
FIFTY FIFTH DAY

House Chamber, Olympia, Saturday, March 3, 2012

February 28, 2012

The House was called to order at 10:00 a.m. by the Speaker (Representative Moeller presiding). The Clerk called the roll and a quorum was present.

The flags were escorted to the rostrum by a Sergeant at Arms Color Guard, Pages Michael Hoffman and Sarah Simon. The Speaker (Representative Moeller presiding) led the Chamber in the Pledge of Allegiance. The prayer was offered by Representative Phyllis Kenney, 46th District, Washington.

Reading of the Journal of the previous day was dispensed with and it was ordered to stand approved.

The Speaker (Representative Moeller presiding) called upon Representative Roberts to preside.

INTRODUCTION & FIRST READING

SB 5950 by Senators Roach and Conway

AN ACT Relating to nonstate pension plans offered by towns; and amending RCW 35.27.130.

Referred to Committee on Ways & Means.

SSB 6598 by Senate Committee on Ways & Means (originally sponsored by Senators Ericksen, Haugen, Holmquist Newbry, Harper, Rolfes, King, Becker, Hatfield, Morton, Litzow, Schoesler and Hewitt)

AN ACT Relating to property tax exemptions for nonprofit fair associations in rural counties; amending RCW 84.36.480; reenacting and amending RCW 84.36.805; creating a new section; and providing an expiration date.

Referred to Committee on Ways & Means.

SSB 6600 by Senate Committee on Ways & Means (originally sponsored by Senator Eide)

AN ACT Relating to extending property tax exemptions to property used exclusively by certain nonprofit organizations that is leased from an entity that acquired the property from a previously exempt nonprofit organization; and amending RCW 84.36.031.

Referred to Committee on Ways & Means.

There being no objection, the bills listed on the day's introduction sheet under the fourth order of business were referred to the committees so designated.

There being no objection, the House advanced to the seventh order of business.

MESSAGE FROM THE SENATE

Mr. Speaker:

The Senate has passed SUBSTITUTE HOUSE BILL NO. 1700 with the following amendment:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. It is the intent of the legislature that the Washington state department of transportation shall provide for the needs of drivers, public transportation vehicles and patrons, bicyclists, and pedestrians of all ages and abilities in all planning, programming, design, construction, reconstruction, retrofit, operations, and maintenance activities and products.

It is also the intent of the legislature that the department shall view all transportation improvements as opportunities to improve safety, access, and mobility for all travelers in Washington and recognize bicycle, pedestrian, and transit modes as integral elements of the transportation system.

The increase in Washington's older adult population, which is up to forty percent of total population in some counties, increases the need for locally based transportation options and a statewide transportation system less reliant on the automobile.

Washington is committed to providing community-based options for individuals with disabilities who require access to a broader range of transportation options.

Washington believes the full integration of all modes in the design of streets and roadways will increase the capacity and efficiency of the road network, reduce traffic congestion, improve mobility options, and limit greenhouse gas emissions.

Washington believes regular walking and bicycling improves physical health, increases mental well-being, and helps reduce the risk of cardiovascular disease, Type 2 diabetes, some cancers, and other chronic diseases. Increased physical activity is also critical to combating the obesity crisis in Washington.

Sec. 2. RCW 35.75.060 and 1982 c 55 s 1 are each amended to read as follows:

Any city or town may use any funds available for street or road construction, maintenance, or improvement for building, improving, and maintaining bicycle paths, lanes, roadways, and routes, and for improvements to make existing streets and roads more suitable and safe for bicycle traffic: PROVIDED, That any such paths, lanes, roadways, routes, or streets for which any such street or road funds are expended shall be suitable for bicycle transportation purposes and not solely for recreation purposes. Bicycle facilities constructed or modified after ~~((June 10, 1982))~~ December 31, 2012, shall meet or exceed the standards ~~((of the state department of transportation))~~ adopted by the design standards committee under RCW 35.78.030.

NEW SECTION. Sec. 3. A new section is added to chapter 35.78 RCW to read as follows:

Any city or town may use any funds available for street or road construction, maintenance, or improvement for building, improving, and maintaining a pedestrian right-of-way and for improvements to make existing streets and roads more suitable and safe for pedestrian travel. Any such paths, lanes, roadways, routes, or streets for which any such street or road funds are expended must be suitable for

pedestrian travel purposes and not solely for recreation purposes. A pedestrian right-of-way constructed or modified after December 31, 2012, must meet or exceed the standards adopted by the design standards committee under RCW 35.78.030.

Sec. 4. RCW 35.78.030 and 1965 c 7 s 35.78.030 are each amended to read as follows:

(1) The design standards committee shall from time to time adopt uniform design standards for major arterial and secondary arterial streets.

(2) By July 1, 2012, and from time to time thereafter, the design standards committee shall adopt standards for bicycle and pedestrian facilities.

Sec. 5. RCW 36.82.145 and 1982 c 55 s 3 are each amended to read as follows:

Any funds deposited in the county road fund may be used for the construction, maintenance, or improvement of bicycle paths, lanes, routes, and roadways, and for improvements to make existing streets and roads more suitable and safe for bicycle traffic. Bicycle facilities constructed or modified after ~~((June 10, 1982))~~ December 31, 2012, shall meet or exceed the standards ~~((of the state department of transportation))~~ adopted by the design standards committee under RCW 43.32.020.

NEW SECTION. Sec. 6. A new section is added to chapter 36.82 RCW to read as follows:

Any county may use any funds available for street or road construction, maintenance, or improvement for building, improving, and maintaining a pedestrian right-of-way and for improvements to make existing streets and roads more suitable and safe for pedestrian travel. Any such paths, lanes, roadways, routes, or streets for which any such street or road funds are expended must be suitable for pedestrian travel purposes and not solely for recreation purposes. A pedestrian right-of-way constructed or modified after December 31, 2012, must meet or exceed the standards adopted by the design standards committee under RCW 43.32.020.

Sec. 7. RCW 43.32.020 and 1965 c 8 s 43.32.020 are each amended to read as follows:

(1) On or before January 1, 1950, and from time to time thereafter, the design standards committee shall adopt uniform design standards for the county primary road systems.

(2) By July 1, 2012, and from time to time thereafter, the design standards committee shall adopt standards for bicycle and pedestrian facilities."

On page 1, line 2 of the title, after "projects;" strike the remainder of the title and insert "amending RCW 35.75.060, 35.78.030, 36.82.145, and 43.32.020; adding a new section to chapter 35.78 RCW; adding a new section to chapter 36.82 RCW; and creating a new section."

and the same is herewith transmitted.

Brad Hendrickson, Deputy, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to SUBSTITUTE HOUSE BILL NO. 1700 and advanced the bill as amended by the Senate to final passage.

FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representatives Fitzgibbon and Shea spoke in favor of the passage of the bill.

The Speaker (Representative Roberts presiding) stated the question before the House to be the final passage of Substitute House Bill No. 1700, as amended by the Senate.

MOTION

On motion of Representative Hinkle, Representatives Ahern, Klippert and Rodne were excused.

ROLL CALL

The Clerk called the roll on the final passage of Substitute House Bill No. 1700, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 62; Nays, 33; Absent, 0; Excused, 3.

Voting yea: Representatives Anderson, Angel, Appleton, Armstrong, Asay, Billig, Blake, Carlyle, Clibborn, Cody, Darneille, Dickerson, Dunshee, Eddy, Finn, Fitzgibbon, Goodman, Green, Haigh, Hansen, Hasegawa, Hope, Hudgins, Hunt, Hunter, Hurst, Jinkins, Kagi, Kelley, Kenney, Kirby, Ladenburg, Liias, Lytton, Maxwell, McCoy, Miloscia, Moeller, Morris, Moscoso, Ormsby, Orwall, Pedersen, Pettigrew, Pollet, Probst, Reykdal, Roberts, Ryu, Santos, Seaquist, Sells, Springer, Stanford, Sullivan, Takko, Tharinger, Upthegrove, Van De Wege, Wylie, Zeiger and Mr. Speaker.

Voting nay: Representatives Alexander, Bailey, Buys, Chandler, Condotta, Crouse, Dahlquist, Dammeier, DeBolt, Fagan, Haler, Hargrove, Harris, Hinkle, Johnson, Kretz, Kristiansen, McCune, Nealey, Orcutt, Overstreet, Parker, Pearson, Rivers, Ross, Schmick, Shea, Short, Smith, Taylor, Walsh, Warnick and Wilcox.

Excused: Representatives Ahern, Klippert and Rodne.

SUBSTITUTE HOUSE BILL NO. 1700, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

STATEMENT FOR THE JOURNAL

I intended to vote YEA on Substitute House Bill No. 1700.

Representative Dammeier, 25th District

MESSAGE FROM THE SENATE

March 1, 2012

Mr. Speaker:

The Senate has passed ENGROSSED HOUSE BILL NO. 2152 with the following amendment:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 58.17.140 and 2010 c 79 s 1 are each amended to read as follows:

(1) Preliminary plats of any proposed subdivision and dedication shall be approved, disapproved, or returned to the applicant for modification or correction within ninety days from date of filing thereof unless the applicant consents to an extension of such time period or the ninety day limitation is extended to include up to twenty-one days as specified under RCW 58.17.095(3): PROVIDED, That if an environmental impact statement is required as provided in RCW 43.21C.030, the ninety day period shall not include the time spent preparing and circulating the environmental impact statement by the local government agency.

(2) Final plats and short plats shall be approved, disapproved, or returned to the applicant within thirty days from the date of filing

thereof, unless the applicant consents to an extension of such time period.

(3)(a) Except as provided by (b) of this subsection, a final plat meeting all requirements of this chapter shall be submitted to the legislative body of the city, town, or county for approval within seven years of the date of preliminary plat approval if the date of preliminary plat approval is on or before December 31, 2014, and within five years of the date of preliminary plat approval if the date of preliminary plat approval is on or after January 1, 2015.

(b) A final plat meeting all requirements of this chapter shall be submitted to the legislative body of the city for approval within nine years of the date of preliminary plat approval if the project is within city limits, not subject to requirements adopted under chapter 90.58 RCW, and the date of preliminary plat approval is on or before December 31, 2007.

(4) Nothing contained in this section shall act to prevent any city, town, or county from adopting by ordinance procedures which would allow extensions of time that may or may not contain additional or altered conditions and requirements.

Sec. 2. RCW 58.17.170 and 2010 c 79 s 2 are each amended to read as follows:

(1) When the legislative body of the city, town or county finds that the subdivision proposed for final plat approval conforms to all terms of the preliminary plat approval, and that said subdivision meets the requirements of this chapter, other applicable state laws, and any local ordinances adopted under this chapter which were in effect at the time of preliminary plat approval, it shall suitably inscribe and execute its written approval on the face of the plat. The original of said final plat shall be filed for record with the county auditor. One reproducible copy shall be furnished to the city, town or county engineer. One paper copy shall be filed with the county assessor. Paper copies shall be provided to such other agencies as may be required by ordinance.

(2)(a) Except as provided by (b) of this subsection, any lots in a final plat filed for record shall be a valid land use notwithstanding any change in zoning laws for a period of seven years from the date of filing if the date of filing is on or before December 31, 2014, and for a period of five years from the date of filing if the date of filing is on or after January 1, 2015.

(b) Any lots in a final plat filed for record shall be a valid land use notwithstanding any change in zoning laws for a period of nine years from the date of filing if the project is within city limits, not subject to requirements adopted under chapter 90.58 RCW, and the date of filing is on or before December 31, 2007.

(3)(a) Except as provided by (b) of this subsection, a subdivision shall be governed by the terms of approval of the final plat, and the statutes, ordinances, and regulations in effect at the time of approval under RCW 58.17.150 (1) and (3) for a period of seven years after final plat approval if the date of final plat approval is on or before December 31, 2014, and for a period of five years after final plat approval if the date of final plat approval is on or after January 1, 2015, unless the legislative body finds that a change in conditions creates a serious threat to the public health or safety in the subdivision.

(b) A subdivision shall be governed by the terms of approval of the final plat, and the statutes, ordinances, and regulations in effect at the time of approval under RCW 58.17.150 (1) and (3) for a period of nine years after final plat approval if the project is within city limits, not subject to requirements adopted under chapter 90.58 RCW, and the date of final plat approval is on or before December 31, 2007, unless the legislative body finds that a change in conditions creates a serious threat to the public health or safety in the subdivision.

NEW SECTION. Sec. 3. 2010 c 79 s 3 (uncodified) is hereby repealed."

On page 1, line 1 of the title, after "plats;" strike the remainder of the title and insert "amending RCW 58.17.140 and 58.17.170; and repealing 2010 c 79 s 3 (uncodified)."

and the same is herewith transmitted.

Brad Hendrickson, Deputy, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to ENGROSSED HOUSE BILL NO. 2152 and advanced the bill as amended by the Senate to final passage.

FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representatives Takko and Angel spoke in favor of the passage of the bill.

The Speaker (Representative Roberts presiding) stated the question before the House to be the final passage of Engrossed House Bill No. 2152, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of Engrossed House Bill No. 2152, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 95; Nays, 0; Absent, 0; Excused, 3.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Asay, Bailey, Billig, Blake, Buys, Carlyle, Chandler, Clibborn, Cody, Condotta, Crouse, Dahlquist, Dammeier, Darneille, DeBolt, Dickerson, Dunshee, Eddy, Fagan, Finn, Fitzgibbon, Goodman, Green, Haigh, Haler, Hansen, Hargrove, Harris, Hasegawa, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jinkins, Johnson, Kagi, Kelley, Kenney, Kirby, Kretz, Kristiansen, Ladenburg, Liias, Lytton, Maxwell, McCoy, McCune, Miloscia, Moeller, Morris, Moscoso, Nealey, Orcutt, Ormsby, Orwall, Overstreet, Parker, Pearson, Pedersen, Pettigrew, Pollet, Probst, Reykdal, Rivers, Roberts, Ross, Ryu, Santos, Schmick, Seaquist, Sells, Shea, Short, Smith, Springer, Stanford, Sullivan, Takko, Taylor, Tharinger, Upthegrove, Van De Wege, Walsh, Warnick, Wilcox, Wylie, Zeiger and Mr. Speaker.

Excused: Representatives Ahern, Klippert and Rodne.

ENGROSSED HOUSE BILL NO. 2152, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

March 1, 2012

Mr. Speaker:

The Senate has passed SECOND SUBSTITUTE HOUSE BILL NO. 2156 with the following amendment:

On page 3, after line 34, insert the following:

"**Sec. 4.** RCW 28B.122.010 and 2011 c 8 s 1 are each amended to read as follows:

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

(1) "Aerospace training or educational program" means a course in the aerospace industry offered (~~either~~) by the Washington aerospace training and research center (~~(¶)~~), the Spokane aerospace technology center, or Renton technical college.

(2) (~~"Board" means the higher education coordinating board.~~) (3) "Eligible student" means a student who is registered for an aerospace training or educational program, is making satisfactory progress as defined by the program, and has a declared intention to work in the aerospace industry in the state of Washington.

(3) "Office" means the office of student financial assistance.

(4) "Participant" means an eligible student who has received an aerospace training student loan.

(5) "Student loan" means a loan that is approved by the ~~((board))~~ office and awarded to an eligible student.

Sec. 5. RCW 28B.122.020 and 2011 c 8 s 2 are each amended to read as follows:

(1) The aerospace training student loan program is established.

(2) The program shall be designed in consultation with representatives of aerospace employers, aerospace workers, and aerospace training or educational programs.

(3) The program shall be administered by the ~~((board))~~ office. In administering the program, the ~~((board))~~ office has the following powers and duties:

(a) To screen and select, in coordination with representatives of aerospace training or educational programs, eligible students to receive an aerospace training student loan;

(b) To consider an eligible student's financial inability to meet the total cost of the aerospace training or educational program in the selection process;

(c) To issue low-interest student loans;

(d) To establish an annual loan limit equal to the cost of attendance minus any other financial aid received;

(e) To define the terms of repayment, including applicable interest rates, fees, and deferments;

(f) To collect and manage repayments from students who do not meet their obligations under this chapter;

(g) To solicit and accept grants and donations from public and private sources for the program; and

(h) To adopt necessary rules.

Sec. 6. RCW 28B.122.040 and 2011 c 8 s 4 are each amended to read as follows:

The ~~((board))~~ office may award aerospace training student loans to eligible students from the funds available in the aerospace training student loan account for this program. The amount of the student loan awarded an individual may not exceed tuition and fees for the program of study.

Sec. 7. RCW 28B.122.050 and 2011 c 8 s 5 are each amended to read as follows:

(1) The aerospace training student loan account is created in the custody of the state treasurer. No appropriation is required for expenditures of funds from the account for student loans. An appropriation is required for expenditures of funds from the account for costs associated with program administration by the ~~((board))~~ office. The account is not subject to allotment procedures under chapter 43.88 RCW.

(2) The ~~((board))~~ office shall deposit into the account all moneys received for the program. The account shall be self-sustaining and consist of moneys received for the program by the ~~((board))~~ office, and receipts from participant repayments, including principal and interest.

(3) Expenditures from the account may be used solely for student loans to participants in the program established by this chapter and costs associated with program administration by the ~~((board))~~ office.

(4) Disbursements from the account may be made only on the authorization of the ~~((board))~~ office.

Sec. 8. RCW 28B.122.060 and 2011 c 8 s 6 are each amended to read as follows:

(1) The ~~((board))~~ office, in collaboration with aerospace training or educational programs, shall submit an annual report regarding the

aerospace training student loan program to the governor and to the appropriate committees of the legislature.

(2) The annual report shall describe the design and implementation of the aerospace training student loan program, and shall include the following:

(a) The number of applicants for loans;

(b) The number of participants in the loan program;

(c) The number of participants in the loan program who complete an aerospace training or educational program;

(d) The number of participants in the loan program who are placed in employment;

(e) The nature of that employment, including: (i) The type of job; (ii) whether the job is full-time, part-time, or temporary; (iii) whether the job pays annual wages that are: (A) Less than thirty thousand dollars; (B) thirty thousand dollars or greater, but less than sixty thousand dollars; or (C) sixty thousand dollars or more; and

(f) Demographic profiles of applicants for loans and participants in the loan programs.

(3) The annual report shall be submitted by December 1st of each year after July 22, 2011.

NEW SECTION. Sec. 9. Sections 4 through 8 of this act take effect July 1, 2012."

On page 1, line 2 of the title, after "manufacturing;" insert "amending RCW 28B.122.010, 28B.122.020, 28B.122.040, 28B.122.050, and 28B.122.060;"

On page 1, line 4 of the title, after "RCW;" strike the remainder of the title and insert "creating a new section; and providing an effective date."

and the same is herewith transmitted.

Brad Hendrickson, Deputy, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to SECOND SUBSTITUTE HOUSE BILL NO. 2156 and advanced the bill as amended by the Senate to final passage.

FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representatives Sells and Anderson spoke in favor of the passage of the bill.

The Speaker (Representative Roberts presiding) stated the question before the House to be the final passage of Second Substitute House Bill No. 2156, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of Second Substitute House Bill No. 2156, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 94; Nays, 1; Absent, 0; Excused, 3.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Asay, Bailey, Billig, Blake, Buys, Carlyle, Chandler, Clibborn, Cody, Condotta, Crouse, Dahlquist, Dammeier, Darneille, DeBolt, Dickerson, Dunshee, Eddy, Fagan, Finn, Fitzgibbon, Goodman, Green, Haigh, Haler, Hansen, Hargrove, Harris, Hasegawa, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jinkins, Johnson, Kagi, Kelley, Kenney, Kirby, Kretz, Kristiansen, Ladenburg, Lias, Lytton, Maxwell, McCoy, McCune, Miloscia, Moeller, Morris, Moscoso, Nealey, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Pollet, Probst, Reykdal, Rivers, Roberts, Ross, Ryu, Santos, Schmick,

Seaquist, Sells, Shea, Short, Smith, Springer, Stanford, Sullivan, Takko, Taylor, Tharinger, Upthegrove, Van De Wege, Walsh, Warnick, Wilcox, Wylie, Zeiger and Mr. Speaker.

Voting nay: Representative Overstreet.

Excused: Representatives Ahern, Klippert and Rodne.

SECOND SUBSTITUTE HOUSE BILL NO. 2156, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

March 1, 2012

Mr. Speaker:

The Senate has passed SUBSTITUTE HOUSE BILL NO. 2177 with the following amendment:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 9.68A.001 and 2010 c 227 s 1 are each amended to read as follows:

The legislature finds that the prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance. The care of children is a sacred trust and should not be abused by those who seek commercial gain or personal gratification based on the exploitation of children.

The legislature further finds that the protection of children from sexual exploitation can be accomplished without infringing on a constitutionally protected activity. The definition of "sexually explicit conduct" and other operative definitions demarcate a line between protected and prohibited conduct and should not inhibit legitimate scientific, medical, or educational activities.

The legislature further finds that children engaged in sexual conduct for financial compensation are frequently the victims of sexual abuse. Approximately eighty to ninety percent of children engaged in sexual activity for financial compensation have a history of sexual abuse victimization. It is the intent of the legislature to encourage these children to engage in prevention and intervention services and to hold those who pay to engage in the sexual abuse of children accountable for the trauma they inflict on children.

The legislature further finds that due to the changing nature of technology, offenders are now able to access child pornography in different ways and in increasing quantities. By amending current statutes governing depictions of a minor engaged in sexually explicit conduct, it is the intent of the legislature to ensure that intentional viewing of and dealing in child pornography over the internet is subject to a criminal penalty without limiting the scope of existing prohibitions on the possession of or dealing in child pornography, including the possession of electronic depictions of a minor engaged in sexually explicit conduct. It is also the intent of the legislature to clarify, in response to *State v. Sutherby*, 204 P.3d 916 (2009), the unit of prosecution for the statutes governing possession of and dealing in depictions of a minor engaged in sexually explicit conduct. It is the intent of the legislature that the first degree offenses under RCW 9.68A.050, 9.68A.060, and 9.68A.070 have a per depiction or image unit of prosecution, while the second degree offenses under RCW 9.68A.050, 9.68A.060, and 9.68A.070 have a per incident unit of prosecution as established in *State v. Sutherby*, 204 P.3d 916 (2009). Furthermore, it is the intent of the legislature to set a different unit of prosecution for the new offense of viewing of depictions of a minor engaged in sexually explicit conduct such that each separate session of intentionally viewing over the internet of visual depictions or images of a minor engaged in sexually explicit conduct constitutes a separate offense.

The decisions of the Washington supreme court in *State v. Boyd*, 160 W.2d 424, 158 P.3d 54 (2007), and *State v. Grenning*, 169 Wn.2d 47,

234 P.3d 169 (2010), require prosecutors to duplicate and distribute depictions of a minor engaged in sexually explicit conduct ("child pornography") as part of the discovery process in a criminal prosecution. The legislature finds that the importance of protecting children from repeat exploitation in child pornography is not being given sufficient weight under these decisions. The importance of protecting children from repeat exploitation in child pornography is based upon the following findings:

(1) Child pornography is not entitled to protection under the First Amendment and thus may be prohibited;

(2) The state has a compelling interest in protecting children from those who sexually exploit them, and this interest extends to stamping out the vice of child pornography at all levels in the distribution chain;

(3) Every instance of viewing images of child pornography represents a renewed violation of the privacy of the victims and a repetition of their abuse;

(4) Child pornography constitutes prima facie contraband, and as such should not be distributed to, or copied by, child pornography defendants or their attorneys;

(5) It is imperative to prohibit the reproduction of child pornography in criminal cases so as to avoid repeated violation and abuse of victims, so long as the government makes reasonable accommodations for the inspection, viewing, and examination of such material for the purposes of mounting a criminal defense. The legislature is also aware that the Adam Walsh child protection and safety act, P.L. 109-248, 120 Stat. 587 (2006), codified at 18 U.S.C. Sec. 3509(m), prohibits the duplication and distribution of child pornography as part of the discovery process in federal prosecutions. This federal law has been in effect since 2006, and upheld repeatedly as constitutional. Courts interpreting the Walsh act have found that such limitations can be employed while still providing the defendant due process. The legislature joins congress, and the legislatures of other states that have passed similar provisions, in protecting these child victims so that our justice system does not cause repeat exploitation, while still providing due process to criminal defendants.

NEW SECTION. Sec. 2. A new section is added to chapter 9.68A RCW to read as follows:

(1) In any criminal proceeding, any property or material that constitutes a depiction of a minor engaged in sexually explicit conduct shall remain in the care, custody, and control of either a law enforcement agency or the court.

(2) Despite any request by the defendant or prosecution, any property or material that constitutes a depiction of a minor engaged in sexually explicit conduct shall not be copied, photographed, duplicated, or otherwise reproduced, so long as the property or material is made reasonably available to the parties. Such property or material shall be deemed to be reasonably available to the parties if the prosecution, defense counsel, or any individual sought to be qualified to furnish expert testimony at trial has ample opportunity for inspection, viewing, and examination of the property or material at a law enforcement facility or a neutral facility approved by the court upon petition by the defense.

(3) The defendant may view and examine the property and materials only while in the presence of his or her attorney. If the defendant is proceeding pro se, the court will appoint an individual to supervise the defendant while he or she examines the materials.

(4) The court may direct that a mirror image of a computer hard drive containing such depictions be produced for use by an expert only upon a showing that an expert has been retained and is prepared to conduct a forensic examination while the mirror imaged hard drive remains in the care, custody, and control of a law enforcement agency or the court. Upon a substantial showing that the expert's analysis cannot be accomplished while the mirror imaged hard drive is kept within the care, custody, and control of a law enforcement agency or the court, the court may order its release to the expert for analysis for a limited time. If release is granted, the court shall issue a protective

order setting forth such terms and conditions as are necessary to protect the rights of the victims, to document the chain of custody, and to protect physical evidence.

NEW SECTION. Sec. 3. A new section is added to chapter 9.68A RCW to read as follows:

(1) Whenever a depiction of a minor engaged in sexually explicit conduct, regardless of its format, is marked as an exhibit in a criminal proceeding, the prosecutor shall seek an order sealing the exhibit at the close of the trial. Any exhibits sealed under this section shall be sealed with evidence tape in a manner that prevents access to, or viewing of, the depiction of a minor engaged in sexually explicit conduct and shall be labeled so as to identify its contents. Anyone seeking to view such an exhibit must obtain permission from the superior court after providing at least ten days notice to the prosecuting attorney. Appellate attorneys for the defendant and the state shall be given access to the exhibit, which must remain in the care and custody of either a law enforcement agency or the court. Any other person moving to view such an exhibit must demonstrate to the court that his or her reason for viewing the exhibit is of sufficient importance to justify another violation of the victim's privacy.

(2) Whenever the clerk of the court receives an exhibit of a depiction of a minor engaged in sexually explicit conduct, he or she shall store the exhibit in a secure location, such as a safe. The clerk may arrange for the transfer of such exhibits to a law enforcement agency evidence room for safekeeping provided the agency agrees not to destroy or dispose of the exhibits without an order of the court.

(3) If the criminal proceeding ends in a conviction, the clerk of the court shall destroy any exhibit containing a depiction of a minor engaged in sexually explicit conduct five years after the judgment is final, as determined by the provisions of RCW 10.73.090(3). Before any destruction, the clerk shall contact the prosecuting attorney and verify that there is no collateral attack on the judgment pending in any court. If the criminal proceeding ends in a mistrial, the clerk shall either maintain the exhibit or return it to the law enforcement agency that investigated the criminal charges for safekeeping until the matter is set for retrial. If the criminal proceeding ends in an acquittal, the clerk shall return the exhibit to the law enforcement agency that investigated the criminal charges for either safekeeping or destruction.

NEW SECTION. Sec. 4. A new section is added to chapter 9.68A RCW to read as follows:

Any depiction of a minor engaged in sexually explicit conduct, in any format, distributed as discovery to defense counsel or an expert witness prior to the effective date of this section shall either be returned to the law enforcement agency that investigated the criminal charges or destroyed, if the case is no longer pending in superior court. If the case is still pending, the depiction shall be returned to the superior court judge assigned to the case or the presiding judge. The court shall order either the destruction of the depiction or the safekeeping of the depiction if it will be used at trial. It is not a defense to violations of this chapter for crimes committed after December 31, 2012, that the initial receipt of the depictions was done under the color of law through the discovery process."

On page 1, line 1 of the title, after "exploitation;" strike the remainder of the title and insert "amending RCW 9.68A.001; and adding new sections to chapter 9.68A RCW."

and the same is herewith transmitted.

Brad Hendrickson, Deputy, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to SUBSTITUTE HOUSE BILL NO. 2177 and advanced the bill as amended by the Senate to final passage.

FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representatives Ladenburg and Pearson spoke in favor of the passage of the bill.

The Speaker (Representative Roberts presiding) stated the question before the House to be the final passage of Substitute House Bill No. 2177, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of Substitute House Bill No. 2177, as amended by the Senate, and the bill passed before the House by the following vote: Yeas, 95; Nays, 0; Absent, 0; Excused, 3.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Asay, Bailey, Billig, Blake, Buys, Carlyle, Chandler, Clibborn, Cody, Condotta, Crouse, Dahlquist, Dammeier, Darneille, DeBolt, Dickerson, Dunshee, Eddy, Fagan, Finn, Fitzgibbon, Goodman, Green, Haigh, Haler, Hansen, Hargrove, Harris, Hasegawa, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jinkins, Johnson, Kagi, Kelley, Kenney, Kirby, Kretz, Kristiansen, Ladenburg, Liias, Lytton, Maxwell, McCoy, McCune, Miloscia, Moeller, Morris, Moscoso, Nealey, Orcutt, Ormsby, Orwall, Overstreet, Parker, Pearson, Pedersen, Pettigrew, Pollet, Probst, Reykdal, Rivers, Roberts, Ross, Ryu, Santos, Schmick, Seaquist, Sells, Shea, Short, Smith, Springer, Stanford, Sullivan, Takko, Taylor, Tharinger, Upthegrove, Van De Wege, Walsh, Warnick, Wilcox, Wylie, Zeiger and Mr. Speaker.

Excused: Representatives Ahern, Klippert and Rodne.

SUBSTITUTE HOUSE BILL NO. 2177, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

February 28, 2012

Mr. Speaker:

The Senate has passed SUBSTITUTE HOUSE BILL NO. 2191 with the following amendment:

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 16.08.040 and 1941 c 77 s 1 are each amended to read as follows:

(1) The owner of any dog which shall bite any person while such person is in or on a public place or lawfully in or on a private place including the property of the owner of such dog, shall be liable for such damages as may be suffered by the person bitten, regardless of the former viciousness of such dog or the owner's knowledge of such viciousness.

(2) This section does not apply to the lawful application of a police dog, as defined in RCW 4.24.410.

Sec. 2. RCW 9A.76.200 and 2003 c 269 s 1 are each amended to read as follows:

(1) A person is guilty of harming a police dog, accelerant detection dog, or police horse, if he or she maliciously injures, disables, shoots, or kills by any means any dog or horse that the person knows or has reason to know to be a police dog or accelerant detection dog, as defined in RCW 4.24.410, or police horse, as defined in subsection (2) of this section, whether or not the dog or horse is actually engaged in police or accelerant detection work at the time of the injury.

(2) "Police horse" means any horse used or kept for use by a law enforcement officer in discharging any legal duty or power of his or her office.

(3) Harming a police dog, accelerant detection dog, or police horse is a class C felony.

(4)(a) In addition to the criminal penalty provided in this section for harming a police dog:

(i) The court may impose a civil penalty of up to five thousand dollars for harming a police dog.

(ii) The court shall impose a civil penalty of at least five thousand dollars and may increase the penalty up to a maximum of ten thousand dollars for killing a police dog.

(b) Moneys collected must be distributed to the jurisdiction that owns the police dog."

On page 1, line 1 of the title, after "dogs;" strike the remainder of the title and insert "amending RCW 16.08.040 and 9A.76.200; and prescribing penalties."

and the same is herewith transmitted.

Brad Hendrickson, Deputy, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to SUBSTITUTE HOUSE BILL NO. 2191 and advanced the bill as amended by the Senate to final passage.

**FINAL PASSAGE OF HOUSE BILL
AS SENATE AMENDED**

Representatives Rivers and Hurst spoke in favor of the passage of the bill.

The Speaker (Representative Roberts presiding) stated the question before the House to be the final passage of Substitute House Bill No. 2191, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of Substitute House Bill No. 2191, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 95; Nays, 0; Absent, 0; Excused, 3.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Asay, Bailey, Billig, Blake, Buys, Carlyle, Chandler, Clibborn, Cody, Condotta, Crouse, Dahlquist, Dammeier, Darneille, DeBolt, Dickerson, Dunshee, Eddy, Fagan, Finn, Fitzgibbon, Goodman, Green, Haigh, Haler, Hansen, Hargrove, Harris, Hasegawa, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jinkins, Johnson, Kagi, Kelley, Kenney, Kirby, Kretz, Kristiansen, Ladenburg, Lias, Lytton, Maxwell, McCoy, McCune, Miloscia, Moeller, Morris, Moscoso, Nealey, Orcutt, Ormsby, Orwall, Overstreet, Parker, Pearson, Pedersen, Pettigrew, Pollet, Probst, Reykdal, Rivers, Roberts, Ross, Ryu, Santos, Schmick, Seaquist, Sells, Shea, Short, Smith, Springer, Stanford, Sullivan, Takko, Taylor, Tharinger, Upthegrove, Van De Wege, Walsh, Warnick, Wilcox, Wylie, Zeiger and Mr. Speaker.

Excused: Representatives Ahern, Klippert and Rodne.

SUBSTITUTE HOUSE BILL NO. 2191, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

February 29, 2012

Mr. Speaker:

The Senate has passed ENGROSSED SUBSTITUTE HOUSE BILL NO. 2197 with the following amendment:

Strike everything after the enacting clause and insert the following:

"PART I

AMENDMENTS TO UNIFORM COMMERCIAL CODE

ARTICLE 1

Sec. 101. RCW 62A.1-101 and 1965 ex.s. c 157 s 1-101 are each amended to read as follows:

SHORT TITLES. (a) This title (~~shall be known as~~) may be cited as the Uniform Commercial Code.

(b) This Article may be cited as Uniform Commercial Code--General Provisions.

Sec. 102. RCW 62A.1-102 and 1965 ex.s. c 157 s 1-102 are each amended to read as follows:

((PURPOSES; RULES OF CONSTRUCTION; VARIATION BY AGREEMENT.)) **SCOPE OF ARTICLE.**((1) This Title shall be liberally construed and applied to promote its underlying purposes and policies.

(2) Underlying purposes and policies of this Title are (a) to simplify, clarify and modernize the law governing commercial transactions;

(b) to permit the continued expansion of commercial practices through custom, usage and agreement of the parties; (c) to make uniform the law among the various jurisdictions.

(3) The effect of provisions of this Title may be varied by agreement, except as otherwise provided in this Title and except that the obligations of good faith, diligence, reasonableness and care prescribed by this Title may not be disclaimed by agreement but the parties may by agreement determine the standards by which the performance of such obligations is to be measured if such standards are not manifestly unreasonable.

(4) The presence in certain provisions of this Title of the words "unless otherwise agreed" or words of similar import does not imply that the effect of other provisions may not be varied by agreement under subsection (3).

(5) In this Title unless the context otherwise requires (a) words in the singular number include the plural, and in the plural include the singular;

(b) words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender.) This Article applies to a transaction to the extent that it is governed by another article of this title.

Sec. 103. RCW 62A.1-103 and 1965 ex.s. c 157 s 1-103 are each amended to read as follows:

~~((SUPPLEMENTARY GENERAL PRINCIPLES OF LAW APPLICABLE.))~~ **CONSTRUCTION OF UNIFORM COMMERCIAL CODE TO PROMOTE ITS PURPOSES AND POLICIES; APPLICABILITY OF SUPPLEMENTAL PRINCIPLES OF LAW.** (a) This title must be liberally construed and applied to promote its underlying purposes and policies, which are:

(1) To simplify, clarify, and modernize the law governing commercial transactions;

(2) To permit the continued expansion of commercial practices through custom, usage, and agreement of the parties; and (3) To make uniform the law among the various jurisdictions.

(b) Unless displaced by the particular provisions of this title, the

principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, ~~((or))~~ and other validating or invalidating cause ~~((shall))~~ supplement its provisions.

Sec. 104. RCW 62A.1-104 and 1965 ex.s. c 157 s 1-104 are each amended to read as follows:

CONSTRUCTION AGAINST ~~((IMPLICIT))~~ IMPLIED REPEAL. This title being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

Sec. 105. RCW 62A.1-105 and 2001 c 32 s 8 are each amended to read as follows:

((TERRITORIAL APPLICATION OF THE TITLE; PARTIES' POWER TO CHOOSE APPLICABLE LAW.)) SEVERABILITY.~~((1))~~ Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this Title applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of this Title specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. RCW 62A.2-402.

Applicability of the Article on Leases. RCW 62A.2A-105 and 62A.2A-106.

Applicability of the Article on Bank Deposits and Collections. RCW 62A.4-102.

Governing law in the Article on Funds Transfers. RCW 62A.4A-507.

Letters of Credit. RCW 62A.5-116.

Applicability of the Article on Investment Securities. RCW 62A.8-110.

Law governing perfection, the effect of perfection or nonperfection, and the priority of security interests and agricultural liens. RCW 62A.9A-301 through 62A.9A-307.) If any provision or clause of this title or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this title which can be given effect without the invalid provision or application, and to this end the provisions of this title are severable.

Sec. 106. RCW 62A.1-106 and 1965 ex.s. c 157 s 1-106 are each amended to read as follows:

((REMEDIES TO BE LIBERALLY ADMINISTERED.)) USE OF SINGULAR AND PLURAL; GENDER.~~((1))~~ The remedies provided by this Title shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special nor penal damages may be had except as specifically provided in this Title or by other rule of law.

(2) Any right or obligation declared by this Title is enforceable by action unless the provision declaring it specifies a different and limited effect.) In this title, unless the statutory context otherwise requires:

(1) Words in the singular number include the plural, and those in the plural include the singular; and

(2) Words of any gender also refer to any other gender.

Sec. 107. RCW 62A.1-107 and 1965 ex.s. c 157 s 1-107. Cf. former RCW sections: (i) RCW 62.01.119(3) are each amended to read as follows:

((WAIVER OR RENUNCIATION OF CLAIM OR RIGHT AFTER BREACH.)) SECTION CAPTIONS.~~((Any claim or right arising out of an alleged breach can be discharged in whole or in part without~~

consideration by a written waiver or renunciation signed and delivered by the aggrieved party.)) Section captions are part of this title.

Sec. 108. RCW 62A.1-108 and 1965 ex.s. c 157 s 1-108 are each amended to read as follows:

((SEVERABILITY.)) RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.~~((If any provision or clause of this Title or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Title which can be given effect without the invalid provision or application, and to this end the provisions of this Title are declared to be severable.))~~ Except as provided in this section, this Article modifies, limits, and supersedes the federal electronic signatures in global and national commerce act, 15 U.S.C. Sec. 7001 et seq., except that nothing in this Article modifies, limits, or supersedes section 7001(c) of that act, and nothing in this section either authorizes or prohibits electronic delivery of any of the notices described in section 7003(b) of that act. This section does not modify, limit, or supersede application of the federal electronic signatures in global and national commerce act, 15 U.S.C. Sec. 7001 et seq., to transactions governed by Article 2 or 2A of this title.

Sec. 109. RCW 62A.1-201 and 2001 c 32 s 9 are each amended to read as follows:

GENERAL DEFINITIONS. (a) Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other articles of this title that apply to particular articles or parts thereof, have the meanings stated.

(b) Subject to ~~((additional))~~ definitions contained in ~~((the subsequent))~~ other articles of this title ~~((which are applicable to specific))~~ that apply to particular articles or parts thereof~~((, and unless the context otherwise requires, in this Title))~~:

(1) "Action₁" in the sense of a judicial proceeding, includes recoupment, counterclaim, set-off, suit in equity, and any other proceeding~~((s))~~ in which rights are determined.

(2) "Aggrieved party" means a party entitled to ~~((resort to))~~ pursue a remedy.

(3) "Agreement₁" as distinguished from "contract," means the bargain of the parties in fact, as found in their language or ~~((by implication))~~ inferred from other circumstances, including course of performance, course of dealing, or usage of trade ~~((or course of performance))~~ as provided in ~~((this Title (RCW 62A.1-205, RCW 62A.2-208, and RCW 62A.2A-207). Whether an agreement has legal consequences is determined by the provisions of this Title, if applicable; otherwise by the law of contracts (RCW 62A.1-103))~~ RCW 62A.1-303. ~~((Compare "Contract".))~~

(4) "Bank" means ~~((any))~~ a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company.

(5) "Bearer" means ~~((the))~~ a person in control of a negotiable electronic document of title or a person in possession of ~~((an))~~ a negotiable instrument, negotiable tangible document of title, or certificated security that is payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods~~((; and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill)).~~ The term does not include a warehouse receipt.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the trier~~((s))~~ of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a ~~((pre-existing))~~ preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Article ~~((62A.2 RCW))~~ 2 of this title may be a buyer in ordinary course of business. "Buyer in ordinary course of business" does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt ((is not a buyer in ordinary course of business)).

(10) "Conspicuous," ~~((is))~~ with reference to a term ((or clause is conspicuous when it is)), means so written, displayed, or presented that a reasonable person against ~~((whom))~~ which it is to operate ought to have noticed it. ~~((A printed heading in capitals (as: NON-NEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous".))~~ Whether a term ~~((or clause))~~ is "conspicuous" or not is ~~((for))~~ a decision ((by)) for the court. Conspicuous terms include the following:

(A) A heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and

(B) Language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.

(11) "Consumer" means an individual who enters into a transaction primarily for personal, family, or household purposes.

(12) "Contract," as distinguished from "agreement," means the total legal obligation ~~((which))~~ that results from the parties' agreement as ~~((affected))~~ determined by this title ~~((and))~~ as supplemented by any other applicable ~~((rules of))~~ laws. ~~((Compare "Agreement" -))~~ ~~((12))~~ (13) "Creditor" includes a general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor's or assignor's estate.

~~((13))~~ (14) "Defendant" includes a person in the position of defendant in a ~~((cross action or))~~ counterclaim, cross-claim, or third-party claim.

~~((14))~~ (15) "Delivery," with respect to an electronic document of title means voluntary transfer of control and with respect to an instrument((s)), a tangible document((s)) of title, or chattel paper, ((or certificated securities)) means voluntary transfer of possession.

~~((15))~~ (16) "Document of title" ~~((includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which))~~ means a record (i) that in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of ((it)) the record is entitled to receive, control, hold, and dispose of the ((document)) record and the goods ((it)) the record covers((. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass)) and (ii) that purports to be issued by or addressed to a bailee and to cover goods in

the bailee's possession which are either identified or are fungible portions of an identified mass. The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods. An electronic document of title means a document of title evidenced by a record consisting of information stored in an electronic medium. A tangible document of title means a document of title evidenced by a record consisting of information that is inscribed on a tangible medium.

~~((16))~~ (17) "Fault" means a default, breach, or wrongful act((;)) or omission ((or breach)).

~~((17))~~ (18) "Fungible goods" ~~((with respect to goods or securities))~~ means:

(A) Goods ((or securities)) of which any unit ((is)), by nature or usage of trade, is the equivalent of any other like unit((;)) or

(B) Goods ((which are not fungible shall be deemed fungible for the purposes of this Title to the extent)) that ((under a particular)) by agreement ~~((or document unlike units))~~ are treated as equivalent((s)).

~~((18))~~ (19) "Genuine" means free of forgery or counterfeiting.

~~((19))~~ (20) "Good faith," except as otherwise provided in Article 5 of this title, means honesty in fact ~~((in the conduct or transaction concerned))~~ and the observance of reasonable commercial standards of fair dealing.

~~((20))~~ (21) "Holder" with respect to a negotiable instrument, means:

(A) The person in possession ((if the)) of a negotiable instrument that is payable either to bearer or ~~((, in the case of an instrument payable to an identified person, if the))~~ to an identified person that is the person in possession ~~((-"Holder" with respect to));~~

(B) The person in possession of a negotiable tangible document of title ~~((means the person in possession))~~ if the goods are deliverable either to bearer or to the order of the person in possession; or

(C) The person in control of a negotiable electronic document of title.

~~((21))~~ To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.)

(22) "Insolvency proceeding(s)" includes ~~((any))~~ an assignment for the benefit of creditors or other proceeding(s) intended to liquidate or rehabilitate the estate of the person involved.

(23) ~~((A person is))~~ "Insolvent" ~~((who either has))~~ means:

(A) Having generally ceased to pay ((his or her)) debts in the ordinary course of business ~~((or cannot))~~ other than as a result of bona fide dispute;

(B) Being unable to pay ((his or her)) debts as they become due; or ((is))

(C) Being insolvent within the meaning of ~~((the))~~ federal bankruptcy law.

(24) "Money" means a medium of exchange currently authorized or adopted by a domestic or foreign government ~~((and)).~~ The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more ~~((nations))~~ countries.

(25) ((A person has "notice" of a fact when

- he or she has actual knowledge of it; or
- he or she has received a notice or notification of it; or
- from all the facts and circumstances known to him or her at the time in question he or she has reason to know that it exists.

A person "knows" or has "knowledge" of a fact when he or she has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this Title.

(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when

(a) it comes to his or her attention; or
 (b) it is duly delivered at the place of business through which the contract was made or at any other place held out by him or her as the place for receipt of such communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his or her attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his or her regular duties or unless he or she has reason to know of the transaction and that the transaction would be materially affected by the information.

(28)) "Organization" ((includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity)) means a person other than an individual.

((29)) (26) "Party,"((s)) as ((distinct)) distinguished from "third party,"((s)) means a person ((who)) that has engaged in a transaction or made an agreement ((within)) subject to this title .

((30)) (27) "Person" ((includes)) means an individual ((or an organization (See RCW 62A.1-102).

(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32)), 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.

(28) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into.

(29) "Purchase" ((includes)) means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or ((re-issue)) reissue, gift, or any other voluntary transaction creating an interest in property.

((33)) (30) "Purchaser" means a person ((who)) that takes by purchase.

((34)) (31) "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.

(32) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

((35)) (33) "Representative" ((includes)) means a person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, executor, or administrator of an estate((, or any other person empowered to act for another)).

((36)) (34) "Right(s)" includes ((remedies)) remedy.

((37)) (35) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation((, except for lease purchase agreements under chapter 63.19 RCW. The term also)), "Security interest" includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Article 9A of this title. "Security interest" does not include the special property interest of a buyer of goods on identification of ((such)) those goods to a contract for sale under RCW 62A.2-401 ((is

~~not a "security interest"), but a buyer may also acquire a "security interest" by complying with Article 9A of this title. Except as otherwise provided in RCW 62A.2-505, the right of a seller or lessor of goods under Article 2 or 2A of this title to retain or acquire possession of the goods is not a "security interest," but a seller or lessor may also acquire a "security interest" by complying with Article 9A of this title. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer ((f)) under RCW 62A.2-401((s)) is limited in effect to a reservation of a "security interest." Whether a transaction in the form of a lease creates a ((lease or)) "security interest" is determined ((by the facts of each case. However, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and:~~

— (a) The original term of the lease is equal to or greater than the remaining economic life of the goods;

— (b) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

— (c) The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement; or

— (d) The lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

A transaction does not create a security interest merely because it provides that:

— (a) The present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

— (b) The lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods;

— (c) The lessee has an option to renew the lease or to become the owner of the goods;

— (d) The lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed;

— (e) The lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed; or

— (f) The amount of rental payments may or will be increased or decreased by reference to the amount realized by the lessor upon sale or disposition of the goods.

For purposes of this subsection (37):

— (a) Additional consideration is not nominal if (i) when the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or (ii) when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;

— (b) "Reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and

— (c) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is

~~entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into)~~ pursuant to RCW 62A.1-203.

~~((38))~~ (36) "Send" in connection with ~~((any))~~ a writing, record, or notice means:

(A) To deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances ~~((The receipt of any writing))~~; or

(B) In any other way to cause to be received any record or notice within the time ~~((at which))~~ it would have arrived if properly sent ~~((has the effect of a proper sending))~~.

~~((39))~~ (37) "Signed" includes using any symbol executed or adopted ~~((by a party))~~ with present intention to ~~((authenticate))~~ adopt or accept a writing.

~~((40))~~ (38) "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.

(39) "Surety" includes a guarantor or other secondary obligor.

~~((41))~~ (40) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

~~((42))~~ (40) "Term" means ~~((that))~~ a portion of an agreement ~~((which))~~ that relates to a particular matter.

~~((43))~~ (41) "Unauthorized" signature means ~~((one))~~ a signature made without actual, implied, or apparent authority ~~((and))~~. The term includes a forgery.

~~((44))~~ "Value". Except as otherwise provided with respect to negotiable instruments and bank collections (RCW 62A.3-303, RCW 62A.4-210, and RCW 62A.4-211) a person gives "value" for rights if he or she acquires them

(a) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or

(b) as security for or in total or partial satisfaction of a preexisting claim; or

(c) by accepting delivery pursuant to a pre-existing contract for purchase; or

(d) generally, in return for any consideration sufficient to support a simple contract.

~~((45))~~ (42) "Warehouse receipt" means a ~~((receipt))~~ document of title issued by a person engaged in the business of storing goods for hire.

~~((46))~~ "Written" or (43) "Writing" includes printing, typewriting, or any other intentional reduction to tangible form. "Written" has a corresponding meaning.

Sec. 110. RCW 62A.1-202 and 1965 ex.s. c 157 s 1-202 are each amended to read as follows:

(PRIMA FACIE EVIDENCE BY THIRD PARTY DOCUMENTS.) NOTICE; KNOWLEDGE. ((A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party shall be prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.)) (a) Subject to subsection (f) of this section, a person has "notice" of a fact if the person:

(1) Has actual knowledge of it;

(2) Has received a notice or notification of it; or

(3) From all the facts and circumstances known to the person at the time in question, has reason to know that it exists.

(b) "Knowledge" means actual knowledge. "Knows" has a

corresponding meaning.

(c) "Discover," "learn," or words of similar import refer to knowledge rather than to reason to know.

(d) A person "notifies" or "gives" a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not the other person actually comes to know of it.

(e) Subject to subsection (f) of this section, a person "receives" a notice or notification when:

(1) It comes to that person's attention; or

(2) It is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.

(f) Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

Sec. 111. RCW 62A.1-203 and 1965 ex.s. c 157 s 1-203 are each amended to read as follows:
((OBLIGATION OF GOOD FAITH.)) LEASE DISTINGUISHED FROM SECURITY INTEREST. ((Every contract or duty within this Title imposes an obligation of good faith in its performance or enforcement.)) (a) Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.

(b) A transaction in the form of a lease creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and is not subject to termination by the lessee, and:

(1) The original term of the lease is equal to or greater than the remaining economic life of the goods;

(2) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(3) The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement; or

(4) The lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement.

(c) A transaction in the form of a lease does not create a security interest merely because:

(1) The present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

(2) The lessee assumes risk of loss of the goods;

(3) The lessee agrees to pay, with respect to the goods, taxes, insurance, filing, recording, or registration fees, or service or maintenance costs;

(4) The lessee has an option to renew the lease or to become the owner of the goods;

(5) The lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the

option is to be performed; or
(6) The lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(d) Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised. Additional consideration is not nominal if:

(1) When the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or

(2) When the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed.

(e) The "remaining economic life of the goods" and "reasonably predictable" fair market rent, fair market value, or cost of performing under the lease agreement must be determined with reference to the facts and circumstances at the time the transaction is entered into.

Sec. 112. RCW 62A.1-204 and 1965 ex.s. c 157 s 1-204 are each amended to read as follows:

(TIME; REASONABLE TIME; "SEASONABLY".) VALUE.((1) Whenever this Title requires any action to be taken within a reasonable time, any time which is not manifestly unreasonable may be fixed by agreement.

(2) What is a reasonable time for taking any action depends on the nature, purpose and circumstances of such action.

(3) An action is taken "seasonably" when it is taken at or within the time agreed or if no time is agreed at or within a reasonable time.)) Except as otherwise provided in Articles 3, 4, and 5 of this title, a person gives value for rights if the person acquires them:

(1) In return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection;

(2) As security for, or in total or partial satisfaction of, a preexisting claim;

(3) By accepting delivery under a preexisting contract for purchase; or

(4) In return for any consideration sufficient to support a simple contract.

Sec. 113. RCW 62A.1-205 and 1965 ex.s. c 157 s 1-205 are each amended to read as follows:

(COURSE OF DEALING AND USAGE OF TRADE.) REASONABLE TIME; SEASONABLENESS.((1) A course of dealing is a sequence of previous conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(2) A usage of trade is any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage are to be proved as facts. If it is established that such a usage is embodied in a written trade code or similar writing the interpretation of the writing is for the court.

(3) A course of dealing between parties and any usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware give particular meaning to and supplement or qualify terms of an agreement.

(4) The express terms of an agreement and an applicable course of dealing or usage of trade shall be construed wherever reasonable as consistent with each other; but when such construction is unreasonable express terms control both course of dealing and usage of trade and course of dealing controls usage of trade.

(5) An applicable usage of trade in the place where any part of performance is to occur shall be used in interpreting the agreement as to that part of the performance.

(6) Evidence of a relevant usage of trade offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise to the latter.)) (a) Whether a time for taking an action required by this title is reasonable depends on the nature, purpose, and circumstances of the action.

(b) An action is taken seasonably if it is taken at or within the time agreed or, if no time is agreed, at or within a reasonable time.

Sec. 114. RCW 62A.1-206 and 1995 c 48 s 55 are each amended to read as follows:

((STATUTE OF FRAUDS FOR KINDS OF PERSONAL PROPERTY NOT OTHERWISE COVERED.)) PRESUMPTIONS.((1) Except in the cases described in subsection

(2) of this section a contract for the sale of personal property is not enforceable by way of action or defense beyond five thousand dollars in amount or value of remedy unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by his authorized agent.

(2) Subsection (1) of this section does not apply to contracts for the sale of goods (RCW 62A.2-201) nor of securities (RCW 62A.8-113) nor to security agreements (RCW 62A.9-203.)) Whenever this title creates a "presumption" with respect to a fact, or provides that a fact is "presumed," the trier of fact must find the existence of the fact unless and until evidence is introduced that supports a finding of its nonexistence.

NEW SECTION. Sec. 115. A new section is added to chapter 62A.1 RCW, to be codified as RCW 62A.1-301, to read as follows:

TERRITORIAL APPLICABILITY; PARTIES' POWER TO CHOOSE APPLICABLE LAW. (a) Except as otherwise provided in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties.

(b) In the absence of an agreement effective under subsection (a) of this section, and except as provided in subsection (c) of this section, this title applies to transactions bearing an appropriate relation to this state.

(c) If one of the following provisions of this title specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law so specified:

- (1) RCW 62A.2-402;
- (2) RCW 62A.2A-105 and 62A.2A-106;
- (3) RCW 62A.4-102;
- (4) RCW 62A.4A-507;
- (5) RCW 62A.5-116;
- (6) RCW 62A.8-110;
- (7) RCW 62A.9A-301 through 62A.9A-307.

NEW SECTION. Sec. 116. A new section is added to chapter 62A.1 RCW, to be codified as RCW 62A.1-302, to read as follows:

VARIATION BY AGREEMENT. (a) Except as otherwise provided in subsection (b) of this section or elsewhere in this title, the effect of provisions of this title may be varied by agreement.

(b) The obligations of good faith, diligence, reasonableness, and care prescribed by this title may not be disclaimed by agreement. The parties, by agreement, may determine the standards by which the performance of those obligations is to be measured if those standards are not manifestly unreasonable. Whenever this title requires an action to be taken within a reasonable time, a time that is not manifestly unreasonable may be fixed by agreement.

(c) The presence in certain provisions of this title of the phrase "unless otherwise agreed," or words of similar import, does not imply

that the effect of other provisions may not be varied by agreement under this section.

NEW SECTION. Sec. 117. A new section is added to chapter 62A.1 RCW, to be codified as RCW 62A.1-303, to read as follows:

COURSE OF PERFORMANCE, COURSE OF DEALING, AND USAGE OF TRADE. (a) A "course of performance" is a sequence of conduct between the parties to a particular transaction that exists if:

(1) The agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and

(2) The other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

(b) A "course of dealing" is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(c) A "usage of trade" is any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage must be proved as facts. If it is established that such a usage is embodied in a trade code or similar record, the interpretation of the record is a question of law.

(d) A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware is relevant in ascertaining the meaning of the parties' agreement, may give particular meaning to specific terms of the agreement, and may supplement or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.

(e) Except as otherwise provided in subsection (f) of this section, the express terms of an agreement and any applicable course of performance, course of dealing, or usage of trade must be construed whenever reasonable as consistent with each other. If such a construction is unreasonable:

(1) Express terms prevail over course of performance, course of dealing, and usage of trade;

(2) Course of performance prevails over course of dealing and usage of trade; and

(3) Course of dealing prevails over usage of trade.

(f) Subject to RCW 62A.2-209 and 62A.2A-208, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

(g) Evidence of a relevant usage of trade offered by one party is not admissible unless that party has given the other party notice that the court finds sufficient to prevent unfair surprise to the other party.

NEW SECTION. Sec. 118. A new section is added to chapter 62A.1 RCW, to be codified as RCW 62A.1-304, to read as follows:

OBLIGATION OF GOOD FAITH. Every contract or duty within this title imposes an obligation of good faith in its performance and enforcement.

NEW SECTION. Sec. 119. A new section is added to chapter 62A.1 RCW, to be codified as RCW 62A.1-305, to read as follows:

REMEDIES TO BE LIBERALLY ADMINISTERED. (a) The remedies provided by this title must be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special damages nor penal damages may be had except as specifically provided in this title or by other rule of law.

(b) Any right or obligation declared by this title is enforceable by action unless the provision declaring it specifies a different and limited effect.

NEW SECTION. Sec. 120. A new section is added to chapter 62A.1 RCW, to be codified as RCW 62A.1-306, to read as follows:

WAIVER OR RENUNCIATION OF CLAIM OR RIGHT AFTER BREACH. A claim or right arising out of an alleged breach may be discharged in whole or in part without consideration by agreement of the aggrieved party in an authenticated record.

NEW SECTION. Sec. 121. A new section is added to chapter 62A.1 RCW, to be codified as RCW 62A.1-307, to read as follows:

PRIMA FACIE EVIDENCE BY THIRD-PARTY DOCUMENTS. A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party is prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

NEW SECTION. Sec. 122. A new section is added to chapter 62A.1 RCW, to be codified as RCW 62A.1-308, to read as follows:

PERFORMANCE OR ACCEPTANCE UNDER RESERVATION OF RIGHTS. (a) A party that with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice," "under protest," or the like are sufficient.

(b) Subsection (a) of this section does not apply to an accord and satisfaction.

NEW SECTION. Sec. 123. A new section is added to chapter 62A.1 RCW, to be codified as RCW 62A.1-309, to read as follows:

OPTION TO ACCELERATE AT WILL. A term providing that one party or that party's successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or when the party "deems itself insecure," or words of similar import, means that the party has power to do so only if that party in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against which the power has been exercised.

NEW SECTION. Sec. 124. A new section is added to chapter 62A.1 RCW, to be codified as RCW 62A.1-310, to read as follows:

SUBORDINATED OBLIGATIONS. An obligation may be issued as subordinated to performance of another obligation of the person obligated, or a creditor may subordinate its right to performance of an obligation by agreement with either the person obligated or another creditor of the person obligated. Subordination does not create a security interest as against either the common debtor or a subordinated creditor.

PART II

AMENDMENTS TO UNIFORM COMMERCIAL CODE

ARTICLE 7

GENERAL

Sec. 201. RCW 62A.7-101 and 1965 ex.s. c 157 s 7-101 are each amended to read as follows:

SHORT TITLE. This Article (~~shall be known and~~) may be cited as Uniform Commercial Code--Documents of Title.

Sec. 202. RCW 62A.7-102 and 2011 c 336 s 825 are each amended to read as follows:

DEFINITIONS AND INDEX OF DEFINITIONS. ((4)) (a) In this Article, unless the context otherwise requires:

((a)) (1) "Bailee" means ((the)) a person ((who)) that by a warehouse receipt, bill of lading, or other document of title acknowledges possession of goods and contracts to deliver them.

~~((b))~~ (2) "Carrier" means a person that issues a bill of lading.
~~(3)~~ "Consignee" means ~~((the))~~ a person named in a bill of lading to ~~((whom))~~ which or to whose order the bill promises delivery.

~~((e))~~ (4) "Consignor" means ~~((the))~~ a person named in a bill of lading as the person from ~~((whom))~~ which the goods have been received for shipment.

~~((d))~~ (5) "Delivery order" means a ~~((written))~~ record that contains an order to deliver goods directed to a warehouse ~~((operator))~~, carrier, or other person ~~((who))~~ that in the ordinary course of business issues warehouse receipts or bills of lading.

~~((e))~~ "Document" means document of title as defined in the general definitions in Article 1 (RCW 62A.1-201).
~~((f))~~ (6) _____ [Reserved.]

~~(7)~~ "Goods" means all things ~~((which))~~ that are treated as movable for the purposes of a contract ~~((of))~~ for storage or transportation.

~~((e))~~ (8) "Issuer" means a bailee ~~((who))~~ that issues a document ~~((except that))~~ of title or, in ~~((relation to))~~ the case of an unaccepted delivery order ~~((it means))~~, the person ~~((who))~~ that orders the possessor of goods to deliver. ~~((Issuer))~~ The term includes ~~((any))~~ a person for ~~((whom))~~ which an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, ~~((notwithstanding that))~~ even if the issuer ~~((received no))~~ did not receive any goods ~~((or that))~~, the goods were misdescribed, or ~~((that))~~ in any other respect the agent or employee violated ~~((his or her))~~ the issuer's instructions.

~~((h))~~ (9) "Person entitled under the document" means the holder, in the case of a negotiable document of title, or the person to which delivery of the goods is to be made by the terms of, or pursuant to instructions in a record under, a nonnegotiable document of title.

(10) _____ [Reserved.]

(11) "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 sound, symbol, or process.

(12) "Shipper" means a person that enters into a contract of transportation with a carrier.

(13) "Warehouse ~~((operator))~~" ~~((is))~~ means a person engaged in the business of storing goods for hire.

~~((2))~~ Other definitions applying to this Article or to specified Parts thereof, and the sections in which they appear are:

"Duly negotiate." RCW 62A.7-501.

"Person entitled under the document." RCW 62A.7-403(4).

~~(3))~~ ~~(b)~~ Definitions in other articles applying to this Article and the sections in which they appear are:

~~(1)~~ "Contract for sale~~((s))~~," RCW 62A.2-106(~~-~~
~~"Overseas."~~ RCW 62A.2-323.);

~~(2)~~ "Lessee in ordinary course of business," RCW 62A.2A-103;
 and

~~(3)~~ "Receipt" of goods~~((s))~~, RCW 62A.2-103.

~~((4))~~ ~~(c)~~ In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

Sec. 203. RCW 62A.7-103 and 1965 ex.s. c 157 s 7-103 are each amended to read as follows:

RELATION OF ARTICLE TO TREATY~~((s))~~ OR STATUTE~~((s))~~ (TARIFF, CLASSIFICATION OR REGULATION)). ~~((To the extent that))~~ ~~(a)~~ This Article is subject to any treaty or statute of the United States~~((s))~~ or regulatory statute of this state ~~((or tariff, classification or regulation filed or issued pursuant thereto))~~ to the extent the treaty, statute, or regulatory statute is applicable~~((, the provisions of this Article are subject thereto))~~.

(b) This Article does not modify or repeal any law prescribing the form or content of a document of title or the services or facilities to be afforded by a bailee, or otherwise regulating a bailee's business in

respects not specifically treated in this Article. However, violation of such a law does not affect the status of a document of title that otherwise is within the definition of a document of title.

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

(d) A person in its capacity as an electronic data storage provider or an electronic data transmitter is not subject to this Article.

Sec. 204. RCW 62A.7-104 and 1965 ex.s. c 157 s 7-104 are each amended to read as follows:

NEGOTIABLE AND NONNEGOTIABLE ((WAREHOUSE RECEIPT, BILL OF LADING OR OTHER)) DOCUMENT OF TITLE. ~~((1))~~ A warehouse receipt, bill of lading or other document of title is negotiable)

~~(a)~~ ~~Except as otherwise provided in subsection (c) of this section, a document of title is negotiable~~ if by its terms the goods are to be delivered to bearer or to the order of a named person~~((s))~~ ~~(b) where recognized in overseas trade, if it runs to a named person or assigns.~~

~~(2)~~ Any other document),

~~(b)~~ A document of title other than one described in subsection (a) of this section is nonnegotiable. A bill of lading ~~((in which it is stated))~~ that states that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against ~~((a written))~~ an order in a record signed by the same or another named person.

(c) A document of title is nonnegotiable if, at the time it is issued, the document has a conspicuous legend, however expressed, that it is nonnegotiable.

Sec. 205. RCW 62A.7-105 and 1965 ex.s. c 157 s 7-105 are each amended to read as follows:

~~((CONSTRUCTION AGAINST NEGATIVE IMPLICATION.))~~

REISSUANCE IN ALTERNATIVE MEDIUM. ~~((The omission from either Part 2 or Part 3 of this Article of a provision corresponding to a provision made in the other Part does not imply that a corresponding rule of law is not applicable.))~~ (a) Upon request of a person entitled under an electronic document of title, the issuer of the electronic document may issue a tangible document of title as a substitute for the electronic document if:

(1) The person entitled under the electronic document surrenders control of the document to the issuer; and

(2) The tangible document when issued contains a statement that it is issued in substitution for the electronic document.

(b) Upon issuance of a tangible document of title in substitution for an electronic document of title in accordance with subsection (a) of this section:

(1) The electronic document ceases to have any effect or validity; and

(2) The person that procured issuance of the tangible document warrants to all subsequent persons entitled under the tangible document that the warrantor was a person entitled under the electronic document when the warrantor surrendered control of the electronic document to the issuer.

(c) Upon request of a person entitled under a tangible document of title, the issuer of the tangible document may issue an electronic document of title as a substitute for the tangible document if:

(1) The person entitled under the tangible document surrenders possession of the document to the issuer; and

(2) The electronic document when issued contains a statement that it is issued in substitution for the tangible document.

(d) Upon issuance of an electronic document of title in substitution for a tangible document of title in accordance with subsection (c) of this section:

(1) The tangible document ceases to have any effect or validity; and

(2) The person that procured issuance of the electronic document warrants to all subsequent persons entitled under the electronic document that the warrantor was a person entitled under the tangible document when the warrantor surrendered possession of the tangible document to the issuer.

NEW SECTION. Sec. 206. A new section is added to chapter 62A.7 RCW, to be codified as RCW 62A.7-106, to read as follows:

CONTROL OF ELECTRONIC DOCUMENT OF TITLE. (a) A person has control of an electronic document of title if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred.

(b) A system satisfies subsection (a) of this section, and a person is deemed to have control of an electronic document of title, if the document is created, stored, and assigned in such a manner that:

(1) A single authoritative copy of the document exists which is unique, identifiable, and, except as otherwise provided in (4), (5), and (6) of this subsection, unalterable;

(2) The authoritative copy identifies the person asserting control as:

(A) The person to which the document was issued; or

(B) If the authoritative copy indicates that the document has been transferred, the person to which the document was most recently transferred;

(3) The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) Copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) Any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

PART III

AMENDMENTS TO UNIFORM COMMERCIAL CODE

ARTICLE 7

WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

Sec. 301. RCW 62A.7-201 and 2011 c 336 s 826 are each amended to read as follows:

~~((WHO)) PERSON THAT MAY ISSUE A WAREHOUSE RECEIPT; STORAGE UNDER ((GOVERNMENT)) BOND.~~ ~~((1))~~

(a) A warehouse receipt may be issued by any warehouse ((operator)).

~~((2))~~ (b) If goods, including distilled spirits and agricultural commodities, are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods ((has like effect as)) is deemed to be a warehouse receipt even ((though)) if issued by a person ((who)) that is the owner of the goods and is not a warehouse ((operator)).

Sec. 302. RCW 62A.7-202 and 2011 c 336 s 827 are each amended to read as follows:

~~FORM OF WAREHOUSE RECEIPT; ((ESSENTIAL TERMS; OPTIONAL TERMS)) EFFECT OF OMISSION.~~ ~~((4))~~ (a) A warehouse receipt need not be in any particular form.

~~((2))~~ (b) Unless a warehouse receipt ((embodies within its written, printed, or electronic terms)) provides for each of the

following, the warehouse ((operator)) is liable for damages caused ((by the omission)) to a person injured ((thereby)) by its omission:

~~((a))~~ (1) A statement of the location of the warehouse facility where the goods are stored;

~~((b))~~ (2) The date of issue of the receipt;

~~((c))~~ (3) The ((consecutive number)) unique identification code of the receipt;

~~((d))~~ (4) A statement whether the goods received will be delivered to the bearer, to a ((specified)) named person, or to a ((specified)) named person or ((his or her)) its order;

~~((e))~~ (5) The rate of storage and handling charges, ((except that where)) unless goods are stored under a field warehousing arrangement, in which case a statement of that fact is sufficient on a nonnegotiable receipt;

~~((f))~~ (6) A description of the goods or ((of)) the packages containing them;

~~((g))~~ (7) The signature of the warehouse ((operator, which may be made by his or her authorized)) or its agent;

~~((h))~~ (8) If the receipt is issued for goods ((of which the warehouse operator is owner)) that the warehouse owns, either solely ((of)), jointly, or in common with others, a statement of the fact of ((such)) that ownership; and

~~((i))~~ (9) A statement of the amount of advances made and of liabilities incurred for which the warehouse ((operator)) claims a lien or security interest ((RCW 62A.7-209). If), unless the precise amount of ((such)) advances made or ((of such)) liabilities incurred ((is)), at the time of the issue of the receipt, is unknown to the warehouse ((operator)) or to ((his or her)) its agent ((who issues it), that issued the receipt, in which case a statement of the fact that advances have been made or liabilities incurred and the purpose ((thereof)) of the advances or liabilities is sufficient.

~~((3))~~ (c) A warehouse ((operator)) may insert in ((his or her)) its receipt any ((other)) terms ((which)) that are not contrary to the provisions of this title and do not impair ((his or her)) its obligation of delivery ((of)) under RCW 62A.7-403((+ or his or her)) or its duty of care ((of)) under RCW 62A.7-204((+)). Any contrary provision((s shall be)) is ineffective.

Sec. 303. RCW 62A.7-203 and 1965 ex.s. c 157 s 7-203 are each amended to read as follows:

LIABILITY FOR NONRECEIPT OR MISDESCRIPTION. A party to or purchaser for value in good faith of a document of title, other than a bill of lading ((relying in either case)), that relies upon the description ((therein)) of the goods in the document may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that:

(1) The document conspicuously indicates that the issuer does not know whether ((any)) all or part ((of all)) of the goods in fact were received or conform to the description, such as ((where)) a case in which the description is in terms of marks or labels or kind, quantity, or condition, or the receipt or description is qualified by "contents, condition, and quality unknown," "said to contain," or ((the like)) words of similar import, if ((such)) the indication ((be)) is true((:)); or
(2) The party or purchaser otherwise has notice of the nonreceipt or misdescription.

Sec. 304. RCW 62A.7-204 and 2011 c 336 s 828 are each amended to read as follows:

DUTY OF CARE; CONTRACTUAL LIMITATION OF WAREHOUSE'S ((OPERATOR'S)) LIABILITY. ~~((1))~~ (a) A warehouse ((operator)) is liable for damages for loss of or injury to the goods caused by ((his or her)) its failure to exercise ((such)) care ((it)) with regard to ((them as)) the goods that a reasonably careful person would exercise under ((like)) similar circumstances ((but)), Unless otherwise agreed ((he or she)), the warehouse is not liable for damages ((which)) that could not have been avoided by the exercise of ((such)) that care.

~~((2)) (b) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage (, and setting forth a specific liability per article or item, or value per unit of weight,) beyond which the warehouse ((operator shall not be)) is not liable (, provided, however, that such liability may on written). Such a limitation is not effective with respect to the warehouse's liability for conversion to its own use. On request of the bailor in a record at the time of signing ((such)) the storage agreement or within a reasonable time after receipt of the warehouse receipt, the warehouse's liability may be increased on part or all of the goods ((thereunder, in which)) covered by the storage agreement or the warehouse receipt. In this event, increased rates may be charged based on ((such)) an increased valuation (, but that no such increase shall be permitted contrary to a lawful limitation of liability contained in the warehouse operator's tariff, if any. No such limitation is effective with respect to the warehouse operator's liability for conversion to his or her own use) of the goods.~~

~~((3)) (c) Reasonable provisions as to the time and manner of presenting claims and ((instituting)) commencing actions based on the bailment may be included in the warehouse receipt or ((tariff)) storage agreement.~~

~~((4)) (d) This section does not ((impair or repeal the duties of care or liabilities or penalties for breach thereof as provided in)) modify or repeal the provisions of chapters 22.09 and 22.32 RCW.~~

Sec. 305. RCW 62A.7-205 and 2011 c 336 s 829 are each amended to read as follows:

TITLE UNDER WAREHOUSE RECEIPT DEFEATED IN CERTAIN CASES. A buyer in ((the)) ordinary course of business of fungible goods sold and delivered by a warehouse ((operator who)) that is also in the business of buying and selling such goods takes the goods free of any claim under a warehouse receipt even ((though it)) if the receipt is negotiable and has been duly negotiated.

Sec. 306. RCW 62A.7-206 and 2011 c 336 s 830 are each amended to read as follows:

TERMINATION OF STORAGE AT ((WAREHOUSE OPERATOR'S)) WAREHOUSE'S OPTION. ~~((4)) (a) A warehouse ((operator may on notifying)), by giving notice to the person on whose account the goods are held and any other person known to claim an interest in the goods, may require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document((,)) of title or, if ((no)) a period is not fixed, within a stated period not less than thirty days after the ((notification)) warehouse gives notice. If the goods are not removed before the date specified in the ((notification)) notice, the warehouse ((operator)) may sell them ((in accordance with the provisions of the section on enforcement of a warehouse operator's lien)) pursuant to RCW 62A.7-210((,)).~~

~~((2)) (b) If a warehouse ((operator)) in good faith believes that ((the)) goods are about to deteriorate or decline in value to less than the amount of ((his or her)) its lien within the time ((prescribed)) provided in subsection ((4)) (a) of this section ((for notification, advertisement, and sale)) and RCW 62A.7-210, the warehouse ((operator)) may specify in the ((notification)) notice given under subsection (a) of this section any reasonable shorter time for removal of the goods and ((in case)), if the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.~~

~~((3)) (c) If, as a result of a quality or condition of the goods of which the warehouse ((operator had no)) did not have notice at the time of deposit, the goods are a hazard to other property ((or to)), the warehouse facilities, or ((to)) other persons, the warehouse ((operator)) may sell the goods at public or private sale without advertisement or posting on reasonable notification to all persons known to claim an interest in the goods. If the warehouse ((operator)), after a reasonable effort, is unable to sell the goods ((he~~

~~or she)), it may dispose of them in any lawful manner and ((shall)) does not incur ((no)) liability by reason of ((such)) that disposition.~~

~~((4)) (d) The warehouse ((operator must)) shall deliver the goods to any person entitled to them under this Article upon due demand made at any time ((prior to)) before sale or other disposition under this section.~~

~~((5)) (e) The warehouse ((operator)) may satisfy ((his or her)) its lien from the proceeds of any sale or disposition under this section but ((must)) shall hold the balance for delivery on the demand of any person to ((whom he or she)) which the warehouse would have been bound to deliver the goods.~~

Sec. 307. RCW 62A.7-207 and 2011 c 336 s 831 are each amended to read as follows:

GOODS MUST BE KEPT SEPARATE; FUNGIBLE GOODS. ~~((4)) (a) Unless the warehouse receipt provides otherwise ((provides)), a warehouse ((operator must)) shall keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods ((except that)). However, different lots of fungible goods may be commingled.~~

~~((2)) (b) If different lots of fungible goods ((so)) are commingled, the goods are owned in common by the persons entitled thereto and the warehouse ((operator)) is severally liable to each owner for that owner's share. ((Where)) If because of over-issue, a mass of fungible goods is insufficient to meet all the claims ((which)) the warehouse ((operator)) has issued against it, the persons entitled include all holders to ((whom)) which overissued receipts have been duly negotiated.~~

Sec. 308. RCW 62A.7-208 and 1965 ex.s. c 157 s 7-208 are each amended to read as follows:

ALTERED WAREHOUSE RECEIPTS. ~~((Where)) If a blank in a negotiable tangible warehouse receipt has been filled in without authority, a good-faith purchaser for value and without notice of the ((want)) lack of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any tangible or electronic warehouse receipt enforceable against the issuer according to its original tenor.~~

Sec. 309. RCW 62A.7-209 and 2011 c 336 s 832 are each amended to read as follows:

LIEN OF WAREHOUSE ((OPERATOR)). ~~((4)) (a) A warehouse ((operator)) has a lien against the bailor on the goods covered by a warehouse receipt or storage agreement or on the proceeds thereof in ((his or her)) its possession for charges for storage or transportation ((,)) including demurrage and terminal charges((,)), insurance, labor, or other charges, present or future, in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for ((like)) similar charges or expenses in relation to other goods whenever deposited and it is stated in the warehouse receipt or storage agreement that a lien is claimed for charges and expenses in relation to other goods, the warehouse ((operator)) also has a lien against ((him or her)) the goods covered by the warehouse receipt or storage agreement or on the proceeds thereof in its possession for ((such)) those charges and expenses, whether or not the other goods have been delivered by the warehouse ((operator)). ((But)) However, as against a person to ((whom)) which a negotiable warehouse receipt is duly negotiated, a ((warehouse operator's)) warehouse's lien is limited to charges in an amount or at a rate specified ((on)) in the warehouse receipt or, if no charges are so specified ((then)), to a reasonable charge for storage of the specific goods covered by the receipt subsequent to the date of the receipt. A ((warehouse operator's)) warehouse's lien as provided in this chapter takes priority over all other liens and perfected or unperfected security interests.~~

~~((2)) (b) The warehouse ((operator)) may also reserve a security interest against the bailor for ((a)) the maximum amount specified on the receipt for charges other than those specified in subsection ((4))~~

(a) of this section, such as for money advanced and interest. ~~((Such a))~~ The security interest is governed by ~~((the Article on Secured Transactions (Article 9)))~~ Article 9A of this title.

~~((3))~~ (c) A ~~((warehouse operator's))~~ warehouse's lien for charges and expenses under subsection ~~((4))~~ (a) of this section or a security interest under subsection ~~((2))~~ (b) of this section is also effective against any person ~~((who))~~ that so entrusted the bailor with possession of the goods that a pledge of them by ~~((him or her))~~ the bailor to a good-faith purchaser for value would have been valid ~~((but is not effective against a person as to whom the document confers no right in the goods covered by it under RCW 62A.7-503)).~~

~~((4))~~ A warehouse operator loses his or her lien on any goods which he or she voluntarily delivers or which he or she However, the lien or security interest is not effective against a person that before issuance of a document of title had a legal interest or a perfected security interest in the goods and that did not:

(1) Deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with:

(A) Actual or apparent authority to ship, store, or sell;

(B) Power to obtain delivery under RCW 62A.7-403; or

(C) Power of disposition under RCW 62A.2-403, 62A.2A-304(2), 62A.2A-305(2), 62A.9A-320, or 62A.9A-321(c) or other statute or rule of law;

(2) Acquiesce in the procurement by the bailor or its nominee of any document.

(d) A warehouse's lien on household goods for charges and expenses in relation to the goods under subsection (a) of this section is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. In this subsection, "household goods" means furniture, furnishings, or personal effects used by the depositor in a dwelling.

(e) A warehouse loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

Sec. 310. RCW 62A.7-210 and 2011 c 336 s 833 are each amended to read as follows:

ENFORCEMENT OF WAREHOUSE ~~((OPERATOR'S))~~ LIEN.

~~((4))~~ (a) Except as otherwise provided in subsection ~~((2))~~ (b) of this section, a ~~((warehouse operator's))~~ warehouse's lien may be enforced by public or private sale of the goods, in ~~((bulk))~~ bulk or in ~~((parcels))~~ packages, at any time or place and on any terms ~~((which))~~ that are commercially reasonable, after notifying all persons known to claim an interest in the goods. ~~((Such))~~ The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a ~~((different))~~ method different from that selected by the warehouse ~~((operator))~~ is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The warehouse sells in a commercially reasonable manner if the warehouse ~~((operator either))~~ sells the goods in the usual manner in any recognized market therefor, ~~((or if he or she))~~ sells at the price current in ~~((such))~~ that market at the time of ~~((his or her))~~ the sale, or ~~((if he or she has))~~ otherwise ~~((sold))~~ sells in conformity with commercially reasonable practices among dealers in the type of goods sold~~((, he or she has sold in a commercially reasonable manner))~~. A sale of more goods than apparently necessary to be offered to ~~((insure))~~ ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

~~((2))~~ (b) A warehouse ~~((operator's))~~ may enforce its lien on goods, other than goods stored by a merchant in the course of ~~((his or her))~~ its business ~~((may be enforced)),~~ only ~~((as follows))~~ if the following requirements are satisfied:

~~((a))~~ (1) All persons known to claim an interest in the goods must be notified.

~~((b))~~ (2) The notification must be delivered in person or sent by registered or certified letter to the last known address of any person to

be notified.

~~((c))~~ (2) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than ten days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

~~((d))~~ (3) The sale must conform to the terms of the notification.

~~((e))~~ (4) The sale must be held at the nearest suitable place to that where the goods are held or stored.

~~((f))~~ (5) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account ~~((they))~~ the goods are being held, and the time and place of the sale. The sale must take place at least fifteen days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least ten days before the sale in not ~~((less))~~ fewer than six conspicuous places in the neighborhood of the proposed sale.

~~((3))~~ (c) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred ~~((under))~~ in complying with this section. In that event, the goods ~~((must))~~ may not be sold, but must be retained by the warehouse ~~((operator))~~ subject to the terms of the receipt and this Article.

~~((4))~~ (d) A warehouse ~~((operator))~~ may buy at any public sale held pursuant to this section.

~~((5))~~ (e) A purchaser in good faith of goods sold to enforce a ~~((warehouse operator's))~~ warehouse's lien takes the goods free of any rights of persons against ~~((whom))~~ which the lien was valid, despite the warehouse's noncompliance ~~((by the warehouse operator))~~ with ~~((the requirements of))~~ this section.

~~((6))~~ (f) A warehouse ~~((operator))~~ may satisfy ~~((his or her))~~ its lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to ~~((whom he or she))~~ which the warehouse would have been bound to deliver the goods.

~~((7))~~ (g) The rights provided by this section ~~((shall be))~~ are in addition to all other rights allowed by law to a creditor against ~~((his or her))~~ a debtor.

~~((8))~~ (h) If a lien is on goods stored by a merchant in the course of ~~((his or her))~~ its business, the lien may be enforced in accordance with either subsection ~~((1) or (2))~~ (a) or (b) of this section.

~~((9))~~ (i) A warehouse ~~((operator))~~ is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

PART IV

AMENDMENTS TO UNIFORM COMMERCIAL CODE

ARTICLE 7

BILLS OF LADING: SPECIAL PROVISIONS

Sec. 401. RCW 62A.7-301 and 1965 ex.s. c 157 s 7-301 are each amended to read as follows:

LIABILITY FOR NONRECEIPT OR MISDESCRIPTION; "SAID TO CONTAIN"; "SHIPPER'S WEIGHT, LOAD, AND COUNT"; IMPROPER HANDLING. ~~((4))~~ (a) A consignee of a nonnegotiable bill ~~((who))~~ of lading which has given value in good

faith, or a holder to ~~((whom))~~ which a negotiable bill has been duly negotiated, relying ~~((in either case))~~ upon the description ~~((therein))~~ of the goods ~~((:))~~ in the bill or upon the date ~~((therein))~~ shown in the bill, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent that the ~~((document))~~ bill indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, such as ~~((where))~~ in a case in which the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by "contents or condition of contents of packages unknown," ~~((:))~~ "said to contain," ~~((:))~~ "shipper's weight, load, and count," or ~~((the like))~~ words of similar import, if ~~((such))~~ that indication ~~((be))~~ is true.

~~((2))~~ ~~(When)~~ (b) If goods are loaded by ~~((an))~~ the issuer ~~((who is a common carrier))~~ of a bill of lading:

(1) The issuer ~~((must))~~ shall count the packages of goods if ~~((package freight))~~ shipped in packages and ascertain the kind and quantity if shipped in bulk ~~((freight. In))~~; and

(2) Words ~~((eases))~~ as "shipper's weight, load, and count," or ~~((other))~~ words of similar import indicating that the description was made by the shipper are ineffective except as to ~~((freight))~~ goods concealed ~~((by))~~ in packages.

~~((3))~~ ~~(When)~~ (c) If bulk ~~((freight is))~~ goods are loaded by a shipper ~~((who))~~ that makes available to the issuer of a bill of lading adequate facilities for weighing ~~((such freight, an))~~ those goods, the issuer ~~((who is a common carrier must))~~ shall ascertain the kind and quantity within a reasonable time after receiving the ~~((written))~~ shipper's request ~~((of the shipper))~~ in a record to do so. ~~((In such cases))~~ In that case, "shipper's weight" or ~~((other))~~ words of ~~((like purpose))~~ similar import are ineffective.

~~((4))~~ (d) The issuer ~~((may))~~ of a bill of lading, by ~~((inserting))~~ including in the bill the words "shipper's weight, load, and count," or ~~((other))~~ words of ~~((like purpose))~~ similar import, may indicate that the goods were loaded by the shipper ~~((:))~~, and, if ~~((such))~~ that statement ~~((be))~~ is true, the issuer ~~((shall))~~ is not ~~((be))~~ liable for damages caused by the improper loading. ~~((But their))~~ However, omission of such words does not imply liability for ~~((such))~~ damages caused by improper loading.

~~((5))~~ (e) A shipper ~~((shall be deemed to have guaranteed to the))~~ guarantees to an issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition, and weight, as furnished by ~~((him))~~ the shipper, and the shipper shall indemnify the issuer against damage caused by inaccuracies in ~~((such))~~ those particulars. ~~((The))~~ This right of ~~((the issuer to such))~~ indemnity ~~((shall in no way))~~ does not limit ~~((his))~~ the issuer's responsibility ~~((and))~~ or liability under the contract of carriage to any person other than the shipper.

Sec. 402. RCW 62A.7-302 and 1965 ex.s. c 157 s 7-302 are each amended to read as follows:

THROUGH BILLS OF LADING AND SIMILAR DOCUMENTS OF TITLE. ~~((+))~~ (a) The issuer of a through bill of lading, or other document of title embodying an undertaking to be performed in part by ~~((persons))~~ a person acting as its agent ~~((s))~~ or by ~~((connecting carriers))~~ a performing carrier, is liable to ~~((anyone))~~ any person entitled to recover on the bill or other document for any breach by ~~((such other persons or by a connecting))~~ the other person or the performing carrier of its obligation under the bill or other document ~~((but))~~. However, to the extent that the bill or other document covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation, this liability for breach by the other person or the performing carrier may be varied by agreement of the parties.

~~((2))~~ ~~(Where)~~ (b) If goods covered by a through bill of lading or other document of title embodying an undertaking to be performed in part by ~~((persons))~~ a person other than the issuer are received by ~~((any such))~~ that person, ~~((he))~~ the person is subject, with respect to ~~((his))~~

its own performance while the goods are in ~~((his))~~ its possession, to the obligation of the issuer. ~~((His))~~ The person's obligation is discharged by delivery of the goods to another ~~((such))~~ person pursuant to the bill or other document ~~((:))~~ and does not include liability for breach by any other ~~((such))~~ person ~~((s))~~ or by the issuer.

~~((3))~~ (c) The issuer of ~~((such))~~ a through bill of lading or other document ~~((shall be))~~ of title described in subsection (a) of this section is entitled to recover from the ~~((connecting))~~ performing carrier, or ~~((such))~~ other person in possession of the goods when the breach of the obligation under the bill or other document occurred ~~((:))~~:

(1) The amount it may be required to pay to ~~((anyone))~~ any person entitled to recover on the bill or other document ~~((therefor))~~ for the breach, as may be evidenced by any receipt, judgment, or transcript ~~((thereof, and))~~ of judgment; and

(2) The amount of any expense reasonably incurred by ~~((it))~~ the issuer in defending any action ~~((brought))~~ commenced by ~~((anyone))~~ any person entitled to recover on the bill or other document ~~((therefor))~~ for the breach.

Sec. 403. RCW 62A.7-303 and 1965 ex.s. c 157 s 7-303 are each amended to read as follows:

DIVERSION; RECONSIGNMENT; CHANGE OF INSTRUMENTS. ~~((+))~~ (a) Unless the bill of lading otherwise provides, (the) a carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods, without liability for misdelivery, on instructions from:

~~((+))~~ (1) The holder of a negotiable bill; (or

~~((b))~~ (2) The consignor on a nonnegotiable bill ~~((notwithstanding))~~, even if the consignee has given contrary instructions ~~((from the consignee))~~; ~~((or~~

~~((e))~~ (3) The consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the tangible bill or in control of the electronic bill; or

~~((d))~~ (4) The consignee on a nonnegotiable bill, if ~~((he))~~ the consignee is entitled as against the consignor to dispose of ~~((them))~~ the goods.

~~((2))~~ (b) Unless ~~((such))~~ instructions described in subsection (a) of this section are ~~((noted on))~~ included in a negotiable bill of lading, a person to ~~((whom))~~ which the bill is duly negotiated ~~((can))~~ may hold the bailee according to the original terms.

Sec. 404. RCW 62A.7-304 and 1965 ex.s. c 157 s 7-304 are each amended to read as follows:

TANGIBLE BILLS OF LADING IN A SET. ~~((+))~~ (a) Except ~~((where))~~ as customary in ~~((overseas))~~ international transportation, a tangible bill of lading ~~((must))~~ may not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

~~((2))~~ ~~(Where)~~ (b) If a tangible bill of lading is lawfully ~~((drawn))~~ issued in a set of parts, each of which ~~((is numbered))~~ contains an identification code and is expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitutes one bill.

~~((3))~~ ~~(Where)~~ (c) If a tangible negotiable bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to ~~((whom))~~ which the first due negotiation is made prevails as to both the document of title and the goods even ~~((though))~~ if any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by ~~((surrender of his))~~ surrendering its part.

~~((4))~~ ~~(Any)~~ (d) A person ~~((who))~~ that negotiates or transfers a single part of a tangible bill of lading ~~((drawn))~~ issued in a set is liable to holders of that part as if it were the whole set.

~~((5))~~ (e) The bailee ~~((is obliged to))~~ shall deliver in accordance with ~~((Part 4 of this Article))~~ RCW 62A.7-401 through 62A.7-404 against the first presented part of a tangible bill of lading lawfully

~~(drawn)~~ issued in a set. ~~(Such)~~ Delivery in this manner discharges the bailee's obligation on the whole bill.

Sec. 405. RCW 62A.7-305 and 1965 ex.s. c 157 s 7-305 are each amended to read as follows:

DESTINATION BILLS. ~~((+))~~ (a) Instead of issuing a bill of lading to the consignee at the place of shipment, a carrier ~~(may)~~, at the request of the consignee, may procure the bill to be issued at destination or at any other place designated in the request.

~~((2))~~ (b) Upon request of ~~(anyone)~~ any person entitled as against ~~(the)~~ a carrier to control the goods while in transit and on surrender of possession or control of any outstanding bill of lading or other receipt covering ~~(such)~~ the goods, the issuer, subject to RCW 62A.7-105, may procure a substitute bill to be issued at any place designated in the request.

Sec. 406. RCW 62A.7-307 and 1965 ex.s. c 157 s 7-307 are each amended to read as follows:

LIEN OF CARRIER. ~~((+))~~ (a) A carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges ~~(subsequent to)~~ after the date of ~~(its)~~ the carrier's receipt of the goods for storage or transportation ~~(6)~~, including demurrage and terminal charges~~(7)~~, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. ~~(But)~~ However, against a purchaser for value of a negotiable bill of lading, a carrier's lien is limited to charges stated in the bill or the applicable tariffs~~(8)~~ or, if no charges are stated ~~(then to)~~, a reasonable charge.

~~((2))~~ (b) A lien for charges and expenses under subsection ~~((+))~~ (a) of this section on goods ~~(which)~~ that the carrier was required by law to receive for transportation is effective against the consignee or any person entitled to the goods unless the carrier had notice that the consignee lacked authority to subject the goods to ~~(such)~~ those charges and expenses. Any other lien under subsection ~~((+))~~ (a) of this section is effective against the consignee and any person ~~(who)~~ that permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked ~~(such)~~ authority.

~~((3))~~ (c) A carrier loses ~~(his)~~ its lien on any goods ~~(which he)~~ that it voluntarily delivers or ~~(which he)~~ unjustifiably refuses to deliver.

Sec. 407. RCW 62A.7-308 and 1965 ex.s. c 157 s 7-308 are each amended to read as follows:

ENFORCEMENT OF CARRIER'S LIEN. ~~((+))~~ (a) A carrier's lien on goods may be enforced by public or private sale of the goods, in ~~(blo)~~ bulk or in ~~(parcels)~~ packages, at any time or place and on any terms ~~(which)~~ that are commercially reasonable, after notifying all persons known to claim an interest in the goods. ~~(Such)~~ The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different ~~(method)~~ from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The carrier sells goods in a commercially reasonable manner if the carrier ~~(either)~~ sells the goods in the usual manner in any recognized market therefor ~~(or if he)~~, sells at the price current in ~~(such)~~ that market at the time of ~~(his)~~ the sale, or ~~(if he has)~~ otherwise ~~(sold)~~ sells in conformity with commercially reasonable practices among dealers in the type of goods sold ~~(he has sold in a commercially reasonable manner)~~. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

~~((2))~~ (b) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred ~~(under)~~ in complying with this section. In that event, the goods ~~(must)~~ may not be

sold~~(3)~~ but must be retained by the carrier, subject to the terms of the bill of lading and this Article.

~~((3-The))~~ (c) A carrier may buy at any public sale pursuant to this section.

~~((4))~~ (d) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against ~~(whom)~~ which the lien was valid, despite the carrier's noncompliance ~~(by the carrier)~~ with ~~(the requirements of)~~ this section.

~~((5-The))~~ (e) A carrier may satisfy ~~(his)~~ its lien from the proceeds of any sale pursuant to this section but ~~(must)~~ shall hold the balance, if any, for delivery on demand to any person to ~~(whom he)~~ which the carrier would have been bound to deliver the goods.

~~((6))~~ (f) The rights provided by this section ~~(shall be)~~ are in addition to all other rights allowed by law to a creditor against ~~(his)~~ a debtor.

~~((7))~~ (g) A carrier's lien may be enforced ~~(in accordance with)~~ pursuant to either subsection ~~((+))~~ (a) of this section or the procedure set forth in ~~(subsection (2) of)~~ RCW 62A.7-210~~(b)~~.

~~((8-The))~~ (h) A carrier is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

Sec. 408. RCW 62A.7-309 and 2009 c 549 s 1017 are each amended to read as follows:

DUTY OF CARE; CONTRACTUAL LIMITATION OF CARRIER'S LIABILITY. Save as otherwise provided in RCW 81.29.010 and 81.29.020:

~~((+))~~ (a) A carrier ~~(who)~~ that issues a bill of lading, whether negotiable or nonnegotiable, ~~(must)~~ shall exercise the degree of care in relation to the goods which a reasonably careful person would exercise under ~~(like)~~ similar circumstances. This subsection does not affect any statute, regulation, or rule of law that imposes liability upon a common carrier for damages not caused by its negligence.

~~((2))~~ (b) Damages may be limited by a ~~(provision)~~ term in the bill of lading or in a transportation agreement that the carrier's liability ~~(shall)~~ may not exceed a value stated in the ~~(document)~~ bill of lading or transportation agreement if the carrier's rates are dependent upon value and the consignee ~~(by the carrier's tariff)~~ is afforded an opportunity to declare a higher value ~~(or a value as lawfully provided in the tariff, or where no tariff)~~ and the consignee is ~~(filed he or she is otherwise)~~ advised of ~~(such)~~ the opportunity~~(; but no)~~. However, such a limitation is not effective with respect to the carrier's liability for conversion to its own use.

~~((3))~~ (c) Reasonable provisions as to the time and manner of presenting claims and ~~(instituting)~~ commencing actions based on the shipment may be included in a bill of lading or ~~(tariff)~~ a transportation agreement.

PART V

AMENDMENTS TO UNIFORM COMMERCIAL CODE

ARTICLE 7

WAREHOUSE RECEIPTS AND BILLS OF LADING:

GENERAL OBLIGATIONS

Sec. 501. RCW 62A.7-401 and 2011 c 336 s 834 are each amended to read as follows:

IRREGULARITIES IN ISSUE OF RECEIPT OR BILL OR CONDUCT OF ISSUER. The obligations imposed by this Article on an issuer apply to a document of title ~~(regardless of the fact that)~~ even if:

~~((a))~~ (1) The document ~~((may))~~ does not comply with the requirements of this Article or of any other ~~((law))~~ statute, rule, or regulation regarding its ~~((issue))~~ issuance, form, or content; ~~((b))~~ (2) The issuer ~~((may have))~~ violated laws regulating the conduct of ~~((his or her))~~ its business; ~~((c))~~ (3) The goods covered by the document were owned by the bailee ~~((at the time))~~ when the document was issued; or

~~((d))~~ (4) The person issuing the document ~~((does not come within the definition of warehouse operator if it))~~ is not a warehouse but the document purports to be a warehouse receipt.

Sec. 502. RCW 62A.7-402 and 1965 ex.s. c 157 s 7-402 are each amended to read as follows:

DUPLICATE ~~((RECEIPT OR BILL))~~ DOCUMENT OF TITLE; OVERISSUANCE. ~~((Neither))~~ A duplicate ~~((or))~~ or any other document of title purporting to cover goods already represented by an outstanding document of the same issuer does not confer(s) any right in the goods, except as provided in the case of tangible bills of lading in a set of parts, overissue of documents for fungible goods ~~((and))~~, substitutes for lost, stolen, or destroyed documents, or substitute documents issued pursuant to RCW 62A.7-105. ~~((But))~~ The issuer is liable for damages caused by ~~((his))~~ its overissue or failure to identify a duplicate document ~~((as such))~~ by a conspicuous notation ~~((on its face)).~~

Sec. 503. RCW 62A.7-403 and 2011 c 336 s 835 are each amended to read as follows:

OBLIGATION OF ~~((WAREHOUSE OPERATOR OR CARRIER))~~ BAILEE TO DELIVER; EXCUSE. ~~((1-The))~~ (a) A bailee ~~((must))~~ shall deliver the goods to a person entitled under ~~((the))~~ a document ~~((who))~~ of title if the person complies with subsections ~~((2) and (3))~~ (b) and (c) of this section, unless and to the extent that the bailee establishes any of the following:

~~((a))~~ (1) Delivery of the goods to a person whose receipt was rightful as against the claimant;

~~((b))~~ (2) Damage to or delay, loss, or destruction of the goods for which the bailee is not liable;

~~((c))~~ (3) Previous sale or other disposition of the goods in lawful enforcement of a lien or on ~~((warehouse operator's))~~ a warehouse's lawful termination of storage;

~~((d))~~ (4) The exercise by a seller of ~~((his or her))~~ its right to stop delivery pursuant to ~~((the provisions of the Article on Sales))~~ RCW 62A.2-705(3) or by a lessor of its right to stop delivery pursuant to RCW 62A.2A-526;

~~((e))~~ (5) A diversion, reconignment, or other disposition pursuant to ~~((the provisions of this Article))~~ RCW 62A.7-303(1) or tariff regulating such right);

~~((f))~~ (6) Release, satisfaction, or any other ~~((fact affording a))~~ personal defense against the claimant; or

~~((g))~~ (7) Any other lawful excuse.

~~((2))~~ (b) A person claiming goods covered by a document of title ~~((must))~~ shall satisfy the bailee's lien ~~((where))~~ if the bailee so requests or ~~((where))~~ if the bailee is prohibited by law from delivering the goods until the charges are paid.

~~((3))~~ (c) Unless ~~((the))~~ a person claiming the goods is ~~((one))~~ a person against ~~((whom))~~ which the document ~~((confers no))~~ of title does not confer a right under RCW 62A.7-503(1), ~~((he or she must surrender for cancellation or notation of partial deliveries any outstanding negotiable document covering the goods, and))~~ (a):

(1) The person claiming under a document shall surrender possession or control of any outstanding negotiable document covering the goods for cancellation or indication of partial deliveries; and

(2) The bailee ~~((must))~~ shall cancel the document or conspicuously ~~((note))~~ indicate in the document the partial delivery ~~((thereon or be))~~ or the bailee is liable to any person to ~~((whom))~~ which the document is duly negotiated.

~~((4))~~ "Person entitled under the document" means holder in the case of a negotiable document, or the person to whom delivery is to be made by the terms of or pursuant to written instructions under a nonnegotiable document.)

Sec. 504. RCW 62A.7-404 and 1965 ex.s. c 157 s 7-404 are each amended to read as follows:

NO LIABILITY FOR GOOD-FAITH DELIVERY PURSUANT TO ~~((RECEIPT OR BILL))~~ DOCUMENT OF TITLE. A bailee ~~((who in))~~ that in good faith ~~((including observance of reasonable commercial standards))~~ has received goods and delivered or otherwise disposed of ~~((them))~~ the goods according to the terms of ~~((the))~~ a document of title or pursuant to this Article is not liable ~~((therefor. This rule applies even though))~~ for the goods even if:

(1) The person from ~~((whom he))~~ which the bailee received the goods ~~((had no))~~ did not have authority to procure the document or to dispose of the goods ~~((and even though)); or~~

(2) The person to ~~((whom he))~~ which the bailee delivered the goods ~~((had no))~~ did not have authority to receive ~~((them))~~ the goods.

PART VI

AMENDMENTS TO UNIFORM COMMERCIAL CODE

ARTICLE 7

WAREHOUSE RECEIPTS AND BILLS OF LADING:

NEGOTIATION AND TRANSFER

Sec. 601. RCW 62A.7-501 and 1965 ex.s. c 157 s 7-501 are each amended to read as follows:

FORM OF NEGOTIATION AND REQUIREMENTS OF ~~((2))~~DUE NEGOTIATION~~((2))~~. ~~((4))~~ (a) The following rules apply to a negotiable tangible document of title ~~((running))~~:

(1) If the document's original terms run to the order of a named person, the document is negotiated by ~~((his))~~ the named person's indorsement and delivery. After ~~((his))~~ the named person's indorsement in blank or to bearer, any person ~~((can))~~ may negotiate ~~((it))~~ the document by delivery alone.

(2)~~((a))~~ A negotiable document of title is also negotiated by delivery alone when by its original terms it runs to bearer;

(b) when a document running) If the document's original terms run to bearer, it is negotiated by delivery alone.

(3) If the document's original terms run to the order of a named person and it is delivered to ~~((him))~~ the named person, the effect is the same as if the document had been negotiated.

~~((3))~~ (4) Negotiation of ~~((a negotiable))~~ the document ~~((of title))~~ after it has been indorsed to a ~~((specified))~~ named person requires indorsement by the ~~((special indorsee as well as))~~ named person and delivery.

~~((4))~~ (5) A ~~((negotiable))~~ document ~~((of title))~~ is ~~((2))~~ duly negotiated~~((when))~~ if it is negotiated in the manner stated in this ~~((section))~~ subsection to a holder ~~((who))~~ that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a ~~((money))~~ monetary obligation.

~~((5))~~ (b) The following rules apply to a negotiable electronic document of title:

(1) If the document's original terms run to the order of a named person or to bearer, the document is negotiated by delivery of the document to another person. Indorsement by the named person is not required to negotiate the document.

(2) If the document's original terms run to the order of a named

person and the named person has control of the document, the effect is the same as if the document had been negotiated.

(3) A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves taking delivery of the document in settlement or payment of a monetary obligation.

(c) Indorsement of a nonnegotiable document of title neither makes it negotiable nor adds to the transferee's rights.

~~((6))~~ (d) The naming in a negotiable bill of lading of a person to be notified of the arrival of the goods does not limit the negotiability of the bill ~~((not))~~ or constitute notice to a purchaser ~~((thereof))~~ of the bill of any interest of ~~((such))~~ that person in the goods.

Sec. 602. RCW 62A.7-502 and 1965 ex.s. c 157 s 7-502 are each amended to read as follows:

RIGHTS ACQUIRED BY DUE NEGOTIATION. ~~((4))~~ (a) Subject to ~~((the following section and to the provisions of))~~ RCW 62A.7-205 ~~((on fungible goods))~~ and 62A.7-503, a holder to ~~((whom))~~ which a negotiable document of title has been duly negotiated acquires thereby:

~~((a))~~ (1) Title to the document;

~~((b))~~ (2) Title to the goods;

~~((c))~~ (3) All rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

~~((d))~~ (4) The direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by ~~((him))~~ the issuer except those arising under the terms of the document or under this Article~~(:)~~, but in the case of a delivery order, the bailee's obligation accrues only upon the bailee's acceptance of the delivery order and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

~~((2))~~ (b) Subject to ~~((the following section))~~ RCW 62A.7-503, title and rights ~~((so))~~ acquired by due negotiation are not defeated by any stoppage of the goods represented by the document of title or by surrender of ~~((such))~~ the goods by the bailee~~(:)~~ and are not impaired even ~~((though))~~ if:

(1) The due negotiation or any prior due negotiation constituted a breach of duty ~~((or even though))~~;

(2) Any person has been deprived of possession of ~~((the))~~ a negotiable tangible document or control of a negotiable electronic document by misrepresentation, fraud, accident, mistake, duress, loss, theft, or conversion~~(:)~~; or ~~((even though))~~

(3) A previous sale or other transfer of the goods or document has been made to a third person.

Sec. 603. RCW 62A.7-503 and 2000 c 250 s 9A-814 are each amended to read as follows:

DOCUMENT OF TITLE TO GOODS DEFEATED IN CERTAIN CASES. ~~((4))~~ (a) A document of title confers no right in goods against a person ~~((who))~~ that before issuance of the document had a legal interest or a perfected security interest in ~~((them and who neither))~~ the goods and that did not:

~~((a delivered or entrusted them))~~ (1) Deliver or entrust the goods or any document of title covering ~~((them))~~ the goods to the bailor or ~~((his))~~ the bailor's nominee with:

(A) Actual or apparent authority to ship, store, or sell ~~((or with))~~;

(B) Power to obtain delivery under ~~((this Article))~~ RCW 62A.7-403~~(:)~~; or ~~((with))~~

(C) Power of disposition under ~~((this Title))~~ RCW 62A.2-403 ~~((and 62A.9A-320))~~, 62A.2A-304(2), 62A.2A-305(2), 62A.9A-320, or 62A.9A-321(c) or other statute or rule of law; ~~((not))~~ or

~~((b acquiesced))~~ (2) Acquire in the procurement by the bailor or ~~((his))~~ its nominee of any document ~~((of title))~~.

~~((2))~~ (b) Title to goods based upon an unaccepted delivery order is subject to the rights of ~~((anyone to whom))~~ any person to which a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. ~~((Such a))~~ That title may be defeated under ~~((the next section))~~ RCW 62A.7-504 to the same extent as the rights of the issuer or a transferee from the issuer.

~~((3))~~ (c) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of ~~((anyone to whom))~~ any person to which a bill issued by the freight forwarder is duly negotiated~~((but))~~. However, delivery by the carrier in accordance with ~~((Part 4 of this Article))~~ RCW 62A.7-401 through 62A.7-404 pursuant to its own bill of lading discharges the carrier's obligation to deliver.

Sec. 604. RCW 62A.7-504 and 1965 ex.s. c 157 s 7-504 are each amended to read as follows:

RIGHTS ACQUIRED IN ~~((THE))~~ ABSENCE OF DUE NEGOTIATION; EFFECT OF DIVERSION; ~~((SELLER'S))~~ STOPPAGE OF DELIVERY. ~~((4))~~ (a) A transferee of a document of title, whether negotiable or nonnegotiable, to ~~((whom))~~ which the document has been delivered but not duly negotiated, acquires the title and rights ~~((which his))~~ that its transferor had or had actual authority to convey.

~~((2))~~ (b) In the case of a transfer of a nonnegotiable document of title, until but not after the bailee receives ~~((notification))~~ notice of the transfer, the rights of the transferee may be defeated:

~~((a))~~ (1) By those creditors of the transferor ~~((who))~~ which could treat the ~~((sale))~~ transfer as void under RCW ~~((62A.7-402; or))~~ 62A.2-402 or 62A.2A-308;

~~((b))~~ (2) By a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of ~~((his))~~ the buyer's rights; ~~((or))~~ ~~((c))~~ (3) By a lessee from the transferor in ordinary course of business if the bailee has delivered the goods to the lessee or received notification of the lessee's rights; or

(4) As against the bailee, by good-faith dealings of the bailee with the transferor.

~~((3))~~ (c) A diversion or other change of shipping instructions by the consignor in a nonnegotiable bill of lading which causes the bailee not to deliver the goods to the consignee defeats the consignee's title to the goods if ~~((they))~~ the goods have been delivered to a buyer in ordinary course of business or a lessee in ordinary course of business and, in any event, defeats the consignee's rights against the bailee.

~~((4))~~ (d) Delivery of the goods pursuant to a nonnegotiable document of title may be stopped by a seller under RCW 62A.2-705~~(, and)~~ or a lessor under RCW 62A.2A-526, subject to the requirements of due notification ~~((there provided))~~ in those statutes. A bailee ~~((honoring))~~ that honors the seller's or lessor's instructions is entitled to be indemnified by the seller or lessor against any resulting loss or expense.

Sec. 605. RCW 62A.7-505 and 1965 ex.s. c 157 s 7-505 are each amended to read as follows:

INDORSER NOT ~~((A))~~ GUARANTOR FOR OTHER PARTIES. The indorsement of a tangible document of title issued by a bailee does not make the indorser liable for any default by the bailee or ~~((by))~~ previous indorsers.

Sec. 606. RCW 62A.7-506 and 1965 ex.s. c 157 s 7-506 are each amended to read as follows:

DELIVERY WITHOUT INDORSEMENT: RIGHT TO COMPEL INDORSEMENT. The transferee of a negotiable tangible document of title has a specifically enforceable right to have ~~((his))~~ its transferor supply any necessary indorsement, but the transfer becomes a negotiation only as of the time the indorsement is supplied.

Sec. 607. RCW 62A.7-507 and 1965 ex.s. c 157 s 7-507 are each amended to read as follows:

WARRANTIES ON NEGOTIATION OR ~~((TRANSFER OF RECEIPT OR BILL))~~ DELIVERY OF DOCUMENT OF TITLE.

~~((Where))~~ If a person negotiates or ~~((transfers))~~ delivers a document of title for value, otherwise than as a mere intermediary under ~~((the next following section, then))~~ RCW 62A.7-508, unless otherwise agreed ~~((he warrants to his immediate purchaser only)),~~ the transferor, in addition to any warranty made in selling or leasing the goods, warrants to its immediate purchaser only that:

~~((a—that))~~ (1) The document is genuine; ~~((and —(b) that he has no))~~ (2) The transferor does not have knowledge of any fact ~~((which))~~ that would impair ((its)) the document's validity or worth; and

~~((e—that his))~~ (3) The negotiation or ((transfer)) delivery is rightful and fully effective with respect to the title to the document and the goods it represents.

Sec. 608. RCW 62A.7-508 and 1965 ex.s. c 157 s 7-508 are each amended to read as follows:

WARRANTIES OF COLLECTING BANK AS TO DOCUMENTS OF TITLE. A collecting bank or other intermediary known to be entrusted with documents of title on behalf of another or with collection of a draft or other claim against delivery of documents warrants by ~~((such))~~ the delivery of the documents only its own good faith and authority~~((—This rule applies))~~ even ~~((though))~~ if the collecting bank or other intermediary has purchased or made advances against the claim or draft to be collected.

Sec. 609. RCW 62A.7-509 and 1965 ex.s. c 157 s 7-509 are each amended to read as follows:

~~((RECEIPT OR BILL: WHEN))~~ ADEQUATE COMPLIANCE WITH COMMERCIAL CONTRACT. ~~((The question))~~ Whether a document of title is adequate to fulfill the obligations of a contract for sale, a contract for lease, or the conditions of a letter of credit is ((governed by the Articles on Sales (Article 2) and on Letters of Credit (Article 5))) determined by Article 2, 2A, or 5 of this title.

PART VII

AMENDMENTS TO UNIFORM COMMERCIAL CODE

ARTICLE 7

WAREHOUSE RECEIPTS AND BILLS OF LADING:

MISCELLANEOUS PROVISIONS

Sec. 701. RCW 62A.7-601 and 1965 ex.s. c 157 s 7-601 are each amended to read as follows:

~~((AND MISSING)),~~ STOLEN, OR DESTROYED DOCUMENTS OF TITLE. ~~((+))~~ (a) If a document ~~((has been))~~ of title is lost, stolen, or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with ((such)) the order. If the document was negotiable ((the claimant must post security approved by the)), a court ((to indemnify)) may not order delivery of the goods or issuance of a substitute document without the claimant's posting security unless it finds that any person ~~((who))~~ that may suffer loss as a result of nonsurrender of possession or control of the document is adequately protected against the loss. If the document was ~~((not negotiable, such))~~ nonnegotiable, the court may require security ((may be required at the discretion of the court)). The court may also ~~((in its discretion))~~ order payment of the bailee's reasonable costs and ((counsel)) attorneys' fees in any action under this subsection.

~~((2))~~ (b) A bailee ~~((who))~~ that, without a court order, delivers goods to a person claiming under a missing negotiable document of title is liable to any person injured thereby~~((, and)).~~ If the delivery is not in good faith ((becomes)), the bailee is liable for conversion. Delivery in good faith is not conversion if ((made in accordance with a filed classification or tariff or, where no classification or tariff is

filed, if)) the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery ((who)) which files a notice of claim within one year after the delivery.

Sec. 702. RCW 62A.7-602 and 1965 ex.s. c 157 s 7-602 are each amended to read as follows:

~~((ATTACHMENT OF))~~ JUDICIAL PROCESS AGAINST GOODS COVERED BY ((A)) NEGOTIABLE DOCUMENT OF TITLE. ~~((Except where the))~~ Unless a document of title was originally issued upon delivery of the goods by a person ((who had no)) that did not have power to dispose of them, ((no)) a lien ((attaches)) does not attach by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless possession or control of the document ((be)) is first surrendered to the bailee or ((its)) the document's negotiation is enjoined~~((, and)).~~ The bailee ((shall)) may not be compelled to deliver the goods pursuant to process until possession or control of the document is surrendered to ((him or impounded by)) the bailee or to the court. ((One who purchases)) A purchaser of the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

Sec. 703. RCW 62A.7-603 and 1965 ex.s. c 157 s 7-603 are each amended to read as follows:

CONFLICTING CLAIMS; INTERPLEADER. If more than one person claims title to or possession of the goods, the bailee is excused from delivery until ~~((he))~~ the bailee has ((had)) a reasonable time to ascertain the validity of the adverse claims or to ((bring an action to compel all claimants to interplead and may compel such)) commence an action for interpleader. The bailee may assert an interpleader~~((;))~~ either in defending an action for nondelivery of the goods~~((;))~~ or by original action~~((, whichever is appropriate)).~~

PART VIII

AMENDMENTS TO UNIFORM COMMERCIAL CODE

ARTICLE 2

Sec. 801. RCW 62A.2-103 and 2000 c 250 s 9A-803 are each amended to read as follows:

DEFINITIONS AND INDEX OF DEFINITIONS. (1) In this Article unless the context otherwise requires:

- (a) "Buyer" means a person who buys or contracts to buy goods.
- (b) ("Good faith" in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.) [Reserved.]
- (c) "Receipt" of goods means taking physical possession of them.
- (d) "Seller" means a person who sells or contracts to sell goods.

(2) Other definitions applying to this Article or to specified Parts thereof, and the sections in which they appear are:

"Acceptance."	RCW 62A.2-606.
"Banker's credit."	RCW 62A.2-325.
"Between merchants."	RCW 62A.2-104.
"Cancellation."	RCW 62A.2-106(4).
"Commercial unit."	RCW 62A.2-105.
"Confirmed credit."	RCW 62A.2-325.

"Conforming to contract."	RCW 62A.2-106.
"Contract for sale."	RCW 62A.2-106.
"Cover."	RCW 62A.2-712.
"Entrusting."	RCW 62A.2-403.
"Financing agency."	RCW 62A.2-104.
"Future goods."	RCW 62A.2-105.
"Goods."	RCW 62A.2-105.
"Identification."	RCW 62A.2-501.
"Installment contract."	RCW 62A.2-612.
"Letter of credit."	RCW 62A.2-325.
"Lot."	RCW 62A.2-105.
"Merchant."	RCW 62A.2-104.
"Overseas."	RCW 62A.2-323.
"Person in position of seller."	RCW 62A.2-707.
"Present sale."	RCW 62A.2-106.
"Sale."	RCW 62A.2-106.
"Sale on approval."	RCW 62A.2-326.
"Sale or return."	RCW 62A.2-326.
"Termination."	RCW 62A.2-106.

(3) "Control" as provided in RCW 62A.7-106 and the following definitions in other articles apply to this Article:

"Check."	RCW 62A.3-104.
"Consignee."	RCW 62A.7-102.
"Consignor."	RCW 62A.7-102.
"Consumer goods."	RCW 62A.9A-102.
"Dishonor."	RCW 62A.3-502.
"Draft."	RCW 62A.3-104.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

Sec. 802. RCW 62A.2-104 and 1965 ex.s. c 157 s 2-104 are each amended to read as follows:

DEFINITIONS: "MERCHANT"; "BETWEEN MERCHANTS"; "FINANCING AGENCY;"((s)) (1) "Merchant" means a person who deals in goods of the kind or otherwise by his or her occupation holds himself or herself out as having knowledge or

skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his or her employment of an agent or broker or other intermediary who by his or her occupation holds himself or herself out as having such knowledge or skill.

(2) "Financing agency" means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany or are associated with the draft. "Financing agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (RCW 62A.2-707).

(3) "Between merchants" means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

Sec. 803. RCW 62A.2-202 and 1965 ex.s. c 157 s 2-202 are each amended to read as follows:

FINAL WRITTEN EXPRESSION: PAROL OR EXTRINSIC EVIDENCE. Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented;

(a) By course of performance, course of dealing, or usage of trade ~~((RCW 62A.1-205) or by course of performance (RCW 62A.2-208))~~ (RCW 62A.1-303); and

(b) By evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

Sec. 804. RCW 62A.2-310 and 1965 ex.s. c 157 s 2-310 are each amended to read as follows:

OPEN TIME FOR PAYMENT OR RUNNING OF CREDIT; AUTHORITY TO SHIP UNDER RESERVATION. Unless otherwise agreed;

(a) Payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; and

(b) If the seller is authorized to send the goods he or she may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (RCW 62A.2-513); and

(c) If delivery is authorized and made by way of documents of title otherwise than by subsection (b) of this section then payment is due regardless of where the goods are to be received (i) at the time and place at which the buyer is to receive delivery of the tangible documents ((regardless of where the goods are to be received)) or (ii) at the time the buyer is to receive delivery of the electronic documents and at the seller's place of business or if none, the seller's residence; and

(d) Where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but post-dating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period.

Sec. 805. RCW 62A.2-323 and 1965 ex.s. c 157 s 2-323 are each amended to read as follows:

FORM OF BILL OF LADING REQUIRED IN OVERSEAS SHIPMENT; "OVERSEAS." (1) Where the contract contemplates overseas shipment and contains a term C.I.F. or C.&F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill

of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C.&F., received for shipment.

(2) Where in a case within subsection (1) of this section a tangible bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set:

(a) Due tender of a single part is acceptable within the provisions of this Article on cure of improper delivery (~~((subsection (1) of))~~) RCW 62A.2-508(1); and

(b) Even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.

(3) A shipment by water or by air or a contract contemplating such shipment is "overseas" insofar as by usage of trade or agreement it is subject to the commercial, financing or shipping practices characteristic of international deep water commerce.

Sec. 806. RCW 62A.2-401 and 1965 ex.s. c 157 s 2-401 are each amended to read as follows:

PASSING OF TITLE; RESERVATION FOR SECURITY; LIMITED APPLICATION OF THIS SECTION. Each provision of this Article with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this Article and matters concerning title become material the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (RCW 62A.2-501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this title. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the Article on Secured Transactions Article 9A, title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his or her performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading:

(a) If the contract requires or authorizes the seller to send the goods to the buyer but does not require him or her to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) If the contract requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods(;-):

(a) If the seller is to deliver a tangible document of title, title passes at the time when and the place where he or she delivers such documents and if the seller is to deliver an electronic document of title, title passes when the seller delivers the document; or

(b) If the goods are at the time of contracting already identified and no documents of title are to be delivered, title passes at the time and place of contracting.

(4) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance revests title to the goods in the seller. Such revesting occurs by operation of law and is not a "sale_((-))"

Sec. 807. RCW 62A.2-503 and 1965 ex.s. c 157 s 2-503 are each amended to read as follows:

MANNER OF SELLER'S TENDER OF DELIVERY. (1) Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him or her to take delivery. The manner, time and place for tender are determined by the agreement and this Article, and in particular:

(a) Tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

(b) Unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

(2) Where the case is within the next section respecting shipment tender requires that the seller comply with its provisions.

(3) Where the seller is required to deliver at a particular destination tender requires that he or she comply with subsection (1) of this section and also in any appropriate case tender documents as described in subsections (4) and (5) of this section.

(4) Where goods are in the possession of a bailee and are to be delivered without being moved:

(a) Tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

(b) Tender to the buyer of a nonnegotiable document of title or of a (~~written direction to~~) record directing the bailee to deliver is sufficient tender unless the buyer seasonably objects, and except as otherwise provided in Article 9A of this title, receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the nonnegotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

(5) Where the contract requires the seller to deliver documents:

(a) He or she must tender all such documents in correct form, except as provided in this Article with respect to bills of lading in a set (~~((subsection (2) of))~~) RCW 62A.2-323(2); and

(b) Tender through customary banking channels is sufficient and dishonor of a draft accompanying or associated with the documents constitutes nonacceptance or rejection.

Sec. 808. RCW 62A.2-505 and 1965 ex.s. c 157 s 2-505 are each amended to read as follows:

SELLER'S SHIPMENT UNDER RESERVATION. (1) Where the seller has identified goods to the contract by or before shipment:

(a) His or her procurement of a negotiable bill of lading to his or her own order or otherwise reserves in him or her a security interest in the goods. His or her procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.

(b) A nonnegotiable bill of lading to himself or herself or his or her nominee reserves possession of the goods as security but except in a case of conditional delivery (~~((subsection (2) of))~~) RCW 62A.2-507(2) a nonnegotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession or control of the bill of lading.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document of title.

Sec. 809. RCW 62A.2-506 and 1965 ex.s. c 157 s 2-506 are each amended to read as follows:

RIGHTS OF FINANCING AGENCY. (1) A financing agency by paying or purchasing for value a draft which relates to a shipment

of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

(2) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular (~~on its face~~).

Sec. 810. RCW 62A.2-509 and 1965 ex.s. c 157 s 2-509 are each amended to read as follows:

RISK OF LOSS IN THE ABSENCE OF BREACH. (1) Where the contract requires or authorizes the seller to ship the goods by carrier:

(a) If it does not require him or her to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (RCW 62A.2-505); but

(b) If it does require him or her to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer:

(a) On his or her receipt of possession or control of a negotiable document of title covering the goods; or

(b) On acknowledgment by the bailee of the buyer's right to possession of the goods; or

(c) After his or her receipt of possession or control of a nonnegotiable document of title or other (~~written~~) direction to deliver in a record, as provided in (~~subsection (4)(b) of~~) RCW 62A.2-503(4)(b).

(3) In any case not within subsection (1) or (2) of this section, the risk of loss passes to the buyer on his or her receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

(4) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this Article on sale on approval (RCW 62A.2-327) and on effect of breach on risk of loss (RCW 62A.2-510).

Sec. 811. RCW 62A.2-605 and 1965 ex.s. c 157 s 2-605 are each amended to read as follows:

WAIVER OF BUYER'S OBJECTIONS BY FAILURE TO PARTICULARIZE. (1) The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes him or her from relying on the unstated defect to justify rejection or to establish breach:

(a) Where the seller could have cured it if stated seasonably; or

(b) Between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.

(2) Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent (~~on the face of~~) in the documents.

Sec. 812. RCW 62A.2-705 and 2011 c 336 s 823 are each amended to read as follows:

SELLER'S STOPPAGE OF DELIVERY IN TRANSIT OR OTHERWISE. (1) The seller may stop delivery of goods in the possession of a carrier or other bailee when he or she discovers the buyer to be insolvent (RCW 62A.2-702) and may stop delivery of carload, truckload, planeload(~~(s)~~) or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

(2) As against such buyer the seller may stop delivery until:

(a) Receipt of the goods by the buyer; or

(b) Acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or

(c) Such acknowledgment to the buyer by a carrier by reshipment or as a warehouse (~~operator~~); or

(d) Negotiation to the buyer of any negotiable document of title covering the goods.

(3)(a) To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.

(c) If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of possession or control of the document.

(d) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

PART IX

AMENDMENTS TO UNIFORM COMMERCIAL CODE

ARTICLE 2A

Sec. 901. RCW 62A.2A-103 and 2000 c 250 s 9A-808 are each amended to read as follows:

DEFINITIONS AND INDEX OF DEFINITIONS. (1) In this Article unless the context otherwise requires:

(a) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash, or by exchange of other property, or on secured or unsecured credit, and includes (~~receiving~~) acquiring goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

(d) "Conforming" goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.

(e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual who takes under the lease primarily for a personal, family, or household purpose, if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed twenty-five thousand dollars.

(f) "Fault" means wrongful act, omission, breach, or default.

(g) "Finance lease" means a lease with respect to which:

(i) The lessor does not select, manufacture, or supply the goods;

(ii) The lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(iii) Only in the case of a consumer lease, either:

(A) The lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(B) The lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract; or

(C) The lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods.

(h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (RCW 62A.2A-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(i) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.

(j) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(k) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this Article. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(l) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this Article and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(m) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

(n) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(o) "Lessee in ordinary course of business" means a person who in good faith and without knowledge that the lease to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, leases in ordinary course from a person in the business of selling or leasing goods of that kind(;) but does not include a pawnbroker. "Leasing" may be for cash, or by exchange of other property, or on secured or unsecured credit and includes ((receiving)) acquiring goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(q) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.

(r) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(s) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(u) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

(w) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

(z) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to this Article or to specified Parts thereof, and the sections in which they appear are:

"Accessions."	RCW 62A.2A-310(1).
"Construction mortgage."	RCW 62A.2A-309(1)(d).
"Encumbrance."	RCW 62A.2A-309(1)(e).
"Fixtures."	RCW 62A.2A-309(1)(a).
"Fixture filing."	RCW 62A.2A-309(1)(b).
"Purchase money lease."	RCW 62A.2A-309(1)(c).

(3) The following definitions in other articles apply to this Article:

"Account."	RCW 62A.9A-102(a)(2).
"Between merchants."	RCW 62A.2-104(3).
"Buyer."	RCW 62A.2-103(1)(a).
"Chattel paper."	RCW 62A.9A-102(a)(11).
"Consumer goods."	RCW 62A.9A-102(a)(23).
"Document."	RCW 62A.9A-102(a)(30).
"Entrusting."	RCW 62A.2-403(3).
"General intangible."	RCW 62A.9A-102(a)(42).
((("Good faith."	RCW 62A.2-103(1)(b);)
"Instrument."	RCW 62A.9A-102(a)(47).
"Merchant."	RCW 62A.2-104(1).

"Mortgage."	RCW 62A.9A-102(a)(55).
"Pursuant to commitment."	RCW 62A.9A-102(a)(68).
"Receipt."	RCW 62A.2-103(1)(c).
"Sale."	RCW 62A.2-106(1).
"Sale on approval."	RCW 62A.2-326.
"Sale or return."	RCW 62A.2-326.
"Seller."	RCW 62A.2-103(1)(d).

(4) In addition, Article ((62A.1-RCW)) 1 of this title contains general definitions and principles of construction and interpretation applicable throughout this Article.

Sec. 902. RCW 62A.2A-103 and 2011 c 74 s 701 are each amended to read as follows:

DEFINITIONS AND INDEX OF DEFINITIONS. (1) In this Article unless the context otherwise requires:

(a) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash, or by exchange of other property, or on secured or unsecured credit, and includes ((receiving)) acquiring goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

(d) "Conforming" goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.

(e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual who takes under the lease primarily for a personal, family, or household purpose, if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed twenty-five thousand dollars.

(f) "Fault" means wrongful act, omission, breach, or default.

(g) "Finance lease" means a lease with respect to which:

(i) The lessor does not select, manufacture, or supply the goods;

(ii) The lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(iii) Only in the case of a consumer lease, either:

(A) The lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(B) The lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract; or

(C) The lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or

modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods.

(h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (RCW 62A.2A-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(i) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.

(j) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(k) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this Article. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(l) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this Article and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(m) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

(n) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(o) "Lessee in ordinary course of business" means a person who in good faith and without knowledge that the lease to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, leases in ordinary course from a person in the business of selling or leasing goods of that kind((;)) but does not include a pawnbroker. "Leasing" may be for cash, or by exchange of other property, or on secured or unsecured credit and includes ((receiving)) acquiring goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(q) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.

(r) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(s) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(u) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and

circumstances of each case at the time the transaction was entered into.

(v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

(w) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

(z) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to this Article or to specified Parts thereof, and the sections in which they appear are:

"Accessions."	RCW 62A.2A-310.
"Construction mortgage."	RCW 62A.2A-309.
"Encumbrance."	RCW 62A.2A-309.
"Fixtures."	RCW 62A.2A-309.
"Fixture filing."	RCW 62A.2A-309.
"Purchase money lease."	RCW 62A.2A-309.

(3) The following definitions in other articles apply to this Article:

"Account."	RCW 62A.9A-102.
"Between merchants."	RCW 62A.2-104.
"Buyer."	RCW 62A.2-103.
"Chattel paper."	RCW 62A.9A-102.
"Consumer goods."	RCW 62A.9A-102.
"Document."	RCW 62A.9A-102.
"Entrusting."	RCW 62A.2-403.
"General intangible."	RCW 62A.9A-102.
("Good faith."	RCW 62A.2-103-)
"Instrument."	RCW 62A.9A-102.
"Merchant."	RCW 62A.2-104(1).
"Mortgage."	RCW 62A.9A-102.
"Pursuant to commitment."	RCW 62A.9A-102.
"Receipt."	RCW 62A.2-103.
"Sale."	RCW 62A.2-106.

"Sale on approval."

RCW 62A.2-326.

"Sale or return."

RCW 62A.2-326.

"Seller."

RCW 62A.2-103.

(4) In addition, Article ~~((62A.1 RCW))~~ 1 of this title contains general definitions and principles of construction and interpretation applicable throughout this Article.

Sec. 903. RCW 62A.2A-501 and 1993 c 230 s 2A-501 are each amended to read as follows:

DEFAULT: PROCEDURE. (1) Whether the lessor or the lessee is in default under a lease contract is determined by the lease agreement and this Article.

(2) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement has rights and remedies as provided in this Article and, except as limited by this Article, as provided in the lease agreement.

(3) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement may reduce the party's claim to judgment, or otherwise enforce the lease contract by self help or any available judicial procedure or nonjudicial procedure, including administrative proceeding, arbitration, or the like, in accordance with this Article.

(4) Except as otherwise provided in ~~((RCW 62A.1-106(1)))~~ RCW 62A.1-305(a) or this Article or the lease agreement, the rights and remedies referred to in subsections (2) and (3) of this section are cumulative.

(5) If the lease agreement covers both real property and goods, the party seeking enforcement may proceed under this Part 5 as to the goods, or under other applicable law as to both the real property and the goods in accordance with that party's rights and remedies in respect of the real property, in which case this Part 5 does not apply.

Sec. 904. RCW 62A.2A-514 and 1993 c 230 s 2A-514 are each amended to read as follows:

WAIVER OF LESSEE'S OBJECTIONS. (1) In rejecting goods, a lessee's failure to state a particular defect that is ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify rejection or to establish default:

(a) If, stated seasonably, the lessor or the supplier could have cured it (RCW 62A.2A-513); or

(b) Between merchants if the lessor or the supplier after rejection has made a request in writing for a full and final written statement of all defects on which the lessee proposes to rely.

(2) A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent ~~((on the face of))~~ in the documents.

Sec. 905. RCW 62A.2A-518 and 1993 c 230 s 2A-518 are each amended to read as follows:

COVER; SUBSTITUTE GOODS. (1) After a default by a lessor under the lease contract of the type described in ~~((RCW 62A.2A-508(1)(3)))~~, or, if agreed, after other default by the lessor, the lessee may cover by making any purchase or lease of or contract to purchase or lease goods in substitution for those due from the lessor.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (RCW 62A.2A-504) or otherwise determined pursuant to agreement of the parties ~~((RCW 62A.1-102(3)))~~ (RCW 62A.1-302 and 62A.2A-503), if a lessee's cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages (i) the present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease applicable to that period of the new lease term

which is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement, and (ii) any incidental or consequential damages, less expenses saved in consequence of the lessor's default.

(3) If a lessee's cover is by lease agreement that for any reason does not qualify for treatment under subsection (2) of this section, or is by purchase or otherwise, the lessee may recover from the lessor as if the lessee had elected not to cover and RCW 62A.2A-519 governs.

Sec. 906. RCW 62A.2A-519 and 1993 c 230 s 2A-519 are each amended to read as follows:

LESSEE'S DAMAGES FOR NONDELIVERY, REPUDIATION, DEFAULT, AND BREACH OF WARRANTY IN REGARD TO ACCEPTED GOODS. (1) Except as otherwise provided with respect to damages liquidated in the lease agreement (RCW 62A.2A-504) or otherwise determined pursuant to agreement of the parties (~~((RCW 62A.1-102(3)))~~) (RCW 62A.1-302 and 62A.2A-503), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under RCW 62A.2A-518(2), or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(2) Market rent is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

(3) Except as otherwise agreed, if the lessee has accepted goods and given notification (RCW 62A.2A-516(3)), the measure of damages for nonconforming tender or delivery or other default by a lessor is the loss resulting in the ordinary course of events from the lessor's default as determined in any manner that is reasonable together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(4) Except as otherwise agreed, the measure of damages for breach of warranty is the present value at the time and place of acceptance of the difference between the value of the use of the goods accepted and the value if they had been as warranted for the lease term, unless special circumstances show proximate damages of a different amount, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default or breach of warranty.

Sec. 907. RCW 62A.2A-526 and 2011 c 336 s 824 are each amended to read as follows:

LESSOR'S STOPPAGE OF DELIVERY IN TRANSIT OR OTHERWISE. (1) A lessor may stop delivery of goods in the possession of a carrier or other bailee if the lessor discovers the lessee to be insolvent and may stop delivery of carload, truckload, paneload, or larger shipments of express or freight if the lessee repudiates or fails to make a payment due before delivery, whether for rent, security, or otherwise under the lease contract, or for any other reason the lessor has a right to withhold or take possession of the goods.

(2) In pursuing its remedies under subsection (1) of this section, the lessor may stop delivery until:

(a) Receipt of the goods by the lessee;

(b) Acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or

(c) Such an acknowledgment to the lessee by a carrier via reshipment or as a warehouse (~~(operator)~~).

(3)(a) To stop delivery, a lessor shall so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After notification, the bailee shall hold and deliver the goods according to the directions of the lessor, but the lessor is liable to the bailee for any ensuing charges or damages.

(c) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

Sec. 908. RCW 62A.2A-527 and 1993 c 230 s 2A-527 are each amended to read as follows:

LESSOR'S RIGHTS TO DISPOSE OF GOODS. (1) After a default by a lessee under the lease contract of the type described in RCW 62A.2A-523 (1) or (3)(a) or after the lessor refuses to deliver or takes possession of goods (RCW 62A.2A-525 or 62A.2A-526), or, if agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale, or otherwise.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (RCW 62A.2A-504) or otherwise determined pursuant to agreement of the parties (~~((RCW 62A.1-102(3)))~~) (RCW 62A.1-302 and 62A.2A-503), if the disposition is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages (i) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement, (ii) the present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement, and (iii) any incidental damages allowed under RCW 62A.2A-530, less expenses saved in consequence of the lessee's default.

(3) If the lessor's disposition is by lease agreement that for any reason does not qualify for treatment under subsection (2) of this section, or is by sale or otherwise, the lessor may recover from the lessee as if the lessor had elected not to dispose of the goods and RCW 62A.2A-528 governs.

(4) A subsequent buyer or lessee who buys or leases from the lessor in good faith for value as a result of a disposition under this section takes the goods free of the original lease contract and any rights of the original lessee even though the lessor fails to comply with one or more of the requirements of this Article.

(5) The lessor is not accountable to the lessee for any profit made on any disposition. A lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee's security interest (RCW 62A.2A-508(~~(§)~~)).

Sec. 909. RCW 62A.2A-528 and 1993 c 230 s 2A-528 are each amended to read as follows:

LESSOR'S DAMAGES FOR NONACCEPTANCE, FAILURE TO PAY, REPUDIATION, OR OTHER DEFAULT. (1) Except as otherwise provided with respect to damages liquidated in the lease agreement (RCW 62A.2A-504) or otherwise determined pursuant to agreement of the parties (~~((RCW 62A.1-102(3)))~~) (RCW 62A.1-302 and 62A.2A-503), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under RCW 62A.2A-527(2), or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in RCW 62A.2A-523 (1) or (3)(a), or, if agreed, for other default of the lessee, (i) accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor, (ii) the present value as of the date determined under (i) of this subsection (~~((1)(i) of this section)~~) of the total rent for the then remaining lease term of the original lease agreement minus

the present value as of the same date of the market rent at the place where the goods are located computed for the same lease term, and (iii) any incidental damages allowed under RCW 62A.2A-530, less expenses saved in consequence of the lessee's default.

(2) If the measure of damages provided in subsection (1) of this section is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the present value of the profit, including reasonable overhead, the lessor would have made from full performance by the lessee, together with any incidental damages allowed under RCW 62A.2A-530, due allowance for costs reasonably incurred and due credit for payments or proceeds of disposition.

PART X

AMENDMENTS TO UNIFORM COMMERCIAL CODE

ARTICLE 3

Sec. 1001. RCW 62A.3-103 and 1993 c 229 s 5 are each amended to read as follows:

DEFINITIONS. (a) In this Article:

(1) "Acceptor" means a drawee who has accepted a draft.

(2) "Drawee" means a person ordered in a draft to make payment.

(3) "Drawer" means a person who signs or is identified in a draft as a person ordering payment.

(4) ("Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.) [Reserved.]

(5) "Maker" means a person who signs or is identified in a note as a person undertaking to pay.

(6) "Order" means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.

(7) "Ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this Article or Article 4.

(8) "Party" means a party to an instrument.

(9) "Promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.

(10) "Prove" with respect to a fact means to meet the burden of establishing the fact (RCW 62A.1-201(b)(8)).

(11) "Remitter" means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

(b) Other definitions applying to this Article and the sections in which they appear are:

"Acceptance" RCW 62A.3-409

"Accommodated party" RCW 62A.3-419

"Accommodation party" RCW 62A.3-419

"Alteration" RCW 62A.3-407

"Anomalous indorsement" RCW 62A.3-205

"Blank indorsement" RCW 62A.3-205

"Cashier's check" RCW 62A.3-104

"Certificate of deposit" RCW 62A.3-104

"Certified check" RCW 62A.3-409

"Check" RCW 62A.3-104

"Consideration" RCW 62A.3-303

"Draft" RCW 62A.3-104

"Holder in due course" RCW 62A.3-302

"Incomplete instrument" RCW 62A.3-115

"Indorsement" RCW 62A.3-204

"Indorser" RCW 62A.3-204

"Instrument" RCW 62A.3-104

"Issue" RCW 62A.3-105

"Issuer" RCW 62A.3-105

"Negotiable instrument" RCW 62A.3-104

"Negotiation" RCW 62A.3-201

"Note" RCW 62A.3-104

"Payable at a definite time" RCW 62A.3-108

"Payable on demand" RCW 62A.3-108

"Payable to bearer" RCW 62A.3-109

"Payable to order" RCW 62A.3-109

"Payment" RCW 62A.3-602

"Person entitled to enforce" RCW 62A.3-301

"Presentment" RCW 62A.3-501

"Reacquisition" RCW 62A.3-207

"Special indorsement" RCW 62A.3-205

"Teller's check" RCW 62A.3-104

"Transfer of instrument" RCW 62A.3-203

"Traveler's check" RCW 62A.3-104

"Value" RCW 62A.3-303

(c) The following definitions in other articles apply to this Article:

("Bank"	RCW 62A.4-105)
"Banking day"	RCW 62A.4-104
"Clearing house"	RCW 62A.4-104
"Collecting bank"	RCW 62A.4-105
"Depository bank"	RCW 62A.4-105
"Documentary draft"	RCW 62A.4-104
"Intermediary bank"	RCW 62A.4-105
"Item"	RCW 62A.4-104
"Payor bank"	RCW 62A.4-105
"Suspends payments"	RCW 62A.4-104

(d) In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

PART XI

AMENDMENTS TO UNIFORM COMMERCIAL CODE

ARTICLE 4

Sec. 1101. RCW 62A.4-104 and 1995 c 48 s 56 are each amended to read as follows:

DEFINITIONS AND INDEX OF DEFINITIONS. (a) In this Article, unless the context otherwise requires:

(1) "Account" means any deposit or credit account with a bank, including a demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit;

(2) "Afternoon" means the period of a day between noon and midnight;

(3) "Banking day" means the part of a day on which a bank is open to the public for carrying on substantially all of its banking functions, except that it shall not include a Saturday, Sunday, or legal holiday;

(4) "Clearing house" means an association of banks or other payors regularly clearing items;

(5) "Customer" means a person having an account with a bank or for whom a bank has agreed to collect items, including a bank that maintains an account at another bank;

(6) "Documentary draft" means a draft to be presented for acceptance or payment if specified documents, certificated securities (RCW 62A.8-102) or instructions for uncertificated securities (RCW 62A.8-102), or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft;

(7) "Draft" means a draft as defined in RCW 62A.3-104 or an item, other than an instrument, that is an order;

(8) "Drawee" means a person ordered in a draft to make payment;

(9) "Item" means an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does

not include a payment order governed by Article 4A or a credit or debit card slip;

(10) "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;

(11) "Settle" means to pay in cash, by clearing-house settlement, in a charge or credit or by remittance, or otherwise as agreed. A settlement may be either provisional or final;

(12) "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business.

(b) Other definitions applying to this Article and the sections in which they appear are:

"Agreement for electronic presentment"	RCW 62A.4-110.
"Bank"	RCW 62A.4-105.
"Collecting bank"	RCW 62A.4-105.
"Depository bank"	RCW 62A.4-105.
"Intermediary bank"	RCW 62A.4-105.
"Payor bank"	RCW 62A.4-105.
"Presenting bank"	RCW 62A.4-105.
"Presentment notice"	RCW 62A.4-110.

(c) "Control" as provided in RCW 62A.7-106 and the following definitions in other articles apply to this Article:

"Acceptance"	RCW 62A.3-409.
"Alteration"	RCW 62A.3-407.
"Cashier's check"	RCW 62A.3-104.
"Certificate of deposit"	RCW 62A.3-104.
"Certified check"	RCW 62A.3-409.
"Check"	RCW 62A.3-104.
"Draft"	RCW 62A.3-104.
("Good faith"	RCW 62A.3-103.)
"Holder in due course"	RCW 62A.3-302.
"Instrument"	RCW 62A.3-104.
"Notice of dishonor"	RCW 62A.3-503.
"Order"	RCW 62A.3-103.
"Ordinary care"	RCW 62A.3-103.
"Person entitled to enforce"	RCW 62A.3-301.

"Presentment"	RCW 62A.3-501.
"Promise"	RCW 62A.3-103.
"Prove"	RCW 62A.3-103.
"Teller's check"	RCW 62A.3-104.
"Unauthorized signature"	RCW 62A.3-403.

(d) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

Sec. 1102. RCW 62A.4-210 and 2001 c 32 s 13 are each amended to read as follows:

SECURITY INTEREST OF COLLECTING BANK IN ITEMS, ACCOMPANYING DOCUMENTS AND PROCEEDS. (a) A collecting bank has a security interest in an item and any accompanying documents or the proceeds of either:

(1) In case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;

(2) In case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given whether or not the credit is drawn upon or there is a right of charge-back; or

(3) If it makes an advance on or against the item.

(b) If credit given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(c) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents, and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or possession or control of the accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to Article 9A, but:

(1) No security agreement is necessary to make the security interest enforceable (RCW 62A.9A-203(b)(3)(A));

(2) No filing is required to perfect the security interest; and

(3) The security interest has priority over conflicting perfected security interests in the item, accompanying documents, or proceeds.

PART XII

AMENDMENTS TO UNIFORM COMMERCIAL CODE

ARTICLE 4A

Sec. 1201. RCW 62A.4A-105 and 1991 sp.s. c 21 s 4A-105 are each amended to read as follows:

OTHER DEFINITIONS. (1) In this Article:

(a) "Authorized account" means a deposit account of a customer in a bank designated by the customer as a source of payment orders issued by the customer to the bank. If a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of the account.

(b) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company. A branch or separate office of a bank is a separate bank for purposes of this Article.

(c) "Customer" means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders.

(d) "Funds-transfer business day" of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing, and transmittal of payment orders and cancellations and amendments of payment orders.

(e) "Funds-transfer system" means a wire transfer network, automated clearing house, or other communication system of a clearing house or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.

(f) ("Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.) [Reserved.]

(g) "Prove" with respect to a fact means to meet the burden of establishing the fact (RCW 62A.1-201(b)(8)).

(2) Other definitions applying to this Article and the sections in which they appear are:

"Acceptance"	RCW 62A.4A-209
"Beneficiary"	RCW 62A.4A-103
"Beneficiary's bank"	RCW 62A.4A-103
"Executed"	RCW 62A.4A-301
"Execution date"	RCW 62A.4A-301
"Funds transfer"	RCW 62A.4A-104
"Funds-transfer system rule"	RCW 62A.4A-501
"Intermediary bank"	RCW 62A.4A-104
"Originator"	RCW 62A.4A-104
"Originator's bank"	RCW 62A.4A-104
"Payment by beneficiary's bank to beneficiary"	RCW 62A.4A-405
"Payment by originator to beneficiary"	RCW 62A.4A-406
"Payment by sender to receiving bank"	RCW 62A.4A-403
"Payment date"	RCW 62A.4A-401
"Payment order"	RCW 62A.4A-103
"Receiving bank"	RCW 62A.4A-103
"Security procedure"	RCW 62A.4A-201
"Sender"	RCW 62A.4A-103

(3) The following definitions in Article 4 (RCW 62A.4-101 through 62A.4-504) apply to this Article:

"Clearing house"	((section 4-104 of this act) <u>RCW 62A.4-104</u>)
"Item"	((section 4-104 of this act) <u>RCW 62A.4-104</u>)
"Suspends payments"	((section 4-104 of this act) <u>RCW 62A.4-104</u>)

(4) In addition ~~((#))~~, Article 1 ~~((RCW 62A.1-101 through 62A.1-208))~~ contains general definitions and principles of construction and interpretation applicable throughout this Article.

Sec. 1202. RCW 62A.4A-106 and 1991 sp.s. c 21 s 4A-106 are each amended to read as follows:

TIME PAYMENT ORDER IS RECEIVED. (1) The time of receipt of a payment order or communication canceling or amending a payment order is determined by the rules applicable to receipt of a notice stated in ~~((RCW 62A.1-201(27)))~~ RCW 62A.1-202. A receiving bank may fix a cut-off time or times on a funds-transfer business day for the receipt and processing of payment orders and communications canceling or amending payment orders. Different cut-off times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cut-off time may apply to senders generally or different cut-off times may apply to different senders or categories of payment orders. If a payment order or communication canceling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cut-off time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

(2) If this Article refers to an execution date or payment date or states a day on which a receiving bank is required to take action, and the date or day does not fall on a funds-transfer business day, the next day that is a funds-transfer business day is treated as the date or day stated, unless the contrary is stated in this Article.

Sec. 1203. RCW 62A.4A-204 and 1991 sp.s. c 21 s 4A-204 are each amended to read as follows:

REFUND OF PAYMENT AND DUTY OF CUSTOMER TO REPORT WITH RESPECT TO UNAUTHORIZED PAYMENT ORDER. (1) If a receiving bank accepts a payment order issued in the name of its customer as sender which is (a) not authorized and not effective as the order of the customer under RCW 62A.4A-202, or (b) not enforceable, in whole or in part, against the customer under RCW 62A.4A-203, the bank shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment and shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund. However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time not exceeding ninety days after the date the customer received notification from the bank that the order was accepted or that the customer's account was debited with respect to the order. The bank is not entitled to any recovery from the customer on account of a failure by the customer to give notification as stated in this section.

(2) Reasonable time under subsection (1) of this section may be fixed by agreement as stated in ~~((RCW 62A.1-204(4)))~~ RCW 62A.1-302(b), but the obligation of a receiving bank to refund payment as stated in subsection (1) of this section may not otherwise be varied by agreement.

PART XIII

AMENDMENTS TO UNIFORM COMMERCIAL CODE

ARTICLE 5

Sec. 1301. RCW 62A.5-103 and 1997 c 56 s 4 are each amended to read as follows:

SCOPE. ~~((#))~~ (a) This Article applies to letters of credit and to certain rights and obligations arising out of transactions involving letters of credit.

~~((2))~~ (b) The statement of a rule in this Article does not by itself require, imply, or negate application of the same or a different rule to a situation not provided for, or to a person not specified, in this Article.

~~((3))~~ (c) With the exception of this subsection, subsections ~~((4))~~ (a) and ~~((4))~~ (d) of this section, RCW 62A.5-102~~((4))~~ (a) (9) and ~~((4))~~ (10), 62A.5-106~~((4))~~ (d), and 62A.5-114~~((4))~~ (d), and except to the extent prohibited in ~~((RCW 62A.1-102(3)))~~ RCW 62A.1-302 and 62A.5-117~~((4))~~ (d), the effect of this Article may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this Article.

~~((4))~~ (d) Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of credit are independent of the existence, performance, or nonperformance of a contract or arrangement out of which the letter of credit arises or which underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary.

PART XIV

AMENDMENTS TO UNIFORM COMMERCIAL CODE

ARTICLE 8

Sec. 1401. RCW 62A.8-102 and 1995 c 48 s 2 are each amended to read as follows:

DEFINITIONS. (1) In this Article:

(a) "Adverse claim" means a claim that a claimant has a property interest in a financial asset and that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the financial asset.

(b) "Bearer form," as applied to a certificated security, means a form in which the security is payable to the bearer of the security certificate according to its terms but not by reason of an indorsement.

(c) "Broker" means a person defined as a broker or dealer under the federal securities laws, but without excluding a bank acting in that capacity.

(d) "Certificated security" means a security that is represented by a certificate.

(e) "Clearing corporation" means:

(i) A person that is registered as a "clearing agency" under the federal securities laws;

(ii) A federal reserve bank; or

(iii) Any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including adoption of rules, are subject to regulation by a federal or state governmental authority.

(f) "Communicate" means to:

(i) Send a signed writing; or

(ii) Transmit information by any mechanism agreed upon by the persons transmitting and receiving the information.

(g) "Entitlement holder" means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of RCW 62A.8-501(2) (b) or (c), that person is the entitlement holder.

(h) "Entitlement order" means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement.

(i) "Financial asset," except as otherwise provided in RCW 62A.8-103, means:

(i) A security;

(ii) An obligation of a person or a share, participation, or other interest in a person or in property or an enterprise of a person, which is, or is of a type, dealt in or traded on financial markets, or which is recognized in any area in which it is issued or dealt in as a medium for investment; or

(iii) Any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this Article.

As context requires, the term means either the interest itself or the means by which a person's claim to it is evidenced, including a certificated or uncertificated security, a security certificate, or a security entitlement.

(j) ("Good faith," for purposes of the obligation of good faith in the performance or enforcement of contracts or duties within this Article, means honesty in fact and the observance of reasonable commercial standards of fair dealing.) [Reserved.]

(k) "Indorsement" means a signature that alone or accompanied by other words is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring, or redeeming the security or granting a power to assign, transfer, or redeem it.

(l) "Instruction" means a notification communicated to the issuer of an uncertificated security which directs that the transfer of the security be registered or that the security be redeemed.

(m) "Registered form," as applied to a certificated security, means a form in which:

(i) The security certificate specifies a person entitled to the security; and

(ii) A transfer of the security may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security certificate so states.

(n) "Securities intermediary" means:

(i) A clearing corporation; or

(ii) A person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

(o) "Security," except as otherwise provided in RCW 62A.8-103, means an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer:

(i) Which is represented by a security certificate in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer;

(ii) Which is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations; and

(iii) Which:

(A) Is, or is of a type, dealt in or traded on securities exchanges or securities markets; or

(B) Is a medium for investment and by its terms expressly provides that it is a security governed by this Article.

(p) "Security certificate" means a certificate representing a security.

(q) "Security entitlement" means the rights and property interest of an entitlement holder with respect to a financial asset specified in Part 5 of this Article.

(r) "Uncertificated security" means a security that is not represented by a certificate.

(2) Other definitions applying to this Article and the sections in which they appear are:

Appropriate person	RCW 62A.8-107
Control	RCW 62A.8-106
Delivery	RCW 62A.8-301
Investment company security	RCW 62A.8-103
Issuer	RCW 62A.8-201
Overissue	RCW 62A.8-210
Protected purchaser	RCW 62A.8-303
Securities account	RCW 62A.8-501

(3) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

(4) The characterization of a person, business, or transaction for purposes of this Article does not determine the characterization of the person, business, or transaction for purposes of any other law, regulation, or rule.

Sec. 1402. RCW 62A.8-103 and 2000 c 250 s 9A-815 are each amended to read as follows:

RULES FOR DETERMINING WHETHER CERTAIN OBLIGATIONS AND INTERESTS ARE SECURITIES OR FINANCIAL ASSETS. (1) A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.

(2) An "investment company security" is a security. "Investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

(3) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this Article, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

(4) A writing that is a security certificate is governed by this Article and not by Article 3, even though it also meets the requirements of that Article. However, a negotiable instrument governed by Article 3 is a financial asset if it is held in a securities account.

(5) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

(6) A commodity contract, as defined in RCW 62A.9A-102(a)(15), is not a security or a financial asset.

(7) A document of title is not a financial asset unless RCW 62A.8-102(1)(i)(iii) applies.

Sec. 1403. RCW 62A.8-103 and 2011 c 74 s 706 are each amended to read as follows:

RULES FOR DETERMINING WHETHER CERTAIN OBLIGATIONS AND INTERESTS ARE SECURITIES OR FINANCIAL ASSETS. (1) A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.

(2) An "investment company security" is a security. "Investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

(3) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this Article, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

(4) A writing that is a security certificate is governed by this Article and not by Article 3, even though it also meets the requirements of that Article. However, a negotiable instrument governed by Article 3 is a financial asset if it is held in a securities account.

(5) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

(6) A commodity contract, as defined in RCW 62A.9A-102, is not a security or a financial asset.

(7) A document of title is not a financial asset unless RCW 62A.8-102(1)(i)(iii) applies.

PART XV

AMENDMENTS TO UNIFORM COMMERCIAL CODE

ARTICLE 9A

Sec. 1501. RCW 62A.9A-102 and 2001 c 32 s 16 are each amended to read as follows:

DEFINITIONS AND INDEX OF DEFINITIONS. (a) **Article 9A definitions.** In this Article:

(1) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2)(A) "Account," except as used in "account for," means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health-care-insurance receivables.

(B) The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) "Accounting," except as used in "accounting for," means a record:

(A) Authenticated by a secured party;

(B) Indicating the aggregate unpaid secured obligations as of a date not more than thirty-five days earlier or thirty-five days later than the date of the record; and

(C) Identifying the components of the obligations in reasonable detail.

(5) "Agricultural lien" means an interest, other than a security interest, in farm products:

(A) Which secures payment or performance of an obligation for:

(i) Goods or services furnished in connection with a debtor's farming operation; or

(ii) Rent on real property leased by a debtor in connection with its farming operation;

(B) Which is created by statute in favor of a person that:

(i) In the ordinary course of its business, furnished goods or services to a debtor in connection with a debtor's farming operation; or

(ii) Leased real property to a debtor in connection with the debtor's farming operation; and

(C) Whose effectiveness does not depend on the person's possession of the personal property.

(6) "As-extracted collateral" means:

(A) Oil, gas, or other minerals that are subject to a security interest that:

(i) Is created by a debtor having an interest in the minerals before extraction; and

(ii) Attaches to the minerals as extracted; or

(B) Accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(7) "Authenticate" means:

(A) To sign; or

(B) To execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.

(8) "Bank" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

(9) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.

(10) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this subsection, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term "chattel paper" does not include ~~((A))~~ (i) charters or other contracts involving the use or hire of a vessel or ~~((B))~~ (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(12) "Collateral" means the property subject to a security interest or agricultural lien. The term includes:

(A) Proceeds to which a security interest attaches;

(B) Accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and

(C) Goods that are the subject of a consignment.

(13) "Commercial tort claim" means a claim arising in tort with respect to which:

(A) The claimant is an organization; or

(B) The claimant is an individual, and the claim:

(i) Arose in the course of the claimant's business or profession; and

(ii) Does not include damages arising out of personal injury to, or the death of, an individual.

(14) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(15) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

(A) Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or

(B) Traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(16) "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books.

(17) "Commodity intermediary" means a person that:

(A) Is registered as a futures commission merchant under federal commodities law; or

(B) In the ordinary course of its business, provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(18) "Communicate" means:

(A) To send a written or other tangible record;

(B) To transmit a record by any means agreed upon by the persons sending and receiving the record; or

(C) In the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(19) "Consignee" means a merchant to which goods are delivered in a consignment.

(20) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(A) The merchant:

(i) Deals in goods of that kind under a name other than the name of the person making delivery;

(ii) Is not an auctioneer; and

(iii) Is not generally known by its creditors to be substantially engaged in selling the goods of others;

(B) With respect to each delivery, the aggregate value of the goods is one thousand dollars or more at the time of delivery;

(C) The goods are not consumer goods immediately before delivery; and

(D) The transaction does not create a security interest that secures an obligation.

(21) "Consignor" means a person that delivers goods to a consignee in a consignment.

(22) "Consumer debtor" means a debtor in a consumer transaction.

(23) "Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes.

(24) "Consumer-goods transaction" means a consumer transaction in which:

(A) An individual incurs a consumer obligation; and

(B) A security interest in consumer goods secures the obligation.

(25) "Consumer obligation" means an obligation which:

(A) Is incurred as part of a transaction entered into primarily for personal, family, or household purposes; and

(B) Arises from an extension of credit, or commitment to extend credit, in an aggregate amount not exceeding forty thousand dollars, or is secured by personal property used or expected to be used as a principal dwelling.

"Consumer obligor" means an obligor who is an individual and who incurred a consumer obligation.

(26) "Consumer transaction" means a transaction in which ~~((A))~~ (i) an individual incurs a consumer obligation, ~~((B))~~ (ii) a security interest secures the obligation, and ~~((C))~~ (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

(27) "Continuation statement" means an amendment of a financing statement which:

(A) Identifies, by its file number, the initial financing statement to which it relates; and

(B) Indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(28) "Debtor" means:

(A) A person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(B) A seller of accounts, chattel paper, payment intangibles, or promissory notes; or

(C) A consignee.

(29) "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(30) "Document" means a document of title or a receipt of the type described in RCW 62A.7-201~~((2))~~ (b).

(31) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(32) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) "Equipment" means goods other than inventory, farm products, or consumer goods.

(34) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(A) Crops grown, growing, or to be grown, including:

(i) Crops produced on trees, vines, and bushes; and

(ii) Aquatic goods produced in aquacultural operations;

(B) Livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(C) Supplies used or produced in a farming operation; or

(D) Products of crops or livestock in their unmanufactured states.

(35) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(36) "File number" means the number assigned to an initial financing statement pursuant to RCW 62A.9A-519(a).

(37) "Filing office" means an office designated in RCW 62A.9A-501 as the place to file a financing statement.

(38) "Filing-office rule" means a rule adopted pursuant to RCW 62A.9A-526.

(39) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying RCW 62A.9A-502 (a) and (b). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(41) "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law.

(42) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

(43) ("Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.) [Reserved.]

(44) "Goods" means all things that are movable when a security interest attaches. The term includes ~~((A))~~ (i) fixtures, ~~((B))~~ (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, ~~((C))~~ (iii) the unborn young of animals, ~~((D))~~ (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and ~~((E))~~ (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction or a manufactured home converted to real property under chapter 65.20 RCW.

(45) "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) "Health-care-insurance receivable" means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided.

(47) "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include ~~((A))~~ (i) investment property, ~~((B))~~ (ii) letters of credit, ~~((C))~~ (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card, ~~((D))~~ (iv) writings that do not contain a promise or order to pay, or ~~((E))~~ (v) writings that are expressly nontransferable or nonassignable.

(48) "Inventory" means goods, other than farm products, which:

(A) Are leased by a person as lessor;

(B) Are held by a person for sale or lease or to be furnished under a contract of service;

(C) Are furnished by a person under a contract of service; or

(D) Consist of raw materials, work in process, or materials used or consumed in a business.

(49) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(50) "Jurisdiction of organization," with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

(51) "Letter-of-credit right" means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or

performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) "Lien creditor" means:

(A) A creditor that has acquired a lien on the property involved by attachment, levy, or the like;

(B) An assignee for benefit of creditors from the time of assignment;

(C) A trustee in bankruptcy from the date of the filing of the petition; or

(D) A receiver in equity from the time of appointment.

(53) "Manufactured home" means a manufactured home or mobile home as defined in RCW 46.04.302.

(54) [Reserved]

(55) "Mortgage" means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

(56) "New debtor" means a person that becomes bound as debtor under RCW 62A.9A-203(d) by a security agreement previously entered into by another person.

(57) "New value" means ~~((A))~~ (i) money, ~~((B))~~ (ii) money's worth in property, services, or new credit, or ~~((C))~~ (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) "Noncash proceeds" means proceeds other than cash proceeds.

(59) "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, ~~((A))~~ (i) owes payment or other performance of the obligation, ~~((B))~~ (ii) has provided property other than the collateral to secure payment or other performance of the obligation, or ~~((C))~~ (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(60) "Original debtor", except as used in RCW 62A.9A-310(c), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under RCW 62A.9A-203(d).

(61) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(62) "Person related to," with respect to an individual, means:

(A) The spouse of the individual;

(B) A brother, brother-in-law, sister, or sister-in-law of the individual;

(C) An ancestor or lineal descendant of the individual or the individual's spouse; or

(D) Any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(63) "Person related to," with respect to an organization, means:

(A) A person directly or indirectly controlling, controlled by, or under common control with the organization;

(B) An officer or director of, or a person performing similar functions with respect to, the organization;

(C) An officer or director of, or a person performing similar functions with respect to, a person described in (63)(A) of this subsection;

(D) The spouse of an individual described in (63)(A), (B), or (C) of this subsection; or

(E) An individual who is related by blood or marriage to an individual described in (63)(A), (B), (C), or (D) of this subsection and shares the same home with the individual.

(64) "Proceeds", except as used in RCW 62A.9A-609(b), means the following property:

(A) Whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;

(B) Whatever is collected on, or distributed on account of, collateral;

(C) Rights arising out of collateral;

(D) To the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or

(E) To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(65) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(66) "Proposal" means a record authenticated by a secured party, which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to RCW 62A.9A-620, 62A.9A-621, and 62A.9A-622.

(67) "Public-finance transaction" means a secured transaction in connection with which:

(A) Debt securities are issued;

(B) All or a portion of the securities issued have an initial stated maturity of at least twenty years; and

(C) The debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

(68) "Pursuant to commitment," with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(69) "Record," except as used in "for record," "of record," "record or legal title," and "record owner," means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(70) "Registered organization" means an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized.

(71) "Secondary obligor" means an obligor to the extent that:

(A) The obligor's obligation is secondary; or

(B) The obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(72) "Secured party" means:

(A) A person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(B) A person that holds an agricultural lien;

(C) A consignor;

(D) A person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(E) A trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(F) A person that holds a security interest arising under RCW 62A.2-401, 62A.2-505, 62A.2-711(3), 62A.2A-508(5), 62A.4-210, or 62A.5-118.

(73) "Security agreement" means an agreement that creates or provides for a security interest.

(74) "Send," in connection with a record or notification, means:

(A) To deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of

transmission provided for, addressed to any address reasonable under the circumstances; or

(B) To cause the record or notification to be received within the time that it would have been received if properly sent under (A) of this subsection.

(75) "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(76) "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.

(77) "Supporting obligation" means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

(78) "Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(79) "Termination statement" means an amendment of a financing statement which:

(A) Identifies, by its file number, the initial financing statement to which it relates; and

(B) Indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(80) "Transmitting utility" means a person primarily engaged in the business of:

(A) Operating a railroad, subway, street railway, or trolley bus;

(B) Transmitting communications electrically, electromagnetically, or by light;

(C) Transmitting goods by pipeline or sewer; or

(D) Transmitting or producing and transmitting electricity, steam, gas, or water.

(b) **Definitions in other articles.** "Control" as provided in RCW 62A.7-106 and the following definitions in other articles apply to this Article:

"Applicant."	RCW 62A.5-102.
"Beneficiary."	RCW 62A.5-102.
"Broker."	RCW 62A.8-102.
"Certificated security."	RCW 62A.8-102.
"Check."	RCW 62A.3-104.
"Clearing corporation."	RCW 62A.8-102.
"Contract for sale."	RCW 62A.2-106.
"Customer."	RCW 62A.4-104.
"Entitlement holder."	RCW 62A.8-102.
"Financial asset."	RCW 62A.8-102.
"Holder in due course."	RCW 62A.3-302.
<u>"Issuer" with respect to documents of title.</u>	<u>RCW 62A.7-102.</u>
"Issuer" with respect to a letter of credit or letter-of-credit right.	RCW 62A.5-102.

"Issuer" with respect to a security.	RCW 62A.8-201.
"Lease."	RCW 62A.2A-103.
"Lease agreement."	RCW 62A.2A-103.
"Lease contract."	RCW 62A.2A-103.
"Leasehold interest."	RCW 62A.2A-103.
"Lessee."	RCW 62A.2A-103.
"Lessee in ordinary course of business."	RCW 62A.2A-103.
"Lessor."	RCW 62A.2A-103.
"Lessor's residual interest."	RCW 62A.2A-103.
"Letter of credit."	RCW 62A.5-102.
"Merchant."	RCW 62A.2-104.
"Negotiable instrument."	RCW 62A.3-104.
"Nominated person."	RCW 62A.5-102.
"Note."	RCW 62A.3-104.
"Proceeds of a letter of credit."	RCW 62A.5-114.
"Prove."	RCW 62A.3-103.
"Sale."	RCW 62A.2-106.
"Securities account."	RCW 62A.8-501.
"Securities intermediary."	RCW 62A.8-102.
"Security."	RCW 62A.8-102.
"Security certificate."	RCW 62A.8-102.
"Security entitlement."	RCW 62A.8-102.
"Uncertificated security."	RCW 62A.8-102.

(c) **Article 1 definitions and principles.** Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

Sec. 1502. RCW 62A.9A-102 and 2011 c 74 s 101 are each amended to read as follows:

DEFINITIONS AND INDEX OF DEFINITIONS. (a) **Article 9A definitions.** In this Article:

(1) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2)(A) "Account," except as used in "account for," means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit

or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health-care-insurance receivables.

(B) The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) "Accounting," except as used in "accounting for," means a record:

(A) Authenticated by a secured party;

(B) Indicating the aggregate unpaid secured obligations as of a date not more than thirty-five days earlier or thirty-five days later than the date of the record; and

(C) Identifying the components of the obligations in reasonable detail.

(5) "Agricultural lien" means an interest, other than a security interest, in farm products:

(A) Which secures payment or performance of an obligation for:

(i) Goods or services furnished in connection with a debtor's farming operation; or

(ii) Rent on real property leased by a debtor in connection with its farming operation;

(B) Which is created by statute in favor of a person that:

(i) In the ordinary course of its business, furnished goods or services to a debtor in connection with a debtor's farming operation; or

(ii) Leased real property to a debtor in connection with the debtor's farming operation; and

(C) Whose effectiveness does not depend on the person's possession of the personal property.

(6) "As-extracted collateral" means:

(A) Oil, gas, or other minerals that are subject to a security interest that:

(i) Is created by a debtor having an interest in the minerals before extraction; and

(ii) Attaches to the minerals as extracted; or

(B) Accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(7) "Authenticate" means:

(A) To sign; or

(B) With present intent to adopt or accept a record, to attach to or logically associate with the record an electronic sound, symbol, or process.

(8) "Bank" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

(9) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.

(10) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. The term includes another record maintained as an alternative to a certificate of title by the governmental unit that issues certificates of title if a statute permits the security interest in question to be indicated on the record as a condition or result of the

security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this subsection, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term "chattel paper" does not include ~~((A))~~ (i) charters or other contracts involving the use or hire of a vessel or ~~((B))~~ (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(12) "Collateral" means the property subject to a security interest or agricultural lien. The term includes:

(A) Proceeds to which a security interest attaches;

(B) Accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and

(C) Goods that are the subject of a consignment.

(13) "Commercial tort claim" means a claim arising in tort with respect to which:

(A) The claimant is an organization; or

(B) The claimant is an individual, and the claim:

(i) Arose in the course of the claimant's business or profession; and

(ii) Does not include damages arising out of personal injury to, or the death of, an individual.

(14) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(15) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

(A) Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or

(B) Traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(16) "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books.

(17) "Commodity intermediary" means a person that:

(A) Is registered as a futures commission merchant under federal commodities law; or

(B) In the ordinary course of its business, provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(18) "Communicate" means:

(A) To send a written or other tangible record;

(B) To transmit a record by any means agreed upon by the persons sending and receiving the record; or

(C) In the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(19) "Consignee" means a merchant to which goods are delivered in a consignment.

(20) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(A) The merchant:

(i) Deals in goods of that kind under a name other than the name of the person making delivery;

(ii) Is not an auctioneer; and

(iii) Is not generally known by its creditors to be substantially engaged in selling the goods of others;

(B) With respect to each delivery, the aggregate value of the goods is one thousand dollars or more at the time of delivery;

(C) The goods are not consumer goods immediately before delivery; and

(D) The transaction does not create a security interest that secures an obligation.

(21) "Consignor" means a person that delivers goods to a consignee in a consignment.

(22) "Consumer debtor" means a debtor in a consumer transaction.

(23) "Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes.

(24) "Consumer-goods transaction" means a consumer transaction in which:

(A) An individual incurs a consumer obligation; and

(B) A security interest in consumer goods secures the obligation.

(25) "Consumer obligation" means an obligation which:

(A) Is incurred as part of a transaction entered into primarily for personal, family, or household purposes; and

(B) Arises from an extension of credit, or commitment to extend credit, in an aggregate amount not exceeding forty thousand dollars, or is secured by personal property used or expected to be used as a principal dwelling.

"Consumer obligor" means an obligor who is an individual and who incurred a consumer obligation.

(26) "Consumer transaction" means a transaction in which ~~((A))~~ (i) an individual incurs a consumer obligation, ~~((B))~~ (ii) a security interest secures the obligation, and ~~((C))~~ (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

(27) "Continuation statement" means an amendment of a financing statement which:

(A) Identifies, by its file number, the initial financing statement to which it relates; and

(B) Indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(28) "Debtor" means:

(A) A person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(B) A seller of accounts, chattel paper, payment intangibles, or promissory notes; or

(C) A consignee.

(29) "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(30) "Document" means a document of title or a receipt of the type described in RCW 62A.7-201~~((2))~~ (b).

(31) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(32) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) "Equipment" means goods other than inventory, farm products, or consumer goods.

(34) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(A) Crops grown, growing, or to be grown, including:

(i) Crops produced on trees, vines, and bushes; and

(ii) Aquatic goods produced in aquacultural operations;

(B) Livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(C) Supplies used or produced in a farming operation; or

(D) Products of crops or livestock in their unmanufactured states.

(35) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(36) "File number" means the number assigned to an initial financing statement pursuant to RCW 62A.9A-519(a).

(37) "Filing office" means an office designated in RCW 62A.9A-501 as the place to file a financing statement.

(38) "Filing-office rule" means a rule adopted pursuant to RCW 62A.9A-526.

(39) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying RCW 62A.9A-502 (a) and (b). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(41) "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law.

(42) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

(43) ("Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.) [Reserved.]

(44) "Goods" means all things that are movable when a security interest attaches. The term includes ~~((A))~~ (i) fixtures, ~~((B))~~ (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, ~~((C))~~ (iii) the unborn young of animals, ~~((D))~~ (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and ~~((E))~~ (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction or a manufactured home converted to real property under chapter 65.20 RCW.

(45) "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) "Health-care-insurance receivable" means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided.

(47) "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include ~~((A))~~ (i) investment property, ~~((B))~~ (ii) letters of credit, ~~((C))~~ (iii)

writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card, ~~((D))~~ (iv) writings that do not contain a promise or order to pay, or ~~((E))~~ (v) writings that are expressly nontransferable or nonassignable.

(48) "Inventory" means goods, other than farm products, which:

(A) Are leased by a person as lessor;

(B) Are held by a person for sale or lease or to be furnished under a contract of service;

(C) Are furnished by a person under a contract of service; or

(D) Consist of raw materials, work in process, or materials used or consumed in a business.

(49) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(50) "Jurisdiction of organization," with respect to a registered organization, means the jurisdiction under whose law the organization is formed or organized.

(51) "Letter-of-credit right" means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) "Lien creditor" means:

(A) A creditor that has acquired a lien on the property involved by attachment, levy, or the like;

(B) An assignee for benefit of creditors from the time of assignment;

(C) A trustee in bankruptcy from the date of the filing of the petition; or

(D) A receiver in equity from the time of appointment.

(53) "Manufactured home" means a manufactured home or mobile home as defined in RCW 46.04.302.

(54) [Reserved]

(55) "Mortgage" means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

(56) "New debtor" means a person that becomes bound as debtor under RCW 62A.9A-203(d) by a security agreement previously entered into by another person.

(57) "New value" means ~~((A))~~ (i) money, ~~((B))~~ (ii) money's worth in property, services, or new credit, or ~~((C))~~ (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) "Noncash proceeds" means proceeds other than cash proceeds.

(59) "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, ~~((A))~~ (i) owes payment or other performance of the obligation, ~~((B))~~ (ii) has provided property other than the collateral to secure payment or other performance of the obligation, or ~~((C))~~ (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(60) "Original debtor", except as used in RCW 62A.9A-310(c), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under RCW 62A.9A-203(d).

(61) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(62) "Person related to," with respect to an individual, means:

(A) The spouse or state registered domestic partner of the individual;

(B) A brother, brother-in-law, sister, or sister-in-law of the individual;

(C) An ancestor or lineal descendant of the individual or the individual's spouse or state registered domestic partner; or

(D) Any other relative, by blood or by marriage or other law, of the individual or the individual's spouse or state registered domestic partner who shares the same home with the individual.

(63) "Person related to," with respect to an organization, means:

(A) A person directly or indirectly controlling, controlled by, or under common control with the organization;

(B) An officer or director of, or a person performing similar functions with respect to, the organization;

(C) An officer or director of, or a person performing similar functions with respect to, a person described in (63)(A) of this subsection;

(D) The spouse or state registered domestic partner of an individual described in (63)(A), (B), or (C) of this subsection; or

(E) An individual who is related by blood or by marriage or other law to an individual described in (63)(A), (B), (C), or (D) of this subsection and shares the same home with the individual.

(64) "Proceeds", except as used in RCW 62A.9A-609(b), means the following property:

(A) Whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;

(B) Whatever is collected on, or distributed on account of, collateral;

(C) Rights arising out of collateral;

(D) To the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or

(E) To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(65) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(66) "Proposal" means a record authenticated by a secured party, which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to RCW 62A.9A-620, 62A.9A-621, and 62A.9A-622.

(67) "Public-finance transaction" means a secured transaction in connection with which:

(A) Debt securities are issued;

(B) All or a portion of the securities issued have an initial stated maturity of at least twenty years; and

(C) The debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

(68) "Public organic record" means a record that is available to the public for inspection and is:

(A) A record consisting of the record initially filed with or issued by a state or the United States to form or organize an organization and any record filed with or issued by the state or the United States which amends or restates the initial record;

(B) An organic record of a business trust consisting of the record initially filed with a state and any record filed with the state which amends or restates the initial record, if a statute of the state governing business trusts requires that the record be filed with the state; or

(C) A record consisting of legislation enacted by the legislature of a state or the congress of the United States which forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the state or the United States which amends or restates the name of the organization.

(69) "Pursuant to commitment," with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(70) "Record," except as used in "for record," "of record," "record or legal title," and "record owner," means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(71) "Registered organization" means an organization formed or organized solely under the law of a single state or the United States by the filing of a public organic record with, the issuance of a public organic record by, or the enactment of legislation by the state or the United States. The term includes a business trust that is formed or organized under the law of a single state if a statute of the state governing business trusts requires that the business trust's organic record be filed with the state.

(72) "Secondary obligor" means an obligor to the extent that:

(A) The obligor's obligation is secondary; or

(B) The obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(73) "Secured party" means:

(A) A person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(B) A person that holds an agricultural lien;

(C) A consignor;

(D) A person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(E) A trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(F) A person that holds a security interest arising under RCW 62A.2-401, 62A.2-505, 62A.2-711(3), 62A.2A-508(5), 62A.4-210, or 62A.5-118.

(74) "Security agreement" means an agreement that creates or provides for a security interest.

(75) "Send," in connection with a record or notification, means:

(A) To deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(B) To cause the record or notification to be received within the time that it would have been received if properly sent under (75)(A) of this subsection.

(76) "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(77) "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.

(78) "Supporting obligation" means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

(79) "Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(80) "Termination statement" means an amendment of a financing statement which:

(A) Identifies, by its file number, the initial financing statement to which it relates; and

(B) Indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(81) "Transmitting utility" means a person primarily engaged in the business of:

(A) Operating a railroad, subway, street railway, or trolley bus;

(B) Transmitting communications electrically, electromagnetically, or by light;

(C) Transmitting goods by pipeline or sewer; or

(D) Transmitting or producing and transmitting electricity, steam, gas, or water.

(b) **Definitions in other articles.** "Control" as provided in RCW 62A.7-106 and the following definitions in other articles apply to this Article:

"Applicant."	RCW 62A.5-102.
"Beneficiary."	RCW 62A.5-102.
"Broker."	RCW 62A.8-102.
"Certificated security."	RCW 62A.8-102.
"Check."	RCW 62A.3-104.
"Clearing corporation."	RCW 62A.8-102.
"Contract for sale."	RCW 62A.2-106.
"Customer."	RCW 62A.4-104.
"Entitlement holder."	RCW 62A.8-102.
"Financial asset."	RCW 62A.8-102.
"Holder in due course."	RCW 62A.3-302.
"Issuer" with respect to documents of title.	RCW 62A.7-102.
"Issuer" with respect to a letter of credit or letter-of-credit right.	RCW 62A.5-102.
"Issuer" with respect to a security.	RCW 62A.8-201.
"Lease."	RCW 62A.2A-103.
"Lease agreement."	RCW 62A.2A-103.
"Lease contract."	RCW 62A.2A-103.
"Leasehold interest."	RCW 62A.2A-103.
"Lessee."	RCW 62A.2A-103.
"Lessee in ordinary course of business."	RCW 62A.2A-103.
"Lessor."	RCW 62A.2A-103.
"Lessor's residual interest."	RCW 62A.2A-103.
"Letter of credit."	RCW 62A.5-102.
"Merchant."	RCW 62A.2-104.
"Negotiable instrument."	RCW 62A.3-104.

"Nominated person."	RCW 62A.5-102.
"Note."	RCW 62A.3-104.
"Proceeds of a letter of credit."	RCW 62A.5-114.
"Prove."	RCW 62A.3-103.
"Sale."	RCW 62A.2-106.
"Securities account."	RCW 62A.8-501.
"Securities intermediary."	RCW 62A.8-102.
"Security."	RCW 62A.8-102.
"Security certificate."	RCW 62A.8-102.
"Security entitlement."	RCW 62A.8-102.
"Uncertificated security."	RCW 62A.8-102.

(c) **Article 1 definitions and principles.** Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

Sec. 1503. RCW 62A.9A-203 and 2000 c 250 s 9A-203 are each amended to read as follows:

ATTACHMENT AND ENFORCEABILITY OF SECURITY INTEREST; PROCEEDS; SUPPORTING OBLIGATIONS; FORMAL REQUISITES. (a) **Attachment.** A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

(b) **Enforceability.** Except as otherwise provided in subsections (c) through (i) of this section, a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

(1) Value has been given;

(2) The debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

(3) One of the following conditions is met:

(A) The debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

(B) The collateral is not a certificated security and is in the possession of the secured party under RCW 62A.9A-313 pursuant to the debtor's security agreement;

(C) The collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under RCW 62A.8-301 pursuant to the debtor's security agreement; or

(D) The collateral is deposit accounts, electronic chattel paper, investment property, ~~((or))~~ letter-of-credit rights, or electronic documents, and the secured party has control under RCW 62A.7-106, 62A.9A-104, 62A.9A-105, 62A.9A-106, or 62A.9A-107 pursuant to the debtor's security agreement.

(c) **Other UCC provisions.** Subsection (b) of this section is subject to RCW 62A.4-210 on the security interest of a collecting bank, RCW 62A.5-118 on the security interest of a letter-of-credit issuer or nominated person, RCW 62A.9A-110 on a security interest arising under Article 2 or 2A, and RCW 62A.9A-206 on security interests in investment property.

(d) **When person becomes bound by another person's security agreement.** A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this Article or by contract:

(1) The security agreement becomes effective to create a security interest in the person's property; or

(2) The person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

(e) **Effect of new debtor becoming bound.** If a new debtor becomes bound as debtor by a security agreement entered into by another person:

(1) The agreement satisfies subsection (b)(3) of this section with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and

(2) Another agreement is not necessary to make a security interest in the property enforceable.

(f) **Proceeds and supporting obligations.** The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by RCW 62A.9A-315 and is also attachment of a security interest in a supporting obligation for the collateral.

(g) **Lien securing right to payment.** The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.

(h) **Security entitlement carried in securities account.** The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

(i) **Commodity contracts carried in commodity account.** The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account.

Sec. 1504. RCW 62A.9A-207 and 2000 c 250 s 9A-207 are each amended to read as follows:

RIGHTS AND DUTIES OF SECURED PARTY HAVING POSSESSION OR CONTROL OF COLLATERAL. (a) **Duty of care when secured party in possession.** Except as otherwise provided in subsection (d) of this section, a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(b) **Expenses, risks, duties, and rights when secured party in possession.** Except as otherwise provided in subsection (d) of this section, if a secured party has possession of collateral:

(1) Reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(2) The risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;

(3) The secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and

(4) The secured party may use or operate the collateral:

(A) For the purpose of preserving the collateral or its value;

(B) As permitted by an order of a court having competent jurisdiction; or

(C) Except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

(c) **Duties and rights when secured party in possession or control.** Except as otherwise provided in subsection (d) of this section, a secured party having possession of collateral or control of collateral under RCW 62A.7-106, 62A.9A-104, 62A.9A-105, 62A.9A-106, or 62A.9A-107:

(1) May hold as additional security any proceeds, except money or funds, received from the collateral;

(2) Shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and

(3) May create a security interest in the collateral.

(d) **Buyer of certain rights to payment.** If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor:

(1) Subsection (a) of this section does not apply unless the secured party is entitled under an agreement:

(A) To charge back uncollected collateral; or

(B) Otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and

(2) Subsections (b) and (c) of this section do not apply.

Sec. 1505. RCW 62A.9A-208 and 2001 c 32 s 21 are each amended to read as follows:

ADDITIONAL DUTIES OF SECURED PARTY HAVING CONTROL OF COLLATERAL. (a) **Applicability of section.** This section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) **Duties of secured party after receiving demand from debtor.** Within ten days after receiving an authenticated demand by the debtor:

(1) A secured party having control of a deposit account under RCW 62A.9A-104(a)(2) shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;

(2) A secured party having control of a deposit account under RCW 62A.9A-104(a)(3) shall:

(A) Pay the debtor the balance on deposit in the deposit account; or

(B) Transfer the balance on deposit into a deposit account in the debtor's name;

(3) A secured party, other than a buyer, having control of electronic chattel paper under RCW 62A.9A-105 shall:

(A) Communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;

(B) If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) Take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party;

(4) A secured party having control of investment property under RCW 62A.8-106(4)(b) or 62A.9A-106(b) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party; ~~(and)~~

(5) A secured party having control of a letter-of-credit right under RCW 62A.9A-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party; and

(6) A secured party having control of an electronic document shall:

(A) Give control of the electronic document to the debtor or its designated custodian;

(B) If the debtor designates a custodian that is the designated

custodian with which the authoritative copy of the electronic document is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) Take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party.

Sec. 1506. RCW 62A.9A-301 and 2001 c 32 s 22 are each amended to read as follows:

LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS. Except as otherwise provided in RCW 62A.9A-303 through 62A.9A-306, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

(3) Except as otherwise provided in subsection (4) of this section, while tangible negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(A) Perfection of a security interest in the goods by filing a fixture filing;

(B) Perfection of a security interest in timber to be cut; and

(C) The effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

(4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

Sec. 1507. RCW 62A.9A-310 and 2000 c 250 s 9A-310 are each amended to read as follows:

WHEN FILING REQUIRED TO PERFECT SECURITY INTEREST OR AGRICULTURAL LIEN; SECURITY INTERESTS AND AGRICULTURAL LIENS TO WHICH FILING PROVISIONS DO NOT APPLY. (a) **General rule: Perfection by filing.** Except as otherwise provided in subsections (b) and (d) of this section and RCW 62A.9A-312(b), a financing statement must be filed to perfect all security interests and agricultural liens.

(b) **Exceptions: Filing not necessary.** The filing of a financing statement is not necessary to perfect a security interest:

(1) That is perfected under RCW 62A.9A-308 (d), (e), (f), or (g);

(2) That is perfected under RCW 62A.9A-309 when it attaches;

(3) In property subject to a statute, regulation, or treaty described in RCW 62A.9A-311(a);

(4) In goods in possession of a bailee which is perfected under RCW 62A.9A-312(d) (1) or (2);

(5) In certificated securities, documents, goods, or instruments which is perfected without filing, control, or possession under RCW 62A.9A-312 (e), (f), or (g);

(6) In collateral in the secured party's possession under RCW 62A.9A-313;

(7) In a certificated security which is perfected by delivery of the security certificate to the secured party under RCW 62A.9A-313;

(8) In deposit accounts, electronic chattel paper, electronic documents, investment property, or letter-of-credit rights which is perfected by control under RCW 62A.9A-314;

(9) In proceeds which is perfected under RCW 62A.9A-315; or

(10) That is perfected under RCW 62A.9A-316.

(c) **Assignment of perfected security interest.** If a secured party assigns a perfected security interest or agricultural lien, a filing under this Article is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(d) **Further exception: Filing not necessary for handler's lien.** The filing of a financing statement is not necessary to perfect the agricultural lien of a handler on orchard crops as provided in RCW 60.11.020(3).

Sec. 1508. RCW 62A.9A-310 and 2011 c 74 s 709 are each amended to read as follows:

WHEN FILING REQUIRED TO PERFECT SECURITY INTEREST OR AGRICULTURAL LIEN; SECURITY INTERESTS AND AGRICULTURAL LIENS TO WHICH FILING PROVISIONS DO NOT APPLY. (a) **General rule: Perfection by filing.** Except as otherwise provided in subsections (b) and (d) of this section and RCW 62A.9A-312(b), a financing statement must be filed to perfect all security interests and agricultural liens.

(b) **Exceptions: Filing not necessary.** The filing of a financing statement is not necessary to perfect a security interest:

(1) That is perfected under RCW 62A.9A-308 (d), (e), (f), or (g);

(2) That is perfected under RCW 62A.9A-309 when it attaches;

(3) In property subject to a statute, regulation, or treaty described in RCW 62A.9A-311(a);

(4) In goods in possession of a bailee which is perfected under RCW 62A.9A-312(d) (1) or (2);

(5) In certificated securities, documents, goods, or instruments which is perfected without filing, control, or possession under RCW 62A.9A-312 (e), (f), or (g);

(6) In collateral in the secured party's possession under RCW 62A.9A-313;

(7) In a certificated security which is perfected by delivery of the security certificate to the secured party under RCW 62A.9A-313;

(8) In deposit accounts, electronic chattel paper, electronic documents, investment property, or letter-of-credit rights which is perfected by control under RCW 62A.9A-314;

(9) In proceeds which is perfected under RCW 62A.9A-315; or

(10) That is perfected under RCW 62A.9A-316.

(c) **Assignment of perfected security interest.** If a secured party assigns a perfected security interest or agricultural lien, a filing under this Article is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(d) **Further exception: Filing not necessary for handler's lien.** The filing of a financing statement is not necessary to perfect the agricultural lien of a handler on orchard crops as provided in RCW 60.11.020(3).

Sec. 1509. RCW 62A.9A-312 and 2000 c 250 s 9A-312 are each amended to read as follows:

PERFECTION OF SECURITY INTERESTS IN CHATTEL PAPER, DEPOSIT ACCOUNTS, DOCUMENTS, GOODS COVERED BY DOCUMENTS, INSTRUMENTS, INVESTMENT PROPERTY, LETTER-OF-CREDIT RIGHTS, AND MONEY; PERFECTION BY PERMISSIVE FILING; TEMPORARY PERFECTION WITHOUT FILING OR TRANSFER OF POSSESSION. (a) **Perfection by filing permitted.** A security interest in chattel paper, negotiable documents, instruments, or investment property may be perfected by filing.

(b) **Control or possession of certain collateral.** Except as otherwise provided in RCW 62A.9A-315 (c) and (d) for proceeds:

(1) A security interest in a deposit account may be perfected only by control under RCW 62A.9A-314;

(2) And except as otherwise provided in RCW 62A.9A-308(d), a security interest in a letter-of-credit right may be perfected only by control under RCW 62A.9A-314; and

(3) A security interest in money may be perfected only by the secured party's taking possession under RCW 62A.9A-313.

(c) **Goods covered by negotiable document.** While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

(1) A security interest in the goods may be perfected by perfecting a security interest in the document; and

(2) A security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

(d) **Goods covered by nonnegotiable document.** While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

(1) Issuance of a document in the name of the secured party;

(2) The bailee's receipt of notification of the secured party's interest; or

(3) Filing as to the goods.

(e) **Temporary perfection: New value.** A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession or control for a period of twenty days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

(f) **Temporary perfection: Goods or documents made available to debtor.** A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for twenty days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

(1) Ultimate sale or exchange; or

(2) Loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(g) **Temporary perfection: Delivery of security certificate or instrument to debtor.** A perfected security interest in a certificated security or instrument remains perfected for twenty days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

(1) Ultimate sale or exchange; or

(2) Presentation, collection, enforcement, renewal, or registration of transfer.

(h) **Expiration of temporary perfection.** After the twenty-day period specified in subsection (e), (f), or (g) of this section expires, perfection depends upon compliance with this Article.

Sec. 1510. RCW 62A.9A-313 and 2001 c 32 s 26 are each amended to read as follows:

WHEN POSSESSION BY OR DELIVERY TO SECURED PARTY PERFECTS SECURITY INTEREST WITHOUT FILING.

(a) **Perfection by possession or delivery.** Except as otherwise provided in subsection (b) of this section, a secured party may perfect a security interest in tangible negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under RCW 62A.8-301.

(b) **Goods covered by certificate of title.** With respect to goods covered by a certificate of title issued by this state, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in RCW 62A.9A-316(d).

(c) **Collateral in possession of person other than debtor.** With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party,

or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

(1) The person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

(2) The person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.

(d) **Time of perfection by possession; continuation of perfection.** If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

(e) **Time of perfection by delivery; continuation of perfection.** A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under RCW 62A.8-301 and remains perfected by delivery until the debtor obtains possession of the security certificate.

(f) **Acknowledgment not required.** A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

(g) **Effectiveness of acknowledgment; no duties or confirmation.** If a person acknowledges that it holds possession for the secured party's benefit:

(1) The acknowledgment is effective under subsection (c) of this section or RCW 62A.8-301(1), even if the acknowledgment violates the rights of a debtor; and

(2) Unless the person otherwise agrees or law other than this Article otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

(h) **Secured party's delivery to person other than debtor.** A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

(1) To hold possession of the collateral for the secured party's benefit; or

(2) To redeliver the collateral to the secured party.

(i) **Effect of delivery under subsection (h) of this section; no duties or confirmation.** A secured party does not relinquish possession, even if a delivery under subsection (h) of this section violates the rights of a debtor. A person to which collateral is delivered under subsection (h) of this section does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this Article otherwise provides.

Sec. 1511. RCW 62A.9A-313 and 2011 c 74 s 710 are each amended to read as follows:

WHEN POSSESSION BY OR DELIVERY TO SECURED PARTY PERFECTS SECURITY INTEREST WITHOUT FILING.

(a) **Perfection by possession or delivery.** Except as otherwise provided in subsection (b) of this section, a secured party may perfect a security interest in tangible negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under RCW 62A.8-301.

(b) **Goods covered by certificate of title.** With respect to goods covered by a certificate of title issued by this state, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in RCW 62A.9A-316(d).

(c) **Collateral in possession of person other than debtor.** With respect to collateral other than certificated securities and goods

covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

(1) The person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

(2) The person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.

(d) **Time of perfection by possession; continuation of perfection.** If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

(e) **Time of perfection by delivery; continuation of perfection.** A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under RCW 62A.8-301 and remains perfected by delivery until the debtor obtains possession of the security certificate.

(f) **Acknowledgment not required.** A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

(g) **Effectiveness of acknowledgment; no duties or confirmation.** If a person acknowledges that it holds possession for the secured party's benefit:

(1) The acknowledgment is effective under subsection (c) of this section or RCW 62A.8-301(1), even if the acknowledgment violates the rights of a debtor; and

(2) Unless the person otherwise agrees or law other than this Article otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

(h) **Secured party's delivery to person other than debtor.** A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

(1) To hold possession of the collateral for the secured party's benefit; or

(2) To redeliver the collateral to the secured party.

(i) **Effect of delivery under subsection (h) of this section; no duties or confirmation.** A secured party does not relinquish possession, even if a delivery under subsection (h) of this section violates the rights of a debtor. A person to which collateral is delivered under subsection (h) of this section does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this Article otherwise provides.

Sec. 1512. RCW 62A.9A-314 and 2000 c 250 s 9A-314 are each amended to read as follows:

PERFECTION BY CONTROL. (a) **Perfection by control.** A security interest in investment property, deposit accounts, letter-of-credit rights, ((~~or~~)) electronic chattel paper, or electronic documents may be perfected by control of the collateral under RCW 62A.7-106, 62A.9A-104, 62A.9A-105, 62A.9A-106, or 62A.9A-107.

(b) **Specified collateral: Time of perfection by control; continuation of perfection.** A security interest in deposit accounts, electronic chattel paper, ((~~or~~)) letter-of-credit rights, or electronic documents is perfected by control under RCW 62A.7-106, 62A.9A-104, 62A.9A-105, or 62A.9A-107 when the secured party obtains control and remains perfected by control only while the secured party retains control.

(c) **Investment property: Time of perfection by control; continuation of perfection.** A security interest in investment

property is perfected by control under RCW 62A.9A-106 from the time the secured party obtains control and remains perfected by control until:

(1) The secured party does not have control; and

(2) One of the following occurs:

(A) If the collateral is a certificated security, the debtor has or acquires possession of the security certificate;

(B) If the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or

(C) If the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

Sec. 1513. RCW 62A.9A-317 and 2001 c 32 s 27 are each amended to read as follows:

INTERESTS THAT TAKE PRIORITY OVER OR TAKE FREE OF SECURITY INTEREST OR AGRICULTURAL LIEN.

(a) **Conflicting security interests and rights of lien creditors.** A security interest or agricultural lien is subordinate to the rights of:

(1) A person entitled to priority under RCW 62A.9A-322; and

(2) Except as otherwise provided in subsection (e) of this section, a person that becomes a lien creditor before the earlier of the time:

(A) The security interest or agricultural lien is perfected; or

(B) One of the conditions specified in RCW 62A.9A-203(b)(3) is met and a financing statement covering the collateral is filed.

(b) **Buyers that receive delivery.** Except as otherwise provided in subsection (e) of this section, a buyer, other than a secured party, of tangible chattel paper, tangible documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) **Lessees that receive delivery.** Except as otherwise provided in subsection (e) of this section, a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) **Licensees and buyers of certain collateral.** A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, electronic documents, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) **Purchase-money security interest.** Except as otherwise provided in RCW 62A.9A-320 and 62A.9A-321, if a person files a financing statement with respect to a purchase-money security interest before or within twenty days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

Sec. 1514. RCW 62A.9A-317 and 2011 c 74 s 204 are each amended to read as follows:

INTERESTS THAT TAKE PRIORITY OVER OR TAKE FREE OF SECURITY INTEREST OR AGRICULTURAL LIEN.

(a) **Conflicting security interests and rights of lien creditors.** A security interest or agricultural lien is subordinate to the rights of:

(1) A person entitled to priority under RCW 62A.9A-322; and

(2) Except as otherwise provided in subsection (e) of this section, a person that becomes a lien creditor before the earlier of the time:

(A) The security interest or agricultural lien is perfected; or

(B) One of the conditions specified in RCW 62A.9A-203(b)(3) is met and a financing statement covering the collateral is filed.

(b) **Buyers that receive delivery.** Except as otherwise provided in subsection (e) of this section, a buyer, other than a secured party, of tangible chattel paper, tangible documents, goods, instruments, or a certificated security takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without

knowledge of the security interest or agricultural lien and before it is perfected.

(c) **Lessees that receive delivery.** Except as otherwise provided in subsection (e) of this section, a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) **Licensees and buyers of certain collateral.** A licensee of a general intangible or a buyer, other than a secured party, of collateral other than tangible chattel paper, tangible documents, goods, instruments, or a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) **Purchase-money security interest.** Except as otherwise provided in RCW 62A.9A-320 and 62A.9A-321, if a person files a financing statement with respect to a purchase-money security interest before or within twenty days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

Sec. 1515. RCW 62A.9A-338 and 2000 c 250 s 9A-338 are each amended to read as follows:

PRIORITY OF SECURITY INTEREST OR AGRICULTURAL LIEN PERFECTED BY FILED FINANCING STATEMENT PROVIDING CERTAIN INCORRECT INFORMATION. If a security interest or agricultural lien is perfected by a filed financing statement providing information described in RCW 62A.9A-516(b)(5) which is incorrect at the time the financing statement is filed:

(1) The security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and

(2) A purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of tangible chattel paper, tangible documents, goods, instruments, or a security certificate, receives delivery of the collateral.

Sec. 1516. RCW 62A.9A-338 and 2011 c 74 s 715 are each amended to read as follows:

PRIORITY OF SECURITY INTEREST OR AGRICULTURAL LIEN PERFECTED BY FILED FINANCING STATEMENT PROVIDING CERTAIN INCORRECT INFORMATION. If a security interest or agricultural lien is perfected by a filed financing statement providing information described in RCW 62A.9A-516(b)(5) which is incorrect at the time the financing statement is filed:

(1) The security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and

(2) A purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of tangible chattel paper, tangible documents, goods, instruments, or a security certificate, receives delivery of the collateral.

Sec. 1517. RCW 62A.9A-601 and 2000 c 250 s 9A-601 are each amended to read as follows:

RIGHTS AFTER DEFAULT; JUDICIAL ENFORCEMENT; CONSIGNOR OR BUYER OF ACCOUNTS, CHATTEL PAPER, PAYMENT INTANGIBLES, OR PROMISSORY NOTES. (a) **Rights of secured party after default.** After default, a secured party has the rights provided in this part and, except as otherwise provided

in RCW 62A.9A-602, those provided by agreement of the parties. A secured party:

(1) May reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and

(2) If the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(b) **Rights and duties of secured party in possession or control.** A secured party in possession of collateral or control of collateral under RCW 62A.7-106, 62A.9A-104, 62A.9A-105, 62A.9A-106, or 62A.9A-107 has the rights and duties provided in RCW 62A.9A-207.

(c) **Rights cumulative; simultaneous exercise.** The rights under subsections (a) and (b) of this section are cumulative and may be exercised simultaneously.

(d) **Rights of debtor and obligor.** Except as otherwise provided in subsection (g) of this section and RCW 62A.9A-605, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

(e) **Lien of levy after judgment.** If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

(1) The date of perfection of the security interest or agricultural lien in the collateral;

(2) The date of filing a financing statement covering the collateral; or

(3) Any date specified in a statute under which the agricultural lien was created.

(f) **Execution sale.** A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this Article.

(g) **Consignor or buyer of certain rights to payment.** Except as otherwise provided in RCW 62A.9A-607(c), this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

(h) **Enforcement restrictions.** All rights and remedies provided in this part with respect to promissory notes or an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, are subject to RCW 62A.9A-408 to the extent applicable.

Sec. 1518. RCW 62A.9A-601 and 2011 c 74 s 722 are each amended to read as follows:

RIGHTS AFTER DEFAULT; JUDICIAL ENFORCEMENT; CONSIGNOR OR BUYER OF ACCOUNTS, CHATTEL PAPER, PAYMENT INTANGIBLES, OR PROMISSORY NOTES. (a) **Rights of secured party after default.** After default, a secured party has the rights provided in this part and, except as otherwise provided in RCW 62A.9A-602, those provided by agreement of the parties. A secured party:

(1) May reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and

(2) If the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(b) **Rights and duties of secured party in possession or control.** A secured party in possession of collateral or control of collateral under RCW 62A.7-106, 62A.9A-104, 62A.9A-105, 62A.9A-106, or 62A.9A-107 has the rights and duties provided in RCW 62A.9A-207.

(c) **Rights cumulative; simultaneous exercise.** The rights under subsections (a) and (b) of this section are cumulative and may be exercised simultaneously.

(d) **Rights of debtor and obligor.** Except as otherwise provided in subsection (g) of this section and RCW 62A.9A-605, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

(e) **Lien of levy after judgment.** If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

(1) The date of perfection of the security interest or agricultural lien in the collateral;

(2) The date of filing a financing statement covering the collateral; or

(3) Any date specified in a statute under which the agricultural lien was created.

(f) **Execution sale.** A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this Article.

(g) **Consignor or buyer of certain rights to payment.** Except as otherwise provided in RCW 62A.9A-607(c), this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

(h) **Enforcement restrictions.** All rights and remedies provided in this part with respect to promissory notes or an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, are subject to RCW 62A.9A-408 to the extent applicable.

PART XVI

STATUTORY REPEALS

NEW SECTION. Sec. 1601. The following acts or parts of acts are each repealed:

(1) RCW 62A.1-109 (Section captions) and 1965 ex.s. c 157 s 1-109;

(2) RCW 62A.1-207 (Performance or acceptance under reservation of rights) and 1993 c 229 s 2 & 1965 ex.s. c 157 s 1-207;

(3) RCW 62A.1-208 (Option to accelerate at will) and 1965 ex.s. c 157 s 1-208;

(4) RCW 62A.2-208 (Course of performance or practical construction) and 1965 ex.s. c 157 s 2-208;

(5) RCW 62A.2A-207 (Course of performance or practical construction) and 1993 c 230 s 2A-207;

(6) RCW 62A.10-104 (Laws not repealed) and 1995 c 48 s 71 & 1965 ex.s. c 157 s 10-104; and

(7) 2011 c 74 s 801.

PART XVII

CONFORMING AMENDMENTS TO UCC NUMBERING SYSTEM FOR ARTICLE 5

Sec. 1701. RCW 62A.5-102 and 1997 c 56 s 3 are each amended to read as follows:

((+)) (a) The definitions in this section apply throughout this Article unless the context clearly requires otherwise:

((+)) (1) "Adviser" means a person who, at the request of the issuer, a confirmer, or another adviser, notifies or requests another

adviser to notify the beneficiary that a letter of credit has been issued, confirmed, or amended.

((+)) (2) "Applicant" means a person at whose request or for whose account a letter of credit is issued. The term includes a person who requests an issuer to issue a letter of credit on behalf of another if the person making the request undertakes an obligation to reimburse the issuer.

((+)) (3) "Beneficiary" means a person who under the terms of a letter of credit is entitled to have its complying presentation honored. The term includes a person to whom drawing rights have been transferred under a transferable letter of credit.

((+)) (4) "Confirmer" means a nominated person who undertakes, at the request or with the consent of the issuer, to honor a presentation under a letter of credit issued by another.

((+)) (5) "Dishonor" of a letter of credit means failure timely to honor or to take an interim action, such as acceptance of a draft, that may be required by the letter of credit.

((+)) (6) "Document" means a draft or other demand, document of title, investment security, certificate, invoice, or other record, statement, or representation of fact, law, right, or opinion (i) which is presented in a written or other medium permitted by the letter of credit or, unless prohibited by the letter of credit, by the standard practice referred to in RCW 62A.5-108((+)) (e) and (ii) which is capable of being examined for compliance with the terms and conditions of the letter of credit. A document may not be oral.

((+)) (7) "Good faith" means honesty in fact in the conduct or transaction concerned.

((+)) (8) "Honor" of a letter of credit means performance of the issuer's undertaking in the letter of credit to pay or deliver an item of value. Unless the letter of credit otherwise provides, "honor" occurs:

(i) Upon payment;

(ii) If the letter of credit provides for acceptance, upon acceptance of a draft and, at maturity, its payment; or

(iii) If the letter of credit provides for incurring a deferred obligation, upon incurring the obligation and, at maturity, its performance.

((+)) (9) "Issuer" means a bank or other person that issues a letter of credit, but does not include an individual who makes an engagement for personal, family, or household purposes.

((+)) (10) "Letter of credit" means a definite undertaking that satisfies the requirements of RCW 62A.5-104 by an issuer to a beneficiary at the request or for the account of an applicant or, in the case of a financial institution, to itself or for its own account, to honor a documentary presentation by payment or delivery of an item of value.

((+)) (11) "Nominated person" means a person whom the issuer (i) designates or authorizes to pay, accept, negotiate, or otherwise give value under a letter of credit and (ii) undertakes by agreement or custom and practice to reimburse.

((+)) (12) "Presentation" means delivery of a document to an issuer or nominated person for honor or giving of value under a letter of credit.

((+)) (13) "Presenter" means a person making a presentation as or on behalf of a beneficiary or nominated person.

((+)) (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) "Successor of a beneficiary" means a person who succeeds to substantially all of the rights of a beneficiary by operation of law, including a corporation with or into which the beneficiary has been merged or consolidated, an administrator, executor, personal representative, trustee in bankruptcy, debtor in possession, liquidator, and receiver.

((+)) (b) Definitions in other Articles applying to this Article and the sections in which they appear are:

"Accept" or "Acceptance"

RCW 62A.3-409

"Value"

RCW 62A.3-303, RCW 62A.4-211.

~~((3))~~ (c) Article 1 contains certain additional general definitions and principles of construction and interpretation applicable throughout this Article.

Sec. 1702. RCW 62A.5-104 and 1997 c 56 s 5 are each amended to read as follows:

A letter of credit, confirmation, advice, transfer, amendment, or cancellation may be issued in any form that is a record and is authenticated ~~((+))~~ (i) by a signature or ~~((2))~~ (ii) in accordance with the agreement of the parties or the standard practice referred to in RCW 62A.5-108~~((5))~~ (e).

Sec. 1703. RCW 62A.5-106 and 1997 c 56 s 7 are each amended to read as follows:

~~((+))~~ (a) A letter of credit is issued and becomes enforceable according to its terms against the issuer when the issuer sends or otherwise transmits it to the person requested to advise or to the beneficiary. A letter of credit is revocable only if it so provides.

~~((2))~~ (b) After a letter of credit is issued, rights and obligations of a beneficiary, applicant, confirmer, and issuer are not affected by an amendment or cancellation to which that person has not consented except to the extent the letter of credit provides that it is revocable or that the issuer may amend or cancel the letter of credit without that consent.

~~((3))~~ (c) If there is no stated expiration date or other provision that determines its duration, a letter of credit expires one year after its stated date of issuance or, if none is stated, after the date on which it is issued.

~~((+))~~ (d) A letter of credit that states that it is perpetual expires five years after its stated date of issuance, or if none is stated, after the date on which it is issued.

Sec. 1704. RCW 62A.5-107 and 1997 c 56 s 8 are each amended to read as follows:

~~((+))~~ (a) A confirmer is directly obligated on a letter of credit and has the rights and obligations of an issuer to the extent of its confirmation. The confirmer also has rights against and obligations to the issuer as if the issuer were an applicant and the confirmer had issued the letter of credit at the request and for the account of the issuer.

~~((2))~~ (b) A nominated person who is not a confirmer is not obligated to honor or otherwise give value for a presentation.

~~((3))~~ (c) A person requested to advise may decline to act as an adviser. An adviser that is not a confirmer is not obligated to honor or give value for a presentation. An adviser undertakes to the issuer and to the beneficiary accurately to advise the terms of the letter of credit, confirmation, amendment, or advice received by that person and undertakes to the beneficiary to check the apparent authenticity of the request to advise. Even if the advice is inaccurate, the letter of credit, confirmation, or amendment is enforceable as issued.

~~((+))~~ (d) A person who notifies a transferee beneficiary of the terms of a letter of credit, confirmation, amendment, or advice has the rights and obligations of an adviser under subsection ~~((3))~~ (c) of this section. The terms in the notice to the transferee beneficiary may differ from the terms in any notice to the transferor beneficiary to the extent permitted by the letter of credit, confirmation, amendment, or advice received by the person who so notifies.

Sec. 1705. RCW 62A.5-108 and 1997 c 56 s 9 are each amended to read as follows:

~~((+))~~ (a) Except as otherwise provided in RCW 62A.5-109, an issuer shall honor a presentation that, as determined by the standard practice referred to in subsection ~~((5))~~ (e) of this section, appears on its face strictly to comply with the terms and conditions of the letter of credit. Except as otherwise provided in RCW 62A.5-113 and unless otherwise agreed with the applicant, an issuer shall dishonor a presentation that does not appear so to comply.

~~((2))~~ (b) An issuer has a reasonable time after presentation, but not beyond the end of the seventh business day of the issuer after the day of its receipt of documents:

~~((a))~~ (1) To honor;

~~((b))~~ (2) If the letter of credit provides for honor to be completed more than seven business days after presentation, to accept a draft or incur a deferred obligation; or

~~((e))~~ (3) To give notice to the presenter of discrepancies in the presentation.

~~((3))~~ (c) Except as otherwise provided in subsection ~~((+))~~ (d) of this section, an issuer is precluded from asserting as a basis for dishonor any discrepancy if timely notice is not given, or any discrepancy not stated in the notice if timely notice is given.

~~((+))~~ (d) Failure to give the notice specified in subsection ~~((2))~~ (b) of this section or to mention fraud, forgery, or expiration in the notice does not preclude the issuer from asserting as a basis for dishonor fraud or forgery as described in RCW 62A.5-109~~((+))~~ (a) or expiration of the letter of credit before presentation.

~~((5))~~ (e) An issuer shall observe standard practice of financial institutions that regularly issue letters of credit. Determination of the issuer's observance of the standard practice is a matter of interpretation for the court. The court shall offer the parties a reasonable opportunity to present evidence of the standard practice.

~~((6))~~ (f) An issuer is not responsible for:

~~((a))~~ (1) The performance or nonperformance of the underlying contract, arrangement, or transaction;

~~((b))~~ (2) An act or omission of others; or

~~((e))~~ (3) Observance or knowledge of the usage of a particular trade other than the standard practice referred to in subsection ~~((5))~~ (e) of this section.

~~((7))~~ (g) If an undertaking constituting a letter of credit under RCW 62A.5-102~~((+)(j))~~ (a)(10) contains nondocumentary conditions, an issuer shall disregard the nondocumentary conditions and treat them as if they were not stated.

~~((8))~~ (h) An issuer that has dishonored a presentation shall return the documents or hold them at the disposal of, and send advice to that effect to, the presenter.

~~((9))~~ (i) An issuer that has honored a presentation as permitted or required by this Article:

~~((a))~~ (1) Is entitled to be reimbursed by the applicant in immediately available funds not later than the date of its payment of funds;

~~((b))~~ (2) Takes the documents free of claims of the beneficiary or presenter;

~~((e))~~ (3) Is precluded from asserting a right of recourse on a draft under RCW 62A.3-414 and 62A.3-415;

~~((d))~~ (4) Except as otherwise provided in RCW 62A.5-110 and 62A.5-117, is precluded from restitution of money paid or other value given by mistake to the extent the mistake concerns discrepancies in the documents or tender which are apparent on the face of the presentation; and

~~((e))~~ (5) Is discharged to the extent of its performance under the letter of credit unless the issuer honored a presentation in which a required signature of a beneficiary was forged.

Sec. 1706. RCW 62A.5-109 and 1997 c 56 s 10 are each amended to read as follows:

~~((+))~~ (a) If a presentation is made that appears on its face strictly to comply with the terms and conditions of the letter of credit, but a required document is forged or materially fraudulent, or honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant:

~~((a))~~ (1) The issuer shall honor the presentation, if honor is demanded by (i) a nominated person who has given value in good faith and without notice of forgery or material fraud, (ii) a confirmer who has honored its confirmation in good faith, (iii) a holder in due course of a draft drawn under the letter of credit which was taken after

acceptance by the issuer or nominated person, or (iv) an assignee of the issuer's or nominated person's deferred obligation that was taken for value and without notice of forgery or material fraud after the obligation was incurred by the issuer or nominated person; and

~~((b))~~ (2) The issuer, acting in good faith, may honor or dishonor the presentation in any other case.

~~((2))~~ (b) If an applicant claims that a required document is forged or materially fraudulent or that honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant, a court of competent jurisdiction may temporarily or permanently enjoin the issuer from honoring a presentation or grant similar relief against the issuer or other persons only if the court finds that:

~~((a))~~ (1) The relief is not prohibited under the law applicable to an accepted draft or deferred obligation incurred by the issuer;

~~((b))~~ (2) A beneficiary, issuer, or nominated person who may be adversely affected is adequately protected against loss that it may suffer because the relief is granted;

~~((c))~~ (3) All of the conditions to entitle a person to the relief under the law of this state have been met; and

~~((d))~~ (4) On the basis of the information submitted to the court, the applicant is more likely than not to succeed under its claim of forgery or material fraud and the person demanding honor does not qualify for protection under subsection ~~((+)(a))~~ (a)(1) of this section.

Sec. 1707. RCW 62A.5-110 and 1997 c 56 s 11 are each amended to read as follows:

~~((+))~~ (a) If its presentation is honored, the beneficiary warrants:

~~((a))~~ (1) To the issuer, any other person to whom presentation is made, and the applicant that there is no fraud or forgery of the kind described in RCW 62A.5-109~~((+))~~ (a); and

~~((b))~~ (2) To the applicant that the drawing does not violate any agreement between the applicant and beneficiary or any other agreement intended by them to be augmented by the letter of credit.

~~((2))~~ (b) The warranties in subsection ~~((+))~~ (a) of this section are in addition to warranties arising under Articles 3, 4, 7, and 8 because of the presentation or transfer of documents covered by any of those articles.

Sec. 1708. RCW 62A.5-111 and 1997 c 56 s 12 are each amended to read as follows:

~~((+))~~ (a) If an issuer wrongfully dishonors or repudiates its obligation to pay money under a letter of credit before presentation, the beneficiary, successor, or nominated person presenting on its own behalf may recover from the issuer the amount that is the subject of the dishonor or repudiation. If the issuer's obligation under the letter of credit is not for the payment of money, the claimant may obtain specific performance or, at the claimant's election, recover an amount equal to the value of performance from the issuer. In either case, the claimant may also recover incidental but not consequential damages. The claimant is not obligated to take action to avoid damages that might be due from the issuer under this subsection. If, although not obligated to do so, the claimant avoids damages, the claimant's recovery from the issuer must be reduced by the amount of damages avoided. The issuer has the burden of proving the amount of damages avoided. In the case of repudiation the claimant need not present any document.

~~((2))~~ (b) If an issuer wrongfully dishonors a draft or demand presented under a letter of credit or honors a draft or demand in breach of its obligation to the applicant, the applicant may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach.

~~((3))~~ (c) If an adviser or nominated person other than a confirmer breaches an obligation under this Article or an issuer breaches an obligation not covered in subsection ~~((+ or (2))~~ (a) or (b) of this section, a person to whom the obligation is owed may recover damages resulting from the breach, including incidental but

not consequential damages, less any amount saved as a result of the breach. To the extent of the confirmation, a confirmer has the liability of an issuer specified in this subsection and subsections ~~((1) and (2))~~ (a) and (b) of this section.

~~((4))~~ (d) An issuer, nominated person, or adviser who is found liable under subsection ~~((+), (2), or (3))~~ (a), (b), or (c) of this section shall pay interest on the amount owed thereunder from the date of wrongful dishonor or other appropriate date.

~~((5))~~ (e) Reasonable attorney's fees and other expenses of litigation must be awarded to the prevailing party in an action in which a remedy is sought under this Article.

~~((6))~~ (f) Damages that would otherwise be payable by a party for breach of an obligation under this Article may be liquidated by agreement or undertaking, but only in an amount or by a formula that is reasonable in light of the harm anticipated.

Sec. 1709. RCW 62A.5-112 and 1997 c 56 s 13 are each amended to read as follows:

~~((+))~~ (a) Except as otherwise provided in RCW 62A.5-113, unless a letter of credit provides that it is transferable, the right of a beneficiary to draw or otherwise demand performance under a letter of credit may not be transferred.

~~((2))~~ (b) Even if a letter of credit provides that it is transferable, the issuer may refuse to recognize or carry out a transfer if:

~~((a))~~ (1) The transfer would violate applicable law; or

~~((b))~~ (2) The transferor or transferee has failed to comply with any requirement stated in the letter of credit or any other requirement relating to transfer imposed by the issuer which is within the standard practice referred to in RCW 62A.5-108(5) or is otherwise reasonable under the circumstances.

Sec. 1710. RCW 62A.5-113 and 1997 c 56 s 14 are each amended to read as follows:

~~((+))~~ (a) A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in the name of the beneficiary without disclosing its status as a successor.

~~((2))~~ (b) A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in its own name as the disclosed successor of the beneficiary. Except as otherwise provided in subsection ~~((5))~~ (e) of this section, an issuer shall recognize a disclosed successor of a beneficiary as beneficiary in full substitution for its predecessor upon compliance with the requirements for recognition by the issuer of a transfer of drawing rights by operation of law under the standard practice referred to in RCW 62A.5-108~~((5))~~ (e) or, in the absence of such a practice, compliance with other reasonable procedures sufficient to protect the issuer.

~~((3))~~ (c) An issuer is not obliged to determine whether a purported successor is a successor of a beneficiary or whether the signature of a purported successor is genuine or authorized.

~~((4))~~ (d) Honor of a purported successor's apparently complying presentation under subsection ~~((+ or (2))~~ (a) or (b) of this section has the consequences specified in RCW 62A.5-108~~((9))~~ (i) even if the purported successor is not the successor of a beneficiary. Documents signed in the name of the beneficiary or of a disclosed successor by a person who is neither the beneficiary nor the successor of the beneficiary are forged documents for the purposes of RCW 62A.5-109.

~~((5))~~ (e) An issuer whose rights of reimbursement are not covered by subsection ~~((4))~~ (d) of this section or substantially similar law and any confirmer or nominated person may decline to recognize a presentation under subsection ~~((2))~~ (b) of this section.

~~((6))~~ (f) A beneficiary whose name is changed after the issuance of a letter of credit has the same rights and obligations as a successor of a beneficiary under this section.

Sec. 1711. RCW 62A.5-114 and 1997 c 56 s 15 are each amended to read as follows:

~~((4))~~ (a) In this section, "proceeds of a letter of credit" means the cash, check, accepted draft, or other item of value paid or delivered upon honor or giving of value by the issuer or any nominated person under the letter of credit. The term does not include a beneficiary's drawing rights or documents presented by the beneficiary.

~~((2))~~ (b) A beneficiary may assign its right to part or all of the proceeds of a letter of credit. The beneficiary may do so before presentation as a present assignment of its right to receive proceeds contingent upon its compliance with the terms and conditions of the letter of credit.

~~((3))~~ (c) An issuer or nominated person need not recognize an assignment of proceeds of a letter of credit until it consents to the assignment.

~~((4))~~ (d) An issuer or nominated person has no obligation to give or withhold its consent to an assignment of proceeds of a letter of credit, but consent may not be unreasonably withheld if the assignee possesses and exhibits the letter of credit and presentation of the letter of credit is a condition to honor.

~~((5))~~ (e) Rights of a transferee beneficiary or nominated person are independent of the beneficiary's assignment of the proceeds of a letter of credit and are superior to the assignee's right to the proceeds.

~~((6))~~ (f) Neither the rights recognized by this section between an assignee and an issuer, transferee beneficiary, or nominated person nor the issuer's or nominated person's payment of proceeds to an assignee or a third person affect the rights between the assignee and any person other than the issuer, transferee beneficiary, or nominated person. The mode of creating and perfecting a security interest in or granting an assignment of a beneficiary's rights to proceeds is governed by Article 9A or other law. Against persons other than the issuer, transferee beneficiary, or nominated person, the rights and obligations arising upon the creation of a security interest or other assignment of a beneficiary's right to proceeds and its perfection are governed by Article 9A or other law.

Sec. 1712. RCW 62A.5-116 and 1997 c 56 s 17 are each amended to read as follows:

~~((4))~~ (a) The liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction chosen by an agreement in the form of a record signed or otherwise authenticated by the affected parties in the manner provided in RCW 62A.5-104 or by a provision in the person's letter of credit, confirmation, or other undertaking. The jurisdiction whose law is chosen need not bear any relation to the transaction.

~~((2))~~ (b) Unless subsection ~~((4))~~ (a) of this section applies, the liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction in which the person is located. The person is considered to be located at the address indicated in the person's undertaking. If more than one address is indicated, the person is considered to be located at the address from which the person's undertaking was issued. For the purpose of jurisdiction, choice of law, and recognition of interbranch letters of credit, but not enforcement of a judgment, all branches of a bank are considered separate juridical entities and a bank is considered to be located at the place where its relevant branch is considered to be located under this subsection.

~~((3))~~ (c) Except as otherwise provided in this subsection, the liability of an issuer, nominated person, or adviser is governed by any rules of custom or practice, such as the Uniform Customs and Practice for Documentary Credits, to which the letter of credit, confirmation, or other undertaking is expressly made subject. If ~~((4))~~ (i) this Article would govern the liability of an issuer, nominated person, or adviser under subsection ~~((4) or (2))~~ (a) or (b) of this section, ~~((4))~~ (ii) the relevant undertaking incorporates rules of custom or practice, and ~~((4))~~ (iii) there is conflict between this Article and those rules as applied to that undertaking, those rules govern except to the extent of any conflict with the nonvariable provisions specified in RCW 62A.5-103~~((3))~~ (c).

~~((4))~~ (d) If there is conflict between this Article and Article 3, 4, 4A, or 9A, this Article governs.

~~((5))~~ (e) The forum for settling disputes arising out of an undertaking within this Article may be chosen in the manner and with the binding effect that governing law may be chosen in accordance with subsection ~~((4))~~ (a) of this section.

Sec. 1713. RCW 62A.5-117 and 1997 c 56 s 18 are each amended to read as follows:

~~((4))~~ (a) An issuer that honors a beneficiary's presentation is subrogated to the rights of the beneficiary to the same extent as if the issuer were a secondary obligor of the underlying obligation owed to the beneficiary and of the applicant to the same extent as if the issuer were the secondary obligor of the underlying obligation owed to the applicant.

~~((2))~~ (b) An applicant that reimburses an issuer is subrogated to the rights of the issuer against any beneficiary, presenter, or nominated person to the same extent as if the applicant were the secondary obligor of the obligations owed to the issuer and has the rights of subrogation of the issuer to the rights of the beneficiary stated in subsection ~~((4))~~ (a) of this section.

~~((3))~~ (c) A nominated person who pays or gives value against a draft or demand presented under a letter of credit is subrogated to the rights of:

~~((4))~~ (1) The issuer against the applicant to the same extent as if the nominated person were a secondary obligor of the obligation owed to the issuer by the applicant;

~~((4))~~ (2) The beneficiary to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the beneficiary; and

~~((4))~~ (3) The applicant to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the applicant.

~~((4))~~ (d) Notwithstanding any agreement or term to the contrary, the rights of subrogation stated in subsections ~~((4) and (2))~~ (a) and (b) of this section do not arise until the issuer honors the letter of credit or otherwise pays and the rights in subsection ~~((3))~~ (c) of this section do not arise until the nominated person pays or otherwise gives value. Until then, the issuer, nominated person, and the applicant do not derive under this section present or prospective rights forming the basis of a claim, defense, or excuse.

Sec. 1714. RCW 62A.5-118 and 2000 c 250 s 2 are each amended to read as follows:

(a) An issuer or nominated person has a security interest in a document presented under a letter of credit to the extent that the issuer or nominated person honors or gives value for the presentation.

(b) So long as and to the extent that an issuer or nominated person has not been reimbursed or has not otherwise recovered the value given with respect to a security interest in a document under subsection (a) of this section, the security interest continues and is subject to Article 9A, but:

(1) A security agreement is not necessary to make the security interest enforceable under RCW 62A.9A-203~~((4)(3))~~ (2)(c);

(2) If the document is presented in a medium other than a written or other tangible medium, the security interest is perfected; and

(3) If the document is presented in a written or other tangible medium and is not a certificated security, chattel paper, a document of title, an instrument, or a letter of credit, the security interest is perfected and has priority over a conflicting security interest in the document so long as the debtor does not have possession of the document.

Sec. 1715. RCW 62A.2-512 and 1997 c 56 s 20 are each amended to read as follows:

(1) Where the contract requires payment before inspection non-conformity of the goods does not excuse the buyer from so making payment unless

(a) the non-conformity appears without inspection; or

(b) despite tender of the required documents the circumstances would justify injunction against honor under the provisions of this Title (RCW 62A.5-109((2)) (b)).

(2) Payment pursuant to subsection (1) does not constitute an acceptance of goods or impair the buyer's right to inspect or any of his or her remedies.

Sec. 1716. RCW 62A.9A-107 and 2001 c 32 s 19 are each amended to read as follows:

A secured party has control of a letter-of-credit right to the extent of any right to payment or performance by the issuer or any nominated person if the issuer or nominated person has consented to an assignment of proceeds of the letter of credit under RCW 62A.5-114((3)) (c) or otherwise applicable law or practice.

PART XVIII

ADMINISTRATIVE DRAFTING PROVISIONS

NEW SECTION. Sec. 1801. Sections 115 through 124 of this act must be placed in chapter 62A.1 RCW under the heading:

PART 3

TERRITORIAL APPLICABILITY AND GENERAL RULES

NEW SECTION. Sec. 1802. PART HEADINGS. Part headings used in this act are not any part of the law.

NEW SECTION. Sec. 1803. APPLICABILITY. This act applies to a transaction that is entered into, a document of title that is issued, or a bailment that arises on or after the effective date of this section. This act does not apply to a transaction that is entered into, a document of title that is issued, or a bailment that arises before the effective date of this section even if the transaction, document of title, or bailment would be subject to this act if the transaction had been entered into, the document of title had been issued, or the bailment had arisen on or after the effective date of this section. This act does not apply to a right of action that has accrued before the effective date of this section.

NEW SECTION. Sec. 1804. SAVINGS CLAUSE. A transaction that is entered into, a document of title that is issued, or a bailment that arises before the effective date of this section and the rights, obligations, and interests flowing from that transaction, document, or bailment are governed by any statute or other rule amended or repealed by this act as if amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule.

NEW SECTION. Sec. 1805. Sections 901, 1402, 1501, 1507, 1510, 1513, 1515, and 1517 of this act expire July 1, 2013.

NEW SECTION. Sec. 1806. Sections 902, 1403, 1502, 1508, 1511, 1514, 1516, and 1518 of this act take effect July 1, 2013."

On page 1, line 1 of the title, after "Code;" strike the remainder of the title and insert "amending RCW 62A.1-101, 62A.1-102, 62A.1-103, 62A.1-104, 62A.1-105, 62A.1-106, 62A.1-107, 62A.1-108, 62A.1-201, 62A.1-202, 62A.1-203, 62A.1-204, 62A.1-205, 62A.1-206, 62A.7-101, 62A.7-102, 62A.7-103, 62A.7-104, 62A.7-105, 62A.7-201, 62A.7-202, 62A.7-203, 62A.7-204, 62A.7-205, 62A.7-206, 62A.7-207, 62A.7-208, 62A.7-209, 62A.7-210, 62A.7-301, 62A.7-302, 62A.7-303, 62A.7-304, 62A.7-305, 62A.7-307, 62A.7-308, 62A.7-309, 62A.7-401, 62A.7-402, 62A.7-403, 62A.7-404, 62A.7-501, 62A.7-502, 62A.7-503, 62A.7-504, 62A.7-505, 62A.7-506, 62A.7-507, 62A.7-508, 62A.7-509, 62A.7-601, 62A.7-602, 62A.7-603, 62A.2-103, 62A.2-104, 62A.2-202, 62A.2-310, 62A.2-323, 62A.2-401, 62A.2-503, 62A.2-505, 62A.2-506, 62A.2-

509, 62A.2-605, 62A.2-705, 62A.2A-103, 62A.2A-103, 62A.2A-501, 62A.2A-514, 62A.2A-518, 62A.2A-519, 62A.2A-526, 62A.2A-527, 62A.2A-528, 62A.3-103, 62A.4-104, 62A.4-210, 62A.4A-105, 62A.4A-106, 62A.4A-204, 62A.5-103, 62A.8-102, 62A.8-103, 62A.8-103, 62A.9A-102, 62A.9A-102, 62A.9A-203, 62A.9A-207, 62A.9A-208, 62A.9A-301, 62A.9A-310, 62A.9A-310, 62A.9A-312, 62A.9A-313, 62A.9A-313, 62A.9A-314, 62A.9A-317, 62A.9A-317, 62A.9A-338, 62A.9A-338, 62A.9A-601, 62A.9A-601, 62A.5-102, 62A.5-104, 62A.5-106, 62A.5-107, 62A.5-108, 62A.5-109, 62A.5-110, 62A.5-111, 62A.5-112, 62A.5-113, 62A.5-114, 62A.5-116, 62A.5-117, 62A.5-118, 62A.2-512, and 62A.9A-107; adding new sections to chapter 62A.1 RCW; adding a new section to chapter 62A.7 RCW; creating new sections; repealing RCW 62A.1-109, 62A.1-207, 62A.1-208, 62A.2-208, 62A.2A-207, and 62A.10-104; repealing 2011 c 74 s 801; providing an effective date; and providing an expiration date."

and the same is herewith transmitted.

Thomas Hoeman, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to ENGROSSED SUBSTITUTE HOUSE BILL NO. 2197 and advanced the bill as amended by the Senate to final passage.

FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representatives Pedersen and Shea spoke in favor of the passage of the bill.

The Speaker (Representative Roberts presiding) stated the question before the House to be the final passage of Engrossed Substitute House Bill No. 2197, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of Engrossed Substitute House Bill No. 2197, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 95; Nays, 0; Absent, 0; Excused, 3.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Asay, Bailey, Billig, Blake, Buys, Carlyle, Chandler, Clibborn, Cody, Condotta, Crouse, Dahlquist, Dammeier, Darneille, DeBolt, Dickerson, Dunshee, Eddy, Fagan, Finn, Fitzgibbon, Goodman, Green, Haigh, Haler, Hansen, Hargrove, Harris, Hasegawa, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jinkins, Johnson, Kagi, Kelley, Kenney, Kirby, Kretz, Kristiansen, Ladenburg, Liias, Lytton, Maxwell, McCoy, McCune, Miloscia, Moeller, Morris, Moscoso, Nealey, Orcutt, Ormsby, Orwall, Overstreet, Parker, Pearson, Pedersen, Pettigrew, Pollet, Probst, Reykdal, Rivers, Roberts, Ross, Ryu, Santos, Schmick, Seaquist, Sells, Shea, Short, Smith, Springer, Stanford, Sullivan, Takko, Taylor, Tharinger, Upthegrove, Van De Wege, Walsh, Warnick, Wilcox, Wylie, Zeiger and Mr. Speaker.

Excused: Representatives Ahern, Klippert and Rodne.

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2197, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

February 28, 2012

Mr. Speaker:

The Senate has passed SUBSTITUTE HOUSE BILL NO. 2252 with the following amendment:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 35.58.580 and 2008 c 123 s 1 are each amended to read as follows:

(1) Persons traveling on public transportation operated by a metropolitan municipal corporation or a city-owned transit system shall pay the fare established by the metropolitan municipal corporation or the city-owned transit system and shall produce proof of payment in accordance with the terms of use established by the metropolitan municipal corporation or the city-owned transit system. Such persons shall produce proof of payment when requested by a person designated to monitor fare payment. The required manner of producing proof of payment specified in the terms of use established by the metropolitan municipal corporation or the city-owned transit system may include, but is not limited to, requiring a person using an electronic fare payment card to validate the card by presenting the card to an electronic card reader before or upon entering a public transportation vehicle or a restricted fare paid area.

(2) The following constitute civil infractions punishable according to the schedule of fines and penalties established by a metropolitan municipal corporation or a city-owned transit system under RCW 35.58.585:

(a) Failure to pay the required fare, except when a metropolitan municipal corporation or a city-owned transit system under RCW 35.58.585 fails to meet the requirements of subsection (3) of this section;

(b) Failure to ~~((display))~~ produce proof of payment in the manner required by the terms of use established by the metropolitan municipal corporation or the city-owned transit system including, but not limited to, the failure to produce a validated fare payment card when requested to do so by a person designated to monitor fare payment; and

(c) Failure to depart the bus or other mode of public transportation when requested to do so by a person designated to monitor fare payment.

(3) If fare payment is required before entering a transit vehicle, as defined in RCW 9.91.025(2)(b), or before entering a fare paid area in a transit facility, as defined in RCW 9.91.025(2)(a), signage must be conspicuously posted at the place of boarding or within ten feet of the nearest entrance to a transit facility that clearly indicates: (a) The locations where tickets or fare media may be purchased; and (b) that a person using an electronic fare payment card must present the card to an electronic card reader before entering a transit vehicle or before entering a restricted fare paid area.

Sec. 2. RCW 36.57A.230 and 2008 c 123 s 6 are each amended to read as follows:

(1) Persons traveling on public transportation operated by a public transportation benefit area shall pay the fare established by the public transportation benefit area and shall produce proof of payment in accordance with the terms of use established by the public transportation benefit area. Such persons shall produce proof of payment when requested by a person designated to monitor fare payment. The required manner of producing proof of payment specified in the terms of use established by the public transportation benefit area may include, but is not limited to, requiring a person using an electronic fare payment card to validate the card by presenting the card to an electronic card reader before or upon entering a public transportation vehicle or a restricted fare paid area.

(2) The following constitute civil infractions punishable according to the schedule of fines and penalties established by a public transportation benefit area under RCW 36.57A.235:

(a) Failure to pay the required fare, except when a public transportation benefit area fails to meet the requirements of subsection (3) of this section;

(b) Failure to ~~((display))~~ produce proof of payment in the manner required by the terms of use established by the public transportation benefit area including, but not limited to, the failure to produce a validated fare payment card when requested to do so by a person designated to monitor fare payment; and

(c) Failure to depart the bus or other mode of public transportation when requested to do so by a person designated to monitor fare payment.

(3) If fare payment is required before entering a transit vehicle, as defined in RCW 9.91.025(2)(b), or before entering a fare paid area in a transit facility, as defined in RCW 9.91.025(2)(a), signage must be conspicuously posted at the place of boarding or within ten feet of the nearest entrance to a transit facility that clearly indicates: (a) The locations where tickets or fare media may be purchased; and (b) that a person using an electronic fare payment card must present the card to an electronic card reader before entering a transit vehicle or before entering a restricted fare paid area.

Sec. 3. RCW 81.112.220 and 2009 c 279 s 6 are each amended to read as follows:

(1) Persons traveling on facilities operated by an authority shall pay the fare established by the authority and shall produce proof of payment in accordance with the terms of use established by the authority. Such persons shall produce proof of payment when requested by a person designated to monitor fare payment. The required manner of producing proof of payment specified in the terms of use established by the authority may include, but is not limited to, requiring a person using an electronic fare payment card to validate the card by presenting the card to an electronic card reader before or upon entering a public transportation vehicle or a restricted fare paid area.

(2) The following constitute civil infractions punishable according to the schedule of fines and penalties established by the authority under RCW 81.112.210(1):

(a) Failure to pay the required fare, except when the authority fails to meet the requirements of subsection (3) of this section;

(b) Failure to ~~((display))~~ produce proof of payment in the manner required by the terms of use established by the authority including, but not limited to, the failure to produce a validated fare payment card when requested to do so by a person designated to monitor fare payment; and

(c) Failure to depart the facility when requested to do so by a person designated to monitor fare payment.

(3) If fare payment is required before entering a transit vehicle, as defined in RCW 9.91.025(2)(b), or before entering a fare paid area in a transit facility, as defined in RCW 9.91.025(2)(a), signage must be conspicuously posted at the place of boarding or within ten feet of the nearest entrance to a transit facility that clearly indicates: (a) The locations where tickets or fare media may be purchased; and (b) that a person using an electronic fare payment card must present the card to an electronic card reader before entering a transit vehicle or before entering a restricted fare paid area.

Sec. 4. RCW 42.56.330 and 2010 c 128 s 8 are each amended to read as follows:

The following information relating to public utilities and transportation is exempt from disclosure under this chapter:

(1) Records filed with the utilities and transportation commission or attorney general under RCW 80.04.095 that a court has determined are confidential under RCW 80.04.095;

(2) The residential addresses and residential telephone numbers of the customers of a public utility contained in the records or lists held by the public utility of which they are customers, except that this information may be released to the division of child support or the agency or firm providing child support enforcement for another state

under Title IV-D of the federal social security act, for the establishment, enforcement, or modification of a support order;

(3) The names, residential addresses, residential telephone numbers, and other individually identifiable records held by an agency in relation to a vanpool, carpool, or other ride-sharing program or service; however, these records may be disclosed to other persons who apply for ride-matching services and who need that information in order to identify potential riders or drivers with whom to share rides;

(4) The personally identifying information of current or former participants or applicants in a paratransit or other transit service operated for the benefit of persons with disabilities or elderly persons;

(5) The personally identifying information of persons who acquire and use transit passes ~~((and))~~ or other fare payment media including, but not limited to, stored value smart cards and magnetic strip cards, except that an agency may disclose ~~((this))~~ personally identifying information to a person, employer, educational institution, or other entity that is responsible, in whole or in part, for payment of the cost of acquiring or using a transit pass or other fare payment media for the purpose of preventing fraud, or to the news media when reporting on public transportation or public safety. As used in this subsection, "personally identifying information" includes acquisition or use information pertaining to a specific, individual transit pass or fare payment media.

(a) ~~((This))~~ Information regarding the acquisition or use of transit passes or fare payment media may be disclosed in aggregate form if the data does not contain any personally identifying information.

(b) Personally identifying information may be released to law enforcement agencies if the request is accompanied by a court order;

(6) Any information obtained by governmental agencies that is collected by the use of a motor carrier intelligent transportation system or any comparable information equipment attached to a truck, tractor, or trailer; however, the information may be given to other governmental agencies or the owners of the truck, tractor, or trailer from which the information is obtained. As used in this subsection, "motor carrier" has the same definition as provided in RCW 81.80.010;

(7) The personally identifying information of persons who acquire and use transponders or other technology to facilitate payment of tolls. This information may be disclosed in aggregate form as long as the data does not contain any personally identifying information. For these purposes aggregate data may include the census tract of the account holder as long as any individual personally identifying information is not released. Personally identifying information may be released to law enforcement agencies only for toll enforcement purposes. Personally identifying information may be released to law enforcement agencies for other purposes only if the request is accompanied by a court order; and

(8) The personally identifying information of persons who acquire and use a driver's license or identicaid that includes a radio frequency identification chip or similar technology to facilitate border crossing. This information may be disclosed in aggregate form as long as the data does not contain any personally identifying information. Personally identifying information may be released to law enforcement agencies only for United States customs and border protection enforcement purposes. Personally identifying information may be released to law enforcement agencies for other purposes only if the request is accompanied by a court order."

On page 1, line 2 of the title, after "fares;" strike the remainder of the title and insert "amending RCW 35.58.580, 36.57A.230, 81.112.220, and 42.56.330; and prescribing penalties."

and the same is herewith transmitted.

Brad Hendrickson, Deputy, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to SUBSTITUTE HOUSE BILL NO. 2252 and advanced the bill as amended by the Senate to final passage.

FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representatives Fitzgibbon and Hargrove spoke in favor of the passage of the bill.

The Speaker (Representative Roberts presiding) stated the question before the House to be the final passage of Substitute House Bill No. 2252, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of Substitute House Bill No. 2252, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 95; Nays, 0; Absent, 0; Excused, 3.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Asay, Bailey, Billig, Blake, Buys, Carlyle, Chandler, Clibborn, Cody, Condotta, Crouse, Dahlquist, Dammeier, Darneille, DeBolt, Dickerson, Dunshee, Eddy, Fagan, Finn, Fitzgibbon, Goodman, Green, Haigh, Haler, Hansen, Hargrove, Harris, Hasegawa, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jinkins, Johnson, Kagi, Kelley, Kenney, Kirby, Kretz, Kristiansen, Ladenburg, Liias, Lytton, Maxwell, McCoy, McCune, Miloscia, Moeller, Morris, Moscoso, Nealey, Orcutt, Ormsby, Orwall, Overstreet, Parker, Pearson, Pedersen, Pettigrew, Pollet, Probst, Reykdal, Rivers, Roberts, Ross, Ryu, Santos, Schmick, Seaquist, Sells, Shea, Short, Smith, Springer, Stanford, Sullivan, Takko, Taylor, Tharinger, Upthegrove, Van De Wege, Walsh, Warnick, Wilcox, Wylie, Zeiger and Mr. Speaker.

Excused: Representatives Ahern, Klippert and Rodne.

SUBSTITUTE HOUSE BILL NO. 2252, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

February 29, 2012

Mr. Speaker:

The Senate has passed SUBSTITUTE HOUSE BILL NO. 2299 with the following amendment:

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 46.18.200 and 2011 c 229 s 1, 2011 c 225 s 1, and 2011 c 171 s 69 are each reenacted and amended to read as follows:

(1) Special license plate series reviewed and approved by the department:

(a) May be issued in lieu of standard issue or personalized license plates for vehicles required to display one and two license plates unless otherwise specified;

(b) Must be issued under terms and conditions established by the department;

(c) Must not be issued for vehicles registered under chapter 46.87 RCW; and

(d) Must display a symbol or artwork approved by the department.

(2) The department approves and shall issue the following special license plates:

LICENSE PLATE	DESCRIPTION, SYMBOL, OR ARTWORK				
<u>4-H</u>	<u>Displays the "4-H" logo.</u>			communities, and providing educational opportunities related to Washington's national parks.	
Armed forces collection	Recognizes the contribution of veterans, active duty military personnel, reservists, and members of the national guard, and includes six separate designs, each containing a symbol representing a different branch of the armed forces to include army, navy, air force, marine corps, coast guard, and national guard.	Washington's wildlife collection We love our pets		Recognizes Washington's wildlife. Recognizes an organization that assists local member agencies of the federation of animal welfare and control agencies to promote and perform spay/neuter surgery on Washington state pets to reduce pet overpopulation.	
Endangered wildlife	Displays a symbol or artwork, approved by the special license plate review board and the legislature.	Wild on Washington		Symbolizes wildlife viewing in Washington state.	
Gonzaga University alumni association	Recognizes the Gonzaga University alumni association.			(3) Applicants for initial and renewal professional firefighters and paramedics special license plates must show proof eligibility by providing a certificate of current membership from the Washington state council of firefighters.	
Helping kids speak	Recognizes an organization that supports programs that provide no-cost speech pathology programs to children.			(4) Applicants for initial volunteer firefighters special license plates must (a) have been a volunteer firefighter for at least ten years or be a volunteer firefighter for one or more years and (b) have documentation of service from the district of the appropriate fire service. If the volunteer firefighter leaves firefighting service before ten years of service have been completed, the volunteer firefighter shall surrender the license plates to the department on the registration renewal date. If the volunteer firefighter stays in service for at least ten years and then leaves, the license plate may be retained by the former volunteer firefighter and as long as the license plate is retained for use the person will continue to pay the future registration renewals. A qualifying volunteer firefighter may have no more than one set of license plates per vehicle, and a maximum of two sets per applicant, for their personal vehicles. If the volunteer firefighter is convicted of a violation of RCW 46.61.502 or a felony, the license plates must be surrendered upon conviction.	
Keep kids safe	Recognizes efforts to prevent child abuse and neglect.			<u>NEW SECTION. Sec. 2.</u> A new section is added to chapter 46.04 RCW to read as follows: "4-H license plates" means special license plates issued under RCW 46.18.200 that display the "4-H" logo.	
Law enforcement memorial	Honors law enforcement officers in Washington killed in the line of duty.			<u>NEW SECTION. Sec. 3.</u> A new section is added to chapter 46.04 RCW to read as follows: "State flower license plates" means special license plates issued under RCW 46.18.200 that display the Washington state flower.	
Music matters	Displays the "Music Matters" logo.			Sec. 4. RCW 46.17.220 and 2011 c 229 s 3, 2011 c 225 s 2, and 2011 c 171 s 58 are each reenacted and amended to read as follows: (1) In addition to all fees and taxes required to be paid upon application for a vehicle registration in chapter 46.16A RCW, the holder of a special license plate shall pay the appropriate special license plate fee as listed in this section.	
Professional firefighters and paramedics	Recognizes professional firefighters and paramedics who are members of the Washington state council of firefighters.				
Share the road	Recognizes an organization that promotes bicycle safety and awareness education.				
Ski & ride Washington	Recognizes the Washington snowsports industry.				
<u>State flower</u>	<u>Recognizes the Washington state flower.</u>				
Volunteer firefighters	Recognizes volunteer firefighters.				
Washington lighthouses	Recognizes an organization that supports selected Washington state lighthouses and provides environmental education programs.				
Washington state parks	Recognizes Washington state parks as premier destinations of uncommon quality that preserve significant natural, cultural, historical, and recreational resources.				
Washington's national park fund	Builds awareness of Washington's national parks and supports priority park programs and projects in Washington's national parks, such as enhancing visitor experience, promoting volunteerism, engaging				
		PLATE TYPE	INITIAL FEE	RENEWAL FEE	DISTRIBUTED UNDER
		(a) <u>4-H</u>	<u>\$ 40.00</u>	<u>\$ 30.00</u>	<u>RCW 46.68.420</u>
		(b) Amateur radio license	\$ 5.00	N/A	RCW 46.68.070
		((b)) (c) Armed forces	\$ 40.00	\$ 30.00	RCW 46.68.425
		((c)) (d) Baseball stadium	\$ 40.00	\$ 30.00	Subsection (2) of this section

ACCOUNT	CONDITIONS FOR USE OF FUNDS
((e)) (e) Collector vehicle	wildlife collection
((f)) (f) Collegiate	((z)) (z) We love our pets
((g)) (g) Endangered wildlife	((aa)) (aa) Wild on Washington
((h)) (h) Gonzaga University alumni association	(2) After deducting administration and collection expenses for the sale of baseball stadium license plates, the remaining proceeds must be distributed to a county for the purpose of paying the principal and interest payments on bonds issued by the county to construct a baseball stadium, as defined in RCW 82.14.0485, including reasonably necessary preconstruction costs, while the taxes are being collected under RCW 82.14.360. After this date, the state treasurer shall credit the funds to the state general fund.
((i)) (i) Helping kids speak	Sec. 5. RCW 46.68.420 and 2011 c 229 s 4, 2011 c 225 s 3, and 2011 c 171 s 87 are each reenacted and amended to read as follows:
((j)) (j) Horseless carriage	(1) The department shall:
((k)) (k) Keep kids safe	(a) Collect special license plate fees established under RCW 46.17.220;
((l)) (l) Law enforcement memorial	(b) Deduct an amount not to exceed twelve dollars for initial issue and two dollars for renewal issue for administration and collection expenses incurred by it; and
((m)) (m) Military affiliate radio system	(c) Remit the remaining proceeds to the custody of the state treasurer with a proper identifying detailed report.
((n)) (n) Music matters	(2) The state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the special license plate. Upon determination by the department that the state has been reimbursed, the state treasurer shall credit the remaining special license plate fee amounts for each special license plate to the following appropriate account as created in this section in the custody of the state treasurer:
((o)) (o) Professional firefighters and paramedics	
((p)) (p) Ride share	
((q)) (q) Share the road	
((r)) (r) Ski & ride Washington	
((s)) (s) Square dancer	
((t)) (t) State flower	
((u)) (u) Volunteer firefighters	
((v)) (v) Washington lighthouses	
((w)) (w) Washington state parks	
((x)) (x) Washington's national parks	
((y)) (y) Washington's	

	assist in funding infrastructure preservation and restoration; encourage and support interpretive programs by lighthouse docents
Music matters awareness	Promote music education in schools throughout Washington
Share the road	Promote bicycle safety and awareness education in communities throughout Washington
Ski & ride Washington	Promote winter snowsports, such as skiing and snowboarding, and related programs, such as ski and ride safety programs, underprivileged youth ski and ride programs, and active, healthy lifestyle programs
<u>State flower</u>	<u>Support Meerkerk Rhododendron Gardens and provide for grants to other qualified nonprofit organizations' efforts to preserve rhododendrons</u>
Volunteer firefighters	Receive and disseminate funds for purposes on behalf of volunteer firefighters, their families, and others deemed in need
Washington state council of firefighters benevolent fund	Receive and disseminate funds for charitable purposes on behalf of members of the Washington state council of firefighters, their families, and others deemed in need
Washington's national park fund	Build awareness of Washington's national parks and support priority park programs and projects in Washington's national parks, such as enhancing visitor experience, promoting volunteerism, engaging communities, and providing educational opportunities related to Washington's national parks
We love our pets	Support and enable the Washington federation of animal welfare and control agencies to promote and perform spay/neuter surgery of Washington state pets in order to reduce pet population

(3) Only the director or the director's designee may authorize expenditures from the accounts described in subsection (2) of this section. The accounts are subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(4) Funds in the special license plate accounts described in subsection (2) of this section must be disbursed subject to the conditions described in subsection (2) of this section and under

contract between the department and qualified nonprofit organizations that provide the services described in subsection (2) of this section.

(5) For the purposes of this section, a "qualified nonprofit organization" means a not-for-profit corporation operating in Washington that has received a determination of tax exempt status under 26 U.S.C. Sec. 501(c)(3). The qualified nonprofit organization must meet all the requirements under RCW 46.18.100(1).

Sec. 6. RCW 46.18.060 and 2011 c 367 s 703, 2011 c 229 s 5, 2011 c 225 s 4, and 2011 c 171 s 66 are each reenacted and amended to read as follows:

(1) The department must review and either approve or reject special license plate applications submitted by sponsoring organizations.

(2) Duties of the department include, but are not limited to, the following:

(a) Review and approve the annual financial reports submitted by sponsoring organizations with active special license plate series and present those annual financial reports to the joint transportation committee;

(b) Report annually to the joint transportation committee on the special license plate applications that were considered by the department;

(c) Issue approval and rejection notification letters to sponsoring organizations, the executive committee of the joint transportation committee, and the legislative sponsors identified in each application. The letters must be issued within seven days of making a determination on the status of an application; and

(d) Review annually the number of plates sold for each special license plate series created after January 1, 2003. The department may submit a recommendation to discontinue a special plate series to the executive committee of the joint transportation committee.

(3) Except as provided in RCW 46.18.245, in order to assess the effects and impact of the proliferation of special license plates, the legislature declares a temporary moratorium on the issuance of any additional plates until July 1, 2013. During this period of time, the department is prohibited from accepting, reviewing, processing, or approving any applications. Additionally, a special license plate may not be enacted by the legislature during the moratorium, unless the proposed license plate has been approved by the former special license plate review board before February 15, 2005.

(4) ((The volunteer firefighters license plates created under RCW 46.18.200 are exempt from the requirements of subsection (3) of this section.

(5) The Music Matters license plates created under RCW 46.18.200 are exempt from the requirements of subsection (3) of this section)) The limitations under subsection (3) of this section do not apply to the following special license plates:

(a) 4-H license plates created under RCW 46.18.200;

(b) Music Matters license plates created under RCW 46.18.200;

(c) State flower license plates created under RCW 46.18.200;

(d) Volunteer firefighter license plates created under RCW 46.18.200.

NEW SECTION. Sec. 7. This act takes effect January 1, 2013."

On page 1, line 1 of the title, after "Relating to" strike the remainder of the title and insert "special license plates; reenacting and amending RCW 46.18.200, 46.17.220, 46.68.420, and 46.18.060; adding new sections to chapter 46.04 RCW; and providing an effective date."

and the same is herewith transmitted.

Brad Hendrickson, Deputy, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to SUBSTITUTE HOUSE BILL NO. 2299 and advanced the bill as amended by the Senate to final passage.

**FINAL PASSAGE OF HOUSE BILL
AS SENATE AMENDED**

Representatives Warnick and Billig spoke in favor of the passage of the bill.

The Speaker (Representative Roberts presiding) stated the question before the House to be the final passage of Substitute House Bill No. 2299, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of Substitute House Bill No. 2299, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 94; Nays, 1; Absent, 0; Excused, 3.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Asay, Bailey, Billig, Blake, Buys, Carlyle, Chandler, Clibborn, Cody, Condotta, Crouse, Dahlquist, Dammeier, Darneille, DeBolt, Dickerson, Dunshee, Eddy, Fagan, Finn, Fitzgibbon, Goodman, Green, Haigh, Haler, Hansen, Hargrove, Harris, Hasegawa, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jinkins, Johnson, Kagi, Kelley, Kenney, Kirby, Kretz, Kristiansen, Ladenburg, Liias, Lytton, Maxwell, McCoy, McCune, Miloscia, Moeller, Morris, Moscoso, Nealey, Orcutt, Ormsby, Orwall, Overstreet, Parker, Pearson, Pedersen, Pettigrew, Pollet, Probst, Reykdal, Rivers, Roberts, Ross, Ryu, Santos, Schmick, Seaquist, Sells, Shea, Short, Smith, Springer, Sullivan, Takko, Taylor, Tharinger, Upthegrove, Van De Wege, Walsh, Warnick, Wilcox, Wylie, Zeiger and Mr. Speaker.

Voting nay: Representative Stanford.

Excused: Representatives Ahern, Klippert and Rodne.

SUBSTITUTE HOUSE BILL NO. 2299, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

February 29, 2012

Mr. Speaker:

The Senate has passed ENGROSSED SUBSTITUTE HOUSE BILL NO. 2302 with the following amendment:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 46.61.507 and 2010 c 214 s 1 are each amended to read as follows:

(1) In every case where a person is arrested for a violation of RCW 46.61.502 or 46.61.504, the law enforcement officer shall make a clear notation if a child under the age of sixteen was present in the vehicle.

(2) A law enforcement officer shall promptly notify child protective services whenever a child is present in a vehicle being driven by his or her parent, guardian, ~~((or))~~ legal custodian, or sibling or half-sibling and that person is being arrested for a drug or alcohol-related driving offense. This section does not require law enforcement to take custody of the child unless there is no other responsible person, or an agency having the right to physical custody of the child that can be contacted, or the officer has reasonable grounds to believe the child should be taken into custody pursuant to RCW 13.34.050 or 26.44.050.

(3) For purposes of this section, "child" means any person under ~~((thirteen))~~ sixteen years of age.

Sec. 2. RCW 46.61.5055 and 2011 c 293 s 7 and 2011 c 96 s 35 are each reenacted and amended to read as follows:

(1) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has no prior offense within seven years shall be punished as follows:

(a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than one day nor more than three hundred sixty-four days. Twenty-four consecutive hours of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based. In lieu of the mandatory minimum term of imprisonment required under this subsection (1)(a)(i), the court may order not less than fifteen days of electronic home monitoring. The offender shall pay the cost of electronic home monitoring. The county or municipality in which the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device to include an alcohol detection breathalyzer, and the court may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

(ii) By a fine of not less than three hundred fifty dollars nor more than five thousand dollars. Three hundred fifty dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; or

(b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than two days nor more than three hundred sixty-four days. Two consecutive days of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based. In lieu of the mandatory minimum term of imprisonment required under this subsection (1)(b)(i), the court may order not less than thirty days of electronic home monitoring. The offender shall pay the cost of electronic home monitoring. The county or municipality in which the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device to include an alcohol detection breathalyzer, and the court may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

(ii) By a fine of not less than five hundred dollars nor more than five thousand dollars. Five hundred dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent.

(2) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has one prior offense within seven years shall be punished as follows:

(a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to

take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than thirty days nor more than three hundred sixty-four days and sixty days of electronic home monitoring. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. Thirty days of imprisonment and sixty days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than five hundred dollars nor more than five thousand dollars. Five hundred dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; or

(b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than forty-five days nor more than three hundred sixty-four days and ninety days of electronic home monitoring. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. Forty-five days of imprisonment and ninety days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than seven hundred fifty dollars nor more than five thousand dollars. Seven hundred fifty dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent.

(3) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has two or three prior offenses within seven years shall be punished as follows:

(a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than ninety days nor more than three hundred sixty-four days and one hundred twenty days of electronic home monitoring. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. Ninety days of imprisonment and one hundred twenty days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the

offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than one thousand dollars nor more than five thousand dollars. One thousand dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; or

(b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than one hundred twenty days nor more than three hundred sixty-four days and one hundred fifty days of electronic home monitoring. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. One hundred twenty days of imprisonment and one hundred fifty days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than one thousand five hundred dollars nor more than five thousand dollars. One thousand five hundred dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent.

(4) A person who is convicted of a violation of RCW 46.61.502 or 46.61.504 shall be punished under chapter 9.94A RCW if:

(a) The person has four or more prior offenses within ten years; or

(b) The person has ever previously been convicted of:

(i) A violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug;

(ii) A violation of RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug;

(iii) An out-of-state offense comparable to the offense specified in (b)(i) or (ii) of this subsection; or

(iv) A violation of RCW 46.61.502(6) or 46.61.504(6).

(5)(a) The court shall require any person convicted of a violation of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance to apply for an ignition interlock driver's license from the department and to have a functioning ignition interlock device installed on all motor vehicles operated by the person.

(b) The installation of an ignition interlock device is not necessary on vehicles owned, leased, or rented by a person's employer and on those vehicles whose care and/or maintenance is the temporary responsibility of the employer, and driven at the direction of a person's employer as a requirement of employment during working hours. The person must provide the department with a declaration pursuant to RCW 9A.72.085 from his or her employer stating that the person's employment requires the person to operate a vehicle owned by the employer or other persons during working hours.

(c) An ignition interlock device imposed under this section shall be calibrated to prevent a motor vehicle from being started when the breath sample provided has an alcohol concentration of 0.025 or more.

(d) The court may waive the requirement that a person apply for an ignition interlock driver's license if the court makes a specific finding in writing that:

(i) The person lives out-of-state and the devices are not reasonably available in the person's local area;

(ii) The person does not operate a vehicle; or

(iii) The person is not eligible to receive an ignition interlock driver's license under RCW 46.20.385 because the person is not a resident of Washington, is a habitual traffic offender, has already applied for or is already in possession of an ignition interlock driver's license, has never had a driver's license, has been certified under chapter 74.20A RCW as noncompliant with a child support order, or is subject to any other condition or circumstance that makes the person ineligible to obtain an ignition interlock driver's license.

(e) If a court finds that a person is not eligible to receive an ignition interlock driver's license under this section, the court is not required to make any further subsequent inquiry or determination as to the person's eligibility.

(f) If the court orders that a person refrain from consuming any alcohol and requires the person to apply for an ignition interlock driver's license, and the person states that he or she does not operate a motor vehicle or the person is ineligible to obtain an ignition interlock driver's license, the court shall order the person to submit to alcohol monitoring through an alcohol detection breathalyzer device, transdermal sensor device, or other technology designed to detect alcohol in a person's system. Alcohol monitoring ordered under this subsection must be for the period of the mandatory license suspension or revocation. The person shall pay for the cost of the monitoring. The county or municipality where the penalty is being imposed shall determine the cost.

(g) The period of time for which ignition interlock use is required will be as follows:

(i) For a person who has not previously been restricted under this section, a period of one year;

(ii) For a person who has previously been restricted under (g)(i) of this subsection, a period of five years;

(iii) For a person who has previously been restricted under (g)(ii) of this subsection, a period of ten years.

(h) Beginning with incidents occurring on or after September 1, 2011, when calculating the period of time for the restriction under RCW 46.20.720(3), the department must also give the person a day-for-day credit for the time period, beginning from the date of the incident, during which the person kept an ignition interlock device installed on all vehicles the person operates. For the purposes of this subsection (5)(h), the term "all vehicles" does not include vehicles that would be subject to the employer exception under RCW 46.20.720(3).

(6) If a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 committed the offense while a passenger under the age of sixteen was in the vehicle, the court shall:

(a) ((In any case in which the installation and use of an interlock or other device is not mandatory under RCW 46.20.720 or other law, order the use of such a device for not less than sixty days following the restoration of the person's license, permit, or nonresident driving privileges; and

(b) In any case in which the installation and use of such a device is otherwise mandatory,) Order the use of ((such a) an ignition interlock or other device for an additional ((sixty days)) six months;

(b) In any case in which the person has no prior offenses within seven years, and except as provided in RCW 46.61.502(6) or 46.61.504(6), order a penalty by a fine of not less than one thousand dollars and not more than five thousand dollars. One thousand dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent;

(c) In any case in which the person has one prior offense within seven years, and except as provided in RCW 46.61.502(6) or 46.61.504(6), order a penalty by a fine of not less than two thousand dollars and not more than five thousand dollars. One thousand dollars of the fine may not be suspended or deferred unless the court finds the

offender to be indigent;

(d) In any case in which the person has two or three prior offenses within seven years, and except as provided in RCW 46.61.502(6) or 46.61.504(6), order a penalty by a fine of not less than three thousand dollars and not more than ten thousand dollars. One thousand dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent.

(7) In exercising its discretion in setting penalties within the limits allowed by this section, the court shall particularly consider the following:

(a) Whether the person's driving at the time of the offense was responsible for injury or damage to another or another's property; and

(b) Whether at the time of the offense the person was driving or in physical control of a vehicle with one or more passengers.

(8) An offender punishable under this section is subject to the alcohol assessment and treatment provisions of RCW 46.61.5056.

(9) The license, permit, or nonresident privilege of a person convicted of driving or being in physical control of a motor vehicle while under the influence of intoxicating liquor or drugs must:

(a) If the person's alcohol concentration was less than 0.15, or if for reasons other than the person's refusal to take a test offered under RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) Where there has been no prior offense within seven years, be suspended or denied by the department for ninety days;

(ii) Where there has been one prior offense within seven years, be revoked or denied by the department for two years; or

(iii) Where there have been two or more prior offenses within seven years, be revoked or denied by the department for three years;

(b) If the person's alcohol concentration was at least 0.15:

(i) Where there has been no prior offense within seven years, be revoked or denied by the department for one year;

(ii) Where there has been one prior offense within seven years, be revoked or denied by the department for nine hundred days; or

(iii) Where there have been two or more prior offenses within seven years, be revoked or denied by the department for four years; or

(c) If by reason of the person's refusal to take a test offered under RCW 46.20.308, there is no test result indicating the person's alcohol concentration:

(i) Where there have been no prior offenses within seven years, be revoked or denied by the department for two years;

(ii) Where there has been one prior offense within seven years, be revoked or denied by the department for three years; or

(iii) Where there have been two or more previous offenses within seven years, be revoked or denied by the department for four years.

The department shall grant credit on a day-for-day basis for any portion of a suspension, revocation, or denial already served under this subsection for a suspension, revocation, or denial imposed under RCW 46.20.3101 arising out of the same incident.

For purposes of this subsection (9), the department shall refer to the driver's record maintained under RCW 46.52.120 when determining the existence of prior offenses.

(10) After expiration of any period of suspension, revocation, or denial of the offender's license, permit, or privilege to drive required by this section, the department shall place the offender's driving privilege in probationary status pursuant to RCW 46.20.355.

(11)(a) In addition to any nonsuspendable and nondeferable jail sentence required by this section, whenever the court imposes up to three hundred sixty-four days in jail, the court shall also suspend but shall not defer a period of confinement for a period not exceeding five years. The court shall impose conditions of probation that include: (i) Not driving a motor vehicle within this state without a valid license to drive and proof of financial responsibility for the future; (ii) not driving a motor vehicle within this state while having an alcohol concentration of 0.08 or more within two hours after driving; and (iii) not refusing to submit to a test of his or her breath or blood to

determine alcohol concentration upon request of a law enforcement officer who has reasonable grounds to believe the person was driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor. The court may impose conditions of probation that include nonrepetition, installation of an ignition interlock device on the probationer's motor vehicle, alcohol or drug treatment, supervised probation, or other conditions that may be appropriate. The sentence may be imposed in whole or in part upon violation of a condition of probation during the suspension period.

(b) For each violation of mandatory conditions of probation under (a)(i), (ii), or (iii) of this subsection, the court shall order the convicted person to be confined for thirty days, which shall not be suspended or deferred.

(c) For each incident involving a violation of a mandatory condition of probation imposed under this subsection, the license, permit, or privilege to drive of the person shall be suspended by the court for thirty days or, if such license, permit, or privilege to drive already is suspended, revoked, or denied at the time the finding of probation violation is made, the suspension, revocation, or denial then in effect shall be extended by thirty days. The court shall notify the department of any suspension, revocation, or denial or any extension of a suspension, revocation, or denial imposed under this subsection.

(12) A court may waive the electronic home monitoring requirements of this chapter when:

(a) The offender does not have a dwelling, telephone service, or any other necessity to operate an electronic home monitoring system;

(b) The offender does not reside in the state of Washington; or

(c) The court determines that there is reason to believe that the offender would violate the conditions of the electronic home monitoring penalty.

Whenever the mandatory minimum term of electronic home monitoring is waived, the court shall state in writing the reason for granting the waiver and the facts upon which the waiver is based, and shall impose an alternative sentence with similar punitive consequences. The alternative sentence may include, but is not limited to, additional jail time, work crew, or work camp.

Whenever the combination of jail time and electronic home monitoring or alternative sentence would exceed three hundred sixty-four days, the offender shall serve the jail portion of the sentence first, and the electronic home monitoring or alternative portion of the sentence shall be reduced so that the combination does not exceed three hundred sixty-four days.

(13) An offender serving a sentence under this section, whether or not a mandatory minimum term has expired, may be granted an extraordinary medical placement by the jail administrator subject to the standards and limitations set forth in RCW 9.94A.728(3).

(14) For purposes of this section and RCW 46.61.502 and 46.61.504:

(a) A "prior offense" means any of the following:

(i) A conviction for a violation of RCW 46.61.502 or an equivalent local ordinance;

(ii) A conviction for a violation of RCW 46.61.504 or an equivalent local ordinance;

(iii) A conviction for a violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug, or a conviction for a violation of RCW 46.61.520 committed in a reckless manner or with the disregard for the safety of others if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug;

(iv) A conviction for a violation of RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug, or a conviction for a violation of RCW 46.61.522 committed in a reckless manner or with the disregard for the safety of others if the conviction is the result of a charge that was originally filed as a violation of

RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug;

(v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or 9A.36.050 or an equivalent local ordinance, if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522;

(vi) An out-of-state conviction for a violation that would have been a violation of (a)(i), (ii), (iii), (iv), or (v) of this subsection if committed in this state;

(vii) A deferred prosecution under chapter 10.05 RCW granted in a prosecution for a violation of RCW 46.61.502, 46.61.504, or an equivalent local ordinance; or

(viii) A deferred prosecution under chapter 10.05 RCW granted in a prosecution for a violation of RCW 46.61.5249, or an equivalent local ordinance, if the charge under which the deferred prosecution was granted was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522;

If a deferred prosecution is revoked based on a subsequent conviction for an offense listed in this subsection (14)(a), the subsequent conviction shall not be treated as a prior offense of the revoked deferred prosecution for the purposes of sentencing;

(b) "Within seven years" means that the arrest for a prior offense occurred within seven years before or after the arrest for the current offense; and

(c) "Within ten years" means that the arrest for a prior offense occurred within ten years before or after the arrest for the current offense.

Sec. 3. RCW 9.94A.533 and 2011 c 293 s 9 are each amended to read as follows:

(1) The provisions of this section apply to the standard sentence ranges determined by RCW 9.94A.510 or 9.94A.517.

(2) For persons convicted of the anticipatory offenses of criminal attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the standard sentence range is determined by locating the sentencing grid sentence range defined by the appropriate offender score and the seriousness level of the completed crime, and multiplying the range by seventy-five percent.

(3) The following additional times shall be added to the standard sentence range for felony crimes committed after July 23, 1995, if the offender or an accomplice was armed with a firearm as defined in RCW 9.41.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any firearm enhancements based on the classification of the completed felony crime. If the offender is being sentenced for more than one offense, the firearm enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a firearm enhancement. If the offender or an accomplice was armed with a firearm as defined in RCW 9.41.010 and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection as eligible for any firearm enhancements, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(a) Five years for any felony defined under any law as a class A felony or with a statutory maximum sentence of at least twenty years, or both, and not covered under (f) of this subsection;

(b) Three years for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both, and not covered under (f) of this subsection;

(c) Eighteen months for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both, and not covered under (f) of this subsection;

(d) If the offender is being sentenced for any firearm enhancements under (a), (b), and/or (c) of this subsection and the offender has previously been sentenced for any deadly weapon enhancements after July 23, 1995, under (a), (b), and/or (c) of this subsection or subsection (4)(a), (b), and/or (c) of this section, or both, all firearm enhancements under this subsection shall be twice the amount of the enhancement listed;

(e) Notwithstanding any other provision of law, all firearm enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under RCW 9.94A.728(3);

(f) The firearm enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun in a felony;

(g) If the standard sentence range under this section exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a firearm enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

(4) The following additional times shall be added to the standard sentence range for felony crimes committed after July 23, 1995, if the offender or an accomplice was armed with a deadly weapon other than a firearm as defined in RCW 9.41.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any deadly weapon enhancements based on the classification of the completed felony crime. If the offender is being sentenced for more than one offense, the deadly weapon enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a deadly weapon enhancement. If the offender or an accomplice was armed with a deadly weapon other than a firearm as defined in RCW 9.41.010 and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection as eligible for any deadly weapon enhancements, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(a) Two years for any felony defined under any law as a class A felony or with a statutory maximum sentence of at least twenty years, or both, and not covered under (f) of this subsection;

(b) One year for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both, and not covered under (f) of this subsection;

(c) Six months for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both, and not covered under (f) of this subsection;

(d) If the offender is being sentenced under (a), (b), and/or (c) of this subsection for any deadly weapon enhancements and the offender has previously been sentenced for any deadly weapon enhancements after July 23, 1995, under (a), (b), and/or (c) of this subsection or subsection (3)(a), (b), and/or (c) of this section, or both, all deadly weapon enhancements under this subsection shall be twice the amount of the enhancement listed;

(e) Notwithstanding any other provision of law, all deadly weapon enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter.

However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under RCW 9.94A.728(3);

(f) The deadly weapon enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun in a felony;

(g) If the standard sentence range under this section exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a deadly weapon enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

(5) The following additional times shall be added to the standard sentence range if the offender or an accomplice committed the offense while in a county jail or state correctional facility and the offender is being sentenced for one of the crimes listed in this subsection. If the offender or an accomplice committed one of the crimes listed in this subsection while in a county jail or state correctional facility, and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section:

(a) Eighteen months for offenses committed under RCW 69.50.401(2) (a) or (b) or 69.50.410;

(b) Fifteen months for offenses committed under RCW 69.50.401(2) (c), (d), or (e);

(c) Twelve months for offenses committed under RCW 69.50.4013.

For the purposes of this subsection, all of the real property of a state correctional facility or county jail shall be deemed to be part of that facility or county jail.

(6) An additional twenty-four months shall be added to the standard sentence range for any ranked offense involving a violation of chapter 69.50 RCW if the offense was also a violation of RCW 69.50.435 or 9.94A.827. All enhancements under this subsection shall run consecutively to all other sentencing provisions, for all offenses sentenced under this chapter.

(7) An additional two years shall be added to the standard sentence range for vehicular homicide committed while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502 for each prior offense as defined in RCW 46.61.5055. All enhancements under this subsection shall be mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions.

(8)(a) The following additional times shall be added to the standard sentence range for felony crimes committed on or after July 1, 2006, if the offense was committed with sexual motivation, as that term is defined in RCW 9.94A.030. If the offender is being sentenced for more than one offense, the sexual motivation enhancement must be added to the total period of total confinement for all offenses, regardless of which underlying offense is subject to a sexual motivation enhancement. If the offender committed the offense with sexual motivation and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(i) Two years for any felony defined under the law as a class A felony or with a statutory maximum sentence of at least twenty years, or both;

(ii) Eighteen months for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both;

(iii) One year for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both;

(iv) If the offender is being sentenced for any sexual motivation enhancements under (i), (ii), and/or (iii) of this subsection and the offender has previously been sentenced for any sexual motivation enhancements on or after July 1, 2006, under (i), (ii), and/or (iii) of this subsection, all sexual motivation enhancements under this subsection shall be twice the amount of the enhancement listed;

(b) Notwithstanding any other provision of law, all sexual motivation enhancements under this subsection are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other sexual motivation enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under RCW 9.94A.728(3);

(c) The sexual motivation enhancements in this subsection apply to all felony crimes;

(d) If the standard sentence range under this subsection exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a sexual motivation enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced;

(e) The portion of the total confinement sentence which the offender must serve under this subsection shall be calculated before any earned early release time is credited to the offender;

(f) Nothing in this subsection prevents a sentencing court from imposing a sentence outside the standard sentence range pursuant to RCW 9.94A.535.

(9) An additional one-year enhancement shall be added to the standard sentence range for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on or after July 22, 2007, if the offender engaged, agreed, or offered to engage the victim in the sexual conduct in return for a fee. If the offender is being sentenced for more than one offense, the one-year enhancement must be added to the total period of total confinement for all offenses, regardless of which underlying offense is subject to the enhancement. If the offender is being sentenced for an anticipatory offense for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, and the offender attempted, solicited another, or conspired to engage, agree, or offer to engage the victim in the sexual conduct in return for a fee, an additional one-year enhancement shall be added to the standard sentence range determined under subsection (2) of this section. For purposes of this subsection, "sexual conduct" means sexual intercourse or sexual contact, both as defined in chapter 9A.44 RCW.

(10)(a) For a person age eighteen or older convicted of any criminal street gang-related felony offense for which the person compensated, threatened, or solicited a minor in order to involve the minor in the commission of the felony offense, the standard sentence range is determined by locating the sentencing grid sentence range defined by the appropriate offender score and the seriousness level of the completed crime, and multiplying the range by one hundred twenty-five percent. If the standard sentence range under this subsection exceeds the statutory maximum sentence for the offense, the statutory maximum sentence is the presumptive sentence unless the offender is a persistent offender.

(b) This subsection does not apply to any criminal street gang-related felony offense for which involving a minor in the commission of the felony offense is an element of the offense.

(c) The increased penalty specified in (a) of this subsection is unavailable in the event that the prosecution gives notice that it will seek an exceptional sentence based on an aggravating factor under RCW 9.94A.535.

(11) An additional twelve months and one day shall be added to the standard sentence range for a conviction of attempting to elude a police vehicle as defined by RCW 46.61.024, if the conviction included a finding by special allegation of endangering one or more persons under RCW 9.94A.834.

(12) An additional twelve months shall be added to the standard sentence range for an offense that is also a violation of RCW 9.94A.831.

(13) An additional twelve months shall be added to the standard sentence range for vehicular homicide committed while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.520 or for vehicular assault committed while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.522, or for any felony driving under the influence (RCW 46.61.502(6)) or felony physical control under the influence (RCW 46.61.504(6)) for each child passenger under the age of sixteen who is an occupant in the defendant's vehicle. These enhancements shall be mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions. If the addition of a minor child enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced."

On page 1, line 2 of the title, after "vehicle;" strike the remainder of the title and insert "amending RCW 46.61.507 and 9.94A.533; reenacting and amending RCW 46.61.5055; and prescribing penalties."

and the same is herewith transmitted.

Thomas Hoeman, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to ENGROSSED SUBSTITUTE HOUSE BILL NO. 2302 and advanced the bill as amended by the Senate to final passage.

FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representatives Goodman and Shea spoke in favor of the passage of the bill.

The Speaker (Representative Roberts presiding) stated the question before the House to be the final passage of Engrossed Substitute House Bill No. 2302, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of Engrossed Substitute House Bill No. 2302, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 95; Nays, 0; Absent, 0; Excused, 3.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Asay, Bailey, Billig, Blake, Buys, Carlyle, Chandler, Clibborn, Cody, Condotta, Crouse, Dahlquist, Dammeier, Darneille, DeBolt, Dickerson, Dunshee, Eddy, Fagan, Finn, Fitzgibbon, Goodman, Green, Haigh, Haler, Hansen, Hargrove, Harris, Hasegawa, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jinkins, Johnson, Kagi, Kelley, Kenney, Kirby, Kretz, Kristiansen, Ladenburg, Liias, Lytton, Maxwell, McCoy,

McCune, Miloscia, Moeller, Morris, Moscoso, Nealey, Orcutt, Ormsby, Orwall, Overstreet, Parker, Pearson, Pedersen, Pettigrew, Pollet, Probst, Reykdal, Rivers, Roberts, Ross, Ryu, Santos, Schmick, Seaquist, Sells, Shea, Short, Smith, Springer, Stanford, Sullivan, Takko, Taylor, Tharinger, Upthegrove, Van De Wege, Walsh, Warnick, Wilcox, Wylie, Zeiger and Mr. Speaker.

Excused: Representatives Ahern, Klippert and Rodne.

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2302, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

February 29, 0212

Mr. Speaker:

The Senate has passed ENGROSSED SUBSTITUTE HOUSE BILL NO. 2314 with the following amendment:

Strike everything after the enacting clause and insert the following:

"I. INTENT

NEW SECTION. Sec. 101. The legislature finds that numerous enactments and amendments to long-term care services statutes over many years have resulted in duplicated provisions, ambiguities, and other technical errors. The legislature intends to make corrections and clarify provisions governing services by long-term care workers.

II. DEFINITIONS

Sec. 201. RCW 18.88B.010 and 2009 c 2 s 17 are each amended to read as follows:

The definitions in ~~((RCW 74.39A.009))~~ this section apply throughout this chapter unless the context clearly requires otherwise.

- (1) "Community residential service business" has the same meaning as defined in RCW 74.39A.009.
- (2) "Department" means the department of health.
- (3) "Home care aide" means a person certified under this chapter.
- (4) "Individual provider" has the same meaning as defined in RCW 74.39A.009.
- (5) "Personal care services" has the same meaning as defined in RCW 74.39A.009.
- (6) "Secretary" means the secretary of the department of health.
- (7) "Long-term care worker" has the same meaning as defined in RCW 74.39A.009.

Sec. 202. RCW 74.39A.009 and 2009 c 580 s 1 are each amended to read as follows:

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

- (1) "Adult family home" means a home licensed under chapter 70.128 RCW.
- (2) "Adult residential care" means services provided by a boarding home that is licensed under chapter 18.20 RCW and that has a contract with the department under RCW 74.39A.020 to provide personal care services.
- (3) "Assisted living services" means services provided by a boarding home that has a contract with the department under RCW 74.39A.010 to provide personal care services, intermittent nursing

services, and medication administration services, and the resident is housed in a private apartment-like unit.

(4) "Boarding home" means a facility licensed under chapter 18.20 RCW.

(5) "Community residential service business" means a business that:

- (a) Is certified by the department of social and health services to provide to individuals who have a developmental disability as defined in RCW 71A.10.020(4):
 - (i) Group home services;
 - (ii) Group training home services;
 - (iii) Supported living services; or
 - (iv) Voluntary placement services provided in a licensed staff residential facility for children;
- (b) Has a contract with the division of developmental disabilities to provide the services identified in (a) of this subsection; and
- (c) All of the business's long-term care workers are subject to statutory or regulatory training requirements that are required to provide the services identified in (a) of this subsection.

(6) "Core competencies" means basic training topics, including but not limited to, communication skills, worker self-care, problem solving, maintaining dignity, consumer directed care, cultural sensitivity, body mechanics, fall prevention, skin and body care, long-term care worker roles and boundaries, supporting activities of daily living, and food preparation and handling.

~~((6))~~ (7) "Cost-effective care" means care provided in a setting of an individual's choice that is necessary to promote the most appropriate level of physical, mental, and psychosocial well-being consistent with client choice, in an environment that is appropriate to the care and safety needs of the individual, and such care cannot be provided at a lower cost in any other setting. But this in no way precludes an individual from choosing a different residential setting to achieve his or her desired quality of life.

~~((7))~~ (8) "Department" means the department of social and health services.

~~((8))~~ (9) "Developmental disability" has the same meaning as defined in RCW 71A.10.020.

~~((9))~~ (10) "Direct care worker" means a paid caregiver who provides direct, hands-on personal care services to persons with disabilities or the elderly requiring long-term care.

~~((10))~~ (11) "Enhanced adult residential care" means services provided by a boarding home that is licensed under chapter 18.20 RCW and that has a contract with the department under RCW 74.39A.010 to provide personal care services, intermittent nursing services, and medication administration services.

~~((11))~~ (12) "Functionally disabled person" or "person who is functionally disabled" is synonymous with chronic functionally disabled and means a person who because of a recognized chronic physical or mental condition or disease, or developmental disability, including chemical dependency, is impaired to the extent of being dependent upon others for direct care, support, supervision, or monitoring to perform activities of daily living. "Activities of daily living", in this context, means self-care abilities related to personal care such as bathing, eating, using the toilet, dressing, and transfer. Instrumental activities of daily living may also be used to assess a person's functional abilities as they are related to the mental capacity to perform activities in the home and the community such as cooking, shopping, house cleaning, doing laundry, working, and managing personal finances.

~~((12))~~ (13) "Home and community-based services" means adult family homes, in-home services, and other services administered or provided by contract by the department directly or through contract with area agencies on aging or similar services provided by facilities and agencies licensed by the department.

~~((13))~~ (14) "Home care aide" means a long-term care worker who has obtained certification as a home care aide by the department of health.

~~((14))~~ (15) "Individual provider" is defined according to RCW 74.39A.240.

~~((15))~~ (16) "Long-term care" is synonymous with chronic care and means care and supports delivered indefinitely, intermittently, or over a sustained time to persons of any age disabled by chronic mental or physical illness, disease, chemical dependency, or a medical condition that is permanent, not reversible or curable, or is long-lasting and severely limits their mental or physical capacity for self-care. The use of this definition is not intended to expand the scope of services, care, or assistance by any individuals, groups, residential care settings, or professions unless otherwise expressed by law.

~~((16))~~ (17)(a) "Long-term care workers ~~((for the elderly or persons with disabilities) or "long-term care workers"))" include(s) all persons who ~~((are long-term care workers))~~ provide paid, hands-on personal care services for the elderly or persons with disabilities, including but not limited to individual providers of home care services, direct care ~~((employees of))~~ workers employed by home care agencies, providers of home care services to persons with developmental disabilities under Title 71A RCW, all direct care workers in state-licensed boarding homes, assisted living facilities, and adult family homes, respite care providers, direct care workers employed by community residential service ~~((providers))~~ businesses, and any other direct care worker providing home or community-based services to the elderly or persons with functional disabilities or developmental disabilities.~~

(b) "Long-term care workers" do not include: (i) Persons employed by the following facilities or agencies: Nursing homes subject to chapter 18.51 RCW, hospitals or other acute care settings, residential habilitation centers under chapter 71A.20 RCW, facilities certified under 42 C.F.R., Part 483, hospice agencies subject to chapter 70.127 RCW, adult day care centers, and adult day health care centers; or (ii) persons who are not paid by the state or by a private agency or facility licensed by the state to provide personal care services.

~~((17))~~ (18) "Nursing home" means a facility licensed under chapter 18.51 RCW.

~~((18))~~ (19) "Personal care services" means physical or verbal assistance with activities of daily living and instrumental activities of daily living provided because of a person's functional disability.

~~((19))~~ (20) "Population specific competencies" means basic training topics unique to the care needs of the population the long-term care worker is serving, including but not limited to, mental health, dementia, developmental disabilities, young adults with physical disabilities, and older adults.

~~((20))~~ (21) "Qualified instructor" means a registered nurse or other person with specific knowledge, training, and work experience in the provision of direct, hands-on personal care and other assistance services to the elderly or persons with disabilities requiring long-term care.

~~((21))~~ (22) "Secretary" means the secretary of social and health services.

~~((22))~~ (23) "Secretary of health" means the secretary of health or the secretary's designee.

~~((23))~~ (24) "Training partnership" means a joint partnership or trust that includes the office of the governor and the exclusive bargaining representative of individual providers under RCW 74.39A.270 with the capacity to provide training, peer mentoring, and workforce development, or other services to individual providers.

~~((24))~~ (25) "Tribally licensed boarding home" means a boarding home licensed by a federally recognized Indian tribe which home provides services similar to boarding homes licensed under chapter 18.20 RCW.

III. CREDENTIAL REQUIREMENT

Sec. 301. RCW 18.88B.021 and 2012 c 1 s 103 (Initiative Measure No. 1163) are each amended to read as follows:

(1) ~~((Effective January 1, 2011;))~~ Beginning January 7, 2012, except as provided in RCW ~~((18.88B.040, the department of health shall require that))~~ 18.88B.041, any person hired as a long-term care worker ~~((for the elderly or persons with disabilities))~~ must be certified as a home care aide as provided in this chapter within one hundred fifty calendar days ~~((from))~~ after the date of being hired or within one hundred fifty calendar days after the effective date of this section, whichever is later. In computing the time periods in this subsection, the first day is the date of hire or the effective date of this section, whichever is applicable.

(2) ~~((Except as provided in RCW 18.88B.040, certification as a home care aide requires both completion of seventy-five hours of training and successful completion of a certification examination pursuant to RCW 74.39A.073 and 18.88B.030.~~

(3)) (a) No person may practice or, by use of any title or description, represent himself or herself as a certified home care aide without being certified ~~((pursuant to))~~ as provided in this chapter.

~~((4))~~ (b) This section does not prohibit a person: (i) From practicing a profession for which the person has been issued a license or which is specifically authorized under this state's laws; or (ii) who is exempt from certification under RCW 18.88B.041 from providing services as a long-term care worker.

(c) In consultation with consumer and worker representatives, the department shall, by January 1, 2013, establish by rule a single scope of practice that encompasses both long-term care workers who are certified home care aides and long-term care workers who are exempted from certification under RCW 18.88B.041.

(3) The department ~~((of health))~~ shall adopt rules ~~((by August 1, 2010;))~~ to implement this section.

Sec. 302. RCW 18.88B.041 and 2012 c 1 s 105 (Initiative Measure No. 1163) are each amended to read as follows:

(1) The following long-term care workers are not required to become a certified home care aide pursuant to this chapter~~((~~—(1))):

~~((a)(i)(A))~~ Registered nurses, licensed practical nurses, certified nursing assistants or persons who are in an approved training program for certified nursing assistants under chapter 18.88A RCW, medicare-certified home health aides, or other persons who hold a similar health credential, as determined by the secretary ~~((of health)),~~ or persons with special education training and an endorsement granted by the superintendent of public instruction, as described in RCW 28A.300.010, if the secretary ~~((of health))~~ determines that the circumstances do not require certification. ~~((Individuals exempted by this subsection may obtain certification as a home care aide from the department of health without fulfilling the training requirements in RCW 74.39A.073 but must successfully complete a certification examination pursuant to RCW 18.88B.030.~~

~~((2))~~ (B) A person ~~((already employed))~~ who was initially hired as a long-term care worker prior to January ~~((1, 2011))~~ 7, 2012, and who completes all of his or her training requirements in effect as of the date he or she was hired~~((is not required to obtain certification)).~~

(ii) Individuals exempted by (a)(i) of this subsection may obtain certification as a home care aide ~~((from the department of health))~~ without fulfilling the training requirements in RCW ~~((74.39A.073))~~ 74.39A.074(1)(d)(ii) but must successfully complete a certification examination pursuant to RCW ~~((18.88B.030))~~ 18.88B.031.

~~((3))~~ (b) All long-term care workers employed by ~~((supported living providers are not required to obtain certification under this chapter))~~ community residential service businesses.

~~((4))~~ (c) An individual provider caring only for his or her biological, step, or adoptive child or parent ~~((is not required to obtain certification under this chapter))~~.

~~((5))~~ (d) Prior to ~~((June 30))~~ July 1, 2014, a person hired as an individual provider who provides twenty hours or less of care for one person in any calendar month ~~((is not required to obtain certification under this chapter))~~.

~~((6))~~ (2) A long-term care worker exempted by this section from the training requirements contained in RCW ~~((74.39A.073))~~ 74.39A.074 may not be prohibited from enrolling in training pursuant to that section.

~~((7))~~ (3) The department ~~((of health))~~ shall adopt rules ~~((by August 1, 2010))~~ to implement this section.

NEW SECTION. Sec. 303. A new section is added to chapter 18.88B RCW to read as follows:

(1) The department has the authority to:

(a) Establish forms, procedures, and examinations necessary to certify home care aides pursuant to this chapter;

(b) Hire clerical, administrative, and investigative staff as needed to implement this section;

(c) Issue certification as a home care aide to any applicant who has successfully completed the home care aide examination, and renew such certificates;

(d) Maintain the official record of all applicants and persons with certificates;

(e) Exercise disciplinary authority as authorized in chapter 18.130 RCW; and

(f) Deny certification to applicants who do not meet training, competency examination, and conduct requirements, including background checks, for certification.

(2) The department shall adopt rules that establish the procedures, including criteria for reviewing an applicant's state and federal background checks, and examinations necessary to implement this section.

Sec. 304. RCW 18.88B.031 and 2012 c 1 s 104 (Initiative Measure No. 1163) are each amended to read as follows:

(1) ~~((Effective January 1, 2011))~~ Except as provided in RCW ~~((18.88B.040))~~ 18.88B.041 and subject to the other requirements of this chapter, ~~((the department of health shall require that all))~~ to be certified as a home care aide, a long-term care worker(s) must successfully complete the training required under RCW 74.39A.074(1) and a certification examination. Any long-term care worker failing to make the required grade for the examination ~~((will))~~ may not be certified as a home care aide.

(2) The department ~~((of health))~~, in consultation with consumer and worker representatives, shall develop a home care aide certification examination to evaluate whether an applicant possesses the skills and knowledge necessary to practice competently. ~~((Unless excluded))~~ Except as provided by RCW ~~((18.88B.040 (1) and (2))~~ 18.88B.041(1)(a)(ii), only those who have completed the training requirements in RCW ~~((74.39A.073))~~ 74.39A.074(1) shall be eligible to sit for this examination.

(3) The examination shall include both a skills demonstration and a written or oral knowledge test. The examination papers, all grading of the papers, and records related to the grading of skills demonstration shall be preserved for a period of not less than one year. The department ~~((of health))~~ shall establish rules governing the number of times and under what circumstances individuals who have failed the examination may sit for the examination, including whether any intermediate remedial steps should be required.

(4) All examinations shall be conducted by fair and wholly impartial methods. The certification examination shall be administered and evaluated by the department ~~((of health))~~ or by a contractor to the department ~~((of health))~~ that is neither an employer of long-term care workers or a private contractor(s) providing training services under this chapter.

(5) ~~((The department of health has the authority to:~~

(a) Establish forms, procedures, and examinations necessary to certify home care aides pursuant to this chapter;

(b) Hire clerical, administrative, and investigative staff as needed to implement this section;

(c) Issue certification as a home care aide to any applicant who has successfully completed the home care aide examination;

(d) Maintain the official record of all applicants and persons with certificates;

(e) Exercise disciplinary authority as authorized in chapter 18.130 RCW; and

(f) Deny certification to applicants who do not meet training, competency examination, and conduct requirements for certification.

(6) ~~((The department ((of health)) shall adopt rules ((by August 1, 2010, that establish the procedures, including criteria for reviewing an applicant's state and federal background checks, and examinations necessary to carry this section into effect))~~ to implement this section.

IV. TRAINING PROVISIONS

Sec. 401. RCW 74.39A.074 and 2012 c 1 s 107 (Initiative Measure No. 1163) are each amended to read as follows:

(1) ~~((Effective January 1, 2011))~~ (a) Beginning January 7, 2012, except ~~((as provided in RCW 18.88B.040))~~ for long-term care workers exempt from certification under RCW 18.88B.041(1)(a) and, until January 1, 2016, those exempt under RCW 18.88B.041(1)(b), all persons ~~((employed))~~ hired as long-term care workers ~~((for the elderly or persons with disabilities))~~ must meet the minimum training requirements in this section within one hundred twenty calendar days ~~((of employment))~~ after the date of being hired or within one hundred twenty calendar days after the effective date of this section, whichever is later. In computing the time periods in this subsection, the first day is the date of hire or the effective date of this section, whichever is applicable.

~~((2))~~ ~~All persons employed as long-term care workers must obtain~~ (b) Except as provided in RCW 74.39A.076, the minimum training requirement is seventy-five hours of entry-level training approved by the department. A long-term care worker must ~~((accomplish))~~ successfully complete five of these seventy-five hours before ~~((becoming))~~ being eligible to provide care.

~~((3))~~ (c) Training required by (d) of this subsection ~~((4))~~ ~~((e))~~ ~~of this section will be applied~~ applies toward(s) the training required under RCW 18.20.270 or 70.128.230 ~~((as well as))~~ or any statutory or regulatory training requirements for long-term care workers employed by ~~((supportive living providers))~~ community residential service businesses.

~~((4))~~ Only training curriculum approved by the department may be used to fulfill the training requirements specified in this section.)

(d) The seventy-five hours of entry-level training required shall be as follows:

~~((a))~~ (i) Before a long-term care worker is eligible to provide care, he or she must complete:

(A) Two hours of orientation training regarding his or her role as caregiver and the applicable terms of employment; and

~~((b))~~ ~~Before a long-term care worker is eligible to provide care, he or she must complete~~ (B) Three hours of safety training, including basic safety precautions, emergency procedures, and infection control; and

~~((c))~~ ~~All long-term care workers must complete~~ (ii) Seventy hours of long-term care basic training, including training related to core competencies and population specific competencies.

~~((5))~~ (2) Only training curriculum approved by the department may be used to fulfill the training requirements specified in this section. The department shall only approve training curriculum that:

(a) Has been developed with input from consumer and worker representatives; and

(b) Requires comprehensive instruction by qualified instructors on the competencies and training topics in this section.

~~((6))~~ (3) Individual providers under RCW 74.39A.270 shall be compensated for training time required by this section.

~~((7))~~ The department of health shall adopt rules by August 1, 2010, to implement subsections (1), (2), and (3) of this section.

~~((8))~~ (4) The department shall adopt rules ((by August 1, 2010,)) to implement ((subsections (4) and (5) of)) this section.

Sec. 402. RCW 74.39A.076 and 2012 c 1 s 108 (Initiative Measure No. 1163) are each amended to read as follows:

(1) ~~((Effective January 1, 2011,))~~ Beginning January 7, 2012, except for long-term care workers exempt from certification under RCW 18.88B.041(1)(a):

(a) A biological, step, or adoptive parent who is the individual provider only for his or her developmentally disabled son or daughter must receive twelve hours of training relevant to the needs of adults with developmental disabilities within the first one hundred twenty days ~~((6))~~ after becoming an individual provider or within one hundred twenty calendar days after the effective date of this section, whichever is later.

~~((2))~~ ~~Effective January 1, 2011,))~~ (b) Individual providers identified in ~~((a) and)~~ (b)(i) and (ii) of this subsection must complete thirty-five hours of training within the first one hundred twenty days ~~((6))~~ after becoming an individual provider or within one hundred twenty calendar days after the effective date of this section, whichever is later. Five of the thirty-five hours must be completed before becoming eligible to provide care. Two of these five hours shall be devoted to an orientation training regarding an individual provider's role as caregiver and the applicable terms of employment, and three hours shall be devoted to safety training, including basic safety precautions, emergency procedures, and infection control. Individual providers subject to this requirement include:

~~((a))~~ (i) An individual provider caring only for his or her biological, step, or adoptive child or parent unless covered by (a) of this subsection ~~((1) of this section))~~; and

~~((b))~~ ~~Before~~ (ii) Until January 1, 2014, a person hired as an individual provider who provides twenty hours or less of care for one person in any calendar month.

(2) In computing the time periods in this section, the first day is the date of hire or the effective date of this section, whichever is applicable.

(3) Only training curriculum approved by the department may be used to fulfill the training requirements specified in this section. The department shall only approve training curriculum that:

(a) Has been developed with input from consumer and worker representatives; and

(b) Requires comprehensive instruction by qualified instructors.

(4) The department shall adopt rules ~~((by August 1, 2010,))~~ to implement this section.

Sec. 403. RCW 74.39A.331 and 2012 c 1 s 111 (Initiative Measure No. 1163) are each amended to read as follows:

Long-term care workers shall be offered on-the-job training or peer mentorship for at least one hour per week in the first ninety days of work from a long-term care worker who has completed at least twelve hours of mentor training and is mentoring no more than ten other workers at any given time. This requirement applies to long-term care workers who begin work on or after July 1, ~~((2014))~~ 2012, except that it does not apply to long-term care workers employed by community residential service businesses until January 1, 2016.

Sec. 404. RCW 74.39A.351 and 2012 c 1 s 113 (Initiative Measure No. 1163) are each amended to read as follows:

(1) The department shall offer, directly or through contract, training opportunities sufficient for a long-term care worker to accumulate seventy hours of training within a reasonable time period. For individual providers represented by an exclusive bargaining representative under RCW 74.39A.270, the training opportunities shall be offered through the training partnership established under RCW 74.39A.360.

(2) Training topics offered under this section shall include, but are not limited to: Client rights; personal care; mental illness; dementia; developmental disabilities; depression; medication assistance; advanced communication skills; positive client behavior support; developing or improving client-centered activities; dealing with wandering or aggressive client behaviors; medical conditions; nurse delegation core training; peer mentor training; and advocacy for quality care training.

(3) The department may not require long-term care workers to obtain the training described in this section. ~~((This))~~

(4) The requirement to offer advanced training applies beginning January 1, ~~((2012))~~ 2013, except that it does not apply to long-term care workers employed by community residential service businesses until January 1, 2016.

Sec. 405. RCW 74.39A.341 and 2012 c 1 s 112 (Initiative Measure No. 1163) are each amended to read as follows:

(1) ~~((The department of health shall ensure that))~~ All long-term care workers shall complete twelve hours of continuing education training in advanced training topics each year. This requirement applies beginning ~~((on))~~ July 1, ~~((2014))~~ 2012.

(2) Completion of continuing education as required in this section is a prerequisite to maintaining home care aide certification under chapter ~~((2, Laws of 2009))~~ 18.88B RCW.

(3) Unless voluntarily certified as a home care aide under chapter ~~((2, Laws of 2009))~~ 18.88B RCW, subsection (1) of this section does not apply to:

(a) An individual provider caring only for his or her biological, step, or adoptive child; ~~((and))~~

(b) Before January 1, 2016, a long-term care worker employed by a community residential service business; or

(c) Before ~~((June 30))~~ July 1, 2014, a person hired as an individual provider who provides twenty hours or less of care for one person in any calendar month.

(4) Only training curriculum approved by the department may be used to fulfill the training requirements specified in this section. The department shall only approve training curriculum that:

(a) Has been developed with input from consumer and worker representatives; and

(b) Requires comprehensive instruction by qualified instructors.

(5) Individual providers under RCW 74.39A.270 shall be compensated for training time required by this section.

(6) The department of health shall adopt rules ~~((by August 1, 2010,))~~ to implement subsection(s) (1) ~~((, (2), and (3))~~ of this section.

(7) The department shall adopt rules ~~((by August 1, 2010,))~~ to implement subsection ~~((4))~~ (2) of this section.

NEW SECTION. Sec. 406. A new section is added to chapter 18.88B RCW to read as follows:

(1) The legislature recognizes that nurses have been successfully delegating nursing care tasks to family members and others for many years. The opportunity for a nurse to delegate nursing care tasks to home care aides certified under this chapter may enhance the viability and quality of health care services in community-based care settings and in-home care settings to allow individuals to live as independently as possible with maximum safeguards.

(2)(a) A certified home care aide who wishes to perform a nurse delegated task pursuant to RCW 18.79.260 must complete nurse

delegation core training under chapter 18.88A RCW before the home care aide may be delegated a nursing care task by a registered nurse delegator. Before administering insulin, a home care aide must also complete the specialized diabetes nurse delegation training under chapter 18.88A RCW. Before commencing any specific nursing care tasks authorized under RCW 18.79.260, the home care aide must:

(i) Provide to the delegating nurse a transcript or certificate of successful completion of training issued by an approved instructor or approved training entity indicating the completion of basic core nurse delegation training; and

(ii) Meet any additional training requirements mandated by the nursing care quality assurance commission. Any exception to these training requirements is subject to RCW 18.79.260(3)(e)(vi).

(b) In addition to meeting the requirements of (a) of this subsection, before providing delegated nursing care tasks that involve administration of insulin by injection to individuals with diabetes, the home care aide must provide to the delegating nurse a transcript or certificate of successful completion of training issued by an approved instructor or approved training entity indicating completion of specialized diabetes nurse delegation training. The training must include, but is not limited to, instruction regarding diabetes, insulin, sliding scale insulin orders, and proper injection procedures.

(3) The home care aide is accountable for his or her own individual actions in the delegation process. Home care aides accurately following written delegation instructions from a registered nurse are immune from liability regarding the performance of the delegated duties.

(4) Home care aides are not subject to any employer reprisal or disciplinary action by the secretary for refusing to accept delegation of a nursing care task based on his or her concerns about patient safety issues. No provider of a community-based care setting as defined in RCW 18.79.260, or in-home services agency as defined in RCW 70.127.010, may discriminate or retaliate in any manner against a person because the person made a complaint about the nurse delegation process or cooperated in the investigation of the complaint.

Sec. 407. RCW 18.79.260 and 2009 c 203 s 1 are each amended to read as follows:

(1) A registered nurse under his or her license may perform for compensation nursing care, as that term is usually understood, to individuals with illnesses, injuries, or disabilities.

(2) A registered nurse may, at or under the general direction of a licensed physician and surgeon, dentist, osteopathic physician and surgeon, naturopathic physician, optometrist, podiatric physician and surgeon, physician assistant, osteopathic physician assistant, or advanced registered nurse practitioner acting within the scope of his or her license, administer medications, treatments, tests, and inoculations, whether or not the severing or penetrating of tissues is involved and whether or not a degree of independent judgment and skill is required. Such direction must be for acts which are within the scope of registered nursing practice.

(3) A registered nurse may delegate tasks of nursing care to other individuals where the registered nurse determines that it is in the best interest of the patient.

(a) The delegating nurse shall:

(i) Determine the competency of the individual to perform the tasks;

(ii) Evaluate the appropriateness of the delegation;

(iii) Supervise the actions of the person performing the delegated task; and

(iv) Delegate only those tasks that are within the registered nurse's scope of practice.

(b) A registered nurse, working for a home health or hospice agency regulated under chapter 70.127 RCW, may delegate the application, instillation, or insertion of medications to a registered or certified nursing assistant under a plan of care.

(c) Except as authorized in (b) or (e) of this subsection, a registered nurse may not delegate the administration of medications. Except as authorized in (e) of this subsection, a registered nurse may not delegate acts requiring substantial skill, and may not delegate piercing or severing of tissues. Acts that require nursing judgment shall not be delegated.

(d) No person may coerce a nurse into compromising patient safety by requiring the nurse to delegate if the nurse determines that it is inappropriate to do so. Nurses shall not be subject to any employer reprisal or disciplinary action by the nursing care quality assurance commission for refusing to delegate tasks or refusing to provide the required training for delegation if the nurse determines delegation may compromise patient safety.

(e) For delegation in community-based care settings or in-home care settings, a registered nurse may delegate nursing care tasks only to registered or certified nursing assistants or home care aides certified under chapter 18.88B RCW. Simple care tasks such as blood pressure monitoring, personal care service, diabetic insulin device set up, verbal verification of insulin dosage for sight-impaired individuals, or other tasks as defined by the nursing care quality assurance commission are exempted from this requirement.

(i) "Community-based care settings" includes: Community residential programs for people with developmental disabilities, certified by the department of social and health services under chapter 71A.12 RCW; adult family homes licensed under chapter 70.128 RCW; and boarding homes licensed under chapter 18.20 RCW. Community-based care settings do not include acute care or skilled nursing facilities.

(ii) "In-home care settings" include an individual's place of temporary or permanent residence, but does not include acute care or skilled nursing facilities, and does not include community-based care settings as defined in (e)(i) of this subsection.

(iii) Delegation of nursing care tasks in community-based care settings and in-home care settings is only allowed for individuals who have a stable and predictable condition. "Stable and predictable condition" means a situation in which the individual's clinical and behavioral status is known and does not require the frequent presence and evaluation of a registered nurse.

(iv) The determination of the appropriateness of delegation of a nursing task is at the discretion of the registered nurse. Other than delegation of the administration of insulin by injection for the purpose of caring for individuals with diabetes, the administration of medications by injection, sterile procedures, and central line maintenance may never be delegated.

(v) When delegating insulin injections under this section, the registered nurse delegator must instruct the individual regarding proper injection procedures and the use of insulin, demonstrate proper injection procedures, and must supervise and evaluate the individual performing the delegated task weekly during the first four weeks of delegation of insulin injections. If the registered nurse delegator determines that the individual is competent to perform the injection properly and safely, supervision and evaluation shall occur at least every ninety days thereafter.

(vi)(A) The registered nurse shall verify that the nursing assistant or home care aide, as the case may be, has completed the required core nurse delegation training required in chapter 18.88A or 18.88B RCW prior to authorizing delegation.

(B) Before commencing any specific nursing tasks authorized to be delegated in this section, a home care aide must be certified pursuant to chapter 18.88B RCW and must comply with section 406 of this act.

(vii) The nurse is accountable for his or her own individual actions in the delegation process. Nurses acting within the protocols of their delegation authority are immune from liability for any action performed in the course of their delegation duties.

(viii) Nursing task delegation protocols are not intended to regulate the settings in which delegation may occur, but are intended

to ensure that nursing care services have a consistent standard of practice upon which the public and the profession may rely, and to safeguard the authority of the nurse to make independent professional decisions regarding the delegation of a task.

(f) The nursing care quality assurance commission may adopt rules to implement this section.

(4) Only a person licensed as a registered nurse may instruct nurses in technical subjects pertaining to nursing.

(5) Only a person licensed as a registered nurse may hold herself or himself out to the public or designate herself or himself as a registered nurse.

NEW SECTION. Sec. 408. By September 1, 2012, the department of social and health services shall adopt rules that reflect all statutory and regulatory training requirements for long-term care workers, as defined in RCW 74.39A.009, to provide the services identified in RCW 74.39A.009(5)(a).

V. BACKGROUND CHECK REQUIREMENT

NEW SECTION. Sec. 501. A new section is added to chapter 18.88B RCW to read as follows:

A long-term care worker disqualified from working with vulnerable persons under chapter 74.39A RCW may not be certified or maintain certification as a home care aide under this chapter. To allow the department to satisfy its certification responsibilities under this chapter, the department of social and health services shall share the results of state and federal background checks conducted pursuant to RCW 74.39A.056 with the department. Neither department may share the federal background check results with any other state agency or person.

Sec. 502. RCW 74.39A.261 and 2012 c 1 s 102 (Initiative Measure No. 1163) are each amended to read as follows:

The department must perform criminal background checks for individual providers and prospective individual providers (and ensure that the authority has ready access to any long-term care abuse and neglect registry used by the department. Individual providers who are hired after January 1, 2012, are subject to background checks) under RCW ((74.39A.055)) 74.39A.056.

Sec. 503. RCW 74.39A.056 and 2012 c 1 s 101 (Initiative Measure No. 1163) are each amended to read as follows:

(1)(a) All long-term care workers (~~for the elderly or persons with disabilities hired after January 1, 2012;~~) shall be screened through state and federal background checks in a uniform and timely manner to ~~(ensure)~~ verify that they do not have a criminal history that would disqualify them from working with vulnerable persons. ~~(These)~~ The department must perform criminal background checks for individual providers and prospective individual providers and make the information available as provided by law.

(b)(i) Except as provided in (b)(ii) of this subsection, for long-term care workers hired after January 7, 2012, the background checks required under this section shall include checking against the federal bureau of investigation fingerprint identification records system and against the national sex offenders registry or their successor programs. The department shall require these long-term care workers to submit fingerprints for the purpose of investigating conviction records through both the Washington state patrol and the federal bureau of investigation. The department shall not pass on the cost of these criminal background checks to the workers or their employers.

(ii) This subsection does not apply to long-term care workers employed by community residential service businesses until January 1, 2016.

~~((2) To allow the department of health to satisfy its certification responsibilities under chapter 18.88B RCW,)) (c) The department~~

shall share state and federal background check results with the department of health((. Neither department may share the federal background check results with any other state agency or person)) in accordance with section 501 of this act.

~~((3) The department shall not pass on the cost of these criminal background checks to the workers or their employers.))~~ (2) No provider, or its staff, or long-term care worker, or prospective provider or long-term care worker, with a stipulated finding of fact, conclusion of law, an agreed order, or finding of fact, conclusion of law, or final order issued by a disciplining authority or a court of law or entered into a state registry with a final substantiated finding of abuse, neglect, exploitation, or abandonment of a minor or a vulnerable adult as defined in chapter 74.34 RCW shall be employed in the care of and have unsupervised access to vulnerable adults.

(3) The department shall establish, by rule, a state registry which contains identifying information about long-term care workers identified under this chapter who have final substantiated findings of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult as defined in RCW 74.34.020. The rule must include disclosure, disposition of findings, notification, findings of fact, appeal rights, and fair hearing requirements. The department shall disclose, upon request, final substantiated findings of abuse, neglect, financial exploitation, or abandonment to any person so requesting this information. This information must also be shared with the department of health to advance the purposes of chapter 18.88B RCW.

(4) The department shall adopt rules to implement ~~((the provisions of))~~ this section ~~((by August 1, 2010)).~~

Sec. 504. RCW 18.20.125 and 2011 1st sp.s. c 31 s 15 are each amended to read as follows:

(1) Inspections must be outcome based and responsive to resident complaints and based on a clear set of health, quality of care, and safety standards that are easily understandable and have been made available to facilities, residents, and other interested parties. This includes that when conducting licensing inspections, the department shall interview an appropriate percentage of residents, family members, and advocates in addition to interviewing appropriate staff.

(2) Prompt and specific enforcement remedies shall also be implemented without delay, consistent with RCW 18.20.190, for facilities found to have delivered care or failed to deliver care resulting in problems that are serious, recurring, or uncorrected, or that create a hazard that is causing or likely to cause death or serious harm to one or more residents. These enforcement remedies may also include, when appropriate, reasonable conditions on a license. In the selection of remedies, the safety, health, and well-being of residents shall be of paramount importance.

(3)(a) To the extent funding is available, the licensee, administrator, and their staff should be screened through background checks in a uniform and timely manner to ensure that they do not have a criminal history that would disqualify them from working with vulnerable adults. Employees may be provisionally hired pending the results of the background check if they have been given three positive references.

(b) Long-term care workers, as defined in RCW 74.39A.009, who are hired after January ~~((1, 2014))~~ 7, 2012, are subject to background checks under RCW ~~((74.39A.055))~~ 74.39A.056.

(4) No licensee, administrator, or staff, or prospective licensee, administrator, or staff, with a stipulated finding of fact, conclusion of law, and agreed order, or finding of fact, conclusion of law, or final order issued by a disciplining authority, a court of law, or entered into the state registry finding him or her guilty of abuse, neglect, exploitation, or abandonment of a minor or a vulnerable adult as defined in chapter 74.34 RCW shall be employed in the care of and have unsupervised access to vulnerable adults.

Sec. 505. RCW 43.20A.710 and 2011 1st sp.s. c 31 s 16 are each amended to read as follows:

(1) The secretary shall investigate the conviction records, pending charges and disciplinary board final decisions of:

(a) Any current employee or applicant seeking or being considered for any position with the department who will or may have unsupervised access to children, vulnerable adults, or individuals with mental illness or developmental disabilities. This includes, but is not limited to, positions conducting comprehensive assessments, financial eligibility determinations, licensing and certification activities, investigations, surveys, or case management; or for state positions otherwise required by federal law to meet employment standards;

(b) Individual providers who are paid by the state and providers who are paid by home care agencies to provide in-home services involving unsupervised access to persons with physical, mental, or developmental disabilities or mental illness, or to vulnerable adults as defined in chapter 74.34 RCW, including but not limited to services provided under chapter 74.39 or 74.39A RCW; and

(c) Individuals or businesses or organizations for the care, supervision, case management, or treatment of children, persons with developmental disabilities, or vulnerable adults, including but not limited to services contracted for under chapter 18.20, 70.127, 70.128, 72.36, or 74.39A RCW or Title 71A RCW.

(2) The secretary shall require a fingerprint-based background check through both the Washington state patrol and the federal bureau of investigation as provided in RCW 43.43.837. Unless otherwise authorized by law, the secretary shall use the information solely for the purpose of determining the character, suitability, and competence of the applicant.

(3) Except as provided in subsection (4) of this section, an individual provider or home care agency provider who has resided in the state less than three years before applying for employment involving unsupervised access to a vulnerable adult as defined in chapter 74.34 RCW must be fingerprinted for the purpose of investigating conviction records through both the Washington state patrol and the federal bureau of investigation. This subsection applies only with respect to the provision of in-home services funded by medicaid personal care under RCW 74.09.520, community options program entry system waiver services under RCW 74.39A.030, or chore services under RCW 74.39A.110. However, this subsection does not supersede RCW 74.15.030(2)(b).

(4) Long-term care workers, as defined in RCW 74.39A.009, who are hired after January (~~(1, 2014)~~) 7, 2012, are subject to background checks under RCW (~~(74.39A.055)~~) 74.39A.056, except that the department may require a background check at any time under RCW 43.43.837. For the purposes of this subsection, "background check" includes, but is not limited to, a fingerprint check submitted for the purpose of investigating conviction records through both the Washington state patrol and the federal bureau of investigation.

(5) An individual provider or home care agency provider hired to provide in-home care for and having unsupervised access to a vulnerable adult as defined in chapter 74.34 RCW must have no conviction for a disqualifying crime under RCW 43.43.830 and 43.43.842. An individual or home care agency provider must also have no conviction for a crime relating to drugs as defined in RCW 43.43.830. This subsection applies only with respect to the provision of in-home services funded by medicaid personal care under RCW 74.09.520, community options program entry system waiver services under RCW 74.39A.030, or chore services under RCW 74.39A.110.

(6) The secretary shall provide the results of the state background check on long-term care workers, including individual providers, to the persons hiring them or to their legal guardians, if any, for their determination of the character, suitability, and competence of the applicants. If the person elects to hire or retain an individual provider after receiving notice from the department that the applicant has a conviction for an offense that would disqualify the applicant from having unsupervised access to persons with physical, mental, or developmental disabilities or mental illness, or to vulnerable adults as

defined in chapter 74.34 RCW, then the secretary shall deny payment for any subsequent services rendered by the disqualified individual provider.

(7) Criminal justice agencies shall provide the secretary such information as they may have and that the secretary may require for such purpose.

Sec. 506. RCW 43.43.837 and 2011 1st sp.s. c 31 s 17 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, in order to determine the character, competence, and suitability of any applicant or service provider to have unsupervised access, the secretary may require a fingerprint-based background check through both the Washington state patrol and the federal bureau of investigation at any time, but shall require a fingerprint-based background check when the applicant or service provider has resided in the state less than three consecutive years before application, and:

(a) Is an applicant or service provider providing services to children or people with developmental disabilities under RCW 74.15.030;

(b) Is an individual residing in an applicant or service provider's home, facility, entity, agency, or business or who is authorized by the department to provide services to children or people with developmental disabilities under RCW 74.15.030; or

(c) Is an applicant or service provider providing in-home services funded by:

(i) Medicaid personal care under RCW 74.09.520;

(ii) Community options program entry system waiver services under RCW 74.39A.030;

(iii) Chore services under RCW 74.39A.110; or

(iv) Other home and community long-term care programs, established pursuant to chapters 74.39 and 74.39A RCW, administered by the department.

(2) Long-term care workers, as defined in RCW 74.39A.009, who are hired after January (~~(1, 2014)~~) 7, 2012, are subject to background checks under RCW (~~(74.39A.055)~~) 74.39A.056.

(3) To satisfy the shared background check requirements provided for in RCW 43.215.215 and 43.20A.710, the department of early learning and the department of social and health services shall share federal fingerprint-based background check results as permitted under the law. The purpose of this provision is to allow both departments to fulfill their joint background check responsibility of checking any individual who may have unsupervised access to vulnerable adults, children, or juveniles. Neither department may share the federal background check results with any other state agency or person.

(4) The secretary shall require a fingerprint-based background check through the Washington state patrol identification and criminal history section and the federal bureau of investigation when the department seeks to approve an applicant or service provider for a foster or adoptive placement of children in accordance with federal and state law.

(5) Any secure facility operated by the department under chapter 71.09 RCW shall require applicants and service providers to undergo a fingerprint-based background check through the Washington state patrol identification and criminal history section and the federal bureau of investigation.

(6) Service providers and service provider applicants who are required to complete a fingerprint-based background check may be hired for a one hundred twenty-day provisional period as allowed under law or program rules when:

(a) A fingerprint-based background check is pending; and

(b) The applicant or service provider is not disqualified based on the immediate result of the background check.

(7) Fees charged by the Washington state patrol and the federal bureau of investigation for fingerprint-based background checks shall

be paid by the department for applicants or service providers providing:

(a) Services to people with a developmental disability under RCW 74.15.030;

(b) In-home services funded by medicaid personal care under RCW 74.09.520;

(c) Community options program entry system waiver services under RCW 74.39A.030;

(d) Chore services under RCW 74.39A.110;

(e) Services under other home and community long-term care programs, established pursuant to chapters 74.39 and 74.39A RCW, administered by the department;

(f) Services in, or to residents of, a secure facility under RCW 71.09.115; and

(g) Foster care as required under RCW 74.15.030.

(8) Service providers licensed under RCW 74.15.030 must pay fees charged by the Washington state patrol and the federal bureau of investigation for conducting fingerprint-based background checks.

(9) Children's administration service providers licensed under RCW 74.15.030 may not pass on the cost of the background check fees to their applicants unless the individual is determined to be disqualified due to the background information.

(10) The department shall develop rules identifying the financial responsibility of service providers, applicants, and the department for paying the fees charged by law enforcement to roll, print, or scan fingerprints-based for the purpose of a Washington state patrol or federal bureau of investigation fingerprint-based background check.

(11) For purposes of this section, unless the context plainly indicates otherwise:

(a) "Applicant" means a current or prospective department or service provider employee, volunteer, student, intern, researcher, contractor, or any other individual who will or may have unsupervised access because of the nature of the work or services he or she provides. "Applicant" includes but is not limited to any individual who will or may have unsupervised access and is:

(i) Applying for a license or certification from the department;

(ii) Seeking a contract with the department or a service provider;

(iii) Applying for employment, promotion, reallocation, or transfer;

(iv) An individual that a department client or guardian of a department client chooses to hire or engage to provide services to himself or herself or another vulnerable adult, juvenile, or child and who might be eligible to receive payment from the department for services rendered; or

(v) A department applicant who will or may work in a department-covered position.

(b) "Authorized" means the department grants an applicant, home, or facility permission to:

(i) Conduct licensing, certification, or contracting activities;

(ii) Have unsupervised access to vulnerable adults, juveniles, and children;

(iii) Receive payments from a department program; or

(iv) Work or serve in a department-covered position.

(c) "Department" means the department of social and health services.

(d) "Secretary" means the secretary of the department of social and health services.

(e) "Secure facility" has the meaning provided in RCW 71.09.020.

(f) "Service provider" means entities, facilities, agencies, businesses, or individuals who are licensed, certified, authorized, or regulated by, receive payment from, or have contracts or agreements with the department to provide services to vulnerable adults, juveniles, or children. "Service provider" includes individuals whom a department client or guardian of a department client may choose to hire or engage to provide services to himself or herself or another

vulnerable adult, juvenile, or child and who might be eligible to receive payment from the department for services rendered. "Service provider" does not include those certified under chapter 70.96A RCW.

Sec. 507. RCW 74.39A.095 and 2011 1st sp.s. c 31 s 14 and 2011 1st sp.s. c 21 s 5 are each reenacted and amended to read as follows:

(1) In carrying out case management responsibilities established under RCW 74.39A.090 for consumers who are receiving services under the medicaid personal care, community options programs entry system or chore services program through an individual provider, each area agency on aging shall provide oversight of the care being provided to consumers receiving services under this section to the extent of available funding. Case management responsibilities incorporate this oversight, and include, but are not limited to:

(a) Verification that any individual provider has met any training requirements established by the department;

(b) Verification of a sample of worker time sheets;

(c) Monitoring the consumer's plan of care to verify that it adequately meets the needs of the consumer, through activities such as home visits, telephone contacts, and responses to information received by the area agency on aging indicating that a consumer may be experiencing problems relating to his or her home care;

(d) Reassessing and reauthorizing services;

(e) Monitoring of individual provider performance; and

(f) Conducting criminal background checks or verifying that criminal background checks have been conducted for any individual provider. Individual providers who are hired after January ~~((1, 2014))~~ 7, 2012, are subject to background checks under RCW ~~((74.39A.055))~~ 74.39A.056.

(2) The area agency on aging case manager shall work with each consumer to develop a plan of care under this section that identifies and ensures coordination of health and long-term care services that meet the consumer's needs. In developing the plan, they shall utilize, and modify as needed, any comprehensive community service plan developed by the department as provided in RCW 74.39A.040. The plan of care shall include, at a minimum:

(a) The name and telephone number of the consumer's area agency on aging case manager, and a statement as to how the case manager can be contacted about any concerns related to the consumer's well-being or the adequacy of care provided;

(b) The name and telephone numbers of the consumer's primary health care provider, and other health or long-term care providers with whom the consumer has frequent contacts;

(c) A clear description of the roles and responsibilities of the area agency on aging case manager and the consumer receiving services under this section;

(d) The duties and tasks to be performed by the area agency on aging case manager and the consumer receiving services under this section;

(e) The type of in-home services authorized, and the number of hours of services to be provided;

(f) The terms of compensation of the individual provider;

(g) A statement by the individual provider that he or she has the ability and willingness to carry out his or her responsibilities relative to the plan of care; and

(h)(i) Except as provided in (h)(ii) of this subsection, a clear statement indicating that a consumer receiving services under this section has the right to waive any of the case management services offered by the area agency on aging under this section, and a clear indication of whether the consumer has, in fact, waived any of these services.

(ii) The consumer's right to waive case management services does not include the right to waive reassessment or reauthorization of services, or verification that services are being provided in accordance with the plan of care.

(3) Each area agency on aging shall retain a record of each waiver of services included in a plan of care under this section.

(4) Each consumer has the right to direct and participate in the development of their plan of care to the maximum practicable extent of their abilities and desires, and to be provided with the time and support necessary to facilitate that participation.

(5) A copy of the plan of care must be distributed to the consumer's primary care provider, individual provider, and other relevant providers with whom the consumer has frequent contact, as authorized by the consumer.

(6) The consumer's plan of care shall be an attachment to the contract between the department, or their designee, and the individual provider.

(7) If the department or area agency on aging case manager finds that an individual provider's inadequate performance or inability to deliver quality care is jeopardizing the health, safety, or well-being of a consumer receiving service under this section, the department or the area agency on aging may take action to terminate the contract between the department and the individual provider. If the department or the area agency on aging has a reasonable, good faith belief that the health, safety, or well-being of a consumer is in imminent jeopardy, the department or area agency on aging may summarily suspend the contract pending a fair hearing. The consumer may request a fair hearing to contest the planned action of the case manager, as provided in chapter 34.05 RCW. The department may by rule adopt guidelines for implementing this subsection.

(8) The department or area agency on aging may reject a request by a consumer receiving services under this section to have a family member or other person serve as his or her individual provider if the case manager has a reasonable, good faith belief that the family member or other person will be unable to appropriately meet the care needs of the consumer. The consumer may request a fair hearing to contest the decision of the case manager, as provided in chapter 34.05 RCW. The department may by rule adopt guidelines for implementing this subsection.

VI. ENFORCEMENT

Sec. 601. RCW 18.88B.050 and 2011 1st sp.s. c 31 s 4 are each amended to read as follows:

(1) The uniform disciplinary act, chapter 18.130 RCW, governs uncertified practice, issuance and renewal of certificates, and the discipline of persons with certificates under this chapter. The secretary (~~(of health)~~) shall be the disciplinary authority under this chapter.

(2) The secretary (~~(of health)~~) may take action to immediately suspend the certification of a (~~(long-term care worker)~~) home care aide upon finding that conduct of the (~~(long-term care worker)~~) home care aide has caused or presents an imminent threat of harm to a functionally disabled person in his or her care.

(3) If the secretary (~~(of health)~~) imposes suspension or conditions for continuation or renewal of certification, the suspension or conditions for continuation or renewal are effective immediately upon notice and shall continue in effect pending the outcome of any hearing.

(4) The department (~~(of health)~~) shall take appropriate enforcement action related to the licensure of a private agency or facility licensed by the state, to provide personal care services, other than an individual provider, who knowingly employs a long-term care worker who is not a certified home care aide as required under this chapter or whose certification is revoked or, if exempted from certification by RCW ((18.88B.040)) 18.88B.041, who has not

completed his or her required training pursuant to (~~(this chapter)~~) RCW 74.39A.074.

(5) Chapter 34.05 RCW shall govern actions by the department (~~(of health)~~) under this section.

(6) The department (~~(of health)~~) shall adopt rules (~~(by August 1, 2013,)~~) to implement this section.

Sec. 602. RCW 74.39A.086 and 2012 c 1 s 109 (Initiative Measure No. 1163) are each amended to read as follows:

(1) The department;
(a) Shall deny payment to any individual provider of home care services who has not been certified (~~(by the department of health)~~) as a home care aide as required under chapter (~~(2, Laws of 2009 or, if exempted from certification by RCW 18.88B.040,)) 18.88B RCW or whose certification is revoked or, if exempted from certification under RCW 18.88B.041, who~~ has not completed his or her required training pursuant to (~~(chapter 2, Laws of 2009)) RCW 74.39A.074.~~

(~~(2) The department~~) (b) May terminate the contract of any individual provider of home care services, or take any other enforcement measure deemed appropriate by the department if the individual provider has not been certified or the individual provider's certification is revoked under chapter ((2, Laws of 2009)) 18.88B RCW or, if exempted from certification by RCW ((18.88B.040)) 18.88B.041, the individual provider has not completed his or her required training pursuant to (~~(chapter 2, Laws of 2009)) RCW 74.39A.074.~~

(~~(3)) (2)~~ The department shall take appropriate enforcement action related to the contract of a private agency or facility licensed by the state(~~(s))~~) to provide personal care services, other than an individual provider, who knowingly employs a long-term care worker who is not a certified home care aide as required under chapter (~~(2, Laws of 2009 or, if exempted from certification by RCW 18.88B.040,)) 18.88B RCW or whose certification is revoked or, if exempted from certification under RCW 18.88B.041, who~~ has not completed his or her required training pursuant to (~~(chapter 2, Laws of 2009)) RCW 74.39A.074.~~

(~~(4)) (3)~~ Chapter 34.05 RCW shall govern actions by the department under this section.

(~~(5)) (4)~~ The department shall adopt rules (~~(by August 1, 2010,))~~ to implement this section.

VII. MISCELLANEOUS

Sec. 701. RCW 74.39A.051 and 2012 c 1 s 106 (Initiative Measure No. 1163) are each amended to read as follows:

The department's system of quality improvement for long-term care services shall use the following principles, consistent with applicable federal laws and regulations:

(1) The system shall be client-centered and promote privacy, independence, dignity, choice, and a home or home-like environment for consumers consistent with chapter 392, Laws of 1997.

(2) The goal of the system is continuous quality improvement with the focus on consumer satisfaction and outcomes for consumers. This includes that when conducting licensing or contract inspections, the department shall interview an appropriate percentage of residents, family members, resident case managers, and advocates in addition to interviewing providers and staff.

(3) Providers should be supported in their efforts to improve quality and address identified problems initially through training, consultation, technical assistance, and case management.

(4) The emphasis should be on problem prevention both in monitoring and in screening potential providers of service.

(5) Monitoring should be outcome based and responsive to consumer complaints and based on a clear set of health, quality of

care, and safety standards that are easily understandable and have been made available to providers, residents, and other interested parties.

(6) Prompt and specific enforcement remedies shall also be implemented without delay, pursuant to RCW 74.39A.080(~~(RCW)~~) or 70.128.160, or chapter 18.51 (~~(RCW)~~) or (~~chapter~~) 74.42 RCW, for providers found to have delivered care or failed to deliver care resulting in problems that are serious, recurring, or uncorrected, or that create a hazard that is causing or likely to cause death or serious harm to one or more residents. These enforcement remedies may also include, when appropriate, reasonable conditions on a contract or license. In the selection of remedies, the safety, health, and well-being of residents shall be of paramount importance.

(7) ((All long-term care workers shall be screened through background checks in a uniform and timely manner to ensure that they do not have a criminal history that would disqualify them from working with vulnerable persons. Long-term care workers who are hired after January 1, 2012, are subject to background checks under RCW 74.39A.055. This information will be shared with the department of health in accordance with RCW 74.39A.055 to advance the purposes of chapter 2, Laws of 2009.

(8) No provider, or its staff, or long-term care worker, or prospective provider or long-term care worker, with a stipulated finding of fact, conclusion of law, an agreed order, or finding of fact, conclusion of law, or final order issued by a disciplining authority, a court of law, or entered into a state registry finding him or her guilty of abuse, neglect, exploitation, or abandonment of a minor or a vulnerable adult as defined in chapter 74.34 RCW shall be employed in the care of and have unsupervised access to vulnerable adults.

(9) The department shall establish, by rule, a state registry which contains identifying information about long-term care workers identified under this chapter who have substantiated findings of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult as defined in RCW 74.34.020. The rule must include disclosure, disposition of findings, notification, findings of fact, appeal rights, and fair hearing requirements. The department shall disclose, upon request, substantiated findings of abuse, neglect, financial exploitation, or abandonment to any person so requesting this information. This information will also be shared with the department of health to advance the purposes of chapter 2, Laws of 2009.

(10) Until December 31, 2010,)) Background checks of long-term care workers must be conducted as provided in RCW 74.39A.056.

(8) Except as provided in RCW 74.39A.074 and 74.39A.076, individual providers and home care agency providers must satisfactorily complete department-approved orientation, basic training, and continuing education within the time period specified by the department in rule. The department shall adopt rules ((by March 1, 2002,)) for the implementation of this section. The department shall deny payment to an individual provider or a home care provider who does not complete the training requirements within the time limit specified by the department by rule.

((11) Until December 31, 2010, in an effort to improve access to training and education and reduce costs, especially for rural communities, the coordinated system of long-term care training and education must include the use of innovative types of learning strategies such as internet resources, videotapes, and distance learning using satellite technology coordinated through community colleges or other entities, as defined by the department.

(12) The department shall create an approval system by March 1, 2002, for those seeking to conduct department-approved training.

(13) The department shall establish, by rule, background checks and other quality assurance requirements for long-term care workers who provide in-home services funded by medicaid personal care as described in RCW 74.09.520, community options program entry system waiver services as described in RCW 74.39A.030, or chore

services as described in RCW 74.39A.110 that are equivalent to requirements for individual providers. Long-term care workers who are hired after January 1, 2012, are subject to background checks under RCW 74.39A.055.

(14))) (9) Under existing funds the department shall establish internally a quality improvement standards committee to monitor the development of standards and to suggest modifications.

((15) Within existing funds, the department shall design, develop, and implement a long-term care training program that is flexible, relevant, and qualifies towards the requirements for a nursing assistant certificate as established under chapter 18.88A RCW. This subsection does not require completion of the nursing assistant certificate training program by providers or their staff. The long-term care teaching curriculum must consist of a fundamental module, or modules, and a range of other available relevant training modules that provide the caregiver with appropriate options that assist in meeting the resident's care needs. Some of the training modules may include, but are not limited to, specific training on the special care needs of persons with developmental disabilities, dementia, mental illness, and the care needs of the elderly. No less than one training module must be dedicated to workplace violence prevention. The nursing care quality assurance commission shall work together with the department to develop the curriculum modules. The nursing care quality assurance commission shall direct the nursing assistant training programs to accept some or all of the skills and competencies from the curriculum modules towards meeting the requirements for a nursing assistant certificate as defined in chapter 18.88A RCW. A process may be developed to test persons completing modules from a caregiver's class to verify that they have the transferable skills and competencies for entry into a nursing assistant training program. The department may review whether facilities can develop their own related long-term care training programs. The department may develop a review process for determining what previous experience and training may be used to waive some or all of the mandatory training. The department of social and health services and the nursing care quality assurance commission shall work together to develop an implementation plan by December 12, 1998.))

Sec. 702. RCW 18.20.270 and 2002 c 233 s 1 are each amended to read as follows:

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

(a) "Caregiver" includes any person who provides residents with hands-on personal care on behalf of a boarding home, except volunteers who are directly supervised.

(b) "Direct supervision" means oversight by a person who has demonstrated competency in the core areas or has been fully exempted from the training requirements pursuant to this section, is on the premises, and is quickly and easily available to the caregiver.

(2) Training must have the following components: Orientation, basic training, specialty training as appropriate, and continuing education. All boarding home employees or volunteers who routinely interact with residents shall complete orientation. Boarding home administrators, or their designees, and caregivers shall complete orientation, basic training, specialty training as appropriate, and continuing education.

(3) Orientation consists of introductory information on residents' rights, communication skills, fire and life safety, and universal precautions. Orientation must be provided at the facility by appropriate boarding home staff to all boarding home employees before the employees have routine interaction with residents.

(4) Basic training consists of modules on the core knowledge and skills that caregivers need to learn and understand to effectively and safely provide care to residents. Basic training must be outcome-based, and the effectiveness of the basic training must be measured by demonstrated competency in the core areas through the use of a competency test. Basic training must be completed by caregivers

within one hundred twenty days of the date on which they begin to provide hands-on care (~~(or within one hundred twenty days of September 1, 2002, whichever is later)~~). Until competency in the core areas has been demonstrated, caregivers shall not provide hands-on personal care to residents without direct supervision. Boarding home administrators, or their designees, must complete basic training and demonstrate competency within one hundred twenty days of employment (~~(or within one hundred twenty days of September 1, 2002, whichever is later)~~).

(5) For boarding homes that serve residents with special needs such as dementia, developmental disabilities, or mental illness, specialty training is required of administrators, or designees, and caregivers.

(a) Specialty training consists of modules on the core knowledge and skills that caregivers need to effectively and safely provide care to residents with special needs. Specialty training should be integrated into basic training wherever appropriate. Specialty training must be outcome-based, and the effectiveness of the specialty training measured by demonstrated competency in the core specialty areas through the use of a competency test.

(b) Specialty training must be completed by caregivers within one hundred twenty days of the date on which they begin to provide hands-on care to a resident having special needs (~~(or within one hundred twenty days of September 1, 2002, whichever is later)~~). However, if specialty training is not integrated with basic training, the specialty training must be completed within ninety days of completion of basic training. Until competency in the core specialty areas has been demonstrated, caregivers shall not provide hands-on personal care to residents with special needs without direct supervision.

(c) Boarding home administrators, or their designees, must complete specialty training and demonstrate competency within one hundred twenty days (~~(of September 1, 2002, or one hundred twenty days)~~) from the date on which the administrator or his or her designee is hired, (~~(which ever is later)~~) if the boarding home serves one or more residents with special needs.

(6) Continuing education consists of ongoing delivery of information to caregivers on various topics relevant to the care setting and care needs of residents. Competency testing is not required for continuing education. Continuing education is not required in the same calendar year in which basic or modified basic training is successfully completed. Continuing education is required in each calendar year thereafter. If specialty training is completed, the specialty training applies toward any continuing education requirement for up to two years following the completion of the specialty training.

(7) Persons who successfully challenge the competency test for basic training are fully exempt from the basic training requirements of this section. Persons who successfully challenge the specialty training competency test are fully exempt from the specialty training requirements of this section.

(8) Licensed persons who perform the tasks for which they are licensed are fully or partially exempt from the training requirements of this section, as specified by the department in rule.

(9) In an effort to improve access to training and education and reduce costs, especially for rural communities, the coordinated system of long-term care training and education must include the use of innovative types of learning strategies such as internet resources, videotapes, and distance learning using satellite technology coordinated through community colleges or other entities, as defined by the department.

(10) The department shall develop criteria for the approval of orientation, basic training, and specialty training programs.

(11) Boarding homes that desire to deliver facility-based training with facility designated trainers, or boarding homes that desire to pool their resources to create shared training systems, must be encouraged

by the department in their efforts. The department shall develop criteria for reviewing and approving trainers and training materials that are substantially similar to or better than the materials developed by the department. The department may approve a curriculum based upon attestation by a boarding home administrator that the boarding home's training curriculum addresses basic and specialty training competencies identified by the department, and shall review a curriculum to verify that it meets these requirements. The department may conduct the review as part of the next regularly scheduled yearly inspection and investigation required under RCW 18.20.110. The department shall rescind approval of any curriculum if it determines that the curriculum does not meet these requirements.

(12) The department shall adopt rules (~~(by September 1, 2002)~~) for the implementation of this section.

(13)(a) ~~Except as provided in (b) of this subsection, the orientation, basic training, specialty training, and continuing education requirements of this section commence September 1, 2002, or one hundred twenty days from the date of employment, whichever is later, and shall be applied to ((a)) (i) employees hired subsequent to September 1, 2002; and ((b)) (ii) existing employees that on September 1, 2002, have not successfully completed the training requirements under RCW 74.39A.010 or 74.39A.020 and this section. Existing employees who have not successfully completed the training requirements under RCW 74.39A.010 or 74.39A.020 shall be subject to all applicable requirements of this section. ((However, prior to September 1, 2002, nothing in this section affects the current training requirements under RCW 74.39A.010.))~~

(b) Beginning January 7, 2012, long-term care workers, as defined in RCW 74.39A.009, employed by facilities licensed under this chapter are also subject to the training requirements under RCW 74.39A.074.

Sec. 703. RCW 70.128.120 and 2011 1st sp.s. c 3 s 205 are each amended to read as follows:

Each adult family home provider, applicant, and each resident manager shall have the following minimum qualifications, except that only applicants are required to meet the provisions of subsections (10) and (11) of this section:

- (1) Twenty-one years of age or older;
- (2) For those applying after September 1, 2001, to be licensed as providers, and for resident managers whose employment begins after September 1, 2001, a United States high school diploma or general educational development (GED) certificate or any English or translated government documentation of the following:
 - (a) Successful completion of government-approved public or private school education in a foreign country that includes an annual average of one thousand hours of instruction over twelve years or no less than twelve thousand hours of instruction;
 - (b) A foreign college, foreign university, or United States community college two-year diploma;
 - (c) Admission to, or completion of coursework at, a foreign university or college for which credit was granted;
 - (d) Admission to, or completion of coursework at, a United States college or university for which credits were awarded;
 - (e) Admission to, or completion of postgraduate coursework at, a United States college or university for which credits were awarded; or
 - (f) Successful passage of the United States board examination for registered nursing, or any professional medical occupation for which college or university education preparation was required;
- (3) Good moral and responsible character and reputation;
- (4) Literacy and the ability to communicate in the English language;
- (5) Management and administrative ability to carry out the requirements of this chapter;
- (6) Satisfactory completion of department-approved basic training and continuing education training as required by RCW (~~(74.39A.073)~~) 74.39A.074, and in rules adopted by the department;

(7) Satisfactory completion of department-approved, or equivalent, special care training before a provider may provide special care services to a resident;

(8) Not been convicted of any crime that is disqualifying under RCW 43.43.830 or 43.43.842, or department rules adopted under this chapter, or been found to have abused, neglected, exploited, or abandoned a minor or vulnerable adult as specified in RCW ~~((74.39A.050(8)))~~ 74.39A.056(2);

(9) For those applying to be licensed as providers, and for resident managers whose employment begins after August 24, 2011, at least one thousand hours in the previous sixty months of successful, direct caregiving experience obtained after age eighteen to vulnerable adults in a licensed or contracted setting prior to operating or managing an adult family home. The applicant or resident manager must have credible evidence of the successful, direct caregiving experience or, currently hold one of the following professional licenses: Physician licensed under chapter 18.71 RCW; osteopathic physician licensed under chapter 18.57 RCW; osteopathic physician assistant licensed under chapter 18.57A RCW; physician assistant licensed under chapter 18.71A RCW; registered nurse, advanced registered nurse practitioner, or licensed practical nurse licensed under chapter 18.79 RCW;

(10) For applicants, proof of financial solvency, as defined in rule; and

(11) Applicants must successfully complete an adult family home administration and business planning class, prior to being granted a license. The class must be a minimum of forty-eight hours of classroom time and approved by the department. The department shall promote and prioritize bilingual capabilities within available resources and when materials are available for this purpose.

Sec. 704. RCW 70.128.130 and 2011 1st sp.s. c 3 s 206 are each amended to read as follows:

(1) The provider is ultimately responsible for the day-to-day operations of each licensed adult family home.

(2) The provider shall promote the health, safety, and well-being of each resident residing in each licensed adult family home.

(3) Adult family homes shall be maintained internally and externally in good repair and condition. Such homes shall have safe and functioning systems for heating, cooling, hot and cold water, electricity, plumbing, garbage disposal, sewage, cooking, laundry, artificial and natural light, ventilation, and any other feature of the home.

(4) In order to preserve and promote the residential home-like nature of adult family homes, adult family homes licensed after August 24, 2011, shall:

(a) Have sufficient space to accommodate all residents at one time in the dining and living room areas;

(b) Have hallways and doorways wide enough to accommodate residents who use mobility aids such as wheelchairs and walkers; and

(c) Have outdoor areas that are safe and accessible for residents to use.

(5) The adult family home must provide all residents access to resident common areas throughout the adult family home including, but not limited to, kitchens, dining and living areas, and bathrooms, to the extent that they are safe under the resident's care plan.

(6) Adult family homes shall be maintained in a clean and sanitary manner, including proper sewage disposal, food handling, and hygiene practices.

(7) Adult family homes shall develop a fire drill plan for emergency evacuation of residents, shall have working smoke detectors in each bedroom where a resident is located, shall have working fire extinguishers on each floor of the home, and shall not keep nonambulatory patients above the first floor of the home.

(8) The adult family home shall ensure that all residents can be safely evacuated in an emergency.

(9) Adult family homes shall have clean, functioning, and safe household items and furnishings.

(10) Adult family homes shall provide a nutritious and balanced diet and shall recognize residents' needs for special diets.

(11) Adult family homes shall establish health care procedures for the care of residents including medication administration and emergency medical care.

(a) Adult family home residents shall be permitted to self-administer medications.

(b) Adult family home providers may administer medications and deliver special care only to the extent authorized by law.

(12) Adult family home providers shall either: (a) Reside at the adult family home; or (b) employ or otherwise contract with a qualified resident manager to reside at the adult family home. The department may exempt, for good cause, a provider from the requirements of this subsection by rule.

(13) A provider will ensure that any volunteer, student, employee, or person residing within the adult family home who will have unsupervised access to any resident shall not have been convicted of a crime listed under RCW 43.43.830 or 43.43.842, or been found to have abused, neglected, exploited, or abandoned a minor or vulnerable adult as specified in RCW ~~((74.39A.050(8)))~~ 74.39A.056(2). A provider may conditionally employ a person pending the completion of a criminal conviction background inquiry, but may not allow the person to have unsupervised access to any resident.

(14) A provider shall offer activities to residents under care as defined by the department in rule.

(15) An adult family home must be financially solvent, and upon request for good cause, shall provide the department with detailed information about the home's finances. Financial records of the adult family home may be examined when the department has good cause to believe that a financial obligation related to resident care or services will not be met.

(16) An adult family home provider must ensure that staff are competent and receive necessary training to perform assigned tasks. Staff must satisfactorily complete department-approved staff orientation, basic training, and continuing education as specified by the department by rule. The provider shall ensure that a qualified caregiver is on-site whenever a resident is at the adult family home; any exceptions will be specified by the department in rule. Notwithstanding RCW 70.128.230, until orientation and basic training are successfully completed, a caregiver may not provide hands-on personal care to a resident without on-site supervision by a person who has successfully completed basic training or been exempted from the training pursuant to statute.

(17) The provider and resident manager must assure that there is:

(a) A mechanism to communicate with the resident in his or her primary language either through a qualified person on-site or readily available at all times, or other reasonable accommodations, such as language lines; and

(b) Staff on-site at all times capable of understanding and speaking English well enough to be able to respond appropriately to emergency situations and be able to read and understand resident care plans.

Sec. 705. RCW 70.128.230 and 2002 c 233 s 3 are each amended to read as follows:

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

(a) "Caregiver" includes all adult family home resident managers and any person who provides residents with hands-on personal care on behalf of an adult family home, except volunteers who are directly supervised.

(b) "Indirect supervision" means oversight by a person who has demonstrated competency in the core areas or has been fully exempted from the training requirements pursuant to this section and

is quickly and easily available to the caregiver, but not necessarily on-site.

(2) Training must have three components: Orientation, basic training, and continuing education. All adult family home providers, resident managers, and employees, or volunteers who routinely interact with residents shall complete orientation. Caregivers shall complete orientation, basic training, and continuing education.

(3) Orientation consists of introductory information on residents' rights, communication skills, fire and life safety, and universal precautions. Orientation must be provided at the facility by appropriate adult family home staff to all adult family home employees before the employees have routine interaction with residents.

(4) Basic training consists of modules on the core knowledge and skills that caregivers need to learn and understand to effectively and safely provide care to residents. Basic training must be outcome-based, and the effectiveness of the basic training must be measured by demonstrated competency in the core areas through the use of a competency test. Basic training must be completed by caregivers within one hundred twenty days of the date on which they begin to provide hands-on care ~~((or within one hundred twenty days of September 1, 2002, whichever is later))~~. Until competency in the core areas has been demonstrated, caregivers shall not provide hands-on personal care to residents without indirect supervision.

(5) For adult family homes that serve residents with special needs such as dementia, developmental disabilities, or mental illness, specialty training is required of providers and resident managers.

(a) Specialty training consists of modules on the core knowledge and skills that providers and resident managers need to effectively and safely provide care to residents with special needs. Specialty training should be integrated into basic training wherever appropriate. Specialty training must be outcome-based, and the effectiveness of the specialty training measured by demonstrated competency in the core specialty areas through the use of a competency test.

(b) Specialty training must be completed by providers and resident managers before admitting and serving residents who have been determined to have special needs related to mental illness, dementia, or a developmental disability. Should a resident develop special needs while living in a home without specialty designation, the provider and resident manager have one hundred twenty days to complete specialty training.

(6) Continuing education consists of ongoing delivery of information to caregivers on various topics relevant to the care setting and care needs of residents. Competency testing is not required for continuing education. Continuing education is not required in the same calendar year in which basic or modified basic training is successfully completed. Continuing education is required in each calendar year thereafter. If specialty training is completed, the specialty training applies toward any continuing education requirement for up to two years following the completion of the specialty training.

(7) Persons who successfully challenge the competency test for basic training are fully exempt from the basic training requirements of this section. Persons who successfully challenge the specialty training competency test are fully exempt from the specialty training requirements of this section.

(8) Licensed persons who perform the tasks for which they are licensed are fully or partially exempt from the training requirements of this section, as specified by the department in rule.

(9) In an effort to improve access to training and education and reduce costs, especially for rural communities, the coordinated system of long-term care training and education must include the use of innovative types of learning strategies such as internet resources, videotapes, and distance learning using satellite technology coordinated through community colleges, private associations, or other entities, as defined by the department.

(10) Adult family homes that desire to deliver facility-based training with facility designated trainers, or adult family homes that desire to pool their resources to create shared training systems, must be encouraged by the department in their efforts. The department shall develop criteria for reviewing and approving trainers and training materials. The department may approve a curriculum based upon attestation by an adult family home administrator that the adult family home's training curriculum addresses basic and specialty training competencies identified by the department, and shall review a curriculum to verify that it meets these requirements. The department may conduct the review as part of the next regularly scheduled inspection authorized under RCW 70.128.070. The department shall rescind approval of any curriculum if it determines that the curriculum does not meet these requirements.

(11) The department shall adopt rules by September 1, 2002, for the implementation of this section.

~~(12)(a) Except as provided in (b) of this subsection, the orientation, basic training, specialty training, and continuing education requirements of this section commence September 1, 2002, and shall be applied to ((a)) (i) employees hired subsequent to September 1, 2002; or ((b)) (ii) existing employees that on September 1, 2002, have not successfully completed the training requirements under RCW 70.128.120 or 70.128.130 and this section. Existing employees who have not successfully completed the training requirements under RCW 70.128.120 or 70.128.130 shall be subject to all applicable requirements of this section. ((However, until September 1, 2002, nothing in this section affects the current training requirements under RCW 70.128.120 and 70.128.130.))~~

(b) Beginning January 7, 2012, long-term care workers, as defined in RCW 74.39A.009, employed by an adult family home are also subject to the training requirements under RCW 74.39A.074.

Sec. 706. RCW 74.39A.010 and 1995 1st sp.s. c 18 s 14 are each amended to read as follows:

(1) To the extent of available funding, the department of social and health services may contract with licensed boarding homes under chapter 18.20 RCW and tribally licensed boarding homes for assisted living services and enhanced adult residential care. The department shall develop rules for facilities that contract with the department for assisted living services or enhanced adult residential care to establish:

(a) Facility service standards consistent with the principles in RCW ~~((74.39A.050))~~ 74.39A.051 and consistent with chapter 70.129 RCW;

(b) Standards for resident living areas consistent with RCW 74.39A.030;

(c) Training requirements for providers and their staff.

(2) The department's rules shall provide that services in assisted living and enhanced adult residential care:

(a) Recognize individual needs, privacy, and autonomy;

(b) Include, but not be limited to, personal care, nursing services, medication administration, and supportive services that promote independence and self-sufficiency;

(c) Are of sufficient scope to assure that each resident who chooses to remain in the assisted living or enhanced adult residential care may do so, to the extent that the care provided continues to be cost-effective and safe and promote the most appropriate level of physical, mental, and psychosocial well-being consistent with client choice;

(d) Are directed first to those persons most likely, in the absence of enhanced adult residential care or assisted living services, to need hospital, nursing facility, or other out-of-home placement; and

(e) Are provided in compliance with applicable facility and professional licensing laws and rules.

(3) When a facility contracts with the department for assisted living services or enhanced adult residential care, only services and facility standards that are provided to or in behalf of the assisted

living services or enhanced adult residential care client shall be subject to the department's rules.

Sec. 707. RCW 74.39A.020 and 2004 c 142 s 15 are each amended to read as follows:

(1) To the extent of available funding, the department of social and health services may contract for adult residential care.

(2) The department shall, by rule, develop terms and conditions for facilities that contract with the department for adult residential care to establish:

(a) Facility service standards consistent with the principles in RCW ~~((74.39A.050))~~ 74.39A.051 and consistent with chapter 70.129 RCW; and

(b) Training requirements for providers and their staff.

(3) The department shall, by rule, provide that services in adult residential care facilities:

(a) Recognize individual needs, privacy, and autonomy;

(b) Include personal care and other services that promote independence and self-sufficiency and aging in place;

(c) Are directed first to those persons most likely, in the absence of adult residential care services, to need hospital, nursing facility, or other out-of-home placement; and

(d) Are provided in compliance with applicable facility and professional licensing laws and rules.

(4) When a facility contracts with the department for adult residential care, only services and facility standards that are provided to or in behalf of the adult residential care client shall be subject to the adult residential care rules.

(5) To the extent of available funding, the department may also contract under this section with a tribally licensed boarding home for the provision of services of the same nature as the services provided by adult residential care facilities. The provisions of subsections (2)(a) and (b) and (3)(a) through (d) of this section apply to such a contract.

Sec. 708. RCW 74.39A.250 and 2011 1st sp.s. c 21 s 8 are each amended to read as follows:

(1) The department shall provide assistance to consumers and prospective consumers in finding individual providers and prospective individual providers through the establishment of a referral registry of individual providers and prospective individual providers. Before placing an individual provider or prospective individual provider on the referral registry, the department shall determine that:

(a) The individual provider or prospective individual provider has met the minimum requirements for training set forth in RCW ~~((74.39A.050))~~ 74.39A.051;

(b) The individual provider or prospective individual provider has satisfactorily undergone a criminal background check conducted within the prior twelve months; and

(c) The individual provider or prospective individual provider is not listed on any long-term care abuse and neglect registry used by the department.

(2) The department shall remove from the referral registry any individual provider or prospective individual provider that does not meet the qualifications set forth in subsection (1) of this section or to have committed misfeasance or malfeasance in the performance of his or her duties as an individual provider. The individual provider or prospective individual provider, or the consumer to which the individual provider is providing services, may request a fair hearing to contest the removal from the referral registry, as provided in chapter 34.05 RCW.

(3) The department shall provide routine, emergency, and respite referrals of individual providers and prospective individual providers to consumers and prospective consumers who are authorized to receive long-term in-home care services through an individual provider.

(4) The department shall give preference in the recruiting, training, referral, and employment of individual providers and prospective individual providers to recipients of public assistance or other low-income persons who would qualify for public assistance in the absence of such employment.

Sec. 709. 2012 c 1 s 201 (uncodified) (Initiative Measure No. 1163) is amended to read as follows:

The state auditor shall conduct performance audits of the long-term in-home care program. The first audit must be completed within twelve months after January 7, 2012, and must be completed on a ~~((biannual))~~ biennial basis thereafter. As part of this auditing process, the state shall hire five additional fraud investigators to ensure that clients receiving services at taxpayers' expense are medically and financially qualified to receive the services and are actually receiving the services.

Sec. 710. 2012 c 1 s 303 (uncodified) (Initiative Measure No. 1163) is amended to read as follows:

Notwithstanding any action of the legislature during 2011, all long-term care workers as defined under RCW 74.39A.009(16), as it existed on April 1, 2011, are covered by sections 101 through 113 of this act or by the corresponding original versions of the statutes, as referenced in section 302 (1) through (13) on the schedules set forth in those sections, as amended by chapter . . . Laws of 2012 (this act), except that long-term care workers employed ~~((s))~~ by community residential service ~~((providers are covered by sections 101 through 113 of this act beginning January 1, 2016))~~ businesses are exempt to the extent provided in RCW 18.88B.041, 74.39A.056, 74.39A.074, 74.39A.331, 74.39A.341, and 74.39A.351.

NEW SECTION. Sec. 711. 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."

On page 1, line 7 of the title, after "requirements;" strike the remainder of the title and insert "amending RCW 18.88B.010, 74.39A.009, 18.88B.021, 18.88B.041, 18.88B.031, 74.39A.074, 74.39A.076, 74.39A.331, 74.39A.351, 74.39A.341, 18.79.260, 74.39A.261, 74.39A.056, 18.20.125, 43.20A.710, 43.43.837, 18.88B.050, 74.39A.086, 74.39A.051, 18.20.270, 70.128.120, 70.128.130, 70.128.230, 74.39A.010, 74.39A.020, and 74.39A.250; amending 2012 c 1 ss 201 and 303 (uncodified); reenacting and amending RCW 74.39A.095; adding new sections to chapter 18.88B RCW; creating new sections; and declaring an emergency."

and the same is herewith transmitted.

Thomas Hoeman, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to ENGROSSED SUBSTITUTE HOUSE BILL NO. 2314 and advanced the bill as amended by the Senate to final passage.

FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representatives Cody and Schmick spoke in favor of the passage of the bill.

The Speaker (Representative Roberts presiding) stated the question before the House to be the final passage of Engrossed Substitute House Bill No. 2314, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of Engrossed Substitute House Bill No. 2314, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 95; Nays, 0; Absent, 0; Excused, 3.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Asay, Bailey, Billig, Blake, Buys, Carlyle, Chandler, Clibborn, Cody, Condotta, Crouse, Dahlquist, Dammeier, Darneille, DeBolt, Dickerson, Dunshee, Eddy, Fagan, Finn, Fitzgibbon, Goodman, Green, Haigh, Haler, Hansen, Hargrove, Harris, Hasegawa, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jinkins, Johnson, Kagi, Kelley, Kenney, Kirby, Kretz, Kristiansen, Ladenburg, Liias, Lytton, Maxwell, McCoy, McCune, Miloscia, Moeller, Morris, Moscoso, Nealey, Orcutt, Ormsby, Orwall, Overstreet, Parker, Pearson, Pedersen, Pettigrew, Pollet, Probst, Reykdal, Rivers, Roberts, Ross, Ryu, Santos, Schmick, Seaquist, Sells, Shea, Short, Smith, Springer, Stanford, Sullivan, Takko, Taylor, Tharinger, Upthegrove, Van De Wege, Walsh, Warnick, Wilcox, Wylie, Zeiger and Mr. Speaker.

Excused: Representatives Ahern, Klippert and Rodne.

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2314, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

February 29, 2012

Mr. Speaker:

The Senate has passed HOUSE BILL NO. 2346 with the following amendment:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 43.19.534 and 2011 1st sp.s. c 43 s 227 and 2011 c 367 s 707 are each reenacted and amended to read as follows:

(1) State agencies, the legislature, and departments shall purchase for their use all goods and services required by the legislature, agencies, or departments that are produced or provided in whole or in part from class II inmate work programs operated by the department of corrections through state contract. These goods and services shall not be purchased from any other source unless, upon application by the department or agency: (a) The department finds that the articles or products do not meet the reasonable requirements of the agency or department, (b) are not of equal or better quality, or (c) the price of the product or service is higher than that produced by the private sector. However, the criteria contained in (a), (b), and (c) of this subsection for purchasing goods and services from sources other than correctional industries do not apply to goods and services produced by correctional industries that primarily replace goods manufactured or services obtained from outside the state. The department of corrections and department shall adopt administrative rules that implement this section.

(2) During the 2009-2011 and 2011-2013 fiscal biennia, and in conformance with section 223(11), chapter 470, Laws of 2009 and section 221(2), chapter 367, Laws of 2011, this section does not apply to the purchase of uniforms by the Washington state ferries.

(3) Effective July 1, 2012, this section does not apply to the purchase of uniforms for correctional officers employed with the Washington state department of corrections.

Sec. 2. RCW 72.09.100 and 2011 1st sp.s. c 21 s 37 and 2011 c 100 s 1 are each reenacted and amended to read as follows:

It is the intent of the legislature to vest in the department the power to provide for a comprehensive inmate work program and to remove statutory and other restrictions which have limited work programs in the past. It is also the intent of the legislature to ensure that the department, in developing and selecting correctional

industries work programs, does not encourage the development of, or provide for selection of or contracting for, or the significant expansion of, any new or existing class I correctional industries work programs that unfairly compete with Washington businesses. The legislature intends that the requirements relating to fair competition in the correctional industries work programs be liberally construed by the department to protect Washington businesses from unfair competition. For purposes of establishing such a comprehensive program, the legislature recommends that the department consider adopting any or all, or any variation of, the following classes of work programs:

(1) CLASS I: FREE VENTURE INDUSTRIES.

(a) The employer model industries in this class shall be operated and managed in total or in part by any profit or nonprofit organization pursuant to an agreement between the organization and the department. The organization shall produce goods or services for sale to both the public and private sector.

(b) The customer model industries in this class shall be operated and managed by the department to provide Washington state manufacturers or businesses with products or services currently produced or provided by out-of-state or foreign suppliers.

(c) The department shall review these proposed industries, including any potential new class I industries work program or the significant expansion of an existing class I industries work program, before the department contracts to provide such products or services. The review shall include the analysis required under RCW 72.09.115 to determine if the proposed correctional industries work program will compete with any Washington business. An agreement for a new class I correctional industries work program, or an agreement for a significant expansion of an existing class I correctional industries work program, that unfairly competes with any Washington business is prohibited.

(d) The department shall supply appropriate security and custody services without charge to the participating firms.

(e) Inmates who work in free venture industries shall do so at their own choice. They shall be paid a wage comparable to the wage paid for work of a similar nature in the locality in which the industry is located, as determined by the director of correctional industries. If the director cannot reasonably determine the comparable wage, then the pay shall not be less than the federal minimum wage.

(f) An inmate who is employed in the class I program of correctional industries shall not be eligible for unemployment compensation benefits pursuant to any of the provisions of Title 50 RCW until released on parole or discharged.

(2) CLASS II: TAX REDUCTION INDUSTRIES.

(a) Industries in this class shall be state-owned and operated enterprises designed primarily to reduce the costs for goods and services for tax-supported agencies and for nonprofit organizations.

(b)(i) The industries selected for development within this class shall, as much as possible, match the available pool of inmate work skills and aptitudes with the work opportunities in the free community. The industries shall be closely patterned after private sector industries but with the objective of reducing public support costs rather than making a profit.

(ii) Except as provided in RCW 43.19.534(3) and this section, the products and services of this industry, including purchased products and services necessary for a complete product line, may be sold to the following:

(A) Public agencies;

(B) Nonprofit organizations;

(C) Private contractors when the goods purchased will be ultimately used by a public agency or a nonprofit organization;

(D) An employee and immediate family members of an employee of the department;

(E) A person under the supervision of the department and his or her immediate family members; and

(F) A licensed health professional for the sole purpose of providing eyeglasses to enrollees of the state medical program at no more than the health professional's cost of acquisition.

(iii) The department shall authorize the type and quantity of items that may be purchased and sold under (b)(ii)(D) and (E) of this subsection.

(iv) It is prohibited to purchase any item purchased under (b)(ii)(D) and (E) of this subsection for the purpose of resale.

(v) Clothing manufactured by an industry in this class may be donated to nonprofit organizations that provide clothing free of charge to low-income persons.

(c) Under no circumstance shall offenders under the custody of the department of corrections make or assemble uniforms to be worn by correctional officers employed with the department.

(d)(i) Class II correctional industries products and services shall be reviewed by the department before offering such products and services for sale to private contractors.

(ii) The secretary shall conduct a yearly marketing review of the products and services offered under this subsection. Such review shall include an analysis of the potential impact of the proposed products and services on the Washington state business community. To avoid waste or spoilage and consequent loss to the state, when there is no public sector market for such goods, by-products and surpluses of timber, agricultural, and animal husbandry enterprises may be sold to private persons, at private sale. Surplus by-products and surpluses of timber, agricultural and animal husbandry enterprises that cannot be sold to public agencies or to private persons may be donated to nonprofit organizations. All sales of surplus products shall be carried out in accordance with rules prescribed by the secretary.

~~((d))~~ (e) Security and custody services shall be provided without charge by the department.

~~((e))~~ (f) Inmates working in this class of industries shall do so at their own choice and shall be paid for their work on a gratuity scale which shall not exceed the wage paid for work of a similar nature in the locality in which the industry is located and which is approved by the director of correctional industries.

~~((f))~~ (g) Provisions of RCW 41.06.142 shall not apply to contracts with Washington state businesses entered into by the department through class II industries.

(3) CLASS III: INSTITUTIONAL SUPPORT INDUSTRIES.

(a) Industries in this class shall be operated by the department. They shall be designed and managed to accomplish the following objectives:

(i) Whenever possible, to provide basic work training and experience so that the inmate will be able to qualify for better work both within correctional industries and the free community. It is not intended that an inmate's work within this class of industries should be his or her final and total work experience as an inmate.

(ii) Whenever possible, to provide forty hours of work or work training per week.

(iii) Whenever possible, to offset tax and other public support costs.

(b) Class III correctional industries shall be reviewed by the department to set policy for work crews. The department shall prepare quarterly detail statements showing where work crews worked, what correctional industry class, and the hours worked.

(c) Supervising, management, and custody staff shall be employees of the department.

(d) All able and eligible inmates who are assigned work and who are not working in other classes of industries shall work in this class.

(e) Except for inmates who work in work training programs, inmates in this class shall be paid for their work in accordance with an inmate gratuity scale. The scale shall be adopted by the secretary of corrections.

(4) CLASS IV: COMMUNITY WORK INDUSTRIES.

(a) Industries in this class shall be operated by the department. They shall be designed and managed to provide services in the inmate's resident community at a reduced cost. The services shall be provided to public agencies, to persons who are poor or infirm, or to nonprofit organizations.

(b) Class IV correctional industries shall be reviewed by the department to set policy for work crews. The department shall prepare quarterly detail statements showing where work crews worked, what correctional industry class, and the hours worked. Class IV correctional industries operated in work camps established pursuant to RCW 72.64.050 are exempt from the requirements of this subsection (4)(b).

(c) Inmates in this program shall reside in facilities owned by, contracted for, or licensed by the department. A unit of local government shall provide work supervision services without charge to the state and shall pay the inmate's wage.

(d) The department shall reimburse participating units of local government for liability and workers compensation insurance costs.

(e) Inmates who work in this class of industries shall do so at their own choice and shall receive a gratuity which shall not exceed the wage paid for work of a similar nature in the locality in which the industry is located.

(5) CLASS V: COMMUNITY RESTITUTION PROGRAMS.

(a) Programs in this class shall be subject to supervision by the department. The purpose of this class of industries is to enable an inmate, placed on community supervision, to work off all or part of a community restitution order as ordered by the sentencing court.

(b) Employment shall be in a community restitution program operated by the state, local units of government, or a nonprofit agency.

(c) To the extent that funds are specifically made available for such purposes, the department shall reimburse nonprofit agencies for workers compensation insurance costs.

NEW SECTION. Sec. 3. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2012, in the omnibus appropriations act, this act is null and void."

On page 1, line 3 of the title, after "industries;" strike the remainder of the title and insert "reenacting and amending RCW 43.19.534 and 72.09.100; and creating a new section."

and the same is herewith transmitted.

Thomas Hoeman, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to HOUSE BILL NO. 2346 and advanced the bill as amended by the Senate to final passage.

FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representatives Walsh, Hurst and Hudgins spoke in favor of the passage of the bill.

The Speaker (Representative Roberts presiding) stated the question before the House to be the final passage of House Bill No. 2346, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of House Bill No. 2346, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 92; Nays, 3; Absent, 0; Excused, 3.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Asay, Bailey, Billig, Blake, Buys, Carlyle, Chandler, Clibborn, Cody, Condotta, Crouse, Dahlquist, Dammeier, Darneille, DeBolt, Dickerson, Dunshee, Eddy, Fagan, Finn, Fitzgibbon, Goodman, Green, Haigh, Haler, Hansen, Hargrove, Harris, Hasegawa, Hinkle, Hope, Hudgins, Hunter, Hurst, Jinkins, Johnson, Kagi, Kelley, Kenney, Kirby, Kretz, Kristiansen, Ladenburg, Liias, Lytton, Maxwell, McCoy, McCune, Miloscia, Moeller, Morris, Moscoso, Nealey, Orcutt, Ormsby, Orwall, Overstreet, Parker, Pearson, Pedersen, Pettigrew, Pollet, Probst, Reykdal, Rivers, Ross, Ryu, Santos, Schmick, Seaquist, Sells, Shea, Short, Smith, Springer, Stanford, Sullivan, Takko, Taylor, Tharinger, Upthegrove, Van De Wege, Walsh, Wilcox, Wylie, Zeiger and Mr. Speaker.

Voting nay: Representatives Hunt, Roberts and Warnick.

Excused: Representatives Ahern, Klippert and Rodne.

HOUSE BILL NO. 2346, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

February 29, 2012

Mr. Speaker:

The Senate has passed ENGROSSED SUBSTITUTE HOUSE BILL NO. 2363 with the following amendment:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 9A.46.040 and 2011 c 307 s 4 are each amended to read as follows:

(1) Because of the likelihood of repeated harassment directed at those who have been victims of harassment in the past, when any defendant charged with a crime involving harassment is released from custody before trial on bail or personal recognizance, the court authorizing the release may require that the defendant:

(a) Stay away from the home, school, business, or place of employment of the victim or victims of the alleged offense or other location, as shall be specifically named by the court in the order;

(b) Refrain from contacting, intimidating, threatening, or otherwise interfering with the victim or victims of the alleged offense and such other persons, including but not limited to members of the family or household of the victim, as shall be specifically named by the court in the order.

(2) (~~An intentional~~) Willful violation of a court order issued under this section or an equivalent local ordinance is a gross misdemeanor. The written order releasing the defendant shall contain the court's directives and shall bear the legend: Violation of this order is a criminal offense under chapter 9A.46 RCW. A certified copy of the order shall be provided to the victim by the clerk of the court.

Sec. 2. RCW 9A.46.080 and 2011 c 307 s 5 are each amended to read as follows:

The victim shall be informed by local law enforcement agencies or the prosecuting attorney of the final disposition of the case in which the victim is involved. If a defendant is found guilty of a crime of harassment and a condition of the sentence restricts the defendant's ability to have contact with the victim or witnesses, the condition shall be recorded and a written certified copy of that order shall be provided to the victim or witnesses by the clerk of the court. Willful violation of a court order issued under this section or an equivalent local ordinance is a gross misdemeanor. The written order shall contain the court's directives and shall bear the legend: Violation of this order is a criminal offense under chapter 9A.46 RCW and will subject a violator to arrest.

Sec. 3. RCW 10.99.040 and 2010 c 274 s 309 are each amended to read as follows:

(1) Because of the serious nature of domestic violence, the court in domestic violence actions:

(a) Shall not dismiss any charge or delay disposition because of concurrent dissolution or other civil proceedings;

(b) Shall not require proof that either party is seeking a dissolution of marriage prior to instigation of criminal proceedings;

(c) Shall waive any requirement that the victim's location be disclosed to any person, other than the attorney of a criminal defendant, upon a showing that there is a possibility of further violence: PROVIDED, That the court may order a criminal defense attorney not to disclose to his or her client the victim's location; and

(d) Shall identify by any reasonable means on docket sheets those criminal actions arising from acts of domestic violence.

(2)(a) Because of the likelihood of repeated violence directed at those who have been victims of domestic violence in the past, when any person charged with or arrested for a crime involving domestic violence is released from custody before arraignment or trial on bail or personal recognizance, the court authorizing the release may prohibit that person from having any contact with the victim. The jurisdiction authorizing the release shall determine whether that person should be prohibited from having any contact with the victim. If there is no outstanding restraining or protective order prohibiting that person from having contact with the victim, the court authorizing release may issue, by telephone, a no-contact order prohibiting the person charged or arrested from having contact with the victim or from knowingly coming within, or knowingly remaining within, a specified distance of a location.

(b) In issuing the order, the court shall consider the provisions of RCW 9.41.800.

(c) The no-contact order shall also be issued in writing as soon as possible, and shall state that it may be extended as provided in subsection (3) of this section. By January 1, 2011, the administrative office of the courts shall develop a pattern form for all no-contact orders issued under this chapter. A no-contact order issued under this chapter must substantially comply with the pattern form developed by the administrative office of the courts.

(3) At the time of arraignment the court shall determine whether a no-contact order shall be issued or extended. So long as the court finds probable cause, the court may issue or extend a no-contact order even if the defendant fails to appear at arraignment. The no-contact order shall terminate if the defendant is acquitted or the charges are dismissed. If a no-contact order is issued or extended, the court may also include in the conditions of release a requirement that the defendant submit to electronic monitoring. If electronic monitoring is ordered, the court shall specify who shall provide the monitoring services, and the terms under which the monitoring shall be performed. Upon conviction, the court may require as a condition of the sentence that the defendant reimburse the providing agency for the costs of the electronic monitoring.

(4)(a) Willful violation of a court order issued under subsection (2) (~~(a)~~), (3), or (7) of this section is punishable under RCW 26.50.110.

(b) The written order releasing the person charged or arrested shall contain the court's directives and shall bear the legend: "Violation of this order is a criminal offense under chapter 26.50 RCW and will subject a violator to arrest; any assault, drive-by shooting, or reckless endangerment that is a violation of this order is a felony. You can be arrested even if any person protected by the order invites or allows you to violate the order's prohibitions. You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order."

(c) A certified copy of the order shall be provided to the victim.

(5) If a no-contact order has been issued prior to charging, that order shall expire at arraignment or within seventy-two hours if

charges are not filed. ~~((Such orders need not be entered into the computer based criminal intelligence information system in this state which is used by law enforcement agencies to list outstanding warrants.))~~

(6) Whenever a no-contact order is issued, modified, or terminated under subsection (2) or (3) of this section, the clerk of the court shall forward a copy of the order on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order the law enforcement agency shall enter the order for one year or until the expiration date specified on the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. Entry into the computer-based criminal intelligence information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any jurisdiction in the state. Upon receipt of notice that an order has been terminated under subsection (3) of this section, the law enforcement agency shall remove the order from the computer-based criminal intelligence information system.

(7) All courts shall develop policies and procedures by January 1, 2011, to grant victims a process to modify or rescind a no-contact order issued under this chapter. The administrative office of the courts shall develop a model policy to assist the courts in implementing the requirements of this subsection.

NEW SECTION. Sec. 4. A new section is added to chapter 10.14 RCW to read as follows:

(1) A defendant arrested for violating any civil antiharassment protection order issued pursuant to this chapter is required to appear in person before a magistrate within one judicial day after the arrest. At the time of the appearance, the court shall determine the necessity of imposing a no-contact order or other conditions of pretrial release in accordance with RCW 9A.46.050.

(2) A defendant who is charged by citation, complaint, or information with violating any civil antiharassment protection order issued pursuant to this chapter and not arrested shall appear in court for arraignment in accordance with RCW 9A.46.050.

(3) Appearances required pursuant to this section are mandatory and cannot be waived.

Sec. 5. RCW 26.09.013 and 2007 c 496 s 401 are each amended to read as follows:

In order to provide judicial officers with better information and to facilitate decision making which allows for the protection of children from physical, mental, or emotional harm and in order to facilitate consistent healthy contact between both parents and their children:

(1) Parties and witnesses who require the assistance of interpreters shall be provided access to qualified interpreters pursuant to chapter 2.42 or 2.43 RCW. To the extent practicable and within available resources, interpreters shall also be made available at dissolution-related proceedings.

(2) Parties and witnesses who require literacy assistance shall be referred to the multipurpose service centers established in chapter 28B.04 RCW.

(3) In matters involving guardians ad litem(s), the court shall specify the hourly rate the guardian ad litem may charge for his or her services, and shall specify the maximum amount the guardian ad litem may charge without additional review. Counties may, and to the extent state funding is provided therefor counties shall, provide indigent parties with guardian ad litem services at a reduced or waived fee.

(4) Parties may request to participate by telephone or interactive videoconference. The court may allow telephonic or interactive videoconference participation of one or more parties at any proceeding in its discretion. The court may also allow telephonic or interactive videoconference participation of witnesses.

(5) In cases involving domestic violence or child abuse, if residential time is ordered, the court may:

(a) Order exchange of a child to occur in a protected setting;

(b) Order residential time supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time. The court shall not approve of a supervisor for contact between the child and the parent unless the supervisor is willing to and capable of protecting the child from harm. The court shall revoke court approval of the supervisor if the court determines, after a hearing, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child. If the court allows a family or household member to supervise residential time, the court shall establish conditions to be followed during residential time.

(6)(a) In cases in which the court has made a finding of domestic violence or child abuse, the court may not require a victim of domestic violence or the custodial parent of a victim of child abuse to disclose to the other party information that would reasonably be expected to enable the perpetrator of domestic violence or child abuse to obtain previously undisclosed information regarding the name, location, or address of a victim's residence, employer, or school at an initial hearing, and shall carefully weigh the safety interests of the victim before issuing orders which would require disclosure in a future hearing.

(b) In cases in which domestic violence or child abuse has been alleged but the court has not yet made a finding regarding such allegations, the court shall provide the party alleging domestic violence or child abuse with the opportunity to prove the allegations before ordering the disclosure of information that would reasonably be expected to enable the alleged perpetrator of domestic violence or child abuse to obtain previously undisclosed information regarding the name, location, or address of a victim's residence, employer, or school.

(7) In cases in which the court finds that the parties do not have a satisfactory history of cooperation or there is a high level of parental conflict, the court may order the parties to use supervised visitation and safe exchange centers or alternative safe locations to facilitate the exercise of residential time.

Sec. 6. RCW 43.235.040 and 2000 c 50 s 4 are each amended to read as follows:

(1) An oral or written communication or a document shared within or produced by a ~~((regional))~~ domestic violence fatality review panel related to a domestic violence fatality review is confidential and not subject to disclosure or discoverable by a third party. An oral or written communication or a document provided by a third party to a ~~((regional))~~ domestic violence fatality review panel, or between a third party and a ~~((regional))~~ domestic violence fatality review panel is confidential and not subject to disclosure or discovery by a third party. Notwithstanding the foregoing, recommendations from the ~~((regional))~~ domestic violence fatality review panel and the coordinating entity generally may be disclosed minus personal identifiers.

(2) The ~~((regional))~~ review panels, only to the extent otherwise permitted by law or court rule, shall have access to information and records regarding the domestic violence victims and perpetrators under review held by domestic violence perpetrators' treatment providers; dental care providers; hospitals, medical providers, and pathologists; coroners and medical examiners; mental health providers; lawyers; the state and local governments; the courts; and employers. The coordinating entity and the ~~((regional))~~ review panels shall maintain the confidentiality of such information to the extent required by any applicable law.

(3) The ~~((regional))~~ review panels shall review, only to the extent otherwise permitted by law or court rule when determined to be relevant and necessary to an investigation, guardian ad litem reports, parenting evaluations, and victim impact statements; probation information; mental health evaluations done for court; presentence interviews and reports, and any recommendations made regarding

bail and release on own recognizance; child protection services, welfare, and other information held by the department; any law enforcement incident documentation, such as incident reports, dispatch records, victim, witness, and suspect statements, and any supplemental reports, probable cause statements, and 911 call taker's reports; corrections and postsentence supervision reports; and any other information determined to be relevant to the review. The coordinating entity and the ((regional)) review panels shall maintain the confidentiality of such information to the extent required by any applicable law.

Sec. 7. RCW 43.235.050 and 2000 c 50 s 5 are each amended to read as follows:

If acting in good faith, without malice, and within the parameters of this chapter and the protocols established, representatives of the coordinating entity and the statewide and regional domestic violence fatality review panels are immune from civil liability for an activity related to reviews of particular fatalities.

NEW SECTION. Sec. 8. A new section is added to chapter 26.12 RCW to read as follows:

The court shall act in accordance with the requirements of the address confidentiality program pursuant to chapter 40.24 RCW in the course of all proceedings under this title. A court order for information protected by the address confidentiality program may only be issued upon completing the requirements of RCW 40.24.075.

NEW SECTION. Sec. 9. A new section is added to chapter 26.50 RCW to read as follows:

(1)(a) No court or administrative body may compel any person or domestic violence program as defined in RCW 70.123.020 to disclose the name, address, or location of any domestic violence program, including a shelter or transitional housing facility location, in any civil or criminal case or in any administrative proceeding unless the court finds by clear and convincing evidence that disclosure is necessary for the implementation of justice after consideration of safety and confidentiality concerns of the parties and other residents of the domestic violence program, and other alternatives to disclosure that would protect the interests of the parties.

(b) The court's findings shall be made following a hearing in which the domestic violence program has been provided notice of the request for disclosure and an opportunity to respond.

(2) In any proceeding where the confidential name, address, or location of a domestic violence program is ordered to be disclosed, the court shall order that the parties be prohibited from further dissemination of the confidential information, and that any portion of any records containing such confidential information be sealed.

(3) Any person who obtains access to and intentionally and maliciously releases confidential information about the location of a domestic violence program for any purpose other than required by a court proceeding is guilty of a gross misdemeanor.

NEW SECTION. Sec. 10. A new section is added to chapter 26.50 RCW to read as follows:

(1) The Washington state institute for public policy shall conduct a statewide study to assess recidivism by domestic violence offenders involved in the criminal justice system, examine effective community supervision practices of domestic violence offenders as it relates to Washington state institute for public policy findings on evidence-based community supervision, and assess domestic violence perpetrator treatment. The institute shall report recidivism rates of domestic violence offenders in Washington, and if data is available, the report must also include an estimate of the number of domestic violence offenders sentenced to certified domestic violence perpetrator treatment in Washington state and completion rates for those entering treatment.

(2) The study must be done in collaboration with the Washington state gender and justice commission and experts on domestic violence and must include a review and update of the literature on domestic violence perpetrator treatment, and provide a description of studies

used in meta-analysis of domestic violence perpetrator treatment. The institute shall report on other treatments and programs, including related findings on evidence-based community supervision, that are effective at reducing recidivism among the general offender population. The institute shall survey other states to study how misdemeanor and felony domestic violence cases are handled and assess whether domestic violence perpetrator treatment is required by law and whether a treatment modality is codified in law. The institute shall complete the review and report results to the legislature by January 1, 2013.

NEW SECTION. Sec. 11. If specific funding for the purposes of section 10 of this act, referencing section 10 of this act by bill or chapter number and section number, is not provided by June 30, 2012, in the omnibus appropriations act, section 10 of this act is null and void."

On page 1, line 2 of the title, after "harassment;" strike the remainder of the title and insert "amending RCW 9A.46.040, 9A.46.080, 10.99.040, 26.09.013, 43.235.040, and 43.235.050; adding a new section to chapter 10.14 RCW; adding a new section to chapter 26.12 RCW; adding new sections to chapter 26.50 RCW; creating a new section; and prescribing penalties."

and the same is herewith transmitted.

Thomas Hoeman, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to ENGROSSED SUBSTITUTE HOUSE BILL NO. 2363 and advanced the bill as amended by the Senate to final passage.

FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representatives Goodman and Shea spoke in favor of the passage of the bill.

The Speaker (Representative Roberts presiding) stated the question before the House to be the final passage of Engrossed Substitute House Bill No. 2363, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of Engrossed Substitute House Bill No. 2363, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 96; Nays, 0; Absent, 0; Excused, 2.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Asay, Bailey, Billig, Blake, Buys, Carlyle, Chandler, Clibborn, Cody, Condotta, Crouse, Dahlquist, Dammeier, Darneille, DeBolt, Dickerson, Dunshee, Eddy, Fagan, Finn, Fitzgibbon, Goodman, Green, Haigh, Haler, Hansen, Hargrove, Harris, Hasegawa, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jinkins, Johnson, Kagi, Kelley, Kenney, Kirby, Kretz, Kristiansen, Ladenburg, Lias, Lytton, Maxwell, McCoy, McCune, Miloscia, Moeller, Morris, Moscoso, Nealey, Orcutt, Ormsby, Orwall, Overstreet, Parker, Pearson, Pedersen, Pettigrew, Pollet, Probst, Reykdal, Rivers, Roberts, Rodne, Ross, Ryu, Santos, Schmick, Seaquist, Sells, Shea, Short, Smith, Springer, Stanford, Sullivan, Takko, Taylor, Tharinger, Upthegrove, Van De Wege, Walsh, Warnick, Wilcox, Wylie, Zeiger and Mr. Speaker.

Excused: Representatives Ahern and Klippert.

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2363, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

February 28, 2012

Mr. Speaker:

The Senate has passed ENGROSSED SUBSTITUTE HOUSE BILL NO. 2366 with the following amendment:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. (1) The legislature finds that:

(a) According to the centers for disease control and prevention:

(i) In 2008, more than thirty-six thousand people died by suicide in the United States, making it the tenth leading cause of death nationally.

(ii) During 2007-2008, an estimated five hundred sixty-nine thousand people visited hospital emergency departments with self-inflicted injuries in the United States, seventy percent of whom had attempted suicide.

(iii) During 2008-2009, the average percentages of adults who thought, planned, or attempted suicide in Washington were higher than the national average.

(b) According to a national study, veterans face an elevated risk of suicide as compared to the general population, more than twice the risk among male veterans. Another study has indicated a positive correlation between posttraumatic stress disorder and suicide.

(i) Washington state is home to more than sixty thousand men and women who have deployed in support of the wars in Iraq and Afghanistan.

(ii) Research continues on how the effects of wartime service and injuries such as traumatic brain injury, posttraumatic stress disorder, or other service-related conditions, may increase the number of veterans who attempt suicide.

(iii) As more men and women separate from the military and transition back into civilian life, community mental health providers will become a vital resource to help these veterans and their families deal with issues that may arise.

(c) Suicide has an enormous impact on the family and friends of the victim as well as the community as a whole.

(d) Approximately ninety percent of people who die by suicide had a diagnosable psychiatric disorder at the time of death. Most suicide victims exhibit warning signs or behaviors prior to an attempt.

(e) Improved training and education in suicide assessment, treatment, and management has been recommended by a variety of organizations, including the United States department of health and human services and the institute of medicine.

(2) It is therefore the intent of the legislature to help lower the suicide rate in Washington by requiring certain health professionals to complete training in suicide assessment, treatment, and management as part of their continuing education, continuing competency, or recertification requirements.

(3) The legislature does not intend to expand or limit the existing scope of practice of any health professional affected by this act.

NEW SECTION. Sec. 2. A new section is added to chapter 43.70 RCW to read as follows:

(1)(a) Beginning January 1, 2014, each of the following professionals certified or licensed under Title 18 RCW shall, at least once every six years, complete a training program in suicide assessment, treatment, and management that is approved, in rule, by the relevant disciplining authority:

(i) An adviser or counselor certified under chapter 18.19 RCW;

(ii) A chemical dependency professional licensed under chapter 18.205 RCW;

(iii) A marriage and family therapist licensed under chapter 18.225 RCW;

(iv) A mental health counselor licensed under chapter 18.225 RCW;

(v) An occupational therapy practitioner licensed under chapter 18.59 RCW;

(vi) A psychologist licensed under chapter 18.83 RCW; and

(vii) An advanced social worker or independent clinical social worker licensed under chapter 18.225 RCW.

(b) The requirements in (a) of this subsection apply to a person holding a retired active license for one of the professions in (a) of this subsection.

(2)(a)(i) Except as provided in (a)(ii) of this subsection, a professional listed in subsection (1)(a) of this section must complete the first training required by this section during the first full continuing education reporting period after the effective date of this section or the first full continuing education reporting period after initial licensure or certification, whichever occurs later.

(ii) A professional listed in subsection (1)(a) of this subsection applying for initial licensure on or after the effective date of this section may delay completion of the first training required by this section for six years after initial licensure if he or she can demonstrate successful completion of a six-hour training program in suicide assessment, treatment, and management that:

(A) Was completed no more than six years prior to the application for initial licensure; and

(B) Is listed on the best practices registry of the American foundation for suicide prevention and the suicide prevention resource center.

(3) The hours spent completing a training program in suicide assessment, treatment, and management under this section count toward meeting any applicable continuing education or continuing competency requirements for each profession.

(4)(a) A disciplining authority may, by rule, specify minimum training and experience that is sufficient to exempt a professional from the training requirements in subsection (1) of this section.

(b) The board of occupational therapy practice may exempt occupational therapists from the training requirements of subsection (1) of this section by specialty, if the specialty in question has only brief or limited patient contact.

(5)(a) The secretary and the disciplining authorities shall work collaboratively to develop a model list of training programs in suicide assessment, treatment, and management.

(b) When developing the model list, the secretary and the disciplining authorities shall:

(i) Consider suicide assessment, treatment, and management training programs of at least six hours in length listed on the best practices registry of the American foundation for suicide prevention and the suicide prevention resource center; and

(ii) Consult with public and private institutions of higher education, experts in suicide assessment, treatment, and management, and affected professional associations.

(c) The secretary and the disciplining authorities shall report the model list of training programs to the appropriate committees of the legislature no later than December 15, 2013.

(6) Nothing in this section may be interpreted to expand or limit the scope of practice of any profession regulated under chapter 18.130 RCW.

(7) The secretary and the disciplining authorities affected by this section shall adopt any rules necessary to implement this section.

(8) For purposes of this section:

(a) "Disciplining authority" has the same meaning as in RCW 18.130.020.

(b) "Training program in suicide assessment, treatment, and management" means an empirically supported training program approved by the appropriate disciplining authority that contains the

following elements: Suicide assessment, including screening and referral, suicide treatment, and suicide management. The disciplining authority may approve a training program that excludes one of the elements if the element is inappropriate for the profession in question based on the profession's scope of practice. A training program that includes only screening and referral elements shall be at least three hours in length. All other training programs approved under this section shall be at least six hours in length.

(9) A state or local government employee is exempt from the requirements of this section if he or she receives a total of at least six hours of training in suicide assessment, treatment, and management from his or her employer every six years. For purposes of this subsection, the training may be provided in one six-hour block or may be spread among shorter training sessions at the employer's discretion.

(10) An employee of a community mental health agency licensed under chapter 71.24 RCW or a chemical dependency program certified under chapter 70.96A RCW is exempt from the requirements of this section if he or she receives a total of at least six hours of training in suicide assessment, treatment, and management from his or her employer every six years. For purposes of this subsection, the training may be provided in one six-hour block or may be spread among shorter training sessions at the employer's discretion.

NEW SECTION. Sec. 3. (1) The secretary of health shall conduct a study evaluating the effect of evidence-based suicide assessment, treatment, and management training on the ability of licensed health care professionals to identify, refer, treat, and manage patients with suicidal ideation. This study shall at a minimum:

(a) Review available research and literature regarding the relationship between licensed health professionals completing training in suicide assessment, treatment, and management and patient suicide rates;

(b) Assess which licensed health professionals are best situated to positively influence the mental health behavior of individuals with suicidal ideation;

(c) Evaluate the impact of suicide assessment, treatment, and management training on veterans with suicidal ideation; and

(d) Review curriculum of health profession programs offered at Washington state educational institutions regarding suicide prevention.

(2) In conducting this study the secretary may collaborate with other health profession disciplinary boards and commissions, professional associations, and other interested parties.

(3) The secretary shall submit a report to the legislature no later than December 15, 2013, summarizing the findings of this study.

NEW SECTION. Sec. 4. This act may be known and cited as the Matt Adler suicide assessment, treatment, and management training act of 2012."

On page 1, line 2 of the title, after "management;" strike the remainder of the title and insert "adding a new section to chapter 43.70 RCW; and creating new sections."

and the same is herewith transmitted.

Brad Hendrickson, Deputy, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to ENGROSSED SUBSTITUTE HOUSE BILL NO. 2366 and advanced the bill as amended by the Senate to final passage.

FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representatives Orwall, Schmick and Shea spoke in favor of the passage of the bill.

The Speaker (Representative Roberts presiding) stated the question before the House to be the final passage of Engrossed Substitute House Bill No. 2366, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of Engrossed Substitute House Bill No. 2366, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 96; Nays, 0; Absent, 0; Excused, 2.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Asay, Bailey, Billig, Blake, Buys, Carlyle, Chandler, Clibborn, Cody, Condotta, Crouse, Dahlquist, Dammeier, Darneille, DeBolt, Dickerson, Dunshee, Eddy, Fagan, Finn, Fitzgibbon, Goodman, Green, Haigh, Haler, Hansen, Hargrove, Harris, Hasegawa, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jinkins, Johnson, Kagi, Kelley, Kenney, Kirby, Kretz, Kristiansen, Ladenburg, Lias, Lytton, Maxwell, McCoy, McCune, Miloscia, Moeller, Morris, Moscoso, Nealey, Orcutt, Ormsby, Orwall, Overstreet, Parker, Pearson, Pedersen, Pettigrew, Pollet, Probst, Reykdal, Rivers, Roberts, Rodne, Ross, Ryu, Santos, Schmick, Seaquist, Sells, Shea, Short, Smith, Springer, Stanford, Sullivan, Takko, Taylor, Tharinger, Upthegrove, Van De Wege, Walsh, Warnick, Wilcox, Wylie, Zeiger and Mr. Speaker.

Excused: Representatives Ahern and Klippert.

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2366, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

February 29, 2012

Mr. Speaker:

The Senate has passed ENGROSSED HOUSE BILL NO. 2469 with the following amendment:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 90.58.355 and 1994 c 257 s 20 are each amended to read as follows:

~~((The procedural requirements of this chapter))~~ Requirements to obtain a substantial development permit, conditional use permit, or variance shall not apply to any person;

(1) Conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or to the department of ecology when it conducts a remedial action under chapter 70.105D RCW. The department (~~of ecology shall~~) must ensure compliance with the substantive requirements of this chapter through the consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or during the department-conducted remedial action, through the procedures developed by the department pursuant to RCW 70.105D.090; or

(2) Installing site improvements for storm water treatment in an existing boatyard facility to meet requirements of a national pollutant discharge elimination system storm water general permit. The department must ensure compliance with the substantive requirements of this chapter through the review of engineering reports, site plans, and other documents related to the installation of boatyard storm water treatment facilities."

On page 1, line 1 of the title, after "systems;" strike the remainder of the title and insert "and amending RCW 90.58.355."

and the same is herewith transmitted.

Thomas Hoeman, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to ENGROSSED HOUSE BILL NO. 2469 and advanced the bill as amended by the Senate to final passage.

FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representatives Takko and Angel spoke in favor of the passage of the bill.

The Speaker (Representative Roberts presiding) stated the question before the House to be the final passage of Engrossed House Bill No. 2469, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of Engrossed House Bill No. 2469, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 96; Nays, 0; Absent, 0; Excused, 2.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Asay, Bailey, Billig, Blake, Buys, Carlyle, Chandler, Clibborn, Cody, Condotta, Crouse, Dahlquist, Dammeier, Darneille, DeBolt, Dickerson, Dunshee, Eddy, Fagan, Finn, Fitzgibbon, Goodman, Green, Haigh, Haler, Hansen, Hargrove, Harris, Hasegawa, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jinkins, Johnson, Kagi, Kelley, Kenney, Kirby, Kretz, Kristiansen, Ladenburg, Liias, Lytton, Maxwell, McCoy, McCune, Miloscia, Moeller, Morris, Moscoso, Nealey, Orcutt, Ormsby, Orwall, Overstreet, Parker, Pearson, Pedersen, Pettigrew, Pollet, Probst, Reykdal, Rivers, Roberts, Rodne, Ross, Ryu, Santos, Schmick, Seaquist, Sells, Shea, Short, Smith, Springer, Stanford, Sullivan, Takko, Taylor, Tharinger, Upthegrove, Van De Wege, Walsh, Warnick, Wilcox, Wylie, Zeiger and Mr. Speaker.

Excused: Representatives Ahern and Klippert.

ENGROSSED HOUSE BILL NO. 2469, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

February 29, 2012

Mr. Speaker:

The Senate has passed ENGROSSED SUBSTITUTE HOUSE BILL NO. 2473 with the following amendment:

On page 1, after line 7, insert the following:

"NEW SECTION. Sec. 1. (1) The legislature finds that many residents of skilled nursing facilities are vulnerable and their health and well-being are dependent on their caregivers. The quality, skills, and knowledge of their caregivers are often the key to good care and the need for well-trained caregivers with diverse skill sets is growing as the state's population ages and residents' needs increase.

(2) The legislature further finds that the evidence-based practice of allowing nursing assistants certified to administer certain medications and treatments promotes quality and safety for residents

in skilled nursing facilities, and that creating opportunities for career advancement and pay improvement through additional training and credentialing will help enhance the working environment for nursing assistants certified in skilled nursing facilities.

(3) The legislature further finds that creating continued opportunities for recruitment into nursing practice and career advancement for nursing assistants certified will help ensure quality care for residents, and nurse training programs should recognize the relevant training and experience obtained by these credentialed professionals."

Renumber the remaining sections consecutively and correct any internal references accordingly.

On page 1, line 5 of the title, after "RCW;" strike "creating a new section" and insert "creating new sections"

and the same is herewith transmitted.

Thomas Hoeman, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to ENGROSSED SUBSTITUTE HOUSE BILL NO. 2473 and advanced the bill as amended by the Senate to final passage.

FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representatives Green and Schmick spoke in favor of the passage of the bill.

The Speaker (Representative Roberts presiding) stated the question before the House to be the final passage of Engrossed Substitute House Bill No. 2473, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of Engrossed Substitute House Bill No. 2473, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 96; Nays, 0; Absent, 0; Excused, 2.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Asay, Bailey, Billig, Blake, Buys, Carlyle, Chandler, Clibborn, Cody, Condotta, Crouse, Dahlquist, Dammeier, Darneille, DeBolt, Dickerson, Dunshee, Eddy, Fagan, Finn, Fitzgibbon, Goodman, Green, Haigh, Haler, Hansen, Hargrove, Harris, Hasegawa, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jinkins, Johnson, Kagi, Kelley, Kenney, Kirby, Kretz, Kristiansen, Ladenburg, Liias, Lytton, Maxwell, McCoy, McCune, Miloscia, Moeller, Morris, Moscoso, Nealey, Orcutt, Ormsby, Orwall, Overstreet, Parker, Pearson, Pedersen, Pettigrew, Pollet, Probst, Reykdal, Rivers, Roberts, Rodne, Ross, Ryu, Santos, Schmick, Seaquist, Sells, Shea, Short, Smith, Springer, Stanford, Sullivan, Takko, Taylor, Tharinger, Upthegrove, Van De Wege, Walsh, Warnick, Wilcox, Wylie, Zeiger and Mr. Speaker.

Excused: Representatives Ahern and Klippert.

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2473, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

The Speaker (Representative Roberts presiding) called upon Representative Moeller to preside.

MESSAGES FROM THE SENATE

March 3, 2012

MR. SPEAKER:

The Senate has passed:

ENGROSSED SENATE BILL NO. 5967
 ENGROSSED SENATE BILL NO. 6378
 SENATE BILL NO. 6615
 SENATE BILL NO. 6616

and the same are herewith transmitted.

Brad Hendrickson, Deputy, Secretary

March 2, 2012

MR. SPEAKER:

The Senate has passed:

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1820

and the same are herewith transmitted.

Brad Hendrickson, Deputy, Secretary

March 2, 2012

MR. SPEAKER:

The Senate has passed:

SUBSTITUTE HOUSE BILL NO. 2194
 HOUSE BILL NO. 2195
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 2229
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 2318
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 2502
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 2592
 ENGROSSED HOUSE BILL NO. 2814

and the same are herewith transmitted.

Brad Hendrickson, Deputy, Secretary

MESSAGE FROM THE SENATE

February 29, 2012

Mr. Speaker:

The Senate has passed ENGROSSED SUBSTITUTE HOUSE BILL NO. 2048 with the following amendment:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 36.22.179 and 2011 c 110 s 2 are each amended to read as follows:

(1) In addition to the surcharge authorized in RCW 36.22.178, and except as provided in subsection (2) of this section, an additional surcharge of ten dollars shall be charged by the county auditor for each document recorded, which will be in addition to any other charge allowed by law. ~~((During the 2009-11 and 2011-13 biennia))~~ From July 1, 2009, through August 31, 2012, and from July 1, 2015, through June 30, 2017, the surcharge shall be thirty dollars. From September 1, 2012, through June 30, 2015, the surcharge shall be forty dollars. The funds collected pursuant to this section are to be distributed and used as follows:

(a) The auditor shall retain two percent for collection of the fee, and of the remainder shall remit sixty percent to the county to be deposited into a fund that must be used by the county and its cities and towns to accomplish the purposes of chapter 484, Laws of 2005, six percent of which may be used by the county for administrative costs related to its homeless housing plan, and the remainder for programs which directly accomplish the goals of the county's local

homeless housing plan, except that for each city in the county which elects as authorized in RCW 43.185C.080 to operate its own local homeless housing program, a percentage of the surcharge assessed under this section equal to the percentage of the city's local portion of the real estate excise tax collected by the county shall be transmitted at least quarterly to the city treasurer, without any deduction for county administrative costs, for use by the city for program costs which directly contribute to the goals of the city's local homeless housing plan; of the funds received by the city, it may use six percent for administrative costs for its homeless housing program.

(b) The auditor shall remit the remaining funds to the state treasurer for deposit in the home security fund account. The department may use twelve and one-half percent of this amount for administration of the program established in RCW 43.185C.020, including the costs of creating the statewide homeless housing strategic plan, measuring performance, providing technical assistance to local governments, and managing the homeless housing grant program. The remaining eighty-seven and one-half percent is to be used by the department to:

(i) Provide housing and shelter for homeless people including, but not limited to: Grants to operate, repair, and staff shelters; grants to operate transitional housing; partial payments for rental assistance; consolidated emergency assistance; overnight youth shelters; grants and vouchers designated for victims of human trafficking and their families; and emergency shelter assistance; and

(ii) Fund the homeless housing grant program.

(2) The surcharge imposed in this section applies to documents required to be recorded or filed under RCW 65.04.030(1) including, but not limited to: Full reconveyance; deeds of trust; deeds; liens related to real property; release of liens related to real property; notice of trustee sales; judgments related to real property; and all other documents pertaining to real property as determined by the department. However, the surcharge does not apply to (a) assignments or substitutions of previously recorded deeds of trust, or (b) documents recording a birth, marriage, divorce, or death or any documents otherwise exempted from a recording fee under state law.

(3) By August 31, 2012, the department shall submit to each county auditor a list of documents that are subject to the surcharge established in subsection (1) of this section.

(4) If section 2, chapter . . . , Laws of 2012 (section 2 of this act) is not enacted into law by July 31, 2012, section 1, chapter . . . , Laws of 2012 (section 1 of this act) is null and void.

NEW SECTION. Sec. 2. A new section is added to chapter 43.185C RCW to read as follows:

(1) As a means of efficiently and cost-effectively providing housing assistance to very-low income and homeless households:

(a) Any local government that has the authority to issue housing vouchers, directly or through a contractor, using document recording surcharge funds collected pursuant to RCW 36.22.178, 36.22.179, or 36.22.1791 must:

(i)(A) Maintain an interested landlord list, which at a minimum, includes information on rental properties in buildings with fewer than fifty units;

(B) Update the list at least once per quarter;

(C) Distribute the list to agencies providing services to individuals and households receiving housing vouchers;

(D) Ensure that a copy of the list or information for accessing the list online is provided with voucher paperwork; and

(E) Use reasonable best efforts to communicate and interact with landlord and tenant associations located within its jurisdiction to facilitate development, maintenance, and distribution of the list;

(ii) Using cost-effective methods of communication, convene, on a semiannual or more frequent basis, landlords represented on the interested landlord list and agencies providing services to individuals and households receiving housing vouchers to identify successes, barriers, and process improvements. The local government is not

required to reimburse any participants for expenses related to attendance;

(iii) Produce data, limited to document recording fee uses and expenditures, on a calendar year basis in consultation with landlords represented on the interested landlord list and agencies providing services to individuals and households receiving housing vouchers, that include the following: Total amount expended from document recording fees; amount expended on, number of households that received, and number of housing vouchers issued in each of the private, public, and nonprofit markets; amount expended on, number of households that received, and number of housing placement payments provided in each of the private, public, and nonprofit markets; amount expended on and number of eviction prevention services provided in the private market; and amount expended on and number of other tenant-based rent assistance services provided in the private market. If these data elements are not readily available, the reporting government may request the department to use the sampling methodology established pursuant to (c)(iii) of this subsection to obtain the data; and

(iv) Annually submit the calendar year data to the department by October 1st, with preliminary data submitted by October 1, 2012, and full calendar year data submitted beginning October 1, 2013.

(b) Any local government receiving more than three million five hundred thousand dollars during the previous calendar year from document recording surcharge funds collected pursuant to RCW 36.22.178, 36.22.179, and 36.22.1791, must apply to the Washington state quality award program, or similar Baldrige assessment organization, for an independent assessment of its quality management, accountability, and performance system. The first assessment may be a lite assessment. After submitting an application, a local government is required to reapply to at least every two years.

(c) The department must:

(i) Require contractors that provide housing vouchers to distribute the interested landlord list created by the appropriate local government to individuals and households receiving the housing vouchers;

(ii) Using cost-effective methods of communication, annually convene local governments issuing housing vouchers, landlord association representatives, and agencies providing services to individuals and households receiving housing vouchers to identify successes, barriers, and process improvements. The department is not required to reimburse any participants for expenses related to attendance;

(iii) Develop a sampling methodology to obtain data required under this section when a local government or contractor does not have such information readily available. The process for developing the sampling methodology must include providing notification to and the opportunity for public comment by local governments issuing housing vouchers, landlord association representatives, and agencies providing services to individuals and households receiving housing vouchers;

(iv) Develop a report, limited to document recording fee uses and expenditures, on a calendar year basis in consultation with local governments, landlord association representatives, and agencies providing services to individuals and households receiving housing vouchers, that includes the following: Total amount expended from document recording fees; amount expended on, number of households that received, and number of housing vouchers issued in each of the private, public, and nonprofit markets; amount expended on, number of households that received, and number of housing placement payments provided in each of the private, public, and nonprofit markets; amount expended on and number of eviction prevention services provided in the private market; and amount expended on and number of other tenant-based rent assistance services provided in the private market. The information in the report must include data submitted by local governments and data on all

additional document recording fee activities for which the department contracted that were not otherwise reported;

(v) Annually submit the calendar year report to the legislature by December 15th, with a preliminary report submitted by December 15, 2012, and full calendar year reports submitted beginning December 15, 2013; and

(vi) Work with the Washington state quality award program, local governments, and any other organizations to ensure the appropriate scheduling of assessments for all local governments meeting the criteria described in subsection (1)(b) of this section.

(2) For purposes of this section:

(a) "Housing placement payments" means one-time payments, such as first and last month's rent and move-in costs, funded by document recording surcharges collected pursuant to RCW 36.22.178, 36.22.179, or 36.22.1791 that are made to secure a unit on behalf of a tenant.

(b) "Housing vouchers" means payments funded by document recording surcharges collected pursuant to RCW 36.22.178, 36.22.179, or 36.22.1791 that are made by a local government or contractor to secure: (i) A rental unit on behalf of an individual tenant; or (ii) a block of units on behalf of multiple tenants.

(c) "Interested landlord list" means a list of landlords who have indicated to a local government or contractor interest in renting to individuals or households receiving a housing voucher funded by document recording surcharges.

(3) This section expires June 30, 2017.

(4) If section 1, chapter . . ., Laws of 2012 (section 1 of this act) is not enacted into law by July 31, 2012, this section is null and void."

On page 1, line 2 of the title, after "surcharges;" strike the remainder of the title and insert "amending RCW 36.22.179; adding a new section to chapter 43.185C RCW; and providing an expiration date."

and the same is herewith transmitted.

Brad Hendrickson, Deputy, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to ENGROSSED SUBSTITUTE HOUSE BILL NO. 2048 and advanced the bill as amended by the Senate to final passage.

FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representative Kenney spoke in favor of the passage of the bill.

Representative Orcutt spoke against the passage of the bill.

The Speaker (Representative Moeller presiding) stated the question before the House to be the final passage of Engrossed Substitute House Bill No. 2048, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of Engrossed Substitute House Bill No. 2048, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 55; Nays, 41; Absent, 0; Excused, 2.

Voting yea: Representatives Appleton, Asay, Billig, Carlyle, Clibborn, Cody, Dammeier, Darneille, Dickerson, Dunshee, Eddy, Finn, Fitzgibbon, Goodman, Green, Haigh, Hansen, Hasegawa, Hudgins, Hunt, Hunter, Jinkins, Kagi, Kenney, Kirby, Ladenburg,

Liias, Lytton, Maxwell, McCoy, Miloscia, Moeller, Morris, Moscoso, Ormsby, Orwall, Pedersen, Pettigrew, Pollet, Probst, Reykdal, Roberts, Ryu, Santos, Seaquist, Sells, Springer, Stanford, Sullivan, Tharinger, Upthegrove, Van De Wege, Wylie, Zeiger and Mr. Speaker.

Voting nay: Representatives Alexander, Anderson, Angel, Armstrong, Bailey, Blake, Buys, Chandler, Condotta, Crouse, Dahlquist, DeBolt, Fagan, Haler, Hargrove, Harris, Hinkle, Hope, Hurst, Johnson, Kelley, Kretz, Kristiansen, McCune, Nealey, Orcutt, Overstreet, Parker, Pearson, Rivers, Rodne, Ross, Schmick, Shea, Short, Smith, Takko, Taylor, Walsh, Warnick and Wilcox.

Excused: Representatives Ahern and Klippert.

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2048, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

March 1, 2012

Mr. Speaker:

The Senate has passed ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 2319 with the following amendment:

Strike everything after the enacting clause and insert the following:

**"PART I
DEFINITIONS**

Sec. 1. RCW 48.43.005 and 2011 c 315 s 2 and 2011 c 314 s 3 are each reenacted and amended to read as follows:

Unless otherwise specifically provided, the definitions in this section apply throughout this chapter.

(1) "Adjusted community rate" means the rating method used to establish the premium for health plans adjusted to reflect actuarially demonstrated differences in utilization or cost attributable to geographic region, age, family size, and use of wellness activities.

(2) "Adverse benefit determination" means a denial, reduction, or termination of, or a failure to provide or make payment, in whole or in part, for a benefit, including a denial, reduction, termination, or failure to provide or make payment that is based on a determination of an enrollee's or applicant's eligibility to participate in a plan, and including, with respect to group health plans, a denial, reduction, or termination of, or a failure to provide or make payment, in whole or in part, for a benefit resulting from the application of any utilization review, as well as a failure to cover an item or service for which benefits are otherwise provided because it is determined to be experimental or investigational or not medically necessary or appropriate.

(3) "Applicant" means a person who applies for enrollment in an individual health plan as the subscriber or an enrollee, or the dependent or spouse of a subscriber or enrollee.

(4) "Basic health plan" means the plan described under chapter 70.47 RCW, as revised from time to time.

(5) "Basic health plan model plan" means a health plan as required in RCW 70.47.060(2)(e).

(6) "Basic health plan services" means that schedule of covered health services, including the description of how those benefits are to be administered, that are required to be delivered to an enrollee under the basic health plan, as revised from time to time.

(7) "Board" means the governing board of the Washington health benefit exchange established in chapter 43.71 RCW.

(8)(a) For grandfathered health benefit plans issued before January 1, 2014, and renewed thereafter, "catastrophic health plan" means:

~~((a))~~ (i) In the case of a contract, agreement, or policy covering a single enrollee, a health benefit plan requiring a calendar year deductible of, at a minimum, one thousand seven hundred fifty dollars and an annual out-of-pocket expense required to be paid under the plan (other than for premiums) for covered benefits of at least three thousand five hundred dollars, both amounts to be adjusted annually by the insurance commissioner; and

~~((b))~~ (ii) In the case of a contract, agreement, or policy covering more than one enrollee, a health benefit plan requiring a calendar year deductible of, at a minimum, three thousand five hundred dollars and an annual out-of-pocket expense required to be paid under the plan (other than for premiums) for covered benefits of at least six thousand dollars, both amounts to be adjusted annually by the insurance commissioner;~~(;~~

~~(c) Any health benefit plan that provides benefits for hospital inpatient and outpatient services, professional and prescription drugs provided in conjunction with such hospital inpatient and outpatient services, and excludes or substantially limits outpatient physician services and those services usually provided in an office setting).~~

(b) In July 2008, and in each July thereafter, the insurance commissioner shall adjust the minimum deductible and out-of-pocket expense required for a plan to qualify as a catastrophic plan to reflect the percentage change in the consumer price index for medical care for a preceding twelve months, as determined by the United States department of labor. For a plan year beginning in 2014, the out-of-pocket limits must be adjusted as specified in section 1302(c)(1) of P.L. 111-148 of 2010, as amended. The adjusted amount shall apply on the following January 1st.

(c) For health benefit plans issued on or after January 1, 2014, "catastrophic health plan" means:

(i) A health benefit plan that meets the definition of catastrophic plan set forth in section 1302(e) of P.L. 111-148 of 2010, as amended; or

(ii) A health benefit plan offered outside the exchange marketplace that requires a calendar year deductible or out-of-pocket expenses under the plan, other than for premiums, for covered benefits, that meets or exceeds the commissioner's annual adjustment under (b) of this subsection.

~~((8))~~ (9) "Certification" means a determination by a review organization that an admission, extension of stay, or other health care service or procedure has been reviewed and, based on the information provided, meets the clinical requirements for medical necessity, appropriateness, level of care, or effectiveness under the auspices of the applicable health benefit plan.

~~((9))~~ (10) "Concurrent review" means utilization review conducted during a patient's hospital stay or course of treatment.

~~((10))~~ (11) "Covered person" or "enrollee" means a person covered by a health plan including an enrollee, subscriber, policyholder, beneficiary of a group plan, or individual covered by any other health plan.

~~((11))~~ (12) "Dependent" means, at a minimum, the enrollee's legal spouse and dependent children who qualify for coverage under the enrollee's health benefit plan.

~~((12))~~ (13) "Emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in a condition (a) placing the health of the individual, or with respect to a pregnant woman, the health of the woman or her unborn child, in

serious jeopardy, (b) serious impairment to bodily functions, or (c) serious dysfunction of any bodily organ or part.

~~((13))~~ (14) "Emergency services" means a medical screening examination, as required under section 1867 of the social security act (42 U.S.C. 1395dd), that is within the capability of the emergency department of a hospital, including ancillary services routinely available to the emergency department to evaluate that emergency medical condition, and further medical examination and treatment, to the extent they are within the capabilities of the staff and facilities available at the hospital, as are required under section 1867 of the social security act (42 U.S.C. 1395dd) to stabilize the patient. Stabilize, with respect to an emergency medical condition, has the meaning given in section 1867(e)(3) of the social security act (42 U.S.C. 1395dd(e)(3)).

~~((14))~~ (15) "Employee" has the same meaning given to the term, as of January 1, 2008, under section 3(6) of the federal employee retirement income security act of 1974.

~~((15))~~ (16) "Enrollee point-of-service cost-sharing" means amounts paid to health carriers directly providing services, health care providers, or health care facilities by enrollees and may include copayments, coinsurance, or deductibles.

~~((16))~~ (17) "Exchange" means the Washington health benefit exchange established under chapter 43.71 RCW.

(18) "Final external review decision" means a determination by an independent review organization at the conclusion of an external review.

~~((17))~~ (19) "Final internal adverse benefit determination" means an adverse benefit determination that has been upheld by a health plan or carrier at the completion of the internal appeals process, or an adverse benefit determination with respect to which the internal appeals process has been exhausted under the exhaustion rules described in RCW 48.43.530 and 48.43.535.

~~((18))~~ (20) "Grandfathered health plan" means a group health plan or an individual health plan that under section 1251 of the patient protection and affordable care act, P.L. 111-148 (2010) and as amended by the health care and education reconciliation act, P.L. 111-152 (2010) is not subject to subtitles A or C of the act as amended.

~~((19))~~ (21) "Grievance" means a written complaint submitted by or on behalf of a covered person regarding: (a) Denial of payment for medical services or nonprovision of medical services included in the covered person's health benefit plan, or (b) service delivery issues other than denial of payment for medical services or nonprovision of medical services, including dissatisfaction with medical care, waiting time for medical services, provider or staff attitude or demeanor, or dissatisfaction with service provided by the health carrier.

~~((20))~~ (22) "Health care facility" or "facility" means hospices licensed under chapter 70.127 RCW, hospitals licensed under chapter 70.41 RCW, rural health care facilities as defined in RCW 70.175.020, psychiatric hospitals licensed under chapter 71.12 RCW, nursing homes licensed under chapter 18.51 RCW, community mental health centers licensed under chapter 71.05 or 71.24 RCW, kidney disease treatment centers licensed under chapter 70.41 RCW, ambulatory diagnostic, treatment, or surgical facilities licensed under chapter 70.41 RCW, drug and alcohol treatment facilities licensed under chapter 70.96A RCW, and home health agencies licensed under chapter 70.127 RCW, and includes such facilities if owned and operated by a political subdivision or instrumentality of the state and such other facilities as required by federal law and implementing regulations.

~~((21))~~ (23) "Health care provider" or "provider" means:

(a) A person regulated under Title 18 or chapter 70.127 RCW, to practice health or health-related services or otherwise practicing health care services in this state consistent with state law; or

(b) An employee or agent of a person described in (a) of this subsection, acting in the course and scope of his or her employment.

~~((22))~~ (24) "Health care service" means that service offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease.

~~((23))~~ (25) "Health carrier" or "carrier" means a disability insurer regulated under chapter 48.20 or 48.21 RCW, a health care service contractor as defined in RCW 48.44.010, or a health maintenance organization as defined in RCW 48.46.020, and includes "issuers" as that term is used in the patient protection and affordable care act (P.L. 111-148).

~~((24))~~ (26) "Health plan" or "health benefit plan" means any policy, contract, or agreement offered by a health carrier to provide, arrange, reimburse, or pay for health care services except the following:

(a) Long-term care insurance governed by chapter 48.84 or 48.83 RCW;

(b) Medicare supplemental health insurance governed by chapter 48.66 RCW;

(c) Coverage supplemental to the coverage provided under chapter 55, Title 10, United States Code;

(d) Limited health care services offered by limited health care service contractors in accordance with RCW 48.44.035;

(e) Disability income;

(f) Coverage incidental to a property/casualty liability insurance policy such as automobile personal injury protection coverage and homeowner guest medical;

(g) Workers' compensation coverage;

(h) Accident only coverage;

(i) Specified disease or illness-triggered fixed payment insurance, hospital confinement fixed payment insurance, or other fixed payment insurance offered as an independent, noncoordinated benefit;

(j) Employer-sponsored self-funded health plans;

(k) Dental only and vision only coverage; and

(l) Plans deemed by the insurance commissioner to have a short-term limited purpose or duration, or to be a student-only plan that is guaranteed renewable while the covered person is enrolled as a regular full-time undergraduate or graduate student at an accredited higher education institution, after a written request for such classification by the carrier and subsequent written approval by the insurance commissioner.

~~((25))~~ (27) "Material modification" means a change in the actuarial value of the health plan as modified of more than five percent but less than fifteen percent.

~~((26))~~ (28) "Open enrollment" means a period of time as defined in rule to be held at the same time each year, during which applicants may enroll in a carrier's individual health benefit plan without being subject to health screening or otherwise required to provide evidence of insurability as a condition for enrollment.

~~((27))~~ (29) "Preexisting condition" means any medical condition, illness, or injury that existed any time prior to the effective date of coverage.

~~((28))~~ (30) "Premium" means all sums charged, received, or deposited by a health carrier as consideration for a health plan or the continuance of a health plan. Any assessment or any "membership," "policy," "contract," "service," or similar fee or charge made by a health carrier in consideration for a health plan is deemed part of the premium. "Premium" shall not include amounts paid as enrollee point-of-service cost-sharing.

~~((29))~~ (31) "Review organization" means a disability insurer regulated under chapter 48.20 or 48.21 RCW, health care service contractor as defined in RCW 48.44.010, or health maintenance organization as defined in RCW 48.46.020, and entities affiliated with, under contract with, or acting on behalf of a health carrier to perform a utilization review.

~~((30))~~ (32) "Small employer" or "small group" means any person, firm, corporation, partnership, association, political subdivision, sole proprietor, or self-employed individual that is

actively engaged in business that employed an average of at least one but no more than fifty employees, during the previous calendar year and employed at least one employee on the first day of the plan year, is not formed primarily for purposes of buying health insurance, and in which a bona fide employer-employee relationship exists. In determining the number of employees, companies that are affiliated companies, or that are eligible to file a combined tax return for purposes of taxation by this state, shall be considered an employer. Subsequent to the issuance of a health plan to a small employer and for the purpose of determining eligibility, the size of a small employer shall be determined annually. Except as otherwise specifically provided, a small employer shall continue to be considered a small employer until the plan anniversary following the date the small employer no longer meets the requirements of this definition. A self-employed individual or sole proprietor who is covered as a group of one must also: (a) Have been employed by the same small employer or small group for at least twelve months prior to application for small group coverage, and (b) verify that he or she derived at least seventy-five percent of his or her income from a trade or business through which the individual or sole proprietor has attempted to earn taxable income and for which he or she has filed the appropriate internal revenue service form 1040, schedule C or F, for the previous taxable year, except a self-employed individual or sole proprietor in an agricultural trade or business, must have derived at least fifty-one percent of his or her income from the trade or business through which the individual or sole proprietor has attempted to earn taxable income and for which he or she has filed the appropriate internal revenue service form 1040, for the previous taxable year.

~~((31))~~ (33) "Special enrollment" means a defined period of time of not less than thirty-one days, triggered by a specific qualifying event experienced by the applicant, during which applicants may enroll in the carrier's individual health benefit plan without being subject to health screening or otherwise required to provide evidence of insurability as a condition for enrollment.

~~((32))~~ (34) "Standard health questionnaire" means the standard health questionnaire designated under chapter 48.41 RCW.

~~((33))~~ (35) "Utilization review" means the prospective, concurrent, or retrospective assessment of the necessity and appropriateness of the allocation of health care resources and services of a provider or facility, given or proposed to be given to an enrollee or group of enrollees.

~~((34))~~ (36) "Wellness activity" means an explicit program of an activity consistent with department of health guidelines, such as, smoking cessation, injury and accident prevention, reduction of alcohol misuse, appropriate weight reduction, exercise, automobile and motorcycle safety, blood cholesterol reduction, and nutrition education for the purpose of improving enrollee health status and reducing health service costs.

PART II

THE WASHINGTON HEALTH BENEFIT EXCHANGE

Sec. 2. RCW 43.71.010 and 2011 c 317 s 2 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise. Terms and phrases used in this chapter that are not defined in this section must be defined as consistent with implementation of a state health benefit exchange pursuant to the affordable care act.

(1) "Affordable care act" means the federal patient protection and affordable care act, P.L. 111-148, as amended by the federal health care and education reconciliation act of 2010, P.L. 111-152, or federal regulations or guidance issued under the affordable care act.

(2) "Authority" means the Washington state health care authority, established under chapter 41.05 RCW.

(3) "Board" means the governing board established in RCW 43.71.020.

(4) "Commissioner" means the insurance commissioner, established in Title 48 RCW.

(5) "Exchange" means the Washington health benefit exchange established in RCW 43.71.020.

(6) "Self-sustaining" means capable of operating without direct state tax subsidy. Self-sustaining sources include, but are not limited to, federal grants, federal premium tax subsidies and credits, charges to health carriers, and premiums paid by enrollees.

Sec. 3. RCW 43.71.020 and 2011 c 317 s 3 are each amended to read as follows:

(1) The Washington health benefit exchange is established and constitutes a self-sustaining public-private partnership separate and distinct from the state, exercising functions delineated in chapter 317, Laws of 2011. By January 1, 2014, the exchange shall operate consistent with the affordable care act subject to statutory authorization. The exchange shall have a governing board consisting of persons with expertise in the Washington health care system and private and public health care coverage. The initial membership of the board shall be appointed as follows:

(a) By October 1, 2011, each of the two largest caucuses in both the house of representatives and the senate shall submit to the governor a list of five nominees who are not legislators or employees of the state or its political subdivisions, with no caucus submitting the same nominee.

(i) The nominations from the largest caucus in the house of representatives must include at least one employee benefit specialist;

(ii) The nominations from the second largest caucus in the house of representatives must include at least one health economist or actuary;

(iii) The nominations from the largest caucus in the senate must include at least one representative of health consumer advocates;

(iv) The nominations from the second largest caucus in the senate must include at least one representative of small business;

(v) The remaining nominees must have demonstrated and acknowledged expertise in at least one of the following areas: Individual health care coverage, small employer health care coverage, health benefits plan administration, health care finance and economics, actuarial science, or administering a public or private health care delivery system.

(b) By December 15, 2011, the governor shall appoint two members from each list submitted by the caucuses under (a) of this subsection. The appointments made under this subsection (1)(b) must include at least one employee benefits specialist, one health economist or actuary, one representative of small business, and one representative of health consumer advocates. The remaining four members must have a demonstrated and acknowledged expertise in at least one of the following areas: Individual health care coverage, small employer health care coverage, health benefits plan administration, health care finance and economics, actuarial science, or administering a public or private health care delivery system.

(c) By December 15, 2011, the governor shall appoint a ninth member to serve as chair. The chair may not be an employee of the state or its political subdivisions. The chair shall serve as a nonvoting member except in the case of a tie.

(d) The following members shall serve as nonvoting, ex officio members of the board:

(i) The insurance commissioner or his or her designee; and

(ii) The administrator of the health care authority, or his or her designee.

(2) Initial members of the board shall serve staggered terms not to exceed four years. Members appointed thereafter shall serve two-year terms.

(3) A member of the board whose term has expired or who otherwise leaves the board shall be replaced by gubernatorial appointment. When the person leaving was nominated by one of the caucuses of the house of representatives or the senate, his or her replacement shall be appointed from a list of five nominees submitted by that caucus within thirty days after the person leaves. If the member to be replaced is the chair, the governor shall appoint a new chair within thirty days after the vacancy occurs. A person appointed to replace a member who leaves the board prior to the expiration of his or her term shall serve only the duration of the unexpired term. Members of the board may be reappointed to multiple terms.

(4) No board member may be appointed if his or her participation in the decisions of the board could benefit his or her own financial interests or the financial interests of an entity he or she represents. A board member who develops such a conflict of interest shall resign or be removed from the board.

(5) Members of the board must be reimbursed for their travel expenses while on official business in accordance with RCW 43.03.050 and 43.03.060. The board shall prescribe rules for the conduct of its business. Meetings of the board are at the call of the chair.

(6) The exchange and the board are subject only to the provisions of chapter 42.30 RCW, the open public meetings act, and chapter 42.56 RCW, the public records act, and not to any other law or regulation generally applicable to state agencies. Consistent with the open public meetings act, the board may hold executive sessions to consider proprietary or confidential nonpublished information.

(7)(a) The board shall establish an advisory committee to allow for the views of the health care industry and other stakeholders to be heard in the operation of the health benefit exchange.

(b) The board may establish technical advisory committees or seek the advice of technical experts when necessary to execute the powers and duties included in chapter 317, Laws of 2011.

(8) Members of the board are not civilly or criminally liable and may not have any penalty or cause of action of any nature arise against them for any action taken or not taken, including any discretionary decision or failure to make a discretionary decision, when the action or inaction is done in good faith and in the performance of the powers and duties under chapter 317, Laws of 2011. Nothing in this section prohibits legal actions against the board to enforce the board's statutory or contractual duties or obligations.

(9) In recognition of the government-to-government relationship between the state of Washington and the federally recognized tribes in the state of Washington, the board shall consult with the American Indian health commission.

Sec. 4. RCW 43.71.030 and 2011 c 317 s 4 are each amended to read as follows:

(1) The exchange may, consistent with the purposes of this chapter: (a) Sue and be sued in its own name; (b) make and execute agreements, contracts, and other instruments, with any public or private person or entity; (c) employ, contract with, or engage personnel; (d) pay administrative costs; ~~(and)~~ (e) accept grants, donations, loans of funds, and contributions in money, services, materials or otherwise, from the United States or any of its agencies, from the state of Washington and its agencies or from any other source, and use or expend those moneys, services, materials, or other contributions; (f) aggregate or delegate the aggregation of funds that comprise the premium for a health plan; and (g) complete other duties necessary to begin open enrollment in qualified health plans through the exchange beginning October 1, 2013.

(2) (The powers and duties of the exchange and the board are limited to those necessary to apply for and administer grants, establish information technology infrastructure, and undertake additional administrative functions necessary to begin operation of the exchange by January 1, 2014. Any actions relating to substantive issues included in RCW 43.71.040 must be consistent with statutory

direction on those issues.)) The board shall develop a methodology to ensure the exchange is self-sustaining after December 31, 2014. The board shall seek input from health carriers to develop funding mechanisms that fairly and equitably apportion among carriers the reasonable administrative costs and expenses incurred to implement the provisions of this chapter. The board shall submit its recommendations to the legislature by December 1, 2012. If the legislature does not enact legislation during the 2013 regular session to modify or reject the board's recommendations, the board may proceed with implementation of the recommendations.

(3) The board shall establish policies that permit city and county governments, Indian tribes, tribal organizations, urban Indian organizations, private foundations, and other entities to pay premiums on behalf of qualified individuals.

(4) The employees of the exchange may participate in the public employees' retirement system under chapter 41.40 RCW and the public employees' benefits board under chapter 41.05 RCW.

(5) Qualified employers may access coverage for their employees through the exchange for small groups under section 1311 of P.L. 111-148 of 2010, as amended. The exchange shall enable any qualified employer to specify a level of coverage so that any of its employees may enroll in any qualified health plan offered through the small group exchange at the specified level of coverage.

(6) The exchange shall report its activities and status to the governor and the legislature as requested, and no less often than annually.

Sec. 5. RCW 43.71.060 and 2011 c 317 s 7 are each amended to read as follows:

(1) The health benefit exchange account is created in the custody of the state treasurer. All receipts from federal grants received under the affordable care act ~~(shall)~~ may be deposited into the account. Expenditures from the account may be used only for purposes consistent with the grants. Until March 15, 2012, only the administrator of the health care authority, or his or her designee, may authorize expenditures from the account. Beginning March 15, 2012, only the board of the Washington health benefit exchange or designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) This section expires January 1, 2014.

PART III

MARKET RULES

NEW SECTION. **Sec. 6.** A new section is added to chapter 48.43 RCW to read as follows:

(1) For plan or policy years beginning January 1, 2014, a carrier must offer individual or small group health benefit plans that meet the definition of silver and gold level plans in section 1302 of P.L. 111-148 of 2010, as amended, in any market outside the exchange in which it offers a plan that meets the definition of bronze level in section 1302 of P.L. 111-148 of 2010, as amended.

(2) A health benefit plan meeting the definition of a catastrophic plan in RCW 48.43.005(8)(c)(i) may only be sold through the exchange.

(3) By December 1, 2016, the exchange board, in consultation with the commissioner, must complete a review of the impact of this section on the health and viability of the markets inside and outside the exchange and submit the recommendations to the legislature on whether to maintain the market rules or let them expire.

(4) The commissioner shall evaluate plans offered at each actuarial value defined in section 1302 of P.L. 111-148 of 2010, as amended, and determine whether variation in prescription drug

benefit cost-sharing, both inside and outside the exchange in both the individual and small group markets results in adverse selection. If so, the commissioner may adopt rules to assure substantial equivalence of prescription drug cost-sharing.

NEW SECTION. Sec. 7. A new section is added to chapter 48.43 RCW to read as follows:

All health plans, other than catastrophic health plans, offered outside of the exchange must conform with the actuarial value tiers specified in section 1302 of P.L. 111-148 of 2010, as amended, as bronze, silver, gold, or platinum.

PART IV

QUALIFIED HEALTH PLANS

NEW SECTION. Sec. 8. A new section is added to chapter 43.71 RCW to read as follows:

(1) The board shall certify a plan as a qualified health plan to be offered through the exchange if the plan is determined by the:

(a) Insurance commissioner to meet the requirements of Title 48 RCW and rules adopted by the commissioner pursuant to chapter 34.05 RCW to implement the requirements of Title 48 RCW;

(b) Board to meet the requirements of the affordable care act for certification as a qualified health plan; and

(c) Board to include tribal clinics and urban Indian clinics as essential community providers in the plan's provider network consistent with federal law. If consistent with federal law, integrated delivery systems shall be exempt from the requirement to include essential community providers in the provider network.

(2) Consistent with section 1311 of P.L. 111-148 of 2010, as amended, the board shall allow stand-alone dental plans to offer coverage in the exchange beginning January 1, 2014. Dental benefits offered in the exchange must be offered and priced separately to assure transparency for consumers.

(3) The board may permit direct primary care medical home plans, consistent with section 1301 of P.L. 111-148 of 2010, as amended, to be offered in the exchange beginning January 1, 2014.

(4) Upon request by the board, a state agency shall provide information to the board for its use in determining if the requirements under subsection (1)(b) or (c) of this section have been met. Unless the agency and the board agree to a later date, the agency shall provide the information within sixty days of the request. The exchange shall reimburse the agency for the cost of compiling and providing the requested information within one hundred eighty days of its receipt.

(5) A decision by the board denying a request to certify or recertify a plan as a qualified health plan may be appealed according to procedures adopted by the board.

NEW SECTION. Sec. 9. A new section is added to chapter 43.71 RCW to read as follows:

The board shall establish a rating system consistent with section 1311 of P.L. 111-148 of 2010, as amended, for qualified health plans to assist consumers in evaluating plan choices in the exchange. Rating factors established by the board may include, but are not limited to:

(1) Affordability with respect to premiums, deductibles, and point-of-service cost-sharing;

(2) Enrollee satisfaction;

(3) Provider reimbursement methods that incentivize health homes or chronic care management or care coordination for enrollees with complex, high-cost, or multiple chronic conditions;

(4) Promotion of appropriate primary care and preventive services utilization;

(5) High standards for provider network adequacy, including consumer choice of providers and service locations and robust provider participation intended to improve access to underserved populations through participation of essential community providers, family planning providers and pediatric providers;

(6) High standards for covered services, including languages spoken or transportation assistance; and

(7) Coverage of benefits for spiritual care services that are deductible under section 213(d) of the internal revenue code.

Sec. 10. RCW 48.42.010 and 1985 c 264 s 15 are each amended to read as follows:

(1) Notwithstanding any other provision of law, and except as provided in this chapter, any person or other entity which provides coverage in this state for life insurance, annuities, loss of time, medical, surgical, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental, hospital, or optometric expenses, whether the coverage is by direct payment, reimbursement, the providing of services, or otherwise, shall be subject to the authority of the state insurance commissioner, unless the person or other entity shows that while providing the services it is subject to the jurisdiction and regulation of another agency of this state, any subdivisions thereof, or the federal government.

(2) "Another agency of this state, any subdivision thereof, or the federal government" does not include the Washington health benefit exchange under chapter 43.71 RCW or P.L. 111-148 of 2010, as amended.

Sec. 11. RCW 48.42.020 and 1983 c 36 s 2 are each amended to read as follows:

(1) A person or entity may show that it is subject to the jurisdiction and regulation of another agency of this state, any subdivision thereof, or the federal government, by providing to the insurance commissioner the appropriate certificate, license, or other document issued by the other governmental agency which permits or qualifies it to provide the coverage as defined in RCW 48.42.010.

(2) "Another agency of this state, any subdivision thereof, or the federal government" does not include the Washington health benefit exchange under chapter 43.71 RCW or P.L. 111-148 of 2010, as amended.

NEW SECTION. Sec. 12. A new section is added to chapter 48.43 RCW to read as follows:

Certification by the Washington health benefit exchange of a plan as a qualified health plan, or of a carrier as a qualified issuer, does not exempt the plan or carrier from any of the requirements of this title or rules adopted by the commissioner pursuant to chapter 34.05 RCW to implement this title.

PART V

ESSENTIAL HEALTH BENEFITS

NEW SECTION. Sec. 13. A new section is added to chapter 48.43 RCW to read as follows:

(1) Consistent with federal law, the commissioner, in consultation with the board and the health care authority, shall, by rule, select the largest small group plan in the state by enrollment as the benchmark plan for the individual and small group market for purposes of establishing the essential health benefits in Washington state under P.L. 111-148 of 2010, as amended.

(2) If the essential health benefits benchmark plan for the individual and small group market does not include all of the ten benefit categories specified by section 1302 of P.L. 111-148, as amended, the commissioner, in consultation with the board and the health care authority, shall, by rule, supplement the benchmark plan

benefits as needed to meet the minimum requirements of section 1302.

(3) A health plan required to offer the essential health benefits, other than a health plan offered through the federal basic health program or medicaid, under P.L. 111-148 of 2010, as amended, may not be offered in the state unless the commissioner finds that it is substantially equal to the benchmark plan. When making this determination, the commissioner must:

(a) Ensure that the plan covers the ten essential health benefits categories specified in section 1302 of P.L. 111-148 of 2010, as amended; and

(b) May consider whether the health plan has a benefit design that would create a risk of biased selection based on health status and whether the health plan contains meaningful scope and level of benefits in each of the ten essential health benefit categories specified by section 1302 of P.L. 111-148 of 2010, as amended.

(4) Beginning December 15, 2012, and every year thereafter, the commissioner shall submit to the legislature a list of state-mandated health benefits, the enforcement of which will result in federally imposed costs to the state related to the plans sold through the exchange because the benefits are not included in the essential health benefits designated under federal law. The list must include the anticipated costs to the state of each state-mandated health benefit on the list and any statutory changes needed if funds are not appropriated to defray the state costs for the listed mandate. The commissioner may enforce a mandate on the list for the entire market only if funds are appropriated in an omnibus appropriations act specifically to pay the state portion of the identified costs.

NEW SECTION. Sec. 14. Nothing in this act prohibits the offering of benefits for spiritual care services deductible under section 213(d) of the internal revenue code in health plans inside and outside of the exchange.

PART VI

THE BASIC HEALTH OPTION

NEW SECTION. Sec. 15. A new section is added to chapter 70.47 RCW to read as follows:

(1) On or before December 1, 2012, the director of the health care authority shall submit a report to the legislature on whether to proceed with implementation of a federal basic health option, under section 1331 of P.L. 111-148 of 2010, as amended. The report shall address whether:

(a) Sufficient funding is available to support the design and development work necessary for the program to provide health coverage to enrollees beginning January 1, 2014;

(b) Anticipated federal funding under section 1331 will be sufficient, absent any additional state funding, to cover the provision of essential health benefits and costs for administering the basic health plan. Enrollee premium levels will be below the levels that would apply to persons with income between one hundred thirty-four and two hundred percent of the federal poverty level through the exchange; and

(c) Health plan payment rates will be sufficient to ensure enrollee access to a robust provider network and health homes, as described under RCW 70.47.100.

(2) If the legislature determines to proceed with implementation of a federal basic health option, the director shall provide the necessary certifications to the secretary of the federal department of health and human services under section 1331 of P.L. 111-148 of 2010, as amended, to proceed with adoption of the federal basic health program option.

(3) Prior to making this finding, the director shall:

(a) Actively consult with the board of the Washington health benefit exchange, the office of the insurance commissioner, consumer advocates, provider organizations, carriers, and other interested organizations;

(b) Consider any available objective analysis specific to Washington state, by an independent nationally recognized consultant that has been actively engaged in analysis and economic modeling of the federal basic health program option for multiple states.

(4) The director shall report any findings and supporting analysis made under this section to the governor and relevant policy and fiscal committees of the legislature.

(5) To the extent funding is available specifically for this purpose in the operating budget, the health care authority shall assume the federal basic health plan option will be implemented in Washington state, and initiate the necessary design and development work. If the legislature determines under subsection (1) of this section not to proceed with implementation, the authority may cease activities related to basic health program implementation.

(6) If implemented, the federal basic health program must be guided by the following principles:

(a) Meeting the minimum state certification standards in section 1331 of the federal patient protection and affordable care act;

(b) To the extent allowed by the federal department of health and human services, twelve-month continuous eligibility for the basic health program, and corresponding twelve-month continuous enrollment in standard health plans by enrollees; or, in lieu of twelve-month continuous eligibility, financing mechanisms that enable enrollees to remain with a plan for the entire plan year;

(c) Achieving an appropriate balance between:

(i) Premiums and cost-sharing minimized to increase the affordability of insurance coverage;

(ii) Standard health plan contracting requirements that minimize plan and provider administrative costs, while incentivizing improvements in quality and enrollee health outcomes; and

(iii) Health plan payment rates and provider payment rates that are sufficient to ensure enrollee access to a robust provider network and health homes, as described under RCW 70.47.100; and

(d) Transparency in program administration, including active and ongoing consultation with basic health program enrollees and interested organizations, and ensuring adequate enrollee notice and appeal rights.

PART VII

RISK ADJUSTMENT AND REINSURANCE

NEW SECTION. Sec. 16. A new section is added to chapter 48.43 RCW to read as follows:

(1)(a) The commissioner, in consultation with the board, shall adopt rules establishing the reinsurance and risk adjustment programs required by P.L. 111-148 of 2010, as amended.

(b) The commissioner must include in deliberations related to reinsurance rule making an analysis of an invisible high risk pool option, in which the full premium and risk associated with certain high-risk or high-cost enrollees would be ceded to the transitional reinsurance program. The analysis must include a determination as to whether that option is authorized under the federal reinsurance program regulations, whether the option would provide sufficiently comprehensive coverage for current nonmedicare high risk pool enrollees, and how an invisible high risk pool option could be designed to ensure that carriers ceding risk provide effective care management to high-risk or high-cost enrollees.

(2) Consistent with federal law, the rules for the reinsurance program must, at a minimum, establish:

- (a) A mechanism to collect reinsurance contribution funds;
- (b) A reinsurance payment formula; and
- (c) A mechanism to disburse reinsurance payments.

(3)(a) The commissioner may adjust the rules adopted under this section as needed to preserve a healthy market both inside and outside of the exchange.

(b) The rules adopted under this section must identify and may require submission of the data needed to support operation of the reinsurance and risk adjustment programs established under this section. The commissioner must identify by rule the sources of the data, and other requirements related to the collection, validation, correction, interpretation, transmission or exchange, and retention of the data.

(4) The commissioner shall contract with one or more nonprofit entities to administer the risk adjustment and reinsurance programs.

(5) Contribution amounts for the transitional reinsurance program under section 1341 of P.L. 111-148 of 2010, as amended, may be increased to include amounts sufficient to cover the costs of administration of the reinsurance program including reasonable costs incurred for preoperational and planning activities related to the reinsurance program.

PART VIII

THE WASHINGTON STATE HEALTH INSURANCE POOL

NEW SECTION. Sec. 17. A new section is added to chapter 48.41 RCW to read as follows:

(1) The board shall review populations that may need ongoing access to coverage through the pool, with specific attention to those persons who may be excluded from or may receive inadequate coverage beginning January 1, 2014, such as persons with end-stage renal disease or HIV/AIDS, or persons not eligible for coverage in the exchange.

(2) If the review under subsection (1) of this section indicates a continued need for coverage through the pool after December 31, 2013, the board shall submit recommendations regarding any modifications to pool eligibility requirements for new and ongoing enrollment after December 31, 2013. The recommendations must address any needed modifications to the standard health questionnaire or other eligibility screening tool that could be used in a manner consistent with federal law to determine eligibility for enrollment in the pool.

(3) The board shall complete an analysis of current pool assessment requirements in relation to assessments that will fund the reinsurance program and recommend changes to pool assessments or any credits against assessments that may be considered for the reinsurance program. The analysis shall recommend whether the categories of members paying assessments should be adjusted to make the assessment fair and equitable among all payers.

(4) The board shall report its recommendations to the governor and the legislature by December 1, 2012.

NEW SECTION. Sec. 18. A new section is added to chapter 48.41 RCW to read as follows:

(1) The pool is authorized to contract with the commissioner to administer risk management functions if necessary, consistent with section 16 of this act, and consistent with P.L. 111-148 of 2010, as amended. Prior to entering into a contract, the pool may conduct preoperational and planning activities related to these programs, including defining and implementing an appropriate legal structure or structures to administer and coordinate the reinsurance or risk adjustment programs.

(2) The reasonable costs incurred by the pool for preoperational and planning activities related to the reinsurance program may be

reimbursed from federal funds or from the additional contributions authorized under section 16 of this act to pay the administrative costs of the reinsurance program.

(3) If the pool contracts to administer and coordinate the reinsurance or risk adjustment program, the board must submit recommendations to the legislature with suggestions for additional consumer representatives or other representative members to the board.

(4) The pool shall report on these activities to the appropriate committees of the senate and house of representatives by December 15, 2012, and December 15, 2013.

PART IX

EXCHANGE EMPLOYEES

NEW SECTION. Sec. 19. A new section is added to chapter 41.04 RCW to read as follows:

Except for chapters 41.05 and 41.40 RCW, this title does not apply to any position in or employee of the Washington health benefit exchange established in chapter 43.71 RCW.

NEW SECTION. Sec. 20. A new section is added to chapter 43.01 RCW to read as follows:

This chapter does not apply to any position in or employee of the Washington health benefit exchange established in chapter 43.71 RCW.

NEW SECTION. Sec. 21. A new section is added to chapter 43.03 RCW to read as follows:

This chapter does not apply to any position in or employee of the Washington health benefit exchange established in chapter 43.71 RCW.

Sec. 22. RCW 41.05.011 and 2011 1st sp.s. c 15 s 54 are each reenacted and amended to read as follows:

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

(1) "Authority" means the Washington state health care authority.

(2) "Board" means the public employees' benefits board established under RCW 41.05.055.

(3) "Dependent care assistance program" means a benefit plan whereby state and public employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan under this chapter pursuant to 26 U.S.C. Sec. 129 or other sections of the internal revenue code.

(4) "Director" means the director of the authority.

(5) "Emergency service personnel killed in the line of duty" means law enforcement officers and firefighters as defined in RCW 41.26.030, members of the Washington state patrol retirement fund as defined in RCW 43.43.120, and reserve officers and firefighters as defined in RCW 41.24.010 who die as a result of injuries sustained in the course of employment as determined consistent with Title 51 RCW by the department of labor and industries.

(6) "Employee" includes all employees of the state, whether or not covered by civil service; elected and appointed officials of the executive branch of government, including full-time members of boards, commissions, or committees; justices of the supreme court and judges of the court of appeals and the superior courts; and members of the state legislature. Pursuant to contractual agreement with the authority, "employee" may also include: (a) Employees of a county, municipality, or other political subdivision of the state and members of the legislative authority of any county, city, or town who are elected to office after February 20, 1970, if the legislative authority of the county, municipality, or other political subdivision of the state seeks and receives the approval of the authority to provide any of its insurance programs by contract with the authority, as

provided in RCW 41.04.205 and 41.05.021(1)(g); (b) employees of employee organizations representing state civil service employees, at the option of each such employee organization, and, effective October 1, 1995, employees of employee organizations currently pooled with employees of school districts for the purpose of purchasing insurance benefits, at the option of each such employee organization; (c) employees of a school district if the authority agrees to provide any of the school districts' insurance programs by contract with the authority as provided in RCW 28A.400.350; ~~((and))~~ (d) employees of a tribal government, if the governing body of the tribal government seeks and receives the approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021(1) (f) and (g); and (e) employees of the Washington health benefit exchange if the governing board of the exchange established in RCW 43.71.020 seeks and receives approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021(1) (g) and (n). "Employee" does not include: Adult family homeowners; unpaid volunteers; patients of state hospitals; inmates; employees of the Washington state convention and trade center as provided in RCW 41.05.110; students of institutions of higher education as determined by their institution; and any others not expressly defined as employees under this chapter or by the authority under this chapter.

(7) "Employer" means the state of Washington.

(8) "Employing agency" means a division, department, or separate agency of state government, including an institution of higher education; a county, municipality, school district, educational service district, or other political subdivision; and a tribal government covered by this chapter.

(9) "Faculty" means an academic employee of an institution of higher education whose workload is not defined by work hours but whose appointment, workload, and duties directly serve the institution's academic mission, as determined under the authority of its enabling statutes, its governing body, and any applicable collective bargaining agreement.

(10) "Flexible benefit plan" means a benefit plan that allows employees to choose the level of health care coverage provided and the amount of employee contributions from among a range of choices offered by the authority.

(11) "Insuring entity" means an insurer as defined in chapter 48.01 RCW, a health care service contractor as defined in chapter 48.44 RCW, or a health maintenance organization as defined in chapter 48.46 RCW.

(12) "Medical flexible spending arrangement" means a benefit plan whereby state and public employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan under this chapter pursuant to 26 U.S.C. Sec. 125 or other sections of the internal revenue code.

(13) "Participant" means an individual who fulfills the eligibility and enrollment requirements under the salary reduction plan.

(14) "Plan year" means the time period established by the authority.

(15) "Premium payment plan" means a benefit plan whereby state and public employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan under this chapter pursuant to 26 U.S.C. Sec. 125 or other sections of the internal revenue code.

(16) "Retired or disabled school employee" means:

(a) Persons who separated from employment with a school district or educational service district and are receiving a retirement allowance under chapter 41.32 or 41.40 RCW as of September 30, 1993;

(b) Persons who separate from employment with a school district or educational service district on or after October 1, 1993, and immediately upon separation receive a retirement allowance under chapter 41.32, 41.35, or 41.40 RCW;

(c) Persons who separate from employment with a school district or educational service district due to a total and permanent disability, and are eligible to receive a deferred retirement allowance under chapter 41.32, 41.35, or 41.40 RCW.

(17) "Salary" means a state employee's monthly salary or wages.

(18) "Salary reduction plan" means a benefit plan whereby state and public employees may agree to a reduction of salary on a pretax basis to participate in the dependent care assistance program, medical flexible spending arrangement, or premium payment plan offered pursuant to 26 U.S.C. Sec. 125 or other sections of the internal revenue code.

(19) "Seasonal employee" means an employee hired to work during a recurring, annual season with a duration of three months or more, and anticipated to return each season to perform similar work.

(20) "Separated employees" means persons who separate from employment with an employer as defined in:

(a) RCW 41.32.010(17) on or after July 1, 1996; or

(b) RCW 41.35.010 on or after September 1, 2000; or

(c) RCW 41.40.010 on or after March 1, 2002;

and who are at least age fifty-five and have at least ten years of service under the teachers' retirement system plan 3 as defined in RCW 41.32.010(33), the Washington school employees' retirement system plan 3 as defined in RCW 41.35.010, or the public employees' retirement system plan 3 as defined in RCW 41.40.010.

(21) "State purchased health care" or "health care" means medical and health care, pharmaceuticals, and medical equipment purchased with state and federal funds by the department of social and health services, the department of health, the basic health plan, the state health care authority, the department of labor and industries, the department of corrections, the department of veterans affairs, and local school districts.

(22) "Tribal government" means an Indian tribal government as defined in section 3(32) of the employee retirement income security act of 1974, as amended, or an agency or instrumentality of the tribal government, that has government offices principally located in this state.

Sec. 23. RCW 41.05.021 and 2011 1st sp.s. c 15 s 56 are each amended to read as follows:

(1) The Washington state health care authority is created within the executive branch. The authority shall have a director appointed by the governor, with the consent of the senate. The director shall serve at the pleasure of the governor. The director may employ a deputy director, and such assistant directors and special assistants as may be needed to administer the authority, who shall be exempt from chapter 41.06 RCW, and any additional staff members as are necessary to administer this chapter. The director may delegate any power or duty vested in him or her by law, including authority to make final decisions and enter final orders in hearings conducted under chapter 34.05 RCW. The primary duties of the authority shall be to: Administer state employees' insurance benefits and retired or disabled school employees' insurance benefits; administer the basic health plan pursuant to chapter 70.47 RCW; administer the children's health program pursuant to chapter 74.09 RCW; study state-purchased health care programs in order to maximize cost containment in these programs while ensuring access to quality health care; implement state initiatives, joint purchasing strategies, and techniques for efficient administration that have potential application to all state-purchased health services; and administer grants that further the mission and goals of the authority. The authority's duties include, but are not limited to, the following:

(a) To administer health care benefit programs for employees and retired or disabled school employees as specifically authorized in RCW 41.05.065 and in accordance with the methods described in RCW 41.05.075, 41.05.140, and other provisions of this chapter;

(b) To analyze state-purchased health care programs and to explore options for cost containment and delivery alternatives for

those programs that are consistent with the purposes of those programs, including, but not limited to:

(i) Creation of economic incentives for the persons for whom the state purchases health care to appropriately utilize and purchase health care services, including the development of flexible benefit plans to offset increases in individual financial responsibility;

(ii) Utilization of provider arrangements that encourage cost containment, including but not limited to prepaid delivery systems, utilization review, and prospective payment methods, and that ensure access to quality care, including assuring reasonable access to local providers, especially for employees residing in rural areas;

(iii) Coordination of state agency efforts to purchase drugs effectively as provided in RCW 70.14.050;

(iv) Development of recommendations and methods for purchasing medical equipment and supporting services on a volume discount basis;

(v) Development of data systems to obtain utilization data from state-purchased health care programs in order to identify cost centers, utilization patterns, provider and hospital practice patterns, and procedure costs, utilizing the information obtained pursuant to RCW 41.05.031; and

(vi) In collaboration with other state agencies that administer state purchased health care programs, private health care purchasers, health care facilities, providers, and carriers:

(A) Use evidence-based medicine principles to develop common performance measures and implement financial incentives in contracts with insuring entities, health care facilities, and providers that:

(I) Reward improvements in health outcomes for individuals with chronic diseases, increased utilization of appropriate preventive health services, and reductions in medical errors; and

(II) Increase, through appropriate incentives to insuring entities, health care facilities, and providers, the adoption and use of information technology that contributes to improved health outcomes, better coordination of care, and decreased medical errors;

(B) Through state health purchasing, reimbursement, or pilot strategies, promote and increase the adoption of health information technology systems, including electronic medical records, by hospitals as defined in RCW 70.41.020(4), integrated delivery systems, and providers that:

(I) Facilitate diagnosis or treatment;

(II) Reduce unnecessary duplication of medical tests;

(III) Promote efficient electronic physician order entry;

(IV) Increase access to health information for consumers and their providers; and

(V) Improve health outcomes;

(C) Coordinate a strategy for the adoption of health information technology systems using the final health information technology report and recommendations developed under chapter 261, Laws of 2005;

(c) To analyze areas of public and private health care interaction;

(d) To provide information and technical and administrative assistance to the board;

(e) To review and approve or deny applications from counties, municipalities, and other political subdivisions of the state to provide state-sponsored insurance or self-insurance programs to their employees in accordance with the provisions of RCW 41.04.205 and (g) of this subsection, setting the premium contribution for approved groups as outlined in RCW 41.05.050;

(f) To review and approve or deny the application when the governing body of a tribal government applies to transfer their employees to an insurance or self-insurance program administered under this chapter. In the event of an employee transfer pursuant to this subsection (1)(f), members of the governing body are eligible to be included in such a transfer if the members are authorized by the tribal government to participate in the insurance program being

transferred from and subject to payment by the members of all costs of insurance for the members. The authority shall: (i) Establish the conditions for participation; (ii) have the sole right to reject the application; and (iii) set the premium contribution for approved groups as outlined in RCW 41.05.050. Approval of the application by the authority transfers the employees and dependents involved to the insurance, self-insurance, or health care program approved by the authority;

(g) To ensure the continued status of the employee insurance or self-insurance programs administered under this chapter as a governmental plan under section 3(32) of the employee retirement income security act of 1974, as amended, the authority shall limit the participation of employees of a county, municipal, school district, educational service district, or other political subdivision, the Washington health benefit exchange, or a tribal government, including providing for the participation of those employees whose services are substantially all in the performance of essential governmental functions, but not in the performance of commercial activities;

(h) To establish billing procedures and collect funds from school districts in a way that minimizes the administrative burden on districts;

(i) To publish and distribute to nonparticipating school districts and educational service districts by October 1st of each year a description of health care benefit plans available through the authority and the estimated cost if school districts and educational service district employees were enrolled;

(j) To apply for, receive, and accept grants, gifts, and other payments, including property and service, from any governmental or other public or private entity or person, and make arrangements as to the use of these receipts to implement initiatives and strategies developed under this section;

(k) To issue, distribute, and administer grants that further the mission and goals of the authority;

(l) To adopt rules consistent with this chapter as described in RCW 41.05.160 including, but not limited to:

(i) Setting forth the criteria established by the board under RCW 41.05.065 for determining whether an employee is eligible for benefits;

(ii) Establishing an appeal process in accordance with chapter 34.05 RCW by which an employee may appeal an eligibility determination;

(iii) Establishing a process to assure that the eligibility determinations of an employing agency comply with the criteria under this chapter, including the imposition of penalties as may be authorized by the board;

(m)(i) To administer the medical services programs established under chapter 74.09 RCW as the designated single state agency for purposes of Title XIX of the federal social security act;

(ii) To administer the state children's health insurance program under chapter 74.09 RCW for purposes of Title XXI of the federal social security act;

(iii) To enter into agreements with the department of social and health services for administration of medical care services programs under Titles XIX and XXI of the social security act. The agreements shall establish the division of responsibilities between the authority and the department with respect to mental health, chemical dependency, and long-term care services, including services for persons with developmental disabilities. The agreements shall be revised as necessary, to comply with the final implementation plan adopted under section 116, chapter 15, Laws of 2011 1st sp. sess.;

(iv) To adopt rules to carry out the purposes of chapter 74.09 RCW;

(v) To appoint such advisory committees or councils as may be required by any federal statute or regulation as a condition to the receipt of federal funds by the authority. The director may appoint

statewide committees or councils in the following subject areas: (A) Health facilities; (B) children and youth services; (C) blind services; (D) medical and health care; (E) drug abuse and alcoholism; (F) rehabilitative services; and (G) such other subject matters as are or come within the authority's responsibilities. The statewide councils shall have representation from both major political parties and shall have substantial consumer representation. Such committees or councils shall be constituted as required by federal law or as the director in his or her discretion may determine. The members of the committees or councils shall hold office for three years except in the case of a vacancy, in which event appointment shall be only for the remainder of the unexpired term for which the vacancy occurs. No member shall serve more than two consecutive terms. Members of such state advisory committees or councils may be paid their travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended;

(n) To review and approve or deny the application from the governing board of the Washington health benefit exchange to provide state-sponsored insurance or self-insurance programs to employees of the exchange. The authority shall (i) establish the conditions for participation; (ii) have the sole right to reject an application; and (iii) set the premium contribution for approved groups as outlined in RCW 41.05.050.

(2) On and after January 1, 1996, the public employees' benefits board may implement strategies to promote managed competition among employee health benefit plans. Strategies may include but are not limited to:

- (a) Standardizing the benefit package;
- (b) Soliciting competitive bids for the benefit package;
- (c) Limiting the state's contribution to a percent of the lowest priced qualified plan within a geographical area;
- (d) Monitoring the impact of the approach under this subsection with regards to: Efficiencies in health service delivery, cost shifts to subscribers, access to and choice of managed care plans statewide, and quality of health services. The health care authority shall also advise on the value of administering a benchmark employer-managed plan to promote competition among managed care plans.

PART X

MISCELLANEOUS

NEW SECTION. Sec. 24. The health care authority shall pursue an application for the state to participate in the individual market wellness program demonstration as described in section 2705 of P.L. 111-148 of 2010, as amended. The health care authority shall pursue activities that will prepare the state to apply for the demonstration project once announced by the United States department of health and human services.

NEW SECTION. Sec. 25. A new section is added to chapter 43.71 RCW to read as follows:

A person or entity functioning as a navigator consistent with the requirements of section 1311(i) of P.L. 111-148 of 2010, as amended, shall not be considered soliciting or negotiating insurance as stated under chapter 48.17 RCW.

NEW SECTION. Sec. 26. A new section is added to chapter 43.71 RCW to read as follows:

If at any time the exchange is no longer self-sustaining as defined in RCW 43.71.010, the operations of the exchange shall be suspended.

NEW SECTION. Sec. 27. 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.

NEW SECTION. Sec. 28. Sections 4, 16, 18, and 19 through 23 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately."

E2SHB 2319 - S COMM AMD

By Committee on Health & Long-Term Care

On page 1, line 2 of the title, after "act;" strike the remainder of the title and insert "amending RCW 43.71.010, 43.71.020, 43.71.030, 43.71.060, 48.42.010, 48.42.020, and 41.05.021; reenacting and amending RCW 48.43.005 and 41.05.011; adding new sections to chapter 48.43 RCW; adding new sections to chapter 43.71 RCW; adding a new section to chapter 70.47 RCW; adding new sections to chapter 48.41 RCW; adding a new section to chapter 41.04 RCW; adding a new section to chapter 43.01 RCW; adding a new section to chapter 43.03 RCW; creating new sections; providing an expiration date; and declaring an emergency."

and the same is herewith transmitted.

Thomas Hoeman, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 2319 and advanced the bill as amended by the Senate to final passage.

FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representative Cody spoke in favor of the passage of the bill.

Representatives Schmick, Shea, Bailey, Rodne, Hinkle and Parker spoke against the passage of the bill.

The Speaker (Representative Moeller presiding) stated the question before the House to be the final passage of Engrossed Second Substitute House Bill No. 2319, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of Engrossed Second Substitute House Bill No. 2319, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 55; Nays, 41; Absent, 0; Excused, 2.

Voting yea: Representatives Appleton, Billig, Blake, Carlyle, Clibborn, Cody, Darneille, Dickerson, Dunshee, Eddy, Finn, Fitzgibbon, Goodman, Green, Haigh, Hansen, Hasegawa, Hudgins, Hunt, Hunter, Jinkins, Kagi, Kelley, Kenney, Kirby, Ladenburg, Lias, Lytton, Maxwell, McCoy, Miloscia, Moeller, Morris, Moscoso, Ormsby, Orwall, Pedersen, Pettigrew, Pollet, Probst, Reykdal, Roberts, Ryu, Santos, Seaquist, Sells, Springer, Stanford, Sullivan, Takko, Tharinger, Upthegrove, Van De Wege, Wylie and Mr. Speaker.

Voting nay: Representatives Alexander, Anderson, Angel, Armstrong, Asay, Bailey, Buys, Chandler, Condotta, Crouse, Dahlquist, Dammeier, DeBolt, Fagan, Haler, Hargrove, Harris, Hinkle, Hope, Hurst, Johnson, Kretz, Kristiansen, McCune, Nealey, Orcutt, Overstreet, Parker, Pearson, Rivers, Rodne, Ross, Schmick, Shea, Short, Smith, Taylor, Walsh, Warnick, Wilcox and Zeiger.

Excused: Representatives Ahern and Klippert.

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 2319, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

February 29, 2012

Mr. Speaker:

The Senate has passed ENGROSSED SUBSTITUTE HOUSE BILL NO. 2582 with the following amendment:

On page 2, line 8, after "(c) The" strike "total"

and the same is herewith transmitted.

Thomas Hoeman, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to ENGROSSED SUBSTITUTE HOUSE BILL NO. 2582 and advanced the bill as amended by the Senate to final passage.

**FINAL PASSAGE OF HOUSE BILL
AS SENATE AMENDED**

Representatives Johnson and Cody spoke in favor of the passage of the bill.

The Speaker (Representative Moeller presiding) stated the question before the House to be the final passage of Engrossed Substitute House Bill No. 2582, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of Engrossed Substitute House Bill No. 2582, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 95; Nays, 1; Absent, 0; Excused, 2.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Asay, Bailey, Billig, Blake, Buys, Carlyle, Clibborn, Cody, Condotta, Crouse, Dahlquist, Dammeier, Darneille, DeBolt, Dickerson, Dunshee, Eddy, Fagan, Finn, Fitzgibbon, Goodman, Green, Haigh, Haler, Hansen, Hargrove, Harris, Hasegawa, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jinkins, Johnson, Kagi, Kelley, Kenney, Kirby, Kretz, Kristiansen, Ladenburg, Lias, Lytton, Maxwell, McCoy, McCune, Miloscia, Moeller, Morris, Moscoso, Nealey, Orcutt, Ormsby, Orwall, Overstreet, Parker, Pearson, Pedersen, Pettigrew, Pollet, Probst, Reykdal, Rivers, Roberts, Ross, Ryu, Santos, Schmick, Seaquist, Sells, Shea, Short, Smith, Springer, Stanford, Sullivan, Takko, Taylor, Tharinger, Upthegrove, Van De Wege, Walsh, Warnick, Wilcox, Wylie, Zeiger and Mr. Speaker.

Voting nay: Representative Chandler.

Excused: Representatives Ahern and Klippert.

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2582, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

February 29, 2012

Mr. Speaker:

The Senate has passed SUBSTITUTE HOUSE BILL NO. 2617 with the following amendment:

On page 23, line 6, after "RCW 28A.315.225 must be ", strike all material through the end of line 8, and insert "the established official boundaries of such districts existing on the first day of September of the year in which the property tax levy is made."

and the same is herewith transmitted.

Thomas Hoeman, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to SUBSTITUTE HOUSE BILL NO. 2617 and advanced the bill as amended by the Senate to final passage.

**FINAL PASSAGE OF HOUSE BILL
AS SENATE AMENDED**

Representatives Probst and Anderson spoke in favor of the passage of the bill.

The Speaker (Representative Moeller presiding) stated the question before the House to be the final passage of Substitute House Bill No. 2617, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of Substitute House Bill No. 2617, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 96; Nays, 0; Absent, 0; Excused, 2.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Asay, Bailey, Billig, Blake, Buys, Carlyle, Chandler, Clibborn, Cody, Condotta, Crouse, Dahlquist, Dammeier, Darneille, DeBolt, Dickerson, Dunshee, Eddy, Fagan, Finn, Fitzgibbon, Goodman, Green, Haigh, Haler, Hansen, Hargrove, Harris, Hasegawa, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jinkins, Johnson, Kagi, Kelley, Kenney, Kirby, Kretz, Kristiansen, Ladenburg, Lias, Lytton, Maxwell, McCoy, McCune, Miloscia, Moeller, Morris, Moscoso, Nealey, Orcutt, Ormsby, Orwall, Overstreet, Parker, Pearson, Pedersen, Pettigrew, Pollet, Probst, Reykdal, Rivers, Roberts, Rodne, Ross, Ryu, Santos, Schmick, Seaquist, Sells, Shea, Short, Smith, Springer, Stanford, Sullivan, Takko, Taylor, Tharinger, Upthegrove, Van De Wege, Walsh, Warnick, Wilcox, Wylie, Zeiger and Mr. Speaker.

Excused: Representatives Ahern and Klippert.

SUBSTITUTE HOUSE BILL NO. 2617, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

March 1, 2012

Mr. Speaker:

The Senate has passed SUBSTITUTE HOUSE BILL NO. 2673 with the following amendment:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. A new section is added to chapter 47.01 RCW to read as follows:

(1) The department shall expend federal funds received by the department, and funds that may be available to the department, under 23 U.S.C. Sec. 140(b) to increase diversity in the highway construction workforce and prepare individuals interested in entering the highway construction workforce by conducting activities in subsection (4) of this section.

(2) The requirements contained in subsection (1) of this section do not apply to or reduce the federal funds that would be otherwise allocated to local government agencies.

(3) The department shall, to the greatest extent practicable, in coordination with the apprenticeship and training council described in chapter 49.04 RCW, expend moneys from other sources than those specified in subsection (1) of this section for the activities in subsection (4) of this section.

(4) The department shall coordinate with the apprenticeship and training council to provide any portion of the following services:

- (a) Preapprenticeship programs approved by the apprenticeship and training council;
- (b) Preemployment counseling;
- (c) Orientations on the highway construction industry, including outreach to women, minorities, and other disadvantaged individuals;
- (d) Basic skills improvement classes;
- (e) Career counseling;
- (f) Remedial training;
- (g) Entry requirements for training programs;
- (h) Supportive services and assistance with transportation;
- (i) Child care and special needs;
- (j) Job site mentoring and retention services; and
- (k) Assistance with tools, protective clothing, and other related support for employment costs.

(5) The department, in coordination with the apprenticeship and training council, shall submit a report to the transportation committees of the legislature by December 1st of each year beginning in 2012. The report must contain:

- (a) An analysis of the results of the activities in subsection (4) of this section;
- (b) The amount available to the department from federal funds for the activities in subsection (4) of this section and the amount expended for those activities; and
- (c) The performance outcomes achieved from each activity, including the number of persons receiving services, training, and employment."

On page 1, line 1 of the title, after "development;" strike the remainder of the title and insert "and adding a new section to chapter 47.01 RCW."

and the same is herewith transmitted.

Thomas Hoeman, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to SUBSTITUTE HOUSE BILL NO. 2673 and advanced the bill as amended by the Senate to final passage.

FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representatives Billig and Armstrong spoke in favor of the passage of the bill.

The Speaker (Representative Moeller presiding) stated the question before the House to be the final passage of Substitute House Bill No. 2673, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of Substitute House Bill No. 2673, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 70; Nays, 26; Absent, 0; Excused, 2.

Voting yea: Representatives Anderson, Angel, Appleton, Armstrong, Asay, Bailey, Billig, Blake, Carlyle, Clibborn, Cody, Darneille, Dickerson, Dunshee, Eddy, Finn, Fitzgibbon, Goodman, Green, Haigh, Hansen, Hasegawa, Hope, Hudgins, Hunt, Hunter, Hurst, Jinkins, Johnson, Kagi, Kelley, Kenney, Kirby, Ladenburg, Lias, Lytton, Maxwell, McCoy, Miloscia, Moeller, Morris, Moscoso, Nealey, Ormsby, Orwall, Parker, Pedersen, Pettigrew, Pollet, Probst, Reykdal, Roberts, Ross, Ryu, Santos, Seaquist, Sells, Smith, Springer, Stanford, Sullivan, Takko, Tharinger, Uptegrove, Van De Wege, Walsh, Warnick, Wylie, Zeiger and Mr. Speaker.

Voting nay: Representatives Alexander, Buys, Chandler, Condotta, Crouse, Dahlquist, Dammeier, DeBolt, Fagan, Haler, Hargrove, Harris, Hinkle, Kretz, Kristiansen, McCune, Orcutt, Overstreet, Pearson, Rivers, Rodne, Schmick, Shea, Short, Taylor and Wilcox.

Excused: Representatives Ahern and Klippert.

SUBSTITUTE HOUSE BILL NO. 2673, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

February 29, 2012

Mr. Speaker:

The Senate has passed ENGROSSED SUBSTITUTE HOUSE BILL NO. 2692 with the following amendment:

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 9A.88.120 and 2007 c 368 s 12 are each amended to read as follows:

(1)(a) In addition to penalties set forth in RCW 9A.88.010, 9A.88.030, and 9A.88.090, a person who is either convicted or given a deferred sentence or a deferred prosecution or who has entered into a statutory or nonstatutory diversion agreement as a result of an arrest for violating RCW 9A.88.010, 9A.88.030, 9A.88.090, or comparable county or municipal ordinances shall be assessed a fifty dollar fee.

(b)(i) In addition to penalties set forth in RCW 9A.88.110, a person who is either convicted or given a deferred sentence or a deferred prosecution or who has entered into a statutory or nonstatutory diversion agreement as a result of an arrest for violating RCW 9A.88.110 or a comparable county or municipal ordinance shall be assessed a ~~((one hundred fifty dollar))~~ fee in the amount of:

(A) One thousand five hundred dollars for the first offense;

(B) Two thousand five hundred dollars for the second offense;

and
(C) Five thousand dollars for the third and each subsequent offense.

(ii) The court shall not reduce, waive, or suspend payment of all or part of the assessed fees in this section unless it finds, on the record, that the offender does not have the ability to pay the fees, in which case it may reduce the fees by an amount up to two-thirds of the maximum allowable fees.

(iii) Fees assessed under this subsection (1)(b) shall be collected by the clerk of court and be remitted to the treasurer of the county where the offense occurred for deposit in the county general fund, except in cases in which the offense occurred in a city or town that provides for its own law enforcement, in which case these amounts

shall be remitted to the treasurer of the city or town for deposit in the general fund of the city or town. Revenue from the fees must be used for local efforts to reduce the commercial sale of sex including, but not limited to, increased enforcement of commercial sex laws.

(A) At least fifty percent of the revenue from fees imposed under this subsection (1)(b) must be spent on prevention, including education programs for offenders, such as john school, and rehabilitative services, such as mental health and substance abuse counseling, parenting skills training, housing relief, education, vocational training, drop-in centers, and employment counseling.

(B) Revenues from these fees are not subject to the distribution requirements under RCW 3.50.100, 3.62.020, 3.62.040, 10.82.070, or 35.20.220.

(c) In addition to penalties set forth in RCW 9A.88.070 and 9A.88.080, a person who is either convicted or given a deferred sentence or a deferred prosecution or who has entered into a statutory or nonstatutory diversion agreement as a result of an arrest for violating RCW 9A.88.070, 9A.88.080, or comparable county or municipal ordinances shall be assessed a three hundred dollar fee.

(2) The court may not suspend payment of all or part of the fee unless it finds that the person does not have the ability to pay.

(3) When a minor has been adjudicated a juvenile offender or has entered into a statutory or nonstatutory diversion agreement for an offense which, if committed by an adult, would constitute a violation under this chapter or comparable county or municipal ordinances, the court shall assess the fee as specified under subsection (1) of this section. The court may not suspend payment of all or part of the fee unless it finds that the minor does not have the ability to pay the fee.

(4) Any fee assessed under this section shall be collected by the clerk of the court and distributed each month to the state treasurer for deposit in the prostitution prevention and intervention account under RCW 43.63A.740 for the purpose of funding prostitution prevention and intervention activities.

(5) For the purposes of this section:

(a) "Statutory or nonstatutory diversion agreement" means an agreement under RCW 13.40.080 or any written agreement between a person accused of an offense listed in subsection (1) of this section and a court, county, or city prosecutor, or designee thereof, whereby the person agrees to fulfill certain conditions in lieu of prosecution.

(b) "Deferred sentence" means a sentence that will not be carried out if the defendant meets certain requirements, such as complying with the conditions of probation.

Sec. 2. RCW 9A.88.130 and 1999 c 327 s 2 are each amended to read as follows:

(1) When sentencing or imposing conditions on a person convicted of, or receiving a deferred sentence or deferred prosecution for, violating RCW 9A.88.110 or 9.68A.100, the court must impose a requirement that the offender:

(a) Not be subsequently arrested for patronizing a prostitute or ~~((patronizing a juvenile prostitute))~~ commercial sexual abuse of a minor; ~~(and)~~

(b) Remain outside the geographical area, prescribed by the court, in which the person was arrested for violating RCW 9A.88.110 or 9.68A.100, unless such a requirement would interfere with the person's legitimate employment or residence or otherwise be infeasible; and

(c) Fulfill the terms of a program, if a first-time offender, designated by the sentencing court, designed to educate offenders about the negative costs of prostitution.

(2) This requirement is in addition to the penalties set forth in RCW 9A.88.110, 9A.88.120, and 9.68A.100.

Sec. 3. RCW 3.50.100 and 2009 c 479 s 3 are each amended to read as follows:

(1) Costs in civil and criminal actions may be imposed as provided in district court. All fees, costs, fines, forfeitures and other money imposed by any municipal court for the violation of any

municipal or town ordinances shall be collected by the court clerk and, together with any other noninterest revenues received by the clerk, shall be deposited with the city or town treasurer as a part of the general fund of the city or town, or deposited in such other fund of the city or town, or deposited in such other funds as may be designated by the laws of the state of Washington.

(2) Except as provided in RCW ~~9A.88.120~~ and 10.99.080, the city treasurer shall remit monthly thirty-two percent of the noninterest money received under this section, other than for parking infractions, and certain costs to the state treasurer. "Certain costs" as used in this subsection, means those costs awarded to prevailing parties in civil actions under RCW 4.84.010 or 36.18.040, or those costs awarded against convicted defendants in criminal actions under RCW 10.01.160, 10.46.190, or 36.18.040, or other similar statutes if such costs are specifically designated as costs by the court and are awarded for the specific reimbursement of costs incurred by the state, county, city, or town in the prosecution of the case, including the fees of defense counsel. Money remitted under this subsection to the state treasurer shall be deposited in the state general fund.

(3) The balance of the noninterest money received under this section shall be retained by the city and deposited as provided by law.

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

(5) Interest retained by the court on penalties, fines, bail forfeitures, fees, and costs shall be split twenty-five percent to the state treasurer for deposit in the state general fund, twenty-five percent to the state treasurer for deposit in the judicial information system account as provided in RCW 2.68.020, twenty-five percent to the city general fund, and twenty-five percent to the city general fund to fund local courts.

Sec. 4. RCW 3.62.020 and 2011 1st sp.s. c 44 s 1 are each amended to read as follows:

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

(2) Except as provided in RCW ~~9A.88.120~~, 10.99.080, and this section, the county treasurer shall remit thirty-two percent of the noninterest money received under subsection (1) of this section except certain costs to the state treasurer. "Certain costs" as used in this subsection, means those costs awarded to prevailing parties in civil actions under RCW 4.84.010 or 36.18.040, or those costs awarded against convicted defendants in criminal actions under RCW 10.01.160, 10.46.190, or 36.18.040, or other similar statutes if such costs are specifically designated as costs by the court and are awarded for the specific reimbursement of costs incurred by the state or county in the prosecution of the case, including the fees of defense counsel. With the exception of funds to be transferred to the judicial stabilization trust account under RCW 3.62.060(2), money remitted under this subsection to the state treasurer shall be deposited in the state general fund.

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

(4) All money collected for county parking infractions shall be remitted by the clerk of the district court at least monthly, with the

information required under subsection (1) of this section, to the county treasurer for deposit in the county current expense fund.

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

(6) Interest retained by the court on penalties, fines, bail forfeitures, fees, and costs shall be split twenty-five percent to the state treasurer for deposit in the state general fund, twenty-five percent to the state treasurer for deposit in the judicial information system account as provided in RCW 2.68.020, twenty-five percent to the county current expense fund, and twenty-five percent to the county current expense fund to fund local courts.

Sec. 5. RCW 3.62.040 and 2009 c 479 s 6 are each amended to read as follows:

(1) Except as provided in subsection (4) of this section, all costs, fines, forfeitures and penalties assessed and collected, in whole or in part, by district courts because of violations of city ordinances shall be remitted by the clerk of the district court at least monthly directly to the treasurer of the city wherein the violation occurred.

(2) Except as provided in RCW 9A.88.120 and 10.99.080, the city treasurer shall remit monthly thirty-two percent of the noninterest money received under this section, other than for parking infractions and certain costs, to the state treasurer. "Certain costs" as used in this subsection, means those costs awarded to prevailing parties in civil actions under RCW 4.84.010 or 36.18.040, or those costs awarded against convicted defendants in criminal actions under RCW 10.01.160, 10.46.190, or 36.18.040, or other similar statutes if such costs are specifically designated as costs by the court and are awarded for the specific reimbursement of costs incurred by the state, county, city, or town in the prosecution of the case, including the fees of defense counsel. Money remitted under this subsection to the state treasurer shall be deposited in the state general fund.

(3) The balance of the noninterest money received under this section shall be retained by the city and deposited as provided by law.

(4) All money collected for city parking infractions shall be remitted by the clerk of the district court at least monthly to the city treasurer for deposit in the city's general fund.

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

(6) Interest retained by the court on penalties, fines, bail forfeitures, fees, and costs shall be split twenty-five percent to the state treasurer for deposit in the state general fund, twenty-five percent to the state treasurer for deposit in the judicial information system account as provided in RCW 2.68.020, twenty-five percent to the city general fund, and twenty-five percent to the city general fund to fund local courts.

Sec. 6. RCW 10.82.070 and 2009 c 479 s 13 are each amended to read as follows:

(1) All sums of money derived from costs, fines, penalties, and forfeitures imposed or collected, in whole or in part, by a superior court for violation of orders of injunction, mandamus and other like writs, for contempt of court, or for breach of the penal laws shall be paid in cash by the person collecting the same, within twenty days after the collection, to the county treasurer of the county in which the same have accrued.

(2) Except as provided in RCW 9A.88.120 and 10.99.080, the county treasurer shall remit monthly thirty-two percent of the money received under this section except for certain costs to the state treasurer for deposit in the state general fund and shall deposit the remainder as provided by law. "Certain costs" as used in this subsection, means those costs awarded to prevailing parties in civil actions under RCW 4.84.010 or 36.18.040, or those costs awarded against convicted defendants in criminal actions under RCW

10.01.160, 10.46.190, or 36.18.040, or other similar statutes if such costs are specifically designated as costs by the court and are awarded for the specific reimbursement of costs incurred by the state or county in the prosecution of the case, including the fees of defense counsel. Costs or assessments awarded to dedicated accounts, state or local, are not subject to this state allocation or to RCW 7.68.035.

(3) All fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. All fees, fines, forfeitures, and penalties collected or assessed by a superior court in cases on appeal from a lower court shall be remitted to the municipal or district court from which the cases were appealed.

Sec. 7. RCW 35.20.220 and 2009 c 479 s 19 are each amended to read as follows:

(1) The chief clerk, under the supervision and direction of the court administrator of the municipal court, shall have the custody and care of the books, papers and records of the court. The chief clerk or a deputy shall be present during the session of the court and has the power to swear all witnesses and jurors, administer oaths and affidavits, and take acknowledgments. The chief clerk shall keep the records of the court and shall issue all process under his or her hand and the seal of the court. The chief clerk shall do and perform all things and have the same powers pertaining to the office as the clerks of the superior courts have in their office. He or she shall receive all fines, penalties, and fees of every kind and keep a full, accurate, and detailed account of the same. The chief clerk shall on each day pay into the city treasury all money received for the city during the day previous, with a detailed account of the same, and taking the treasurer's receipt therefor.

(2) Except as provided in RCW 9A.88.120 and 10.99.080, the city treasurer shall remit monthly thirty-two percent of the noninterest money received under this section, other than for parking infractions and certain costs to the state treasurer. "Certain costs" as used in this subsection, means those costs awarded to prevailing parties in civil actions under RCW 4.84.010 or 36.18.040, or those costs awarded against convicted defendants in criminal actions under RCW 10.01.160, 10.46.190, or 36.18.040, or other similar statutes if such costs are specifically designated as costs by the court and are awarded for the specific reimbursement of costs incurred by the state, county, city, or town in the prosecution of the case, including the fees of defense counsel. Money remitted under this subsection to the state treasurer shall be deposited in the state general fund.

(3) The balance of the noninterest money received under this section shall be retained by the city and deposited as provided by law.

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

(5) Interest retained by the court on penalties, fines, bail forfeitures, fees, and costs shall be split twenty-five percent to the state treasurer for deposit in the state general fund, twenty-five percent to the state treasurer for deposit in the judicial information system account as provided in RCW 2.68.020, twenty-five percent to the city general fund, and twenty-five percent to the city general fund to fund local courts."

On page 1, line 1 of the title, after "sex;" strike the remainder of the title and insert "amending RCW 9A.88.120, 9A.88.130, 3.50.100, 3.62.020, 3.62.040, 10.82.070, and 35.20.220; and prescribing penalties."

and the same is herewith transmitted.

Thomas Hoeman, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to ENGROSSED SUBSTITUTE HOUSE BILL NO. 2692 and advanced the bill as amended by the Senate to final passage.

**FINAL PASSAGE OF HOUSE BILL
AS SENATE AMENDED**

Representatives Orwall and Pearson spoke in favor of the passage of the bill.

The Speaker (Representative Moeller presiding) stated the question before the House to be the final passage of Engrossed Substitute House Bill No. 2692, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of Engrossed Substitute House Bill No. 2692, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 96; Nays, 0; Absent, 0; Excused, 2.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Asay, Bailey, Billig, Blake, Buys, Carlyle, Chandler, Clibborn, Cody, Condotta, Crouse, Dahlquist, Dammeier, Darneille, DeBolt, Dickerson, Dunshee, Eddy, Fagan, Finn, Fitzgibbon, Goodman, Green, Haigh, Haler, Hansen, Hargrove, Harris, Hasegawa, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jinkins, Johnson, Kagi, Kelley, Kenney, Kirby, Kretz, Kristiansen, Ladenburg, Lias, Lytton, Maxwell, McCoy, McCune, Miloscia, Moeller, Morris, Moscoso, Nealey, Orcutt, Ormsby, Orwall, Overstreet, Parker, Pearson, Pedersen, Pettigrew, Pollet, Probst, Reykdal, Rivers, Roberts, Rodne, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Smith, Springer, Sullivan, Takko, Taylor, Tharinger, Upthegrove, Van De Wege, Walsh, Warnick, Wilcox, Wylie, Zeiger and Mr. Speaker.

Excused: Representatives Ahern and Klippert.

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2692, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

March 1, 2012

Mr. Speaker:

The Senate has passed ENGROSSED HOUSE BILL NO. 2771 with the following amendment:

On page 2, after line 29, insert the following:
"(5) This act shall apply solely to eligibility for state-sponsored public employee pension plans under chapters 41.26, 41.32, 41.35, 41.37, and 41.40 RCW and shall not affect any other statute or rule regarding employee benefits, status, or workplace protections."

Renumber the remaining subsection consecutively and correct any internal references accordingly.

and the same is herewith transmitted.

Thomas Hoeman, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to ENGROSSED HOUSE BILL NO. 2771 and advanced the bill as amended by the Senate to final passage.

**FINAL PASSAGE OF HOUSE BILL
AS SENATE AMENDED**

Representative Green spoke in favor of the passage of the bill.

The Speaker (Representative Moeller presiding) stated the question before the House to be the final passage of Engrossed House Bill No. 2771, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of Engrossed House Bill No. 2771, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 91; Nays, 5; Absent, 0; Excused, 2.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Asay, Bailey, Billig, Blake, Buys, Carlyle, Chandler, Clibborn, Cody, Condotta, Crouse, Dahlquist, Dammeier, Darneille, DeBolt, Dickerson, Dunshee, Eddy, Fagan, Finn, Fitzgibbon, Goodman, Green, Haigh, Haler, Hansen, Hargrove, Harris, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jinkins, Johnson, Kagi, Kelley, Kenney, Kirby, Kretz, Kristiansen, Ladenburg, Lias, Lytton, Maxwell, McCoy, McCune, Miloscia, Moeller, Morris, Moscoso, Nealey, Orcutt, Orwall, Overstreet, Parker, Pearson, Pedersen, Pettigrew, Probst, Reykdal, Rivers, Roberts, Rodne, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Smith, Springer, Sullivan, Takko, Taylor, Tharinger, Upthegrove, Van De Wege, Walsh, Warnick, Wilcox, Wylie, Zeiger and Mr. Speaker.

Voting nay: Representatives Hasegawa, Ormsby, Pollet, Ryu and Stanford.

Excused: Representatives Ahern and Klippert.

ENGROSSED HOUSE BILL NO. 2771, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

RECONSIDERATION

There being no objection, the House reconsidered the vote by which ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 2319, as amended by the Senate, passed the House.

The Speaker (Representative Moeller presiding) stated the question before the House to be the final passage of Engrossed Second Substitute House Bill No. 2319, as amended by the Senate, on reconsideration.

ROLL CALL

The Clerk called the roll on the final passage of Engrossed Second Substitute House Bill No. 2319, as amended by the Senate, on reconsideration, and the bill passed the House by the following vote: Yeas, 55; Nays, 41; Absent, 0; Excused, 2.

Voting yea: Representatives Appleton, Billig, Blake, Carlyle, Clibborn, Cody, Darneille, Dickerson, Dunshee, Eddy, Finn, Fitzgibbon, Goodman, Green, Haigh, Hansen, Hasegawa, Hudgins, Hunt, Hunter, Jinkins, Kagi, Kelley, Kenney, Kirby, Ladenburg, Lias, Lytton, Maxwell, McCoy, Miloscia, Moeller, Morris, Moscoso, Ormsby, Orwall, Pedersen, Pettigrew, Pollet, Probst, Reykdal, Roberts, Ryu, Santos, Seaquist, Sells, Springer, Stanford,

Sullivan, Takko, Tharinger, Upthegrove, Van De Wege, Wylie and Mr. Speaker.

Voting nay: Representatives Alexander, Anderson, Angel, Armstrong, Asay, Bailey, Buys, Chandler, Condotta, Crouse, Dahlquist, Dammeier, DeBolt, Fagan, Haler, Hargrove, Harris, Hinkle, Hope, Hurst, Johnson, Kretz, Kristiansen, McCune, Nealey, Orcutt, Overstreet, Parker, Pearson, Rivers, Rodne, Ross, Schmick, Shea, Short, Smith, Taylor, Walsh, Warnick, Wilcox and Zeiger.

Excused: Representatives Ahern and Klippert.

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 2319, as amended by the Senate, on reconsideration, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

March 3, 2012

MR. SPEAKER:

The President has signed:

SENATE BILL NO. 5365
ENGROSSED SUBSTITUTE SENATE BILL NO. 5715
SENATE BILL NO. 5981
ENGROSSED SUBSTITUTE SENATE BILL NO. 5991
SUBSTITUTE SENATE BILL NO. 6002
SENATE BILL NO. 6046
SENATE BILL NO. 6059
SENATE BILL NO. 6098
SUBSTITUTE SENATE BILL NO. 6112
SUBSTITUTE SENATE BILL NO. 6167
SENATE BILL NO. 6171
SUBSTITUTE SENATE BILL NO. 6208
SENATE BILL NO. 6218
ENGROSSED SENATE BILL NO. 6255
SENATE BILL NO. 6290
SUBSTITUTE SENATE BILL NO. 6325
SUBSTITUTE SENATE BILL NO. 6371
ENGROSSED SUBSTITUTE SENATE BILL NO. 6470
SUBSTITUTE SENATE BILL NO. 6574

and the same are herewith transmitted.

Thomas Hoemann, Secretary

There being no objection, the House reverted to the fifth order of business.

REPORTS OF STANDING COMMITTEES

March 3, 2012

HB 2129 Prime Sponsor, Representative Haigh: Delaying apportionments to school districts for the 2012-13 school year. Reported by Committee on Ways & Means

MAJORITY recommendation: The substitute bill be substituted therefor and the substitute bill do pass. Signed by Representatives Hunter, Chair; Darneille, Vice Chair; Hasegawa, Vice Chair; Carlyle; Cody; Dickerson; Haigh; Hudgins; Hunt; Kagi; Kenney; Ormsby; Pettigrew; Seaquist; Springer and Sullivan.

MINORITY recommendation: Do not pass. Signed by Representatives Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Chandler; Haler; Parker; Ross; Schmick and Wilcox.

Passed to Committee on Rules for second reading.

March 3, 2012

HB 2798 Prime Sponsor, Representative Hudgins: Changing judicial stabilization trust account surcharges. Reported by Committee on Ways & Means

MAJORITY recommendation: Do pass. Signed by Representatives Hunter, Chair; Darneille, Vice Chair; Hasegawa, Vice Chair; Carlyle; Cody; Dickerson; Haigh; Hudgins; Hunt; Kagi; Kenney; Ormsby; Pettigrew; Seaquist; Springer and Sullivan.

MINORITY recommendation: Do not pass. Signed by Representatives Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Chandler; Haler; Parker; Ross; Schmick and Wilcox.

Passed to Committee on Rules for second reading.

March 2, 2012

HB 2799 Prime Sponsor, Representative Sullivan: Authorizing a five-year pilot project for up to six collaborative schools for innovation and success operated by school districts in partnership with colleges of education. Reported by Committee on Education

MAJORITY recommendation: The substitute bill be substituted therefor and the substitute bill do pass. Signed by Representatives Santos, Chair; Lytton, Vice Chair; Ahern; Billig; Fagan; Finn; Haigh; Hunt; Maxwell; McCoy; Parker; Probst and Wilcox.

MINORITY recommendation: Without recommendation. Signed by Representatives Dammeier, Ranking Minority Member; Dahlquist, Assistant Ranking Minority Member; Angel; Hargrove; Klippert; Ladenburg and Liias.

March 3, 2012

HB 2803 Prime Sponsor, Representative Cody: Concerning health care services for incarcerated offenders. Reported by Committee on Ways & Means

MAJORITY recommendation: Do pass. Signed by Representatives Hunter, Chair; Darneille, Vice Chair; Hasegawa, Vice Chair; Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Carlyle; Chandler; Cody; Dickerson; Haigh; Haler; Hudgins; Hunt; Kagi; Kenney; Ormsby; Parker; Pettigrew; Ross; Schmick; Seaquist; Springer; Sullivan and Wilcox.

Passed to Committee on Rules for second reading.

March 3, 2012

SSB 6493 Prime Sponsor, Committee on Human Services & Corrections: Addressing sexually violent predator civil commitment cases. Reported by Committee on Ways & Means

MAJORITY recommendation: Do pass as amended by Committee on Ways & Means and without amendment by Committee on Public Safety & Emergency Preparedness.

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 2.70.020 and 2008 c 313 s 4 are each amended to read as follows:

The director shall:

(1) Administer all state-funded services in the following program areas:

(a) Trial court criminal indigent defense, as provided in chapter 10.101 RCW;

(b) Appellate indigent defense, as provided in this chapter;

(c) Representation of indigent parents qualified for appointed counsel in dependency and termination cases, as provided in RCW 13.34.090 and 13.34.092;

(d) Extraordinary criminal justice cost petitions, as provided in RCW 43.330.190;

(e) Compilation of copies of DNA test requests by persons convicted of felonies, as provided in RCW 10.73.170;

(f) Representation of indigent respondents qualified for appointed counsel in sexually violent predator civil commitment cases, as provided in chapter 71.09 RCW;

(2) Submit a biennial budget for all costs related to the office's program areas;

(3) Establish administrative procedures, standards, and guidelines for the office's program areas, including cost-efficient systems that provide for authorized recovery of costs;

(4) Provide oversight and technical assistance to ensure the effective and efficient delivery of services in the office's program areas;

(5) Recommend criteria and standards for determining and verifying indigency. In recommending criteria for determining indigency, the director shall compile and review the indigency standards used by other state agencies and shall periodically submit the compilation and report to the legislature on the appropriateness and consistency of such standards;

(6) Collect information regarding indigent defense services funded by the state and report annually to the advisory committee, the legislature, and the supreme court;

(7) Coordinate with the supreme court and the judges of each division of the court of appeals to determine how appellate attorney services should be provided.

The office of public defense shall not provide direct representation of clients.

NEW SECTION. Sec. 2. A new section is added to chapter 2.70 RCW to read as follows:

In providing indigent defense services for sexually violent predator civil commitment cases under chapter 71.09 RCW, the director shall:

(1) In accordance with state contracting laws, contract with persons admitted to practice law in this state and organizations employing persons admitted to practice law in this state for the provision of legal services to indigent persons;

(2) Establish annual contract fees for defense legal services within amounts appropriated based on court rules and court orders;

(3) Ensure an indigent person qualified for appointed counsel has one contracted counsel appointed to assist him or her. Upon a showing of good cause, the court may order additional counsel;

(4) Consistent with court rules and court orders, establish procedures for the reimbursement of expert witness and other professional and investigative costs;

(5) Review and analyze existing caseload standards and make recommendations for updating caseload standards as appropriate;

(6) Annually, with the first report due December 1, 2013, submit a report to the chief justice of the supreme court, the governor, and the legislature, with all pertinent data on the operation of indigent defense services for commitment proceedings under this section, including:

(a) Recommended levels of appropriation to maintain adequate indigent defense services to the extent constitutionally required;

(b) The time to trial for all commitment trial proceedings including a list of the number of continuances granted, the party that requested the continuance, the county where the proceeding is being heard, and, if available, the reason the continuance was granted;

(c) Recommendations for policy changes, including changes in statutes and changes in court rules, which may be appropriate for the improvement of sexually violent predator civil commitment proceedings.

NEW SECTION. Sec. 3. (1) All powers, duties, and functions of the department of social and health services and the special commitment center pertaining to indigent defense under chapter 71.09 RCW are transferred to the office of public defense.

(2)(a) The office of public defense may request any written materials in the possession of the department of social and health services and the special commitment center pertaining to the powers, functions, and duties transferred, which shall be delivered to the custody of the office of public defense. Materials may be transferred electronically and/or in hard copy, as agreed by the agencies. All funds, credits, or other assets held in connection with the powers, functions, and duties transferred shall be assigned to the office of public defense.

(b) Any appropriations made to the department of social and health services for carrying out the powers, functions, and duties transferred shall, on July 1, 2012, be transferred and credited to the office of public defense.

(3) Notwithstanding the effective date of this section, if implementation of office of public defense contracts would result in the substitution of counsel within one hundred eighty days of a scheduled trial date, the director of the office of public defense may continue defense services with existing counsel to facilitate continuity of effective representation and avoid further continuance of a trial. When existing counsel is maintained, payment to complete the trial shall be prorated based on standard contract fees established by the office of public defense under section 2 of this act and, at the director's discretion, may include extraordinary compensation based on attorney documentation.

Sec. 4. RCW 71.09.040 and 2009 c 409 s 4 are each amended to read as follows:

(1) Upon the filing of a petition under RCW 71.09.030, the judge shall determine whether probable cause exists to believe that the person named in the petition is a sexually violent predator. If such determination is made the judge shall direct that the person be taken into custody and notify the office of public defense of the potential need for representation.

(2) Within seventy-two hours after a person is taken into custody pursuant to subsection (1) of this section, the court shall provide the person with notice of, and an opportunity to appear in person at, a hearing to contest probable cause as to whether the person is a sexually violent predator. In order to assist the person at the hearing, within twenty-four hours of service of the petition, the prosecuting agency shall provide to the person or his or her counsel a copy of all materials provided to the prosecuting agency by the referring agency pursuant to RCW 71.09.025, or obtained by the prosecuting agency pursuant to RCW 71.09.025(1) (c) and (d). At this hearing, the court shall (a) verify the person's identity, and (b) determine whether probable cause exists to believe that the person is a sexually violent predator. At the probable cause hearing, the state may rely upon the petition and certification for determination of probable cause filed pursuant to RCW 71.09.030. The state may supplement this with additional documentary evidence or live testimony. The person may

be held in total confinement at the county jail until the trial court renders a decision after the conclusion of the seventy-two hour probable cause hearing. The county shall be entitled to reimbursement for the cost of housing and transporting the person pursuant to rules adopted by the secretary.

(3) At the probable cause hearing, the person shall have the following rights in addition to the rights previously specified: (a) To be represented by counsel, and if the person is indigent as defined in RCW 10.101.010, to have office of public defense contracted counsel appointed as provided in RCW 10.101.020; (b) to present evidence on his or her behalf; (c) to cross-examine witnesses who testify against him or her; (d) to view and copy all petitions and reports in the court file. The court must permit a witness called by either party to testify by telephone. Because this is a special proceeding, discovery pursuant to the civil rules shall not occur until after the hearing has been held and the court has issued its decision.

(4) If the probable cause determination is made, the judge shall direct that the person be transferred to ((an appropriate facility for an evaluation as to whether the person is a sexually violent predator. The evaluation shall be conducted by a person deemed to be professionally qualified to conduct such an examination pursuant to rules developed by the department of social and health services. In adopting such rules, the department of social and health services shall consult with the department of health and the department of corrections)) the custody of the department of social and health services for placement in a total confinement facility operated by the department. In no event shall the person be released from confinement prior to trial. ((A witness called by either party shall be permitted to testify by telephone.))

Sec. 5. RCW 71.09.050 and 2010 1st sp.s. c 28 s 1 are each amended to read as follows:

(1) Within forty-five days after the completion of any hearing held pursuant to RCW 71.09.040, the court shall conduct a trial to determine whether the person is a sexually violent predator. The trial may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the due administration of justice, and when the respondent will not be substantially prejudiced. ~~((The department is responsible for the cost of one expert or professional person to conduct an evaluation on the prosecuting agency's behalf.))~~ The prosecuting agency shall have a right to a current evaluation of the person by experts chosen by the state. The judge may require the person to complete any or all of the following procedures or tests if requested by the evaluator: (a) A clinical interview; (b) psychological testing; (c) plethysmograph testing; and (d) polygraph testing. The judge may order the person to complete any other procedures and tests relevant to the evaluation. The state is responsible for the costs of the evaluation. At all stages of the proceedings under this chapter, any person subject to this chapter shall be entitled to the assistance of counsel, and if the person is indigent as defined in RCW 10.101.010, the court, as provided in RCW 10.101.020, shall appoint office of public defense contracted counsel to assist him or her. The person shall be confined in a secure facility for the duration of the trial.

(2) Whenever any indigent person is subjected to an evaluation under this chapter, the ~~((department))~~ office of public defense is responsible for the cost of one expert or professional person to conduct an evaluation on the person's behalf. When the person wishes to be evaluated by a qualified expert or professional person of his or her own choice, the expert or professional person must be permitted to have reasonable access to the person for the purpose of such evaluation, as well as to all relevant medical and psychological records and reports. In the case of a person who is indigent, the court shall, upon the person's request, assist the person in obtaining an expert or professional person to perform an evaluation or participate in the trial on the person's behalf. Nothing in this chapter precludes

the person from paying for additional expert services at his or her own expense.

(3) The person, the prosecuting agency, or the judge shall have the right to demand that the trial be before a twelve-person jury. If no demand is made, the trial shall be before the court.

Sec. 6. RCW 71.09.080 and 2010 c 218 s 2 are each amended to read as follows:

(1) Any person subjected to restricted liberty as a sexually violent predator pursuant to this chapter shall not forfeit any legal right or suffer any legal disability as a consequence of any actions taken or orders made, other than as specifically provided in this chapter, or as otherwise authorized by law.

(2)(a) Any person committed or detained pursuant to this chapter shall be prohibited from possessing or accessing a personal computer if the resident's individualized treatment plan states that access to a computer is harmful to bringing about a positive response to a specific and certain phase or course of treatment.

(b) A person who is prohibited from possessing or accessing a personal computer under (a) of this subsection shall be permitted to access a limited functioning personal computer capable of word processing and limited data storage on the computer only that does not have: (i) Internet access capability; (ii) an optical drive, external drive, universal serial bus port, or similar drive capability; or (iii) the capability to display photographs, images, videos, or motion pictures, or similar display capability from any drive or port capability listed under (b)(ii) of this subsection.

(3) Any person committed pursuant to this chapter has the right to adequate care and individualized treatment. The department of social and health services shall keep records detailing all medical, expert, and professional care and treatment received by a committed person, and shall keep copies of all reports of periodic examinations made pursuant to this chapter. All such records and reports shall be made available upon request only to: The committed person, his or her attorney, the prosecuting ~~((attorney))~~ agency, the court, the protection and advocacy agency, or another expert or professional person who, upon proper showing, demonstrates a need for access to such records.

(4) At the time a person is taken into custody or transferred into a facility pursuant to a petition under this chapter, the professional person in charge of such facility or his or her designee shall take reasonable precautions to inventory and safeguard the personal property of the persons detained or transferred. A copy of the inventory, signed by the staff member making it, shall be given to the person detained and shall, in addition, be open to inspection to any responsible relative, subject to limitations, if any, specifically imposed by the detained person. For purposes of this subsection, "responsible relative" includes the guardian, conservator, attorney, spouse, parent, adult child, or adult brother or sister of the person. The facility shall not disclose the contents of the inventory to any other person without consent of the patient or order of the court.

(5) Nothing in this chapter prohibits a person presently committed from exercising a right presently available to him or her for the purpose of obtaining release from confinement, including the right to petition for a writ of habeas corpus.

(6) No indigent person may be conditionally released or unconditionally discharged under this chapter without suitable clothing, and the secretary shall furnish the person with such sum of money as is required by RCW 72.02.100 for persons without ample funds who are released from correctional institutions. As funds are available, the secretary may provide payment to the indigent persons conditionally released pursuant to this chapter consistent with the optional provisions of RCW 72.02.100 and 72.02.110, and may adopt rules to do so.

(7) If a civil commitment petition is dismissed, or a trier of fact determines that a person does not meet civil commitment criteria, the person shall be released within twenty-four hours of service of the

release order on the superintendent of the special commitment center, or later by agreement of the person who is the subject of the petition.

Sec. 7. RCW 71.09.090 and 2011 2nd sp.s. c 7 s 2 are each amended to read as follows:

(1) If the secretary determines that the person's condition has so changed that either: (a) The person no longer meets the definition of a sexually violent predator; or (b) conditional release to a less restrictive alternative is in the best interest of the person and conditions can be imposed that adequately protect the community, the secretary shall authorize the person to petition the court for conditional release to a less restrictive alternative or unconditional discharge. The petition shall be filed with the court and served upon the prosecuting agency responsible for the initial commitment. The court, upon receipt of the petition for conditional release to a less restrictive alternative or unconditional discharge, shall within forty-five days order a hearing.

(2)(a) Nothing contained in this chapter shall prohibit the person from otherwise petitioning the court for conditional release to a less restrictive alternative or unconditional discharge without the secretary's approval. The secretary shall provide the committed person with an annual written notice of the person's right to petition the court for conditional release to a less restrictive alternative or unconditional discharge over the secretary's objection. The notice shall contain a waiver of rights. The secretary shall file the notice and waiver form and the annual report with the court. If the person does not affirmatively waive the right to petition, the court shall set a show cause hearing to determine whether probable cause exists to warrant a hearing on whether the person's condition has so changed that: (i) He or she no longer meets the definition of a sexually violent predator; or (ii) conditional release to a proposed less restrictive alternative would be in the best interest of the person and conditions can be imposed that would adequately protect the community.

(b) The committed person shall have a right to have an attorney represent him or her at the show cause hearing, which may be conducted solely on the basis of affidavits or declarations, but the person is not entitled to be present at the show cause hearing. At the show cause hearing, the prosecuting ~~((attorney or attorney general))~~ agency shall present prima facie evidence establishing that the committed person continues to meet the definition of a sexually violent predator and that a less restrictive alternative is not in the best interest of the person and conditions cannot be imposed that adequately protect the community. In making this showing, the state may rely exclusively upon the annual report prepared pursuant to RCW 71.09.070. The committed person may present responsive affidavits or declarations to which the state may reply.

(c) If the court at the show cause hearing determines that either: (i) The state has failed to present prima facie evidence that the committed person continues to meet the definition of a sexually violent predator and that no proposed less restrictive alternative is in the best interest of the person and conditions cannot be imposed that would adequately protect the community; or (ii) probable cause exists to believe that the person's condition has so changed that: (A) The person no longer meets the definition of a sexually violent predator; or (B) release to a proposed less restrictive alternative would be in the best interest of the person and conditions can be imposed that would adequately protect the community, then the court shall set a hearing on either or both issues.

(d) If the court has not previously considered the issue of release to a less restrictive alternative, either through a trial on the merits or through the procedures set forth in RCW 71.09.094(1), the court shall consider whether release to a less restrictive alternative would be in the best interests of the person and conditions can be imposed that would adequately protect the community, without considering whether the person's condition has changed. The court may not find probable cause for a trial addressing less restrictive alternatives unless a proposed less restrictive alternative placement meeting the

conditions of RCW 71.09.092 is presented to the court at the show cause hearing.

(3)(a) At the hearing resulting from subsection (1) or (2) of this section, the committed person shall be entitled to be present and to the benefit of all constitutional protections that were afforded to the person at the initial commitment proceeding. The prosecuting agency shall represent the state and shall have a right to a jury trial and to have the committed person evaluated by experts chosen by the state. ~~((The department is responsible for the cost of one expert or professional person to conduct an evaluation on the prosecuting agency's behalf.))~~ The prosecuting agency shall have a right to a current evaluation of the person by experts chosen by the state. The judge may require the person to complete any or all of the following procedures or tests if requested by the evaluator: (i) A clinical interview; (ii) psychological testing; (iii) plethysmograph testing; and (iv) polygraph testing. The judge may order the person to complete any other procedures and tests relevant to the evaluation. The state is responsible for the costs of the evaluation. The committed person shall also have the right to a jury trial and the right to have experts evaluate him or her on his or her behalf and the court shall appoint an expert if the person is indigent and requests an appointment.

(b) Whenever any indigent person is subjected to an evaluation under (a) of this subsection, the ~~((department))~~ office of public defense is responsible for the cost of one expert or professional person conducting an evaluation on the person's behalf. When the person wishes to be evaluated by a qualified expert or professional person of his or her own choice, such expert or professional person must be permitted to have reasonable access to the person for the purpose of such evaluation, as well as to all relevant medical and psychological records and reports. In the case of a person who is indigent, the court shall, upon the person's request, assist the person in obtaining an expert or professional person to perform an evaluation or participate in the hearing on the person's behalf. Nothing in this chapter precludes the person from paying for additional expert services at his or her own expense.

(c) If the issue at the hearing is whether the person should be unconditionally discharged, the burden of proof shall be upon the state to prove beyond a reasonable doubt that the committed person's condition remains such that the person continues to meet the definition of a sexually violent predator. Evidence of the prior commitment trial and disposition is admissible. The recommitment proceeding shall otherwise proceed as set forth in RCW 71.09.050 and 71.09.060.

(d) If the issue at the hearing is whether the person should be conditionally released to a less restrictive alternative, the burden of proof at the hearing shall be upon the state to prove beyond a reasonable doubt that conditional release to any proposed less restrictive alternative either: (i) Is not in the best interest of the committed person; or (ii) does not include conditions that would adequately protect the community. Evidence of the prior commitment trial and disposition is admissible.

(4)(a) Probable cause exists to believe that a person's condition has "so changed," under subsection (2) of this section, only when evidence exists, since the person's last commitment trial, or less restrictive alternative revocation proceeding, of a substantial change in the person's physical or mental condition such that the person either no longer meets the definition of a sexually violent predator or that a conditional release to a less restrictive alternative is in the person's best interest and conditions can be imposed to adequately protect the community.

(b) A new trial proceeding under subsection (3) of this section may be ordered, or a trial proceeding may be held, only when there is current evidence from a licensed professional of one of the following and the evidence presents a change in condition since the person's last commitment trial proceeding:

(i) An identified physiological change to the person, such as paralysis, stroke, or dementia, that renders the committed person unable to commit a sexually violent act and this change is permanent; or

(ii) A change in the person's mental condition brought about through positive response to continuing participation in treatment which indicates that the person meets the standard for conditional release to a less restrictive alternative or that the person would be safe to be at large if unconditionally released from commitment.

(c) For purposes of this section, a change in a single demographic factor, without more, does not establish probable cause for a new trial proceeding under subsection (3) of this section. As used in this section, a single demographic factor includes, but is not limited to, a change in the chronological age, marital status, or gender of the committed person.

(5) The jurisdiction of the court over a person civilly committed pursuant to this chapter continues until such time as the person is unconditionally discharged.

(6) During any period of confinement pursuant to a criminal conviction, or for any period of detention awaiting trial on criminal charges, this section is suspended.

NEW SECTION. Sec. 8. A new section is added to chapter 71.09 RCW to read as follows:

The following activities, unless provided as part of investigation and preparation for any hearing or trial under this chapter, are beyond the scope of representation of an attorney under contract with the office of public defense pursuant to chapter 2.70 RCW for the purposes of providing indigent defense services in sexually violent predator civil commitment proceedings:

(1) Investigation or legal representation challenging the conditions of confinement at the special commitment center or any secure community transition facility;

(2) Investigation or legal representation for making requests under the public records act, chapter 42.56 RCW;

(3) Legal representation or advice regarding filing a grievance with the department as part of its grievance policy or procedure;

(4) Such other activities as may be excluded by policy or contract with the office of public defense.

NEW SECTION. Sec. 9. A new section is added to chapter 71.09 RCW to read as follows:

(1) The office of public defense is responsible for the cost of one expert or professional person conducting an evaluation on an indigent person's behalf as provided in RCW 71.09.050, 71.09.070, or 71.09.090.

(2) Expert evaluations are capped at ten thousand dollars, to include all professional fees, travel, per diem, and other costs. Partial evaluations are capped at five thousand five hundred dollars and expert services apart from an evaluation, exclusive of testimony at trial or depositions, are capped at six thousand dollars.

(3) The office of public defense will pay for the costs related to the evaluation of an indigent person by an additional examiner or in excess of the stated fee caps only upon a finding by the superior court that such appointment or extraordinary fees are for good cause.

Sec. 10. RCW 71.09.110 and 2010 1st sp.s. c 28 s 3 are each amended to read as follows:

The department of social and health services shall be responsible for ~~((all))~~ the costs relating to the ~~((evaluation and))~~ treatment of persons committed to their custody whether in a secure facility or under a less restrictive alternative ~~((under any provision of))~~ as provided in this chapter. ~~((The secretary shall adopt rules to contain costs relating to reimbursement for evaluation services.))~~ Reimbursement may be obtained by the department for the cost of care and treatment of persons committed to its custody whether in a secure facility or under a less restrictive alternative pursuant to RCW 43.20B.330 through 43.20B.370.

Sec. 11. RCW 71.09.120 and 1990 c 3 s 1012 are each amended to read as follows:

(1) In addition to any other information required to be released under this chapter, the department is authorized, pursuant to RCW 4.24.550, to release relevant information that is necessary to protect the public, concerning a specific sexually violent predator committed under this chapter.

(2) The department and the courts are authorized to release to the office of public defense records needed to implement the office's administration of public defense in these cases, including research, reports, and other functions as required by RCW 2.70.020 and section 2 of this act. The office of public defense shall maintain the confidentiality of all confidential information included in the records.

(3) The inspection or copying of any nonexempt public record by persons residing in a civil commitment facility for sexually violent predators may be enjoined following procedures identified in RCW 42.56.565. The injunction may be requested by:

(a) An agency or its representative;

(b) A person named in the record or his or her representative;

(c) A person to whom the request specifically pertains or his or her representative.

Sec. 12. RCW 71.09.140 and 1995 c 216 s 17 are each amended to read as follows:

(1) At the earliest possible date, and in no event later than thirty days before conditional release or unconditional discharge, except in the event of escape, the department of social and health services shall send written notice of conditional release, unconditional discharge, or escape, to the following:

(a) The chief of police of the city, if any, in which the person will reside or in which placement will be made under a less restrictive alternative;

(b) The sheriff of the county in which the person will reside or in which placement will be made under a less restrictive alternative; and

(c) The sheriff of the county where the person was last convicted of a sexually violent offense, if the department does not know where the person will reside.

The department shall notify the state patrol of the release of all sexually violent predators and that information shall be placed in the Washington crime information center for dissemination to all law enforcement.

(2) The same notice as required by subsection (1) of this section shall be sent to the following if such notice has been requested in writing about a specific person found to be a sexually violent predator under this chapter:

(a) The victim or victims of any sexually violent offenses for which the person was convicted in the past or the victim's next of kin if the crime was a homicide. "Next of kin" as used in this section means a person's spouse, parents, siblings, and children;

(b) Any witnesses who testified against the person in his or her commitment trial under RCW 71.09.060; and

(c) Any person specified in writing by the prosecuting ~~((attorney))~~ agency.

Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting ~~((attorney))~~ agency to receive the notice, and the notice are confidential and shall not be available to the committed person.

(3) If a person committed as a sexually violent predator under this chapter escapes from a department of social and health services facility, the department shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the committed person resided immediately before his or her commitment as a sexually violent predator, or immediately before his or her incarceration for his or her most recent offense. If previously requested, the department shall also notify the witnesses and the victims of the sexually violent

offenses for which the person was convicted in the past or the victim's next of kin if the crime was a homicide. If the person is recaptured, the department shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

(4) If the victim or victims of any sexually violent offenses for which the person was convicted in the past or the victim's next of kin, or any witness is under the age of sixteen, the notice required by this section shall be sent to the parents or legal guardian of the child.

(5) The department of social and health services shall send the notices required by this chapter to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(6) Nothing in this section shall impose any liability upon a chief of police of a city or sheriff of a county for failing to request in writing a notice as provided in subsection (1) of this section.

NEW SECTION. Sec. 13. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2012, in the omnibus appropriations act, this act is null and void.

NEW SECTION. Sec. 14. This act takes effect July 1, 2012."

Correct the title.

Signed by Representatives Hunter, Chair; Darneille, Vice Chair; Hasegawa, Vice Chair; Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Carlyle; Chandler; Cody; Dickerson; Haigh; Haler; Hudgins; Hunt; Kagi; Kenney; Ormsby; Parker; Pettigrew; Ross; Schmick; Seaquist; Springer; Sullivan and Wilcox.

Passed to Committee on Rules for second reading.

March 3, 2012

SSB 6494

Prime Sponsor, Committee on Human Services & Corrections: Improving truancy procedures by changing the applicability of mandatory truancy petition filing provisions to children under seventeen years of age, requiring initial petitions to contain information about the child's academic status, prohibiting issuance of a bench warrant at an initial truancy status hearing, and modifying school district reporting requirements after the court assumes jurisdiction in a truancy case. Reported by Committee on Ways & Means

MAJORITY recommendation: Do pass as amended by Committee on Judiciary. Signed by Representatives Hunter, Chair; Darneille, Vice Chair; Hasegawa, Vice Chair; Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Carlyle; Chandler; Cody; Dickerson; Haigh; Haler; Hudgins; Hunt; Kagi; Kenney; Ormsby; Parker; Pettigrew; Ross; Schmick; Seaquist; Springer and Wilcox.

Passed to Committee on Rules for second reading.

There being no objection, the bills listed on the day's committee reports under the fifth order of business were referred to the committees so designated with the exception of HOUSE BILL NO. 2799 which was placed on the second reading calendar.

SECOND READING

ENGROSSED SUBSTITUTE SENATE BILL NO. 6150, by Senate Committee on Transportation (originally sponsored by Senators Haugen, King, Eide, Hobbs, Shin and Chase)

Authorizing the implementation of a facial recognition matching system for drivers' licenses, permits, and identicards. Revised for 1st Substitute: Concerning the administration of a facial recognition matching system and related processes applicable to drivers' licenses, permits, and identicards. (REVISED FOR ENGROSSED: Addressing the driver's license, permit, and identicard system, including the administration of a facial recognition matching system.)

The bill was read the second time.

Representative Clibborn moved the adoption of amendment (1286).

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 46.20.037 and 2006 c 292 s 1 are each amended to read as follows:

(1) ((No later than two years after full implementation of the provisions of Title II of P.L. 109-13, improved security for driver's licenses and personal identification cards (Real ID), as passed by Congress May 10, 2005,)) The department ((shall)) may implement a ((voluntary biometric)) facial recognition matching system for ((driver's)) drivers' licenses, permits, and identicards. ((A biometric)) Any facial recognition matching system ((shall)) selected by the department must be used only to verify the identity of an applicant for or holder of a ((renewal or duplicate)) driver's license, permit, or identicard ((by matching a biometric identifier submitted by the applicant against the biometric identifier submitted when the license was last issued. This project requires a full review by the information services board using the criteria for projects of the highest visibility and risk)) to determine whether the person has been issued a driver's license, permit, or identicard under a different name or names.

(2) Any ((biometric)) facial recognition matching system selected by the department ((shall)) must be capable of highly accurate matching, and ((shall)) must be compliant with ((biometric)) appropriate standards established by the American association of motor vehicle administrators that exist on the effective date of this section, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section.

(3) ((The biometric matching system selected by the department must incorporate a process that allows the owner of a driver's license or identicard to present a personal identification number or other code along with the driver's license or identicard before the information may be verified by a third party, including a governmental entity.

(4) Upon the establishment of a biometric driver's license and identicard system as described in this section, the department shall allow every person applying for an original, renewal, or duplicate driver's license or identicard to voluntarily submit a biometric identifier. Each applicant shall be informed of all ways in which the biometric identifier may be used, all parties to whom the identifier may be disclosed and the conditions of disclosure, the expected error rates for the biometric matching system which shall be regularly updated as the technology changes or empirical data is collected, and the potential consequences of those errors. The department shall adopt rules to allow applicants to verify the accuracy of the system at the time that biometric information is submitted, including the use of at least two separate devices.

(5) The department may not disclose biometric information to the public or any governmental entity except when authorized by court order.

(6)) The department shall post notices in conspicuous locations

at all department driver licensing offices, make written information available to all applicants at department driver licensing offices, and provide information on the department's web site regarding the facial recognition matching system. The notices, written information, and information on the web site must address how the facial recognition matching system works, all ways in which the department may use results from the facial recognition matching system, how an investigation based on results from the facial recognition matching system would be conducted, and a person's right to appeal any determinations made under this chapter.

(4) Results from the facial recognition matching system:
(a) Are not available for public inspection and copying under chapter 42.56 RCW;

(b) May only be disclosed pursuant to a valid subpoena, warrant, or court order;

(c) May only be disclosed to a federal government agency if specifically required under federal law; and

(d) May be disclosed by the department to a government agency, including a court or law enforcement agency, for use in carrying out its functions if the department has determined that person has committed one of the prohibited practices listed in RCW 46.20.0921 and this determination has been confirmed by a hearings examiner under this chapter or the person declined a hearing or did not attend a scheduled hearing.

(5) All ((biometric)) personally identifying information ((shall)) derived from the facial recognition matching system must be stored with appropriate security safeguards((, including but not limited to encryption)). The office of the chief information officer shall develop the appropriate security standards for the department's use of the facial recognition matching system, subject to approval and oversight by the technology services board.

((7)) (6) The department shall develop procedures to handle instances in which the ((biometric)) facial recognition matching system fails to verify the identity of an applicant for a renewal or duplicate driver's license, permit, or identicard. These procedures ((shall)) must allow an applicant to prove identity without using ((a biometric identifier.

(8) Any person who has voluntarily submitted a biometric identifier may choose to discontinue participation in the biometric matching program at any time, provided that the department utilizes a secure procedure to prevent fraudulent requests for a renewal or duplicate driver's license or identicard. When the person discontinues participation, any previously collected biometric information shall be destroyed.

(9) This section does not apply when an applicant renews his or her driver's license or identicard by mail or electronic commerce)) the facial recognition matching system.

(7) The department shall report to the governor and the legislature by October 1st of each year, beginning October 1, 2012, on the following numbers during the previous fiscal year: The number of investigations initiated by the department based on results from the facial recognition matching system; the number of determinations made that a person has committed one of the prohibited practices in RCW 46.20.0921 after the completion of an investigation; the number of determinations that were confirmed by a hearings examiner and the number that were overturned by a hearings examiner; the number of cases where a person declined a hearing or did not attend a scheduled hearing; and the number of determinations that were referred to law enforcement.

NEW SECTION. Sec. 2. A new section is added to chapter 46.04 RCW to read as follows:

"Facial recognition matching system" means a system that compares the biometric template derived from an image of an applicant or holder of a driver's license, permit, or identicard with the biometric templates derived from the images in the department's negative file.

NEW SECTION. Sec. 3. RCW 46.20.038 (Biometric matching system-- Funding) and 2004 c 273 s 4 are each repealed.

Sec. 4. RCW 46.20.055 and 2010 c 223 s 1 are each amended to read as follows:

(1) **Driver's instruction permit.** The department may issue a driver's instruction permit with or without a photograph to an applicant who has successfully passed all parts of the examination other than the driving test, provided the information required by RCW 46.20.091, paid ((a)) an application fee of twenty-five dollars, and meets the following requirements:

(a) Is at least fifteen and one-half years of age; or

(b) Is at least fifteen years of age and:

(i) Has submitted a proper application; and

(ii) Is enrolled in a traffic safety education program offered, approved, and accredited by the superintendent of public instruction or offered by a driver training school licensed and inspected by the department of licensing under chapter 46.82 RCW, that includes practice driving.

(2) **Waiver of written examination for instruction permit.** The department may waive the written examination, if, at the time of application, an applicant is enrolled in:

(a) A traffic safety education course as defined by RCW 28A.220.020(2); or

(b) A course of instruction offered by a licensed driver training school as defined by RCW 46.82.280.

The department may require proof of registration in such a course as it deems necessary.

(3) **Effect of instruction permit.** A person holding a driver's instruction permit may drive a motor vehicle, other than a motorcycle, upon the public highways if:

(a) The person has immediate possession of the permit;

(b) The person is not using a wireless communications device, unless the person is using the device to report illegal activity, summon medical or other emergency help, or prevent injury to a person or property; and

(c) An approved instructor, or a licensed driver with at least five years of driving experience, occupies the seat beside the driver.

(4) **Term of instruction permit.** A driver's instruction permit is valid for one year from the date of issue.

(a) The department may issue one additional one-year permit.

(b) The department may issue a third driver's permit if it finds after an investigation that the permittee is diligently seeking to improve driving proficiency.

(c) A person applying ((to renew)) for an additional instruction permit must submit the application to the department in person and pay an application fee of twenty-five dollars for each issuance.

Sec. 5. RCW 46.20.117 and 2005 c 314 s 305 are each amended to read as follows:

(1) **Issuance.** The department shall issue an identicard, containing a picture, if the applicant:

(a) Does not hold a valid Washington driver's license;

(b) Proves his or her identity as required by RCW 46.20.035; and

(c) Pays the required fee. Except as provided in subsection (5) of this section, the fee is ((twenty)) forty-five dollars from October 1, 2012, to June 30, 2013, and fifty-four dollars after June 30, 2013, unless an applicant is a recipient of continuing public assistance grants under Title 74 RCW, who is referred in writing by the secretary of social and health services. For those persons the fee must be the actual cost of production of the identicard.

(2) **Design and term.** The identicard must:

(a) Be distinctly designed so that it will not be confused with the official driver's license; and

(b) Except as provided in subsection (5) of this section, expire on the ((fifth)) sixth anniversary of the applicant's birthdate after issuance.

(3) **Renewal.** An application for identicard renewal may be submitted by means of:

(a) Personal appearance before the department; or

(b) Mail or electronic commerce, if permitted by rule of the department and if the applicant did not renew his or her identicard by mail or by electronic commerce when it last expired. ~~((However, the department may accept an application for renewal of an identicard submitted by means of mail or electronic commerce only if specific authority and funding is provided for this purpose by June 30, 2004, in the omnibus transportation appropriations act.))~~

An identicard may not be renewed by mail or by electronic commerce unless the renewal issued by the department includes a photograph of the identicard holder.

(4) **Cancellation.** The department may cancel an identicard if the holder of the identicard used the card or allowed others to use the card in violation of RCW 46.20.0921.

(5) **Alternative issuance/renewal/extension.** The department may issue or renew an identicard for a period other than five years from October 1, 2012, to June 30, 2013, or six years after June 30, 2013, or may extend by mail or electronic commerce an identicard that has already been issued, in order to evenly distribute, as nearly as possible, the yearly renewal rate of identicard holders. The fee for an identicard issued or renewed for a period other than five years from October 1, 2012, to June 30, 2013, or six years after June 30, 2013, or that has been extended by mail or electronic commerce, is nine dollars for each year that the identicard is issued, renewed, or extended. The department may adopt any rules as are necessary to carry out this subsection.

Sec. 6. RCW 46.20.120 and 2011 c 370 s 4 are each amended to read as follows:

An applicant for a new or renewed driver's license must successfully pass a driver licensing examination to qualify for a driver's license. The department must ensure that examinations are given at places and times reasonably available to the people of this state. If the department does not administer driver licensing examinations as a routine part of its licensing services within a department region because adequate testing sites are provided by driver training schools or school districts within that region, the department shall, at a minimum, administer driver licensing examinations by appointment to applicants eighteen years of age and older in at least one licensing office within that region.

(1) **Waiver.** The department may waive:

(a) All or any part of the examination of any person applying for the renewal of a driver's license unless the department determines that the applicant is not qualified to hold a driver's license under this title; or

(b) All or any part of the examination involving operating a motor vehicle if the applicant:

(i) Surrenders a valid driver's license issued by the person's previous home state; or

(ii) Provides for verification a valid driver's license issued by a foreign driver licensing jurisdiction with which the department has an informal agreement under RCW 46.20.125; and

(iii) Is otherwise qualified to be licensed.

(2) **Fee.** Each applicant for a new license must pay an examination fee of ~~((twenty))~~ thirty-five dollars.

(a) The examination fee is in addition to the fee charged for issuance of the license.

(b) "New license" means a license issued to a driver:

(i) Who has not been previously licensed in this state; or

(ii) Whose last previous Washington license has been expired for more than ~~((five))~~ six years.

(3) An application for driver's license renewal may be submitted by means of:

(a) Personal appearance before the department; or

(b) Mail or electronic commerce, if permitted by rule of the department and if the applicant did not renew his or her license by mail or by electronic commerce when it last expired.

(4) A person whose license expired or will expire while he or she is living outside the state, may:

(a) Apply to the department to extend the validity of his or her license for no more than twelve months. If the person establishes to the department's satisfaction that he or she is unable to return to Washington before the date his or her license expires, the department shall extend the person's license. The department may grant consecutive extensions, but in no event may the cumulative total of extensions exceed twelve months. An extension granted under this section does not change the expiration date of the license for purposes of RCW 46.20.181. The department shall charge a fee of five dollars for each license extension;

(b) Apply to the department to renew his or her license by mail or, if permitted by rule of the department, by electronic commerce even if subsection (3)(b) of this section would not otherwise allow renewal by that means. If the person establishes to the department's satisfaction that he or she is unable to return to Washington within twelve months of the date that his or her license expires, the department shall renew the person's license by mail or, if permitted by rule of the department, by electronic commerce.

(5) If a qualified person submits an application for renewal under subsection (3)(b) or (4)(b) of this section, he or she is not required to pass an examination nor provide an updated photograph. A license renewed by mail or by electronic commerce that does not include a photograph of the licensee must be labeled "not valid for identification purposes."

(6) Driver training schools licensed by the department under chapter 46.82 RCW may administer the portions of the driver licensing examination that test the applicant's knowledge of traffic laws and ability to safely operate a motor vehicle.

(7) School districts that offer a traffic safety education program under chapter 28A.220 RCW may administer the portions of the driver licensing examination that test the applicant's knowledge of traffic laws and ability to safely operate a motor vehicle.

Sec. 7. RCW 46.20.161 and 2000 c 115 s 6 are each amended to read as follows:

The department, upon receipt of a fee of ~~((twenty-five))~~ forty-five dollars ~~from October 1, 2012, to June 30, 2013, and fifty-four dollars after June 30, 2013,~~ unless the driver's license is issued for a period other than five years ~~from October 1, 2012, to June 30, 2013, or six years after June 30, 2013,~~ in which case the fee shall be ~~((five))~~ nine dollars for each year that the license is issued, which includes the fee for the required photograph, shall issue to every qualifying applicant a driver's license. A driver's license issued to a person under the age of eighteen is an intermediate license, subject to the restrictions imposed under RCW 46.20.075, until the person reaches the age of eighteen. The license must include a distinguishing number assigned to the licensee, the name of record, date of birth, Washington residence address, photograph, a brief description of the licensee, and either a facsimile of the signature of the licensee or a space upon which the licensee shall write his or her usual signature with pen and ink immediately upon receipt of the license. No license is valid until it has been so signed by the licensee.

Sec. 8. RCW 46.20.181 and 1999 c 308 s 3 are each amended to read as follows:

(1) Except as provided in subsection (4) or (5) of this section or RCW 46.20.105, every driver's license expires on the ~~((fifth))~~ sixth anniversary of the licensee's birthdate following the issuance of the license.

(2) A person may renew his or her license on or before the expiration date by submitting an application as prescribed by the department and paying a fee of ~~((twenty-five))~~ forty-five dollars ~~from~~

October 1, 2012, to June 30, 2013, and fifty-four dollars after June 30, 2013. This fee includes the fee for the required photograph.

(3) A person renewing his or her driver's license more than sixty days after the license has expired shall pay a penalty fee of ten dollars in addition to the renewal fee, unless his or her license expired when:

(a) The person was outside the state and he or she renews the license within sixty days after returning to this state; or

(b) The person was incapacitated and he or she renews the license within sixty days after the termination of the incapacity.

(4) (~~During the period from July 1, 2000, to July 1, 2006,~~) The department may issue or renew a driver's license for a period other than five years from October 1, 2012, to June 30, 2013, or six years after June 30, 2013, or may extend by mail or electronic commerce a license that has already been issued, in order to evenly distribute, as nearly as possible, the yearly renewal rate of licensed drivers. The fee for a driver's license issued or renewed for a period other than five years from October 1, 2012, to June 30, 2013, or six years after June 30, 2013, or that has been extended by mail or electronic commerce, is (~~five~~) nine dollars for each year that the license is issued, renewed, or extended. The department may adopt any rules as are necessary to carry out this subsection.

(5) A driver's license that includes a hazardous materials endorsement under chapter 46.25 RCW may expire on an anniversary of the licensee's birthdate other than the sixth year following issuance or renewal of the license in order to match, as nearly as possible, the validity of certification from the federal transportation security administration that the licensee has been determined not to pose a security risk. The fee for a driver's license issued or renewed for a period other than five years from October 1, 2012, to June 30, 2013, or six years after June 30, 2013, is nine dollars for each year that the license is issued or renewed, not including any endorsement fees. The department may adjust the expiration date of a driver's license that has previously been issued to conform to the provisions of this subsection if a hazardous materials endorsement is added to the license subsequent to its issuance. If the validity of the driver's license is extended, the licensee must pay a fee of nine dollars for each year that the license is extended.

(6) The department may adopt any rules as are necessary to carry out this section.

Sec. 9. RCW 46.20.200 and 2002 c 352 s 14 are each amended to read as follows:

(1) If an instruction permit, identicaid, or a driver's license is lost or destroyed, the person to whom it was issued may obtain a duplicate of it upon furnishing proof of such fact satisfactory to the department and payment of a fee of (~~fifteen~~) twenty dollars to the department.

(2) A replacement permit, identicaid, or driver's license may be obtained to change or correct material information upon payment of a fee of ten dollars and surrender of the permit, identicaid, or driver's license being replaced.

Sec. 10. RCW 46.20.049 and 2011 c 227 s 6 are each amended to read as follows:

There shall be an additional fee for issuing any class of commercial driver's license in addition to the prescribed fee required for the issuance of the original driver's license. The additional fee for each class shall be (~~sixty-one~~) eighty-five dollars from October 1, 2012, to June 30, 2013, and one hundred two dollars after June 30, 2013, for the original commercial driver's license or subsequent renewals. If the commercial driver's license is issued, renewed, or extended for a period other than five years from October 1, 2012, to June 30, 2013, or six years after June 30, 2013, the fee for each class shall be (~~twelve~~) seventeen dollars (~~and twenty cents~~) for each year that the commercial driver's license is issued, renewed, or extended. The fee shall be deposited in the highway safety fund.

Sec. 11. RCW 46.20.308 and 2008 c 282 s 2 are each amended to read as follows:

(1) Any person who operates a motor vehicle within this state is deemed to have given consent, subject to the provisions of RCW 46.61.506, to a test or tests of his or her breath or blood for the purpose of determining the alcohol concentration or presence of any drug in his or her breath or blood if arrested for any offense where, at the time of the arrest, the arresting officer has reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug or was in violation of RCW 46.61.503. Neither consent nor this section precludes a police officer from obtaining a search warrant for a person's breath or blood.

(2) The test or tests of breath shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or any drug or the person to have been driving or in actual physical control of a motor vehicle while having alcohol in a concentration in violation of RCW 46.61.503 in his or her system and being under the age of twenty-one. However, in those instances where the person is incapable due to physical injury, physical incapacity, or other physical limitation, of providing a breath sample or where the person is being treated in a hospital, clinic, doctor's office, emergency medical vehicle, ambulance, or other similar facility or where the officer has reasonable grounds to believe that the person is under the influence of a drug, a blood test shall be administered by a qualified person as provided in RCW 46.61.506(5). The officer shall inform the person of his or her right to refuse the breath or blood test, and of his or her right to have additional tests administered by any qualified person of his or her choosing as provided in RCW 46.61.506. The officer shall warn the driver, in substantially the following language, that:

(a) If the driver refuses to take the test, the driver's license, permit, or privilege to drive will be revoked or denied for at least one year; and

(b) If the driver refuses to take the test, the driver's refusal to take the test may be used in a criminal trial; and

(c) If the driver submits to the test and the test is administered, the driver's license, permit, or privilege to drive will be suspended, revoked, or denied for at least ninety days if the driver is age twenty-one or over and the test indicates the alcohol concentration of the driver's breath or blood is 0.08 or more, or if the driver is under age twenty-one and the test indicates the alcohol concentration of the driver's breath or blood is 0.02 or more, or if the driver is under age twenty-one and the driver is in violation of RCW 46.61.502 or 46.61.504; and

(d) If the driver's license, permit, or privilege to drive is suspended, revoked, or denied the driver may be eligible to immediately apply for an ignition interlock driver's license.

(3) Except as provided in this section, the test administered shall be of the breath only. If an individual is unconscious or is under arrest for the crime of vehicular homicide as provided in RCW 46.61.520 or vehicular assault as provided in RCW 46.61.522, or if an individual is under arrest for the crime of driving while under the influence of intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest results from an accident in which there has been serious bodily injury to another person, a breath or blood test may be administered without the consent of the individual so arrested.

(4) Any person who is dead, unconscious, or who is otherwise in a condition rendering him or her incapable of refusal, shall be deemed not to have withdrawn the consent provided by subsection (1) of this section and the test or tests may be administered, subject to the provisions of RCW 46.61.506, and the person shall be deemed to have received the warnings required under subsection (2) of this section.

(5) If, following his or her arrest and receipt of warnings under subsection (2) of this section, the person arrested refuses upon the

request of a law enforcement officer to submit to a test or tests of his or her breath or blood, no test shall be given except as authorized under subsection (3) or (4) of this section.

(6) If, after arrest and after the other applicable conditions and requirements of this section have been satisfied, a test or tests of the person's blood or breath is administered and the test results indicate that the alcohol concentration of the person's breath or blood is 0.08 or more if the person is age twenty-one or over, or 0.02 or more if the person is under the age of twenty-one, or the person refuses to submit to a test, the arresting officer or other law enforcement officer at whose direction any test has been given, or the department, where applicable, if the arrest results in a test of the person's blood, shall:

(a) Serve notice in writing on the person on behalf of the department of its intention to suspend, revoke, or deny the person's license, permit, or privilege to drive as required by subsection (7) of this section;

(b) Serve notice in writing on the person on behalf of the department of his or her right to a hearing, specifying the steps he or she must take to obtain a hearing as provided by subsection (8) of this section and that the person waives the right to a hearing if he or she receives an ignition interlock driver's license;

(c) Mark the person's Washington state driver's license or permit to drive, if any, in a manner authorized by the department;

(d) Serve notice in writing that the marked license or permit, if any, is a temporary license that is valid for sixty days from the date of arrest or from the date notice has been given in the event notice is given by the department following a blood test, or until the suspension, revocation, or denial of the person's license, permit, or privilege to drive is sustained at a hearing pursuant to subsection (8) of this section, whichever occurs first. No temporary license is valid to any greater degree than the license or permit that it replaces; and

(e) Immediately notify the department of the arrest and transmit to the department within seventy-two hours, except as delayed as the result of a blood test, a sworn report or report under a declaration authorized by RCW 9A.72.085 that states:

(i) That the officer had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or drugs, or both, or was under the age of twenty-one years and had been driving or was in actual physical control of a motor vehicle while having an alcohol concentration in violation of RCW 46.61.503;

(ii) That after receipt of the warnings required by subsection (2) of this section the person refused to submit to a test of his or her blood or breath, or a test was administered and the results indicated that the alcohol concentration of the person's breath or blood was 0.08 or more if the person is age twenty-one or over, or was 0.02 or more if the person is under the age of twenty-one; and

(iii) Any other information that the director may require by rule.

(7) The department of licensing, upon the receipt of a sworn report or report under a declaration authorized by RCW 9A.72.085 under subsection (6)(e) of this section, shall suspend, revoke, or deny the person's license, permit, or privilege to drive or any nonresident operating privilege, as provided in RCW 46.20.3101, such suspension, revocation, or denial to be effective beginning sixty days from the date of arrest or from the date notice has been given in the event notice is given by the department following a blood test, or when sustained at a hearing pursuant to subsection (8) of this section, whichever occurs first.

(8) A person receiving notification under subsection (6)(b) of this section may, within twenty days after the notice has been given, request in writing a formal hearing before the department. The person shall pay a fee of ~~((two))~~ three hundred seventy-five dollars as part of the request. If the request is mailed, it must be postmarked within twenty days after receipt of the notification. Upon timely receipt of such a request for a formal hearing, including receipt of the required

~~((two))~~ three hundred seventy-five dollar fee, the department shall afford the person an opportunity for a hearing. The department may waive the required ~~((two))~~ three hundred seventy-five dollar fee if the person is an indigent as defined in RCW 10.101.010. Except as otherwise provided in this section, the hearing is subject to and shall be scheduled and conducted in accordance with RCW 46.20.329 and 46.20.332. The hearing shall be conducted in the county of the arrest, except that all or part of the hearing may, at the discretion of the department, be conducted by telephone or other electronic means. The hearing shall be held within sixty days following the arrest or following the date notice has been given in the event notice is given by the department following a blood test, unless otherwise agreed to by the department and the person, in which case the action by the department shall be stayed, and any valid temporary license marked under subsection (6)(c) of this section extended, if the person is otherwise eligible for licensing. For the purposes of this section, the scope of the hearing shall cover the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or any drug or had been driving or was in actual physical control of a motor vehicle within this state while having alcohol in his or her system in a concentration of 0.02 or more if the person was under the age of twenty-one, whether the person was placed under arrest, and (a) whether the person refused to submit to the test or tests upon request of the officer after having been informed that such refusal would result in the revocation of the person's license, permit, or privilege to drive, or (b) if a test or tests were administered, whether the applicable requirements of this section were satisfied before the administration of the test or tests, whether the person submitted to the test or tests, or whether a test was administered without express consent as permitted under this section, and whether the test or tests indicated that the alcohol concentration of the person's breath or blood was 0.08 or more if the person was age twenty-one or over at the time of the arrest, or 0.02 or more if the person was under the age of twenty-one at the time of the arrest. The sworn report or report under a declaration authorized by RCW 9A.72.085 submitted by a law enforcement officer is prima facie evidence that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or drugs, or both, or the person had been driving or was in actual physical control of a motor vehicle within this state while having alcohol in his or her system in a concentration of 0.02 or more and was under the age of twenty-one and that the officer complied with the requirements of this section.

A hearing officer shall conduct the hearing, may issue subpoenas for the attendance of witnesses and the production of documents, and shall administer oaths to witnesses. The hearing officer shall not issue a subpoena for the attendance of a witness at the request of the person unless the request is accompanied by the fee required by RCW 5.56.010 for a witness in district court. The sworn report or report under a declaration authorized by RCW 9A.72.085 of the law enforcement officer and any other evidence accompanying the report shall be admissible without further evidentiary foundation and the certifications authorized by the criminal rules for courts of limited jurisdiction shall be admissible without further evidentiary foundation. The person may be represented by counsel, may question witnesses, may present evidence, and may testify. The department shall order that the suspension, revocation, or denial either be rescinded or sustained.

(9) If the suspension, revocation, or denial is sustained after such a hearing, the person whose license, privilege, or permit is suspended, revoked, or denied has the right to file a petition in the superior court of the county of arrest to review the final order of revocation by the department in the same manner as an appeal from a decision of a court of limited jurisdiction. Notice of appeal must be filed within

thirty days after the date the final order is served or the right to appeal is waived. Notwithstanding RCW 46.20.334, RALJ 1.1, or other statutes or rules referencing de novo review, the appeal shall be limited to a review of the record of the administrative hearing. The appellant must pay the costs associated with obtaining the record of the hearing before the hearing officer. The filing of the appeal does not stay the effective date of the suspension, revocation, or denial. A petition filed under this subsection must include the petitioner's grounds for requesting review. Upon granting petitioner's request for review, the court shall review the department's final order of suspension, revocation, or denial as expeditiously as possible. The review must be limited to a determination of whether the department has committed any errors of law. The superior court shall accept those factual determinations supported by substantial evidence in the record: (a) That were expressly made by the department; or (b) that may reasonably be inferred from the final order of the department. The superior court may reverse, affirm, or modify the decision of the department or remand the case back to the department for further proceedings. The decision of the superior court must be in writing and filed in the clerk's office with the other papers in the case. The court shall state the reasons for the decision. If judicial relief is sought for a stay or other temporary remedy from the department's action, the court shall not grant such relief unless the court finds that the appellant is likely to prevail in the appeal and that without a stay the appellant will suffer irreparable injury. If the court stays the suspension, revocation, or denial it may impose conditions on such stay.

(10)(a) If a person whose driver's license, permit, or privilege to drive has been or will be suspended, revoked, or denied under subsection (7) of this section, other than as a result of a breath or blood test refusal, and who has not committed an offense for which he or she was granted a deferred prosecution under chapter 10.05 RCW, petitions a court for a deferred prosecution on criminal charges arising out of the arrest for which action has been or will be taken under subsection (7) of this section, or notifies the department of licensing of the intent to seek such a deferred prosecution, then the license suspension or revocation shall be stayed pending entry of the deferred prosecution. The stay shall not be longer than one hundred fifty days after the date charges are filed, or two years after the date of the arrest, whichever time period is shorter. If the court stays the suspension, revocation, or denial, it may impose conditions on such stay. If the person is otherwise eligible for licensing, the department shall issue a temporary license, or extend any valid temporary license marked under subsection (6) of this section, for the period of the stay. If a deferred prosecution treatment plan is not recommended in the report made under RCW 10.05.050, or if treatment is rejected by the court, or if the person declines to accept an offered treatment plan, or if the person violates any condition imposed by the court, then the court shall immediately direct the department to cancel the stay and any temporary marked license or extension of a temporary license issued under this subsection.

(b) A suspension, revocation, or denial imposed under this section, other than as a result of a breath or blood test refusal, shall be stayed if the person is accepted for deferred prosecution as provided in chapter 10.05 RCW for the incident upon which the suspension, revocation, or denial is based. If the deferred prosecution is terminated, the stay shall be lifted and the suspension, revocation, or denial reinstated. If the deferred prosecution is completed, the stay shall be lifted and the suspension, revocation, or denial canceled.

(c) The provisions of (b) of this subsection relating to a stay of a suspension, revocation, or denial and the cancellation of any suspension, revocation, or denial do not apply to the suspension, revocation, denial, or disqualification of a person's commercial driver's license or privilege to operate a commercial motor vehicle.

(11) When it has been finally determined under the procedures of this section that a nonresident's privilege to operate a motor vehicle in

this state has been suspended, revoked, or denied, the department shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which he or she has a license.

Sec. 12. RCW 46.20.505 and 2007 c 97 s 1 are each amended to read as follows:

Every person applying for a special endorsement of a driver's license authorizing such person to drive a two or three-wheeled motorcycle or a motor-driven cycle shall pay a fee of five dollars, which is not refundable. In addition, the endorsement fee for the initial motorcycle endorsement shall not exceed ~~((ten))~~ twelve dollars ~~((and))~~, unless the endorsement is issued for a period other than six years, in which case the endorsement fee shall not exceed two dollars for each year the initial motorcycle endorsement is issued. The subsequent renewal endorsement fee shall not exceed ~~((twenty-five))~~ thirty dollars, unless the endorsement is renewed or extended for a period other than ~~((five))~~ six years, in which case the subsequent renewal endorsement fee shall not exceed five dollars for each year that the endorsement is renewed or extended. Fees collected under this section shall be deposited in the motorcycle safety education account of the highway safety fund.

Sec. 13. RCW 46.20.105 and 2000 c 115 s 5 are each amended to read as follows:

(1)(a) The department may provide a method to distinguish the driver's license of a person who is under the age of twenty-one from the driver's license of a person who is twenty-one years of age or older.

(b) If the department provides a method to distinguish under (a) of this subsection, any driver's license issued to a person who is under the age of twenty-one expires on the person's twenty-first birthdate.

(2) An instruction permit must be identified as an "instruction permit" and issued in a distinctive form as determined by the department.

(3) An intermediate license must be identified as an "intermediate license" and issued in a distinctive form as determined by the department.

NEW SECTION. Sec. 14. A new section is added to chapter 46.68 RCW to read as follows:

(1) The following amounts in aggregate may only be used for the purposes listed in subsection (2) of this section:

(a) Five dollars per year of validity of each fee collected by the department for an identicard under RCW 46.20.117;

(b) Four dollars per year of validity of each fee collected by the department for a driver's license under RCW 46.20.161;

(c) Four dollars and eighty cents per year of validity of each fee collected by the department for a commercial driver's license under RCW 46.20.049;

(d) Five dollars of each fee collected by the department under RCW 46.20.055;

(e) Fifteen dollars of each fee collected by the department under RCW 46.20.120(2);

(f) Five dollars of each fee collected by the department under RCW 46.20.200; and

(g) One hundred seventy-five dollars of each fee collected by the department under RCW 46.20.308.

(2) The fees in subsection (1) of this section may only be used for the following purposes at the following percentages:

(a) Fourteen and one-half percent for highway maintenance;

(b) Fourteen and one-half percent for highway preservation;

(c) Fourteen and one-half percent for street construction and maintenance grants to cities and urban counties;

(d) Fourteen and one-half percent to provide grants for county road improvements;

(e) Twenty-nine percent for state ferry operations;

(f) Three and seven-tenths percent for freight mobility projects; and

(g) Nine and three-tenths percent for grants to improve safety and mobility for children by enabling and encouraging them to walk and bicycle to school.

NEW SECTION. Sec. 15. Sections 4 through 14 of this act take effect October 1, 2012."

Correct the title.

Representative Shea moved the adoption of amendment (1244) to the striking amendment.

On page 9, line 1 of the amendment, after "year" insert "or partial year"

On page 20, line 12 of the amendment, after "through" insert "12 and"

On page 20, after line 13 of the amendment, insert the following: "**NEW SECTION. Sec. 16.** Section 13 of this act takes effect July 1, 2013."

Correct the title.

Representatives Shea and Clibborn spoke in favor of the adoption of the amendment to the striking amendment.

Amendment (1244) was adopted.

Representative Clibborn and Armstrong spoke in favor of the adoption of the striking amendment as amended.

Amendment (1286) was adopted as amended.

There being no objection, the rules were suspended, the second reading considered the third and the bill was placed on final passage.

Representatives Clibborn and Ryu spoke in favor of the passage of the bill.

Representatives Armstrong and Angel spoke against the passage of the bill.

The Speaker (Representative Moeller presiding) stated the question before the House to be the final passage of Engrossed Substitute Senate Bill No. 6150, as amended by the House.

ROLL CALL

The Clerk called the roll on the final passage of Engrossed Substitute Senate Bill No. 6150, as amended by the House, and the bill passed the House by the following vote: Yeas, 52; Nays, 44; Absent, 0; Excused, 2.

Voting yea: Representatives Anderson, Appleton, Billig, Blake, Carlyle, Clibborn, Cody, Dunshee, Eddy, Finn, Fitzgibbon, Goodman, Green, Haigh, Hansen, Hasegawa, Hudgins, Hunt, Hunter, Jinkins, Kagi, Kenney, Kirby, Ladenburg, Liias, Lytton, Maxwell, McCoy, Miloscia, Moeller, Morris, Moscoso, Ormsby, Orwall, Pedersen, Pettigrew, Pollet, Reykdal, Roberts, Ryu, Santos, Seaquist, Sells, Springer, Stanford, Sullivan, Takko, Tharinger, Upthegrove, Van De Wege, Wylie and Mr. Speaker.

Voting nay: Representatives Alexander, Angel, Armstrong, Asay, Bailey, Buys, Chandler, Condotta, Crouse, Dahlquist, Dammeier, Darneille, DeBolt, Dickerson, Fagan, Haler, Hargrove, Harris, Hinkle, Hope, Hurst, Johnson, Kelley, Kretz, Kristiansen, McCune, Nealey, Orcutt, Overstreet, Parker, Pearson, Probst, Rivers, Rodne, Ross, Schmick, Shea, Short, Smith, Taylor, Walsh, Warnick, Wilcox and Zeiger.

Excused: Representatives Ahern and Klippert.

ENGROSSED SUBSTITUTE SENATE BILL NO. 6150, as amended by the House, having received the necessary constitutional majority, was declared passed.

ENGROSSED SUBSTITUTE SENATE BILL NO. 6455, by Senate Committee on Transportation (originally sponsored by Senators Haugen and Shin)

Addressing transportation revenue. Revised for 1st Substitute: Concerning transportation revenue.

The bill was read the second time.

With the consent of the house, amendments (1283) and (1257) were withdrawn.

Representative Clibborn moved the adoption of amendment (1302).

Strike everything after the enacting clause and insert the following:

Sec. 1. RCW 46.17.100 and 2010 c 161 s 508 are each amended to read as follows:

Before accepting an application for a certificate of title as required in this title, the department, county auditor or other agent, or subagent appointed by the director shall require the applicant to pay a ~~((five))~~ fifteen dollar application fee in addition to any other fees and taxes required by law. The certificate of title application fee must be distributed under RCW 46.68.020.

Sec. 2. RCW 46.17.140 and 2010 c 161 s 512 are each amended to read as follows:

The penalty for a late transfer under RCW 46.12.650(7) is ~~((twenty-five))~~ fifty dollars assessed on the sixteenth day after the date of delivery and two dollars for each additional day thereafter, but the total penalty must not exceed one hundred twenty-five dollars. The penalty must be distributed under RCW 46.68.020.

Sec. 3. RCW 46.17.200 and 2011 c 171 s 56 are each amended to read as follows:

(1) In addition to all other fees and taxes required by law, the department, county auditor or other agent, or subagent appointed by the director shall charge:

(a) The following license plate fees for each license plate, unless the owner or type of vehicle is exempt from payment:

FEE TYPE	FEE	DISTRIBUTION
<u>Original issue</u>	<u>\$ 10.00</u>	<u>RCW 46.68.070</u>
Reflectivity	\$ 2.00	RCW 46.68.070
Replacement	\$ 10.00	RCW 46.68.070
<u>Original issue, motorcycle</u>	<u>\$ 4.00</u>	<u>RCW 46.68.070</u>
Replacement, motorcycle	((2.00)) <u>\$ 4.00</u>	RCW 46.68.070
Original issue, moped	\$ 1.50	RCW 46.68.070

(b) A license plate retention fee, as required under RCW 46.16A.200(10)~~((a)(iii))~~ (c), of twenty dollars if the owner wishes to retain the current license plate number upon license plate replacement, unless the owner or type of vehicle is exempt from

payment. The twenty dollar fee must be deposited in the multimodal transportation account created in RCW 47.66.070.

(c) A ten dollar license plate transfer fee, as required under RCW 46.16A.200(8)(a), when transferring standard issue license plates from one vehicle to another, unless the owner or type of vehicle is exempt from payment. The ten dollar license plate transfer fee must be deposited in the motor vehicle fund created in RCW 46.68.070.

(d) Former prisoner of war license plates, as described in RCW 46.18.235, may be transferred to a replacement vehicle upon payment of a five dollar license plate fee, in addition to any other fee required by law.

(2) The department may, upon request, provide license plates that have been used and returned to the department to individuals for nonvehicular use. The department may charge a fee of up to five dollars per license plate to cover costs or recovery for postage and handling. The department may waive the fee for license plates used in educational projects and may, by rule, provide standards for the fee waiver and restrictions on the number of license plates provided to any one person. The fee must be deposited in the motor vehicle fund created in RCW 46.68.070.

Sec. 4. RCW 46.17.375 and 2010 c 161 s 534 are each amended to read as follows:

(1) Before accepting an application for registration for a recreational vehicle, the department, county auditor or other agent, or subagent appointed by the director (~~(shall)~~ must require an applicant to pay a (~~(three)~~ thirteen dollar fee in addition to any other fees and taxes required by law. The state parks support and recreational vehicle sanitary disposal fee must be (~~(deposited in the RV account created)~~ distributed as provided in RCW 46.68.170.

(2) For the purposes of this section, "recreational vehicle" means a camper, motor home, or travel trailer.

Sec. 5. RCW 46.68.170 and 2011 c 367 s 715 are each amended to read as follows:

(~~(There is)~~) The director shall forward all proceeds from the state parks support and recreational vehicle sanitary disposal fee imposed under RCW 46.17.375 to the state treasurer to be distributed to the following accounts:

(1) Three dollars to the RV account hereby created in the motor vehicle fund the RV account. All moneys hereafter deposited in (~~(said)~~) the account (~~(shall)~~ must be used by the department of transportation for the construction, maintenance, and operation of recreational vehicle sanitary disposal systems at safety rest areas in accordance with the department's highway system plan as prescribed in chapter 47.06 RCW. During the 2009-2011 and 2011-2013 fiscal biennia, the legislature may transfer from the RV account to the motor vehicle fund such amounts as reflect the excess fund balance of the RV account to accomplish the purposes identified in this section; and

(2) Ten dollars to the state parks renewal and stewardship account established in RCW 79A.05.215.

Sec. 6. RCW 79A.05.215 and 2011 c 320 s 22 are each amended to read as follows:

The state parks renewal and stewardship account is created in the state treasury. Except as otherwise provided in this chapter, all receipts from user fees, concessions, leases, donations collected under RCW 46.16A.090(3), and other state park-based activities (~~(shall)~~ must be deposited into the account. In addition, ten dollars of the fee established in RCW 46.17.375 must be deposited into the account as provided in RCW 46.68.170(2) and may be used by the commission only for the operation and maintenance of state parks that provide access and overnight accommodations to recreational vehicles. The proceeds from the recreation access pass account created in RCW 79A.80.090 must be used for the purpose of operating and maintaining state parks. Except as provided otherwise in this section, expenditures from the account may be used for operating state parks, developing and renovating park facilities, undertaking deferred maintenance, enhancing park stewardship, and other state park

purposes. Expenditures from the account may be made only after appropriation by the legislature.

Sec. 7. RCW 46.20.293 and 2007 c 424 s 1 are each amended to read as follows:

The department is authorized to provide juvenile courts with the department's record of traffic charges compiled under RCW 46.52.101 and 13.50.200, against any minor upon the request of any state juvenile court or duly authorized officer of any juvenile court of this state. Further, the department is authorized to provide any juvenile court with any requested service which the department can reasonably perform which is not inconsistent with its legal authority which substantially aids juvenile courts in handling traffic cases and which promotes highway safety.

The department is authorized to furnish to the parent, parents, or guardian of any person under eighteen years of age who is not emancipated from such parent, parents, or guardian, the department records of traffic charges compiled against the person and shall collect for the copy a fee of (~~(ten)~~ thirteen dollars, fifty percent of which must be deposited in the highway safety fund and fifty percent of which must be deposited according to RCW 46.68.038.

Sec. 8. RCW 46.29.050 and 2010 c 8 s 9028 are each amended to read as follows:

(1) The department shall upon request furnish any person or his or her attorney a certified abstract of his or her driving record, which abstract shall include enumeration of any motor vehicle accidents in which such person has been involved. Such abstract shall (a) indicate the total number of vehicles involved, whether the vehicles were legally parked or moving, and whether the vehicles were occupied at the time of the accident; and (b) contain reference to any convictions of the person for violation of the motor vehicle laws as reported to the department, reference to any findings that the person has committed a traffic infraction which have been reported to the department, and a record of any vehicles registered in the name of the person. The department shall collect for each abstract the sum of (~~(ten)~~ thirteen dollars, fifty percent of which shall be deposited in the highway safety fund and fifty percent of which must be deposited according to RCW 46.68.038.

(2) The department shall upon request furnish any person who may have been injured in person or property by any motor vehicle, with an abstract of all information of record in the department pertaining to the evidence of the ability of any driver or owner of any motor vehicle to respond in damages. The department shall collect for each abstract the sum of (~~(ten)~~ thirteen dollars, fifty percent of which shall be deposited in the highway safety fund and fifty percent of which must be deposited according to RCW 46.68.038.

Sec. 9. RCW 46.52.130 and 2010 c 253 s 1 are each amended to read as follows:

Upon a proper request, the department may furnish an abstract of a person's driving record as permitted under this section.

(1) **Contents of abstract of driving record.** An abstract of a person's driving record, whenever possible, must include:

(a) An enumeration of motor vehicle accidents in which the person was driving, including:

- (i) The total number of vehicles involved;
- (ii) Whether the vehicles were legally parked or moving;
- (iii) Whether the vehicles were occupied at the time of the accident; and
- (iv) Whether the accident resulted in a fatality;

(b) Any reported convictions, forfeitures of bail, or findings that an infraction was committed based upon a violation of any motor vehicle law;

(c) The status of the person's driving privilege in this state; and

(d) Any reports of failure to appear in response to a traffic citation or failure to respond to a notice of infraction served upon the named individual by an arresting officer.

(2) **Release of abstract of driving record.** An abstract of a person's driving record may be furnished to the following persons or entities:

(a) **Named individuals.** (i) An abstract of the full driving record maintained by the department may be furnished to the individual named in the abstract.

(ii) Nothing in this section prevents a court from providing a copy of the driver's abstract to the individual named in the abstract, provided that the named individual has a pending or open infraction or criminal case in that court. A pending case includes criminal cases that have not reached a disposition by plea, stipulation, trial, or amended charge. An open infraction or criminal case includes cases on probation, payment agreement or subject to, or in collections. Courts may charge a reasonable fee for the production and copying of the abstract for the individual.

(b) **Employers or prospective employers.** (i) An abstract of the full driving record maintained by the department may be furnished to an employer or prospective employer or an agent acting on behalf of an employer or prospective employer of the named individual for purposes related to driving by the individual as a condition of employment or otherwise at the direction of the employer.

(ii) Release of an abstract of the driving record of an employee or prospective employee requires a statement signed by: (A) The employer or prospective employer that authorizes the release of the record; and (B) the employer attesting that the information is necessary for employment purposes related to driving by the individual as a condition of employment or otherwise at the direction of the employer. If the employer or prospective employer authorizes an agent to obtain this information on their behalf, this must be noted in the statement.

(iii) Upon request of the person named in the abstract provided under this subsection, and upon that same person furnishing copies of court records ruling that the person was not at fault in a motor vehicle accident, the department must indicate on any abstract provided under this subsection that the person was not at fault in the motor vehicle accident.

(c) **Volunteer organizations.** (i) An abstract of the full driving record maintained by the department may be furnished to a volunteer organization or an agent for a volunteer organization for which the named individual has submitted an application for a position that would require driving by the individual at the direction of the volunteer organization.

(ii) Release of an abstract of the driving record of a prospective volunteer requires a statement signed by: (A) The prospective volunteer that authorizes the release of the record; and (B) the volunteer organization attesting that the information is necessary for purposes related to driving by the individual at the direction of the volunteer organization. If the volunteer organization authorizes an agent to obtain this information on their behalf, this must be noted in the statement.

(d) **Transit authorities.** An abstract of the full driving record maintained by the department may be furnished to an employee or agent of a transit authority checking prospective volunteer vanpool drivers for insurance and risk management needs.

(e) **Insurance carriers.** (i) An abstract of the driving record maintained by the department covering the period of not more than the last three years may be furnished to an insurance company or its agent:

(A) That has motor vehicle or life insurance in effect covering the named individual;

(B) To which the named individual has applied; or

(C) That has insurance in effect covering the employer or a prospective employer of the named individual.

(ii) The abstract provided to the insurance company must:

(A) Not contain any information related to actions committed by law enforcement officers or firefighters, as both terms are defined in

RCW 41.26.030, or by Washington state patrol officers, while driving official vehicles in the performance of their occupational duty. This does not apply to any situation where the vehicle was used in the commission of a misdemeanor or felony;

(B) Include convictions under RCW 46.61.5249 and 46.61.525, except that the abstract must report the convictions only as negligent driving without reference to whether they are for first or second degree negligent driving; and

(C) Exclude any deferred prosecution under RCW 10.05.060, except that if a person is removed from a deferred prosecution under RCW 10.05.090, the abstract must show the deferred prosecution as well as the removal.

(ii) Any policy of insurance may not be canceled, nonrenewed, denied, or have the rate increased on the basis of information regarding an accident included in the abstract of a driving record, unless the policyholder was determined to be at fault.

(iv) Any insurance company or its agent, for underwriting purposes relating to the operation of commercial motor vehicles, may not use any information contained in the abstract relative to any person's operation of motor vehicles while not engaged in such employment. Any insurance company or its agent, for underwriting purposes relating to the operation of noncommercial motor vehicles, may not use any information contained in the abstract relative to any person's operation of commercial motor vehicles.

(v) The director may enter into a contractual agreement with an insurance company or its agent for the limited purpose of reviewing the driving records of existing policyholders for changes to the record during specified periods of time. The department shall establish a fee for this service, which must be deposited in the highway safety fund. The fee for this service must be set at a level that will not result in a net revenue loss to the state. Any information provided under this subsection must be treated in the same manner and is subject to the same restrictions as driving record abstracts.

(f) **Alcohol/drug assessment or treatment agencies.** An abstract of the driving record maintained by the department covering the period of not more than the last five years may be furnished to an alcohol/drug assessment or treatment agency approved by the department of social and health services to which the named individual has applied or been assigned for evaluation or treatment, for purposes of assisting employees in making a determination as to what level of treatment, if any, is appropriate, except that the abstract must:

(i) Also include records of alcohol-related offenses, as defined in RCW 46.01.260(2), covering a period of not more than the last ten years; and

(ii) Indicate whether an alcohol-related offense was originally charged as a violation of either RCW 46.61.502 or 46.61.504.

(g) **City attorneys and county prosecuting attorneys.** An abstract of the full driving record maintained by the department, including whether a recorded violation is an alcohol-related offense, as defined in RCW 46.01.260(2), that was originally charged as a violation of either RCW 46.61.502 or 46.61.504, may be furnished to city attorneys or county prosecuting attorneys. City attorneys and county prosecuting attorneys may provide the driving record to alcohol/drug assessment or treatment agencies approved by the department of social and health services to which the named individual has applied or been assigned for evaluation or treatment.

(h) **State colleges, universities, or agencies, or units of local government.** An abstract of the full driving record maintained by the department may be furnished to (i) state colleges, universities, or agencies for employment and risk management purposes or (ii) units of local government authorized to self-insure under RCW 48.62.031 for employment and risk management purposes.

(i) **Superintendent of public instruction.** An abstract of the full driving record maintained by the department may be furnished to the superintendent of public instruction for review of public school bus

driver records. The superintendent or superintendent's designee may discuss information on the driving record with an authorized representative of the employing school district for employment and risk management purposes.

(3) **Release to third parties prohibited.** Any person or entity receiving an abstract of a person's driving record under subsection (2)(b) through (i) of this section shall use the abstract exclusively for his, her, or its own purposes or as otherwise expressly permitted under this section, and shall not divulge any information contained in the abstract to a third party.

(4) **Fee.** The director shall collect a ~~((ten))~~ thirteen dollar fee for each abstract of a person's driving record furnished by the department. Fifty percent of the fee must be deposited in the highway safety fund, and fifty percent of the fee must be deposited according to RCW 46.68.038.

(5) **Violation.** (a) Any negligent violation of this section is a gross misdemeanor.

(b) Any intentional violation of this section is a class C felony.

Sec. 10. RCW 46.70.061 and 2002 c 352 s 23 are each amended to read as follows:

(1) The annual fees for original licenses issued for twelve consecutive months from the date of issuance under this chapter shall be:

(a) Vehicle dealers, principal place of business for each and every license classification: ~~((Seven))~~ Nine hundred ~~((fifty))~~ seventy-five dollars;

(b) Vehicle dealers, each subagency, and temporary subagency: One hundred dollars;

(c) Vehicle manufacturers: Five hundred dollars.

(2) The annual fee for renewal of any license issued pursuant to this chapter shall be:

(a) Vehicle dealers, principal place of business for each and every license classification: ~~((Two))~~ Three hundred ~~((fifty))~~ twenty-five dollars;

(b) Vehicle dealer, each and every subagency: Twenty-five dollars;

(c) Vehicle manufacturers: Two hundred fifty dollars.

If any licensee fails or neglects to apply for such renewal within thirty days after the expiration of the license, or assigned renewal date under a staggered licensing system, the license shall be declared canceled by the director, in which case the licensee will be required to apply for an original license and pay the fee required for the original license.

(3) The fee for the transfer to another location of any license classification issued pursuant to this chapter shall be twenty-five dollars.

(4) The fee for vehicle dealer license plates and manufacturer license plates shall be the amount required by law for vehicle license plates exclusive of excise tax and gross weight and tonnage fees.

(5) All fees collected under this chapter shall be deposited in the state treasury and credited to the motor vehicle fund.

(6) The fees prescribed in this section are in addition to any excise taxes imposed by chapter 82.44 RCW.

Sec. 11. RCW 46.70.180 and 2010 c 161 s 1136 are each amended to read as follows:

Each of the following acts or practices is unlawful:

(1) To cause or permit to be advertised, printed, displayed, published, distributed, broadcasted, televised, or disseminated in any manner whatsoever, any statement or representation with regard to the sale, lease, or financing of a vehicle which is false, deceptive, or misleading, including but not limited to the following:

(a) That no down payment is required in connection with the sale of a vehicle when a down payment is in fact required, or that a vehicle may be purchased for a smaller down payment than is actually required;

(b) That a certain percentage of the sale price of a vehicle may be financed when such financing is not offered in a single document evidencing the entire security transaction;

(c) That a certain percentage is the amount of the service charge to be charged for financing, without stating whether this percentage charge is a monthly amount or an amount to be charged per year;

(d) That a new vehicle will be sold for a certain amount above or below cost without computing cost as the exact amount of the factory invoice on the specific vehicle to be sold;

(e) That a vehicle will be sold upon a monthly payment of a certain amount, without including in the statement the number of payments of that same amount which are required to liquidate the unpaid purchase price.

(2)(a)(i) To incorporate within the terms of any purchase and sale or lease agreement any statement or representation with regard to the sale, lease, or financing of a vehicle which is false, deceptive, or misleading, including but not limited to terms that include as an added cost to the selling price or capitalized cost of a vehicle an amount for licensing or transfer of title of that vehicle which is not actually due to the state, unless such amount has in fact been paid by the dealer prior to such sale.

(ii) However, an amount not to exceed ~~((the applicable amount provided in (iii)(A) and (B) of this subsection (2)(a)))~~ one hundred fifty dollars per vehicle sale or lease may be charged by a dealer to recover administrative costs for collecting motor vehicle excise taxes, licensing and registration fees and other agency fees, verifying and clearing titles, transferring titles, perfecting, releasing, or satisfying liens or other security interests, and other administrative and documentary services rendered by a dealer in connection with the sale or lease of a vehicle and in carrying out the requirements of this chapter or any other provisions of state law.

((iii) A dealer may charge under (a)(ii) of this subsection:

(A) As of July 26, 2009, through June 30, 2014, an amount not to exceed one hundred fifty dollars; and

(B) As of July 1, 2014, an amount not to exceed fifty dollars.)

(b) A dealer may charge the documentary service fee in (a) of this subsection under the following conditions:

(i) The documentary service fee is disclosed in writing to a prospective purchaser or lessee before the execution of a purchase and sale or lease agreement;

(ii) The dealer discloses to the purchaser or lessee in writing that the documentary service fee is a negotiable fee. The disclosure must be written in a typeface that is at least as large as the typeface used in the standard text of the document that contains the disclosure and that is bold faced, capitalized, underlined, or otherwise set out from the surrounding material so as to be conspicuous. The dealer shall not represent to the purchaser or lessee that the fee or charge is required by the state to be paid by either the dealer or prospective purchaser or lessee;

(iii) The documentary service fee is separately designated from the selling price or capitalized cost of the vehicle and from any other taxes, fees, or charges; and

(iv) Dealers disclose in any advertisement that a documentary service fee in an amount ~~((provided in (iv)(A) and (B) of this subsection (2)(b)))~~ up to one hundred fifty dollars may be added to the sale price or the capitalized cost ~~((~~
~~(A) As of July 26, 2009, through June 30, 2014, an amount up to one hundred fifty dollars; and~~
~~(B) As of July 1, 2014, an amount up to fifty dollars)).~~

For the purposes of this subsection (2), the term "documentary service fee" means the optional amount charged by a dealer to provide the services specified in (a) of this subsection.

(3) To set up, promote, or aid in the promotion of a plan by which vehicles are to be sold or leased to a person for a consideration and upon further consideration that the purchaser or lessee agrees to secure one or more persons to participate in the plan by respectively

making a similar purchase and in turn agreeing to secure one or more persons likewise to join in said plan, each purchaser or lessee being given the right to secure money, credits, goods, or something of value, depending upon the number of persons joining the plan.

(4) To commit, allow, or ratify any act of "bushing" which is defined as follows: Entering into a written contract, written purchase order or agreement, retail installment sales agreement, note and security agreement, or written lease agreement, hereinafter collectively referred to as contract or lease, signed by the prospective buyer or lessee of a vehicle, which:

(a) Is subject to any conditions or the dealer's or his or her authorized representative's future acceptance, and the dealer fails or refuses within four calendar days, exclusive of Saturday, Sunday, or legal holiday, and prior to any further negotiations with said buyer or lessee to inform the buyer or lessee either: (i) That the dealer unconditionally accepts the contract or lease, having satisfied, removed, or waived all conditions to acceptance or performance, including, but not limited to, financing, assignment, or lease approval; or (ii) that the dealer rejects the contract or lease, thereby automatically voiding the contract or lease, as long as such voiding does not negate commercially reasonable contract or lease provisions pertaining to the return of the subject vehicle and any physical damage, excessive mileage after the demand for return of the vehicle, and attorneys' fees authorized by law, and tenders the refund of any initial payment or security made or given by the buyer or lessee, including, but not limited to, any down payment, and tenders return of the trade-in vehicle, key, other trade-in, or certificate of title to a trade-in. Tender may be conditioned on return of the subject vehicle if previously delivered to the buyer or lessee.

The provisions of this subsection (4)(a) do not impair, prejudice, or abrogate the rights of a dealer to assert a claim against the buyer or lessee for misrepresentation or breach of contract and to exercise all remedies available at law or in equity, including those under chapter 62A.9A RCW, if the dealer, bank, or other lender or leasing company discovers that approval of the contract or financing or approval of the lease was based upon material misrepresentations made by the buyer or lessee, including, but not limited to, misrepresentations regarding income, employment, or debt of the buyer or lessee, as long as the dealer, or his or her staff, has not, with knowledge of the material misrepresentation, aided, assisted, encouraged, or participated, directly or indirectly, in the misrepresentation. A dealer shall not be in violation of this subsection (4)(a) if the buyer or lessee made a material misrepresentation to the dealer, as long as the dealer, or his or her staff, has not, with knowledge of the material misrepresentation, aided, assisted, encouraged, or participated, directly or indirectly, in the misrepresentation.

When a dealer informs a buyer or lessee under this subsection (4)(a) regarding the unconditional acceptance or rejection of the contract, lease, or financing by an electronic mail message, the dealer must also transmit the communication by any additional means;

(b) Permits the dealer to renegotiate a dollar amount specified as trade-in allowance on a vehicle delivered or to be delivered by the buyer or lessee as part of the purchase price or lease, for any reason except:

(i) Failure to disclose that the vehicle's certificate of title has been branded for any reason, including, but not limited to, status as a rebuilt vehicle as provided in RCW 46.12.540 and 46.12.560; or

(ii) Substantial physical damage or latent mechanical defect occurring before the dealer took possession of the vehicle and which could not have been reasonably discoverable at the time of the taking of the order, offer, or contract; or

(iii) Excessive additional miles or a discrepancy in the mileage. "Excessive additional miles" means the addition of five hundred miles or more, as reflected on the vehicle's odometer, between the time the vehicle was first valued by the dealer for purposes of determining its trade-in value and the time of actual delivery of the vehicle to the

dealer. "A discrepancy in the mileage" means (A) a discrepancy between the mileage reflected on the vehicle's odometer and the stated mileage on the signed odometer statement; or (B) a discrepancy between the mileage stated on the signed odometer statement and the actual mileage on the vehicle; or

(c) Fails to comply with the obligation of any written warranty or guarantee given by the dealer requiring the furnishing of services or repairs within a reasonable time.

(5) To commit any offense relating to odometers, as such offenses are defined in RCW 46.37.540, 46.37.550, 46.37.560, and 46.37.570. A violation of this subsection is a class C felony punishable under chapter 9A.20 RCW.

(6) For any vehicle dealer or vehicle salesperson to refuse to furnish, upon request of a prospective purchaser or lessee, for vehicles previously registered to a business or governmental entity, the name and address of the business or governmental entity.

(7) To commit any other offense under RCW 46.37.423, 46.37.424, or 46.37.425.

(8) To commit any offense relating to a dealer's temporary license permit, including but not limited to failure to properly complete each such permit, or the issuance of more than one such permit on any one vehicle. However, a dealer may issue a second temporary permit on a vehicle if the following conditions are met:

(a) The lienholder fails to deliver the vehicle title to the dealer within the required time period;

(b) The dealer has satisfied the lien; and

(c) The dealer has proof that payment of the lien was made within two calendar days, exclusive of Saturday, Sunday, or a legal holiday, after the sales contract has been executed by all parties and all conditions and contingencies in the sales contract have been met or otherwise satisfied.

(9) For a dealer, salesperson, or mobile home manufacturer, having taken an instrument or cash "on deposit" from a purchaser or lessee prior to the delivery of the bargained-for vehicle, to commingle the "on deposit" funds with assets of the dealer, salesperson, or mobile home manufacturer instead of holding the "on deposit" funds as trustee in a separate trust account until the purchaser or lessee has taken delivery of the bargained-for vehicle. Delivery of a manufactured home shall be deemed to occur in accordance with RCW 46.70.135(5). Failure, immediately upon receipt, to endorse "on deposit" instruments to such a trust account, or to set aside "on deposit" cash for deposit in such trust account, and failure to deposit such instruments or cash in such trust account by the close of banking hours on the day following receipt thereof, shall be evidence of intent to commit this unlawful practice: PROVIDED, HOWEVER, That a motor vehicle dealer may keep a separate trust account which equals his or her customary total customer deposits for vehicles for future delivery. For purposes of this section, "on deposit" funds received from a purchaser of a manufactured home means those funds that a seller requires a purchaser to advance before ordering the manufactured home, but does not include any loan proceeds or moneys that might have been paid on an installment contract.

(10) For a dealer or manufacturer to fail to comply with the obligations of any written warranty or guarantee given by the dealer or manufacturer requiring the furnishing of goods and services or repairs within a reasonable period of time, or to fail to furnish to a purchaser or lessee, all parts which attach to the manufactured unit including but not limited to the undercarriage, and all items specified in the terms of a sales or lease agreement signed by the seller and buyer or lessee.

(11) For a vehicle dealer to pay to or receive from any person, firm, partnership, association, or corporation acting, either directly or through a subsidiary, as a buyer's agent for consumers, any compensation, fee, purchase moneys or funds that have been deposited into or withdrawn out of any account controlled or used by

any buyer's agent, gratuity, or reward in connection with the purchase, sale, or lease of a new motor vehicle.

(12) For a buyer's agent, acting directly or through a subsidiary, to pay to or to receive from any motor vehicle dealer any compensation, fee, gratuity, or reward in connection with the purchase, sale, or lease of a new motor vehicle. In addition, it is unlawful for any buyer's agent to engage in any of the following acts on behalf of or in the name of the consumer:

(a) Receiving or paying any purchase moneys or funds into or out of any account controlled or used by any buyer's agent;

(b) Signing any vehicle purchase orders, sales contracts, leases, odometer statements, or title documents, or having the name of the buyer's agent appear on the vehicle purchase order, sales contract, lease, or title; or

(c) Signing any other documentation relating to the purchase, sale, lease, or transfer of any new motor vehicle.

It is unlawful for a buyer's agent to use a power of attorney obtained from the consumer to accomplish or effect the purchase, sale, lease, or transfer of ownership documents of any new motor vehicle by any means which would otherwise be prohibited under (a) through (c) of this subsection. However, the buyer's agent may use a power of attorney for physical delivery of motor vehicle license plates to the consumer.

Further, it is unlawful for a buyer's agent to engage in any false, deceptive, or misleading advertising, disseminated in any manner whatsoever, including but not limited to making any claim or statement that the buyer's agent offers, obtains, or guarantees the lowest price on any motor vehicle or words to similar effect.

(13) For a buyer's agent to arrange for or to negotiate the purchase, or both, of a new motor vehicle through an out-of-state dealer without disclosing in writing to the customer that the new vehicle would not be subject to chapter 19.118 RCW. This subsection also applies to leased vehicles. In addition, it is unlawful for any buyer's agent to fail to have a written agreement with the customer that: (a) Sets forth the terms of the parties' agreement; (b) discloses to the customer the total amount of any fees or other compensation being paid by the customer to the buyer's agent for the agent's services; and (c) further discloses whether the fee or any portion of the fee is refundable.

(14) Being a manufacturer, other than a motorcycle manufacturer governed by chapter 46.93 RCW, to:

(a) Coerce or attempt to coerce any vehicle dealer to order or accept delivery of any vehicle or vehicles, parts or accessories, or any other commodities which have not been voluntarily ordered by the vehicle dealer: PROVIDED, That recommendation, endorsement, exposition, persuasion, urging, or argument are not deemed to constitute coercion;

(b) Cancel or fail to renew the franchise or selling agreement of any vehicle dealer doing business in this state without fairly compensating the dealer at a fair going business value for his or her capital investment which shall include but not be limited to tools, equipment, and parts inventory possessed by the dealer on the day he or she is notified of such cancellation or termination and which are still within the dealer's possession on the day the cancellation or termination is effective, if: (i) The capital investment has been entered into with reasonable and prudent business judgment for the purpose of fulfilling the franchise; and (ii) the cancellation or nonrenewal was not done in good faith. Good faith is defined as the duty of each party to any franchise to act in a fair and equitable manner towards each other, so as to guarantee one party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party: PROVIDED, That recommendation, endorsement, exposition, persuasion, urging, or argument are not deemed to constitute a lack of good faith;

(c) Encourage, aid, abet, or teach a vehicle dealer to sell or lease vehicles through any false, deceptive, or misleading sales or financing

practices including but not limited to those practices declared unlawful in this section;

(d) Coerce or attempt to coerce a vehicle dealer to engage in any practice forbidden in this section by either threats of actual cancellation or failure to renew the dealer's franchise agreement;

(e) Refuse to deliver any vehicle publicly advertised for immediate delivery to any duly licensed vehicle dealer having a franchise or contractual agreement for the retail sale or lease of new and unused vehicles sold or distributed by such manufacturer within sixty days after such dealer's order has been received in writing unless caused by inability to deliver because of shortage or curtailment of material, labor, transportation, or utility services, or by any labor or production difficulty, or by any cause beyond the reasonable control of the manufacturer;

(f) To provide under the terms of any warranty that a purchaser or lessee of any new or unused vehicle that has been sold or leased, distributed for sale or lease, or transferred into this state for resale or lease by the vehicle manufacturer may only make any warranty claim on any item included as an integral part of the vehicle against the manufacturer of that item.

Nothing in this section may be construed to impair the obligations of a contract or to prevent a manufacturer, distributor, representative, or any other person, whether or not licensed under this chapter, from requiring performance of a written contract entered into with any licensee hereunder, nor does the requirement of such performance constitute a violation of any of the provisions of this section if any such contract or the terms thereof requiring performance, have been freely entered into and executed between the contracting parties. This paragraph and subsection (14)(b) of this section do not apply to new motor vehicle manufacturers governed by chapter 46.96 RCW.

(15) Unlawful transfer of an ownership interest in a motor vehicle as defined in RCW 19.116.050.

(16) To knowingly and intentionally engage in collusion with a registered owner of a vehicle to repossess and return or resell the vehicle to the registered owner in an attempt to avoid a suspended license impound under chapter 46.55 RCW. However, compliance with chapter 62A.9A RCW in repossessing, selling, leasing, or otherwise disposing of the vehicle, including providing redemption rights to the debtor, is not a violation of this section.

(17)(a) For a dealer to enter into a new motor vehicle sales contract without disclosing in writing to a buyer of the new motor vehicle, or to a dealer in the case of an unregistered motor vehicle, any known damage and repair to the new motor vehicle if the damage exceeds five percent of the manufacturer's suggested retail price as calculated at the dealer's authorized warranty rate for labor and parts, or one thousand dollars, whichever amount is greater. A manufacturer or new motor vehicle dealer is not required to disclose to a dealer or buyer that glass, tires, bumpers, or cosmetic parts of a new motor vehicle were damaged at any time if the damaged item has been replaced with original or comparable equipment. A replaced part is not part of the cumulative damage required to be disclosed under this subsection.

(b) A manufacturer is required to provide the same disclosure to a dealer of any known damage or repair as required in (a) of this subsection.

(c) If disclosure of any known damage or repair is not required under this section, a buyer may not revoke or rescind a sales contract due to the fact that the new motor vehicle was damaged and repaired before completion of the sale.

(d) As used in this section:

(i) "Cosmetic parts" means parts that are attached by and can be replaced in total through the use of screws, bolts, or other fasteners without the use of welding or thermal cutting, and includes windshields, bumpers, hoods, or trim panels.

(ii) "Manufacturer's suggested retail price" means the retail price of the new motor vehicle suggested by the manufacturer, and includes

the retail delivered price suggested by the manufacturer for each accessory or item of optional equipment physically attached to the new motor vehicle at the time of delivery to the new motor vehicle dealer that is not included within the retail price suggested by the manufacturer for the new motor vehicle.

NEW SECTION. Sec. 12. A new section is added to chapter 46.68 RCW to read as follows:

(1) The public transportation grant program account is created in the state treasury. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for the grants provided under section 13 of this act.

(2) By the last day of December 2012, March 2013, and June 2013, the state treasurer shall transfer from the multimodal transportation account to the public transportation grant program account one million two hundred fifty thousand dollars.

(3) Beginning September 2013, and by the last day of September, December, March, and June of each year, the state treasurer shall transfer from the multimodal transportation account to the public transportation grant program account one million eight hundred seventy-five thousand dollars.

NEW SECTION. Sec. 13. A new section is added to chapter 47.66 RCW to read as follows:

(1) The department shall establish a public transportation grant program. The purpose of the grant program is to aid transit authorities, and the grant amounts provided pursuant to this subsection must be used for operations. One hundred percent of the money appropriated for the public transportation grant program must be distributed statewide to transit authorities according to the distribution formula in (a) of this subsection.

(a) Of the grant amounts provided to transit authorities pursuant to this subsection:

(i) One-third must be distributed based on the number of vehicle miles of service provided;

(ii) One-third must be distributed based on the number of vehicle hours of service provided; and

(iii) One-third must be distributed based on the number of passenger trips.

(b) For the purposes of this subsection:

(i) "Transit authorities" has the same meaning as in RCW 9.91.025(2).

(ii) "Vehicle miles of service," "vehicle hours of service," and "passenger trips" are transit service metrics as reported by the public transportation program of the department of transportation in the annual report required in RCW 35.58.2796 for the calendar year that is two years prior to the current fiscal year.

(2) The department must report annually to the transportation committees of the legislature on the use of the grant amounts provided pursuant to this section.

NEW SECTION. Sec. 14. A new section is added to chapter 46.68 RCW to read as follows:

(1) Ten dollars of the fee established in RCW 46.17.100 for the purposes of motor change, the transfer of certificates of title, security interest changes, and duplicate certificates of title, and that is deposited to the transportation 2003 account (nickel account) under RCW 46.68.280, must be used for the purposes of paying the debt service on bonds issued for the construction of a second one hundred forty-four car class ferry boat vessel. After the bonds have been retired, the proceeds may be used for other account purposes.

(2) The following must be used for the purposes of initial highway and road project development, including design, preliminary engineering, and rights-of-way acquisition:

(a) Ten dollars of the fee established in RCW 46.17.200(1)(a) for the original issue of motor vehicle license plates;

(b) Four dollars of the fee established in RCW 46.17.200(1)(a) for the original issue of motorcycle license plates;

(c) Two dollars of the fee established in RCW 46.17.200(1)(a) for the issue of replacement motorcycle license plates;

(d) Two hundred twenty-five dollars of the fee established in RCW 46.70.061(1)(a) for the original license of a vehicle dealer's principal place of business; and

(e) Seventy-five dollars of the fee established in RCW 46.70.061(2)(a) for the renewal license of a vehicle dealer's principal place of business.

(3) The following must be used for the purposes of enforcing the driver and vehicle laws and rules of the state:

(a) Three dollars of the fee established in RCW 46.20.293;

(b) Three dollars of the fee established in RCW 46.29.050; and

(c) Three dollars of the fee established in RCW 46.52.130.

NEW SECTION. Sec. 15. A new section is added to chapter 46.17 RCW to read as follows:

(1) Before accepting an application for an annual vehicle registration renewal for an electric vehicle that uses propulsion units powered solely by electricity, the department, county auditor or other agent, or subagent appointed by the director must require the applicant to pay a one hundred dollar fee in addition to any other fees and taxes required by law. The one hundred dollar fee is due only at the time of annual registration renewal.

(2) This section only applies to:

(a) A vehicle that is designed to have the capability to drive at a speed of more than thirty-five miles per hour; and

(b) An annual vehicle registration renewal that is due on or after February 1, 2013.

(3)(a) The fee under this section is imposed to provide funds to mitigate the impact of vehicles on state roads and highways and for the purpose of evaluating the feasibility of transitioning from a revenue collection system based on fuel taxes to a road user assessment system, and is separate and distinct from other vehicle license fees. Proceeds from the fee must be used for highway purposes, and must be deposited in the motor vehicle fund created in RCW 46.68.070, subject to (b) of this subsection.

(b) If in any year the amount of proceeds from the fee collected under this section exceeds one million dollars, the excess amount over one million dollars must be deposited as follows:

(i) Seventy percent to the motor vehicle fund created in RCW 46.68.070;

(ii) Fifteen percent to the transportation improvement account created in RCW 47.26.084; and

(iii) Fifteen percent to the rural arterial trust account created in RCW 36.79.020.

NEW SECTION. Sec. 16. Section 15 of this act expires on the effective date of legislation enacted by the legislature that imposes a vehicle miles traveled fee or tax.

NEW SECTION. Sec. 17. The department of licensing must provide written notice of the expiration date of section 15 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 department.

Sec. 18. RCW 46.10.420 and 2010 c 161 s 231 are each amended to read as follows:

(1) Each dealer of snowmobiles in this state shall obtain a snowmobile dealer license from the department in a manner prescribed by the department. Upon receipt of an application for a snowmobile dealer's license and the fee provided in subsection (2) of this section, the dealer is licensed and a snowmobile dealer license number must be assigned.

(2) The annual license fee for a snowmobile dealer is twenty-five dollars, which covers all of the snowmobiles offered by a dealer for sale and not rented on a regular, commercial basis. Snowmobiles rented on a regular commercial basis by a snowmobile dealer must be registered separately under RCW 46.10.310, 46.10.400, 46.10.430, and 46.10.440.

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

(4) Only a dealer, dealer representative, or prospective customer may display a snowmobile dealer plate, and only a dealer, dealer representative, or prospective customer may use a snowmobile dealer's license plate for the purposes described in subsection (3) of this section.

(5) Snowmobile dealer licenses are nontransferable.

(6) It is unlawful for any snowmobile dealer to sell a snowmobile at wholesale or retail, or to test or demonstrate any snowmobile, within the state, unless the dealer has a snowmobile dealer license as required under this section.

(7) When a snowmobile is sold by a snowmobile dealer, the dealer:

(a) Shall apply for licensing in the purchaser's name (~~within fifteen days following the sale~~) as provided by rules adopted by the department; and

(b) May issue a temporary license as provided by rules adopted by the department.

Sec. 19. RCW 46.12.675 and 2010 c 161 s 316 are each amended to read as follows:

(1) A security interest in a vehicle other than one held as inventory by a manufacturer or a dealer and for which a certificate of title is required is perfected only by:

(a) Complying with the requirements of RCW 46.12.660 or this section;

(b) Receipt by the department, county auditor or other agent, or subagent appointed by the director of:

(i) The existing certificate of title, if any;

(ii) An application for a certificate of title containing the name and address of the secured party; and

(iii) Payment of the required fees.

(2) A security interest is perfected when it is created if the secured party's name and address appear on the most recently issued certificate of title or, if not, it is created when the department, county auditor or other agent, or subagent appointed by the director receives the certificate of title or an application for a certificate of title and the fees required in subsection (1) of this section.

(3) If a vehicle is subject to a security interest when brought into this state, perfection of the security interest is determined by the law of the jurisdiction where the vehicle was when the security interest was attached, subject to the following:

(a) The security interest continues perfected in this state if the name of the secured party is shown on the existing certificate of title issued by that jurisdiction. The name of the secured party must be shown on the certificate of title issued for the vehicle by this state. The security interest continues perfected in this state when the department issues the certificate of title.

(b) If the security interest was not perfected under the law of the jurisdiction where the vehicle was when the security interest was attached, it may be perfected in this state. Perfection begins when the department receives the information and fees required in subsection (1) of this section.

(4)(a) After a certificate of title has been issued, the registered owner or secured party must apply to the department, county auditor or other agent, or subagent appointed by the director for a new certificate of title when a security interest is granted on a vehicle. Within ten days after creating a security agreement, the registered owner or secured party must submit:

(i) An application for a certificate of title;

(ii) The certificate of title last issued for the vehicle, or other documentation required by the department; and

(iii) The fee required in RCW 46.17.100.

(b) If satisfied that a certificate of title should be reissued, the department shall change the vehicle record and issue a new certificate of title to the secured party.

(5) A secured party shall release the security interest when the conditions within the security agreement have been met and there is no further secured obligation. The secured party must either:

(a) Assign the certificate of title to the registered owner or the registered owner's designee and send the certificate of title to the department, county auditor or other agent, or subagent appointed by the director with the fee required in RCW 46.17.100; or

(b) Assign the certificate of title to the person acquiring the vehicle from the registered owner with the registered owner's release of interest.

(6) The department shall issue a new certificate of title to the registered owner when the department receives the release of interest and required fees as provided in subsection (5)(a) of this section.

(7) A secured party is liable for one hundred dollars payable to the registered owner or person acquiring the vehicle from the registered owner when:

(a) The secured party fails to either assign the certificate of title to the registered owner or to the person acquiring the vehicle from the registered owner or apply for a new certificate of title within ten days after proper demand; and

(b) The failure of the secured party to act as described in (a) of this subsection results in a loss to the registered owner or person acquiring the vehicle from the registered owner.

Sec. 20. RCW 46.16A.320 and 2010 c 161 s 425 are each amended to read as follows:

(1)(a) A vehicle owner may operate an unregistered vehicle on public highways under the authority of a trip permit issued by this state. For purposes of trip permits, a vehicle is considered unregistered if:

(i) Under reciprocal relations with another jurisdiction, the owner would be required to register the vehicle in this state;

(ii) Not registered when registration is required under this chapter;

(iii) The license tabs have expired; or

~~((iii))~~ (iv) The current gross weight license is insufficient for the load being carried. The licensed gross weight may not exceed eighty thousand pounds for a combination of vehicles or forty thousand pounds for a single unit vehicle with three or more axles.

(b) Trip permits are required to move mobile homes or park model trailers and may only be issued if property taxes are paid in full.

(2) Trip permits may not be:

(a) Issued to vehicles registered under RCW 46.16A.455(5) in lieu of further registration within the same registration year; or

(b) Used for commercial motor vehicles owned by a motor carrier subject to RCW 46.32.080 if the motor carrier's department of transportation number has been placed out of service by the Washington state patrol. A violation of or a failure to comply with this subsection is a gross misdemeanor, subject to a minimum monetary penalty of two thousand five hundred dollars for the first violation and five thousand dollars for each subsequent violation.

(3)(a) Each trip permit authorizes the operation of a single vehicle at the maximum legal weight limit for the vehicle for a period of three consecutive days beginning with the day of first use. No more than three trip permits may be used for any one vehicle in any thirty consecutive day period. No more than two trip permits may be used for any one recreational vehicle, as defined in RCW 43.22.335, in a one-year period. Every trip permit must:

(i) Identify the vehicle for which it is issued;

- (ii) Be completed in its entirety;
 - (iii) Be signed by the operator before operation of the vehicle on the public highways of this state;
 - (iv) Not be altered or corrected. Altering or correcting data on the trip permit invalidates the trip permit; and
 - (v) Be displayed on the vehicle for which it is issued as required by the department.
- (b) Vehicles operating under the authority of trip permits are subject to all laws, rules, and regulations affecting the operation of similar vehicles in this state.
- (4) Prorate operators operating commercial vehicles on trip permits in Washington shall retain the customer copy of each permit for four years.

(5) Trip permits may be obtained from field offices of the department of transportation, department of licensing, county auditors or other agents, and subagents appointed by the department for the fee provided in RCW 46.17.400(1)(h). Exchanges, credits, or refunds may not be given for trip permits after they have been purchased.

(6) Except as provided in subsection (2)(b) of this section, a violation of or a failure to comply with this section is a gross misdemeanor.

(7) The department may adopt rules necessary to administer this section.

Sec. 21. RCW 88.02.640 and 2011 c 326 s 5, 2011 c 171 s 134, and 2011 c 169 s 1 are each reenacted and amended to read as follows:

(1) In addition to any other fees and taxes required by law, the department, county auditor or other agent, or subagent appointed by the director shall charge the following vessel fees and surcharge:

FEE	AMOUNT	AUTHORITY	DISTRIBUTION
(a) Dealer temporary permit	\$5.00	RCW 88.02.800(2)	General fund
(b) Derelict vessel and invasive species removal	Subsection (3) of this section	Subsection (3) of this section	Subsection (3) of this section
(c) Derelict vessel removal surcharge	\$1.00	Subsection (4) of this section	Subsection (4) of this section
(d) Duplicate certificate of title	\$1.25	RCW 88.02.530(1)(c)	General fund
(e) Duplicate registration	\$1.25	RCW 88.02.590(1)(c)	General fund
(f) Filing	RCW 46.17.005	RCW ((46.17.005)) 88.02.560(2)	RCW 46.68.400
(g) License plate technology	RCW 46.17.015	RCW ((46.17.015)) 88.02.560(2)	RCW 46.68.370
(h) License service	RCW 46.17.025	RCW ((46.17.025)) 88.02.560(2)	RCW 46.68.220
(i) Nonresident vessel permit	\$25.00	RCW 88.02.620(3)	Subsection (5) of this section
(j) Quick title service	\$50.00	RCW 88.02.540(3)	Subsection (7) of this section
(k) Registration	\$10.50	RCW 88.02.560(2)	RCW 88.02.650

((k)) (l) Replacement decal	\$1.25	RCW 88.02.595(1)(c)	General fund
((l)) (m) Title application	\$5.00	RCW 88.02.515	General fund
((m)) (n) Transfer	\$1.00	RCW 88.02.560(7)	General fund
((n)) (o) Vessel visitor permit	\$30.00	RCW 88.02.610(3)	Subsection (6) of this section

(2) The five dollar dealer temporary permit fee required in subsection (1) of this section must be credited to the payment of registration fees at the time application for registration is made.

(3)(a) The derelict vessel and invasive species removal fee required in subsection (1) of this section is five dollars and must be distributed as follows:

(i) One dollar and fifty cents must be deposited in the aquatic invasive species prevention account created in RCW 77.12.879;

(ii) One dollar must be deposited into the aquatic algae control account created in RCW 43.21A.667;

(iii) Fifty cents must be deposited into the aquatic invasive species enforcement account created in RCW 43.43.400; and

(iv) Two dollars must be deposited in the derelict vessel removal account created in RCW 79.100.100.

(b) If the department of natural resources indicates that the balance of the derelict vessel removal account, not including any transfer or appropriation of funds into the account or funds deposited into the account collected under subsection (5) of this section reaches one million dollars as of March 1st of any year, the collection of the two dollars of the derelict vessel and invasive species removal fee that is deposited into the derelict vessel removal account as authorized in (a)(iv) of this subsection must be suspended for the following fiscal year.

(4) Until January 1, 2014, an annual derelict vessel removal surcharge of one dollar must be charged with each vessel registration. The surcharge:

(a) Is to address the significant backlog of derelict vessels accumulated in Washington state waters that pose a threat to the health and safety of the people and to the environment;

(b) Is to be used only for the removal of vessels that are less than seventy-five feet in length; and

(c) Must be deposited into the derelict vessel removal account created in RCW 79.100.100.

(5) The twenty-five dollar nonresident vessel permit fee must be paid by the vessel owner to the department for the cost of providing the identification document by the department. Any moneys remaining from the fee after the payment of costs must be allocated to counties by the state treasurer for approved boating safety programs under RCW 88.02.650.

(6) The thirty dollar vessel visitor permit fee must be distributed as follows:

(a) Five dollars must be deposited in the derelict vessel removal account created in RCW 79.100.100;

(b) The department may keep an amount to cover costs for providing the vessel visitor permit;

(c) Any moneys remaining must be allocated to counties by the state treasurer for approved boating safety programs under RCW 88.02.650; and

(d) Any fees required for licensing agents under RCW 46.17.005 are in addition to any other fee or tax due for the titling and registration of vessels.

(7)(a) The fifty dollar quick title service fee must be distributed as follows:

(i) If the fee is paid to the director, the fee must be deposited to the general fund.

(ii) If the fee is paid to the participating county auditor or other agent or subagent appointed by the director, twenty-five dollars must be deposited to the general fund. The remainder must be retained by the county treasurer in the same manner as other fees collected by the county auditor.

(b) For the purposes of this subsection, "quick title" has the same meaning as in RCW 88.02.540.

NEW SECTION. Sec. 22. Section 4 of this act applies to vehicle registrations that are due or become due on or after October 1, 2012.

NEW SECTION. Sec. 23. Sections 1 through 17 of this act take effect October 1, 2012.

NEW SECTION. Sec. 24. Sections 4 through 6 of this act expire July 1, 2015."

Correct the title.

Representatives Clibborn and Armstrong spoke in favor of the adoption of the amendment.

Amendment (1302) was adopted.

There being no objection, the rules were suspended, the second reading considered the third and the bill was placed on final passage.

Representative Clibborn spoke in favor of the passage of the bill.

Representative Armstrong spoke against the passage of the bill.

The Speaker (Representative Moeller presiding) stated the question before the House to be the final passage of Engrossed Substitute Senate Bill No. 6455, as amended by the House.

ROLL CALL

The Clerk called the roll on the final passage of Engrossed Substitute Senate Bill No. 6455, as amended by the House, and the bill passed the House by the following vote: Yeas: 57 Nays: 39 Absent: 0 Excused: 2

Voting yea: Representatives Appleton, Billig, Blake, Carlyle, Clibborn, Cody, Darneille, Dickerson, Dunshee, Eddy, Finn, Fitzgibbon, Goodman, Green, Haigh, Hansen, Hasegawa, Hinkle, Hudgins, Hunt, Hunter, Hurst, Jinkins, Kagi, Kelley, Kenney, Kirby, Ladenburg, Lias, Lytton, Maxwell, McCoy, Miloscia, Moeller, Morris, Moscoso, Ormsby, Orwall, Pedersen, Pettigrew, Pollet, Reykdal, Roberts, Ryu, Santos, Seaquist, Sells, Springer, Stanford, Sullivan, Takko, Tharinger, Upthegrove, Van De Wege, Warnick, Wylie, and Mr. Speaker

Voting nay: Representatives Alexander, Anderson, Angel, Armstrong, Asay, Bailey, Buys, Chandler, Condotta, Crouse, Dahlquist, Dammeier, DeBolt, Fagan, Haler, Hargrove, Harris, Hope, Johnson, Kretz, Kristiansen, McCune, Nealey, Orcutt, Overstreet, Parker, Pearson, Probst, Rivers, Rodne, Ross, Schmick, Shea, Short, Smith, Taylor, Walsh, Wilcox, and Zeiger

Excused: Representatives Ahern and Klippert

ENGROSSED SUBSTITUTE SENATE BILL NO. 6455, as amended by the House, having received the necessary constitutional majority, was declared passed.

SUBSTITUTE SENATE BILL NO. 6444, by Senate Committee on Transportation (originally sponsored by Senators Haugen and Fain)

Concerning eligible toll facilities.

The bill was read the second time.

There being no objection, the rules were suspended, the second reading considered the third and the bill was placed on final passage.

Representatives Clibborn and Armstrong spoke in favor of the passage of the bill.

The Speaker (Representative Moeller presiding) stated the question before the House to be the final passage of Substitute Senate Bill No. 6444.

ROLL CALL

The Clerk called the roll on the final passage of Substitute Senate Bill No. 6444, and the bill passed the House by the following vote: Yeas, 77; Nays, 19; Absent, 0; Excused, 2.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Asay, Bailey, Billig, Blake, Buys, Carlyle, Chandler, Clibborn, Cody, Dammeier, Darneille, DeBolt, Dickerson, Dunshee, Eddy, Fagan, Finn, Fitzgibbon, Goodman, Green, Haigh, Hansen, Hargrove, Hope, Hudgins, Hunt, Hunter, Jinkins, Johnson, Kagi, Kenney, Kirby, Kristiansen, Ladenburg, Lias, Lytton, Maxwell, McCoy, Miloscia, Moeller, Morris, Moscoso, Nealey, Orcutt, Ormsby, Orwall, Pearson, Pedersen, Pettigrew, Pollet, Reykdal, Rivers, Roberts, Ross, Ryu, Schmick, Seaquist, Sells, Smith, Springer, Stanford, Sullivan, Takko, Tharinger, Upthegrove, Van De Wege, Walsh, Warnick, Wilcox, Wylie, Zeiger and Mr. Speaker.

Voting nay: Representatives Condotta, Crouse, Dahlquist, Haler, Harris, Hasegawa, Hinkle, Hurst, Kelley, Kretz, McCune, Overstreet, Parker, Probst, Rodne, Santos, Shea, Short and Taylor.

Excused: Representatives Ahern and Klippert.

SUBSTITUTE SENATE BILL NO. 6444, having received the necessary constitutional majority, was declared passed.

STATEMENT FOR THE JOURNAL

I intended to vote NAY on Substitute Senate Bill No. 6444.

Representative Bailey, 10th District

STATEMENT FOR THE JOURNAL

I intended to vote NAY on Substitute Senate Bill No. 6444.

Representative Smith, 10th District

MESSAGE FROM THE SENATE

March 3, 2012

MR. SPEAKER:

The Senate concurred in the House amendment(s) to the following bills and passed the bills as amended by the House:

SUBSTITUTE SENATE BILL NO. 5246
ENGROSSED SENATE BILL NO. 5661
SUBSTITUTE SENATE BILL NO. 5982

SUBSTITUTE SENATE BILL NO. 5995
 SUBSTITUTE SENATE BILL NO. 5997
 SUBSTITUTE SENATE BILL NO. 6116
 SENATE BILL NO. 6134
 ENGROSSED SENATE BILL NO. 6155
 SUBSTITUTE SENATE BILL NO. 6242
 SECOND SUBSTITUTE SENATE BILL NO. 6263
 SUBSTITUTE SENATE BILL NO. 6359
 SUBSTITUTE SENATE BILL NO. 6384
 SENATE BILL NO. 6412
 SUBSTITUTE SENATE BILL NO. 6414
 SUBSTITUTE SENATE BILL NO. 6508

and the same are herewith transmitted.

Brad Hendrickson, Deputy, Secretary

THIRD READING

RECONSIDERATION

There being no objection, the House reconsidered the vote by which Engrossed Substitute Senate Bill No. 6455, as amended by the House, passed the House.

The Speaker (Representative Moeller presiding) stated the question before the House to be the final passage of Engrossed Substitute Senate Bill No. 6455, as amended by the House, on reconsideration.

ROLL CALL

The Clerk called the roll on the final passage of Engrossed Substitute Senate Bill No. 6455, as amended by the House, and the bill passed the House by the following vote: Yeas: 54 Nays: 42 Absent: 0 Excused: 2

Voting yea: Representatives Appleton, Billig, Blake, Carlyle, Clibborn, Cody, Darneille, Dickerson, Dunshee, Eddy, Finn, Fitzgibbon, Goodman, Green, Haigh, Hansen, Hasegawa, Hudgins, Hunt, Hunter, Hurst, Jinkins, Kagi, Kenney, Kirby, Ladenburg, Liias, Lytton, Maxwell, McCoy, Miloscia, Moeller, Morris, Moscoso, Ormsby, Orwall, Pedersen, Pettigrew, Pollet, Reykdal, Roberts, Ryu, Santos, Seaquist, Sells, Springer, Stanford, Sullivan, Takko, Tharinger, Upthegrove, Van De Wege, Wylie, and Mr. Speaker

Voting nay: Representatives Alexander, Anderson, Angel, Armstrong, Asay, Bailey, Buys, Chandler, Condotta, Crouse, Dahlquist, Dammeier, DeBolt, Fagan, Haler, Hargrove, Harris, Hinkle, Hope, Johnson, Kelley, Kretz, Kristiansen, McCune, Nealey, Orcutt, Overstreet, Parker, Pearson, Probst, Rivers, Rodne, Ross, Schmick, Shea, Short, Smith, Taylor, Walsh, Warnick, Wilcox, and Zeiger

Excused: Representatives Ahern and Klippert

ENGROSSED SUBSTITUTE SENATE BILL NO. 6455, having received the necessary constitutional majority, was declared passed.

There being no objection, the House reverted to the sixth order of business.

SECOND READING

ENGROSSED SUBSTITUTE SENATE BILL NO. 6582, by Senate Committee on Transportation (originally sponsored by Senators Haugen, Eide, Hobbs, Ranker and Shin)

Concerning local transportation revenue options.

The bill was read the second time.

There being no objection, the committee amendment by the Committee on Transportation was not adopted. (For committee amendment, see Journal, Day 51, February 28, 2012)

Amendments (1306), (1276), (1251) and (1243) were ruled out of order.

Representative Liias moved the adoption of amendment (1311).

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. (1) It is the intent of the legislature to provide diversified local revenue options that may be tailored to the needs of each jurisdiction. It is also the intent that local governments provide countywide transportation planning and coordinate with other municipalities, transit systems, transportation benefit districts, planning organizations, and other transportation agencies. It is critical that all transportation infrastructure is well planned, coordinated, and maintained at the local levels to provide a seamless transportation infrastructure to enable people and goods to move safely and efficiently throughout the state and to bolster and improve the state's economy.

(2) The legislature finds that the purchasing power of funds to pay for local transportation needs continues to decline while costs have risen. Without additional funding, counties and cities will continue to struggle financially to preserve and maintain county roads, city streets, and bridges; pavement conditions will continue to decline; and public transit systems will be forced to cut services at a time when demand for transit services is increasing.

Sec. 2. RCW 36.73.065 and 2007 c 329 s 1 are each amended to read as follows:

(1) Except as provided in subsection (4) of this section, taxes, fees, charges, and tolls may not be imposed by a district without approval of a majority of the voters in the district voting on a proposition at a general or special election. The proposition must include a specific description of the transportation improvement or improvements proposed by the district and the proposed taxes, fees, charges, and the range of tolls imposed by the district to raise revenue to fund the improvement or improvements.

(2) Voter approval under this section (~~shall~~) **must** be accorded substantial weight regarding the validity of a transportation improvement as defined in RCW 36.73.015.

(3) A district may not increase any taxes, fees, charges, or range of tolls imposed under this chapter once the taxes, fees, charges, or tolls take effect, unless authorized by the district voters pursuant to RCW 36.73.160 or up to forty dollars of the vehicle fee authorized in RCW 82.80.140 by the governing board of a city transportation benefit district with a population of five hundred thousand or less.

(4)(a) A district that includes all the territory within the boundaries of the jurisdiction, or jurisdictions, establishing the district, but not including territory in which a fee is currently being collected under RCW 82.80.140, may impose by a majority vote of the governing board of the district the following fees and charges:

(i) Up to twenty dollars of the vehicle fee authorized in RCW 82.80.140; (~~or~~)

(ii) For a city transportation benefit district with a population of five hundred thousand or less, up to forty dollars of the vehicle fee authorized in RCW 82.80.140; or

(iii) A fee or charge in accordance with RCW 36.73.120.

(b) The vehicle fee authorized in (a) of this subsection may only be imposed for a passenger-only ferry transportation improvement if the vehicle fee is first approved by a majority of the voters within the jurisdiction of the district.

(c)(i) A district solely comprised of a city or cities (~~shall~~) may not impose the fees or charges identified in (a) of this subsection within one hundred eighty days after July 22, 2007, unless the county in which the city or cities reside, by resolution, declares that it will not impose the fees or charges identified in (a) of this subsection within the one hundred eighty-day period; or

(ii) A district solely comprised of a city or cities identified in RCW 36.73.020(6)(b) (~~shall~~) may not impose the fees or charges until after May 22, 2008, unless the county in which the city or cities reside, by resolution, declares that it will not impose the fees or charges identified in (a) of this subsection through May 22, 2008.

(5) If the interlocal agreement in RCW 82.80.140(2)(a) cannot be reached, a district that includes only the unincorporated territory of a county may impose by a majority vote of the governing body of the district up to (~~twenty~~) forty dollars of the vehicle fee authorized in RCW 82.80.140.

(6) Until June 30, 2015, the additional revenue generated by the vehicle fee authorized in RCW 82.80.140 by the governing board of the district must not be used to supplant existing local transportation funding in the local road operation and maintenance accounts.

Sec. 3. RCW 82.80.140 and 2010 c 161 s 917 are each amended to read as follows:

(1) Subject to the provisions of RCW 36.73.065, a transportation benefit district under chapter 36.73 RCW may fix and impose an annual vehicle fee, not to exceed one hundred dollars per vehicle registered in the district, for each vehicle subject to vehicle license fees under RCW 46.17.350(1) (a), (c), (d), (e), (g), (h), (j), or (n) through (q) and for each vehicle subject to gross weight license fees under RCW 46.17.355 with a scale weight of six thousand pounds or less.

(2)(a) A district that includes all the territory within the boundaries of the jurisdiction, or jurisdictions, or a city with a population of over five hundred thousand establishing the district, but not including territory in which a fee is currently being collected under this section, may impose by a majority vote of the governing board of the district up to twenty dollars of the vehicle fee authorized in subsection (1) of this section. A city transportation benefit district with a population of five hundred thousand or less may impose by a majority vote of the governing board of the city transportation benefit district up to forty dollars of the vehicle fee authorized in subsection (1) of this section.

(i) If the district is countywide, the revenues of the fee (~~shall~~) must be distributed to each city within the (~~county~~) district by interlocal agreement that must be effective prior to imposition of the fee. The interlocal agreement is effective when approved by the (~~county~~) district and sixty percent of the cities representing seventy-five percent of the population of the cities within the (~~county~~) district in which the countywide fee is collected.

(ii) If the district is less than countywide, the revenues of the fee must be distributed to each city within the district by interlocal agreement that must be effective prior to imposition of the fee.

(b) A district may not impose a fee under this subsection (2):

(i) For a passenger-only ferry transportation improvement unless the vehicle fee is first approved by a majority of the voters within the jurisdiction of the district; or

(ii) That, if combined with the fees previously imposed by another district within its boundaries under RCW 36.73.065(4)(a)(i), exceeds twenty dollars.

(c) If a district imposes or increases a fee under this subsection (2) that, if combined with the fees previously imposed by another district within its boundaries, exceeds twenty dollars, the district shall provide a credit for the previously imposed fees so that the combined vehicle fee does not exceed twenty dollars.

(3) The department of licensing shall administer and collect the fee. The department shall deduct a percentage amount, as provided by contract, not to exceed one percent of the fees collected, for

administration and collection expenses incurred by it. The department shall remit remaining proceeds to the custody of the state treasurer. The state treasurer shall distribute the proceeds to the district on a monthly basis.

(4) No fee under this section may be collected until six months after approval under RCW 36.73.065.

(5) The vehicle fee under this section applies only when renewing a vehicle registration, and is effective upon the registration renewal date as provided by the department of licensing.

(6) The following vehicles are exempt from the fee under this section:

(a) Campers, as defined in RCW 46.04.085;

(b) Farm tractors or farm vehicles, as defined in RCW 46.04.180 and 46.04.181;

(c) Mopeds, as defined in RCW 46.04.304;

(d) Off-road and nonhighway vehicles, as defined in RCW 46.04.365;

(e) Private use single-axle trailer, as defined in RCW 46.04.422;

(f) Snowmobiles, as defined in RCW 46.04.546; and

(g) Vehicles registered under chapter 46.87 RCW and the international registration plan.

(7)(a) A county transportation benefit district with a population of one million five hundred thousand or more may use funds derived from the vehicle license fee authorized in this section as a public authority to purchase air space rights and associated rights above transit facilities that include parking facilities and ferry terminals and provide, at no or reduced costs, for nonprofit organizations or public housing authorities to provide, for purchase or lease, affordable workforce housing. For purposes of this subsection, "affordable workforce housing" means housing for a single person, family, or unrelated persons living together whose income is between thirty percent and eighty percent of the median income, adjusted for household size, for the county in which the housing is located. Any commercial use located in these facilities must pay a commercial market rate when purchasing or leasing in one of these facilities.

(b) In furtherance of the public health and welfare and public transportation purposes, a county transportation benefit district with a population of one million five hundred thousand or more, the central Puget Sound regional transit authority, and the Washington state ferries may sell, transfer, exchange, lease, or otherwise dispose of the air rights or other property interests in any parcel of real property owned by such entities, and used and improved by those entities for public transportation facilities, for the development of and use of the air rights and associated property interests for affordable housing so long as any such sale, transfer, exchange, lease, or other disposition of the air rights or other property interests for affordable housing is compatible with the public transportation use of the underlying property or facility.

(c) Any sale, transfer, exchange, lease, or other disposition of air rights and associated property interests made under the authority of this section is exempt from any statutory or other requirement to obtain fair market value, and a sale, transfer, exchange, lease, or other disposition of air rights and associated property interests at less than fair market value made under this section is not invalid, provided that such sale, transfer, exchange, lease, or other disposition of air rights and associated property interests is discounted below fair market value not more than any proportional reduction in value resulting from the requirement for affordable housing.

(d) Any sale, transfer, exchange, lease, or other disposition of air rights and associated property interests to a private entity made under the authority of this section must include a restrictive covenant requiring that any subsequent transfer of the air rights and associated property interests be prohibited unless the property continues to be used for affordable housing purposes for the duration of the term of the restrictive covenant.

(e) Any sale, transfer, exchange, lease, or other disposition of air

rights and associated property interests for affordable housing purposes is considered a legitimate public transportation purpose.

Sec. 4. RCW 36.73.015 and 2010 c 251 s 2 and 2010 c 105 s 1 are each reenacted and amended to read as follows:

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

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

(2) "District" means a transportation benefit district created under this chapter.

(3) "Supplemental transportation improvement" or "supplemental improvement" means any project, work, or undertaking to provide public transportation service, in addition to a district's existing or planned voter-approved transportation improvements, proposed by a participating city member of the district under RCW 36.73.180.

(4) "Transportation improvement" means a project contained in the transportation plan of the state, a regional transportation planning organization, city, county, or eligible jurisdiction as identified in RCW 36.73.020(2). A project may include, but is not limited to, investment in new or existing highways of statewide significance, principal arterials of regional significance, high capacity transportation, public transportation, and other transportation projects and programs of local, regional, or statewide significance including transportation demand management. Projects may also include the operation, preservation, and maintenance of these facilities or programs.

NEW SECTION. Sec. 5. A new section is added to chapter 82.80 RCW to read as follows:

(1) A county may impose, by approval of a majority of the registered voters of the county voting on the proposition at a general or special election, a local motor vehicle excise tax of up to one percent annually on the value of every motor vehicle registered to a person residing within the county based on the valuation schedules in RCW 82.44.035. No motor vehicle excise tax may be imposed on vehicles licensed under RCW 46.17.355, except for motor vehicles with an unladen weight of six thousand pounds or less, RCW 46.16A.425, 46.17.335, or 46.17.350(1)(c).

(2) Counties imposing a tax under this section shall contract, before the effective date of the resolution or ordinance imposing a motor vehicle excise tax, with the department of licensing. The department of licensing must administer and collect the tax. The department must deduct a percentage amount, as provided by contract, not to exceed one percent of the taxes collected, for administration and collection expenses incurred by the department. The department must remit the remaining proceeds to the custody of the state treasurer. The state treasurer must distribute the proceeds to the county on a monthly basis.

(3) No tax imposed under this section may be collected until six months after approval.

(4) The tax under this section applies only when renewing a vehicle registration, and is effective upon the registration renewal date as provided by the department of licensing.

(5) Counties imposing a tax under this section must use the funds in a manner consistent with RCW 35.58.2795, 36.70A.070, and 36.70.330, and chapters 36.73 and 47.80 RCW.

(6)(a) The legislative authority of each county shall convene a meeting with representatives of each city and town located within the county for the purpose of establishing a collaborative process that will provide a framework for the adoption of a ballot measure pursuant to chapter 29A.36 RCW.

(b) The legislative authority of each county that includes a public transit system under chapter 36.57A RCW, 36.56, 35.95A, or 36.57 RCW, or RCW 35.58.2721 or 36.57.100, shall convene a meeting with representatives of the respective transit system for the purpose of establishing a collaborative process that will provide a framework for the adoption of a ballot measure pursuant to chapter 29A.36 RCW.

(7) A county has until December 31, 2013, to impose a local motor vehicle tax of up to one percent, as authorized in this section. If a county does not impose the full one percent of the local motor vehicle excise tax authorized under this section within this time period, the transit systems within that county may impose up to one-half of the county's one percent local motor vehicle excise tax. A county may waive the December 31, 2013, deadline and allow transit agencies in that county to proceed with imposing a motor vehicle excise tax.

(8) Any county that has implemented a congestion reduction charge under RCW 82.80.055 must sunset the congestion reduction charge prior to the implementation date of the county motor vehicle excise tax imposed in accordance with this section.

(9) Local governments may use all or a part of the local option motor vehicle excise tax revenues for the amortization of local government general obligation and revenue bonds issued for transportation purposes.

NEW SECTION. Sec. 6. A new section is added to chapter 82.80 RCW to read as follows:

(1)(a) A transit system that receives a waiver from a county pursuant to section 5(7) of this act may impose, by approval of a majority of the registered voters within the boundaries of the transit system voting on the proposition at a general or special election, a local motor vehicle excise tax or greater of up to one-half of one percent annually under section 5 of this act on the value of every motor vehicle registered to a person residing within the transit boundaries based on the valuation schedules in RCW 82.44.035. No motor vehicle excise tax may be imposed on vehicles licensed under RCW 46.17.355, except for motor vehicles with an unladen weight of six thousand pounds or less, RCW 46.16A.425, 46.17.335, or 46.17.350(1)(c).

(b) Beginning January 1, 2014, a transit system may impose, by approval of a majority of the registered voters within the boundaries of the transit system voting on the proposition at a general or special election, a local motor vehicle excise tax or greater of up to one-half of one percent annually under section 5 of this act on the value of every motor vehicle registered to a person residing within the transit boundaries based on the valuation schedules in RCW 82.44.035. No motor vehicle excise tax may be imposed on vehicles licensed under RCW 46.17.355, except for motor vehicles with an unladen weight of six thousand pounds or less, RCW 46.16A.425, 46.17.335, or 46.17.350(1)(c).

(2) Transit systems imposing a tax under this section shall contract, before the effective date of the resolution or ordinance imposing a motor vehicle excise tax, with the department of licensing. The department of licensing must administer and collect the tax. The department must deduct a percentage amount, as provided by contract, not to exceed one percent of the taxes collected, for administration and collection expenses incurred by the department. The department must remit the remaining proceeds to the custody of the state treasurer. The state treasurer must distribute the proceeds to the county on a monthly basis.

(3) No tax imposed under this section may be collected until six months after approval.

(4) The tax under this section applies only when renewing a vehicle registration, and is effective upon the registration renewal date as provided by the department of licensing.

(5) Transit systems may use all or a part of the local option motor vehicle excise tax revenues authorized in this section for the amortization of local government general obligation and revenue bonds issued for transportation purposes.

Sec. 7. RCW 82.80.010 and 2003 c 350 s 1 are each amended to read as follows:

(1) For purposes of this section:

(a) "Distributor" means every person who imports, refines, manufactures, produces, or compounds motor vehicle fuel and special

fuel as defined in RCW 82.36.010 and 82.38.020, respectively, and sells or distributes the fuel into a county;

(b) "Person" has the same meaning as in RCW 82.04.030.

(2) Subject to the conditions of this section ~~((,))~~: (a) Any county may levy, by approval of its legislative body and a majority of the registered voters of the county voting on the proposition at a general or special election, additional excise taxes equal to ~~((ten percent of the statewide motor vehicle fuel tax rate under RCW 82.36.025)) one cent, two cents, or three cents on each gallon of motor vehicle fuel as defined in RCW 82.36.010 and on each gallon of special fuel as defined in RCW 82.38.020 sold within the boundaries of the county; and (b) any city with a population of over five hundred thousand may levy, by approval of its legislative body and a majority of the registered voters of the city voting on the proposition at a general or special election, additional excise taxes equal to one cent on each gallon of motor vehicle fuel as defined in RCW 82.36.010 and on each gallon of special fuel as defined in RCW 82.38.020 sold within the boundaries of the city.~~ Vehicles paying an annual license fee under RCW 82.38.075 are exempt from the county fuel excise tax. An election held under this section must be held not more than twelve months before the date on which the proposed tax is to be levied. The ballot setting forth the proposition ~~((shall))~~ must state the tax rate that is proposed. The county's authority to levy additional excise taxes under this section includes the incorporated and unincorporated areas of the county to the extent that the tax has not been imposed by the city. The additional excise taxes are subject to the same exceptions and rights of refund as applicable to other motor vehicle fuel and special fuel excise taxes levied under chapters 82.36 and 82.38 RCW. The proposed tax ~~((shall))~~ may not be levied less than one month from the date the election results are certified by the county election officer. The commencement date for the levy of any tax under this section ~~((shall be))~~ is the first day of January, April, July, or October.

(3) The local option motor vehicle fuel tax on each gallon of motor vehicle fuel and on each gallon of special fuel is imposed upon the distributor of the fuel.

(4) A taxable event for the purposes of this section occurs upon the first distribution of the fuel within the boundaries of a county or city to a retail outlet, bulk fuel user, or ultimate user of the fuel.

(5) All administrative provisions in chapters 82.01, 82.03, and 82.32 RCW, insofar as they are applicable, apply to local option fuel taxes imposed under this section.

(6) Before the effective date of the imposition of the fuel taxes under this section, a county ~~((shall))~~ or city must contract with the department of revenue for the administration and collection of the taxes. The contract must provide that a percentage amount, not to exceed one percent of the taxes imposed under this section, will be deposited into the local tax administration account created in the custody of the state treasurer. The department of revenue may spend money from this account, upon appropriation, for the administration of the local taxes imposed under this section.

(7) The state treasurer ~~((shall))~~ must distribute monthly to the levying county and cities contained therein the proceeds of the additional excise taxes collected under this section, after the deductions for payments and expenditures as provided in RCW 46.68.090(1) (a) and (b) and under the conditions and limitations provided in RCW 82.80.080.

(8) The proceeds of the additional excise taxes levied under this section ~~((shall))~~ must be used strictly for transportation purposes in accordance with RCW 82.80.070.

(9) A county or city may not levy the tax under this section if they are levying the additional fuel tax in RCW 82.80.110 or if they are a member of a regional transportation investment district levying the additional fuel tax in RCW 82.80.120."

Correct the title.

Representatives Liias and Armstrong spoke in favor of the adoption of the amendment.

Amendment (1311) was adopted.

There being no objection, the rules were suspended, the second reading considered the third and the bill was placed on final passage.

Representatives Liias, Ladenburg and Ryu spoke in favor of the passage of the bill.

Representatives Armstrong, Orcutt and Angel spoke against the passage of the bill.

The Speaker (Representative Moeller presiding) stated the question before the House to be the final passage of Engrossed Substitute Senate Bill No. 6582, as amended by the House.

ROLL CALL

The Clerk called the roll on the final passage of Engrossed Substitute Senate Bill No. 6582, as amended by the House, and the bill passed the House by the following vote: Yeas, 53; Nays, 43; Absent, 0; Excused, 2.

Voting yea: Representatives Appleton, Asay, Billig, Blake, Carlyle, Clibborn, Cody, Darneille, Dunshee, Eddy, Finn, Fitzgibbon, Goodman, Green, Haigh, Hansen, Hasegawa, Hudgins, Hunt, Hunter, Jinkins, Kagi, Kenney, Kirby, Ladenburg, Liias, Lytton, Maxwell, McCoy, Miloscia, Moeller, Morris, Moscoso, Ormsby, Orwall, Pedersen, Pettigrew, Pollet, Reykdal, Roberts, Ryu, Santos, Seaquist, Sells, Springer, Stanford, Sullivan, Takko, Tharinger, Upthegrove, Van De Wege, Wylie and Mr. Speaker.

Voting nay: Representatives Alexander, Anderson, Angel, Armstrong, Bailey, Buys, Chandler, Condotta, Crouse, Dahlquist, Dammeier, DeBolt, Dickerson, Fagan, Haler, Hargrove, Harris, Hinkle, Hope, Hurst, Johnson, Kelley, Kretz, Kristiansen, McCune, Nealey, Orcutt, Overstreet, Parker, Pearson, Probst, Rivers, Rodne, Ross, Schmick, Shea, Short, Smith, Taylor, Walsh, Warnick, Wilcox and Zeiger.

Excused: Representatives Ahern and Klippert.

ENGROSSED SUBSTITUTE SENATE BILL NO. 6582, as amended by the House, having received the necessary constitutional majority, was declared passed.

STATEMENT FOR THE JOURNAL

I intended to vote YEA on Engrossed Substitute Senate Bill No. 6582.

Representative Dickerson, 36th District

THIRD READING

RECONSIDERATION

There being no objection, the House reconsidered the vote by which ENGROSSED SUBSTITUTE SENATE BILL NO. 6455, as amended by the house, passed the House.

The Speaker (Representative Moeller presiding) stated the question before the House to be the final passage of Engrossed Substitute Senate Bill No. 6455, as amended by the House, on reconsideration.

ROLL CALL

The Clerk called the roll on the final passage of Engrossed Substitute Senate Bill No. 6455, as amended by the House, on reconsideration, and the bill passed the House by the following vote: Yeas, 55; Nays, 41; Absent, 0; Excused, 2.

Voting yea: Representatives Appleton, Billig, Blake, Carlyle, Clibborn, Cody, Darneille, Dickerson, Dunshee, Eddy, Finn, Fitzgibbon, Goodman, Green, Haigh, Hansen, Hasegawa, Hudgins, Hunt, Hunter, Hurst, Jinkins, Kagi, Kelley, Kenney, Kirby, Ladenburg, Lias, Lytton, Maxwell, McCoy, Miloscia, Moeller, Morris, Moscoso, Ormsby, Orwall, Pedersen, Pettigrew, Pollet, Reykdal, Roberts, Ryu, Santos, Seaquist, Sells, Springer, Stanford, Sullivan, Takko, Tharinger, Upthegrove, Van De Wege, Wylie and Mr. Speaker.

Voting nay: Representatives Alexander, Anderson, Angel, Armstrong, Asay, Bailey, Buys, Chandler, Condotta, Crouse, Dahlquist, Dammeier, DeBolt, Fagan, Haler, Hargrove, Harris, Hinkle, Hope, Johnson, Kretz, Kristiansen, McCune, Nealey, Orcutt, Overstreet, Parker, Pearson, Probst, Rivers, Rodne, Ross, Schmick, Shea, Short, Smith, Taylor, Walsh, Warnick, Wilcox and Zeiger.

Excused: Representatives Ahern and Klippert.

ENGROSSED SUBSTITUTE SENATE BILL NO. 6455, as amended by the House, on reconsideration, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

March 1, 2012

Mr. Speaker:

The Senate has passed Engrossed Substitute House Bill No. 2233 with the following amendment:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 8. A new section is added to chapter 37.12 RCW to read as follows:

(1) The process by which the state may retrocede to the United States all or part of the civil and/or criminal jurisdiction previously acquired by the state over a federally recognized Indian tribe, and the Indian country of such tribe, must be accomplished in accordance with the requirements of this section.

(2) To initiate civil and/or criminal retrocession the duly authorized governing body of a tribe must submit a retrocession resolution to the governor accompanied by information about the tribe's plan regarding the tribe's exercise of jurisdiction following the proposed retrocession. The resolution must express the desire of the tribe for the retrocession by the state of all or any measures or provisions of the civil and/or criminal jurisdiction acquired by the state under this chapter over the Indian country and the members of such Indian tribe. Before a tribe submits a retrocession resolution to the governor, the tribe and affected municipalities are encouraged to collaborate in the adoption of interlocal agreements, or other collaborative arrangements, with the goal of ensuring that the best interests of the tribe and the surrounding communities are served by the retrocession process.

(3) Upon receiving a resolution under this section, the governor must within ninety days convene a government-to-government meeting with either the governing body of the tribe or duly authorized tribal representatives for the purpose of considering the tribe's retrocession resolution. The governor's office must consult with elected officials from the counties, cities, and towns proximately located to the area of the proposed retrocession.

(4) Within one year of the receipt of an Indian tribe's retrocession resolution the governor must issue a proclamation, if approving the request either in whole or in part. This one-year deadline may be extended by the mutual consent of the tribe and the governor, as needed. In addition, either the tribe or the governor may extend the deadline once for a period of up to six months. Within ten days of issuance of a proclamation approving the retrocession resolution, the governor must formally submit the proclamation to the federal government in accordance with the procedural requirements for federal approval of the proposed retrocession. In the event the governor denies all or part of the resolution, the reasons for such denial must be provided to the tribe in writing.

(5) Within one hundred twenty days of the governor's receipt of a tribe's resolution requesting civil and/or criminal retrocession, but prior to the governor's issuance of the proclamation approving or denying the tribe's resolution, the appropriate standing committees of the state house and senate may conduct public hearings on the tribe's request for state retrocession. The majority leader of the senate must designate the senate standing committee and the speaker of the house of representatives must designate the house standing committee. Following such public hearings, the designated legislative committees may submit advisory recommendations and/or comments to the governor regarding the proposed retrocession, but in no event are such legislative recommendations binding on the governor or otherwise of legal effect.

(6) The proclamation for retrocession does not become effective until it is approved by a duly designated officer of the United States government and in accordance with the procedures established by the United States for the approval of a proposed state retrocession.

(7) The provisions of RCW 37.12.010 are not applicable to a civil and/or criminal retrocession that is accomplished in accordance with the requirements of this section.

(8) Any proclamation issued by the governor under this section that addresses the operation of motor vehicles upon the public streets, alleys, roads and highways must include a certification that the following actions have been completed:

(a) The adoption of interlocal agreements with affected municipalities and state agencies regarding the operation of motor vehicles over Indian country and the maintenance of public highways;

(b) A certification by the Washington state patrol, the department of licensing, and the department of transportation regarding uniformity of motor vehicle operations over Indian country;

(c) A certification by the department of transportation regarding conformance with the manual of uniform traffic control devices for streets and highways as adopted by the department under chapter 47.36 RCW; and

(d) Adopted provisions in applicable interlocal agreements identified in (a) of this subsection (8) addressing tribal assumption of liability for traffic operations on state highways in Indian country.

(9) The following definitions apply for the purposes of this section:

(a) "Civil retrocession" means the state's act of returning to the federal government the civil jurisdiction acquired over Indians and Indian country under federal Public Law 280, Act of August 15, 1953, 67 Stat. 588 (codified as amended at 18 U.S.C. Sec. 1162, 25 U.S.C. Secs. 1321-1326, and 28 U.S.C. Sec. 1360);

(b) "Criminal retrocession" means the state's act of returning to the federal government the criminal jurisdiction acquired over Indians and Indian country under federal Public Law 280, Act of August 15, 1953, 67 Stat. 588 (codified as amended at 18 U.S.C. Sec. 1162, 25 U.S.C. Secs. 1321-1326, and 28 U.S.C. Sec. 1360);

(c) "Indian tribe" means any federally recognized Indian tribe, nation, community, band, or group;

(d) "Indian country" means:

(i) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the

issuance of any patent, and including rights-of-way running through the reservation;

(ii) All dependent Indian communities with the borders of the United States whether in the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and

(iii) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

NEW SECTION. Sec. 9. A new section is added to chapter 37.12 RCW to read as follows:

A civil or criminal retrocession accomplished pursuant to the procedure set forth in section 1 of this act does not:

(1) Affect the state's civil jurisdiction over the civil commitment of sexually violent predators pursuant to chapter 71.09 RCW and the state must retain such jurisdiction notwithstanding the completion of the retrocession process authorized under section 1 of this act; and

(2) Abate any action or proceeding which has been filed with any court or agency of the state or local government preceding the effective date of the completion of a retrocession authorized under section 1 of this act.

NEW SECTION. Sec. 10. A new section is added to chapter 37.12 RCW to read as follows:

(1) The provisions of section 1 of this act do not affect the validity of any retrocession procedure commenced under RCW 37.12.100 through 37.12.140 prior to the effective date of this section.

(2) Any Indian tribe that has commenced but not completed the retrocession procedure authorized in RCW 37.12.100 through 37.12.140 may request retrocession under section 1 of this act in lieu of completing that procedure.

(3) Any Indian tribe that has completed the retrocession procedure authorized in RCW 37.12.100 through 37.12.140 may use the process authorized under section 1 of this act to request retrocession of any civil or criminal jurisdiction retained by the state under RCW 37.12.120 or 37.12.010.

(4) The provisions of RCW 37.12.120 are not applicable to a civil and/or criminal retrocession that is accomplished in accordance with the requirements of section 1 of this act."

On page 1, line 3 of the title, after "country;" strike the remainder of the title and insert "and adding new sections to chapter 37.12 RCW."

and the same is herewith transmitted.

Brad Hendrickson Deputy Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House refused to concur in the Senate amendment to Engrossed Substitute House Bill No. 2233 and asked the Senate to recede therefrom.

MESSAGE FROM THE SENATE

March 1, 2012

Mr. Speaker:

The Senate has passed Engrossed Substitute House Bill No. 2361 with the following amendment:

Strike everything after the enacting clause and insert the following:

"**Sec. 11.** RCW 48.19.040 and 1994 c 131 s 8 are each amended to read as follows:

(1) Every insurer or rating organization shall, before using, file with the commissioner every classifications manual, manual of rules and rates, rating plan, rating schedule, minimum rate, class rate, and

rating rule, and every modification of any of the foregoing which it proposes. The insurer need not so file any rate on individually rated risks as described in subdivision (1) of RCW 48.19.030; except that any such specific rate made by a rating organization shall be filed.

(2) Every such filing shall indicate the type and extent of the coverage contemplated and must be accompanied by sufficient information to permit the commissioner to determine whether it meets the requirements of this chapter. An insurer or rating organization shall offer in support of any filing:

(a) The experience or judgment of the insurer or rating organization making the filing;

(b) An exhibit detailing the major elements of operating expense for the types of insurance affected by the filing;

(c) An explanation of how investment income has been taken into account in the proposed rates; and

(d) Any other information which the insurer or rating organization deems relevant.

(3) If an insurer has insufficient loss experience to support its proposed rates, it may submit loss experience for similar exposures of other insurers or of a rating organization.

(4) Every such filing shall state its proposed effective date.

(5)(a) A filing made pursuant to this chapter shall be exempt from the provisions of RCW 48.02.120(3). However, the filing and all supporting information accompanying it shall be open to public inspection only after the filing becomes effective, except as provided in (b) of this subsection.

(b) For the purpose of this section, "usage-based insurance" means private passenger automobile coverage that uses data gathered by an insurer through a recording device as defined in RCW 46.35.010 to determine rates or premiums. Information in a filing of usage-based insurance about the usage-based component of the rate is confidential and must be withheld from public inspection.

(6) Where a filing is required no insurer shall make or issue an insurance contract or policy except in accordance with its filing then in effect, except as is provided by RCW 48.19.090.

Sec. 12. RCW 42.56.400 and 2011 c 188 s 21 are each amended to read as follows:

The following information relating to insurance and financial institutions is exempt from disclosure under this chapter:

(1) Records maintained by the board of industrial insurance appeals that are related to appeals of crime victims' compensation claims filed with the board under RCW 7.68.110;

(2) Information obtained and exempted or withheld from public inspection by the health care authority under RCW 41.05.026, whether retained by the authority, transferred to another state purchased health care program by the authority, or transferred by the authority to a technical review committee created to facilitate the development, acquisition, or implementation of state purchased health care under chapter 41.05 RCW;

(3) The names and individual identification data of either all owners or all insureds, or both, received by the insurance commissioner under chapter 48.102 RCW;

(4) Information provided under RCW 48.30A.045 through 48.30A.060;

(5) Information provided under RCW 48.05.510 through 48.05.535, 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600 through 48.46.625;

(6) Examination reports and information obtained by the department of financial institutions from banks under RCW 30.04.075, from savings banks under RCW 32.04.220, from savings and loan associations under RCW 33.04.110, from credit unions under RCW 31.12.565, from check cashers and sellers under RCW 31.45.030(3), and from securities brokers and investment advisers under RCW 21.20.100, all of which is confidential and privileged information;

(7) Information provided to the insurance commissioner under RCW 48.110.040(3);

(8) Documents, materials, or information obtained by the insurance commissioner under RCW 48.02.065, all of which are confidential and privileged;

(9) Confidential proprietary and trade secret information provided to the commissioner under RCW 48.31C.020 through 48.31C.050 and 48.31C.070;

(10) Data filed under RCW 48.140.020, 48.140.030, 48.140.050, and 7.70.140 that, alone or in combination with any other data, may reveal the identity of a claimant, health care provider, health care facility, insuring entity, or self-insurer involved in a particular claim or a collection of claims. For the purposes of this subsection:

(a) "Claimant" has the same meaning as in RCW 48.140.010(2).

(b) "Health care facility" has the same meaning as in RCW 48.140.010(6).

(c) "Health care provider" has the same meaning as in RCW 48.140.010(7).

(d) "Insuring entity" has the same meaning as in RCW 48.140.010(8).

(e) "Self-insurer" has the same meaning as in RCW 48.140.010(11);

(11) Documents, materials, or information obtained by the insurance commissioner under RCW 48.135.060;

(12) Documents, materials, or information obtained by the insurance commissioner under RCW 48.37.060;

(13) Confidential and privileged documents obtained or produced by the insurance commissioner and identified in RCW 48.37.080;

(14) Documents, materials, or information obtained by the insurance commissioner under RCW 48.37.140;

(15) Documents, materials, or information obtained by the insurance commissioner under RCW 48.17.595;

(16) Documents, materials, or information obtained by the insurance commissioner under RCW 48.102.051(1) and 48.102.140(3) and (7)(a)(ii);

(17) Documents, materials, or information obtained by the insurance commissioner in the commissioner's capacity as receiver under RCW 48.31.025 and 48.99.017, which are records under the jurisdiction and control of the receivership court. The commissioner is not required to search for, log, produce, or otherwise comply with the public records act for any records that the commissioner obtains

under chapters 48.31 and 48.99 RCW in the commissioner's capacity as a receiver, except as directed by the receivership court;

(18) Documents, materials, or information obtained by the insurance commissioner under RCW 48.13.151; ~~((and))~~

(19) Data, information, and documents provided by a carrier pursuant to section 1, chapter 172, Laws of 2010; and

(20) Information in a filing of usage-based insurance about the usage-based component of the rate pursuant to RCW 48.19.040(5)(b)."

On page 1, line 2 of the title, after "inspection;" strike the remainder of the title and insert "and amending RCW 48.19.040 and 42.56.400."

and the same is herewith transmitted.

Thomas Hoemann Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House refused to concur in the Senate amendment to Engrossed Substitute House Bill No. 2361 and asked the Senate to recede therefrom.

There being no objection, the House advanced to the eleventh order of business.

There being no objection, the House adjourned until 10:00 a.m., March 5, 2012, the 57th Day of the Regular Session.

FRANK CHOPP, Speaker

BARBARA BAKER, Chief Clerk

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