

FIFTY-FOURTH DAY

MORNING SESSION

Senate Chamber, Olympia, Friday, March 7, 2008

The Senate was called to order at 9:00 a.m. by President Owen. The Secretary called the roll and announced to the President that all Senators were present with the exception of Senators Benton, Delvin, Haugen, Holmquist, Jacobsen, Kauffman, Murray, Oemig, Pflug and Rasmussen.

MOTION

On motion of Senator Morton, Senator Delvin was excused.

The Sergeant at Arms Color Guard consisting of Pages Ryan Fox and Erin O'Shaughnessy, presented the Colors. High Priest Jim Erlandson of Community of Christ Church offered the prayer.

MOTION

On motion of Senator Eide, the reading of the Journal of the previous day was dispensed with and it was approved.

MOTION

On motion of Senator Eide, the Senate advanced to the sixth order of business.

SECOND READING
CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

MOTION

Senator Marr moved that Gubernatorial Appointment No. 9370, Bruce Montgomery, as a member of The Life Sciences Discovery Fund Authority Board of Trustees, be confirmed. Senator Marr spoke in favor of the motion.

MOTION

On motion of Senator Brandland, Senators Benton, Delvin, Holmquist, Pflug, Roach and Zarelli were excused.

MOTION

On motion of Senator Regala, Senators Haugen and Kauffman were excused.

APPOINTMENT OF BRUCE MONTGOMERY

The President declared the question before the Senate to be the confirmation of Gubernatorial Appointment No. 9370, Bruce Montgomery as a member of The Life Sciences Discovery Fund Authority Board of Trustees.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9370, Bruce Montgomery as a member of The Life Sciences Discovery Fund Authority Board of Trustees and the appointment was confirmed by the following vote: Yeas, 39; Nays, 0; Absent, 4; Excused, 6.

Voting yea: Senators Berkey, Brandland, Brown, Carrell, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Hewitt, Hobbs, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Parlette, Prentice, Pridemore, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 39

Absent: Senators Jacobsen, Murray, Oemig and Rasmussen - 4

Excused: Senators Benton, Delvin, Haugen, Holmquist, Kauffman and Pflug - 6

Gubernatorial Appointment No. 9370, Bruce Montgomery, having received the constitutional majority was declared confirmed as a member of The Life Sciences Discovery Fund Authority Board of Trustees.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 2482, by House Committee on Local Government (originally sponsored by Representative Moeller)

Addressing the signature validation process for petitions that seek annexation.

The measure was read the second time.

MOTION

Senator Fairley moved that the following committee striking amendment by the Committee on Government Operations & Elections be adopted.

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 35.21.005 and 2003 c 331 s 8 are each amended to read as follows:

Wherever in this title petitions are required to be signed and filed, the following rules shall govern the sufficiency thereof:

(1) A petition may include any page or group of pages containing an identical text or prayer intended by the circulators, signers or sponsors to be presented and considered as one petition and containing the following essential elements when applicable, except that the elements referred to in (d) and (e) of this subsection are essential for petitions referring or initiating legislative matters to the voters, but are directory as to other petitions:

(a) The text or prayer of the petition which shall be a concise statement of the action or relief sought by petitioners and shall include a reference to the applicable state statute or city ordinance, if any;

(b) If the petition initiates or refers an ordinance, a true copy thereof;

(c) If the petition seeks the annexation, incorporation, withdrawal, or reduction of an area for any purpose, an accurate legal description of the area proposed for such action and if practical, a map of the area;

(d) Numbered lines for signatures with space provided beside each signature for the name and address of the signer and the date of signing;

(e) The warning statement prescribed in subsection (2) of this section.

(2) Petitions shall be printed or typed on single sheets of white paper of good quality and each sheet of petition paper having a space thereon for signatures shall contain the text or prayer of the petition and the following warning:

WARNING

Every person who signs this petition with any other than his or her true name, or who knowingly signs more than one of these petitions, or signs a petition seeking an election when he or she is not a legal voter, or signs a petition when he or she is otherwise not qualified to sign, or who makes herein any false statement, shall be guilty of a misdemeanor.

Each signature shall be executed in ink or indelible pencil and shall be followed by the name and address of the signer and the date of signing.

FIFTY-FOURTH DAY, MARCH 7, 2008

2008 REGULAR SESSION

(3) The term "signer" means any person who signs his or her own name to the petition.

(4) To be sufficient a petition must contain valid signatures of qualified registered voters or property owners, as the case may be, in the number required by the applicable statute or ordinance. Within three working days after the filing of a petition, the officer with whom the petition is filed shall transmit the petition to the county auditor for petitions signed by registered voters, or to the county assessor for petitions signed by property owners for determination of sufficiency. The officer or officers whose duty it is to determine the sufficiency of the petition shall proceed to make such a determination with reasonable promptness and shall file with the officer receiving the petition for filing a certificate stating the date upon which such determination was begun, which date shall be referred to as the terminal date. Additional pages of one or more signatures may be added to the petition by filing the same with the appropriate filing officer prior to such terminal date. Any signer of a filed petition may withdraw his or her signature by a written request for withdrawal filed with the receiving officer prior to such terminal date. Such written request shall so sufficiently describe the petition as to make identification of the person and the petition certain. The name of any person seeking to withdraw shall be signed exactly the same as contained on the petition and, after the filing of such request for withdrawal, prior to the terminal date, the signature of any person seeking such withdrawal shall be deemed withdrawn.

(5) Petitions containing the required number of signatures shall be accepted as prima facie valid until their invalidity has been proved.

(6) A variation on petitions between the signatures on the petition and that on the voter's permanent registration caused by the substitution of initials instead of the first or middle names, or both, shall not invalidate the signature on the petition if the surname and handwriting are the same.

(7) Signatures, including the original, of any person who has signed a petition two or more times shall be stricken.

(8) Signatures followed by a date of signing which is more than six months prior to the date of filing of the petition shall be stricken.

(9) When petitions are required to be signed by the owners of property, the determination shall be made by the county assessor. Where validation of signatures to the petition is required, the following shall apply:

(a) The signature of a record owner, as determined by the records of the county auditor, shall be sufficient without the signature of his or her spouse;

(b) In the case of mortgaged property, the signature of the mortgagor shall be sufficient, without the signature of his or her spouse;

(c) In the case of property purchased on contract, the signature of the contract purchaser, as shown by the records of the county auditor, shall be deemed sufficient, without the signature of his or her spouse;

(d) Any officer of a corporation owning land within the area involved who is duly authorized to execute deeds or encumbrances on behalf of the corporation, may sign on behalf of such corporation, and shall attach to the petition a certified excerpt from the bylaws of such corporation showing such authority;

(e) When the petition seeks annexation, any officer of a corporation owning land within the area involved, who is duly authorized to execute deeds or encumbrances on behalf of the corporation, may sign under oath on behalf of such corporation. If an officer signs the petition, he or she must attach an affidavit stating that he or she is duly authorized to sign the petition on behalf of such corporation;

(f) When property stands in the name of a deceased person or any person for whom a guardian has been appointed, the signature of the executor, administrator, or guardian, as the case may be, shall be equivalent to the signature of the owner of the property; and

~~((f))~~ (g) When a parcel of property is owned by multiple owners, the signature of an owner designated by the multiple owners is sufficient.

(10) The officer or officers responsible for determining the sufficiency of the petition shall do so in writing and transmit the written certificate to the officer with whom the petition was originally filed.

Sec. 2. RCW 35A.01.040 and 2003 c 331 s 9 are each amended to read as follows:

Wherever in this title petitions are required to be signed and filed, the following rules shall govern the sufficiency thereof:

(1) A petition may include any page or group of pages containing an identical text or prayer intended by the circulators, signers or sponsors to be presented and considered as one petition and containing the following essential elements when applicable, except that the elements referred to in (d) and (e) of this subsection are essential for petitions referring or initiating legislative matters to the voters, but are directory as to other petitions:

(a) The text or prayer of the petition which shall be a concise statement of the action or relief sought by petitioners and shall include a reference to the applicable state statute or city ordinance, if any;

(b) If the petition initiates or refers an ordinance, a true copy thereof;

(c) If the petition seeks the annexation, incorporation, withdrawal, or reduction of an area for any purpose, an accurate legal description of the area proposed for such action and if practical, a map of the area;

(d) Numbered lines for signatures with space provided beside each signature for the name and address of the signer and the date of signing;

(e) The warning statement prescribed in subsection (2) of this section.

(2) Petitions shall be printed or typed on single sheets of white paper of good quality and each sheet of petition paper having a space thereon for signatures shall contain the text or prayer of the petition and the following warning:

WARNING

Every person who signs this petition with any other than his or her true name, or who knowingly signs more than one of these petitions, or signs a petition seeking an election when he or she is not a legal voter, or signs a petition when he or she is otherwise not qualified to sign, or who makes herein any false statement, shall be guilty of a misdemeanor.

Each signature shall be executed in ink or indelible pencil and shall be followed by the name and address of the signer and the date of signing.

(3) The term "signer" means any person who signs his or her own name to the petition.

(4) To be sufficient a petition must contain valid signatures of qualified registered voters or property owners, as the case may be, in the number required by the applicable statute or ordinance. Within three working days after the filing of a petition, the officer with whom the petition is filed shall transmit the petition to the county auditor for petitions signed by registered voters, or to the county assessor for petitions signed by property owners for determination of sufficiency. The officer or officers whose duty it is to determine the sufficiency of the petition shall proceed to make such a determination with reasonable promptness and shall file with the officer receiving the petition for filing a certificate stating the date upon which such determination was begun, which date shall be referred to as the terminal date. Additional pages of one or more signatures may be added to the petition by filing the same with the appropriate filing officer prior to such terminal date. Any signer of a filed petition may withdraw his or her signature by a written request for withdrawal filed with the receiving officer prior to such terminal date. Such written request shall so sufficiently describe the petition as to make identification of the person and the petition certain. The name of any person seeking to withdraw shall be signed exactly the same as contained on the petition and, after the filing of such request for withdrawal, prior to the terminal date, the signature of any person seeking such withdrawal shall be deemed withdrawn.

FIFTY-FOURTH DAY, MARCH 7, 2008

2008 REGULAR SESSION

(5) Petitions containing the required number of signatures shall be accepted as prima facie valid until their invalidity has been proved.

(6) A variation on petitions between the signatures on the petition and that on the voter's permanent registration caused by the substitution of initials instead of the first or middle names, or both, shall not invalidate the signature on the petition if the surname and handwriting are the same.

(7) Signatures, including the original, of any person who has signed a petition two or more times shall be stricken.

(8) Signatures followed by a date of signing which is more than six months prior to the date of filing of the petition shall be stricken.

(9) When petitions are required to be signed by the owners of property, the determination shall be made by the county assessor. Where validation of signatures to the petition is required, the following shall apply:

(a) The signature of a record owner, as determined by the records of the county auditor, shall be sufficient without the signature of his or her spouse;

(b) In the case of mortgaged property, the signature of the mortgagor shall be sufficient, without the signature of his or her spouse;

(c) In the case of property purchased on contract, the signature of the contract purchaser, as shown by the records of the county auditor, shall be deemed sufficient, without the signature of his or her spouse;

(d) Any officer of a corporation owning land within the area involved who is duly authorized to execute deeds or encumbrances on behalf of the corporation, may sign on behalf of such corporation, and shall attach to the petition a certified excerpt from the bylaws of such corporation showing such authority;

(e) When the petition seeks annexation, any officer of a corporation owning land within the area involved, who is duly authorized to execute deeds or encumbrances on behalf of the corporation, may sign under oath on behalf of such corporation. If an officer signs the petition, he or she must attach an affidavit stating that he or she is duly authorized to sign the petition on behalf of such corporation.

(f) When property stands in the name of a deceased person or any person for whom a guardian has been appointed, the signature of the executor, administrator, or guardian, as the case may be, shall be equivalent to the signature of the owner of the property; and

~~((f))~~ (g) When a parcel of property is owned by multiple owners, the signature of an owner designated by the multiple owners is sufficient.

(10) The officer or officers responsible for determining the sufficiency of the petition shall do so in writing and transmit the written certificate to the officer with whom the petition was originally filed."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Government Operations & Elections to Substitute House Bill No. 2482.

The motion by Senator Fairley carried and the committee striking amendment was adopted by voice vote.

MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 2 of the title, after "annexation;" strike the remainder of the title and insert "and amending RCW 35.21.005 and 35A.01.040."

MOTION

On motion of Senator Fairley, the rules were suspended, Substitute House Bill No. 2482 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Fairley and Roach spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2482 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2482 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 43; Nays, 0; Absent, 3; Excused, 3.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Hewitt, Hobbs, Honeyford, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 43

Absent: Senators Jacobsen, Murray and Oemig - 3

Excused: Senators Delvin, Haugen and Holmquist - 3

SUBSTITUTE HOUSE BILL NO. 2482 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

On motion of Senator Regala, Senators Jacobsen, Murray and Oemig were excused.

MOTION

On motion of Senator Brandland, Senator Schoesler was excused.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 2560, by House Committee on Health Care & Wellness (originally sponsored by Representatives VanDeWege, Kessler, Cody, Morrell, Rolfes, Chase, Barlow, Green and Loomis)

Defining small employers for purposes of health insurance coverage.

The measure was read the second time.

MOTION

On motion of Senator Keiser, the rules were suspended, Substitute House Bill No. 2560 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Keiser spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2560.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2560 and the bill passed the Senate by the following vote: Yeas, 44; Nays, 0; Absent, 0; Excused, 5.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Hewitt, Hobbs, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler,

FIFTY-FOURTH DAY, MARCH 7, 2008

Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 44

Excused: Senators Delvin, Haugen, Holmquist, Murray and Oemig - 5

SUBSTITUTE HOUSE BILL NO. 2560, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 2624, by House Committee on Appropriations (originally sponsored by Representatives McCoy, Kessler, Appleton, Ormsby, VanDeWege, Hunt, Kenney, Darneille and Chase)

Concerning human remains.

The measure was read the second time.

MOTION

Senator Fairley moved that the following committee striking amendment by the Committee on Government Operations & Elections be adopted.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. A new section is added to chapter 68.50 RCW to read as follows:

(1) It is the duty of every person who knows of the existence and location of skeletal human remains to notify the coroner and local law enforcement in the most expeditious manner possible, unless such person has good reason to believe that such notice has already been given. Any person knowing of the existence of skeletal human remains and not having good reason to believe that the coroner and local law enforcement has notice thereof and who fails to give notice to the coroner and local law enforcement, is guilty of a misdemeanor.

(2) Any person engaged in ground disturbing activity and who encounters or discovers skeletal human remains in or on the ground shall:

(a) Immediately cease any activity which may cause further disturbance;

(b) Make a reasonable effort to protect the area from further disturbance;

(c) Report the presence and location of the remains to the coroner and local law enforcement in the most expeditious manner possible; and

(d) Be held harmless from criminal and civil liability arising under the provisions of this section provided the following criteria are met:

(i) The finding of the remains was based on inadvertent discovery;

(ii) The requirements of the subsection are otherwise met; and

(iii) The person is otherwise in compliance with applicable law.

(3) The coroner must make a determination of whether the skeletal human remains are forensic or nonforensic within five business days of receiving notification of a finding of such human remains provided that there is sufficient evidence to make such a determination within that time period. The coroner will retain jurisdiction over forensic remains.

(a) Upon determination that the remains are nonforensic, the coroner must notify the department of archaeology and historic preservation within two business days. The department will have jurisdiction over such remains until provenance of the remains is established. A determination that remains are nonforensic does not create a presumption of removal or nonremoval.

(b) Upon receiving notice from a coroner of a finding of nonforensic skeletal human remains, the department must notify the appropriate local cemeteries, and all affected tribes via certified mail to the head of the appropriate tribal government,

2008 REGULAR SESSION

and contact the appropriate tribal cultural resources staff within two business days of the finding. The determination of what are appropriate local cemeteries to be notified is at the discretion of the department. A notification to tribes of a finding of such nonforensic skeletal human remains does not create a presumption that the remains are Indian.

(c) The state physical anthropologist must make an initial determination of whether nonforensic skeletal human remains are Indian or non-Indian to the extent possible based on the remains within two business days of notification of a finding of nonforensic remains. If the remains are determined to be Indian, the department must notify all affected tribes via certified mail to the head of the appropriate tribal government within two business days and contact the appropriate tribal cultural resources staff.

(d) The affected tribes have five business days to respond via telephone or writing to the department as to their interest in the remains.

(4) For the purposes of this section:

(a) "Affected tribes" are those tribes with usual and accustomed areas in the jurisdiction where the remains were found, or those tribes that submit to the department maps that reflect the tribe's geographical area of cultural affiliation.

(b) "Forensic remains" are those that come under the jurisdiction of the coroner pursuant to RCW 68.50.010.

(c) "Inadvertent discovery" has the same meaning as used in RCW 27.44.040.

NEW SECTION. Sec. 2. A new section is added to chapter 27.44 RCW to read as follows:

(1) Any person who discovers skeletal human remains must notify the coroner and local law enforcement in the most expeditious manner possible. Any person knowing of the existence of human remains and not having good reason to believe that the coroner and local law enforcement has notice thereof and who fails to give notice thereof is guilty of a misdemeanor.

(2) Any person engaged in ground disturbing activity and who encounters or discovers skeletal human remains in or on the ground shall:

(a) Immediately cease any activity which may cause further disturbance;

(b) Make a reasonable effort to protect the area from further disturbance;

(c) Report the presence and location of the remains to the coroner and local law enforcement in the most expeditious manner possible; and

(d) Be held harmless from criminal and civil liability arising under the provisions of this section provided the following criteria are met:

(i) The finding of the remains was based on inadvertent discovery;

(ii) The requirements of the subsection are otherwise met; and

(iii) The person is otherwise in compliance with applicable law.

(3) The coroner must make a determination whether the skeletal human remains are forensic or nonforensic within five business days of receiving notification of a finding of such remains provided that there is sufficient evidence to make such a determination within that time period. The coroner will retain jurisdiction over forensic remains.

(a) Upon determination that the remains are nonforensic, the coroner must notify the department of archaeology and historic preservation within two business days. The department will have jurisdiction over such remains until provenance of the remains is established. A determination that remains are nonforensic does not create a presumption of removal or nonremoval.

(b) Upon receiving notice from a coroner of a finding of nonforensic skeletal human remains, the department must notify the appropriate local cemeteries, and all affected tribes via certified mail to the head of the appropriate tribal government, and contact the appropriate tribal cultural resources staff within two business days of the finding. The determination of what are appropriate local cemeteries to be notified is at the discretion of

FIFTY-FOURTH DAY, MARCH 7, 2008

2008 REGULAR SESSION

the department. A notification to tribes of a finding of nonforensic skeletal human remains does not create a presumption that the remains are Indian.

(c) The state physical anthropologist must make an initial determination of whether nonforensic skeletal human remains are Indian or non-Indian to the extent possible based on the remains within two business days of notification of a finding of such nonforensic remains. If the remains are determined to be Indian, the department must notify all affected tribes via certified mail to the head of the appropriate tribal government within two business days and contact the appropriate tribal cultural resources staff.

(d) The affected tribes have five business days to respond via telephone or writing to the department as to their interest in the remains.

(4) For the purposes of this section:

(a) "Affected tribes" are those tribes with usual and accustomed areas in the jurisdiction where the remains were found, or those tribes that submit to the department maps that reflect the tribe's geographical area of cultural affiliation.

(b) "Forensic remains" are those that come under the jurisdiction of the coroner pursuant to RCW 68.50.010.

(c) "Inadvertent discovery" has the same meaning as used in RCW 27.44.040.

NEW SECTION. Sec. 3. A new section is added to chapter 68.60 RCW to read as follows:

(1) Any person who discovers skeletal human remains shall notify the coroner and local law enforcement in the most expeditious manner possible. Any person knowing of the existence of skeletal human remains and not having good reason to believe that the coroner and local law enforcement has notice thereof and who fails to give notice thereof is guilty of a misdemeanor.

(2) Any person engaged in ground disturbing activity and who encounters or discovers skeletal human remains in or on the ground shall:

(a) Immediately cease any activity which may cause further disturbance;

(b) Make a reasonable effort to protect the area from further disturbance;

(c) Report the presence and location of the remains to the coroner and local law enforcement in the most expeditious manner possible; and

(d) Be held harmless from criminal and civil liability arising under the provisions of this section provided the following criteria are met:

(i) The finding of the remains was based on inadvertent discovery;

(ii) The requirements of the subsection are otherwise met; and

(iii) The person is otherwise in compliance with applicable law.

(3) The coroner must make a determination whether the skeletal human remains are forensic or nonforensic within five business days of receiving notification of a finding of such remains provided that there is sufficient evidence to make such a determination within that time period. The coroner will retain jurisdiction over forensic remains.

(a) Upon determination that the remains are nonforensic, the coroner must notify the department of archaeology and historic preservation within two business days. The department will have jurisdiction over such remains until provenance of the remains is established. A determination that remains are nonforensic does not create a presumption of removal or nonremoval.

(b) Upon receiving notice from a coroner of a finding of nonforensic skeletal human remains, the department must notify the appropriate local cemeteries, and all affected tribes via certified mail to the head of the appropriate tribal government, and contact the appropriate tribal cultural resources staff within two business days of the finding. The determination of what are appropriate local cemeteries to be notified is at the discretion of the department. A notification to tribes of a finding of such nonforensic skeletal human remains does not create a presumption that the remains are Indian.

(c) The state physical anthropologist must make an initial determination of whether nonforensic skeletal human remains are Indian or non-Indian to the extent possible based on the remains within two business days of notification of a finding of such nonforensic remains. If the remains are determined to be Indian, the department must notify all affected tribes via certified mail to the head of the appropriate tribal government within two business days and contact the appropriate tribal cultural resources staff.

(d) The affected tribes have five business days to respond via telephone or writing to the department as to their interest in the remains.

(4) For the purposes of this section:

(a) "Affected tribes" are those tribes with usual and accustomed areas in the jurisdiction where the remains were found, or those tribes that submit to the department maps that reflect the tribe's geographical area of cultural affiliation.

(b) "Forensic remains" are those that come under the jurisdiction of the coroner pursuant to RCW 68.50.010.

(c) "Inadvertent discovery" has the same meaning as used in RCW 27.44.040.

NEW SECTION. Sec. 4. A new section is added to chapter 43.334 RCW to read as follows:

(1) The director shall appoint a state physical anthropologist. At a minimum, the state physical anthropologist must have a doctorate in either archaeology or anthropology and have experience in forensic osteology or other relevant aspects of physical anthropology and must have at least one year of experience in laboratory reconstruction and analysis. A medical degree with archaeological experience in addition to the experience required may substitute for a doctorate in archaeology or anthropology.

(2) The state physical anthropologist has the primary responsibility of investigating, preserving, and, when necessary, removing and reintering discoveries of nonforensic skeletal human remains. The state physical anthropologist is available to any local governments or any tribal government within the boundaries of Washington to assist in determining whether discovered skeletal human remains are forensic or nonforensic.

(3) The director shall hire staff as necessary to support the state physical anthropologist to meet the objectives of this section.

(4) For the purposes of this section, "forensic remains" are those that come under the jurisdiction of the coroner pursuant to RCW 68.50.010.

Sec. 5. RCW 27.53.030 and 2005 c 333 s 20 are each amended to read as follows:

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

(1) "Archaeology" means systematic, scientific study of man's past through material remains.

(2) "Archaeological object" means an object that comprises the physical evidence of an indigenous and subsequent culture including material remains of past human life including monuments, symbols, tools, facilities, and technological by-products.

(3) "Archaeological site" means a geographic locality in Washington, including but not limited to, submerged and submersible lands and the bed of the sea within the state's jurisdiction, that contains archaeological objects.

(4) "Department" means the department of archaeology and historic preservation, created in chapter 43.334 RCW.

(5) "Director" means the director of the department of archaeology and historic preservation, created in chapter 43.334 RCW.

(6) "Historic" means peoples and cultures who are known through written documents in their own or other languages. As applied to underwater archaeological resources, the term historic shall include only those properties which are listed in or eligible for listing in the Washington State Register of Historic Places (RCW 27.34.220) or the National Register of Historic Places as defined in the National Historic Preservation Act of 1966 (Title 1, Sec. 101, Public Law 89-665; 80 Stat. 915; 16 U.S.C. Sec. 470) as now or hereafter amended.

FIFTY-FOURTH DAY, MARCH 7, 2008

2008 REGULAR SESSION

(7) "Prehistoric" means peoples and cultures who are unknown through contemporaneous written documents in any language.

(8) "Professional archaeologist" means a person ~~(who has met the educational, training, and experience requirements of the society of professional archaeologists.~~

~~(9) "Qualified archaeologist" means a person who has had formal training and/or experience in archaeology over a period of at least three years, and has been certified in writing to be a qualified archaeologist by two professional archaeologists)) with qualifications meeting the federal secretary of the interior's standards for a professional archaeologist. Archaeologists not meeting this standard may be conditionally employed by working under the supervision of a professional archaeologist for a period of four years provided the employee is pursuing qualifications necessary to meet the federal secretary of the interior's standards for a professional archaeologist. During this four-year period, the professional archaeologist is responsible for all findings. The four-year period is not subject to renewal.~~

~~((+))~~ (9) "Amateur society" means any organization composed primarily of persons who are not professional archaeologists, whose primary interest is in the archaeological resources of the state, and which has been certified in writing by two professional archaeologists.

~~((+))~~ (10) "Historic archaeological resources" means those properties which are listed in or eligible for listing in the Washington State Register of Historic Places (RCW 27.34.220) or the National Register of Historic Places as defined in the National Historic Preservation Act of 1966 (Title 1, Sec. 101, Public Law 89-665; 80 Stat. 915; 16 U.S.C. Sec. 470) as now or hereafter amended.

NEW SECTION. Sec. 6. A new section is added to chapter 27.34 RCW to read as follows:

The department of archaeology and historic preservation shall develop and maintain a centralized database and geographic information systems spatial layer of all known cemeteries and known sites of burials of human remains in Washington state. The information in the database is subject to public disclosure, except as provided in RCW 42.56.300; exempt information is available by confidentiality agreement to federal, state, and local agencies for purposes of environmental review, and to tribes in order to participate in environmental review, protect their ancestors, and perpetuate their cultures.

Information provided to state and local agencies under this section is subject to public disclosure, except as provided in RCW 42.56.300.

NEW SECTION. Sec. 7. A new section is added to chapter 43.334 RCW to read as follows:

The skeletal human remains assistance account is created in the custody of the state treasurer. All appropriations provided by the legislature for this purpose as well as any reimbursement for services provided pursuant to this act must be deposited in the account. Expenditures from the account may be used only for archaeological determinations and excavations of inadvertently discovered skeletal human remains, and removal and reinterment of such remains when necessary. Only the director or the director's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

NEW SECTION. Sec. 8. The department of archaeology and historic preservation must communicate with the appropriate committees of the legislature by November 15, 2009, and biennially thereafter, regarding the numbers of inadvertent discoveries of skeletal human remains and other associated activities pursuant to this act.

NEW SECTION. Sec. 9. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2008, in the omnibus appropriations act, this act is null and void."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Government Operations & Elections to Engrossed Second Substitute House Bill No. 2624.

The motion by Senator Fairley carried and the committee striking amendment was adopted by voice vote.

MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 1 of the title, after "remains;" strike the remainder of the title and insert "amending RCW 27.53.030; adding a new section to chapter 68.50 RCW; adding a new section to chapter 27.44 RCW; adding a new section to chapter 68.60 RCW; adding new sections to chapter 43.334 RCW; adding a new section to chapter 27.34 RCW; creating new sections; and prescribing penalties."

MOTION

On motion of Senator Fairley, the rules were suspended, Engrossed Second Substitute House Bill No. 2624 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Fairley and Prentice spoke in favor of passage of the bill.

POINT OF INQUIRY

Senator Roach: "Would Senator Fairley yield to a question? Senator Fairley, as we've looked at this bill, it has that many different variations and there have been lots of interest that have been I think, addressed. However, the one thing that I don't see in here is the question: Does this still make this a misdemeanor for not reporting? Are we now bringing this to a level of crime is someone does not report?"

Senator Fairley: "We do not, if they don't report that they found it, yes."

Senator Roach: "So, thank you Senator Fairley, I appreciate that."

Senator Roach spoke in favor of passage of the bill.

Senators Honeyford and Jacobsen spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Second Substitute House Bill No. 2624 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Second Substitute House Bill No. 2624 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 41; Nays, 5; Absent, 0; Excused, 3.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Hewitt, Hobbs, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Parlette, Pflug, Prentice, Pridmore, Rasmussen, Regala, Roach, Rockefeller, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 41

Voting nay: Senators Holmquist, Honeyford, Jacobsen, King and Schoesler - 5

Excused: Senators Delvin, Haugen and Oemig - 3

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 2624 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

FIFTY-FOURTH DAY, MARCH 7, 2008

2008 REGULAR SESSION

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 2783, by House Committee on Appropriations (originally sponsored by Representatives Wallace, Chase, Anderson, Sells, Haigh, Roberts, Hasegawa, Morrell, Sullivan, Kenney and Hudgins)

Regarding transfer and articulation between institutions of higher education.

The measure was read the second time.

MOTION

Senator Shin moved that the following committee striking amendment by the Committee on Ways & Means be adopted.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. The legislature finds that students are accessing higher education differently than they have in previous years. Rather than attending a single institution and attaining their degree, many students now attend multiple institutions, sometimes simultaneously.

The legislature also finds that learning occurs throughout a person's lifetime. Whether citizens need different training to change careers or need further education for career advancement, people exit and reenter institutions of higher education multiple times and for various reasons.

The legislature also finds that current policies and practices do not provide clear, consistent, easily accessible information to ease transition in and among the state's colleges and universities. Often, courses taken at some career and technical schools as well as private for-profit institutions are not accepted in transfer because these schools are not accredited by a regional accrediting body. Students often do not understand that these courses are not transferrable. Students must retake courses once they have transferred into a regionally accredited institution, costing the student additional time and money.

Therefore, it is the legislature's intent to improve statewide communication and coordination of transfer and articulation policies and practices. Students should be provided clear, consistent information regarding the courses required for their degrees and how those courses will be treated when a student moves between colleges and universities. This information should be communicated to students and their families in one easily accessible place in a format that is common among all colleges and universities in the state.

NEW SECTION. Sec. 2. A new section is added to chapter 28B.10 RCW to read as follows:

(1) The higher education coordinating board shall convene a work group of representatives from the state board for community and technical colleges, the office of the superintendent of public instruction, the council of presidents, and two-year and four-year institutions of higher education including students, to develop a list of rights guaranteed to students who have earned a transfer associate degree under the direct transfer agreement. The work group may be an existing work group that addresses policy issues related to transitions among public and private institutions of higher education and may also include representatives from the independent colleges of Washington, as well as the career and tribal colleges.

(2) The list in subsection (1) of this section shall be known as the transfer student bill of rights and shall include statements of institutional policy regarding transfer and articulation to assist students who have earned a transfer associate degree in their academic planning. The list shall include but is not limited to:

(a) Admission to each public and private two-year and four-year institution of higher education that participates in the direct transfer agreement;

(b) The number of credits that will transfer;

(c) Academic requirements fulfilled by the degree at the receiving institution;

(d) Acceptance of credit earned in dual enrollment and accelerated programs such as advanced placement, running start, and international baccalaureate;

(e) Acceptance of credits earned at nonregionally accredited institutions; and

(f) Advance knowledge of selection criteria for limited access programs.

(3) The work group shall determine which elements in this section are guaranteed to students entering a four-year institution of higher education and which elements differ based on admission requirements at a specific institution or program. The work group must determine the clearest manner in which to communicate this information to students and their families as part of the transfer student bill of rights.

(4) The transfer student bill of rights shall be displayed prominently in a user-friendly area of each institution's web site. Admissions offices, transfer planning offices, recruiting offices and other relevant offices at public and private institutions of higher education shall also make the transfer student bill of rights available to prospective and enrolled students. Public institutions of higher education shall make the bill of rights available by September 2009. The transfer student bill of rights may also be used by private institutions of higher education participating in direct transfer agreements.

(5) For purposes of this section, "nonregionally accredited institutions" means only those institutions that are fully accredited by a national accrediting agency recognized by the United States department of education.

NEW SECTION. Sec. 3. A new section is added to chapter 28B.76 RCW to read as follows:

(1) The higher education coordinating board must convene a work group including representatives from the state board for community and technical colleges, the workforce training and education coordinating board, the council of presidents, two-year institutions of higher education, and four-year institutions of higher education to develop a plan to monitor the progress and success of transfer students. The workgroup may be an existing work group that addresses policy issues related to transitions across institutions of higher education.

(2) The plan shall contain data that measures student progress through the higher education system that can be monitored over time. This information shall include, but not be limited to:

(a) The number of students who indicate their intent to transfer at the time of enrollment and the percentage of those students who actually transfer or earn an associate degree within three years;

(b) Educational outcomes for students who declare their intent to transfer, earn at least fifteen academic credits, and transfer within three years;

(c) The percentage of students who earn their four-year degree within three years of earning their associate degree;

(d) The average time and credits to completion of an academic transfer degree including the direct transfer agreement, the associate of science-transfer, and all major related programs; and

(e) The average grade point average for students who attain their transfer associate degrees.

(3) The plan shall also include analysis regarding the barriers that transfer students face in pursuit of their four-year degree and recommendations to address those barriers.

(4) The higher education coordinating board, in collaboration with the work group and the state board for community and technical colleges, shall report to the appropriate committees of the legislature by January 2009, and thereafter on a time schedule consistent with reporting related to monitoring progress toward the higher education coordinating board master plan goals.

NEW SECTION. Sec. 4. A new section is added to chapter 28B.10 RCW to read as follows:

(1) Consistent with the statewide strategic master plan for higher education, the higher education coordinating board shall convene a work group identified in section 2(1) of this act that shall recommend the best means to identify, at the time of registration, the transferability and applicability of community and technical college courses to students' baccalaureate degree goals.

FIFTY-FOURTH DAY, MARCH 7, 2008

2008 REGULAR SESSION

(2) Whether and to what extent each course published in an institutional catalog is transferrable must be identified in a manner mutually agreed upon by the two-year institutions of higher education and four-year institutions of higher education.

(3) Institutions of higher education must publish this information either on the internet, in physical course catalogs, or by another means identified by the work group that addresses the needs of students without access to the internet.

(4) The system of identification in this section shall be implemented by September 2009.

NEW SECTION. Sec. 5. (1) Consistent with the schedule and work plans for implementation of the strategic master plan for higher education, the higher education coordinating board shall convene a work group or assign an existing work group that includes broad representation from the workforce training and education coordinating board, the state board for community and technical colleges, institutions of higher education, the independent colleges of Washington, the career and tribal colleges, the center for information services, student representatives from two-year and four-year institutions of higher education, and the office of the superintendent of public instruction to create a detailed plan for developing and implementing a statewide web-based academic planning tool. The web-based academic planning tool would be used by current, prospective, and returning students to plan their path from high school through the attainment of their higher education goals.

(2) The plan shall contain information including, but not limited to:

(a) Functions that will be included in the web site;

(b) Options for development including, but not limited to: Purchasing the entire system from a vendor; purchasing parts of the system from a private vendor; building parts of the system with Washington informational technology resources; and building the entire system with Washington information technology resources; and

(c) Costs associated with each of the options in this subsection.

(3) The higher education coordinating board shall report to the appropriate committees of the legislature by December 15, 2008. The report shall include recommendations on the most robust yet cost-effective options for the web-based academic planning tool.

NEW SECTION. Sec. 6. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2008, in the omnibus appropriations act, this act is null and void."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Ways & Means to Engrossed Second Substitute House Bill No. 2783.

The motion by Senator Shin carried and the committee striking amendment was adopted by voice vote.

MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 2 of the title, after "education;" strike the remainder of the title and insert "adding new sections to chapter 28B.10 RCW; adding a new section to chapter 28B.76 RCW; and creating new sections."

MOTION

On motion of Senator Shin, the rules were suspended, Engrossed Second Substitute House Bill No. 2783 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Shin spoke in favor of passage of the bill.

MOTION

On motion of Senator Regala, Senator Prentice was excused.

The President declared the question before the Senate to be the final passage of Engrossed Second Substitute House Bill No. 2783 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Second Substitute House Bill No. 2783 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 45; Nays, 0; Absent, 0; Excused, 4.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Parlette, Pflug, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 45

Excused: Senators Delvin, Haugen, Oemig and Prentice - 4

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 2783 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION TO LIMIT DEBATE

Senator Eide: "Mr. President, I move that the members of the Senate be allowed to speak but once on each question before the Senate, that such speech be limited to three minutes and that members be prohibited from yielding their time, however, the maker of a motion shall be allowed to open and close debate. This motion shall be in effect through March 7, 2008."

The President declared the question before the Senate to be the motion by Senator Eide to limit debate.

The motion by Senator Eide carried and debate was limited through March 7, 2008.

MOTION

On motion of Senator Eide, Rule 15 was suspended for the remainder of the day for the purpose of allowing continued floor action.

EDITOR'S NOTE: Senate Rule 15 establishes the floor schedule and calls for a lunch and dinner break of 90 minutes each per day during regular daily sessions.

SECOND READING

HOUSE BILL NO. 2786, by Representatives Kelley, Hurst, Lantz, Upthegrove, Pearson, Morrell, Priest, Kenney, Haler, Williams, Loomis, Smith, Bailey, Kristiansen, McCune, Simpson and VanDeWege

Including level I offenders who fail to maintain registration as required by RCW 9A.44.130 to the statewide notification web site.

The measure was read the second time.

MOTION

Senator Hargrove moved that the following committee striking amendment by the Committee on Human Services & Corrections be adopted.

Strike everything after the enacting clause and insert the following:

FIFTY-FOURTH DAY, MARCH 7, 2008

2008 REGULAR SESSION

"Sec. 1. RCW 4.24.550 and 2005 c 380 s 2, 2005 c 228 s 1, and 2005 c 99 s 1 are each reenacted and amended to read as follows:

(1) In addition to the disclosure under subsection (5) of this section, public agencies are authorized to release information to the public regarding sex offenders and kidnapping offenders when the agency determines that disclosure of the information is relevant and necessary to protect the public and counteract the danger created by the particular offender. This authorization applies to information regarding: (a) Any person adjudicated or convicted of a sex offense as defined in RCW 9A.44.130 or a kidnapping offense as defined by RCW 9A.44.130; (b) any person under the jurisdiction of the indeterminate sentence review board as the result of a sex offense or kidnapping offense; (c) any person committed as a sexually violent predator under chapter 71.09 RCW or as a sexual psychopath under chapter 71.06 RCW; (d) any person found not guilty of a sex offense or kidnapping offense by reason of insanity under chapter 10.77 RCW; and (e) any person found incompetent to stand trial for a sex offense or kidnapping offense and subsequently committed under chapter 71.05 or 71.34 RCW.

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

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

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

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

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

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

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

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

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

(6) Local law enforcement agencies that disseminate information pursuant to this section shall: (a) Review available risk level classifications made by the department of corrections, the department of social and health services, and the indeterminate sentence review board; (b) assign risk level classifications to all offenders about whom information will be disseminated; and (c) make a good faith effort to notify the public and residents at least fourteen days before the offender is released from confinement or, where an offender moves from another jurisdiction, as soon as possible after the agency learns of the offender's move, except that in no case may this notification provision be construed to require an extension of an offender's release date. The juvenile court shall provide local law enforcement officials with all relevant information on offenders allowed to remain in the community in a timely manner.

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

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

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

FIFTY-FOURTH DAY, MARCH 7, 2008

2008 REGULAR SESSION

(10) When a local law enforcement agency or official classifies an offender differently than the offender is classified by the end of sentence review committee or the department of social and health services at the time of the offender's release from confinement, the law enforcement agency or official shall notify the end of sentence review committee or the department of social and health services and submit its reasons supporting the change in classification. Upon implementation of subsection (5)(a) of this section, notification of the change shall also be sent to the Washington association of sheriffs and police chiefs."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Human Services & Corrections to House Bill No. 2786.

The motion by Senator Hargrove carried and the committee striking amendment was adopted by voice vote.

MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 3 of the title, after "site;" strike the remainder of the title and insert "and reenacting and amending RCW 4.24.550."

MOTION

On motion of Senator Hargrove, the rules were suspended, House Bill No. 2786 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Hargrove spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 2786 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 2786 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 44; Nays, 0; Absent, 2; Excused, 3.

Voting yea: Senators Benton, Berkey, Brandland, Carrell, Delvin, Eide, Fairley, Franklin, Hargrove, Hatfield, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Parlette, Pflug, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 44

Absent: Senators Brown and Fraser - 2

Excused: Senators Haugen, Oemig and Prentice - 3

HOUSE BILL NO. 2786 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 2727, by House Committee on Judiciary (originally sponsored by Representatives Lantz, Pedersen, Rodne, Goodman, Williams and Green)

Extending personality rights to deceased persons.

The measure was read the second time.

MOTION

On motion of Senator Kline, the rules were suspended, Substitute House Bill No. 2727 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Kline and King spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2727.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2727 and the bill passed the Senate by the following vote: Yeas, 46; Nays, 0; Absent, 0; Excused, 3.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Parlette, Pflug, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 46

Excused: Senators Haugen, Oemig and Prentice - 3

SUBSTITUTE HOUSE BILL NO. 2727, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2996, by House Committee on Commerce & Labor (originally sponsored by Representatives Loomis, Dunshee, Simpson and Morrell)

Requiring aversive agents in antifreeze products.

The measure was read the second time.

MOTION

On motion of Senator Kohl-Welles, the rules were suspended, Engrossed Substitute House Bill No. 2996 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Kohl-Welles and Holmquist spoke in favor of passage of the bill.

MOTION

On motion of Senator Regala, Senator Kauffman was excused.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 2996.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 2996 and the bill passed the Senate by the following vote: Yeas, 47; Nays, 0; Absent, 0; Excused, 2.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Parlette, Pflug, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 47

FIFTY-FOURTH DAY, MARCH 7, 2008

Excused: Senators Oemig and Prentice - 2

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2996, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

On motion of Senator Brandland, Senator Carrell was excused.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 2823, by House Committee on Agriculture & Natural Resources (originally sponsored by Representatives Blake and Kretz)

Regarding the Willapa harbor oyster reserve.

The measure was read the second time.

MOTION

On motion of Senator Hatfield, the rules were suspended, Substitute House Bill No. 2823 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Hatfield and Morton spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2823.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2823 and the bill passed the Senate by the following vote: Yeas, 45; Nays, 0; Absent, 0; Excused, 4.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Parlette, Pflug, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 45

Excused: Senators Carrell, Kauffman, Oemig and Prentice - 4

SUBSTITUTE HOUSE BILL NO. 2823, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

On motion of Senator Eide, the Senate advanced to the eighth order of business.

MOTION

Senator Rasmussen moved adoption of the following resolution:

SENATE RESOLUTION 8731

By Senators Rasmussen, Fraser, Swecker, Franklin, Jacobsen, Shin, Berkey, Delvin, and Fairley

WHEREAS, Washington state is a leader in the development of both public and private higher education; and

2008 REGULAR SESSION

WHEREAS, Washington state has a history of pursuing international relationships with the specific purpose of increasing cross-cultural understanding and goodwill for the benefit of citizens here and abroad; and

WHEREAS, Washington state's higher education institutions offer opportunities abroad and welcome international faculty, students, and administrators to participate in colleges and universities in this state; and

WHEREAS, Washington state institutions and individuals have helped increase access to higher education in Malawi, Africa, the fifth poorest nation in the world, to aid the country in its effort to lift itself from economic poverty to self-sustaining independence; and

WHEREAS, Centralia College and City University of Seattle, service clubs such as Rotary, P.E.O., Sertoma, Lions, A.A.U.W., and churches of the Olympia Presbytery and throughout the state have joined Malawians in their efforts to improve their in-country education opportunities; and

WHEREAS, Washington state public and private entities have supported the Malawian dream to bring to reality the vision of Dr. Robert Laws to establish the University of Livingstonia in honor of Dr. David Livingstone; and

WHEREAS, The opening of the University of Livingstonia on August 27, 2003, was celebrated by the nation of Malawi, and the University of Livingstonia has received government accreditation of its educational programs; and

WHEREAS, The first Bachelor of Education degrees were awarded to thirty-five graduates of the University of Livingstonia College of Education during the graduation ceremony at Livingstonia on September 15, 2007, and presented by the guest of honor, His Excellency, Dr. Bingu wa Mutharika, president of the Republic of Malawi; and

WHEREAS, Citizens from Washington state, working both in the United States and in Malawi, have contributed their time and knowledge to help Malawians build capacity and capability for the long-term sustainability of the University of Livingstonia; and

WHEREAS, The following residents of the state of Washington are to be congratulated and thanked for their willingness to travel to Malawi to encourage Malawians and to assist with the development of the University of Livingstonia: David Carr, Joyce Carr, Ralph Carr, Drew Conrad, Doris Crawford, Doug Crawford, Anthony Dolezal, Joe Dolezal, Laura Dolezal, Patricia Dolezal, Sarah Dolezal, Vernon Elgin, Ken Gentili, Sylvia Gentili, Barbara Hayden Wahl, Cindy Hill, James Hill, Rob Jacobson, Carol Johnstone, Sherry Jorgensen, Henry Kirk, Jenny Sheldon Kirk, Lynn Longfield, Vicki Nupen, Glen Nutter, Linda Rakoz, Ken Rakoz, Judith Richerzhagen, Barbara Schacht, Bill Schacht, Janice Smith, Jeff Smith, Michiko Tanaka, Linda Ticknor, Alicia Wicks, Bob Wubbena, Joan Wubbena, Melody Young, and others;

NOW, THEREFORE, BE IT RESOLVED, That the Washington state legislature thank and commend all those who have reached beyond our borders to lend a hand to the nation of Malawi located halfway around the world; and

BE IT FURTHER RESOLVED, That the Washington state legislature offer congratulations to the citizens of Malawi for bringing their 100-plus-year dream to reality; and

BE IT FURTHER RESOLVED, That the Washington state legislature encourage those with time, talent, and resources to continue to support this humanitarian effort which will help Malawians build better futures for themselves and their nation.

Senators Rasmussen, Swecker and Shin spoke in favor of adoption of the resolution.

The President declared the question before the Senate to be the adoption of Senate Resolution No. 8731.

The motion by Senator Rasmussen carried and the resolution was adopted by voice vote.

INTRODUCTION OF SPECIAL GUESTS

The President recognized a large group of representatives from Lewis and Thurston counties and other Washingtonians

FIFTY-FOURTH DAY, MARCH 7, 2008

who have helped establish the University of Livingstonia in the nation of Malawi and were seated in the gallery.

MOTION

On motion of Senator Eide, the Senate reverted to the sixth order of business.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 3224, by House Committee on Transportation (originally sponsored by Representatives Loomis, Hunter, Sells and Liias)

Reviewing and conducting studies on providing commuter rail services.

The measure was read the second time.

MOTION

On motion of Senator Murray, the rules were suspended, Substitute House Bill No. 3224 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Murray and Swecker spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 3224.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 3224 and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 49

SUBSTITUTE HOUSE BILL NO. 3224, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 3144, by House Committee on Technology, Energy & Communications (originally sponsored by Representatives Liias, Loomis, Hunt, Miloscia, Rolfes, Upthegrove, Linville, Green, VanDeWege, Morrell, Conway, Kelley, Nelson, Santos and Ormsby)

Creating a consumer protection web site and information line. Revised for 1st Substitute: Creating a consumer protection web site.

The measure was read the second time.

MOTION

Senator Kilmer moved that the following committee striking amendment by the Committee on Consumer Protection &

Housing be adopted.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. The legislature finds that in an era of consumer product recalls, increasing state emphasis on quality ratings and accountability, and decreasing resources at the federal level for consumer protection, there may be a gap in outreach to consumers in the state. The legislature further finds that many state agencies provide helpful information to consumers, but consumers may not always know where to look to find such information. To remedy this potential information gap, the legislature declares that a "one-stop" consumer protection web site should be created so that consumers in Washington state have access to clear and appropriate information regarding consumer services that are available to them across state government.

NEW SECTION. Sec. 2. A new section is added to chapter 43.105 RCW to read as follows:

(1) The department shall coordinate among state agencies to develop a consumer protection web site. The web site shall serve as a one-stop web site for consumer information. At a minimum, the web site must provide links to information on:

(a) Insurance information provided by the office of the insurance commissioner, including information on how to file consumer complaints against insurance companies, how to look up authorized insurers, and how to learn more about health insurance benefits;

(b) Child care information provided by the department of early learning, including how to select a child care provider, how child care providers are rated, and information about product recalls;

(c) Financial information provided by the department of financial institutions, including consumer information on financial fraud, investing, credit, and enforcement actions;

(d) Health care information provided by the department of health, including health care provider listings and quality assurance information;

(e) Home care information provided by the home care quality authority, including information to assist consumers in finding an in-home provider;

(f) Licensing information provided by the department of licensing, including information regarding business, vehicle, and professional licensing; and

(g) Other information available on existing state agency web sites that could be a helpful resource for consumers.

(2) By July 1, 2008, state agencies shall report to the department on whether they maintain resources for consumers that could be made available through the consumer protection web site.

(3) By September 1, 2008, the department shall make the consumer protection web site available to the public.

(4) After September 1, 2008, the department, in coordination with other state agencies, shall develop a plan on how to build upon the consumer protection web site to create a consumer protection portal. The plan must also include an examination of the feasibility of developing a toll-free information line to support the consumer protection portal. The plan must be submitted to the governor and the appropriate committees of the legislature by December 1, 2008.

NEW SECTION. Sec. 3. (1) Within existing funds, the attorney general shall conduct a study to:

(a) Determine the percentage of consumer complaints of possible consumer protection act violations received by its consumer resource centers that are resolved to the consumer's satisfaction; and

(b) Develop possible sanctions that the attorney general may use if it determines that a consumer's complaint is legitimate and the business fails to provide the consumer with an adequate remedy or response.

(2) The attorney general shall report its findings to the legislature by December 1, 2008.

FIFTY-FOURTH DAY, MARCH 7, 2008

2008 REGULAR SESSION

NEW SECTION. **Sec. 4.** Section 3 of this act expires December 31, 2008."

MOTION

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Consumer Protection & Housing to Substitute House Bill No. 3144.

The motion by Senator Kilmer carried and the committee striking amendment was adopted by voice vote.

MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 2 of the title, after "line;" strike the remainder of the title and insert "adding a new section to chapter 43.105 RCW; creating new sections; and providing an expiration date."

MOTION

On motion of Senator Kilmer, the rules were suspended, Substitute House Bill No. 3144 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Kilmer spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 3144 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 3144 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 49

SUBSTITUTE HOUSE BILL NO. 3144 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

On motion of Senator Delvin, Senator Swecker was excused.

SECOND READING

SECOND SUBSTITUTE HOUSE BILL NO. 2903, by House Committee on Appropriations Subcommittee on General Government & Audit Review (originally sponsored by Representatives Lantz, Rodne, McCoy, Wallace, Moeller, Williams, O'Brien and Goodman)

Creating an access coordinator for the administrative office of the courts.

The measure was read the second time.

On motion of Senator Kline, the rules were suspended, Second Substitute House Bill No. 2903 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Kline spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Second Substitute House Bill No. 2903.

ROLL CALL

The Secretary called the roll on the final passage of Second Substitute House Bill No. 2903 and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Tom, Weinstein and Zarelli - 48

Excused: Senator Swecker - 1

SECOND SUBSTITUTE HOUSE BILL NO. 2903, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 2668, by House Committee on Appropriations (originally sponsored by Representatives Morrell, Green, Cody, Hunt, McCoy, Wallace, Pedersen, Campbell, McIntire, Conway, Simpson, Kenney and Darneille)

Expanding programs for persons needing long-term care. Revised for 2nd Substitute: Expanding programs for persons needing long-term care. (REVISED FOR ENGROSSED: Concerning long-term care.)

The measure was read the second time.

MOTION

Senator Keiser moved that the following committee striking amendment by the Committee on Ways & Means be adopted.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** The legislature finds that Washingtonians sixty-five years of age and older will nearly double in the next twenty years, from eleven percent of our population today to almost twenty percent of our population in 2025. Younger people with disabilities will also require supportive long-term care services. Nationally, young people with a disability account for thirty seven percent of the total number of people who need long-term care.

The legislature further finds that to address this increasing need, the long-term care system should support autonomy and self-determination, and support the role of informal caregivers and families. It should promote personal planning and savings combined with public support, when needed. It should also include culturally appropriate, high quality information, services, and supports delivered in a cost-effective and efficient manner.

The legislature further finds that more than fifteen percent of adults over age sixty-five in Washington state have diabetes.

FIFTY-FOURTH DAY, MARCH 7, 2008

Current nurse delegation statutes limit the ability of elderly and disabled persons with diabetes to remain in their own homes or in other home-like long-term care settings. It is the intent of the legislature to modify nurse delegation statutes to enable elderly persons and persons with disabilities who have diabetes to continue to reside in their own home or other home-like settings.

The legislature further finds that the long-term care system should utilize evidence-based practices for the prevention and management of chronic disease to improve the general health of Washingtonians over their lifetime and reduce health care and long-term care costs related to ineffective chronic care management.

Sec. 2. RCW 74.41.040 and 1987 c 409 s 3 are each amended to read as follows:

The department shall administer this chapter and shall establish such rules and standards as the department deems necessary in carrying out this chapter. The department shall not require the development of plans of care or discharge plans by nursing homes or adult family homes providing respite care service under this chapter. Boarding homes providing respite care services shall comply with the assessment and plan of care provisions of RCW 18.20.350.

The department shall develop standards for the respite program in conjunction with the selected area agencies on aging. The program standards shall serve as the basis for soliciting bids, entering into subcontracts, and developing sliding fee scales to be used in determining the ability of eligible participants to participate in paying for respite care.

Sec. 3. RCW 18.20.350 and 2004 c 142 s 7 are each amended to read as follows:

(1) The boarding home licensee shall conduct a preadmission assessment for each resident applicant. The preadmission assessment shall include the following information, unless unavailable despite the best efforts of the licensee:

- (a) Medical history;
- (b) Necessary and contraindicated medications;
- (c) A licensed medical or health professional's diagnosis, unless the individual objects for religious reasons;
- (d) Significant known behaviors or symptoms that may cause concern or require special care;
- (e) Mental illness diagnosis, except where protected by confidentiality laws;
- (f) Level of personal care needs;
- (g) Activities and service preferences; and
- (h) Preferences regarding other issues important to the resident applicant, such as food and daily routine.

(2) The boarding home licensee shall complete the preadmission assessment before admission unless there is an emergency. If there is an emergency admission, the preadmission assessment shall be completed within five days of the date of admission. For purposes of this section, "emergency" includes, but is not limited to: Evening, weekend, or Friday afternoon admissions if the resident applicant would otherwise need to remain in an unsafe setting or be without adequate and safe housing.

(3) The boarding home licensee shall complete an initial resident service plan upon move-in to identify the resident's immediate needs and to provide direction to staff and caregivers relating to the resident's immediate needs. The initial resident service plan shall include as much information as can be obtained, under subsection (1) of this section.

(4) When a facility provides respite care, before or at the time of admission, the facility must obtain sufficient information to meet the individual's anticipated needs. At a minimum, such information must include:

- (a) The name, address, and telephone number of the individual's attending physician, and alternate physician if any;
- (b) Medical and social history, which may be obtained from a respite care assessment and service plan performed by a case

2008 REGULAR SESSION

manager designated by an area agency on aging under contract with the department, and mental and physical assessment data;

(c) Physician's orders for diet, medication, and routine care consistent with the individual's status on admission;

(d) Ensure the individuals have assessments performed, where needed, and where the assessment of the individual reveals symptoms of tuberculosis, follow required tuberculosis testing requirements; and

(e) With the participation of the individual and, where appropriate, their representative, develop a plan of care to maintain or improve their health and functional status during their stay in the facility.

Sec. 4. RCW 74.41.050 and 2000 c 207 s 4 are each amended to read as follows:

The department shall contract with area agencies on aging or other appropriate agencies to conduct family caregiver long-term care information and support services to the extent of available funding. The responsibilities of the agencies shall include but not be limited to: (1) Administering a program of family caregiver long-term care information and support services; ~~(and)~~ (2) negotiating rates of payment, administering sliding-fee scales to enable eligible participants to participate in paying for respite care, and arranging for respite care information, training, and other support services; and (3) developing an evidence-based tailored caregiver assessment and referral tool. In evaluating the need for respite services, consideration shall be given to the mental and physical ability of the caregiver to perform necessary caregiver functions.

Sec. 5. RCW 74.38.030 and 1975-'76 2nd ex.s. c 131 s 3 are each amended to read as follows:

(1) The program of community based services authorized under this chapter shall be administered by the department. Such services may be provided by the department or through purchase of service contracts, vendor payments or direct client grants.

The department shall, under stipend or grant programs provided under RCW 74.38.060, utilize, to the maximum staffing level possible, eligible persons in its administration, supervision, and operation.

(2) The department shall be responsible for planning, coordination, monitoring and evaluation of services provided under this chapter but shall avoid duplication of services.

(3) The department may designate area agencies in cities of not less than twenty thousand population or in regional areas within the state. These agencies shall submit area plans, as required by the department. For area plans prepared for submission in 2009, and thereafter, the area agencies may include the findings and recommendations of area-wide planning initiatives that they may undertake with appropriate local and regional partners regarding the changing age demographics of their area and the implications of this demographic change for public policies and public services. They shall also submit, in the manner prescribed by the department, such other program or fiscal data as may be required.

(4) The department shall develop an annual state plan pursuant to the Older Americans Act of 1965, as now or hereafter amended. This plan shall include, but not be limited to:

- (a) Area agencies' programs and services approved by the department;
- (b) Other programs and services authorized by the department; and
- (c) Coordination of all programs and services.

(5) The department shall establish rules and regulations for the determination of low income eligible persons. Such determination shall be related to need based on the initial resources and subsequent income of the person entering into a program or service. This determination shall not prevent the eligible person from utilizing a program or service provided by the department or area agency. However, if the determination is

FIFTY-FOURTH DAY, MARCH 7, 2008

that such eligible person is nonlow income, the provision of RCW 74.38.050 shall be applied as of the date of such determination.

Sec. 6. RCW 74.38.040 and 1983 c 290 s 14 are each amended to read as follows:

The community based services for low-income eligible persons provided by the department or the respective area agencies may include:

(1) Access services designed to provide identification of eligible persons, assessment of individual needs, reference to the appropriate service, and follow-up service where required. These services shall include information and referral, outreach, transportation and counseling. They shall also include long-term care planning and options counseling, information and crisis intervention, and streamlined assistance to access a wide array of public and private community-based services. Services would be available to individuals, concerned families or friends, or professionals working with issues related to aging, disabilities, and caregivers;

(2) Day care offered on a regular, recurrent basis. General nursing, rehabilitation, personal care, nutritional services, social casework, mental health as provided pursuant to chapter 71.24 RCW and/or limited transportation services may be made available within this program;

(3) In-home care for persons, including basic health care; performance of various household tasks and other necessary chores, or, a combination of these services;

(4) Counseling on death for the terminally ill and care and attendance at the time of death; except, that this is not to include reimbursement for the use of life-sustaining mechanisms;

(5) Health services which will identify health needs and which are designed to avoid institutionalization; assist in securing admission to medical institutions or other health related facilities when required; and, assist in obtaining health services from public or private agencies or providers of health services. These services shall include health screening and evaluation, in-home services, health education, and such health appliances which will further the independence and well-being of the person;

(6) The provision of low cost, nutritionally sound meals in central locations or in the person's home in the instance of incapacity. Also, supportive services may be provided in nutritional education, shopping assistance, diet counseling and other services to sustain the nutritional well-being of these persons;

(7) The provisions of services to maintain a person's home in a state of adequate repair, insofar as is possible, for their safety and comfort. These services shall be limited, but may include housing counseling, minor repair and maintenance, and moving assistance when such repair will not attain standards of health and safety, as determined by the department;

(8) Civil legal services, as limited by RCW 2.50.100, for counseling and representation in the areas of housing, consumer protection, public entitlements, property, and related fields of law;

(9) Long-term care ombudsman programs for residents of all long-term care facilities.

NEW SECTION. Sec. 7. A new section is added to chapter 43.70 RCW to read as follows:

Within funds appropriated for this purpose, the department shall develop a statewide fall prevention program. The program shall include networking community services, identifying service gaps, making affordable senior-based, evaluated exercise programs more available, providing consumer education to older adults, their adult children, and the community at large, and conducting professional education on fall risk identification and reduction.

NEW SECTION. Sec. 8. A new section is added to chapter 74.39A RCW to read as follows:

Within funds appropriated for this purpose, the department shall provide additional support for residents in community

2008 REGULAR SESSION

settings who exhibit challenging behaviors that put them at risk for institutional placement. The residents must be receiving services under the community options program entry system waiver or the medically needy residential facility waiver under section 1905(c) of the federal social security act and must have been evaluated under the individual comprehensive assessment reporting and evaluation process.

NEW SECTION. Sec. 9. A new section is added to chapter 74.39A RCW to read as follows:

Within funds appropriated for this specific purpose, the department shall develop a challenge grant program to assist communities and organizations in efforts to plan and establish additional adult day service programs throughout the state. The challenge grant program shall provide financial grants, not to exceed fifty thousand dollars for each grant, for the purpose of helping to meet the costs of planning, development, and start-up of new adult day service programs in underserved communities. Recipients of these grants must provide matching resources, in funds or in-kind, of equal value to any grant received. Any adult day services program developed after receiving a challenge grant must agree to serve people whose care is paid for by the state on a first-come, first-served basis, regardless of the source of payment.

NEW SECTION. Sec. 10. A new section is added to chapter 74.34 RCW to read as follows:

(1) The department may conduct a vulnerable adult fatality review in the event of a death of a vulnerable adult when the department has reason to believe that the death of the vulnerable adult may be related to the abuse, abandonment, exploitation, or neglect of the vulnerable adult, or may be related to the vulnerable adult's self-neglect, and the vulnerable adult was:

(a) Receiving home and community-based services in his or her own home, described under chapters 74.39 and 74.39A RCW, within sixty days preceding his or her death; or

(b) Living in his or her own home and was the subject of a report under this chapter received by the department within twelve months preceding his or her death.

(2) When conducting a vulnerable adult fatality review of a person who had been receiving hospice care services before the person's death, the review shall provide particular consideration to the similarities between the signs and symptoms of abuse and those of many patients receiving hospice care services.

(3) All files, reports, records, communications, and working papers used or developed for purposes of a fatality review are confidential and not subject to disclosure pursuant to RCW 74.34.095.

(4) The department may adopt rules to implement this section.

Sec. 11. RCW 18.79.260 and 2003 c 140 s 2 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, 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;

FIFTY-FOURTH DAY, MARCH 7, 2008

(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. 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 ~~((the developmentally disabled))~~ 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. ~~((However))~~ 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) The registered nurse shall verify that the nursing assistant has completed the required core nurse delegation training required in chapter 18.88A RCW prior to authorizing delegation.

2008 REGULAR SESSION

~~((vii))~~ (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))~~ (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.

Sec. 12. RCW 18.88A.210 and 2003 c 140 s 5 are each amended to read as follows:

(1) A nursing assistant meeting the requirements of this section who provides care to individuals in community-based care settings or in-home care settings, as defined in RCW 18.79.260(3), may accept delegation of nursing care tasks by a registered nurse as provided in RCW 18.79.260(3).

(2) For the purposes of this section, "nursing assistant" means a nursing assistant-registered or a nursing assistant-certified. Nothing in this section may be construed to affect the authority of nurses to delegate nursing tasks to other persons, including licensed practical nurses, as authorized by law.

(3)(a) Before commencing any specific nursing care tasks authorized under this chapter, the nursing assistant must ~~((a))~~ (i) provide to the delegating nurse a certificate of completion issued by the department of social and health services indicating the completion of basic core nurse delegation training, ~~((b))~~ (ii) be regulated by the department of health pursuant to this chapter, subject to the uniform disciplinary act under chapter 18.130 RCW, and ~~((c))~~ (iii) meet any additional training requirements identified by the nursing care quality assurance commission. Exceptions to these training requirements must adhere to RCW 18.79.260(3)(e)~~((a))~~ (vi).

(b) In addition to meeting the requirements of (a) of this subsection, before commencing the care of individuals with diabetes that involves administration of insulin by injection, the nursing assistant must provide to the delegating nurse a certificate of completion issued by the department of social and health services 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.

NEW SECTION. Sec. 13. A new section is added to chapter 74.09 RCW to read as follows:

Within funds appropriated for this purpose, the department shall establish two dental access projects to serve seniors and other adults who are categorically needy blind or disabled. The projects shall provide:

(1) Enhanced reimbursement rates for certified dentists for specific procedures, to begin no sooner than July 1, 2009;

(2) Reimbursement for trained medical providers for preventive oral health services, to begin no sooner than July 1, 2009;

(3) Training, development, and implementation through a partnership with the University of Washington school of dentistry;

(4) Local program coordination including outreach and case management; and

(5) An evaluation that measures the change in utilization rates and cost savings.

NEW SECTION. Sec. 14. If any provision of this act or its application to any person or circumstance is held invalid, the

FIFTY-FOURTH DAY, MARCH 7, 2008

2008 REGULAR SESSION

remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 15. If specific funding for the purposes of sections 4, 6, 7, 8, and 9 of this act, referencing the section by section number and by bill or chapter number, is not provided by June 30, 2008, in the omnibus appropriations act, each section not referenced is null and void."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Ways & Means to Engrossed Second Substitute House Bill No. 2668.

The motion by Senator Keiser carried and the committee striking amendment was adopted by voice vote.

MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 1 of the title, after "care;" strike the remainder of the title and insert "amending RCW 74.41.040, 18.20.350, 74.41.050, 74.38.030, 74.38.040, 18.79.260, and 18.88A.210; adding a new section to chapter 43.70 RCW; adding new sections to chapter 74.39A RCW; adding a new section to chapter 74.34 RCW; adding a new section to chapter 74.09 RCW; and creating new sections."

MOTION

On motion of Senator Keiser, the rules were suspended, Engrossed Second Substitute House Bill No. 2668 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Keiser and Pflug spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Second Substitute House Bill No. 2668 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Second Substitute House Bill No. 2668 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 49

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 2668 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 2679, by House Committee on Appropriations (originally sponsored by Representatives Roberts, Pettigrew, Hunt, Hasegawa, Sullivan, Chase, Morrell, McIntire, Santos, Barlow, Simpson, Kenney, Goodman, Wood, Dameille, Lantz and McDonald)

Creating programs to improve educational outcomes for students in foster care.

The measure was read the second time.

MOTION

Senator Tom moved that the following committee striking amendment by the Committee on Early Learning & K-12 Education be adopted.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. A new section is added to chapter 28A.310 RCW to read as follows:

Subject to the availability of funds appropriated for this purpose, the Puget Sound educational service district shall designate a foster care program supervisor to coordinate programs and services for students in foster care. The foster care program supervisor shall:

(1) Facilitate the use of education system resources to improve educational stability and other measurable outcomes for children in children's administration out-of-home care and enrolled in a school district within the Puget Sound educational service district;

(2) Develop and distribute model school district policies to improve services and supports to children in children's administration out-of-home care and enrolled in a school district within the Puget Sound educational service district;

(3) Provide training to public school staff on the impact of child abuse and neglect, school preparedness, and the child welfare system upon children who live in children's administration out-of-home care, the likely need for students in children's administration out-of-home care to have a strong relationship with one or more adults at school and academic and behavioral remediation, and the need to determine eligibility of students in children's administration out-of-home care for the many programs for which they qualify that are provided in schools;

(4) Provide technical assistance to schools concerning interagency agreements and children's administration policies relative to the education of children who live in children's administration out-of-home care;

(5) Coordinate with the McKinney-Vento education of homeless children and youth program supervisor within the office of the superintendent of public instruction on issues that relate to the definition of children's administration out-of-home care and homelessness;

(6) Coordinate with the office of the superintendent of public instruction the legal interpretations of the family education rights and privacy act and the health insurance portability and accountability act relative to data exchange;

(7) Provide technical assistance to school districts within the Puget Sound educational service district to facilitate local data exchange;

(8) Coordinate with regions 4 and 5 children's administration education leads to facilitate completion of interagency agreements for top priority school districts within the Puget Sound educational service district; and

(9) Establish a model information and data-sharing agreement between school districts and the children's administration and facilitate completion of information and data-sharing agreements.

NEW SECTION. Sec. 2. A new section is added to chapter 28A.300 RCW to read as follows:

The superintendent of public instruction shall provide an annual aggregate report to the legislature on the educational experiences and progress of students in children's administration out-of-home care. This data should be disaggregated in the smallest units allowable by law that do not identify an individual student, in order to learn which school districts are experiencing

FIFTY-FOURTH DAY, MARCH 7, 2008

the greatest success and challenges in achieving quality educational outcomes with students in children's administration out-of-home care.

NEW SECTION. Sec. 3. A new section is added to chapter 28A.310 RCW to read as follows:

(1) Subject to the availability of funds appropriated for this purpose, the Puget Sound educational service district shall create a grant program for local school districts to improve stability and educational outcomes for students in foster care. Grants shall be awarded to school districts with the highest incidence of child protective services removals and foster care placements under chapter 13.34 RCW.

(2) School districts receiving grants under this section shall agree to the following:

(a) The grant shall not supplant funding already in place for all students.

(b) The grant shall be used to supplement and enhance educational stability and educational outcomes for students in foster care.

(3) Grant activities may include but are not limited to the following:

(a) Dedicated staff time for:

(i) Additional counselor support for students in foster care and foster parent support;

(ii) Facilitation of education planning meetings with children's administration caseworkers, students, foster and relative caregivers, other community providers, and birth parents when appropriate;

(iii) Coordination with programs for which students in foster care may be eligible including: Title I, Upward Bound, free and reduced meals, etc.;

(iv) Tutoring;

(v) Temporary arrangements for transportation to enhance educational stability;

(vi) Coordination with the McKinney-Vento education of homeless children and youth program activities within the office of the superintendent of public instruction and local school district Title X liaisons;

(vii) Activities promoting engagement of foster parents in school programming activities;

(viii) Outreach to birth parents, when appropriate;

(ix) Assurance of timely and accurate record and data transfer when a student in foster care moves to a different school;

(x) Support for school-based foster parent recruitment; and

(xi) Additional school staff training concerning the characteristics and needs of students in foster care including protecting the right to privacy for students in foster care;

(b) Fees normally covered by parents for extracurricular activity participation, school pictures, yearbooks, ASB cards, school fines, etc.

(4) The Puget Sound educational service district shall annually submit a report to the legislature on grant program outcomes under this section.

NEW SECTION. Sec. 4. A new section is added to chapter 74.13 RCW to read as follows:

(1) Subject to availability of funds appropriated specifically for this purpose, the department of social and health services, within the children's administration, shall fund two school district-based foster care recruitment pilots in one or more of the school districts with the highest number of child protective services removals and out-of-home placements under chapter 13.34 RCW. Pilots must coordinate with existing foster care recruitment contracts and the family-to-family model. Funds can be used to expand existing contracts or fund children's administration staff.

(2) The department of social and health services shall annually report to the legislature on the increase or decrease of foster homes within the pilot areas.

Sec. 5. RCW 28A.150.510 and 2000 c 88 s 1 are each amended to read as follows:

2008 REGULAR SESSION

In order to effectively serve students who are (~~under the jurisdiction of the juvenile justice system as~~) dependent pursuant to chapter 13.34 RCW, education records shall be (~~released upon~~) transmitted to the department of social and health services within two school days after receiving the request (~~to~~) from the department (~~of social and health services~~) provided that the department (~~of social and health services~~) certifies that it will not disclose to any other party the education records without prior written consent of the parent or student unless authorized to disclose the records under state law. The department of social and health services is authorized to disclose education records it obtains pursuant to this section to a foster parent, guardian, or other entity authorized by the department (~~of social and health services~~) to provide residential care to the student.

NEW SECTION. Sec. 6. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2008, in the omnibus appropriations act, this act is null and void."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Early Learning & K-12 Education to Substitute House Bill No. 2679.

The motion by Senator Tom carried and the committee striking amendment was adopted by voice vote.

MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 2 of the title, after "care;" strike the remainder of the title and insert "amending RCW 28A.150.510; adding new sections to chapter 28A.310 RCW; adding a new section to chapter 28A.300 RCW; adding a new section to chapter 74.13 RCW; and creating a new section."

MOTION

On motion of Senator Tom, the rules were suspended, Substitute House Bill No. 2679 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Tom spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2679 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2679 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 49

SUBSTITUTE HOUSE BILL NO. 2679 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

FIFTY-FOURTH DAY, MARCH 7, 2008
SECOND READING

SUBSTITUTE HOUSE BILL NO. 2580, by House Committee on Appropriations (originally sponsored by Representatives Hurst, McCoy, VanDeWege, Morrell, Campbell and Roach)

Concerning paydates for employees participating in state active military duty.

The measure was read the second time.

MOTION

On motion of Senator Hobbs, the rules were suspended, Substitute House Bill No. 2580 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Hobbs spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2580.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2580 and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 49

SUBSTITUTE HOUSE BILL NO. 2580, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SECOND SUBSTITUTE HOUSE BILL NO. 2822, by House Committee on Appropriations (originally sponsored by Representatives Kagi, Walsh, Lantz, Dickerson, Haler, Sullivan, Seaquist and Kenney)

Concerning the family and juvenile court improvement program.

The measure was read the second time.

MOTION

Senator Hargrove moved that the following committee striking amendment by the Committee on Ways & Means be adopted.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. A new section is added to chapter 2.56 RCW to read as follows:

Subject to the availability of funds appropriated therefor, the family and juvenile court improvement grant program is created.

(1) The purpose of the program is to assist superior courts in improving their family and juvenile court systems, especially in dependency cases, with the goals of:

2008 REGULAR SESSION

(a) Assuring a stable and well-trained judiciary in family and juvenile law providing consistency of judicial officers hearing all of the proceedings in a case involving one family, especially in dependency cases; and

(b) Ensuring judicial accountability in implementing specific principles and practices for family and juvenile court.

(2) The administrator for the courts shall develop and administer the program subject to requirements in section 2 of this act. As part of administering the program, the administrator for the courts shall define appropriate outcome measures, collect data, and gather information from courts receiving grants.

NEW SECTION. Sec. 2. A new section is added to chapter 2.56 RCW to read as follows:

(1) A superior court may apply for grants from the family and juvenile court improvement grant program by submitting a local improvement plan with the administrator for the courts. To be eligible for grant funds, a superior court's local improvement plan must meet the criteria developed by the administrator for the courts and approved by the board for judicial administration. The criteria must be consistent with the principles adopted for unified family courts. At a minimum, the criteria must require that the court's local improvement plan meet the following requirements:

(a) Commit to a chief judge assignment to the family and juvenile court for a minimum of two years;

(b) Implementation of the principle of one judicial team hearing all of the proceedings in a case involving one family, especially in dependency cases;

(c) Require court commissioners and judges assigned to family and juvenile court to receive a minimum of thirty hours specialized training in topics related to family and juvenile matters within six months of assuming duties in family and juvenile court. Where possible, courts should utilize local, statewide, and national training forums. A judicial officer's recorded educational history may be applied toward the thirty-hour requirement. The topics for training must include:

(i) Parentage;

(ii) Adoption;

(iii) Domestic relations;

(iv) Dependency and termination of parental rights;

(v) Child development;

(vi) The impact of child abuse and neglect;

(vii) Domestic violence;

(viii) Substance abuse;

(ix) Mental health;

(x) Juvenile status offenses;

(xi) Juvenile offenders;

(xii) Self-representation issues;

(xiii) Cultural competency;

(xiv) Roles of family and juvenile court judges and commissioners; and

(d) As part of the application for grant funds, submit a spending proposal detailing how the superior court would use the grant funds.

(2) Courts receiving grant money must use the funds to improve and support family and juvenile court operations based on standards developed by the administrator for the courts and approved by the board for judicial administration. The standards may allow courts to use the funds to:

(a) Pay for family and juvenile court training of commissioners and judges or pay for pro tem commissioners and judges to assist the court while the commissioners and judges receive training;

(b) Increase judicial and nonjudicial staff, including administrative staff to improve case coordination and referrals in family and juvenile cases, guardian ad litem volunteers or court-appointed special advocates, security, and other staff;

(c) Improve the court facility to better meet the needs of children and families;

(d) Improve referral and treatment options for court participants, including enhancing court facilitator programs and

FIFTY-FOURTH DAY, MARCH 7, 2008

family treatment court and increasing the availability of alternative dispute resolution;

(e) Enhance existing family and children support services funded by the courts and expand access to social service programs for families and children ordered by the court; and

(f) Improve or support family and juvenile court operations in any other way deemed appropriate by the administrator for the courts.

(3) The administrator for the courts shall allocate available grant moneys based upon the needs of the court as expressed in their local improvement plan.

(4) Money received by the superior court under this program must be used to supplement, not supplant, any other local, state, and federal funds for the court.

(5) Upon receipt of grant funds, the superior court shall submit to the administrator for the courts a spending plan detailing the use of funds. At the end of the fiscal year, the superior court shall submit to the administrator for the courts a financial report comparing the spending plan to actual expenditures. The administrator for the courts shall compile the financial reports and submit them to the appropriate committees of the legislature.

NEW SECTION. Sec. 3. A new section is added to chapter 2.56 RCW to read as follows:

After July 1, 2009, grant money received by a court under section 1 of this act shall be deemed to be state funding for the purpose of RCW 26.12.260 thereby obligating the court to operate a program to provide services to all parties involved in dissolution proceedings as required in RCW 26.12.260.

This obligation remains in effect only for the duration of the grant authorized by section 1 of this act.

Sec. 4. RCW 2.56.030 and 2007 c 496 s 302 are each amended to read as follows:

The administrator for the courts shall, under the supervision and direction of the chief justice:

(1) Examine the administrative methods and systems employed in the offices of the judges, clerks, stenographers, and employees of the courts and make recommendations, through the chief justice, for the improvement of the same;

(2) Examine the state of the dockets of the courts and determine the need for assistance by any court;

(3) Make recommendations to the chief justice relating to the assignment of judges where courts are in need of assistance and carry out the direction of the chief justice as to the assignments of judges to counties and districts where the courts are in need of assistance;

(4) Collect and compile statistical and other data and make reports of the business transacted by the courts and transmit the same to the chief justice to the end that proper action may be taken in respect thereto;

(5) Prepare and submit budget estimates of state appropriations necessary for the maintenance and operation of the judicial system and make recommendations in respect thereto;

(6) Collect statistical and other data and make reports relating to the expenditure of public moneys, state and local, for the maintenance and operation of the judicial system and the offices connected therewith;

(7) Obtain reports from clerks of courts in accordance with law or rules adopted by the supreme court of this state on cases and other judicial business in which action has been delayed beyond periods of time specified by law or rules of court and make report thereof to supreme court of this state;

(8) Act as secretary of the judicial conference referred to in RCW 2.56.060;

(9) Submit annually, as of February 1st, to the chief justice, a report of the activities of the administrator's office for the preceding calendar year including activities related to courthouse security;

(10) Administer programs and standards for the training and education of judicial personnel;

2008 REGULAR SESSION

(11) Examine the need for new superior court and district court judge positions under an objective workload analysis. The results of the objective workload analysis shall be reviewed by the board for judicial administration which shall make recommendations to the legislature. It is the intent of the legislature that an objective workload analysis become the basis for creating additional district and superior court positions, and recommendations should address that objective;

(12) Provide staff to the judicial retirement account plan under chapter 2.14 RCW;

(13) Attend to such other matters as may be assigned by the supreme court of this state;

(14) Within available funds, develop a curriculum for a general understanding of child development, placement, and treatment resources, as well as specific legal skills and knowledge of relevant statutes including chapters 13.32A, 13.34, and 13.40 RCW, cases, court rules, interviewing skills, and special needs of the abused or neglected child. This curriculum shall be completed and made available to all juvenile court judges, court personnel, and service providers and be updated yearly to reflect changes in statutes, court rules, or case law;

(15) Develop, in consultation with the entities set forth in RCW 2.56.150(3), a comprehensive statewide curriculum for persons who act as guardians ad litem under Title 13 or 26 RCW. The curriculum shall be made available July 1, 2008, and include specialty sections on child development, child sexual abuse, child physical abuse, child neglect, domestic violence, clinical and forensic investigative and interviewing techniques, family reconciliation and mediation services, and relevant statutory and legal requirements. The curriculum shall be made available to all superior court judges, court personnel, and all persons who act as guardians ad litem;

(16) Develop a curriculum for a general understanding of crimes of malicious harassment, as well as specific legal skills and knowledge of RCW 9A.36.080, relevant cases, court rules, and the special needs of malicious harassment victims. This curriculum shall be made available to all superior court and court of appeals judges and to all justices of the supreme court;

(17) Develop, in consultation with the criminal justice training commission and the commissions established under chapters 43.113, 43.115, and 43.117 RCW, a curriculum for a general understanding of ethnic and cultural diversity and its implications for working with youth of color and their families. The curriculum shall be available to all superior court judges and court commissioners assigned to juvenile court, and other court personnel. Ethnic and cultural diversity training shall be provided annually so as to incorporate cultural sensitivity and awareness into the daily operation of juvenile courts statewide;

(18) Authorize the use of closed circuit television and other electronic equipment in judicial proceedings. The administrator shall promulgate necessary standards and procedures and shall provide technical assistance to courts as required;

(19) Develop a Washington family law handbook in accordance with RCW 2.56.180;

(20) Administer state funds for improving the operation of the courts and provide support for court coordinating councils, under the direction of the board for judicial administration;

(21) Administer the family and juvenile court improvement grant program;

(22)(a) Administer and distribute amounts appropriated from the equal justice subaccount under RCW 43.08.250(2) for district court judges' and qualifying elected municipal court judges' salary contributions. The administrator for the courts shall develop a distribution formula for these amounts that does not differentiate between district and elected municipal court judges.

(b) A city qualifies for state contribution of elected municipal court judges' salaries under (a) of this subsection if:

(i) The judge is serving in an elected position;

FIFTY-FOURTH DAY, MARCH 7, 2008

2008 REGULAR SESSION

(ii) The city has established by ordinance that a full-time judge is compensated at a rate equivalent to at least ninety-five percent, but not more than one hundred percent, of a district court judge salary or for a part-time judge on a pro rata basis the same equivalent; and

(iii) The city has certified to the office of the administrator for the courts that the conditions in (b)(i) and (ii) of this subsection have been met.

NEW SECTION. Sec. 5. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2008, in the omnibus appropriations act, this act is null and void."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Ways & Means to Second Substitute House Bill No. 2822.

The motion by Senator Hargrove carried and the committee striking amendment was adopted by voice vote.

MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 2 of the title, after "program;" strike the remainder of the title and insert "amending RCW 2.56.030; adding new sections to chapter 2.56 RCW; and creating a new section."

MOTION

On motion of Senator Hargrove, the rules were suspended, Second Substitute House Bill No. 2822 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Hargrove spoke in favor of passage of the bill.

MOTION

On motion of Senator Brandland, Senator Zarelli was excused.

MOTION

On motion of Senator Regala, Senator McAuliffe was excused.

The President declared the question before the Senate to be the final passage of Second Substitute House Bill No. 2822 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Second Substitute House Bill No. 2822 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 1; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 48

Absent: Senator Kauffman - 1

SECOND SUBSTITUTE HOUSE BILL NO. 2822 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2864, by House Committee on Commerce & Labor (originally sponsored by Representatives Ormsby, Wood, Barlow, Hasegawa and Simpson)

Requiring the filing of certified payroll records on public works projects.

The measure was read the second time.

MOTION

Senator Kohl-Welles moved that the following striking amendment by Senator Kohl-Welles be adopted:

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 39.12.030 and 1989 c 12 s 9 are each amended to read as follows:

(1) The specifications for every contract for the construction, reconstruction, maintenance, or repair of any public work, to which the state or any county, municipality, or political subdivision created by its laws is a party, shall contain a provision stating the hourly minimum rate of wage, not less than the prevailing rate of wage, which may be paid to laborers, workers, or mechanics in each trade or occupation required for such public work employed in the performance of the contract either by the contractor, subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by the contract, and the contract shall contain a stipulation that such laborers, workers, or mechanics shall be paid not less than such specified hourly minimum rate of wage.

(2) For purposes of compliance with this chapter, including identifying certified payroll records to be requested from a contractor or subcontractor, every contract and subcontract for the construction, reconstruction, maintenance, or repair of any public work, to which the state or any county, municipality, or political subdivision created by its laws is a party, must contain a provision requiring the contractor and all subcontractors to submit a certified list of any off-site prefabricated, nonstandard, project-specific products that are supplied under the terms of each respective contract. The list must identify: (a) The type of product produced; (b) the contractor or subcontractor's name; (c) the contractor or subcontractor's employer identification number; (d) the labor hours expended producing the product; and (e) the hourly rate of wages paid in each trade or occupation producing the product. The provision in the contract or subcontract must indicate that the list requirement does not apply to a contractor or subcontractor who submits a statement of intent to pay prevailing wages under RCW 39.12.040(1).

Sec. 2. RCW 39.12.040 and 2007 c 210 s 4 are each amended to read as follows:

(1)(a) Except as provided in subsection (2) of this section, before payment is made by or on behalf of the state, or any county, municipality, or political subdivision created by its laws, of any sum or sums due on account of a public works contract, it shall be the duty of the officer or person charged with the custody and disbursement of public funds to require the contractor and each and every subcontractor from the contractor or a subcontractor to submit to such officer a "Statement of Intent to Pay Prevailing Wages". For a contract in excess of ten thousand dollars, the statement of intent to pay prevailing wages shall include:

FIFTY-FOURTH DAY, MARCH 7, 2008

~~((a))~~ (i) The contractor's registration certificate number; and

~~((b))~~ (ii) The prevailing rate of wage for each classification of workers entitled to prevailing wages under RCW 39.12.020 and the estimated number of workers in each classification. Each statement of intent to pay prevailing wages must be approved by the industrial statistician of the department of labor and industries before it is submitted to said officer.

(b) Unless otherwise authorized by the department of labor and industries, each voucher claim submitted by a contractor for payment on a project estimate shall state that the prevailing wages have been paid in accordance with the prefilled statement or statements of intent to pay prevailing wages on file with the public agency.

(c) For purposes of compliance with this chapter, including identifying certified payroll records to be requested from a contractor or subcontractor, for a public works project involving the off-site prefabrication of a nonstandard, project-specific product, before final acceptance of the project, the awarding agency must receive from the contractor or subcontractor of all such products a list certified by the contractor or subcontractor that identifies: (i) The contractor or subcontractor's name; (ii) the contractor or subcontractor's employer identification number; (iii) the labor hours expended producing the product; and (iv) the hourly rate of wages paid in each trade or occupation producing the product. The contractor or subcontractor must also submit a copy of the list to the department of labor and industries. This subsection does not apply to a contractor or subcontractor who has submitted a statement of intent to pay prevailing wages under (a) of this subsection.

(d) Following the final acceptance of a public works project, it shall be the duty of the officer charged with the disbursement of public funds, to require the contractor and each and every subcontractor from the contractor or a subcontractor to submit to such officer an "Affidavit of Wages Paid" before the funds retained according to the provisions of RCW 60.28.010 are released to the contractor. Each affidavit of wages paid must be certified by the industrial statistician of the department of labor and industries before it is submitted to said officer.

(2) As an alternate to the procedures provided for in subsection (1) of this section, for public works projects of two thousand five hundred dollars or less and for projects where the limited public works process under RCW 39.04.155(3) is followed:

(a) An awarding agency may authorize the contractor or subcontractor to submit the statement of intent to pay prevailing wages directly to the officer or person charged with the custody or disbursement of public funds in the awarding agency without approval by the industrial statistician of the department of labor and industries. The awarding agency shall retain such statement of intent to pay prevailing wages for a period of not less than three years.

(b) Upon final acceptance of the public works project, the awarding agency shall require the contractor or subcontractor to submit an affidavit of wages paid. Upon receipt of the affidavit of wages paid, the awarding agency may pay the contractor or subcontractor in full, including funds that would otherwise be retained according to the provisions of RCW 60.28.010. Within thirty days of receipt of the affidavit of wages paid, the awarding agency shall submit the affidavit of wages paid to the industrial statistician of the department of labor and industries for approval.

(c) A statement of intent to pay prevailing wages and an affidavit of wages paid shall be on forms approved by the department of labor and industries.

(d) In the event of a wage claim and a finding for the claimant by the department of labor and industries where the awarding agency has used the alternative process provided for in subsection (2) of this section, the awarding agency shall pay the wages due directly to the claimant. If the contractor or

2008 REGULAR SESSION

subcontractor did not pay the wages stated in the affidavit of wages paid, the awarding agency may take action at law to seek reimbursement from the contractor or subcontractor of wages paid to the claimant, and may prohibit the contractor or subcontractor from bidding on any public works contract of the awarding agency for up to one year.

(e) Nothing in this section shall be interpreted to allow an awarding agency to subdivide any public works project of more than two thousand five hundred dollars for the purpose of circumventing the procedures required by ~~((RCW 39.12.040(1)))~~ subsection (1) of this section.

NEW SECTION. **Sec. 3.** A new section is added to chapter 39.12 RCW to read as follows:

If an interested party makes a written request of a contractor or subcontractor to file certified payroll records under rules regarding payroll which have been adopted by the department of labor and industries to enforce this chapter and the records requested are for the off-site prefabrication of a nonstandard, project-specific product, the contractor or subcontractor must file the certified copy of the payroll records with the awarding agency and the department of labor and industries."

Senator Kohl-Welles spoke in favor of adoption of the striking amendment.

MOTION

On motion of Senator Regala, Senators Fairley and Kauffman were excused.

The President declared the question before the Senate to be the adoption of the striking amendment by Senator Kohl-Welles to Engrossed Substitute House Bill No. 2864.

The motion by Senator Kohl-Welles carried and the striking amendment was adopted by voice vote.

MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 2 of the title, after "projects;" strike the remainder of the title and insert "amending RCW 39.12.030 and 39.12.040; and adding a new section to chapter 39.12 RCW."

MOTION

On motion of Senator Kohl-Welles, the rules were suspended, Engrossed Substitute House Bill No. 2864 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Kohl-Welles and Keiser spoke in favor of passage of the bill.

Senators King, Carrell, Holmquist, Zarelli and Benton spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 2864 as amended by the Senate.

MOTION

On motion of Senator Eide, further consideration of Engrossed Substitute House Bill No. 2864 was deferred and the bill held its place on the third reading calendar.

SECOND READING

SECOND SUBSTITUTE HOUSE BILL NO. 2713, by House Committee on Appropriations (originally sponsored by

FIFTY-FOURTH DAY, MARCH 7, 2008

Representatives Seaquist, Hurst, Lantz, Pearson, Conway, Morrell, Miloscia, Priest, Kenney, Schual-Berke, Haler, McDonald, Loomis, Smith, Bailey, Kristiansen, Hudgins, McCune, Simpson, VanDeWege, Ericks, Kelley, Ormsby and Rolfes)

Providing for broader collection of biological samples for the DNA identification of convicted sex offenders and other persons.

The measure was read the second time.

MOTION

Senator Regala moved that the following committee striking amendment by the Committee on Human Services & Corrections be adopted.

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 43.43.753 and 2002 c 289 s 1 are each amended to read as follows:

The legislature finds that recent developments in molecular biology and genetics have important applications for forensic science. It has been scientifically established that there is a unique pattern to the chemical structure of the deoxyribonucleic acid (DNA) contained in each cell of the human body. The process for identifying this pattern is called "DNA identification."

The legislature further finds that DNA databases are important tools in criminal investigations, in the exclusion of individuals who are the subject of investigations or prosecutions, and in detecting recidivist acts. It is the policy of this state to assist federal, state, and local criminal justice and law enforcement agencies in both the identification and detection of individuals in criminal investigations and the identification and location of missing and unidentified persons. Therefore, it is in the best interest of the state to establish a DNA database and DNA data bank containing DNA samples submitted by persons convicted of felony offenses and other crimes as specified in RCW 43.43.754. DNA samples necessary for the identification of missing persons and unidentified human remains shall also be included in the DNA database.

The legislature further finds that the DNA identification system used by the federal bureau of investigation and the Washington state patrol has no ability to predict genetic disease or predisposal to illness. Nonetheless, the legislature intends that biological samples collected under RCW 43.43.754, and DNA identification data obtained from the samples, be used only for purposes related to criminal investigation, identification of human remains or missing persons, or improving the operation of the system authorized under RCW 43.43.752 through 43.43.758.

Sec. 2. RCW 43.43.754 and 2002 c 289 s 2 are each amended to read as follows:

(1) A biological sample must be collected for purposes of DNA identification analysis from:

(a) Every adult or juvenile individual convicted of a felony (, stalking under RCW 9A.46.110, harassment under RCW 9A.46.020, communicating with a minor for immoral purposes under RCW 9.68A.090, or adjudicated guilty of an equivalent juvenile offense must have a biological sample collected for purposes of DNA identification analysis in the following manner), or any of the following crimes (or equivalent juvenile offenses):

Assault in the fourth degree with sexual motivation (RCW 9A.36.041, 9.94A.835)

Communication with a minor for immoral purposes (RCW 9.68A.090)

Custodial sexual misconduct in the second degree (RCW 9A.44.170)

2008 REGULAR SESSION

Failure to register (RCW 9A.44.130)

Harassment (RCW 9A.46.020)

Patronizing a prostitute (RCW 9A.88.110)

Sexual misconduct with a minor in the second degree (RCW 9A.44.096)

Stalking (RCW 9A.46.110)

Violation of a sexual assault protection order granted under chapter 7.90 RCW; and

(b) Every adult or juvenile individual who is required to register under RCW 9A.44.130.

(2) If the Washington state patrol crime laboratory already has a DNA sample from an individual for a qualifying offense, a subsequent submission is not required to be submitted.

(3) Biological samples shall be collected in the following manner:

(a) For persons convicted of ((such offenses)) any offense listed in subsection (1)(a) of this section or adjudicated guilty of an equivalent juvenile offense who do not serve a term of confinement in a department of corrections facility, and do serve a term of confinement in a city or county jail facility, the city or county shall be responsible for obtaining the biological samples ((either as part of the intake process into the city or county jail or detention facility for those persons convicted on or after July 1, 2002, or within a reasonable time after July 1, 2002, for those persons incarcerated before July 1, 2002, who have not yet had a biological sample collected, beginning with those persons who will be released the soonest).

(b) The local police department or sheriff's office shall be responsible for obtaining the biological samples for:

(i) Persons convicted of ((such offenses)) any offense listed in subsection (1)(a) of this section or adjudicated guilty of an equivalent juvenile offense who do not serve a term of confinement in a department of corrections facility, and do not serve a term of confinement in a city or county jail facility((the local police department or sheriff's office is responsible for obtaining the biological samples after sentencing on or after July 1, 2002)); and

(ii) Persons who are required to register under RCW 9A.44.030.

(c) For persons convicted of ((such offenses)) any offense listed in subsection (1)(a) of this section or adjudicated guilty of an equivalent juvenile offense, who are serving or who are to serve a term of confinement in a department of corrections facility or a department of social and health services facility, the facility holding the person shall be responsible for obtaining the biological samples ((either as part of the intake process into such facility for those persons convicted on or after July 1, 2002, or within a reasonable time after July 1, 2002;)). For those persons incarcerated before ((July 1, 2002)) the effective date of this section, who have not yet had a biological sample collected, ((beginning with)) priority shall be given to those persons who will be released the soonest.

((2)) (4) Any biological sample taken pursuant to RCW 43.43.752 through 43.43.758 may be retained by the forensic laboratory services bureau, and shall be used solely for the purpose of providing DNA or other tests for identification analysis and prosecution of a criminal offense or for the identification of human remains or missing persons. Nothing in this section prohibits the submission of results derived from the biological samples to the federal bureau of investigation combined DNA index system.

((3)) (5) The ((director of the)) forensic laboratory services bureau of the Washington state patrol ((shall perform)) is responsible for testing performed on all biological samples that are collected under subsection (1) of this section, to the extent allowed by funding available for this purpose. The director shall give priority to testing on samples collected from those adults or juveniles convicted of a felony or adjudicated guilty of an equivalent juvenile offense that is defined as a sex offense or a violent offense in RCW 9.94A.030. Known duplicate samples

FIFTY-FOURTH DAY, MARCH 7, 2008

may be excluded from testing unless testing is deemed necessary or advisable by the director.

~~((4)) This section applies to all adults who are convicted of a sex or violent offense after July 1, 1990; and to all adults who were convicted of a sex or violent offense on or prior to July 1, 1990, and who are still incarcerated on or after July 25, 1999. This section applies to all juveniles who are adjudicated guilty of a sex or violent offense after July 1, 1994; and to all juveniles who were adjudicated guilty of a sex or violent offense on or prior to July 1, 1994, and who are still incarcerated on or after July 25, 1999. This section applies to all adults and juveniles who are convicted of a felony other than a sex or violent offense, stalking under RCW 9A.46.110, harassment under RCW 9A.46.020, or communicating with a minor for immoral purposes under RCW 9.68A.090, or adjudicated guilty of an equivalent juvenile offense, on or after July 1, 2002; and to all adults and juveniles who were convicted or adjudicated guilty of such an offense before July 1, 2002, and are still incarcerated on or after July 1, 2002.)~~ (6) This section applies to :

(a) All adults and juveniles to whom this section applied prior to the effective date of this section;

(b) All adults and juveniles to whom this section did not apply prior to the effective date of this section who:

(i) Are convicted on or after the effective date of this section of an offense listed in subsection (1)(a) of this section; or

(ii) Were convicted prior to the effective date of this section of an offense listed in subsection (1)(a) of this section and are still incarcerated on or after the effective date of this section; and

(c) All adults and juveniles who are required to register under RCW 9A.44.130 on or after the effective date of this section, whether convicted before, on, or after the effective date of this section.

~~((5))~~ (7) This section creates no rights in a third person. No cause of action may be brought based upon the noncollection or nonanalysis or the delayed collection or analysis of a biological sample authorized to be taken under RCW 43.43.752 through 43.43.758.

~~((6))~~ (8) The detention, arrest, or conviction of a person based upon a database match or database information is not invalidated if it is determined that the sample was obtained or placed in the database by mistake, or if the conviction or juvenile adjudication that resulted in the collection of the biological sample was subsequently vacated or otherwise altered in any future proceeding including but not limited to posttrial or postfact-finding motions, appeals, or collateral attacks.

Sec. 3. RCW 43.43.7541 and 2002 c 289 s 4 are each amended to read as follows:

Every sentence imposed under chapter 9.94A RCW(;) for a ~~(felony)~~ crime specified in RCW 43.43.754 ~~((that is committed on or after July 1, 2002;))~~ must include a fee of one hundred dollars ~~((for collection of a biological sample as required under RCW 43.43.754, unless the court finds that imposing the fee would result in undue hardship on the offender)).~~ The fee is a court-ordered legal financial obligation as defined in RCW 9.94A.030, payable by the offender after payment of all other legal financial obligations included in the sentence has been completed. The clerk of the court shall transmit eighty percent of the fee(s) collected to the state treasurer for deposit in the state DNA database account created under RCW 43.43.7532, and shall transmit twenty percent of the fee collected to the agency responsible for collection of a biological sample from the offender as required under RCW 43.43.754.

Sec. 4. RCW 43.43.756 and 1989 c 350 s 5 are each amended to read as follows:

The ~~Washington state patrol ((in consultation with the University of Washington school of medicine)) forensic laboratory services bureau~~ may:

(1) Provide DNA analysis services to law enforcement agencies throughout the state ~~((after July 1, 1990));~~

2008 REGULAR SESSION

(2) Provide assistance to law enforcement officials and prosecutors in the preparation and utilization of DNA evidence for presentation in court; and

(3) Provide expert testimony in court on DNA evidentiary issues."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Human Services & Corrections to Second Substitute House Bill No. 2713.

The motion by Senator Regala carried and the committee striking amendment was adopted by voice vote.

MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 2 of the title, after "persons;" strike the remainder of the title and insert "and amending RCW 43.43.753, 43.43.754, 43.43.7541, and 43.43.756."

MOTION

On motion of Senator Regala, the rules were suspended, Second Substitute House Bill No. 2713 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Regala spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Second Substitute House Bill No. 2713 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Second Substitute House Bill No. 2713 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 1; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 48

Absent: Senator Kastama - 1

SECOND SUBSTITUTE HOUSE BILL NO. 2713 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

HOUSE BILL NO. 3200, by Representatives Schmick, Simpson, Warnick, Schindler and Sullivan

Establishing a cemetery district in a county.

The measure was read the second time.

MOTION

On motion of Senator Fairley, the rules were suspended, House Bill No. 3200 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

FIFTY-FOURTH DAY, MARCH 7, 2008

2008 REGULAR SESSION

Senator Fairley spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 3200.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 3200 and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 1; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 48

Absent: Senator Carrell - 1

HOUSE BILL NO. 3200, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 3120, by House Committee on Finance (originally sponsored by Representatives Rolfes, Morrell, Liias and Williams)

Providing a sales and use tax exemption for environmentally certified residential and commercial construction. Revised for 1st Substitute: Requiring a study on tax incentives to encourage green building.

The measure was read the second time.

MOTION

Senator Prentice moved that the following committee striking amendment by the Committee on Ways & Means be adopted.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. (1)(a) The legislature finds that green building, also called "sustainable" or "high-performance" building, has significant environmental benefits. Buildings consume thirty-six percent of the energy used in the United States, more than factories and automobiles, and they generate thirty percent of the nation's greenhouse gas emissions. The construction of commercial, residential, public, or institutional buildings using energy-efficient techniques and environmentally sustainable products also connects to the state's climate change goals.

(b) The legislature further finds that standards for green building provide an effective framework for green building practices. Some techniques have been shown to reduce building energy costs by twenty to fifty percent and water usage by at least fifty percent outdoors and thirty percent indoors. It is in the interest of the state to encourage the best green building practices through targeted incentives and policies.

(c) The legislature intends to establish a connection between green construction and the need for local governments to adopt "green" land use provisions, permitting standards, and building codes that allow green building, in order to achieve the most effective climate change policies.

(2) The department of community, trade, and economic development shall conduct a study to determine the potential feasibility and effectiveness of providing tax incentives to encourage green building in commercial, residential, and public

buildings. The department of revenue shall provide any tax-related data necessary for the department of community, trade, and economic development to perform the study.

(3) In conducting the study, the department of community, trade, and economic development shall:

(a) Identify existing tax incentives with the primary purpose of encouraging green building;

(b) Propose tax incentives that would encourage green building, with special emphasis on sales and use tax exemptions on green building construction activities and business and occupation tax incentives for contractors or architects that build or design green buildings;

(c) Provide an estimate on the fiscal cost for each tax incentive identified under (b) of this subsection;

(d) Provide an estimate of cost savings and emission reductions for the estimated number of buildings that would qualify for a tax incentive identified under (b) of this subsection;

(e) Recommend other tax and programmatic policy changes that would encourage green building;

(f) Evaluate whether tax incentives should target communities that encourage green building; and

(g) Evaluate current trends in green building and whether tax incentives would support these trends.

(4) The department of community, trade, and economic development may include any other information in the study that it deems necessary for the legislative evaluation of potential tax incentives to encourage green building.

(5) By December 1, 2008, the department of community, trade, and economic development shall report its findings and recommendations to the appropriate committees of the legislature."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Ways & Means to Substitute House Bill No. 3120.

The motion by Senator Prentice carried and the committee striking amendment was adopted by voice vote.

MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 2 of the title, after "construction;" strike the remainder of the title and insert "and creating a new section."

MOTION

On motion of Senator Prentice, the rules were suspended, Substitute House Bill No. 3120 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Prentice spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 3120 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 3120 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 48; Nays, 1; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala,

FIFTY-FOURTH DAY, MARCH 7, 2008

Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 48

Voting nay: Senator Honeyford - 1

SUBSTITUTE HOUSE BILL NO. 3120 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1865, by House Committee on Judiciary (originally sponsored by Representatives Williams, O'Brien, Springer, Fromhold, Warnick and McCune)

Limiting the obligations of landlords under writs of restitution.

The measure was read the second time.

MOTION

On motion of Senator Weinstein, the rules were suspended, Engrossed Substitute House Bill No. 1865 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Weinstein and Honeyford spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 1865.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 1865 and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 1; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 48

Absent: Senator Murray - 1

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1865, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

ENGROSSED HOUSE BILL NO. 2476, by Representatives McCoy, Simpson, Lantz, Appleton, O'Brien, Kenney, Sells, Moeller, Hudgins, Dunn, Upthegrove and Chase

Authorizing tribal police officers to act as general authority Washington state peace officers.

The measure was read the second time.

PARLIAMENTARY INQUIRY

Senator Kline: "We have a striker amendment by Senator Carrell and myself. We also have a committee striker."

REPLY BY THE PRESIDENT

President Owen: "The President assumes that you wish to pass the amendment by you and Senator Carrell. He would suggest that possibly you would make the motion to not adopt the committee amendment."

MOTION

Senator Kline moved that the following committee striking amendment by the Committee on Judiciary be not adopted.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "General authority Washington peace officer" means an officer authorized to enforce the criminal and traffic laws of the state of Washington generally.

(2) "Tribal police officer" means any person in the employ of one of the federally recognized sovereign tribal governments, whose traditional lands and territories lie within the borders of the state of Washington, to enforce the criminal laws of that government.

NEW SECTION. Sec. 1. (1) Tribal police officers under subsection (2) of this section shall be recognized and authorized to act as general authority Washington peace officers. A tribal police officer recognized and authorized to act as a general authority Washington peace officer under this section has the same powers as any other general authority Washington peace officer to enforce state laws in Washington, including the power to make arrests for violations of state laws.

(2) A tribal police officer may exercise the powers of law enforcement of a general authority Washington peace officer under this section, subject to the following:

(a) The appropriate sovereign tribal nation shall submit to the office of financial management proof of public liability and property damage insurance for vehicles operated by the peace officers and police professional liability insurance from a company licensed to sell insurance in the state.

(i) Within the thirty days of receipt of written proof of insurance from the sovereign tribal nation, the office of financial management shall either approve or reject the adequacy of insurance. The adequacy of insurance under this chapter shall be subject to annual review by the state office of financial management.

(ii) Each policy of insurance issued under this chapter must include a provision that the insurance shall be available to satisfy settlements or judgments arising from the tortious conduct of tribal police officers when acting in the capacity of a general authority Washington peace officer, and that to the extent of policy coverage neither the sovereign tribal nation nor its liability insurance companies will raise a defense of sovereign immunity to preclude an action for damages, the determination of fault in a civil action, or the payment of a settlement or judgment arising from the tortious conduct.

(b) The appropriate sovereign tribal nation shall submit to the office of financial management proof of training requirements for each tribal police officer. To be authorized as a general authority Washington peace officer, a tribal police officer must successfully complete the requirements set forth under RCW 43.101.157. Any applicant not meeting the requirements for certification as a tribal police officer may not act as a general authority Washington peace officer under this chapter. The criminal justice training commission shall notify the office of financial management if:

(i) A tribal police officer authorized under this act as a general authority Washington state peace officer has been decertified pursuant to RCW 43.101.157; or

FIFTY-FOURTH DAY, MARCH 7, 2008

2008 REGULAR SESSION

(ii) An appropriate sovereign tribal government is otherwise in noncompliance with RCW 43.101.157.

(3) A copy of any citation or notice of infraction issued, or any incident report taken, by a tribal police officer acting in the capacity of a general authority Washington peace officer as authorized by this act must be submitted within three days to the police chief or sheriff within whose jurisdiction the action was taken. Any citation issued under this section shall be to a Washington court, except that any citation issued to Indians within the exterior boundaries of an Indian reservation may be cited to a tribal court. Any arrest made or citation issued not in compliance with this section is not enforceable.

(4) Any authorization granted under this act shall not in any way expand the jurisdiction of any tribal court or other tribal authority.

(5) The authority granted under this act shall be coextensive with the exterior boundaries of the reservation, except that an officer commissioned under this act may act as authorized under RCW 10.93.070 beyond the exterior boundaries of the reservation.

(6) For purposes of civil liability under this chapter, a tribal police officer shall not be considered an employee of the state of Washington or any local government. Neither the state of Washington nor local governments nor their individual employees thereof shall be liable for the authorization of tribal police officers under this chapter, nor for the negligence or other misconduct of tribal officers. The authorization of tribal police officers under this chapter shall not be deemed to have been a nondelegable duty of the state of Washington or any local government.

(7) Nothing in this act impairs or affects the existing status and sovereignty of those sovereign tribal governments whose traditional lands and territories lie within the borders of the state of Washington as established under the laws of the United States.

(8) Nothing in this act limits, impairs, or nullifies the authority of a county sheriff to appoint duly commissioned state or federally certified tribal police officers as deputy sheriffs authorized to enforce the criminal and traffic laws of the state of Washington.

(9) Nothing in this act limits, impairs, or otherwise affects the existing authority under state or federal law of state or local law enforcement officers to (a) enforce state law within the exterior boundaries of an Indian reservation; or (b) enter Indian country in fresh pursuit of a person suspected of violating state law, where the officer would otherwise not have jurisdiction, as fresh pursuit is defined in RCW 10.93.120.

NEW SECTION. Sec. 2. Sections 1 and 2 of this act constitute a new chapter in Title 10 RCW.

NEW SECTION. Sec. 3. (1) This act takes effect June 1, 2009, provided however, if a sovereign tribal nation has entered into an interlocal agreement pursuant to chapter 39.34 RCW with an appropriate local government regarding the implementation of the provisions of this act and the requirements of section 2(2) of this act have been met, the agreement shall be effective immediately thereafter.

(2)(a) If a sovereign tribal nation and an appropriate local government have failed to enter into an interlocal agreement pursuant to chapter 39.34 RCW prior to June 1, 2009, regarding the implementation of the provisions of this act, the sovereign tribal nation and the appropriate local government shall agree to binding arbitration to resolve any conflicts regarding the implementation of the provisions of this act.

(b) The sovereign tribal nation and the appropriate local government shall agree to an arbitration panel consisting of three members. Each party shall name one person to serve as its arbitrator on the arbitration panel. The two members appointed shall meet within seven days following the appointment of the later appointed member to choose a third member to act as the neutral chair of the arbitration panel.

(c) Each party shall pay the fees and expenses of its arbitrator, and the fees and expenses of the neutral chair shall be shared equally between the parties.

(d) The arbitration panel shall consider the final offer submitted by each party and shall select the offer that best implements the provisions of this act."

On page 1, line 2 of the title, after "officers;" strike the remainder of the title and insert "adding a new chapter to Title 10 RCW; and providing an effective date."

The President declared the question before the Senate to be the motion by Senator Kline to not adopt the committee striking amendment by the Committee on Judiciary to Engrossed House Bill No. 2476.

The motion by Senator Kline carried and the committee striking amendment was not adopted by voice vote.

MOTION

Senator Carrell moved that the following striking amendment by Senators Carrell and Kline be adopted:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "General authority Washington peace officer" means an officer authorized to enforce the criminal and traffic laws of the state of Washington generally.

(2) "Tribal police officer" means any person in the employ of one of the federally recognized sovereign tribal governments, whose traditional lands and territories lie within the borders of the state of Washington, to enforce the criminal laws of that government.

NEW SECTION. Sec. 2. (1) Tribal police officers under subsection (2) of this section shall be recognized and authorized to act as general authority Washington peace officers. A tribal police officer recognized and authorized to act as a general authority Washington peace officer under this section has the same powers as any other general authority Washington peace officer to enforce state laws in Washington, including the power to make arrests for violations of state laws.

(2) A tribal police officer may exercise the powers of law enforcement of a general authority Washington peace officer under this section, subject to the following:

(a) The appropriate sovereign tribal nation shall submit to the office of financial management proof of public liability and property damage insurance for vehicles operated by the peace officers and police professional liability insurance from a company licensed to sell insurance in the state. For purposes of determining adequacy of insurance liability, the sovereign tribal government must submit with the proof of liability insurance a copy of the interlocal agreement between the sovereign tribal government and the local governments that have shared jurisdiction under this chapter where such an agreement has been reached pursuant to subsection (10) of this section.

(i) Within the thirty days of receipt of the information from the sovereign tribal nation, the office of financial management shall either approve or reject the adequacy of insurance, giving consideration to the scope of the interlocal agreement. The adequacy of insurance under this chapter shall be subject to annual review by the state office of financial management.

(ii) Each policy of insurance issued under this chapter must include a provision that the insurance shall be available to satisfy settlements or judgments arising from the tortious conduct of tribal police officers when acting in the capacity of a general authority Washington peace officer, and that to the extent of policy coverage neither the sovereign tribal nation nor the insurance carrier will raise a defense of sovereign immunity to preclude an action for damages under state or federal law, the

FIFTY-FOURTH DAY, MARCH 7, 2008

determination of fault in a civil action, or the payment of a settlement or judgment arising from the tortious conduct.

(b) The appropriate sovereign tribal nation shall submit to the office of financial management proof of training requirements for each tribal police officer. To be authorized as a general authority Washington peace officer, a tribal police officer must successfully complete the requirements set forth under RCW 43.101.157. Any applicant not meeting the requirements for certification as a tribal police officer may not act as a general authority Washington peace officer under this chapter. The criminal justice training commission shall notify the office of financial management if:

(i) A tribal police officer authorized under this chapter as a general authority Washington state peace officer has been decertified pursuant to RCW 43.101.157; or

(ii) An appropriate sovereign tribal government is otherwise in noncompliance with RCW 43.101.157.

(3) A copy of any citation or notice of infraction issued, or any incident report taken, by a tribal police officer acting in the capacity of a general authority Washington peace officer as authorized by this chapter must be submitted within three days to the police chief or sheriff within whose jurisdiction the action was taken. Any citation issued under this chapter shall be to a Washington court, except that any citation issued to Indians within the exterior boundaries of an Indian reservation may be cited to a tribal court. Any arrest made or citation issued not in compliance with this chapter is not enforceable.

(4) Any authorization granted under this chapter shall not in any way expand the jurisdiction of any tribal court or other tribal authority.

(5) The authority granted under this chapter shall be coextensive with the exterior boundaries of the reservation, except that an officer commissioned under this section may act as authorized under RCW 10.93.070 beyond the exterior boundaries of the reservation.

(6) For purposes of civil liability under this chapter, a tribal police officer shall not be considered an employee of the state of Washington or any local government except where a state or local government has deputized a tribal police officer as a specially commissioned officer. Neither the state of Washington and its individual employees nor any local government and its individual employees shall be liable for the authorization of tribal police officers under this chapter, nor for the negligence or other misconduct of tribal officers. The authorization of tribal police officers under this chapter shall not be deemed to have been a nondelegable duty of the state of Washington or any local government.

(7) Nothing in this chapter impairs or affects the existing status and sovereignty of those sovereign tribal governments whose traditional lands and territories lie within the borders of the state of Washington as established under the laws of the United States.

(8) Nothing in this chapter limits, impairs, or nullifies the authority of a county sheriff to appoint duly commissioned state or federally certified tribal police officers as deputy sheriffs authorized to enforce the criminal and traffic laws of the state of Washington.

(9) Nothing in this act limits, impairs, or otherwise affects the existing authority under state or federal law of state or local law enforcement officers to enforce state law within the exterior boundaries of an Indian reservation or to enter Indian country in fresh pursuit, as defined in RCW 10.93.120, of a person suspected of violating state law, where the officer would otherwise not have jurisdiction.

(10) An interlocal agreement pursuant to chapter 39.34 RCW is required between the sovereign tribal government and all local government law enforcement agencies that will have shared jurisdiction under this chapter prior to authorization taking effect under this chapter. Nothing in this act shall limit, impair, or otherwise affect the implementation of an interlocal agreement completed pursuant to chapter 39.34 RCW by the

2008 REGULAR SESSION

effective date of this act, between a sovereign tribal government and a local government law enforcement agency for cooperative law enforcement.

(a) Sovereign tribal governments that meet all of the requirements of subsection (2) of this section, but do not have an interlocal agreement pursuant to chapter 39.34 RCW and seek authorization under this chapter, may submit proof of liability insurance and training certification to the office of financial management. Upon confirmation of receipt of the information from the office of financial management, the sovereign tribal government and the local government law enforcement agencies that will have shared jurisdiction under this chapter have one year to enter into an interlocal agreement pursuant to chapter 39.34 RCW. If the sovereign tribal government and the local government law enforcement agencies that will have shared jurisdiction under this chapter are not able to reach agreement after one year, the sovereign tribal governments and the local government law enforcement agencies shall submit to binding arbitration pursuant to chapter 7.04A RCW with the American arbitration association or successor agency for purposes of completing an agreement prior to authorization going into effect.

(b) For the purposes of (a) of this subsection, those sovereign tribal government and local government law enforcement agencies that must enter into binding arbitration shall submit to last best offer arbitration. For purposes of accepting a last best offer, the arbitrator must consider other interlocal agreements between sovereign tribal governments and local law enforcement agencies in Washington state, any model policy developed by the Washington association of sheriffs and police chiefs or successor agency, and national best practices.

NEW SECTION. Sec. 3. Sections 1 and 2 of this act constitute a new chapter in Title 10 RCW.

NEW SECTION. Sec. 4. This act takes effect July 1, 2008."

Senators Carrell and Kline spoke in favor of adoption of the striking amendment.

The President declared the question before the Senate to be the adoption of the striking amendment by Senators Carrell and Kline to Engrossed House Bill No. 2476.

The motion by Senator Carrell carried and the striking amendment was adopted by voice vote.

MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 2 of the title, after "officers;" strike the remainder of the title and insert "adding a new chapter to Title 10 RCW; and providing an effective date."

MOTION

On motion of Senator Kline, the rules were suspended, Engrossed House Bill No. 2476 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Kline, Carrell, Sheldon and Jacobsen spoke in favor of passage of the bill.

Senators Berkey, Honeyford and Parlette spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed House Bill No. 2476 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of

FIFTY-FOURTH DAY, MARCH 7, 2008

2008 REGULAR SESSION

Engrossed House Bill No. 2476 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 34; Nays, 15; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hobbs, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Murray, Oemig, Pflug, Prentice, Pridemore, Rasmussen, Regala, Rockefeller, Sheldon, Shin, Spanel, Swecker, Tom and Weinstein - 34

Voting nay: Senators Berkey, Brandland, Hatfield, Haugen, Hewitt, Holmquist, Honeyford, King, McCaslin, Morton, Parlette, Roach, Schoesler, Stevens and Zarelli - 15

ENGROSSED HOUSE BILL NO. 2476 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

At 12:02 p.m., on motion of Senator Eide, the Senate was recessed until 12:45 p.m.

AFTERNOON SESSION

The Senate was called to order at 12:45 p.m. by President Owen.

SECOND READING

HOUSE BILL NO. 2774, by Representatives Barlow, O'Brien, Warnick, Ormsby, Seaquist, Moeller, Morrell and Kelley

Making a false or misleading material statement that results in an Amber alert.

The measure was read the second time.

MOTION

Senator Tom moved that the following committee striking amendment by the Committee on Judiciary be adopted.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. A new section is added to chapter 9A.76 RCW to read as follows:

(1) A person who, with the intent of causing an activation of the voluntary broadcast notification system commonly known as the "Amber alert," or as the same system may otherwise be known, which is used to notify the public of abducted children, knowingly makes a false or misleading material statement to a public servant that a child has been abducted and which statement causes an activation, is guilty of a class C felony.

(2) "Material statement" means a written or oral statement reasonably likely to be relied upon by a public servant in the discharge of his or her official powers or duties."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Judiciary to House Bill No. 2774.

The motion by Senator Tom carried and the committee striking amendment was adopted by voice vote.

MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 2 of the title, after "alert;" strike the remainder of the title and insert "adding a new section to chapter 9A.76 RCW; and prescribing penalties."

MOTION

On motion of Senator Tom, the rules were suspended, House Bill No. 2774 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

MOTION

On motion of Senator Brandland, Senators Benton, Carrell, Delvin, Hewitt, Honeyford, McCaslin, Parlette, Roach, Stevens and Zarelli were excused.

MOTION

On motion of Senator Regala, Senator Shin was excused.

Senator Tom spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 2774 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 2774 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 42; Nays, 0; Absent, 1; Excused, 6.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hobbs, Holmquist, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Spanel, Stevens, Swecker, Tom and Weinstein - 42

Absent: Senator McAuliffe - 1

Excused: Senators Delvin, Hewitt, Honeyford, McCaslin, Shin and Zarelli - 6

HOUSE BILL NO. 2774 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

HOUSE BILL NO. 2762, by Representatives Takko, Blake, Orcutt and Herrera

Increasing the number of district court judges in Cowlitz county.

The measure was read the second time.

MOTION

On motion of Senator Hatfield, the rules were suspended, House Bill No. 2762 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Hatfield spoke in favor of passage of the bill.

MOTION

FIFTY-FOURTH DAY, MARCH 7, 2008

2008 REGULAR SESSION

On motion of Senator Regala, Senator McAuliffe was excused.

The President declared the question before the Senate to be the final passage of House Bill No. 2762.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 2762 and the bill passed the Senate by the following vote: Yeas, 45; Nays, 0; Absent, 0; Excused, 4.

Voting yeas: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Spanel, Stevens, Swecker, Tom and Weinstein - 45

Excused: Senators McAuliffe, McCaslin, Shin and Zarelli - 4

HOUSE BILL NO. 2762, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 1141, by House Committee on Human Services (originally sponsored by Representatives Roberts, Haler, O'Brien, Green, Goodman, Kagi, Appleton, Walsh, Williams, Dickerson, Darnelle, Flannigan, McCoy, Hinkle, Pettigrew and Hasegawa)

Modifying diversion records provisions.

The measure was read the second time.

MOTION

Senator Hargrove moved that the following committee striking amendment by the Committee on Human Services & Corrections be adopted.

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 13.50.050 and 2004 c 42 s 1 are each amended to read as follows:

(1) This section governs records relating to the commission of juvenile offenses, including records relating to diversions.

(2) The official juvenile court file of any alleged or proven juvenile offender shall be open to public inspection, unless sealed pursuant to subsection (12) of this section.

(3) All records other than the official juvenile court file are confidential and may be released only as provided in this section, RCW 13.50.010, 13.40.215, and 4.24.550.

(4) Except as otherwise provided in this section and RCW 13.50.010, records retained or produced by any juvenile justice or care agency may be released to other participants in the juvenile justice or care system only when an investigation or case involving the juvenile in question is being pursued by the other participant or when that other participant is assigned the responsibility for supervising the juvenile.

(5) Except as provided in RCW 4.24.550, information not in an official juvenile court file concerning a juvenile or a juvenile's family may be released to the public only when that information could not reasonably be expected to identify the juvenile or the juvenile's family.

(6) Notwithstanding any other provision of this chapter, the release, to the juvenile or his or her attorney, of law enforcement and prosecuting attorneys' records pertaining to investigation, diversion, and prosecution of juvenile offenses shall be governed by the rules of discovery and other rules of law applicable in adult criminal investigations and prosecutions.

(7) Upon the decision to arrest or the arrest, law enforcement and prosecuting attorneys may cooperate with schools in releasing information to a school pertaining to the investigation, diversion, and prosecution of a juvenile attending the school. Upon the decision to arrest or the arrest, incident reports may be released unless releasing the records would jeopardize the investigation or prosecution or endanger witnesses. If release of incident reports would jeopardize the investigation or prosecution or endanger witnesses, law enforcement and prosecuting attorneys may release information to the maximum extent possible to assist schools in protecting other students, staff, and school property.

(8) The juvenile court and the prosecutor may set up and maintain a central record-keeping system which may receive information on all alleged juvenile offenders against whom a complaint has been filed pursuant to RCW 13.40.070 whether or not their cases are currently pending before the court. The central record-keeping system may be computerized. If a complaint has been referred to a diversion unit, the diversion unit shall promptly report to the juvenile court or the prosecuting attorney when the juvenile has agreed to diversion. An offense shall not be reported as criminal history in any central record-keeping system without notification by the diversion unit of the date on which the offender agreed to diversion.

(9) Upon request of the victim of a crime or the victim's immediate family, the identity of an alleged or proven juvenile offender alleged or found to have committed a crime against the victim and the identity of the alleged or proven juvenile offender's parent, guardian, or custodian and the circumstance of the alleged or proven crime shall be released to the victim of the crime or the victim's immediate family.

(10) Subject to the rules of discovery applicable in adult criminal prosecutions, the juvenile offense records of an adult criminal defendant or witness in an adult criminal proceeding shall be released upon request to prosecution and defense counsel after a charge has actually been filed. The juvenile offense records of any adult convicted of a crime and placed under the supervision of the adult corrections system shall be released upon request to the adult corrections system.

(11) In any case in which an information has been filed pursuant to RCW 13.40.100 or a complaint has been filed with the prosecutor and referred for diversion pursuant to RCW 13.40.070, the person the subject of the information or complaint may file a motion with the court to have the court vacate its order and findings, if any, and, subject to subsection (23) of this section, order the sealing of the official juvenile court file, the social file, and records of the court and of any other agency in the case.

(12) The court shall not grant any motion to seal records made pursuant to subsection (11) of this section that is filed on or after July 1, 1997, unless it finds that:

(a) For class B offenses other than sex offenses, since the last date of release from confinement, including full-time residential treatment, if any, or entry of disposition, the person has spent five consecutive years in the community without committing any offense or crime that subsequently results in conviction. For class C offenses other than sex offenses, since the last date of release from confinement, including full-time residential treatment, if any, or entry of disposition, the person has spent two consecutive years in the community without committing any offense or crime that subsequently results in conviction. For gross misdemeanors and misdemeanors, since the last date of release from confinement, including full-time residential treatment, if any, or entry of disposition, the person

FIFTY-FOURTH DAY, MARCH 7, 2008

has spent two consecutive years in the community without committing any offense or crime that subsequently results in conviction. For diversions, since completion of the diversion agreement, the person has spent two consecutive years in the community without committing any offense or crime that subsequently results in conviction or diversion;

(b) No proceeding is pending against the moving party seeking the conviction of a juvenile offense or a criminal offense;

(c) No proceeding is pending seeking the formation of a diversion agreement with that person;

(d) The person has not been convicted of a class A or sex offense; and

(e) Full restitution has been paid.

(13) The person making a motion pursuant to subsection (11) of this section shall give reasonable notice of the motion to the prosecution and to any person or agency whose files are sought to be sealed.

(14) If the court grants the motion to seal made pursuant to subsection (11) of this section, it shall, subject to subsection (23) of this section, order sealed the official juvenile court file, the social file, and other records relating to the case as are named in the order. Thereafter, the proceedings in the case shall be treated as if they never occurred, and the subject of the records may reply accordingly to any inquiry about the events, records of which are sealed. Any agency shall reply to any inquiry concerning confidential or sealed records that records are confidential, and no information can be given about the existence or nonexistence of records concerning an individual.

(15) Inspection of the files and records included in the order to seal may thereafter be permitted only by order of the court upon motion made by the person who is the subject of the information or complaint, except as otherwise provided in RCW 13.50.010(8) and subsection (23) of this section.

(16) Any adjudication of a juvenile offense or a crime subsequent to sealing has the effect of nullifying the sealing order. Any charging of an adult felony subsequent to the sealing has the effect of nullifying the sealing order for the purposes of chapter 9.94A RCW. The administrative office of the courts shall ensure that the superior court judicial information system provides prosecutors access to information on the existence of sealed juvenile records.

~~(17)(a) ((A person eighteen years of age or older whose criminal history consists of only one referral for diversion may request that the court order the records in that case destroyed. The request shall be granted, subject to subsection (23) of this section, if the court finds that two years have elapsed since completion of the diversion agreement.)) (i) Subject to subsection (23) of this section, all records maintained by any court or law enforcement agency, including the juvenile court, local law enforcement, the Washington state patrol, and the prosecutor's office, shall be automatically destroyed within ninety days of becoming eligible for destruction. Juvenile records are eligible for destruction when:~~

~~(A) The person who is the subject of the information or complaint is at least eighteen years of age;~~

~~(B) His or her criminal history consists entirely of one diversion agreement or counsel and release entered on or after the effective date of this act;~~

~~(C) Two years have elapsed since completion of the agreement or counsel and release;~~

~~(D) No proceeding is pending against the person seeking the conviction of a criminal offense; and~~

~~(E) There is no restitution owing in the case.~~

~~(ii) No less than quarterly, the administrative office of the courts shall provide a report to the juvenile courts of those individuals whose records may be eligible for destruction. The juvenile court shall verify eligibility and notify the Washington state patrol and the appropriate local law enforcement agency and prosecutor's office of the records to be destroyed. The requirement to destroy records under this subsection is not~~

2008 REGULAR SESSION

~~dependent on a court hearing or the issuance of a court order to destroy records.~~

~~(iii) The state and local governments and their officers and employees are not liable for civil damages for the failure to destroy records pursuant to this section.~~

~~(b) A person eighteen years of age or older whose criminal history consists entirely of one diversion agreement or counsel and release entered prior to the effective date of this act, may request that the court order the records in his or her case destroyed. The request shall be granted, subject to subsection (23) of this section, if the court finds that two years have elapsed since completion of the agreement or counsel and release.~~

~~(c) A person twenty-three years of age or older whose criminal history consists of only referrals for diversion may request that the court order the records in those cases destroyed. The request shall be granted, subject to subsection (23) of this section, if the court finds that all diversion agreements have been successfully completed and no proceeding is pending against the person seeking the conviction of a criminal offense.~~

~~(18) If the court grants the motion to destroy records made pursuant to subsection (17)(b) or (c) of this section, it shall, subject to subsection (23) of this section, order the official juvenile court file, the social file, and any other records named in the order to be destroyed.~~

~~(19) The person making the motion pursuant to subsection (17)(b) or (c) of this section shall give reasonable notice of the motion to the prosecuting attorney and to any agency whose records are sought to be destroyed.~~

~~(20) Any juvenile to whom the provisions of this section may apply shall be given written notice of his or her rights under this section at the time of his or her disposition hearing or during the diversion process.~~

~~(21) Nothing in this section may be construed to prevent a crime victim or a member of the victim's family from divulging the identity of the alleged or proven juvenile offender or his or her family when necessary in a civil proceeding.~~

~~(22) Any juvenile justice or care agency may, subject to the limitations in subsection (23) of this section and (a) and (b) of this subsection, develop procedures for the routine destruction of records relating to juvenile offenses and diversions.~~

~~(a) Records may be routinely destroyed only when the person the subject of the information or complaint has attained twenty-three years of age or older (or is eighteen years of age or older and his or her criminal history consists entirely of one diversion agreement and two years have passed since completion of the agreement) or pursuant to subsection (17)(a) of this section.~~

~~(b) The court may not routinely destroy the official juvenile court file or recordings or transcripts of any proceedings.~~

~~(23) No identifying information held by the Washington state patrol in accordance with chapter 43.43 RCW is subject to destruction or sealing under this section. For the purposes of this subsection, identifying information includes photographs, fingerprints, palmprints, soleprints, toeprints and any other data that identifies a person by physical characteristics, name, birthdate or address, but does not include information regarding criminal activity, arrest, charging, diversion, conviction or other information about a person's treatment by the criminal justice system or about the person's behavior.~~

~~(24) Information identifying child victims under age eighteen who are victims of sexual assaults by juvenile offenders is confidential and not subject to release to the press or public without the permission of the child victim or the child's legal guardian. Identifying information includes the child victim's name, addresses, location, photographs, and in cases in which the child victim is a relative of the alleged perpetrator, identification of the relationship between the child and the alleged perpetrator. Information identifying a child victim of sexual assault may be released to law enforcement, prosecutors, judges, defense attorneys, or private or governmental agencies that provide services to the child victim of sexual assault."~~

FIFTY-FOURTH DAY, MARCH 7, 2008

2008 REGULAR SESSION

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Human Services & Corrections to Substitute House Bill No. 1141.

The motion by Senator Hargrove carried and the committee striking amendment was adopted by voice vote.

MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 1 of the title, after "records;" strike the remainder of the title and insert "and amending RCW 13.50.050."

MOTION

On motion of Senator Hargrove, the rules were suspended, Substitute House Bill No. 1141 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Hargrove spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 1141 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 1141 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 48

Excused: Senator McCaslin - 1

SUBSTITUTE HOUSE BILL NO. 1141 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

On motion of Senator Brandland, Senator Delvin was excused.

SECOND READING

HOUSE BILL NO. 2448, by Representatives Hunt, Chandler, Appleton, Armstrong and Haigh

Changing the time frame covered by the twenty-one day preelection campaign finance report.

The measure was read the second time.

MOTION

On motion of Senator Fairley, the rules were suspended, House Bill No. 2448 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Fairley spoke in favor of passage of the bill.

MOTION

On motion of Senator Regala, Senator Prentice was excused.

The President declared the question before the Senate to be the final passage of House Bill No. 2448.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 2448 and the bill passed the Senate by the following vote: Yeas, 45; Nays, 0; Absent, 1; Excused, 3.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Pridemore, Rasmussen, Regala, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 45

Absent: Senator Roach - 1

Excused: Senators Delvin, McCaslin and Prentice - 3

HOUSE BILL NO. 2448, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 2788, by House Committee on Agriculture & Natural Resources (originally sponsored by Representatives VanDeWege, Blake, Orcutt, Kretz, Nelson, Grant, Williams, Eickmeyer, Linville and McCoy)

Organizing definitions in Title 77 RCW.

The measure was read the second time.

MOTION

Senator Jacobsen moved that the following committee striking amendment by the Committee on Natural Resources, Ocean & Recreation be adopted.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. The code reviser is directed to put the defined terms in RCW 77.08.010 in alphabetical order.

Sec. 2. RCW 77.08.010 and 2007 c 350 s 2 and 2007 c 254 s 1 are each reenacted and amended to read as follows:

((As used in) The definitions in this section apply throughout this title or rules adopted under this title(☺) unless the context clearly requires otherwise(☺).)

(1) "Director" means the director of the department of fish and wildlife.

(2) "Department" means the department of fish and wildlife.

(3) "Commission" means the state fish and wildlife commission.

(4) "Person" means and includes an individual; a corporation; a public or private entity or organization; a local, state, or federal agency; all business organizations, including corporations and partnerships; or a group of two or more individuals acting with a common purpose whether acting in an individual, representative, or official capacity.

(5) "Fish and wildlife officer" means a person appointed and commissioned by the director, with authority to enforce this title

FIFTY-FOURTH DAY, MARCH 7, 2008

and rules adopted pursuant to this title, and other statutes as prescribed by the legislature. Fish and wildlife officer includes a person commissioned before June 11, 1998, as a wildlife agent or a fisheries patrol officer.

(6) "Ex officio fish and wildlife officer" means a commissioned officer of a municipal, county, state, or federal agency having as its primary function the enforcement of criminal laws in general, while the officer is in the appropriate jurisdiction. The term "ex officio fish and wildlife officer" includes special agents of the national marine fisheries service, state parks commissioned officers, United States fish and wildlife special agents, department of natural resources enforcement officers, and United States forest service officers, while the agents and officers are within their respective jurisdictions.

(7) "To hunt" and its derivatives means an effort to kill, injure, capture, or harass a wild animal or wild bird.

(8) "To trap" and its derivatives means a method of hunting using devices to capture wild animals or wild birds.

(9) "To fish," "to harvest," and "to take," and their derivatives means an effort to kill, injure, harass, or catch a fish or shellfish.

(10) "Open season" means those times, manners of taking, and places or waters established by rule of the commission for the lawful hunting, fishing, taking, or possession of game animals, game birds, game fish, food fish, or shellfish that conform to the special restrictions or physical descriptions established by rule of the commission or that have otherwise been deemed legal to hunt, fish, take, harvest, or possess by rule of the commission. "Open season" includes the first and last days of the established time.

(11) "Closed season" means all times, manners of taking, and places or waters other than those established by rule of the commission as an open season. "Closed season" also means all hunting, fishing, taking, or possession of game animals, game birds, game fish, food fish, or shellfish that do not conform to the special restrictions or physical descriptions established by rule of the commission as an open season or that have not otherwise been deemed legal to hunt, fish, take, harvest, or possess by rule of the commission as an open season.

(12) "Closed area" means a place where the hunting of some or all species of wild animals or wild birds is prohibited.

(13) "Closed waters" means all or part of a lake, river, stream, or other body of water, where fishing or harvesting is prohibited.

(14) "Game reserve" means a closed area where hunting for all wild animals and wild birds is prohibited.

(15) "Bag limit" means the maximum number of game animals, game birds, or game fish which may be taken, caught, killed, or possessed by a person, as specified by rule of the commission for a particular period of time, or as to size, sex, or species.

(16) "Wildlife" means all species of the animal kingdom whose members exist in Washington in a wild state. This includes but is not limited to mammals, birds, reptiles, amphibians, fish, and invertebrates. The term "wildlife" does not include feral domestic mammals, old world rats and mice of the family Muridae of the order Rodentia, or those fish, shellfish, and marine invertebrates classified as food fish or shellfish by the director. The term "wildlife" includes all stages of development and the bodily parts of wildlife members.

(17) "Wild animals" means those species of the class Mammalia whose members exist in Washington in a wild state and the species *Rana catesbeiana* (bullfrog). The term "wild animal" does not include feral domestic mammals or old world rats and mice of the family Muridae of the order Rodentia.

(18) "Wild birds" means those species of the class Aves whose members exist in Washington in a wild state.

(19) "Protected wildlife" means wildlife designated by the commission that shall not be hunted or fished.

2008 REGULAR SESSION

(20) "Endangered species" means wildlife designated by the commission as seriously threatened with extinction.

(21) "Game animals" means wild animals that shall not be hunted except as authorized by the commission.

(22) "Fur-bearing animals" means game animals that shall not be trapped except as authorized by the commission.

(23) "Game birds" means wild birds that shall not be hunted except as authorized by the commission.

(24) "Predatory birds" means wild birds that may be hunted throughout the year as authorized by the commission.

(25) "Deleterious exotic wildlife" means species of the animal kingdom not native to Washington and designated as dangerous to the environment or wildlife of the state.

(26) "Game farm" means property on which wildlife is held or raised for commercial purposes, trade, or gift. The term "game farm" does not include publicly owned facilities.

(27) "Fish" includes all species classified as game fish or food fish by statute or rule, as well as all fin fish not currently classified as food fish or game fish if such species exist in state waters. The term "fish" includes all stages of development and the bodily parts of fish species.

(28) "Raffle" means an activity in which tickets bearing an individual number are sold for not more than twenty-five dollars each and in which a permit or permits are awarded to hunt or for access to hunt big game animals or wild turkeys on the basis of a drawing from the tickets by the person or persons conducting the raffle.

(29) "Youth" means a person fifteen years old for fishing and under sixteen years old for hunting.

(30) "Senior" means a person seventy years old or older.

(31) "License year" means the period of time for which a recreational license is valid. The license year begins April 1st, and ends March 31st.

(32) "Saltwater" means those marine waters seaward of river mouths.

(33) "Freshwater" means all waters not defined as saltwater including, but not limited to, rivers upstream of the river mouth, lakes, ponds, and reservoirs.

(34) "State waters" means all marine waters and fresh waters within ordinary high water lines and within the territorial boundaries of the state.

(35) "Offshore waters" means marine waters of the Pacific Ocean outside the territorial boundaries of the state, including the marine waters of other states and countries.

(36) "Concurrent waters of the Columbia river" means those waters of the Columbia river that coincide with the Washington-Oregon state boundary.

(37) "Resident" means:

(a) A person who has maintained a permanent place of abode within the state for at least ninety days immediately preceding an application for a license, has established by formal evidence an intent to continue residing within the state, and who is not licensed to hunt or fish as a resident in another state; and

(b) A person age eighteen or younger who does not qualify as a resident under (a) of this subsection, but who has a parent that qualifies as a resident under (a) of this subsection.

(38) "Nonresident" means a person who has not fulfilled the qualifications of a resident.

(39) "Shellfish" means those species of marine and freshwater invertebrates that have been classified and that shall not be taken except as authorized by rule of the commission. The term "shellfish" includes all stages of development and the bodily parts of shellfish species.

(40) "Commercial" means related to or connected with buying, selling, or bartering.

(41) "To process" and its derivatives mean preparing or preserving fish, wildlife, or shellfish.

(42) "Personal use" means for the private use of the individual taking the fish or shellfish and not for sale or barter.

FIFTY-FOURTH DAY, MARCH 7, 2008

(43) "Angling gear" means a line attached to a rod and reel capable of being held in hand while landing the fish or a hand-held line operated without rod or reel.

(44) "Fishery" means the taking of one or more particular species of fish or shellfish with particular gear in a particular geographical area.

(45) "Limited-entry license" means a license subject to a license limitation program established in chapter 77.70 RCW.

(46) "Seaweed" means marine aquatic plant species that are dependent upon the marine aquatic or tidal environment, and exist in either an attached or free floating form, and includes but is not limited to marine aquatic plants in the classes Chlorophyta, Phaeophyta, and Rhodophyta.

(47) "Trafficking" means offering, attempting to engage, or engaging in sale, barter, or purchase of fish, shellfish, wildlife, or deleterious exotic wildlife.

(48) "Invasive species" means a plant species or a nonnative animal species that either:

(a) Causes or may cause displacement of, or otherwise threatens, native species in their natural communities;

(b) Threatens or may threaten natural resources or their use in the state;

(c) Causes or may cause economic damage to commercial or recreational activities that are dependent upon state waters; or

(d) Threatens or harms human health.

(49) "Prohibited aquatic animal species" means an invasive species of the animal kingdom that has been classified as a prohibited aquatic animal species by the commission.

(50) "Regulated aquatic animal species" means a potentially invasive species of the animal kingdom that has been classified as a regulated aquatic animal species by the commission.

(51) "Unregulated aquatic animal species" means a nonnative animal species that has been classified as an unregulated aquatic animal species by the commission.

(52) "Unlisted aquatic animal species" means a nonnative animal species that has not been classified as a prohibited aquatic animal species, a regulated aquatic animal species, or an unregulated aquatic animal species by the commission.

(53) "Aquatic plant species" means an emergent, submersed, partially submersed, free-floating, or floating-leaving plant species that grows in or near a body of water or wetland.

(54) "Retail-eligible species" means commercially harvested salmon, crab, and sturgeon.

(55) "Aquatic invasive species" means any invasive, prohibited, regulated, unregulated, or unlisted aquatic animal or plant species as defined under subsections (48) through (53) of this section, aquatic noxious weeds as defined under RCW 17.26.020(5)(c), and aquatic nuisance species as defined under RCW 77.60.130(1).

(56) "Recreational and commercial watercraft" includes the boat, as well as equipment used to transport the boat, and any auxiliary equipment such as attached or detached outboard motors.

Sec. 3. RCW 77.04.060 and 1993 sp.s. c 2 s 63 are each amended to read as follows:

(1) The commission shall hold at least one regular meeting during the first two months of each calendar quarter, and special meetings when called by the chair and by five members. Five members constitute a quorum for the transaction of business.

(2) The commission at a meeting in each odd-numbered year shall elect one of its members as ~~((chairman))~~ chair and another member as ~~((vice-chairman))~~ vice-chair, each of whom shall serve for a term of two years or until a successor is elected and qualified.

(3) No member may serve as chair of the commission unless that member has been confirmed by the senate.

(4) Members of the commission shall be compensated in accordance with RCW 43.03.250. In addition, members are allowed their travel expenses incurred while absent from their usual places of residence in accordance with RCW 43.03.050 and 43.03.060."

2008 REGULAR SESSION

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Natural Resources, Ocean & Recreation to Substitute House Bill No. 2788.

The motion by Senator Jacobsen carried and the committee striking amendment was adopted by voice vote.

MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 1 of the title, after "RCW;" strike the remainder of the title and insert "amending RCW 77.04.060; reenacting and amending RCW 77.08.010; and creating a new section."

MOTION

On motion of Senator Jacobsen, the rules were suspended, Substitute House Bill No. 2788 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Jacobsen and Morton spoke in favor of passage of the bill.

Senator Kline spoke against passage of the bill.

MOTION

On motion of Senator Regala, Senator Fairley was excused.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2788 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2788 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 47; Nays, 1; Absent, 0; Excused, 1.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Franklin, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 47

Voting nay: Senator Fraser - 1

Excused: Senator Fairley - 1

SUBSTITUTE HOUSE BILL NO. 2788 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 3126, by House Committee on Finance (originally sponsored by Representatives Loomis, Orcutt, Hunter, McIntire, Priest, Roach, Condotta, Kelley and Rolfes)

Clarifying the interaction of the streamlined sales and use tax legislation and the power of local governments to license and tax.

The measure was read the second time.

FIFTY-FOURTH DAY, MARCH 7, 2008
MOTION

On motion of Senator Prentice, the rules were suspended, Substitute House Bill No. 3126 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Prentice and Zarelli spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 3126.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 3126 and the bill passed the Senate by the following vote: Yeas, 47; Nays, 0; Absent, 1; Excused, 1.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Swecker, Tom, Weinstein and Zarelli - 47

Absent: Senator Stevens - 1

Excused: Senator Fairley - 1

SUBSTITUTE HOUSE BILL NO. 3126, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

HOUSE BILL NO. 2999, by Representatives Hurst, Loomis, Kelley, Kirby, Liias, Morrell, Green and Simpson

Concerning the "chief for a day" program.

The measure was read the second time.

MOTION

On motion of Senator Kline, the rules were suspended, House Bill No. 2999 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Kline and McCaslin spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 2999.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 2999 and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 48

Excused: Senator Fairley - 1

2008 REGULAR SESSION

HOUSE BILL NO. 2999, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SECOND SUBSTITUTE HOUSE BILL NO. 3168, by House Committee on Appropriations (originally sponsored by Representatives Goodman, Kagi, Walsh, Haler, Roberts, Pettigrew, Hinkle, Sullivan, Kessler, Green, Hudgins, Darneille, McIntire, Liias, Kelley, Kenney, Hankins, Nelson, Santos and Ormsby)

Regarding the creation of the Washington head start program.

The measure was read the second time.

MOTION

Senator McAuliffe moved that the following committee striking amendment by the Committee on Ways & Means be adopted.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. The legislature finds that:

(1) It is in the best interest of the state to provide early learning services to economically disadvantaged families;

(2) Research has demonstrated that comprehensive services, including family support services designed to meet the early education needs of low-income and at-risk children, are successful in improving school readiness, reducing the risk of juvenile delinquency and incarceration, and reducing reliance on public assistance among these children later in life;

(3) The state's early childhood education and assistance program was originally established to serve as the state counterpart to the federal head start program. When it was created, it aligned with the federal program in both standards and funding levels;

(4) The state early childhood education and assistance program has served an important role in providing comprehensive services to low-income children. However, since it was first created, per-child funding levels for the state program have not kept pace with funding levels for the federal program. This has resulted in fewer service hours for children and less intensive services for families;

(5) Aligning performance standards and funding levels for the state early childhood education and assistance program with federal head start will improve the quality of state-supported early learning programs. Additionally, it will improve school readiness through measures, such as a forty percent increase in class time, and it will achieve administrative efficiencies and make state-supported services more easily recognizable and accessible to parents and families eligible for these programs; and

(6) Providing quality early learning services for children from birth to age three is the most cost-effective investment society can make. Additionally, the state can use the demonstrated results from the federal early head start program as an example to expand its reach of services already provided to three and four-year old children to children in the critical birth to three years age category.

NEW SECTION. Sec. 2. (1) Within existing funds, the department shall develop a proposal for implementing a statewide Washington head start program. To the extent possible while maintaining quality standards, the proposal should align the state early childhood education and assistance program with federal head start program eligibility criteria, guidelines, performance standards, and methods/processes for

FIFTY-FOURTH DAY, MARCH 7, 2008

ensuring continuous improvement in program quality. In this proposal, the department shall make recommendations that:

(a) Identify federal head start program guidelines, performance measures and standards, or other requirements for which state flexibility would be recommended. This shall include an analysis of how state flexibility may impact outcomes for children and how that flexibility might deviate from outcomes associated with the federal standards. Areas to be examined must include, but are not limited to, transportation requirements, service hour configurations, delivery methods, and impact on rural programs;

(b) Provide comparative data regarding child performance, readiness, and educational outcomes for Washington's existing head start and early childhood education and assistance programs;

(c) Determine the alignment between head start standards and the recommendations of Washington learns;

(d) Identify any change in the state early childhood education and assistance program laws that would be required to implement the Washington head start proposal;

(e) Identify additional resources needed to meet federal guidelines and standards. Areas to be examined must include, but are not limited to: Per-child funding levels, professional development and training needs, facilities needs, and technical assistance;

(f) Identify state early childhood education and assistance programs that do and do not offer full-day, full-year services to children, and what transition steps would be needed for these programs to operate in the same manner as federal head start programs;

(g) Provide steps for phasing-in the Washington head start proposal;

(h) Include a timeline, strategy, and funding needs to implement a statewide, state-supported early head start program as a component of the Washington head start proposal; and

(i) Detail the process the department would take with the regional office of federal head start in identifying any exceptions or waivers needed to provide flexibility and maintain high quality standards.

(2) In developing its recommendations for this proposal, the department shall seek, where appropriate and available, training or technical assistance from the appropriate regional office of federal head start in order to maximize nonstate resources that might be available for the consultative work and research involved with developing this proposal. The department also shall consult with and solicit input from:

(a) State early childhood education and assistance program providers on Indian reservations and across the state, including providers who operate solely state-supported programs;

(b) Tribal governments operating head start programs and early head start programs in the state to ensure that the needs of Indian and Alaskan native children and their families are incorporated into the recommendations of the proposal, especially as they pertain to standards or guidelines around language acquisition, school readiness, availability and need for services among Indian and Alaskan native children and their families, and curriculum development; and

(c) Providers operating migrant and seasonal head start programs in the state in order to address the needs of the children of migrant and seasonal farmworker families.

(3) The department shall make recommendations on how it would periodically review the standards and guidelines within the Washington head start program, including incorporation of the latest research and information on early childhood development as well as any new innovations that may further improve outcomes to low-income children and their families.

(4) The department shall deliver its report to the governor and legislature by December 1, 2009.

NEW SECTION. Sec. 3. Sections 1 and 2 of this act are each added to chapter 43.215 RCW."

2008 REGULAR SESSION
MOTION

Senator Kauffman moved that the following amendment by Senator Kauffman and others to the committee striking amendment be adopted.

On page 3, line 37 of the amendment, after "families." insert the following:

"(4) The department's recommendations on a Washington head start proposal shall include how the proposal aligns with the department's current statutory duties. The recommendations shall also include any other options that may improve the quality of state-supported early learning programs."

Renumber the remaining subsection consecutively.

The President declared the question before the Senate to be the adoption of the amendment by Senator Kauffman and others on page 3, line 37 to the committee striking amendment to Second Substitute House Bill No. 3168.

The motion by Senator Kauffman carried and the amendment to the committee striking amendment was adopted by voice vote.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Ways & Means as amended to Second Substitute House Bill No. 3168.

The motion by Senator McAuliffe carried and the committee striking amendment as amended was adopted by voice vote.

MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 2 of the title, after "program;" insert "and adding new sections to chapter 43.215 RCW."

MOTION

On motion of Senator McAuliffe, the rules were suspended, Second Substitute House Bill No. 3168 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators McAuliffe and King spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Second Substitute House Bill No. 3168 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Second Substitute House Bill No. 3168 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 49

SECOND SUBSTITUTE HOUSE BILL NO. 3168 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

FIFTY-FOURTH DAY, MARCH 7, 2008
MOTION

On motion of Senator Brandland, Senator Zarelli was excused.

SECOND READING

SECOND ENGROSSED SUBSTITUTE HOUSE BILL NO. 1637, by House Committee on Health Care & Wellness (originally sponsored by Representatives Hinkle, Cody, B. Sullivan, Moeller, Campbell, Williams, Green, Lovick, Upthegrove, Seaquist, Goodman, Simpson, Morrell, Linville, Ormsby and Rolfes)

Creating the revised uniform anatomical gift act.

The measure was read the second time.

MOTION

Senator Keiser moved that the following committee striking amendment by the Committee on Health & Long-Term Care be adopted.

Strike everything after the enacting clause and insert the following:

NEW SECTION. Sec. 1. This chapter may be cited as the revised uniform anatomical gift act.

NEW SECTION. Sec. 2. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Adult" means an individual who is at least eighteen years old.

(2) "Agent" means an individual:

(a) Authorized to make health care decisions on the principal's behalf by a power of attorney for health care; or

(b) Expressly authorized to make an anatomical gift on the principal's behalf by any other record signed by the principal.

(3) "Anatomical gift" means a donation of all or part of a human body to take effect after the donor's death for the purpose of transplantation, therapy, research, or education.

(4) "Decedent" means a deceased individual whose body or part is or may be the source of an anatomical gift.

(5) "Disinterested witness" means a witness other than the spouse or state registered domestic partner, child, parent, sibling, grandchild, grandparent, or guardian of the individual who makes, amends, revokes, or refuses to make an anatomical gift. The term does not include a person to which an anatomical gift could pass under section 11 of this act.

(6) "Document of gift" means a donor card or other record used to make an anatomical gift. The term includes a statement or symbol on a driver's license, identification card, or donor registry.

(7) "Donor" means an individual whose body or part is the subject of an anatomical gift.

(8) "Donor registry" means a database that contains records of anatomical gifts and amendments to or revocations of anatomical gifts.

(9) "Driver's license" means a license or permit issued by the department of licensing to operate a vehicle, whether or not conditions are attached to the license or permit.

(10) "Eye bank" means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of human eyes or portions of human eyes.

(11) "Guardian" means a person appointed by a court to make decisions regarding the support, care, education, health, or welfare of an individual. The term does not include a guardian ad litem.

2008 REGULAR SESSION

(12) "Hospital" means a facility licensed as a hospital under the law of any state or a facility operated as a hospital by the United States, a state, or a subdivision of a state.

(13) "Identification card" means an identification card issued by the department of licensing.

(14) "Know" means to have actual knowledge.

(15) "Minor" means an individual who is less than eighteen years old.

(16) "Organ procurement organization" means a person designated by the secretary of the United States department of health and human services as an organ procurement organization.

(17) "Parent" means a parent whose parental rights have not been terminated.

(18) "Part" means an organ, an eye, or tissue of a human being. The term does not include the whole body.

(19) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(20) "Physician" means an individual licensed or otherwise authorized to practice medicine and surgery or osteopathic medicine and surgery under the law of any state.

(21) "Procurement organization" means an eye bank, organ procurement organization, or tissue bank.

(22) "Prospective donor" means an individual whose death is imminent and has been determined by a procurement organization to have a part that could be medically suitable for transplantation, therapy, research, or education. "Prospective donor" does not include an individual who has made a refusal.

(23) "Reasonable costs" include: (a) Programming and software installation and upgrades; (b) employee training that is specific to the organ and tissue donor registry or the donation program created in RCW 46.12.510; (c) literature that is specific to the organ and tissue donor registry or the donation program created in RCW 46.12.510; and (d) hardware upgrades or other issues important to the organ and tissue donor registry or the donation program created in RCW 46.12.510 that have been mutually agreed upon in advance by the department of licensing and the Washington state organ procurement organizations.

(24) "Reasonably available" means able to be contacted by a procurement organization without undue effort and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift.

(25) "Recipient" means an individual into whose body a decedent's part has been or is intended to be transplanted.

(26) "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.

(27) "Refusal" means a record created under section 7 of this act that expressly states an intent to bar other persons from making an anatomical gift of an individual's body or part.

(28) "Sign" means, with the present intent to authenticate or adopt a record:

(a) To execute or adopt a tangible symbol; or

(b) To attach to or logically associate with the record an electronic symbol, sound, or process.

(29) "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.

(30) "Technician" means an individual determined to be qualified to remove or process parts by an appropriate organization that is licensed, accredited, or regulated under federal or state law. The term includes an enucleator.

(31) "Tissue" means a portion of the human body other than an organ or an eye. The term does not include blood unless the blood is donated for the purpose of research or education.

(32) "Tissue bank" means a person that is licensed to conduct business in this state, accredited, and regulated under

FIFTY-FOURTH DAY, MARCH 7, 2008

federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of tissue.

(33) "Transplant hospital" means a hospital that furnishes organ transplants and other medical and surgical specialty services required for the care of transplant patients.

(34) "Washington state organ procurement organization" means an organ procurement organization that has been designated by the United States department of health and human services to coordinate organ procurement activities for any portion of Washington state.

NEW SECTION. Sec. 3. This chapter applies to an anatomical gift or amendment to, revocation of, or refusal to make an anatomical gift, whenever made.

NEW SECTION. Sec. 4. Subject to section 8 of this act, an anatomical gift of a donor's body or part may be made during the life of the donor in the manner provided in section 5 of this act by:

(1) The donor, if the donor is an adult or if the donor is a minor and is:

(a) Emancipated; or

(b) Authorized under state law to apply for a driver's license because the donor is at least fifteen and one-half years old;

(2) An agent of the donor, unless the power of attorney for health care or other record prohibits the agent from making an anatomical gift;

(3) A parent of the donor, if the donor is an unemancipated minor; provided, however, that an anatomical gift made pursuant to this subsection shall cease to be valid once the donor becomes either an emancipated minor or an adult; or

(4) The donor's guardian.

NEW SECTION. Sec. 5. (1) A donor may make an anatomical gift:

(a) By authorizing a statement or symbol indicating that the donor has made an anatomical gift to be imprinted on the donor's driver's license or identification card;

(b) In a will;

(c) During a terminal illness or injury of the donor, by any form of communication addressed to at least two adults, at least one of whom is a disinterested witness; or

(d) As provided in subsection (2) of this section.

(2) A donor or other person authorized to make an anatomical gift under section 4 of this act may make a gift by a donor card or other record signed by the donor or other person making the gift or by authorizing that a statement or symbol indicating that the donor has made an anatomical gift be included on a donor registry. If the donor or other person is physically unable to sign a record, the record may be signed by another individual at the direction of the donor or other person and must:

(a) Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and

(b) State that it has been signed and witnessed as provided in (a) of this subsection.

(3) Revocation, suspension, expiration, or cancellation of a driver's license or identification card through which an anatomical gift has been made does not invalidate the gift.

(4) An anatomical gift made by will takes effect upon the donor's death whether or not the will is probated. Invalidation of the will after the donor's death does not invalidate the gift.

NEW SECTION. Sec. 6. (1) Subject to section 8 of this act, a donor or other person authorized to make an anatomical gift under section 4 of this act may amend or revoke an anatomical gift by:

(a) A record signed by:

(i) The donor;

(ii) The other person; or

(iii) Subject to subsection (2) of this section, another individual acting at the direction of the donor or the other person if the donor or other person is physically unable to sign; or

(b) A later-executed document of gift that amends or revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency.

(2) A record signed pursuant to subsection (1)(a)(iii) of this section must:

(a) Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and

(b) State that it has been signed and witnessed as provided in (a) of this subsection.

(3) Subject to section 8 of this act, a donor or other person authorized to make an anatomical gift under section 4 of this act may revoke an anatomical gift by the destruction or cancellation of the document of gift, or the portion of the document of gift used to make the gift, with the intent to revoke the gift. The donor or other person shall notify the Washington organ procurement organization of the destruction or cancellation of the document of gift for the purpose of removing the individual's name from the organ and tissue donor registry created in RCW 68.50.635 (as recodified by this act). If the Washington state organ procurement organization that is notified does not maintain a registry for Washington residents, it shall notify all Washington state procurement organizations that do maintain such a registry.

(4) A donor may amend or revoke an anatomical gift that was not made in a will by any form of communication during a terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.

(5) A donor who makes an anatomical gift in a will may amend or revoke the gift in the manner provided for amendment or revocation of wills or as provided in subsection (1) of this section.

NEW SECTION. Sec. 7. (1) An individual may refuse to make an anatomical gift of the individual's body or part by:

(a) A record signed by:

(i) The individual; or

(ii) Subject to subsection (2) of this section, another individual acting at the direction of the individual if the individual is physically unable to sign;

(b) The individual's will, whether or not the will is admitted to probate or invalidated after the individual's death; or

(c) Any form of communication made by the individual during the individual's terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.

(2) A record signed pursuant to subsection (1)(a)(ii) of this section must:

(a) Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the individual; and

(b) State that it has been signed and witnessed as provided in (a) of this subsection.

(3) An individual who has made a refusal may amend or revoke the refusal:

(a) In the manner provided in subsection (1) of this section for making a refusal;

(b) By subsequently making an anatomical gift pursuant to section 5 of this act that is inconsistent with the refusal; or

(c) By destroying or canceling the record evidencing the refusal, or the portion of the record used to make the refusal, with the intent to revoke the refusal.

(4) Except as otherwise provided in section 8(8) of this act, in the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift of the individual's body or part bars all other persons from making an anatomical gift of the individual's body or part.

NEW SECTION. Sec. 8. (1) Except as otherwise provided in subsection (7) of this section and subject to subsection (6) of this section, in the absence of an express, contrary indication by the donor, a person other than the donor is barred from making, amending, or revoking an anatomical gift of a donor's body or

FIFTY-FOURTH DAY, MARCH 7, 2008

part if the donor made an anatomical gift of the donor's body or part under section 5 of this act or an amendment to an anatomical gift of the donor's body or part under section 6 of this act.

(2) A donor's revocation of an anatomical gift of the donor's body or part under section 6 of this act is not a refusal and does not bar another person specified in section 4 or 9 of this act from making an anatomical gift of the donor's body or part under section 5 or 10 of this act.

(3) If a person other than the donor makes an unrevoked anatomical gift of the donor's body or part under section 5 of this act or an amendment to an anatomical gift of the donor's body or part under section 6 of this act, another person may not make, amend, or revoke the gift of the donor's body or part under section 10 of this act.

(4) A revocation of an anatomical gift of a donor's body or part under section 6 of this act by a person other than the donor does not bar another person from making an anatomical gift of the body or part under section 5 or 10 of this act.

(5) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under section 4 of this act, an anatomical gift of a part is neither a refusal to give another part nor a limitation on the making of an anatomical gift of another part at a later time by the donor or another person.

(6) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under section 4 of this act, an anatomical gift of a part for one or more of the permitted purposes is not a limitation on the making of an anatomical gift of the part for any of the other purposes by the donor or any other person under section 5 or 10 of this act.

(7) If a donor who is an unemancipated minor dies, a parent of the donor who is reasonably available may revoke or amend an anatomical gift of the donor's body or part.

(8) If an unemancipated minor who signed a refusal dies, a parent of the minor who is reasonably available may revoke the minor's refusal.

NEW SECTION. Sec. 9. (1) Subject to subsections (2) and (3) of this section and unless barred by section 7 or 8 of this act, an anatomical gift of a decedent's body or part may be made by any member of the following classes of persons who is reasonably available, in the order of priority listed:

(a) An agent of the decedent at the time of death who could have made an anatomical gift under section 4(2) of this act immediately before the decedent's death;

(b) The spouse, or domestic partner registered as required by state law, of the decedent;

(c) Adult children of the decedent;

(d) Parents of the decedent;

(e) Adult siblings of the decedent;

(f) Adult grandchildren of the decedent;

(g) Grandparents of the decedent;

(h) The persons who were acting as the guardians of the person of the decedent at the time of death; and

(i) Any other person having the authority under applicable law to dispose of the decedent's body.

(2) If there is more than one member of a class listed in subsection (1)(a), (c), (d), (e), (f), (g), or (h) of this section entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to which the gift may pass under section 11 of this act knows of an objection by another member of the class. If an objection is known, the gift may be made only by a majority of the members of the class who are reasonably available.

(3) A person may not make an anatomical gift if, at the time of the decedent's death, a person in a prior class under subsection (1) of this section is reasonably available to make or to object to the making of an anatomical gift.

NEW SECTION. Sec. 10. (1) A person authorized to make an anatomical gift under section 9 of this act may make an anatomical gift by a document of gift signed by the person

2008 REGULAR SESSION

making the gift or by that person's oral communication that is electronically recorded or is contemporaneously reduced to a record and signed by the individual receiving the oral communication.

(2) Subject to subsection (3) of this section, an anatomical gift by a person authorized under section 9 of this act may be amended or revoked orally or in a record by any member of a prior class who is reasonably available. If more than one member of the prior class is reasonably available, the gift made by a person authorized under section 9 of this act may be:

(a) Amended only if a majority of the reasonably available members agree to the amending of the gift; or

(b) Revoked only if a majority of the reasonably available members agree to the revoking of the gift or if they are equally divided as to whether to revoke the gift.

(3) A revocation under subsection (2) of this section is effective only if, before an incision has been made to remove a part from the donor's body or before transplant procedures have begun on the recipient, the procurement organization, transplant hospital, or physician or technician knows of the revocation.

NEW SECTION. Sec. 11. (1) An anatomical gift may be made to the following persons named in the document of gift:

(a) For research or education: A hospital; an accredited medical school, dental school, college, or university; or an organ procurement organization;

(b) Subject to subsection (2) of this section, an individual designated by the person making the anatomical gift if the individual is the recipient of the part;

(c) An eye bank or tissue bank.

(2) If an anatomical gift to an individual under subsection (1)(b) of this section cannot be transplanted into the individual, the part passes in accordance with subsection (7) of this section in the absence of an express, contrary indication by the person making the anatomical gift.

(3) If an anatomical gift of one or more specific parts or of all parts is made in a document of gift that does not name a person described in subsection (1) of this section but identifies the purpose for which an anatomical gift may be used, the following rules apply:

(a) If the part is an eye and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate eye bank.

(b) If the part is tissue and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate tissue bank.

(c) If the part is an organ and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(d) If the part is an organ, an eye, or tissue and the gift is for the purpose of research or education, the gift passes to the appropriate procurement organization.

(4) For the purpose of subsection (3) of this section, if there is more than one purpose of an anatomical gift set forth in the document of gift but the purposes are not set forth in any priority, the gift must be used for transplantation or therapy, if suitable. If the gift cannot be used for transplantation or therapy, the gift may be used for research or education.

(5) If an anatomical gift of one or more specific parts is made in a document of gift that does not name a person described in subsection (1) of this section and does not identify the purpose of the gift, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection (7) of this section.

(6) If a document of gift specifies only a general intent to make an anatomical gift by words such as "donor," "organ donor," or "body donor," or by a symbol or statement of similar import, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection (7) of this section.

(7) For purposes of subsections (2), (5), and (6) of this section the following rules apply:

FIFTY-FOURTH DAY, MARCH 7, 2008

2008 REGULAR SESSION

(a) If the part is an eye, the gift passes to the appropriate eye bank.

(b) If the part is tissue, the gift passes to the appropriate tissue bank.

(c) If the part is an organ, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(8) An anatomical gift of an organ for transplantation or therapy, other than an anatomical gift under subsection (1)(b) of this section, passes to the organ procurement organization as custodian of the organ.

(9) If an anatomical gift does not pass pursuant to subsections (1) through (8) of this section or the decedent's body or part is not used for transplantation, therapy, research, or education, custody of the body or part passes to the person under obligation to dispose of the body or part.

(10) A person may not accept an anatomical gift if the person knows that the gift was not effectively made under section 5 or 10 of this act or if the person knows that the decedent made a refusal under section 7 of this act that was not revoked. For purposes of this subsection (10), if a person knows that an anatomical gift was made on a document of gift, the person is deemed to know of any amendment or revocation of the gift or any refusal to make an anatomical gift on the same document of gift.

(11) Except as otherwise provided in subsection (1)(b) of this section, nothing in this chapter affects the allocation of organs for transplantation or therapy.

NEW SECTION. Sec. 12. (1) A document of gift need not be delivered during the donor's lifetime to be effective.

(2) Upon or after an individual's death, a person in possession of a document of gift or a refusal to make an anatomical gift with respect to the individual shall allow examination and copying of the document of gift or refusal by a person authorized to make or object to the making of an anatomical gift with respect to the individual or by a person to which the gift could pass under section 11 of this act.

NEW SECTION. Sec. 13. (1) When a hospital refers an individual at or near death to a procurement organization, the organization shall make a reasonable search of the records of the department of licensing and any donor registry that it knows exists for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.

(2) A procurement organization must be allowed reasonable access to information in the records of the department of licensing to ascertain whether an individual at or near death is a donor.

(3) When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination necessary to ensure the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor. During the examination period, measures necessary to ensure the medical suitability of the part may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent.

(4) Unless prohibited by law other than this chapter, at any time after a donor's death, the person to which a part passes under section 11 of this act may conduct any reasonable examination necessary to ensure the medical suitability of the body or part for its intended purpose.

(5) Unless prohibited by law other than this chapter, an examination under subsection (3) or (4) of this section may include an examination of all medical records of the donor or prospective donor.

(6) Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.

(7) Upon referral by a hospital under subsection (1) of this section, a procurement organization shall make a reasonable search for any person listed in section 9 of this act having priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the other person of all relevant information.

(8) Subject to sections 11(9), 21, and 22 of this act, the rights of the person to which a part passes under section 11 of this act are superior to the rights of all others with respect to the part. The person may accept or reject an anatomical gift in whole or in part. Subject to the terms of the document of gift and this chapter, a person that accepts an anatomical gift of an entire body may allow embalming, burial, or cremation, and use of remains in a funeral service. If the gift is of a part, the person to which the part passes under section 11 of this act, upon the death of the donor and before embalming, burial, or cremation, shall cause the part to be removed without unnecessary mutilation.

(9) Neither the physician who attends the decedent at death nor the physician who determines the time of the decedent's death may participate in the procedures for removing or transplanting a part from the decedent.

(10) A physician or technician may remove a donated part from the body of a donor that the physician or technician is qualified to remove.

NEW SECTION. Sec. 14. When English is not the first language of the person or persons making, amending, revoking, or refusing anatomical gifts as defined in this act, organ procurement organizations are responsible for providing, at no cost, appropriate interpreter services or translations to such persons for the purpose of making such decisions.

NEW SECTION. Sec. 15. Each hospital in this state shall enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts.

NEW SECTION. Sec. 16. (1) Except as otherwise provided in subsection (2) of this section, a person who, for valuable consideration, knowingly purchases or sells a part for transplantation or therapy if removal of a part from an individual is intended to occur after the individual's death is guilty of a class C felony under RCW 9A.20.010.

(2) A person may charge a reasonable amount for the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a part.

NEW SECTION. Sec. 17. A person who, in order to obtain financial gain, intentionally falsifies, forges, conceals, defaces, or obliterates a document of gift, an amendment or revocation of a document of gift, or a refusal is guilty of a class C felony under RCW 9A.20.010.

NEW SECTION. Sec. 18. (1) A person who acts in accordance with this chapter or with the applicable anatomical gift law of another state, or attempts in good faith to do so, is not liable for the act in a civil action, criminal prosecution, or administrative proceeding.

(2) Neither the person making an anatomical gift nor the donor's estate is liable for any injury or damage that results from the making or use of the gift.

(3) In determining whether an anatomical gift has been made, amended, or revoked under this chapter, a person may rely upon representations of an individual listed in section 9(1)(b) through (g) of this act relating to the individual's relationship to the donor or prospective donor unless the person knows that the representation is untrue.

NEW SECTION. Sec. 19. (1) A document of gift is valid if executed in accordance with:

(a) This chapter;

(b) The laws of the state or country where it was executed;

or

FIFTY-FOURTH DAY, MARCH 7, 2008

2008 REGULAR SESSION

(c) The laws of the state or country where the person making the anatomical gift was domiciled, has a place of residence, or was a national at the time the document of gift was executed.

(2) If a document of gift is valid under this section, the law of this state governs the interpretation of the document of gift.

(3) A person may presume that a document of gift or amendment of an anatomical gift is valid unless that person knows that it was not validly executed or was revoked.

NEW SECTION. Sec. 20. (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Advance health care directive" means a power of attorney for health care or a "directive" as defined in RCW 70.122.020.

(b) "Declaration" means a record signed by a prospective donor specifying the circumstances under which a life support system may be withheld or withdrawn from the prospective donor.

(c) "Health care decision" means any decision made regarding the health care of the prospective donor.

(2) If a prospective donor has a declaration or advance health care directive, and the terms of the declaration or directive and the express or implied terms of a potential anatomical gift are in conflict with regard to the administration of measures necessary to ensure the medical suitability of a part for transplantation or therapy, the prospective donor's attending physician and the prospective donor shall confer to resolve the conflict. If the prospective donor is incapable of resolving the conflict, an agent acting under the prospective donor's declaration or directive, or, if none or the agent is not reasonably available, another person authorized by law other than this chapter to make health care decisions on behalf of the prospective donor, shall act for the donor to resolve the conflict. The conflict must be resolved as expeditiously as possible. Information relevant to the resolution of the conflict may be obtained from the appropriate procurement organization and any other person authorized to make an anatomical gift for the prospective donor under section 9 of this act. Before resolution of the conflict, measures necessary to ensure the medical suitability of the part may not be withheld or withdrawn from the prospective donor if withholding or withdrawing the measures is not contraindicated by appropriate end-of-life care.

NEW SECTION. Sec. 21. (1)(a) A coroner or medical examiner shall cooperate with procurement organizations, to the extent that such cooperation does not prevent, hinder, or impede the timely investigation of death, to facilitate the opportunity to recover anatomical gifts for the purpose of transplantation or therapy. However, a coroner or medical examiner may limit the number of procurement organizations with which he or she cooperates.

(b) The coroner or medical examiner may release the initial investigative information to the tissue or organ procurement organization for the purpose of determining the suitability of the potential donor by those organizations. The information released for this purpose shall remain confidential. The coroner or medical examiner is not liable for any release of confidential information by the procurement organization.

(2)(a) Procurement organizations shall cooperate with the coroner or medical examiner to ensure the preservation of and timely transfer to the coroner or medical examiner any physical or biological evidence from a prospective donor that the procurement organization may have contact with or access to that is required by the coroner or medical examiner for the investigation of death.

(b) If the coroner or medical examiner or a designee releases a part for donation under subsection (4) of this section, the procurement organization, upon request, shall cause the physician or technician who removes the part to provide the coroner or medical examiner with a record describing the condition of the part, biopsies, residual tissue, photographs, and any other information and observations requested by the coroner

or medical examiner that would assist in the investigation of death.

(3) A part may not be removed from the body of a decedent under the jurisdiction of a coroner or medical examiner for transplantation, therapy, research, or education unless the part is the subject of an anatomical gift, and has been released by the coroner or medical examiner. The body of a decedent under the jurisdiction of the coroner or medical examiner may not be delivered to a person for research or education unless the body is the subject of an anatomical gift. This subsection does not preclude a coroner or medical examiner from performing the medicolegal investigation upon the body or relevant parts of a decedent under the jurisdiction of the coroner or medical examiner.

(4) If an anatomical gift of a part from the decedent under the jurisdiction of the coroner or medical examiner has been or might be made, but the coroner or medical examiner initially believes that the recovery of the part could interfere with the postmortem investigation into the decedent's cause or manner of death, the collection of evidence, or the description, documentation, or interpretation of injuries on the body, the coroner or medical examiner may consult with the procurement organization or physician or technician designated by the procurement organization about the proposed recovery. After consultation, the coroner or medical examiner may release the part for recovery.

NEW SECTION. Sec. 22. This chapter is subject to the laws of this state governing the jurisdiction of the coroner or medical examiner.

NEW SECTION. Sec. 23. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

NEW SECTION. Sec. 24. This chapter modifies, limits, and supersedes the federal electronic signatures in global and national commerce act (15 U.S.C. Sec. 7001 et seq.) with respect to electronic signatures and anatomical gifts, but does not modify, limit, or supersede section 101(a) of that act (15 U.S.C. Sec. 7001), or authorize electronic delivery of any of the notices described in section 103(b) of that act (15 U.S.C. Sec. 7003(b)).

Sec. 25. RCW 1.50.010 and 1998 c 59 s 2 are each amended to read as follows:

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

(1) "Organ donor" means an individual who makes an anatomical gift as specified in ~~((RCW 68.50.530(+)))~~ chapter 68.-- RCW (sections 1 through 24 of this act).

(2) "Organ procurement organization" ~~((means any accredited or certified organ or eye bank))~~ has the same meaning as in section 2 of this act.

(3) "Person" means a person specified in ~~((RCW 68.50.550))~~ section 9 of this act.

Sec. 26. RCW 46.12.510 and 2003 c 94 s 6 are each amended to read as follows:

An applicant for a new or renewed registration for a vehicle required to be registered under this chapter or chapter 46.16 RCW may make a donation of one dollar or more to the organ and tissue donation awareness account to promote the donation of organs and tissues under the provisions of the uniform anatomical gift act, ~~((RCW 68.50.520 through 68.50.630))~~ chapter 68.-- RCW (sections 1 through 24 of this act). The department shall collect the donations and credit the donations to the organ and tissue donation awareness account, created in RCW 68.50.640 (as recodified by this act). At least quarterly, the department shall transmit donations made to the organ and tissue donation awareness account to the foundation established for organ and tissue donation awareness purposes by the Washington state organ procurement organizations. All Washington state organ procurement organizations will have proportional access to these funds to conduct public education

FIFTY-FOURTH DAY, MARCH 7, 2008

in their service areas. The donation of one or more dollars is voluntary and may be refused by the applicant. The department shall make available informational booklets or other informational sources on the importance of organ and tissue donations to applicants.

The department shall inquire of each applicant at the time the completed application is presented whether the applicant is interested in making a donation of one dollar or more and shall also specifically inform the applicant of the option for organ and tissue donations as required by RCW 46.20.113. The department shall also provide written information to each applicant volunteering to become an organ and tissue donor. The written information shall disclose that the applicant's name shall be transmitted to the organ and tissue donor registry created in RCW 68.50.635 (as recodified by this act), and that the applicant shall notify a Washington state organ procurement organization of any changes to the applicant's donor status.

All reasonable costs associated with the creation of the donation program created under this section must be paid proportionally or by other agreement by a Washington state organ procurement organization.

For the purposes of this section, "reasonable costs" and "Washington state organ procurement organization" have the same meaning as defined in ((RCW 68.50.530)) section 2 of this act.

Sec. 27. RCW 46.20.113 and 1993 c 228 s 18 are each amended to read as follows:

The department of licensing shall provide a statement whereby the licensee may certify his or her willingness to make an anatomical gift under ((RCW 68.50.540)) section 4 of this act, as now or hereafter amended. The department shall provide the statement in at least one of the following ways:

- (1) On each driver's license; or
- (2) With each driver's license; or
- (3) With each in-person driver's license application.

Sec. 28. RCW 46.20.1131 and 2003 c 94 s 5 are each amended to read as follows:

The department shall electronically transfer the information of all persons who upon application for a driver's license or identicaid volunteer to donate organs or tissue to a registry created in RCW 68.50.635 (as recodified by this act), and any subsequent changes to the applicant's donor status when the applicant renews a driver's license or identicaid or applies for a new driver's license or identicaid.

NEW SECTION. Sec. 29. Sections 1 through 24 of this act constitute a new chapter in Title 68 RCW.

NEW SECTION. Sec. 30. RCW 68.50.635 and 68.50.640 are each recodified as sections in the new chapter created in section 29 of this act.

NEW SECTION. Sec. 31. The following acts or parts of acts are each repealed:

- (1) RCW 68.50.500 (Identification of potential donors--Hospital procedures) and 1993 c 228 s 20, 1987 c 331 s 71, & 1986 c 129 s 1;
- (2) RCW 68.50.510 (Good faith compliance with RCW 68.50.500--Hospital liability) and 1987 c 331 s 72 & 1986 c 129 s 2;
- (3) RCW 68.50.520 (Anatomical gifts--Findings--Declaration) and 1993 c 228 s 1;
- (4) RCW 68.50.530 (Anatomical gifts--Definitions) and 2003 c 94 s 2, 1996 c 178 s 15, & 1993 c 228 s 2;
- (5) RCW 68.50.540 (Anatomical gifts--Authorized--Procedures--Changes--Refusal) and 2003 c 94 s 4, 1995 c 132 s 1, & 1993 c 228 s 3;
- (6) RCW 68.50.550 (Anatomical gifts--By person other than decedent) and 2007 c 156 s 26 & 1993 c 228 s 4;
- (7) RCW 68.50.560 (Anatomical gifts--Hospital procedure--Records--Liability) and 1993 c 228 s 5;
- (8) RCW 68.50.570 (Anatomical gifts--Donees) and 1993 c 228 s 6;

2008 REGULAR SESSION

(9) RCW 68.50.580 (Anatomical gifts--Document of gift--Delivery) and 1993 c 228 s 7;

(10) RCW 68.50.590 (Anatomical gifts--Rights of donee--Time of death--Actions by technician, enucleator) and 1993 c 228 s 8;

(11) RCW 68.50.600 (Anatomical gifts--Hospitals--Procurement and use coordination) and 1993 c 228 s 9;

(12) RCW 68.50.610 (Anatomical gifts--Illegal purchase or sale--Penalty) and 2003 c 53 s 312 & 1993 c 228 s 10; and

(13) RCW 68.50.620 (Anatomical gifts--Examination for medical acceptability--Jurisdiction of coroner, medical examiner--Liability limited) and 1993 c 228 s 11."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Health & Long-Term Care to Second Engrossed Substitute House Bill No. 1637.

The motion by Senator Keiser carried and the committee striking amendment was adopted by voice vote.

MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 2 of the title, after "act;" strike the remainder of the title and insert "amending RCW 1.50.010, 46.12.510, 46.20.113, and 46.20.1131; adding a new chapter to Title 68 RCW; recodifying RCW 68.50.635 and 68.50.640; repealing RCW 68.50.500, 68.50.510, 68.50.520, 68.50.530, 68.50.540, 68.50.550, 68.50.560, 68.50.570, 68.50.580, 68.50.590, 68.50.600, 68.50.610, and 68.50.620; and prescribing penalties."

MOTION

On motion of Senator Keiser, the rules were suspended, Second Engrossed Substitute House Bill No. 1637 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Keiser and Delvin spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Second Engrossed Substitute House Bill No. 1637 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Second Engrossed Substitute House Bill No. 1637 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmner, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom and Weinstein - 48

Excused: Senator Zarelli - 1

SECOND ENGROSSED SUBSTITUTE HOUSE BILL NO. 1637 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

FIFTY-FOURTH DAY, MARCH 7, 2008

2008 REGULAR SESSION

ENGROSSED HOUSE BILL NO. 2459, by Representatives Kelley, Ross, Simpson, Hudgins, Upthegrove and Warnick

Creating the uniform real property electronic recording act.

The measure was read the second time.

MOTION

On motion of Senator Fairley, the rules were suspended, Engrossed House Bill No. 2459 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Fairley spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed House Bill No. 2459.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed House Bill No. 2459 and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom and Weinstein - 48

Excused: Senator Zarelli - 1

ENGROSSED HOUSE BILL NO. 2459, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 2474, by House Committee on Health Care & Wellness (originally sponsored by Representatives Cody, Wood, Morrell, Barlow and Green)

Modifying supervised experience requirements for social worker licenses.

The measure was read the second time.

MOTION

Senator Hargrove moved that the following committee striking amendment by the Committee on Human Services & Corrections be adopted.

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 18.225.090 and 2006 c 69 s 1 are each amended to read as follows:

(1) The secretary shall issue a license to any applicant who demonstrates to the satisfaction of the secretary that the applicant meets the following education and experience requirements for the applicant's practice area.

(a) Licensed social work classifications:

(i) Licensed advanced social worker:

(A) Graduation from a master's or doctorate social work educational program accredited by the council on social work education and approved by the secretary based upon nationally recognized standards;

(B) Successful completion of an approved examination;

(C) Successful completion of a supervised experience requirement. The supervised experience requirement consists of a minimum of three thousand two hundred hours with supervision by an approved supervisor who has been licensed for at least two years. Of those supervised hours:

~~(1) At least ninety hours (of supervision) must include direct supervision as specified in this subsection by a licensed independent clinical social worker ((or) a licensed advanced social worker ((who has been licensed or certified for at least two years)), or an equally qualified licensed mental health professional. Of those hours(;) of directly supervised experience:~~

~~(1) At least fifty hours must include ((direct)) supervision by a licensed advanced social worker or licensed independent clinical social worker; the other forty hours may be ((with)) supervised by an equally qualified licensed mental health practitioner(;) and~~

~~(2) At least forty hours must be in one-to-one supervision and fifty hours may be in one-to-one supervision or group supervision(;) and~~

~~(II) Distance supervision is limited to forty supervision hours(;) and~~

~~(III) Eight hundred hours must be in direct client contact; and~~

(D) Successful completion of continuing education requirements of thirty-six hours, with six in professional ethics.

(i) Licensed independent clinical social worker:

(A) Graduation from a master's or doctorate level social work educational program accredited by the council on social work education and approved by the secretary based upon nationally recognized standards;

(B) Successful completion of an approved examination;

(C) Successful completion of a supervised experience requirement. The supervised experience requirement consists of a minimum of four thousand hours of experience, ~~((of which)) over a three-year period, with supervision by an approved supervisor who has been licensed for at least two years and, as specified in this subsection, may be either a licensed independent clinical social worker who has had at least one year of experience in supervising the clinical social work of others or an equally qualified licensed mental health practitioner. Of those supervised hours:~~

~~(1) At least one thousand hours must be direct client contact(;) over a three-year period supervised by a licensed independent clinical social worker who has been licensed or certified for at least five years and who has had at least one year of experience in supervising the clinical social work practice of others, with supervision of);~~

~~(II) Hours of direct supervision must include:~~

~~(1) At least one hundred thirty hours by a licensed mental health practitioner(;) (Of the total supervision.);~~

~~(2) At least seventy hours ((must be)) of supervision with ((am)) a licensed independent clinical social worker meeting the qualifications under this subsection (1)(a)(ii)(C); the other sixty hours may be ((with)) supervised by an equally qualified licensed mental health practitioner(;) and~~

~~(3) At least sixty hours must be in one-to-one supervision and seventy hours may be in one-to-one supervision or group supervision(;) and~~

~~(III) Distance supervision is limited to sixty supervision hours; and~~

(D) Successful completion of continuing education requirements of thirty-six hours, with six in professional ethics.

(b) Licensed mental health counselor:

(i) Graduation from a master's or doctoral level educational program in mental health counseling or a related discipline from a college or university approved by the secretary based upon nationally recognized standards;

(ii) Successful completion of an approved examination;

(iii) Successful completion of a supervised experience requirement. The experience requirement consists of a minimum

FIFTY-FOURTH DAY, MARCH 7, 2008

of thirty-six months full-time counseling or three thousand hours of postgraduate mental health counseling under the supervision of a qualified licensed mental health counselor or equally qualified licensed mental health practitioner, in an approved setting. The three thousand hours of required experience includes a minimum of one hundred hours spent in immediate supervision with the qualified licensed mental health counselor, and includes a minimum of one thousand two hundred hours of direct counseling with individuals, couples, families, or groups; and

(iv) Successful completion of continuing education requirements of thirty-six hours, with six in professional ethics.

(c) Licensed marriage and family therapist:

(i) Graduation from a master's degree or doctoral degree educational program in marriage and family therapy or graduation from an educational program in an allied field equivalent to a master's degree or doctoral degree in marriage and family therapy approved by the secretary based upon nationally recognized standards;

(ii) Successful passage of an approved examination;

(iii) Successful completion of a supervised experience requirement. The experience requirement consists of a minimum of two calendar years of full-time marriage and family therapy. Of the total supervision, one hundred hours must be with a licensed marriage and family therapist with at least five years' clinical experience; the other one hundred hours may be with an equally qualified licensed mental health practitioner. Total experience requirements include:

(A) A minimum of three thousand hours of experience, one thousand hours of which must be direct client contact; at least five hundred hours must be gained in diagnosing and treating couples and families; plus

(B) At least two hundred hours of qualified supervision with a supervisor. At least one hundred of the two hundred hours must be one-on-one supervision, and the remaining hours may be in one-on-one or group supervision.

Applicants who have completed a master's program accredited by the commission on accreditation for marriage and family therapy education of the American association for marriage and family therapy may be credited with five hundred hours of direct client contact and one hundred hours of formal meetings with an approved supervisor; and

(iv) Successful completion of continuing education requirements of thirty-six hours, with six in professional ethics.

(2) The department shall establish by rule what constitutes adequate proof of meeting the criteria.

(3) In addition, applicants shall be subject to the grounds for denial of a license or issuance of a conditional license under chapter 18.130 RCW.

NEW SECTION. Sec. 2. This act is remedial and curative in nature and applies retroactively to July 22, 2003."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Human Services & Corrections to Substitute House Bill No. 2474.

The motion by Senator Hargrove carried and the committee striking amendment was adopted by voice vote.

MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 2 of the title, after "licenses;" strike the remainder of the title and insert "amending RCW 18.225.090; and creating a new section."

MOTION

2008 REGULAR SESSION

On motion of Senator Hargrove, the rules were suspended, Substitute House Bill No. 2474 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Hargrove spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2474 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2474 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 49

SUBSTITUTE HOUSE BILL NO. 2474 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

HOUSE BILL NO. 2499, by Representatives Pedersen and Rodne

Addressing the materials required to accompany notice under the Washington business corporation act.

The measure was read the second time.

MOTION

On motion of Senator Kline, the rules were suspended, House Bill No. 2499 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Kline and Carrell spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 2499.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 2499 and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 49

FIFTY-FOURTH DAY, MARCH 7, 2008

2008 REGULAR SESSION

HOUSE BILL NO. 2499, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

On motion of Senator Delvin, Senator McCaslin was excused.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 2575, by House Committee on Local Government (originally sponsored by Representatives Simpson, Ormsby and Wood)

Forming a technical advisory group on fire sprinkler systems in private residences.

The measure was read the second time.

MOTION

On motion of Senator Tom, the rules were suspended, Substitute House Bill No. 2575 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Tom spoke in favor of passage of the bill.

MOTION

On motion of Senator Regala, Senator Prentice was excused.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2575.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2575 and the bill passed the Senate by the following vote: Yeas, 42; Nays, 5; Absent, 0; Excused, 2.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Murray, Oemig, Parlette, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 42

Voting nay: Senators Carrell, Honeyford, King, Morton and Pflug - 5

Excused: Senators McCaslin and Prentice - 2

SUBSTITUTE HOUSE BILL NO. 2575, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2480, by House Committee on Transportation (originally sponsored by Representatives Clibborn, McIntire and Simpson)

Concerning public transportation fares.

The measure was read the second time.

MOTION

Senator Murray moved that the following committee striking amendment by the Committee on Transportation be adopted.

Strike everything after the enacting clause and insert the following:

NEW SECTION. Sec. 1. A new section is added to chapter 35.58 RCW 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. Such persons shall produce proof of payment when requested by a person designated to monitor fare payment.

(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 section 2 of this act:

- (a) Failure to pay the required fare;
- (b) Failure to display proof of payment 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.

NEW SECTION. Sec. 2. A new section is added to chapter 35.58 RCW to read as follows:

(1) Both a metropolitan municipal corporation and a city-owned transit system may establish, by resolution, a schedule of fines and penalties for civil infractions established in section 1 of this act. Fines established shall not exceed those imposed for class 1 infractions under RCW 7.80.120.

(2)(a) Both a metropolitan municipal corporation and a city-owned transit system may designate persons to monitor fare payment who are equivalent to, and are authorized to exercise all the powers of, an enforcement officer as defined in RCW 7.80.040. Both a metropolitan municipal corporation and a city-owned transit system may employ personnel to either monitor fare payment or contract for such services, or both.

(b) In addition to the specific powers granted to enforcement officers under RCW 7.80.050 and 7.80.060, persons designated to monitor fare payment may also take the following actions:

- (i) Request proof of payment from passengers;
- (ii) Request personal identification from a passenger who does not produce proof of payment when requested;
- (iii) Issue a citation conforming to the requirements established in RCW 7.80.070; and
- (iv) Request that a passenger leave the bus or other mode of public transportation when the passenger has not produced proof of payment after being asked to do so by a person designated to monitor fare payment.

(3) Both a metropolitan municipal corporation and a city-owned transit system shall keep records of citations in the manner prescribed by RCW 7.80.150. All civil infractions established by this section and sections 1 and 3 of this act shall be heard and determined by a district court as provided in RCW 7.80.010 (1) and (4).

NEW SECTION. Sec. 3. A new section is added to chapter 35.58 RCW to read as follows:

Sections 1 and 2 of this act do not prevent law enforcement authorities from prosecuting for theft, trespass, or other charges by any individual who:

- (1) Fails to pay the required fare on more than one occasion within a twelve-month period;
- (2) Fails to timely select one of the options for responding to the notice of civil infraction after receiving a statement of the options for responding to the notice of infraction and the procedures necessary to exercise these options; or

FIFTY-FOURTH DAY, MARCH 7, 2008

(3) Fails to depart the bus or other mode of public transportation when requested to do so by a person designated to monitor fare payment.

NEW SECTION. Sec. 4. A new section is added to chapter 35.58 RCW to read as follows:

The powers and authority conferred by sections 1 through 3 of this act shall be construed as in addition and supplemental to powers or authority conferred by any other law, and nothing contained therein shall be construed as limiting any other powers or authority of any public agency.

Sec. 5. RCW 35.58.020 and 1982 c 103 s 1 are each amended to read as follows:

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

(1) "Metropolitan municipal corporation" means a municipal corporation of the state of Washington created pursuant to this chapter, or a county which has by ordinance or resolution assumed the rights, powers, functions, and obligations of a metropolitan municipal corporation pursuant to the provisions of chapter 36.56 RCW.

(2) "Metropolitan area" means the area contained within the boundaries of a metropolitan municipal corporation, or within the boundaries of an area proposed to be organized as such a corporation.

(3) "City" means an incorporated city or town.

(4) "Component city" means an incorporated city or town within a metropolitan area.

(5) "Component county" means a county, all or part of which is included within a metropolitan area.

(6) "Central city" means the city with the largest population in a metropolitan area.

(7) "Central county" means the county containing the city with the largest population in a metropolitan area.

(8) "Special district" means any municipal corporation of the state of Washington other than a city, county, or metropolitan municipal corporation.

(9) "Metropolitan council" means the legislative body of a metropolitan municipal corporation, or the legislative body of a county which has by ordinance or resolution assumed the rights, powers, functions, and obligations of a metropolitan municipal corporation pursuant to the provisions of chapter 36.56 RCW.

(10) "City council" means the legislative body of any city or town.

(11) "Population" means the number of residents as shown by the figures released for the most recent official state, federal, or county census, or population determination made under the direction of the office of financial management.

(12) "Metropolitan function" means any of the functions of government named in RCW 35.58.050.

(13) "Authorized metropolitan function" means a metropolitan function which a metropolitan municipal corporation shall have been authorized to perform in the manner provided in this chapter.

(14) "Metropolitan public transportation" or "metropolitan transportation" for the purposes of this chapter means the transportation of packages, passengers, and their incidental baggage by means other than by chartered bus, sightseeing bus, or any other motor vehicle not on an individual fare-paying basis, together with the necessary passenger terminals and parking facilities or other properties necessary for passenger and vehicular access to and from such people-moving systems: PROVIDED, That nothing in this chapter shall be construed to prohibit a metropolitan municipal corporation from leasing its buses to private certified carriers; to prohibit a metropolitan municipal corporation from providing school bus service for the transportation of pupils; or to prohibit a metropolitan municipal corporation from chartering an electric streetcar on rails which it operates entirely within a city.

(15) "Pollution" has the meaning given in RCW 90.48.020.

(16) "Proof of payment" means evidence of fare prepayment authorized by a metropolitan municipal corporation or a city-

2008 REGULAR SESSION

owned transit system for the use of buses or other modes of public transportation.

(17) "City-owned transit system" means a system of public transportation owned or operated, including contracts for the services of a publicly owned or operated system of transportation, by a city that is not located within the boundaries of a metropolitan municipal corporation, county transportation authority, or public transportation benefit area.

NEW SECTION. Sec. 6. A new section is added to chapter 36.57A RCW 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. Such persons shall produce proof of payment when requested by a person designated to monitor fare payment.

(2) The following constitute civil infractions punishable according to the schedule of fines and penalties established by a public transportation benefit area under section 7 of this act:

(a) Failure to pay the required fare;

(b) Failure to display proof of payment 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.

NEW SECTION. Sec. 7. A new section is added to chapter 36.57A RCW to read as follows:

(1) A public transportation benefit area may establish, by resolution, a schedule of fines and penalties for civil infractions established in section 6 of this act. Fines established shall not exceed those imposed for class 1 infractions under RCW 7.80.120.

(2)(a) A public transportation benefit area may designate persons to monitor fare payment who are equivalent to, and are authorized to exercise all the powers of, an enforcement officer as defined in RCW 7.80.040. A public transportation benefit area may employ personnel to either monitor fare payment or contract for such services, or both.

(b) In addition to the specific powers granted to enforcement officers under RCW 7.80.050 and 7.80.060, persons designated to monitor fare payment may also take the following actions:

(i) Request proof of payment from passengers;

(ii) Request personal identification from a passenger who does not produce proof of payment when requested;

(iii) Issue a citation conforming to the requirements established in RCW 7.80.070; and

(iv) Request that a passenger leave the bus or other mode of public transportation when the passenger has not produced proof of payment after being asked to do so by a person designated to monitor fare payment.

(3) A public transportation benefit area shall keep records of citations in the manner prescribed by RCW 7.80.150. All civil infractions established by this section and sections 6 and 8 of this act shall be heard and determined by a district court as provided in RCW 7.80.010 (1) and (4).

NEW SECTION. Sec. 8. A new section is added to chapter 36.57A RCW to read as follows:

Sections 6 and 7 of this act do not prevent law enforcement authorities from prosecuting for theft, trespass, or other charges by any individual who:

(1) Fails to pay the required fare on more than one occasion within a twelve-month period;

(2) Fails to timely select one of the options for responding to the notice of civil infraction after receiving a statement of the options for responding to the notice of infraction and the procedures necessary to exercise these options; or

(3) Fails to depart the bus or other mode of public transportation when requested to do so by a person designated to monitor fare payment.

NEW SECTION. Sec. 9. A new section is added to chapter 36.57A RCW to read as follows:

FIFTY-FOURTH DAY, MARCH 7, 2008

2008 REGULAR SESSION

The powers and authority conferred by sections 6 through 8 of this act shall be construed as in addition and supplemental to powers or authority conferred by any other law, and nothing contained therein shall be construed as limiting any other powers or authority of any public agency.

Sec. 10. RCW 36.57A.010 and 2003 c 83 s 209 are each amended to read as follows:

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

(1) "Public transportation benefit area" means a municipal corporation of the state of Washington created pursuant to this chapter.

(2) "Public transportation benefit area authority" or "authority" means the legislative body of a public transportation benefit area.

(3) "City" means an incorporated city or town.

(4) "Component city" means an incorporated city or town within a public transportation benefit area.

(5) "City council" means the legislative body of any city or town.

(6) "County legislative authority" means the board of county commissioners or the county council.

(7) "Population" means the number of residents as shown by the figures released for the most recent official state, federal, or county census, or population determination made by the office of financial management.

(8) "Proof of payment" means evidence of fare prepayment authorized by a public transportation benefit area for the use of buses or other modes of public transportation.

(9) "Public transportation service" means the transportation of packages, passengers, and their incidental baggage by means other than by chartered bus, sight-seeing bus, together with the necessary passenger terminals and parking facilities or other properties necessary for passenger and vehicular access to and from such people moving systems: PROVIDED, That nothing shall prohibit an authority from leasing its buses to private certified carriers or prohibit the authority from providing school bus service. "Public transportation service" includes passenger-only ferry service for those public transportation benefit areas eligible to provide passenger-only ferry service under RCW 36.57A.200.

~~((9))~~ (10) "Public transportation improvement conference" or "conference" means the body established pursuant to RCW 36.57A.020 which shall be authorized to establish, subject to the provisions of RCW 36.57A.030, a public transportation benefit area pursuant to the provisions of this chapter.

NEW SECTION. Sec. 11. The code reviser shall alphabetize and renumber the definitions in RCW 35.58.020 and 36.57A.010."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Transportation to Engrossed Substitute House Bill No. 2480.

The motion by Senator Murray carried and the committee striking amendment was adopted by voice vote.

MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 1 of the title, after "fares;" strike the remainder of the title and insert "amending RCW 35.58.020 and 36.57A.010; adding new sections to chapter 35.58 RCW; adding new sections to chapter 36.57A RCW; creating a new section; and prescribing penalties."

MOTION

On motion of Senator Murray, the rules were suspended, Engrossed Substitute House Bill No. 2480 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

MOTION

On motion of Senator Regala, Senator Brown was excused.

Senator Murray spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 2480 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 2480 as amended by the Senate and the bill passed the Senate by the following vote : Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Benton, Berkey, Brandland, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 48

Excused: Senator Brown - 1

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2480 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 3254, by House Committee on Transportation (originally sponsored by Representatives Goodman, Pedersen, Simpson, Morrell, Green, Kelley, Kagi and Roberts)

Concerning accountability for persons driving under the influence of intoxicating liquor or drugs.

The measure was read the second time.

MOTION

Senator Kline moved that the following committee striking amendment by the Committee on Transportation be adopted.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. A new section is added to chapter 46.04 RCW to read as follows:

"Ignition interlock driver's license" means a permit issued to a person by the department that allows the person to operate a noncommercial motor vehicle with an ignition interlock device while the person's regular driver's license is suspended, revoked, or denied.

Sec. 2. RCW 46.20.308 and 2005 c 314 s 307 and 2005 c 269 s 1 are each reenacted and 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

FIFTY-FOURTH DAY, MARCH 7, 2008

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

2008 REGULAR SESSION

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 ~~((thirty))~~ 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 hundred dollars as part of the request. If the request is mailed, it must be postmarked within ~~((thirty))~~ twenty days after receipt of the notification. Upon timely receipt of such a request for a formal hearing, including receipt of the required two hundred dollar fee, the department shall afford the person an opportunity for a hearing. The department may waive the required two hundred dollar fee if the person is an indigent as defined in RCW

FIFTY-FOURTH DAY, MARCH 7, 2008

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

2008 REGULAR SESSION

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

FIFTY-FOURTH DAY, MARCH 7, 2008

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.

NEW SECTION. Sec. 3. A new section is added to chapter 46.68 RCW to read as follows:

The ignition interlock device revolving account is created in the state treasury. All receipts from the fee assessed under section 9(6) of this act must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for administering and operating the ignition interlock device revolving account program.

Sec. 4. RCW 46.20.342 and 2004 c 95 s 5 are each amended to read as follows:

(1) It is unlawful for any person to drive a motor vehicle in this state while that person is in a suspended or revoked status or when his or her privilege to drive is suspended or revoked in this or any other state. Any person who has a valid Washington driver's license is not guilty of a violation of this section.

(a) A person found to be a habitual offender under chapter 46.65 RCW, who violates this section while an order of revocation issued under chapter 46.65 RCW prohibiting such operation is in effect, is guilty of driving while license suspended or revoked in the first degree, a gross misdemeanor. Upon the first such conviction, the person shall be punished by imprisonment for not less than ten days. Upon the second conviction, the person shall be punished by imprisonment for not less than ninety days. Upon the third or subsequent conviction, the person shall be punished by imprisonment for not less than one hundred eighty days. If the person is also convicted of the offense defined in RCW 46.61.502 or 46.61.504, when both convictions arise from the same event, the minimum sentence of confinement shall be not less than ninety days. The minimum sentence of confinement required shall not be suspended or deferred. A conviction under this subsection does not prevent a person from petitioning for reinstatement as provided by RCW 46.65.080.

(b) A person who violates this section while an order of suspension or revocation prohibiting such operation is in effect and while the person is not eligible to reinstate his or her driver's license or driving privilege, other than for a suspension for the reasons described in (c) of this subsection, is guilty of driving while license suspended or revoked in the second degree, a gross misdemeanor. This subsection applies when a person's driver's license or driving privilege has been suspended or revoked by reason of:

(i) A conviction of a felony in the commission of which a motor vehicle was used;

(ii) A previous conviction under this section;

(iii) A notice received by the department from a court or diversion unit as provided by RCW 46.20.265, relating to a minor who has committed, or who has entered a diversion unit concerning an offense relating to alcohol, legend drugs, controlled substances, or imitation controlled substances;

(iv) A conviction of RCW 46.20.410, relating to the violation of restrictions of an occupational ~~(or)~~ driver's license, a temporary restricted driver's license, or an ignition interlock driver's license;

(v) A conviction of RCW 46.20.345, relating to the operation of a motor vehicle with a suspended or revoked license;

(vi) A conviction of RCW 46.52.020, relating to duty in case of injury to or death of a person or damage to an attended vehicle;

(vii) A conviction of RCW 46.61.024, relating to attempting to elude pursuing police vehicles;

(viii) A conviction of RCW 46.61.500, relating to reckless driving;

(ix) A conviction of RCW 46.61.502 or 46.61.504, relating to a person under the influence of intoxicating liquor or drugs;

2008 REGULAR SESSION

(x) A conviction of RCW 46.61.520, relating to vehicular homicide;

(xi) A conviction of RCW 46.61.522, relating to vehicular assault;

(xii) A conviction of RCW 46.61.527(4), relating to reckless endangerment of roadway workers;

(xiii) A conviction of RCW 46.61.530, relating to racing of vehicles on highways;

(xiv) A conviction of RCW 46.61.685, relating to leaving children in an unattended vehicle with motor running;

(xv) A conviction of RCW 46.61.740, relating to theft of motor vehicle fuel;

(xvi) A conviction of RCW 46.64.048, relating to attempting, aiding, abetting, coercing, and committing crimes;

(xvii) An administrative action taken by the department under chapter 46.20 RCW; or

(xviii) A conviction of a local law, ordinance, regulation, or resolution of a political subdivision of this state, the federal government, or any other state, of an offense substantially similar to a violation included in this subsection.

(c) A person who violates this section when his or her driver's license or driving privilege is, at the time of the violation, suspended or revoked solely because (i) the person must furnish proof of satisfactory progress in a required alcoholism or drug treatment program, (ii) the person must furnish proof of financial responsibility for the future as provided by chapter 46.29 RCW, (iii) the person has failed to comply with the provisions of chapter 46.29 RCW relating to uninsured accidents, (iv) the person has failed to respond to a notice of traffic infraction, failed to appear at a requested hearing, violated a written promise to appear in court, or has failed to comply with the terms of a notice of traffic infraction or citation, as provided in RCW 46.20.289, (v) the person has committed an offense in another state that, if committed in this state, would not be grounds for the suspension or revocation of the person's driver's license, (vi) the person has been suspended or revoked by reason of one or more of the items listed in (b) of this subsection, but was eligible to reinstate his or her driver's license or driving privilege at the time of the violation, or (vii) the person has received traffic citations or notices of traffic infraction that have resulted in a suspension under RCW 46.20.267 relating to intermediate drivers' licenses, or any combination of (i) through (vii), is guilty of driving while license suspended or revoked in the third degree, a misdemeanor.

(2) Upon receiving a record of conviction of any person or upon receiving an order by any juvenile court or any duly authorized court officer of the conviction of any juvenile under this section, the department shall:

(a) For a conviction of driving while suspended or revoked in the first degree, as provided by subsection (1)(a) of this section, extend the period of administrative revocation imposed under chapter 46.65 RCW for an additional period of one year from and after the date the person would otherwise have been entitled to apply for a new license or have his or her driving privilege restored; or

(b) For a conviction of driving while suspended or revoked in the second degree, as provided by subsection (1)(b) of this section, not issue a new license or restore the driving privilege for an additional period of one year from and after the date the person would otherwise have been entitled to apply for a new license or have his or her driving privilege restored; or

(c) Not extend the period of suspension or revocation if the conviction was under subsection (1)(c) of this section. If the conviction was under subsection (1)(a) or (b) of this section and the court recommends against the extension and the convicted person has obtained a valid driver's license, the period of suspension or revocation shall not be extended.

Sec. 5. RCW 46.20.380 and 2004 c 95 s 6 are each amended to read as follows:

FIFTY-FOURTH DAY, MARCH 7, 2008

2008 REGULAR SESSION

No person may file an application for an occupational ~~((or))~~ driver's license, a temporary restricted driver's license, or an ignition interlock driver's license as provided in RCW 46.20.391 and section 9 of this act unless he or she first pays to the director or other person authorized to accept applications and fees for driver's licenses a fee of one hundred dollars. The applicant shall receive upon payment an official receipt for the payment of such fee. All such fees shall be forwarded to the director who shall transmit such fees to the state treasurer in the same manner as other driver's license fees.

Sec. 6. RCW 46.20.391 and 2004 c 95 s 7 are each amended to read as follows:

(1)~~((a))~~ Any person licensed under this chapter who is convicted of an offense relating to motor vehicles for which suspension or revocation of the driver's license is mandatory, other than vehicular homicide ~~((or))~~, vehicular assault, ~~((or who has had his or her license suspended, revoked, or denied under RCW 46.20.3101))~~ driving while under the influence of intoxicating liquor or any drug, or being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug, may submit to the department an application for a temporary restricted driver's license. The department, upon receipt of the prescribed fee and upon determining that the petitioner is eligible to receive the license, may issue a temporary restricted driver's license and may set definite restrictions as provided in RCW 46.20.394. ~~((No person may petition for, and the department shall not issue, a temporary restricted driver's license that is effective during the first thirty days of any suspension or revocation imposed for a violation of RCW 46.61.502 or 46.61.504 or, for a suspension, revocation, or denial imposed under RCW 46.20.3101, during the required minimum portion of the periods of suspension, revocation, or denial established under (c) of this subsection.~~

~~—(b) An applicant under this subsection whose driver's license is suspended or revoked for an alcohol-related offense shall provide proof to the satisfaction of the department that a functioning ignition interlock device has been installed on a vehicle owned or operated by the person.~~

~~—(i) The department shall require the person to maintain such a device on a vehicle owned or operated by the person and shall restrict the person to operating only vehicles equipped with such a device, for the remainder of the period of suspension, revocation, or denial.~~

~~—(ii) Subject to any periodic renewal requirements established by the department pursuant to this section and subject to any applicable compliance requirements under this chapter or other law, a temporary restricted driver's license granted after a suspension or revocation under RCW 46.61.5055 or 46.20.3101 extends through the remaining portion of any concurrent or consecutive suspension or revocation that may be imposed as the result of administrative action and criminal conviction arising out of the same incident.~~

~~—(iii) The time period during which the person is licensed under this section shall apply on a day-for-day basis toward satisfying the period of time the ignition interlock device restriction is required under RCW 46.20.720 (1) and (2) (a), (b), and (c).~~

~~—(c) The department shall provide by rule the minimum portions of the periods of suspension, revocation, or denial set forth in RCW 46.20.3101 after which a person may apply for a temporary restricted driver's license under this section. In establishing the minimum portions of the periods of suspension, revocation, or denial, the department shall consider the requirements of federal law regarding state eligibility for grants or other funding, and shall establish such periods so as to ensure that the state will maintain its eligibility, or establish eligibility, to obtain incentive grants or any other federal funding.)~~

(2)(a) A person licensed under this chapter whose driver's license is suspended administratively due to failure to appear or pay a traffic ticket under RCW 46.20.289; a violation of the financial responsibility laws under chapter 46.29 RCW; or for

multiple violations within a specified period of time under RCW 46.20.291, may apply to the department for an occupational driver's license.

(b) If the suspension is for failure to respond, pay, or comply with a notice of traffic infraction or conviction, the applicant must enter into a payment plan with the court.

(c) An occupational driver's license issued to an applicant described in (a) of this subsection shall be valid for the period of the suspension or revocation.

(3) An applicant for an occupational or temporary restricted driver's license who qualifies under subsection (1) or (2) of this section is eligible to receive such license only if:

(a) Within seven years immediately preceding the date of the offense that gave rise to the present conviction or incident, the applicant has not committed vehicular homicide under RCW 46.61.520 or vehicular assault under RCW 46.61.522; and

(b) The applicant demonstrates that it is necessary for him or her to operate a motor vehicle because he or she:

(i) Is engaged in an occupation or trade that makes it essential that he or she operate a motor vehicle;

(ii) Is undergoing continuing health care or providing continuing care to another who is dependent upon the applicant;

(iii) Is enrolled in an educational institution and pursuing a course of study leading to a diploma, degree, or other certification of successful educational completion;

(iv) Is undergoing substance abuse treatment or is participating in meetings of a twelve-step group such as Alcoholics Anonymous that requires the petitioner to drive to or from the treatment or meetings;

(v) Is fulfilling court-ordered community service responsibilities;

(vi) Is in a program that assists persons who are enrolled in a WorkFirst program pursuant to chapter 74.08A RCW to become gainfully employed and the program requires a driver's license;

(vii) Is in an apprenticeship, on-the-job training, or welfare-to-work program; or

(viii) Presents evidence that he or she has applied for a position in an apprenticeship or on-the-job training program for which a driver's license is required to begin the program, provided that a license granted under this provision shall be in effect for no longer than fourteen days; and

(c) The applicant files satisfactory proof of financial responsibility under chapter 46.29 RCW; and

(d) Upon receipt of evidence that a holder of an occupational driver's license granted under this subsection is no longer enrolled in an apprenticeship or on-the-job training program, the director shall give written notice by first-class mail to the driver that the occupational driver's license shall be canceled. The effective date of cancellation shall be fifteen days from the date of mailing the notice. If at any time before the cancellation goes into effect the driver submits evidence of continued enrollment in the program, the cancellation shall be stayed. If the cancellation becomes effective, the driver may obtain, at no additional charge, a new occupational driver's license upon submittal of evidence of enrollment in another program that meets the criteria set forth in this subsection; and

(e) The department shall not issue an occupational driver's license under (b)(iv) of this subsection if the applicant is able to receive transit services sufficient to allow for the applicant's participation in the programs referenced under (b)(iv) of this subsection.

(4) A person aggrieved by the decision of the department on the application for an occupational or temporary restricted driver's license may request a hearing as provided by rule of the department.

(5) The director shall cancel an occupational or temporary restricted driver's license upon receipt of notice that the holder thereof has been convicted of operating a motor vehicle in violation of its restrictions, or of a separate offense that under chapter 46.20 RCW would warrant suspension or revocation of a regular driver's license. The cancellation is effective as of the

FIFTY-FOURTH DAY, MARCH 7, 2008

date of the conviction, and continues with the same force and effect as any suspension or revocation under this title.

Sec. 7. RCW 46.20.400 and 2004 c 95 s 9 are each amended to read as follows:

If an occupational ~~(or)~~ driver's license, a temporary restricted driver's license, or an ignition interlock driver's license is issued and is not revoked during the period for which issued the licensee may obtain a new driver's license at the end of such period, but no new driver's license may be issued to such person until he or she surrenders his or her occupational ~~(or)~~ driver's license, temporary restricted driver's license, or ignition interlock driver's license and his or her copy of the order, and the director is satisfied that the person complies with all other provisions of law relative to the issuance of a driver's license.

Sec. 8. RCW 46.20.410 and 2004 c 95 s 10 are each amended to read as follows:

Any person convicted for violation of any restriction of an occupational ~~(or)~~ driver's license, a temporary restricted driver's license, or an ignition interlock driver's license shall in addition to the immediate revocation of such license and any other penalties provided by law be fined not less than fifty nor more than two hundred dollars or imprisoned for not more than six months or both such fine and imprisonment.

NEW SECTION. Sec. 9. A new section is added to chapter 46.20 RCW to read as follows:

(1)(a) Beginning January 1, 2009, any person licensed under this chapter who is convicted of any offense involving the use, consumption, or possession of alcohol while operating a motor vehicle in violation of RCW 46.61.502 or 46.61.504, other than vehicular homicide or vehicular assault, or who has had or will have his or her license suspended, revoked, or denied under RCW 46.20.3101, may submit to the department an application for an ignition interlock driver's license. The department, upon receipt of the prescribed fee and upon determining that the petitioner is eligible to receive the license, may issue an ignition interlock driver's license.

(b) A person may apply for an ignition interlock driver's license anytime, including immediately after receiving the notices under RCW 46.20.308 or after his or her license is suspended, revoked, or denied. A person receiving an ignition interlock driver's license waives his or her right to a hearing or appeal under RCW 46.20.308.

(c) An applicant under this subsection shall provide proof to the satisfaction of the department that a functioning ignition interlock device has been installed on all vehicles operated by the person.

(i) The department shall require the person to maintain the device on all vehicles operated by the person and shall restrict the person to operating only vehicles equipped with the device, for the remainder of the period of suspension, revocation, or denial. The installation of an ignition interlock device is not necessary on vehicles owned by a person's employer and driven 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 during working hours.

(ii) Subject to any periodic renewal requirements established by the department under this section and subject to any applicable compliance requirements under this chapter or other law, an ignition interlock driver's license granted upon a suspension or revocation under RCW 46.61.5055 or 46.20.3101 extends through the remaining portion of any concurrent or consecutive suspension or revocation that may be imposed as the result of administrative action and criminal conviction arising out of the same incident.

(iii) The time period during which the person is licensed under this section shall apply on a day-for-day basis toward satisfying the period of time the ignition interlock device restriction is required under RCW 46.20.720 and 46.61.5055.

2008 REGULAR SESSION

(2) An applicant for an ignition interlock driver's license who qualifies under subsection (1) of this section is eligible to receive a license only if:

(a) Within seven years immediately preceding the date of the offense that gave rise to the present conviction or incident, the applicant has not committed vehicular homicide under RCW 46.61.520 or vehicular assault under RCW 46.61.522; and

(b) The applicant files satisfactory proof of financial responsibility under chapter 46.29 RCW.

(3) Upon receipt of evidence that a holder of an ignition interlock driver's license granted under this subsection no longer has a functioning ignition interlock device installed on all vehicles operated by the driver, the director shall give written notice by first-class mail to the driver that the ignition interlock driver's license shall be canceled. The effective date of cancellation shall be fifteen days from the date of mailing the notice. If at any time before the cancellation goes into effect the driver submits evidence that a functioning ignition interlock device has been installed on all vehicles operated by the driver, the cancellation shall be stayed. If the cancellation becomes effective, the driver may obtain, at no additional charge, a new ignition interlock driver's license upon submittal of evidence that a functioning ignition interlock device has been installed on all vehicles operated by the driver.

(4) A person aggrieved by the decision of the department on the application for an ignition interlock driver's license may request a hearing as provided by rule of the department.

(5) The director shall cancel an ignition interlock driver's license upon receipt of notice that the holder thereof has been convicted of operating a motor vehicle in violation of its restrictions, or of a separate offense that under this chapter would warrant suspension or revocation of a regular driver's license. The cancellation is effective as of the date of the conviction, and continues with the same force and effect as any suspension or revocation under this title.

(6)(a) Unless costs are waived by the ignition interlock company or the person is indigent under RCW 10.101.010, the applicant shall pay the cost of installing, removing, and leasing the ignition interlock device and shall pay an additional fee of twenty dollars per month. Payments shall be made directly to the ignition interlock company. The company shall remit the additional twenty-dollar fee to the department. (b) The

department shall deposit the proceeds of the twenty-dollar fee into the ignition interlock device revolving account. Expenditures from the account may be used only to administer and operate the ignition interlock device revolving account program. The department shall adopt rules to provide monetary assistance according to greatest need and when funds are available.

(7) The department shall adopt rules to implement ignition interlock licensing. The department shall consult with the administrative office of the courts, the state patrol, the Washington association of sheriffs and police chiefs, ignition interlock companies, and any other organization or entity the department deems appropriate.

NEW SECTION. Sec. 10. A new section is added to chapter 46.20 RCW to read as follows:

(1) The ignition interlock device revolving account program is created within the department to assist in covering the monetary costs of installing, removing, and leasing an ignition interlock device, and applicable licensing, for indigent persons who are required under section 9 of this act and RCW 46.61.5055 to install an ignition interlock device in all vehicles owned or operated by the person. For purposes of this subsection, "indigent" has the same meaning as in RCW 10.101.010, as determined by the department.

(2) A pilot program is created within the ignition interlock device revolving account program for the purpose of monitoring compliance by persons required to use ignition interlock devices and by ignition interlock companies and vendors.

FIFTY-FOURTH DAY, MARCH 7, 2008

2008 REGULAR SESSION

(3) The department, the state patrol, and the Washington traffic safety commission shall coordinate to establish a compliance pilot program that will target at least one county from eastern Washington and one county from western Washington, as determined by the department, state patrol, and Washington traffic safety commission.

(4) At a minimum, the compliance pilot program shall:

(a) Review the number of ignition interlock devices that are required to be installed in the targeted county and the number of ignition interlock devices actually installed;

(b) Work to identify those persons who are not complying with ignition interlock requirements or are repeatedly violating ignition interlock requirements; and

(c) Identify ways to track compliance and reduce noncompliance.

(5) As part of monitoring compliance, the Washington traffic safety commission shall also track recidivism for violations of RCW 46.61.502 and 46.61.504 by persons required to have an ignition interlock driver's license under section 9 of this act.

Sec. 11. RCW 46.63.020 and 2005 c 431 s 2, 2005 c 323 s 3, and 2005 c 183 s 10 are each reenacted and amended to read as follows:

Failure to perform any act required or the performance of any act prohibited by this title or an equivalent administrative regulation or local law, ordinance, regulation, or resolution relating to traffic including parking, standing, stopping, and pedestrian offenses, is designated as a traffic infraction and may not be classified as a criminal offense, except for an offense contained in the following provisions of this title or a violation of an equivalent administrative regulation or local law, ordinance, regulation, or resolution:

(1) RCW 46.09.120(2) relating to the operation of a nonhighway vehicle while under the influence of intoxicating liquor or a controlled substance;

(2) RCW 46.09.130 relating to operation of nonhighway vehicles;

(3) RCW 46.10.090(2) relating to the operation of a snowmobile while under the influence of intoxicating liquor or narcotics or habit-forming drugs or in a manner endangering the person of another;

(4) RCW 46.10.130 relating to the operation of snowmobiles;

(5) Chapter 46.12 RCW relating to certificates of ownership and registration and markings indicating that a vehicle has been destroyed or declared a total loss;

(6) RCW 46.16.010 relating to the nonpayment of taxes and fees by failure to register a vehicle and falsifying residency when registering a motor vehicle;

(7) RCW 46.16.011 relating to permitting unauthorized persons to drive;

(8) RCW 46.16.160 relating to vehicle trip permits;

(9) RCW 46.16.381(2) relating to knowingly providing false information in conjunction with an application for a special placard or license plate for disabled persons' parking;

(10) RCW 46.20.005 relating to driving without a valid driver's license;

(11) RCW 46.20.091 relating to false statements regarding a driver's license or instruction permit;

(12) RCW 46.20.0921 relating to the unlawful possession and use of a driver's license;

(13) RCW 46.20.342 relating to driving with a suspended or revoked license or status;

(14) RCW 46.20.345 relating to the operation of a motor vehicle with a suspended or revoked license;

(15) RCW 46.20.410 relating to the violation of restrictions of an occupational ~~(or)~~ driver's license, temporary restricted driver's license, or ignition interlock driver's license;

(16) RCW 46.20.740 relating to operation of a motor vehicle without an ignition interlock device in violation of a license notation that the device is required;

(17) RCW 46.20.750 relating to ~~((assisting another person to start a vehicle equipped with))~~ circumventing an ignition interlock device;

(18) RCW 46.25.170 relating to commercial driver's licenses;

(19) Chapter 46.29 RCW relating to financial responsibility;

(20) RCW 46.30.040 relating to providing false evidence of financial responsibility;

(21) RCW 46.37.435 relating to wrongful installation of sunscreening material;

(22) RCW 46.37.650 relating to the sale, resale, distribution, or installation of a previously deployed air bag;

(23) RCW 46.37.671 through 46.37.675 relating to signal preemption devices;

~~(24)~~ RCW 46.44.180 relating to operation of mobile home pilot vehicles;

~~((24))~~ ~~(25)~~ RCW 46.48.175 relating to the transportation of dangerous articles;

~~((25))~~ ~~(26)~~ RCW 46.52.010 relating to duty on striking an unattended car or other property;

~~((26))~~ ~~(27)~~ RCW 46.52.020 relating to duty in case of injury to or death of a person or damage to an attended vehicle;

~~((27))~~ ~~(28)~~ RCW 46.52.090 relating to reports by repairmen, storagemen, and appraisers;

~~((28))~~ ~~(29)~~ RCW 46.52.130 relating to confidentiality of the driving record to be furnished to an insurance company, an employer, and an alcohol/drug assessment or treatment agency;

~~((29))~~ ~~(30)~~ RCW 46.55.020 relating to engaging in the activities of a registered tow truck operator without a registration certificate;

~~((30))~~ ~~(31)~~ RCW 46.55.035 relating to prohibited practices by tow truck operators;

~~((31))~~ ~~(32)~~ RCW 46.55.300 relating to vehicle immobilization;

~~(33)~~ RCW 46.61.015 relating to obedience to police officers, flaggers, or firefighters;

~~((32))~~ ~~(34)~~ RCW 46.61.020 relating to refusal to give information to or cooperate with an officer;

~~((33))~~ ~~(35)~~ RCW 46.61.022 relating to failure to stop and give identification to an officer;

~~((34))~~ ~~(36)~~ RCW 46.61.024 relating to attempting to elude pursuing police vehicles;

~~((35))~~ ~~(37)~~ RCW 46.61.500 relating to reckless driving;

~~((36))~~ ~~(38)~~ RCW 46.61.502 and 46.61.504 relating to persons under the influence of intoxicating liquor or drugs;

~~((37))~~ ~~(39)~~ RCW 46.61.503 relating to a person under age twenty-one driving a motor vehicle after consuming alcohol;

~~((38))~~ ~~(40)~~ RCW 46.61.520 relating to vehicular homicide by motor vehicle;

~~((39))~~ ~~(41)~~ RCW 46.61.522 relating to vehicular assault;

~~((40))~~ ~~(42)~~ RCW 46.61.5249 relating to first degree negligent driving;

~~((41))~~ ~~(43)~~ RCW 46.61.527(4) relating to reckless endangerment of roadway workers;

~~((42))~~ ~~(44)~~ RCW 46.61.530 relating to racing of vehicles on highways;

~~((43))~~ ~~(45)~~ RCW 46.61.655(7) (a) and (b) relating to failure to secure a load;

~~((44))~~ ~~(46)~~ RCW 46.61.685 relating to leaving children in an unattended vehicle with the motor running;

~~((45))~~ ~~(47)~~ RCW 46.61.740 relating to theft of motor vehicle fuel;

~~((46)~~ ~~RCW 46.37.671 through 46.37.675 relating to signal preemption devices~~;

~~(47))~~ ~~(48)~~ RCW 46.64.010 relating to unlawful cancellation of or attempt to cancel a traffic citation;

~~((48))~~ ~~(49)~~ RCW 46.64.048 relating to attempting, aiding, abetting, coercing, and committing crimes;

~~((49))~~ ~~(50)~~ Chapter 46.65 RCW relating to habitual traffic offenders;

FIFTY-FOURTH DAY, MARCH 7, 2008

~~((50))~~ (51) RCW 46.68.010 relating to false statements made to obtain a refund;

~~((51))~~ (52) Chapter 46.70 RCW relating to unfair motor vehicle business practices, except where that chapter provides for the assessment of monetary penalties of a civil nature;

~~((52))~~ (53) Chapter 46.72 RCW relating to the transportation of passengers in for hire vehicles;

~~((53))~~ (54) RCW 46.72A.060 relating to limousine carrier insurance;

~~((54))~~ (55) RCW 46.72A.070 relating to operation of a limousine without a vehicle certificate;

~~((55))~~ (56) RCW 46.72A.080 relating to false advertising by a limousine carrier;

~~((56))~~ (57) Chapter 46.80 RCW relating to motor vehicle wreckers;

~~((57))~~ (58) Chapter 46.82 RCW relating to driver's training schools;

~~((58))~~ (59) RCW 46.87.260 relating to alteration or forgery of a cab card, letter of authority, or other temporary authority issued under chapter 46.87 RCW;

~~((59))~~ (60) RCW 46.87.290 relating to operation of an unregistered or unlicensed vehicle under chapter 46.87 RCW.

Sec. 12. RCW 46.20.720 and 2004 c 95 s 11 are each amended to read as follows:

(1) The court may order that after a period of suspension, revocation, or denial of driving privileges, and for up to as long as the court has jurisdiction, any person convicted of any offense involving the use, consumption, or possession of alcohol while operating a motor vehicle may drive only a motor vehicle equipped with a functioning ignition interlock. The court shall establish a specific calibration setting at which the interlock will prevent the vehicle from being started. The court shall also establish the period of time for which interlock use will be required.

(2) Under RCW 46.61.5055, the court shall order any person convicted of an alcohol-related 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 under section 9 of this act and to have a functioning ignition interlock device installed on all motor vehicles operated by the person.

(3) The department shall require that, after any applicable period of suspension, revocation, or denial of driving privileges, a person may drive only a motor vehicle equipped with a functioning ignition interlock device if the person is convicted of an alcohol-related violation of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance.

The department may waive the requirement for the use of such a device if it concludes that such devices are not reasonably available in the local area. The device is not necessary on vehicles owned by a person's employer and driven 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 during working hours.

The ignition interlock device shall be calibrated to prevent the motor vehicle from being started when the breath sample provided has an alcohol concentration of 0.025 or more. The period of time of the restriction will be as follows:

(a) For a person who has not previously been restricted under this section, a period of one year;

(b) For a person who has previously been restricted under (a) of this subsection, a period of five years;

(c) For a person who has previously been restricted under (b) of this subsection, a period of ten years.

Sec. 13. RCW 46.20.740 and 2004 c 95 s 12 are each amended to read as follows:

(1) The department shall attach or imprint a notation on the driving record of any person restricted under RCW 46.20.720 or 46.61.5055 stating that the person may operate only a motor

2008 REGULAR SESSION

vehicle equipped with a functioning ignition interlock device. The department shall determine the person's eligibility for licensing based upon written verification by a company doing business in the state that it has installed the required device on a vehicle owned or operated by the person seeking reinstatement. If, based upon notification from the interlock provider or otherwise, the department determines that an ignition interlock required under this section is no longer installed or functioning as required, the department shall suspend the person's license or privilege to drive. Whenever the license or driving privilege of any person is suspended or revoked as a result of noncompliance with an ignition interlock requirement, the suspension shall remain in effect until the person provides notice issued by a company doing business in the state that a vehicle owned or operated by the person is equipped with a functioning ignition interlock device.

(2) It is a misdemeanor for a person with such a notation on his or her driving record to operate a motor vehicle that is not so equipped.

Sec. 14. RCW 46.61.5055 and 2007 c 474 s 1 are each 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 one year. 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 one year. 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

FIFTY-FOURTH DAY, MARCH 7, 2008

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 one year 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 one year 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:

2008 REGULAR SESSION

(i) By imprisonment for not less than ninety days nor more than one year 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 one year 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 and who has four or more prior offenses within ten years, or who has ever previously been convicted of a violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug or RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug, shall be punished in accordance with chapter 9.94A RCW.

(5)(a) The court shall require any person convicted of an alcohol-related violation of RCW 46.61.502 or 46.61.504 to apply for an ignition interlock driver's license from the department under section 9 of this act 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 by a person's employer and driven 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 during working hours.

(c) An ignition interlock device imposed under this section shall be calibrated to prevent a motor vehicle from being started

FIFTY-FOURTH DAY, MARCH 7, 2008

when the breath sample provided has an alcohol concentration of 0.025 or more.

(d) The court may waive the requirement that a person obtain an ignition interlock driver's license and operate only vehicles equipped with a functioning ignition interlock device if the court makes a specific finding in writing that the devices are not reasonably available in the local area, that the person does not operate a vehicle, or the person is not eligible to receive an ignition interlock driver's license under section 9 of this act.

(e) When the requirement that a person obtain an ignition interlock driver's license and operate only vehicles equipped with a functioning ignition interlock device is waived by the court, 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. The person shall pay for the cost of the monitoring. The county or municipality where the penalty is being imposed shall determine the cost.

(f) The period of time for which ignition interlock use or alcohol monitoring 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 (f)(i) of this subsection, a period of five years;

(iii) For a person who has previously been restricted under (f)(ii) of this subsection, a period of ten years.

(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 device for an additional sixty days.

~~((6))~~ (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.

~~((7))~~ (8) An offender punishable under this section is subject to the alcohol assessment and treatment provisions of RCW 46.61.5056.

~~((8))~~ (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

2008 REGULAR SESSION

(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 ~~((8))~~ (9), the department shall refer to the driver's record maintained under RCW 46.52.120 when determining the existence of prior offenses.

~~((9))~~ (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.

~~((10))~~ (11)(a) In addition to any nonsuspendable and nondeferrable jail sentence required by this section, whenever the court imposes less than one year 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.

~~((11))~~ (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.

FIFTY-FOURTH DAY, MARCH 7, 2008

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-five 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-five days.

~~((#2))~~ (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(4).

~~((#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;

(iv) A conviction for 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;

(b) "Within seven years" means that the arrest for a prior offense occurred within seven years of the arrest for the current offense; and

(c) "Within ten years" means that the arrest for a prior offense occurred within ten years of the arrest for the current offense.

NEW SECTION. Sec. 15. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2008, in the omnibus transportation appropriations act, this act is null and void.

NEW SECTION. Sec. 16. Sections 2, 4 through 8, and 11 through 14 of this act take effect January 1, 2009."

MOTION

Senator Hargrove moved that the following amendment by Senator Hargrove and others to the committee striking amendment be adopted.

On page 23, line 14 of the amendment, after "46.61.5055," insert "10.05.020, or section 18 of this act"

On page 23, line 16 of the amendment, after "ordinance" insert "or participating in a deferred prosecution program under RCW 10.05.020 or section 18 of this act for an alcohol-related

2008 REGULAR SESSION

violation of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance"

On page 34, after line 7 of the amendment, insert the following:

"**Sec. 15.** RCW 10.05.010 and 2002 c 219 s 6 are each amended to read as follows:

(1) In a court of limited jurisdiction a person charged with a misdemeanor or gross misdemeanor may petition the court to be considered for a deferred prosecution program. The petition shall be filed with the court at least seven days before the date set for trial but, upon a written motion and affidavit establishing good cause for the delay and failure to comply with this section, the court may waive this requirement subject to the defendant's reimbursement to the court of the witness fees and expenses due for subpoenaed witnesses who have appeared on the date set for trial.

(2) A person charged with a traffic infraction, misdemeanor, or gross misdemeanor under Title 46 RCW shall not be eligible for a deferred prosecution program unless the court makes specific findings pursuant to RCW 10.05.020 or section 18 of this act. Such person shall not be eligible for a deferred prosecution program more than once; and cannot receive a deferred prosecution under both RCW 10.05.020 and section 18 of this act. Separate offenses committed more than seven days apart may not be consolidated in a single program.

(3) A person charged with a misdemeanor or a gross misdemeanor under chapter 9A.42 RCW shall not be eligible for a deferred prosecution program unless the court makes specific findings pursuant to RCW 10.05.020. Such person shall not be eligible for a deferred prosecution program more than once.

Sec. 16. RCW 10.05.020 and 2002 c 219 s 7 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section or section 18 of this act, the petitioner shall allege under oath in the petition that the wrongful conduct charged is the result of or caused by alcoholism, drug addiction, or mental problems for which the person is in need of treatment and unless treated the probability of future recurrence is great, along with a statement that the person agrees to pay the cost of a diagnosis and treatment of the alleged problem or problems if financially able to do so. The petition shall also contain a case history and written assessment prepared by an approved alcoholism treatment program as designated in chapter 70.96A RCW if the petition alleges alcoholism, an approved drug program as designated in chapter 71.24 RCW if the petition alleges drug addiction, or by an approved mental health center if the petition alleges a mental problem.

(2) In the case of a petitioner charged with a misdemeanor or gross misdemeanor under chapter 9A.42 RCW, the petitioner shall allege under oath in the petition that the petitioner is the natural or adoptive parent of the alleged victim; that the wrongful conduct charged is the result of parenting problems for which the petitioner is in need of services; that the petitioner is in need of child welfare services under chapter 74.13 RCW to improve his or her parenting skills in order to better provide his or her child or children with the basic necessities of life; that the petitioner wants to correct his or her conduct to reduce the likelihood of harm to his or her minor children; that in the absence of child welfare services the petitioner may be unable to reduce the likelihood of harm to his or her minor children; and that the petitioner has cooperated with the department of social and health services to develop a plan to receive appropriate child welfare services; along with a statement that the person agrees to pay the cost of the services if he or she is financially able to do so. The petition shall also contain a case history and a written service plan from the department of social and health services.

(3) Before entry of an order deferring prosecution, a petitioner shall be advised of his or her rights as an accused and execute, as a condition of receiving treatment, a statement that contains: (a) An acknowledgment of his or her rights; (b) an

FIFTY-FOURTH DAY, MARCH 7, 2008

acknowledgment and waiver of the right to testify, the right to a speedy trial, the right to call witnesses to testify, the right to present evidence in his or her defense, and the right to a jury trial; (c) a stipulation to the admissibility and sufficiency of the facts contained in the written police report; and (d) an acknowledgment that the statement will be entered and used to support a finding of guilty if the court finds cause to revoke the order granting deferred prosecution. The petitioner shall also be advised that he or she may, if he or she proceeds to trial and is found guilty, be allowed to seek suspension of some or all of the fines and incarceration that may be ordered upon the condition that he or she seek treatment and, further, that he or she may seek treatment from public and private agencies at any time without regard to whether or not he or she is found guilty of the offense charged. He or she shall also be advised that the court will not accept a petition for deferred prosecution from a person who: (i) Sincerely believes that he or she is innocent of the charges ~~((or))~~; (ii) sincerely believes that he or she does not, in fact, suffer from alcoholism, drug addiction, or mental problems, unless the petition for deferred prosecution is under section 18 of this act; or (iii) in the case of a petitioner charged under chapter 9A.42 RCW, sincerely believes that he or she does not need child welfare services.

(4) Before entering an order deferring prosecution, the court shall make specific findings that: (a) The petitioner has stipulated to the admissibility and sufficiency of the facts as contained in the written police report; (b) the petitioner has acknowledged the admissibility of the stipulated facts in any criminal hearing on the underlying offense or offenses held subsequent to revocation of the order granting deferred prosecution; (c) the petitioner has acknowledged and waived the right to testify, the right to a speedy trial, the right to call witnesses to testify, the right to present evidence in his or her defense, and the right to a jury trial; and (d) the petitioner's statements were made knowingly and voluntarily. Such findings shall be included in the order granting deferred prosecution.

Sec. 17. RCW 10.05.090 and 1997 c 229 s 1 are each amended to read as follows:

If a petitioner, who has been accepted for a deferred prosecution, fails or neglects to carry out and fulfill any term or condition of the petitioner's treatment plan or any term or condition imposed in connection with the installation of an interlock or other device under RCW 46.20.720 or section 9 of this act, the facility, center, institution, or agency administering the treatment or the entity administering the use of the device, shall immediately report such breach to the court, the prosecutor, and the petitioner or petitioner's attorney of record, together with its recommendation. The court upon receiving such a report shall hold a hearing to determine whether the petitioner should be removed from the deferred prosecution program. At the hearing, evidence shall be taken of the petitioner's alleged failure to comply with the treatment plan or device installation and the petitioner shall have the right to present evidence on his or her own behalf. The court shall either order that the petitioner continue on the treatment plan or be removed from deferred prosecution. If the petitioner's noncompliance is based on a violation of a term or condition imposed in connection with the installation of an ignition interlock device under section 9 of this act, the court shall either order that the petitioner comply with the term or condition or be removed from deferred prosecution. If removed from deferred prosecution, the court shall enter judgment pursuant to RCW 10.05.020 and, if the charge for which the deferred prosecution was granted was a misdemeanor or gross misdemeanor under Title 46 RCW, shall notify the department of licensing of the removal and entry of judgment.

NEW SECTION. Sec. 18. A new section is added to chapter 10.05 RCW to read as follows:

(1) A person charged with a misdemeanor or gross misdemeanor under RCW 46.61.502 or 46.61.504 who has had no prior offenses as defined in RCW 46.61.5055 and has been

2008 REGULAR SESSION

assessed pursuant to subsection (3) of this section shall be eligible for a one-time deferred prosecution program.

(2) Before entering an order deferring prosecution under this section, the court shall make a specific finding that the petitioner has no prior offenses as defined in RCW 46.61.5055 and has been assessed by a certified chemical dependency counselor and a licensed mental health professional, and found not to need treatment for alcoholism, drug addiction, or mental problems. As a condition of granting a deferral prosecution petition, the court shall order the petitioner to satisfy the conditions in RCW 10.05.140 and shall order the petitioner to apply for an ignition interlock driver's license from the department of licensing and have a functioning ignition interlock device installed on all motor vehicles operated by the person. The required period of use of the ignition interlock device shall be one year. The court may order supervision of the petitioner during the period of deferral pursuant to RCW 10.05.170.

(3) A petitioner seeking a deferral of prosecution under this section shall undergo an assessment by a certified chemical dependency counselor and a licensed mental health professional to determine whether the petitioner is or is not in need of treatment for alcoholism, drug addiction, or mental problems.

Sec. 19. RCW 10.05.160 and 1999 c 143 s 44 are each amended to read as follows:

The prosecutor may appeal an order granting deferred prosecution on any or all of the following grounds:

(1) Prior deferred prosecution has been granted to the defendant;

(2) Failure of the court to obtain proof of insurance or a treatment plan conforming to the requirements of this chapter;

(3) Failure of the court to comply with the requirements of RCW 10.05.100;

(4) Failure of the evaluation facility to provide the information required in RCW 10.05.040 and 10.05.050, if the defendant has been referred to the facility for treatment. If an appeal on such basis is successful, the trial court may consider the use of another treatment program;

(5) Failure of the court to order the installation of an ignition interlock or other device under RCW 46.20.720 or section 9 of this act."

Renumber the remaining sections consecutively and correct any internal references accordingly.

Senator Hargrove spoke in favor of adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Hargrove and others on page 23, line 14 to the committee striking amendment to Engrossed Second Substitute House Bill No. 3254.

The motion by Senator Hargrove carried and the amendment to the committee striking amendment was adopted by voice vote.

MOTION

Senator Brandland moved that the following amendment by Senator Brandland and others to the committee striking amendment be adopted.

Beginning on page 28, line 37 of the amendment, strike all of subsection (4) and insert the following:

"(4) A person who is convicted of a violation of RCW 46.61.502 or 46.61.504 ~~((and who))~~ shall be punished under chapter 9.94A RCW if: (a) The person has four or more prior offenses within ten years~~((;))~~; or ~~((who))~~ (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 ~~((or))~~; (ii) a violation of RCW 46.61.522 committed while under the influence of intoxicating liquor or

FIFTY-FOURTH DAY, MARCH 7, 2008

2008 REGULAR SESSION

any drug (~~shall be punished in accordance with chapter 9.94A RCW~~); or (iii) an out-of-state offense comparable to the offense specified in (b)(i) or (ii) of this subsection."

On page 34, after line 7 of the amendment, insert the following:

"**Sec. 15.** RCW 46.61.502 and 2006 c 73 s 1 are each amended to read as follows:

(1) A person is guilty of driving while under the influence of intoxicating liquor or any drug if the person drives a vehicle within this state:

(a) And the person has, within two hours after driving, an alcohol concentration of 0.08 or higher as shown by analysis of the person's breath or blood made under RCW 46.61.506; or

(b) While the person is under the influence of or affected by intoxicating liquor or any drug; or

(c) While the person is under the combined influence of or affected by intoxicating liquor and any drug.

(2) The fact that a person charged with a violation of this section is or has been entitled to use a drug under the laws of this state shall not constitute a defense against a charge of violating this section.

(3) It is an affirmative defense to a violation of subsection (1)(a) of this section which the defendant must prove by a preponderance of the evidence that the defendant consumed a sufficient quantity of alcohol after the time of driving and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol concentration to be 0.08 or more within two hours after driving. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(4) Analyses of blood or breath samples obtained more than two hours after the alleged driving may be used as evidence that within two hours of the alleged driving, a person had an alcohol concentration of 0.08 or more in violation of subsection (1)(a) of this section, and in any case in which the analysis shows an alcohol concentration above 0.00 may be used as evidence that a person was under the influence of or affected by intoxicating liquor or any drug in violation of subsection (1)(b) or (c) of this section.

(5) Except as provided in subsection (6) of this section, a violation of this section is a gross misdemeanor.

(6) It is a class C felony punishable under chapter 9.94A RCW, or chapter 13.40 RCW if the person is a juvenile, if: (a) The person has four or more prior offenses within ten years as defined in RCW 46.61.5055; or (b) the person has ever previously been convicted of (i) vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a), ~~((or))~~ (ii) vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b), or (iii) an out-of-state offense comparable to the offense specified in (b)(i) or (ii) of this subsection.

Sec. 16. RCW 46.61.504 and 2006 c 73 s 2 are each amended to read as follows:

(1) A person is guilty of being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug if the person has actual physical control of a vehicle within this state:

(a) And the person has, within two hours after being in actual physical control of the vehicle, an alcohol concentration of 0.08 or higher as shown by analysis of the person's breath or blood made under RCW 46.61.506; or

(b) While the person is under the influence of or affected by intoxicating liquor or any drug; or

(c) While the person is under the combined influence of or

affected by intoxicating liquor and any drug.

(2) The fact that a person charged with a violation of this section is or has been entitled to use a drug under the laws of this state does not constitute a defense against any charge of violating this section. No person may be convicted under this section if, prior to being pursued by a law enforcement officer, the person has moved the vehicle safely off the roadway.

(3) It is an affirmative defense to a violation of subsection (1)(a) of this section which the defendant must prove by a preponderance of the evidence that the defendant consumed a sufficient quantity of alcohol after the time of being in actual physical control of the vehicle and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol concentration to be 0.08 or more within two hours after being in such control. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(4) Analyses of blood or breath samples obtained more than two hours after the alleged being in actual physical control of a vehicle may be used as evidence that within two hours of the alleged being in such control, a person had an alcohol concentration of 0.08 or more in violation of subsection (1)(a) of this section, and in any case in which the analysis shows an alcohol concentration above 0.00 may be used as evidence that a person was under the influence of or affected by intoxicating liquor or any drug in violation of subsection (1)(b) or (c) of this section.

(5) Except as provided in subsection (6) of this section, a violation of this section is a gross misdemeanor.

(6) It is a class C felony punishable under chapter 9.94A RCW, or chapter 13.40 RCW if the person is a juvenile, if: (a) The person has four or more prior offenses within ten years as defined in RCW 46.61.5055; or (b) the person has ever previously been convicted of (i) vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a), ~~((or))~~ (ii) vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b), or (iii) an out-of-state offense comparable to the offense specified in (b)(i) or (ii) of this subsection."

Renumber the remaining sections consecutively and correct any internal references accordingly.

Senator Brandland spoke in favor of adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Brandland and others on page 28, line 7 to the committee striking amendment to Engrossed Second Substitute House Bill No. 3254.

The motion by Senator Brandland carried and the amendment to the committee striking amendment was adopted by voice vote.

MOTION

Senator Hargrove moved that the following amendment by Senator Hargrove and others to the committee striking amendment be adopted.

On page 34, after line 7 of the amendment, insert the following:

"**Sec. 15.** RCW 10.05.010 and 2002 c 219 s 6 are each amended to read as follows:

(1) In a court of limited jurisdiction a person charged with a misdemeanor or gross misdemeanor may petition the court to be

FIFTY-FOURTH DAY, MARCH 7, 2008

2008 REGULAR SESSION

considered for a deferred prosecution program. The petition shall be filed with the court at least seven days before the date set for trial but, upon a written motion and affidavit establishing good cause for the delay and failure to comply with this section, the court may waive this requirement subject to the defendant's reimbursement to the court of the witness fees and expenses due for subpoenaed witnesses who have appeared on the date set for trial.

(2) A person charged with a traffic infraction, misdemeanor, or gross misdemeanor under Title 46 RCW shall not be eligible for a deferred prosecution program unless the court makes specific findings pursuant to RCW 10.05.020 or section 18 of this act. Such person shall not be eligible for a deferred prosecution program more than once. Separate offenses committed more than seven days apart may not be consolidated in a single program.

(3) A person charged with a misdemeanor or a gross misdemeanor under chapter 9A.42 RCW shall not be eligible for a deferred prosecution program unless the court makes specific findings pursuant to RCW 10.05.020. Such person shall not be eligible for a deferred prosecution program more than once.

Sec. 16. RCW 10.05.020 and 2002 c 219 s 7 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section or section 18 of this act, the petitioner shall allege under oath in the petition that the wrongful conduct charged is the result of or caused by alcoholism, drug addiction, or mental problems for which the person is in need of treatment and unless treated the probability of future recurrence is great, along with a statement that the person agrees to pay the cost of a diagnosis and treatment of the alleged problem or problems if financially able to do so. The petition shall also contain a case history and written assessment prepared by an approved alcoholism treatment program as designated in chapter 70.96A RCW if the petition alleges alcoholism, an approved drug program as designated in chapter 71.24 RCW if the petition alleges drug addiction, or by an approved mental health center if the petition alleges a mental problem.

(2) In the case of a petitioner charged with a misdemeanor or gross misdemeanor under chapter 9A.42 RCW, the petitioner shall allege under oath in the petition that the petitioner is the natural or adoptive parent of the alleged victim; that the wrongful conduct charged is the result of parenting problems for which the petitioner is in need of services; that the petitioner is in need of child welfare services under chapter 74.13 RCW to improve his or her parenting skills in order to better provide his or her child or children with the basic necessities of life; that the petitioner wants to correct his or her conduct to reduce the likelihood of harm to his or her minor children; that in the absence of child welfare services the petitioner may be unable to reduce the likelihood of harm to his or her minor children; and that the petitioner has cooperated with the department of social and health services to develop a plan to receive appropriate child welfare services; along with a statement that the person agrees to pay the cost of the services if he or she is financially able to do so. The petition shall also contain a case history and a written service plan from the department of social and health services.

(3) Before entry of an order deferring prosecution, a petitioner shall be advised of his or her rights as an accused and execute, as a condition of receiving treatment, a statement that contains: (a) An acknowledgment of his or her rights; (b) an acknowledgment and waiver of the right to testify, the right to a speedy trial, the right to call witnesses to testify, the right to present evidence in his or her defense, and the right to a jury

trial; (c) a stipulation to the admissibility and sufficiency of the facts contained in the written police report; and (d) an acknowledgment that the statement will be entered and used to support a finding of guilty if the court finds cause to revoke the order granting deferred prosecution. The petitioner shall also be advised that he or she may, if he or she proceeds to trial and is found guilty, be allowed to seek suspension of some or all of the fines and incarceration that may be ordered upon the condition that he or she seek treatment and, further, that he or she may seek treatment from public and private agencies at any time without regard to whether or not he or she is found guilty of the offense charged. He or she shall also be advised that the court will not accept a petition for deferred prosecution from a person who: (i) Sincerely believes that he or she is innocent of the charges ~~((or))~~; (ii) sincerely believes that he or she does not, in fact, suffer from alcoholism, drug addiction, or mental problems, unless the petition for deferred prosecution is under section 18 of this act; or (iii) in the case of a petitioner charged under chapter 9A.42 RCW, sincerely believes that he or she does not need child welfare services.

(4) Before entering an order deferring prosecution, the court shall make specific findings that: (a) The petitioner has stipulated to the admissibility and sufficiency of the facts as contained in the written police report; (b) the petitioner has acknowledged the admissibility of the stipulated facts in any criminal hearing on the underlying offense or offenses held subsequent to revocation of the order granting deferred prosecution; (c) the petitioner has acknowledged and waived the right to testify, the right to a speedy trial, the right to call witnesses to testify, the right to present evidence in his or her defense, and the right to a jury trial; and (d) the petitioner's statements were made knowingly and voluntarily. Such findings shall be included in the order granting deferred prosecution.

Sec. 17. RCW 10.05.090 and 1997 c 229 s 1 are each amended to read as follows:

If a petitioner, who has been accepted for a deferred prosecution, fails or neglects to carry out and fulfill any term or condition of the petitioner's treatment plan or any term or condition imposed in connection with the installation of an interlock or other device under RCW 46.20.720 or section 9 of this act, the facility, center, institution, or agency administering the treatment or the entity administering the use of the device, shall immediately report such breach to the court, the prosecutor, and the petitioner or petitioner's attorney of record, together with its recommendation. The court upon receiving such a report shall hold a hearing to determine whether the petitioner should be removed from the deferred prosecution program. At the hearing, evidence shall be taken of the petitioner's alleged failure to comply with the treatment plan or device installation and the petitioner shall have the right to present evidence on his or her own behalf. The court shall either order that the petitioner continue on the treatment plan or be removed from deferred prosecution. If the petitioner's noncompliance is based on a violation of a term or condition imposed in connection with the installation of an ignition interlock device under section 9 of this act, the court shall either order that the petitioner comply with the term or condition or be removed from deferred prosecution. If removed from deferred prosecution, the court shall enter judgment pursuant to RCW 10.05.020 and, if the charge for which the deferred prosecution was granted was a misdemeanor or gross misdemeanor under Title 46 RCW, shall notify the department of licensing of the removal and entry of judgment.

NEW SECTION. Sec. 18. A new section is added to chapter 10.05 RCW to read as follows:

FIFTY-FOURTH DAY, MARCH 7, 2008

2008 REGULAR SESSION

(1) A person charged with a misdemeanor or gross misdemeanor under RCW 46.61.502 or 46.61.504 who has had no prior offenses as defined in RCW 46.61.5055 and has been assessed pursuant to subsection (3) of this section shall be eligible for a one-time deferred prosecution program.

(2) Before entering an order deferring prosecution under this section, the court shall make a specific finding that the petitioner has no prior offenses as defined in RCW 46.61.5055 and has been assessed by a certified chemical dependency counselor and a licensed mental health professional, and found not to need treatment for alcoholism, drug addiction, or mental problems. As a condition of granting a deferral prosecution petition, the court shall order the petitioner to satisfy the conditions in RCW 10.05.140 and shall order the petitioner to apply for an ignition interlock driver's license from the department of licensing and have a functioning ignition interlock device installed on all motor vehicles operated by the person. The required period of use of the ignition interlock device shall be one year. The court may order supervision of the petitioner during the period of deferral pursuant to RCW 10.05.170.

(3) A petitioner seeking a deferral of prosecution under this section shall undergo an assessment by a certified chemical dependency counselor and a licensed mental health professional to determine whether the petitioner is or is not in need of treatment for alcoholism, drug addiction, or mental problems."

Renumber the remaining sections consecutively and correct any internal references accordingly.

On page 34, line 16 of the title amendment, after "46.20.740," strike "and" and after "46.61.5055" insert ", 10.05.010, 10.05.020, and 10.05.090"

On page 34, line 19 of the title amendment, after "RCW;" insert "adding a new section to chapter 10.05 RCW;"

WITHDRAWAL OF AMENDMENT

On motion of Senator Hargrove, the amendment by Senator Hargrove and others on page 34, line 7 to the committee striking amendment to Engrossed Second Substitute House Bill No. 3254 was withdrawn.

MOTION

Senator Brandland moved that the following amendment by Senator Brandland to the committee striking amendment be adopted.

On page 34, after line 7 of the amendment, insert the following:

"**Sec. 15.** RCW 9.94A.533 and 2007 c 368 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(4);

(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

FIFTY-FOURTH DAY, MARCH 7, 2008

2008 REGULAR SESSION

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(4);

(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.605. 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. This enhancement is mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other 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(4).

(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(4);

(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

FIFTY-FOURTH DAY, MARCH 7, 2008

2008 REGULAR SESSION

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))~~ 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.

Sec. 16. RCW 9.94A.728 and 2007 c 483 s 304 are each amended to read as follows:

No person serving a sentence imposed pursuant to this chapter and committed to the custody of the department shall leave the confines of the correctional facility or be released prior to the expiration of the sentence except as follows:

(1) Except as otherwise provided for in subsection (2) of this section, the term of the sentence of an offender committed to a correctional facility operated by the department may be reduced by earned release time in accordance with procedures that shall be developed and promulgated by the correctional agency having jurisdiction in which the offender is confined. The earned release time shall be for good behavior and good performance, as determined by the correctional agency having jurisdiction. The correctional agency shall not credit the offender with earned release credits in advance of the offender actually earning the credits. Any program established pursuant to this section shall allow an offender to earn early release credits for presentence incarceration. If an offender is transferred from a county jail to the department, the administrator of a county jail facility shall certify to the department the amount of time spent in custody at the facility and the amount of earned release time. An offender who has been convicted of a felony committed after July 23, 1995, that involves any applicable deadly weapon enhancements under RCW 9.94A.533 (3) or (4), or both, shall not receive any good time credits or earned release time for that portion of his or her sentence that results from any deadly weapon enhancements. An offender convicted of vehicular homicide committed while under the influence of intoxicating liquor or any drug that involves a sentence enhancement under RCW 9.94A.533(7) may not receive any earned early release time for the portion of his or her sentence that results from the enhancement.

(a) In the case of an offender convicted of a serious violent offense, or a sex offense that is a class A felony, committed on or after July 1, 1990, and before July 1, 2003, the aggregate earned release time may not exceed fifteen percent of the sentence. In the case of an offender convicted of a serious violent offense, or a sex offense that is a class A felony, committed on or after July 1, 2003, the aggregate earned release time may not exceed ten percent of the sentence.

(b)(i) In the case of an offender who qualifies under (b)(ii) of this subsection, the aggregate earned release time may not exceed fifty percent of the sentence.

(ii) An offender is qualified to earn up to fifty percent of aggregate earned release time under this subsection (1)(b) if he or she:

(A) Is classified in one of the two lowest risk categories under (b)(iii) of this subsection;

(B) Is not confined pursuant to a sentence for:

(I) A sex offense;

(II) A violent offense;

(III) A crime against persons as defined in RCW 9.94A.411;

(IV) A felony that is domestic violence as defined in RCW 10.99.020;

(V) A violation of RCW 9A.52.025 (residential burglary);

(VI) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine; or

(VII) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

(C) Has no prior conviction for:

(I) A sex offense;

(II) A violent offense;

(III) A crime against persons as defined in RCW 9.94A.411;

(IV) A felony that is domestic violence as defined in RCW 10.99.020;

(V) A violation of RCW 9A.52.025 (residential burglary);

(VI) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine; or

(VII) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

(D) Participates in programming or activities as directed by the offender's individual reentry plan as provided under RCW 72.09.270 to the extent that such programming or activities are made available by the department; and

(E) Has not committed a new felony after July 22, 2007, while under community supervision, community placement, or community custody.

(iii) For purposes of determining an offender's eligibility under this subsection (1)(b), the department shall perform a risk assessment of every offender committed to a correctional facility operated by the department who has no current or prior conviction for a sex offense, a violent offense, a crime against persons as defined in RCW 9.94A.411, a felony that is domestic violence as defined in RCW 10.99.020, a violation of RCW 9A.52.025 (residential burglary), a violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine, or a violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor). The department must classify each assessed offender in one of four risk categories between highest and lowest risk.

(iv) The department shall recalculate the earned release time and reschedule the expected release dates for each qualified offender under this subsection (1)(b).

(v) This subsection (1)(b) applies retroactively to eligible offenders serving terms of total confinement in a state correctional facility as of July 1, 2003.

(vi) This subsection (1)(b) does not apply to offenders convicted after July 1, 2010.

(c) In no other case shall the aggregate earned release time

exceed one-third of the total sentence;

(2)(a) A person convicted of a sex offense or an offense categorized as a serious violent offense, assault in the second degree, vehicular homicide, vehicular assault, assault of a child in the second degree, any crime against persons where it is determined in accordance with RCW 9.94A.602 that the offender or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW, committed before July 1, 2000, may become eligible, in accordance with a program developed by the department, for transfer to community custody status in lieu of earned release time pursuant to subsection (1) of this section;

(b) A person convicted of a sex offense, a violent offense, any crime against persons under RCW 9.94A.411(2), or a felony offense under chapter 69.50 or 69.52 RCW, committed on or after July 1, 2000, may become eligible, in accordance with a program developed by the department, for transfer to community custody status in lieu of earned release time pursuant to subsection (1) of this section;

(c) The department shall, as a part of its program for release to the community in lieu of earned release, require the offender to propose a release plan that includes an approved residence and living arrangement. All offenders with community placement or community custody terms eligible for release to community custody status in lieu of earned release shall provide an approved residence and living arrangement prior to release to the community;

(d) The department may deny transfer to community custody status in lieu of earned release time pursuant to subsection (1) of this section if the department determines an offender's release plan, including proposed residence location and living arrangements, may violate the conditions of the sentence or conditions of supervision, place the offender at risk to violate the conditions of the sentence, place the offender at risk to reoffend, or present a risk to victim safety or community safety. The department's authority under this section is independent of any court-ordered condition of sentence or statutory provision regarding conditions for community custody or community placement;

(e) If the department denies transfer to community custody status in lieu of earned early release pursuant to (d) of this subsection, the department may transfer an offender to partial confinement in lieu of earned early release up to three months. The three months in partial confinement is in addition to that portion of the offender's term of confinement that may be served in partial confinement as provided in this section;

(f) An offender serving a term of confinement imposed under RCW 9.94A.670(4)(a) is not eligible for earned release credits under this section;

(3) An offender may leave a correctional facility pursuant to an authorized furlough or leave of absence. In addition, offenders may leave a correctional facility when in the custody of a corrections officer or officers;

(4)(a) The secretary may authorize an extraordinary medical placement for an offender when all of the following conditions exist:

(i) The offender has a medical condition that is serious enough to require costly care or treatment;

(ii) The offender poses a low risk to the community because he or she is physically incapacitated due to age or the medical condition; and

(iii) Granting the extraordinary medical placement will result in a cost savings to the state.

(b) An offender sentenced to death or to life imprisonment without the possibility of release or parole is not eligible for an

extraordinary medical placement.

(c) The secretary shall require electronic monitoring for all offenders in extraordinary medical placement unless the electronic monitoring equipment interferes with the function of the offender's medical equipment or results in the loss of funding for the offender's medical care. The secretary shall specify who shall provide the monitoring services and the terms under which the monitoring shall be performed.

(d) The secretary may revoke an extraordinary medical placement under this subsection at any time;

(5) The governor, upon recommendation from the clemency and pardons board, may grant an extraordinary release for reasons of serious health problems, senility, advanced age, extraordinary meritorious acts, or other extraordinary circumstances;

(6) No more than the final six months of the offender's term of confinement may be served in partial confinement designed to aid the offender in finding work and reestablishing himself or herself in the community. This is in addition to that period of earned early release time that may be exchanged for partial confinement pursuant to subsection (2)(e) of this section;

(7) The governor may pardon any offender;

(8) The department may release an offender from confinement any time within ten days before a release date calculated under this section; and

(9) An offender may leave a correctional facility prior to completion of his or her sentence if the sentence has been reduced as provided in RCW 9.94A.870.

Notwithstanding any other provisions of this section, an offender sentenced for a felony crime listed in RCW 9.94A.540 as subject to a mandatory minimum sentence of total confinement shall not be released from total confinement before the completion of the listed mandatory minimum sentence for that felony crime of conviction unless allowed under RCW 9.94A.540, however persistent offenders are not eligible for extraordinary medical placement.

NEW SECTION. Sec. 17. Sections 15 and 16 of this act apply prospectively only and not retroactively. Those provisions apply only to convictions occurring on or after the effective date of this section."

Renumber the remaining sections consecutively and correct any internal references accordingly.

On page 34, line 16 of the title amendment, after "46.20.740," strike "and 46.61.5055" and insert "46.61.5055, 9.94A.533, and 9.94A.728"

On page 34, line 19 of the title amendment, after "creating" strike "a new section" and insert "new sections"

WITHDRAWAL OF AMENDMENT

On motion of Senator Brandland, the amendment by Senator Brandland on page 34, line 7 to the committee striking amendment to Engrossed Second Substitute House Bill No. 3254 was withdrawn.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Transportation to Engrossed Second Substitute House Bill No. 3254 as amended.

The motion by Senator Kline carried and the committee striking amendment as amended was adopted by voice vote.

MOTION

There being no objection, the following title amendments were adopted:

FIFTY-FOURTH DAY, MARCH 7, 2008

2008 REGULAR SESSION

On page 1, line 2 of the title, after "drugs;" strike the remainder of the title and insert "amending RCW 46.20.342, 46.20.380, 46.20.391, 46.20.400, 46.20.410, 46.20.720, 46.20.740, and 46.61.5055; reenacting and amending RCW 46.20.308 and 46.63.020; adding a new section to chapter 46.04 RCW; adding a new section to chapter 46.68 RCW; adding new sections to chapter 46.20 RCW; creating a new section; and providing an effective date."

On page 34, line 16 of the title amendment, after "46.20.740," strike "and" and after "46.61.5055" insert ", 10.05.010, 10.05.020, 10.05.090, and 10.05.160"

On page 34, line 19 of the title amendment, after "RCW;" insert "adding a new section to chapter 10.05 RCW;"

On page 34, line 16 of the title amendment, after "46.20.740," strike "and 46.61.5055" and insert "46.61.5055, 46.61.502, and 46.61.504"

MOTION

On motion of Senator Haugen, the rules were suspended, Engrossed Second Substitute House Bill No. 3254 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Kline and Brandland spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Second Substitute House Bill No. 3254 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Second Substitute House Bill No. 3254 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 47; Nays, 0; Absent, 1; Excused, 1.

Voting yea: Senators Benton, Berkey, Brandland, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 47

Absent: Senator Holmquist - 1

Excused: Senator Brown - 1

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 3254 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

HOUSE BILL NO. 2594, by Representatives Kirby, Ormsby, Kenney and Upthegrove

Distributing the insurance commissioner's examination reports.

The measure was read the second time.

MOTION

On motion of Senator Berkey, the rules were suspended, House Bill No. 2594 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Berkey and Benton spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 2594.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 2594 and the bill passed the Senate by the following vote: Yeas, 47; Nays, 0; Absent, 1; Excused, 1.

Voting yea: Senators Benton, Berkey, Brandland, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 47

Absent: Senator Hobbs - 1

Excused: Senator Brown - 1

HOUSE BILL NO. 2594, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

HOUSE BILL NO. 2540, by Representatives Warnick, Walsh and Kristiansen

Regarding the advisory committee that represents the interest of hunters and fishers with disabilities.

The measure was read the second time.

MOTION

On motion of Senator Jacobsen, the rules were suspended, House Bill No. 2540 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Jacobsen and Morton spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 2540.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 2540 and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Benton, Berkey, Brandland, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 48

Excused: Senator Brown - 1

HOUSE BILL NO. 2540, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

FIFTY-FOURTH DAY, MARCH 7, 2008

SUBSTITUTE HOUSE BILL NO. 2729, by House Committee on Technology, Energy & Communications (originally sponsored by Representatives Eddy, Pedersen, Appleton, Lantz, Williams, Upthegrove, Santos, Simpson, Hasegawa, Ericks, Ormsby and Springer)

Addressing the reading and handling of certain identification documents.

The measure was read the second time.

MOTION

Senator Murray moved that the following committee striking amendment by the Committee on Transportation be adopted.

Strike everything after the enacting clause and insert the following:

NEW SECTION. Sec. 1. The legislature finds that:

(1) Washington state recognizes the importance of protecting its citizens from unwanted wireless surveillance.

(2) Enhanced drivers' licenses and enhanced identicards are intended to facilitate efficient travel at land and sea borders between the United States, Canada, and Mexico, not to facilitate the profiling and tracking of individuals.

(3) Easy access to the information found on enhanced drivers' licenses and enhanced identicards could facilitate the commission of other unwanted offenses, such as identity theft.

NEW SECTION. Sec. 2. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Enhanced driver's license" means a driver's license that is issued under RCW 46.20.202.

(2) "Enhanced identicard" means an identicard that is issued under RCW 46.20.202.

(3) "Identification document" means an enhanced driver's license or an enhanced identicard.

(4) "Radio frequency identification" means a technology that uses radio waves to transmit data remotely to readers.

(5) "Reader" means a scanning device that is capable of using radio waves to communicate with an identification document and read the data transmitted by the identification document.

(6) "Remotely" means that no physical contact between the identification document and a reader is necessary in order to transmit data using radio waves.

(7) "Unique personal identifier number" means a randomly assigned string of numbers or symbols issued by the department of licensing that is encoded on an identification document and is intended to be read remotely by a reader to identify the identification document that has been issued to a particular individual.

NEW SECTION. Sec. 3. (1) Except as provided in subsection (2) of this section, a person is guilty of a class C felony if the person intentionally possesses, or reads or captures remotely using radio waves, information contained on another person's identification document, including the unique personal identifier number encoded on the identification document, without that person's express knowledge or consent.

(2) This section does not apply to:

(a) A person or entity that reads an identification document to facilitate border crossing;

(b) A person or entity that reads a person's identification document in the course of an act of good faith security research, experimentation, or scientific inquiry including, but not limited to, activities useful in identifying and analyzing security flaws and vulnerabilities; or

(c) A person or entity that unintentionally reads an identification document remotely in the course of operating its

2008 REGULAR SESSION

own radio frequency identification system, provided that the inadvertently received information:

(i) Is not disclosed to any other party;

(ii) Is not used for any purpose; and

(iii) Is not stored or is promptly destroyed.

NEW SECTION. Sec. 4. The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying chapter 19.86 RCW. A violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying chapter 19.86 RCW.

Sec. 5. RCW 42.56.230 and 2005 c 274 s 403 are each amended to read as follows:

The following personal information is exempt from public inspection and copying under this chapter:

(1) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients;

(2) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy;

(3) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would (a) be prohibited to such persons by RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (b) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer; ~~(and)~~

(4) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers, except when disclosure is expressly required by or governed by other law; and

(5) Documents and related materials and scanned images of documents and related materials used to prove identity, age, residential address, social security number, or other personal information required to apply for a driver's license or identicard.

Sec. 6. RCW 42.56.330 and 2007 c 197 s 5 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 other fare payment media including, but not limited to, stored value smart cards and magnetic strip cards, except that an agency may disclose this 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, or to the news media when reporting on public

FIFTY-FOURTH DAY, MARCH 7, 2008

2008 REGULAR SESSION

transportation or public safety. This information may also be disclosed at the agency's discretion to governmental agencies or groups concerned with public transportation or public safety;

(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; ~~(and)~~

(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.

NEW SECTION. Sec. 7. Sections 1 through 4 of this act constitute a new chapter in Title 9A RCW."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Transportation to Substitute House Bill No. 2729.

The motion by Senator Murray carried and the committee striking amendment was adopted by voice vote.

MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 1 of the title, after "documents;" strike the remainder of the title and insert "amending RCW 42.56.230 and 42.56.330; adding a new chapter to Title 9A RCW; and prescribing penalties."

MOTION

On motion of Senator Murray, the rules were suspended, Substitute House Bill No. 2729 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Murray spoke in favor of passage of the bill.

PARLIAMENTARY INQUIRY

Senator Benton: "Was there an amendment adopted here on the floor of the Senate to this bill?"

REPLY BY THE PRESIDENT

President Owen: "There was a committee amendment."

MOTION

On motion of Senator Regala, Senator Rockefeller was excused.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2729 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2729 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 47; Nays, 0; Absent, 0; Excused, 2.

Voting yea: Senators Benton, Berkey, Brandland, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 47

Excused: Senators Brown and Rockefeller - 2

SUBSTITUTE HOUSE BILL NO. 2729 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 2817, by House Committee on Transportation (originally sponsored by Representatives Campbell, Green, Morrell, Hudgins and McCune)

Concerning motor vehicles, vehicles, and vessels contaminated with methamphetamines.

The measure was read the second time.

MOTION

Senator Marr moved that the following committee striking amendment by the Committee on Water, Energy & Telecommunications be adopted.

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 64.44.050 and 2006 c 339 s 205 are each amended to read as follows:

(1) An owner of contaminated property who desires to have the property decontaminated, demolished, or disposed of shall use the services of an authorized contractor unless otherwise authorized by the local health officer. The contractor and property owner shall prepare and submit a written work plan for decontamination, demolition, or disposal to the local health officer. The local health officer may charge a reasonable fee for review of the work plan. If the work plan is approved and the decontamination, demolition, or disposal is completed and the property is retested according to the plan and properly documented, then the health officer shall allow reuse of the property. A release for reuse document shall be recorded in the real property records indicating the property has been decontaminated, demolished, or disposed of in accordance with rules of the state department of health. The property owner is responsible for: (a) The costs of any property testing which may be required to demonstrate the presence or absence of hazardous chemicals; and (b) the costs of the property's decontamination,

FIFTY-FOURTH DAY, MARCH 7, 2008

demolition, and disposal expenses, as well as costs incurred by the local health officer resulting from the enforcement of this chapter.

(2)(a) In a case where the contaminated property is a motor vehicle as defined in RCW 46.04.320, a vehicle as defined in RCW 46.04.670, or a vessel as defined in RCW 88.02.010, and the local health officer has issued an order declaring the property unfit and prohibiting its use, the city or county in which the property is located shall take action to prohibit use, occupancy, or removal, and shall require demolition, disposal, or decontamination of the property. The city, county, or local law enforcement agency may impound the vehicle or vessel to enforce this chapter.

(b) The property owner shall have the property demolished, disposed of, or decontaminated by an authorized contractor, or under a written work plan approved by the local health officer, within thirty days of receiving the order declaring the property unfit and prohibited from use. After all procedures granting the right of notice and the opportunity to appeal in RCW 64.44.030 have been exhausted, if the property owner has not demolished, disposed of, or decontaminated the property using an authorized contractor, or under a written work plan approved by the local health officer within thirty days, then the local health officer or the local law enforcement agency may demolish, dispose of, or decontaminate the property. The property owner is responsible for the costs of the property's demolition, disposal, or decontamination, as well as all costs incurred by the local health officer or the local law enforcement agency resulting from the enforcement of this chapter, except as otherwise provided under this subsection.

(c) The legal owner of a motor vehicle as defined in RCW 46.04.320, a vehicle as defined in RCW 46.04.670, or a vessel as defined in RCW 88.02.010 whose sole basis of ownership is a bona fide security interest is responsible for costs under this subsection if the legal owner had knowledge of or consented to any act or omission that caused contamination of the vehicle or vessel.

(d) If the vehicle or vessel has been stolen and the property owner neither had knowledge of nor consented to any act or omission that contributed to the theft and subsequent contamination of the vehicle or vessel, the owner is not responsible for costs under this subsection. However, if the registered owner is insured, the registered owner shall, within fifteen calendar days of receiving an order declaring the property unfit and prohibiting its use, submit a claim to his or her insurer for reimbursement of costs of the property's demolition, disposal, or decontamination, as well as all costs incurred by the local health officer or the local law enforcement agency resulting from the enforcement of this chapter, and shall provide proof of claim to the local health officer or the local law enforcement agency.

(e) If the property owner has not acted to demolish, dispose of, or decontaminate as set forth in this subsection regardless of responsibility for costs, and the local health officer or local law enforcement agency has taken responsibility for demolition, disposal, or decontamination, including all associated costs, then all rights, title, and interest in the property shall be deemed forfeited to the local health jurisdiction or the local law enforcement agency.

(f) This subsection may not be construed to limit the authority of a city, county, local law enforcement agency, or local health officer to take action under this chapter to require the owner of the real property upon which the contaminated vehicle or vessel is located to comply with the requirements of this chapter, including provisions for the right of notice and opportunity to appeal as provided in RCW 64.44.030.

(3) Except as provided in subsection (2) of this section, the local health officer has thirty days from the issuance of an order declaring a property unfit and prohibiting its use to establish a reasonable timeline for decontamination. The department of

2008 REGULAR SESSION

health shall establish the factors to be considered by the local health officer in establishing the appropriate amount of time.

The local health officer shall notify the property owner of the proposed time frame by United States mail to the last known address. Notice shall be postmarked no later than the thirtieth day from the issuance of the order. The property owner may request a modification of the time frame by submitting a letter identifying the circumstances which justify such an extension to the local health officer within thirty-five days of the date of the postmark on the notification regardless of when received.

NEW SECTION. Sec. 2. A new section is added to chapter 64.44 RCW to read as follows:

(1) The Washington state department of licensing shall take action to place notification on the title of any motor vehicle as defined in RCW 46.04.320, a vehicle as defined in RCW 46.04.670, or a vessel as defined in RCW 88.02.010, that the vehicle or vessel has been declared unfit and prohibited from use by order of the local health officer under this chapter. When satisfactory decontamination has been completed and the contaminated property has been retested according to the written work plan approved by the local health officer, a release for reuse document shall be issued by the local health officer, and the department of licensing shall place notification on the title of that vehicle or vessel as having been decontaminated and released for reuse.

(2)(a) A person is guilty of a gross misdemeanor if he or she advertises for sale or sells a motor vehicle as defined in RCW 46.04.320, a vehicle as defined in RCW 46.04.670, or a vessel as defined in RCW 88.02.010, that has been declared unfit and prohibited from use by the local health officer under this chapter when:

(i) The person has knowledge that the local health officer has issued an order declaring the vehicle or vessel unfit and prohibiting its use; or

(ii) A notification has been placed on the title under subsection (1) of this section that the vehicle or vessel has been declared unfit and prohibited from use.

(b) A person may advertise or sell a vehicle or vessel when a release for reuse document has been issued by the local health officer under this chapter or a notification has been placed on the title under subsection (1) of this section that the vehicle or vessel has been decontaminated and released for reuse.

NEW SECTION. Sec. 3. A new section is added to chapter 46.55 RCW to read as follows:

An impound under RCW 64.44.050 shall not be considered an impound under this chapter. A tow operator who contracts with a law enforcement agency for transporting a vehicle impounded under RCW 64.44.050 shall only remove the vehicle to a secure public facility, and is not required to store or dispose of the vehicle. The vehicle shall remain in the care, custody, and control of the law enforcement agency to be demolished, disposed of, or decontaminated as provided under RCW 64.44.050. The law enforcement agency shall pay for all costs incurred as a result of the towing if the vehicle owner does not pay within thirty days. The law enforcement agency may seek reimbursement from the owner.

NEW SECTION. Sec. 4. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2008, in the omnibus transportation appropriations act, this act is null and void."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Water, Energy & Telecommunications to Engrossed Second Substitute House Bill No. 2817.

The motion by Senator Marr carried and the committee striking amendment was adopted by voice vote.

MOTION

FIFTY-FOURTH DAY, MARCH 7, 2008

2008 REGULAR SESSION

There being no objection, the following title amendment was adopted:

On page 1, line 1 of the title, after "Relating to" strike the remainder of the title and insert "contaminated motor vehicles, vehicles, and vessels; amending RCW 64.44.050; adding a new section to chapter 64.44 RCW; adding a new section to chapter 46.55 RCW; and creating a new section."

MOTION

On motion of Senator Marr, the rules were suspended, Engrossed Second Substitute House Bill No. 2817 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Marr spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Second Substitute House Bill No. 2817 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Second Substitute House Bill No. 2817 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Benton, Berkey, Brandland, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 48

Excused: Senator Brown - 1

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 2817 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 2885, by House Committee on Commerce & Labor (originally sponsored by Representatives Williams, Conway, Newhouse, Sells, Chandler, Condotta and Moeller)

Modifying industrial insurance coverage for geoduck harvesters.

The measure was read the second time.

MOTION

On motion of Senator Kohl-Welles, the rules were suspended, Substitute House Bill No. 2885 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Kohl-Welles and Holmquist spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2885.

ROLL CALL

The Secretary called the roll on the final passage of

Substitute House Bill No. 2885 and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 49

SUBSTITUTE HOUSE BILL NO. 2885, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

HOUSE BILL NO. 3024, by Representatives Conway, Fromhold, Bailey, Crouse, Hurst, Simpson and Linville

Purchasing service credit in plan 2 and plan 3 of the teachers' retirement system for public education experience performed as a teacher in a public school in another state or with the federal government.

The measure was read the second time.

MOTION

On motion of Senator Prentice, the rules were suspended, House Bill No. 3024 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Prentice spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 3024.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 3024 and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 49

HOUSE BILL NO. 3024, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

HOUSE BILL NO. 3019, by Representatives Fromhold, Conway, Bailey, Crouse, Hurst and Simpson

Addressing service credit for members working a partial year in plans 2 and 3 of the teachers' retirement system and the school employees' retirement system.

The measure was read the second time.

FIFTY-FOURTH DAY, MARCH 7, 2008

MOTION

On motion of Senator Prentice, the rules were suspended, House Bill No. 3019 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Prentice spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 3019.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 3019 and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 49

HOUSE BILL NO. 3019, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 3139, by House Committee on Appropriations (originally sponsored by Representatives Conway, Wood, Green, Moeller, Simpson and Ormsby)

Providing for stays of industrial insurance orders on appeal.

The measure was read the second time.

MOTION

Senator Kohl-Welles moved that the following committee striking amendment by the Committee on Labor, Commerce, Research & Development be not adopted.

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 51.52.050 and 2004 c 243 s 8 are each amended to read as follows:

(1) Whenever the department has made any order, decision, or award, it shall promptly serve the worker, beneficiary, employer, or other person affected thereby, with a copy thereof by mail, which shall be addressed to such person at his or her last known address as shown by the records of the department. The copy, in case the same is a final order, decision, or award, shall bear on the same side of the same page on which is found the amount of the award, a statement, set in black faced type of at least ten point body or size, that such final order, decision, or award shall become final within sixty days from the date the order is communicated to the parties unless a written request for reconsideration is filed with the department of labor and industries, Olympia, or an appeal is filed with the board of industrial insurance appeals, Olympia (~~:- PROVIDED, That~~). However, a department order or decision making demand, whether with or without penalty, for repayment of sums paid to a provider of medical, dental, vocational, or other health services rendered to an industrially injured worker, shall state that such order or decision shall become final within twenty days from the date the order or decision is communicated to the

2008 REGULAR SESSION

parties unless a written request for reconsideration is filed with the department of labor and industries, Olympia, or an appeal is filed with the board of industrial insurance appeals, Olympia.

(2)(a) Whenever the department has taken any action or made any decision relating to any phase of the administration of this title the worker, beneficiary, employer, or other person aggrieved thereby may request reconsideration of the department, or may appeal to the board. In an appeal before the board, the appellant shall have the burden of proceeding with the evidence to establish a prima facie case for the relief sought in such appeal (~~:- PROVIDED, That~~).

(b) An order by the department awarding benefits shall become effective and benefits due on the date issued. Subject to (b)(i) and (ii) of this subsection, if the department order is appealed the order shall not be stayed pending a final decision on the merits unless ordered by the board. Upon issuance of the order granting the appeal, the board will provide the worker with notice concerning the potential of an overpayment of benefits paid pending the outcome of the appeal and the requirements for interest on unpaid benefits pursuant to RCW 51.52.135. A worker may request that benefits cease pending appeal at any time following the employer's motion for stay or the board's order granting appeal. The request must be submitted in writing to the employer, the board, and the department. Any employer may move for a stay of the order on appeal, in whole or in part. The motion must be filed within fifteen days of the order granting appeal. The board shall conduct an expedited review of the claim file provided by the department as it existed on the date of the department order. The board shall issue a final decision within twenty-five days of the filing of the motion for stay or the order granting appeal, whichever is later. The board's final decision may be appealed to superior court in accordance with RCW 51.52.110. The board shall grant a motion to stay if the moving party demonstrates that it is more likely than not to prevail on the facts as they existed at the time of the order on appeal. The board shall not consider the likelihood of recoupment of benefits as a basis to grant or deny a motion to stay.

(i) If upon reconsideration requested by a worker or medical provider, the department has ordered an increase in a permanent partial disability award from the amount reflected in an earlier order, the award reflected in the earlier order shall not be stayed pending a final decision on the merits. However, the increase is stayed without further action by the board pending a final decision on the merits.

(ii) If any party appeals an order establishing a worker's wages or the compensation rate at which a worker will be paid temporary or permanent total disability or loss of earning power benefits, the worker shall receive payment pending a final decision on the merits based on the following:

(A) When the employer is self-insured, the wage calculation or compensation rate the employer most recently submitted to the department; or

(B) When the employer is insured through the state fund, the highest wage amount or compensation rate uncontested by the parties.

Payment of benefits or consideration of wages at a rate that is higher than that specified in (b)(ii)(A) or (B) of this subsection is stayed without further action by the board pending a final decision on the merits.

(c) In an appeal from an order of the department that alleges willful misrepresentation, the department or self-insured employer shall initially introduce all evidence in its case in chief. Any such person aggrieved by the decision and order of the board may thereafter appeal to the superior court, as prescribed in this chapter.

Sec. 2. RCW 51.32.240 and 2004 c 243 s 7 are each amended to read as follows:

(1)(a) Whenever any payment of benefits under this title is made because of clerical error, mistake of identity, innocent misrepresentation by or on behalf of the recipient thereof

FIFTY-FOURTH DAY, MARCH 7, 2008

mistakenly acted upon, or any other circumstance of a similar nature, all not induced by willful misrepresentation, the recipient thereof shall repay it and recoupment may be made from any future payments due to the recipient on any claim with the state fund or self-insurer, as the case may be. The department or self-insurer, as the case may be, must make claim for such repayment or recoupment within one year of the making of any such payment or it will be deemed any claim therefor has been waived.

(b) Except as provided in subsections (3), (4), and (5) of this section, the department may only assess an overpayment of benefits because of adjudicator error when the order upon which the overpayment is based is not yet final as provided in RCW 51.52.050 and 51.52.060. "Adjudicator error" includes the failure to consider information in the claim file, failure to secure adequate information, or an error in judgment.

(c) The director, pursuant to rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise his or her discretion to waive, in whole or in part, the amount of any such timely claim where the recovery would be against equity and good conscience.

(2) Whenever the department or self-insurer fails to pay benefits because of clerical error, mistake of identity, or innocent misrepresentation, all not induced by recipient willful misrepresentation, the recipient may request an adjustment of benefits to be paid from the state fund or by the self-insurer, as the case may be, subject to the following:

(a) The recipient must request an adjustment in benefits within one year from the date of the incorrect payment or it will be deemed any claim therefore has been waived.

(b) The recipient may not seek an adjustment of benefits because of adjudicator error. Adjustments due to adjudicator error are addressed by the filing of a written request for reconsideration with the department of labor and industries or an appeal with the board of industrial insurance appeals within sixty days from the date the order is communicated as provided in RCW 51.52.050. "Adjudicator error" includes the failure to consider information in the claim file, failure to secure adequate information, or an error in judgment.

(3) Whenever the department issues an order rejecting a claim for benefits paid pursuant to RCW 51.32.190 or 51.32.210, after payment for temporary disability benefits has been paid by a self-insurer pursuant to RCW 51.32.190(3) or by the department pursuant to RCW 51.32.210, the recipient thereof shall repay such benefits and recoupment may be made from any future payments due to the recipient on any claim with the state fund or self-insurer, as the case may be. The director, under rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise discretion to waive, in whole or in part, the amount of any such payments where the recovery would be against equity and good conscience.

(4)(a) Whenever any payment of benefits under this title has been made pursuant to an adjudication by the department or by order of the board or any court and timely appeal therefrom has been made where the final decision is that any such payment was made pursuant to an erroneous adjudication, the recipient thereof shall repay it and recoupment may be made from any future payments due to the recipient on any claim (~~with the state fund or self-insurer, as the case may be~~) whether state funded or self-insured.

(b) The department shall establish procedures by rule to collect information concerning self-insured claim overpayments resulting from decisions of the board or court, and to recoup such overpayments from state fund claims. If recovery is made in whole or in part on behalf of a self-insurer from a worker's state fund claim, the amount recovered shall be paid to the self-insurer by the department. The department may provide overpayment information to a self-insurer when the worker is entitled to benefits from which the self-insurer can collect the

2008 REGULAR SESSION

amount due, in whole or in part, on behalf of the department or another self-insurer. In these cases, the self-insurer shall pay directly to the department any amounts recovered. The department shall credit the amounts recovered to the appropriate workers' compensation funds or shall forward any amounts collected on behalf of another self-insurer, as the case may be.

(c) For purposes of this subsection, "recipient" does not include health service providers whose treatment or services were authorized by the department or self-insurer.

(d) The department or self-insurer may recover overpayments for health services from any entity that provided health insurance to the worker to the extent that the health insurance entity would have provided health insurance benefits but for workers' compensation coverage.

(e) The director, pursuant to rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise ~~(his)~~ discretion to waive, in whole or in part, the amount of any such payments where the recovery would be against equity and good conscience.

(5)(a) Whenever any payment of benefits under this title has been induced by willful misrepresentation the recipient thereof shall repay any such payment together with a penalty of fifty percent of the total of any such payments and the amount of such total sum may be recouped from any future payments due to the recipient on any claim with the state fund or self-insurer against whom the willful misrepresentation was committed, as the case may be, and the amount of such penalty shall be placed in the supplemental pension fund. Such repayment or recoupment must be demanded or ordered within three years of the discovery of the willful misrepresentation.

(b) For purposes of this subsection (5), it is willful misrepresentation for a person to obtain payments or other benefits under this title in an amount greater than that to which the person otherwise would be entitled. Willful misrepresentation includes:

(i) Willful false statement; or

(ii) Willful misrepresentation, omission, or concealment of any material fact.

(c) For purposes of this subsection (5), "willful" means a conscious or deliberate false statement, misrepresentation, omission, or concealment of a material fact with the specific intent of obtaining, continuing, or increasing benefits under this title.

(d) For purposes of this subsection (5), failure to disclose a work-type activity must be willful in order for a misrepresentation to have occurred.

(e) For purposes of this subsection (5), a material fact is one which would result in additional, increased, or continued benefits, including but not limited to facts about physical restrictions, or work-type activities which either result in wages or income or would be reasonably expected to do so. Wages or income include the receipt of any goods or services. For a work-type activity to be reasonably expected to result in wages or income, a pattern of repeated activity must exist. For those activities that would reasonably be expected to result in wages or produce income, but for which actual wage or income information cannot be reasonably determined, the department shall impute wages pursuant to RCW 51.08.178(4).

(6) The worker, beneficiary, or other person affected thereby shall have the right to contest an order assessing an overpayment pursuant to this section in the same manner and to the same extent as provided under RCW 51.52.050 and 51.52.060. In the event such an order becomes final under chapter 51.52 RCW and notwithstanding the provisions of subsections (1) through (5) of this section, the director, director's designee, or self-insurer may file with the clerk in any county within the state a warrant in the amount of the sum representing the unpaid overpayment and/or penalty plus interest accruing from the date the order became final. The clerk of the county in which the warrant is filed shall immediately designate a superior court

FIFTY-FOURTH DAY, MARCH 7, 2008

cause number for such warrant and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the worker, beneficiary, or other person mentioned in the warrant, the amount of the unpaid overpayment and/or penalty plus interest accrued, and the date the warrant was filed. The amount of the warrant as docketed shall become a lien upon the title to and interest in all real and personal property of the worker, beneficiary, or other person against whom the warrant is issued, the same as a judgment in a civil case docketed in the office of such clerk. The sheriff shall then proceed in the same manner and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgment in the superior court. Such warrant so docketed shall be sufficient to support the issuance of writs of garnishment in favor of the department or self-insurer in the manner provided by law in the case of judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee under RCW 36.18.012(10), which shall be added to the amount of the warrant. A copy of such warrant shall be mailed to the worker, beneficiary, or other person within three days of filing with the clerk.

The director, director's designee, or self-insurer may issue to any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, a notice to withhold and deliver property of any kind if there is reason to believe that there is in the possession of such person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, property that is due, owing, or belonging to any worker, beneficiary, or other person upon whom a warrant has been served for payments due the department or self-insurer. The notice and order to withhold and deliver shall be served by certified mail accompanied by an affidavit of service by mailing or served by the sheriff of the county, or by the sheriff's deputy, or by any authorized representative of the director, director's designee, or self-insurer. Any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state upon whom service has been made shall answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired or in the notice and order to withhold and deliver. In the event there is in the possession of the party named and served with such notice and order, any property that may be subject to the claim of the department or self-insurer, such property shall be delivered forthwith to the director, the director's authorized representative, or self-insurer upon demand. If the party served and named in the notice and order fails to answer the notice and order within the time prescribed in this section, the court may, after the time to answer such order has expired, render judgment by default against the party named in the notice for the full amount, plus costs, claimed by the director, director's designee, or self-insurer in the notice. In the event that a notice to withhold and deliver is served upon an employer and the property found to be subject thereto is wages, the employer may assert in the answer all exemptions provided for by chapter 6.27 RCW to which the wage earner may be entitled.

This subsection shall only apply to orders assessing an overpayment which are issued on or after July 28, 1991: PROVIDED, That this subsection shall apply retroactively to all orders assessing an overpayment resulting from fraud, civil or criminal.

(7) Orders assessing an overpayment which are issued on or after July 28, 1991, shall include a conspicuous notice of the collection methods available to the department or self-insurer.

NEW SECTION. Sec. 3. A new section is added to chapter 51.52 RCW to read as follows:

(1) The department shall study appeals of workers' compensation cases and collect information on the impacts of this act on state fund and self-insured workers and employers.

2008 REGULAR SESSION

The study shall consider the types of benefits that may be paid pending an appeal, and shall include, but not be limited to:

- (a) The frequency and outcomes of appeals;
- (b) The duration of appeals and any procedural or process changes made by the board to implement this act and expedite the process;
- (c) The number of and amount of overpayments resulting from decisions of the board or court; and
- (d) The processes used and efforts made to recoup overpayments and the results of those efforts.

(2) State fund and self-insured employers shall provide the information requested by the department to conduct the study.

(3) The department shall report to the workers' compensation advisory committee by July 1, 2009, on the preliminary results of the study. By December 1, 2009, and annually thereafter, with the final report due by December 1, 2011, the department shall report to the workers' compensation advisory committee and the appropriate committees of the legislature on the results of the study. The workers' compensation advisory committee shall provide its recommendations for addressing overpayments resulting from this act, including the need for and ability to fund a permanent method to reimburse employer and state fund overpayment costs.

NEW SECTION. Sec. 4. Section 2 of this act takes effect July 1, 2009.

NEW SECTION. Sec. 5. This act applies to orders issued on or after the effective date of this section."

On page 1, line 1 of the title, after "appeal;" strike the remainder of the title and insert "amending RCW 51.52.050 and 51.32.240; adding a new section to chapter 51.52 RCW; creating a new section; and providing an effective date."

The President declared the question before the Senate to be the motion by Senator Kohl-Welles to not adopt the committee striking amendment by the Committee on Labor, Commerce, Research & Development to Engrossed Second Substitute House Bill No. 3139.

The motion by Senator Kohl-Welles carried and the committee striking amendment was not adopted by voice vote.

MOTION

Senator Kohl-Welles moved that the following striking amendment by Senator Kohl-Welles, Murray and Holmquist be adopted:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. A new section is added to chapter 51.52 RCW to read as follows:

(1) The department shall study appeals of workers' compensation cases and collect information concerning the impacts on employees and employers of a requirement that employers pay workers' compensation benefits pending an employer appeal. The study shall consider the types of benefits that may be paid pending an appeal, and shall include, but not be limited to:

- (a) The issues, frequency, and outcomes of appeals;
- (b) The duration of appeals;
- (c) The number of cases that may be affected by the payment of benefits pending an appeal and the potential for overpayments; and
- (d) The processes used and efforts made to recoup overpayments and the results of those efforts.

(2) State fund and self-insured employers shall provide the information requested by the department to conduct the study.

(3) The department shall report to the workers' compensation advisory committee and the appropriate committees of the legislature by December 1, 2008, on the results of the study. By December 31, 2008, the workers' compensation advisory committee shall provide its

FIFTY-FOURTH DAY, MARCH 7, 2008

2008 REGULAR SESSION

recommendations for addressing payment of benefits pending employer appeals, any procedural or process changes that may be considered by the board to expedite the appeals process, the need for a permanent funding source to reimburse employer and state fund overpayment costs, and the method to fund such a source if needed."

Senators Kohl-Welles and Holmquist spoke in favor of adoption of the striking amendment.

The President declared the question before the Senate to be the adoption of the striking amendment by Senator Kohl-Welles, Murray and Holmquist to Engrossed Second Substitute House Bill No. 3139.

The motion by Senator Kohl-Welles carried and the striking amendment was adopted by voice vote.

MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 1 of the title, after "appeal;" strike the remainder of the title and insert "and creating a new section."

MOTION

On motion of Senator Kohl-Welles, the rules were suspended, Engrossed Second Substitute House Bill No. 3139 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Kohl-Welles spoke in favor of passage of the bill.

MOTION

On motion of Senator Brandland, Senator Swecker was excused.

The President declared the question before the Senate to be the final passage of Engrossed Second Substitute House Bill No. 3139 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Second Substitute House Bill No. 3139 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 49

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 3139 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

HOUSE BILL NO. 2949, by Representatives Linville, Conway, Armstrong, Condotta, Fromhold and Wood

Designating nonappropriated expenses of the liquor control board paid from the liquor revolving fund.

The measure was read the second time.

MOTION

On motion of Senator Prentice, the rules were suspended, House Bill No. 2949 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Prentice spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 2949.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 2949 and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 49

HOUSE BILL NO. 2949, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 2279, by House Committee on Housing (originally sponsored by Representatives Darneille, Springer, Pettigrew, O'Brien, Hasegawa and Santos)

Prohibiting discrimination against affordable housing developments.

The measure was read the second time.

MOTION

Senator Kauffman moved that the following committee striking amendment by the Committee on Consumer Protection & Housing be adopted.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. It is the public policy of the state to assist in making affordable housing available throughout the state. The legislature recognizes that despite ongoing efforts there is still a lack of affordable housing in many areas. The legislature also recognizes that some local governments have imposed development requirements on affordable housing developments that are not generally imposed on other housing developments. The intent of this legislature is to prohibit discrimination against affordable housing developments.

NEW SECTION. Sec. 2. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Affordable housing development" means a housing development in which at least twenty-five percent of the dwelling units within the development are set aside for or are occupied by low-income households at a sales price or rent amount that is considered affordable by a federal, state, or local government housing program.

FIFTY-FOURTH DAY, MARCH 7, 2008

(2) "Dwelling unit" means that part of a housing development that is used as a home, residence, or place to sleep by one person or two or more persons maintaining a common household.

(3) "Housing development" means a proposed or existing structure that is used as a home, residence, or place to sleep by one or more persons including, but not limited to, single-family residences, manufactured homes, multifamily housing, group homes, and foster care facilities.

(4) "Low-income household" means a single person, family, or unrelated persons living together whose adjusted income is less than eighty percent of the median family income, adjusted for household size, for the county where the affordable housing development is located.

NEW SECTION. Sec. 3. (1) A city, county, or other local governmental entity or agency may not adopt, impose, or enforce requirements on an affordable housing development that are different than the requirements imposed on housing developments generally.

(2) This section does not prohibit any city, county, or other local governmental entity or agency from extending preferential treatment to affordable housing developments intended for including, but not limited to, occupancy by homeless persons, farmworkers, persons with disabilities, senior citizens, or low-income households. Preferential treatment may include, but is not limited to: A reduction or waiver of fees or changes in applicable requirements including, without limitation, architectural requirements, site development requirements, property line requirements, building setback requirements, or vehicle parking requirements; or other treatment that reduces or is likely to reduce the development or operating costs of an affordable housing development.

NEW SECTION. Sec. 4. Sections 2 and 3 of this act constitute a new chapter in Title 43 RCW."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Consumer Protection & Housing to Substitute House Bill No. 2279.

The motion by Senator Kauffman carried and the committee striking amendment was adopted by voice vote.

MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 2 of the title, after "developments;" strike the remainder of the title and insert "adding a new chapter to Title 43 RCW; and creating a new section."

MOTION

On motion of Senator Kauffman, the rules were suspended, Substitute House Bill No. 2279 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Kauffman and Honeyford spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2279 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2279 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown,

2008 REGULAR SESSION

Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 49

SUBSTITUTE HOUSE BILL NO. 2279 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

HOUSE BILL NO. 2467, by Representatives Warnick, Blake, Grant, Kretz, Newhouse and VanDeWege

Regulating fertilizers.

The measure was read the second time.

MOTION

Senator Rasmussen moved that the following committee amendment by the Committee on Agriculture & Rural Economic Development be not adopted.

On page 3, line 25, after "registered," insert "However, a customer-formula fertilizer must comply with all applicable requirements of chapter 70.105 RCW and the resource conservation and recovery act, 42 U.S.C. Sec. 6901 et seq."

The President declared the question before the Senate to be the motion by Senator Rasmussen to not adopt the committee amendment by the Committee on Agriculture & Rural Economic Development to House Bill No. 2467.

The motion by Senator Rasmussen carried and the committee amendment was not adopted by voice vote.

MOTION

Senator Rasmussen moved that the following striking amendment by Senators Rasmussen and Schoesler be adopted:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 15.54.325 and 1999 c 383 s 1 and 1999 c 382 s 1 are each reenacted and amended to read as follows:

(1) No person may distribute in this state a commercial fertilizer until it has been registered with the department by the producer, importer, or packager of that product. ~~((A bulk fertilizer does not require registration if all commercial fertilizer products contained in the final product are registered.))~~

(2) An application for registration ~~((shall))~~ must be made on a form furnished by the department and ~~((shall))~~ must include the following:

- (a) The product name;
- (b) The brand and grade;
- (c) The guaranteed analysis;
- (d) Name, address, and phone number of the registrant;
- (e) ~~((Labels))~~ A label for each product being registered;
- (f) Identification of those products that are (i) waste-derived fertilizers, (ii) micronutrient fertilizers, or (iii) fertilizer materials containing phosphate;

(g) The concentration of each metal, for which standards are established under RCW 15.54.800, in each product being registered, unless the product is (i) anhydrous ammonia or a solution derived solely from dissolving anhydrous ammonia in water, (ii) a customer-formula fertilizer containing only registered commercial fertilizers, or (iii) a packaged commercial

FIFTY-FOURTH DAY, MARCH 7, 2008

fertilizer whose plant nutrient content is present in the form of a single chemical compound which is registered in compliance with this chapter and the product is not blended with any other material. The provisions of (g)(i) of this subsection do not apply if the anhydrous ammonia is derived in whole or in part from waste such that the fertilizer is a "waste-derived fertilizer" as defined in RCW 15.54.270. Verification of a registration relied on by an applicant under (g)(iii) of this subsection must be submitted with the application;

(h) ~~If a waste-derived fertilizer~~~~(s and)~~ or micronutrient fertilizer~~(s shall include at a minimum)~~, information to ensure the product complies with chapter 70.105 RCW and the resource conservation and recovery act, 42 U.S.C. Sec. 6901 et seq.; and

(i) Any other information required by the department by rule.

(3) All companies planning to mix customer-formula fertilizers shall include the statement "customer-formula grade mixes" under the column headed "product name" on the product registration application form. All customer-formula fertilizers sold under one brand name shall be considered one product.

(4) ~~((All registrations issued by the department for registrants whose names begin with the letters A through M expire on June 30th of even-numbered years and all registrations issued by the department for registrants whose names begin with the letters N through Z expire on June 30th of odd-numbered years, unless otherwise specified in rule adopted by the director))~~ Registrations are issued by the department for a two-year period beginning on July 1st of a given year and ending twenty-four months later on July 1st, except that registrations issued to a registrant who applies to register an additional product during the last twelve months of the registrant's period expire on the next July 1st.

(5) An application for registration ~~((shall))~~ must be accompanied by a fee of fifty dollars for each product ~~(, except that an applicant whose registration expires in even-numbered years shall pay a fee of twenty-five dollars for each product for the registration period ending June 30, 2000).~~

(6) Application for renewal of registration is due July 1st of each registration period. If an application for renewal ((of the product registration provided for in this section is not filed prior to July 1st of the registration renewal year)) is not received by the department by the due date, a late fee of ten dollars per product ((shall be assessed and)) is added to the original fee and ((shall)) must be paid by the applicant before the renewal registration ((shall)) may be issued. ((The assessment of this late fee shall not prevent the department from taking any other action as provided for in this chapter. The)) A late fee ((shall)) does not apply if the applicant furnishes an affidavit that he or she has not distributed this commercial fertilizer subsequent to the expiration of ((his or her)) the prior registration. Payment of a late fee does not prevent the department from taking any action authorized by this chapter for the violation.

Sec. 2. RCW 15.54.340 and 2003 c 15 s 1 are each amended to read as follows:

(1) Any packaged commercial fertilizer distributed in this state ~~((shall))~~ that is not a customer-formula fertilizer must have placed on or affixed to the package a label ~~((setting forth))~~ stating in clearly legible and conspicuous form the following information:

(a) The net weight;

(b) The product name, brand, and grade. The grade is not required if no primary nutrients are claimed;

(c) The guaranteed analysis;

(d) The name and address of the registrant or licensee. The name and address of the manufacturer, if different from the registrant or licensee, may also be stated;

(e) Any information required under WAC ~~((296-62-054))~~ 296-307-560 through 296-307-56050;

(f) A statement, established by rule, referring persons to the department's Uniform Resource Locator (URL) internet address

2008 REGULAR SESSION

where data regarding the metals content of the product is located; and

(g) Other information as required by the department by rule.

(2) ~~((If a))~~ Any commercial fertilizer that is distributed in bulk~~(s) in this state that is not a customer-formula fertilizer must be accompanied by a written or printed statement ((of)) that includes the information required by subsection (1) of this section ((shall accompany delivery)) and must be supplied to the purchaser at the time of delivery.~~

(3) Each delivery of a customer-formula fertilizer ~~((shall be subject to containing those ingredients specified by the purchaser, which ingredients shall be shown on the statement or invoice with the amount contained therein, and a record of all invoices of customer-formula grade mixes shall be kept by the registrant or licensee for a period of twelve months and shall be available to the department upon request. PROVIDED, That each such delivery shall))~~ in this state must be accompanied by either a statement, invoice, a delivery slip, or a label if bagged, containing the following information: The net weight; the brand; the name and amount of each ingredient; the guaranteed analysis which may be stated to the nearest tenth of a percent or to the next lower whole number; the name and address of the registrant or licensee, or manufacturer, or both; and the name and address of the purchaser.

(4) Each delivery of a customer-formula fertilizer must contain the ingredients specified by the purchaser. A record of the invoice or statement of each delivery must be kept by the registrant or licensee for twelve months and must be available to the department upon request.

Sec. 3. RCW 15.54.362 and 1993 c 183 s 7 are each amended to read as follows:

(1) Every registrant or licensee who distributes commercial fertilizer in this state ~~((shall))~~ must file a semiannual report on forms provided by the department ~~((setting forth))~~ stating the number of net tons of each commercial fertilizer ~~((so))~~ distributed in this state. ~~((The reports will cover the following periods: January 1 through June 30 and July 1 through December 31 of each year.))~~

(a) For the period January 1st through June 30th of each year, the report is due on July 31st of that year; and

(b) For the period July 1st through December 31st of each year, the report is due on January 31st of the following year.

Upon permission of the department, ~~((an annual statement under oath may be filed for the annual reporting period of July 1 through June 30 of any year by any))~~ a person distributing ~~((within))~~ in the state less than one hundred tons for each six-month period during any ~~((calendar year, and upon filing such statement, such person shall pay the inspection fee required under RCW 15.54.350))~~ annual reporting period of July 1st through June 30th may submit an annual report on a form provided by the department that is due on the July 31st following the period. The department may accept sales records or other records accurately reflecting the tonnage sold and verifying such reports.

(2) Each person responsible for the payment of inspection fees for commercial fertilizer distributed in this state ~~((shall))~~ must include the inspection fees with ~~((the report on the same dates and for the same reporting periods mentioned in subsection (1) of this section))~~ each semiannual or annual report. If in ~~((one year))~~ an annual reporting period a registrant or licensee distributes less than eighty-three tons of commercial fertilizer or less than one hundred sixty-seven tons of commercial lime or equivalent combination of the two, the registrant or licensee ~~((shall))~~ must pay the minimum inspection fee ~~((The minimum inspection fee shall be))~~ of twenty-five dollars ~~((per year)).~~

(3) The department may, upon request, require registrants or licensees to furnish information setting forth the net tons of commercial fertilizer distributed to each location in this state.

(4) ~~((Semiannual or annual reports filed after the close of the corresponding reporting period shall pay a late filing fee of twenty-five dollars. Inspection fees which are due and have not been remitted to the department by the due date shall have a late collection fee of ten percent, but not less than twenty-five dollars, added to the amount due when payment is finally made. The assessment of this late collection fee shall not prevent the department from taking any other action as provided for in this chapter.))~~

(a) If a complete report is not received by the due date, the person responsible for filing the report must pay a late fee of twenty-five dollars.

(b) If the appropriate inspection fees are not received by the due date, the person responsible for paying the inspection fee must pay a late fee equal to ten percent of the inspection fee owed or twenty-five dollars, whichever is greater.

(c) Payment of a late fee does not prevent the department from taking any other action authorized by this chapter for the violation.

~~(5) It ((shall be)) is a misdemeanor for any person to divulge any information provided under this section that would reveal the business operation of the person making the report. However, nothing contained in this subsection may be construed to prevent or make unlawful the use of information concerning the business operations of a person in any action, suit, or proceeding instituted under the authority of this chapter, including any civil action for the collection of unpaid inspection fees, which action is ((hereby)) authorized and which shall be as an action at law in the name of the director of the department.~~

Sec. 4. RCW 15.54.433 and 1998 c 36 s 21 are each amended to read as follows:

(1) The department shall ~~((expand its))~~ maintain a fertilizer database ~~((to include additional))~~ that includes the information required for registration under RCW 15.54.325 and 15.54.330.

(2) Except for confidential information under RCW 15.54.362 regarding fertilizer tonnages distributed in the state, information in the fertilizer database ~~((shall))~~ must be made available to the public upon request.

(3) The department, and the department of ecology in consultation with the department of health, shall biennially prepare a report to the legislature presenting information on levels of nonnutritive substances in fertilizers ~~((Results from))~~ and the results of any agency testing of products ~~((that were sampled shall also be displayed))~~. The first ~~((such))~~ report ~~((will))~~ must be provided to the legislature by December 1, 1999.

(4) ~~((After July 1, 1999;))~~ The department shall post on the internet the information contained in applications for fertilizer registration."

Senators Rasmussen and Schoesler spoke in favor of adoption of the striking amendment.

The President declared the question before the Senate to be the adoption of the striking amendment by Senators Rasmussen and Schoesler to House Bill No. 2467.

The motion by Senator Rasmussen carried and the striking amendment was adopted by voice vote.

MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 2 of the title, after "fertilizers;" strike the remainder of the title and insert "amending RCW 15.54.340, 15.54.362, and 15.54.433; and reenacting and amending RCW 15.54.325."

MOTION

On motion of Senator Rasmussen, the rules were suspended, House Bill No. 2467 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Rasmussen spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 2467 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 2467 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 49

HOUSE BILL NO. 2467 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 2551, by House Committee on Human Services (originally sponsored by Representatives Dickerson, Appleton, McCoy, Roberts, Kenney and Kagi)

Expanding the types of treatment programs provided under the suspended disposition alternative for juveniles.

The measure was read the second time.

MOTION

Senator Hargrove moved that the following committee striking amendment by the Committee on Human Services & Corrections be adopted.

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 13.40.0357 and 2007 c 199 s 11 are each amended to read as follows:

DESCRIPTION AND OFFENSE CATEGORY

JUVENILE DISPOSITION OFFENSE CATEGORY	DESCRIPTION (RCW CITATION)	JUVENILE DISPOSITION CATEGORY FOR ATTEMPT, BAILJUMP, CONSPIRACY, OR SOLICITATION
---------------------------------------	----------------------------	--

Arson and Malicious Mischief

A	Arson 1 (9A.48.020)	B +
B	Arson 2 (9A.48.030)	C
C	Reckless Burning 1 (9A.48.040)	D

D	Reckless Burning 2 (9A.48.050)	E	B +	Violation of Uniform Controlled Substances Act - Narcotic, Methamphetamine, or Flunitrazepam Sale (69.50.401(2) (a) or (b))	B +
B	Malicious Mischief 1 (9A.48.070)	C			
C	Malicious Mischief 2 (9A.48.080)	D			
D	Malicious Mischief 3 (9A.48.090(2) (a) and (c))	E	C	Violation of Uniform Controlled Substances Act - Nonnarcotic Sale (69.50.401(2)(c))	C
E	Malicious Mischief 3 (9A.48.090(2)(b))	E	E	Possession of Marihuana <40 grams (69.50.4014)	E
E	Tampering with Fire Alarm Apparatus (9.40.100)	E	C	Fraudulently Obtaining Controlled Substance (69.50.403)	C
E	Tampering with Fire Alarm Apparatus with Intent to Commit Arson (9.40.105)	E	C +	Sale of Controlled Substance for Profit (69.50.410)	C +
A	Possession of Incendiary Device (9.40.120)	B +	E	Unlawful Inhalation (9.47A.020)	E
	Assault and Other Crimes Involving Physical Harm		B	Violation of Uniform Controlled Substances Act - Narcotic, Methamphetamine, or Flunitrazepam Counterfeit Substances (69.50.4011(2) (a) or (b))	B
A	Assault 1 (9A.36.011)	B +	C	Violation of Uniform Controlled Substances Act - Nonnarcotic Counterfeit Substances (69.50.4011(2) (c), (d), or (e))	C
B +	Assault 2 (9A.36.021)	C +			
C +	Assault 3 (9A.36.031)	D +			
D +	Assault 4 (9A.36.041)	E	C	Violation of Uniform Controlled Substances Act - Possession of a Controlled Substance (69.50.4013)	C
B +	Drive-By Shooting (9A.36.045)	C +			
D +	Reckless Endangerment (9A.36.050)	E	C	Violation of Uniform Controlled Substances Act - Possession of a Controlled Substance (69.50.4012)	C
C +	Promoting Suicide Attempt (9A.36.060)	D +			
D +	Coercion (9A.36.070)	E			
C +	Custodial Assault (9A.36.100)	D +			
	Burglary and Trespass		B	Theft of Firearm (9A.56.300)	C
B +	Burglary 1 (9A.52.020)	C +	B	Possession of Stolen Firearm (9A.56.310)	C
B	Residential Burglary (9A.52.025)	C	E	Carrying Loaded Pistol Without Permit (9.41.050)	E
B	Burglary 2 (9A.52.030)	C	C	Possession of Firearms by Minor (<18) (9.41.040(2)(a)(iii))	C
D	Burglary Tools (Possession of) (9A.52.060)	E	D +	Possession of Dangerous Weapon (9.41.250)	E
D	Criminal Trespass 1 (9A.52.070)	E			
E	Criminal Trespass 2 (9A.52.080)	E	D	Intimidating Another Person by use of Weapon (9.41.270)	E
C	Mineral Trespass (78.44.330)	C			
C	Vehicle Prowling 1 (9A.52.095)	D			
D	Vehicle Prowling 2 (9A.52.100)	E			
	Drugs		A +	Murder 1 (9A.32.030)	A
E	Possession/Consumption of Alcohol (66.44.270)	E	A +	Murder 2 (9A.32.050)	B +
C	Illegally Obtaining Legend Drug (69.41.020)	D	B +	Manslaughter 1 (9A.32.060)	C +
C +	Sale, Delivery, Possession of Legend Drug with Intent to Sell (69.41.030(2)(a))	D +	C +	Manslaughter 2 (9A.32.070)	D +
E	Possession of Legend Drug (69.41.030(2)(b))	E	B +	Vehicular Homicide (46.61.520)	C +
				Kidnapping	
			A	Kidnap 1 (9A.40.020)	B +
			B +	Kidnap 2 (9A.40.030)	C +
			C +	Unlawful Imprisonment (9A.40.040)	D +
				Obstructing Governmental Operation	

D	Obstructing a Law Enforcement Officer (9A.76.020)	E	B +	Extortion 1 (9A.56.120)	C +
E	Resisting Arrest (9A.76.040)	E	C +	Extortion 2 (9A.56.130)	D +
B	Introducing Contraband 1 (9A.76.140)	C	C	Identity Theft 1 (9.35.020(2))	D
C	Introducing Contraband 2 (9A.76.150)	D	D	Identity Theft 2 (9.35.020(3))	E
E	Introducing Contraband 3 (9A.76.160)	E	D	Improperly Obtaining Financial Information (9.35.010)	E
B +	Intimidating a Public Servant (9A.76.180)	C +	B	Possession of a Stolen Vehicle (9A.56.068)	C
B +	Intimidating a Witness (9A.72.110)	C +	B	Possession of Stolen Property 1 (9A.56.150)	C
Public Disturbance			C	Possession of Stolen Property 2 (9A.56.160)	D
C +	Riot with Weapon (9A.84.010(2)(b))	D +	D	Possession of Stolen Property 3 (9A.56.170)	E
D +	Riot Without Weapon (9A.84.010(2)(a))	E	B	Taking Motor Vehicle Without Permission 1 (9A.56.070)	C
E	Failure to Disperse (9A.84.020)	E	C	Taking Motor Vehicle Without Permission 2 (9A.56.075)	D
E	Disorderly Conduct (9A.84.030)	E	B	Theft of a Motor Vehicle (9A.56.065)	C
Sex Crimes			Motor Vehicle Related Crimes		
A	Rape 1 (9A.44.040)	B +	E	Driving Without a License (46.20.005)	E
A-	Rape 2 (9A.44.050)	B +	B +	Hit and Run - Death (46.52.020(4)(a))	C +
C +	Rape 3 (9A.44.060)	D +	C	Hit and Run - Injury (46.52.020(4)(b))	D
A-	Rape of a Child 1 (9A.44.073)	B +	D	Hit and Run-Attended (46.52.020(5))	E
B +	Rape of a Child 2 (9A.44.076)	C +	E	Hit and Run-Unattended (46.52.010)	E
B	Incest 1 (9A.64.020(1))	C	C	Vehicular Assault (46.61.522)	D
C	Incest 2 (9A.64.020(2))	D	C	Attempting to Elude Pursuing Police Vehicle (46.61.024)	D
D +	Indecent Exposure (Victim <14) (9A.88.010)	E	E	Reckless Driving (46.61.500)	E
E	Indecent Exposure (Victim 14 or over) (9A.88.010)	E	D	Driving While Under the Influence (46.61.502 and 46.61.504)	E
B +	Promoting Prostitution 1 (9A.88.070)	C +	B +	Felony Driving While Under the Influence (46.61.502(6))	B
C +	Promoting Prostitution 2 (9A.88.080)	D +	B +	Felony Physical Control of a Vehicle While Under the Influence (46.61.504(6))	B
E	O & A (Prostitution) (9A.88.030)	E	Other		
B +	Indecent Liberties (9A.44.100)	C +	B	Animal Cruelty 1 (16.52.205)	C
A-	Child Molestation 1 (9A.44.083)	B +	B	Bomb Threat (9.61.160)	C
B	Child Molestation 2 (9A.44.086)	C +	C	Escape 1 ¹ (9A.76.110)	C
Theft, Robbery, Extortion, and Forgery			C	Escape 2 ¹ (9A.76.120)	C
B	Theft 1 (9A.56.030)	C	D	Escape 3 (9A.76.130)	E
C	Theft 2 (9A.56.040)	D	E	Obscene, Harassing, Etc., Phone Calls (9.61.230)	E
D	Theft 3 (9A.56.050)	E	A	Other Offense Equivalent to an Adult Class A Felony	B +
B	Theft of Livestock 1 and 2 (9A.56.080 and 9A.56.083)	C			
C	Forgery (9A.60.020)	D			
A	Robbery 1 (9A.56.200)	B +			
B +	Robbery 2 (9A.56.210)	C +			

FIFTY-FOURTH DAY, MARCH 7, 2008

2008 REGULAR SESSION

			SANCTIONS (LS)	15-36 WEEKS	WEEKS
B	Other Offense Equivalent to an Adult Class B Felony	C			
C	Other Offense Equivalent to an Adult Class C Felony	D			
D	Other Offense Equivalent to an Adult Gross Misdemeanor	E	C + LS		
E	Other Offense Equivalent to an Adult Misdemeanor	E		15-36 WEEKS	
V	Violation of Order of Restitution, Community Supervision, or Confinement (13.40.200) ²	V	C LS		15-36 WEEKS

¹Escape 1 and 2 and Attempted Escape 1 and 2 are classed as C offenses and the standard range is established as follows:

1st escape or attempted escape during 12-month period - 4 weeks confinement

2nd escape or attempted escape during 12-month period - 8 weeks confinement

3rd and subsequent escape or attempted escape during 12-month period - 12 weeks confinement

²If the court finds that a respondent has violated terms of an order, it may impose a penalty of up to 30 days of confinement.

JUVENILE SENTENCING STANDARDS

This schedule must be used for juvenile offenders. The court may select sentencing option A, B, C, D, or RCW 13.40.167.

**OPTION A
JUVENILE OFFENDER
SENTENCING GRID
STANDARD RANGE**

	PRIOR ADJUDICATIONS				
	0	1	2	3	4 or more
A +	180 WEEKS TO AGE 21 YEARS				
A	103 WEEKS TO 129 WEEKS				
A-	15-36 WEEKS	52-65 WEEKS	80-100 WEEKS	103-129 WEEKS	
EXCEPT 30-40 WEEKS FOR 15-17 YEAR OLDS					
Current Offense Category	B + 15-36 WEEKS	52-65 WEEKS	80-100 WEEKS	103-129 WEEKS	
B	LOCAL				52-65

NOTE: References in the grid to days or weeks mean periods of confinement.

(1) The vertical axis of the grid is the current offense category. The current offense category is determined by the offense of adjudication.

(2) The horizontal axis of the grid is the number of prior adjudications included in the juvenile's criminal history. Each prior felony adjudication shall count as one point. Each prior violation, misdemeanor, and gross misdemeanor adjudication shall count as 1/4 point. Fractional points shall be rounded down.

(3) The standard range disposition for each offense is determined by the intersection of the column defined by the prior adjudications and the row defined by the current offense category.

(4) RCW 13.40.180 applies if the offender is being sentenced for more than one offense.

(5) A current offense that is a violation is equivalent to an offense category of E. However, a disposition for a violation shall not include confinement.

**OR
OPTION B
SUSPENDED DISPOSITION ALTERNATIVE**

(1) If the offender is subject to a standard range disposition involving confinement by the department, the court may impose the standard range and suspend the disposition on condition that the offender comply with one or more local sanctions and any educational or treatment requirement. The treatment programs provided to the offender must be either research-based best practice programs as identified by the Washington state institute for public policy or the joint legislative audit and review committee, or for chemical dependency treatment programs or services, they must be evidence-based or research-based best practice programs. For the purposes of this subsection:

(a) "Evidence-based" means a program or practice that has had multiple site random controlled trials across heterogeneous

FIFTY-FOURTH DAY, MARCH 7, 2008

populations demonstrating that the program or practice is effective for the population; and

(b) "Research-based" means a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based practices.

(2) If the offender fails to comply with the suspended disposition, the court may impose sanctions pursuant to RCW 13.40.200 or may revoke the suspended disposition and order the disposition's execution.

(3) An offender is ineligible for the suspended disposition option under this section if the offender is:

(a) Adjudicated of an A + offense;

(b) Fourteen years of age or older and is adjudicated of one or more of the following offenses:

(i) A class A offense, or an attempt, conspiracy, or solicitation to commit a class A offense;

(ii) Manslaughter in the first degree (RCW 9A.32.060); or

(iii) Assault in the second degree (RCW 9A.36.021), extortion in the first degree (RCW 9A.56.120), kidnapping in the second degree (RCW 9A.40.030), robbery in the second degree (RCW 9A.56.210), residential burglary (RCW 9A.52.025), burglary in the second degree (RCW 9A.52.030), drive-by shooting (RCW 9A.36.045), vehicular homicide (RCW 46.61.520), hit and run death (RCW 46.52.020(4)(a)), intimidating a witness (RCW 9A.72.110), violation of the uniform controlled substances act (RCW 69.50.401 (2)(a) and (b)), or manslaughter 2 (RCW 9A.32.070), when the offense includes infliction of bodily harm upon another or when during the commission or immediate withdrawal from the offense the respondent was armed with a deadly weapon;

(c) Ordered to serve a disposition for a firearm violation under RCW 13.40.193; or

(d) Adjudicated of a sex offense as defined in RCW 9.94A.030.

**OR
OPTION C
CHEMICAL DEPENDENCY DISPOSITION
ALTERNATIVE**

If the juvenile offender is subject to a standard range disposition of local sanctions or 15 to 36 weeks of confinement and has not committed an A- or B+ offense, the court may impose a disposition under RCW 13.40.160(4) and 13.40.165.

**OR
OPTION D
MANIFEST INJUSTICE**

If the court determines that a disposition under option A, B, or C would effectuate a manifest injustice, the court shall impose a disposition outside the standard range under RCW 13.40.160(2)."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Human Services & Corrections to Substitute House Bill No. 2551.

The motion by Senator Hargrove carried and the committee striking amendment was adopted by voice vote.

MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 2 of the title, after "juveniles;" strike the remainder of the title and insert "and amending RCW 13.40.0357."

MOTION

On motion of Senator Hargrove, the rules were suspended, Substitute House Bill No. 2551 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Hargrove spoke in favor of passage of the bill.

MOTION

On motion of Senator Regala, Senator Murray was excused.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2551 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2551 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 48

Excused: Senator Murray - 1

SUBSTITUTE HOUSE BILL NO. 2551 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

HOUSE BILL NO. 2835, by Representatives Kagi, Roberts, Loomis, Morrell, Kenney and Haigh

Requiring federal name-based criminal history record checks when a child is placed in out-of-home care in an emergency situation.

The measure was read the second time.

MOTION

Senator Hargrove moved that the following committee striking amendment by the Committee on Ways & Means be adopted.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. The legislature finds that the safety of children in foster care depends upon receipt of comprehensive, accurate, and timely information about the background of prospective foster parents. It is vital to ensure that all relevant information about prospective foster parents is received and carefully reviewed. The legislature believes that some foster parents may have previously resided in other countries and that it is important to determine whether those countries have background information on the prospective foster parents that might impact the safety of children in their care.

NEW SECTION. Sec. 2. A new section is added to chapter 26.44 RCW to read as follows:

(1) During an emergency situation when a child must be placed in out-of-home care due to the absence of appropriate

FIFTY-FOURTH DAY, MARCH 7, 2008

2008 REGULAR SESSION

parents or custodians, the department shall request a federal name-based criminal history record check of each adult residing in the home of the potential placement resource. Upon receipt of the results of the name-based check, the department shall provide a complete set of each adult resident's fingerprints to the Washington state patrol for submission to the federal bureau of investigation within fourteen calendar days from the date the name search was conducted. The child shall be removed from the home immediately if any adult resident fails to provide fingerprints and written permission to perform a federal criminal history record check when requested.

(2) When placement of a child in a home is denied as a result of a name-based criminal history record check of a resident, and the resident contests that denial, the resident shall, within fifteen calendar days, submit to the department a complete set of the resident's fingerprints with written permission allowing the department to forward the fingerprints to the Washington state patrol for submission to the federal bureau of investigation.

(3) The Washington state patrol and the federal bureau of investigation may each charge a reasonable fee for processing a fingerprint-based criminal history record check.

(4) As used in this section, "emergency placement" refers to those limited instances when the department is placing a child in the home of private individuals, including neighbors, friends, or relatives, as a result of a sudden unavailability of the child's primary caretaker.

Sec. 3. RCW 74.15.040 and 1982 c 118 s 7 are each amended to read as follows:

An agency seeking to accept and serve children, developmentally disabled persons, or expectant mothers as a foster-family home shall make application for license in such form and substance as required by the department. The department shall maintain a list of applicants through which placement may be undertaken. However, agencies and the department shall not place a child, developmentally disabled person, or expectant mother in a home until the home is licensed. The department shall inquire whether an applicant has previously resided in any other state or foreign country and shall check databases available to it through the Washington state patrol and federal bureau of investigation to ascertain whether the applicant has ever been the subject of a conviction or civil finding outside of the state of Washington that bears upon the fitness of the applicant to serve as a foster-family home. Foster-family homes shall be inspected prior to licensure, except that inspection by the department is not required if the foster-family home is under the supervision of a licensed agency upon certification to the department by the licensed agency that such homes meet the requirements for foster homes as adopted pursuant to chapter 74.15 RCW and RCW 74.13.031."

MOTION

Senator Hargrove moved that the following amendment by Senators Hargrove and Stevens to the committee striking amendment be adopted.

On page 2, after line 31 of the amendment, insert the following:

"**NEW SECTION. Sec. 4.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately."

Senator Hargrove spoke in favor of adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senators Hargrove and Stevens on page 2, after line 31 to the committee striking amendment to House Bill No. 2835.

The motion by Senator Hargrove carried and the amendment to the committee striking amendment was adopted by voice vote.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Ways & Means as amended to House Bill No. 2835.

The motion by Senator Hargrove carried and the committee striking amendment as amended was adopted by voice vote.

MOTION

There being no objection, the following title amendments were adopted:

On page 1, line 3 of the title, after "situation;" strike the remainder of the title and insert "amending RCW 74.15.040; adding a new section to chapter 26.44 RCW; and creating a new section."

On page 3, line 3 of the title amendment, after "26.44 RCW;" strike the remainder of the title and insert "creating a new section; and declaring an emergency."

MOTION

On motion of Senator Hargrove, the rules were suspended, House Bill No. 2835 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Hargrove spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 2835 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 2835 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 49

HOUSE BILL NO. 2835 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

Senator Eide moved that, pursuant to Senate Rule 18, Engrossed Second Substitute House Bill No. 2647 be made a Special Order of Business at 4:55 p.m.

The President declared the question before the Senate to be the motion by Senator Eide pursuant to Rule 18 Engrossed Second Substitute House Bill No. 2647 be made a special order of business at 4:55 p.m.

The motion by Senator Eide carried on a rising vote.

SECOND READING

FIFTY-FOURTH DAY, MARCH 7, 2008

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2847, by House Committee on Finance (originally sponsored by Representatives Ormsby, Schindler, Barlow, Simpson, Springer, Wood and Santos)

Creating a sales and use tax exemption of materials and services used in the weatherization assistance program.

The measure was read the second time.

MOTION

On motion of Senator Prentice, the rules were suspended, Engrossed Substitute House Bill No. 2847 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Prentice spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 2847.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 2847 and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 49

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2847, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

HOUSE BILL NO. 2263, by Representatives Blake, Moeller, Orcutt and Newhouse

Regarding the phosphorus content in dishwashing detergent.

The measure was read the second time.

MOTION

Senator Brandland moved that the following amendment by Senators Brandland and Spanel be adopted.

On page 1, after line 8, strike all of subsection (2) and insert the following:

" (2)(a) After July 1, 1994, and until the dates specified in this subsection, a person may not sell or distribute for sale a dishwashing detergent that contains 8.7 percent or more phosphorous weight.

(b) Beginning on July 1, 2008, in counties located east of the crest of the Cascade mountains with populations greater than three hundred ninety thousand, as determined by the office of financial management population estimates, a person may not sell or distribute for sale dishwashing detergent that contains .5 percent phosphorus by weight.

(c) Beginning on July 1, 2008, in counties greater than one

2008 REGULAR SESSION

hundred eighty thousand and less than two hundred twenty thousand, as determined by the office of financial management population estimates, a person may not sell or distribute for sale dishwashing detergent that contains no more than 2.0 grams phosphorus per single use package.

(d) Beginning July 1, 2008, in counties located west of the crest of the Cascade mountains and adjacent to the north shore of the Columbia river with populations greater than four hundred thousand and less than four hundred fifty thousand, as determined by the office of financial management population estimates, a person may not sell or distribute for sale dishwashing detergent that contains more than 2.0 grams phosphorus per single use package.

(e) After July 1, 2010, a person may not sell or distribute for sale a dishwashing detergent that contains .5 percent or more phosphorus by weight in the state.

(f) For purposes of this subsection, "single use package" means tablets or other forms of dishwashing detergent by which the amount in tact is intended for use in a single washing."

Renumber the sections consecutively and correct any internal references accordingly.

Senators Brandland and Honeyford spoke in favor of adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senators Brandland and Spanel on page 1, after line 8 to House Bill No. 2263.

The motion by Senator Brandland carried and the amendment was adopted by voice vote.

MOTION

On motion of Senator Rockefeller, the rules were suspended, House Bill No. 2263 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Rockefeller and Honeyford spoke in favor of passage of the bill.

POINT OF INQUIRY

Senator Benton: "Would Senator Rockefeller yield to a question? Senator, if this bill is a good bill and if in fact it is and I believe it is for the State of Washington, why, maybe you can tell me why Clark, Spokane and Whatcom are the only three counties singled out in this legislation for accelerated implementation?"

Senator Rockefeller: "Thank you for the question Senator. The reason is all the other counties have a July 1, 2010 effective date. These were the only three counties for which the new standards were accelerated and now we're modifying it as to two of those three."

The President declared the question before the Senate to be the final passage of House Bill No. 2263 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 2263 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

FIFTY-FOURTH DAY, MARCH 7, 2008

2008 REGULAR SESSION

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 49

HOUSE BILL NO. 2263 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 3149, by House Committee on Appropriations (originally sponsored by Representatives Sommers, Haler, Conway, Kenney, Fromhold, McIntire, Anderson and Darneille)

Changing state investment board personnel compensation provisions.

The measure was read the second time.

MOTION

Senator Prentice moved that the following committee striking amendment by the Committee on Ways & Means be adopted.

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 43.33A.100 and 2001 c 302 s 1 are each amended to read as follows:

The state investment board shall maintain appropriate offices and employ such personnel as may be necessary to perform its duties. Employment by the investment board shall include but not be limited to an executive director, investment officers, and a confidential secretary, which positions are exempt from classified service under chapter 41.06 RCW. Employment of the executive director by the board shall be for a term of three years, and such employment shall be subject to confirmation of the state finance committee: PROVIDED, That nothing shall prevent the board from dismissing the director for cause before the expiration of the term nor shall anything prohibit the board, with the confirmation of the state finance committee, from employing the same individual as director in succeeding terms. Compensation levels for the executive director, a confidential secretary, and all investment officers, including the deputy director for investment management, employed by the investment board shall be established by the state investment board. The investment board is authorized to maintain a retention pool within the state investment board expense account under RCW 43.33A.160, from the earnings of the funds managed by the board, pursuant to a performance management and compensation program developed by the investment board, in order to address recruitment and retention problems and to reward performance. The compensation levels and incentive compensation for investment officers shall be limited to the average of total compensation provided by state or other public funds of similar size, based upon a biennial survey conducted by the investment board, with review and comment by the joint legislative audit and review committee. However, in any fiscal year the ~~(salary increases)~~ incentive compensation granted by the investment board from the retention pool to investment officers pursuant to this section may not exceed ~~(an average of five)~~ thirty percent. Disbursements from the retention pool shall be from legislative appropriations and shall

be on authorization of the board's executive director or the director's designee.

The investment board shall provide notice to the director of the department of personnel, the director of financial management, and the chairs of the house of representatives and senate fiscal committees of proposed changes to the compensation levels for the positions. The notice shall be provided not less than sixty days prior to the effective date of the proposed changes.

As of July 1, 1981, all employees classified under chapter 41.06 RCW and engaged in duties assumed by the state investment board on July 1, 1981, are assigned to the state investment board. The transfer shall not diminish any rights granted these employees under chapter 41.06 RCW nor exempt the employees from any action which may occur thereafter in accordance with chapter 41.06 RCW.

All existing contracts and obligations pertaining to the functions transferred to the state investment board in ~~((this 1980 act))~~ chapter 3, Laws of 1981 shall remain in full force and effect, and shall be performed by the board. None of the transfers directed by ~~((this 1980 act))~~ chapter 3, Laws of 1981 shall affect the validity of any act performed by a state entity or by any official or employee thereof prior to July 1, 1981."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Ways & Means to Substitute House Bill No. 3149.

The motion by Senator Prentice carried and the committee striking amendment was adopted by voice vote.

MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 2 of the title, after "personnel;" strike the remainder of the title and insert "and amending RCW 43.33A.100."

MOTION

On motion of Senator Prentice, the rules were suspended, Substitute House Bill No. 3149 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Prentice and Zarelli spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 3149 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 3149 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 49

SUBSTITUTE HOUSE BILL NO. 3149 as amended by the Senate, having received the constitutional majority, was

FIFTY-FOURTH DAY, MARCH 7, 2008

declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 2712, by House Committee on Appropriations (originally sponsored by Representatives Hurst, Ross, Dickerson, Newhouse, Conway, Morrell, Roach, Kelley and Ormsby)

Concerning criminal street gangs.

The measure was read the second time.

MOTION

Senator Prentice moved that the following committee striking amendment by the Committee on Ways & Means be adopted.

Strike everything after the enacting clause and insert the following:

"PART I NEAR-TERM RELIEF FOR 2008

Washington Association Of Sheriffs And Police Chiefs Grant Program To Communities

NEW SECTION. Sec. 101. A new section is added to chapter 36.28A RCW to read as follows:

(1) When funded, the Washington association of sheriffs and police chiefs shall establish a grant program to assist local law enforcement agencies in the support of special enforcement emphasis targeting gang crime. Grant applications shall be reviewed and awarded through peer review panels. Grant applicants are encouraged to utilize multijurisdictional efforts.

(2) Each grant applicant shall:

(a) Show a significant gang problem in the jurisdiction or jurisdictions receiving the grant;

(b) Verify that grant awards are sufficient to cover increased investigation, prosecution, and jail costs;

(c) Design an enforcement program that best suits the specific gang problem in the jurisdiction or jurisdictions receiving the grant;

(d) Demonstrate community coordination focusing on prevention, intervention, and suppression; and

(e) Collect data on performance pursuant to section 103 of this act.

(3) The cost of administering the grants shall not exceed sixty thousand dollars, or four percent of appropriated funding, whichever is greater.

Graffiti/Tagging Abatement Grant

NEW SECTION. Sec. 102. A new section is added to chapter 36.28A RCW to read as follows:

(1) When funded, the Washington association of sheriffs and police chiefs shall establish a grant program to assist local law enforcement agencies in the support of graffiti and tagging abatement programs located in local communities. Grant applicants are encouraged to utilize multijurisdictional efforts.

(2) Each graffiti or tagging abatement grant applicant shall:

(a) Demonstrate that a significant gang problem exists in the jurisdiction or jurisdictions receiving the grant;

(b) Show how the funds will be used to dispose or eliminate any current or ongoing tagging or graffiti within a specified time period;

(c) Specify how the funds will be used to reduce gang-related graffiti or tagging within its community;

2008 REGULAR SESSION

(d) Show how the local citizens and business owners of the community will benefit from the proposed graffiti or tagging abatement process being presented in the grant application; and

(e) Collect data on performance pursuant to section 103 of this act.

(3) The cost of administering the grants shall not exceed twenty-five thousand dollars, or four percent of funding, whichever is greater.

NEW SECTION. Sec. 103. A new section is added to chapter 36.28A RCW to read as follows:

For the grant programs created in sections 101 and 102 of this act and within the funds provided for these programs, the Washington association of sheriffs and police chiefs shall, upon consultation with the Washington state institute for public policy, identify performance measures, periodic reporting requirements, data needs, and a framework for evaluating the effectiveness of grant programs in graffiti and tagging abatement and reducing gang crime.

PART II

STATEWIDE GANG INFORMATION DATABASE

NEW SECTION. Sec. 201. A new section is added to chapter 43.43 RCW to read as follows:

The Washington association of sheriffs and police chiefs shall work with the Washington state patrol to coordinate, designate, and recommend the use of a statewide database accessible by law enforcement agencies that utilizes existing resources, networks, or structures for assessing and addressing the problems associated with criminal street gangs.

(1) The gang database shall comply with federal regulations for state law enforcement databases shared with other law enforcement agencies, including auditing and access to data.

(2) The Washington state patrol, in consultation with the Washington state association of sheriffs and police chiefs, shall adopt uniform state criteria for entering gangs, gang members, and gang associates into the database. Data on individuals may be entered only based on reasonable suspicion of criminal activity or actual criminal activity and must be supported by documentation, where documentation is available.

(3) Information in the database shall be available to all local, state, and federal general authority law enforcement agencies, the Washington department of corrections, and the juvenile rehabilitation administration of the Washington department of social and health services solely for gang enforcement and for tracking gangs, gang members, and gang incidents. Information in the database shall not be available for public use.

(4) The database shall provide an internet-based multiagency, multilocation, information-sharing application that operates in a network fashion.

(5) The database shall be used solely as a law enforcement intelligence tool and shall not be used as evidence in any criminal, civil, or administrative proceeding. Law enforcement may use the information within the database to obtain information external to the database to formulate the probable cause necessary to make a stop or arrest. The mere existence of information relating to an individual within the database does not by itself justify a stop or arrest.

(6) Access to the database shall be determined by the chief executive officer of each participating agency. Information about specific individuals in the database shall be automatically expunged if: (a) No new or updated information has been entered into the database within the previous five years; (b) there are no pending criminal charges against such person in any court in this state or another state or in any federal court; (c) the person has not been convicted of a new crime in this state, another state, or federal court within the last five years; and (d) it has been five years since the person completed his or her term of total confinement.

(7) Each law enforcement and criminal justice agency using the database is required to:

FIFTY-FOURTH DAY, MARCH 7, 2008

(a) Identify a system administrator that is responsible for annually auditing the use of the system within his or her respective agency to ensure agency compliance with policies established for the use of the database;

(b) Ensure that all users of the database receive training on the use of the database before granting the users access to the database;

(c) Ensure that any information entered into the database relates to a criminal street gang associate or gang member who is twelve years old or older;

(d) Annually produce a gang threat assessment report including available data sources such as uniform crime reports, record management systems, and entries into the statewide gang database. Local public schools shall also be encouraged to provide data to the local gang threat assessment report.

(8) The database and all contents in the database are confidential and exempt from public disclosure under chapter 42.56 RCW.

(9) Any public employee or public agency as defined in RCW 4.24.470, or units of local government and its employees, as provided in RCW 36.28A.010, and the Washington association of sheriffs and police chiefs and its employees are immune from civil liability for damages arising from incidents involving a person who has been included in the database, unless it is shown that an employee acted with gross negligence or bad faith.

Sec. 202. RCW 42.56.240 and 2005 c 274 s 404 are each amended to read as follows:

The following investigative, law enforcement, and crime victim information is exempt from public inspection and copying under this chapter:

(1) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy;

(2) Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement, or penology agencies, other than the commission, if disclosure would endanger any person's life, physical safety, or property. If at the time a complaint is filed the complainant, victim, or witness indicates a desire for disclosure or nondisclosure, such desire shall govern. However, all complaints filed with the commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath;

(3) Any records of investigative reports prepared by any state, county, municipal, or other law enforcement agency pertaining to sex offenses contained in chapter 9A.44 RCW or sexually violent offenses as defined in RCW 71.09.020, which have been transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval pursuant to RCW 40.14.070(2)(b);

(4) License applications under RCW 9.41.070; copies of license applications or information on the applications may be released to law enforcement or corrections agencies; ~~(and)~~

(5) Information revealing the identity of child victims of sexual assault who are under age eighteen. Identifying information means the child victim's name, address, location, photograph, and in cases in which the child victim is a relative or stepchild of the alleged perpetrator, identification of the relationship between the child and the alleged perpetrator; ~~and~~

(6) The statewide gang database referenced in section 201 of this act.

PART III CIVIL INJUNCTIONS

2008 REGULAR SESSION

NEW SECTION. Sec. 301. The legislature recognizes that counsel is not constitutionally required in civil actions (*In re Marriage of King*, No. 79978-4 (Wash. Dec. 6, 2007)), but believes that it should be required as a matter of public policy in actions brought against a respondent criminal street gang member under section 303 of this act who might risk the loss of procedural rights, in that the resulting injunction may be enforced by criminal prosecution for contempt of court.

NEW SECTION. Sec. 302. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Gang" means "criminal street gang" as defined in RCW 9.94A.030.

(2) "Pattern of criminal street gang activity" has the same meaning as that term is defined in RCW 9.94A.030.

NEW SECTION. Sec. 303. (1) Equitable relief is authorized to enjoin, abate, and prevent criminal street gang activity, whether it is a private or public nuisance. Relief is authorized to enjoin criminal street gang-related offenses defined in RCW 9.94A.030(17) and associated noncriminal acts or acts which are known precursors to gang-related criminal acts as specified in subsection (2) of this section, upon a showing that the individual gang member sought to be enjoined has been convicted of a crime included within the definition of "pattern of criminal street gang activity" under RCW 9.94A.030, and of the following elements by a preponderance of the evidence:

(a) A gang is named as a respondent and contains at least five members, at least two of whom possess active leadership roles at the time of application, and that any person sought to be enjoined is an active or current member of the gang;

(b) The gang is a cohesive organization with a historical relationship to the described geographical area for the past five years or more immediately prior to the filing, and with known leadership, membership, and criminal practices;

(c) The respondent gang members have committed, during the five years immediately prior to the filing of the petition, a pattern of criminal street gang activity within the described geographical area. It is necessary to demonstrate a nexus between criminal gang activity and crime in the area;

(d) As a result of the criminal activity of the gang or members, a significant number of nongang members residing within the described geographical area are in reasonable fear of their physical security or that of their family members, or of significant damage to their property to such an extent that they are intimidated or terrorized, and are effectively prevented from living normal lives; and

(e) The plaintiffs have engaged in prevention and intervention planning to serve a reasonable number of the gang's total membership with prevention and intervention services to divert them from gang activity.

(2) The complaint for equitable relief shall contain a statement of specific relief requested and activities sought to be enjoined, which may include:

(a) Associating with other gang members;

(b) Confronting, intimidating, annoying, harassing, threatening, challenging, provoking, or assaulting any person;

(c) Confronting, intimidating, annoying, harassing, threatening, challenging, provoking, or assaulting any person known to be a victim or witness to gang activity;

(d) Possessing or knowingly remaining in the presence of anyone who is in possession of any firearm, ammunition, or deadly weapon in a public place;

(e) Possessing or knowingly remaining in the presence of anyone who is in possession of any controlled substance or drug paraphernalia;

(f) Consuming alcohol in public;

(g) Being present on any private property without the written consent of the owner;

(h) Defacing any public or private property or possessing graffiti or tagging tools; or

(i) Violating any court defined curfew.

FIFTY-FOURTH DAY, MARCH 7, 2008

(3) The attorney general, the prosecuting attorney, or city attorney or city prosecutor may maintain an action of an equitable nature in the name of the state under this act. If a city applies for equitable relief under this act, the city shall seek and obtain approval of the prosecuting attorney of the county in which the city is located to maintain the action.

(4) Service of the summons and complaint on the respondent gang members may be made by representative service of at least five active and current members of the gang, at least two of whom possess active leadership roles at the time of application. A person served in a representative capacity and who appears may request, if indigent, that an attorney be appointed to represent him or her at public expense. If the court appoints counsel, the plaintiff shall pay the cost of representation. Notice of this shall be provided in the summons. A person served in a representative capacity of the gang need not testify, but may testify and cross-examine witnesses and present testimony and other evidence on his or her own behalf.

(5) A court of competent jurisdiction shall conduct an evidentiary hearing on the complaint for equitable relief filed under this act whether or not any person served in a representative capacity of the gang appears to contest the issuance of the injunction. The plaintiff must prove by a preponderance of the evidence all of the elements set forth in subsection (1) of this section that the persons served in a representative capacity are current and active members of the gang, and that the specific remedies requested are reasonable and necessary.

(6) If after trial the court grants the request for relief, it shall issue an appropriate order of injunction against the gang and any members of the gang within the delineated geographical area as authorized by this section.

(7) An injunction issued under this section is not effective as to any person unless the plaintiff makes a showing to the court, which may be made ex parte, that the person is an active or current member or associate of the gang, as defined in RCW 9.94A.030, and after authorization by the court the person is served with personal notice of the injunction. The notice must state that the person may request an evidentiary hearing at which the plaintiffs must present evidence and show by preponderance of evidence that the defendant is a member of the gang. The individual need not testify, but may testify and may cross-examine witnesses for the plaintiffs and may present testimony and other evidence on his or her own behalf. The plaintiff may seek to add any person to an existing gang injunction at any time using the procedures in this subsection, regardless of whether the person was a gang member or associate at the time that the request for relief was requested or granted.

(8) The final order of injunction shall contain an opt out provision, by which an alleged member previously included in the order may petition at any time for removal from the injunction after a period of three years in which no act by the alleged member has resulted in either a contempt finding or a conviction of crime, and further that there is no criminal charge pending at the time of the hearing. In the petition, the alleged member may request a court hearing on the matter.

(9) All actions to punish any violation of the injunction shall be by prosecution of the crime of contempt of court. It is an affirmative defense that the person charged was a gang member but that he or she was no longer an active or current member of the gang at the time of the alleged violation.

(10) No nonprofit or charitable organization which is conducting its affairs with ordinary care and skill, no labor organization, and no governmental entity, shall be enjoined or abated under this chapter.

**PART IV
ADDITIONAL MEASURES TO COMBAT GANG-
RELATED CRIME**

Increase In Sentences For Adults Who Recruit Juveniles

Sec. 401. RCW 9.94A.533 and 2007 c 368 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(4);

(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

FIFTY-FOURTH DAY, MARCH 7, 2008

2008 REGULAR SESSION

deadly weapon other than a firearm as defined in RCW 9A.10.010 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 9A.10.010 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(4);

(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.605. 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.

(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(4);

(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;

FIFTY-FOURTH DAY, MARCH 7, 2008

2008 REGULAR SESSION

(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))~~ 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.

NEW SECTION. Sec. 402. A new section is added to chapter 9.94A RCW to read as follows:

(1) In a prosecution of a criminal street gang-related felony offense, the prosecution may file a special allegation that the felony offense involved the compensation, threatening, or solicitation of a minor in order to involve that minor in the commission of the felony offense, as described under RCW 9.94A.533(10)(a).

(2) The state has the burden of proving a special allegation made under this section beyond a reasonable doubt. If a jury is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to whether the criminal street gang-related felony offense involved the compensation, threatening, or solicitation of a minor in order to involve that minor in the commission of the felony offense. If no jury is had, the court shall make a finding of fact as to whether the criminal street gang-related felony offense involved the compensation, threatening, or solicitation of a minor in order to involve that minor in the commission of the felony offense.

Expansion Of The List Of Aggravating Factors

Sec. 403. RCW 9.94A.535 and 2007 c 377 s 10 are each amended to read as follows:

The court may impose a sentence outside the standard sentence range for an offense if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence. Facts supporting aggravated sentences, other than the fact of a prior conviction, shall be determined pursuant to the provisions of RCW 9.94A.537.

Whenever a sentence outside the standard sentence range is imposed, the court shall set forth the reasons for its decision in written findings of fact and conclusions of law. A sentence outside the standard sentence range shall be a determinate sentence.

If the sentencing court finds that an exceptional sentence outside the standard sentence range should be imposed, the sentence is subject to review only as provided for in RCW 9.94A.585(4).

A departure from the standards in RCW 9.94A.589 (1) and (2) governing whether sentences are to be served consecutively or concurrently is an exceptional sentence subject to the limitations in this section, and may be appealed by the offender or the state as set forth in RCW 9.94A.585 (2) through (6).

(1) Mitigating Circumstances - Court to Consider

The court may impose an exceptional sentence below the standard range if it finds that mitigating circumstances are established by a preponderance of the evidence. The following are illustrative only and are not intended to be exclusive reasons for exceptional sentences.

(a) To a significant degree, the victim was an initiator, willing participant, aggressor, or provoker of the incident.

(b) Before detection, the defendant compensated, or made a good faith effort to compensate, the victim of the criminal conduct for any damage or injury sustained.

(c) The defendant committed the crime under duress, coercion, threat, or compulsion insufficient to constitute a complete defense but which significantly affected his or her conduct.

(d) The defendant, with no apparent predisposition to do so, was induced by others to participate in the crime.

(e) The defendant's capacity to appreciate the wrongfulness of his or her conduct, or to conform his or her conduct to the requirements of the law, was significantly impaired. Voluntary use of drugs or alcohol is excluded.

(f) The offense was principally accomplished by another person and the defendant manifested extreme caution or sincere concern for the safety or well-being of the victim.

(g) The operation of the multiple offense policy of RCW 9.94A.589 results in a presumptive sentence that is clearly excessive in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(h) The defendant or the defendant's children suffered a continuing pattern of physical or sexual abuse by the victim of the offense and the offense is a response to that abuse.

(2) Aggravating Circumstances - Considered and Imposed by the Court

The trial court may impose an aggravated exceptional sentence without a finding of fact by a jury under the following circumstances:

(a) The defendant and the state both stipulate that justice is best served by the imposition of an exceptional sentence outside the standard range, and the court finds the exceptional sentence to be consistent with and in furtherance of the interests of justice and the purposes of the sentencing reform act.

(b) The defendant's prior unscored misdemeanor or prior unscored foreign criminal history results in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(c) The defendant has committed multiple current offenses and the defendant's high offender score results in some of the current offenses going unpunished.

(d) The failure to consider the defendant's prior criminal history which was omitted from the offender score calculation pursuant to RCW 9.94A.525 results in a presumptive sentence that is clearly too lenient.

(3) Aggravating Circumstances - Considered by a Jury - Imposed by the Court

Except for circumstances listed in subsection (2) of this section, the following circumstances are an exclusive list of factors that can support a sentence above the standard range.

FIFTY-FOURTH DAY, MARCH 7, 2008

Such facts should be determined by procedures specified in RCW 9.94A.537.

(a) The defendant's conduct during the commission of the current offense manifested deliberate cruelty to the victim.

(b) The defendant knew or should have known that the victim of the current offense was particularly vulnerable or incapable of resistance.

(c) The current offense was a violent offense, and the defendant knew that the victim of the current offense was pregnant.

(d) The current offense was a major economic offense or series of offenses, so identified by a consideration of any of the following factors:

(i) The current offense involved multiple victims or multiple incidents per victim;

(ii) The current offense involved attempted or actual monetary loss substantially greater than typical for the offense;

(iii) The current offense involved a high degree of sophistication or planning or occurred over a lengthy period of time; or

(iv) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense.

(e) The current offense was a major violation of the Uniform Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to trafficking in controlled substances, which was more onerous than the typical offense of its statutory definition: The presence of ANY of the following may identify a current offense as a major VUCSA:

(i) The current offense involved at least three separate transactions in which controlled substances were sold, transferred, or possessed with intent to do so;

(ii) The current offense involved an attempted or actual sale or transfer of controlled substances in quantities substantially larger than for personal use;

(iii) The current offense involved the manufacture of controlled substances for use by other parties;

(iv) The circumstances of the current offense reveal the offender to have occupied a high position in the drug distribution hierarchy;

(v) The current offense involved a high degree of sophistication or planning, occurred over a lengthy period of time, or involved a broad geographic area of disbursement; or

(vi) The offender used his or her position or status to facilitate the commission of the current offense, including positions of trust, confidence or fiduciary responsibility (e.g., pharmacist, physician, or other medical professional).

(f) The current offense included a finding of sexual motivation pursuant to RCW 9.94A.835.

(g) The offense was part of an ongoing pattern of sexual abuse of the same victim under the age of eighteen years manifested by multiple incidents over a prolonged period of time.

(h) The current offense involved domestic violence, as defined in RCW 10.99.020, and one or more of the following was present:

(i) The offense was part of an ongoing pattern of psychological, physical, or sexual abuse of the victim manifested by multiple incidents over a prolonged period of time;

(ii) The offense occurred within sight or sound of the victim's or the offender's minor children under the age of eighteen years; or

(iii) The offender's conduct during the commission of the current offense manifested deliberate cruelty or intimidation of the victim.

(i) The offense resulted in the pregnancy of a child victim of rape.

(j) The defendant knew that the victim of the current offense was a youth who was not residing with a legal custodian and the

2008 REGULAR SESSION

defendant established or promoted the relationship for the primary purpose of victimization.

(k) The offense was committed with the intent to obstruct or impair human or animal health care or agricultural or forestry research or commercial production.

(l) The current offense is trafficking in the first degree or trafficking in the second degree and any victim was a minor at the time of the offense.

(m) The offense involved a high degree of sophistication or planning.

(n) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense.

(o) The defendant committed a current sex offense, has a history of sex offenses, and is not amenable to treatment.

(p) The offense involved an invasion of the victim's privacy.

(q) The defendant demonstrated or displayed an egregious lack of remorse.

(r) The offense involved a destructive and foreseeable impact on persons other than the victim.

(s) The defendant committed the offense to obtain or maintain his or her membership or to advance his or her position in the hierarchy of an organization, association, or identifiable group.

(t) The defendant committed the current offense shortly after being released from incarceration.

(u) The current offense is a burglary and the victim of the burglary was present in the building or residence when the crime was committed.

(v) The offense was committed against a law enforcement officer who was performing his or her official duties at the time of the offense, the offender knew that the victim was a law enforcement officer, and the victim's status as a law enforcement officer is not an element of the offense.

(w) The defendant committed the offense against a victim who was acting as a good samaritan.

(x) The defendant committed the offense against a public official or officer of the court in retaliation of the public official's performance of his or her duty to the criminal justice system.

(y) The victim's injuries substantially exceed the level of bodily harm necessary to satisfy the elements of the offense. This aggravator is not an exception to RCW 9.94A.530(2).

(z)(1)(A) The current offense is theft in the first degree, theft in the second degree, possession of stolen property in the first degree, or possession of stolen property in the second degree; (B) the stolen property involved is metal property; and (C) the property damage to the victim caused in the course of the theft of metal property is more than three times the value of the stolen metal property, or the theft of the metal property creates a public hazard.

(ii) For purposes of this subsection, "metal property" means commercial metal property or nonferrous metal property, as defined in RCW 19.290.010.

(aa) The defendant committed the offense with the intent to directly or indirectly cause any benefit, aggrandizement, gain, profit, or other advantage to or for a criminal street gang as defined in RCW 9.94A.030, its reputation, influence, or membership.

Requiring Community Custody For Unlawful Possession Of A Firearm

Sec. 404. RCW 9.94A.545 and 2006 c 128 s 4 are each amended to read as follows:

(1) Except as provided in RCW 9.94A.650 and in subsection (2) of this section, on all sentences of confinement for one year or less, in which the offender is convicted of a sex offense, a violent offense, a crime against a person under RCW 9.94A.411, or felony violation of chapter 69.50 or 69.52 RCW or an attempt, conspiracy, or solicitation to commit such a

FIFTY-FOURTH DAY, MARCH 7, 2008

crime, the court may impose up to one year of community custody, subject to conditions and sanctions as authorized in RCW 9.94A.715 and 9.94A.720. An offender shall be on community custody as of the date of sentencing. However, during the time for which the offender is in total or partial confinement pursuant to the sentence or a violation of the sentence, the period of community custody shall toll.

(2)(a) If the offender is guilty of failure to register under RCW 9A.44.130((+0)) (11)(a), the court shall impose a term of community custody under RCW 9.94A.715.

(b) If the offender is a criminal street gang associate or member and is found guilty of unlawful possession of a firearm under RCW 9.41.040, the court shall impose a term of community custody under RCW 9.94A.715.

(c) In a criminal case in which there has been a special allegation, the state shall prove by a preponderance of the evidence that the accused is a criminal street gang member or associate as defined in RCW 9.94A.030 and has committed the crime of unlawful possession of a firearm. The court shall make a finding of fact of whether or not the accused was a criminal street gang member or associate at the time of the commission of the crime, or if a jury trial is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to whether or not the accused was a criminal street gang member or associate during the commission of the crime.

Sec. 405. RCW 9.94A.715 and 2006 c 130 s 2 and 2006 c 128 s 5 are each reenacted and amended to read as follows:

(1) When a court sentences a person to the custody of the department for a sex offense not sentenced under RCW 9.94A.712, a violent offense, any crime against persons under RCW 9.94A.411(2), an offense involving the unlawful possession of a firearm under RCW 9.41.040, where the offender is a criminal street gang member or associate, or a felony offense under chapter 69.50 or 69.52 RCW, committed on or after July 1, 2000, or when a court sentences a person to a term of confinement of one year or less for a violation of RCW 9A.44.130((+0)) (11)(a) committed on or after June 7, 2006, the court shall in addition to the other terms of the sentence, sentence the offender to community custody for the community custody range established under RCW 9.94A.850 or up to the period of earned release awarded pursuant to RCW 9.94A.728 (1) and (2), whichever is longer. The community custody shall begin: (a) Upon completion of the term of confinement; (b) at such time as the offender is transferred to community custody in lieu of earned release in accordance with RCW 9.94A.728 (1) and (2); or (c) with regard to offenders sentenced under RCW 9.94A.660, upon failure to complete or administrative termination from the special drug offender sentencing alternative program. Except as provided in RCW 9.94A.501, the department shall supervise any sentence of community custody imposed under this section.

(2)(a) Unless a condition is waived by the court, the conditions of community custody shall include those provided for in RCW 9.94A.700(4). The conditions may also include those provided for in RCW 9.94A.700(5). The court may also order the offender to participate in rehabilitative programs or otherwise perform affirmative conduct reasonably related to the circumstances of the offense, the offender's risk of reoffending, or the safety of the community, and the department shall enforce such conditions pursuant to subsection (6) of this section.

(b) As part of any sentence that includes a term of community custody imposed under this subsection, the court shall also require the offender to comply with any conditions imposed by the department under RCW 9.94A.720. The department shall assess the offender's risk of reoffense and may establish and modify additional conditions of the offender's community custody based upon the risk to community safety. In addition, the department may require the offender to participate in rehabilitative programs, or otherwise perform affirmative conduct, and to obey all laws. The department may impose electronic monitoring as a condition of community custody for

2008 REGULAR SESSION

an offender sentenced to a term of community custody under this section pursuant to a conviction for a sex offense. Within the resources made available by the department for this purpose, the department shall carry out any electronic monitoring imposed under this section using the most appropriate technology given the individual circumstances of the offender. As used in this section, "electronic monitoring" means the monitoring of an offender using an electronic offender tracking system including, but not limited to, a system using radio frequency or active or passive global positioning system technology.

(c) The department may not impose conditions that are contrary to those ordered by the court and may not contravene or decrease court imposed conditions. The department shall notify the offender in writing of any such conditions or modifications. In setting, modifying, and enforcing conditions of community custody, the department shall be deemed to be performing a quasi-judicial function.

(3) If an offender violates conditions imposed by the court or the department pursuant to this section during community custody, the department may transfer the offender to a more restrictive confinement status and impose other available sanctions as provided in RCW 9.94A.737 and 9.94A.740.

(4) Except for terms of community custody under RCW 9.94A.670, the department shall discharge the offender from community custody on a date determined by the department, which the department may modify, based on risk and performance of the offender, within the range or at the end of the period of earned release, whichever is later.

(5) At any time prior to the completion or termination of a sex offender's term of community custody, if the court finds that public safety would be enhanced, the court may impose and enforce an order extending any or all of the conditions imposed pursuant to this section for a period up to the maximum allowable sentence for the crime as it is classified in chapter 9A.20 RCW, regardless of the expiration of the offender's term of community custody. If a violation of a condition extended under this subsection occurs after the expiration of the offender's term of community custody, it shall be deemed a violation of the sentence for the purposes of RCW 9.94A.631 and may be punishable as contempt of court as provided for in RCW 7.21.040. If the court extends a condition beyond the expiration of the term of community custody, the department is not responsible for supervision of the offender's compliance with the condition.

(6) Within the funds available for community custody, the department shall determine conditions and duration of community custody on the basis of risk to community safety, and shall supervise offenders during community custody on the basis of risk to community safety and conditions imposed by the court. The secretary shall adopt rules to implement the provisions of this subsection.

(7) By the close of the next business day after receiving notice of a condition imposed or modified by the department, an offender may request an administrative review under rules adopted by the department. The condition shall remain in effect unless the reviewing officer finds that it is not reasonably related to any of the following: (a) The crime of conviction; (b) the offender's risk of reoffending; or (c) the safety of the community.

Making Subsequent Convictions Of Malicious Mischief 3 A Gross Misdemeanor Offense

NEW SECTION. Sec. 406. A new section is added to chapter 9A.48 RCW to read as follows:

(1) A person is guilty of criminal street gang tagging and graffiti if he or she commits malicious mischief in the third degree under RCW 9A.48.090(1)(b) and he or she:

FIFTY-FOURTH DAY, MARCH 7, 2008

(a) Has multiple current convictions for malicious mischief in the third degree offenses under RCW 9A.48.090(1)(b); or

(b) Has previously been convicted for a malicious mischief in the third degree offense under RCW 9A.48.090(1)(b) or a comparable offense under a municipal code provision of any city or town; and

(c) The current offense or one of the current offenses is a "criminal street gang-related offense" as defined in RCW 9.94A.030.

(2) Criminal street gang tagging and graffiti is a gross misdemeanor offense.

Civil Cause Of Action For Graffiti And Tagging

NEW SECTION. Sec. 407. A new section is added to chapter 4.24 RCW to read as follows:

(1) An adult or emancipated minor who commits criminal street gang tagging and graffiti under section 406 of this act by causing physical damage to the property of another is liable in addition to actual damages, for a penalty to the owner in the amount of the value of the damaged property not to exceed one thousand dollars, plus an additional penalty of not less than one hundred dollars nor more than two hundred dollars, plus all reasonable attorneys' fees and court costs expended by the owner.

(2) A conviction for violation of section 406 of this act is not a condition precedent to maintenance of a civil action authorized by this section.

(3) An owner demanding payment of a penalty under subsection (1) of this section shall give written notice to the person or persons from whom the penalty is sought.

Sec. 408. RCW 10.22.010 and 1999 c 143 s 45 are each amended to read as follows:

When a defendant is prosecuted in a criminal action for a misdemeanor, other than a violation of section 406 of this act, for which the person injured by the act constituting the offense has a remedy by a civil action, the offense may be compromised as provided in RCW 10.22.020, except when it was committed:

(1) By or upon an officer while in the execution of the duties of his office(-);

(2) Riotously;

(3) With an intent to commit a felony; or

(4) By one family or household member against another as defined in RCW 10.99.020 and was a crime of domestic violence as defined in RCW 10.99.020.

Criminal Street Gang Definition

Sec. 409. RCW 9.94A.030 and 2006 c 139 s 5, 2006 c 124 s 1, 2006 c 122 s 7, 2006 c 73 s 5, and 2005 c 436 s 1 are each reenacted and amended to read as follows:

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

(1) "Board" means the indeterminate sentence review board created under chapter 9.95 RCW.

(2) "Collect," or any derivative thereof, "collect and remit," or "collect and deliver," when used with reference to the department, means that the department, either directly or through a collection agreement authorized by RCW 9.94A.760, is responsible for monitoring and enforcing the offender's sentence with regard to the legal financial obligation, receiving payment thereof from the offender, and, consistent with current law, delivering daily the entire payment to the superior court clerk without depositing it in a departmental account.

(3) "Commission" means the sentencing guidelines commission.

(4) "Community corrections officer" means an employee of the department who is responsible for carrying out specific duties in supervision of sentenced offenders and monitoring of sentence conditions.

2008 REGULAR SESSION

(5) "Community custody" means that portion of an offender's sentence of confinement in lieu of earned release time or imposed pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670, 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the community subject to controls placed on the offender's movement and activities by the department. For offenders placed on community custody for crimes committed on or after July 1, 2000, the department shall assess the offender's risk of reoffense and may establish and modify conditions of community custody, in addition to those imposed by the court, based upon the risk to community safety.

(6) "Community custody range" means the minimum and maximum period of community custody included as part of a sentence under RCW 9.94A.715, as established by the commission or the legislature under RCW 9.94A.850, for crimes committed on or after July 1, 2000.

(7) "Community placement" means that period during which the offender is subject to the conditions of community custody and/or postrelease supervision, which begins either upon completion of the term of confinement (postrelease supervision) or at such time as the offender is transferred to community custody in lieu of earned release. Community placement may consist of entirely community custody, entirely postrelease supervision, or a combination of the two.

(8) "Community protection zone" means the area within eight hundred eighty feet of the facilities and grounds of a public or private school.

(9) "Community restitution" means compulsory service, without compensation, performed for the benefit of the community by the offender.

(10) "Community supervision" means a period of time during which a convicted offender is subject to crime-related prohibitions and other sentence conditions imposed by a court pursuant to this chapter or RCW 16.52.200(6) or 46.61.524. Where the court finds that any offender has a chemical dependency that has contributed to his or her offense, the conditions of supervision may, subject to available resources, include treatment. For purposes of the interstate compact for out-of-state supervision of parolees and probationers, RCW 9.95.270, community supervision is the functional equivalent of probation and should be considered the same as probation by other states.

(11) "Confinement" means total or partial confinement.

(12) "Conviction" means an adjudication of guilt pursuant to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

(13) "Crime-related prohibition" means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct. However, affirmative acts necessary to monitor compliance with the order of a court may be required by the department.

(14) "Criminal history" means the list of a defendant's prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere.

(a) The history shall include, where known, for each conviction (i) whether the defendant has been placed on probation and the length and terms thereof; and (ii) whether the defendant has been incarcerated and the length of incarceration.

(b) A conviction may be removed from a defendant's criminal history only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or a similar out-of-state statute, or if the conviction has been vacated pursuant to a governor's pardon.

(c) The determination of a defendant's criminal history is distinct from the determination of an offender score. A prior conviction that was not included in an offender score calculated pursuant to a former version of the sentencing reform act remains part of the defendant's criminal history.

FIFTY-FOURTH DAY, MARCH 7, 2008

(15) "Criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having a common name or common identifying sign or symbol, having as one of its primary activities the commission of criminal acts, and whose members or associates individually or collectively engage in or have engaged in a pattern of criminal street gang activity. This definition does not apply to employees engaged in concerted activities for their mutual aid and protection, or to the activities of labor and bona fide nonprofit organizations or their members or agents.

(16) "Criminal street gang associate or member" means any person who actively participates in any criminal street gang and who intentionally promotes, furthers, or assists in any criminal act by the criminal street gang.

(17) "Criminal street gang-related offense" means any felony or misdemeanor offense, whether in this state or elsewhere, that is committed for the benefit of, at the direction of, or in association with any criminal street gang, or is committed with the intent to promote, further, or assist in any criminal conduct by the gang, or is committed for one or more of the following reasons:

(a) To gain admission, prestige, or promotion within the gang;

(b) To increase or maintain the gang's size, membership, prestige, dominance, or control in any geographical area;

(c) To exact revenge or retribution for the gang or any member of the gang;

(d) To obstruct justice, or intimidate or eliminate any witness against the gang or any member of the gang;

(e) To directly or indirectly cause any benefit, aggrandizement, gain, profit, or other advantage for the gang, its reputation, influence, or membership; or

(f) To provide the gang with any advantage in, or any control or dominance over any criminal market sector, including, but not limited to, manufacturing, delivering, or selling any controlled substance (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88 RCW); human trafficking (RCW 9A.40.100); or promoting pornography (chapter 9.68 RCW).

(18) "Day fine" means a fine imposed by the sentencing court that equals the difference between the offender's net daily income and the reasonable obligations that the offender has for the support of the offender and any dependents.

((+6)) (19) "Day reporting" means a program of enhanced supervision designed to monitor the offender's daily activities and compliance with sentence conditions, and in which the offender is required to report daily to a specific location designated by the department or the sentencing court.

((+7)) (20) "Department" means the department of corrections.

((+8)) (21) "Determinate sentence" means a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community supervision, the number of actual hours or days of community restitution work, or dollars or terms of a legal financial obligation. The fact that an offender through earned release can reduce the actual period of confinement shall not affect the classification of the sentence as a determinate sentence.

((+9)) (22) "Disposable earnings" means that part of the earnings of an offender remaining after the deduction from those earnings of any amount required by law to be withheld. For the purposes of this definition, "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonuses, or otherwise, and, notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy a court-ordered legal financial obligation, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not include payments

2008 REGULAR SESSION

made under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050, or Title 74 RCW.

((20)) (23) "Drug offender sentencing alternative" is a sentencing option available to persons convicted of a felony offense other than a violent offense or a sex offense and who are eligible for the option under RCW 9.94A.660.

((21)) (24) "Drug offense" means:

(a) Any felony violation of chapter 69.50 RCW except possession of a controlled substance (RCW 69.50.4013) or forged prescription for a controlled substance (RCW 69.50.403);

(b) Any offense defined as a felony under federal law that relates to the possession, manufacture, distribution, or transportation of a controlled substance; or

(c) Any out-of-state conviction for an offense that under the laws of this state would be a felony classified as a drug offense under (a) of this subsection.

((22)) (25) "Earned release" means earned release from confinement as provided in RCW 9.94A.728.

((23)) (26) "Escape" means:

(a) Sexually violent predator escape (RCW 9A.76.115), escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), willful failure to return from furlough (RCW 72.66.060), willful failure to return from work release (RCW 72.65.070), or willful failure to be available for supervision by the department while in community custody (RCW 72.09.310); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as an escape under (a) of this subsection.

((24)) (27) "Felony traffic offense" means:

(a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-run injury-accident (RCW 46.52.020(4)), felony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug (RCW 46.61.504(6)); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a felony traffic offense under (a) of this subsection.

((25)) (28) "Fine" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specific period of time.

((26)) (29) "First-time offender" means any person who has no prior convictions for a felony and is eligible for the first-time offender waiver under RCW 9.94A.650.

((27)) (30) "Home detention" means a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance.

((28)) (31) "Legal financial obligation" means a sum of money that is ordered by a superior court of the state of Washington for legal financial obligations which may include restitution to the victim, statutorily imposed crime victims' compensation fees as assessed pursuant to RCW 7.68.035, court costs, county or interlocal drug funds, court-appointed attorneys' fees, and costs of defense, fines, and any other financial obligation that is assessed to the offender as a result of a felony conviction. Upon conviction for vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial obligations may also include payment to a public agency of the expense of an emergency response to the incident resulting in the conviction, subject to RCW 38.52.430.

((29)) (32) "Most serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies:

FIFTY-FOURTH DAY, MARCH 7, 2008

(a) Any felony defined under any law as a class A felony or criminal solicitation of or criminal conspiracy to commit a class A felony;

(b) Assault in the second degree;

(c) Assault of a child in the second degree;

(d) Child molestation in the second degree;

(e) Controlled substance homicide;

(f) Extortion in the first degree;

(g) Incest when committed against a child under age fourteen;

(h) Indecent liberties;

(i) Kidnapping in the second degree;

(j) Leading organized crime;

(k) Manslaughter in the first degree;

(l) Manslaughter in the second degree;

(m) Promoting prostitution in the first degree;

(n) Rape in the third degree;

(o) Robbery in the second degree;

(p) Sexual exploitation;

(q) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner;

(r) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(s) Any other class B felony offense with a finding of sexual motivation;

(t) Any other felony with a deadly weapon verdict under RCW 9.94A.602;

(u) Any felony offense in effect at any time prior to December 2, 1993, that is comparable to a most serious offense under this subsection, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a most serious offense under this subsection;

(v)(i) A prior conviction for indecent liberties under RCW 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

(ii) A prior conviction for indecent liberties under RCW 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988, if: (A) The crime was committed against a child under the age of fourteen; or (B) the relationship between the victim and perpetrator is included in the definition of indecent liberties under RCW 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993, through July 27, 1997.

~~((30))~~ (33) "Nonviolent offense" means an offense which is not a violent offense.

~~((31))~~ (34) "Offender" means a person who has committed a felony established by state law and is eighteen years of age or older or is less than eighteen years of age but whose case is under superior court jurisdiction under RCW 13.04.030 or has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

~~((32))~~ (35) "Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, or, if home detention or work crew has been ordered by the court, in an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement includes work release, home detention, work crew, and a combination of work crew and home detention.

~~((33))~~ (36) "Pattern of criminal street gang activity" means:

2008 REGULAR SESSION

(a) The commission, attempt, conspiracy, or solicitation of, or any prior juvenile adjudication of or adult conviction of, two or more of the following criminal street gang-related offenses:

(i) Any "serious violent" felony offense as defined in RCW 9.94A.030, excluding Homicide by Abuse (RCW 9A.32.055) and Assault of a Child 1 (RCW 9A.36.120);

(ii) Any "violent" offense as defined by RCW 9.94A.030, excluding Assault of a Child 2 (RCW 9A.36.130);

(iii) Deliver or Possession with Intent to Deliver a Controlled Substance (chapter 69.50 RCW);

(iv) Any violation of the firearms and dangerous weapon act (chapter 9.41 RCW);

(v) Theft of a Firearm (RCW 9A.56.300);

(vi) Possession of a Stolen Firearm (RCW 9A.56.310);

(vii) Malicious Harassment (RCW 9A.36.080);

(viii) Harassment where a subsequent violation or deadly threat is made (RCW 9A.46.020(2)(b));

(ix) Criminal Gang Intimidation (RCW 9A.46.120);

(x) Any felony conviction by a person eighteen years of age or older with a special finding of involving a juvenile in a felony offense under section 402 of this act;

(xi) Residential Burglary (RCW 9A.52.025);

(xii) Burglary 2 (RCW 9A.52.030);

(xiii) Malicious Mischief 1 (RCW 9A.48.070);

(xiv) Malicious Mischief 2 (RCW 9A.48.080);

(xv) Theft of a Motor Vehicle (RCW 9A.56.065);

(xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);

(xvii) Taking a Motor Vehicle Without Permission 1 (RCW 9A.56.070);

(xviii) Taking a Motor Vehicle Without Permission 2 (RCW 9A.56.075);

(xix) Extortion 1 (RCW 9A.56.120);

(xx) Extortion 2 (RCW 9A.56.130);

(xxi) Intimidating a Witness (RCW 9A.72.110);

(xxii) Tampering with a Witness (RCW 9A.72.120);

(xxiii) Reckless Endangerment (RCW 9A.36.050);

(xxiv) Coercion (RCW 9A.36.070);

(xxv) Harassment (RCW 9A.46.020); or

(xxvi) Malicious Mischief 3 (RCW 9A.48.090);

(b) That at least one of the offenses listed in (a) of this subsection shall have occurred after July 1, 2008;

(c) That the most recent committed offense listed in (a) of this subsection occurred within three years of a prior offense listed in (a) of this subsection; and

(d) Of the offenses that were committed in (a) of this subsection, the offenses occurred on separate occasions or were committed by two or more persons.

(37) "Persistent offender" is an offender who:

(a)(i) Has been convicted in this state of any felony considered a most serious offense; and

(ii) Has, before the commission of the offense under (a) of this subsection, been convicted as an offender on at least two separate occasions, whether in this state or elsewhere, of felonies that under the laws of this state would be considered most serious offenses and would be included in the offender score under RCW 9.94A.525; provided that of the two or more previous convictions, at least one conviction must have occurred before the commission of any of the other most serious offenses for which the offender was previously convicted; or

(b)(i) Has been convicted of: (A) Rape in the first degree, rape of a child in the first degree, child molestation in the first degree, rape in the second degree, rape of a child in the second degree, or indecent liberties by forcible compulsion; (B) any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in the second degree, or burglary in the first degree; or (C)

FIFTY-FOURTH DAY, MARCH 7, 2008

2008 REGULAR SESSION

an attempt to commit any crime listed in this subsection ~~((33))~~ (37)(b)(i); and

(ii) Has, before the commission of the offense under (b)(i) of this subsection, been convicted as an offender on at least one occasion, whether in this state or elsewhere, of an offense listed in (b)(i) of this subsection or any federal or out-of-state offense or offense under prior Washington law that is comparable to the offenses listed in (b)(i) of this subsection. A conviction for rape of a child in the first degree constitutes a conviction under (b)(i) of this subsection only when the offender was sixteen years of age or older when the offender committed the offense. A conviction for rape of a child in the second degree constitutes a conviction under (b)(i) of this subsection only when the offender was eighteen years of age or older when the offender committed the offense.

~~((34))~~ (38) "Postrelease supervision" is that portion of an offender's community placement that is not community custody.

~~((35))~~ (39) "Predatory" means: (a) The perpetrator of the crime was a stranger to the victim, as defined in this section; (b) the perpetrator established or promoted a relationship with the victim prior to the offense and the victimization of the victim was a significant reason the perpetrator established or promoted the relationship; or (c) the perpetrator was: (i) A teacher, counselor, volunteer, or other person in authority in any public or private school and the victim was a student of the school under his or her authority or supervision. For purposes of this subsection, "school" does not include home-based instruction as defined in RCW 28A.225.010; (ii) a coach, trainer, volunteer, or other person in authority in any recreational activity and the victim was a participant in the activity under his or her authority or supervision; or (iii) a pastor, elder, volunteer, or other person in authority in any church or religious organization, and the victim was a member or participant of the organization under his or her authority.

~~((36))~~ (40) "Private school" means a school regulated under chapter 28A.195 or 28A.205 RCW.

~~((37))~~ (41) "Public school" has the same meaning as in RCW 28A.150.010.

~~((38))~~ (42) "Restitution" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specified period of time as payment of damages. The sum may include both public and private costs.

~~((39))~~ (43) "Risk assessment" means the application of an objective instrument supported by research and adopted by the department for the purpose of assessing an offender's risk of reoffense, taking into consideration the nature of the harm done by the offender, place and circumstances of the offender related to risk, the offender's relationship to any victim, and any information provided to the department by victims. The results of a risk assessment shall not be based on unconfirmed or unconfirmable allegations.

~~((40))~~ (44) "Serious traffic offense" means:

(a) Nonfelony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502), nonfelony actual physical control while under the influence of intoxicating liquor or any drug (RCW 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or

(b) Any federal, out-of-state, county, or municipal conviction for an offense that under the laws of this state would be classified as a serious traffic offense under (a) of this subsection.

~~((41))~~ (45) "Serious violent offense" is a subcategory of violent offense and means:

- (a)(i) Murder in the first degree;
- (ii) Homicide by abuse;
- (iii) Murder in the second degree;
- (iv) Manslaughter in the first degree;
- (v) Assault in the first degree;
- (vi) Kidnapping in the first degree;
- (vii) Rape in the first degree;

(viii) Assault of a child in the first degree; or
(ix) An attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies; or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious violent offense under (a) of this subsection.

~~((42))~~ (46) "Sex offense" means:

(a)(i) A felony that is a violation of chapter 9A.44 RCW other than RCW 9A.44.130~~((41))~~ (12);

(ii) A violation of RCW 9A.64.020;

(iii) A felony that is a violation of chapter 9.68A RCW other than RCW 9.68A.080; or

(iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a sex offense in (a) of this subsection;

(c) A felony with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135; or

(d) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a sex offense under (a) of this subsection.

~~((43))~~ (47) "Sexual motivation" means that one of the purposes for which the defendant committed the crime was for the purpose of his or her sexual gratification.

~~((44))~~ (48) "Standard sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

~~((45))~~ (49) "Statutory maximum sentence" means the maximum length of time for which an offender may be confined as punishment for a crime as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the crime, or other statute defining the maximum penalty for a crime.

~~((46))~~ (50) "Stranger" means that the victim did not know the offender twenty-four hours before the offense.

~~((47))~~ (51) "Total confinement" means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

~~((48))~~ (52) "Transition training" means written and verbal instructions and assistance provided by the department to the offender during the two weeks prior to the offender's successful completion of the work ethic camp program. The transition training shall include instructions in the offender's requirements and obligations during the offender's period of community custody.

~~((49))~~ (53) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged.

~~((50))~~ (54) "Violent offense" means:

(a) Any of the following felonies:

(i) Any felony defined under any law as a class A felony or an attempt to commit a class A felony;

(ii) Criminal solicitation of or criminal conspiracy to commit a class A felony;

(iii) Manslaughter in the first degree;

(iv) Manslaughter in the second degree;

(v) Indecent liberties if committed by forcible compulsion;

(vi) Kidnapping in the second degree;

(vii) Arson in the second degree;

(viii) Assault in the second degree;

(ix) Assault of a child in the second degree;

(x) Extortion in the first degree;

(xi) Robbery in the second degree;

(xii) Drive-by shooting;

(xiii) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner; and

FIFTY-FOURTH DAY, MARCH 7, 2008

2008 REGULAR SESSION

(xiv) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a violent offense in (a) of this subsection; and

(c) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a violent offense under (a) or (b) of this subsection.

~~((54))~~ (55) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community that complies with RCW 9.94A.725.

~~((52))~~ (56) "Work ethic camp" means an alternative incarceration program as provided in RCW 9.94A.690 designed to reduce recidivism and lower the cost of corrections by requiring offenders to complete a comprehensive array of real-world job and vocational experiences, character-building work ethics training, life management skills development, substance abuse rehabilitation, counseling, literacy training, and basic adult education.

~~((53))~~ (57) "Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school.

**PART V
STATE PREEMPTION**

NEW SECTION. Sec. 501. (1) The state of Washington hereby fully occupies and preempts the entire field of definitions used for purposes of substantive criminal law relating to criminal street gangs, criminal street gang-related offenses, criminal street gang associates and members, and pattern of criminal street gang activity. These definitions of "criminal street gang," "criminal street gang associate or member," "criminal street gang-related offense," and "pattern of criminal street gang activity" contained in RCW 9.94A.030 expressly preempt any conflicting city or county codes or ordinances. Cities, towns, counties, or other municipalities may enact laws and ordinances relating to criminal street gangs that contain definitions that are consistent with definitions pursuant to RCW 9.94A.030. Local laws and ordinances that are inconsistent with the definitions shall not be enacted and are preempted and repealed, regardless of the nature of the code, charter, or home rule status of such city, town, county, or municipality.

(2) The preemption provided in this chapter does not apply to "gang" as defined in RCW 28A.600.455 under the common school provisions act or "gang" as defined in RCW 59.18.030 under the landlord-tenant act.

(3) The preemption provided for in this chapter does not restrict the adoption or use of a uniform state definition of "gang," "gang member," or "gang associate," for purposes of the creation and maintenance of the statewide gang database for law enforcement intelligence purposes under section 201 of this act.

**PART VI
TEMPORARY WITNESS RELOCATION PROGRAM**

NEW SECTION. Sec. 601. A new section is added to chapter 43.31 RCW to read as follows:

The legislature recognizes that witnesses are often fearful of testifying against criminal gang members. Witnesses may be subject to harassment, intimidation, and threats. While the state does not ensure protection of witnesses, the state intends to provide resources to assist local prosecutors in combating gang-related crimes and to help citizens perform their civic duty to testify in these cases.

NEW SECTION. Sec. 602. A new section is added to chapter 43.31 RCW to read as follows:

(1) Subject to available funds, the department of community, trade, and economic development shall establish a temporary witness assistance grant program for witnesses of felony criminal street gang-related offenses. The department of community, trade, and economic development shall develop a formula for distributing temporary witness assistance grants and consideration shall primarily be given to those county prosecutors that show that there is a significant gang problem in their jurisdiction.

(2) As part of the temporary witness assistance grant program, the department of community, trade, and economic development shall work in collaboration with each local prosecuting attorney to determine how and how much grant funding shall be distributed in order to reimburse county prosecutors in assisting witnesses of felony gang-related offenses with temporary assistance, relocation, and shelter.

(3) Each temporary witness assistance grant awarded shall be limited to a maximum of five thousand dollars per witness of a felony criminal street gang-related offense or for a period of no more than three months.

(4) Based upon the prior approval of the department of community, trade, and economic development, approved county prosecutor costs incurred for providing temporary witness assistance shall be reimbursed to the respective county prosecutor's office on a quarterly basis.

(5) An appointed or elected public official, public employee, or public agency as defined in RCW 4.24.470 is immune from civil liability for damages resulting from the temporary witness assistance program, unless it is shown that the official, employee, or agency acted with gross negligence or in bad faith.

NEW SECTION. Sec. 603. If specific funding for purposes of section 602 of this act, referencing section 602 of this act by bill or chapter and section number, is not provided by June 30, 2008, in the omnibus operating appropriations act, section 602 of this act is null and void.

**PART VII
STUDY ON BEST PRACTICES TO REDUCE GANG
INVOLVEMENT WHILE
INCARCERATED**

NEW SECTION. Sec. 701. A new section is added to chapter 72.09 RCW to read as follows:

(1) The department shall study and establish best practices to reduce gang involvement and recruitment among incarcerated offenders. The department shall study and make recommendations regarding the establishment of:

(a) Intervention programs within the institutions of the department for offenders who are seeking to opt out of gangs. The intervention programs shall include, but are not limited to, tattoo removal, anger management, GED, and other interventions; and

(b) An intervention program to assist gang members with successful reentry into the community.

(2) The department shall report to the legislature on its findings and recommendations by January 1, 2009.

**PART VIII
MISCELLANEOUS**

NEW SECTION. Sec. 801. 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. 802. Part headings and subheadings used in this act are not any part of the law.

NEW SECTION. Sec. 803. Sections 302 and 303 of this act constitute a new chapter in Title 7 RCW.

NEW SECTION. Sec. 804. Section 501 of this act constitutes a new chapter in Title 9 RCW.

NEW SECTION. Sec. 805. If specific funding for the purposes of this act, referencing this act by bill or chapter

FIFTY-FOURTH DAY, MARCH 7, 2008

number, is not provided by June 30, 2008, in the omnibus appropriations act, this act is null and void."

MOTION

Senator Prentice moved that the following amendment by Senators Prentice and Brown to the committee striking amendment be adopted.

On page 5, beginning on line 33 of the amendment, strike all material up to and including page 9, line 13 of the amendment

Renumber the remaining parts and sections consecutively and correct any internal references accordingly.

Senators Prentice, Kauffman and Franklin spoke in favor of adoption of the amendment to the committee striking amendment.

Senator Holmquist spoke against adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senators Prentice and Brown on page 5, line 33 to the committee striking amendment to Engrossed Second Substitute House Bill No. 2712.

The motion by Senator Prentice carried and the amendment to the committee striking amendment was adopted by voice vote.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Ways & Means as amended to Engrossed Second Substitute House Bill No. 2712.

The motion by Senator Prentice carried and the committee striking amendment as amended was adopted by voice vote.

MOTION

There being no objection, the following title amendments were adopted:

On page 1, line 1 of the title, after "gangs;" strike the remainder of the title and insert "amending RCW 42.56.240, 9.94A.533, 9.94A.535, 9.94A.545, and 10.22.010; reenacting and amending RCW 9.94A.715 and 9.94A.030; adding a new section to chapter 43.20A RCW; adding new sections to chapter 36.28A RCW; adding a new section to chapter 43.43 RCW; adding a new section to chapter 9.94A RCW; adding a new section to chapter 9A.48 RCW; adding a new section to chapter 4.24 RCW; adding a new section to chapter 28A.300 RCW; adding new sections to chapter 43.31 RCW; adding a new section to chapter 72.09 RCW; adding a new chapter to Title 7 RCW; adding a new chapter to Title 9 RCW; creating new sections; and prescribing penalties."

On page 42, line 19 of the title amendment, after "72.09 RCW;" strike "adding a new chapter to Title 7 RCW;"

MOTION

On motion of Senator Kline, the rules were suspended, Engrossed Second Substitute House Bill No. 2712 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Kline, Honeyford and King spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Second Substitute House Bill No. 2712 as amended by the Senate.

ROLL CALL

2008 REGULAR SESSION

The Secretary called the roll on the final passage of Engrossed Second Substitute House Bill No. 2712 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 46; Nays, 3; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 46

Voting nay: Senators Franklin, Kauffman and Prentice - 3

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 2712 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SECOND SUBSTITUTE HOUSE BILL NO. 2479, by House Committee on Appropriations (originally sponsored by Representatives Morrell, Bailey, Cody, Pedersen, Appleton, Sells, Lantz, Hasegawa, Ormsby, Conway, Condotta, Hurst, McIntire, Roberts, Kenney, Haigh, Schual-Berke, Campbell, VanDeWege, Rolfes, Kagi, Chase, Liias, Simpson, Barlow, Ericks, Green, Kelley and McDonald)

Requiring subscribers' consent to disclosure of wireless phone numbers.

The measure was read the second time.

MOTION

Senator Kauffman moved that the following committee striking amendment by the Committee on Consumer Protection & Housing be adopted.

Strike everything after the enacting clause and insert the following:

NEW SECTION. Sec. 1. The legislature finds that the right to privacy is a personal and fundamental right protected by Article I, section 7 of the state Constitution. The legislature also finds that, in the vast majority of cases, subscribers pay for both incoming and outgoing calls, and that subscribers purchase cell phone service with an expectation that their numbers will not be made public. Therefore, the legislature recognizes that a subscriber's cell phone number should be kept private, unless that subscriber knowingly provides their express, opt-in consent to have that number made available in a public directory.

NEW SECTION. Sec. 2. A new section is added to chapter 19.250 RCW to read as follows:

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

(1) "Directory provider" means any person in the business of marketing, selling, or sharing the phone number of any subscriber for commercial purposes.

(2) "Radio communications service company" has the same meaning as in RCW 80.04.010.

(3) "Reverse phone number search services" means a service that provides the name of a subscriber associated with a phone number when the phone number is supplied.

(4) "Subscriber" means a person who resides in the state of Washington and subscribes to radio communications services, radio paging, or cellular communications service.

(5) "Wireless phone number" means a phone number unique to the subscriber that permits the subscriber to receive radio

FIFTY-FOURTH DAY, MARCH 7, 2008

communications, radio paging, or cellular communications from others.

Sec. 3. RCW 19.250.010 and 2005 c 322 s 1 are each amended to read as follows:

(1) A radio communications service company (~~as defined in RCW 80.04.010;~~) or any direct or indirect affiliate or agent of a (~~provider~~) radio communications service company shall not include the wireless phone number of any subscriber for inclusion in any directory of any form, nor shall it sell the contents of any directory database, without first obtaining the express, opt-in consent of that subscriber. The subscriber's consent must be obtained either in writing or electronically, and a receipt must be provided to the subscriber. The consent shall be a separate document or located on a separate screen or web page that has the sole purpose of authorizing a radio communications service company to include the subscriber's wireless phone number in a publicly available directory assistance database.

(2) In obtaining the subscriber's consent, the (~~provider~~) radio communications service company or direct or indirect affiliate or agent of a radio communications service company shall unambiguously disclose that, by consenting, the subscriber agrees to (~~have~~) the following:

(a) That the subscriber's wireless phone number may be sold or licensed as part of a list of subscribers and that the wireless phone number may be included in a publicly available directory assistance database; (~~The provider must also disclose that by consenting to be included in the directory;~~);

(b) That the subscriber may incur additional charges for receiving unsolicited calls or text messages; and

(c) That the subscriber's express, opt-in consent will be construed as consent for the subsequent publication of the wireless phone number to and by third parties in other directories or databases.

~~((2) A subscriber who provides express consent pursuant to subsection (1) of this section may revoke that consent at any time. A radio communications service company shall comply with the subscriber's request to opt out within a reasonable period of time, not to exceed sixty days.~~

~~(3) A subscriber shall not be charged for opting not to be listed in the directory.~~

~~(4) This section does not apply to the provision of telephone numbers, for the purposes indicated, to:~~

~~(a) Any law enforcement agency, fire protection agency, public health agency, public environmental health agency, city or county emergency services planning agency, or private for-profit corporation operating under contract with, and at the direction of, one or more of these agencies, for the exclusive purpose of responding to a 911 call or communicating an imminent threat to life or property. Information or records provided to a private for-profit corporation pursuant to (b) of this subsection shall be held in confidence by that corporation and by any individual employed by or associated with that corporation. Such information or records shall not be open to examination for any purpose not directly connected with the administration of the services specified in this subsection;~~

~~(b) A lawful process issued under state or federal law;~~

~~(c) A telecommunications company providing service between service areas for the provision of telephone services to the subscriber between service areas, or to third parties for the limited purpose of providing billing services;~~

~~(d) A telecommunications company to effectuate a customer's request to transfer the customer's assigned telephone number from the customer's existing provider of telecommunications services to a new provider of telecommunications services;~~

~~(e) The utilities and transportation commission pursuant to its jurisdiction and control over telecommunications companies; and~~

2008 REGULAR SESSION

~~(f) A sales agent to provide the subscriber's cell phone numbers to the cellular provider for the limited purpose of billing and customer service.~~

~~(5) Every knowing violation of this section is punishable by a fine of up to fifty thousand dollars for each violation.~~

~~(6) The attorney general may bring actions to enforce compliance with this section. For the first violation by any company or organization of this section, the attorney general may notify the company with a letter of warning that the section has been violated.~~

~~(7) No telecommunications company, nor any official or employee of a telecommunications company, shall be subject to criminal or civil liability for the release of customer information as authorized by this section.)~~

NEW SECTION. Sec. 4. A new section is added to chapter 19.250 RCW to read as follows:

(1) A directory provider shall not include any phone number that belongs to a Washington state resident in any directory of any form, or sell the contents of any directory database, without first undertaking a reasonable ongoing investigation as to whether the phone number is a wireless phone number. An investigation under this section is presumed reasonable if the directory provider compares the phone number at least every thirty days against: (a) A commercially available list of central office code assignment records offered through the North American numbering plan administration or other similar service; or (b) a commercially available list of intermodal ports of telephone numbers between wireline-to-wireless ports and wireless-to-wireline ports. A directory provider also has a duty to continually use up-to-date, commercially available technology when conducting its investigation of a phone number. If an investigation reveals that the phone number is a wireless phone number, the directory provider shall not include the number in any directory of any form, or sell the contents of any directory database without first obtaining the subscriber's express, opt-in consent. The subscriber's consent must be obtained either in writing or electronically, and a receipt must be provided to the subscriber. The consent must be a separate document or located on a separate screen or web page that has the sole purpose of authorizing a directory provider to include the subscriber's wireless phone number in a publicly available directory assistance database.

(2) In obtaining the subscriber's consent, the directory provider shall unambiguously disclose that, by consenting, the subscriber agrees to the following:

(a) That the subscriber's wireless phone number may be sold or licensed as part of a list of subscribers and that the wireless phone number may be included in a publicly available directory assistance database;

(b) That the subscriber may incur additional charges for receiving unsolicited calls or text messages; and

(c) That the subscriber's express, opt-in consent will be construed as consent for the subsequent publication of the wireless phone number to and by third parties in other directories or databases.

(3) This section does not preclude a directory provider from providing a reverse phone number search service. However, a subscriber whose wireless phone number is contained in a reverse phone number search service may utilize the opt-out provisions set forth in section 5 of this act.

NEW SECTION. Sec. 5. A new section is added to chapter 19.250 RCW to read as follows:

(1) A subscriber who provides express, opt-in consent under RCW 19.250.010 and section 4 of this act may revoke that consent at any time. A radio communications service company and a directory provider shall comply with the subscriber's request to opt out within a reasonable period of time, not to exceed sixty days for printed directories and not to exceed thirty days for online directories.

(2) At the subscriber's request, a provider of a reverse phone number search service must allow a subscriber to perform a

FIFTY-FOURTH DAY, MARCH 7, 2008

reverse phone number search free of charge to determine whether the subscriber's wireless phone number is listed in the reverse phone number search service. If the subscriber finds that his or her wireless phone number is contained in the reverse phone number search service, the subscriber may opt out of having his or her wireless phone number included in the reverse phone number search service at any time. The provider of the reverse phone number search service must comply with the subscriber's request to opt out within a reasonable period of time, not to exceed thirty days.

(3) A subscriber shall not be charged for opting out of having his or her wireless phone number listed in a directory or reverse phone number search service.

NEW SECTION. Sec. 6. A new section is added to chapter 19.250 RCW to read as follows:

The legislature finds that allowing a subscriber to opt out of a reverse phone number search service vitally affects the public interest for the purpose of applying chapter 19.86 RCW. A violation of section 5 of this act by a provider of a reverse phone number search service is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying chapter 19.86 RCW.

NEW SECTION. Sec. 7. A new section is added to chapter 19.250 RCW to read as follows:

(1) Every knowing violation of RCW 19.250.010 is punishable by a fine of not less than two thousand dollars and no more than fifty thousand dollars for each violation. Including a wireless phone number in a directory without a subscriber's express, opt-in consent pursuant to section 4 of this act is a violation of this chapter and is punishable by a fine of up to fifty thousand dollars unless the directory provider first conducted a reasonable investigation as required in section 4 of this act and was unable to determine if the published number was a wireless phone number.

(2) The attorney general may bring actions to enforce compliance with this section. For the first violation by any company, organization, or person under this chapter, the attorney general may notify the company, organization, or person with a letter of warning that this chapter has been violated.

(3) A telecommunications company or directory provider, or any official or employee of a telecommunications company or directory provider, is not subject to criminal or civil liability for the release of customer information as authorized by this chapter.

NEW SECTION. Sec. 8. A new section is added to chapter 19.250 RCW to read as follows:

(1) A radio communications service company or a directory provider, who has maintained a directory before the effective date of this section, must within thirty days either:

(a) Secure the express, opt-in consent of each subscriber listed in the directory as specified in RCW 19.250.010 or section 4 of this act; or

(b) Remove the wireless phone numbers of any subscribers who have not provided their express, opt-in consent.

(2) This section does not apply to the following:

(a) A directory provider that has undertaken a reasonable investigation pursuant to section 4 of this act and is unable to determine whether the phone number is a wireless phone number;

(b) A directory provider that publishes a subscriber's wireless phone number in a directory that is obtained directly from a radio communications service company and that radio communications service company has obtained the required express, opt-in consent for including in any directory the subscriber's wireless phone number as specified in RCW 19.250.010;

(c) A person that publishes a subscriber's wireless phone number in a directory where the subscriber pays a fee to have the number published for commercial purposes; and

2008 REGULAR SESSION

(d) A person that publishes a subscriber's wireless phone number that was ported from listed wireline service to wireless service within the previous fifteen months.

(3) This section does not preclude a directory provider from providing a reverse phone number search service. However, a subscriber whose wireless phone number is contained in a reverse phone number search service may utilize the opt-out provisions set forth in section 5 of this act.

NEW SECTION. Sec. 9. A new section is added to chapter 19.250 RCW to read as follows:

This chapter does not apply to the provision of wireless phone numbers, for the purposes indicated, to:

(1) Any law enforcement agency, fire protection agency, public health agency, public environmental health agency, city or county emergency services planning agency, or private for-profit corporation operating under contract with, and at the direction of, one or more of these agencies, for the exclusive purpose of responding to a 911 call or communicating an imminent threat to life or property. Information or records provided to a private for-profit corporation pursuant to subsection (2) of this section must be held in confidence by that corporation and by any individual employed by or associated with that corporation. Such information or records are not open to examination for any purpose not directly connected with the administration of the services specified in this subsection;

(2) A lawful process issued under state or federal law;

(3) A telecommunications company providing service between service areas for the provision of telephone services to the subscriber between service areas, or to third parties for the limited purpose of providing billing services;

(4) A telecommunications company to effectuate a customer's request to transfer the customer's assigned telephone number from the customer's existing provider of telecommunications services to a new provider of telecommunications services;

(5) The utilities and transportation commission pursuant to its jurisdiction and control over telecommunications companies;

(6) A sales agent to provide the subscriber's wireless phone numbers to the radio communications service company for the limited purpose of billing and customer service;

(7) A directory provider that has undertaken a reasonable investigation pursuant to section 4 of this act and is unable to determine whether the phone number is a wireless phone number;

(8) A directory provider that publishes a subscriber's wireless phone number in a directory that is obtained directly from a radio communications service company and that radio communications service company has obtained the required express, opt-in consent for including in any directory the subscriber's wireless phone number as specified in RCW 19.250.010;

(9) A person that publishes a subscriber's wireless phone number in a directory where the subscriber pays a fee to have the number published for commercial purposes;

(10) A person that publishes a subscriber's wireless phone number that was ported from listed wireline service to wireless service within the previous fifteen months; and

(11) A consumer reporting agency as defined in RCW 19.182.010 for use as a unique identifier of a consumer in a consumer report as defined in RCW 19.182.010."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Consumer Protection & Housing to Second Substitute House Bill No. 2479.

The motion by Senator Kauffman carried and the committee striking amendment was adopted by voice vote.

MOTION

FIFTY-FOURTH DAY, MARCH 7, 2008

2008 REGULAR SESSION

There being no objection, the following title amendment was adopted:

On page 1, line 1 of the title, after "numbers;" strike the remainder of the title and insert "amending RCW 19.250.010; adding new sections to chapter 19.250 RCW; creating a new section; and prescribing penalties."

MOTION

On motion of Senator Kauffman, the rules were suspended, Second Substitute House Bill No. 2479 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Kauffman and Honeyford spoke in favor of passage of the bill.

MOTION

On motion of Senator Regala, Senator Prentice was excused.

The President declared the question before the Senate to be the final passage of Second Substitute House Bill No. 2479 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Second Substitute House Bill No. 2479 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 48

Excused: Senator Prentice - 1

SECOND SUBSTITUTE HOUSE BILL NO. 2479 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SECOND SUBSTITUTE HOUSE BILL NO. 2635, by House Committee on Appropriations Subcommittee on Education (originally sponsored by Representative Quall)

Regarding school district boundaries and organization.

The measure was read the second time.

MOTION

Senator McAuliffe moved that the following committee striking amendment by the Committee on Early Learning & K-12 Education be adopted.

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 28A.315.195 and 2006 c 263 s 502 are each amended to read as follows:

(1) A proposed change in school district organization by transfer of territory from one school district to another may be initiated by a petition in writing presented to the educational service district superintendent:

(a) Signed by at least fifty percent plus one of the active registered voters residing in the territory proposed to be transferred; or

(b) Signed by a majority of the members of the board of directors of one of the districts affected by a proposed transfer of territory and providing documentation that, before signing the petition, the board of directors took the following actions:

(i) Communicated the proposed transfer to the board of directors of the affected district or districts and provided an opportunity for the board of the affected district or districts to respond; and

(ii) Communicated the proposed transfer to the registered voters residing in the territory proposed to be transferred, provided notice of a public hearing regarding the proposal, and provided the voters an opportunity to comment on the proposal at the public hearing.

(2) The petition shall state the name and number of each district affected, describe the boundaries of the territory proposed to be transferred, and state the reasons for desiring the change and the number of children of school age, if any, residing in the territory.

(3) The educational service district superintendent shall not complete any transfer of territory under this section that involves ten percent or more of the common school student population of the entire district from which the transfer is proposed, unless the educational service district superintendent has first called and held a special election of the voters of the entire school district from which the transfer of territory is proposed. The purpose of the election is to afford those voters an opportunity to approve or reject the proposed transfer. A simple majority shall determine approval or rejection.

(4) The superintendent of public instruction may establish rules limiting the frequency of petitions that may be filed pertaining to territory included in whole or in part in a previous petition.

(5) Upon receipt of the petition, the educational service district superintendent shall notify in writing the affected districts that:

(a) Each school district board of directors, whether or not initiating a proposed transfer of territory, is required to enter into negotiations with the affected district or districts;

(b) In the case of a citizen-initiated petition, the affected districts must negotiate on the entire proposed transfer of territory;

(c) The districts have ninety calendar days in which to agree to the proposed transfer of territory;

(d) The districts may request and shall be granted by the educational service district superintendent one thirty-day extension to try to reach agreement; and

(e) Any district involved in the negotiations may at any time during the ninety-day period notify the educational service district superintendent in writing that agreement will not be possible.

(6) If the negotiating school boards cannot come to agreement about the proposed transfer of territory, the educational service district superintendent, if requested by the affected districts, shall appoint a mediator. The mediator has thirty days to work with the affected school districts to see if an agreement can be reached on the proposed transfer of territory.

(7) If the affected school districts cannot come to agreement about the proposed transfer of territory, and the districts do not request the services of a mediator or the mediator was unable to bring the districts to agreement, either district may file with the educational service district superintendent a written request for a hearing by the regional committee.

(8) If the affected school districts cannot come to agreement about the proposed transfer of territory initiated by citizen petition, and the districts do not request the services of a mediator or the mediator was unable to bring the districts to agreement, the district in which the citizens who filed the petition reside shall file with the educational service district

FIFTY-FOURTH DAY, MARCH 7, 2008

superintendent a written request for a hearing by the regional committee, unless a majority of the citizen petitioners request otherwise.

(9) Upon receipt of a notice under subsection (7) or (8) of this section, the educational service district superintendent shall notify the chair of the regional committee in writing within ten days.

(10) Costs incurred by school districts under this section shall be reimbursed by the state from such funds as are appropriated for this purpose.

Sec. 2. RCW 28A.315.205 and 2006 c 263 s 503 are each amended to read as follows:

(1) The chair of the regional committee shall schedule a hearing on the proposed transfer of territory at a location in the educational service district within sixty calendar days of being notified under RCW 28A.315.195 (7) or (8).

(2) Within thirty calendar days of the hearing under subsection (1) of this section, or final hearing if more than one is held by the committee, the committee shall issue its written findings and decision to approve or disapprove the proposed transfer of territory. The educational service district superintendent shall transmit a copy of the committee's decision to the superintendents of the affected school districts within ten calendar days.

(3) In carrying out the purposes of RCW 28A.315.015 and in making decisions as authorized under RCW 28A.315.095(1), the regional committee shall base its judgment upon whether and to the extent the proposed change in school district organization complies with RCW 28A.315.015(2) and rules adopted by the superintendent of public instruction under chapter 34.05 RCW.

(4) The rules under subsection (3) of this section shall provide for giving consideration to all of the following:

(a) Student educational opportunities as measured by the percentage of students performing at each level of the statewide mandated assessments and data regarding student attendance, graduation, and dropout rates;

(b) The safety and welfare of pupils. For the purposes of this subsection, "safety" means freedom or protection from danger, injury, or damage and "welfare" means a positive condition or influence regarding health, character, and well-being;

(c) The history and relationship of the property affected to the students and communities affected, including, for example, ~~((inclusion within a single school district, for school attendance and corresponding tax support purposes, of entire master planned communities that were or are to be developed pursuant to an integrated commercial and residential development plan with over one thousand dwelling units))~~ the impact of the growth management act and current or proposed urban growth areas, city boundaries, and master planned communities;

(d) Whether or not geographic accessibility warrants a favorable consideration of a recommended change in school district organization, including remoteness or isolation of places of residence and time required to travel to and from school; and

(e) All funding sources of the affected districts, equalization among school districts of the tax burden for general fund and capital purposes through a reduction in disparities in per pupil valuation when all funding sources are considered, improvement in the economies in the administration and operation of schools, and the extent the proposed change would potentially reduce or increase the individual and aggregate transportation costs of the affected school districts.

(5)(a)(i) A petitioner or school district may appeal a decision by the regional committee to the superintendent of public instruction based on the claim that the regional committee failed to follow the applicable statutory and regulatory procedures or acted in an arbitrary and capricious manner. Any such appeal shall be based on the record and the appeal must be filed within thirty days of the final decision of the regional committee. The appeal shall be heard and determined by an administrative law

2008 REGULAR SESSION

judge in the office of administrative hearings, based on the standards in (a)(ii) of this subsection.

(ii) If the administrative law judge finds that all applicable procedures were not followed or that the regional committee acted in an arbitrary and capricious manner, the administrative law judge shall refer the matter back to the regional committee with an explanation of his or her findings. The regional committee shall rehear the proposal.

(iii) If the administrative law judge finds that all applicable procedures were followed or that the regional committee did not act in an arbitrary and capricious manner, depending on the appeal, the educational service district shall be notified and directed to implement the changes.

(b) Any school district or citizen petitioner affected by a final decision of the regional committee may seek judicial review of the committee's decision in accordance with RCW 34.05.570.

Sec. 3. RCW 28A.315.085 and 2006 c 263 s 507 are each amended to read as follows:

(1) The superintendent of public instruction shall furnish to regional committees the services of employed personnel and the materials and supplies necessary to enable them to perform the duties imposed upon them by this chapter. ~~((Members shall be reimbursed for expenses necessarily incurred by them in the performance of their duties in accordance with RCW 28A.315.155.))~~

(2) Costs that may be incurred by an educational service district in association with school district negotiations under RCW 28A.315.195 and supporting the regional committee under RCW 28A.315.205 shall be reimbursed by the state from such funds as are appropriated for these purposes.

Sec. 4. RCW 28A.315.105 and 1985 c 385 s 2 are each amended to read as follows:

(1) There is hereby created in each educational service district a committee which shall be known as the regional committee on school district organization, which committee shall be composed of not less than seven nor more than nine registered voters of the educational service district, the number to correspond with the number of board member districts established for the governance of the educational service district in which the regional committee is located.

(2) Members of each regional committee shall be appointed to serve a four-year term by the educational service district board of the district in which the regional committee is located. One member of the regional committee shall be ((elected from the registered voters of)) appointed from each such educational service district board member district. Appointed members of regional committees must be registered voters and reside in the educational service district board member district from which they are appointed. Members of regional committees who were elected before the effective date of this section may serve the remainder of their four-year terms. Vacancies occurring for any reason, including at the end of the term of any member of a regional committee who was elected before the effective date of this section, shall be filled by appointment by the educational service district board of directors as provided in this section.

(3) In the event of a change in the number of educational service districts or in the number of educational service district board members pursuant to chapter 28A.310 RCW, a new regional committee shall be appointed for each affected educational service district at the expiration of the terms of the majority of the members of the regional committee. Those persons who were serving on a regional committee within an educational service district affected by a change in the number of districts or board members shall continue to constitute the regional committee for the educational service district within which they are registered to vote until the majority of a new board has been appointed.

(4) No appointed member of a regional committee may continue to serve on the committee if he or she ceases to be a registered voter of the educational service district board member

FIFTY-FOURTH DAY, MARCH 7, 2008

2008 REGULAR SESSION

district or if he or she is absent from three consecutive meetings of the committee without an excuse acceptable to the committee.

NEW SECTION. Sec. 5. The following acts or parts of acts are each repealed:

(1) RCW 28A.315.125 (Regional committees--Election of members--Qualifications) and 2006 c 263 s 508, 1993 c 416 s 2, 1990 c 33 s 295, 1985 c 385 s 4, & 1975-'76 2nd ex.s. c 15 s 1;

(2) RCW 28A.315.135 (Regional committees--Vacancies) and 1985 c 385 s 5, 1975 1st ex.s. c 275 s 81, 1969 ex.s. c 176 s 117, & 1969 ex.s. c 223 s 28A.57.033; and

(3) RCW 28A.315.145 (Regional committees--Terms of members) and 1993 c 416 s 3, 1990 c 33 s 296, 1985 c 385 s 6, & 1969 ex.s. c 223 s 28A.57.034.

Sec. 6. RCW 28A.323.020 and 2006 c 263 s 612 are each amended to read as follows:

The duties in this chapter imposed upon and required to be performed by a regional committee and by an educational service district superintendent in connection with a change in the organization and extent of school districts and/or with the adjustment of the assets and liabilities of school districts and with all matters related to such change or adjustment whenever territory lying in ~~((a single))~~ more than one educational service district is involved shall be performed ~~((jointly))~~ by the regional committee~~((s))~~ and by the superintendent~~((s))~~ of the ~~((several))~~ educational service district~~((s as required whenever territory lying in more than one educational service district is involved in a proposed change in the organization and extent of school districts. PROVIDED, That a regional committee may designate three of its members, or two of its members and the educational service district superintendent, as a subcommittee to serve in lieu of the whole committee, but action by a subcommittee shall not be binding unless approved by a majority of the regional committee))~~ in which is located the part of the proposed or enlarged school district having the largest number of common school pupils residing therein. Proposals for changes in the organization and extent of school districts and proposed terms of adjustment of assets and liabilities thus prepared and approved shall be submitted to the superintendent of public instruction ~~((by the regional committee of the educational service district in which is located the part of the proposed or enlarged district having the largest number of common school pupils residing therein)).~~

NEW SECTION. Sec. 7. RCW 28A.323.030 (School districts in two or more educational service districts--Proposed change or adjustment--Procedure when one committee does not approve or fails to act--Temporary committee) and 1990 c 33 s 310, 1985 c 385 s 26, 1975 1st ex.s. c 275 s 96, 1969 ex.s. c 176 s 132, & 1969 ex.s. c 223 s 28A.57.245 are each repealed.

NEW SECTION. Sec. 8. RCW 28A.323.020 is recodified as a new section in chapter 28A.315 RCW.

Sec. 9. RCW 28A.343.070 and 1990 c 33 s 324 are each amended to read as follows:

Each educational service district superintendent shall prepare and keep in his or her office ~~((+))~~ a map showing the boundaries of the directors' districts of all school districts in or belonging to his or her educational service district that are so divided ~~((, and (2) a record of the action taken by the regional committee in establishing such boundaries)).~~

NEW SECTION. Sec. 10. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2008, in the omnibus appropriations act, this act is null and void."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Early Learning & K-12 Education to Second Substitute House Bill No. 2635.

The motion by Senator McAuliffe carried and the committee striking amendment was adopted by voice vote.

MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 1 of the title, after "organization;" strike the remainder of the title and insert "amending RCW 28A.315.195, 28A.315.205, 28A.315.085, 28A.315.105, 28A.323.020, and 28A.343.070; adding a new section to chapter 28A.315 RCW; creating a new section; recodifying RCW 28A.323.020; and repealing RCW 28A.315.125, 28A.315.135, 28A.315.145, and 28A.323.030."

MOTION

On motion of Senator McAuliffe, the rules were suspended, Second Substitute House Bill No. 2635 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators McAuliffe and King spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Second Substitute House Bill No. 2635 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Second Substitute House Bill No. 2635 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 48

Excused: Senator Prentice - 1

SECOND SUBSTITUTE HOUSE BILL NO. 2635 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

HOUSE BILL NO. 2955, by Representatives Hunter, O'Brien, Hurst, Sullivan, Williams, Kelley and Morrell

Ensuring access to criminal justice information.

The measure was read the second time.

MOTION

On motion of Senator Kohl-Welles, the rules were suspended, House Bill No. 2955 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Kohl-Welles spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 2955.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 2955 and the bill passed the Senate by the following

FIFTY-FOURTH DAY, MARCH 7, 2008

vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yeas: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 48

Excused: Senator Prentice - 1

HOUSE BILL NO. 2955, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

HOUSE BILL NO. 2700, by Representatives O'Brien, Morrell, VanDeWege, Green, Hurst, Pearson, Sullivan, Williams, Hankins and Kelley

Creating the military department active state service account.

The measure was read the second time.

MOTION

On motion of Senator Pridemore, the rules were suspended, House Bill No. 2700 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Pridemore spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 2700.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 2700 and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yeas: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 49

HOUSE BILL NO. 2700, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 2879, by House Committee on Technology, Energy & Communications (originally sponsored by Representatives Morris, Erickson, Hasegawa, Morrell and Kelley)

Modifying provisions regulating spyware.

The measure was read the second time.

MOTION

2008 REGULAR SESSION

On motion of Senator Tom, the rules were suspended, Substitute House Bill No. 2879 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Tom spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2879.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2879 and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yeas: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 49

SUBSTITUTE HOUSE BILL NO. 2879, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SECOND SUBSTITUTE HOUSE BILL NO. 2537, by House Committee on Appropriations (originally sponsored by Representatives Cody, Hasegawa, Kenney, Morrell, Green and Loomis)

Modifications to the health insurance partnership act.

The measure was read the second time.

MOTION

Senator Keiser moved that the following committee striking amendment by the Committee on Ways & Means be adopted.

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 70.47A.020 and 2007 c 260 s 2 are each amended to read as follows:

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

(1) "Administrator" means the administrator of the Washington state health care authority, established under chapter 41.05 RCW.

(2) "Board" means the health insurance partnership board established in RCW 70.47A.100.

(3) "Eligible partnership participant" means ~~((an individual))~~ a partnership participant who:

(a) Is a resident of the state of Washington; and

(b) Has family income that does not exceed two hundred percent of the federal poverty level, as determined annually by the federal department of health and human services ~~((and~~

~~((c) Is employed by a participating small employer or is a former employee of a participating small employer who chooses to continue receiving coverage through the partnership following separation from employment)).~~

(4) "Health benefit plan" has the same meaning as defined in RCW 48.43.005.

(5) "Participating small employer" means a small employer that ~~((employs at least one eligible partnership participant and))~~ has entered into an agreement with the partnership ~~((for the~~

FIFTY-FOURTH DAY, MARCH 7, 2008

2008 REGULAR SESSION

partnership to offer and administer the small employer's group health benefit plan, as defined in federal law, Sec. 706 of ERISA (29 U.S.C. Sec. 1167), for enrollees in the plan) to purchase health benefits through the partnership. To participate in the partnership, an employer must attest to the fact that (a) the employer does not currently offer health insurance to its employees, and (b) at least fifty percent of the employer's employees are low-wage workers.

(6) "Partnership" means the health insurance partnership established in RCW 70.47A.030.

(7) "Partnership participant" means ~~((an employee))~~ a participating small employer and employees of a participating small employer, ~~((or))~~ and, except to the extent provided otherwise in RCW 70.47A.110(1)(e), a former employee of a participating small employer who chooses to continue receiving coverage through the partnership following separation from employment.

(8) "Small employer" has the same meaning as defined in RCW 48.43.005.

(9) "Subsidy" or "premium subsidy" means payment or reimbursement to an eligible partnership participant toward the purchase of a health benefit plan, and may include a net billing arrangement with insurance carriers or a prospective or retrospective payment for health benefit plan premiums.

Sec. 2. RCW 70.47A.030 and 2007 c 259 s 58 are each amended to read as follows:

(1) To the extent funding is appropriated in the operating budget for this purpose, the health insurance partnership is established. The administrator shall be responsible for the implementation and operation of the health insurance partnership, directly or by contract. The administrator shall offer premium subsidies to eligible partnership participants under RCW 70.47A.040. The partnership shall begin to offer coverage no later than March 1, 2009.

(2) Consistent with policies adopted by the board under ~~(section 59 of this act)~~ RCW 70.47A.110, the administrator shall, directly or by contract:

(a) Establish and administer procedures for enrolling small employers in the partnership, including publicizing the existence of the partnership and disseminating information on enrollment, and establishing rules related to minimum participation of employees in small groups purchasing health insurance through the partnership. Opportunities to publicize the program for outreach and education of small employers on the value of insurance shall explore the use of online employer guides. As a condition of participating in the partnership, a small employer must agree to establish a cafeteria plan under section 125 of the federal internal revenue code that will enable employees to use pretax dollars to pay their share of their health benefit plan premium. The partnership shall provide technical assistance to small employers for this purpose;

(b) Establish and administer procedures for health benefit plan enrollment by employees of small employers during open enrollment periods and outside of open enrollment periods upon the occurrence of any qualifying event specified in the federal health insurance portability and accountability act of 1996 or applicable state law. ~~((Neither))~~ Except to the extent authorized in RCW 70.47A.110(1)(e), neither the employer nor the partnership shall limit an employee's choice of coverage from among ((aH)) the health benefit plans offered through the partnership.

(c) ~~(Establish and manage a system for the partnership to be designated as the sponsor or administrator of a participating small employer health benefit plan and to undertake the obligations required of a plan administrator under federal law;~~

~~((d))~~ Establish and manage a system of collecting and transmitting to the applicable carriers all premium payments or contributions made by or on behalf of partnership participants, including employer contributions, automatic payroll deductions for partnership participants, premium subsidy payments, and contributions from philanthropies;

~~((c))~~ (d) Establish and manage a system for determining eligibility for and making premium subsidy payments under chapter 259, Laws of 2007;

~~((f))~~ (e) Establish a mechanism to apply a surcharge to ~~((aH))~~ each health benefit plan ~~((s))~~ purchased through the partnership, which shall be used only to pay for administrative and operational expenses of the partnership. The surcharge must be applied uniformly to all health benefit plans ~~((offered))~~ purchased through the partnership ~~((and must be included in the premium for each health benefit plan)).~~ Any surcharge amount may be added to the premium, but shall not be considered part of the small group community rate, and shall be applied only to the coverage purchased through the partnership. Surcharges may not be used to pay any premium assistance payments under this chapter. The surcharge shall reflect administrative and operational expenses remaining after any appropriation provided by the legislature to support administrative or operational expenses of the partnership during the year the surcharge is assessed;

~~((g))~~ (f) Design a schedule of premium subsidies that is based upon gross family income, giving appropriate consideration to family size and the ages of all family members based on a benchmark health benefit plan designated by the board. The amount of an eligible partnership participant's premium subsidy shall be determined by applying a sliding scale subsidy schedule with the percentage of premium similar to that developed for subsidized basic health plan enrollees under RCW 70.47.060. The subsidy shall be applied to the employee's premium obligation for his or her health benefit plan, so that employees benefit financially from any employer contribution to the cost of their coverage through the partnership.

(3) The administrator may enter into interdepartmental agreements with the office of the insurance commissioner, the department of social and health services, and any other state agencies necessary to implement this chapter.

Sec. 3. RCW 70.47A.040 and 2007 c 260 s 6 are each amended to read as follows:

Beginning ~~((September 1, 2008))~~ January 1, 2009, the administrator shall accept applications from eligible partnership participants, on behalf of themselves, their spouses, and their dependent children, to receive premium subsidies through the health insurance partnership.

Sec. 4. RCW 70.47A.070 and 2006 c 255 s 7 are each amended to read as follows:

The administrator shall report biennially, beginning November 1, 2010, to the relevant policy and fiscal committees of the legislature on the effectiveness and efficiency of the ~~((small employer))~~ health insurance partnership program, including enrollment trends, the services and benefits covered under the purchased health benefit plans, consumer satisfaction, and other program operational issues.

Sec. 5. RCW 70.47A.110 and 2007 c 260 s 5 are each amended to read as follows:

(1) The health insurance partnership board shall:

(a) Develop policies for enrollment of small employers in the partnership, including minimum participation rules for small employer groups. The small employer shall determine the criteria for eligibility and enrollment in his or her plan and the terms and amounts of the employer's contributions to that plan, consistent with any minimum employer premium contribution level established by the board under (d) of this subsection;

(b) Designate health benefit plans that are currently offered in the small group market that will be offered to participating small employers through the health insurance partnership and those plans that will qualify for premium subsidy payments. ~~((At least four))~~ Up to five health benefit plans shall be chosen, with multiple deductible and point-of-service cost-sharing options. The health benefit plans shall range from catastrophic to comprehensive coverage, and one health benefit plan shall be a high deductible health plan accompanied by a health savings account. Every effort shall be made to include health benefit

FIFTY-FOURTH DAY, MARCH 7, 2008

plans that include components to maximize the quality of care provided and result in improved health outcomes, such as preventive care, wellness incentives, chronic care management services, and provider network development and payment policies related to quality of care;

(c) Approve a mid-range benefit plan from those selected to be used as a benchmark plan for calculating premium subsidies;

(d) Determine whether there should be a minimum employer premium contribution on behalf of employees, and if so, how much;

(e) Develop policies related to partnership participant enrollment in health benefit plans. The board may focus its initial efforts on access to coverage and affordability of coverage for participating small employers and their employees. To the extent necessary for successful implementation of the partnership, during a start-up phase of partnership operation, the board may:

(i) Limit partnership participant health benefit plan choice; and

(ii) Offer former employees of participating small employers the opportunity to continue coverage after separation from employment to the extent that a former employee is eligible for continuation coverage under 29 U.S.C. Sec. 1161 et seq.

The start-up phase may not exceed two years from the date the partnership begins to offer coverage;

(f) Determine appropriate health benefit plan rating methodologies. The methodologies shall be based on the small group adjusted community rate as defined in Title 48 RCW. The board shall evaluate the impact of applying the small group adjusted community rating ((with)) methodology to health benefit plans purchased through the partnership on the ((partnership)) principle of allowing each ((employee)) partnership participant to choose ((their)) his or her health benefit plan, and ((consider options)) may implement one or more risk adjustment or reinsurance mechanisms to reduce uncertainty for carriers and provide for efficient risk management of high-cost enrollees ((through risk adjustment, reinsurance, or other mechanisms));

((+)) (g) Determine whether the partnership should be designated as the administrator of a participating small employer health benefit plan and undertake the obligations required of a plan administrator under federal law in order to minimize administrative burdens on participating small employers;

(h) Conduct analyses and provide recommendations as requested by the legislature and the governor, with the assistance of staff from the health care authority and the office of the insurance commissioner.

(2) The board may authorize one or more limited health care service plans for dental care services to be offered by limited health care service contractors under RCW 48.44.035. However, such plan shall not qualify for subsidy payments.

(3) In fulfilling the requirements of this section, the board shall consult with small employers, the office of the insurance commissioner, members in good standing of the American academy of actuaries, health carriers, agents and brokers, and employees of small business.

Sec. 6. RCW 48.21.045 and 2007 c 260 s 7 are each amended to read as follows:

(1)(a) An insurer offering any health benefit plan to a small employer, either directly or through an association or member-governed group formed specifically for the purpose of purchasing health care, may offer and actively market to the small employer a health benefit plan featuring a limited schedule of covered health care services. Nothing in this subsection shall preclude an insurer from offering, or a small employer from purchasing, other health benefit plans that may have more comprehensive benefits than those included in the product offered under this subsection. An insurer offering a health benefit plan under this subsection shall clearly disclose all covered benefits to the small employer in a brochure filed with the commissioner.

2008 REGULAR SESSION

(b) A health benefit plan offered under this subsection shall provide coverage for hospital expenses and services rendered by a physician licensed under chapter 18.57 or 18.71 RCW but is not subject to the requirements of RCW 48.21.130, 48.21.140, 48.21.141, 48.21.142, 48.21.144, 48.21.146, 48.21.160 through 48.21.197, 48.21.200, 48.21.220, 48.21.225, 48.21.230, 48.21.235, ~~((48.21.240,))~~ 48.21.244, 48.21.250, 48.21.300, 48.21.310, or 48.21.320.

(2) Nothing in this section shall prohibit an insurer from offering, or a purchaser from seeking, health benefit plans with benefits in excess of the health benefit plan offered under subsection (1) of this section. All forms, policies, and contracts shall be submitted for approval to the commissioner, and the rates of any plan offered under this section shall be reasonable in relation to the benefits thereto.

(3) Premium rates for health benefit plans for small employers as defined in this section shall be subject to the following provisions:

(a) The insurer shall develop its rates based on an adjusted community rate and may only vary the adjusted community rate for:

- (i) Geographic area;
- (ii) Family size;
- (iii) Age; and
- (iv) Wellness activities.

(b) The adjustment for age in (a)(iii) of this subsection may not use age brackets smaller than five-year increments, which shall begin with age twenty and end with age sixty-five. Employees under the age of twenty shall be treated as those age twenty.

(c) The insurer shall be permitted to develop separate rates for individuals age sixty-five or older for coverage for which medicare is the primary payer and coverage for which medicare is not the primary payer. Both rates shall be subject to the requirements of this subsection (3).

(d) The permitted rates for any age group shall be no more than four hundred twenty-five percent of the lowest rate for all age groups on January 1, 1996, four hundred percent on January 1, 1997, and three hundred seventy-five percent on January 1, 2000, and thereafter.

(e) A discount for wellness activities shall be permitted to reflect actuarially justified differences in utilization or cost attributed to such programs.

(f) The rate charged for a health benefit plan offered under this section may not be adjusted more frequently than annually except that the premium may be changed to reflect:

- (i) Changes to the enrollment of the small employer;
- (ii) Changes to the family composition of the employee;
- (iii) Changes to the health benefit plan requested by the small employer; or
- (iv) Changes in government requirements affecting the health benefit plan.

(g) Rating factors shall produce premiums for identical groups that differ only by the amounts attributable to plan design, with the exception of discounts for health improvement programs.

(h) For the purposes of this section, a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health benefit plan that does not contain such a provision, provided that the restrictions of benefits to network providers result in substantial differences in claims costs. A carrier may develop its rates based on claims costs due to network provider reimbursement schedules or type of network. This subsection does not restrict or enhance the portability of benefits as provided in RCW 48.43.015.

(i) Adjusted community rates established under this section shall pool the medical experience of all small groups purchasing coverage, including the small group participants in the health insurance partnership established in RCW 70.47A.030. However, annual rate adjustments for each small group health benefit plan may vary by up to plus or minus four percentage

FIFTY-FOURTH DAY, MARCH 7, 2008

2008 REGULAR SESSION

points from the overall adjustment of a carrier's entire small group pool, such overall adjustment to be approved by the commissioner, upon a showing by the carrier, certified by a member of the American academy of actuaries that: (i) The variation is a result of deductible leverage, benefit design, or provider network characteristics; and (ii) for a rate renewal period, the projected weighted average of all small group benefit plans will have a revenue neutral effect on the carrier's small group pool. Variations of greater than four percentage points are subject to review by the commissioner, and must be approved or denied within sixty days of submittal. A variation that is not denied within sixty days shall be deemed approved. The commissioner must provide to the carrier a detailed actuarial justification for any denial within thirty days of the denial.

(j) For health benefit plans purchased through the health insurance partnership established in chapter 70.47A RCW:

(i) Any surcharge established pursuant to RCW 70.47A.030(2)(e) shall be applied only to health benefit plans purchased through the health insurance partnership; and

(ii) Risk adjustment or reinsurance mechanisms may be used by the health insurance partnership program to redistribute funds to carriers participating in the health insurance partnership based on differences in risk attributable to individual choice of health plans or other factors unique to health insurance partnership participation. Use of such mechanisms shall be limited to the partnership program and will not affect small group health plans offered outside the partnership.

(4) Nothing in this section shall restrict the right of employees to collectively bargain for insurance providing benefits in excess of those provided herein.

(5)(a) Except as provided in this subsection, requirements used by an insurer in determining whether to provide coverage to a small employer shall be applied uniformly among all small employers applying for coverage or receiving coverage from the carrier.

(b) An insurer shall not require a minimum participation level greater than:

(i) One hundred percent of eligible employees working for groups with three or less employees; and

(ii) Seventy-five percent of eligible employees working for groups with more than three employees.

(c) In applying minimum participation requirements with respect to a small employer, a small employer shall not consider employees or dependents who have similar existing coverage in determining whether the applicable percentage of participation is met.

(d) An insurer may not increase any requirement for minimum employee participation or modify any requirement for minimum employer contribution applicable to a small employer at any time after the small employer has been accepted for coverage.

(e) Minimum participation requirements and employer premium contribution requirements adopted by the health insurance partnership board under RCW 70.47A.110 shall apply only to the employers and employees who purchase health benefit plans through the health insurance partnership.

(6) An insurer must offer coverage to all eligible employees of a small employer and their dependents. An insurer may not offer coverage to only certain individuals or dependents in a small employer group or to only part of the group. An insurer may not modify a health plan with respect to a small employer or any eligible employee or dependent, through riders, endorsements or otherwise, to restrict or exclude coverage or benefits for specific diseases, medical conditions, or services otherwise covered by the plan.

(7) As used in this section, "health benefit plan," "small employer," "adjusted community rate," and "wellness activities" mean the same as defined in RCW 48.43.005.

Sec. 7. RCW 48.44.023 and 2007 c 260 s 8 are each amended to read as follows:

(1)(a) A health care services contractor offering any health benefit plan to a small employer, either directly or through an association or member-governed group formed specifically for the purpose of purchasing health care, may offer and actively market to the small employer a health benefit plan featuring a limited schedule of covered health care services. Nothing in this subsection shall preclude a contractor from offering, or a small employer from purchasing, other health benefit plans that may have more comprehensive benefits than those included in the product offered under this subsection. A contractor offering a health benefit plan under this subsection shall clearly disclose all covered benefits to the small employer in a brochure filed with the commissioner.

(b) A health benefit plan offered under this subsection shall provide coverage for hospital expenses and services rendered by a physician licensed under chapter 18.57 or 18.71 RCW but is not subject to the requirements of RCW 48.44.225, 48.44.240, 48.44.245, 48.44.290, 48.44.300, 48.44.310, 48.44.320, 48.44.325, 48.44.330, 48.44.335, ~~(48.44.340)~~, 48.44.344, 48.44.360, 48.44.400, 48.44.440, 48.44.450, and 48.44.460.

(2) Nothing in this section shall prohibit a health care service contractor from offering, or a purchaser from seeking, health benefit plans with benefits in excess of the health benefit plan offered under subsection (1) of this section. All forms, policies, and contracts shall be submitted for approval to the commissioner, and the rates of any plan offered under this section shall be reasonable in relation to the benefits thereto.

(3) Premium rates for health benefit plans for small employers as defined in this section shall be subject to the following provisions:

(a) The contractor shall develop its rates based on an adjusted community rate and may only vary the adjusted community rate for:

- (i) Geographic area;
- (ii) Family size;
- (iii) Age; and
- (iv) Wellness activities.

(b) The adjustment for age in (a)(iii) of this subsection may not use age brackets smaller than five-year increments, which shall begin with age twenty and end with age sixty-five. Employees under the age of twenty shall be treated as those age twenty.

(c) The contractor shall be permitted to develop separate rates for individuals age sixty-five or older for coverage for which medicare is the primary payer and coverage for which medicare is not the primary payer. Both rates shall be subject to the requirements of this subsection (3).

(d) The permitted rates for any age group shall be no more than four hundred twenty-five percent of the lowest rate for all age groups on January 1, 1996, four hundred percent on January 1, 1997, and three hundred seventy-five percent on January 1, 2000, and thereafter.

(e) A discount for wellness activities shall be permitted to reflect actuarially justified differences in utilization or cost attributed to such programs.

(f) The rate charged for a health benefit plan offered under this section may not be adjusted more frequently than annually except that the premium may be changed to reflect:

- (i) Changes to the enrollment of the small employer;
- (ii) Changes to the family composition of the employee;
- (iii) Changes to the health benefit plan requested by the small employer; or
- (iv) Changes in government requirements affecting the health benefit plan.

(g) Rating factors shall produce premiums for identical groups that differ only by the amounts attributable to plan design, with the exception of discounts for health improvement programs.

(h) For the purposes of this section, a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health benefit plan that does

FIFTY-FOURTH DAY, MARCH 7, 2008

not contain such a provision, provided that the restrictions of benefits to network providers result in substantial differences in claims costs. A carrier may develop its rates based on claims costs due to network provider reimbursement schedules or type of network. This subsection does not restrict or enhance the portability of benefits as provided in RCW 48.43.015.

(i) Adjusted community rates established under this section shall pool the medical experience of all groups purchasing coverage, including the small group participants in the health insurance partnership established in RCW 70.47A.030. However, annual rate adjustments for each small group health benefit plan may vary by up to plus or minus four percentage points from the overall adjustment of a carrier's entire small group pool, such overall adjustment to be approved by the commissioner, upon a showing by the carrier, certified by a member of the American academy of actuaries that: (i) The variation is a result of deductible leverage, benefit design, or provider network characteristics; and (ii) for a rate renewal period, the projected weighted average of all small group benefit plans will have a revenue neutral effect on the carrier's small group pool. Variations of greater than four percentage points are subject to review by the commissioner, and must be approved or denied within sixty days of submittal. A variation that is not denied within sixty days shall be deemed approved. The commissioner must provide to the carrier a detailed actuarial justification for any denial within thirty days of the denial.

(j) For health benefit plans purchased through the health insurance partnership established in chapter 70.47A RCW:

(i) Any surcharge established pursuant to RCW 70.47A.030(2)(e) shall be applied only to health benefit plans purchased through the health insurance partnership; and

(ii) Risk adjustment or reinsurance mechanisms may be used by the health insurance partnership program to redistribute funds to carriers participating in the health insurance partnership based on differences in risk attributable to individual choice of health plans or other factors unique to health insurance partnership participation. Use of such mechanisms shall be limited to the partnership program and will not affect small group health plans offered outside the partnership.

(4) Nothing in this section shall restrict the right of employees to collectively bargain for insurance providing benefits in excess of those provided herein.

(5)(a) Except as provided in this subsection, requirements used by a contractor in determining whether to provide coverage to a small employer shall be applied uniformly among all small employers applying for coverage or receiving coverage from the carrier.

(b) A contractor shall not require a minimum participation level greater than:

(i) One hundred percent of eligible employees working for groups with three or less employees; and

(ii) Seventy-five percent of eligible employees working for groups with more than three employees.

(c) In applying minimum participation requirements with respect to a small employer, a small employer shall not consider employees or dependents who have similar existing coverage in determining whether the applicable percentage of participation is met.

(d) A contractor may not increase any requirement for minimum employee participation or modify any requirement for minimum employer contribution applicable to a small employer at any time after the small employer has been accepted for coverage.

(e) Minimum participation requirements and employer premium contribution requirements adopted by the health insurance partnership board under RCW 70.47A.110 shall apply only to the employers and employees who purchase health benefit plans through the health insurance partnership.

(6) A contractor must offer coverage to all eligible employees of a small employer and their dependents. A contractor may not offer coverage to only certain individuals or

2008 REGULAR SESSION

dependents in a small employer group or to only part of the group. A contractor may not modify a health plan with respect to a small employer or any eligible employee or dependent, through riders, endorsements or otherwise, to restrict or exclude coverage or benefits for specific diseases, medical conditions, or services otherwise covered by the plan.

Sec. 8. RCW 48.46.066 and 2007 c 260 s 9 are each amended to read as follows:

(1)(a) A health maintenance organization offering any health benefit plan to a small employer, either directly or through an association or member-governed group formed specifically for the purpose of purchasing health care, may offer and actively market to the small employer a health benefit plan featuring a limited schedule of covered health care services. Nothing in this subsection shall preclude a health maintenance organization from offering, or a small employer from purchasing, other health benefit plans that may have more comprehensive benefits than those included in the product offered under this subsection. A health maintenance organization offering a health benefit plan under this subsection shall clearly disclose all the covered benefits to the small employer in a brochure filed with the commissioner.

(b) A health benefit plan offered under this subsection shall provide coverage for hospital expenses and services rendered by a physician licensed under chapter 18.57 or 18.71 RCW but is not subject to the requirements of RCW 48.46.275, 48.46.280, 48.46.285, ~~((48.46.290,))~~ 48.46.350, 48.46.355, 48.46.375, 48.46.440, 48.46.480, 48.46.510, 48.46.520, and 48.46.530.

(2) Nothing in this section shall prohibit a health maintenance organization from offering, or a purchaser from seeking, health benefit plans with benefits in excess of the health benefit plan offered under subsection (1) of this section. All forms, policies, and contracts shall be submitted for approval to the commissioner, and the rates of any plan offered under this section shall be reasonable in relation to the benefits thereto.

(3) Premium rates for health benefit plans for small employers as defined in this section shall be subject to the following provisions:

(a) The health maintenance organization shall develop its rates based on an adjusted community rate and may only vary the adjusted community rate for:

- (i) Geographic area;
- (ii) Family size;
- (iii) Age; and
- (iv) Wellness activities.

(b) The adjustment for age in (a)(iii) of this subsection may not use age brackets smaller than five-year increments, which shall begin with age twenty and end with age sixty-five. Employees under the age of twenty shall be treated as those age twenty.

(c) The health maintenance organization shall be permitted to develop separate rates for individuals age sixty-five or older for coverage for which medicare is the primary payer and coverage for which medicare is not the primary payer. Both rates shall be subject to the requirements of this subsection (3).

(d) The permitted rates for any age group shall be no more than four hundred twenty-five percent of the lowest rate for all age groups on January 1, 1996, four hundred percent on January 1, 1997, and three hundred seventy-five percent on January 1, 2000, and thereafter.

(e) A discount for wellness activities shall be permitted to reflect actuarially justified differences in utilization or cost attributed to such programs.

(f) The rate charged for a health benefit plan offered under this section may not be adjusted more frequently than annually except that the premium may be changed to reflect:

- (i) Changes to the enrollment of the small employer;
- (ii) Changes to the family composition of the employee;
- (iii) Changes to the health benefit plan requested by the small employer; or

FIFTY-FOURTH DAY, MARCH 7, 2008

2008 REGULAR SESSION

(iv) Changes in government requirements affecting the health benefit plan.

(g) Rating factors shall produce premiums for identical groups that differ only by the amounts attributable to plan design, with the exception of discounts for health improvement programs.

(h) For the purposes of this section, a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health benefit plan that does not contain such a provision, provided that the restrictions of benefits to network providers result in substantial differences in claims costs. A carrier may develop its rates based on claims costs due to network provider reimbursement schedules or type of network. This subsection does not restrict or enhance the portability of benefits as provided in RCW 48.43.015.

(i) Adjusted community rates established under this section shall pool the medical experience of all groups purchasing coverage, including the small group participants in the health insurance partnership established in RCW 70.47A.030. However, annual rate adjustments for each small group health benefit plan may vary by up to plus or minus four percentage points from the overall adjustment of a carrier's entire small group pool, such overall adjustment to be approved by the commissioner, upon a showing by the carrier, certified by a member of the American academy of actuaries that: (i) The variation is a result of deductible leverage, benefit design, or provider network characteristics; and (ii) for a rate renewal period, the projected weighted average of all small group benefit plans will have a revenue neutral effect on the carrier's small group pool. Variations of greater than four percentage points are subject to review by the commissioner, and must be approved or denied within sixty days of submittal. A variation that is not denied within sixty days shall be deemed approved. The commissioner must provide to the carrier a detailed actuarial justification for any denial within thirty days of the denial.

(j) For health benefit plans purchased through the health insurance partnership established in chapter 70.47A RCW:

(i) Any surcharge established pursuant to RCW 70.47A.030(2)(c) shall be applied only to health benefit plans purchased through the health insurance partnership; and

(ii) Risk adjustment or reinsurance mechanisms may be used by the health insurance partnership program to redistribute funds to carriers participating in the health insurance partnership based on differences in risk attributable to individual choice of health plans or other factors unique to health insurance partnership participation. Use of such mechanisms shall be limited to the partnership program and will not affect small group health plans offered outside the partnership.

(4) Nothing in this section shall restrict the right of employees to collectively bargain for insurance providing benefits in excess of those provided herein.

(5)(a) Except as provided in this subsection, requirements used by a health maintenance organization in determining whether to provide coverage to a small employer shall be applied uniformly among all small employers applying for coverage or receiving coverage from the carrier.

(b) A health maintenance organization shall not require a minimum participation level greater than:

(i) One hundred percent of eligible employees working for groups with three or less employees; and

(ii) Seventy-five percent of eligible employees working for groups with more than three employees.

(c) In applying minimum participation requirements with respect to a small employer, a small employer shall not consider employees or dependents who have similar existing coverage in determining whether the applicable percentage of participation is met.

(d) A health maintenance organization may not increase any requirement for minimum employee participation or modify any requirement for minimum employer contribution applicable to a

small employer at any time after the small employer has been accepted for coverage.

(e) Minimum participation requirements and employer premium contribution requirements adopted by the health insurance partnership board under RCW 70.47A.110 shall apply only to the employers and employees who purchase health benefit plans through the health insurance partnership.

(6) A health maintenance organization must offer coverage to all eligible employees of a small employer and their dependents. A health maintenance organization may not offer coverage to only certain individuals or dependents in a small employer group or to only part of the group. A health maintenance organization may not modify a health plan with respect to a small employer or any eligible employee or dependent, through riders, endorsements or otherwise, to restrict or exclude coverage or benefits for specific diseases, medical conditions, or services otherwise covered by the plan.

NEW SECTION. Sec. 9. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2008, in the omnibus appropriations act, this act is null and void."

MOTION

Senator Parlette moved that the following amendment by Senator Parlette to the committee striking amendment be adopted.

On page 1, line 10 of the amendment, strike "established in RCW 70.47A.100" and insert "~~(established in RCW 70.47A.100)~~"

On page 1, line 13 of the amendment, strike "and"

On page 1, beginning on line 16 of the amendment, after "services" strike all material through "or" on line 17, and insert "; and

(c) Is employed by a (~~participating~~) small employer (~~or~~

On page 1, line 22 of the amendment, after "48.43.005" insert "or any plan provided by a self-funded multiple employer welfare arrangement as defined in RCW 48.125.010 or by another benefit arrangement defined in the federal employee retirement income security act of 1974, as amended"

Beginning on page 1, line 23 of the amendment, after "(5)" strike all material through "(6)" on page 2, line 4, and insert ~~("Participating small employer" means a small employer that employs at least one eligible partnership participant and has entered into an agreement with the partnership for the partnership to offer and administer the small employer's group health benefit plan, as defined in federal law. Sec. 706 of ERISA (29 U.S.C. Sec. 1167), for enrollees in the plan. —(6))~~

Renumber the remaining subsections consecutively and correct any internal references accordingly.

On page 2, beginning on line 6 of the amendment, strike all material through "employment." on line 11, and insert ~~("Partnership participant" means an employee of a participating small employer, or a former employee of a participating small employer who chooses to continue receiving coverage through the partnership following separation from employment.)~~

Renumber the remaining subsections consecutively and correct any internal references accordingly.

On page 2, beginning on line 25 of the amendment, after "eligible" strike "partnership participants" and insert ~~("partnership participants") employees"~~

Beginning on page 2, line 28 of the amendment, strike all material through "(3)" on page 4, line 16, and insert the following:

~~"(2) ((Consistent with policies adopted by the board under section 59 of this act, the administrator shall, directly or by contract:~~

~~(a) Establish and administer procedures for enrolling small employers in the partnership, including publicizing the existence of the partnership and disseminating information on enrollment;~~

FIFTY-FOURTH DAY, MARCH 7, 2008

and establishing rules related to minimum participation of employees in small groups purchasing health insurance through the partnership. Opportunities to publicize the program for outreach and education of small employers on the value of insurance shall explore the use of online employer guides. As a condition of participating in the partnership, a small employer must agree to establish a cafeteria plan under section 125 of the federal internal revenue code that will enable employees to use pretax dollars to pay their share of their health benefit plan premium. The partnership shall provide technical assistance to small employers for this purpose;

—(b) Establish and administer procedures for health benefit plan enrollment by employees of small employers during open enrollment periods and outside of open enrollment periods upon the occurrence of any qualifying event specified in the federal health insurance portability and accountability act of 1996 or applicable state law. Neither the employer nor the partnership shall limit an employee's choice of coverage from among all the health benefit plans offered;

—(c) Establish and manage a system for the partnership to be designated as the sponsor or administrator of a participating small employer health benefit plan and to undertake the obligations required of a plan administrator under federal law;

—(d) Establish and manage a system of collecting and transmitting to the applicable carriers all premium payments or contributions made by or on behalf of partnership participants, including employer contributions, automatic payroll deductions for partnership participants, premium subsidy payments, and contributions from philanthropies;

—(e) Establish and manage a system for determining eligibility for and making premium subsidy payments under chapter 259, Laws of 2007;

—(f) Establish a mechanism to apply a surcharge to all health benefit plans, which shall be used only to pay for administrative and operational expenses of the partnership. The surcharge must be applied uniformly to all health benefit plans offered through the partnership and must be included in the premium for each health benefit plan. Surcharges may not be used to pay any premium assistance payments under this chapter;

—(g) Design a schedule of premium subsidies that is based upon gross family income, giving appropriate consideration to family size and the ages of all family members based on a benchmark health benefit plan designated by the board. The amount of an eligible partnership participant's premium subsidy shall be determined by applying a sliding scale subsidy schedule with the percentage of premium similar to that developed for subsidized basic health plan enrollees under RCW 70.47.060. The subsidy shall be applied to the employee's premium obligation for his or her health benefit plan, so that employees benefit financially from any employer contribution to the cost of their coverage through the partnership.

—(3))"

On page 4, at the beginning of line 22 of the amendment, insert "(1)"

On page 4, line 23 of the amendment, after "eligible" strike "partnership participants" and insert "((partnership participants)) employees"

On page 4, after line 25 of the amendment, insert the following:

"(2) Premium subsidy payments may be provided to eligible employees if:

—(a) The eligible employee is employed by a small employer;

—(b) The actuarial value of the health benefit plan offered by the small employer is at least substantially equivalent to that of the basic health plan benefit offered under chapter 70.47 RCW. The office of the insurance commissioner under Title 48 RCW shall certify those small employer health benefit plans that are at least ninety percent actuarially equivalent to the basic health plan benefit; and

—(c) The small employer will pay at least forty percent of the monthly premium cost for health benefit plan coverage of the

eligible employee.

(3) The amount of an eligible employee's premium subsidy shall be determined by applying the sliding scale subsidy schedule similar to the subsidy scale used for subsidized basic health plan enrollees under RCW 70.47.060.

(4) After an eligible individual has enrolled in the program, the program shall issue subsidies in an amount determined pursuant to subsection (3) of this section to either the eligible employee or to the carrier designated by the eligible employee.

(5) An eligible employee must agree to provide verification of continued enrollment in his or her small employer's health benefit plan on a semiannual basis or to notify the administrator whenever his or her enrollment status changes, whichever is earlier. Verification or notification may be made directly by the employee, or through his or her employer or the carrier providing the small employer health benefit plan. When necessary, the administrator has the authority to perform retrospective audits on premium subsidy accounts. The administrator may suspend or terminate an employee's participation in the program and seek repayment of any subsidy amounts paid due to the omission or misrepresentation of an applicant or enrolled employee. The administrator shall adopt rules to define the appropriate application of these sanctions and the processes to implement the sanctions provided in this subsection, within available resources."

Beginning on page 4, line 34 of the amendment, strike all material through "void." on page 18, line 6, and insert the following:

"NEW SECTION. Sec. 5. The joint legislative audit and review committee shall conduct a program and fiscal review of the small employer health insurance partnership program and report their findings and recommendation to the appropriate committees of the legislature no later than December 1, 2010.

NEW SECTION. Sec. 6. The following acts or parts of acts are each repealed:

(1) RCW 70.47A.100 (Health insurance partnership board) and 2007 c 260 s 4;

(2) RCW 70.47A.110 (Health insurance partnership board--Duties) and 2007 c 260 s 5;

(3) 2007 c 260 s 10 (uncodified); and

(4) 2007 c 260 s 11 (uncodified)."

On page 18, beginning on line 9 of the title amendment, after "70.47A.040," strike the remainder of the title amendment and insert "and 70.47A.070; repealing RCW 70.47A.100 and 70.47A.110; repealing 2007 c 260 s 10 (uncodified); repealing 2007 c 260 s 11 (uncodified); and creating a new section."

POINT OF ORDER

Senator Parlette: "We have a lot of documents that are still sitting on the rostrum. I think it would be proper that they have the opportunity to be handed out before we start discussing this bill, please."

REPLY BY THE PRESIDENT

President Owen: "Senator Parlette, in response to your inquiry, it is not necessary for the orderly conduct for those to be handed out, however, if the body desire that we wait, the President will wait before we continue on but it's up to the body to determine whether or not we wait for those documents to be handed out."

Senator Parlette: "Thank you Mr. President. Those documents had been prepared for quite some time. They include many talking points to help educate those senators who may choose to vote a certain way. We tried to. We've had them there for at least an hour..."

President Owen: "Senator Parlette, your issue needs to be taken up with the members, not with the President."

FIFTY-FOURTH DAY, MARCH 7, 2008

Senator Parlette: "Oh, thank you."

President Owen: "So if you wish to have them handed out and have the process held up for that, I can do that but we need to have the body tell me to do that...They are out there."

Senators Parlette and Pflug spoke in favor of adoption of the amendment to the committee striking amendment.

Senator Keiser spoke against adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Parlette on page 1, line 10 to the committee striking amendment to Second Substitute House Bill No. 2537.

The motion by Senator Parlette failed and the amendment to the committee striking amendment was not adopted by a rising vote.

MOTION

Senator Keiser moved that the following amendment by Senators Keiser and Parlette to the committee striking amendment be adopted.

On page 4, line 25 of the amendment, after "partnership." insert "Every effort shall be made to coordinate premium subsidies for dependent children with federal funding available under Title XIX and Title XXI of the federal social security act, consistent with the requirements established in RCW 74.09.470(4) for the employer-sponsored insurance program at the department of social and health services."

Senator Keiser spoke in favor of adoption of the amendment to the committee striking amendment.

SPECIAL ORDER OF BUSINESS

Pursuant to Rule 18 at 4:55 p.m., the President announced that the special order of business was before the Senate.

SECOND READING

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 2647, by House Committee on Appropriations (originally sponsored by Representatives Dickerson, Hudgins, Hunt, Morrell, Pedersen, Williams, Cody, Green, Campbell, VanDeWege, Hasegawa, Roberts, Loomis, Upthegrove, Lias, Hunter, Chase, Smith, McIntire, Barlow, Conway, Priest, Schual-Berke, Simpson, Kenney, Goodman, Sells, Rolfes, Darneille and Lantz)

Regarding the children's safe products act.

The measure was read the second time.

MOTION

Senator Rockefeller moved that the following committee striking amendment by the Committee on Water, Energy & Telecommunications be adopted.

Strike everything after the enacting clause and insert the following:

"**NEW SECTION. Sec. 1.** Research shows that many toys and other children's products contain toxic chemicals, such as lead, cadmium, and phthalates that have been shown to cause harm to children's health and the environment. These chemicals, and others like them, have been linked to long-term health impacts such as birth defects, reproductive harm, impaired

2008 REGULAR SESSION

learning, liver toxicity, and cancer. Because children's bodies are growing and developing, they are especially vulnerable to the effects of toxic chemicals. Regulation of toxic chemicals in children's toys and other products is woefully inadequate. To protect children's health, it is important to phase out the use of lead, cadmium, and phthalates in children's toys and other products and to begin collecting information on other chemicals that are present in toys and other products to determine whether further action is required.

NEW SECTION. Sec. 2. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Children's cosmetics" means cosmetics that are made for, marketed for use by, or marketed to children under the age of twelve. Children's cosmetics includes cosmetics that meet any of the following conditions:

(a) Represented in its packaging, display, or advertising as appropriate for use by children;

(b) Sold in conjunction with, attached to, or packaged together with other products that are packaged, displayed, or advertised as appropriate for use by children; or

(c) Sold in any of the following:

(i) Retail store, catalogue, or online web site, in which a person exclusively offers for sale products that are packaged, displayed, or advertised as appropriate for use by children; or

(ii) A discrete portion of a retail store, catalogue, or online web site, in which a person offers for sale products that are packaged, displayed, or advertised as appropriate for use by children.

(2) "Children's jewelry" means jewelry that is made for, marketed for use by, or marketed to children under the age of twelve. Children's jewelry includes jewelry that meets any of the following conditions:

(a) Represented in its packaging, display, or advertising as appropriate for use by children under the age of twelve;

(b) Sold in conjunction with, attached to, or packaged together with other products that are packaged, displayed, or advertised as appropriate for use by children;

(c) Sized for children and not intended for use by adults; or

(d) Sold in any of the following:

(i) A vending machine;

(ii) Retail store, catalogue, or online web site, in which a person exclusively offers for sale products that are packaged, displayed, or advertised as appropriate for use by children; or

(iii) A discrete portion of a retail store, catalogue, or online web site, in which a person offers for sale products that are packaged, displayed, or advertised as appropriate for use by children.

(3)(a) "Children's product" includes any of the following:

(i) Toys;

(ii) Children's cosmetics;

(iii) Children's jewelry;

(iv) A product designed or intended by the manufacturer to help a child with sucking or teething, to facilitate sleep, relaxation, or the feeding of a child, or to be worn as clothing by children; or

(v) Child car seats.

(b) "Children's product" does not include the following:

(i) Batteries;

(ii) Slings and catapults;

(iii) Sets of darts with metallic points;

(iv) Toy steam engines;

(v) Bicycles;

(vi) Video toys that can be connected to a video screen and are operated at a nominal voltage exceeding twenty-four volts;

(vii) Chemistry sets;

(viii) Consumer electronic products, including but not limited to personal computers, audio and video equipment, calculators, wireless phones, game consoles, and handheld devices incorporating a video screen, used to access interactive software and their associated peripherals; and

FIFTY-FOURTH DAY, MARCH 7, 2008

(ix) Interactive software, intended for leisure and entertainment, such as computer games, and their storage media, such as compact disks.

(4) "Cosmetics" includes articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and articles intended for use as a component of such an article. "Cosmetics" does not include soap, dietary supplements, or food and drugs approved by the United States food and drug administration.

(5) "Department" means the department of ecology.

(6) "High priority chemical" means a chemical identified by a state agency, federal agency, or accredited research university, or other scientific evidence deemed authoritative by the department on the basis of credible scientific evidence as known to do one or more of the following:

(a) Harm the normal development of a fetus or child or cause other developmental toxicity;

(b) Cause cancer, genetic damage, or reproductive harm;

(c) Disrupt the endocrine system;

(d) Damage the nervous system, immune system, or organs or cause other systemic toxicity;

(e) Be persistent, bioaccumulative, and toxic; or

(f) Be very persistent and very bioaccumulative.

(7) "Manufacturer" includes any person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that produces a children's product or an importer or domestic distributor of a children's product. For the purposes of this subsection, "importer" means the owner of the children's product.

(8) "Phthalates" means di-(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP), benzyl butyl phthalate (BBP), diisonyl phthalate (DINP), diisodecyl phthalate (DIDP), or di-n-octyl phthalate (DnOP).

(9) "Toy" means a product designed or intended by the manufacturer to be used by a child at play.

(10) "Trade association" means a membership organization of persons engaging in a similar or related line of commerce, organized to promote and improve business conditions in that line of commerce and not to engage in a regular business of a kind ordinarily carried on for profit.

(11) "Very bioaccumulative" means having a bioconcentration factor or bioaccumulation factor greater than or equal to five thousand, or if neither are available, having a log Kow greater than 5.0.

(12) "Very persistent" means having a half-life greater than or equal to one of the following:

(a) A half-life in soil or sediment of greater than one hundred eighty days;

(b) A half-life greater than or equal to sixty days in water or evidence of long-range transport.

NEW SECTION. Sec. 3. (1) Beginning July 1, 2009, no manufacturer, wholesaler, or retailer may manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in this state a children's product or product component containing the following:

(a) Except as provided in subsection (2) of this section, lead at more than .009 percent by weight (ninety parts per million);

(b) Cadmium at more than .004 percent by weight (forty parts per million); or

(c) Phthalates, individually or in combination, at more than 0.10 percent by weight (one thousand parts per million).

(2) Beginning July 1, 2010, no manufacturer, wholesaler, or retailer may manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in this state a children's product or product component containing lead at more than .004 percent by weight (forty parts per million).

NEW SECTION. Sec. 4. (1) By January 1, 2009, the department, in consultation with the department of health, shall identify high priority chemicals that are of high concern for

2008 REGULAR SESSION

children after considering a child's or developing fetus's potential for exposure to each chemical. In identifying the chemicals, the department shall include chemicals that meet one or more of the following criteria:

(a) The chemical has been found through biomonitoring studies that demonstrate the presence of the chemical in human umbilical cord blood, human breast milk, human urine, or other bodily tissues or fluids;

(b) The chemical has been found through sampling and analysis to be present in household dust, indoor air, drinking water, or elsewhere in the home environment; or

(c) The chemical has been added to or is present in a consumer product used or present in the home.

(2) By January 1, 2009, the department shall identify children's products or product categories that may contain chemicals identified under subsection (1) of this section.

(3) By January 1, 2009, the department shall submit a report on the chemicals of high concern to children and the children's products or product categories they identify to the appropriate standing committees of the legislature. The report shall include policy options for addressing children's products that contain chemicals of high concern for children, including recommendations for additional ways to inform consumers about toxic chemicals in products, such as labeling.

NEW SECTION. Sec. 5. Beginning six months after the department has adopted rules under section 8(5) of this act, a manufacturer of a children's product, or a trade organization on behalf of its member manufacturers, shall provide notice to the department that the manufacturer's product contains a high priority chemical. The notice must be filed annually with the department and must include the following information:

(1) The name of the chemical used or produced and its chemical abstracts service registry number;

(2) A brief description of the product or product component containing the substance;

(3) A description of the function of the chemical in the product;

(4) The amount of the chemical used in each unit of the product or product component. The amount may be reported in ranges, rather than the exact amount;

(5) The name and address of the manufacturer and the name, address, and phone number of a contact person for the manufacturer; and

(6) Any other information the manufacturer deems relevant to the appropriate use of the product.

Sec. 6. RCW 43.70.660 and 2001 c 257 s 2 are each amended to read as follows:

(1) The legislature authorizes the secretary to establish and maintain a product safety education campaign to promote greater awareness of products designed to be used by infants and children (~~excluding toys~~) that:

(a) Are recalled by the United States consumer products safety commission;

(b) Do not meet federal safety regulations and voluntary safety standards; ~~((or))~~

(c) Are unsafe or illegal to place into the stream of commerce under the infant crib safety act, chapter 70.111 RCW; or

(d) Contain chemicals of high concern for children as identified under section 4 of this act.

(2) The department shall make reasonable efforts to ensure that this infant and children product safety education campaign reaches the target population. The target population for this campaign includes, but is not limited to, parents, foster parents and other caregivers, child care providers, consignment and resale stores selling infant and child products, and charitable and governmental entities serving infants, children, and families.

(3) The secretary may utilize a combination of methods to achieve this outreach and education goal, including but not limited to print and electronic media. The secretary may operate the campaign or may contract with a vendor.

FIFTY-FOURTH DAY, MARCH 7, 2008

2008 REGULAR SESSION

(4) The department shall coordinate this infant and children product safety education campaign with child-serving entities including, but not limited to, hospitals, birthing centers, midwives, pediatricians, obstetricians, family practice physicians, governmental and private entities serving infants, children, and families, and relevant manufacturers.

(5) The department shall coordinate with other agencies and entities to eliminate duplication of effort in disseminating infant and children consumer product safety information.

(6) The department may receive funding for this infant and children product safety education effort from federal, state, and local governmental entities, child-serving foundations, or other private sources.

NEW SECTION. Sec. 7. (1) A manufacturer of products that are restricted under this chapter must notify persons that sell the manufacturer's products in this state about the provisions of this chapter no less than ninety days prior to the effective date of the restrictions.

(2) A manufacturer that produces, sells, or distributes a product prohibited from manufacture, sale, or distribution in this state under this chapter shall recall the product and reimburse the retailer or any other purchaser for the product.

(3) A manufacturer of children's products in violation of this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation in the case of a first offense. Manufacturers who are repeat violators are subject to a civil penalty not to exceed ten thousand dollars for each repeat offense. Penalties collected under this section must be deposited in the state toxics control account created in RCW 70.105D.070.

(4) Retailers who unknowingly sell products that are restricted from sale under this chapter are not liable under this chapter.

NEW SECTION. Sec. 8. (1) Before the prohibitions under section 3 of this act take effect, the department shall prepare and distribute information to in-state and out-of-state manufacturers, to the maximum extent practicable, to assist them in identifying products prohibited for manufacture, sale, or distribution under this chapter.

(2) The department must assist in-state retailers in identifying products restricted under this chapter.

(3) The department may require manufacturers to electronically file the notice required under section 5 of this act to the department that the manufacturer's product contains a high priority chemical.

(4) The department shall develop and publish a web site that provides consumers with information on the chemicals used in children's products, the reason the chemical has been identified as a high priority chemical, and any safer alternatives to the chemical.

(5) The department shall adopt rules to finalize the list of high priority chemicals that are of high concern for children identified in section 4(1) of this act by January 1, 2010.

NEW SECTION. Sec. 9. The department may adopt rules as necessary for the purpose of implementing, administering, and enforcing this chapter.

NEW SECTION. Sec. 10. Sections 1 through 5 and 7 through 9 of this act constitute a new chapter in Title 70 RCW.

NEW SECTION. Sec. 11. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2008, in the omnibus appropriations act, this act is null and void."

MOTION

Senator Rockefeller moved that the following amendment by Senator Rockefeller to the committee striking amendment be adopted.

On page 1, after line 2 strike everything beginning with "**NEW SECTION**" through "70 RCW" on page 8, line 11 and insert the following:

"NEW SECTION. Sec. 1 Research shows that many toys and other children's products contain toxic chemicals, such as lead, cadmium, and phthalates that have been shown to cause harm to children's health and the environment. These chemicals have been linked to long-term health impacts such as birth defects, reproductive harm, impaired learning, liver toxicity, and cancer. Because children's bodies are growing and developing, they are especially vulnerable to the effects of toxic chemicals. Regulation of toxic chemicals in children's toys and other products is woefully inadequate. To protect children's health, it is important to phase out the use of lead, cadmium, and phthalates in children's toys and other products and to begin collecting information on other chemicals that are present in toys and other products to determine whether further action is required.

NEW SECTION. Sec. 2 The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Children's cosmetics" means cosmetics that are made for, marketed for use by, or marketed to children under the age of twelve. Children's cosmetics includes cosmetics that meet any of the following conditions:

(a) Represented in its packaging, display, or advertising as appropriate for use by children;

(b) Sold in conjunction with, attached to, or packaged together with other products that are packaged, displayed, or advertised as appropriate for use by children; or

(c) Sold in any of the following:

(i) Retail store, catalogue, or online web site, in which a person exclusively offers for sale products that are packaged, displayed, or advertised as appropriate for use by children; or

(ii) A discrete portion of a retail store, catalogue, or online web site, in which a person offers for sale products that are packaged, displayed, or advertised as appropriate for use by children.

(2) "Children's jewelry" means jewelry that is made for, marketed for use by, or marketed to children under the age of twelve. Children's jewelry includes jewelry that meets any of the following conditions:

(a) Represented in its packaging, display, or advertising as appropriate for use by children under the age of twelve;

(b) Sold in conjunction with, attached to, or packaged together with other products that are packaged, displayed, or advertised as appropriate for use by children;

(c) Sized for children and not intended for use by adults; or

(d) Sold in any of the following:

(i) A vending machine; (ii) Retail store, catalogue, or online web site, in which a person exclusively offers for sale products that are packaged, displayed, or advertised as appropriate for use by children; or

(iii) A discrete portion of a retail store, catalogue, or online web site, in which a person offers for sale products that are packaged, displayed, or advertised as appropriate for use by children.

(3)(a) "Children's product" includes any of the following:

(i) Toys;

(ii) Children's cosmetics;

(iii) Children's jewelry;

(iv) A product designed or intended by the manufacturer to help a child with sucking or teething, to facilitate sleep, relaxation, or the feeding of a child, or to be worn as clothing by children; or

(v) Child car seats.

(b) "Children's product" does not include the following:

(i) Batteries;

(ii) Slings and catapults;

(iii) Sets of darts with metallic points;

(iv) Toy steam engines;

(v) Bicycles;

(vi) Video toys that can be connected to a video screen and are operated at a nominal voltage exceeding twenty-four volts;

FIFTY-FOURTH DAY, MARCH 7, 2008

(vii) Chemistry sets;

(viii) Consumer electronic products, including but not limited to personal computers, audio and video equipment, calculators, wireless phones, game consoles, and handheld devices incorporating a video screen, used to access interactive software and their associated peripherals; and

(ix) Interactive software, intended for leisure and entertainment, such as computer games, and their storage media, such as compact disks.

(4) "Cosmetics" includes articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and articles intended for use as a component of such an article. "Cosmetics" does not include soap, dietary supplements, or food and drugs approved by the United States food and drug administration.

(5) "Department" means the department of ecology.

(6) "High priority chemical" means a chemical identified by a state agency, federal agency, or accredited research university, or other scientific evidence deemed authoritative by the department on the basis of credible scientific evidence as known to do one or more of the following:

(a) Harm the normal development of a fetus or child or cause other developmental toxicity;

(b) Cause cancer, genetic damage, or reproductive harm;

(c) Disrupt the endocrine system;

(d) Damage the nervous system, immune system, or organs or cause other systemic toxicity;

(e) Be persistent, bioaccumulative, and toxic; or (f) Be very persistent and very bioaccumulative.

(7) "Manufacturer" includes any person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that produces a children's product or an importer or domestic distributor of a children's product. For the purposes of this subsection, "importer" means the owner of the children's product.

(8) "Phthalates" means di-(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP), benzyl butyl phthalate (BBP), diisonoyl phthalate (DINP), diisodecyl phthalate (DIDP), or di-n-octyl phthalate (DnOP).

(9) "Toy" means a product designed or intended by the manufacturer to be used by a child at play.

(10) "Trade association" means a membership organization of persons engaging in a similar or related line of commerce, organized to promote and improve business conditions in that line of commerce and not to engage in a regular business of a kind ordinarily carried on for profit.

(11) "Very bioaccumulative" means having a bioconcentration factor or bioaccumulation factor greater than or equal to five thousand, or if neither are available, having a log Kow greater than 5.0.

(12) "Very persistent" means having a half-life greater than or equal to one of the following:

(a) A half-life in soil or sediment of greater than one hundred eighty days;

(b) A half-life greater than or equal to sixty days in water or evidence of long-range transport.

NEW SECTION. Sec. 3 (1) Beginning July 1, 2009, no manufacturer, wholesaler, or retailer may manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in this state a children's product or product component containing the following:

(a) Except as provided in subsection (2) of this section, lead at more than .009 percent by weight (ninety parts per million);

(b) Cadmium at more than .004 percent by weight (forty parts per million); or

(c) Phthalates, individually or in combination, at more than 0.10 percent by weight (one thousand parts per million).

(2) Beginning July 1, 2010, no manufacturer, wholesaler, or retailer may manufacture, knowingly sell, offer for sale,

2008 REGULAR SESSION

distribute for sale, or distribute for use in this state a children's product or product component containing lead at more than .004 percent by weight (forty parts per million).

NEW SECTION. Sec. 4 (1) By January 1, 2009, the department, in consultation with the department of health, shall identify high priority chemicals that are of high concern for children after considering a child's or developing fetus's potential for exposure to each chemical. In identifying the chemicals, the department shall include chemicals that meet one or more of the following criteria:

(a) The chemical has been found through biomonitoring studies that demonstrate the presence of the chemical in human umbilical cord blood, human breast milk, human urine, or other bodily tissues or fluids;

(b) The chemical has been found through sampling and analysis to be present in household dust, indoor air, drinking water, or elsewhere in the home environment; or

(c) The chemical has been added to or is present in a consumer product used or present in the home.

(2) By January 1, 2009, the department shall identify children's products or product categories that may contain chemicals identified under subsection (1) of this section.

(3) By January 1, 2009, the department shall submit a report on the chemicals of high concern to children and the children's products or product categories they identify to the appropriate standing committees of the legislature. The report shall include policy options for addressing children's products that contain chemicals of high concern for children, including recommendations for additional ways to inform consumers about toxic chemicals in products, such as labeling.

NEW SECTION. Sec. 5 Beginning six months after the department has adopted rules under section 8(5) of this act, a manufacturer of a children's product, or a trade organization on behalf of its member manufacturers, shall provide notice to the department that the manufacturer's product contains a high priority chemical. The notice must be filed annually with the department and must include the following information:

(1) The name of the chemical used or produced and its chemical abstracts service registry number;

(2) A brief description of the product or product component containing the substance;

(3) A description of the function of the chemical in the product;

(4) The amount of the chemical used in each unit of the product or product component. The amount may be reported in ranges, rather than the exact amount;

(5) The name and address of the manufacturer and the name, address, and phone number of a contact person for the manufacturer; and

(6) Any other information the manufacturer deems relevant to the appropriate use of the product.

Sec. 6 RCW 43.70.660 and 2001 c 257 s 2 are each amended to read as follows:

(1) The legislature authorizes the secretary to establish and maintain a product safety education campaign to promote greater awareness of products designed to be used by infants and children (~~excluding toys~~) that:

(a) Are recalled by the United States consumer products safety commission;

(b) Do not meet federal safety regulations and voluntary safety standards; ~~(or)~~

(c) Are unsafe or illegal to place into the stream of commerce under the infant crib safety act, chapter 70.111 RCW; or

(d) Contain chemicals of high concern for children as identified under section 4 of this act.

(2) The department shall make reasonable efforts to ensure that this infant and children product safety education campaign reaches the target population. The target population for this campaign includes, but is not limited to, parents, foster parents and other caregivers, child care providers, consignment and resale stores selling infant and child products, and charitable and

FIFTY-FOURTH DAY, MARCH 7, 2008

2008 REGULAR SESSION

governmental entities serving infants, children, and families.

(3) The secretary may utilize a combination of methods to achieve this outreach and education goal, including but not limited to print and electronic media. The secretary may operate the campaign or may contract with a vendor.

(4) The department shall coordinate this infant and children product safety education campaign with child-serving entities including, but not limited to, hospitals, birthing centers, midwives, pediatricians, obstetricians, family practice physicians, governmental and private entities serving infants, children, and families, and relevant manufacturers.

(5) The department shall coordinate with other agencies and entities to eliminate duplication of effort in disseminating infant and children consumer product safety information. (6) The department may receive funding for this infant and children product safety education effort from federal, state, and local governmental entities, child-serving foundations, or other private sources.

NEW SECTION. Sec. 7 (1) A manufacturer of products that are restricted under this chapter must notify persons that sell the manufacturer's products in this state about the provisions of this chapter no less than ninety days prior to the effective date of the restrictions.

(2) A manufacturer that produces, sells, or distributes a product prohibited from manufacture, sale, or distribution in this state under this chapter shall recall the product and reimburse the retailer or any other purchaser for the product.

(3) A manufacturer of children's products in violation of this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation in the case of a first offense. Manufacturers who are repeat violators are subject to a civil penalty not to exceed ten thousand dollars for each repeat offense. Penalties collected under this section must be deposited in the state toxics control account created in RCW 70.105D.070.

(4) Retailers who unknowingly sell products that are restricted from sale under this chapter are not liable under this chapter.

NEW SECTION. Sec. 8 (1) Before the prohibitions under section 3 of this act take effect, the department shall prepare and distribute information to in-state and out-of-state manufacturers, to the maximum extent practicable, to assist them in identifying products prohibited for manufacture, sale, or distribution under this chapter.

(2) The department must assist in-state retailers in identifying products restricted under this chapter.

(3) The department may require manufacturers to electronically file the notice required under section 5 of this act to the department that the manufacturer's product contains a high priority chemical.

(4) The department shall develop and publish a web site that provides consumers with information on the chemicals used in children's products, the reason the chemical has been identified as a high priority chemical, and any safer alternatives to the chemical.

(5) The department shall adopt rules to finalize the list of high priority chemicals that are of high concern for children identified in section 4(1) of this act by January 1, 2010.

NEW SECTION. Sec. 9 The department may adopt rules as necessary for the purpose of implementing, administering, and enforcing this chapter.

NEW SECTION. Sec. 10 Sections 1 through 5 and 7 through 9 of this act constitute a new chapter in Title 70 RCW."

Renumber the sections consecutively and correct any internal references accordingly.

Senator Rockefeller spoke in favor of adoption of the amendment to the committee striking amendment.

Senator Honeyford spoke against adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Rockefeller on page 1, after line 2 to the committee striking amendment to Engrossed Second Substitute House Bill No. 2647.

The motion by Senator Rockefeller carried and the amendment to the committee striking amendment was adopted by a rising voice vote.

MOTION

Senator Hatfield moved that the following amendment by Senator Hatfield and others to the committee striking amendment be adopted.

Beginning on page 1, after line 2 of the amendment, strike all material through "void." on page 8, line 15, and insert the following:

"NEW SECTION. Sec. 1. Research shows that many toys and other children's products contain toxic chemicals, such as lead, cadmium, and phthalates that have been shown to cause harm to children's health and the environment. These chemicals, and others like them, have been linked to long-term health impacts such as birth defects, reproductive harm, impaired learning, liver toxicity, and cancer. Because children's bodies are growing and developing, they are especially vulnerable to the effects of toxic chemicals. Regulation of toxic chemicals in children's toys and other products is woefully inadequate. To protect children's health, it is important to phase out the use of lead, cadmium, and phthalates in children's toys and other products and to begin collecting information on other chemicals that are present in toys and other products to determine whether further action is required.

NEW SECTION. Sec. 2. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Children's cosmetics" means cosmetics that are made for, marketed for use by, or marketed to children under the age of twelve. Children's cosmetics includes cosmetics that meet any of the following conditions:

(a) Represented in its packaging, display, or advertising as appropriate for use by children;

(b) Sold in conjunction with, attached to, or packaged together with other products that are packaged, displayed, or advertised as appropriate for use by children; or

(c) Sold in any of the following:

(i) A retail store, catalogue, or online web site, in which a person exclusively offers for sale products that are packaged, displayed, or advertised as appropriate for use by children; or

(ii) A discrete portion of a retail store, catalogue, or online web site, in which a person offers for sale products that are packaged, displayed, or advertised as appropriate for use by children.

(2) "Children's jewelry" means jewelry that is made for, marketed for use by, or marketed to children under the age of twelve. Children's jewelry includes jewelry that meets any of the following conditions:

(a) Represented in its packaging, display, or advertising as appropriate for use by children under the age of twelve;

(b) Sold in conjunction with, attached to, or packaged together with other products that are packaged, displayed, or advertised as appropriate for use by children;

(c) Sized for children and not intended for use by adults; or

(d) Sold in any of the following:

(i) A vending machine;

(ii) A retail store, catalogue, or online web site, in which a person exclusively offers for sale products that are packaged, displayed, or advertised as appropriate for use by children in this

FIFTY-FOURTH DAY, MARCH 7, 2008

state; or

(iii) A discrete portion of a retail store, catalogue, or online web site in which a person offers for sale products that are packaged, displayed, or advertised as appropriate for use by children in this state.

(3)(a) "Children's product" includes any of the following:

(i) Toys;

(ii) Children's cosmetics;

(iii) Children's jewelry;

(iv) A product designed or intended by the manufacturer to help a child with sucking or teething, to facilitate sleep, relaxation, or the feeding of a child, or to be worn as clothing by children; or

(v) Car seats.

(b) "Children's product" does not include the following:

(i) Batteries;

(ii) Slings and catapults;

(iii) Sets of darts with metallic points;

(iv) Toy steam engines;

(v) Bicycles, tricycles, roller skates, scooters, skateboards, or sporting equipment;

(vi) Video toys that can be connected to a video screen and are operated at a nominal voltage not exceeding twenty-four volts;

(vii) Chemistry sets;

(viii) Consumer electronic products, including but not limited to personal computers, audio and video equipment, calculators, wireless phones, game consoles, and handheld devices incorporating a video screen, used to access interactive software and their associated peripherals;

(ix) Interactive software, intended for leisure and entertainment, such as computer games, and their storage media, such as compact disks;

(x) Toy components through which electrical current is transmitted, including but not limited to: Circuit boards, wiring, connectors, power jacks, lights, and switches;

(xi) Components used for product or child safety; and

(xii) Any component part of a product that is not accessible to a child through normal and reasonably foreseeable use and abuse of such a product. A component part is not accessible under this subsection (3)(a)(xii) if such a component part is not physically exposed by reason of a sealed covering or casing and does not become physically exposed through reasonably foreseeable use and abuse of the product.

(4) "Cosmetics" includes articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and articles intended for use as a component of such article. "Cosmetics" does not include soap, dietary supplements, or food and drugs approved by the United States food and drug administration.

(5) "Department" means the department of ecology.

(6) "High priority chemical" means a chemical identified by a state agency, federal agency, or accredited research university or other scientific evidence deemed authoritative by the department on the basis of credible scientific evidence as known to do one or more of the following:

(a) Harm the normal development of a fetus or child or cause other developmental toxicity;

(b) Cause cancer, genetic damage, or reproductive harm;

(c) Disrupt the endocrine system;

(d) Damage the nervous system, immune system, or organs or cause other systemic toxicity;

(e) Be persistent, bioaccumulative, and toxic; or

(f) Be very persistent and bioaccumulative.

(7) "Manufacture" means to create and introduce a product into the stream of commerce.

(8) "Manufacturer" includes any person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that produces a children's product or an importer or domestic distributor of a children's product. For purposes of this subsection, "importer" means the owner of the children's product.

(9) "Toy" means a product designed or intended by the manufacturer to be used by a child at play.

(10) "Trade association" means a membership organization of persons engaging in a similar or related line of commerce, organized to promote and improve business conditions in that line of commerce and not to engage in a regular business of a kind ordinarily carried on for profit.

(11) "Very bioaccumulative" means having a bioconcentration factor or bioaccumulation factor greater than or equal to five thousand, or if neither are available, having a log Kow of greater than 5.0.

(12) "Very persistent" means having a half-life greater than or equal to one of the following:

(a) A half-life in soil or sediment of greater than one hundred eighty days;

(b) A half-life greater than or equal to sixty days in water or evidence of long-range transport.

NEW SECTION. Sec. 3. (1) Beginning July 1, 2009, a manufacturer, wholesaler, or retailer may not manufacture for sale in this state a children's product containing lead or cadmium at more than .025 percent total weight (two hundred fifty parts per million). This requirement does not apply to children's products with a date of manufacture prior to July 1, 2009.

(2) Beginning July 1, 2011, a manufacturer, wholesaler, or retailer may not manufacture for sale in this state a children's product containing lead or cadmium at more than .010 percent total weight (one hundred parts per million). This subsection does not apply to children's products with a date of manufacture prior to July 1, 2011.

(3) Beginning July 1, 2009, a manufacturer, wholesaler, or retailer may not manufacture for sale in this state a children's product containing lead or cadmium in paint at more than .009 percent total weight (ninety parts per million). This subsection does not apply to children's products with a date of manufacture prior to July 1, 2009.

(4) Beginning July 1, 2012, the department of health may specify lower limits for lead or cadmium than those contained in this section. In making a determination to adopt lower limits, the department of health shall consider whether practical technologies are available to make lower limits feasible, whether lead or cadmium is likely to be bioavailable from materials used in a specific children's product, and whether these children's products provide a safety benefit to the user.

(5) This section does not apply to any product or material in which lead or cadmium is not bioavailable or will not have any adverse impact on public health and safety, such as lead crystal.

NEW SECTION. Sec. 4. (1) Beginning January 1, 2009, a manufacturer, wholesaler, or retailer may not manufacture for use in this state a children's product that contains di-(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP), or benzyl butyl phthalate (BBP) in concentrations exceeding 0.1 percent.

(2) Beginning January 1, 2009, a manufacturer, wholesaler, or retailer may not manufacture a children's product intended for use by a child under three years of age if that product can be placed in the child's mouth and contains diisononyl phthalate

FIFTY-FOURTH DAY, MARCH 7, 2008

2008 REGULAR SESSION

(DINP), diisodecyl phthalate (DIDP), or di-n-octyl phthalate (DnOP), in concentrations exceeding 0.1 percent.

(3) Manufacturers must use the least toxic alternative when replacing phthalates in accordance with this chapter.

(4) Manufacturers may not replace phthalates with carcinogens rated by the United States environmental protection agency as A, B, or C carcinogens, or substances listed as known or likely carcinogens, known to be human carcinogens, likely to be human carcinogens, or suggestive of being human carcinogens, as described in "List of Chemicals Evaluated for Carcinogenic Potential," or known to the state of California to cause cancer as listed in the California safe drinking water act.

(5) Manufacturers may not replace phthalates with reproductive toxicants that cause birth defects, reproductive harm, or developmental harm as identified by the United States environmental protection agency or listed in the California safe drinking water act.

(6) The requirements of this section do not apply to children's products with a date of manufacture prior to January 1, 2009.

NEW SECTION. Sec. 5. The department of ecology and the department of health shall convene an advisory committee by May 1, 2008.

(1) The advisory committee must be composed of representatives of children's product manufacturers, retailers, physicians, public health experts, toxic reduction advocates, and any other parties the department of ecology deems necessary.

(2) The advisory committee shall review:

(a) Any material of high priority used in children's products;

(b) The feasibility and mechanisms for manufacturers to report to the department of ecology regarding high priority materials used in children's products;

(c) Statutory and regulatory actions taken to promote safety in children's products by other states, the federal government, and other countries; and

(d) Effective mechanisms to educate the public and retailers about the safety of children's products and the materials used to manufacture those products.

(3) The departments of ecology shall report to the legislature by December 15, 2008, and shall include recommendations for statutory or regulatory revisions and funding necessary to carry out these recommendations.

NEW SECTION. Sec. 6. (1) A manufacturer of children's products in violation of this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation in the case of the first offense, with a total aggregate fine not to exceed twenty-five thousand dollars per event. Manufacturers who are repeat violators are subject to a civil penalty not to exceed ten thousand dollars for each repeat offense, with a total aggregate fine not to exceed fifty thousand dollars per event. Penalties collected under this section must be deposited in the state toxics control account created in RCW 70.105D.070.

(2) Retailers who unknowingly sell products that are restricted from sale under this chapter are not liable under this chapter.

NEW SECTION. Sec. 7. (1) Before the prohibitions under this chapter take effect, the department shall prepare and distribute information to in-state and out-of-state manufacturers, to the maximum extent practicable, to assist them in identifying products prohibited from manufacture, sale, or distribution under this chapter.

(2) The department must assist in-state retailers in identifying products restricted under this chapter.

NEW SECTION. Sec. 8. Sections 1 through 4, 6, and 7 of this act constitute a new chapter in Title 70 RCW.

NEW SECTION. Sec. 9. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2008, in the omnibus appropriations act, this act is null and void."

On page 8, beginning on line 16, strike the title amendment and insert the following:

"On page 1, line 1 of the title, after "act;" strike the remainder of the title and insert "adding a new chapter to Title 70 RCW; creating new sections; and prescribing penalties."

Senators Hatfield, Honeyford, Hobbs and Roach spoke in favor of adoption of the amendment to the committee striking amendment.

Senators Regala and Kastama spoke against adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Hatfield and others on page 1, after line 2 to the committee striking amendment to Engrossed Second Substitute House Bill No. 2647.

The motion by Senator Hatfield failed and the amendment to the committee striking amendment was not adopted by a rising vote.

MOTION

Senator Oemig moved that the following amendment by Senator Oemig and others to the committee striking amendment be adopted.

On page 2, line 31 of the amendment, after "children," strike "or"

On page 2, line 32 of the amendment, after "seats" insert "; or

(vi) Vaccines containing added mercury for children under the age of eighteen or pregnant women"

On page 4, after line 33 of the amendment, insert the following:

"(3) Beginning July 1, 2009, no one may knowingly administer vaccines containing added mercury into children under the age of eighteen or pregnant women unless notice is provided to parents or guardians of the child or pregnant woman receiving the vaccine, that the vaccine contains mercury. Further, if a United States food and drug administration approved alternative vaccine without added mercury is available, the disclosure to the parents or guardians of the child or pregnant woman receiving a vaccine containing mercury must be informed that a mercury-free option is available."

POINT OF ORDER

Senator Rockefeller: "Mr. President, I wish to raise an objection of scope and object. Thank you Mr. President. Mr. President, may I read from some remarks that I have prepared? Mr. President, I believe the proposed amendment is outside the scope and object and I ask that it be ruled out of order under Rule 66. The underlying bill deals with a single discrete subject, the inclusion of certain chemicals in children's products, children's cosmetics and children's jewelry. It is directed solely that products that are designed to be used by children, toys, clothes, jewelry and cosmetic devices. This amendment is out of scope for at least three reasons: first, it expands the scope of the bill to include vaccines, vaccines are medicines administered under the care and direction of a physician or other health professional. None of the other products listed in the bill following remotely in the same category. This bill is focused on

FIFTY-FOURTH DAY, MARCH 7, 2008

toys, cosmetics and devices that aide in easing pain in teething. The amendment concerns a product taking internally and is severely contrast to the bill. To show just how far this amendment strays from the bill, the bill itself contains exclusion for products that are regulated by the U. S. food and drug administration. There can't be no dispute that vaccines are drugs regulated by the FDA. Secondly, the bill explicitly applies to products marketed to are used by children who are eleven years of age or younger. The amendment however applies to vaccines provided to pregnant women or older children. The addition of this element shows that the underline striker is narrowly focused on protecting our most vulnerable children whose decisions are often made for them while the amendment expands the age group to provide protections for teenagers and one group of adult and third, the penalties in the amendment are expanded to cover a class of persons not even considered in the underline bill. The striker penalties found in section seven focus on finding manufacturers of products that contain the listed toxic chemicals and while retailers are mentioned the bill contains no sanctions directed at retailers. The amendment by contrast prohibits the administration of covered vaccines by doctors, nurses and any other person authorized to administer a vaccine. These persons are extremely remote from the manufacturers targeted in this bill. This expands the scope of the bill in two ways, first, it restricts the actions of the medical professionals who are not included in the underline bill and it includes a class of persons who have the most direct contact with the consumer which the underline bill avoids. For these reasons Mr. President, the proposed amendment falls outside the scope and object and I request it to be ruled out of order."

Senator Oemig spoke against the point of order.

REPLY BY THE PRESIDENT

President Owen: "Senator Oemig, the President has noticed that your next two amendments are very similar and, therefore, he would respectfully request that you move adoption of those amendments and, Senator Eide, if you would defer consideration on each of the amendments after he does that, the President would be able to take a look at those and expedite the process."

MOTION

On motion of Senator Eide, further consideration of amendment number 229 was deferred and the amendment held its place on the second reading calendar.

MOTION

Senator Oemig moved that the following amendment by Senator Oemig to the committee striking amendment be adopted.

On page 2, line 31 of the amendment, after "children," strike "or"

On page 2, line 32 of the amendment, after "seats" insert "; or

(vi) Vaccines containing added mercury for children under the age of eighteen"

On page 4, after line 33 of the amendment, insert the following:

"(3) Beginning July 1, 2009, no one may knowingly administer vaccines containing added mercury into children under the age of eighteen unless notice is provided to parents or guardians of the child receiving the vaccine that the vaccine

2008 REGULAR SESSION

contains mercury. Further, if a United States food and drug administration approved alternative vaccine without added mercury is available, the disclosure to the parents or guardians of the child receiving a vaccine containing mercury must be informed that a mercury-free option is available."

MOTION

On motion of Senator Eide, further consideration of amendment by Senator Oemig, on page 2, line 31 was deferred and the amendment held its place on the second reading calendar.

MOTION

Senator Oemig moved that the following amendment by Senator Oemig be adopted.

On page 2, line 31 of the amendment, after "children," strike "or"

On page 2, line 32 of the amendment, after "seats" insert "; or

(vi) Vaccines containing added mercury for children under the age of twelve"

On page 4, after line 33 of the amendment, insert the following:

"(3) Beginning July 1, 2009, no one may knowingly administer vaccines containing added mercury into children under the age of twelve unless notice is provided to parents or guardians of the child receiving the vaccine that the vaccine contains mercury. Further, if a United States food and drug administration approved alternative vaccine without added mercury is available, the disclosure to the parents or guardians of the child receiving a vaccine containing mercury must be informed that a mercury-free option is available."

MOTION

On motion of Senator Eide, further consideration of the amendment by Senator Oemig, on page 2, line 31 was deferred and the amendment held its place on the second reading calendar.

POINT OF ORDER

Senator Rockefeller: "Thank you Mr. President. I just, for the record, wanted to be sure that my objections to all three would be the same as outlined previously."

REPLY BY THE PRESIDENT

President Owen: "So noted."

Senator Franklin assumed the chair.

MOTION

Senator Honeyford moved that the following amendment by Senator Honeyford to the committee striking amendment be adopted.

On page 2, line 38, after "Bicycles" insert "and tricycles" Renumber the sections consecutively and correct any internal references accordingly.

Senators Honeyford and Regala spoke in favor of adoption of the amendment to the committee striking amendment.

FIFTY-FOURTH DAY, MARCH 7, 2008

2008 REGULAR SESSION

The President Pro Tempore declared the question before the Senate to be the adoption of the amendment by Senator Honeyford on page 2, line 38 to the committee striking amendment to Engrossed Second Substitute House Bill No. 2647.

The motion by Senator Honeyford carried and the amendment to the committee striking amendment was adopted by voice vote.

MOTION

Senator Honeyford moved that the following amendment by Senator Honeyford to the committee striking amendment be adopted.

On page 3, line 8, strike "and"

On page 3, line 10, after "disks" insert "; and

(x) BB guns, pellet guns and air rifles"

Senator Honeyford spoke in favor of adoption of the amendment to the committee striking amendment.

The President Pro Tempore declared the question before the Senate to be the adoption of the amendment by Senator Honeyford on page 3, line 8 to the committee striking amendment to Engrossed Second Substitute House Bill No. 2647.

The motion by Senator Honeyford failed and the amendment to the committee striking amendment was not adopted by voice vote.

MOTION FOR IMMEDIATE RECONSIDERATION

Senator Swecker moved to immediately reconsider the vote by which the amendment by Senator Honeyford failed to pass the Senate.

Senator Swecker moved to reconsider the vote by which the amendment by Senator Honeyford on page 3, line 8 to Engrossed Second Substitute House Bill No. 2647 was adopted.

POINT OF ORDER

Senator Eide: "I believe that there no recorded vote on this so there's no I believe any way that we can change the vote with his motion I should say."

POINT OF ORDER

Senator McCaslin: "Thank you Madam President, she proved the point, there's no recorded vote. You can't say he didn't vote for it and if he did vote for it then he has a right to ask for a reconsideration. Absolutely, never has been on a division and before in the history of this body we have done such a thing. Madam President, ladies and gentlemen of the Senate if I could walk as fast as she brought that gavel down I wouldn't need another hip replacement."

Senator Regala spoke in favor of adoption of the amendment.

POINT OF ORDER

Senator Eide: "Thank you, I believe that I can solve this problem by doing an oral amendment. Can I not? You can introduce an amendment, I can write it out."

REMARKS BY THE PRESIDENT PRO TEMPORE

President Pro Tempore: "Senator Eide, the gavel did come down but it is in order for a movement of reconsideration."

The President Pro Tempore declared the question before the senate to be the motion by Senator Swecker to immediately reconsider the vote by which the amendment by Senator Honeyford to the committee striking amendment to Engrossed Second Substitute House Bill No. 2647 failed to be adopted.

The motion for by Senator Swecker carried by voice vote.

The President Pro Tempore declared the question before the Senate to be the adoption of the amendment by Senator Honeyford, on page 3, line 8 to the committee striking amendment to Engrossed Second Substitute House Bill No. 2647 on reconsideration.

Senators Honeyford and Regala spoke in favor of adoption of the amendment to the committee striking amendment.

The motion by Senator Honeyford carried and the amendment to the committee striking amendment on reconsideration was adopted by voice

MOTION

Senator Morton moved that the following amendment by Senator Morton to the committee striking amendment be adopted.

On page 3, line 8, strike "and"

On page 3, line 10, after "disks" insert "; and

(x) Snow sporting equipment, including skis, poles, boots, snow boards, sleds and bindings"

Renumber the sections consecutively and correct any internal references accordingly.

Senators Morton and Regala spoke in favor of adoption of the amendment to the committee striking amendment.

The President Pro Tempore declared the question before the Senate to be the adoption of the amendment by Senator Morton on page 3, line 8 to the committee striking amendment to Engrossed Second Substitute House Bill No. 2647.

The motion by Senator Morton carried and the amendment to the committee striking amendment was adopted by voice vote.

MOTION

Senator Morton moved that the following amendment by Senator Morton to the committee striking amendment be adopted.

On page 3, line 8, strike "and"

On page 3, line 10, after "disks" insert "; and

(x) Sporting equipment, including, but not limited to bats, balls, gloves, sticks, pucks and pads"

Renumber the sections consecutively and correct any internal references accordingly.

Senators Morton and Regala spoke in favor of adoption of the amendment to the committee striking amendment.

The President Pro Tempore declared the question before the Senate to be the adoption of the amendment by Senator Morton on page 3, line 8 to the committee striking amendment to Engrossed Second Substitute House Bill No. 2647.

FIFTY-FOURTH DAY, MARCH 7, 2008

2008 REGULAR SESSION

The motion by Senator Morton carried and the amendment to the committee striking amendment was adopted by voice vote.

MOTION

Senator Morton moved that the following amendment by Senator Morton to the committee striking amendment be adopted.

On page 3, line 8, strike "and"

On page 3, line 10, after "disks" insert "; and

(x) Roller skates"

Renumber the sections consecutively and correct any internal references accordingly.

Senators Morton and Regala spoke in favor of adoption of the amendment to the committee striking amendment.

The President Pro Tempore declared the question before the Senate to be the adoption of the amendment by Senator Morton on page 3, line 8 to the committee striking amendment to Engrossed Second Substitute House Bill No. 2647.

The motion by Senator Morton carried and the amendment to the committee striking amendment was adopted by voice vote.

MOTION

Senator Honeyford moved that the following amendment by Senator Honeyford to the committee striking amendment be adopted.

On page 3, line 8, strike "and"

On page 3, line 10, after "disks" insert "; and

(x) Scooters"

Renumber the sections consecutively and correct any internal references accordingly.

Senators Honeyford and Rockefeller spoke in favor of adoption of the amendment to the committee striking amendment.

The President Pro Tempore declared the question before the Senate to be the adoption of the amendment by Senator Honeyford on page 3, line 8 to the committee striking amendment to Engrossed Second Substitute House Bill No. 2647.

The motion by Senator Honeyford carried and the amendment to the committee striking amendment was adopted by voice vote.

MOTION

Senator Honeyford, without objection, moved that the three following amendments by Senator Honeyford to the committee striking amendment be considered together and be adopted.

On page 3, line 8, strike "and"

On page 3, line 10, after "disks" insert "; and

(x) Model rockets"

Renumber the sections consecutively and correct any internal references accordingly.

On page 3, line 8, strike "and"

On page 3, line 10, after "disks" insert "; and

(X) Athletic shoes with cleats or spikes"

Renumber the sections consecutively and correct any internal references accordingly.

On page 3, line 8, strike "and"

On page 3, line 10, after "disks" insert "; and

(X) Pocket knives and multitools"

Renumber the sections consecutively and correct any internal references accordingly.

Senators Honeyford and Regala spoke in favor of adoption of the amendments to the committee striking amendment.

The President Pro Tempore declared the question before the Senate to be the adoption of the amendments by Senator Honeyford on page 3, line 8 to the committee striking amendment to Engrossed Second Substitute House Bill No. 2647.

The motion by Senator Honeyford carried and the amendments to the committee striking amendment were adopted by voice vote.

WITHDRAWAL OF AMENDMENT

On motion of Senator Honeyford, the set of amendments by Senator Honeyford on pages 3, lines 14 to Engrossed Second Substitute House Bill No. 2647 were withdrawn.

MOTION

Senator Kastama moved that the following amendment by Senator Kastama and others to the committee striking amendment be adopted.

On page 3, on line 29 strike "Beginning July 1, 2010," and insert "If determined feasible for manufacturers to achieve and necessary to protect children's health, the department, in consultation with the department of health, may by rule require that".

Senators Kastama and Rockefeller spoke in favor of adoption of the amendment to the committee striking amendment.

The President Pro Tempore declared the question before the Senate to be the adoption of the amendment by Senator Kastama and others on page 3, line 29 to the committee striking amendment to Engrossed Second Substitute House Bill No. 2647.

The motion by Senator Kastama carried and the amendment to the committee striking amendment was adopted by voice vote.

MOTION

Senator Holmquist moved that the following amendment by Senator Holmquist to the committee striking amendment be adopted.

On page 5, beginning on line 22, strike all material through "product." on page 6, line 4.

Renumber the sections consecutively and correct any internal references accordingly.

Senators Holmquist and Honeyford spoke in favor of adoption of the amendment to the committee striking amendment.

Senator Rockefeller spoke against adoption of the amendment to the committee striking amendment.

The President Pro Tempore declared the question before the Senate to be the adoption of the amendment by Senator

FIFTY-FOURTH DAY, MARCH 7, 2008

2008 REGULAR SESSION

Holmquist on page 5, line 22 to the committee striking amendment to Engrossed Second Substitute House Bill No. 2647.

The motion by Senator Holmquist failed and the amendment to the committee striking amendment was not adopted by voice vote.

The President assumed the chair.

RULING BY THE PRESIDENT

President Owen: "In ruling upon the point of order raised by Senator Rockefeller that the proposed amendments 229, 310, and 311, are beyond the scope and object of Engrossed Second Substitute House Bill 2647, the President finds and rules as follows:

It is true that the underlying bill, the committee striking amendment, and the amendments at issue all deal with children's health and the toxicity of certain chemicals. The underlying bill and the committee amendment, however, are limited to a very specific category of children's health; that is, toys and products. In a very strict sense, vaccines are a type of product. In the relevant context, however, vaccines are not a contemplated part of this measure. Vaccinations combine specific medical procedures and chemical preparations. This is a highly-regulated and specialized area of medical practice, not another item of general commercial products as covered by the bill and committee striking amendment.

For these reasons, the amendments are beyond the scope and object of the measure and Senator Rockefeller's point is well-taken."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Water, Energy & Telecommunications as amended to Engrossed Second Substitute House Bill No. 2647.

The motion by Senator Rockefeller carried and the committee striking amendment as amended was adopted by voice vote.

MOTION

There being no objection, the following title amendments were adopted:

On page 1, line 1 of the title, after "act;" strike the remainder of the title and insert "amending RCW 43.70.660; adding a new chapter to Title 70 RCW; creating a new section; and prescribing penalties."

On page 1, line 1 of the title, after "act;" strike the remainder of the title and insert "amending RCW 43.70.660; adding a new chapter to Title 70 RCW; creating a new section; and prescribing penalties."

MOTION

On motion of Senator Rockefeller, the rules were suspended, Engrossed Second Substitute House Bill No. 2647 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Rockefeller, Regala, Hargrove, Oemig, Kastama and Kline spoke in favor of passage of the bill.

Senators Honeyford, Hatfield, Holmquist and Delvin spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Second Substitute House Bill No. 2647 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Second Substitute House Bill No. 2647 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 40; Nays, 9; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Eide, Fairley, Franklin, Fraser, Hargrove, Haugen, Hobbs, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Murray, Oemig, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Swecker, Tom, Weinstein and Zarelli - 40

Voting nay: Senators Delvin, Hatfield, Hewitt, Holmquist, Honeyford, King, Morton, Parlette and Stevens - 9

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 2647 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

The Senate resumed consideration of Second Substitute House Bill No. 2537.

The President declared the question before the Senate to be the adoption of the amendment by Senators Keiser and Parlette on page 4, line 25 to Second Substitute House Bill No. 2537.

The motion by Senator Keiser carried and the amendment to the committee striking amendment was adopted by voice vote.

MOTION

Senator Holmquist moved that the following amendment by Senator Holmquist be adopted.

On page 18, after line 6 of the amendment, insert the following:

"NEW SECTION. Sec. 10. This act takes effect only if Senate Bill No. 6030 is passed by the legislature and signed by the governor by June 30, 2008. If Senate Bill No. 6030 is not passed by the legislature and signed by the governor before June 30, 2008, this act is void in its entirety."

On page 18, line 10 of the title amendment, after "48.46.066" strike "and" and after "section" insert "; and providing a contingent effective date"

Senators Holmquist, Pflug and Parlette spoke in favor of adoption of the amendment to the committee striking amendment.

Senator Keiser spoke against adoption of the amendment to the committee striking amendment.

Senator Schoesler demanded a roll call.

The President declared that one-sixth of the members supported the demand and the demand was sustained.

The President declared the question before the Senate to be the adoption of the amendment by Senator Holmquist on page 18, after line 6 to the committee striking amendment to Second Substitute House Bill No. 2537.

ROLL CALL

The Secretary called the roll on the adoption of the

FIFTY-FOURTH DAY, MARCH 7, 2008

amendment by Senator Holmquist to the committee striking amendment and the amendment was not adopted by the following vote: Yeas, 22; Nays, 27; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Brandland, Carrell, Delvin, Hatfield, Haugen, Hewitt, Holmquist, Honeyford, Kilmer, King, McCaslin, Morton, Parlette, Pflug, Roach, Schoesler, Sheldon, Stevens, Swecker, Weinstein and Zarelli - 22

Voting nay: Senators Berkey, Brown, Eide, Fairley, Franklin, Fraser, Hargrove, Hobbs, Jacobsen, Kastama, Kauffman, Keiser, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Murray, Oemig, Prentice, Pridemore, Rasmussen, Regala, Rockefeller, Shin, Spanel and Tom - 27

MOTION

Senator Zarelli moved that the following amendment by Senator Zarelli to the committee striking amendment be adopted.

On page 18, after line 6 of the amendment, insert the following:

"**NEW SECTION. Sec. 10.** The cost of administering the health insurance partnership may not exceed ten percent of the value of the premium subsidies provided under the program."

On page 18, line 10 of the title amendment, after "creating" strike "a new section" and insert "new sections"

Senators Zarelli and Pflug spoke in favor of adoption of the amendment to the committee striking amendment.

Senator Keiser spoke against adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Zarelli on page 18, after line 6 to the committee striking amendment to Second Substitute House Bill No. 2537.

The motion by Senator Zarelli failed and the amendment to the committee striking amendment was not adopted by voice vote.

PARLIAMENTARY INQUIRY

Senator Pflug: "I believe there's another amendment on the bar that would come before this one by Senator Parlette?"

REPLY BY THE PRESIDENT

President Owen: "Senator Pflug, normally we'd take them in the order they come particularly when they come in late but at your request we can take them in the opposite order by page number which would be Senator Parlette's first."

MOTION

Senator Parlette moved that the following amendment by Senator Parlette to the committee striking amendment be adopted.

On page 1, line 10 of the amendment, strike "established in RCW 70.47A.100" and insert "~~((established in RCW 70.47A.100))~~"

On page 1, line 13 of the amendment, strike "and"

On page 1, beginning on line 16 of the amendment, after "services" strike all material through "~~or~~" on line 17, and insert "; and

(c) Is employed by a (~~(participating))~~ small employer (~~(or~~"

On page 1, line 22 of the amendment, after "48.43.005" insert "or any plan provided by a self-funded multiple employer

welfare arrangement as defined in RCW 48.125.010 or by another benefit arrangement defined in the federal employee retirement income security act of 1974, as amended"

Beginning on page 1, line 23 of the amendment, after "(5)" strike all material through "(6)" on page 2, line 4, and insert "~~((("Participating small employer" means a small employer that employs at least one eligible partnership participant and has entered into an agreement with the partnership for the partnership to offer and administer the small employer's group health benefit plan, as defined in federal law, Sec. 706 of ERISA (29 U.S.C. Sec. 1167), for enrollees in the plan:—(6)))~~"

Renumber the remaining subsections consecutively and correct any internal references accordingly.

On page 2, beginning on line 6 of the amendment, strike all material through "employment." on line 11, and insert "~~((("Partnership participant" means an employee of a participating small employer, or a former employee of a participating small employer who chooses to continue receiving coverage through the partnership following separation from employment.))~~"

Renumber the remaining subsections consecutively and correct any internal references accordingly.

On page 2, beginning on line 25 of the amendment, after "eligible" strike "partnership participants" and insert "~~((partnership participants))~~ employees"

Beginning on page 2, line 28 of the amendment, strike all material through "(3)" on page 4, line 16, and insert the following:

"(2) (~~(Consistent with policies adopted by the board under section 59 of this act, the administrator shall, directly or by contract:~~

~~—(a) Establish and administer procedures for enrolling small employers in the partnership, including publicizing the existence of the partnership and disseminating information on enrollment, and establishing rules related to minimum participation of employees in small groups purchasing health insurance through the partnership. Opportunities to publicize the program for outreach and education of small employers on the value of insurance shall explore the use of online employer guides. As a condition of participating in the partnership, a small employer must agree to establish a cafeteria plan under section 125 of the federal internal revenue code that will enable employees to use pretax dollars to pay their share of their health benefit plan premium. The partnership shall provide technical assistance to small employers for this purpose;~~

~~—(b) Establish and administer procedures for health benefit plan enrollment by employees of small employers during open enrollment periods and outside of open enrollment periods upon the occurrence of any qualifying event specified in the federal health insurance portability and accountability act of 1996 or applicable state law. Neither the employer nor the partnership shall limit an employee's choice of coverage from among all the health benefit plans offered;~~

~~—(c) Establish and manage a system for the partnership to be designated as the sponsor or administrator of a participating small employer health benefit plan and to undertake the obligations required of a plan administrator under federal law;~~

~~—(d) Establish and manage a system of collecting and transmitting to the applicable carriers all premium payments or contributions made by or on behalf of partnership participants, including employer contributions, automatic payroll deductions for partnership participants, premium subsidy payments, and contributions from philanthropies;~~

~~—(e) Establish and manage a system for determining eligibility for and making premium subsidy payments under chapter 259;~~

FIFTY-FOURTH DAY, MARCH 7, 2008

2008 REGULAR SESSION

Laws of 2007;

~~—(f) Establish a mechanism to apply a surcharge to all health benefit plans, which shall be used only to pay for administrative and operational expenses of the partnership. The surcharge must be applied uniformly to all health benefit plans offered through the partnership and must be included in the premium for each health benefit plan. Surcharges may not be used to pay any premium assistance payments under this chapter;~~

~~—(g) Design a schedule of premium subsidies that is based upon gross family income, giving appropriate consideration to family size and the ages of all family members based on a benchmark health benefit plan designated by the board. The amount of an eligible partnership participant's premium subsidy shall be determined by applying a sliding scale subsidy schedule with the percentage of premium similar to that developed for subsidized basic health plan enrollees under RCW 70.47.060. The subsidy shall be applied to the employee's premium obligation for his or her health benefit plan, so that employees benefit financially from any employer contribution to the cost of their coverage through the partnership.~~

~~—(3))"~~

On page 4, at the beginning of line 22 of the amendment, insert "(1)"

On page 4, line 23 of the amendment, after "eligible" strike "partnership participants" and insert "((partnership participants)) employees"

On page 4, after line 25 of the amendment, insert the following:

"(2) Premium subsidy payments may be provided to eligible employees if:

(a) The eligible employee is employed by a small employer;
(b) The actuarial value of the health benefit plan offered by the small employer is at least substantially equivalent to that of the basic health plan benefit offered under chapter 70.47 RCW. The office of the insurance commissioner under Title 48 RCW shall certify those small employer health benefit plans that are at least ninety percent actuarially equivalent to the basic health plan benefit; and

(c) The small employer will pay at least forty percent of the monthly premium cost for health benefit plan coverage of the eligible employee.

(3) The amount of an eligible employee's premium subsidy shall be determined by applying the sliding scale subsidy schedule similar to the subsidy scale used for subsidized basic health plan enrollees under RCW 70.47.060.

(4) After an eligible individual has enrolled in the program, the program shall issue subsidies in an amount determined pursuant to subsection (3) of this section to either the eligible employee or to the carrier designated by the eligible employee.

(5) An eligible employee must agree to provide verification of continued enrollment in his or her small employer's health benefit plan on a semiannual basis or to notify the administrator whenever his or her enrollment status changes, whichever is earlier. Verification or notification may be made directly by the employee, or through his or her employer or the carrier providing the small employer health benefit plan. When necessary, the administrator has the authority to perform retrospective audits on premium subsidy accounts. The administrator may suspend or terminate an employee's participation in the program and seek repayment of any subsidy amounts paid due to the omission or misrepresentation of an applicant or enrolled employee. The administrator shall adopt rules to define the appropriate application of these sanctions and the processes to implement the sanctions provided in this subsection, within available resources."

Beginning on page 4, line 34 of the amendment, strike all material through "void." on page 18, line 6, and insert the following:

"NEW SECTION. Sec. 5. The following acts or parts of acts are each repealed:

- (1) RCW 70.47A.100 (Health insurance partnership board) and 2007 c 260 s 4;
- (2) RCW 70.47A.110 (Health insurance partnership board--Duties) and 2007 c 260 s 5;
- (3) 2007 c 260 s 10 (uncodified); and
- (4) 2007 c 260 s 11 (uncodified)."

On page 18, beginning on line 9 of the title amendment, after "70.47A.040," strike the remainder of the title amendment and insert "and 70.47A.070; repealing RCW 70.47A.100 and 70.47A.110; repealing 2007 c 260 s 10 (uncodified); and repealing 2007 c 260 s 11 (uncodified)."

Senator Parlette spoke in favor of adoption of the amendment to the committee striking amendment.

Senator Keiser spoke against adoption of the amendment of the committee striking amendment.

Senator Schoesler demanded a roll call.

The President declared that one-sixth of the members supported the demand and the demand was sustained.

The President declared the question before the Senate to be the adoption of the amendment by Senator Parlette on page 1, line 10 to the committee striking amendment to Second Substitute House Bill No. 2537.

ROLL CALL

The Secretary called the roll on the adoption of the amendment by Senator Parlette to the committee striking amendment and the amendment was not adopted by the following vote: Yeas, 24; Nays, 25; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Brandland, Carrell, Delvin, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, King, McCaslin, Morton, Parlette, Pflug, Rasmussen, Roach, Schoesler, Sheldon, Stevens, Swecker and Zarelli - 24

Voting nay: Senators Berkey, Brown, Eide, Fairley, Franklin, Fraser, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Murray, Oemig, Prentice, Pridemore, Regala, Rockefeller, Shin, Spanel, Tom and Weinstein - 25

MOTION

Senator Pflug moved that the following amendment by Senator Pflug to the committee striking amendment be adopted.

On page 18, after line 6 of the amendment, insert the following:

"NEW SECTION. Sec. 10. The following acts or parts of acts are each repealed:

- (1) RCW 70.47A.010 (Finding--Intent) and 2007 c 260 s 1 & 2006 c 255 s 1;
- (2) RCW 70.47A.020 (Definitions) and 2007 c 260 s 2 & 2006 c 255 s 2;
- (3) RCW 70.47A.030 (Health insurance partnership established--Administrator duties) and 2007 c 259 s 58 & 2006 c 255 s 3;
- (4) RCW 70.47A.040 (Applications for premium subsidies) and 2007 c 260 s 6 & 2006 c 255 s 4;
- (5) RCW 70.47A.050 (Enrollment to remain within

FIFTY-FOURTH DAY, MARCH 7, 2008

appropriation) and 2007 c 260 s 12 & 2006 c 255 s 5;

(6) RCW 70.47A.060 (Rules) and 2007 c 260 s 13 & 2006 c 255 s 6;

(7) RCW 70.47A.070 (Reports) and 2006 c 255 s 7;

(8) RCW 70.47A.080 (Health insurance partnership account) and 2007 c 260 s 14 & 2006 c 255 s 8;

(9) RCW 70.47A.090 (State children's health insurance program--Federal waiver request) and 2006 c 255 s 9;

(10) RCW 70.47A.100 (Health insurance partnership board) and 2007 c 260 s 4;

(11) RCW 70.47A.110 (Health insurance partnership board--Duties) and 2007 c 260 s 5; and

(12) RCW 70.47A.900 (Captions not law--2006 c 255) and 2006 c 255 s 11.

NEW SECTION. Sec. 11. Section 10 of this act takes effect only if specific funding for the purposes of the small employer health insurance partnership program, chapter 70.47A RCW, referencing the program by RCW chapter number, is not provided by June 30, 2008, in the omnibus appropriations act."

On page 18, line 10 of the title amendment, after "48.46.066;" strike the remainder of the title and insert "creating new sections; and repealing RCW 70.47A.010, 70.47A.020, 70.47A.030, 70.47A.040, 70.47A.050, 70.47A.060, 70.47A.070, 70.47A.080, 70.47A.090, 70.47A.100, 70.47A.110, and 70.47A.900."

Senator Pflug spoke in favor of adoption of the amendment to the committee striking amendment.

POINT OF ORDER

Senator Keiser: "I'm a little confused, I thought that I had heard that the amendment was being withdrawn but it seems..."

REPLY BY THE PRESIDENT

President Owen: "Senator Keiser, she's speaking on the amendment. Its her privilege."

Senator Keiser spoke against adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Pflug on page 18, after line 6 to the committee striking amendment to Second Substitute House Bill No. 2537.

The motion by Senator Pflug failed and the amendment to the committee striking amendment was not adopted by voice vote.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Ways & Means as amended to Second Substitute House Bill No. 2537.

The motion by Senator Keiser carried and the committee striking amendment as amended was adopted by voice vote.

MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 3 of the title, after "partnership;" strike the remainder of the title and insert "amending RCW 70.47A.020, 70.47A.030, 70.47A.040, 70.47A.070, 70.47A.110, 48.21.045, 48.44.023, and 48.46.066; and creating a new section."

2008 REGULAR SESSION

MOTION

On motion of Senator Keiser, the rules were suspended, Second Substitute House Bill No. 2537 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Keiser spoke in favor of passage of the bill.

Senators Pflug and Parlette spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Second Substitute House Bill No. 2537 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Second Substitute House Bill No. 2537 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 27; Nays, 22; Absent, 0; Excused, 0.

Voting yea: Senators Berkey, Brown, Eide, Fairley, Franklin, Fraser, Hargrove, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Murray, Oemig, Prentice, Pridemore, Rasmussen, Regala, Rockefeller, Shin, Spanel, Tom and Weinstein - 27

Voting nay: Senators Benton, Brandland, Carrell, Delvin, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, King, McCaslin, Morton, Parlette, Pflug, Roach, Schoesler, Sheldon, Stevens, Swecker and Zarelli - 22

SECOND SUBSTITUTE HOUSE BILL NO. 2537 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

On motion of Senator Eide, the Senate reverted to the fourth order of business.

MESSAGE FROM THE HOUSE

March 7, 2008

MR. PRESIDENT:

The Speaker has signed the following bill:

SENATE BILL NO. 6183,

and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

MESSAGE FROM THE HOUSE

March 6, 2008

MR. PRESIDENT:

The House has passed the following bills:

SUBSTITUTE SENATE BILL NO. 6060,

SUBSTITUTE SENATE BILL NO. 6273,

SENATE BILL NO. 6471,

ENGROSSED SUBSTITUTE SENATE BILL NO. 6532,

SENATE BILL NO. 6588,

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MESSAGE FROM THE HOUSE

March 6, 2008

MR. PRESIDENT:

The House has passed the following bills:
ENGROSSED SENATE BILL NO. 6641,
SUBSTITUTE SENATE BILL NO. 6791,
SUBSTITUTE SENATE BILL NO. 6847,
SENATE JOINT MEMORIAL NO. 8028,
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

SIGNED BY THE PRESIDENT

The President has signed:

SUBSTITUTE SENATE BILL NO. 6060,
SUBSTITUTE SENATE BILL NO. 6273,
SENATE BILL NO. 6471,
ENGROSSED SUBSTITUTE SENATE BILL NO. 6532,
SENATE BILL NO. 6588,
ENGROSSED SENATE BILL NO. 6641,
SUBSTITUTE SENATE BILL NO. 6791,
SUBSTITUTE SENATE BILL NO. 6847,
SENATE JOINT MEMORIAL NO. 8028,

MOTION

At 7:13 p.m., on motion of Senator Eide, the Senate adjourned until 9 a.m. Saturday, March 8, 2008.

BRAD OWEN, President of the Senate

THOMAS HOEMANN, Secretary of the Senate

1141-S	2474-S	
Other Action	Other Action	44
Second Reading	Second Reading	43
Third Reading Final Passage	Third Reading Final Passage	44
1637-S	2476	
Other Action	Other Action	27, 28
Second Reading	Second Reading	26, 27
Third Reading Final Passage	Third Reading Final Passage	29
1865-S	2479-S2	
Second Reading	Other Action	98
Third Reading Final Passage	Second Reading	96
2263	Third Reading Final Passage	99
Second Reading	2480-S	
Third Reading Final Passage	Other Action	47
2279-S	Second Reading	45
Other Action	Third Reading Final Passage	47
Second Reading	2482-S	
Third Reading Final Passage	Other Action	3
2448	Second Reading	1
Second Reading	Third Reading Final Passage	3
Third Reading Final Passage	2499	
2459	Second Reading	44
Second Reading	Third Reading Final Passage	44
Third Reading Final Passage	2537-S2	
2467	Other Action	122
Other Action	Second Reading	102, 107, 109, 119, 120, 121
Second Reading	Third Reading Final Passage	122
Third Reading Final Passage	2540	
	Second Reading	65

Third Reading Final Passage 65

2551-S
 Other Action 80
 Second Reading 76
 Third Reading Final Passage 80

2560-S
 Second Reading 3
 Third Reading Final Passage 3

2575-S
 Second Reading 45
 Third Reading Final Passage 45

2580-S
 Second Reading 19
 Third Reading Final Passage 19

2594
 Second Reading 65
 Third Reading Final Passage 65

2624-S2
 Other Action 6
 Second Reading 4
 Third Reading Final Passage 6

2635-S2
 Other Action 101
 Second Reading 99
 Third Reading Final Passage 101

2647-S2
 Other Action 118, 119
 Second Reading 109, 111, 113, 115, 116, 117, 118
 Third Reading Final Passage 119

2668-S2
 Other Action 17
 Second Reading 13
 Third Reading Final Passage 17

2679-S
 Other Action 18
 Second Reading 17
 Third Reading Final Passage 18

2700
 Second Reading 102
 Third Reading Final Passage 102

2712-S2
 Other Action 96
 Second Reading 84, 96
 Third Reading Final Passage 96

2713-S2
 Other Action 24
 Second Reading 23
 Third Reading Final Passage 24

2727-S
 Second Reading 10
 Third Reading Final Passage 10

2729-S
 Other Action 67
 Second Reading 66
 Third Reading Final Passage 67

2762
 Second Reading 29
 Third Reading Final Passage 30

2774
 Other Action 29
 Second Reading 29
 Third Reading Final Passage 29

2783-S2
 Other Action 8
 Second Reading 7

Third Reading Final Passage 8

2786
 Other Action 10
 Second Reading 8
 Third Reading Final Passage 10

2788-S
 Other Action 34
 Second Reading 32
 Third Reading Final Passage 34

2817-S2
 Other Action 68
 Second Reading 67
 Third Reading Final Passage 69

2822-S2
 Other Action 21
 Second Reading 19
 Third Reading Final Passage 21

2823-S
 Second Reading 11
 Third Reading Final Passage 11

2835
 Other Action 81
 Second Reading 80, 81
 Third Reading Final Passage 81

2847-S
 Second Reading 82
 Third Reading Final Passage 82

2864-S
 Other Action 22
 Second Reading 21

2879-S
 Second Reading 102
 Third Reading Final Passage 102

2885-S
 Second Reading 69
 Third Reading Final Passage 69

2903-S2
 Second Reading 13
 Third Reading Final Passage 13

2949
 Second Reading 73
 Third Reading Final Passage 73

2955
 Second Reading 101
 Third Reading Final Passage 101

2996-S
 Second Reading 10
 Third Reading Final Passage 10

2999
 Second Reading 35
 Third Reading Final Passage 35

3019
 Second Reading 69
 Third Reading Final Passage 70

3024
 Second Reading 69
 Third Reading Final Passage 69

3120-S
 Other Action 25
 Second Reading 25
 Third Reading Final Passage 25

3126-S
 Second Reading 34
 Third Reading Final Passage 35

3139-S2

FIFTY-FOURTH DAY, MARCH 7, 2008

2008 REGULAR SESSION

Other Action 72, 73
 Second Reading 70, 72
 Third Reading Final Passage 73
 3144-S
 Other Action 13
 Second Reading 12
 Third Reading Final Passage 13
 3149-S
 Other Action 83
 Second Reading 83
 Third Reading Final Passage 83
 3168-S2
 Other Action 36
 Second Reading 35, 36
 Third Reading Final Passage 36
 3200
 Second Reading 24
 Third Reading Final Passage 25
 3224-S
 Second Reading 12
 Third Reading Final Passage 12
 3254-S2
 Other Action 61, 64
 Second Reading 47, 57, 58, 59, 61
 Third Reading Final Passage 65
 6060-S
 Messages 122
 President Signed 123
 6183
 Speaker Signed 122
 6273-S
 Messages 122
 President Signed 123
 6471
 Messages 122
 President Signed 123
 6532-S
 Messages 122
 President Signed 123
 6588
 Messages 122
 President Signed 123
 6641
 Messages 123
 President Signed 123
 6791-S
 Messages 123
 President Signed 123
 6847-S
 Messages 123
 President Signed 123
 8028
 Messages 123
 President Signed 123
 8731
 Adopted 11
 Introduced 11
 9370 Bruce Montgomery
 Confirmed 1
 PRESIDENT OF THE SENATE
 Intro. Special Guest, University of Livingstonia members
 11
 Reply by the President 26, 67, 108, 116, 120, 122
 Ruling by the President 119

PRESIDENT OF THE SENATE (SENATOR FRANKLIN
 PRESIDING)
 Remarks by the President Pro Tempore 117
 WASHINGTON STATE SENATE
 Parliamentary Inquiry, Senator Benton 67
 Parliamentary Inquiry, Senator Kline 26
 Parliamentary Inquiry, Senator Pflug 120
 Point of Inquiry, Senator Benton 82
 Point of Inquiry, Senator Roach 6
 Point of Order, Senator Eide 117
 Point of Order, Senator Keiser 122
 Point of Order, Senator McCaslin 117
 Point of Order, Senator Parlette 108
 Point of Order, Senator Rockefeller 115, 116