) If the demand does not contain the information set forth in subsection (2)(a) of this section, the person provides the information to the target within a reasonable period of time after such information is requested by the target;

(b) The person has:

(i) Engaged in reasonable analysis to establish a reasonable, good faith basis for believing the target has infringed the patent; and

(ii) Attempted to negotiate an appropriate remedy in a reasonable manner;

(c) The person has:

(i) Demonstrated reasonable business practices in previous efforts to enforce the patent; or

(ii) Successfully enforced the patent, or a substantially similar patent, through litigation;

(d) The person has made a substantial investment in the use of the patent or in the production or sale of a product covered by the patent;

(e) The person is:

(i) An inventor of the patent or an original assignee;

(ii) An institution of higher education or a technology transfer organization affiliated with an institution of higher education; or

(iii) Any owner or licensee of a patent who is using the patent in connection with substantial research, development, production, manufacturing, processing, or delivery of products or materials; or

(f) Any other factor the court determines to be relevant.

(5) Unless done in bad faith, nothing in this section may be construed to deem it an unfair or deceptive trade practice for any person who owns or has the right to license or enforce a patent to:

(a) Advise others of that ownership or right of license or enforcement;

(b) Communicate to others that the patent is available for license or sale; or

(c) Seek compensation on account of a past or present infringement, or license to the patent, when it is reasonable to believe that the person from whom compensation is sought may owe such compensation or may need or want such a license to practice the patent.

(6) The provisions of chapter 108, Laws of 2015 do not apply to a demand letter or civil action that includes a claim for relief arising under 35 U.S.C. Sec. 271(e)(2), 7 U.S.C. Sec. 136, 7 U.S.C. Sec. 2321, 21 U.S.C. Sec. 301, 35 U.S.C. Sec. 161, 42 U.S.C. Sec. 262, or 35 U.S.C. Sec. 287. [2015 c 108 § 3.]

19.350.030 Enforcement of chapter—Application of consumer protection act. The attorney general may bring an action in the name of the state, or as *parens patriae* on behalf of persons residing in the state, to enforce this chapter. For actions brought by the attorney general to enforce the provisions of this section, the legislature finds that the practices covered by this section are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. For actions brought by the attorney general to enforce this chapter, 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 purposes of applying the consumer protection act, chapter 19.86 RCW. [2015 c 108 § 4.]

19.350.900 Short title. This chapter may be known and cited as the "patent troll prevention act." [2015 c 108 § 6.]

Chapter 19.355 RCW LOCKSMITH SERVICES

Sections

19.355.010 Definitions.

19.355.020 Prohibited practices—Requirements.

19.355.030 Application of consumer protection act.

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

(1) "Local telephone directory" means a publication listing telephone numbers for various businesses in a certain geographic area and distributed free of charge to some or all telephone subscribers in that area.

(2) "Local telephone number" means a telephone number that can be dialed without incurring long distance charges from telephones located within the area covered by the local telephone directory in which the number is listed. The term does not include long distance numbers, toll-free numbers, or nine hundred exchange numbers listed in a local telephone directory.

(3) "Locksmith services" means:

(a) Selling, installing, servicing, repairing, repinning, recombining, and adjusting locks, safes, vaults, or safe deposit boxes;

- (b) Originating keys;
 - (c) Operating, bypassing, or neutralizing locks, safes, vaults, or safe deposit boxes;
 - (d) Creating, documenting, selling, installing, managing, and servicing master-key systems;
 - (e) Unlocking, bypassing, or neutralizing locks for motor vehicles;
 - (f) Originating keys for motor vehicles, which can include the programming, reprogramming, or bypassing of any security transponder, immobilizer system, or subsequent technology built by the manufacturer; and
 - (g) Keying or recombining motor vehicle locks.
- (4) "Person" means an individual, partnership, limited liability partnership, corporation, or limited liability corporation. [2015 c 28 § 1.]

19.355.020 Prohibited practices—Requirements. (1)

No person whose primary business is to provide locksmith services and who represents himself or herself to the public as a locksmith may misrepresent his, her, or its geographic location by:

- (a) Listing a local telephone number in a local telephone directory or on an internet web site if:
 - (i) Calls to the telephone number are routinely forwarded or otherwise transferred to a business location that is outside the calling area covered by the local telephone directory or outside the local calling area for the local telephone number listed on an internet web site; and
 - (ii) The listing fails to conspicuously disclose the locality and state in which the business is located; or
- (b) Listing a business name in a local telephone directory or on an internet web site if:
 - (i) The name misrepresents the business's geographic location; and
 - (ii) The listing fails to disclose the locality and state in which the business is located.

(2) A person whose primary business is to provide locksmith services and who represents himself or herself to the public as a locksmith must conspicuously display on the business web site and all advertising:

- (a) The number of the business license issued to it by the state or a local government; or
 - (b) The state unified business identifier account number.
- (3) The requirements of subsections (1) and (2) of this section do not apply to businesses that provide locksmith services that are ancillary to their primary business, such as businesses that provide roadside or towing services. [2015 c 28 § 2.]

19.355.030 Application of consumer protection act.

The legislature finds that the practices covered by RCW 19.355.020(1) are matters vitally affecting the public interest for the purpose of applying 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 chapter 19.86 RCW. [2015 c 28 § 3.]

(2018 Ed.)

Chapter 19.360 RCW

ELECTRONIC SIGNATURES AND RECORDS

Sections

- 19.360.010 Intent.
- 19.360.020 State and local agencies—Electronic signatures and records—Use and acceptance.
- 19.360.030 Definition—"Electronic signature"—Use of term.
- 19.360.040 Definition—"Record"—Use of term.
- 19.360.050 Definition—"Electronic"—Use of term.
- 19.360.060 Definitions—"State agency" and "local agency."

19.360.010 Intent. The legislature recognizes that the electronic signatures in global and national commerce act, 15 U.S.C. Sec. 7001 et seq., applies to federal and state transactions, including certain governmental transactions, in or affecting interstate or foreign commerce relating to this state. In chapter 72, Laws of 2015, the legislature, to the extent not already authorized by federal or state law, authorizes electronic dealings for governmental affairs and establishes the implementation framework for electronic governmental affairs and governmental transactions. Chapter 72, Laws of 2015 is intended to promote electronic transactions and remove barriers that might prevent electronic transactions with governmental entities. [2015 c 72 § 1.]

19.360.020 State and local agencies—Electronic signatures and records—Use and acceptance. (1) Unless specifically provided otherwise by law or agency rule, whenever the use of a written signature is authorized or required by this code with a state or local agency, an electronic signature may be used with the same force and effect as the use of a signature affixed by hand, as long as the electronic signature conforms to the definition in RCW 19.360.030 and the writing conforms to RCW 19.360.040.

(2) Except as otherwise provided by law, each state or local agency may determine whether, and to what extent, the agency will send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures. Nothing in chapter 72, Laws of 2015 requires a state or local agency to send or accept electronic records or electronic signatures when a writing or signature is required by statute.

(3) Except as otherwise provided by law, for governmental affairs and governmental transactions with state agencies, each state agency electing to send and accept shall establish the method that must be used for electronic submissions and electronic signatures. The method and process for electronic submissions and the use of electronic signatures must be established by policy or rule and be consistent with the policies, standards, or guidance established by the chief information officer required in subsection (4) of this section.

(4)(a) The chief information officer, in coordination with state agencies, must establish standards, guidelines, or policies for the electronic submittal and receipt of electronic records and electronic signatures for governmental affairs and governmental transactions. The standards, policies, or guidelines must take into account reasonable access by and ability of persons to participate in governmental affairs or governmental transactions and be able to rely on transactions that are conducted electronically with agencies. Through the standards, policies, or guidelines, the chief information officer

cer should encourage and promote consistency and interoperability among state agencies.

(b) In order to provide a single point of access, the chief information officer must establish a web site that maintains or links to the agency rules and policies established pursuant to subsection (3) of this section.

(5) Except as otherwise provided by law, for governmental affairs and governmental transactions with local agencies, each local agency electing to send and accept shall establish the method that must be used for electronic submissions and electronic signatures. The method and process for electronic submissions and the use of electronic signatures must be established by ordinance, resolution, policy, or rule. The local agency shall also establish standards, guidelines, or policies for the electronic submittal and receipt of electronic records and electronic signatures for governmental affairs and governmental transactions. The standards, policies, or guidelines must take into account reasonable access by and ability of persons to participate in governmental affairs or governmental transactions and be able to rely on transactions that are conducted electronically with agencies. [2016 c 95 § 2; 2015 c 72 § 2.]

Intent—2016 c 95: "Local governments must be efficient and prudent stewards of our residents' tax resources. To best serve our communities, certain local government statutes must be amended to reflect technological and organizational change. It is the intent of the legislature to clarify current authorities so that local government can better serve their residents, and it is the intent of the legislature that the following sections allow local government to pursue modern methods of serving their residents while preserving the public's right to access public records, and judiciously using scarce county resources to achieve maximum benefit." [2016 c 95 § 1.]

19.360.030 Definition—"Electronic signature"—Use of term. (1) Unless specifically provided otherwise by law or rule or unless the context clearly indicates otherwise, whenever the term "signature" is used in this code for governmental affairs and is authorized by state or local agency ordinance, resolution, rule, or policy pursuant to RCW 19.360.020, the term includes an electronic signature as defined in subsection (2) of this section.

(2) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record. [2016 c 95 § 3; 2015 c 72 § 3.]

Intent—2016 c 95: See note following RCW 19.360.020.

19.360.040 Definition—"Record"—Use of term. (1) Unless specifically provided otherwise by law or rule or unless the context clearly indicates otherwise, whenever the term "writing" is used in this code for governmental affairs and is authorized by state or local agency ordinance, resolution, rule, or policy pursuant to RCW 19.360.020, the term means a record.

(2) "Record," as used in subsection (1) of this section, 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, except as otherwise defined for the purpose of state or local agency record retention, preservation, or disclosure. [2016 c 95 § 4; 2015 c 72 § 4.]

Intent—2016 c 95: See note following RCW 19.360.020.

19.360.050 Definition—"Electronic"—Use of term.

(1) Unless specifically provided otherwise by law or rule or unless the context clearly indicates otherwise, whenever the term "mail" is used in this code and authorized by state or local agency ordinance, resolution, rule, or policy pursuant to RCW 19.360.020 to transmit a writing with a state or local agency, the term includes the use of mail delivered through an electronic system such as email or secure mail transfer if authorized by the state agency in rule.

(2) For the purposes of this section, "electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities. [2016 c 95 § 5; 2015 c 72 § 5.]

Intent—2016 c 95: See note following RCW 19.360.020.

19.360.060 Definitions—"State agency" and "local agency." For purposes of RCW 19.360.020 through 19.360.050, "state agency" means any state board, commission, bureau, committee, department, institution, division, or tribunal in the executive branch of state government, including statewide elected offices and institutions of higher education created and supported by the state government. "Local agency" means every county, city, town, municipal corporation, quasi-municipal corporation, special purpose district, or other local public agency. [2016 c 95 § 6; 2015 c 72 § 6.]

Intent—2016 c 95: See note following RCW 19.360.020.

Chapter 19.365 RCW RADIOLOGY BENEFIT MANAGERS

Sections

19.365.010 Registration required—Requirements.

19.365.010 Registration required—Requirements.

(1) Any radiology benefit manager that is owned by a carrier as defined in RCW 48.43.005 or acts as a subcontractor for a carrier must be registered with the department of revenue's business licensing service and annually renew the registration.

(2)(a) For purposes of this section, a "radiology benefit manager" means a person that contracts with, or is owned by, a carrier or a third-party payor to:

(i) Process claims for services and procedures performed by a licensed radiologist or advanced diagnostic imaging service provider; or

(ii) Pay or authorize payment to radiology clinics, radiologists, or advanced diagnostic imaging service providers for services or procedures;

(b) "Radiology benefit manager" does not include a health care service contractor as defined in RCW 48.44.010, a health maintenance organization as defined in RCW 48.46.020, or an issuer as defined in RCW 48.01.053.

(3) To register under this section, a radiology benefit manager must:

(a) Submit an application requiring the following information:

(i) The identity of the radiology benefit manager;

(ii) The name, business address, phone number, and medical director for the radiology benefit manager; and

(iii) Where applicable, the federal tax employer identification number for the entity; and

(b) Pay a registration fee of two hundred dollars.

(4) To renew a registration under this section, a radiology benefit manager must pay a renewal fee of two hundred dollars.

(5) All receipts from registrations and renewals collected by the department of revenue must be deposited into the business license account created in RCW 19.02.210. [2015 c 166 § 1.]

Chapter 19.370 RCW PERFORMING RIGHTS SOCIETIES

Sections

19.370.010	Definitions.
19.370.020	Requirement to register.
19.370.030	List of members and affiliates—List of works licensed—Availability.
19.370.040	Violations—Penalties—Attorney general enforcement.
19.370.050	Contact with proprietors—Requirements—Prohibited acts.
19.370.060	Information on proprietors' rights and responsibilities.
19.370.070	Contracts for the payment of royalties—Requirements.
19.370.080	Applicability to investigations and notices.
19.370.900	Effective date—2016 c 38.

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

(1) "Copyright owner" means the owner of a copyright of a nondramatic musical work recognized and enforceable under the copyright laws of the United States pursuant to Title 17 of the United States Code (17 U.S.C. Sec. 101 et seq.). "Copyright owner" does not include the owner of a copyright in a motion picture or audiovisual work, or in part of a motion picture or audiovisual work.

(2) "Music licensing agency" means a performing rights society.

(3) "Performing rights society" means an association or corporation that licenses the public performance of nondramatic musical works on behalf of copyright owners, such as the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), and SESAC, Inc.

(4) "Proprietor" means the owner of a retail establishment, restaurant, inn, bar, tavern, sports or entertainment facility, or any other similar place of business or professional office located in this state in which the public may assemble and in which nondramatic musical works or similar copyrighted works may be performed, broadcast, or otherwise transmitted for the enjoyment of members of the public there assembled.

(5) "Royalty" or "royalties" means the fees payable to a copyright owner or performing rights society for the public performance of nondramatic musical works or other similar works. [2016 c 38 § 1.]

19.370.020 Requirement to register. A performing rights society that licenses the performing rights to music may not license or attempt to license the use of or collect or attempt to collect any compensation on account of any sale, license, or other disposition regarding the performance rights of music unless the performing rights society:

(1) Registers and files annually with the department of licensing an electronic copy of each performing rights form agreement providing for the payment of royalties made avail-

able from the performing rights society to any proprietor within the state; and

(2) Has a valid Washington unified business identifier number. [2016 c 38 § 2.]

19.370.030 List of members and affiliates—List of works licensed—Availability. A performing rights society must make available electronically to business proprietors the most current available list of members and affiliates represented by the performing rights society and the most current available list of the performed works that the performing rights society licenses. [2016 c 38 § 3.]

19.370.040 Violations—Penalties—Attorney general enforcement. A person who willfully violates any of the provisions of this chapter may be liable for a civil penalty of not more than one thousand dollars per violation. Multiple violations on a single day may be considered separate violations. The attorney general, acting in the name of the state, may seek recovery of all such penalties in a civil action. The attorney general may issue civil investigative demands for the inspection of documents, interrogatory responses, and oral testimony in the enforcement of this section. [2016 c 38 § 4.]

19.370.050 Contact with proprietors—Requirements—Prohibited acts. (1) Before seeking payment or a contract for payment of royalties for the use of copyrighted works by that proprietor, a representative or agent for a performing rights society must: Identify himself or herself to the proprietor or the proprietor's employees, disclose that he or she is acting on behalf of a performing rights society, and disclose the purpose for being on the premises.

(2) A representative or agent of a performing rights society must not:

(a) Use obscene, abusive, or profane language when communicating with the proprietor or his or her employees;

(b) Communicate by telephone or in-person with a proprietor other than at the proprietor's place of business during the hours when the proprietor's business is open to the public. However, such communications may occur at a location other than the proprietor's place of business or during hours when the proprietor's business is not open to the public if the proprietor or the proprietor's agents, employees, or representatives so authorizes;

(c) Engage in any coercive conduct, act, or practice that is substantially disruptive to a proprietor's business;

(d) Use or attempt to use any unfair or deceptive act or practice in negotiating with a proprietor; or

(e) Communicate with an unlicensed proprietor about licensing performances of musical works at the proprietor's establishment after receiving notification in writing from an attorney representing the proprietor that all further communications related to the licensing of the proprietor's establishment by the performing rights society should be addressed to the attorney. However, the performing rights society may resume communicating directly with the proprietor if the attorney fails to respond to communications from the performing rights society within sixty days, or the attorney becomes nonresponsive for a period of sixty days or more. [2016 c 38 § 5.]

19.370.060 Information on proprietors' rights and responsibilities. (1) The department of revenue shall inform proprietors of their rights and responsibilities regarding the public performance of copyrighted music as part of the business licensing service.

(2) Performing rights societies are encouraged to conduct outreach campaigns to educate existing proprietors on their rights and responsibilities regarding the public performance of copyrighted music. [2016 c 38 § 6.]

19.370.070 Contracts for the payment of royalties—Requirements. (1) No performing rights society may enter into, or offer to enter into, a contract for the payment of royalties by a proprietor unless at least seventy-two hours prior to the execution of that contract it provides to the proprietor or the proprietor's employees, in writing, the following:

(a) A schedule of the rates and terms of royalties under the contract; and

(b) Notice that the proprietor is entitled to the information contained in RCW 19.370.030.

(2) A contract for the payment of royalties executed in this state must:

(a) Be in writing;

(b) Be signed by the parties; and

(c) Include, at least, the following information:

(i) The proprietor's name and business address;

(ii) The name and location of each place of business to which the contract applies;

(iii) The duration of the contract; and

(iv) The schedule of rates and terms of the royalties to be collected under the contract, including any sliding scale or schedule for any increase or decrease of those rates for the duration of that contract. [2016 c 38 § 7.]

19.370.080 Applicability to investigations and notices. Nothing in chapter 38, Laws of 2016 may be construed to prohibit a performing rights society from conducting investigations to determine the existence of music use by a proprietor's business or informing a proprietor of the proprietor's obligations under the copyright laws of the United States pursuant to Title 17 of the United States Code (17 U.S.C. Sec. 101 et seq.). [2016 c 38 § 8.]

19.370.900 Effective date—2016 c 38. This act takes effect January 1, 2017. [2016 c 38 § 10.]

Chapter 19.375 RCW BIOMETRIC IDENTIFIERS

Sections

19.375.010	Definitions.
19.375.020	Enrollment, disclosure, and retention of biometric identifiers.
19.375.030	Application of consumer protection act.
19.375.040	Exclusions.
19.375.900	Finding—Intent—2017 c 299.

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

(1) "Biometric identifier" means data generated by automatic measurements of an individual's biological characteristics, such as a fingerprint, voiceprint, eye retinas, irises, or

other unique biological patterns or characteristics that is used to identify a specific individual. "Biometric identifier" does not include a physical or digital photograph, video or audio recording or data generated therefrom, or information collected, used, or stored for health care treatment, payment, or operations under the federal health insurance portability and accountability act of 1996.

(2) "Biometric system" means an automated identification system capable of capturing, processing, and storing a biometric identifier, comparing the biometric identifier to one or more references, and matching the biometric identifier to a specific individual.

(3) "Capture" means the process of collecting a biometric identifier from an individual.

(4) "Commercial purpose" means a purpose in furtherance of the sale or disclosure to a third party of a biometric identifier for the purpose of marketing of goods or services when such goods or services are unrelated to the initial transaction in which a person first gains possession of an individual's biometric identifier. "Commercial purpose" does not include a security or law enforcement purpose.

(5) "Enroll" means to capture a biometric identifier of an individual, convert it into a reference template that cannot be reconstructed into the original output image, and store it in a database that matches the biometric identifier to a specific individual.

(6) "Law enforcement officer" means a law enforcement officer as defined in RCW 9.41.010 or a federal peace officer as defined in RCW 10.93.020.

(7) "Person" means an individual, partnership, corporation, limited liability company, organization, association, or any other legal or commercial entity, but does not include a government agency.

(8) "Security purpose" means the purpose of preventing shoplifting, fraud, or any other misappropriation or theft of a thing of value, including tangible and intangible goods, services, and other purposes in furtherance of protecting the security or integrity of software, accounts, applications, online services, or any person. [2017 c 299 § 3.]

19.375.020 Enrollment, disclosure, and retention of biometric identifiers. (1) A person may not enroll a biometric identifier in a database for a commercial purpose, without first providing notice, obtaining consent, or providing a mechanism to prevent the subsequent use of a biometric identifier for a commercial purpose.

(2) Notice is a disclosure, that is not considered affirmative consent, that is given through a procedure reasonably designed to be readily available to affected individuals. The exact notice and type of consent required to achieve compliance with subsection (1) of this section is context-dependent.

(3) Unless consent has been obtained from the individual, a person who has enrolled an individual's biometric identifier may not sell, lease, or otherwise disclose the biometric identifier to another person for a commercial purpose unless the disclosure:

(a) Is consistent with subsections (1), (2), and (4) of this section;

(b) Is necessary to provide a product or service subscribed to, requested, or expressly authorized by the individual;

(c) Is necessary to effect, administer, enforce, or complete a financial transaction that the individual requested, initiated, or authorized, and the third party to whom the biometric identifier is disclosed maintains confidentiality of the biometric identifier and does not further disclose the biometric identifier except as otherwise permitted under this subsection (3);

(d) Is required or expressly authorized by a federal or state statute, or court order;

(e) Is made to a third party who contractually promises that the biometric identifier will not be further disclosed and will not be enrolled in a database for a commercial purpose inconsistent with the notice and consent described in this subsection (3) and subsections (1) and (2) of this section; or

(f) Is made to prepare for litigation or to respond to or participate in judicial process.

(4) A person who knowingly possesses a biometric identifier of an individual that has been enrolled for a commercial purpose:

(a) Must take reasonable care to guard against unauthorized access to and acquisition of biometric identifiers that are in the possession or under the control of the person; and

(b) May retain the biometric identifier no longer than is reasonably necessary to:

(i) Comply with a court order, statute, or public records retention schedule specified under federal, state, or local law;

(ii) Protect against or prevent actual or potential fraud, criminal activity, claims, security threats, or liability; and

(iii) Provide the services for which the biometric identifier was enrolled.

(5) A person who enrolls a biometric identifier of an individual for a commercial purpose or obtains a biometric identifier of an individual from a third party for a commercial purpose pursuant to this section may not use or disclose it in a manner that is materially inconsistent with the terms under which the biometric identifier was originally provided without obtaining consent for the new terms of use or disclosure.

(6) The limitations on disclosure and retention of biometric identifiers provided in this section do not apply to disclosure or retention of biometric identifiers that have been unenrolled.

(7) Nothing in this section requires an entity to provide notice and obtain consent to collect, capture, or enroll a biometric identifier and store it in a biometric system, or otherwise, in furtherance of a security purpose. [2017 c 299 § 2.]

19.375.030 Application of consumer protection act.

(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) This chapter may be enforced solely by the attorney general under the consumer protection act, chapter 19.86 RCW. [2017 c 299 § 4.]

19.375.040 Exclusions. (1) Nothing in this chapter applies in any manner to a financial institution or an affiliate

(2018 Ed.)

of a financial institution that is subject to Title V of the federal Gramm-Leach-Bliley act of 1999 and the rules promulgated thereunder.

(2) Nothing in this chapter applies to activities subject to Title V of the federal health insurance privacy and portability act of 1996 and the rules promulgated thereunder.

(3) Nothing in this chapter expands or limits the authority of a law enforcement officer acting within the scope of his or her authority including, but not limited to, the authority of a state law enforcement officer in executing lawful searches and seizures. [2017 c 299 § 5.]

19.375.900 Finding—Intent—2017 c 299. The legislature finds that citizens of Washington are increasingly asked to disclose sensitive biological information that uniquely identifies them for commerce, security, and convenience. The collection and marketing of biometric information about individuals, without consent or knowledge of the individual whose data is collected, is of increasing concern. The legislature intends to require a business that collects and can attribute biometric data to a specific uniquely identified individual to disclose how it uses that biometric data, and provide notice to and obtain consent from an individual before enrolling or changing the use of that individual's biometric identifiers in a database. [2017 c 299 § 1.]

**Chapter 19.380 RCW
SURROGACY BROKERS**

Sections

19.380.010 Regulation of surrogacy brokers.

19.380.010 Regulation of surrogacy brokers. (Effective January 1, 2019.) (1) This section applies to surrogacy brokers arranging or facilitating transactions contemplated by a surrogacy agreement under RCW 26.26A.700 through 26.26A.785 if: (a) A surrogacy broker does business in Washington state; (b) a surrogate who is party to a surrogacy agreement resides in Washington state during the term of the surrogacy agreement; or (c) any medical procedures under the surrogacy agreement are performed in Washington state.

(2) A surrogacy broker to which this section applies:

(a) Must keep all funds paid by or on behalf of the intended parents in a separate, licensed escrow account;

(b) May not be owned or managed, in any part, directly or indirectly by any lawyer representing a party to the surrogacy agreement;

(c) May not pay or receive payment, directly or indirectly, to or from any person licensed to practice law and representing a party to the surrogacy agreement in connection with the referral of any person or party for the purpose of a surrogacy agreement;

(d) May not pay or receive payment, directly or indirectly, to or from any health care provider providing any health services, including assisted reproduction, to a party to the surrogacy agreement; and

(e) May not be owned or managed, in any part, directly or indirectly, by any health care provider providing any health services, including assisted reproduction, to a party to the surrogacy agreement.

(3) For purposes of this section:

(a) The definitions in RCW 26.26A.010 and 26.26A.700 apply.

(b) "Payment" means any type of monetary compensation or other valuable consideration including but not limited to a rebate, refund, commission, unearned discount, or profit by means of credit or other valuable consideration.

(c) "Surrogacy broker" includes but is not limited to any agency, agent, business, or individual engaged in, arranging, or facilitating transactions contemplated by a surrogacy agreement, regardless of whether that surrogacy agreement ultimately comports with the requirements of chapter 26.26A RCW. [2018 c 6 § 905.]

Short title—Uniformity of application and construction—Effective date—2018 c 6: See RCW 26.26A.005, 26.26A.900, and 26.26A.903.

Chapter 19.385 RCW OPEN INTERNET ACCESS

Sections

- 19.385.010 Unfair or deceptive act and unfair method of competition—Enforced by attorney general.
19.385.020 Provider disclosures—Definitions.
19.385.030 Internet consumer access account.

19.385.010 Unfair or deceptive act and unfair method of competition—Enforced by attorney general.

(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) This chapter may be enforced solely by the attorney general under the consumer protection act, chapter 19.86 RCW. [2018 c 5 § 2.]

Contingent effective date—2018 c 5: See note following RCW 19.385.020.

19.385.020 Provider disclosures—Definitions. (1) Any person providing broadband internet access service in Washington state shall publicly disclose accurate information regarding the network management practices, performance characteristics, and commercial terms of its broadband internet access services sufficient to enable consumers to make informed choices regarding the purchase and use of such services and entrepreneurs and other small businesses to develop, market, and maintain internet offerings. The disclosure must be made via a publicly available, easily accessible web site.

(2) A person engaged in the provision of broadband internet access service in Washington state, insofar as the person is so engaged, may not:

(a) Block lawful content, applications, services, or non-harmful devices, subject to reasonable network management;

(b) Impair or degrade lawful internet traffic on the basis of internet content, application, or service, or use of a non-harmful device, subject to reasonable network management; or

(c) Engage in paid prioritization.

(3) Nothing in this chapter:

(a) Supersedes any obligation or authorization a provider of broadband internet access service may have to address the needs of emergency communications or law enforcement, public safety, or national security authorities, consistent with or as permitted by applicable law, or limits the provider's ability to do so; or

(b) Prohibits reasonable efforts by a provider of broadband internet access service to address copyright infringement or other unlawful activity.

(4) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a)(i) "Broadband internet access service" means a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up internet access service.

(ii) "Broadband internet access service" also encompasses any service that the federal communications commission finds to be providing a functional equivalent of the service described in (a)(i) of this subsection, or that is used to evade the protections set forth in this section.

(b) "Edge provider" means any individual or entity that provides any content, application, or service over the internet, and any individual or entity that provides a device used for accessing any content, application, or service over the internet.

(c) "End user" means any individual or entity that uses a broadband internet access service.

(d)(i) "Paid prioritization" means the management of a broadband provider's network to directly or indirectly favor some traffic over other traffic, including through the use of techniques such as traffic shaping, prioritization, resource reservation, or other forms of preferential traffic management, either:

(A) In exchange for consideration, monetary or otherwise, from a third party; or

(B) To benefit an affiliated entity.

(ii) "Paid prioritization" does not include the provision of tiered internet access service or offerings to a retail end user.

(e) "Reasonable network management" means a practice that has a primarily technical network management justification, but does not include other business practices. A network management practice is reasonable if it is primarily used for and tailored to achieving a legitimate network management purpose, taking into account the particular network architecture and technology of the broadband internet access service.

(f) "Tiered internet access service" means offering end users a choice between different packages of service with clearly advertised speeds, prices, terms, and conditions; for example, a ten megabit service for one price and a fifty megabit service for a different price. [2018 c 5 § 1.]

Contingent effective date—2018 c 5: "(1) This act takes effect on the later of the following:

(a) Ninety days after adjournment of the legislative session in which this act is passed; or

(b) The date the federal communications commission's restoring internet freedom order (FCC 17-166) as issued on January 4, 2018, takes effect.

(2) The utilities and transportation commission must provide notice of the effective date of this act to affected parties, the chief clerk of the house of representatives, the secretary of the senate, the office of the code reviser, and others as deemed appropriate by the utilities and transportation commission." [2018 c 5 § 4.] The utilities and transportation commission provided

notice on May 14, 2018, that chapter 5, Laws of 2018 takes effect June 11, 2018.

19.385.030 Internet consumer access account. The internet consumer access account is created in the state treasury. All receipts from recoveries by the office of the attorney general for lawsuits related to the consumer protection act under the provisions of this chapter, or otherwise designated to this account, 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 costs incurred by the office of the attorney general in the administration and enforcement of this chapter. [2018 c 5 § 3.]

Contingent effective date—2018 c 5: See note following RCW 19.385.020.

