

ONE HUNDRED SECOND DAY

MORNING SESSION

Senate Chamber, Olympia, Thursday, April 21, 2011

The Senate was called to order at 10:00 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, Keiser, Kline and Parlette.

The Sergeant at Arms Color Guard consisting of Pages Logan Dozier and Derek Johnson, presented the Colors. The Honorable Glen Nenema, Chairman of Kalispel Tribe offered the prayer.

SIGNED BY THE PRESIDENT

The President signed:

SECOND SUBSTITUTE SENATE BILL 5595,
 SUBSTITUTE SENATE BILL 5614,
 SUBSTITUTE SENATE BILL 5658,
 SUBSTITUTE SENATE BILL 5688,
 SUBSTITUTE SENATE BILL 5700,
 SENATE BILL 5731,
 SUBSTITUTE SENATE BILL 5741.

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 Prentice moved that Gubernatorial Appointment No. 9008, Bruce Becker, as a member of the Professional Educator Standards Board, be confirmed.

Senator Prentice spoke in favor of the motion.

APPOINTMENT OF BRUCE BECKER

The President declared the question before the Senate to be the confirmation of Gubernatorial Appointment No. 9008, Bruce Becker as a member of the Professional Educator Standards Board.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9008, Bruce Becker as a member of the Professional Educator Standards Board and the appointment was confirmed by the following vote: Yeas, 45; Nays, 0; Absent, 4; Excused, 0.

Voting yea: Senators Baumgartner, Baxter, Becker, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Kilmer, King, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom, White and Zarelli

Absent: Senators Benton, Keiser, Kline and Parlette
 Gubernatorial Appointment No. 9008, Bruce Becker, having received the constitutional majority was declared confirmed as a member of the Professional Educator Standards Board.

MOTION

On motion of Senator White, Senators Keiser and Kline were excused.

MOTION

On motion of Senator Ericksen, Senators Benton, Carrell, Parlette and Zarelli were excused.

SECOND READING
 CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

MOTION

Senator Rockefeller moved that Gubernatorial Appointment No. 9136, Philip Jones, as a member of the Utilities and Transportation Commission, be confirmed.

Senator Rockefeller spoke in favor of the motion.

APPOINTMENT OF PHILIP JONES

The President declared the question before the Senate to be the confirmation of Gubernatorial Appointment No. 9136, Philip Jones as a member of the Utilities and Transportation Commission.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9136, Philip Jones as a member of the Utilities and Transportation Commission and the appointment was confirmed by the following vote: Yeas, 44; Nays, 0; Absent, 1; Excused, 4.

Voting yea: Senators Baumgartner, Baxter, Becker, Benton, Brown, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Nelson, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and White

Absent: Senator Murray

Excused: Senators Carrell, Keiser, Parlette and Zarelli

Gubernatorial Appointment No. 9136, Philip Jones, having received the constitutional majority was declared confirmed as a member of the Utilities and Transportation Commission.

MOTION

On motion of Senator White, Senators Murray and Prentice were excused.

SECOND READING
 CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

MOTION

Senator McAuliffe moved that Gubernatorial Appointment No. 9033, Colleen Fairchild, as a member of the Professional Educator Standards Board, be confirmed.

Senator McAuliffe spoke in favor of the motion.

APPOINTMENT OF COLLEEN FAIRCHILD

The President declared the question before the Senate to be the confirmation of Gubernatorial Appointment No. 9033, Colleen Fairchild as a member of the Professional Educator Standards Board.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9033, Colleen Fairchild as a member of the Professional Educator Standards Board and the appointment was confirmed by the following vote: Yeas, 45; Nays, 0; Absent, 0; Excused, 4.

Voting yea: Senators Baumgartner, Baxter, Becker, Benton, Brown, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Pflug, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom, White and Zarelli

Excused: Senators Carrell, Keiser, Parlette and Prentice

Gubernatorial Appointment No. 9033, Colleen Fairchild, having received the constitutional majority was declared confirmed as a member of the Professional Educator Standards Board.

MOTION

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

MESSAGE FROM THE HOUSE

April 14, 2011

MR. PRESIDENT:

The House refuses to concur in the Senate amendment(s) to ENGROSSED HOUSE BILL NO. 1775 and asks the Senate to recede therefrom. and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Hargrove moved that the Senate insist on its position in the Senate amendment(s) to Engrossed House Bill No. 1775 and ask the House to concur thereon.

Senator Hargrove spoke in favor of the motion.

The President declared the question before the Senate to be motion by Senator Hargrove that the Senate insist on its position in the Senate amendment(s) to Engrossed House Bill No. 1775 and ask the House to concur hereon.

The motion by Senator Hargrove carried and the Senate insisted on its position in the Senate amendment(s) to Engrossed House Bill No. 1775 and asked the House to concur thereon by voice vote.

MESSAGE FROM THE HOUSE

April 9, 2011

MR. PRESIDENT:

The House passed SUBSTITUTE SENATE BILL NO. 5187 with the following amendment(s): 5187-S AMH KAGI H2561.1; 5187-S AMH APPH H2450.2

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 71.34.375 and 2003 c 107 s 1 are each amended to read as follows:

(1) ~~((The))~~ An evaluation and treatment facility or an inpatient facility licensed under chapter 70.41, 71.12, or 72.23 RCW is required to promptly provide written and verbal notice of all statutorily available treatment options contained in this chapter to every parent or guardian of a minor child when the parent or guardian ~~((seeks to have))~~ is seeking mental health treatment for his or her minor child ~~((treated at an evaluation and treatment facility))~~. The notice need not be given more than once if written and verbal notice has already been provided and documented by the facility.

(2) The notice must contain the following information and the provision of notice must be documented by the evaluation and treatment facility or the inpatient facility licensed under chapter 70.41, 71.12, or 72.23 RCW and accompanied by a signed acknowledgment of receipt by the parent or guardian:

(a) All current statutorily available treatment options including but not limited to those provided in this chapter; and

(b) The procedures to be followed to utilize the treatment options described in this chapter.

(3) The department shall produce, and make available, the written notification that must include, at a minimum, the information contained in subsection (2) of this section.

(4) Pursuant to the provisions of RCW 71.34.700, if a minor is brought to an evaluation and treatment facility or an emergency room for immediate mental health services and is unwilling to consent to voluntary admission, the parent or guardian, if present, must be notified, as described in this section, of the statutorily available treatment options contained in this chapter.

NEW SECTION. **Sec. 2.** A new section is added to chapter 71.34 RCW to read as follows:

An evaluation and treatment facility that fails to comply with the requirement to provide verbal and written notice to a parent or guardian of a child under RCW 71.34.375 is subject to a civil penalty of one thousand dollars for each failure to provide adequate notice, unless the evaluation and treatment facility is a hospital licensed under chapter 70.41 RCW or a psychiatric hospital licensed under chapter 71.12 RCW in which case the department of health may enforce the notice requirements using its existing enforcement authority provided in chapters 70.41 and 71.12 RCW.

NEW SECTION. **Sec. 3.** A new section is added to chapter 71.34 RCW to read as follows:

(1) By December 1, 2011, inpatient facilities licensed under chapter 70.41, 71.12, or 72.23 RCW are required to adopt policies and protocols regarding the notice requirements described in RCW 71.34.375; and

(2) By December 1, 2012, the department shall provide a detailed report to the legislature regarding the facilities' compliance with RCW 71.34.375 and subsection (1) of this section."

Correct the title.

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 71.34.375 and 2003 c 107 s 1 are each amended to read as follows:

(1) ~~((The))~~ If a parent or guardian, for the purpose of mental health treatment or evaluation, brings his or her minor child to an evaluation and treatment facility, a hospital emergency room, an inpatient facility licensed under chapter 72.23 RCW, or an inpatient facility licensed under chapter 70.41 or 71.12 RCW operating inpatient psychiatric beds for minors, the facility is required to promptly provide written and verbal notice of all statutorily available treatment options contained in this chapter ~~((to every~~

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~~parent or guardian of a minor child when the parent or guardian seeks to have his or her minor child treated at an evaluation and treatment facility~~). The notice need not be given more than once if written and verbal notice has already been provided and documented by the facility.

(2) The provision of notice must be documented by the facilities required to give notice under subsection (1) of this section and must be accompanied by a signed acknowledgment of receipt by the parent or guardian. The notice must contain the following information:

(a) All current statutorily available treatment options including but not limited to those provided in this chapter; and

(b) The procedures to be followed to utilize the treatment options described in this chapter.

(3) The department shall produce, and make available, the written notification that must include, at a minimum, the information contained in subsection (2) of this section. The department must revise the written notification as necessary to reflect changes in the law.

NEW SECTION. Sec. 2. A new section is added to chapter 71.34 RCW to read as follows:

An evaluation and treatment facility that fails to comply with the requirement to provide verbal and written notice to a parent or guardian of a child under RCW 71.34.375 is subject to a civil penalty of one thousand dollars for each failure to provide adequate notice, unless the evaluation and treatment facility is a hospital licensed under chapter 70.41 RCW or a psychiatric hospital licensed under chapter 71.12 RCW in which case the department of health may enforce the notice requirements using its existing enforcement authority provided in chapters 70.41 and 71.12 RCW.

Sec. 3. RCW 70.41.130 and 1991 c 3 s 335 are each amended to read as follows:

The department is authorized to deny, suspend, revoke, or modify a license or provisional license in any case in which it finds that there has been a failure or refusal to comply with the requirements of this chapter or the standards or rules adopted under this chapter or the requirements of RCW 71.34.375. RCW 43.70.115 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.

Sec. 4. RCW 71.12.590 and 1983 c 3 s 180 are each amended to read as follows:

Failure to comply with any of the provisions of RCW 71.12.550 through 71.12.570 or the requirements of RCW 71.34.375 shall constitute grounds for revocation of license: PROVIDED, HOWEVER, That nothing in this chapter or the rules and regulations adopted pursuant thereto shall be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents or patients in any establishment, as defined in this chapter conducted in accordance with the practice and principles of the body known as Church of Christ, Scientist.

NEW SECTION. Sec. 5. A new section is added to chapter 71.34 RCW to read as follows:

(1) By December 1, 2011, facilities licensed under chapter 70.41, 71.12, or 72.23 RCW are required to adopt policies and protocols regarding the notice requirements described in RCW 71.34.375; and

(2) By December 1, 2012, the department, in collaboration with the department of health, shall provide a detailed report to the legislature regarding the facilities' compliance with RCW 71.34.375 and subsection (1) of this section."

Correct the title.
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Becker moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5187.

Senator Becker spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Becker that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5187.

The motion by Senator Becker carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 5187 by voice vote.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 5187, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of SSB 5187, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 47; Nays, 0; Absent, 0; Excused, 2.

Voting yea: Senators Baumgartner, Baxter, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Erickson, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom, White and Zarelli

Excused: Senators Keiser and Parlette

SUBSTITUTE SENATE BILL NO. 5187, as amended by the House, 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.

MESSAGE FROM THE HOUSE

April 11, 2011

MR. PRESIDENT:

The House passed ENGROSSED SECOND SUBSTITUTE SENATE BILL NO. 5769 with the following amendment(s): 5769-S2.E AMH UPTH H2554.1

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 101. (1) The legislature finds that generating electricity from the combustion of coal produces pollutants that are harmful to human health and safety and the environment. While the emission of many of these pollutants continues to be addressed through application of federal and state air quality laws, the emission of greenhouse gases resulting from the combustion of coal has not been addressed.

(2) The legislature finds that coal-fired electricity generation is one of the largest sources of greenhouse gas emissions in the state, and is the largest source of such emissions from the generation of electricity in the state.

(3) The legislature finds coal-fired electric generation may provide baseload power that is necessary in the near-term for the stability and reliability of the electrical transmission grid and that contributes to the availability of affordable power in the state. The legislature further finds that efforts to transition power to other fuels requires a reasonable period of time to ensure grid stability and to maintain affordable electricity resources.

(4) The legislature finds that coal-fired baseload electric generation facilities are a significant contributor to family-wage jobs and economic health in parts of the state and that transition of these

facilities must address the economic future and the preservation of jobs in affected communities.

(5) Therefore, it is the purpose of this act to provide for the reduction of greenhouse gas emissions from large coal-fired baseload electric power generation facilities, to effect an orderly transition to cleaner fuels in a manner that ensures reliability of the state's electrical grid, to ensure appropriate cleanup and site restoration upon decommissioning of any of these facilities in the state, and to provide assistance to host communities planning for new economic development and mitigating the economic impacts of the closure of these facilities.

Sec. 102. RCW 80.80.010 and 2009 c 565 s 54 and 2009 c 448 s 1 are each reenacted and amended to read as follows:

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

(1) "Attorney general" means the Washington state office of the attorney general.

(2) "Auditor" means: (a) The Washington state auditor's office or its designee for consumer-owned utilities under its jurisdiction; or (b) an independent auditor selected by a consumer-owned utility that is not under the jurisdiction of the state auditor.

(3) "Average available greenhouse gas emissions output" means the level of greenhouse gas emissions as surveyed and determined by the energy policy division of the department of commerce under RCW 80.80.050.

(4) "Baseload electric generation" means electric generation from a power plant that is designed and intended to provide electricity at an annualized plant capacity factor of at least sixty percent.

(5) "Cogeneration facility" means a power plant in which the heat or steam is also used for industrial or commercial heating or cooling purposes and that meets federal energy regulatory commission standards for qualifying facilities under the public utility regulatory policies act of 1978 (16 U.S.C. Sec. 824a-3), as amended.

(6) "Combined-cycle natural gas thermal electric generation facility" means a power plant that employs a combination of one or more gas turbines and steam turbines in which electricity is produced in the steam turbine from otherwise lost waste heat exiting from one or more of the gas turbines.

(7) "Commission" means the Washington utilities and transportation commission.

(8) "Consumer-owned utility" means a municipal utility formed under Title 35 RCW, a public utility district formed under Title 54 RCW, an irrigation district formed under chapter 87.03 RCW, a cooperative formed under chapter 23.86 RCW, a mutual corporation or association formed under chapter 24.06 RCW, or port district within which an industrial district has been established as authorized by Title 53 RCW, that is engaged in the business of distributing electricity to more than one retail electric customer in the state.

(9) "Department" means the department of ecology.

(10) "Distributed generation" means electric generation connected to the distribution level of the transmission and distribution grid, which is usually located at or near the intended place of use.

(11) "Electric utility" means an electrical company or a consumer-owned utility.

(12) "Electrical company" means a company owned by investors that meets the definition of RCW 80.04.010.

(13) "Governing board" means the board of directors or legislative authority of a consumer-owned utility.

(14) "Greenhouse ((gases) gas)" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(15) "Long-term financial commitment" means:

(a) Either a new ownership interest in baseload electric generation or an upgrade to a baseload electric generation facility; or

(b) A new or renewed contract for baseload electric generation with a term of five or more years for the provision of retail power or wholesale power to end-use customers in this state.

(16) "Plant capacity factor" means the ratio of the electricity produced during a given time period, measured in kilowatt-hours, to the electricity the unit could have produced if it had been operated at its rated capacity during that period, expressed in kilowatt-hours.

(17) "Power plant" means a facility for the generation of electricity that is permitted as a single plant by a jurisdiction inside or outside the state.

(18) "Upgrade" means any modification made for the primary purpose of increasing the electric generation capacity of a baseload electric generation facility. "Upgrade" does not include routine or necessary maintenance, installation of emission control equipment, installation, replacement, or modification of equipment that improves the heat rate of the facility, or installation, replacement, or modification of equipment for the primary purpose of maintaining reliable generation output capability that does not increase the heat input or fuel usage as specified in existing generation air quality permits as of July 22, 2007, but may result in incidental increases in generation capacity.

(19) "Coal transition power" means the output of a coal-fired electric generation facility that is subject to an obligation to meet the standards contained in RCW 80.80.040(3)(c).

(20) "Memorandum of agreement" or "memorandum" means a binding and enforceable contract entered into pursuant to section 106 of this act between the governor on behalf of the state and an owner of a baseload electric generation facility in the state that produces coal transition power.

Sec. 103. RCW 80.80.040 and 2009 c 448 s 2 are each amended to read as follows:

(1) Beginning July 1, 2008, the greenhouse gas emissions performance standard for all baseload electric generation for which electric utilities enter into long-term financial commitments on or after such date is the lower of:

(a) One thousand one hundred pounds of greenhouse gases per megawatt-hour; or

(b) The average available greenhouse gas emissions output as determined under RCW 80.80.050.

(2) This chapter does not apply to long-term financial commitments with the Bonneville power administration.

(3)(a) Except as provided in (c) of this subsection, all baseload electric generation facilities in operation as of June 30, 2008, are deemed to be in compliance with the greenhouse gas emissions performance standard established under this section until the facilities are the subject of long-term financial commitments.

(b) All baseload electric generation that commences operation after June 30, 2008, and is located in Washington, must comply with the greenhouse gas emissions performance standard established in subsection (1) of this section.

(c)(i) A coal-fired baseload electric generation facility in Washington that emitted more than one million tons of greenhouse gases in any calendar year prior to 2008 must comply with the lower of the following greenhouse gas emissions performance standard such that one generating boiler is in compliance by December 31, 2020, and any other generating boiler is in compliance by December 31, 2025:

(A) One thousand one hundred pounds of greenhouse gases per megawatt-hour; or

(B) The average available greenhouse gas emissions output as determined under RCW 80.80.050.

(ii) This subsection (3)(c) does not apply to a coal-fired baseload electric generating facility in the event the department determines as a requirement of state or federal law or regulation that

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selective catalytic reduction technology must be installed on any of its boilers.

(4) All electric generation facilities or power plants powered exclusively by renewable resources, as defined in RCW 19.280.020, are deemed to be in compliance with the greenhouse gas emissions performance standard established under this section.

(5) All cogeneration facilities in the state that are fueled by natural gas or waste gas or a combination of the two fuels, and that are in operation as of June 30, 2008, are deemed to be in compliance with the greenhouse gas emissions performance standard established under this section until the facilities are the subject of a new ownership interest or are upgraded.

(6) In determining the rate of emissions of greenhouse gases for baseload electric generation, the total emissions associated with producing electricity shall be included.

(7) In no case shall a long-term financial commitment be determined to be in compliance with the greenhouse gas emissions performance standard if the commitment includes more than twelve percent of electricity from unspecified sources.

(8) For a long-term financial commitment with multiple power plants, each specified power plant must be treated individually for the purpose of determining the annualized plant capacity factor and net emissions, and each power plant must comply with subsection (1) of this section, except as provided in subsections (3) through (5) of this section.

(9) The department shall establish an output-based methodology to ensure that the calculation of emissions of greenhouse gases for a cogeneration facility recognizes the total usable energy output of the process, and includes all greenhouse gases emitted by the facility in the production of both electrical and thermal energy. In developing and implementing the greenhouse gas emissions performance standard, the department shall consider and act in a manner consistent with any rules adopted pursuant to the public utilities regulatory policy act of 1978 (16 U.S.C. Sec. 824a-3), as amended.

(10) The following greenhouse gas emissions produced by baseload electric generation owned or contracted through a long-term financial commitment shall not be counted as emissions of the power plant in determining compliance with the greenhouse gas emissions performance standard:

(a) Those emissions that are injected permanently in geological formations;

(b) Those emissions that are permanently sequestered by other means approved by the department; and

(c) Those emissions sequestered or mitigated as approved under subsection (16) of this section.

(11) In adopting and implementing the greenhouse gas emissions performance standard, the department of (~~community, trade, and economic development~~) commerce energy policy division, in consultation with the commission, the department, the Bonneville power administration, the western electricity (~~coordination~~ ~~coordinating~~) coordinating council, the energy facility site evaluation council, electric utilities, public interest representatives, and consumer representatives, shall consider the effects of the greenhouse gas emissions performance standard on system reliability and overall costs to electricity customers.

(12) In developing and implementing the greenhouse gas emissions performance standard, the department shall, with assistance of the commission, the department of (~~community, trade, and economic development~~) commerce energy policy division, and electric utilities, and to the extent practicable, address long-term purchases of electricity from unspecified sources in a manner consistent with this chapter.

(13) The directors of the energy facility site evaluation council and the department shall each adopt rules under chapter 34.05 RCW

in coordination with each other to implement and enforce the greenhouse gas emissions performance standard. The rules necessary to implement this section shall be adopted by June 30, 2008.

(14) In adopting the rules for implementing this section, the energy facility site evaluation council and the department shall include criteria to be applied in evaluating the carbon sequestration plan, for baseload electric generation that will rely on subsection (10) of this section to demonstrate compliance, but that will commence sequestration after the date that electricity is first produced. The rules shall include but not be limited to:

(a) Provisions for financial assurances, as a condition of plant operation, sufficient to ensure successful implementation of the carbon sequestration plan, including construction and operation of necessary equipment, and any other significant costs;

(b) Provisions for geological or other approved sequestration commencing within five years of plant operation, including full and sufficient technical documentation to support the planned sequestration;

(c) Provisions for monitoring the effectiveness of the implementation of the sequestration plan;

(d) Penalties for failure to achieve implementation of the plan on schedule;

(e) Provisions for an owner to purchase emissions reductions in the event of the failure of a sequestration plan under subsection (16) of this section; and

(f) Provisions for public notice and comment on the carbon sequestration plan.

(15)(a) Except as provided in (b) of this subsection, as part of its role enforcing the greenhouse gas emissions performance standard, the department shall determine whether sequestration or a plan for sequestration will provide safe, reliable, and permanent protection against the greenhouse gases entering the atmosphere from the power plant and all ancillary facilities.

(b) For facilities under its jurisdiction, the energy facility site evaluation council shall contract for review of sequestration or the carbon sequestration plan with the department consistent with the conditions under (a) of this subsection, consider the adequacy of sequestration or the plan in its adjudicative proceedings conducted under RCW 80.50.090(3), and incorporate specific findings regarding adequacy in its recommendation to the governor under RCW 80.50.100.

(16) A project under consideration by the energy facility site evaluation council by July 22, 2007, is required to include all of the requirements of subsection (14) of this section in its carbon sequestration plan submitted as part of the energy facility site evaluation council process. A project under consideration by the energy facility site evaluation council by July 22, 2007, that receives final site certification agreement approval under chapter 80.50 RCW shall make a good faith effort to implement the sequestration plan. If the project owner determines that implementation is not feasible, the project owner shall submit documentation of that determination to the energy facility site evaluation council. The documentation shall demonstrate the steps taken to implement the sequestration plan and evidence of the technological and economic barriers to successful implementation. The project owner shall then provide to the energy facility site evaluation council notification that they shall implement the plan that requires the project owner to meet the greenhouse gas emissions performance standard by purchasing verifiable greenhouse gas emissions reductions from an electric (~~generating~~) generation facility located within the western interconnection, where the reduction would not have occurred otherwise or absent this contractual agreement, such that the sum of the emissions reductions purchased and the facility's emissions meets the standard for the life of the facility.

Sec. 104. RCW 80.80.060 and 2009 c 448 s 3 and 2009 c 147 s 1 are each reenacted and amended to read as follows:

(1) No electrical company may enter into a long-term financial commitment unless the baseload electric generation supplied under such a long-term financial commitment complies with the greenhouse (~~((gases - gas))~~) gas emissions performance standard established under RCW 80.80.040.

(2) In order to enforce the requirements of this chapter, the commission shall review in a general rate case or as provided in subsection (5) of this section any long-term financial commitment entered into by an electrical company after June 30, 2008, to determine whether the baseload electric generation to be supplied under that long-term financial commitment complies with the greenhouse (~~((gases - gas))~~) gas emissions performance standard established under RCW 80.80.040.

(3) In determining whether a long-term financial commitment is for baseload electric generation, the commission shall consider the design of the power plant and its intended use, based upon the electricity purchase contract, if any, permits necessary for the operation of the power plant, and any other matter the commission determines is relevant under the circumstances.

(4) Upon application by an electric utility, the commission may provide a case-by-case exemption from the greenhouse (~~((gases - gas))~~) gas emissions performance standard to address: (a) Unanticipated electric system reliability needs; (b) extraordinary cost impacts on utility ratepayers; or (c) catastrophic events or threat of significant financial harm that may arise from unforeseen circumstances.

(5) Upon application by an electrical company, the commission shall determine whether the company's proposed decision to acquire electric generation or enter into a power purchase agreement for electricity complies with the greenhouse (~~((gases - gas))~~) gas emissions performance standard established under RCW 80.80.040. The commission shall not decide in a proceeding under this subsection (5) issues involving the actual costs to construct and operate the selected resource, cost recovery, or other issues reserved by the commission for decision in a general rate case or other proceeding for recovery of the resource or contract costs.

(6) An electrical company may account for and defer for later consideration by the commission costs incurred in connection with a long-term financial commitment, including operating and maintenance costs, depreciation, taxes, and cost of invested capital. The deferral begins with the date on which the power plant begins commercial operation or the effective date of the power purchase agreement and continues for a period not to exceed twenty-four months; provided that if during such period the company files a general rate case or other proceeding for the recovery of such costs, deferral ends on the effective date of the final decision by the commission in such proceeding. Creation of such a deferral account does not by itself determine the actual costs of the long-term financial commitment, whether recovery of any or all of these costs is appropriate, or other issues to be decided by the commission in a general rate case or other proceeding for recovery of these costs. For the purpose of this subsection (6) only, the term "long-term financial commitment" also includes an electric company's ownership or power purchase agreement with a term of five or more years associated with an eligible renewable resource as defined in RCW 19.285.030.

(7) The commission shall consult with the department to apply the procedures adopted by the department to verify the emissions of greenhouse gases from baseload electric generation under RCW 80.80.040. The department shall report to the commission whether baseload electric generation will comply with the greenhouse (~~((gases - gas))~~) gas emissions performance standard for the duration of the period the baseload electric generation is supplied to the electrical company.

(8) The commission shall adopt rules for the enforcement of this section with respect to electrical companies and adopt procedural rules for approving costs incurred by an electrical company under subsection (4) of this section.

(9) This section does not apply to a long-term financial commitment for the purchase of coal transition power with termination dates consistent with the applicable dates in RCW 80.80.040(3)(c).

(10) The commission shall adopt rules necessary to implement this section by December 31, 2008.

Sec. 105. RCW 80.80.070 and 2007 c 307 s 9 are each amended to read as follows:

(1) No consumer-owned utility may enter into a long-term financial commitment unless the baseload electric generation supplied under such a long-term financial commitment complies with the greenhouse (~~((gases))~~) gas emissions performance standard established under RCW 80.80.040.

(2) The governing board shall review and make a determination on any long-term financial commitment by the utility, pursuant to this chapter and after consultation with the department, to determine whether the baseload electric generation to be supplied under that long-term financial commitment complies with the greenhouse (~~((gases))~~) gas emissions performance standard established under RCW 80.80.040. No consumer-owned utility may enter into a long-term financial commitment unless the baseload electric generation to be supplied under that long-term financial commitment complies with the greenhouse (~~((gases))~~) gas emissions performance standard established under RCW 80.80.040.

(3) In confirming that a long-term financial commitment is for baseload electric generation, the governing board shall consider the design of the power plant and the intended use of the power plant based upon the electricity purchase contract, if any, permits necessary for the operation of the power plant, and any other matter the governing board determines is relevant under the circumstances.

(4) The governing board may provide a case-by-case exemption from the greenhouse (~~((gases))~~) gas emissions performance standard to address: (a) Unanticipated electric system reliability needs; or (b) catastrophic events or threat of significant financial harm that may arise from unforeseen circumstances.

(5) The governing board shall apply the procedures adopted by the department to verify the emissions of greenhouse gases from baseload electric generation under RCW 80.80.040, and may request assistance from the department in doing so.

(6) For consumer-owned utilities, the auditor is responsible for auditing compliance with this chapter and rules adopted under this chapter that apply to those utilities and the attorney general is responsible for enforcing that compliance.

(7) This section does not apply to long-term financial commitments for the purchase of coal transition power with termination dates consistent with the applicable dates in RCW 80.80.040(3)(c).

NEW SECTION. Sec. 106. A new section is added to chapter 80.80 RCW to read as follows:

(1) By January 1, 2012, the governor on behalf of the state shall enter into a memorandum of agreement that takes effect on April 1, 2012, with the owners of a coal-fired baseload facility in Washington that emitted more than one million tons of greenhouse gases in any calendar year prior to 2008. The memorandum of agreement entered into by the governor may only contain provisions authorized in this section, except as provided under section 108 of this act.

(2) The memorandum of agreement must:

(a) Incorporate by reference RCW 80.80.040, 80.80.060, and 80.80.070 as of the effective date of this section;

(b) Incorporate binding commitments to install selective noncatalytic reduction pollution control technology in any coal-fired

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generating boilers by January 1, 2013, after discussing the proper use of ammonia in this technology.

(3)(a) The memorandum of agreement must include provisions by which the facility owner will provide financial assistance:

(i) To the affected community for economic development and energy efficiency and weatherization; and

(ii) For energy technologies with the potential to create considerable energy, economic development, and air quality, haze, or other environmental benefits.

(b) Except as described in (c) of this subsection, the financial assistance in (a)(i) of this subsection must be in the amount of thirty million dollars and the financial assistance in (a)(ii) of this subsection must be in the amount of twenty-five million dollars, with investments beginning January 1, 2012, and consisting of equal annual investments through December 31, 2023, or until the full amount has been provided. Only funds for energy efficiency and weatherization may be spent prior to December 31, 2015.

(c) If the tax exemptions provided under RCW 82.08.811 or 82.12.811 are repealed, any remaining financial assistance required by this section is no longer required.

(4) The memorandum of agreement must:

(a) Specify that the investments in subsection (3) of this section be held in independent accounts at an appropriate financial institution; and

(b) Identify individuals to approve expenditures from the accounts. Individuals must have relevant expertise and must include members representing the Lewis county economic development council, local elected officials, employees at the facility, and the facility owner.

(5) The memorandum of agreement must include a provision that allows for the termination of the memorandum of agreement in the event the department determines as a requirement of state or federal law or regulation that selective catalytic reduction technology must be installed on any of its boilers.

(6) The memorandum of agreement must include enforcement provisions to ensure implementation of the agreement by the parties.

(7) If the memorandum of agreement is not signed by January 1, 2012, the governor must impose requirements consistent with the provisions in subsection (2)(b) of this section.

NEW SECTION. Sec. 107. A new section is added to chapter 80.80 RCW to read as follows:

No state agency or political subdivision of the state may adopt or impose a greenhouse gas emission performance standard, or other operating or financial requirement or limitation relating to greenhouse gas emissions, on a coal-fired electric generation facility located in Washington in operation on or before the effective date of this section or upon an electric utility's long-term purchase of coal transition power, that is inconsistent with or in addition to the provisions of RCW 80.80.040 or the memorandum of agreement entered into under section 106 of this act.

NEW SECTION. Sec. 108. A new section is added to chapter 80.80 RCW to read as follows:

(1) A memorandum of agreement entered into pursuant to section 106 of this act may include provisions to assist in the financing of emissions reductions that exceed those required by RCW 80.80.040(3)(c) by providing for the recognition of such reductions in applicable state policies and programs relating to greenhouse gas emissions, and by encouraging and advocating for the recognition of the reductions in all established and emerging emission reduction frameworks at the regional, national, or international level.

(2) The governor may recommend actions to the legislature to strengthen implementation of an agreement or a proposed agreement relating to recognition of investments in emissions reductions described in subsection (1) of this section.

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Sec. 109. RCW 80.50.100 and 1989 c 175 s 174 are each amended to read as follows:

(1)(a) The council shall report to the governor its recommendations as to the approval or rejection of an application for certification within twelve months of receipt by the council of such an application, or such later time as is mutually agreed by the council and the applicant.

(b) In the case of an application filed prior to December 31, 2025, for certification of an energy facility proposed for construction, modification, or expansion for the purpose of providing generating facilities that meet the requirements of RCW 80.80.040 and are located in a county with a coal-fired electric generating facility subject to RCW 80.80.040(3)(c), the council shall expedite the processing of the application pursuant to RCW 80.50.075 and shall report its recommendations to the governor within one hundred eighty days of receipt by the council of such an application, or a later time as is mutually agreed by the council and the applicant.

(2) If the council recommends approval of an application for certification, it shall also submit a draft certification agreement with the report. The council shall include conditions in the draft certification agreement to implement the provisions of this chapter, including, but not limited to, conditions to protect state or local governmental or community interests affected by the construction or operation of the energy facility, and conditions designed to recognize the purpose of laws or ordinances, or rules or regulations promulgated thereunder, that are preempted or superseded pursuant to RCW 80.50.110 as now or hereafter amended.

~~((2))~~ (3)(a) Within sixty days of receipt of the council's report the governor shall take one of the following actions:

~~((a))~~ (i) Approve the application and execute the draft certification agreement; or

~~((b))~~ (ii) Reject the application; or

~~((c))~~ (iii) Direct the council to reconsider certain aspects of the draft certification agreement.

(b) The council shall reconsider such aspects of the draft certification agreement by reviewing the existing record of the application or, as necessary, by reopening the adjudicative proceeding for the purposes of receiving additional evidence. Such reconsideration shall be conducted expeditiously. The council shall resubmit the draft certification to the governor incorporating any amendments deemed necessary upon reconsideration. Within sixty days of receipt of such draft certification agreement, the governor shall either approve the application and execute the certification agreement or reject the application. The certification agreement shall be binding upon execution by the governor and the applicant.

~~((3))~~ (4) The rejection of an application for certification by the governor shall be final as to that application but shall not preclude submission of a subsequent application for the same site on the basis of changed conditions or new information.

NEW SECTION. Sec. 201. (1) A facility subject to closure under either RCW 80.80.040(3)(c) or a memorandum of agreement under section 106 of this act, or both, must provide the department of ecology with a plan for the closure and postclosure of the facility at least twenty- four months prior to facility closure or twenty-four months prior to start of decommissioning work, whichever is earlier. This plan must be consistent with the rules established by the energy facility site evaluation council for site restoration and preservation applicable to facilities subject to a site certification agreement under chapter 80.50 RCW and include but not be limited to:

(a) A detailed estimate of the cost to implement the plan based on the cost of hiring a third party to conduct all activities;

(b) Demonstrating financial assurance to fund the closure and postclosure of the facility and providing methods by which this assurance may be demonstrated;

(c) Methods for estimating closure costs, including full site reclamation under all applicable federal and state clean-up standards; and

(d) A decommissioning and site restoration plan that addresses restoring physical topography, cleanup of all hazardous substances on the site, potential future uses of the site following restoration, and coordination with local and community plans for economic development in the vicinity of the site.

(2) All cost estimates in the plan must be in current dollars and may not include a net present value adjustment or offsets for salvage value of wastes or other property.

(3) Adoption of the plan and significant revisions to the plan must be approved by the department of ecology.

NEW SECTION. Sec. 202. (1) A facility subject to closure under either RCW 80.80.040(3)(c) or a memorandum of agreement under section 106 of this act, or both, must guarantee funds are available to perform all activities specified in the decommissioning plan developed under section 201 of this act. The amount must equal the cost estimates specified in the decommissioning plan and must be updated annually for inflation. All guarantees under this section must be assumed by any successor owner, parent company, or holding company.

(2) The guarantee required under subsection (1) of this section may be accomplished by letter of credit, surety bond, or other means acceptable to the department of ecology.

(3) The issuing institution of the letter of credit must be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated by a federal or state agency. The surety company issuing a surety bond must, at a minimum, be an entity listed as an acceptable surety on federal bonds in circular 570, published by the United States department of the treasury.

(4) A qualifying facility that uses a letter of credit or a surety bond to satisfy the requirements of this act must also establish a standby trust fund as a means to hold any funds issued from the letter of credit or a surety bond. Under the terms of the letter of credit or a surety bond, all amounts paid pursuant to a draft from the department of ecology must be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the department of ecology. This standby trust fund must be approved by the department of ecology.

(5) The letter of credit or a surety bond must be irrevocable and issued for a period of at least one year. The letter of credit or a surety bond must provide that the expiration date will be automatically extended for a period of at least one year unless, at least one hundred twenty days before the current expiration date, the issuing institution notifies both the qualifying facility and the department of ecology of a decision not to extend the expiration date. Under the terms of the letter of credit, the one hundred twenty days will begin on the date when both the qualifying plant and the department of ecology have received the notice, as evidenced by certified mail return receipts or by overnight courier delivery receipts.

(6) If the qualifying facility does not establish an alternative method of guaranteeing decommissioning funds are available within ninety days after receipt by both the qualifying facility plant and the department of ecology of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the department of ecology must draw on the letter of credit or a surety bond. The department of ecology must approve any replacement or substitute guarantee method before the expiration of the ninety-day period.

(7) If a qualifying facility elects to use a letter of credit as the sole method for guaranteeing decommissioning funds are available, the face value of the letter of credit must meet or exceed the current inflation-adjusted cost estimate. If a qualifying facility elects to use a surety bond as the sole method for guaranteeing decommissioning

funds are available, the penal sum of the surety bond must meet or exceed the current inflation-adjusted cost estimate.

(8) A qualifying facility must adjust the decommissioning costs and financial guarantees annually for inflation and may use an amendment to increase the face value of a letter of credit or a surety bond each year to account for this inflation. A qualifying facility is not required to obtain a new letter of credit or a surety bond to cover annual inflation adjustments.

NEW SECTION. Sec. 203. Sections 201 and 202 of this act constitute a new chapter in Title 80 RCW.

Sec. 301. RCW 43.160.076 and 2008 c 327 s 8 are each amended to read as follows:

(1) Except as authorized to the contrary under subsection (2) of this section, from all funds available to the board for financial assistance in a biennium under this chapter, the board shall approve at least seventy-five percent of the first twenty million dollars of funds available and at least fifty percent of any additional funds for financial assistance for projects in rural counties.

(2) If at any time during the last six months of a biennium the board finds that the actual and anticipated applications for qualified projects in rural counties are clearly insufficient to use up the allocations under subsection (1) of this section, then the board shall estimate the amount of the insufficiency and during the remainder of the biennium may use that amount of the allocation for financial assistance to projects not located in rural counties.

(3) The board shall solicit qualifying projects to plan, design, and construct public facilities needed to attract new industrial and commercial activities in areas impacted by the closure or potential closure of large coal-fired electric generation facilities, which for the purposes of this section means a facility that emitted more than one million tons of greenhouse gases in any calendar year prior to 2008. The projects should be consistent with any applicable plans for major industrial activity on lands formerly used or designated for surface coal mining and supporting uses under RCW 36.70A.368. When the board receives timely and eligible project applications from a political subdivision of the state for financial assistance for such projects, the board from available funds shall give priority consideration to such projects.

NEW SECTION. Sec. 302. A new section is added to chapter 43.155 RCW to read as follows:

The board shall solicit qualifying projects to plan, design, and construct public works projects needed to attract new industrial and commercial activities in areas impacted by the closure or potential closure of large coal-fired electric generation facilities, which for the purposes of this section means a facility that emitted more than one million tons of greenhouse gases in any calendar year prior to 2008. The projects should be consistent with any applicable plans for major industrial activity on lands formerly used or designated for surface coal mining and supporting uses under RCW 36.70A.368. When the board receives timely and eligible project applications from a political subdivision of the state for financial assistance for such projects, the board from available funds shall give priority consideration to such projects.

NEW SECTION. Sec. 303. A new section is added to chapter 80.04 RCW to read as follows:

The legislature finds that an electrical company's acquisition of coal transition power helps to achieve the state's greenhouse gas emission reduction goals by effecting an orderly transition to cleaner fuels and supports the state's public policy.

NEW SECTION. Sec. 304. A new section is added to chapter 80.04 RCW to read as follows:

(1) On the petition of an electrical company, the commission shall approve or disapprove a power purchase agreement for acquisition of coal transition power, as defined in RCW 80.80.010, and the recovery of related acquisition costs. No agreement for an

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electrical company's acquisition of coal transition power takes effect until it is approved by the commission.

(2) Any power purchase agreement for the acquisition of coal transition power pursuant to this section must provide for modification of the power purchase agreement to the satisfaction of the parties thereto in the event that a new or revised emission or performance standard or other new or revised operational or financial requirement or limitation directly or indirectly addressing greenhouse gas emissions is imposed by state or federal law, rules, or regulatory requirements. Such a modification to a power purchase agreement agreed to by the parties must be reviewed and considered for approval by the commission, considering the circumstances existing at the time of such a review, under procedures and standards set forth in this section. In the event the parties cannot agree to modification of the power purchase agreement, either party to the agreement has the right to terminate the agreement if it is adversely affected by this new standard, requirement, or limitation.

(3) When a petition is filed, the commission shall provide notice to the public and potentially affected parties and set the petition for hearing as an adjudicative proceeding under chapter 34.05 RCW. Any party may request that the commission expedite the hearing of that petition. The hearing of such a petition is not considered a general rate case. The electrical company must file supporting testimony and exhibits together with the power purchase agreement for coal transition power. Information provided by the facility owner to the purchasing electrical company for evaluating the costs and benefits associated with acquisition of coal transition power must be made available to other parties to the petition under a protective order entered by the commission. An administrative law judge of the commission may enter an initial order including findings of fact and conclusions of law, as provided in RCW 80.01.060(3). The commission shall issue a final order that approves or disapproves the power purchase agreement for acquisition of coal transition power within one hundred eighty days after an electrical company files the petition.

(4) The commission must approve a power purchase agreement for acquisition of coal transition power pursuant to this section only if the commission determines that, considering the circumstances existing at the time of such a review: The terms of such an agreement provide adequate protection to ratepayers and the electrical company during the term of such an agreement or in the event of early termination; the resource is needed by the electrical company to serve its ratepayers and the resource meets the need in a cost-effective manner as determined under the lowest reasonable cost resource standards under chapter 19.280 RCW, including the cost of the power purchase agreement plus the equity component as determined in this section. As part of these determinations, the commission shall consider, among other factors, the long-term economic risks and benefits to the electrical company and its ratepayers of such a long-term purchase.

(5) If the commission has not issued a final order within one hundred eighty days from the date the petition is filed, or if the commission disapproves the petition, the power purchase agreement for acquisition of coal transition power is null and void. In the event the commission approves the agreement upon conditions other than those set forth in the petition, the electrical company has the right to reject the agreement.

(6)(a) Upon commission approval of an electrical company's power purchase agreement for acquisition of coal transition power in accordance with this section, the electrical company is allowed to earn the equity component of its authorized rate of return in the same manner as if it had purchased or built an equivalent plant and to recover the cost of the coal transition power under the power purchase agreement. Any power purchase agreement for

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acquisition of coal transition power that earns a return on equity may not be included in an imputed debt calculation for setting customer rates.

(b) For purposes of determining the equity value, the cost of an equivalent plant is the least cost purchased or self-built electric generation plant with equivalent capacity. In determining the least cost plant, the commission may rely on the electrical company's most recent filed integrated resource plan. The cost of an equivalent plant, in dollars per kilowatt, must be determined in the original process of commission approval for each power purchase agreement for coal transition power.

(c) The equivalent plant cost determined in the approval process must be amortized over the life of the power purchase agreement for acquisition of coal transition power to determine the recovery of the equity value.

(d) The recovery of the equity component must be determined and approved in the review process set forth in this section. The approved equity value must be in addition to the approved cost of the power purchase agreement.

(7) Authorizing recovery of costs under a power purchase agreement for acquisition of coal transition power does not prohibit the commission from authorizing recovery of an electrical company's acquisition of capacity resources for the purpose of integrating intermittent power or following load.

(8) Neither this act nor the commission's approval of a power purchase agreement for acquisition of coal transition power that includes the ability to earn the equity component of an electrical company's authorized rate of return establishes any precedent for an electrical company to receive an equity return on any other power purchase agreement or other power contract.

(9) For purposes of this section, "power purchase agreement" means a long-term financial commitment as defined in RCW 80.80.010(15)(b).

(10) This section expires December 31, 2025.

Sec. 305. RCW 19.280.030 and 2006 c 195 s 3 are each amended to read as follows:

Each electric utility must develop a plan consistent with this section.

(1) Utilities with more than twenty-five thousand customers that are not full requirements customers shall develop or update an integrated resource plan by September 1, 2008. At a minimum, progress reports reflecting changing conditions and the progress of the integrated resource plan must be produced every two years thereafter. An updated integrated resource plan must be developed at least every four years subsequent to the 2008 integrated resource plan. The integrated resource plan, at a minimum, must include:

(a) A range of forecasts, for at least the next ten years, of projected customer demand which takes into account econometric data and customer usage;

(b) An assessment of commercially available conservation and efficiency resources. Such assessment may include, as appropriate, high efficiency cogeneration, demand response and load management programs, and currently employed and new policies and programs needed to obtain the conservation and efficiency resources;

(c) An assessment of commercially available, utility scale renewable and nonrenewable generating technologies including a comparison of the benefits and risks of purchasing power or building new resources;

(d) A comparative evaluation of renewable and nonrenewable generating resources, including transmission and distribution delivery costs, and conservation and efficiency resources using "lowest reasonable cost" as a criterion;

(e) The integration of the demand forecasts and resource evaluations into a long-range assessment describing the mix of

supply side generating resources and conservation and efficiency resources that will meet current and projected needs at the lowest reasonable cost and risk to the utility and its ratepayers; and

(f) A short-term plan identifying the specific actions to be taken by the utility consistent with the long-range integrated resource plan.

(2) All other utilities may elect to develop a full integrated resource plan as set forth in subsection (1) of this section or, at a minimum, shall develop a resource plan that:

(a) Estimates loads for the next five and ten years;

(b) Enumerates the resources that will be maintained and/or acquired to serve those loads; and

(c) Explains why the resources in (b) of this subsection were chosen and, if the resources chosen are not renewable resources or conservation and efficiency resources, why such a decision was made.

(3) An electric utility that is required to develop a resource plan under this section must complete its initial plan by September 1, 2008.

(4) Resource plans developed under this section must be updated on a regular basis, at a minimum on intervals of two years.

(5) Plans shall not be a basis to bring legal action against electric utilities.

(6) Each electric utility shall publish its final plan either as part of an annual report or as a separate document available to the public. The report may be in an electronic form.

NEW SECTION. Sec. 306. A new section is added to chapter 80.70 RCW to read as follows:

(1) An applicant for a natural gas-fired generation plant to be constructed in a county with a coal-fired electric generation facility subject to RCW 80.80.040(3)(c) is exempt from this chapter if the application is filed before December 31, 2025.

(2) For the purposes of this section, an applicant means the owner of a coal-fired electric generation facility subject to RCW 80.80.040(3)(c).

(3) This section expires December 31, 2025, or when the station-generating capability of all natural gas-fired generation plants approved under this section equals the station-generating capability from a coal-fired electric generation facility subject to RCW 80.80.040(3)(c).

NEW SECTION. Sec. 307. 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."

Correct the title.

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Rockefeller moved that the Senate concur in the House amendment(s) to Engrossed Second Substitute Senate Bill No. 5769.

Senators Rockefeller and Swecker spoke in favor of the motion.

Senator Honeyford spoke against the motion.

The President declared the question before the Senate to be the motion by Senator Rockefeller that the Senate concur in the House amendment(s) to Engrossed Second Substitute Senate Bill No. 5769.

The motion by Senator Rockefeller carried and the Senate concurred in the House amendment(s) to Engrossed Second Substitute Senate Bill No. 5769 by voice vote.

Senator Sheldon spoke in favor of final passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Second Substitute Senate Bill No. 5769, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Second Substitute Senate Bill No. 5769, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 33; Nays, 14; Absent, 0; Excused, 2.

Voting yea: Senators Baumgartner, Benton, Brown, Chase, Conway, Eide, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Kastama, Kilmer, Kline, Kohl-Welles, Litzow, McAuliffe, Murray, Nelson, Prentice, Pridemore, Ranker, Regala, Rockefeller, Sheldon, Shin, Swecker, Tom and White

Voting nay: Senators Baxter, Becker, Carrell, Delvin, Ericksen, Holmquist Newbry, Honeyford, King, Morton, Pflug, Roach, Schoesler, Stevens and Zarelli

Excused: Senators Keiser and Parlette

ENGROSSED SECOND SUBSTITUTE SENATE BILL NO. 5769, as amended by the House, 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.

MESSAGE FROM THE HOUSE

April 12, 2011

MR. PRESIDENT:

The House passed SENATE BILL NO. 5044 with the following amendment(s): 5044 AMH REYK PETE 014

On page 1, after line 3, insert the following:

"Sec 1. RCW 43.136.011 and 2006 c 197 s 1 are each amended to read as follows:

"The legislature recognizes that tax preferences are enacted to meet objectives which are determined to be in the public interest. However, some tax preferences may not be efficient or equitable tools for the achievement of current public policy objectives. Given the changing nature of the economy and tax structures of other states, the legislature finds that periodic performance audits of tax preferences are needed to determine if their continued existence will serve the public interest. The legislature further finds that tax preferences that are enacted for economic development purposes must demonstrate growth in full-time family wage jobs with health and retirement benefits. Given that an opportunity cost exists with each economic choice, it is the intent of the legislature that the overall impact of economic development focused tax preferences benefit the state's economy."

Renumber the remaining sections consecutively and correct any internal references accordingly and correct the title.

On page 3, line 19, after "(j)" insert: "The economic impact of the tax preference compared to the economic impact of government activities funded by the tax for which the tax preference is taken at the same level of expenditure as the tax preference. For purposes of this subsection the economic impact shall be determined using the Washington Input-Output Model as published by the office of financial management;

(k)"

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

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Senator Rockefeller moved that the Senate concur in the House amendment(s) to Senate Bill No. 5044.

Senator Rockefeller spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Rockefeller that the Senate concur in the House amendment(s) to Senate Bill No. 5044.

The motion by Senator Rockefeller carried and the Senate concurred in the House amendment(s) to Senate Bill No. 5044 by voice vote.

The President declared the question before the Senate to be the final passage of Senate Bill No. 5044, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of SB 5044, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 31; Nays, 17; Absent, 0; Excused, 1.

Voting yea: Senators Baxter, Brown, Chase, Conway, Eide, Fraser, Hargrove, Harper, Hatfield, Haugen, Hobbs, Kastama, Keiser, Kilmer, Kline, Kohl-Welles, Litzow, McAuliffe, Murray, Nelson, Pflug, Prentice, Pridemore, Ranker, Regala, Rockefeller, Sheldon, Shin, Swecker, Tom and White

Voting nay: Senators Baumgartner, Becker, Benton, Carrell, Delvin, Ericksen, Fain, Hewitt, Hill, Holmquist Newbry, Honeyford, King, Morton, Roach, Schoesler, Stevens and Zarelli

Excused: Senator Parlette

SENATE BILL NO. 5044, as amended by the House, 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.

MESSAGE FROM THE HOUSE

April 5, 2011

MR. PRESIDENT:

The House passed SUBSTITUTE SENATE BILL NO. 5791 with the following amendment(s): 5791-S AMH HARG MUNN 354; 5791-S AMH LIA MUNN 356

On page 1, line 17, after "harm." insert "Any lease entered into under this section must ensure that the lease payments are at fair market value and comparable to market rates in the area of the park and ride lot."

On page 2, beginning on line 1, after "47.66.070" strike all material through "department" on line 3 and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Hobbs moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5791.

Senator Hobbs spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Hobbs that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5791.

The motion by Senator Hobbs carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 5791 by voice vote.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 5791, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 5791, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 47; Nays, 1; Absent, 0; Excused, 1.

Voting yea: Senators Baumgartner, Baxter, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom, White and Zarelli

Voting nay: Senator Honeyford

Excused: Senator Parlette

SUBSTITUTE SENATE BILL NO. 5791, as amended by the House, 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.

MESSAGE FROM THE HOUSE

April 14, 2011

MR. PRESIDENT:

The House refuses to concur in the Senate amendment(s) to ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 1267 and asks the Senate for a conference thereon. The Speaker has appointed the following members as conferees; Representatives: Eddy, Pedersen, Shea and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Hargrove moved that the Senate recede from its position in the Senate amendment(s) to Engrossed Second Substitute House Bill No. 1267.

The President declared the question before the Senate to be motion by Senator Hargrove that the Senate recede from its position in the Senate amendment(s) to Engrossed Second Substitute House Bill No. 1267.

The motion by Senator Hargrove carried and the Senate receded from its position in the Senate amendment(s) to Engrossed Second Substitute House Bill No. 1267 by voice vote.

MOTION

On motion of Senator Hargrove, the rules were suspended and Engrossed Second Substitute House Bill No. 1267 was returned to second reading for the purpose of amendment.

SECOND READING

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 1267, by House Committee on General Government Appropriations & Oversight (originally sponsored by Representatives Pedersen, Walsh, Jinkins, Eddy, Roberts, Kagi, Sullivan, Van De Wege, Hurst, Goodman, Orwall, Moeller, Kirby, Frockt, Carlyle, Liias, Kenney, Clibborn, Seaquist, Blake, Hudgins, Fitzgibbon, Darneille, Dunshee, Morris, Takko, Pettigrew, Finn, Billig, Hunter, Cody, Dickerson, Stanford, Springer, Reykdal, Haigh, Rolfes, Sells, Jacks, Appleton, Hunt,

Maxwell, Ryu, Ormsby, Ladenburg, McCoy, Santos, Lytton, Moscoso, Upthegrove, Green, Hasegawa and Tharinger)

Clarifying and expanding the rights and obligations of state registered domestic partners and other couples related to parentage.

The measure was read the second time.

MOTION

Senator Hargrove moved that the following striking amendment by Senators Harper, Pridemore and Hargrove be adopted:

Strike everything after the enacting clause and insert the following:

Sec. 1. RCW 26.26.011 and 2002 c 302 s 102 are each amended to read as follows:

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

(1) "Acknowledged father" means a man who has established a father-child relationship under RCW 26.26.300 through 26.26.375.

(2) "Adjudicated ~~(father)~~ parent" means a ~~(man)~~ person who has been adjudicated by a court of competent jurisdiction to be the ~~(father)~~ parent of a child.

(3) "Alleged ~~(father)~~ parent" means a ~~(man)~~ person who alleges himself or herself to be, or is alleged to be, the genetic ~~(father)~~ parent or a possible genetic ~~(father)~~ parent of a child, but whose ~~(paternity)~~ parentage has not been determined. The term does not include:

(a) A presumed ~~(father)~~ parent;

(b) A ~~(man)~~ person whose parental rights have been terminated or declared not to exist; or

(c) A ~~(male)~~ donor.

(4) "Assisted reproduction" means a method of causing pregnancy other than sexual intercourse. The term includes:

(a) ~~(Intrauterine)~~ Artificial insemination;

(b) Donation of eggs;

(c) Donation of embryos;

(d) In vitro fertilization and transfer of embryos; and

(e) Intracytoplasmic sperm injection.

(5) "Child" means an individual of any age whose parentage may be determined under this chapter.

(6) "Commence" means to file the petition seeking an adjudication of parentage in a superior court of this state or to serve a summons and the petition.

(7) "Determination of parentage" means the establishment of the parent-child relationship by the signing of a valid acknowledgment of paternity under RCW 26.26.300 through 26.26.375 or adjudication by the court.

(8) "Domestic partner" means a state registered domestic partner as defined in chapter 26.60 RCW.

(9) "Donor" means an individual who ~~(produces eggs or sperm)~~ contributes a gamete or gametes for assisted reproduction, whether or not for consideration. The term does not include:

(a) A ~~(husband)~~ person who provides ~~(sperm, or a wife who provides eggs,)~~ a gamete or gametes to be used for assisted reproduction ~~(by the wife)~~ with his or her spouse or domestic partner; or

(b) A woman who gives birth to a child by means of assisted reproduction, except as otherwise provided in RCW 26.26.210 through 26.26.260 or 26.26.735.

~~(9))~~ (10) "Ethnic or racial group" means, for purposes of genetic testing, a recognized group that an individual identifies as all

or part of ~~(his or her)~~ the individual's ancestry or that is so identified by other information.

~~((10))~~ (11) "Gamete" means either a sperm or an egg.

(12) "Genetic testing" means an analysis of genetic markers ~~((only))~~ to exclude or identify a man as the father or a woman as the mother of a child. The term includes an analysis of one or a combination of the following:

(a) Deoxyribonucleic acid; and

(b) Blood-group antigens, red-cell antigens, human-leukocyte antigens, serum enzymes, serum proteins, or red-cell enzymes.

~~((11))~~ (13) "Man" means a male individual of any age.

~~((12))~~ (14) "Parent" means an individual who has established a parent-child relationship under RCW 26.26.101.

~~((13))~~ (15) "Parent-child relationship" means the legal relationship between a child and a parent of the child. The term includes the mother-child relationship and the father-child relationship.

~~((14))~~ ~~(Paternity)~~ (16) "Parentage index" means the likelihood of ~~(paternity)~~ parentage calculated by computing the ratio between:

(a) The likelihood that the tested ~~(man)~~ person is the ~~(father)~~ parent, based on the genetic markers of the tested ~~(man)~~ person, ~~(mother)~~ genetic parent, and child, conditioned on the hypothesis that the tested ~~(man)~~ person is the ~~(father)~~ parent of the child; and

(b) The likelihood that the tested ~~(man)~~ person is not the ~~(father)~~ parent, based on the genetic markers of the tested ~~(man)~~ person, ~~(mother)~~ genetic parent, and child, conditioned on the hypothesis that the tested ~~(man)~~ person is not the ~~(father)~~ parent of the child and that the ~~(father)~~ parent is ~~(from)~~ of the same ethnic or racial group as the tested ~~(man)~~ person.

~~((15))~~ (17) "Physician" means a person licensed to practice medicine in a state.

(18) "Presumed ~~(father)~~ parent" means a ~~(man)~~ person who, by operation of law under RCW 26.26.116, is recognized ~~((to be))~~ as the ~~(father)~~ parent of a child until that status is rebutted or confirmed in a judicial proceeding.

~~((16))~~ (19) "Probability of ~~(paternity)~~ parentage" means the measure, for the ethnic or racial group to which the alleged ~~(father)~~ parent belongs, of the probability that the individual in question is the ~~(father)~~ parent of the child, compared with a random, unrelated ~~(man)~~ person of the same ethnic or racial group, expressed as a percentage incorporating the ~~(paternity)~~ parentage index and a prior probability.

~~((17))~~ (20) "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.

~~((18))~~ (21) "Signatory" means an individual who authenticates a record and is bound by its terms.

~~((19))~~ (22) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, any territory or insular possession subject to the jurisdiction of the United States, or an Indian tribe or band, or Alaskan native village, that is recognized by federal law or formally acknowledged by state law.

~~((20))~~ (23) "Support enforcement agency" means a public official or agency authorized to seek:

(a) Enforcement of support orders or laws relating to the duty of support;

(b) Establishment or modification of child support;

(c) Determination of parentage; or

(d) Location of child support obligors and their income and assets.

(24) "Fertility clinic" means a facility that provides assisted reproduction services or gametes to be used in assisted reproduction.

(25) "Genetic parent" means a person who is the source of the egg or sperm that produced the child. The term does not include a

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donor.

(26) "Identifying information" includes, but is not limited to, the following information of the gamete donor:

- (a) The first and last name of the person; and
- (b) The age of the person at the time of the donation.

Sec. 2. RCW 26.26.021 and 2002 c 302 s 103 are each amended to read as follows:

(1) This chapter (~~(governs every)~~) applies to determinations of parentage in this state.

(2) The court shall apply the law of this state to adjudicate the parent-child relationship. The applicable law does not depend on:

- (a) The place of birth of the child; or
- (b) The past or present residence of the child.

(3) This chapter does not create, enlarge, or diminish parental rights or duties under other law of this state.

(4) If a birth results under a surrogate parentage contract that is unenforceable under the law of this state, the parent-child relationship is determined as provided in RCW 26.26.101 through 26.26.116 and applicable case law.

Sec. 3. RCW 26.26.041 and 2002 c 302 s 105 are each amended to read as follows:

Proceedings under this chapter are subject to other laws of this state governing the health, safety, privacy, and liberty of a child or other individuals (~~(that)~~) who could be jeopardized by disclosure of identifying information, including the address, telephone number, place of employment, social security number, and the child's day-care facility and school.

Sec. 4. RCW 26.26.051 and 2002 c 302 s 106 are each amended to read as follows:

(1) The provisions relating to determination of (~~(paternity may be applied)~~) parentage apply to (~~(a)~~) determinations of maternity and paternity.

(2) The provisions in this chapter apply to persons in a domestic partnership to the same extent they apply to persons in a marriage, and apply to persons of the same sex who have children together to the same extent they apply to persons of the opposite sex who have children together.

Sec. 5. RCW 26.26.101 and 2002 c 302 s 201 are each amended to read as follows:

~~((+))~~ The (~~(mother-child)~~) parent-child relationship is established between a child and a man or woman by:

~~((a))~~ (1) The woman's having given birth to the child, except as otherwise provided in RCW 26.26.210 through 26.26.260;

~~((b))~~ (2) An adjudication of the (~~(woman's maternity)~~) person's parentage;

~~((c))~~ (3) Adoption of the child by the (~~(woman)~~) person;

~~((d))~~ A valid surrogate parentage contract, under which the mother is an intended parent of the child, as provided in RCW 26.26.210 through 26.26.260; or

~~((e))~~ (4) An affidavit and physician's certificate in a form prescribed by the department of health wherein the donor of (~~(ovum)~~) eggs or surrogate gestation carrier sets forth her intent to be legally bound as the parent of a child or children born through (~~(alternative reproductive medical technology)~~) assisted reproduction by filing the affidavit and physician's certificate with the registrar of vital statistics within ten days after the date of the child's birth pursuant to RCW 26.26.735(.

(2) The father-child relationship is established between a child and a man by:

~~((a))~~;

(5) An un rebutted presumption of the (~~(man's paternity)~~) person's parentage of the child under RCW 26.26.116;

~~((b))~~ (6) The man's having signed an acknowledgment of paternity under RCW 26.26.300 through 26.26.375, unless the acknowledgment has been rescinded or successfully challenged;

~~((c))~~ An adjudication of the man's paternity;

~~((d))~~ Adoption of the child by the man;

~~((e))~~ (7) The (~~(man's)~~) person's having consented to assisted reproduction by his (~~(wife)~~) or her spouse or domestic partner under RCW 26.26.700 through 26.26.730 that resulted in the birth of the child; or

~~((f))~~ (8) A valid surrogate parentage contract, under which the (~~(father)~~) person asserting parentage is an intended parent of the child, as provided in RCW 26.26.210 through 26.26.260.

Sec. 6. RCW 26.26.106 and 2002 c 302 s 202 are each amended to read as follows:

A child born to parents who are not married to each other or in a domestic partnership with each other has the same rights under the law as a child born to parents who are married to each other or who are in a domestic partnership with each other.

Sec. 7. RCW 26.26.111 and 2002 c 302 s 203 are each amended to read as follows:

Unless parental rights are terminated, the parent-child relationship established under this chapter applies for all purposes, except as otherwise specifically provided by other law of this state.

Sec. 8. RCW 26.26.116 and 2002 c 302 s 204 are each amended to read as follows:

(1) In the context of a marriage or a domestic partnership, a (~~(man)~~) person is presumed to be the (~~(father)~~) parent of a child if:

(a) (~~((He))~~) The person and the mother or father of the child are married to each other or in a domestic partnership with each other and the child is born during the marriage or domestic partnership;

(b) (~~((He))~~) The person and the mother or father of the child were married to each other or in a domestic partnership with each other and the child is born within three hundred days after the marriage or domestic partnership is terminated by death, annulment, dissolution (~~(of marriage)~~), legal separation, or declaration of invalidity;

(c) Before the birth of the child, (~~((he))~~) the person and the mother or father of the child married each other or entered into a domestic partnership with each other in apparent compliance with law, even if the attempted marriage or domestic partnership is, or could be, declared invalid and the child is born during the invalid marriage or invalid domestic partnership or within three hundred days after its termination by death, annulment, dissolution (~~(of marriage)~~), legal separation, or declaration of invalidity; or

(d) After the birth of the child, (~~((he))~~) the person and the mother or father of the child have married each other or entered into a domestic partnership with each other in apparent compliance with law, whether or not the marriage or domestic partnership is, or could be declared invalid, and (~~((he))~~) the person voluntarily asserted (~~(his paternity)~~) parentage of the child, and:

(i) The assertion is in a record filed with the state registrar of vital statistics;

(ii) The person agreed to be and is named as the child's (~~(father)~~) parent on the child's birth certificate; or

(iii) The person promised in a record to support the child as his or her own.

(2) A person is presumed to be the parent of a child if, for the first two years of the child's life, the person resided in the same household with the child and openly held out the child as his or her own.

(3) A presumption of (~~(paternity)~~) parentage established under this section may be rebutted only by an adjudication under RCW 26.26.500 through 26.26.630.

Sec. 9. RCW 26.26.130 and 2001 c 42 s 5 are each amended to read as follows:

(1) The judgment and order of the court determining the existence or nonexistence of the parent and child relationship shall be determinative for all purposes.

(2) If the judgment and order of the court is at variance with the child's birth certificate, the court shall order that an amended birth certificate be issued.

(3) The judgment and order shall contain other appropriate provisions directed to the appropriate parties to the proceeding, concerning the duty of current and future support, the extent of any liability for past support furnished to the child if that issue is before the court, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child. The judgment and order may direct (~~the father~~) one parent to pay the reasonable expenses of the mother's pregnancy and (~~confinement~~) childbirth. The judgment and order may include a continuing restraining order or injunction. In issuing the order, the court shall consider the provisions of RCW 9.41.800.

(4) The judgment and order shall contain a provision that each party must file with the court and the Washington state child support registry and update as necessary the information required in the confidential information form required by RCW 26.23.050.

(5) Support judgment and orders shall be for periodic payments which may vary in amount. The court may limit the (~~father's~~) parent's liability for the past support to the child to the proportion of the expenses already incurred as the court deems just. The court shall not limit or affect in any manner the right of nonparties including the state of Washington to seek reimbursement for support and other services previously furnished to the child.

(6) After considering all relevant factors, the court shall order either or both parents to pay an amount determined pursuant to the schedule and standards contained in chapter 26.19 RCW.

(7) On the same basis as provided in chapter 26.09 RCW, the court shall make residential provisions with regard to minor children of the parties, except that a parenting plan shall not be required unless requested by a party. If a parenting plan or residential schedule was not entered at the time the order establishing parentage was entered, a parent may move the court for entry of a parenting plan or residential schedule:

(a) By filing a motion and proposed parenting plan or residential schedule and providing notice to the other parent and other persons who have residential time with the child pursuant to a court order: PROVIDED, That at the time of filing the motion less than twenty-four months have passed since entry of the order establishing parentage and that the proposed parenting plan or residential schedule does not change the designation of the parent with whom the child spends the majority of time; or

(b) By filing a petition for modification under RCW 26.09.260 or petition to establish a parenting plan, residential schedule, or residential provisions.

(8) In any dispute between the (~~natural parents~~) persons claiming parentage of a child and a person or persons who have (a) commenced adoption proceedings or who have been granted an order of adoption, and (b) pursuant to a court order, or placement by the department of social and health services or by a licensed agency, have had actual custody of the child for a period of one year or more before court action is commenced by the (~~natural parent or parents~~) persons claiming parentage, the court shall consider the best welfare and interests of the child, including the child's need for situation stability, in determining the matter of custody, and the parent or person who is more fit shall have the superior right to custody.

(9) In entering an order under this chapter, the court may issue any necessary continuing restraining orders, including the restraint provisions of domestic violence protection orders under chapter 26.50 RCW or antiharassment protection orders under chapter 10.14 RCW.

(10) Restraining orders issued under this section restraining or enjoining the person from molesting or disturbing another party, from going onto the grounds of or entering the home, workplace, or

school of the other party or the day care or school of any child, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, shall prominently bear on the front page of the order the legend: VIOLATION OF THIS ORDER WITH ACTUAL NOTICE OF ITS TERMS IS A CRIMINAL OFFENSE UNDER CHAPTER 26.50 RCW AND WILL SUBJECT A VIOLATOR TO ARREST.

(11) The court shall order that any restraining order bearing a criminal offense legend, any domestic violence protection order, or any antiharassment protection order granted under this section be forwarded by the clerk of the court on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the order, the law enforcement agency shall forthwith enter the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. The order is fully enforceable in any county in the state.

(12) If a restraining order issued pursuant to this section is modified or terminated, the clerk of the court shall notify the law enforcement agency specified in the order on or before the next judicial day. Upon receipt of notice that an order has been terminated, the law enforcement agency shall remove the order from any computer-based criminal intelligence system.

Sec. 10. RCW 26.26.150 and 1994 c 230 s 16 are each amended to read as follows:

(1) If existence of the (~~father~~) parent and child relationship is declared, or paternity or a duty of support has been acknowledged or adjudicated under this chapter or under prior law, the obligation of the (~~father~~) parent may be enforced in the same or other proceedings by the (~~mother~~) other parent, the child, the state of Washington, the public authority that has furnished or may furnish the reasonable expenses of pregnancy, (~~confinement~~) childbirth, education, support, or funeral, or by any other person, including a private agency, to the extent he or she has furnished or is furnishing these expenses.

(2) The court shall order support payments to be made to the Washington state support registry, or the person entitled to receive the payments under an alternate arrangement approved by the court as provided in RCW 26.23.050(2).

(3) All remedies for the enforcement of judgments apply.

Sec. 11. RCW 26.26.300 and 2002 c 302 s 301 are each amended to read as follows:

The mother of a child and a man claiming to be the genetic father of the child (~~conceived as the result of his sexual intercourse with the mother~~) may sign an acknowledgment of paternity with intent to establish the man's paternity.

Sec. 12. RCW 26.26.305 and 2002 c 302 s 302 are each amended to read as follows:

(1) An acknowledgment of paternity must:

(a) Be in a record;

(b) Be signed under penalty of perjury by the mother and by the man seeking to establish his paternity;

(c) State that the child whose paternity is being acknowledged:

(i) Does not have a presumed father, or has a presumed father whose full name is stated; and

(ii) Does not have another acknowledged or adjudicated father;

(d) State whether there has been genetic testing and, if so, that the acknowledging man's claim of paternity is consistent with the results of the genetic testing; and

(e) State that the signatories understand that the acknowledgment is the equivalent of a judicial adjudication of paternity of the child and that a challenge to the acknowledgment is permitted only under limited circumstances and is barred after two years, except as provided in RCW 26.26.330.

(2) An acknowledgment of paternity is void if it:

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(a) States that another man is a presumed father, unless a denial of paternity signed by the presumed father is filed with the state registrar of vital statistics;

(b) States that another man is an acknowledged or adjudicated father; or

(c) Falsely denies the existence of a presumed, acknowledged, or adjudicated father of the child.

(3) A presumed father may sign an acknowledgment of paternity.

Sec. 13. RCW 26.26.310 and 2002 c 302 s 303 are each amended to read as follows:

A presumed father of a child may sign a denial of his paternity. The denial is valid only if:

(1) An acknowledgment of paternity signed by another man is filed under RCW 26.26.320;

(2) The denial is in a record, and is signed under penalty of perjury; and

(3) The presumed father has not previously:

(a) Acknowledged his paternity, unless the previous acknowledgment has been rescinded under RCW 26.26.330 or successfully challenged under RCW 26.26.335; or

(b) Been adjudicated to be the father of the child.

Sec. 14. RCW 26.26.315 and 2002 c 302 s 304 are each amended to read as follows:

(1) An acknowledgment of paternity and a denial of paternity may be contained in a single document or may be signed in counterparts, and may be filed separately or simultaneously. If the acknowledgment and denial are both necessary, neither is valid until both are filed.

(2) An acknowledgment of paternity or a denial of paternity may be signed before the birth of the child.

(3) Subject to subsection (1) of this section, an acknowledgment and denial of paternity, if any, take effect on the birth of the child or the filing of the document with the state registrar of vital statistics, whichever occurs later.

(4) An acknowledgment or denial of paternity signed by a minor is valid if it is otherwise in compliance with this chapter. An acknowledgment or denial of paternity signed by a minor may be rescinded under RCW 26.26.330.

Sec. 15. RCW 26.26.320 and 2002 c 302 s 305 are each amended to read as follows:

(1) Except as otherwise provided in RCW 26.26.330 and 26.26.335, a valid acknowledgment of paternity filed with the state registrar of vital statistics is equivalent to an adjudication of ~~((paternity))~~ parentage of a child and confers upon the acknowledged father all of the rights and duties of a parent.

(2) Except as otherwise provided in RCW 26.26.330 and 26.26.335, a valid denial of paternity filed with the state registrar of vital statistics in conjunction with a valid acknowledgment of paternity is equivalent to an adjudication of the nonpaternity of the presumed father and discharges the presumed father from all of the rights and duties of a parent.

Sec. 16. RCW 26.26.330 and 2004 c 111 s 1 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, a signatory may rescind an acknowledgment or denial of paternity by commencing a court proceeding to rescind before the earlier of:

~~((+))~~ (a) Sixty days after the effective date of the acknowledgment or denial, as provided in RCW 26.26.315; or

~~((2))~~ (b) The date of the first hearing in a proceeding to which the signatory is a party before a court to adjudicate an issue relating to the child, including a proceeding that establishes support.

(2) If the signatory to an acknowledgment or denial of paternity was a minor when he signed the acknowledgment or denial, the signatory may rescind the acknowledgment or denial of paternity by

commencing a court proceeding to rescind on or before the signatory's nineteenth birthday.

Sec. 17. RCW 26.26.335 and 2002 c 302 s 308 are each amended to read as follows:

(1) After the period for rescission under RCW 26.26.330 has ~~((elapsed))~~ expired, a signatory of an acknowledgment or denial of paternity may commence a proceeding to challenge the acknowledgment or denial only:

(a) On the basis of fraud, duress, or material mistake of fact; and

(b) Within ~~((two))~~ four years after the acknowledgment or denial is filed with the state registrar of vital statistics. In actions commenced more than two years after the birth of the child, the child must be made a party to the action.

(2) A party challenging an acknowledgment or denial of paternity has the burden of proof.

Sec. 18. RCW 26.26.340 and 2002 c 302 s 309 are each amended to read as follows:

(1) Every signatory to an acknowledgment ~~((of))~~ of paternity and any related denial of paternity must be made a party to a proceeding to rescind or challenge the acknowledgment or denial.

(2) For the purpose of rescission of, or challenge to, an acknowledgment or denial of paternity, a signatory submits to personal jurisdiction of this state by signing the acknowledgment or denial, effective upon the filing of the document with the state registrar of vital statistics.

(3) Except for good cause shown, during the pendency of a proceeding to rescind or challenge an acknowledgment or denial of paternity, the court may not suspend the legal responsibilities of a signatory arising from ~~((an))~~ the acknowledgment, including the duty to pay child support.

(4) A proceeding to rescind or to challenge an acknowledgment or denial of paternity must be conducted in the same manner as a proceeding to adjudicate parentage under RCW 26.26.500 through 26.26.630.

(5) At the conclusion of a proceeding to rescind or challenge an acknowledgment or denial of paternity, the court shall order the state registrar of vital statistics to amend the birth record of the child, if appropriate.

Sec. 19. RCW 26.26.360 and 2002 c 302 s 313 are each amended to read as follows:

The state registrar of vital statistics may release information relating to the acknowledgment or denial of paternity~~((not expressly sealed under a court order))~~ to: (1) A signatory of the acknowledgment or denial ~~((or their attorneys of record))~~; (2) the courts of this or any other state; (3) the agencies of this or any other state operating a child support program under Title IV-D of the social security act; ~~((and))~~ and (4) the agencies of this or any other state involved in a dependency determination for a child named in the acknowledgment or denial of paternity.

Sec. 20. RCW 26.26.375 and 2002 c 302 s 316 are each amended to read as follows:

(1) After the period for rescission of an acknowledgment of paternity provided in RCW 26.26.330 has passed, a parent executing an acknowledgment of paternity of the child named therein may commence a judicial proceeding for:

(a) Making residential provisions or a parenting plan with regard to the minor child on the same basis as provided in chapter 26.09 RCW; or

(b) Establishing a child support obligation under chapter 26.19 RCW and maintaining health insurance coverage under RCW 26.09.105.

(2) Pursuant to RCW 26.09.010(3), a proceeding authorized by this section shall be ~~((entitled))~~ titled "In re the parenting and support of..."

(3) Before the period for a challenge to the acknowledgment or denial of paternity has elapsed under RCW 26.26.335, the petitioner must specifically allege under penalty of perjury, to the best of the petitioner's knowledge, that: (a) No man other than the man who executed the acknowledgment of paternity is the father of the child; (b) there is not currently pending a proceeding to adjudicate the parentage of the child or that another man is adjudicated the child's father; and (c) the petitioner has provided notice of the proceeding to any other men who have claimed parentage of the child. Should the respondent or any other person appearing in the action deny the allegations, a permanent parenting plan or residential schedule may not be entered for the child without the matter being converted to a proceeding to challenge the acknowledgment of paternity under RCW 26.26.335 and 26.26.340. A copy of the acknowledgment of paternity or the birth certificate issued by the state in which the child was born must be filed with the petition or response. The court may convert the matter to a proceeding to challenge the acknowledgment on its own motion.

Sec. 21. RCW 26.26.400 and 2002 c 302 s 401 are each amended to read as follows:

RCW 26.26.405 through 26.26.450 govern genetic testing of an individual (~~only~~) to determine parentage, whether the individual:

(1) Voluntarily submits to testing; or

(2) Is tested pursuant to an order of the court or a support enforcement agency.

Sec. 22. RCW 26.26.405 and 2002 c 302 s 402 are each amended to read as follows:

(1) Except as otherwise provided in this section and RCW 26.26.410 through 26.26.630, the court shall order the child and other designated individuals to submit to genetic testing if the request for testing is supported by the sworn statement of a party to the proceeding:

(a) Alleging paternity and stating facts establishing a reasonable probability of the requisite sexual contact between the individuals; or

(b) Denying paternity and stating facts establishing a possibility that sexual contact between the individuals, if any, did not result in the conception of the child.

(2) A support enforcement agency may order genetic testing only if there is no presumed(~~acknowledged~~) or adjudicated (~~father~~) parent and no acknowledged father.

(3) If a request for genetic testing of a child is made before birth, the court or support enforcement agency may not order in utero testing.

(4) If two or more (~~men~~) persons are subject to court-ordered genetic testing, the testing may be ordered concurrently or sequentially.

(5) This section does not apply when the child was conceived through assisted reproduction.

Sec. 23. RCW 26.26.410 and 2002 c 302 s 403 are each amended to read as follows:

(1) Genetic testing must be of a type reasonably relied upon by experts in the field of genetic testing and performed in a testing laboratory accredited by:

(a) The American association of blood banks, or a successor to its functions;

(b) The American society for histocompatibility and immunogenetics, or a successor to its functions; or

(c) An accrediting body designated by the United States secretary of health and human services.

(2) A specimen used in genetic testing may consist of one or more samples or a combination of samples of blood, buccal cells, bone, hair, or other body tissue or fluid. The specimen used in the testing need not be of the same kind for each individual undergoing genetic testing.

(3) Based on the ethnic or racial group of an individual, the testing laboratory shall determine the databases from which to select frequencies for use in ~~the~~ calculation~~s~~ of the probability of parentage. If there is disagreement as to the testing laboratory's choice, the following rules apply:

(a) The individual objecting may require the testing laboratory, within thirty days after receipt of the report of the test, to recalculate the probability of ~~paternity~~ parentage using an ethnic or racial group different from that used by the laboratory.

(b) The individual objecting to the testing laboratory's initial choice shall:

(i) If the frequencies are not available to the testing laboratory for the ethnic or racial group requested, provide the requested frequencies compiled in a manner recognized by accrediting bodies; or

(ii) Engage another testing laboratory to perform the calculations.

(c) The testing laboratory may use its own statistical estimate if there is a question regarding which ethnic or racial group is appropriate. If available, the testing laboratory shall calculate the frequencies using statistics for any other ethnic or racial group requested.

(4) If, after recalculation using a different ethnic or racial group, genetic testing does not rebuttably identify a (~~man~~) person as the (~~father~~) parent of a child under RCW 26.26.420, an individual who has been tested may be required to submit to additional genetic testing.

Sec. 24. RCW 26.26.420 and 2002 c 302 s 405 are each amended to read as follows:

(1) Under this chapter, a (~~man~~) person is rebuttably identified as the (~~father~~) parent of a child if the genetic testing complies with this section and RCW 26.26.400 through 26.26.415 and 26.26.425 through 26.26.450 and the results disclose that:

(a) The (~~man~~) person has at least a ninety-nine percent probability of ~~paternity~~ parentage, using a prior probability of 0.50, as calculated by using the combined ~~paternity~~ parentage index obtained in the testing; and

(b) A combined ~~paternity~~ parentage index of at least one hundred to one.

(2) A (~~man~~) person identified under subsection (1) of this section as the (~~father~~) parent of the child may rebut the genetic testing results only by other genetic testing satisfying the requirements of this section and RCW 26.26.400 through 26.26.415 and 26.26.425 through 26.26.450 which:

(a) Excludes the (~~man~~) person as a genetic (~~father~~) parent of the child; or

(b) Identifies another (~~man~~) person as the (~~father~~) parent of the child.

(3) Except as otherwise provided in RCW 26.26.445, if more than one man is identified by genetic testing as the possible father of the child, the court shall order them to submit to further genetic testing to identify the genetic (~~father~~) parent.

(4) This section does not apply when the child was conceived through assisted reproduction.

Sec. 25. RCW 26.26.425 and 2002 c 302 s 406 are each amended to read as follows:

(1) Subject to assessment of costs under RCW 26.26.500 through 26.26.630, the cost of initial genetic testing must be advanced:

(a) By a support enforcement agency in a proceeding in which the support enforcement agency is providing services;

(b) By the individual who made the request;

(c) As agreed by the parties; or

(d) As ordered by the court.

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(2) In cases in which the cost is advanced by the support enforcement agency, the agency may seek reimbursement from a ~~((man))~~ person who is rebuttably identified as the ~~((father))~~ parent.

Sec. 26. RCW 26.26.430 and 2002 c 302 s 407 are each amended to read as follows:

(1) The court or the support enforcement agency shall order additional genetic testing upon the request of a party who contests the result of the original testing. If the previous genetic testing identified a ~~((man))~~ person as the ~~((father))~~ parent of the child under RCW 26.26.420, the court or agency may not order additional testing unless the party provides advance payment for the testing.

(2) This section does not apply when the child was conceived through assisted reproduction.

Sec. 27. RCW 26.26.435 and 2002 c 302 s 408 are each amended to read as follows:

(1) If a genetic testing specimen is not available from a man who may be the father of a child, for good cause and under circumstances the court considers to be just, a court may order the following individuals to submit specimens for genetic testing:

- (a) The parents of the man;
- (b) Brothers and sisters of the man;
- (c) Other children of the man and their mothers; and
- (d) Other relatives of the man necessary to complete genetic testing.

(2) If a specimen from the mother of a child is not available for genetic testing, the court may order genetic testing to proceed without a specimen from the mother.

(3) Issuance of an order under this section requires a finding that a need for genetic testing outweighs the legitimate interests of the individual sought to be tested.

(4) This section does not apply when the child was conceived through assisted reproduction.

Sec. 28. RCW 26.26.445 and 2002 c 302 s 410 are each amended to read as follows:

(1) The court may order genetic testing of a brother of a man identified as the father of a child if the man is commonly believed to have an identical brother and evidence suggests that the brother may be the genetic father of the child.

(2) If ~~((genetic testing excludes none of the brothers as the genetic father, and))~~ each brother satisfies the requirements as the identified father of the child under RCW 26.26.420 without consideration of another identical brother being identified as the father of the child, the court may rely on nongenetic evidence to adjudicate which brother is the father of the child.

Sec. 29. RCW 26.26.505 and 2002 c 302 s 502 are each amended to read as follows:

Subject to RCW 26.26.300 through 26.26.375, 26.26.530, and 26.26.540, a proceeding to adjudicate parentage may be maintained by:

- (1) The child;
- (2) The ~~((mother of))~~ person who has established a parent-child relationship with the child;
- (3) A ~~((man))~~ person whose ~~((paternity))~~ parentage of the child is to be adjudicated;
- (4) The division of child support;
- (5) An authorized adoption agency or licensed child-placing agency;
- (6) A representative authorized by law to act for an individual who would otherwise be entitled to maintain a proceeding but who is deceased, incapacitated, or a minor; or
- (7) An intended parent under a surrogate parentage contract, as provided in RCW 26.26.210 through 26.26.260.

Sec. 30. RCW 26.26.510 and 2002 c 302 s 503 are each amended to read as follows:

The following individuals must be joined as parties in a proceeding to adjudicate parentage:

(1) The ~~((mother))~~ parent of the child who has established a parent-child relationship with the child;

(2) A ~~((man))~~ person whose ~~((paternity))~~ parentage of the child is to be adjudicated; ~~((and))~~

(3) An intended parent under a surrogate parentage contract, as provided in RCW 26.26.210 through 26.26.260; and

(4) The child if required under RCW 26.26.530, 26.26.540, or 26.26.720.

Sec. 31. RCW 26.26.525 and 2002 c 302 s 506 are each amended to read as follows:

A proceeding to adjudicate the parentage of a child having no presumed~~((acknowledged,))~~ or adjudicated ~~((father))~~ second parent and no acknowledged father may be commenced at any time during the life of the child, even after:

- (1) The child becomes an adult; or
- (2) An earlier proceeding to adjudicate ~~((paternity))~~ parentage has been dismissed based on the application of a statute of limitation then in effect.

Sec. 32. RCW 26.26.530 and 2002 c 302 s 507 are each amended to read as follows:

(1) Except as otherwise provided in subsection (2) of this section, a proceeding brought by a presumed ~~((father))~~ parent, the ~~((mother))~~ person with a parent-child relationship with the child, or another individual to adjudicate the parentage of a child having a presumed ~~((father))~~ parent must be commenced not later than ~~((two))~~ four years after the birth of the child. If an action is commenced more than two years after the birth of the child, the child must be made a party to the action.

(2) A proceeding seeking to disprove the ~~((father-child))~~ parent-child relationship between a child and the child's presumed ~~((father))~~ parent may be maintained at any time if the court determines that~~((~~

~~((a))~~ the presumed ~~((father))~~ parent and the ~~((mother of))~~ person who has a parent-child relationship with the child neither cohabited nor engaged in sexual intercourse with each other during the probable time of conception~~((and~~

~~((b))~~ The presumed father never openly treated the child as his own and the presumed parent never held out the child as his or her own.

Sec. 33. RCW 26.26.535 and 2002 c 302 s 508 are each amended to read as follows:

(1) In a proceeding to adjudicate parentage under circumstances described in RCW 26.26.530 or in RCW 26.26.540, a court may deny a motion seeking an order for genetic testing of the mother or father, the child, and the presumed or acknowledged father if the court determines that:

(a)(i) The conduct of the mother or father or the presumed ~~((father))~~ or acknowledged parent estops that party from denying parentage; and

~~((b))~~ (ii) It would be inequitable to disprove the ~~((father-child))~~ parent-child relationship between the child and the presumed ~~((father))~~ or acknowledged parent; or

(b) The child was conceived through assisted reproduction.

(2) In determining whether to deny a motion to seek an order for genetic testing under subsection (1)(a) of this section, the court shall consider the best interest of the child, including the following factors:

(a) The length of time between the proceeding to adjudicate parentage and the time that the presumed ~~((father))~~ or acknowledged parent was placed on notice that he or she might not be the genetic ~~((father))~~ parent;

(b) The length of time during which the presumed ~~((father))~~ or acknowledged parent has assumed the role of ~~((father))~~ parent of the child;

(c) The facts surrounding the presumed ~~((father's))~~ or acknowledged parent's discovery of his or her possible ~~((nonpaternity))~~ nonparentage;

(d) The nature of the ~~((father-child))~~ relationship between the child and the presumed or acknowledged parent;

(e) The age of the child;

(f) The harm ~~((to the child which))~~ that may result to the child if ~~((presumed paternity))~~ parentage is successfully disproved;

(g) The nature of the relationship ~~((of))~~ between the child ~~((to))~~ and any alleged ~~((father))~~ parent;

(h) The extent to which the passage of time reduces the chances of establishing the ~~((paternity))~~ parentage of another ~~((man))~~ person and a child support obligation in favor of the child; and

(i) Other factors that may affect the equities arising from the disruption of the ~~((father-child))~~ parent-child relationship between the child and the presumed ~~((father))~~ or acknowledged parent or the chance of other harm to the child.

(3) In a proceeding involving the application of this section, ~~((the))~~ a minor or incapacitated child must be represented by a guardian ad litem.

(4) A denial of a motion seeking an order for genetic testing under subsection (1)(a) of this section must be based on clear and convincing evidence.

(5) If the court denies a motion seeking an order for genetic testing under subsection (1)(a) of this section, it shall issue an order adjudicating the presumed ~~((father))~~ or acknowledged parent to be the ~~((father))~~ parent of the child.

Sec. 34. RCW 26.26.540 and 2002 c 302 s 509 are each amended to read as follows:

(1) If a child has an acknowledged father, a signatory to the acknowledgment or denial of paternity must commence any proceeding seeking to rescind the acknowledgment or denial or challenge the paternity of ~~((that))~~ the child only within the time allowed under RCW 26.26.330 or 26.26.335.

(2) If a child has an acknowledged father or an adjudicated ~~((father))~~ parent, an individual, other than the child, who is neither a signatory to the acknowledgment nor a party to the adjudication and who seeks an adjudication of ~~((paternity))~~ parentage of the child must commence a proceeding not later than ~~((two))~~ four years after the effective date of the acknowledgment or adjudication. If an action is commenced more than two years after the birth of the child, the child must be made a party to the action.

~~((3))~~ A proceeding under this section is subject to RCW 26.26.535.

Sec. 35. RCW 26.26.545 and 2002 c 302 s 510 are each amended to read as follows:

(1) Except as otherwise provided in subsection (2) of this section, a proceeding to adjudicate parentage may be joined with a proceeding for: Adoption or termination of parental rights under chapter 26.33 RCW; determination of a parenting plan, child support, annulment, dissolution of marriage, dissolution of a domestic partnership, or legal separation under chapter 26.09 or 26.19 RCW; or probate or administration of an estate under chapter 11.48 or 11.54 RCW, or other appropriate proceeding.

(2) A respondent may not join ~~((the))~~ a proceeding~~((s))~~ described in subsection (1) of this section with a proceeding to adjudicate parentage brought under chapter 26.21 A RCW.

Sec. 36. RCW 26.26.550 and 2002 c 302 s 511 are each amended to read as follows:

~~((Although))~~ A proceeding to ~~((determine))~~ adjudicate parentage may be commenced before the birth of the child, ~~((the proceeding))~~ but may not be concluded until after the birth of the

child. The following actions may be taken before the birth of the child:

(1) Service of process;

(2) Discovery;

(3) Except as prohibited by RCW 26.26.405, collection of specimens for genetic testing; and

(4) Temporary orders authorized under RCW 26.26.590.

Sec. 37. RCW 26.26.555 and 2002 c 302 s 512 are each amended to read as follows:

(1) Unless specifically required under other provisions of this chapter, a minor child is a permissible party, but is not a necessary party to a proceeding under RCW 26.26.500 through 26.26.630.

(2) If ~~((the))~~ a minor or incapacitated child is a party, or if the court finds that the interests of ~~((a minor child or incapacitated))~~ the child are not adequately represented, the court shall appoint a guardian ad litem to represent the child, subject to RCW 74.20.310 ~~((neither the child's mother or father))~~. A parent of the child may not represent the child as guardian or ~~((otherwise))~~ in any other capacity.

Sec. 38. RCW 26.26.570 and 2002 c 302 s 521 are each amended to read as follows:

(1) Except as otherwise provided in subsection (3) of this section, a record of a genetic testing expert is admissible as evidence of the truth of the facts asserted in the report unless a party objects to its admission within fourteen days after its receipt by the objecting party and cites specific grounds for exclusion. The admissibility of the report is not affected by whether the testing was performed:

(a) Voluntarily or under an order of the court or a support enforcement agency; or

(b) Before or after the commencement of the proceeding.

(2) A party objecting to the results of genetic testing may call one or more genetic testing experts to testify in person or by telephone, videoconference, deposition, or another method approved by the court. Unless otherwise ordered by the court, the party offering the testimony bears the expense for the expert testifying.

(3) If a child has a presumed~~((acknowledged))~~ or adjudicated ~~((father))~~ parent or an acknowledged father, the results of genetic testing are inadmissible to adjudicate parentage unless performed:

(a) With the consent of both the ~~((mother))~~ person with a parent-child relationship with the child and the presumed~~((acknowledged))~~ or adjudicated ~~((father))~~ parent or an acknowledged father; or

(b) Under an order of the court under RCW 26.26.405.

(4) Copies of bills for genetic testing and for prenatal and postnatal health care for the mother and child that are furnished to the adverse party not less than ten days before the date of a hearing are admissible to establish:

(a) The amount of the charges billed; and

(b) That the charges were reasonable, necessary, and customary.

Sec. 39. RCW 26.26.575 and 2002 c 302 s 522 are each amended to read as follows:

(1) An order for genetic testing is enforceable by contempt.

(2) If an individual whose paternity is being determined declines to submit to genetic testing ~~((as))~~ ordered by the court, the court for that reason may ~~((on that basis))~~ adjudicate parentage contrary to the position of that individual.

(3) Genetic testing of the mother of a child is not a condition precedent to testing the child and a man whose paternity is being determined. If the mother is unavailable or declines to submit to genetic testing, the court may order the testing of the child and every man whose paternity is being adjudicated.

(4) This section does not apply when the child was conceived through assisted reproduction.

Sec. 40. RCW 26.26.585 and 2002 c 302 s 523 are each amended to read as follows:

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(1) A respondent in a proceeding to adjudicate parentage may admit to the paternity of a child by filing a pleading to that effect or by admitting paternity under penalty of perjury when making an appearance or during a hearing.

(2) If the court finds that the admission of paternity ~~((was made under))~~ satisfies the requirements of this section and finds that there is no reason to question the admission, the court shall issue an order adjudicating the child to be the child of the man admitting paternity.

Sec. 41. RCW 26.26.590 and 2002 c 302 s 524 are each amended to read as follows:

This section applies to any proceeding under RCW 26.26.500 through 26.26.630.

(1) The court shall issue a temporary order for support of a child if the individual ordered to pay support:

(a) Is a presumed ~~((father))~~ parent of the child;

(b) Is petitioning to have his ~~((paternity))~~ or her parentage adjudicated or has admitted ~~((paternity))~~ parentage in pleadings filed with the court;

(c) Is identified as the father through genetic testing under RCW 26.26.420;

(d) Has declined to submit to genetic testing but is shown by clear and convincing evidence to be the father of the child; or

(e) Is ~~((the mother of))~~ a person who has established a parent-child relationship with the child.

(2) A temporary order may, on the same basis as provided in chapter 26.09 RCW, make residential provisions with regard to minor children of the parties, except that a parenting plan is not required unless requested by a parent.

(3) Any party may request the court to issue a temporary restraining order or preliminary injunction, providing relief proper in the circumstances, and restraining or enjoining any party from:

(a) Molesting or disturbing the peace of another party;

(b) Going onto the grounds of or entering the home, workplace, or school of another party or the day care or school of any child;

(c) Knowingly coming within, or knowingly remaining within, a specified distance from a specified location; and

(d) Removing a child from the jurisdiction of the court.

(4) Either party may request a domestic violence protection order under chapter 26.50 RCW or an antiharassment protection order under chapter 10.14 RCW on a temporary basis. The court may grant any of the relief provided in RCW 26.50.060 except relief pertaining to residential provisions for the children which provisions shall be provided for under this chapter, and any of the relief provided in RCW 10.14.080. Ex parte orders issued under this subsection shall be effective for a fixed period not to exceed fourteen days, or upon court order, not to exceed twenty-four days if necessary to ensure that all temporary motions in the case can be heard at the same time.

(5) Restraining orders issued under this section restraining or enjoining the person from molesting or disturbing another party, or from going onto the grounds of or entering the home, workplace, or school of the other party or the day care or school of any child, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, shall prominently bear on the front page of the order the legend: VIOLATION OF THIS ORDER WITH ACTUAL NOTICE OF ITS TERMS IS A CRIMINAL OFFENSE UNDER CHAPTER 26.50 RCW AND WILL SUBJECT A VIOLATOR TO ARREST.

(6) The court shall order that any temporary restraining order bearing a criminal offense legend, any domestic violence protection order, or any antiharassment protection order granted under this section be forwarded by the clerk of the court on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the order, the law enforcement agency shall enter the order into any computer-based criminal intelligence

information system available in this state used by law enforcement agencies to list outstanding warrants. The order is fully enforceable in any county in the state.

(7) If a restraining order issued pursuant to this section is modified or terminated, the clerk of the court shall notify the law enforcement agency specified in the order on or before the next judicial day. Upon receipt of notice that an order has been terminated, the law enforcement agency shall remove the order from any computer-based criminal intelligence system.

(8) The court may issue a temporary restraining order without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury could result if an order is not issued until the time for responding has elapsed.

(9) The court may issue a temporary restraining order or preliminary injunction and an order for temporary support in such amounts and on such terms as are just and proper in the circumstances. In issuing the order, the court shall consider the provisions of RCW 9.41.800.

(10) A temporary order, temporary restraining order, or preliminary injunction:

(a) Does not prejudice the rights of a party or any child which are to be adjudicated at subsequent hearings in the proceeding;

(b) May be revoked or modified;

(c) Terminates when the final order is entered or when the petition is dismissed; and

(d) May be entered in a proceeding for the modification of an existing order.

(11) A support debt owed to the state for public assistance expenditures which has been charged against a party pursuant to RCW 74.20A.040 and/or 74.20A.055 shall not be merged in, or otherwise extinguished by, the final decree or order, unless the office of support enforcement has been given notice of the final proceeding and an opportunity to present its claim for the support debt to the court and has failed to file an affidavit as provided in this subsection. Notice of the proceeding shall be served upon the office of support enforcement personally, or by certified mail, and shall be given no fewer than thirty days prior to the date of the final proceeding. An original copy of the notice shall be filed with the court either before service or within a reasonable time thereafter. The office of support enforcement may present its claim, and thereby preserve the support debt, by filing an affidavit setting forth the amount of the debt with the court, and by mailing a copy of the affidavit to the parties or their attorney prior to the date of the final proceeding.

Sec. 42. RCW 26.26.600 and 2002 c 302 s 531 are each amended to read as follows:

The court shall apply the following rules to adjudicate the ~~((paternity))~~ parentage of a child:

(1) Except as provided in subsection (5) of this section, the ~~((paternity))~~ parentage of a child having a presumed ~~((acknowledged,))~~ or adjudicated ~~((father))~~ parent or an acknowledged father may be disproved only by admissible results of genetic testing excluding that ~~((man))~~ person as the ~~((father))~~ parent of the child or identifying another man ~~((to be))~~ as the father of the child.

(2) Unless the results of genetic testing are admitted to rebut other results of genetic testing, the man identified as the father of the child under RCW 26.26.420 must be adjudicated the father of the child.

(3) If the court finds that genetic testing under RCW 26.26.420 neither identifies nor excludes a man as the father of a child, the court may not dismiss the proceeding. In that event, the results of genetic testing, ~~((along with))~~ and other evidence, are admissible to adjudicate the issue of paternity.

(4) Unless the results of genetic testing are admitted to rebut other results of genetic testing, a man excluded as the father of a child by genetic testing must be adjudicated not to be the father of the child.

(5) Subsections (1) through (4) of this section do not apply when the child was conceived through assisted reproduction. The parentage of a child conceived through assisted reproduction may be disproved only by admissible evidence showing the intent of the presumed, acknowledged, or adjudicated parent and the other parent.

Sec. 43. RCW 26.26.620 and 2002 c 302 s 535 are each amended to read as follows:

The court may issue an order dismissing a proceeding commenced under this chapter for want of prosecution only without prejudice. An order of dismissal for want of prosecution purportedly with prejudice is void and ~~((may be challenged in another judicial or an administrative proceeding))~~ has only the effect of a dismissal without prejudice.

Sec. 44. RCW 26.26.625 and 2002 c 302 s 536 are each amended to read as follows:

(1) The court shall issue an order adjudicating whether a ~~((man))~~ person alleged or claiming to be the ~~((father))~~ parent is the parent of the child.

(2) An order adjudicating parentage must identify the child by name and age.

(3) Except as otherwise provided in subsection (4) of this section, the court may assess filing fees, reasonable attorneys' fees, fees for genetic testing, other costs, and necessary travel and other reasonable expenses incurred in a proceeding under this section and RCW 26.26.500 through 26.26.620 and 26.26.630. The court may award attorneys' fees, which may be paid directly to the attorney, who may enforce the order in the attorney's own name.

(4) The court may not assess fees, costs, or expenses against the support enforcement agency of this state or another state, except as provided by other law.

(5) On request of a party and for good cause shown, the court may order that the name of the child be changed.

(6) If the order of the court is at variance with the child's birth certificate, the court shall order the state registrar of vital statistics to issue an amended birth certificate.

Sec. 45. RCW 26.26.630 and 2002 c 302 s 537 are each amended to read as follows:

(1) Except as otherwise provided in subsection (2) of this section, a determination of parentage is binding on:

(a) All signatories to an acknowledgment or denial of paternity as provided in RCW 26.26.300 through 26.26.375; and

(b) All parties to an adjudication by a court acting under circumstances that satisfy the jurisdictional requirements of RCW ~~((26.21.075))~~ 26.21A.100.

(2) A child is not bound by a determination of parentage under this chapter unless:

(a) The determination was based on an unrescinded acknowledgment of paternity and the acknowledgment of paternity is consistent with the results of the genetic testing;

(b) The adjudication of parentage was based on a finding consistent with the results of genetic testing and the consistency is declared in the determination or is otherwise shown, or in the case of a child conceived through assisted reproduction, the adjudication of parentage was based on evidence showing the intent of the parents; or

(c) The child was a party or was represented in the proceeding determining parentage by a guardian ad litem.

(3) In a proceeding to dissolve a marriage or domestic partnership, the court is deemed to have made an adjudication of the parentage of a child if the court acts under circumstances that satisfy

the jurisdictional requirements of RCW ~~((26.21.075))~~ 26.21A.100, and the final order:

(a) Expressly identifies a child as a "child of the marriage," "issue of the marriage," "child of the domestic partnership," "issue of the domestic partnership," or similar words indicating that the ~~((husband is the father))~~ spouses in the marriage or domestic partners in the domestic partnership are the parents of the child; or

(b) Provides for support of the child by one or both of the ~~((husband))~~ spouses or domestic partners unless ~~((paternity))~~ parentage is specifically disclaimed in the order.

(4) Except as otherwise provided in subsection (2) of this section, a determination of parentage may be a defense in a subsequent proceeding seeking to adjudicate parentage by an individual who was not a party to the earlier proceeding.

(5) A party to an adjudication of ~~((paternity))~~ parentage may challenge the adjudication only under law of this state relating to appeal, vacation of judgments, ~~((and))~~ or other judicial review.

Sec. 46. RCW 26.26.705 and 2002 c 302 s 602 are each amended to read as follows:

A donor is not a parent of a child conceived by means of assisted reproduction, unless otherwise agreed in a signed record by the donor and the person or persons intending to be parents of a child conceived through assisted reproduction.

Sec. 47. RCW 26.26.710 and 2002 c 302 s 603 are each amended to read as follows:

~~((If a husband provides sperm for, or consents to, assisted reproduction by his wife as provided in RCW 26.26.715, he is the father of a resulting child born to his wife.))~~ A person who provides gametes for, or consents in a signed record to assisted reproduction with another person, with the intent to be the parent of the child born, is the parent of the resulting child.

Sec. 48. RCW 26.26.715 and 2002 c 302 s 604 are each amended to read as follows:

~~((A consent to assisted reproduction by a married woman must be in a record signed by the woman and her husband.))~~ Consent by a couple who intend to be parents of a child conceived by assisted reproduction must be in a record signed by both persons. This requirement does not apply to ~~((the donation of eggs for assisted reproduction by another woman))~~ a donor.

(2) Failure of the ~~((husband))~~ person to sign a consent required by subsection (1) of this section, before or after birth of the child, does not preclude a finding ~~((that the husband is the father of a child born to his wife if the wife and husband openly treated))~~ of parentage if the persons resided together in the same household with the child and openly held out the child as their own.

Sec. 49. RCW 26.26.720 and 2002 c 302 s 605 are each amended to read as follows:

(1) Except as otherwise provided in subsection (2) of this section, ~~((the husband of a wife))~~ a spouse or domestic partner of a woman who gives birth to a child by means of assisted reproduction, or a spouse or domestic partner of a man who has a child by means of assisted reproduction, may not challenge his ~~((paternity))~~ or her parentage of the child unless:

(a) Within ~~((two))~~ four years after learning of the birth of the child ~~((he))~~ the person commences a proceeding to adjudicate his ~~((paternity))~~ or her parentage. In actions commenced more than two years after the birth of the child, the child must be made a party to the action; and

(b) The court finds that ~~((he))~~ the person did not consent to the assisted reproduction, before or after birth of the child.

(2) A proceeding to adjudicate ~~((paternity))~~ parentage may be maintained at any time if the court determines that:

(a) The ~~((husband))~~ spouse or domestic partner did not provide ~~((sperm))~~ gametes for, or before or after the birth of the child consent to, assisted reproduction by his ~~((wife))~~ or her spouse or domestic partner;

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(b) The ~~((husband and the mother))~~ spouse or domestic partner and the parent of the child have not cohabited since the probable time of assisted reproduction; and

(c) The ~~((husband))~~ spouse or domestic partner never openly ~~((treated))~~ held out the child as his or her own.

(3) The limitation provided in this section applies to a marriage or domestic partnership declared invalid after assisted reproduction.

Sec. 50. RCW 26.26.725 and 2002 c 302 s 606 are each amended to read as follows:

(1) If a marriage or domestic partnership is dissolved before placement of eggs, sperm, or an embryo, the former spouse or former domestic partner is not a parent of the resulting child unless the former spouse or former domestic partner consented in a signed record that if assisted reproduction were to occur after a ~~((divorce))~~ dissolution, the former spouse or former domestic partner would be a parent of the child.

(2) The consent of the former spouse or former domestic partner to assisted reproduction may be ~~((revoked))~~ withdrawn by that individual in a record at any time before placement of eggs, sperm, or embryos. An individual who withdraws consent under this section is not a parent of the resulting child.

Sec. 51. RCW 26.26.730 and 2002 c 302 s 607 are each amended to read as follows:

If ~~((a spouse))~~ an individual who consented in a record to be a parent by assisted reproduction dies before placement of eggs, sperm, or an embryo, the deceased ~~((spouse))~~ individual is not a parent of the resulting child unless the deceased ~~((spouse))~~ individual consented in a signed record that if assisted reproduction were to occur after death, the deceased ~~((spouse))~~ individual would be a parent of the child.

Sec. 52. RCW 26.26.735 and 2002 c 302 s 608 are each amended to read as follows:

The donor of ~~((ovum))~~ eggs provided to a licensed physician for use in ~~((the alternative reproductive medical technology process))~~ assisted reproduction for the purpose of attempting to achieve a pregnancy in a woman other than the donor is treated in law as if she were not the ~~((natural mother))~~ parent of a child thereafter conceived and born unless the donor and the woman who gives birth to a child as a result of the ~~((alternative reproductive medical technology procedures))~~ assisted reproduction agree in writing that the donor is to be a parent. RCW 26.26.705 does not apply in such case. A woman who gives birth to a child conceived through ~~((alternative reproductive medical technology procedures))~~ assisted reproduction under the supervision and with the assistance of a licensed physician is treated in law as if she were the ~~((natural mother))~~ parent of the child unless an agreement in writing signed by an ~~((ovum))~~ egg donor and the woman giving birth to the child states otherwise. An agreement pursuant to this section must be in writing and signed by the ~~((ovum))~~ egg donor and the woman who gives birth to the child and any other intended parent of the child. The physician shall certify the parties' signatures and the date of the ~~((ovum))~~ egg harvest, identify the subsequent medical procedures undertaken, and identify the intended parents. The agreement, including the affidavit and certification ~~((referenced in RCW 26.26.030))~~, must be filed with the registrar of vital statistics, where it must be kept confidential and in a sealed file.

NEW SECTION. Sec. 53. A new section is added to chapter 26.26 RCW to read as follows:

(1) A person who donates gametes to a fertility clinic in Washington to be used in assisted reproduction shall provide, at a minimum, his or her identifying information and medical history to the fertility clinic. The fertility clinic shall keep the identifying information and medical history of its donors and shall disclose the information as provided under subsection (2) of this section.

(2)(a) A child conceived through assisted reproduction who is at least eighteen years old shall be provided, upon his or her request, access to identifying information of the donor who provided gametes for the assisted reproduction that resulted in the birth of the child, unless the donor has signed an affidavit of nondisclosure with the fertility clinic that provided the gamete for assisted reproduction.

(b) Regardless of whether the donor signed an affidavit of nondisclosure, a child conceived through assisted reproduction who is at least eighteen years old shall be provided, upon his or her request, access to the nonidentifying medical history of the donor who provided gametes for the assisted reproduction that resulted in the birth of the child.

Sec. 54. RCW 26.26.903 and 2002 c 302 s 709 are each amended to read as follows:

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it and to the intent that the act apply to persons of the same sex who have children together to the same extent the act applies to persons of the opposite sex who have children together.

Sec. 55. RCW 26.26.911 and 2002 c 302 s 101 are each amended to read as follows:

This act may be known and cited as the uniform parentage act of 2002.

NEW SECTION. Sec. 56. Any action taken by an agency to implement the provisions of this act must be accomplished within existing resources. Any costs incurred by the administrative office of the courts for modifications to the judicial information system as a result of the provisions of this act shall be paid from the judicial information system account.

NEW SECTION. Sec. 57. 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. 58. This act applies to causes of action filed on or after the effective date of this section."

Senators Hargrove and Swecker 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 Harper, Pridemore and Hargrove to Engrossed Second Substitute House Bill No. 1267.

The motion by Senator Hargrove 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 3 of the title, after "parentage;" strike the remainder of the title and insert "amending RCW 26.26.011, 26.26.021, 26.26.041, 26.26.051, 26.26.101, 26.26.106, 26.26.111, 26.26.116, 26.26.130, 26.26.150, 26.26.300, 26.26.305, 26.26.310, 26.26.315, 26.26.320, 26.26.330, 26.26.335, 26.26.340, 26.26.360, 26.26.375, 26.26.400, 26.26.405, 26.26.410, 26.26.420, 26.26.425, 26.26.430, 26.26.435, 26.26.445, 26.26.505, 26.26.510, 26.26.525, 26.26.530, 26.26.535, 26.26.540, 26.26.545, 26.26.550, 26.26.555, 26.26.570, 26.26.575, 26.26.585, 26.26.590, 26.26.600, 26.26.620, 26.26.625, 26.26.630, 26.26.705, 26.26.710, 26.26.715, 26.26.720, 26.26.725, 26.26.730, 26.26.735, 26.26.903, and 26.26.911; adding a new section to chapter 26.26 RCW; and creating new sections."

MOTION

On motion of Senator Hargrove, the rules were suspended, Engrossed Second Substitute House Bill No. 1267 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 on final passage.

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

Senator Benton 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. 1267 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Second Substitute House Bill No. 1267 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 27; Nays, 21; Absent, 0; Excused, 1.

Voting yea: Senators Brown, Chase, Conway, Eide, Fain, Fraser, Harper, Hatfield, Haugen, Hill, Hobbs, Keiser, Kilmer, Kline, Kohl-Welles, Litzow, McAuliffe, Murray, Nelson, Pflug, Prentice, Pridemore, Ranker, Regala, Rockefeller, Tom and White

Voting nay: Senators Baumgartner, Baxter, Becker, Benton, Carrell, Delvin, Ericksen, Hargrove, Hewitt, Holmquist Newbry, Honeyford, Kastama, King, Morton, Roach, Schoesler, Sheldon, Shin, Stevens, Swecker and Zarelli

Excused: Senator Parlette

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 1267 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, Engrossed Second Substitute House Bill No. 1267 was immediately transmitted to the House of Representatives.

MESSAGE FROM THE HOUSE

April 9, 2011

MR. PRESIDENT:

The House passed SECOND SUBSTITUTE SENATE BILL NO. 5636 with the following amendment(s): 5636-S2 AMH WAYS H2503.1

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. A new section is added to chapter 28B.30 RCW to read as follows:

(1) The legislature finds that access to baccalaureate and graduate degree programs continues to be limited for residents of north Snohomish, Island, and Skagit counties. Studies conducted by the state board for community and technical colleges, the higher education coordinating board, and the council of presidents confirm that enrollment in higher education compared to demand in this geographic region lags behind enrollment in other parts of the state, particularly for upper-division courses leading to advanced degrees.

(2) The legislature also finds that access to high employer demand programs of study is imperative for the state's global competitiveness and economic prosperity, particularly those degrees in the science, technology, engineering, and mathematics (STEM) fields that align with the workforce skill demands of the regional

economy, that support the aerospace industry, and provide skilled undergraduate and graduate-degree engineers required by the largest employers in the aerospace industry cluster.

(3) The legislature finds that meeting the long-range goal of greatly expanded access for the population of the region to the widest array of baccalaureate and graduate programs can best be accomplished by assigning responsibility to a research university with multiple experiences in similar settings.

(4) Management and leadership of the University Center of North Puget Sound is assigned to Washington State University to meet the needs of the Everett metropolitan area and the north Snohomish, Island, and Skagit county region and the state of Washington for baccalaureate and graduate degrees offered by a state university. The chief executive officer of the University Center of North Puget Sound is the director who reports to the president of Washington State University. The director shall manage the activities and logistics of operating the center, make policy and planning recommendations to the council in subsection (5) of this section, and implement decisions of the council.

(5)(a) Washington State University and Everett Community College must collaborate with community leaders, and other four-year institutions of higher education that offer programs at the University Center of North Puget Sound to serve the varied interests of students in the region. To this end, a coordinating and planning council must be established to be responsible for long-range and strategic planning, interinstitutional collaboration, collaboration with the community served, and dispute resolution for the center. The following individuals shall comprise the coordinating and planning council:

(i) The president of Washington State University, or his or her designee;

(ii) The provost of Washington State University, or his or her designee;

(iii) The president of Everett Community College;

(iv) Two representatives of two other institutions of higher education that offer baccalaureate or graduate degree programs at the center;

(v) A student enrolled at the University Center of North Puget Sound appointed by the coordinating and planning council;

(vi) The director of the council, as the nonvoting chair;

(vii) A community leader appointed by the president of Everett Community College; and

(viii) A community leader appointed by the mayor of Everett.

(b) The coordinating and planning council may appoint other groups, as appropriate, to advise on administration and operations, and may alter its own composition by agreement of all the members.

(6)(a) Washington State University shall assume leadership of the center upon completion and approval by the legislature as provided under (d) of this subsection of a strategic plan for meeting the academic needs of the region and successful establishment of an engineering degree program. The strategic plan must build on the strengths of the institutions, reflecting each institution's mission, in order to provide the region with the highest standard of educational programs, research, and service to the community. The strategic plan must include a multiyear budget that addresses both operating and capital expenses required to effectively implement the plan. The strategic plan shall be developed with the collaboration of the University Center at Everett Community College and all the institutions of higher education that provide baccalaureate degrees at the University Center, and community leaders.

(b) Center partners must implement the strategic plan with careful attention to the academic and professional standards established and maintained by each institution and by the appropriate accrediting bodies, and to the historic role of each institution's governing board in setting policy.

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(c) The strategic plan must address expansion of the range and depth of educational opportunities in the region and include strategies that:

(i) Build upon baccalaureate and graduate degree offerings at the center;

(ii) Meet projected student enrollment demands for baccalaureate, graduate, and certificate programs in the region;

(iii) Meet employers' needs for skilled workers by expanding high employer demand programs of study as defined in RCW 28B.50.030, with an initial and ongoing emphasis by Washington State University on undergraduate and graduate science, technology, mathematics, and engineering degree programs, including a variety of engineering disciplines such as civil, mechanical, aeronautical, and aerospace manufacturing;

(iv) Coordinate delivery of lower and upper division courses to maximize student opportunities and resources; and

(v) Transfer budget support and resources for the center from Everett Community College to Washington State University.

(d) The strategic plan must be completed by December 1, 2012, and submitted to the legislature for review. The strategic plan shall be considered approved if the legislature does not take further action on the strategic plan during the 2013 legislative session. The transfer of the responsibility for the management and operation of the University Center of North Puget Sound to Washington State University must occur by July 1, 2014.

(7)(a) Academic programming and delivery at the center must be developed in accordance with the missions of Washington State University, Everett Community College, and other institutions of higher education that have a presence at the center.

(b) Each institution shall abide by the guidelines for university centers adopted by the higher education coordinating board.

(c) Each institution shall award all degrees and certificates granted in the programs it delivers at the center.

(d) The coordinating council described in subsection (5) of this section shall establish a process for prioritizing new programs and revising existing programs that facilitates timeliness of new offerings, recognizes the internal processes of the proposing institutions, and addresses each proposal's fit with the needs of the region.

(8)(a) Washington State University shall review center expansion needs and consider capital facilities funding at least annually. Washington State University and Everett Community College must cooperate in preparing funding requests and bond financing for submission to the legislature on behalf of development at the center, in accordance with each institution's process and priorities for advancing legislative requests.

(b) Washington State University shall design, construct, and manage any facility developed at the center. Any facility developed at the center with Everett Community College capital funding must be designed by Everett Community College in consultation with Washington State University. Building construction may be managed by Washington State University via an interagency agreement which details responsibility and associated costs. Building operations and management for all facilities at the center must be governed by the infrastructure and operating cost allocation method described in subsection (9) of this section.

(9) Washington State University has responsibility for infrastructure development and maintenance for the center. All infrastructure operating and maintenance costs are to be shared in what is deemed to be an equitable and fair manner based on space allocation, special cost, and other relevant considerations. Washington State University may make infrastructure development and maintenance decisions in consultation with the council described in subsection (5) of this section.

(10) In the event that conflict cannot be resolved through the coordinating council described in subsection (5) of this section the higher education coordinating board dispute resolution must be employed.

Sec. 2. RCW 28B.50.795 and 2010 1st sp.s. c 25 s 1 are each amended to read as follows:

(1) ((RCW 28B.50.901 assigns responsibility for the north Snohomish, Island, and Skagit counties' higher education consortium to Everett Community College. In April of 2009, Everett Community College opened Gray Wolf Hall, the new home of the University Center of North Puget Sound. The University Center currently offers over twenty bachelor's and master's degrees from six partner universities.

(2)) Although Everett Community College offers an associate degree nursing program that graduates approximately seventy to ninety students per year, the University Center does not offer a bachelor of science in nursing. Some graduates of the Everett Community College program are able to articulate to the bachelor of science in nursing program offered by the University of Washington-Bothell at its Bothell campus or in Mt. Vernon but current capacity is not sufficient for all of the graduates who are both interested and qualified.

((3)) (2) Despite recent growth in nursing education capacity, shortages still persist for registered nurses. According to a June 2007 study by the Washington, Wyoming, Alaska, Montana, and Idaho center for health workforce studies, the average age of Washington's registered nurses was forty-eight years. More than a third were fifty- five years of age or older. Consequently, the high rate of registered nurses retiring from nursing practice over the next two decades will significantly reduce the supply. This reduction comes at the same time as the state's population grows and ages. The registered nurse education capacity in Washington has a large impact on the supply of registered nurses in the state. If the rate of graduation in registered nursing does not increase, projections show that supply in Washington will begin to decline by 2015. In contrast, if graduation rates increased by four hundred per year, the supply of registered nurses would meet estimated demand by the year 2021.

((4)) (3) Subject to specific funding to support up to fifty full-time equivalent students in a bachelor of nursing program, the University Center (~~at Everett Community College~~) of North Puget Sound, in partnership with the University of Washington-Bothell, shall offer a bachelor of science in nursing program with capacity for up to fifty full-time students.

NEW SECTION. Sec. 3. (1) This act takes effect only after the higher education coordinating board determines whether a needs assessment and analysis is required and, if so, conducts a needs assessment and viability determination under RCW 28B.76.230 and recommends that the provisions in section 1 of this act occur.

(2) The higher education coordinating board must make a recommendation under subsection (1) of this section by July 1, 2012.

(3) The higher education coordinating board shall notify the office of financial management, the legislature, and the code reviser's office of the board's recommendations regarding the provisions in section 1 of this act.

NEW SECTION. Sec. 4. RCW 28B.50.901 (Regional higher education consortium management and leadership--Everett Community College-- Educational plan) and 2005 c 258 s 13 are each repealed."

Correct the title.
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Haugen moved that the Senate concur in the House amendment(s) to Second Substitute Senate Bill No. 5636.

Senators Haugen and Shin spoke in favor of the motion.

Senator Tom spoke against the motion.

The President declared the question before the Senate to be the motion by Senator Haugen that the Senate concur in the House amendment(s) to Second Substitute Senate Bill No. 5636.

The motion by Senator Haugen carried and the Senate concurred in the House amendment(s) to Second Substitute Senate Bill No. 5636 by voice vote.

The President declared the question before the Senate to be the final passage of Second Substitute Senate Bill No. 5636, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Second Substitute Senate Bill No. 5636, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 38; Nays, 10; Absent, 0; Excused, 1.

Voting yea: Senators Baumgartner, Baxter, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hobbs, Holmquist Newbry, Kastama, Keiser, Kilmer, King, Kline, Morton, Murray, Nelson, Pflug, Prentice, Regala, Roach, Schoesler, Sheldon, Shin, Stevens, Swecker, White and Zarelli

Voting nay: Senators Ericksen, Hill, Honeyford, Kohl-Welles, Litzow, McAuliffe, Pridemore, Ranker, Rockefeller and Tom

Excused: Senator Parlette

SECOND SUBSTITUTE SENATE BILL NO. 5636, as amended by the House, 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.

PERSONAL PRIVILEGE

Senator Haugen: "Thank you Mr. President. I simply want to say thank you."

MESSAGE FROM THE HOUSE

April 11, 2011

MR. PRESIDENT:

The House passed ENGROSSED SECOND SUBSTITUTE SENATE BILL NO. 5073 with the following amendment(s): 5073-S2.E AMH ENGR H2509.E

Strike everything after the enacting clause and insert the following:

**"PART I
LEGISLATIVE DECLARATION AND INTENT**

NEW SECTION. Sec. 101. (1) The legislature intends to amend and clarify the law on the medical use of cannabis so that:

(a) Qualifying patients and designated providers complying with the terms of this act and registering with the department of health will no longer be subject to arrest or prosecution, other criminal sanctions, or civil consequences based solely on their medical use of cannabis;

(b) Qualifying patients will have access to an adequate, safe, consistent, and secure source of medical quality cannabis; and

(c) Health care professionals may authorize the medical use of cannabis in the manner provided by this act without fear of state criminal or civil sanctions.

(2) This act is not intended to amend or supersede Washington state law prohibiting the acquisition, possession, manufacture, sale, or use of cannabis for nonmedical purposes.

(3) This act is not intended to compromise community safety. State, county, or city correctional agencies or departments shall retain the authority to establish and enforce terms for those on active supervision.

Sec. 102. RCW 69.51A.005 and 2010 c 284 s 1 are each amended to read as follows:

(1) The ~~((people of Washington state))~~ legislature finds that:

(a) There is medical evidence that some patients with terminal or debilitating ~~((illnesses))~~ medical conditions may, under their health care professional's care, ~~((may))~~ benefit from the medical use of ~~((marijuana))~~ cannabis. Some of the ~~((illnesses))~~ conditions for which ~~((marijuana))~~ cannabis appears to be beneficial include ~~((chemotherapy related))~~, but are not limited to:

(i) Nausea ~~((and))~~, vomiting ~~((in cancer patients; AIDS wasting syndrome))~~, and cachexia associated with cancer, HIV-positive status, AIDS, hepatitis C, anorexia, and their treatments;

(ii) Severe muscle spasms associated with multiple sclerosis, epilepsy, and other seizure and spasticity disorders; ~~((epilepsy;))~~

(iii) Acute or chronic glaucoma;

(iv) Crohn's disease; and

(v) Some forms of intractable pain.

~~((The people find that))~~ (b) Humanitarian compassion necessitates that the decision to ~~((authorize the medical))~~ use ~~((of marijuana))~~ cannabis by patients with terminal or debilitating ~~((illnesses))~~ medical conditions is a personal, individual decision, based upon their health care professional's professional medical judgment and discretion.

(2) Therefore, the ~~((people of the state of Washington))~~ legislature intends that:

(a) Qualifying patients with terminal or debilitating ~~((illnesses))~~ medical conditions who, in the judgment of their health care professionals, may benefit from the medical use of ~~((marijuana))~~ cannabis, shall not be ~~((found guilty of a crime under state law for their possession and limited use of marijuana))~~ arrested, prosecuted, or subject to other criminal sanctions or civil consequences under state law based solely on their medical use of cannabis, notwithstanding any other provision of law;

(b) Persons who act as designated providers to such patients shall also not be ~~((found guilty of a crime under state law for))~~ arrested, prosecuted, or subject to other criminal sanctions or civil consequences under state law, notwithstanding any other provision of law, based solely on their assisting with the medical use of ~~((marijuana))~~ cannabis; and

(c) Health care professionals shall also ~~((be exempted from liability and prosecution))~~ not be arrested, prosecuted, or subject to other criminal sanctions or civil consequences under state law for the proper authorization of ~~((marijuana))~~ medical use ~~((to))~~ of cannabis by qualifying patients for whom, in the health care professional's professional judgment, the medical ~~((marijuana))~~ use of cannabis may prove beneficial.

(3) Nothing in this chapter establishes the medical necessity or medical appropriateness of cannabis for treating terminal or debilitating medical conditions as defined in RCW 69.51A.010.

(4) Nothing in this chapter diminishes the authority of correctional agencies and departments, including local governments or jails, to establish a procedure for determining when the use of cannabis would impact community safety or the effective supervision of those on active supervision for a criminal conviction, nor does it create the right to any accommodation of any medical use of cannabis in any correctional facility or jail.

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Sec. 103. RCW 69.51A.020 and 1999 c 2 s 3 are each amended to read as follows:

Nothing in this chapter shall be construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale, or use of ~~((marijuana))~~ cannabis for nonmedical purposes. Criminal penalties created under this act do not preclude the prosecution or punishment for other crimes, including other crimes involving the manufacture or delivery of cannabis for nonmedical purposes.

PART II DEFINITIONS

Sec. 201. RCW 69.51A.010 and 2010 c 284 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) "Cannabis" means all parts of the plant *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. For the purposes of this chapter, "cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. The term "cannabis" includes cannabis products and useable cannabis.

(2) "Cannabis analysis laboratory" means a laboratory that performs chemical analysis and inspection of cannabis samples.

(3) "Cannabis products" means products that contain cannabis or cannabis extracts, have a measurable THC concentration greater than three-tenths of one percent, and are intended for human consumption or application, including, but not limited to, edible products, tinctures, and lotions. The term "cannabis products" does not include useable cannabis. The definition of "cannabis products" as a measurement of THC concentration only applies to the provisions of this chapter and shall not be considered applicable to any criminal laws related to marijuana or cannabis.

(4) "Correctional facility" has the same meaning as provided in RCW 72.09.015.

(5) "Corrections agency or department" means any agency or department in the state of Washington, including local governments or jails, that is vested with the responsibility to manage those individuals who are being supervised in the community for a criminal conviction and has established a written policy for determining when the medical use of cannabis, including possession, manufacture, or delivery of, or for possession with intent to manufacture or deliver, is inconsistent with and contrary to the person's supervision.

(6) "Designated provider" means a person who:

(a) Is eighteen years of age or older;

(b) Has been designated in ~~((writing))~~ a written document signed and dated by a qualifying patient to serve as a designated provider under this chapter; and

(c) Is ~~((prohibited from consuming marijuana obtained for the personal, medical use of the patient for whom the individual is acting as designated provider; and~~

(d) Is the designated provider to only one patient at any one time.

~~((2)))~~ in compliance with the terms and conditions set forth in RCW 69.51A.040.

A qualifying patient may be the designated provider for another qualifying patient and be in possession of both patients' cannabis at the same time.

~~((7))~~ "Director" means the director of the department of agriculture.

~~((8))~~ "Dispense" means the selection, measuring, packaging, labeling, delivery, or retail sale of cannabis by a licensed dispenser to a qualifying patient or designated provider.

~~((9))~~ "Health care professional," for purposes of this chapter only, means a physician licensed under chapter 18.71 RCW, a physician assistant licensed under chapter 18.71A RCW, an osteopathic physician licensed under chapter 18.57 RCW, an osteopathic physicians' assistant licensed under chapter 18.57A RCW, a naturopath licensed under chapter 18.36A RCW, or an advanced registered nurse practitioner licensed under chapter 18.79 RCW.

~~((3))~~ (10) "Jail" has the same meaning as provided in RCW 70.48.020.

(11) "Labeling" means all labels and other written, printed, or graphic matter (a) upon any cannabis intended for medical use, or (b) accompanying such cannabis.

(12) "Licensed dispenser" means a person licensed to dispense cannabis for medical use to qualifying patients and designated providers by the department of health in accordance with rules adopted by the department of health pursuant to the terms of this chapter.

(13) "Licensed processor of cannabis products" means a person licensed by the department of agriculture to manufacture, process, handle, and label cannabis products for wholesale to licensed dispensers.

(14) "Licensed producer" means a person licensed by the department of agriculture to produce cannabis for medical use for wholesale to licensed dispensers and licensed processors of cannabis products in accordance with rules adopted by the department of agriculture pursuant to the terms of this chapter.

(15) "Medical use of ~~((marijuana))~~ cannabis" means the manufacture, production, processing, possession, transportation, delivery, dispensing, ingestion, application, or administration of ~~((marijuana, as defined in RCW 69.50.101(q),))~~ cannabis for the exclusive benefit of a qualifying patient in the treatment of his or her terminal or debilitating ~~((illness))~~ medical condition.

~~((4))~~ (16) "Nonresident" means a person who is temporarily in the state but is not a Washington state resident.

(17) "Peace officer" means any law enforcement personnel as defined in RCW 43.101.010.

(18) "Person" means an individual or an entity.

(19) "Personally identifiable information" means any information that includes, but is not limited to, data that uniquely identify, distinguish, or trace a person's identity, such as the person's name, date of birth, or address, either alone or when combined with other sources, that establish the person is a qualifying patient, designated provider, licensed producer, or licensed processor of cannabis products for purposes of registration with the department of health or department of agriculture. The term "personally identifiable information" also means any information used by the department of health or department of agriculture to identify a person as a qualifying patient, designated provider, licensed producer, or licensed processor of cannabis products.

(20) "Plant" means an organism having at least three distinguishable and distinct leaves, each leaf being at least three centimeters in diameter, and a readily observable root formation consisting of at least two separate and distinct roots, each being at least two centimeters in length. Multiple stalks emanating from the same root ball or root system shall be considered part of the same single plant.

(21) "Process" means to handle or process cannabis in preparation for medical use.

(22) "Processing facility" means the premises and equipment where cannabis products are manufactured, processed, handled, and

labeled for wholesale to licensed dispensers.

(23) "Produce" means to plant, grow, or harvest cannabis for medical use.

(24) "Production facility" means the premises and equipment where cannabis is planted, grown, harvested, processed, stored, handled, packaged, or labeled by a licensed producer for wholesale, delivery, or transportation to a licensed dispenser or licensed processor of cannabis products, and all vehicles and equipment used to transport cannabis from a licensed producer to a licensed dispenser or licensed processor of cannabis products.

(25) "Public place" includes streets and alleys of incorporated cities and towns; state or county or township highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; premises where goods and services are offered to the public for retail sale; public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theatres, stores, garages, and filling stations which are open to and are generally used by the public and to which the public is permitted to have unrestricted access; railroad trains, stages, buses, ferries, and other public conveyances of all kinds and character, and the depots, stops, and waiting rooms used in conjunction therewith which are open to unrestricted use and access by the public; publicly owned bathing beaches, parks, or playgrounds; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

(26) "Qualifying patient" means a person who:

(a)(i) Is a patient of a health care professional;

~~((b))~~ (ii) Has been diagnosed by that health care professional as having a terminal or debilitating medical condition;

~~((c))~~ (iii) Is a resident of the state of Washington at the time of such diagnosis;

~~((d))~~ (iv) Has been advised by that health care professional about the risks and benefits of the medical use of ~~((marijuana))~~ cannabis; ~~and~~

~~((e))~~ (v) Has been advised by that health care professional that ~~((they))~~ he or she may benefit from the medical use of ~~((marijuana))~~ cannabis; and

(vi) Is otherwise in compliance with the terms and conditions established in this chapter.

(b) The term "qualifying patient" does not include a person who is actively being supervised for a criminal conviction by a corrections agency or department that has determined that the terms of this chapter are inconsistent with and contrary to his or her supervision.

~~((f))~~ (27) "Secretary" means the secretary of health.

(28) "Tamper-resistant paper" means paper that meets one or more of the following industry-recognized features:

(a) One or more features designed to prevent copying of the paper;

(b) One or more features designed to prevent the erasure or modification of information on the paper; or

(c) One or more features designed to prevent the use of counterfeit valid documentation.

~~((g))~~ (29) "Terminal or debilitating medical condition" means:

(a) Cancer, human immunodeficiency virus (HIV), multiple sclerosis, epilepsy or other seizure disorder, or spasticity disorders; or

(b) Intractable pain, limited for the purpose of this chapter to mean pain unrelieved by standard medical treatments and medications; or

(c) Glaucoma, either acute or chronic, limited for the purpose of this chapter to mean increased intraocular pressure unrelieved by standard treatments and medications; or

(d) Crohn's disease with debilitating symptoms unrelieved by standard treatments or medications; or

(e) Hepatitis C with debilitating nausea or intractable pain unrelieved by standard treatments or medications; or

(f) Diseases, including anorexia, which result in nausea, vomiting, ~~((wasting))~~ cachexia, appetite loss, cramping, seizures, muscle spasms, or spasticity, when these symptoms are unrelieved by standard treatments or medications; or

(g) Any other medical condition duly approved by the Washington state medical quality assurance commission in consultation with the board of osteopathic medicine and surgery as directed in this chapter.

~~((7))~~ (30) "THC concentration" means percent of tetrahydrocannabinol content per weight or volume of useable cannabis or cannabis product.

(31) "Useable cannabis" means dried flowers of the *Cannabis* plant having a THC concentration greater than three-tenths of one percent. Useable cannabis excludes stems, stalks, leaves, seeds, and roots. For purposes of this subsection, "dried" means containing less than fifteen percent moisture content by weight. The term "useable cannabis" does not include cannabis products.

(32)(a) Until January 1, 2013, "valid documentation" means:

~~((a))~~ (i) A statement signed and dated by a qualifying patient's health care professional written on tamper-resistant paper, which states that, in the health care professional's professional opinion, the patient may benefit from the medical use of ~~((marijuana))~~ cannabis; ~~and~~

~~((b))~~ (ii) Proof of identity such as a Washington state driver's license or identicard, as defined in RCW 46.20.035; and

(iii) In the case of a designated provider, the signed and dated document valid for one year from the date of signature executed by the qualifying patient who has designated the provider; and

(b) Beginning July 1, 2012, "valid documentation" means:

(i) An original statement signed and dated by a qualifying patient's health care professional written on tamper-resistant paper and valid for up to one year from the date of the health care professional's signature, which states that, in the health care professional's professional opinion, the patient may benefit from the medical use of cannabis;

(ii) Proof of identity such as a Washington state driver's license or identicard, as defined in RCW 46.20.035; and

(iii) In the case of a designated provider, the signed and dated document valid for up to one year from the date of signature executed by the qualifying patient who has designated the provider.

PART III

PROTECTIONS FOR HEALTH CARE PROFESSIONALS

Sec. 301. RCW 69.51A.030 and 2010 c 284 s 3 are each amended to read as follows:

((A health care professional shall be excepted from the state's criminal laws and shall not be penalized in any manner, or denied any right or privilege, for)) (1) The following acts do not constitute crimes under state law or unprofessional conduct under chapter 18.130 RCW, and a health care professional may not be arrested, searched, prosecuted, disciplined, or subject to other criminal sanctions or civil consequences or liability under state law, or have real or personal property searched, seized, or forfeited pursuant to state law, notwithstanding any other provision of law as long as the health care professional complies with subsection (2) of this section:

~~((4))~~ (a) Advising a ~~((qualifying))~~ patient about the risks and benefits of medical use of ~~((marijuana))~~ cannabis or that the ~~((qualifying))~~ patient may benefit from the medical use of ~~((marijuana where such use is within a professional standard of care or in the individual health care professional's medical judgment))~~ cannabis; or

~~((2))~~ (b) Providing a ~~((qualifying))~~ patient meeting the criteria established under RCW 69.51A.010(26) with valid documentation,

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based upon the health care professional's assessment of the ~~((qualifying))~~ patient's medical history and current medical condition, ~~((that the medical use of marijuana may benefit a particular qualifying patient))~~ where such use is within a professional standard of care or in the individual health care professional's medical judgment.

(2)(a) A health care professional may only provide a patient with valid documentation authorizing the medical use of cannabis or register the patient with the registry established in section 901 of this act if he or she has a newly initiated or existing documented relationship with the patient, as a primary care provider or a specialist, relating to the diagnosis and ongoing treatment or monitoring of the patient's terminal or debilitating medical condition, and only after:

(i) Completing a physical examination of the patient as appropriate, based on the patient's condition and age;

(ii) Documenting the terminal or debilitating medical condition of the patient in the patient's medical record and that the patient may benefit from treatment of this condition or its symptoms with medical use of cannabis;

(iii) Informing the patient of other options for treating the terminal or debilitating medical condition; and

(iv) Documenting other measures attempted to treat the terminal or debilitating medical condition that do not involve the medical use of cannabis.

(b) A health care professional shall not:

(i) Accept, solicit, or offer any form of pecuniary remuneration from or to a licensed dispenser, licensed producer, or licensed processor of cannabis products;

(ii) Offer a discount or any other thing of value to a qualifying patient who is a customer of, or agrees to be a customer of, a particular licensed dispenser, licensed producer, or licensed processor of cannabis products;

(iii) Examine or offer to examine a patient for purposes of diagnosing a terminal or debilitating medical condition at a location where cannabis is produced, processed, or dispensed;

(iv) Have a business or practice which consists solely of authorizing the medical use of cannabis;

(v) Include any statement or reference, visual or otherwise, on the medical use of cannabis in any advertisement for his or her business or practice; or

(vi) Hold an economic interest in an enterprise that produces, processes, or dispenses cannabis if the health care professional authorizes the medical use of cannabis.

(3) A violation of any provision of subsection (2) of this section constitutes unprofessional conduct under chapter 18.130 RCW.

**PART IV
PROTECTIONS FOR QUALIFYING PATIENTS AND
DESIGNATED PROVIDERS**

Sec. 401. RCW 69.51A.040 and 2007 c 371 s 5 are each amended to read as follows:

((1) If a law enforcement officer determines that marijuana is being possessed lawfully under the medical marijuana law, the officer may document the amount of marijuana, take a representative sample that is large enough to test, but not seize the marijuana. A law enforcement officer or agency shall not be held civilly liable for failure to seize marijuana in this circumstance.

(2) If charged with a violation of state law relating to marijuana, any qualifying patient who is engaged in the medical use of marijuana, or any designated provider who assists a qualifying patient in the medical use of marijuana, will be deemed to have established an affirmative defense to such charges by proof of his or her compliance with the requirements provided in this chapter.

Any person meeting the requirements appropriate to his or her status under this chapter shall be considered to have engaged in activities permitted by this chapter and shall not be penalized in any manner, or denied any right or privilege, for such actions.

(3) A qualifying patient, if eighteen years of age or older, or a designated provider shall:

(a) Meet all criteria for status as a qualifying patient or designated provider;

(b) Possess no more marijuana than is necessary for the patient's personal, medical use, not exceeding the amount necessary for a sixty-day supply; and

(c) Present his or her valid documentation to any law enforcement official who questions the patient or provider regarding his or her medical use of marijuana.

(4) A qualifying patient, if under eighteen years of age at the time he or she is alleged to have committed the offense, shall demonstrate compliance with subsection (3)(a) and (c) of this section. However, any possession under subsection (3)(b) of this section, as well as any production, acquisition, and decision as to dosage and frequency of use, shall be the responsibility of the parent or legal guardian of the qualifying patient.) The medical use of cannabis in accordance with the terms and conditions of this chapter does not constitute a crime and a qualifying patient or designated provider in compliance with the terms and conditions of this chapter may not be arrested, prosecuted, or subject to other criminal sanctions or civil consequences, for possession, manufacture, or delivery of, or for possession with intent to manufacture or deliver, cannabis under state law, or have real or personal property seized or forfeited for possession, manufacture, or delivery of, or for possession with intent to manufacture or deliver, cannabis under state law, and investigating peace officers and law enforcement agencies may not be held civilly liable for failure to seize cannabis in this circumstance, if:

(1)(a) The qualifying patient or designated provider possesses no more than fifteen cannabis plants and:

(i) No more than twenty-four ounces of useable cannabis;

(ii) No more cannabis product than what could reasonably be produced with no more than twenty-four ounces of useable cannabis; or

(iii) A combination of useable cannabis and cannabis product that does not exceed a combined total representing possession and processing of no more than twenty-four ounces of useable cannabis.

(b) If a person is both a qualifying patient and a designated provider for another qualifying patient, the person may possess no more than twice the amounts described in (a) of this subsection, whether the plants, useable cannabis, and cannabis product are possessed individually or in combination between the qualifying patient and his or her designated provider;

(2) The qualifying patient or designated provider presents his or her proof of registration with the department of health, to any peace officer who questions the patient or provider regarding his or her medical use of cannabis;

(3) The qualifying patient or designated provider keeps a copy of his or her proof of registration with the registry established in section 901 of this act and the qualifying patient or designated provider's contact information posted prominently next to any cannabis plants, cannabis products, or useable cannabis located at his or her residence;

(4) The investigating peace officer does not possess evidence that:

(a) The designated provider has converted cannabis produced or obtained for the qualifying patient for his or her own personal use or benefit; or

(b) The qualifying patient has converted cannabis produced or obtained for his or her own medical use to the qualifying patient's

personal, nonmedical use or benefit;

(5) The investigating peace officer does not possess evidence that the designated provider has served as a designated provider to more than one qualifying patient within a fifteen-day period; and

(6) The investigating peace officer has not observed evidence of any of the circumstances identified in section 901(4) of this act.

NEW SECTION. Sec. 402. (1) A qualifying patient or designated provider who is not registered with the registry established in section 901 of this act may raise the affirmative defense set forth in subsection (2) of this section, if:

(a) The qualifying patient or designated provider presents his or her valid documentation to any peace officer who questions the patient or provider regarding his or her medical use of cannabis;

(b) The qualifying patient or designated provider possesses no more cannabis than the limits set forth in RCW 69.51A.040(1);

(c) The qualifying patient or designated provider is in compliance with all other terms and conditions of this chapter;

(d) The investigating peace officer does not have probable cause to believe that the qualifying patient or designated provider has committed a felony, or is committing a misdemeanor in the officer's presence, that does not relate to the medical use of cannabis;

(e) No outstanding warrant for arrest exists for the qualifying patient or designated provider; and

(f) The investigating peace officer has not observed evidence of any of the circumstances identified in section 901(4) of this act.

(2) A qualifying patient or designated provider who is not registered with the registry established in section 901 of this act, but who presents his or her valid documentation to any peace officer who questions the patient or provider regarding his or her medical use of cannabis, may assert an affirmative defense to charges of violations of state law relating to cannabis through proof at trial, by a preponderance of the evidence, that he or she otherwise meets the requirements of RCW 69.51A.040. A qualifying patient or designated provider meeting the conditions of this subsection but possessing more cannabis than the limits set forth in RCW 69.51A.040(1) may, in the investigating peace officer's discretion, be taken into custody and booked into jail in connection with the investigation of the incident.

NEW SECTION. Sec. 403. (1) Qualifying patients may create and participate in collective gardens for the purpose of producing, processing, transporting, and delivering cannabis for medical use subject to the following conditions:

(a) No more than ten qualifying patients may participate in a single collective garden at any time;

(b) A collective garden may contain no more than fifteen plants per patient up to a total of forty-five plants;

(c) A collective garden may contain no more than twenty-four ounces of useable cannabis per patient up to a total of seventy-two ounces of useable cannabis;

(d) A copy of each qualifying patient's valid documentation or proof of registration with the registry established in section 901 of this act, including a copy of the patient's proof of identity, must be available at all times on the premises of the collective garden; and

(e) No useable cannabis from the collective garden is delivered to anyone other than one of the qualifying patients participating in the collective garden.

(2) For purposes of this section, the creation of a "collective garden" means qualifying patients sharing responsibility for acquiring and supplying the resources required to produce and process cannabis for medical use such as, for example, a location for a collective garden; equipment, supplies, and labor necessary to plant, grow, and harvest cannabis; cannabis plants, seeds, and cuttings; and equipment, supplies, and labor necessary for proper construction, plumbing, wiring, and ventilation of a garden of cannabis plants.

(3) A person who knowingly violates a provision of subsection (1) of this section is not entitled to the protections of this chapter.

NEW SECTION. Sec. 404. (1) A qualifying patient may revoke his or her designation of a specific provider and designate a different provider at any time. A revocation of designation must be in writing, signed and dated. The protections of this chapter cease to apply to a person who has served as a designated provider to a qualifying patient seventy-two hours after receipt of that patient's revocation of his or her designation.

(2) A person may stop serving as a designated provider to a given qualifying patient at any time. However, that person may not begin serving as a designated provider to a different qualifying patient until fifteen days have elapsed from the date the last qualifying patient designated him or her to serve as a provider.

NEW SECTION. Sec. 405. A qualifying patient or designated provider in possession of cannabis plants, useable cannabis, or cannabis product exceeding the limits set forth in RCW 69.51A.040(1) but otherwise in compliance with all other terms and conditions of this chapter may establish an affirmative defense to charges of violations of state law relating to cannabis through proof at trial, by a preponderance of the evidence, that the qualifying patient's necessary medical use exceeds the amounts set forth in RCW 69.51A.040(1). An investigating peace officer may seize cannabis plants, useable cannabis, or cannabis product exceeding the amounts set forth in RCW 69.51A.040(1): PROVIDED, That in the case of cannabis plants, the qualifying patient or designated provider shall be allowed to select the plants that will remain at the location. The officer and his or her law enforcement agency may not be held civilly liable for failure to seize cannabis in this circumstance.

NEW SECTION. Sec. 406. A qualifying patient or designated provider who is not registered with the registry established in section 901 of this act or does not present his or her valid documentation to a peace officer who questions the patient or provider regarding his or her medical use of cannabis but is in compliance with all other terms and conditions of this chapter may establish an affirmative defense to charges of violations of state law relating to cannabis through proof at trial, by a preponderance of the evidence, that he or she was a validly authorized qualifying patient or designated provider at the time of the officer's questioning. A qualifying patient or designated provider who establishes an affirmative defense under the terms of this section may also establish an affirmative defense under section 405 of this act.

NEW SECTION. Sec. 407. A nonresident who is duly authorized to engage in the medical use of cannabis under the laws of another state or territory of the United States may raise an affirmative defense to charges of violations of Washington state law relating to cannabis, provided that the nonresident:

(1) Possesses no more than fifteen cannabis plants and no more than twenty-four ounces of useable cannabis, no more cannabis product than reasonably could be produced with no more than twenty-four ounces of useable cannabis, or a combination of useable cannabis and cannabis product that does not exceed a combined total representing possession and processing of no more than twenty-four ounces of useable cannabis;

(2) Is in compliance with all provisions of this chapter other than requirements relating to being a Washington resident or possessing valid documentation issued by a licensed health care professional in Washington;

(3) Presents the documentation of authorization required under the nonresident's authorizing state or territory's law and proof of identity issued by the authorizing state or territory to any peace officer who questions the nonresident regarding his or her medical use of cannabis; and

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(4) Does not possess evidence that the nonresident has converted cannabis produced or obtained for his or her own medical use to the nonresident's personal, nonmedical use or benefit.

NEW SECTION. Sec. 408. A qualifying patient's medical use of cannabis as authorized by a health care professional may not be a sole disqualifying factor in determining the patient's suitability for an organ transplant, unless it is shown that this use poses a significant risk of rejection or organ failure. This section does not preclude a health care professional from requiring that a patient abstain from the medical use of cannabis, for a period of time determined by the health care professional, while waiting for a transplant organ or before the patient undergoes an organ transplant.

NEW SECTION. Sec. 409. A qualifying patient or designated provider may not have his or her parental rights or residential time with a child restricted solely due to his or her medical use of cannabis in compliance with the terms of this chapter absent written findings supported by evidence that such use has resulted in a long-term impairment that interferes with the performance of parenting functions as defined under RCW 26.09.004.

NEW SECTION. Sec. 410. (1) Except as provided in subsection (2) of this section, a qualifying patient may not be refused housing or evicted from housing solely as a result of his or her possession or use of useable cannabis or cannabis products except that housing providers otherwise permitted to enact and enforce prohibitions against smoking in their housing may apply those prohibitions to smoking cannabis provided that such smoking prohibitions are applied and enforced equally as to the smoking of cannabis and the smoking of all other substances, including without limitation tobacco.

(2) Housing programs containing a program component prohibiting the use of drugs or alcohol among its residents are not required to permit the medical use of cannabis among those residents.

NEW SECTION. Sec. 411. In imposing any criminal sentence, deferred prosecution, stipulated order of continuance, deferred disposition, or dispositional order, any court organized under the laws of Washington state may permit the medical use of cannabis in compliance with the terms of this chapter and exclude it as a possible ground for finding that the offender has violated the conditions or requirements of the sentence, deferred prosecution, stipulated order of continuance, deferred disposition, or dispositional order. This section does not require the accommodation of any medical use of cannabis in any correctional facility or jail.

Sec. 412. RCW 69.51A.050 and 1999 c 2 s 7 are each amended to read as follows:

(1) The lawful possession, delivery, dispensing, production, or manufacture of ~~((medical marijuana))~~ cannabis for medical use as authorized by this chapter shall not result in the forfeiture or seizure of any real or personal property including, but not limited to, cannabis intended for medical use, items used to facilitate the medical use of cannabis or its production or dispensing for medical use, or proceeds of sales of cannabis for medical use made by licensed producers, licensed processors of cannabis products, or licensed dispensers.

(2) No person shall be prosecuted for constructive possession, conspiracy, or any other criminal offense solely for being in the presence or vicinity of ~~((medical marijuana))~~ cannabis intended for medical use or its use as authorized by this chapter.

(3) The state shall not be held liable for any deleterious outcomes from the medical use of ~~((marijuana))~~ cannabis by any qualifying patient.

NEW SECTION. Sec. 413. Nothing in this chapter or in the rules adopted to implement it precludes a qualifying patient or

designated provider from engaging in the private, unlicensed, noncommercial production, possession, transportation, delivery, or administration of cannabis for medical use as authorized under RCW 69.51A.040.

PART V

LIMITATIONS ON PROTECTIONS FOR QUALIFYING PATIENTS AND DESIGNATED PROVIDERS

Sec. 501. RCW 69.51A.060 and 2010 c 284 s 4 are each amended to read as follows:

(1) It shall be a ~~((misdemeanor))~~ class 3 civil infraction to use or display medical ~~((marijuana))~~ cannabis in a manner or place which is open to the view of the general public.

(2) Nothing in this chapter ~~((requires any health insurance provider))~~ establishes a right of care as a covered benefit or requires any state purchased health care as defined in RCW 41.05.011 or other health carrier or health plan as defined in Title 48 RCW to be liable for any claim for reimbursement for the medical use of ~~((marijuana))~~ cannabis. Such entities may enact coverage or noncoverage criteria or related policies for payment or nonpayment of medical cannabis in their sole discretion.

(3) Nothing in this chapter requires any health care professional to authorize the medical use of ~~((medical marijuana))~~ cannabis for a patient.

(4) Nothing in this chapter requires any accommodation of any on-site medical use of ~~((marijuana))~~ cannabis in any place of employment, in any school bus or on any school grounds, in any youth center, in any correctional facility, or smoking ~~((medical marijuana))~~ cannabis in any public place ~~((as that term is defined in RCW 70.160.020))~~ or hotel or motel.

(5) Nothing in this chapter authorizes the use of medical cannabis by any person who is subject to the Washington code of military justice in chapter 38.38 RCW.

(6) Employers may establish drug-free work policies. Nothing in this chapter requires an accommodation for the medical use of cannabis if an employer has a drug-free work place.

(7) It is a class C felony to fraudulently produce any record purporting to be, or tamper with the content of any record for the purpose of having it accepted as, valid documentation under RCW 69.51A.010~~((7))~~ (32)(a), or to backdate such documentation to a time earlier than its actual date of execution.

~~((6))~~ (8) No person shall be entitled to claim the ~~((affirmative defense provided in RCW 69.51A.040))~~ protection from arrest and prosecution under RCW 69.51A.040 or the affirmative defense under section 402 of this act for engaging in the medical use of ~~((marijuana))~~ cannabis in a way that endangers the health or well-being of any person through the use of a motorized vehicle on a street, road, or highway, including violations of RCW 46.61.502 or 46.61.504, or equivalent local ordinances.

PART VI

LICENSED PRODUCERS AND LICENSED PROCESSORS OF CANNABIS PRODUCTS

NEW SECTION. Sec. 601. A person may not act as a licensed producer without a license for each production facility issued by the department of agriculture and prominently displayed on the premises. Provided they are acting in compliance with the terms of this chapter and rules adopted to enforce and carry out its purposes, licensed producers and their employees, members, officers, and directors may manufacture, plant, cultivate, grow, harvest, produce, prepare, propagate, process, package, repackage, transport, transfer, deliver, label, relabel, wholesale, or possess cannabis intended for medical use by qualifying patients, including

seeds, seedlings, cuttings, plants, and useable cannabis, and may not be arrested, searched, prosecuted, or subject to other criminal sanctions or civil consequences under state law, or have real or personal property searched, seized, or forfeited pursuant to state law, for such activities, notwithstanding any other provision of law.

NEW SECTION. Sec. 602. A person may not act as a licensed processor without a license for each processing facility issued by the department of agriculture and prominently displayed on the premises. Provided they are acting in compliance with the terms of this chapter and rules adopted to enforce and carry out its purposes, licensed processors of cannabis products and their employees, members, officers, and directors may possess useable cannabis and manufacture, produce, prepare, process, package, repack, transport, transfer, deliver, label, relabel, wholesale, or possess cannabis products intended for medical use by qualifying patients, and may not be arrested, searched, prosecuted, or subject to other criminal sanctions or civil consequences under state law, or have real or personal property searched, seized, or forfeited pursuant to state law, for such activities, notwithstanding any other provision of law.

NEW SECTION. Sec. 603. The director shall administer and carry out the provisions of this chapter relating to licensed producers and licensed processors of cannabis products, and rules adopted under this chapter.

NEW SECTION. Sec. 604. (1) On a schedule determined by the department of agriculture, licensed producers and licensed processors must submit representative samples of cannabis grown or processed to a cannabis analysis laboratory for grade, condition, cannabinoid profile, THC concentration, other qualitative measurements of cannabis intended for medical use, and other inspection standards determined by the department of agriculture. Any samples remaining after testing must be destroyed by the laboratory or returned to the licensed producer or licensed processor.

(2) Licensed producers and licensed processors must submit copies of the results of this inspection and testing to the department of agriculture on a form developed by the department.

(3) If a representative sample of cannabis tested under this section has a THC concentration of three-tenths of one percent or less, the lot of cannabis the sample was taken from may not be sold for medical use and must be destroyed or sold to a manufacturer of hemp products.

NEW SECTION. Sec. 605. The department of agriculture may contract with a cannabis analysis laboratory to conduct independent inspection and testing of cannabis samples to verify testing results provided under section 604 of this act.

NEW SECTION. Sec. 606. The department of agriculture may adopt rules on:

(1) Facility standards, including scales, for all licensed producers and licensed processors of cannabis products;

(2) Measurements for cannabis intended for medical use, including grade, condition, cannabinoid profile, THC concentration, other qualitative measurements, and other inspection standards for cannabis intended for medical use; and

(3) Methods to identify cannabis intended for medical use so that such cannabis may be readily identified if stolen or removed in violation of the provisions of this chapter from a production or processing facility, or if otherwise unlawfully transported.

NEW SECTION. Sec. 607. The director is authorized to deny, suspend, or revoke a producer's or processor's license after a hearing in any case in which it is determined that there has been a violation or refusal to comply with the requirements of this chapter or rules adopted hereunder. All hearings for the denial, suspension, or revocation of a producer's or processor's license are subject to chapter 34.05 RCW, the administrative procedure act, as enacted or hereafter amended.

NEW SECTION. Sec. 608. (1) By January 1, 2013, taking into consideration, but not being limited by, the security requirements described in 21 C.F.R. Sec. 1301.71-1301.76, the director shall adopt rules:

(a) On the inspection or grading and certification of grade, grading factors, condition, cannabinoid profile, THC concentration, or other qualitative measurement of cannabis intended for medical use that must be used by cannabis analysis laboratories in section 604 of this act;

(b) Fixing the sizes, dimensions, and safety and security features required of containers to be used for packing, handling, or storing cannabis intended for medical use;

(c) Establishing labeling requirements for cannabis intended for medical use including, but not limited to:

(i) The business or trade name and Washington state unified business identifier (UBI) number of the licensed producer of the cannabis;

(ii) THC concentration; and

(iii) Information on whether the cannabis was grown using organic, inorganic, or synthetic fertilizers;

(d) Establishing requirements for transportation of cannabis intended for medical use from production facilities to processing facilities and licensed dispensers;

(e) Establishing security requirements for the facilities of licensed producers and licensed processors of cannabis products. These security requirements must consider the safety of the licensed producers and licensed processors as well as the safety of the community surrounding the licensed producers and licensed processors;

(f) Establishing requirements for the licensure of producers, and processors of cannabis products, setting forth procedures to obtain licenses, and determining expiration dates and renewal requirements; and

(g) Establishing license application and renewal fees for the licensure of producers and processors of cannabis products.

(2) Fees collected under this section must be deposited into the agricultural local fund created in RCW 43.23.230.

(3) During the rule-making process, the department of agriculture shall consult with stakeholders and persons with relevant expertise, to include but not be limited to qualifying patients, designated providers, health care professionals, state and local law enforcement agencies, and the department of health.

NEW SECTION. Sec. 609. (1) Each licensed producer and licensed processor of cannabis products shall maintain complete records at all times with respect to all cannabis produced, processed, weighed, tested, stored, shipped, or sold. The director shall adopt rules specifying the minimum recordkeeping requirements necessary to comply with this section.

(2) The property, books, records, accounts, papers, and proceedings of every licensed producer and licensed processor of cannabis products shall be subject to inspection by the department of agriculture at any time during ordinary business hours. Licensed producers and licensed processors of cannabis products shall maintain adequate records and systems for the filing and accounting of crop production, product manufacturing and processing, records of weights and measurements, product testing, receipts, canceled receipts, other documents, and transactions necessary or common to the medical cannabis industry.

(3) The director may administer oaths and issue subpoenas to compel the attendance of witnesses, or the production of books, documents, and records anywhere in the state pursuant to a hearing relative to the purposes and provisions of this chapter. Witnesses shall be entitled to fees for attendance and travel, as provided in chapter 2.40 RCW.

(4) Each licensed producer and licensed processor of cannabis products shall report information to the department of agriculture at

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such times and as may be reasonably required by the director for the necessary enforcement and supervision of a sound, reasonable, and efficient cannabis inspection program for the protection of the health and welfare of qualifying patients.

NEW SECTION. Sec. 610. (1) The department of agriculture may give written notice to a licensed producer or processor of cannabis products to furnish required reports, documents, or other requested information, under such conditions and at such time as the department of agriculture deems necessary if a licensed producer or processor of cannabis products fails to:

(a) Submit his or her books, papers, or property to lawful inspection or audit;

(b) Submit required laboratory results, reports, or documents to the department of agriculture by their due date; or

(c) Furnish the department of agriculture with requested information.

(2) If the licensed producer or processor of cannabis products fails to comply with the terms of the notice within seventy-two hours from the date of its issuance, or within such further time as the department of agriculture may allow, the department of agriculture shall levy a fine of five hundred dollars per day from the final date for compliance allowed by this section or the department of agriculture. In those cases where the failure to comply continues for more than seven days or where the director determines the failure to comply creates a threat to public health, public safety, or a substantial risk of diversion of cannabis to unauthorized persons or purposes, the department of agriculture may, in lieu of levying further fines, petition the superior court of the county where the licensee's principal place of business in Washington is located, as shown by the license application, for an order:

(a) Authorizing the department of agriculture to seize and take possession of all books, papers, and property of all kinds used in connection with the conduct or the operation of the licensed producer or processor's business, and the books, papers, records, and property that pertain specifically, exclusively, and directly to that business; and

(b) Enjoining the licensed producer or processor from interfering with the department of agriculture in the discharge of its duties as required by this chapter.

(3) All necessary costs and expenses, including attorneys' fees, incurred by the department of agriculture in carrying out the provisions of this section may be recovered at the same time and as part of the action filed under this section.

(4) The department of agriculture may request the Washington state patrol to assist it in enforcing this section if needed to ensure the safety of its employees.

NEW SECTION. Sec. 611. (1) A licensed producer may not sell or deliver cannabis to any person other than a cannabis analysis laboratory, licensed processor of cannabis products, licensed dispenser, or law enforcement officer except as provided by court order. A licensed producer may also sell or deliver cannabis to the University of Washington or Washington State University for research purposes, as identified in section 1002 of this act. Violation of this section is a class C felony punishable according to chapter 9A.20 RCW.

(2) A licensed processor of cannabis products may not sell or deliver cannabis to any person other than a cannabis analysis laboratory, licensed dispenser, or law enforcement officer except as provided by court order. A licensed processor of cannabis products may also sell or deliver cannabis to the University of Washington or Washington State University for research purposes, as identified in section 1002 of this act. Violation of this section is a class C felony punishable according to chapter 9A.20 RCW.

PART VII LICENSED DISPENSERS

NEW SECTION. Sec. 701. A person may not act as a licensed dispenser without a license for each place of business issued by the department of health and prominently displayed on the premises. Provided they are acting in compliance with the terms of this chapter and rules adopted to enforce and carry out its purposes, licensed dispensers and their employees, members, officers, and directors may deliver, distribute, dispense, transfer, prepare, package, repack, label, relabel, sell at retail, or possess cannabis intended for medical use by qualifying patients, including seeds, seedlings, cuttings, plants, useable cannabis, and cannabis products, and may not be arrested, searched, prosecuted, or subject to other criminal sanctions or civil consequences under state law, or have real or personal property searched, seized, or forfeited pursuant to state law, for such activities, notwithstanding any other provision of law.

NEW SECTION. Sec. 702. (1) By January 1, 2013, taking into consideration the security requirements described in 21 C.F.R. 1301.71-1301.76, the secretary of health shall adopt rules:

(a) Establishing requirements for the licensure of dispensers of cannabis for medical use, setting forth procedures to obtain licenses, and determining expiration dates and renewal requirements;

(b) Providing for mandatory inspection of licensed dispensers' locations;

(c) Establishing procedures governing the suspension and revocation of licenses of dispensers;

(d) Establishing recordkeeping requirements for licensed dispensers;

(e) Fixing the sizes and dimensions of containers to be used for dispensing cannabis for medical use;

(f) Establishing safety standards for containers to be used for dispensing cannabis for medical use;

(g) Establishing cannabis storage requirements, including security requirements;

(h) Establishing cannabis labeling requirements, to include information on whether the cannabis was grown using organic, inorganic, or synthetic fertilizers;

(i) Establishing physical standards for cannabis dispensing facilities. The physical standards must require a licensed dispenser to ensure that no cannabis or cannabis paraphernalia may be viewed from outside the facility;

(j) Establishing maximum amounts of cannabis and cannabis products that may be kept at one time at a dispensary. In determining maximum amounts, the secretary must consider the security of the dispensary and the surrounding community;

(k) Establishing physical standards for sanitary conditions for cannabis dispensing facilities;

(l) Establishing physical and sanitation standards for cannabis dispensing equipment;

(m) Establishing a maximum number of licensed dispensers that may be licensed in each county as provided in this section;

(n) Enforcing and carrying out the provisions of this section and the rules adopted to carry out its purposes; and

(o) Establishing license application and renewal fees for the licensure of dispensers in accordance with RCW 43.70.250.

(2)(a) The secretary shall establish a maximum number of licensed dispensers that may operate in each county. Prior to January 1, 2016, the maximum number of licensed dispensers shall be based upon a ratio of one licensed dispenser for every twenty thousand persons in a county. On or after January 1, 2016, the secretary may adopt rules to adjust the method of calculating the maximum number of dispensers to consider additional factors, such as the number of enrollees in the registry established in section 901

of this act and the secretary's experience in administering the program. The secretary may not issue more licenses than the maximum number of licenses established under this section.

(b) In the event that the number of applicants qualifying for the selection process exceeds the maximum number for a county, the secretary shall initiate a random selection process established by the secretary in rule.

(c) To qualify for the selection process, an applicant must demonstrate to the secretary that he or she meets initial screening criteria that represent the applicant's capacity to operate in compliance with this chapter. Initial screening criteria shall include, but not be limited to:

(i) Successful completion of a background check;

(ii) A plan to systematically verify qualifying patient and designated provider status of clients;

(iii) Evidence of compliance with functional standards, such as ventilation and security requirements; and

(iv) Evidence of compliance with facility standards, such as zoning compliance and not using the facility as a residence.

(d) The secretary shall establish a schedule to:

(i) Update the maximum allowable number of licensed dispensers in each county; and

(ii) Issue approvals to operate within a county according to the random selection process.

(3) Fees collected under this section must be deposited into the health professions account created in RCW 43.70.320.

(4) During the rule-making process, the department of health shall consult with stakeholders and persons with relevant expertise, to include but not be limited to qualifying patients, designated providers, health care professionals, state and local law enforcement agencies, and the department of agriculture.

NEW SECTION. Sec. 703. A licensed dispenser may not sell cannabis received from any person other than a licensed producer or licensed processor of cannabis products, or sell or deliver cannabis to any person other than a qualifying patient, designated provider, or law enforcement officer except as provided by court order. A licensed dispenser may also sell or deliver cannabis to the University of Washington or Washington State University for research purposes, as identified in section 1002 of this act. Before selling or providing cannabis to a qualifying patient or designated provider, the licensed dispenser must confirm that the patient qualifies for the medical use of cannabis by contacting, at least once in a one-year period, that patient's health care professional. Violation of this section is a class C felony punishable according to chapter 9A.20 RCW.

NEW SECTION. Sec. 704. A license to operate as a licensed dispenser is not transferrable.

NEW SECTION. Sec. 705. The secretary of health shall not issue or renew a license to an applicant or licensed dispenser located within five hundred feet of a community center, child care center, elementary or secondary school, or another licensed dispenser.

PART VIII MISCELLANEOUS PROVISIONS APPLYING TO ALL LICENSED PRODUCERS, PROCESSORS, AND DISPENSERS

NEW SECTION. Sec. 801. All weighing and measuring instruments and devices used by licensed producers, processors of cannabis products, and dispensers shall comply with the requirements set forth in chapter 19.94 RCW.

NEW SECTION. Sec. 802. (1) No person, partnership, corporation, association, or agency may advertise cannabis for sale to the general public in any manner that promotes or tends to promote the use or abuse of cannabis. For the purposes of this subsection, displaying cannabis, including artistic depictions of

cannabis, is considered to promote or to tend to promote the use or abuse of cannabis.

(2) The department of agriculture may fine a licensed producer or processor of cannabis products up to one thousand dollars for each violation of subsection (1) of this section. Fines collected under this subsection must be deposited into the agriculture local fund created in RCW 43.23.230.

(3) The department of health may fine a licensed dispenser up to one thousand dollars for each violation of subsection (1) of this section. Fines collected under this subsection must be deposited into the health professions account created in RCW 43.70.320.

(4) No broadcast television licensee, radio broadcast licensee, newspaper, magazine, advertising agency, or agency or medium for the dissemination of an advertisement, except the licensed producer, processor of cannabis products, or dispenser to which the advertisement relates, is subject to the penalties of this section by reason of dissemination of advertising in good faith without knowledge that the advertising promotes or tends to promote the use or abuse of cannabis.

NEW SECTION. Sec. 803. (1) A prior conviction for a cannabis or marijuana offense shall not disqualify an applicant from receiving a license to produce, process, or dispense cannabis for medical use, provided the conviction did not include any sentencing enhancements under RCW 9.94A.533 or analogous laws in other jurisdictions. Any criminal conviction of a current licensee may be considered in proceedings to suspend or revoke a license.

(2) Nothing in this section prohibits either the department of health or the department of agriculture, as appropriate, from denying, suspending, or revoking the credential of a license holder for other drug-related offenses or any other criminal offenses.

(3) Nothing in this section prohibits a corrections agency or department from considering all prior and current convictions in determining whether the possession, manufacture, or delivery of, or for possession with intent to manufacture or deliver, is inconsistent with and contrary to the person's supervision.

NEW SECTION. Sec. 804. A violation of any provision or section of this chapter that relates to the licensing and regulation of producers, processors, or dispensers, where no other penalty is provided for, and the violation of any rule adopted under this chapter constitutes a misdemeanor.

NEW SECTION. Sec. 805. (1) Every licensed producer or processor of cannabis products who fails to comply with this chapter, or any rule adopted under it, may be subjected to a civil penalty, as determined by the director, in an amount of not more than one thousand dollars for every such violation. Each violation shall be a separate and distinct offense.

(2) Every licensed dispenser who fails to comply with this chapter, or any rule adopted under it, may be subjected to a civil penalty, as determined by the secretary, in an amount of not more than one thousand dollars for every such violation. Each violation shall be a separate and distinct offense.

(3) Every person who, through an act of commission or omission, procures, aids, or abets in the violation shall be considered to have violated this chapter and may be subject to the penalty provided for in this section.

NEW SECTION. Sec. 806. The department of agriculture or the department of health, as the case may be, must immediately suspend any certification of licensure issued under this chapter if the holder of the certificate has been certified under RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order. If the person has continued to meet all other requirements for certification during the suspension, reissuance of the certificate of licensure shall be automatic upon the department's receipt of a release issued by the department of social and health services stating that the person is in compliance with the order.

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NEW SECTION. Sec. 807. The department of agriculture or the department of health, as the case may be, must suspend the certification of licensure of any person who has been certified by a lending agency and reported to the appropriate department for nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. Prior to the suspension, the department of agriculture or the department of health, as the case may be, must provide the person an opportunity for a brief adjudicative proceeding under RCW 34.05.485 through 34.05.494 and issue a finding of nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. The person's license may not be reissued until the person provides the appropriate department a written release issued by the lending agency stating that the person is making payments on the loan in accordance with a repayment agreement approved by the lending agency. If the person has continued to meet all other requirements for certification or registration during the suspension, reinstatement is automatic upon receipt of the notice and payment of any reinstatement fee.

**PART IX
SECURE REGISTRATION OF QUALIFYING PATIENTS,
DESIGNATED PROVIDERS,
AND LICENSED PRODUCERS, PROCESSORS, AND
DISPENSERS**

NEW SECTION. Sec. 901. (1) By January 1, 2013, the department of health shall, in consultation with the department of agriculture, adopt rules for the creation, implementation, maintenance, and timely upgrading of a secure and confidential registration system that allows:

(a) A peace officer to verify at any time whether a health care professional has registered a person as either a qualifying patient or a designated provider; and

(b) A peace officer to verify at any time whether a person, location, or business is licensed by the department of agriculture or the department of health as a licensed producer, licensed processor of cannabis products, or licensed dispenser.

(2) The department of agriculture must, in consultation with the department of health, create and maintain a secure and confidential list of persons to whom it has issued a license to produce cannabis for medical use or a license to process cannabis products, and the physical addresses of the licensees' production and processing facilities. The list must meet the requirements of subsection (9) of this section and be transmitted to the department of health to be included in the registry established by this section.

(3) The department of health must, in consultation with the department of agriculture, create and maintain a secure and confidential list of the persons to whom it has issued a license to dispense cannabis for medical use that meets the requirements of subsection (9) of this section and must be included in the registry established by this section.

(4) Before seeking a nonvehicle search warrant or arrest warrant, a peace officer investigating a cannabis-related incident must make reasonable efforts to ascertain whether the location or person under investigation is registered in the registration system, and include the results of this inquiry in the affidavit submitted in support of the application for the warrant. This requirement does not apply to investigations in which:

(a) The peace officer has observed evidence of an apparent cannabis operation that is not a licensed producer, processor of cannabis products, or dispenser;

(b) The peace officer has observed evidence of theft of electrical power;

(c) The peace officer has observed evidence of illegal drugs other than cannabis at the premises;

(d) The peace officer has observed frequent and numerous short-term visits over an extended period that are consistent with commercial activity, if the subject of the investigation is not a licensed dispenser;

(e) The peace officer has observed violent crime or other demonstrated dangers to the community;

(f) The peace officer has probable cause to believe the subject of the investigation has committed a felony, or a misdemeanor in the officer's presence, that does not relate to cannabis; or

(g) The subject of the investigation has an outstanding arrest warrant.

(5) Law enforcement may access the registration system only in connection with a specific, legitimate criminal investigation regarding cannabis.

(6) Registration in the system shall be optional for qualifying patients and designated providers, not mandatory, and registrations are valid for one year, except that qualifying patients must be able to remove themselves from the registry at any time. For licensees, registrations are valid for the term of the license and the registration must be removed if the licensee's license is expired or revoked. The department of health must adopt rules providing for registration renewals and for removing expired registrations and expired or revoked licenses from the registry.

(7) Fees, including renewal fees, for qualifying patients and designated providers participating in the registration system shall be limited to the cost to the state of implementing, maintaining, and enforcing the provisions of this section and the rules adopted to carry out its purposes. The fee shall also include any costs for the department of health to disseminate information to employees of state and local law enforcement agencies relating to whether a person is a licensed producer, processor of cannabis products, or dispenser, or that a location is the recorded address of a license producer, processor of cannabis products, or dispenser, and for the dissemination of log records relating to such requests for information to the subjects of those requests. No fee may be charged to local law enforcement agencies for accessing the registry.

(8) During the rule-making process, the department of health shall consult with stakeholders and persons with relevant expertise, to include, but not be limited to, qualifying patients, designated providers, health care professionals, state and local law enforcement agencies, and the University of Washington computer science and engineering security and privacy research lab.

(9) The registration system shall meet the following requirements:

(a) Any personally identifiable information included in the registration system must be "nonreversible," pursuant to definitions and standards set forth by the national institute of standards and technology;

(b) Any personally identifiable information included in the registration system must not be susceptible to linkage by use of data external to the registration system;

(c) The registration system must incorporate current best differential privacy practices, allowing for maximum accuracy of registration system queries while minimizing the chances of identifying the personally identifiable information included therein; and

(d) The registration system must be upgradable and updated in a timely fashion to keep current with state of the art privacy and security standards and practices.

(10) The registration system shall maintain a log of each verification query submitted by a peace officer, including the peace officer's name, agency, and identification number, for a period of no

less than three years from the date of the query. Personally identifiable information of qualifying patients and designated providers included in the log shall be confidential and exempt from public disclosure, inspection, or copying under chapter 42.56 RCW: PROVIDED, That:

(a) Names and other personally identifiable information from the list may be released only to:

(i) Authorized employees of the department of agriculture and the department of health as necessary to perform official duties of either department; or

(ii) Authorized employees of state or local law enforcement agencies, only as necessary to verify that the person or location is a qualified patient, designated provider, licensed producer, licensed processor of cannabis products, or licensed dispenser, and only after the inquiring employee has provided adequate identification. Authorized employees who obtain personally identifiable information under this subsection may not release or use the information for any purpose other than verification that a person or location is a qualified patient, designated provider, licensed producer, licensed processor of cannabis products, or licensed dispenser;

(b) Information contained in the registration system may be released in aggregate form, with all personally identifying information redacted, for the purpose of statistical analysis and oversight of agency performance and actions;

(c) The subject of a registration query may appear during ordinary department of health business hours and inspect or copy log records relating to him or her upon adequate proof of identity; and

(d) The subject of a registration query may submit a written request to the department of health, along with adequate proof of identity, for copies of log records relating to him or her.

(11) This section does not prohibit a department of agriculture employee or a department of health employee from contacting state or local law enforcement for assistance during an emergency or while performing his or her duties under this chapter.

(12) Fees collected under this section must be deposited into the health professions account under RCW 43.70.320.

NEW SECTION. Sec. 902. A new section is added to chapter 42.56 RCW to read as follows:

Records containing names and other personally identifiable information relating to qualifying patients, designated providers, and persons licensed as producers or dispensers of cannabis for medical use, or as processors of cannabis products, under section 901 of this act are exempt from disclosure under this chapter.

PART X EVALUATION

NEW SECTION. Sec. 1001. (1) By July 1, 2014, the Washington state institute for public policy shall, within available funds, conduct a cost-benefit evaluation of the implementation of this act and the rules adopted to carry out its purposes.

(2) The evaluation of the implementation of this act and the rules adopted to carry out its purposes shall include, but not necessarily be limited to, consideration of the following factors:

(a) Qualifying patients' access to an adequate source of cannabis for medical use;

(b) Qualifying patients' access to a safe source of cannabis for medical use;

(c) Qualifying patients' access to a consistent source of cannabis for medical use;

(d) Qualifying patients' access to a secure source of cannabis for medical use;

(e) Qualifying patients' and designated providers' contact with law enforcement and involvement in the criminal justice system;

(f) Diversion of cannabis intended for medical use to nonmedical uses;

(g) Incidents of home invasion burglaries, robberies, and other violent and property crimes associated with qualifying patients accessing cannabis for medical use;

(h) Whether there are health care professionals who make a disproportionately high amount of authorizations in comparison to the health care professional community at large;

(i) Whether there are indications of health care professionals in violation of RCW 69.51A.030; and

(j) Whether the health care professionals making authorizations reside in this state or out of this state.

(3) For purposes of facilitating this evaluation, the departments of health and agriculture will make available to the Washington state institute for public policy requested data, and any other data either department may consider relevant, from which all personally identifiable information has been redacted.

NEW SECTION. Sec. 1002. A new section is added to chapter 28B.20 RCW to read as follows:

The University of Washington and Washington State University may conduct scientific research on the efficacy and safety of administering cannabis as part of medical treatment. As part of this research, the University of Washington and Washington State University may develop and conduct studies to ascertain the general medical safety and efficacy of cannabis and may develop medical guidelines for the appropriate administration and use of cannabis.

PART XI CONSTRUCTION

NEW SECTION. Sec. 1101. (1) No civil or criminal liability may be imposed by any court on the state or its officers and employees for actions taken in good faith under this chapter and within the scope of their assigned duties.

(2) No civil or criminal liability may be imposed by any court on cities, towns, and counties or other municipalities and their officers and employees for actions taken in good faith under this chapter and within the scope of their assigned duties.

NEW SECTION. Sec. 1102. (1) Cities and towns may adopt and enforce any of the following pertaining to the production, processing, or dispensing of cannabis or cannabis products within their jurisdiction: Zoning requirements, business licensing requirements, health and safety requirements, and business taxes. Nothing in this act is intended to limit the authority of cities and towns to impose zoning requirements or other conditions upon licensed dispensers, so long as such requirements do not preclude the possibility of siting licensed dispensers within the jurisdiction. If the jurisdiction has no commercial zones, the jurisdiction is not required to adopt zoning to accommodate licensed dispensers.

(2) Counties may adopt and enforce any of the following pertaining to the production, processing, or dispensing of cannabis or cannabis products within their jurisdiction in locations outside of the corporate limits of any city or town: Zoning requirements, business licensing requirements, and health and safety requirements. Nothing in this act is intended to limit the authority of counties to impose zoning requirements or other conditions upon licensed dispensers, so long as such requirements do not preclude the possibility of siting licensed dispensers within the jurisdiction. If the jurisdiction has no commercial zones, the jurisdiction is not required to adopt zoning to accommodate licensed dispensers.

NEW SECTION. Sec. 1103. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

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NEW SECTION. Sec. 1104. In the event that the federal government authorizes the use of cannabis for medical purposes, within a year of such action, the joint legislative audit and review committee shall conduct a program and fiscal review of the cannabis production and dispensing programs established in this chapter. The review shall consider whether a distinct cannabis production and dispensing system continues to be necessary when considered in light of the federal action and make recommendations to the legislature.

NEW SECTION. Sec. 1105. (1)(a) The arrest and prosecution protections established in section 401 of this act may not be asserted in a supervision revocation or violation hearing by a person who is supervised by a corrections agency or department, including local governments or jails, that has determined that the terms of this section are inconsistent with and contrary to his or her supervision.

(b) The affirmative defenses established in sections 402, 405, 406, and 407 of this act may not be asserted in a supervision revocation or violation hearing by a person who is supervised by a corrections agency or department, including local governments or jails, that has determined that the terms of this section are inconsistent with and contrary to his or her supervision.

(2) The provisions of RCW 69.51A.040 and sections 403 and 413 of this act do not apply to a person who is supervised for a criminal conviction by a corrections agency or department, including local governments or jails, that has determined that the terms of this chapter are inconsistent with and contrary to his or her supervision.

(3) A person may not be licensed as a licensed producer, licensed processor of cannabis products, or a licensed dispenser under section 601, 602, or 701 of this act if he or she is supervised for a criminal conviction by a corrections agency or department, including local governments or jails, that has determined that licensure is inconsistent with and contrary to his or her supervision.

Sec. 1106. RCW 69.51A.900 and 1999 c 2 s 1 are each amended to read as follows:

This chapter may be known and cited as the Washington state medical use of (~~marijuana~~) cannabis act.

**PART XII
MISCELLANEOUS**

NEW SECTION. Sec. 1201. (1) The legislature recognizes that there are cannabis producers and cannabis dispensaries in operation as of the effective date of this section that are unregulated by the state and who produce and dispense cannabis for medical use by qualifying patients. The legislature intends that these producers and dispensaries become licensed in accordance with the requirements of this chapter and that this licensing provides them with arrest protection so long as they remain in compliance with the requirements of this chapter and the rules adopted under this chapter. The legislature further recognizes that cannabis producers and cannabis dispensaries in current operation are not able to become licensed until the department of agriculture and the department of health adopt rules and, consequently, it is likely they will remain unlicensed until at least January 1, 2013. These producers and dispensary owners and operators run the risk of arrest between the effective date of this section and the time they become licensed. Therefore, the legislature intends to provide them with an affirmative defense if they meet the requirements of this section.

(2) If charged with a violation of state law relating to cannabis, a producer of cannabis or a dispensary and its owners and operators that are engaged in the production or dispensing of cannabis to a qualifying patient or who assists a qualifying patient in the medical

use of cannabis is deemed to have established an affirmative defense to such charges by proof of compliance with this section.

(3) In order to assert an affirmative defense under this section, a cannabis producer or cannabis dispensary must:

(a) In the case of producers, solely provide cannabis to cannabis dispensaries for the medical use of cannabis by qualified patients;

(b) In the case of dispensaries, solely provide cannabis to qualified patients for their medical use;

(c) Be registered with the secretary of state as of May 1, 2011;

(d) File a letter of intent with the department of agriculture or the department of health, as the case may be, asserting that the producer or dispenser intends to become licensed in accordance with this chapter and rules adopted by the appropriate department; and

(e) File a letter of intent with the city clerk if in an incorporated area or to the county clerk if in an unincorporated area stating they operate as a producer or dispensary and that they comply with the provisions of this chapter and will comply with subsequent department rule making.

(4) Upon receiving a letter of intent under subsection (3) of this section, the department of agriculture, the department of health, and the city clerk or county clerk must send a letter of acknowledgment to the producer or dispenser. The producer and dispenser must display this letter of acknowledgment in a prominent place in their facility.

(5) Letters of intent filed with a public agency, letters of acknowledgement sent from those agencies, and other materials related to such letters are exempt from public disclosure under chapter 42.56 RCW.

(6) This section expires upon the establishment of the licensing programs of the department of agriculture and the department of health and the commencement of the issuance of licenses for dispensers and producers as provided in this chapter. The department of health and the department of agriculture shall notify the code reviser when the establishment of the licensing programs has occurred.

NEW SECTION. Sec. 1202. A new section is added to chapter 42.56 RCW to read as follows:

The following information related to cannabis producers and cannabis dispensers are exempt from disclosure under this section:

(1) Letters of intent filed with a public agency under section 1201 of this act;

(2) Letters of acknowledgement sent from a public agency under section 1201 of this act;

(3) Materials related to letters of intent and acknowledgement under section 1201 of this act.

NEW SECTION. Sec. 1203. (1)(a) On July 1, 2015, the department of health shall report the following information to the state treasurer:

(i) The expenditures from the health professions account related to the administration of chapter 69.51A RCW between the effective date of this section and June 30, 2015; and

(ii) The amounts deposited into the health professions account under sections 702, 802, and 901 of this act between the effective date of this section and June 30, 2015.

(b) If the amount in (a)(i) of this subsection exceeds the amount in (a)(ii) of this subsection, the state treasurer shall transfer an amount equal to the difference from the general fund to the health professions account.

(2)(a) Annually, beginning July 1, 2016, the department of health shall report the following information to the state treasurer:

(i) The expenditures from the health professions account related to the administration of chapter 69.51A RCW for the preceding fiscal year; and

(ii) The amounts deposited into the health professions account under sections 702, 802, and 901 of this act during the preceding fiscal year.

(b) If the amount in (a)(i) of this subsection exceeds the amount in (a)(ii) of this subsection, the state treasurer shall transfer an amount equal to the difference from the general fund to the health professions account.

NEW SECTION. Sec. 1204. RCW 69.51A.080 (Adoption of rules by the department of health--Sixty-day supply for qualifying patients) and 2007 c 371 s 8 are each repealed.

NEW SECTION. Sec. 1205. Sections 402 through 411, 413, 601 through 611, 701 through 705, 801 through 807, 901, 1001, 1101 through 1105, and 1201 of this act are each added to chapter 69.51A RCW.

NEW SECTION. Sec. 1206. Section 1002 of this act takes effect January 1, 2013."

Correct the title.
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Kohl-Welles moved that the Senate concur in the House amendment(s) to Engrossed Second Substitute Senate Bill No. 5073.

Senators Kohl-Welles, Prentice, Keiser, Delvin, Regala and Pflug spoke in favor of the motion.

Senators Sheldon, Hargrove, Schoesler, Shin, Carrell, Roach and Baxter spoke against the motion.

The President declared the question before the Senate to be the motion by Senator Kohl-Welles that the Senate concur in the House amendment(s) to Engrossed Second Substitute Senate Bill No. 5073.

The motion by Senator Kohl-Welles carried and the Senate concurred in the House amendment(s) to Engrossed Second Substitute Senate Bill No. 5073 by a rising vote.

The President declared the question before the Senate to be the final passage of Engrossed Second Substitute Senate Bill No. 5073, as amended by the House.

Senators Kohl-Welles, Brown and Baumgartner spoke in favor of passage of the bill.

Senators Sheldon, Hargrove, Becker and Honeyford spoke against passage of the bill.

ROLL CALL

The Secretary called the roll on the final passage of to Second Substitute Senate Bill No. 5073, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 27; Nays, 21; Absent, 0; Excused, 1.

Voting yea: Senators Baumgartner, Brown, Chase, Delvin, Eide, Fain, Fraser, Harper, Hatfield, Hill, Hobbs, Keiser, Kline, Kohl-Welles, Litzow, McAuliffe, Murray, Nelson, Pflug, Prentice, Pridemore, Ranker, Regala, Rockefeller, Tom, White and Zarelli

Voting nay: Senators Baxter, Becker, Benton, Carrell, Conway, Ericksen, Hargrove, Haugen, Hewitt, Holmquist Newbry, Honeyford, Kastama, Kilmer, King, Morton, Roach, Schoesler, Sheldon, Shin, Stevens and Swecker

Excused: Senator Parlette

ENGROSSED SECOND SUBSTITUTE SENATE BILL NO. 5073, as amended by the House, 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 12:07 p.m., on motion of Senator Eide, the Senate was declared to be at ease subject to the call of the President.

AFTERNOON SESSION

The Senate was called to order at 1:37 p.m. by President Owen.

MESSAGE FROM THE HOUSE

April 21, 2011

MR. PRESIDENT:

The House concurred in the Senate amendments to the following bills and passed the bills as amended by the Senate:

SUBSTITUTE HOUSE BILL 1046,

SECOND SUBSTITUTE HOUSE BILL 1128,

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1546.

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

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

SECOND READING CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

MOTION

Senator Fraser moved that Gubernatorial Appointment No. 9081, Kathleen Mix, as a member of the Pollution Control/Shorelines Hearings Board, be confirmed.

Senator Fraser spoke in favor of the motion.

MOTION

On motion of Senator Ericksen, Senators Benton and Roach were excused.

MOTION

On motion of Senator White, Senator Shin was excused.

APPOINTMENT OF KATHLEEN MIX

The President declared the question before the Senate to be the confirmation of Gubernatorial Appointment No. 9081, Kathleen Mix as a member of the Pollution Control/Shorelines Hearings Board.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9081, Kathleen Mix as a member of the Pollution Control/Shorelines Hearings Board and the appointment was confirmed by the following vote: Yeas, 44; Nays, 0; Absent, 3; Excused, 2.

Voting yea: Senators Baumgartner, Baxter, Becker, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser,

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Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Nelson, Pflug, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom, White and Zarelli

Absent: Senators Hargrove, Murray and Prentice

Excused: Senators Benton and Parlette

Gubernatorial Appointment No. 9081, Kathleen Mix, having received the constitutional majority was declared confirmed as a member of the Pollution Control/Shorelines Hearings Board.

MOTION

On motion of Senator White, Senator Prentice was excused.

MOTION

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

MESSAGE FROM THE HOUSE

April 11, 2011

MR. PRESIDENT:

The House passed SUBSTITUTE SENATE BILL NO. 5487 with the following amendment(s): 5487-S AMH ENGR H2541.E

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 69.25.020 and 1995 c 374 s 25 are each amended to read as follows:

When used in this chapter the following terms shall have the indicated meanings, unless the context otherwise requires:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or his duly authorized representative.

(3) "Person" means any natural person, firm, partnership, exchange, association, trustee, receiver, corporation, and any member, officer, or employee thereof, or assignee for the benefit of creditors.

(4) "Adulterated" applies to any egg or egg product under one or more of the following circumstances:

(a) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health;

(b) If it bears or contains any added poisonous or added deleterious substance (other than one which is: (i) A pesticide chemical in or on a raw agricultural commodity; (ii) a food additive; or (iii) a color additive) which may, in the judgment of the director, make such article unfit for human food;

(c) If it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of RCW 69.04.392, as enacted or hereafter amended;

(d) If it bears or contains any food additive which is unsafe within the meaning of RCW 69.04.394, as enacted or hereafter amended;

(e) If it bears or contains any color additive which is unsafe within the meaning of RCW 69.04.396(~~as enacted or hereafter amended~~; ~~PROVIDED, That~~); however, an article which is not otherwise deemed adulterated under subsection (4)(c), (d), or (e) of this section shall nevertheless be deemed adulterated if use of the

pesticide chemical, food additive, or color additive, in or on such article, is prohibited by regulations of the director in official plants;

(f) If it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for human food;

(g) If it consists in whole or in part of any damaged egg or eggs to the extent that the egg meat or white is leaking, or it has been contacted by egg meat or white leaking from other eggs;

(h) If it has been prepared, packaged, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

(i) If it is an egg which has been subjected to incubation or the product of any egg which has been subjected to incubation;

(j) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(k) If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to RCW 69.04.394; or

(l) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.

(5) "Capable of use as human food" shall apply to any egg or egg product unless it is denatured, or otherwise identified, as required by regulations prescribed by the director, to deter its use as human food.

(6) "Intrastate commerce" means any eggs or egg products in intrastate commerce, whether such eggs or egg products are intended for sale, held for sale, offered for sale, sold, stored, transported, or handled in this state in any manner and prepared for eventual distribution in this state, whether at wholesale or retail.

(7) "Container" or "package" includes any box, can, tin, plastic, or other receptacle, wrapper, or cover.

(8) "Immediate container" means any consumer package, or any other container in which egg products, not consumer-packaged, are packed.

(9) "Shipping container" means any container used in packaging a product packed in an immediate container.

(10) "Egg handler" or "dealer" means any person who produces, contracts for or obtains possession or control of any eggs or egg products for the purpose of sale to another dealer or retailer, or for processing and sale to a dealer, retailer or consumer(~~PROVIDED, That~~); For the purpose of this chapter, "sell" or "sale" includes the following: Offer for sale, expose for sale, have in possession for sale, exchange, barter, trade, or as an inducement for the sale of another product.

(11)(a) "Egg product" means any dried, frozen, or liquid eggs, with or without added ingredients, excepting products which contain eggs only in a relatively small proportion, or historically have not been, in the judgment of the director, considered by consumers as products of the egg food industry, and which may be exempted by the director under such conditions as ~~(he)~~ the director may prescribe to assure that the egg ingredients are not adulterated and ~~((such products))~~ are not represented as egg products.

(b) The following products are not included in the definition of "egg product" if they are prepared from eggs or egg products that have been either inspected by the United States department of agriculture or by the department under a cooperative agreement with the United States department of agriculture: Freeze-dried products, imitation egg products, egg substitutes, dietary foods, dried no-bake custard mixes, egg nog mixes, acidic dressings, noodles, milk and egg dip,

cake mixes, French toast, balut and other similar ethnic delicacies, and sandwiches containing eggs or egg products.

(12) "Egg" means the shell egg of the domesticated chicken, turkey, duck, goose, or guinea, or any other specie of fowl.

(13) "Check" means an egg that has a broken shell or crack in the shell but has its shell membranes intact and contents not leaking.

(14) "Clean and sound shell egg" means any egg whose shell is free of adhering dirt or foreign material and is not cracked or broken.

(15) "Dirty egg" means an egg that has a shell that is unbroken and has adhering dirt or foreign material.

(16) "Incubator reject" means an egg that has been subjected to incubation and has been removed from incubation during the hatching operations as infertile or otherwise unhatchable.

(17) "Inedible" means eggs of the following descriptions: Black rots, yellow rots, white rots, mixed rots (addled eggs), sour eggs, eggs with green whites, eggs with stuck yolks, moldy eggs, musty eggs, eggs showing blood rings, and eggs containing embryo chicks (at or beyond the blood ring stage).

(18) "Leaker" means an egg that has a crack or break in the shell and shell membranes to the extent that the egg contents are exposed or are exuding or free to exude through the shell.

(19) "Loss" means an egg that is unfit for human food because it is smashed or broken so that its contents are leaking; or overheated, frozen, or contaminated; or an incubator reject; or because it contains a bloody white, large meat spots, a large quantity of blood, or other foreign material.

(20) "Restricted egg" means any check, dirty egg, incubator reject, inedible, leaker, or loss.

(21) "Inspection" means the application of such inspection methods and techniques as are deemed necessary by the director to carry out the provisions of this chapter.

(22) "Inspector" means any employee or official of the department authorized to inspect eggs or egg products under the authority of this chapter.

(23) "Misbranded" shall apply to egg products which are not labeled and packaged in accordance with the requirements prescribed by regulations of the director under RCW 69.25.100.

(24) "Official certificate" means any certificate prescribed by regulations of the director for issuance by an inspector or other person performing official functions under this chapter.

(25) "Official device" means any device prescribed or authorized by the director for use in applying any official mark.

(26) "Official inspection legend" means any symbol prescribed by regulations of the director showing that egg products were inspected in accordance with this chapter.

(27) "Official mark" means the official inspection legend or any other symbol prescribed by regulations of the director to identify the status of any article under this chapter.

(28) "Official plant" means any plant which is licensed under the provisions of this chapter, at which inspection of the processing of egg products is maintained by the United States department of agriculture or by the state under cooperative agreements with the United States department of agriculture or by the state.

(29) "Official standards" means the standards of quality, grades, and weight classes for eggs, adopted under the provisions of this chapter.

(30) "Pasteurize" means the subjecting of each particle of egg products to heat or other treatments to destroy harmful, viable micro-organisms by such processes as may be prescribed by regulations of the director.

(31) "Pesticide chemical", "food additive", "color additive", and "raw agricultural commodity" shall have the same meaning for purposes of this chapter as prescribed in chapter 69.04 RCW.

(32) "Plant" means any place of business where egg products are processed.

(33) "Processing" means manufacturing egg products, including breaking eggs or filtering, mixing, blending, pasteurizing, stabilizing, cooling, freezing, drying, or packaging egg products.

(34) "Retailer" means any person in intrastate commerce who sells eggs to a consumer.

(35) "At retail" means any transaction in intrastate commerce between a retailer and a consumer.

(36) "Consumer" means any person who purchases eggs for his or her own family use or consumption; or any restaurant, hotel, boarding house, bakery, or other institution or concern which purchases eggs for serving to guests or patrons thereof, or for its own use in cooking or baking.

(37) "Candling" means the examination of the interior of eggs by the use of transmitted light used in a partially dark room or place.

(38) "Master license system" means the mechanism established by chapter 19.02 RCW by which master licenses, endorsed for individual state-issued licenses, are issued and renewed utilizing a master application and a master license expiration date common to each renewable license endorsement.

(39) "Ambient temperature" means the atmospheric temperature surrounding or encircling shell eggs.

Sec. 2. RCW 69.25.050 and 1995 c 374 s 26 are each amended to read as follows:

(1)(a) No person shall act as an egg handler or dealer without first obtaining an annual license and permanent dealer's number from the department ~~((; such license shall expire on the master license expiration date)).~~

(b) Application for an egg dealer license or egg dealer branch license ~~((; shall))~~ must be made through the master license system as provided under chapter 19.02 RCW and expires on the master license expiration date. The annual egg dealer license fee ~~((shall be))~~ is thirty dollars and the annual egg dealer branch license fee ~~((shall be))~~ is fifteen dollars. A copy of the master license ~~((shall))~~ must be posted at each location where ~~((such))~~ the licensee operates. ~~((Such))~~ The application ~~((shall))~~ must include the full name of the applicant for the license ~~((and))~~, the location of each facility ~~((he))~~ the applicant intends to operate, and, if applicable, documentation of compliance with section 3 or 4 of this act.

(2) If ~~((such))~~ an applicant is an individual, receiver, trustee, firm, partnership, association or corporation, the full name of each member of the firm or partnership or the names of the officers of the association or corporation shall be given on the application. ~~((Such))~~ The application ~~((shall))~~ must further state the principal business address of the applicant in the state and elsewhere and the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant and any other necessary information prescribed by the director.

(3) The applicant must be issued a license or renewal under this section upon the approval of the application and compliance with the provisions of this chapter, including the applicable ((regulations)) rules adopted ((hereunder)) by the department ((; the applicant shall be issued a license or renewal thereof)).

~~((Such))~~ (4) The license and permanent egg handler or dealer's number ~~((shall be))~~ is nontransferable.

NEW SECTION. **Sec. 3.** A new section is added to chapter 69.25 RCW to read as follows:

(1) All new and renewal applications submitted under RCW 69.25.050 before January 1, 2026, must include proof that all eggs and egg products provided in intrastate commerce by the applicant are produced by commercial egg layer operations:

(a) With a current certification under the 2010 version of the united egg producers animal husbandry guidelines for United States egg laying flocks for conventional cage systems or cage-free systems or a subsequent version of the guidelines recognized by the department in rule; or

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(b) Operated in strict compliance with any standards, adopted by the department in rule, that are equivalent to or more stringent than the standards identified in (a) of this subsection.

(2) All new and renewal applications submitted under RCW 69.25.050 before January 1, 2017, must, in addition to complying with subsection (1) of this section, include proof that all eggs and egg products provided in intrastate commerce by the applicant are produced by commercial egg layer operations whose housing facilities, if built between January 1, 2012, and December 31, 2016, are either:

(a) Approved under, or convertible to, the American humane association facility system plan for enriched colony housing in effect on January 1, 2011, or a subsequent version of the plan recognized by the department in rule and, in addition, are convertible to the standards identified in section 5 of this act; or

(b) Operated in strict compliance with any standards, adopted by the department in rule, that are equivalent to or more stringent than the standards identified in (a) of this subsection.

(3) All new and renewal applications submitted under RCW 69.25.050 between January 1, 2017, and December 31, 2025, must, in addition to complying with subsection (1) of this section, include proof that all eggs and egg products provided in intrastate commerce by the applicant are produced by commercial egg layer operations whose housing facilities, if built on or after January 1, 2012, are either:

(a) Approved under the American humane association facility system plan and audit protocol for enriched colony housing in effect on January 1, 2011, or a subsequent version of the plan recognized by the department in rule and, in addition, are operated to the standards identified in section 5 of this act; or

(b) Operated in strict compliance with any standards, adopted by the department in rule, that are equivalent to or more stringent than the standards identified in (a) of this subsection.

(4) All new and renewal applications submitted under RCW 69.25.050 on or after January 1, 2026, must include proof that all eggs and egg products provided in intrastate commerce by the applicant are produced by commercial egg layer operations that are either:

(a) Approved under the American humane association facility system plan and audit protocol for enriched colony housing in effect on January 1, 2011, or a subsequent version of the plan recognized by the department in rule and, in addition, are operated to the standards identified in section 5 of this act; or

(b) Operated in strict compliance with any standards, adopted by the department in rule, that are equivalent to or more stringent than the standards identified in (a) of this subsection.

(5) The following are exempt from the requirements of subsections (2) and (3) of this section:

(a) Applicants with fewer than three thousand laying chickens; and

(b) Commercial egg layer operations when producing eggs or egg products from turkeys, ducks, geese, guineas, or other species of fowl other than domestic chickens.

NEW SECTION. Sec. 4. A new section is added to chapter 69.25 RCW to read as follows:

Any egg handler or dealer involved with the in-state production of eggs or egg products only intended for sale outside of the state of Washington must ensure that the associated commercial egg layer operation is in compliance with the applicable standards as provided in section 3 of this act.

NEW SECTION. Sec. 5. A new section is added to chapter 69.25 RCW to read as follows:

(1) All commercial egg layer operations required under section 3 of this act to meet the American humane association facility

system plan, or an equivalent to the plan, must also ensure that all hens in the operation are provided with:

(a) No less than one hundred sixteen and three-tenths square inches of space per hen; and

(b) Access to areas for nesting, scratching, and perching.

(2) The requirements of this section apply for any commercial egg layer operation on the same dates that section 3 of this act requires compliance with the American humane association facility system plan or an equivalent to the plan.

Sec. 6. RCW 69.25.250 and 1995 c 374 s 29 are each amended to read as follows:

~~(1)(a)~~ There is hereby levied an assessment not to exceed three mills per dozen eggs entering intrastate commerce, as prescribed by rules ~~((and regulations))~~ issued by the director. ~~((Such))~~ The assessment ~~((shall be))~~ is applicable to all eggs entering intrastate commerce, except as provided in RCW 69.25.170 and 69.25.290~~((--Such assessment shall))~~, and must be paid to the director on a monthly basis on or before the tenth day following the month ~~((such))~~ the eggs enter intrastate commerce.

~~(b)~~ The director may require reports by egg handlers or dealers along with the payment of the assessment fee. ~~((Such))~~ The reports may include any and all pertinent information necessary to carry out the purposes of this chapter.

~~(c)~~ The director may, by ~~((regulations))~~ rule, require egg container manufacturers to report on a monthly basis all egg containers sold to any egg handler or dealer and bearing such egg handler or dealer's permanent number.

(2) Egg products in intrastate commerce are exempt from the assessment in subsection (1) of this section.

NEW SECTION. Sec. 7. This act takes effect August 1, 2012.

NEW SECTION. Sec. 8. 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."

Correct the title.
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Hatfield moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5487.

Senator Hatfield spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Hatfield that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5487.

The motion by Senator Hatfield carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 5487 by voice vote.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 5487, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 5487, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 32; Nays, 14; Absent, 1; Excused, 2.

Voting yea: Senators Baumgartner, Baxter, Becker, Benton, Carrell, Conway, Delvin, Eide, Ericksen, Fain, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hobbs, Honeyford, Kastama, Kilmer,

King, Litzow, Morton, Pflug, Pridemore, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker and Zarelli

Voting nay: Senators Brown, Chase, Fraser, Hill, Holmquist Newbry, Keiser, Kline, Kohl-Welles, McAuliffe, Nelson, Ranker, Regala, Tom and White

Absent: Senator Murray

Excused: Senators Parlette and Prentice

SUBSTITUTE SENATE BILL NO. 5487, as amended by the House, 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 White, Senator Murray was excused.

MESSAGE FROM THE HOUSE

April 12, 2011

MR. PRESIDENT:

The House passed SENATE JOINT MEMORIAL NO. 8008 with the following amendment(s): 8008 AMH SHEA REIN 169

On page 2, beginning on line 14, after "Labor" strike all material through "account" on line 18 and insert "provide federal unemployment tax relief to Washington state unemployment tax paying employers, and a financial benefit to the state's unemployment insurance trust fund equal to any benefit provided to states that borrowed from the federal unemployment account" and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Kohl-Welles moved that the Senate concur in the House amendment(s) to Senate Joint Memorial No. 8008.

Senator Kohl-Welles spoke in favor of the motion.

MOTION

On motion of Senator Ericksen, Senator Delvin was excused.

The President declared the question before the Senate to be the motion by Senator Kohl-Welles that the Senate concur in the House amendment(s) to Senate Joint Memorial No. 8008.

The motion by Senator Kohl-Welles carried and the Senate concurred in the House amendment(s) to Senate Joint Memorial No. 8008 by voice vote.

The President declared the question before the Senate to be the final passage of Senate Joint Memorial No. 8008, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Senate Joint Memorial No. 8008, as amended by the House, and the memorial passed the Senate by the following vote: Yeas, 46; Nays, 0; Absent, 0; Excused, 3.

Voting yea: Senators Baumgartner, Baxter, Becker, Benton, Brown, Carrell, Chase, Conway, Eide, Ericksen, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Pflug, Pridemore, Ranker, Regala, Roach, Rockefeller,

Schoesler, Sheldon, Shin, Stevens, Swecker, Tom, White and Zarelli

Excused: Senators Delvin, Parlette and Prentice

SENATE JOINT MEMORIAL NO. 8008, as amended by the House, having received the constitutional majority, was declared passed.

MESSAGE FROM THE HOUSE

April 18, 2011

MR. PRESIDENT:

The House receded from its amendment(s) to ENGROSSED SUBSTITUTE SENATE BILL NO. 5656. Under suspension of the rules, the bill was returned to second reading for the purpose of an amendment. The House adopted the following amendment: 5656-S.E AMH KAGI H2697.1, and passed the bill as amended by the House.

Strike everything after the enacting clause and insert the following:

NEW SECTION. Sec. 1. SHORT TITLE. This chapter shall be known and cited as the "Washington state Indian child welfare act."

NEW SECTION. Sec. 2. APPLICATION. This chapter shall apply in all child custody proceedings as that term is defined in this chapter. Whenever there is a conflict between chapter 13.32A, 13.34, 13.36, 26.10, or 26.33 RCW, the provisions of this chapter shall apply.

NEW SECTION. Sec. 3. INTENT. The legislature finds that the state is committed to protecting the essential tribal relations and best interests of Indian children by promoting practices designed to prevent out-of-home placement of Indian children that is inconsistent with the rights of the parents, the health, safety, or welfare of the children, or the interests of their tribe. Whenever out-of-home placement of an Indian child is necessary in a proceeding subject to the terms of the federal Indian child welfare act and in this chapter, the best interests of the Indian child may be served by placing the Indian child in accordance with the placement priorities expressed in this chapter. The legislature further finds that where placement away from the parent or Indian custodian is necessary for the child's safety, the state is committed to a placement that reflects and honors the unique values of the child's tribal culture and is best able to assist the Indian child in establishing, developing, and maintaining a political, cultural, social, and spiritual relationship with the child's tribe and tribal community.

It is the intent of the legislature that this chapter is a step in clarifying existing laws and codifying existing policies and practices. This chapter shall not be construed to reject or eliminate current policies and practices that are not included in its provisions.

The legislature further intends that nothing in this chapter is intended to interfere with policies and procedures that are derived from agreements entered into between the department and a tribe or tribes, as authorized by section 109 of the federal Indian child welfare act. The legislature finds that this chapter specifies the minimum requirements that must be applied in a child custody proceeding and does not prevent the department from providing a higher standard of protection to the right of any Indian child, parent, Indian custodian, or Indian child's tribe.

It is also the legislature's intent that the department's policy manual on Indian child welfare, the tribal-state agreement, and relevant local agreements between individual federally recognized tribes and the department should serve as persuasive guides in the interpretation and implementation of the federal Indian child welfare act, this chapter, and other relevant state laws.

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NEW SECTION. Sec. 4. DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Active efforts" means the following:

(a) In any foster care placement or termination of parental rights proceeding of an Indian child under chapter 13.34 RCW and this chapter where the department or a supervising agency as defined in RCW 74.13.020 has a statutory or contractual duty to provide services to, or procure services for, the parent or parents or Indian custodian, or is providing services to a parent or parents or Indian custodian pursuant to a disposition order entered pursuant to RCW 13.34.130, the department or supervising agency shall make timely and diligent efforts to provide or procure such services, including engaging the parent or parents or Indian custodian in reasonably available and culturally appropriate preventive, remedial, or rehabilitative services. This shall include those services offered by tribes and Indian organizations whenever possible. At a minimum "active efforts" shall include:

(i) In any dependency proceeding under chapter 13.34 RCW seeking out-of-home placement of an Indian child in which the department or supervising agency provided voluntary services to the parent, parents, or Indian custodian prior to filing the dependency petition, a showing to the court that the department or supervising agency social workers actively worked with the parent, parents, or Indian custodian to engage them in remedial services and rehabilitation programs to prevent the breakup of the family beyond simply providing referrals to such services.

(ii) In any dependency proceeding under chapter 13.34 RCW, in which the petitioner is seeking the continued out-of-home placement of an Indian child, the department or supervising agency must show to the court that it has actively worked with the parent, parents, or Indian custodian in accordance with existing court orders and the individual service plan to engage them in remedial services and rehabilitative programs to prevent the breakup of the family beyond simply providing referrals to such services.

(iii) In any termination of parental rights proceeding regarding an Indian child under chapter 13.34 RCW in which the department or supervising agency provided services to the parent, parents, or Indian custodian, a showing to the court that the department or supervising agency social workers actively worked with the parent, parents, or Indian custodian to engage them in remedial services and rehabilitation programs ordered by the court or identified in the department or supervising agency's individual service and safety plan beyond simply providing referrals to such services.

(b) In any foster care placement or termination of parental rights proceeding in which the petitioner does not otherwise have a statutory or contractual duty to directly provide services to, or procure services for, the parent or Indian custodian, "active efforts" means a documented, concerted, and good faith effort to facilitate the parent's or Indian custodian's receipt of and engagement in services capable of meeting the criteria set out in (a) of this subsection.

(2) "Best interests of the Indian child" means the use of practices in accordance with the federal Indian child welfare act, this chapter, and other applicable law, that are designed to accomplish the following: (a) Protect the safety, well-being, development, and stability of the Indian child; (b) prevent the unnecessary out-of-home placement of the Indian child; (c) acknowledge the right of Indian tribes to maintain their existence and integrity which will promote the stability and security of their children and families; (d) recognize the value to the Indian child of establishing, developing, or maintaining a political, cultural, social, and spiritual relationship with the Indian child's tribe and tribal community; and (e) in a proceeding under this chapter where out-of-home placement

is necessary, to prioritize placement of the Indian child in accordance with the placement preferences of this chapter.

(3) "Child custody proceeding" includes:

(a) "Foster care placement" which means any action removing an Indian child from his or her parent or Indian custodian for temporary placement in a foster home, institution, or with a relative, guardian, conservator, or suitable other person where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(b) "Termination of parental rights" which means any action resulting in the termination of the parent-child relationship;

(c) "Preadoptive placement" which means the temporary placement of an Indian child in a foster home or institution after the termination of parental rights but before or in lieu of adoptive placement; and

(d) "Adoptive placement" which means the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

These terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a dissolution proceeding of custody to one of the parents.

(4) "Court of competent jurisdiction" means a federal court, or a state court that entered an order in a child custody proceeding involving an Indian child, as long as the state court had proper subject matter jurisdiction in accordance with this chapter and the laws of that state, or a tribal court that had or has exclusive or concurrent jurisdiction pursuant to 25 U.S.C. Sec. 1911.

(5) "Department" means the department of social and health services and any of its divisions. "Department" also includes supervising agencies as defined in RCW 74.13.020(12) with which the department entered into a contract to provide services, care, placement, case management, contract monitoring, or supervision to children subject to a petition filed under chapter 13.34 or 26.33 RCW.

(6) "Indian" means a person who is a member of an Indian tribe, or who is an Alaska native and a member of a regional corporation as defined in 43 U.S.C. Sec. 1606.

(7) "Indian child" means an unmarried and unemancipated Indian person who is under eighteen years of age and is either: (a) A member of an Indian tribe; or (b) eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(8) "Indian child's family" or "extended family member" means an individual, defined by the law or custom of the child's tribe, as a relative of the child. If the child's tribe does not identify such individuals by law or custom, the term means an adult who is the Indian child's grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece, nephew, first or second cousin, or step-parent, even following termination of the marriage.

(9) "Indian child's tribe" means a tribe in which an Indian child is a member or eligible for membership.

(10) "Indian custodian" means an Indian person who under tribal law, tribal custom, or state law, has legal or temporary physical custody of an Indian child, or to whom the parent has transferred temporary care, physical custody, and control of an Indian child.

(11) "Indian tribe" or "tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the secretary of the interior because of their status as Indians, including any Alaska native village as defined in 43 U.S.C. Sec. 1602(c).

(12) "Member" and "membership" means a determination by an Indian tribe that a person is a member or eligible for membership in that Indian tribe.

(13) "Parent" means a biological parent or parents of an Indian child or a person who has lawfully adopted an Indian child, including adoptions made under tribal law or custom. "Parent" does not include an unwed father whose paternity has not been acknowledged or established under chapter 26.26 RCW or the applicable laws of other states.

(14) "Secretary of the interior" means the secretary of the United States department of the interior.

(15) "Tribal court" means a court or body vested by an Indian tribe with jurisdiction over child custody proceedings, including but not limited to a federal court of Indian offenses, a court established and operated under the code or custom of an Indian tribe, or an administrative body of an Indian tribe vested with authority over child custody proceedings.

(16) "Tribal customary adoption" means adoption or other process through the tribal custom, traditions, or laws of an Indian child's tribe by which the Indian child is permanently placed with a nonparent and through which the nonparent is vested with the rights, privileges, and obligations of a legal parent. Termination of the parent-child relationship between the Indian child and the biological parent is not required to effect or recognize a tribal customary adoption.

NEW SECTION. Sec. 5. DETERMINATION OF INDIAN STATUS. Any party seeking the foster care placement of, termination of parental rights over, or the adoption of a child must make a good faith effort to determine whether the child is an Indian child. This shall be done by consultation with the child's parent or parents, any person who has custody of the child or with whom the child resides, and any other person that reasonably can be expected to have information regarding the child's possible membership or eligibility for membership in an Indian tribe to determine if the child is an Indian child, and by contacting any Indian tribe in which the child may be a member or may be eligible for membership. Preliminary contacts for the purpose of making a good faith effort to determine a child's possible Indian status, do not constitute legal notice as required by section 7 of this act.

NEW SECTION. Sec. 6. JURISDICTION. (1) An Indian tribe shall have exclusive jurisdiction over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of that tribe, unless the tribe has consented to the state's concurrent jurisdiction, the tribe has expressly declined to exercise its exclusive jurisdiction, or the state is exercising emergency jurisdiction in strict compliance with section 14 of this act.

(2) If an Indian child is already a ward of a tribal court at the start of the child custody proceeding, the Indian tribe may retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

NEW SECTION. Sec. 7. NOTICE. (1) In any involuntary child custody proceeding seeking the foster care placement of, or the termination of parental rights to, a child in which the petitioning party or the court knows, or has reason to know, that the child is or may be an Indian child as defined in this chapter, the petitioning party shall notify the parent or Indian custodian and the Indian child's tribe or tribes, by certified mail, return receipt requested, and by use of a mandatory Indian child welfare act notice. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the secretary of the interior by registered mail, return receipt requested, in accordance with the regulations of the bureau of Indian affairs. The secretary of the interior has fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe. The parent or Indian

custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for the proceeding.

(2) The determination of the Indian status of a child shall be made as soon as practicable in order to serve the best interests of the Indian child and protect the interests of the child's tribe.

(3)(a) A written determination by an Indian tribe that a child is a member of or eligible for membership in that tribe, or testimony by the tribe attesting to such status shall be conclusive that the child is an Indian child;

(b) A written determination by an Indian tribe that a child is not a member of or eligible for membership in that tribe, or testimony by the tribe attesting to such status shall be conclusive that the child is not a member or eligible for membership in that tribe. Such determinations are presumptively those of the tribe where submitted in the form of a tribal resolution, or signed by or testified to by the person(s) authorized by the tribe's governing body to speak for the tribe, or by the tribe's agent designated to receive notice under the federal Indian child welfare act where such designation is published in the federal register;

(c) Where a tribe provides no response to notice under section 7 of this act, such nonresponse shall not constitute evidence that the child is not a member or eligible for membership. Provided, however, that under such circumstances the party asserting application of the federal Indian child welfare act, or this chapter, will have the burden of proving by a preponderance of the evidence that the child is an Indian child.

(4)(a) Where a child has been determined not to be an Indian child, any party to the proceeding, or an Indian tribe that subsequently determines the child is a member, may, during the pendency of any child custody proceeding to which this chapter or the federal Indian child welfare act applies, move the court for redetermination of the child's Indian status based upon new evidence, redetermination by the child's tribe, or newly conferred federal recognition of the tribe.

(b) This subsection (4) does not affect the rights afforded under 25 U.S.C. Sec. 1914.

NEW SECTION. Sec. 8. TRANSFER OF JURISDICTION. (1) In any proceeding for the foster care placement of, or termination of parental rights to, an Indian child who is not domiciled or residing within the reservation of the Indian child's tribe, the court shall, in the absence of good cause to the contrary, transfer the proceeding to the jurisdiction of the Indian child's tribe, upon the motion of any of the following persons:

- (a) Either of the child's parents;
- (b) The child's Indian custodian;
- (c) The child's tribe; or
- (d) The child, if age twelve or older.

The transfer shall be subject to declination by the tribe. The tribe shall have seventy-five days to affirmatively respond to a motion or order transferring jurisdiction to the tribal court. A failure of the tribe to respond within the seventy-five day period shall be construed as a declination to accept transfer of the case.

(2) If the child's tribe has not formally intervened, the moving party shall serve a copy of the motion and all supporting documents on the tribal court to which the moving party seeks transfer.

(3) If either of the Indian child's parents objects to transfer of the proceeding to the Indian child's tribe, the court shall not transfer the proceeding.

(4) Following entry of an order transferring jurisdiction to the Indian child's tribe:

(a) Upon receipt of an order from a tribal court accepting jurisdiction, the state court shall dismiss the child custody proceeding without prejudice.

(b) Pending receipt of such tribal court order, the state court may conduct additional hearings and enter orders which strictly comply with the requirements of the federal Indian child welfare act and this

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chapter. The state court shall not enter a final order in any child custody proceeding, except an order dismissing the proceeding and returning the Indian child to the care of the parent or Indian custodian from whose care the child was removed, while awaiting receipt of a tribal court order accepting jurisdiction, or in the absence of a tribal court order or other formal written declination of jurisdiction.

(c) If the Indian child's tribe declines jurisdiction, the state court shall enter an order vacating the order transferring jurisdiction and proceed with adjudication of the child custody matter in strict compliance with the federal Indian child welfare act, this chapter, and any applicable tribal-state agreement.

NEW SECTION. Sec. 9. INTERVENTION. The Indian child, the Indian child's tribe or tribes, and the Indian custodian have the right to intervene at any point in any child custody proceeding involving the Indian child.

NEW SECTION. Sec. 10. FULL FAITH AND CREDIT. The state shall give full faith and credit to the public acts, records, judicial proceedings, and judgments of any Indian tribe applicable to Indian child custody proceedings.

NEW SECTION. Sec. 11. RIGHT TO COUNSEL. In any child custody proceeding under this chapter in which the court determines the Indian child's parent or Indian custodian is indigent, the parent or Indian custodian shall have the right to court-appointed counsel. The court may, in its discretion, appoint counsel for the Indian child upon a finding that the appointment is in the best interests of the Indian child.

NEW SECTION. Sec. 12. RIGHT TO ACCESS TO EVIDENCE. Each party to a child custody proceeding involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to the proceeding may be based.

NEW SECTION. Sec. 13. EVIDENTIARY REQUIREMENTS. (1) A party seeking to effect an involuntary foster care placement of or the involuntary termination of parental rights to an Indian child shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(2) No involuntary foster care placement may be ordered in a child custody proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. For purposes of this subsection, any harm that may result from interfering with the bond or attachment between the foster parent and the child shall not be the sole basis or primary reason for continuing the child in foster care.

(3) No involuntary termination of parental rights may be ordered in a child custody proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. For the purposes of this subsection, any harm that may result from interfering with the bond or attachment that may have formed between the child and a foster care provider shall not be the sole basis or primary reason for termination of parental rights over an Indian child.

(4)(a) For purposes of this section, "qualified expert witness" means a person who provides testimony in a proceeding under this chapter to assist a court in the determination of whether the continued custody of the child by, or return of the child to, the parent, parents, or Indian custodian, is likely to result in serious emotional or physical damage to the child. In any proceeding in

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which the child's Indian tribe has intervened pursuant to section 9 of this act or, if the department is the petitioner and the Indian child's tribe has entered into a local agreement with the department for the provision of child welfare services, the petitioner shall contact the tribe and ask the tribe to identify a tribal member or other person of the tribe's choice who is recognized by the tribe as knowledgeable regarding tribal customs as they pertain to family organization or child rearing practices. The petitioner shall notify the child's Indian tribe of the need to provide a "qualified expert witness" at least twenty days prior to any evidentiary hearing in which the testimony of the witness will be required. If the child's Indian tribe does not identify a "qualified expert witness" for the proceeding on a timely basis, the petitioner may proceed to identify such a witness pursuant to (b) of this subsection.

(b) In any proceeding in which the child's Indian tribe has not intervened or entered into a local agreement with the department for the provision of child welfare services, or a child's Indian tribe has not responded to a request to identify a "qualified expert witness" for the proceeding on a timely basis, the petitioner shall provide a "qualified expert witness" who meets one or more of the following requirements in descending order of preference:

(i) A member of the child's Indian tribe or other person of the tribe's choice who is recognized by the tribe as knowledgeable regarding tribal customs as they pertain to family organization or child rearing practices for this purpose;

(ii) Any person having substantial experience in the delivery of child and family services to Indians, and extensive knowledge of prevailing social and cultural standards and child rearing practices within the Indian child's tribe;

(iii) Any person having substantial experience in the delivery of child and family services to Indians, and knowledge of prevailing social and cultural standards and child rearing practices in Indian tribes with cultural similarities to the Indian child's tribe; or

(iv) A professional person having substantial education and experience in the area of his or her specialty.

(c) When the petitioner is the department or a supervising agency, the currently assigned department or agency caseworker or the caseworker's supervisor may not testify as a "qualified expert witness" for purposes of this section. Nothing in this section shall bar the assigned department or agency caseworker or the caseworker's supervisor from testifying as an expert witness for other purposes in a proceeding under this chapter. Nothing in this section shall bar other department or supervising agency employees with appropriate expert qualifications or experience from testifying as a "qualified expert witness" in a proceeding under this chapter. Nothing in this section shall bar the petitioner or any other party in a proceeding under this chapter from providing additional witnesses or expert testimony, subject to the approval of the court, on any issue before the court including the determination of whether the continued custody of the child by, or return of the child to, the parent, parents, or Indian custodian, is likely to result in serious emotional or physical damage to the child.

NEW SECTION. Sec. 14. EMERGENCY REMOVAL OF AN INDIAN CHILD. (1) Notwithstanding any other provision of federal or state law, nothing shall be construed to prevent the department or law enforcement from the emergency removal of an Indian child who is a resident of or is domiciled on an Indian reservation, but is temporarily located off the reservation, from his or her parent or Indian custodian or the emergency placement of such child in a foster home, under applicable state law, to prevent imminent physical damage or harm to the child.

(2) The department or law enforcement agency shall ensure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall

expeditiously initiate a child custody proceeding subject to the provisions of the federal Indian child welfare act and this chapter to transfer the child to the jurisdiction of the appropriate Indian tribe or restore the child to the child's parent or Indian custodian, if appropriate.

(3) When the nature of the emergency allows, the department must notify the child's tribe before the removal has occurred. If prior notification is not possible, the department shall notify the child's tribe by the quickest means possible. The notice must contain the basis for the Indian child's removal, the time, date, and place of the initial hearing, and the tribe's right to intervene and participate in the proceeding. This notice shall not constitute the notice required under section 7 of this act for purposes of subsequent dependency, termination of parental rights, or adoption proceedings.

NEW SECTION. Sec. 15. CONSENT. (1) If an Indian child's parent or Indian custodian voluntarily consents to a foster care placement of the child or to termination of parental rights, the consent is not valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court must also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent for release of custody given prior to, or within ten days after, the birth of the Indian child shall not be valid.

(2) An Indian child's parent or Indian custodian may withdraw consent to a voluntary foster care placement at any time and, upon the withdrawal of consent, the child shall be returned to the parent or Indian custodian.

(3) In a voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of an order terminating parental rights or a final decree of adoption, and the child shall be returned to the parent.

(4) After the entry of a final decree of adoption of an Indian child, the parent may withdraw consent to the adoption upon the grounds that consent was obtained through fraud or duress. Upon a finding that such consent was obtained through fraud or duress the court shall vacate the decree and return the child to the parent. No adoption which has been effective for at least two years may be invalidated under this section unless otherwise allowed by state law.

NEW SECTION. Sec. 16. IMPROPER REMOVAL OF AN INDIAN CHILD. If a petitioner in a child custody proceeding under this chapter has improperly removed the child from the custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over the petition and shall immediately return the child to the child's parent or Indian custodian unless returning the child to the parent or Indian custodian would subject the child to substantial and immediate danger or threat of such danger.

NEW SECTION. Sec. 17. REMOVAL OF INDIAN CHILD FROM ADOPTIVE OR FOSTER CARE PLACEMENT.

(1) If a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, the biological parent or prior Indian custodian may petition to have the child returned to their custody and the court shall grant the request unless there is a showing by clear and convincing evidence that return of custody to the biological parent or prior Indian custodian is not in the best interests of the Indian child.

(2) If an Indian child is removed from a foster care placement or a preadoptive or adoptive home for the purpose of further foster care, preadoptive, or adoptive placement, the placement shall be in

accordance with this chapter, except when an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

NEW SECTION. Sec. 18. PLACEMENT PREFERENCES. (1) When an emergency removal, foster care placement, or preadoptive placement of an Indian child is necessary, a good faith effort will be made to place the Indian child:

- (a) In the least restrictive setting;
- (b) Which most approximates a family situation;
- (c) Which is in reasonable proximity to the Indian child's home; and
- (d) In which the Indian child's special needs, if any, will be met.

(2) In any foster care or preadoptive placement, a preference shall be given, in absence of good cause to the contrary, to the child's placement with one of the following:

- (a) A member of the child's extended family.
- (b) A foster home licensed, approved, or specified by the child's tribe.
- (c) An Indian foster home licensed or approved by an authorized non-Indian licensing authority.

(d) A child foster care agency approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(e) A non-Indian child foster care agency approved by the child's tribe.

(f) A non-Indian family that is committed to:

- (i) Promoting and allowing appropriate extended family visitation;

(ii) Establishing, maintaining, and strengthening the child's relationship with his or her tribe or tribes; and

(iii) Participating in the cultural and ceremonial events of the child's tribe.

(3) In the absence of good cause to the contrary, any adoptive or other permanent placement of an Indian child, preference shall be given to a placement with one of the following, in descending priority order:

- (a) Extended family members;
- (b) An Indian family of the same tribe as the child;
- (c) An Indian family that is of a similar culture to the child's tribe;
- (d) Another Indian family; or

(e) Any other family which can provide a suitable home for an Indian child, such suitability to be determined in consultation with the Indian child's tribe or, in proceedings under chapter 13.34 RCW where the Indian child is in the custody of the department or a supervising agency and the Indian child's tribe has not intervened or participated, the local Indian child welfare advisory committee.

(4) Notwithstanding the placement preferences listed in subsections (2) and (3) of this section, if a different order of placement preference is established by the child's tribe, the court or agency effecting the placement shall follow the order of preference established by the tribe so long as the placement is in the least restrictive setting appropriate to the particular needs of the child.

(5) Where appropriate, the preference of the Indian child or his or her parent shall be considered by the court. Where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

(6) The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family members of an Indian child reside, or with which the parent or extended family members maintain social and cultural ties.

(7) Nothing in this section shall prevent the department or the court from placing the child with a parent to effectuate a permanent plan regardless of the parent's relationship to the child's tribe.

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NEW SECTION. Sec. 19. COMPLIANCE. (1) The department, in consultation with Indian tribes, shall establish standards and procedures for the department's review of cases subject to this chapter and methods for monitoring the department's compliance with provisions of the federal Indian child welfare act and this chapter. These standards and procedures and the monitoring methods shall also be integrated into the department's child welfare contracting and contract monitoring process.

(2) Nothing in this chapter shall affect, impair, or limit rights or remedies provided to any party under the federal Indian child welfare act, 25 U.S.C. Sec. 1914.

NEW SECTION. Sec. 20. SEVERABILITY. 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.

Sec. 21. RCW 13.32A.152 and 2004 c 64 s 5 are each amended to read as follows:

(1) Whenever a child in need of services petition is filed by: (a) A youth pursuant to RCW 13.32A.150; (b) the child or the child's parent pursuant to RCW 13.32A.120; or (c) the department pursuant to RCW 13.32A.140, the filing party shall have a copy of the petition served on the parents of the youth. Service shall first be attempted in person and if unsuccessful, then by certified mail with return receipt.

(2) Whenever a child in need of services petition is filed by a youth or parent pursuant to RCW 13.32A.150, the court shall immediately notify the department that a petition has been filed.

~~((a) Whenever)~~ When a child in need of services petition is filed by the department, and the court or the petitioning party knows or has reason to know that an Indian child is involved, the petitioning party shall promptly provide notice to the child's parent or Indian custodian and to the agent designated by the child's Indian tribe to receive such notices. Notice shall be by certified mail with return receipt requested. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the secretary of the interior in the manner described in 25 C.F.R. 23.11. If the child may be a member of more than one tribe, the petitioning party shall send notice to all tribes the petitioner has reason to know may be affiliated with the child.

~~(b) The notice shall: (i) Contain a statement notifying the parent or custodian and the tribe of the pending proceeding; and (ii) notify the tribe of the tribe's right to intervene and/or request that the case be transferred to tribal court)~~ provisions of chapter 13.--- RCW (the new chapter created in section 35 of this act) apply.

Sec. 22. RCW 13.34.030 and 2010 1st sp.s. c 8 s 13, 2010 c 272 s 10, and 2010 c 94 s 6 are each reenacted and amended to read as follows:

For purposes of this chapter:

(1) "Abandoned" means when the child's parent, guardian, or other custodian has expressed, either by statement or conduct, an intent to forego, for an extended period, parental rights or responsibilities despite an ability to exercise such rights and responsibilities. If the court finds that the petitioner has exercised due diligence in attempting to locate the parent, no contact between the child and the child's parent, guardian, or other custodian for a period of three months creates a rebuttable presumption of abandonment, even if there is no expressed intent to abandon.

(2) "Child" and "juvenile" means any individual under the age of eighteen years.

(3) "Current placement episode" means the period of time that begins with the most recent date that the child was removed from the home of the parent, guardian, or legal custodian for purposes of placement in out-of-home care and continues until: (a) The child returns home; (b) an adoption decree, a permanent custody order, or

guardianship order is entered; or (c) the dependency is dismissed, whichever occurs first.

(4) "Department" means the department of social and health services.

(5) "Dependency guardian" means the person, nonprofit corporation, or Indian tribe appointed by the court pursuant to this chapter for the limited purpose of assisting the court in the supervision of the dependency.

(6) "Dependent child" means any child who:

(a) Has been abandoned;

(b) Is abused or neglected as defined in chapter 26.44 RCW by a person legally responsible for the care of the child; or

(c) Has no parent, guardian, or custodian capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child's psychological or physical development.

(7) "Developmental disability" means a disability attributable to intellectual disability, cerebral palsy, epilepsy, autism, or another neurological or other condition of an individual found by the secretary to be closely related to an intellectual disability or to require treatment similar to that required for individuals with intellectual disabilities, which disability originates before the individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial limitation to the individual.

(8) "Guardian" means the person or agency that: (a) Has been appointed as the guardian of a child in a legal proceeding, including a guardian appointed pursuant to chapter 13.36 RCW; and (b) has the legal right to custody of the child pursuant to such appointment. The term "guardian" does not include a "dependency guardian" appointed pursuant to a proceeding under this chapter.

(9) "Guardian ad litem" means a person, appointed by the court to represent the best interests of a child in a proceeding under this chapter, or in any matter which may be consolidated with a proceeding under this chapter. A "court-appointed special advocate" appointed by the court to be the guardian ad litem for the child, or to perform substantially the same duties and functions as a guardian ad litem, shall be deemed to be guardian ad litem for all purposes and uses of this chapter.

(10) "Guardian ad litem program" means a court-authorized volunteer program, which is or may be established by the superior court of the county in which such proceeding is filed, to manage all aspects of volunteer guardian ad litem representation for children alleged or found to be dependent. Such management shall include but is not limited to: Recruitment, screening, training, supervision, assignment, and discharge of volunteers.

(11) "Housing assistance" means appropriate referrals by the department or other supervising agencies to federal, state, local, or private agencies or organizations, assistance with forms, applications, or financial subsidies or other monetary assistance for housing. For purposes of this chapter, "housing assistance" is not a remedial service or time-limited family reunification service as described in RCW 13.34.025(2).

(12) "Indigent" means a person who, at any stage of a court proceeding, is:

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, disability lifeline benefits, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, or supplemental security income; or

(b) Involuntarily committed to a public mental health facility; or

(c) Receiving an annual income, after taxes, of one hundred twenty- five percent or less of the federally established poverty level; or

(d) Unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are insufficient to pay any amount for the retention of counsel.

(13) "Out-of-home care" means placement in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW or placement in a home, other than that of the child's parent, guardian, or legal custodian, not required to be licensed pursuant to chapter 74.15 RCW.

(14) "Preventive services" means preservation services, as defined in chapter 74.14C RCW, and other reasonably available services, including housing assistance, capable of preventing the need for out-of-home placement while protecting the child.

(15) "Shelter care" means temporary physical care in a facility licensed pursuant to RCW 74.15.030 or in a home not required to be licensed pursuant to RCW 74.15.030.

(16) "Sibling" means a child's birth brother, birth sister, adoptive brother, adoptive sister, half-brother, or half-sister, or as defined by the law or custom of the Indian child's tribe for an Indian child as defined in ((25 U.S.C. Sec. 1903(4))) section 4 of this act.

(17) "Social study" means a written evaluation of matters relevant to the disposition of the case and shall contain the following information:

(a) A statement of the specific harm or harms to the child that intervention is designed to alleviate;

(b) A description of the specific services and activities, for both the parents and child, that are needed in order to prevent serious harm to the child; the reasons why such services and activities are likely to be useful; the availability of any proposed services; and the agency's overall plan for ensuring that the services will be delivered. The description shall identify the services chosen and approved by the parent;

(c) If removal is recommended, a full description of the reasons why the child cannot be protected adequately in the home, including a description of any previous efforts to work with the parents and the child in the home; the in-home treatment programs that have been considered and rejected; the preventive services, including housing assistance, that have been offered or provided and have failed to prevent the need for out-of-home placement, unless the health, safety, and welfare of the child cannot be protected adequately in the home; and the parents' attitude toward placement of the child;

(d) A statement of the likely harms the child will suffer as a result of removal;

(e) A description of the steps that will be taken to minimize the harm to the child that may result if separation occurs including an assessment of the child's relationship and emotional bond with any siblings, and the agency's plan to provide ongoing contact between the child and the child's siblings if appropriate; and

(f) Behavior that will be expected before determination that supervision of the family or placement is no longer necessary.

(18) "Supervising agency" means an agency licensed by the state under RCW 74.15.090, or licensed by a federally recognized Indian tribe located in this state under RCW 74.15.190, that has entered into a performance-based contract with the department to provide case management for the delivery and documentation of child welfare services as defined in RCW 74.13.020.

Sec. 23. RCW 13.34.040 and 2004 c 64 s 3 are each amended to read as follows:

(1) Any person may file with the clerk of the superior court a petition showing that there is within the county, or residing within the county, a dependent child and requesting that the superior court deal with such child as provided in this chapter. There shall be no fee for filing such petitions.

(2) In counties having paid probation officers, these officers shall, to the extent possible, first determine if a petition is reasonably justifiable. Each petition shall be verified and contain a statement of facts constituting a dependency, and the names and residence, if

known to the petitioner, of the parents, guardian, or custodian of the alleged dependent child.

(3) Every petition filed in proceedings under this chapter shall contain a statement alleging whether the child is or may be an Indian child as defined in ((25 U.S.C. Sec. 1903)) section 4 of this act. If the child is an Indian child ((as defined under the Indian child welfare act, the provisions of the act)) chapter 13--- RCW (the new chapter created in section 35 of this act) shall apply.

(4) Every order or decree entered under this chapter shall contain a finding that the federal Indian child welfare act or chapter 13--- RCW (the new chapter created in section 35 of this act) does or does not apply. Where there is a finding that the federal Indian child welfare act or chapter 13--- RCW (the new chapter created in section 35 of this act) does apply, the decree or order must also contain a finding that all notice requirements and evidentiary requirements under the federal Indian child welfare act and chapter 13--- RCW (the new chapter created in section 35 of this act) have been satisfied.

Sec. 24. RCW 13.34.065 and 2009 c 520 s 22, 2009 c 491 s 1, 2009 c 477 s 3, and 2009 c 397 s 2 are each reenacted and amended to read as follows:

(1)(a) When a child is taken into custody, the court shall hold a shelter care hearing within seventy-two hours, excluding Saturdays, Sundays, and holidays. The primary purpose of the shelter care hearing is to determine whether the child can be immediately and safely returned home while the adjudication of the dependency is pending.

(b) Any parent, guardian, or legal custodian who for good cause is unable to attend the shelter care hearing may request that a subsequent shelter care hearing be scheduled. The request shall be made to the clerk of the court where the petition is filed prior to the initial shelter care hearing. Upon the request of the parent, the court shall schedule the hearing within seventy-two hours of the request, excluding Saturdays, Sundays, and holidays. The clerk shall notify all other parties of the hearing by any reasonable means.

(2)(a) If it is likely that the child will remain in shelter care longer than seventy-two hours, in those areas in which child welfare services are being provided by a supervising agency, the supervising agency shall assume case management responsibilities of the case. The department or supervising agency shall submit a recommendation to the court as to the further need for shelter care in all cases in which the child will remain in shelter care longer than the seventy-two hour period. In all other cases, the recommendation shall be submitted by the juvenile court probation counselor.

(b) All parties have the right to present testimony to the court regarding the need or lack of need for shelter care.

(c) Hearsay evidence before the court regarding the need or lack of need for shelter care must be supported by sworn testimony, affidavit, or declaration of the person offering such evidence.

(3)(a) At the commencement of the hearing, the court shall notify the parent, guardian, or custodian of the following:

(i) The parent, guardian, or custodian has the right to a shelter care hearing;

(ii) The nature of the shelter care hearing, the rights of the parents, and the proceedings that will follow; and

(iii) If the parent, guardian, or custodian is not represented by counsel, the right to be represented. If the parent, guardian, or custodian is indigent, the court shall appoint counsel as provided in RCW 13.34.090; and

(b) If a parent, guardian, or legal custodian desires to waive the shelter care hearing, the court shall determine, on the record and with the parties present, whether such waiver is knowing and voluntary. A parent may not waive his or her right to the shelter care hearing unless he or she appears in court and the court determines that the waiver is knowing and voluntary. Regardless

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of whether the court accepts the parental waiver of the shelter care hearing, the court must provide notice to the parents of their rights required under (a) of this subsection and make the finding required under subsection (4) of this section.

(4) At the shelter care hearing the court shall examine the need for shelter care and inquire into the status of the case. The paramount consideration for the court shall be the health, welfare, and safety of the child. At a minimum, the court shall inquire into the following:

(a) Whether the notice required under RCW 13.34.062 was given to all known parents, guardians, or legal custodians of the child. The court shall make an express finding as to whether the notice required under RCW 13.34.062 was given to the parent, guardian, or legal custodian. If actual notice was not given to the parent, guardian, or legal custodian and the whereabouts of such person is known or can be ascertained, the court shall order the department to make reasonable efforts to advise the parent, guardian, or legal custodian of the status of the case, including the date and time of any subsequent hearings, and their rights under RCW 13.34.090;

(b) Whether the child can be safely returned home while the adjudication of the dependency is pending;

(c) What efforts have been made to place the child with a relative. The court shall ask the parents whether the department discussed with them the placement of the child with a relative or other suitable person described in RCW 13.34.130(1)(b) and shall determine what efforts have been made toward such a placement;

(d) What services were provided to the family to prevent or eliminate the need for removal of the child from the child's home. If the dependency petition or other information before the court alleges that homelessness or the lack of suitable housing was a significant factor contributing to the removal of the child, the court shall inquire as to whether housing assistance was provided to the family to prevent or eliminate the need for removal of the child or children;

(e) Is the placement proposed by the department or supervising agency the least disruptive and most family-like setting that meets the needs of the child;

(f) Whether it is in the best interest of the child to remain enrolled in the school, developmental program, or child care the child was in prior to placement and what efforts have been made to maintain the child in the school, program, or child care if it would be in the best interest of the child to remain in the same school, program, or child care;

(g) Appointment of a guardian ad litem or attorney;

(h) Whether the child is or may be an Indian child as defined in ~~((25 U.S.C. Sec. 1903))~~ section 4 of this act, whether the provisions of the federal Indian child welfare act or chapter 13--- RCW (the new chapter created in section 35 of this act) apply, and whether there is compliance with the federal Indian child welfare act and chapter 13--- RCW (the new chapter created in section 35 of this act), including notice to the child's tribe;

(i) Whether, as provided in RCW 26.44.063, restraining orders, or orders expelling an allegedly abusive household member from the home of a nonabusive parent, guardian, or legal custodian, will allow the child to safely remain in the home;

(j) Whether any orders for examinations, evaluations, or immediate services are needed. The court may not order a parent to undergo examinations, evaluation, or services at the shelter care hearing unless the parent agrees to the examination, evaluation, or service;

(k) The terms and conditions for parental, sibling, and family visitation.

(5)(a) The court shall release a child alleged to be dependent to the care, custody, and control of the child's parent, guardian, or legal

custodian unless the court finds there is reasonable cause to believe that:

(i) After consideration of the specific services that have been provided, reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home; and

(ii)(A) The child has no parent, guardian, or legal custodian to provide supervision and care for such child; or

(B) The release of such child would present a serious threat of substantial harm to such child, notwithstanding an order entered pursuant to RCW 26.44.063; or

(C) The parent, guardian, or custodian to whom the child could be released has been charged with violating RCW 9A.40.060 or 9A.40.070.

(b) If the court does not release the child to his or her parent, guardian, or legal custodian, the court shall order placement with a relative or other suitable person as described in RCW 13.34.130(1)(b), unless there is reasonable cause to believe the health, safety, or welfare of the child would be jeopardized or that the efforts to reunite the parent and child will be hindered. The court must also determine whether placement with the relative or other suitable person is in the child's best interests. The relative or other suitable person must be willing and available to:

(i) Care for the child and be able to meet any special needs of the child;

(ii) Facilitate the child's visitation with siblings, if such visitation is part of the supervising agency's plan or is ordered by the court; and

(iii) Cooperate with the department or supervising agency in providing necessary background checks and home studies.

(c) If the child was not initially placed with a relative or other suitable person, and the court does not release the child to his or her parent, guardian, or legal custodian, the supervising agency shall make reasonable efforts to locate a relative or other suitable person pursuant to RCW 13.34.060(1). In determining placement, the court shall weigh the child's length of stay and attachment to the current provider in determining what is in the best interest of the child.

(d) If a relative or other suitable person is not available, the court shall order continued shelter care and shall set forth its reasons for the order. If the court orders placement of the child with a person not related to the child and not licensed to provide foster care, the placement is subject to all terms and conditions of this section that apply to relative placements.

(e) Any placement with a relative, or other suitable person approved by the court pursuant to this section, shall be contingent upon cooperation with the department's or supervising agency's case plan and compliance with court orders related to the care and supervision of the child including, but not limited to, court orders regarding parent-child contacts, sibling contacts, and any other conditions imposed by the court. Noncompliance with the case plan or court order is grounds for removal of the child from the home of the relative or other suitable person, subject to review by the court.

(f) Uncertainty by a parent, guardian, legal custodian, relative, or other suitable person that the alleged abuser has in fact abused the child shall not, alone, be the basis upon which a child is removed from the care of a parent, guardian, or legal custodian under (a) of this subsection, nor shall it be a basis, alone, to preclude placement with a relative or other suitable person under (b) of this subsection.

(6)(a) A shelter care order issued pursuant to this section shall include the requirement for a case conference as provided in RCW 13.34.067. However, if the parent is not present at the shelter care hearing, or does not agree to the case conference, the court shall not

include the requirement for the case conference in the shelter care order.

(b) If the court orders a case conference, the shelter care order shall include notice to all parties and establish the date, time, and location of the case conference which shall be no later than thirty days before the fact-finding hearing.

(c) The court may order another conference, case staffing, or hearing as an alternative to the case conference required under RCW 13.34.067 so long as the conference, case staffing, or hearing ordered by the court meets all requirements under RCW 13.34.067, including the requirement of a written agreement specifying the services to be provided to the parent.

(7)(a) A shelter care order issued pursuant to this section may be amended at any time with notice and hearing thereon. The shelter care decision of placement shall be modified only upon a showing of change in circumstances. No child may be placed in shelter care for longer than thirty days without an order, signed by the judge, authorizing continued shelter care.

(b)(i) An order releasing the child on any conditions specified in this section may at any time be amended, with notice and hearing thereon, so as to return the child to shelter care for failure of the parties to conform to the conditions originally imposed.

(ii) The court shall consider whether nonconformance with any conditions resulted from circumstances beyond the control of the parent, guardian, or legal custodian and give weight to that fact before ordering return of the child to shelter care.

(8)(a) If a child is returned home from shelter care a second time in the case, or if the supervisor of the caseworker deems it necessary, the multidisciplinary team may be reconvened.

(b) If a child is returned home from shelter care a second time in the case a law enforcement officer must be present and file a report to the department.

Sec. 25. RCW 13.34.070 and 2004 c 64 s 4 are each amended to read as follows:

(1) Upon the filing of the petition, the clerk of the court shall issue a summons, one directed to the child, if the child is twelve or more years of age, and another to the parents, guardian, or custodian, and such other persons as appear to the court to be proper or necessary parties to the proceedings, requiring them to appear personally before the court at the time fixed to hear the petition. If the child is developmentally disabled and not living at home, the notice shall be given to the child's custodian as well as to the child's parent. The developmentally disabled child shall not be required to appear unless requested by the court. When the custodian is summoned, the parent or guardian or both shall also be served with a summons. The fact-finding hearing on the petition shall be held no later than seventy-five days after the filing of the petition, unless exceptional reasons for a continuance are found. The party requesting the continuance shall have the burden of proving by a preponderance of the evidence that exceptional circumstances exist. To ensure that the hearing on the petition occurs within the seventy-five day time limit, the court shall schedule and hear the matter on an expedited basis.

(2) A copy of the petition shall be attached to each summons.

(3) The summons shall advise the parties of the right to counsel. The summons shall also inform the child's parent, guardian, or legal custodian of his or her right to appointed counsel, if indigent, and of the procedure to use to secure appointed counsel.

(4) The summons shall advise the parents that they may be held responsible for the support of the child if the child is placed in out-of-home care.

(5) The judge may endorse upon the summons an order directing any parent, guardian, or custodian having the custody or control of the child to bring the child to the hearing.

(6) If it appears from affidavit or sworn statement presented to the judge that there is probable cause for the issuance of a warrant of

arrest or that the child needs to be taken into custody pursuant to RCW 13.34.050, the judge may endorse upon the summons an order that an officer serving the summons shall at once take the child into custody and take him or her to the place of shelter designated by the court.

(7) If the person summoned as provided in this section is subject to an order of the court pursuant to subsection (5) or (6) of this section, and if the person fails to abide by the order, he or she may be proceeded against as for contempt of court. The order endorsed upon the summons shall conspicuously display the following legend:

NOTICE:
VIOLATION OF THIS ORDER
IS SUBJECT TO PROCEEDING
FOR CONTEMPT OF COURT
PURSUANT TO RCW 13.34.070.

(8) If a party to be served with a summons can be found within the state, the summons shall be served upon the party personally as soon as possible following the filing of the petition, but in no case later than fifteen court days before the fact-finding hearing, or such time as set by the court. If the party is within the state and cannot be personally served, but the party's address is known or can with reasonable diligence be ascertained, the summons may be served upon the party by mailing a copy by certified mail as soon as possible following the filing of the petition, but in no case later than fifteen court days before the hearing, or such time as set by the court. If a party other than the child is without the state but can be found or the address is known, or can with reasonable diligence be ascertained, service of the summons may be made either by delivering a copy to the party personally or by mailing a copy thereof to the party by certified mail at least ten court days before the fact-finding hearing, or such time as set by the court.

(9) Service of summons may be made under the direction of the court by any person eighteen years of age or older who is not a party to the proceedings or by any law enforcement officer, probation counselor, or department employee.

(10)((a)) Whenever the court or the petitioning party in a proceeding under this chapter knows or has reason to know that an Indian child as defined in section 4 of this act is involved, the petitioning party shall promptly provide notice to the child's parent or Indian custodian and to the agent designated by the child's Indian tribe to receive such notices. Notice shall ~~((be by certified mail with return receipt requested. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the secretary of the interior in the manner described in 25 C.F.R. 23.11. If the child may be a member of more than one tribe, the petitioning party shall send notice to all tribes the petitioner has reason to know may be affiliated with the child.~~

~~((b) The notice shall: (i) Contain a statement notifying the parent or custodian and the tribe of the pending proceeding; and (ii) notify the tribe of the tribe's right to intervene and/or request that the case be transferred to tribal court))~~ comply with section 7 of this act.

Sec. 26. RCW 13.34.105 and 2010 c 180 s 3 are each amended to read as follows:

(1) Unless otherwise directed by the court, the duties of the guardian ad litem for a child subject to a proceeding under this chapter, including an attorney specifically appointed by the court to serve as a guardian ad litem, include but are not limited to the following:

(a) To investigate, collect relevant information about the child's situation, and report to the court factual information regarding the best interests of the child;

(b) To meet with, interview, or observe the child, depending on the child's age and developmental status, and report to the court any

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views or positions expressed by the child on issues pending before the court;

(c) To monitor all court orders for compliance and to bring to the court's attention any change in circumstances that may require a modification of the court's order;

(d) To report to the court information on the legal status of a child's membership in any Indian tribe or band;

(e) Court-appointed special advocates and guardians ad litem may make recommendations based upon an independent investigation regarding the best interests of the child, which the court may consider and weigh in conjunction with the recommendations of all of the parties;

(f) To represent and be an advocate for the best interests of the child; ~~(and)~~

(g) To inform the child, if the child is twelve years old or older, of his or her right to request counsel and to ask the child whether he or she wishes to have counsel, pursuant to RCW 13.34.100(6). The guardian ad litem shall report to the court that the child was notified of this right and indicate the child's position regarding appointment of counsel. The guardian ad litem shall report to the court his or her independent recommendation as to whether appointment of counsel is in the best interest of the child; and

(h) In the case of an Indian child as defined in section 4 of this act, know, understand, and advocate the best interests of the Indian child.

(2) A guardian ad litem shall be deemed an officer of the court for the purpose of immunity from civil liability.

(3) Except for information or records specified in RCW 13.50.100(7), the guardian ad litem shall have access to all information available to the state or agency on the case. Upon presentation of the order of appointment by the guardian ad litem, any agency, hospital, school organization, division or department of the state, doctor, nurse, or other health care provider, psychologist, psychiatrist, police department, or mental health clinic shall permit the guardian ad litem to inspect and copy any records relating to the child or children involved in the case, without the consent of the parent or guardian of the child, or of the child if the child is under the age of thirteen years, unless such access is otherwise specifically prohibited by law.

(4) A guardian ad litem may release confidential information, records, and reports to the office of the family and children's ombudsman for the purposes of carrying out its duties under chapter 43.06A RCW.

(5) The guardian ad litem shall release case information in accordance with the provisions of RCW 13.50.100.

Sec. 27. RCW 13.34.130 and 2010 c 288 s 1 are each amended to read as follows:

If, after a fact-finding hearing pursuant to RCW 13.34.110, it has been proven by a preponderance of the evidence that the child is dependent within the meaning of RCW 13.34.030 after consideration of the social study prepared pursuant to RCW 13.34.110 and after a disposition hearing has been held pursuant to RCW 13.34.110, the court shall enter an order of disposition pursuant to this section.

(1) The court shall order one of the following dispositions of the case:

(a) Order a disposition other than removal of the child from his or her home, which shall provide a program designed to alleviate the immediate danger to the child, to mitigate or cure any damage the child has already suffered, and to aid the parents so that the child will not be endangered in the future. In determining the disposition, the court should choose services to assist the parents in maintaining the child in the home, including housing assistance, if appropriate, that least interfere with family autonomy and are adequate to protect the child.

(b)(i) Order the child to be removed from his or her home and into the custody, control, and care of a relative or other suitable person, the department, or a supervising agency for supervision of the child's placement. The court may not order an Indian child, as defined in ~~((25 U.S.C. Sec. 1903))~~ section 4 of this act, to be removed from his or her home unless the court finds, by clear and convincing evidence including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(ii) The department or supervising agency has the authority to place the child, subject to review and approval by the court (A) with a relative as defined in RCW 74.15.020(2)(a), (B) in the home of another suitable person if the child or family has a preexisting relationship with that person, and the person has completed all required criminal history background checks and otherwise appears to the department or supervising agency to be suitable and competent to provide care for the child, or (C) in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW. Absent good cause, the department or supervising agency shall follow the wishes of the natural parent regarding the placement of the child in accordance with RCW 13.34.260. The department or supervising agency may only place a child with a person not related to the child as defined in RCW 74.15.020(2)(a) when the court finds that such placement is in the best interest of the child. Unless there is reasonable cause to believe that the health, safety, or welfare of the child would be jeopardized or that efforts to reunite the parent and child will be hindered, the child shall be placed with a person who is willing, appropriate, and available to care for the child, and who is: (I) Related to the child as defined in RCW 74.15.020(2)(a) with whom the child has a relationship and is comfortable; or (II) a suitable person as described in this subsection (1)(b). The court shall consider the child's existing relationships and attachments when determining placement.

(2) When placing an Indian child in out-of-home care, the department or supervising agency shall follow the placement preference characteristics in ~~((RCW 13.34.250 and in 25 U.S.C. Sec. 1915))~~ section 18 of this act.

(3) Placement of the child with a relative or other suitable person as described in subsection (1)(b) of this section shall be given preference by the court. An order for out-of-home placement may be made only if the court finds that reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home, specifying the services, including housing assistance, that have been provided to the child and the child's parent, guardian, or legal custodian, and that preventive services have been offered or provided and have failed to prevent the need for out-of-home placement, unless the health, safety, and welfare of the child cannot be protected adequately in the home, and that:

(a) There is no parent or guardian available to care for such child;

(b) The parent, guardian, or legal custodian is not willing to take custody of the child; or

(c) The court finds, by clear, cogent, and convincing evidence, a manifest danger exists that the child will suffer serious abuse or neglect if the child is not removed from the home and an order under RCW 26.44.063 would not protect the child from danger.

(4) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section, the court shall consider whether it is in a child's best interest to be placed with, have contact with, or have visits with siblings.

(a) There shall be a presumption that such placement, contact, or visits are in the best interests of the child provided that:

(i) The court has jurisdiction over all siblings subject to the order of placement, contact, or visitation pursuant to petitions filed under this chapter or the parents of a child for whom there is no jurisdiction are willing to agree; and

(ii) There is no reasonable cause to believe that the health, safety, or welfare of any child subject to the order of placement, contact, or visitation would be jeopardized or that efforts to reunite the parent and child would be hindered by such placement, contact, or visitation. In no event shall parental visitation time be reduced in order to provide sibling visitation.

(b) The court may also order placement, contact, or visitation of a child with a step-brother or step-sister provided that in addition to the factors in (a) of this subsection, the child has a relationship and is comfortable with the step-sibling.

(5) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section and placed into nonparental or nonrelative care, the court shall order a placement that allows the child to remain in the same school he or she attended prior to the initiation of the dependency proceeding when such a placement is practical and in the child's best interest.

(6) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section, the court may order that a petition seeking termination of the parent and child relationship be filed if the requirements of RCW 13.34.132 are met.

(7) If there is insufficient information at the time of the disposition hearing upon which to base a determination regarding the suitability of a proposed placement with a relative or other suitable person, the child shall remain in foster care and the court shall direct the department or supervising agency to conduct necessary background investigations as provided in chapter 74.15 RCW and report the results of such investigation to the court within thirty days. However, if such relative or other person appears otherwise suitable and competent to provide care and treatment, the criminal history background check need not be completed before placement, but as soon as possible after placement. Any placements with relatives or other suitable persons, pursuant to this section, shall be contingent upon cooperation by the relative or other suitable person with the agency case plan and compliance with court orders related to the care and supervision of the child including, but not limited to, court orders regarding parent-child contacts, sibling contacts, and any other conditions imposed by the court. Noncompliance with the case plan or court order shall be grounds for removal of the child from the relative's or other suitable person's home, subject to review by the court.

Sec. 28. RCW 13.34.132 and 2000 c 122 s 16 are each amended to read as follows:

A court may order that a petition seeking termination of the parent and child relationship be filed if the following requirements are met:

(1) The court has removed the child from his or her home pursuant to RCW 13.34.130;

(2) Termination is recommended by the department or the supervising agency;

(3) Termination is in the best interests of the child; and

(4) Because of the existence of aggravated circumstances, reasonable efforts to unify the family are not required. Notwithstanding the existence of aggravated circumstances, reasonable efforts may be required if the court or department determines it is in the best interests of the child. In determining whether aggravated circumstances exist by clear, cogent, and convincing evidence, the court shall consider one or more of the following:

(a) Conviction of the parent of rape of the child in the first, second, or third degree as defined in RCW 9A.44.073, 9A.44.076, and 9A.44.079;

(b) Conviction of the parent of criminal mistreatment of the child in the first or second degree as defined in RCW 9A.42.020 and 9A.42.030;

(c) Conviction of the parent of one of the following assault crimes, when the child is the victim: Assault in the first or second degree as defined in RCW 9A.36.011 and 9A.36.021 or assault of a child in the first or second degree as defined in RCW 9A.36.120 or 9A.36.130;

(d) Conviction of the parent of murder, manslaughter, or homicide by abuse of the child's other parent, sibling, or another child;

(e) Conviction of the parent of attempting, soliciting, or conspiring to commit a crime listed in (a), (b), (c), or (d) of this subsection;

(f) A finding by a court that a parent is a sexually violent predator as defined in RCW 71.09.020;

(g) Failure of the parent to complete available treatment ordered under this chapter or the equivalent laws of another state, where such failure has resulted in a prior termination of parental rights to another child and the parent has failed to effect significant change in the interim. In the case of a parent of an Indian child, as defined in ~~(the Indian Child Welfare Act, P.L. 95-608 (25 U.S.C. Sec. 1903))~~ section 4 of this act, the court shall also consider tribal efforts to assist the parent in completing treatment and make it possible for the child to return home;

(h) An infant under three years of age has been abandoned;

(i) Conviction of the parent, when a child has been born of the offense, of: (A) A sex offense under chapter 9A.44 RCW; or (B) incest under RCW 9A.64.020.

Sec. 29. RCW 13.34.136 and 2009 c 520 s 28 and 2009 c 234 s 5 are each reenacted and amended to read as follows:

(1) Whenever a child is ordered removed from the home, a permanency plan shall be developed no later than sixty days from the time the supervising agency assumes responsibility for providing services, including placing the child, or at the time of a hearing under RCW 13.34.130, whichever occurs first. The permanency planning process continues until a permanency planning goal is achieved or dependency is dismissed. The planning process shall include reasonable efforts to return the child to the parent's home.

(2) The agency supervising the dependency shall submit a written permanency plan to all parties and the court not less than fourteen days prior to the scheduled hearing. Responsive reports of parties not in agreement with the department's or supervising agency's proposed permanency plan must be provided to the department or supervising agency, all other parties, and the court at least seven days prior to the hearing.

The permanency plan shall include:

(a) A permanency plan of care that shall identify one of the following outcomes as a primary goal and may identify additional outcomes as alternative goals: Return of the child to the home of the child's parent, guardian, or legal custodian; adoption, including a tribal customary adoption as defined in section 4 of this act; guardianship; permanent legal custody; long-term relative or foster care, until the child is age eighteen, with a written agreement between the parties and the care provider; successful completion of a responsible living skills program; or independent living, if appropriate and if the child is age sixteen or older. The department or supervising agency shall not discharge a child to an independent living situation before the child is eighteen years of age unless the child becomes emancipated pursuant to chapter 13.64 RCW;

(b) Unless the court has ordered, pursuant to RCW 13.34.130~~((5))~~ (6), that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to return the child home, what steps the supervising agency or the department will take to promote existing appropriate sibling

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relationships and/or facilitate placement together or contact in accordance with the best interests of each child, and what actions the department or supervising agency will take to maintain parent-child ties. All aspects of the plan shall include the goal of achieving permanence for the child.

(i) The department's or supervising agency's plan shall specify what services the parents will be offered to enable them to resume custody, what requirements the parents must meet to resume custody, and a time limit for each service plan and parental requirement.

(ii) Visitation is the right of the family, including the child and the parent, in cases in which visitation is in the best interest of the child. Early, consistent, and frequent visitation is crucial for maintaining parent-child relationships and making it possible for parents and children to safely reunify. The supervising agency or department shall encourage the maximum parent and child and sibling contact possible, when it is in the best interest of the child, including regular visitation and participation by the parents in the care of the child while the child is in placement. Visitation shall not be limited as a sanction for a parent's failure to comply with court orders or services where the health, safety, or welfare of the child is not at risk as a result of the visitation. Visitation may be limited or denied only if the court determines that such limitation or denial is necessary to protect the child's health, safety, or welfare. The court and the department or supervising agency should rely upon community resources, relatives, foster parents, and other appropriate persons to provide transportation and supervision for visitation to the extent that such resources are available, and appropriate, and the child's safety would not be compromised.

(iii) A child shall be placed as close to the child's home as possible, preferably in the child's own neighborhood, unless the court finds that placement at a greater distance is necessary to promote the child's or parents' well-being.

(iv) The plan shall state whether both in-state and, where appropriate, out-of-state placement options have been considered by the department or supervising agency.

(v) Unless it is not in the best interests of the child, whenever practical, the plan should ensure the child remains enrolled in the school the child was attending at the time the child entered foster care.

(vi) The supervising agency or department shall provide all reasonable services that are available within the department or supervising agency, or within the community, or those services which the department has existing contracts to purchase. It shall report to the court if it is unable to provide such services; and

(c) If the court has ordered, pursuant to RCW 13.34.130(~~(5)~~) (6), that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to achieve permanency for the child, services to be offered or provided to the child, and, if visitation would be in the best interests of the child, a recommendation to the court regarding visitation between parent and child pending a fact-finding hearing on the termination petition. The department or supervising agency shall not be required to develop a plan of services for the parents or provide services to the parents if the court orders a termination petition be filed. However, reasonable efforts to ensure visitation and contact between siblings shall be made unless there is reasonable cause to believe the best interests of the child or siblings would be jeopardized.

(3) Permanency planning goals should be achieved at the earliest possible date. If the child has been in out-of-home care for fifteen of the most recent twenty-two months, the court shall require the department or supervising agency to file a petition seeking termination of parental rights in accordance with RCW 13.34.145(3)(b)(vi). In cases where parental rights have been terminated, the child is legally free for adoption, and adoption has

been identified as the primary permanency planning goal, it shall be a goal to complete the adoption within six months following entry of the termination order.

(4) If the court determines that the continuation of reasonable efforts to prevent or eliminate the need to remove the child from his or her home or to safely return the child home should not be part of the permanency plan of care for the child, reasonable efforts shall be made to place the child in a timely manner and to complete whatever steps are necessary to finalize the permanent placement of the child.

(5) The identified outcomes and goals of the permanency plan may change over time based upon the circumstances of the particular case.

(6) The court shall consider the child's relationships with the child's siblings in accordance with RCW 13.34.130(~~(3)~~) (4). Whenever the permanency plan for a child is adoption, the court shall encourage the prospective adoptive parents, birth parents, foster parents, kinship caregivers, and the department or other supervising agency to seriously consider the long-term benefits to the child adoptee and his or her siblings of providing for and facilitating continuing postadoption contact between the siblings. To the extent that it is feasible, and when it is in the best interests of the child adoptee and his or her siblings, contact between the siblings should be frequent and of a similar nature as that which existed prior to the adoption. If the child adoptee or his or her siblings are represented by an attorney or guardian ad litem in a proceeding under this chapter or in any other child custody proceeding, the court shall inquire of each attorney and guardian ad litem regarding the potential benefits of continuing contact between the siblings and the potential detriments of severing contact. This section does not require the department of social and health services or other supervising agency to agree to any specific provisions in an open adoption agreement and does not create a new obligation for the department to provide supervision or transportation for visits between siblings separated by adoption from foster care.

(7) For purposes related to permanency planning:

(a) "Guardianship" means a dependency guardianship or a legal guardianship pursuant to chapter 11.88 RCW or equivalent laws of another state or a federally recognized Indian tribe.

(b) "Permanent custody order" means a custody order entered pursuant to chapter 26.10 RCW.

(c) "Permanent legal custody" means legal custody pursuant to chapter 26.10 RCW or equivalent laws of another state or a federally recognized Indian tribe.

Sec. 30. RCW 13.34.190 and 2010 c 288 s 2 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, after hearings pursuant to RCW 13.34.110 or 13.34.130, the court may enter an order terminating all parental rights to a child only if the court finds that:

(a)(i) The allegations contained in the petition as provided in RCW 13.34.180(1) are established by clear, cogent, and convincing evidence; or

(ii) The provisions of RCW 13.34.180(1) (a), (b), (e), and (f) are established beyond a reasonable doubt and if so, then RCW 13.34.180(1) (c) and (d) may be waived. When an infant has been abandoned, as defined in RCW 13.34.030, and the abandonment has been proved beyond a reasonable doubt, then RCW 13.34.180(1) (c) and (d) may be waived; or

(iii) The allegation under RCW 13.34.180(2) is established beyond a reasonable doubt. In determining whether RCW 13.34.180(1) (e) and (f) are established beyond a reasonable doubt, the court shall consider whether one or more of the aggravated circumstances listed in RCW 13.34.132 exist; or

(iv) The allegation under RCW 13.34.180(3) is established beyond a reasonable doubt; and

(b) Such an order is in the best interests of the child.

(2) The provisions of chapter 13.--- RCW (the new chapter created in section 35 of this act) must be followed in any proceeding under this chapter for termination of the parent-child relationship of an Indian child as defined in ((25 U.S.C. Sec. 1903, no termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child)) section 4 of this act.

Sec. 31. RCW 26.10.034 and 2004 c 64 s 1 are each amended to read as follows:

(1)((~~1~~)) Every petition filed in proceedings under this chapter shall contain a statement alleging whether the child is or may be an Indian child as defined in ((25 U.S.C. Sec. 1903) section 4 of this act. If the child is an Indian child ((as defined under the Indian child welfare act, the provisions of the act)), chapter 13.--- RCW (the new chapter created in section 35 of this act) shall apply.

((b) Whenever the court or the petitioning party in a proceeding under this chapter knows or has reason to know that an Indian child is involved, the petitioning party shall promptly provide notice to the child's parent or Indian custodian and to the agent designated by the child's Indian tribe to receive such notices. Notice shall be by certified mail with return receipt requested. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the secretary of the interior in the manner described in 25 C.F.R. 23.11. If the child may be a member of more than one tribe, the petitioning party shall send notice to all tribes the petitioner has reason to know may be affiliated with the child.

(c) The notice shall: (i) Contain a statement notifying the parent or custodian and the tribe of the pending proceeding; and (ii) notify the tribe of the tribe's right to intervene and/or request that the case be transferred to tribal court.)

(2) Every order or decree entered in any proceeding under this chapter shall contain a finding that the federal Indian child welfare act or chapter 13.--- RCW (the new chapter created in section 35 of this act) does or does not apply. Where there is a finding that the federal Indian child welfare act or chapter 13.--- RCW (the new chapter created in section 35 of this act) does apply, the decree or order must also contain a finding that all notice ((requirements)) and evidentiary requirements under the federal Indian child welfare act and chapter 13.--- RCW (the new chapter created in section 35 of this act) have been satisfied.

Sec. 32. RCW 26.33.040 and 2004 c 64 s 2 are each amended to read as follows:

(1)(a) Every petition filed in proceedings under this chapter shall contain a statement alleging whether the child is or may be an Indian child as defined in ((25 U.S.C. Sec. 1903) section 4 of this act. If the child is an Indian child ((as defined under the Indian child welfare act, the provisions of the act)), chapter 13.--- RCW (the new chapter created in section 35 of this act) shall apply.

(b) Every order or decree entered in any proceeding under this chapter shall contain a finding that the federal Indian child welfare act or chapter 13.--- RCW (the new chapter created in section 35 of this act) does or does not apply. Where there is a finding that the federal Indian child welfare act or chapter 13.--- RCW (the new chapter created in section 35 of this act) does apply, the decree or order must also contain a finding that all notice, consent, and evidentiary requirements ((and evidentiary requirements)) under the federal Indian child welfare act, chapter 13.--- RCW (the new chapter created in section 35 of this act), and this section have been satisfied.

(c) In proceedings under this chapter, the adoption facilitator shall file a sworn statement documenting efforts to determine

whether an Indian child ((as defined under the Indian child welfare act, 25 U.S.C. Sec. 1903,)) is involved.

(d) Whenever the court or the petitioning party knows or has reason to know that an Indian child is involved in any termination, relinquishment, or placement proceeding under this chapter, the petitioning party shall promptly provide notice to the child's parent or Indian custodian and to the agent designated by the child's Indian tribe to receive such notices. Notice shall be by certified mail with return receipt requested. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the secretary of the interior in the manner described in 25 C.F.R. 23.11. If the child may be a member of more than one tribe, the petitioning party shall send notice to all tribes the petitioner has reason to know may be affiliated with the child.

(e) The notice shall: (i) Contain a statement notifying the parent or custodian and the tribe of the pending proceeding; and (ii) notify the tribe of the tribe's right to intervene and/or request that the case be transferred to tribal court.

(f) No termination, relinquishment, or placement proceeding shall be held until at least ten days after receipt of notice by the tribe. If the tribe requests, the court shall grant the tribe up to twenty additional days to prepare for such proceeding.

(2) Every petition filed in proceedings under this chapter shall contain a statement alleging whether the ((Soldiers and Sailors)) federal servicemembers civil relief act of ((1940)) 2004, 50 U.S.C. Sec. 501 et seq. applies to the proceeding. Every order or decree entered in any proceeding under this chapter shall contain a finding that the ((Soldiers and Sailors)) federal servicemembers civil relief act of ((1940)) 2004 does or does not apply.

Sec. 33. RCW 26.33.240 and 1987 c 170 s 8 are each amended to read as follows:

(1) After the reports required by RCW 26.33.190 and 26.33.200 have been filed, the court shall schedule a hearing on the petition for adoption upon request of the petitioner for adoption. Notice of the date, time, and place of hearing shall be given to the petitioner and any person or agency whose consent to adoption is required under RCW 26.33.160, unless the person or agency has waived in writing the right to receive notice of the hearing. If the child is an Indian child, notice shall also be given to the child's tribe. Notice shall be given in the manner prescribed by RCW 26.33.310.

(2) Notice of the adoption hearing shall also be given to any person who or agency which has prepared a preplacement report. The notice shall be given in the manner prescribed by RCW 26.33.230.

(3) If the court determines, after review of the petition, preplacement and post-placement reports, and other evidence introduced at the hearing, that all necessary consents to adoption are valid or have been dispensed with pursuant to RCW 26.33.170 and that the adoption is in the best interest of the adoptee, and, in the case of an adoption of an Indian child, that the adoptive parents are within the placement preferences of ((25 U.S.C. Sec. 1915)) section 18 of this act or good cause to the contrary has been shown on the record, the court shall enter a decree of adoption pursuant to RCW 26.33.250.

(4) If the court determines the petition should not be granted because the adoption is not in the best interest of the child, the court shall make appropriate provision for the care and custody of the child.

Sec. 34. RCW 74.13.350 and 2004 c 183 s 4 are each amended to read as follows:

It is the intent of the legislature that parents are responsible for the care and support of children with developmental disabilities. The legislature recognizes that, because of the intense support required to care for a child with developmental disabilities, the help of an out-of-home placement may be needed. It is the intent of the legislature that, when the sole reason for the out-of-home placement

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is the child's developmental disability, such services be offered by the department to these children and their families through a voluntary placement agreement. In these cases, the parents shall retain legal custody of the child.

As used in this section, "voluntary placement agreement" means a written agreement between the department and a child's parent or legal guardian authorizing the department to place the child in a licensed facility. Under the terms of this agreement, the parent or legal guardian shall retain legal custody and the department shall be responsible for the child's placement and care. The agreement shall at a minimum specify the legal status of the child and the rights and obligations of the parent or legal guardian, the child, and the department while the child is in placement. The agreement must be signed by the child's parent or legal guardian and the department to be in effect, except that an agreement regarding an Indian child shall not be valid unless executed ~~((in writing before the court and filed with the court as provided in RCW 13.34.245))~~ in accordance with section 15 of this act. Any party to a voluntary placement agreement may terminate the agreement at any time. Upon termination of the agreement, the child shall be returned to the care of the child's parent or legal guardian unless the child has been taken into custody pursuant to RCW 13.34.050 or 26.44.050, placed in shelter care pursuant to RCW 13.34.060, or placed in foster care pursuant to RCW 13.34.130.

As used in this section, "out-of-home placement" and "out-of-home care" mean the placement of a child in a foster family home or group care facility licensed under chapter 74.15 RCW.

Whenever the department places a child in out-of-home care under a voluntary placement pursuant to this section, the department shall have the responsibility for the child's placement and care. The department shall develop a permanency plan of care for the child no later than sixty days from the date that the department assumes responsibility for the child's placement and care. Within the first one hundred eighty days of the placement, the department shall obtain a judicial determination pursuant to RCW 13.04.030(1)(j) and 13.34.270 that the placement is in the best interests of the child. If the child's out-of-home placement ends before one hundred eighty days have elapsed, no judicial determination under RCW 13.04.030(1)(b) is required. The permanency planning hearings shall review whether the child's best interests are served by continued out-of-home placement and determine the future legal status of the child.

The department shall provide for periodic administrative reviews as required by federal law. A review may be called at any time by either the department, the parent, or the legal guardian.

Nothing in this section shall prevent the department from filing a dependency petition if there is reason to believe that the child is a dependent child as defined in RCW 13.34.030.

The department shall adopt rules providing for the implementation of chapter 386, Laws of 1997 and the transfer of responsibility for out-of-home placements from the dependency process under chapter 13.34 RCW to the process under this chapter.

It is the intent of the legislature that the department undertake voluntary out-of-home placement in cases where the child's developmental disability is such that the parent, guardian, or legal custodian is unable to provide the necessary care for the child, and the parent, guardian, or legal custodian has determined that the child would benefit from placement outside of the home. If the department does not accept a voluntary placement agreement signed by the parent, a petition may be filed and an action pursued under chapter 13.34 RCW. The department shall inform the parent, guardian, or legal custodian in writing of their right to civil action under chapter 13.34 RCW.

Nothing in this section prohibits the department from seeking support from parents of a child, including a child with a

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developmental disability if the child has been placed into care as a result of an action under chapter 13.34 RCW, when state or federal funds are expended for the care and maintenance of that child or when the department receives an application for services from the physical custodian of the child, unless the department finds that there is good cause not to pursue collection of child support against the parent or parents.

NEW SECTION. Sec. 35. Sections 1 through 20 of this act constitute a new chapter in Title 13 RCW.

NEW SECTION. Sec. 36. RCW 13.34.250 (Preference characteristics when placing Indian child in foster care home) and 1979 c 155 s 53 are each repealed."

Correct the title.
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Hargrove moved that the Senate concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 5656.

Senator Hargrove spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Hargrove that the Senate concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 5656.

The motion by Senator Hargrove carried and the Senate concurred in the House amendment(s) to Engrossed Substitute Senate Bill No. 5656 by voice vote.

The President declared the question before the Senate to be the final passage of Engrossed Substitute Senate Bill No. 5656, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute Senate Bill No. 5656, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 44; Nays, 3; Absent, 0; Excused, 2.

Voting yea: Senators Baumgartner, Baxter, Becker, Benton, Brown, Carrell, Chase, Conway, Eide, Ericksen, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Kastama, Keiser, Kilmer, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom, White and Zarelli

Voting nay: Senators Holmquist Newbry, Honeyford and King

Excused: Senators Delvin and Parlette

ENGROSSED SUBSTITUTE SENATE BILL NO. 5656, as amended by the House, 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.

MESSAGE FROM THE HOUSE

March 25, 2011

MR. PRESIDENT:

The House passed ENGROSSED SENATE BILL NO. 5005 with the following amendment(s): 5005.E AMH HCW H2234.2

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 28A.210.090 and 1991 c 3 s 290 are each amended to read as follows:

(1) Any child shall be exempt in whole or in part from the immunization measures required by RCW 28A.210.060 through 28A.210.170 upon the presentation of any one or more of the ~~((following))~~ certifications required by this section, on a form prescribed by the department of health:

~~((1))~~ (a) A written certification signed by ~~((any physician licensed to practice medicine pursuant to chapter 18.71 or 18.57 RCW))~~ a health care practitioner that a particular vaccine required by rule of the state board of health is, in his or her judgment, not advisable for the child: PROVIDED, That when it is determined that this particular vaccine is no longer contraindicated, the child will be required to have the vaccine;

~~((2))~~ (b) A written certification signed by any parent or legal guardian of the child or any adult in loco parentis to the child that the religious beliefs of the signator are contrary to the required immunization measures; ~~((and))~~ or

~~((3))~~ (c) A written certification signed by any parent or legal guardian of the child or any adult in loco parentis to the child that the signator has either a philosophical or personal objection to the immunization of the child.

(2)(a) The form presented on or after the effective date of this section must include a statement to be signed by a health care practitioner stating that he or she provided the signator with information about the benefits and risks of immunization to the child. The form may be signed by a health care practitioner at any time prior to the enrollment of the child in a school or licensed day care. Photocopies of the signed form or a letter from the health care practitioner referencing the child's name shall be accepted in lieu of the original form.

(b) A health care practitioner who, in good faith, signs the statement provided for in (a) of this subsection is immune from civil liability for providing the signature.

(c) Any parent or legal guardian of the child or any adult in loco parentis to the child who exempts the child due to religious beliefs pursuant to subsection (1)(b) of this section is not required to have the form provided for in (a) of this subsection signed by a health care practitioner if the parent or legal guardian demonstrates membership in a religious body or a church in which the religious beliefs or teachings of the church preclude a health care practitioner from providing medical treatment to the child.

(3) For purposes of this section, "health care practitioner" means a physician licensed under chapter 18.71 or 18.57 RCW, a naturopath licensed under chapter 18.36A RCW, a physician assistant licensed under chapter 18.71A or 18.57A RCW, or an advanced registered nurse practitioner licensed under chapter 18.79 RCW."

Correct the title.
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Keiser moved that the Senate concur in the House amendment(s) to Engrossed Senate Bill No. 5005.

Senators Keiser, Becker and Pflug spoke in favor of the motion.

Senators Ranker and Baumgartner spoke against the motion.

The President declared the question before the Senate to be the motion by Senator Keiser that the Senate concur in the House amendment(s) to Engrossed Senate Bill No. 5005.

The motion by Senator Keiser carried and the Senate concurred in the House amendment(s) to Engrossed Senate Bill No. 5005 by voice vote.

The President declared the question before the Senate to be the final passage of Engrossed Senate Bill No. 5005, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Senate Bill No. 5005, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 34; Nays, 12; Absent, 1; Excused, 2.

Voting yea: Senators Becker, Brown, Carrell, Chase, Conway, Eide, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hill, Hobbs, Honeyford, Kastama, Keiser, Kilmer, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Pflug, Prentice, Pridemore, Regala, Rockefeller, Schoesler, Shin, Tom and White

Voting nay: Senators Baumgartner, Baxter, Benton, Ericksen, Hewitt, Holmquist Newbry, King, Ranker, Sheldon, Stevens, Swecker and Zarelli

Absent: Senator Roach

Excused: Senators Delvin and Parlette

ENGROSSED SENATE BILL NO. 5005, as amended by the House, 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.

MESSAGE FROM THE HOUSE

April 18, 2011

MR. PRESIDENT:

The House refuses to concur in the Senate amendment(s) to ENGROSSED SUBSTITUTE HOUSE BILL NO. 1737 and asks the Senate to recede therefrom.
and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Conway moved that the Senate recede from its position in the Senate amendment(s) to Engrossed Substitute House Bill No. 1737.

The President declared the question before the Senate to be motion by Senator Conway that the Senate recede from its position in the Senate amendment(s) to Engrossed Substitute House Bill No. 1737.

The motion by Senator Conway carried and the Senate receded from its position in the Senate amendment(s) to Engrossed Substitute House Bill No. 1737 by voice vote.

MOTION

On motion of Senator Conway, the rules were suspended and Engrossed Substitute House Bill No. 1737 was returned to second reading for the purpose of amendment.

SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1737, by House Committee on Health Care & Wellness (originally sponsored by Representatives Short, Seaquist and Schmick)

Concerning the department of social and health services' audit program for pharmacy payments.

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The measure was read the second time.

MOTION

Senator Conway moved that the following striking amendment by Senators Conway and Becker be adopted:

Strike everything after the enacting clause and insert the following:

Sec. 1. RCW 74.09.200 and 1979 ex.s. c 152 s 1 are each amended to read as follows:

(1) The legislature finds and declares it to be in the public interest and for the protection of the health and welfare of the residents of the state of Washington that a proper regulatory and inspection program be instituted in connection with the providing of medical, dental, and other health services to recipients of public assistance and medically indigent persons. In order to effectively accomplish such purpose and to assure that the recipient of such services receives such services as are paid for by the state of Washington, the acceptance by the recipient of such services, and by practitioners of reimbursement for performing such services, shall authorize the secretary of the department of social and health services or his designee, to inspect and audit all records in connection with the providing of such services.

(2) It is the intent of the legislature that the regulatory and inspection program authorized in this section shall include a systematic method to gather data for program improvement.

(3) It is the intent of the legislature that the state's inspection and auditing practices provide fairness and flexibility to the providers of health services, while protecting the integrity of the payment process and avoiding any liability on the part of the state to federal programs. The legislature intends that inspection and auditing standards in this chapter shall be construed in a manner that is consistent with applicable federal standards to avoid the loss of federal funding or repayment obligations to federal programs in which the state participates.

NEW SECTION. Sec. 2. A new section is added to chapter 74.09 RCW to read as follows:

(1) Audits under this chapter of the records of pharmacies licensed under chapter 18.64 RCW are subject to the following:

(a) An initial audit may not commence earlier than thirty days prior to the date on which written notice of the audit is given to the pharmacy. The notice must be provided to the physical location at which the audit will be conducted and to the principal office or place of business of the pharmacy, if different, and must include the name, office address, and telephone number of any contractor conducting the audit pursuant to a contract with the department. Audit findings resulting from audit work that is commenced before the thirty-day period may not be used in any audit findings;

(b) Technical deficiencies may not be the basis for finding an overpayment if the pharmacy can substantiate through documentation that the claim for services complies with all of the elements of an allowable cost, as provided in subsection (3) of this section;

(c) Technical deficiencies shall not be used as a basis to appeal third-party-liability audit findings;

(d) An audited pharmacy may use the records of a hospital, physician, or other authorized pharmacy to validate the audited pharmacy's record; and

(e) The pharmacy must have at least ninety days from the date on which the draft audit findings were delivered to the pharmacy to respond with additional documentation or other relevant information. Extensions of these time periods shall be granted for good cause.

(2) This section does not apply to an audit that is based on an investigation for fraudulent or abusive practices under RCW 74.09.210.

(3) The provisions of this section shall be construed in a manner that is consistent with applicable federal standards to avoid the loss of federal funding and financial obligations to federal programs in which the state participates.

(4) For the purposes of this section:

(a) "Technical deficiency" means a billing error or omission that does not affect any elements of an allowable cost. "Technical deficiency" does not include:

(i) Failure to routinely obtain prior authorization of the service if required under this chapter or rules adopted under this chapter;

(ii) Failure to properly document expedited prior authorization criteria; or

(iii) Fraud, a pattern of abusive billing, or noncompliance, continuous violations, or a gross or flagrant violation.

(b) "Allowable cost" means a medical cost that is:

(i) Covered by the state plan and waivers;

(ii) Supported by the medical records indicating that the services were provided and consistent with the medical diagnosis;

(iii) Properly coded; and

(iv) Paid at the rate allowed by the state plan.

NEW SECTION. Sec. 3. The secretary of the department of social and health services may adopt rules as necessary to implement this act.

NEW SECTION. Sec. 4. Section 2 of this act applies retroactively to audits commenced by the department of social and health services under chapter 74.09 RCW on or after April 1, 2011.

NEW SECTION. Sec. 5. If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or that establishes repayment obligations on the part of the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state."

Senator Conway 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 Conway and Becker to Engrossed Substitute House Bill No. 1737.

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

MOTION

On motion of Senator Keiser, the rules were suspended, Engrossed Substitute House Bill No. 1737 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 Becker 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. 1737 as amended by the Senate

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 1737 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 Baumgartner, Baxter, Becker, Benton, Brown, Carrell, Chase, Conway, Eide, Ericksen, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom, White and Zarelli

Excused: Senators Delvin and Parlette

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1737 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.

MESSAGE FROM THE HOUSE

April 9, 2011

MR. PRESIDENT:

The House passed SUBSTITUTE SENATE BILL NO. 5204 with the following amendment(s): 5204-S AMH ENGR H2588.E

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 9A.44.143 and 2010 c 267 s 7 are each amended to read as follows:

(1) An offender having a duty to register under RCW 9A.44.130 for a sex offense or kidnapping offense committed when the offender was a juvenile may petition the superior court to be relieved of that duty as provided in this section.

(2) For class A sex offenses or kidnapping offenses committed when the petitioner was fifteen years of age or older, the court may relieve the petitioner of the duty to register if:

(a) At least sixty months have passed since the petitioner's adjudication and completion of any term of confinement for the offense giving rise to the duty to register and the petitioner has not been adjudicated or convicted of any additional sex offenses or kidnapping offenses;

(b) The petitioner has not been adjudicated or convicted of a violation of RCW 9A.44.132 (failure to register) during the sixty months prior to filing the petition; and

(c) The petitioner shows by a preponderance of the evidence that the petitioner is sufficiently rehabilitated to warrant removal from the central registry of sex offenders and kidnapping offenders.

(3) For all other sex offenses or kidnapping offenses committed by a juvenile not included in subsection (2) of this section, the court may relieve the petitioner of the duty to register if:

(a) At least twenty-four months have passed since the petitioner's adjudication and completion of any term of confinement for the offense giving rise to the duty to register and the petitioner has not been adjudicated or convicted of any additional sex offenses or kidnapping offenses;

(b) The petitioner has not been adjudicated or convicted of a violation of RCW 9A.44.132 (failure to register) during the twenty-four months prior to filing the petition; and

(c)((i) The petitioner was fifteen years of age or older at the time the sex offense or kidnapping offense was committed and the petitioner shows by clear and convincing evidence that the petitioner is sufficiently rehabilitated to warrant removal from the central registry of sex offenders and kidnapping offenders; or

(ii)) The petitioner ((was under the age of fifteen at the time the sex offense or kidnapping offense was committed and the petitioner)) shows by a preponderance of the evidence that the petitioner is sufficiently rehabilitated to warrant removal from the central registry of sex offenders and kidnapping offenders.

((3)) (4) A petition for relief from registration under this section shall be made to the court in which the petitioner was convicted of the offense that subjects him or her to the duty to register or, in the case of convictions in other states, a foreign country, or a federal or military court, to the court in Thurston county. The prosecuting attorney of the county shall be named and served as the respondent in any such petition.

((4)) (5) In determining whether the petitioner is sufficiently rehabilitated to warrant removal from the central registry of sex offenders and kidnapping offenders, the following factors are provided as guidance to assist the court in making its determination, to the extent the factors are applicable considering the age and circumstances of the petitioner:

(a) The nature of the registrable offense committed including the number of victims and the length of the offense history;

(b) Any subsequent criminal history;

(c) The petitioner's compliance with supervision requirements;

(d) The length of time since the charged incident(s) occurred;

(e) Any input from community corrections officers, juvenile parole or probation officers, law enforcement, or treatment providers;

(f) Participation in sex offender treatment;

(g) Participation in other treatment and rehabilitative programs;

(h) The offender's stability in employment and housing;

(i) The offender's community and personal support system;

(j) Any risk assessments or evaluations prepared by a qualified professional;

(k) Any updated polygraph examination;

(l) Any input of the victim;

(m) Any other factors the court may consider relevant.

((5)) (6) A juvenile prosecuted and convicted of a sex offense or kidnapping offense as an adult may not petition to the superior court under this section.

Sec. 2. RCW 13.40.160 and 2007 c 199 s 14 are each amended to read as follows:

(1) The standard range disposition for a juvenile adjudicated of an offense is determined according to RCW 13.40.0357.

(a) When the court sentences an offender to a local sanction as provided in RCW 13.40.0357 option A, the court shall impose a determinate disposition within the standard ranges, except as provided in subsection (2), (3), (4), (5), or (6) of this section. The disposition may be comprised of one or more local sanctions.

(b) When the court sentences an offender to a standard range as provided in RCW 13.40.0357 option A that includes a term of confinement exceeding thirty days, commitment shall be to the department for the standard range of confinement, except as provided in subsection (2), (3), (4), (5), or (6) of this section.

(2) If the court concludes, and enters reasons for its conclusion, that disposition within the standard range would effectuate a manifest injustice the court shall impose a disposition outside the standard range, as indicated in option D of RCW 13.40.0357. The court's finding of manifest injustice shall be supported by clear and convincing evidence.

A disposition outside the standard range shall be determinate and shall be comprised of confinement or community supervision, or a combination thereof. When a judge finds a manifest injustice and imposes a sentence of confinement exceeding thirty days, the court shall sentence the juvenile to a maximum term, and the provisions of RCW 13.40.030(2) shall be used to determine the range. A disposition outside the standard range is appealable under RCW 13.40.230 by the state or the respondent. A disposition within the standard range is not appealable under RCW 13.40.230.

(3) ((When)) If a juvenile offender is found to have committed a sex offense, other than a sex offense that is also a serious violent offense as defined by RCW 9.94A.030, and has no history of a prior sex offense, the court((, on its own motion or the motion of the state

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or the respondent, may order an examination to determine whether the respondent is amenable to treatment.

~~The report of the examination shall include at a minimum the following: The respondent's version of the facts and the official version of the facts, the respondent's offense history, an assessment of problems in addition to alleged deviant behaviors, the respondent's social, educational, and employment situation, and other evaluation measures used. The report shall set forth the sources of the evaluator's information.~~

~~The examiner shall assess and report regarding the respondent's amenability to treatment and relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:~~

~~(a)(i) Frequency and type of contact between the offender and therapist;~~

~~(ii) Specific issues to be addressed in the treatment and description of planned treatment modalities;~~

~~(iii) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members, legal guardians, or others;~~

~~(iv) Anticipated length of treatment; and~~

~~(v) Recommended crime related prohibitions.~~

~~The court on its own motion may order, or on a motion by the state shall order, a second examination regarding the offender's amenability to treatment. The evaluator shall be selected by the party making the motion. The defendant shall pay the cost of any second examination ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost.~~

~~After receipt of reports of the examination, the court shall then consider whether the offender and the community will benefit from use of this special sex offender disposition alternative and consider the victim's opinion whether the offender should receive a treatment disposition under this section. If the court determines that this special sex offender disposition alternative is appropriate, then the court shall impose a determinate disposition within the standard range for the offense, or if the court concludes, and enters reasons for its conclusions, that such disposition would cause a manifest injustice, the court shall impose a disposition under option D, and the court may suspend the execution of the disposition and place the offender on community supervision for at least two years. As a condition of the suspended disposition, the court may impose the conditions of community supervision and other conditions, including up to thirty days of confinement and requirements that the offender do any one or more of the following:~~

~~(b)(i) Devote time to a specific education, employment, or occupation;~~

~~(ii) Undergo available outpatient sex offender treatment for up to two years, or inpatient sex offender treatment not to exceed the standard range of confinement for that offense. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The respondent shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the probation counselor, and the court, and shall not change providers without court approval after a hearing if the prosecutor or probation counselor object to the change;~~

~~(iii) Remain within prescribed geographical boundaries and notify the court or the probation counselor prior to any change in the offender's address, educational program, or employment;~~

~~(iv) Report to the prosecutor and the probation counselor prior to any change in a sex offender treatment provider. This change shall have prior approval by the court;~~

~~(v) Report as directed to the court and a probation counselor;~~

~~(vi) Pay all court ordered legal financial obligations, perform community restitution, or any combination thereof;~~

~~(vii) Make restitution to the victim for the cost of any counseling reasonably related to the offense;~~

~~(viii) Comply with the conditions of any court ordered probation bond; or~~

~~(ix) The court shall order that the offender shall not attend the public or approved private elementary, middle, or high school attended by the victim or the victim's siblings. The parents or legal guardians of the offender are responsible for transportation or other costs associated with the offender's change of school that would otherwise be paid by the school district. The court shall send notice of the disposition and restriction on attending the same school as the victim or victim's siblings to the public or approved private school the juvenile will attend, if known, or if unknown, to the approved private schools and the public school district board of directors of the district in which the juvenile resides or intends to reside. This notice must be sent at the earliest possible date but not later than ten calendar days after entry of the disposition.~~

~~The sex offender treatment provider shall submit quarterly reports on the respondent's progress in treatment to the court and the parties. The reports shall reference the treatment plan and include at a minimum the following: Dates of attendance, respondent's compliance with requirements, treatment activities, the respondent's relative progress in treatment, and any other material specified by the court at the time of the disposition.~~

~~At the time of the disposition, the court may set treatment review hearings as the court considers appropriate.~~

~~Except as provided in this subsection (3), after July 1, 1991, examinations and treatment ordered pursuant to this subsection shall only be conducted by certified sex offender treatment providers or certified affiliate sex offender treatment providers under chapter 18.155 RCW. A sex offender therapist who examines or treats a juvenile sex offender pursuant to this subsection does not have to be certified by the department of health pursuant to chapter 18.155 RCW if the court finds that: (A) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; (B) no certified sex offender treatment providers or certified affiliate sex offender treatment providers are available for treatment within a reasonable geographical distance of the offender's home; and (C) the evaluation and treatment plan comply with this subsection (3) and the rules adopted by the department of health.~~

~~If the offender violates any condition of the disposition or the court finds that the respondent is failing to make satisfactory progress in treatment, the court may revoke the suspension and order execution of the disposition or the court may impose a penalty of up to thirty days' confinement for violating conditions of the disposition. The court may order both execution of the disposition and up to thirty days' confinement for the violation of the conditions of the disposition. The court shall give credit for any confinement time previously served if that confinement was for the offense for which the suspension is being revoked.~~

~~For purposes of this section, "victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged. "Victim" may also include a known parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense.~~

~~A disposition entered under this subsection (3) is not appealable under RCW 13.40.230) may impose the special sex offender disposition alternative under section 3 of this act.~~

~~(4) If the juvenile offender is subject to a standard range disposition of local sanctions or 15 to 36 weeks of confinement and has not committed an A- or B+ offense, the court may impose the disposition alternative under RCW 13.40.165.~~

(5) If a juvenile is subject to a commitment of 15 to 65 weeks of confinement, the court may impose the disposition alternative under RCW 13.40.167.

(6) When the offender is subject to a standard range commitment of 15 to 36 weeks and is ineligible for a suspended disposition alternative, a manifest injustice disposition below the standard range, special sex offender disposition alternative, chemical dependency disposition alternative, or mental health disposition alternative, the court in a county with a pilot program under RCW 13.40.169 may impose the disposition alternative under RCW 13.40.169.

(7) RCW 13.40.193 shall govern the disposition of any juvenile adjudicated of possessing a firearm in violation of RCW 9A.10.040(2)(a)(iii) or any crime in which a special finding is entered that the juvenile was armed with a firearm.

(8) RCW 13.40.308 shall govern the disposition of any juvenile adjudicated of theft of a motor vehicle as defined under RCW 9A.56.065, possession of a stolen motor vehicle as defined under RCW 9A.56.068, taking a motor vehicle without permission in the first degree under RCW 9A.56.070, and taking a motor vehicle without permission in the second degree under RCW 9A.56.075.

(9) Whenever a juvenile offender is entitled to credit for time spent in detention prior to a dispositional order, the dispositional order shall specifically state the number of days of credit for time served.

(10) Except as provided under subsection (3), (4), (5), or (6) of this section, or option B of RCW 13.40.0357, or RCW 13.40.127, the court shall not suspend or defer the imposition or the execution of the disposition.

(11) In no case shall the term of confinement imposed by the court at disposition exceed that to which an adult could be subjected for the same offense.

NEW SECTION. Sec. 3. A new section is added to chapter 13.40 RCW to read as follows:

(1) A juvenile offender is eligible for the special sex offender disposition alternative when:

(a) The offender is found to have committed a sex offense, other than a sex offense that is also a serious violent offense as defined by RCW 9.94A.030; and

(b) The offender has no history of a prior sex offense.

(2) If the court finds the offender is eligible for this alternative, the court, on its own motion or the motion of the state or the respondent, may order an examination to determine whether the respondent is amenable to treatment.

(a) The report of the examination shall include at a minimum the following:

(i) The respondent's version of the facts and the official version of the facts;

(ii) The respondent's offense history;

(iii) An assessment of problems in addition to alleged deviant behaviors;

(iv) The respondent's social, educational, and employment situation;

(v) Other evaluation measures used.

The report shall set forth the sources of the evaluator's information.

(b) The examiner shall assess and report regarding the respondent's amenability to treatment and relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:

(i) The frequency and type of contact between the offender and therapist;

(ii) Specific issues to be addressed in the treatment and description of planned treatment modalities;

(iii) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members, legal guardians, or others;

(iv) Anticipated length of treatment; and

(v) Recommended crime-related prohibitions.

(c) The court on its own motion may order, or on a motion by the state shall order, a second examination regarding the offender's amenability to treatment. The evaluator shall be selected by the party making the motion. The defendant shall pay the cost of any second examination ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost.

(3) After receipt of reports of the examination, the court shall then consider whether the offender and the community will benefit from use of this special sex offender disposition alternative and consider the victim's opinion whether the offender should receive a treatment disposition under this section. If the court determines that this special sex offender disposition alternative is appropriate, then the court shall impose a determinate disposition within the standard range for the offense, or if the court concludes, and enters reasons for its conclusions, that such disposition would cause a manifest injustice, the court shall impose a disposition under option D, and the court may suspend the execution of the disposition and place the offender on community supervision for at least two years.

(4) As a condition of the suspended disposition, the court may impose the conditions of community supervision and other conditions, including up to thirty days of confinement and requirements that the offender do any one or more of the following:

(a) Devote time to a specific education, employment, or occupation;

(b) Undergo available outpatient sex offender treatment for up to two years, or inpatient sex offender treatment not to exceed the standard range of confinement for that offense. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The respondent shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the probation counselor, and the court, and shall not change providers without court approval after a hearing if the prosecutor or probation counselor object to the change;

(c) Remain within prescribed geographical boundaries and notify the court or the probation counselor prior to any change in the offender's address, educational program, or employment;

(d) Report to the prosecutor and the probation counselor prior to any change in a sex offender treatment provider. This change shall have prior approval by the court;

(e) Report as directed to the court and a probation counselor;

(f) Pay all court-ordered legal financial obligations, perform community restitution, or any combination thereof;

(g) Make restitution to the victim for the cost of any counseling reasonably related to the offense; or

(h) Comply with the conditions of any court-ordered probation bond.

(5) If the court orders twenty-four hour, continuous monitoring of the offender while on probation, the court shall include the basis for this condition in its findings.

(6)(a) The court must order the offender not to attend the public or approved private elementary, middle, or high school attended by the victim or the victim's siblings.

(b) The parents or legal guardians of the offender are responsible for transportation or other costs associated with the offender's change of school that would otherwise be paid by the school district.

(c) The court shall send notice of the disposition and restriction on attending the same school as the victim or victim's siblings to the public or approved private school the juvenile will attend, if known, or if unknown, to the approved private schools and the public school

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district board of directors of the district in which the juvenile resides or intends to reside. This notice must be sent at the earliest possible date but not later than ten calendar days after entry of the disposition.

(7)(a) The sex offender treatment provider shall submit quarterly reports on the respondent's progress in treatment to the court and the parties. The reports shall reference the treatment plan and include at a minimum the following: Dates of attendance, respondent's compliance with requirements, treatment activities, the respondent's relative progress in treatment, and any other material specified by the court at the time of the disposition.

(b) At the time of the disposition, the court may set treatment review hearings as the court considers appropriate.

(c) Except as provided in this subsection, examinations and treatment ordered pursuant to this subsection shall only be conducted by certified sex offender treatment providers or certified affiliate sex offender treatment providers under chapter 18.155 RCW.

(d) A sex offender therapist who examines or treats a juvenile sex offender pursuant to this subsection does not have to be certified by the department of health pursuant to chapter 18.155 RCW if the court finds that: (i) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; (ii) no certified sex offender treatment providers or certified affiliate sex offender treatment providers are available for treatment within a reasonable geographical distance of the offender's home; and (iii) the evaluation and treatment plan comply with this subsection and the rules adopted by the department of health.

(8)(a) If the offender violates any condition of the disposition or the court finds that the respondent is failing to make satisfactory progress in treatment, the court may revoke the suspension and order execution of the disposition or the court may impose a penalty of up to thirty days confinement for violating conditions of the disposition.

(b) The court may order both execution of the disposition and up to thirty days confinement for the violation of the conditions of the disposition.

(c) The court shall give credit for any confinement time previously served if that confinement was for the offense for which the suspension is being revoked.

(9) For purposes of this section, "victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged. "Victim" may also include a known parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense.

(10) A disposition entered under this section is not appealable under RCW 13.40.230.

Sec. 4. RCW 13.50.050 and 2010 c 150 s 2 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 recordkeeping system which may receive information on all alleged juvenile offenders against whom a complaint has been filed pursuant to RCW 13.40.070 whether or not their cases are currently pending before the court. The central recordkeeping system may be computerized. If a complaint has been referred to a diversion unit, the diversion unit shall promptly report to the juvenile court or the prosecuting attorney when the juvenile has agreed to diversion. An offense shall not be reported as criminal history in any central recordkeeping system without notification by the diversion unit of the date on which the offender agreed to diversion.

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

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

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

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

(i) Since the last date of release from confinement, including full-time residential treatment, if any, or entry of disposition, the person has spent five consecutive years in the community without

committing any offense or crime that subsequently results in an adjudication or conviction;

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

(iii) No proceeding is pending seeking the formation of a diversion agreement with that person;

(iv) The person is no longer required to register as a sex offender under RCW 9A.44.130 or has ~~((not))~~ been relieved of the duty to register under RCW 9A.44.143 if the person was convicted of a sex offense;

(v) The person has not been convicted of rape in the first degree, rape in the second degree, or indecent liberties that was actually committed with forcible compulsion; and

~~((+))~~ (vi) Full restitution has been paid.

(b) The court shall not grant any motion to seal records for class B, C, gross misdemeanor and misdemeanor offenses and diversions made under subsection (11) of this section unless:

(i) Since the date of last release from confinement, including full-time residential treatment, if any, entry of disposition, or completion of the diversion agreement, the person has spent two consecutive years in the community without being convicted of any offense or crime;

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

(iii) No proceeding is pending seeking the formation of a diversion agreement with that person;

(iv) The person is no longer required to register as a sex offender under RCW 9A.44.130 or has ~~((not))~~ been relieved of the duty to register under RCW 9A.44.143 if the person was convicted of a sex offense; and

(v) Full restitution has been paid.

(13) The person making a motion pursuant to subsection (11) of this section shall give reasonable notice of the motion to the prosecution and to any person or agency whose files are sought to be sealed.

(14) 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)(i) Subject to subsection (23) of this section, all records maintained by any court or law enforcement agency, including the juvenile court, local law enforcement, the Washington state patrol, and the prosecutor's office, shall be automatically destroyed within ninety days of becoming eligible for destruction. Juvenile records are eligible for destruction when:

(A) The person who is the subject of the information or complaint is at least eighteen years of age;

(B) His or her criminal history consists entirely of one diversion agreement or counsel and release entered on or after June 12, 2008;

(C) Two years have elapsed since completion of the agreement or counsel and release;

(D) No proceeding is pending against the person seeking the conviction of a criminal offense; and

(E) There is no restitution owing in the case.

(ii) No less than quarterly, the administrative office of the courts shall provide a report to the juvenile courts of those individuals whose records may be eligible for destruction. The juvenile court shall verify eligibility and notify the Washington state patrol and the appropriate local law enforcement agency and prosecutor's office of the records to be destroyed. The requirement to destroy records under this subsection is not dependent on a court hearing or the issuance of a court order to destroy records.

(iii) The state and local governments and their officers and employees are not liable for civil damages for the failure to destroy records pursuant to this section.

(b) A person eighteen years of age or older whose criminal history consists entirely of one diversion agreement or counsel and release entered prior to June 12, 2008, may request that the court order the records in his or her case destroyed. The request shall be granted, subject to subsection (23) of this section, if the court finds that two years have elapsed since completion of the agreement or counsel and release.

(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 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

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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.

Sec. 5. RCW 72.09.345 and 2008 c 231 s 49 are each amended to read as follows:

(1) In addition to any other information required to be released under this chapter, the department is authorized, pursuant to RCW 4.24.550, to release relevant information that is necessary to protect the public concerning offenders convicted of sex offenses.

(2) In order for public agencies to have the information necessary to notify the public as authorized in RCW 4.24.550, the secretary shall establish and administer an end-of-sentence review committee for the purposes of assigning risk levels, reviewing available release plans, and making appropriate referrals for sex offenders. ~~((The committee shall assess, on a case by case basis, the public risk posed by sex offenders who are: (a) Preparing for their release from confinement for sex offenses committed on or after July 1, 1984; and (b) accepted from another state under a reciprocal agreement under the interstate compact authorized in chapter 72.74 RCW.))~~

(3) The committee shall assess, on a case-by-case basis, the public risk posed by:

(a) Offenders preparing for release from confinement for a sex offense or sexually violent offense committed on or after July 1, 1984;

(b) Sex offenders accepted from another state under a reciprocal agreement under the interstate corrections compact authorized in chapter 72.74 RCW;

(c) Juveniles preparing for release from confinement for a sex offense and releasing from the department of social and health services juvenile rehabilitation administration;

(d) Juveniles, following disposition, under the jurisdiction of a county juvenile court for a registerable sex offense; and

(e) Juveniles found to have committed a sex offense and accepted from another state under a reciprocal agreement under the interstate compact for juveniles authorized in chapter 13.24 RCW.

(4) Notwithstanding any other provision of law, the committee shall have access to all relevant records and information in the possession of public agencies relating to the offenders under review, including police reports; prosecutors' statements of probable cause; presentence investigations and reports; complete judgments and sentences; current classification referrals; criminal history summaries; violation and disciplinary reports; all psychological evaluations and psychiatric hospital reports; sex offender treatment program reports; and juvenile records. Records and information obtained under this subsection shall not be disclosed outside the committee unless otherwise authorized by law.

~~((4))~~ (5) The committee shall review each sex offender under its authority before the offender's release from confinement or start of the offender's term of community custody in order to: (a) Classify the offender into a risk level for the purposes of public notification under RCW 4.24.550; (b) where available, review the

offender's proposed release plan in accordance with the requirements of RCW 72.09.340; and (c) make appropriate referrals.

~~((5))~~ (6) The committee shall classify as risk level I those sex offenders whose risk assessments indicate a low risk of reoffense within the community at large. The committee shall classify as risk level II those offenders whose risk assessments indicate a moderate risk of reoffense within the community at large. The committee shall classify as risk level III those offenders whose risk assessments indicate a high risk of reoffense within the community at large.

~~((6))~~ (7) The committee shall issue to appropriate law enforcement agencies, for their use in making public notifications under RCW 4.24.550, narrative notices regarding the pending release of sex offenders from the department's facilities. The narrative notices shall, at a minimum, describe the identity and criminal history behavior of the offender and shall include the department's risk level classification for the offender. For sex offenders classified as either risk level II or III, the narrative notices shall also include the reasons underlying the classification.

NEW SECTION. Sec. 6. A new section is added to chapter 28A.300 RCW to read as follows:

The superintendent of public instruction shall publish on its web site, with a link to the safety center web page, a revised and updated sample policy for schools to follow regarding students required to register as sex or kidnapping offenders."

Correct the title.
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Regala moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5204.

Senator Regala spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Regala that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5204.

The motion by Senator Regala carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 5204 by voice vote.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 5204, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 5204, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 25; Nays, 20; Absent, 2; Excused, 2.

Voting yea: Senators Brown, Chase, Conway, Eide, Fraser, Hargrove, Harper, Hatfield, Haugen, Hobbs, Kastama, Keiser, Kilmer, Kohl-Welles, McAuliffe, Murray, Nelson, Prentice, Pridemore, Ranker, Regala, Rockefeller, Sheldon, Shin and White

Voting nay: Senators Baumgartner, Baxter, Becker, Benton, Carrell, Ericksen, Fain, Hewitt, Hill, Holmquist Newbry, Honeyford, King, Litzow, Morton, Pflug, Roach, Schoesler, Stevens, Swecker and Zarelli

Absent: Senators Kline and Tom

Excused: Senators Delvin and Parlette

SUBSTITUTE SENATE BILL NO. 5204, as amended by the House, 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.

MESSAGE FROM THE HOUSE

April 1, 2011

MR. PRESIDENT:

The House passed SUBSTITUTE SENATE BILL NO. 5271 with the following amendment(s): 5271-S AMH JUDI H2270.1

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 79.100.110 and 2006 c 153 s 1 are each amended to read as follows:

(1) A person who causes a vessel to become abandoned or derelict upon aquatic lands is guilty of a misdemeanor.

(2) A person who intentionally, through action or inaction and without the appropriate state, local, or federal authorization, causes a vessel to sink, break up, or block a navigational channel upon aquatic lands is guilty of a misdemeanor.

Sec. 2. RCW 79.100.130 and 2007 c 342 s 3 are each amended to read as follows:

A marina owner may contract with a local government for the purpose of participating in the derelict vessel removal program. The local government shall serve as the authorized public entity for the removal of the derelict or abandoned vessel from the marina owner's property. The contract must provide for the marina owner to be financially responsible for the removal costs that are not reimbursed by the department as provided under RCW 79.100.100, and any additional reasonable administrative costs incurred by the local government during the removal of the derelict or abandoned vessel. Prior to the commencement of any removal which will seek reimbursement from the derelict vessel removal program, the contract and the proposed vessel removal shall be submitted to the department for review and approval. The local government shall use the procedure specified under RCW 79.100.100(6).

Sec. 3. RCW 53.08.320 and 2002 c 286 s 23 are each amended to read as follows:

A moorage facility operator may adopt all rules necessary for rental and use of moorage facilities and for the expeditious collection of port charges. The rules may also establish procedures for the enforcement of these rules by port district, city, county, metropolitan park district or town personnel. The rules shall include the following:

(1) Procedures authorizing moorage facility personnel to take reasonable measures, including the use of chains, ropes, and locks, or removal from the water, to secure vessels within the moorage facility so that the vessels are in the possession and control of the moorage facility operator and cannot be removed from the moorage facility. These procedures may be used if an owner mooring or storing a vessel at the moorage facility fails, after being notified that charges are owing and of the owner's right to commence legal proceedings to contest that such charges are owing, to pay the port charges owed or to commence legal proceedings. Notification shall be by registered mail to the owner at his or her last known address. In the case of a transient vessel, or where no address was furnished by the owner, the moorage facility operator need not give such notice prior to securing the vessel. At the time of securing the vessel, an authorized moorage facility employee shall attach to the vessel a readily visible notice. The notice shall be of a reasonable size and shall contain the following information:

(a) The date and time the notice was attached;

(b) A statement that if the account is not paid in full within ninety days from the time the notice is attached, the vessel may be sold at public auction to satisfy the port charges; and

(c) The address and telephone number where additional information may be obtained concerning release of the vessel.

After a vessel is secured, the operator shall make a reasonable effort to notify the owner by registered mail in order to give the owner the information contained in the notice.

(2) Procedures authorizing moorage facility personnel at their discretion to move moored vessels ashore for storage within properties under the operator's control or for storage with private persons under their control as bailees of the moorage facility, if the vessel is, in the opinion of port personnel a nuisance, if the vessel is in danger of sinking or creating other damage, or is owing port charges. Costs of any such procedure shall be paid by the vessel's owner. If the owner is not known, or unable to reimburse the moorage facility operator for the costs of these procedures, the mooring facility operators may seek reimbursement of ~~((seventy-five))~~ ninety percent of all reasonable and auditable costs from the derelict vessel removal account established in RCW 79.100.100.

(3) If a vessel is secured under subsection (1) of this section or moved ashore under subsection (2) of this section, the owner who is obligated to the moorage facility operator for port charges may regain possession of the vessel by:

(a) Making arrangements satisfactory with the moorage facility operator for the immediate removal of the vessel from the moorage facility or for authorized moorage; and

(b) Making payment to the moorage facility operator of all port charges, or by posting with the moorage facility operator a sufficient cash bond or other acceptable security, to be held in trust by the moorage facility operator pending written agreement of the parties with respect to payment by the vessel owner of the amount owing, or pending resolution of the matter of the charges in a civil action in a court of competent jurisdiction. After entry of judgment, including any appeals, in a court of competent jurisdiction, or after the parties reach agreement with respect to payment, the trust shall terminate and the moorage facility operator shall receive so much of the bond or other security as is agreed, or as is necessary to satisfy any judgment, costs, and interest as may be awarded to the moorage facility operator. The balance shall be refunded immediately to the owner at his or her last known address.

(4) If a vessel has been secured by the moorage facility operator under subsection (1) of this section and is not released to the owner under the bonding provisions of this section within ninety days after notifying or attempting to notify the owner under subsection (1) of this section, the vessel shall be conclusively presumed to have been abandoned by the owner.

(5) If a vessel moored or stored at a moorage facility is abandoned, the moorage facility operator may, by resolution of its legislative authority, authorize the public sale of the vessel by authorized personnel to the highest and best bidder for cash as prescribed by this subsection (5). Either a minimum bid may be established or a letter of credit may be required, or both, to discourage the future reabandonment of the vessel.

(a) Before the vessel is sold, the owner of the vessel shall be given at least twenty days' notice of the sale in the manner set forth in subsection (1) of this section if the name and address of the owner is known. The notice shall contain the time and place of the sale, a reasonable description of the vessel to be sold, and the amount of port charges owed with respect to the vessel. The notice of sale shall be published at least once, more than ten but not more than twenty days before the sale, in a newspaper of general circulation in the county in which the moorage facility is located. Such notice shall include the name of the vessel, if any, the last known owner and address, and a reasonable description of the vessel to be sold. The moorage facility operator may bid all or part of its port charges at the sale and may become a purchaser at the sale.

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(b) Before the vessel is sold, any person seeking to redeem an impounded vessel under this section may commence a lawsuit in the superior court for the county in which the vessel was impounded to contest the validity of the impoundment or the amount of the port charges owing. Such lawsuit must be commenced within ten days of the date the notification was provided pursuant to subsection (1) of this section, or the right to a hearing shall be deemed waived and the owner shall be liable for any port charges owing the moorage facility operator. In the event of litigation, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

(c) The proceeds of a sale under this section shall first be applied to the payment of port charges. The balance, if any, shall be paid to the owner. If the owner cannot in the exercise of due diligence be located by the moorage facility operator within one year of the date of the sale, the excess funds from the sale shall revert to the derelict vessel removal account established in RCW 79.100.100. If the sale is for a sum less than the applicable port charges, the moorage facility operator is entitled to assert a claim for a deficiency.

(d) In the event no one purchases the vessel at a sale, or a vessel is not removed from the premises or other arrangements are not made within ten days of sale, title to the vessel will revert to the moorage facility operator.

(6) The rules authorized under this section shall be enforceable only if the moorage facility has had its tariff containing such rules conspicuously posted at its moorage facility at all times.

Sec. 4. RCW 79.100.030 and 2002 c 286 s 4 are each amended to read as follows:

(1) An authorized public entity has the authority, subject to the processes and limitations of this chapter, to store, strip, use, auction, sell, salvage, scrap, or dispose of an abandoned or derelict vessel found on or above aquatic lands within the jurisdiction of the authorized public entity. A vessel disposal must be done in an environmentally sound manner and in accordance with all federal, state, and local laws, including the state solid waste disposal provisions provided for in chapter 70.95 RCW. Scuttling or sinking of a vessel is only permissible after obtaining the express permission of the owner or owners of the aquatic lands below where the scuttling or sinking would occur, and obtaining all necessary state and federal permits or licenses.

(2) The primary responsibility to remove a derelict or abandoned vessel belongs to the owner, operator, or lessee of the moorage facility or the aquatic lands where the vessel is located. If the authorized public entity with the primary responsibility is unwilling or unable to exercise the authority granted by this section, it may request the department to assume the authorized public entity's authority for a particular vessel. The department may at its discretion assume the authorized public entity's authority for a particular vessel after being requested to do so. For vessels not at a moorage facility, an authorized public entity with jurisdiction over the aquatic lands where the vessel is located may, at its discretion, request to assume primary responsibility for that particular vessel from the owner of the aquatic lands where the vessel is located.

(3) The authority granted by this chapter is permissive, and no authorized public entity has a duty to exercise the authority. No liability attaches to an authorized public entity that chooses not to exercise this authority. An authorized public entity, in the good faith performance of the actions authorized under this chapter, is not liable for civil damages resulting from any act or omission in the performance of the actions other than acts or omissions constituting gross negligence or willful or wanton misconduct. Any person whose assistance has been requested by an authorized public entity, who has entered into a written agreement pursuant to RCW 79.100.070, and who, in good faith, renders assistance or advice with respect to activities conducted by an authorized public entity pursuant to this chapter, is not liable for civil damages resulting

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from any act or omission in the rendering of the assistance or advice, other than acts or omissions constituting gross negligence or willful or wanton misconduct."

Correct the title.
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Rockefeller moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5271.

Senators Rockefeller and Morton spoke in favor of the motion.

MOTION

On motion of Senator White, Senators Kastama and Kline were excused.

The President declared the question before the Senate to be the motion by Senator Rockefeller that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5271.

The motion by Senator Rockefeller carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 5271 by voice vote.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 5271, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 5271, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 45; Nays, 0; Absent, 0; Excused, 4.

Voting yea: Senators Baumgartner, Baxter, Becker, Benton, Brown, Carrell, Chase, Conway, Eide, Ericksen, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Keiser, Kilmer, King, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom, White and Zarelli

Excused: Senators Delvin, Kastama, Kline and Parlette

SUBSTITUTE SENATE BILL NO. 5271, as amended by the House, 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.

MESSAGE FROM THE HOUSE

April 7, 2011

MR. PRESIDENT:

The House passed SENATE BILL NO. 5628 with the following amendment(s): 5628 AMH WAYS H2299.4

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. (1) The legislature finds that King county currently imposes an emergency medical services levy throughout the entire county. The legislature further finds that the city of Milton is located partially within King and Pierce counties and the residents of Milton within King county pay the county emergency medical services levy. The legislature further finds that King county, through an interlocal agreement with the city of

Milton, has not provided emergency medical services to the city for many years and instead has remitted the county emergency medical services levy collected within the city back to the city. The legislature further finds that the city of Milton has collected only twenty cents per thousand dollars of assessed valuation under its city emergency medical services levy, and not the full fifty cents authorized by the city's voters, because state law limits the city's levy, as well as any other taxing district's emergency medical services levy, if the county also imposes the tax. The legislature further finds that the city of Milton is exploring the possibility of being annexed by a fire protection district located in Pierce county; however, if the district annexes the entire city, including the portion in King county, the district would have to lower its emergency medical services levy as required under state law.

(2) It is the intent of the legislature to address this unusual situation by excluding the portion of the city of Milton within King county from the county emergency medical services levy. It is the further intent of the legislature to clarify that a fire protection district is able to levy the full amount of emergency medical services levy otherwise allowed by law throughout the entire city.

Sec. 2. RCW 84.52.069 and 2004 c 129 s 23 are each amended to read as follows:

(1) As used in this section, "taxing district" means a county, emergency medical service district, city or town, public hospital district, urban emergency medical service district, regional fire protection service authority, or fire protection district.

(2) Except as provided in subsection (10) of this section, a taxing district may impose additional regular property tax levies in an amount equal to fifty cents or less per thousand dollars of the assessed value of property in the taxing district. The tax shall be imposed (a) each year for six consecutive years, (b) each year for ten consecutive years, or (c) permanently. A tax levy under this section must be specifically authorized by a majority of at least three-fifths of the registered voters thereof approving a proposition authorizing the levies submitted at a general or special election, at which election the number of persons voting "yes" on the proposition shall constitute three-fifths of a number equal to forty percent of the total number of voters voting in such taxing district at the last preceding general election when the number of registered voters voting on the proposition does not exceed forty percent of the total number of voters voting in such taxing district in the last preceding general election; or by a majority of at least three-fifths of the registered voters thereof voting on the proposition when the number of registered voters voting on the proposition exceeds forty percent of the total number of voters voting in such taxing district in the last preceding general election. Ballot propositions ~~(shall)~~ must conform with RCW 29A.36.210. A taxing district ~~(shall)~~ may not submit to the voters at the same election multiple propositions to impose a levy under this section.

(3) A taxing district imposing a permanent levy under this section shall provide for separate accounting of expenditures of the revenues generated by the levy. The taxing district ~~(shall)~~ must maintain a statement of the accounting which ~~(shall)~~ must be updated at least every two years and ~~(shall)~~ must be available to the public upon request at no charge.

(4)(a) A taxing district imposing a permanent levy under this section ~~(shall)~~ must provide for a referendum procedure to apply to the ordinance or resolution imposing the tax. This referendum procedure ~~(shall)~~ must specify that a referendum petition may be filed at any time with a filing officer, as identified in the ordinance or resolution. Within ten days, the filing officer ~~(shall)~~ must confer with the petitioner concerning form and style of the petition, issue the petition an identification number, and secure an accurate, concise, and positive ballot title from the designated local official. The petitioner ~~(shall have)~~ has thirty days in which to secure the signatures of not less than fifteen percent of the registered voters of

the taxing district, as of the last general election, upon petition forms which contain the ballot title and the full text of the measure to be referred. The filing officer ~~(shall)~~ must verify the sufficiency of the signatures on the petition and, if sufficient valid signatures are properly submitted, ~~(shall)~~ must certify the referendum measure to the next election within the taxing district if one is to be held within one hundred eighty days from the date of filing of the referendum petition, or at a special election to be called for that purpose in accordance with RCW 29A.04.330.

(b) The referendum procedure provided in this subsection ~~(shall be)~~ (4) is exclusive in all instances for any taxing district imposing the tax under this section and ~~(shall)~~ supersedes the procedures provided under all other statutory or charter provisions for initiative or referendum which might otherwise apply.

(5) Any tax imposed under this section ~~(shall)~~ may be used only for the provision of emergency medical care or emergency medical services, including related personnel costs, training for such personnel, and related equipment, supplies, vehicles and structures needed for the provision of emergency medical care or emergency medical services.

(6) If a county levies a tax under this section, no taxing district within the county may levy a tax under this section. If a regional fire protection service authority imposes a tax under this section, no other taxing district that is a participating fire protection jurisdiction in the regional fire protection service authority may levy a tax under this section. No other taxing district may levy a tax under this section if another taxing district has levied a tax under this section within its boundaries: PROVIDED, That if a county levies less than fifty cents per thousand dollars of the assessed value of property, then any other taxing district may levy a tax under this section equal to the difference between the rate of the levy by the county and fifty cents: PROVIDED FURTHER, That if a taxing district within a county levies this tax, and the voters of the county subsequently approve a levying of this tax, then the amount of the taxing district levy within the county ~~(shall)~~ must be reduced, when the combined levies exceed fifty cents. Whenever a tax is levied countywide, the service ~~(shall)~~ must, insofar as is feasible, be provided throughout the county: PROVIDED FURTHER, That no countywide levy proposal may be placed on the ballot without the approval of the legislative authority of each city exceeding fifty thousand population within the county: AND PROVIDED FURTHER, That this section and RCW 36.32.480 shall not prohibit any city or town from levying an annual excess levy to fund emergency medical services: AND PROVIDED, FURTHER, That if a county proposes to impose tax levies under this section, no other ballot proposition authorizing tax levies under this section by another taxing district in the county may be placed before the voters at the same election at which the county ballot proposition is placed: AND PROVIDED FURTHER, That any taxing district emergency medical service levy that is limited in duration and that is authorized subsequent to a county emergency medical service levy that is limited in duration, ~~(shall)~~ expires concurrently with the county emergency medical service levy. A fire protection district that has annexed an area described in subsection (10) of this section may levy the maximum amount of tax that would otherwise be allowed, notwithstanding any limitations in this subsection (6).

(7) The limitations in RCW 84.52.043 ~~(shall)~~ do not apply to the tax levy authorized in this section.

(8) If a ballot proposition approved under subsection (2) of this section did not impose the maximum allowable levy amount authorized for the taxing district under this section, any future increase up to the maximum allowable levy amount must be specifically authorized by the voters in accordance with subsection (2) of this section at a general or special election.

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(9) The limitation in RCW 84.55.010 (~~shall~~) does not apply to the first levy imposed pursuant to this section following the approval of such levy by the voters pursuant to subsection (2) of this section.

(10) For purposes of imposing the tax authorized under this section, the boundary of a county with a population greater than one million five hundred thousand does not include all of the area of the county that is located within a city that has a boundary in two counties, if the locally assessed value of all the property in the area of the city within the county having a population greater than one million five hundred thousand is less than two hundred fifty million dollars.

(11) For purposes of this section, the following definitions apply:

(a) "Fire protection jurisdiction" means a fire protection district, city, town, Indian tribe, or port district; and

(b) "Participating fire protection jurisdiction" means a fire protection district, city, town, Indian tribe, or port district that is represented on the governing board of a regional fire protection service authority.

NEW SECTION. Sec. 3. This act applies to taxes levied for collection in 2012 and thereafter."

Correct the title.

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Fain moved that the Senate concur in the House amendment(s) to Senate Bill No. 5628.

Senators Fain and Eide spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Fain that the Senate concur in the House amendment(s) to Senate Bill No. 5628.

The motion by Senator Fain carried and the Senate concurred in the House amendment(s) to Senate Bill No. 5628 by voice vote.

The President declared the question before the Senate to be the final passage of Senate Bill No. 5628, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Senate Bill No. 5628, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 46; Nays, 0; Absent, 0; Excused, 3.

Voting yea: Senators Baumgartner, Baxter, Becker, Benton, Brown, Carrell, Chase, Conway, Eide, Ericksen, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom, White and Zarelli

Excused: Senators Delvin, Kastama and Parlette

SENATE BILL NO. 5628, as amended by the House, 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.

MESSAGE FROM THE HOUSE

April 7, 2011

MR. PRESIDENT:

The House passed SENATE BILL NO. 5304 with the following amendment(s): 5304 AMH WAYS H2480.1

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. A new section is added to chapter 28B.118 RCW to read as follows:

The caseload forecast council shall estimate the anticipated caseload of the Washington college bound scholarship program and shall submit this forecast as specified in RCW 43.88C.020.

Sec. 2. RCW 43.88C.010 and 2000 c 90 s 1 are each amended to read as follows:

(1) The caseload forecast council is hereby created. The council shall consist of two individuals appointed by the governor and four individuals, one of whom is appointed by the chairperson of each of the two largest political caucuses in the senate and house of representatives. The chair of the council shall be selected from among the four caucus appointees. The council may select such other officers as the members deem necessary.

(2) The council shall employ a caseload forecast supervisor to supervise the preparation of all caseload forecasts. As used in this chapter, "supervisor" means the caseload forecast supervisor.

(3) Approval by an affirmative vote of at least five members of the council is required for any decisions regarding employment of the supervisor. Employment of the supervisor shall terminate after each term of three years. At the end of the first year of each three-year term the council shall consider extension of the supervisor's term by one year. The council may fix the compensation of the supervisor. The supervisor shall employ staff sufficient to accomplish the purposes of this section.

(4) The caseload forecast council shall oversee the preparation of and approve, by an affirmative vote of at least four members, the official state caseload forecasts prepared under RCW 43.88C.020. If the council is unable to approve a forecast before a date required in RCW 43.88C.020, the supervisor shall submit the forecast without approval and the forecast shall have the same effect as if approved by the council.

(5) A council member who does not cast an affirmative vote for approval of the official caseload forecast may request, and the supervisor shall provide, an alternative forecast based on assumptions specified by the member.

(6) Members of the caseload forecast council shall serve without additional compensation but shall be reimbursed for travel expenses in accordance with RCW 44.04.120 while attending sessions of the council or on official business authorized by the council. Nonlegislative members of the council shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(7) "Caseload," as used in this chapter, means:

(a) The number of persons expected to meet entitlement requirements and require the services of public assistance programs, state correctional institutions, state correctional noninstitutional supervision, state institutions for juvenile offenders, the common school system, long-term care, medical assistance, foster care, and adoption support;

(b) The number of students who are eligible for the Washington college bound scholarship program and are expected to attend an institution of higher education as defined in RCW 28B.92.030.

(8) Unless the context clearly requires otherwise, the definitions provided in RCW 43.88.020 apply to this chapter."

Correct the title.

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Kilmer moved that the Senate concur in the House amendment(s) to Senate Bill No. 5304.

Senator Kilmer spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Kilmer that the Senate concur in the House amendment(s) to Senate Bill No. 5304.

The motion by Senator Kilmer carried and the Senate concurred in the House amendment(s) to Senate Bill No. 5304 by voice vote.

The President declared the question before the Senate to be the final passage of Senate Bill No. 5304, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Senate Bill No. 5304, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 44; Nays, 2; Absent, 0; Excused, 3.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Eide, Ericksen, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Swecker, Tom, White and Zarelli

Voting nay: Senators Baxter and Stevens

Excused: Senators Delvin, Kastama and Parlette

SENATE BILL NO. 5304, as amended by the House, 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.

MESSAGE FROM THE HOUSE

April 15, 2011

MR. PRESIDENT:

The House receded from its amendment(s) to SECOND SUBSTITUTE SENATE BILL NO. 5662. Under suspension of the rules, the bill was returned to second reading for the purpose of an amendment. The House adopted the following amendment: 5662-S2 AMH TAYL REIL 131, and passed the bill as amended by the House.

Strike everything after the enacting clause and insert the following:

"**NEW SECTION. Sec. 1.** A new section is added to chapter 39.04 RCW to read as follows:

(1) The department of general administration must conduct a survey and compile the results into a list of which states provide a bidding preference on public works contracts for their resident contractors. The list must include details on the type of preference, the amount of the preference, and how the preference is applied. The list must be updated periodically as needed. The initial survey must be completed by November 1, 2011, and by December 1, 2011, the department must submit a report to the appropriate committees of the legislature on the results of the survey. The report must include the list and recommendations necessary to implement the intent of this section and section 2 of this act.

(2) The department of general administration must distribute the report, along with the requirements of this section and section 2 of this act, to all state and local agencies with the authority to procure public works. The department may adopt rules and procedures to implement the reciprocity requirements in subsection (3) of this

section. However, subsection (3) does not take effect until the department of general administration has adopted the rules and procedures for reciprocity under subsection (2) of this section or announced that it will not be issuing rules or procedures pursuant to this section.

(3) In any bidding process for public works in which a bid is received from a nonresident contractor from a state that provides a percentage bidding preference, a comparable percentage disadvantage must be applied to the bid of that nonresident contractor. This subsection does not apply until the department of general administration has adopted the rules and procedures for reciprocity under subsection (2) of this section, or has determined and announced that rules are not necessary for implementation.

(4) A nonresident contractor from a state that provides a percentage bid preference means a contractor that:

(a) Is from a state that provides a percentage bid preference to its resident contractors bidding on public works contracts; and

(b) At the time of bidding on a public works project, does not have a physical office located in Washington.

(5) The state of residence for a nonresident contractor is the state in which the contractor was incorporated or, if not a corporation, the state where the contractor's business entity was formed.

(6) This section does not apply to public works procured pursuant to RCW 39.04.155, 39.04.280, or any other procurement exempt from competitive bidding.

NEW SECTION. Sec. 2. If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or local authority, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or local authority." and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Conway moved that the Senate concur in the House amendment(s) to Second Substitute Senate Bill No. 5662.

Senator Conway spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Conway that the Senate concur in the House amendment(s) to Second Substitute Senate Bill No. 5662.

The motion by Senator Conway carried and the Senate concurred in the House amendment(s) to Second Substitute Senate Bill No. 5662 by voice vote.

The President declared the question before the Senate to be the final passage of Second Substitute Senate Bill No. 5662, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Second Substitute Senate Bill No. 5662, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 35; Nays, 12; Absent, 0; Excused, 2.

Voting yea: Senators Becker, Benton, Brown, Carrell, Chase, Conway, Eide, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, McAuliffe, Murray, Nelson, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Shin, Swecker, Tom and White

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Voting nay: Senators Baumgartner, Baxter, Erickson, Hewitt, Hill, Litzow, Morton, Pflug, Schoesler, Sheldon, Stevens and Zarelli

Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom, White and Zarelli

Excused: Senators Delvin and Parlette

Excused: Senators Delvin and Parlette

SECOND SUBSTITUTE SENATE BILL NO. 5662, as amended by the House, 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.

ENGROSSED SUBSTITUTE SENATE BILL NO. 5708, as amended by the House, 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.

MESSAGE FROM THE HOUSE

MESSAGE FROM THE HOUSE

April 11, 2011

April 9, 2011

MR. PRESIDENT:

MR. PRESIDENT:

The House passed ENGROSSED SUBSTITUTE SENATE BILL NO. 5708 with the following amendment(s): 5708-S.E AMH HCW BLAC 039

The House passed SUBSTITUTE SENATE BILL NO. 5722 with the following amendment(s): 5722-S AMH WAYS H2227.2

On page 5, line 32, after "enabler, and" strike "prefilling insulin syringes" and insert "handing prefilled insulin syringes to the nonresident"

Strike everything after the enacting clause and insert the following:

On page 5, line 34, after "programs;" strike "or (l)" and insert "(l) prefilling insulin syringes when performed by a nurse licensed under chapter 18.79 RCW; or (m)"

"Sec. 1. RCW 82.14.460 and 2010 c 127 s 2 are each amended to read as follows:

On page 9, after line 22, insert the following:

(1)(a) A county legislative authority may authorize, fix, and impose a sales and use tax in accordance with the terms of this chapter.

"NEW SECTION. Sec. 9. If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." and the same are herewith transmitted.

(b) If a county with a population over eight hundred thousand has not imposed the tax authorized under this subsection by January 1, 2011, any city with a population over thirty thousand located in that county may authorize, fix, and impose the sales and use tax in accordance with the terms of this chapter. The county must provide a credit against its tax for the full amount of tax imposed under this subsection (1)(b) by any city located in that county if the county imposes the tax after January 1, 2011.

BARBARA BAKER, Chief Clerk

(2) The tax authorized in this section is in addition to any other taxes authorized by law and must be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the county for a county's tax and within a city for a city's tax. The rate of tax equals one-tenth of one percent of the selling price in the case of a sales tax, or value of the article used, in the case of a use tax.

MOTION

Senator Keiser moved that the Senate concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 5708. Senator Keiser spoke in favor of the motion.

(3) Moneys collected under this section must be used solely for the purpose of providing for the operation or delivery of chemical dependency or mental health treatment programs and services and for the operation or delivery of therapeutic court programs and services. For the purposes of this section, "programs and services" includes, but is not limited to, treatment services, case management, and housing that are a component of a coordinated chemical dependency or mental health treatment program or service.

The President declared the question before the Senate to be the motion by Senator Keiser that the Senate concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 5708.

(4) All moneys collected under this section must be used solely for the purpose of providing new or expanded programs and services as provided in this section, except ~~((a portion of moneys collected under this section may be used to supplant existing funding for these purposes in any county or city as follows: Up to fifty percent may be used to supplant existing funding in calendar year 2010; up to forty percent may be used to supplant existing funding in calendar year 2011; up to thirty percent may be used to supplant existing funding in calendar year 2012; up to twenty percent may be used to supplant existing funding in calendar year 2013; and up to ten percent may be used to supplant existing funding in calendar year 2014))~~ as follows:

The motion by Senator Keiser carried and the Senate concurred in the House amendment(s) to Engrossed Substitute Senate Bill No. 5708 by voice vote.

The President declared the question before the Senate to be the final passage of Engrossed Substitute Senate Bill No. 5708, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute Senate Bill No. 5708, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 47; Nays, 0; Absent, 0; Excused, 2.

(a) For a county with a population larger than twenty-five thousand or a city with a population over thirty thousand, a portion of moneys collected under this section may be used to supplant existing funding for these purposes as follows: Up to fifty percent may be used to supplant existing funding in calendar years 2011-2012; up to forty percent may be used to supplant existing funding in calendar year 2013; up to thirty percent may be used to supplant existing funding in calendar year 2014; up to twenty percent may be used to supplant existing funding in calendar year

Voting yea: Senators Baumgartner, Baxter, Becker, Benton, Brown, Carrell, Chase, Conway, Eide, Erickson, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Pflug, Prentice, Pridemore, Ranker, Regala, Roach,

2015; and up to ten percent may be used to supplant existing funding in calendar year 2016;

(b) For a county with a population of less than twenty-five thousand, a portion of moneys collected under this section may be used to supplant existing funding for these purposes as follows: Up to eighty percent may be used to supplant existing funding in calendar years 2011-2012; up to sixty percent may be used to supplant existing funding in calendar year 2013; up to forty percent may be used to supplant existing funding in calendar year 2014; up to twenty percent may be used to supplant existing funding in calendar year 2015; and up to ten percent may be used to supplant existing funding in calendar year 2016; and

(c) Notwithstanding (a) and (b) of this subsection, moneys collected under this section may be used to support the cost of the judicial officer and support staff of a therapeutic court.

(5) Nothing in this section may be interpreted to prohibit the use of moneys collected under this section for the replacement of lapsed federal funding previously provided for the operation or delivery of services and programs as provided in this section."

Correct the title.

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Hargrove moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5722.

Senator Hargrove spoke in favor of the motion.

Senator Stevens spoke against the motion.

The President declared the question before the Senate to be the motion by Senator Hargrove that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5722.

The motion by Senator Hargrove carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 5722 by voice vote.

MOTION

On motion of Senator Ericksen, Senator Holmquist Newbry was excused.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 5722, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 5722, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 32; Nays, 14; Absent, 0; Excused, 3.

Voting yea: Senators Brown, Chase, Conway, Eide, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hill, Hobbs, Kastama, Keiser, Kilmer, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Pflug, Prentice, Pridemore, Ranker, Regala, Rockefeller, Sheldon, Shin, Tom and White

Voting nay: Senators Baumgartner, Baxter, Becker, Benton, Carrell, Ericksen, Hewitt, Honeyford, King, Roach, Schoesler, Stevens, Swecker and Zarelli

Excused: Senators Delvin, Holmquist Newbry and Parlette
SUBSTITUTE SENATE BILL NO. 5722, as amended by the House, 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.

MESSAGE FROM THE HOUSE

April 7, 2011

MR. PRESIDENT:

The House passed ENGROSSED SUBSTITUTE SENATE BILL NO. 5748 with the following amendment(s): 5748-S.E AMH ENGR H2411.E

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) "Cottage food operation" means a person who produces cottage food products only in the home kitchen of that person's primary domestic residence in Washington and only for sale directly to the consumer.

(2) "Cottage food products" means nonpotentially hazardous baked goods; jams, jellies, preserves, and fruit butters as defined in 21 C.F.R. Sec. 150 as it existed on the effective date of this section; and other nonpotentially hazardous foods identified by the director in rule.

(3) "Department" means the department of agriculture.

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

(5) "Domestic residence" means a single-family dwelling or an area within a rental unit where a single person or family actually resides. Domestic residence does not include:

(a) A group or communal residential setting within any type of structure; or

(b) An outbuilding, shed, barn, or other similar structure.

(6) "Home kitchen" means a kitchen primarily intended for use by the residents of a home. It may contain one or more stoves or ovens, which may be a double oven, designed for residential use.

(7) "Permitted area" means the portion of a domestic residence housing a home kitchen where the preparation, packaging, storage, or handling of cottage food products occurs.

(8) "Potentially hazardous food" means foods requiring temperature control for safety because they are capable of supporting the rapid growth of pathogenic or toxigenic microorganisms, or the growth and toxin production of *Clostridium botulinum*.

NEW SECTION. Sec. 2. (1) The director may adopt, by rule, requirements for cottage food operations. These requirements may include, but are not limited to:

(a) The application and renewal of permits under section 3 of this act;

(b) Inspections as provided under section 4 of this act;

(c) Sanitary procedures;

(d) Facility, equipment, and utensil requirements;

(e) Labeling specificity beyond the requirements of this section;

(f) Requirements for clean water sources and waste and wastewater disposal; and

(g) Requirements for washing and other hygienic practices.

(2) A cottage food operation must package and properly label for sale to the consumer any food it produces, and the food may not be repackaged, sold, or used as an ingredient in other foods by a food processing plant, or sold by a food service establishment.

(3) A cottage food operation must place on the label of any food it produces or packages, at a minimum, the following information:

(a) The name and address of the business of the cottage food operation;

(b) The name of the cottage food product;

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(c) The ingredients of the cottage food product, in descending order of predominance by weight;

(d) The net weight or net volume of the cottage food product;

(e) Allergen labeling as specified by the director in rule;

(f) If any nutritional claim is made, appropriate labeling as specified by the director in rule;

(g) The following statement printed in at least the equivalent of eleven-point font size in a color that provides a clear contrast to the background: "Made in a home kitchen that has not been subject to standard inspection criteria."

(4) Cottage food products may only be sold directly to the consumer and may not be sold by internet, mail order, or for retail sale outside the state.

(5) Cottage food products must be stored only in the primary domestic residence.

NEW SECTION. Sec. 3. (1) All cottage food operations must be permitted annually by the department on forms developed by the department. All permits and permit renewals must be made on forms developed by the director and be accompanied by an inspection fee as provided in section 4 of this act, a seventy-five dollar public health review fee, and a thirty dollar processing fee. All fees must be deposited into the food processing inspection account created in RCW 69.07.120.

(2) In addition to the provision of any information required by the director on forms developed under subsection (1) of this section and the payment of all fees, an applicant for a permit or a permit renewal as a cottage food operation must also provide documentation that all individuals to be involved in the preparation of cottage foods have secured a food and beverage service worker's permit under chapter 69.06 RCW.

(3) All cottage food operations permitted under this section must include a signed document attesting, by opting to become permitted, that the permitted cottage food operation expressly grants to the director the right to enter the domestic residence housing the cottage food operation during normal business hours, or at other reasonable times, for the purposes of inspections under this chapter.

NEW SECTION. Sec. 4. (1) The permitted area of all cottage food operations must be inspected for basic hygiene by the director both before initial permitting under section 3 of this act and annually after initial permitting. In addition, the director may inspect the permitted area of a cottage food operation at any time in response to a foodborne outbreak or other public health emergency.

(2) When conducting an annual basic hygiene inspection, the director shall, at a minimum, inspect for the following:

(a) That the permitted cottage food operator understands that no person other than the permittee, or a person under the direct supervision of the permittee, may be engaged in the processing, preparing, packaging, or handling of any cottage food products or be in the home kitchen during the preparation, packaging, or handling of any cottage food products;

(b) That no cottage food preparation, packaging, or handling is occurring in the home kitchen concurrent with any other domestic activities such as family meal preparation, dishwashing, clothes washing or ironing, kitchen cleaning, or guest entertainment;

(c) That no infants, small children, or pets are in the home kitchen during the preparation, packaging, or handling of any cottage food products;

(d) That all food contact surfaces, equipment, and utensils used for the preparation, packaging, or handling of any cottage food products are washed, rinsed, and sanitized before each use;

(e) That all food preparation and food and equipment storage areas are maintained free of rodents and insects; and

(f) That all persons involved in the preparation and packaging of cottage food products:

(i) Have obtained a food and beverage service workers permit under chapter 69.06 RCW;

(ii) Are not going to work in the home kitchen when ill;

(iii) Wash their hands before any food preparation and food packaging activities; and

(iv) Avoid bare hand contact with ready-to-eat foods through the use of single-service gloves, bakery papers, tongs, or other utensils.

(3) The department shall charge an inspection fee of one hundred twenty-five dollars for any initial or annual basic hygiene inspection, which must be deposited into the food processing inspection account created in RCW 69.07.120. An additional inspection fee must be collected for each visit to a cottage food operation for the purposes of conducting an inspection for compliance.

(4) The director may contract with local health jurisdictions to conduct the inspections required under this section.

NEW SECTION. Sec. 5. (1) The gross sales of cottage food products may not exceed an annual amount set by the department. The determination of the maximum annual gross sales must be computed on the basis of the amount of gross sales within or at a particular domestic residence and may not be computed on a per person basis within or at an individual domestic residence.

(2) If gross sales exceed the maximum annual gross sales amount, the cottage food operation must either obtain a food processing plant license under chapter 69.07 RCW or cease operations.

(3) A cottage food operation exceeding the maximum annual gross sales amount is not entitled to a full or partial refund of any fees paid under section 3 or 4 of this act.

(4) The maximum annual gross sales amount must be established in rule by the department consistent with this subsection. The amount must be set at fifteen thousand dollars until December 31, 2012. Beginning January 1, 2013, the department must increase the fifteen thousand dollar annual gross sales limit biennially to reflect inflation. The department may determine inflation-based increases in any matter it deems most efficient.

(5) The director may request in writing documentation to verify the annual gross sales figure.

NEW SECTION. Sec. 6. (1) For the purpose of determining compliance with this chapter, the director may access, for inspection purposes, the permitted area of a domestic residence housing a cottage food operation permitted by the director under this chapter. This authority includes the authority to inspect any records required to be kept under the provisions of this chapter.

(2) All inspections must be made at reasonable times and, when possible, during regular business hours.

(3) Should the director be denied access to the permitted area of a domestic residence housing a cottage food operation where access was sought for the purposes of enforcing or administering this chapter, the director may apply to any court of competent jurisdiction for a search warrant authorizing access to the permitted area of a domestic residence housing a permitted cottage food operation, upon which the court may issue a search warrant for the purposes requested.

(4) Any access under this section must be limited to the permitted area and further limited to the purpose of enforcing or administering this chapter.

NEW SECTION. Sec. 7. (1) After conducting a hearing, the director may deny, suspend, or revoke any permit provided for in this chapter if it is determined that a permittee has committed any of the following acts:

(a) Refused, neglected, or failed to comply with the provisions of this chapter, any rules adopted to administer this chapter, or any lawful order of the director;

(b) Refused, neglected, or failed to keep and maintain records required by this chapter, or to make the records available when requested pursuant to the provisions of this chapter;

(c) Consistent with section 6 of this act, refused the director access to the permitted area of a domestic residence housing a cottage food operation for the purpose of carrying out the provisions of this chapter;

(d) Consistent with section 6 of this act, refused the department access to any records required to be kept under the provisions of this chapter; or

(e) Exceeded the annual income limits provided in section 5 of this act.

(2) The director may summarily suspend a permit issued under this chapter if the director finds that a cottage food operation is operating under conditions that constitute an immediate danger to public health or if the director is denied access to the permitted area of a domestic residence housing a cottage food operation and records where the access was sought for the purposes of enforcing or administering this chapter.

NEW SECTION. Sec. 8. The rights, remedies, and procedures respecting the administration of this chapter, including rule making, emergency actions, and permit suspension, revocation, or denial are governed by chapter 34.05 RCW.

NEW SECTION. Sec. 9. (1)(a) Any person engaging in a cottage food operation without a valid permit issued under section 3 of this act or otherwise violating any provision of this chapter, or any rule adopted under this chapter, is guilty of a misdemeanor.

(b) A second or subsequent violation is a gross misdemeanor. Any offense committed more than five years after a previous conviction shall be considered a first offense.

(2) Whenever the director finds that a person has committed a violation of any of the provisions of this chapter, and that violation has not been punished pursuant to subsection (1) of this section, the director may impose upon and collect from the violator a civil penalty not exceeding one thousand dollars per violation per day. Each violation shall be a separate and distinct offense.

NEW SECTION. Sec. 10. Except as otherwise provided in this chapter, cottage food operations with a valid permit under section 3 of this act are not subject to the provisions of chapter 69.07 RCW or to permitting and inspection by a local health jurisdiction.

NEW SECTION. Sec. 11. Nothing in this chapter affects the application of any other state or federal laws or any applicable ordinances enacted by any local unit of government.

Sec. 12. RCW 69.07.120 and 1992 c 160 s 5 are each amended to read as follows:

All moneys received by the department under the provisions of this chapter and chapter 69.--- RCW (the new chapter created in section 14 of this act) shall be paid into the food processing inspection account hereby created within the agricultural local fund established in RCW 43.23.230 and shall be used solely to carry out the provisions of this chapter and chapters 69.--- RCW (the new chapter created in section 14 of this act) and 69.04 RCW.

Sec. 13. RCW 69.07.100 and 2002 c 301 s 10 are each amended to read as follows:

(1) The provisions of this chapter shall not apply to establishments issued a permit or licensed under the provisions of:

((+)) (a) Chapter 69.25 RCW, the Washington wholesome eggs and egg products act;

((2)) (b) Chapter 69.28 RCW, the Washington state honey act;

((3)) (c) Chapter 16.49 RCW, the Meat inspection act;

((4)) (d) Chapter 77.65 RCW, relating to the direct retail endorsement for wild-caught seafood;

((5)) (e) Chapter 69.--- RCW (the new chapter created in section 14 of this act), relating to cottage food operations;

(f) Title 66 RCW, relating to alcoholic beverage control; and

((6)) (g) Chapter 69.30 RCW, the sanitary control of shellfish act. ((However,))

(2) If any such establishments process foods not specifically provided for in the above entitled acts, ((such)) the establishments ((shall be)) are subject to the provisions of this chapter.

(3) The provisions of this chapter ((shall)) do not apply to restaurants or food service establishments.

NEW SECTION. Sec. 14. Sections 1 through 11 of this act constitute a new chapter in Title 69 RCW."

Correct the title.

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Rockefeller moved that the Senate concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 5748.

Senator Rockefeller spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Rockefeller that the Senate concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 5748.

The motion by Senator Rockefeller carried and the Senate concurred in the House amendment(s) to Engrossed Substitute Senate Bill No. 5748 by voice vote.

The President declared the question before the Senate to be the final passage of Engrossed Substitute Senate Bill No. 5748, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute Senate Bill No. 5748, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 46; Nays, 1; Absent, 0; Excused, 2.

Voting yea: Senators Baumgartner, Baxter, Becker, Benton, Brown, Carrell, Chase, Conway, Eide, Ericksen, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom, White and Zarelli

Voting nay: Senator Holmquist Newbry

Excused: Senators Delvin and Parlette

ENGROSSED SUBSTITUTE SENATE BILL NO. 5748, as amended by the House, 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.

MESSAGE FROM THE HOUSE

April 7, 2011

MR. PRESIDENT:

The House passed SUBSTITUTE SENATE BILL NO. 5691 with the following amendment(s): 5691-S AMH WAYS H2497.1; 5691-S AMH PSEP H2197.4

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. It is the intent of the legislature that eligible victims of crime who suffer bodily injury or death as a result of violent crime receive benefits under the crime victims' compensation program. To ensure benefits are provided, within

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funds available, to the largest number of eligible victims, it is imperative to streamline and provide flexibility in the administration of the program. Therefore, the legislature intends to simplify the administration of the benefits and services provided to victims of crime by separating the administration of the benefits and services provided to crime victims from the workers' compensation program under Title 51 RCW. These changes are intended to clarify that the limited funding available to help victims of crimes will be managed to help the largest number of crime victims as possible.

I. DEFINITIONS

Sec. 101. RCW 7.68.020 and 2006 c 268 s 1 are each amended to read as follows:

The following words and phrases as used in this chapter have the meanings set forth in this section unless the context otherwise requires.

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

~~—(2))~~ "Accredited school" means a school or course of instruction which is:

(a) Approved by the state superintendent of public instruction, the state board of education, or the state board for community and technical colleges; or

(b) Regulated or licensed as to course content by any agency of the state or under any occupational licensing act of the state, or recognized by the apprenticeship council under an agreement registered with the apprenticeship council pursuant to chapter 49.04 RCW.

(2) "Average monthly wage" means the average annual wage as determined under RCW 50.04.355 as now or hereafter amended divided by twelve.

(3) "Beneficiary" means a husband, wife, registered domestic partner, or child of a victim in whom shall vest a right to receive payment under this chapter, except that a husband or wife of an injured victim, living separate and apart in a state of abandonment, regardless of the party responsible therefor, for more than one year at the time of the injury or subsequently, shall not be a beneficiary. A spouse who has lived separate and apart from the other spouse for the period of two years and who has not, during that time, received or attempted by process of law to collect funds for maintenance, shall be deemed living in a state of abandonment.

(4) "Child" means every natural born child, posthumous child, stepchild, child legally adopted prior to the injury, child born after the injury where conception occurred prior to the injury, and dependent child in the legal custody and control of the victim, all while under the age of eighteen years, or under the age of twenty-three years while permanently enrolled as a full-time student in an accredited school, and over the age of eighteen years if the child is a dependent as a result of a physical, mental, or sensory handicap.

(5) "Criminal act" means an act committed or attempted in this state which is: (a) Punishable as a federal offense that is comparable to a felony or gross misdemeanor in this state; (b) punishable as a felony or gross misdemeanor under the laws of this state; (c) an act committed outside the state of Washington against a resident of the state of Washington which would be compensable had it occurred inside this state and the crime occurred in a state which does not have a crime victims' compensation program, for which the victim is eligible as set forth in the Washington compensation law; or (d) (~~an act of terrorism as defined in 18 U.S.C. Sec. 2331, as it exists on May 2, 1997, committed outside of the United States against a resident of the state of Washington, except as follows~~) trafficking as defined in RCW 9A.40.100. A "criminal act" does not include the following:

(i) The operation of a motor vehicle, motorcycle, train, boat, or aircraft in violation of law (~~does not constitute a "criminal act"~~) unless:

(A) The injury or death was intentionally inflicted;

(B) The operation thereof was part of the commission of another nonvehicular criminal act as defined in this section;

(C) The death or injury was the result of the operation of a motor vehicle after July 24, 1983, and a preponderance of the evidence establishes that the death was the result of vehicular homicide under RCW 46.61.520, or a conviction of vehicular assault under RCW 46.61.522, has been obtained (~~—PROVIDED, That~~). In cases where a probable criminal defendant has died in perpetration of vehicular assault or, in cases where the perpetrator of the vehicular assault is unascertainable because he or she left the scene of the accident in violation of RCW 46.52.020 or, because of physical or mental infirmity or disability the perpetrator is incapable of standing trial for vehicular assault, the department may, by a preponderance of the evidence, establish that a vehicular assault had been committed and authorize benefits;

(D) The injury or death was caused by a driver in violation of RCW 46.61.502; or

(E) The injury or death was caused by a driver in violation of RCW 46.61.655(7)(a), failure to secure a load in the first degree;

(ii) Neither an acquittal in a criminal prosecution nor the absence of any such prosecution is admissible in any claim or proceeding under this chapter as evidence of the noncriminal character of the acts giving rise to such claim or proceeding, except as provided for in (d)(i)(C) of this subsection;

(iii) Evidence of a criminal conviction arising from acts which are the basis for a claim or proceeding under this chapter is admissible in such claim or proceeding for the limited purpose of proving the criminal character of the acts; and

(iv) Acts which, but for the insanity or mental irresponsibility of the perpetrator, would constitute criminal conduct are deemed to be criminal conduct within the meaning of this chapter.

((3)) "Victim" means a person who suffers bodily injury or death as a proximate result of a criminal act of another person, the victim's own good faith and reasonable effort to prevent a criminal act, or his or her good faith effort to apprehend a person reasonably suspected of engaging in a criminal act. For the purposes of receiving benefits pursuant to this chapter, "victim" is interchangeable with "employee" or "worker" as defined in chapter 51.08 RCW as now or hereafter amended.

(4) "Child," "accredited school," "dependent," "beneficiary," "average monthly wage," "director," "injury," "invalid," "permanent partial disability," and "permanent total disability" have the meanings assigned to them in chapter 51.08 RCW as now or hereafter amended.

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

(7) "Financial support for lost wages" means a partial replacement of lost wages due to a temporary or permanent total disability.

(8) "Gainfully employed" means engaging on a regular and continuous basis in a lawful activity from which a person derives a livelihood.

((6)) (9) "Injury" means a sudden and tangible happening, of a traumatic nature, producing an immediate or prompt result, and occurring from without, and such physical conditions as result therefrom.

(10) "Invalid" means one who is physically or mentally incapacitated from earning wages.

(11) "Permanent total disability" means loss of both legs, or arms, or one leg and one arm, total loss of eyesight, paralysis, or other condition permanently incapacitating the victim from

performing any work at any gainful occupation.

(12) "Private insurance" means any source of recompense provided by contract available as a result of the claimed injury or death at the time of such injury or death, or which becomes available any time thereafter.

~~((7))~~ (13) "Public insurance" means any source of recompense provided by statute, state or federal, available as a result of the claimed injury or death at the time of such injury or death, or which becomes available any time thereafter.

(14) "Temporary total disability" means any condition that temporarily incapacitates a victim from performing any type of gainful employment as certified by the victim's attending physician.

(15) "Victim" means a person who suffers bodily injury or death as a proximate result of a criminal act of another person, the victim's own good faith and reasonable effort to prevent a criminal act, or his or her good faith effort to apprehend a person reasonably suspected of engaging in a criminal act. For the purposes of receiving benefits pursuant to this chapter, "victim" is interchangeable with "employee" or "worker" as defined in chapter 51.08 RCW as now or hereafter amended.

II. GENERAL PROVISIONS

NEW SECTION. Sec. 201. On all claims under this chapter, claimants' written or electronic notices, orders, or warrants must be forwarded directly to the claimant until such time as there has been entered an order on the claim appealable to the department. Claimants' written or electronic notices, orders, or warrants may be forwarded to the claimant in care of a representative before an order has been entered if the claimant sets forth in writing the name and address of the representative to whom the claimant desires this information to be forwarded.

NEW SECTION. Sec. 202. The department may, at any time, on receipt of written or electronic authorization, transmit amounts payable to a claimant or to the account of such person in a bank or other financial institution regulated by state or federal authority.

NEW SECTION. Sec. 203. (1) Except as provided in RCW 43.20B.720, 72.09.111, 74.20A.260, and 51.32.380, no money paid or payable under this chapter shall, before the issuance and delivery of the check or warrant, or disbursement of electronic funds or electronic payment, be assigned, charged, or taken in execution, attached, garnished, or pass or be paid to any other person by operation of law, any form of voluntary assignment, or power of attorney. Any such assignment or charge is void unless the transfer is to a financial institution at the request of a victim or other beneficiary and made in accordance with section 204 of this act.

(2)(a) If any victim suffers an injury and dies from it before he or she receives payment of any monthly installment covering financial support for lost wages for any period of time before his or her death, the amount of the monthly payment shall be paid to the surviving spouse or the child or children if there is no surviving spouse. If there is no surviving spouse and no child or children, the amount of the monthly payment shall be paid by the department and distributed consistent with the terms of the decedent's will or, if the decedent dies intestate, consistent with the terms of RCW 11.04.015.

(b) Any application for compensation under this subsection (2) shall be filed with the department within one year of the date of death. The department may satisfy its responsibilities under this subsection (2) by sending any payment due in the name of the decedent and to the last known address of the decedent.

(3) Any victim or beneficiary receiving benefits under this chapter who is subsequently confined in, or who subsequently becomes eligible for benefits under this chapter while confined in, any institution under conviction and sentence shall have all

payments of the compensation canceled during the period of confinement. After discharge from the institution, payment of benefits due afterward shall be paid if the victim or beneficiary would, except for the provisions of this subsection (3), otherwise be eligible for them.

NEW SECTION. Sec. 204. Any victim or other recipient of benefits under this chapter may elect to have any payments due transferred to such person's account in a financial institution for either: (1) Credit to the recipient's account in such financial institution; or (2) immediate transfer therefrom to the recipient's account in any other financial institution. A single warrant may be drawn in favor of such financial institution, for the total amount due the recipients involved, and written directions provided to such financial institution of the amount to be credited to the account of a recipient or to be transferred to an account in another financial institution for such recipient. The issuance and delivery by the disbursing officer of a warrant in accordance with the procedure set forth in this section and proper endorsement thereof by the financial institution shall have the same legal effect as payment directly to the recipient.

For the purposes of this section "financial institution" shall have the meaning given in RCW 41.04.240 as now or hereafter amended.

NEW SECTION. Sec. 205. (1) The department may require that the victim present himself or herself for a special medical examination by a physician or physicians selected by the department, and the department may require that the victim present himself or herself for a personal interview. The costs of the examination or interview, including payment of any reasonable travel expenses, shall be paid by the department as part of the victim's total claim under RCW 7.68.070(1).

(2) The director may establish a medical bureau within the department to perform medical examinations under this section.

(3) Where a dispute arises from the handling of any claim before the condition of the injured victim becomes fixed, the victim may request the department to resolve the dispute or the director may initiate an inquiry on his or her own motion. In these cases, the department shall proceed as provided in this section and an order shall issue in accordance with RCW 51.52.050.

Sec. 206. RCW 7.68.030 and 2009 c 479 s 7 are each amended to read as follows:

~~(1) It shall be the duty of the director to establish and administer a program of benefits to innocent victims of criminal acts within the terms and limitations of this chapter. ((In so doing, the director shall, in accordance with chapter 34.05 RCW, adopt rules and regulations necessary to the administration of this chapter, and the provisions contained in chapter 51.04 RCW, including but not limited to RCW 51.04.020, 51.04.030, 51.04.040, 51.04.050 and 51.04.100 as now or hereafter amended, shall apply where appropriate in keeping with the intent of this chapter.))~~ The director may apply for and, subject to appropriation, expend federal funds under Public Law 98-473 and any other federal program providing financial assistance to state crime victim compensation programs. The federal funds shall be deposited in the state general fund and may be expended only for purposes authorized by applicable federal law.

(2) The director shall:

(a) Establish and adopt rules governing the administration of this chapter in accordance with chapter 34.05 RCW;

(b) Regulate the proof of accident and extent thereof, the proof of death, and the proof of relationship and the extent of dependency;

(c) Supervise the medical, surgical, and hospital treatment to the intent that it may be in all cases efficient and up to the recognized standard of modern surgery;

(d) Issue proper receipts for moneys received and certificates for benefits accrued or accruing;

(e) Designate a medical director who is licensed under chapter

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18.57 or 18.71 RCW;

(f) Supervise the providing of prompt and efficient care and treatment, including care provided by physician assistants governed by the provisions of chapters 18.57A and 18.71A RCW, acting under a supervising physician, including chiropractic care, and including care provided by licensed advanced registered nurse practitioners, to victims at the least cost consistent with promptness and efficiency, without discrimination or favoritism, and with as great uniformity as the various and diverse surrounding circumstances and locations of industries will permit and to that end shall, from time to time, establish and adopt and supervise the administration of printed forms, electronic communications, rules, regulations, and practices for the furnishing of such care and treatment. The medical coverage decisions of the department do not constitute a "rule" as used in RCW 34.05.010(16), nor are such decisions subject to the rule-making provisions of chapter 34.05 RCW except that criteria for establishing medical coverage decisions shall be adopted by rule. The department may recommend to a victim particular health care services and providers where specialized treatment is indicated or where cost-effective payment levels or rates are obtained by the department, and the department may enter into contracts for goods and services including, but not limited to, durable medical equipment so long as statewide access to quality service is maintained for injured victims;

(g) In consultation with interested persons, establish and, in his or her discretion, periodically change as may be necessary, and make available a fee schedule of the maximum charges to be made by any physician, surgeon, chiropractor, hospital, druggist, licensed advanced registered nurse practitioner, and physician assistants as defined in chapters 18.57A and 18.71A RCW, acting under a supervising physician or other agency or person rendering services to victims. The department shall coordinate with other state purchasers of health care services to establish as much consistency and uniformity in billing and coding practices as possible, taking into account the unique requirements and differences between programs. No service covered under this title, including services provided to victims, whether aliens or other victims, who are not residing in the United States at the time of receiving the services, shall be charged or paid at a rate or rates exceeding those specified in such fee schedule, and no contract providing for greater fees shall be valid as to the excess. The establishment of such a schedule, exclusive of conversion factors, does not constitute "agency action" as used in RCW 34.05.010(3), nor does such a fee schedule constitute a "rule" as used in RCW 34.05.010(16);

(h) Make a record of the commencement of every disability and the termination thereof and, when bills are rendered for the care and treatment of injured victims, shall approve and pay those which conform to the adopted rules, regulations, established fee schedules, and practices of the director and may reject any bill or item thereof incurred in violation of the principles laid down in this section or the rules, regulations, or the established fee schedules and rules and regulations adopted under it.

(3) The director and his or her authorized assistants:

(a) Have power to issue subpoenas to enforce the attendance and testimony of witnesses and the production and examination of books, papers, photographs, tapes, and records before the department in connection with any claim made to the department or any billing submitted to the department. The superior court has the power to enforce any such subpoena by proper proceedings;

(b)(i) May apply for and obtain a superior court order approving and authorizing a subpoena in advance of its issuance. The application may be made in the county where the subpoenaed person resides or is found, or the county where the subpoenaed records or documents are located, or in Thurston county. The application must (A) state that an order is sought pursuant to this

subsection; (B) adequately specify the records, documents, or testimony; and (C) declare under oath that an investigation is being conducted for a lawfully authorized purpose related to an investigation within the department's authority and that the subpoenaed documents or testimony are reasonably related to an investigation within the department's authority.

(ii) Where the application under this subsection (3)(b) is made to the satisfaction of the court, the court must issue an order approving the subpoena. An order under this subsection constitutes authority of law for the agency to subpoena the records or testimony.

(iii) The director and his or her authorized assistants may seek approval and a court may issue an order under this subsection without prior notice to any person, including the person to whom the subpoena is directed and the person who is the subject of an investigation.

(4) In all hearings, actions, or proceedings before the department, any physician or licensed advanced registered nurse practitioner having theretofore examined or treated the claimant may be required to testify fully regarding such examination or treatment, and shall not be exempt from so testifying by reason of the relation of the physician or licensed advanced registered nurse practitioner to the patient.

Sec. 207. RCW 7.68.075 and 1977 ex.s. c 302 s 6 are each amended to read as follows:

((Notwithstanding the provisions of any of the sections, as now or hereafter amended, of Title 51 RCW which are made applicable to)) Under this chapter, the marital status of all victims shall be deemed to be fixed as of the date of the criminal act. All references to the child or children living or conceived of the victim in this chapter shall be deemed to refer to such child or children as of the date of the criminal act unless the context clearly indicates the contrary.

Payments for or on account of any such child or children shall cease when such child is no longer a "child" (~~as defined in RCW 51.08.030, as now or hereafter amended,~~) or on the death of any such child whichever occurs first.

Payments to the victim or surviving spouse for or on account of any such child or children shall be made only when the victim or surviving spouse has legal custody of any such child or children. Where the victim or surviving spouse does not have such legal custody any payments for or on account of any such child or children shall be made to the person having legal custody of such child or children and the amount of payments shall be subtracted from the payments which would have been due the victim or surviving spouse had legal custody not been transferred to another person. It shall be the duty of any person or persons receiving payments because of legal custody of any child to immediately notify the department of any change in such legal custody.

III. APPLICATION FOR BENEFITS

Sec. 301. RCW 7.68.060 and 2001 c 153 s 1 are each amended to read as follows:

(1) Except for ((the purposes of applying for benefits under this chapter, the rights, privileges, responsibilities, duties, limitations and procedures contained in RCW 51.28.020, 51.28.030, 51.28.040 and 51.28.060 shall apply: PROVIDED, That except for)) applications received pursuant to subsection (((4))) (6) of this section, no compensation of any kind shall be available under this chapter if:

(a) An application for benefits is not received by the department within two years after the date the criminal act was reported to a local police department or sheriff's office or the date the rights of (~~dependents or~~) beneficiaries accrued, unless the director has

determined that "good cause" exists to expand the time permitted to receive the application. "Good cause" shall be determined by the department on a case-by-case basis and may extend the period of time in which an application can be received for up to five years after the date the criminal act was reported to a local police department or sheriff's office or the date the rights of (~~dependents~~ ~~or~~) beneficiaries accrued; or

(b) The criminal act is not reported by the victim or someone on his or her behalf to a local police department or sheriff's office within twelve months of its occurrence or, if it could not reasonably have been reported within that period, within twelve months of the time when a report could reasonably have been made. In making determinations as to reasonable time limits, the department shall give greatest weight to the needs of the victims.

~~(2) (This section shall apply only to criminal acts reported after December 31, 1985.~~

~~(3))~~ No person or spouse, child, or dependent of such person is eligible for benefits under this chapter when the injury for which benefits are sought, was:

(a) The result of consent, provocation, or incitement by the victim, unless an injury resulting from a criminal act caused the death of the victim;

(b) Sustained while the crime victim was engaged in the attempt to commit, or the commission of, a felony; or

(c) Sustained while the victim was confined in any county or city jail, federal jail or prison or in any other federal institution, or any state correctional institution maintained and operated by the department of social and health services or the department of corrections, prior to release from lawful custody; or confined or living in any other institution maintained and operated by the department of social and health services or the department of corrections.

(3) No person or spouse, child, or dependent of such person is eligible for benefits under this chapter where the person making a claim for such benefits has refused to give reasonable cooperation to state or local law enforcement agencies in their efforts to apprehend and convict the perpetrator of the criminal act which gave rise to the claim.

(4) A victim is not eligible for benefits under this chapter if he or she:

(a) Has been convicted of a felony offense within five years preceding the criminal act for which they are applying where the felony offense is a violent offense under RCW 9.94A.030 or a crime against persons under RCW 9.94A.411, or is convicted of such a felony offense after the criminal act for which they are applying; and

(b) Has not completely satisfied all legal financial obligations owed.

(5) Because victims of childhood criminal acts may repress conscious memory of such criminal acts far beyond the age of eighteen, the rights of adult victims of childhood criminal acts shall accrue at the time the victim discovers or reasonably should have discovered the elements of the crime. In making determinations as to reasonable time limits, the department shall give greatest weight to the needs of the victim.

~~((4) A right to)~~ ~~(6)(a)~~ Benefits under this chapter ~~((is) are~~ available to any victim of a person against whom the state initiates proceedings under chapter 71.09 RCW. The right created under this subsection shall accrue when the victim is notified of proceedings under chapter 71.09 RCW or the victim is interviewed, deposed, or testifies as a witness in connection with the proceedings. An application for benefits under this subsection must be received by the department within two years after the date the victim's right accrued unless the director determines that good cause exists to expand the time to receive the application. The director shall determine "good cause" on a case-by-case basis and may extend the period of time in which an application can be received for up to five

years after the date the right of the victim accrued. Benefits under this subsection shall be limited to compensation for costs or losses incurred on or after the date the victim's right accrues for a claim allowed under this subsection.

(b) A person identified as the "minor" in the charge of commercial sexual abuse of a minor under RCW 9.68A.100, promoting commercial sexual abuse of a minor under RCW 9.68A.101, or promoting travel for commercial sexual abuse of a minor under RCW 9.68A.102 is considered a victim of a criminal act for the purpose of the right to benefits under this chapter even if the person is also charged with prostitution under RCW 9A.88.030.

NEW SECTION. Sec. 302. (1)(a) Where a victim is eligible for compensation under this chapter he or she shall file with the department his or her application for such, together with the certificate of the physician or licensed advanced registered nurse practitioner who attended him or her. An application form developed by the department shall include a notice specifying the victim's right to receive health services from a physician or licensed advanced registered nurse practitioner utilizing his or her private or public insurance or if no insurance, of the victim's choice under section 507 of this act.

(b) The physician or licensed advanced registered nurse practitioner who attended the injured victim shall inform the injured victim of his or her rights under this chapter and lend all necessary assistance in making this application for compensation and such proof of other matters as required by the rules of the department without charge to the victim.

(2) If the application required by this section is filed on behalf of the victim by the physician who attended the victim, the physician may transmit the application to the department electronically.

NEW SECTION. Sec. 303. Where death results from injury the parties eligible for compensation under this chapter, or someone in their behalf, shall make application for the same to the department, which application must be accompanied with proof of death and proof of relationship showing the parties to be eligible for compensation under this chapter, certificates of attending physician or licensed advanced registered nurse practitioner, if any, and such proof as required by the rules of the department.

NEW SECTION. Sec. 304. If change of circumstances warrants an increase or rearrangement of compensation, like application shall be made therefor. Where the application has been granted, compensation and other benefits if in order shall be allowed for periods of time up to sixty days prior to the receipt of such application.

NEW SECTION. Sec. 305. If injury or death results to a victim from the deliberate intention of the victim himself or herself to produce such injury or death, or while the victim is engaged in the attempt to commit, or the commission of, a felony, neither the victim nor the widow, widower, child, or dependent of the victim shall receive any payment under this chapter.

If injury or death results to a victim from the deliberate intention of a beneficiary of that victim to produce the injury or death, or if injury or death results to a victim as a consequence of a beneficiary of that victim engaging in the attempt to commit, or the commission of, a felony, the beneficiary shall not receive any payment under this chapter.

An invalid child, while being supported and cared for in a state institution, shall not receive compensation under this chapter.

No payment shall be made to or for a natural child of a deceased victim and, at the same time, as the stepchild of a deceased victim.

NEW SECTION. Sec. 306. Except as otherwise provided by treaty or this chapter, whenever compensation is payable to a beneficiary who is an alien not residing in the United States, the department shall pay the compensation to which a resident beneficiary is eligible under this chapter. But if a nonresident alien beneficiary is a citizen of a government having a compensation law

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which excludes citizens of the United States, either resident or nonresident, from partaking of the benefit of such law in as favorable a degree as herein extended to nonresident aliens, he or she shall receive no compensation. No payment shall be made to any beneficiary residing in any country with which the United States does not maintain diplomatic relations when such payment is due.

NEW SECTION. Sec. 307. Physicians or licensed advanced registered nurse practitioners examining or attending injured victims under this chapter shall comply with rules and regulations adopted by the director, and shall make such reports as may be requested by the department upon the condition or treatment of any such victim, or upon any other matters concerning such victims in their care. Except under RCW 49.17.210 and 49.17.250, all medical information in the possession or control of any person and relevant to the particular injury in the opinion of the department pertaining to any victim whose injury is the basis of a claim under this chapter shall be made available at any stage of the proceedings to the claimant's representative and the department upon request, and no person shall incur any legal liability by reason of releasing such information.

IV. BENEFITS

Sec. 401. RCW 7.68.070 and 2010 c 289 s 6 and 2010 c 122 s 1 are each reenacted and amended to read as follows:

The ~~((right to))~~ eligibility for benefits under this chapter and the amount thereof will be governed insofar as is applicable by the provisions contained in this chapter ~~((51.32 RCW except as provided in this section, provided that no more than fifty thousand dollars shall be paid per claim:))~~.

(1) ~~((The provisions contained in RCW 51.32.015, 51.32.030, 51.32.072, 51.32.073, 51.32.180, 51.32.190, and 51.32.200 are not applicable to this chapter.~~

(2)) Each victim injured as a result of a criminal act, including criminal acts committed between July 1, 1981, and January 1, 1983, or the victim's family or ~~((dependents))~~ beneficiary in case of death of the victim, are ~~((entitled to))~~ eligible for benefits in accordance with this chapter, subject to the limitations under RCW 7.68.015. ~~((The rights, duties, responsibilities, limitations, and procedures applicable to a worker as contained in RCW 51.32.010 are applicable to this chapter.~~

(3)(a) The limitations contained in RCW 51.32.020 are applicable to claims under this chapter. In addition, no person or spouse, child, or dependent of such person is entitled to benefits under this chapter when the injury for which benefits are sought, was:

(i) The result of consent, provocation, or incitement by the victim, unless an injury resulting from a criminal act caused the death of the victim;

(ii) Sustained while the crime victim was engaged in the attempt to commit, or the commission of, a felony; or

(iii) Sustained while the victim was confined in any county or city jail, federal jail or prison or in any other federal institution, or any state correctional institution maintained and operated by the department of social and health services or the department of corrections, prior to release from lawful custody; or confined or living in any other institution maintained and operated by the department of social and health services or the department of corrections.

(b) A person identified as the "minor" in the charge of commercial sexual abuse of a minor under RCW 9.68A.100, promoting commercial sexual abuse of a minor under RCW 9.68A.101, or promoting travel for commercial sexual abuse of a minor under RCW 9.68A.102 is considered a victim of a criminal act for the purpose of the right to benefits under this chapter even if

the person is also charged with prostitution under RCW 9A.88.030.

(4) The benefits established upon the death of a worker and contained in RCW 51.32.050 shall be the benefits obtainable under this chapter and provisions relating to payment contained in that section shall equally apply under this chapter, except that:

(a)) No more than fifty thousand dollars shall be paid in total per claim, of which nonmedical benefits shall not exceed forty thousand dollars of the entire claim. Benefits may include a combination of burial expenses, financial support for lost wages, and medical expenses.

(a) Benefits payable for temporary total disability that results in financial support for lost wages shall not exceed fifteen thousand dollars.

(b) Benefits payable for a permanent total disability or fatality that results in financial support for lost wages shall not exceed forty thousand dollars. After at least twelve monthly payments have been paid, the department shall have the sole discretion to make a final lump sum payment of the balance remaining.

(c) Benefits for disposition of remains or burial expenses shall not exceed five thousand seven hundred fifty dollars per claim.

(2) If the victim was not gainfully employed at the time of the criminal act, no financial support for lost wages will be paid to the victim or any beneficiaries.

(3) No victim or beneficiary shall receive compensation for or during the day on which the injury was received.

(4) If a victim's employer continues to pay the victim's wages that he or she was earning at the time of the crime, the victim shall not receive any financial support for lost wages.

(5) When the director determines that a temporary total disability results in a loss of wages, the victim shall receive monthly subject to subsection (1) of this section, during the period of disability, sixty percent of the victim's monthly wage but no more than one hundred percent of the state's average monthly wage as defined in RCW 7.68.020. The minimum monthly payment shall be no less than five hundred dollars. Monthly wages shall be based upon employer wage statements, employment security records, or documents reported to and certified by the internal revenue service. Monthly wages must be determined using the actual documented monthly wage or averaging the total wages earned for up to twelve successive calendar months preceding the injury. In cases where the victim's wages and hours are fixed, they shall be determined by multiplying the daily wage the victim was receiving at the time of the injury:

(a) By five, if the victim was normally employed one day a week;

(b) By nine, if the victim was normally employed two days a week;

(c) By thirteen, if the victim was normally employed three days a week;

(d) By eighteen, if the victim was normally employed four days a week;

(e) By twenty-two, if the victim was normally employed five days a week;

(f) By twenty-six, if the victim was normally employed six days a week; or

(g) By thirty, if the victim was normally employed seven days a week.

(6) When the director determines that a permanent total disability or death results in a loss of wages, the victim or eligible spouse shall receive the monthly payments established in this subsection, not to exceed forty thousand dollars or the limits established in this chapter.

(7) If the director determines that the victim is voluntarily retired and is no longer attached to the workforce, benefits shall not be paid under this section.

(8) In the case of death, if there is no eligible spouse, benefits shall be paid to the child or children of the deceased victim. If there is no spouse or children, no payments shall be made under this section. If the spouse remarries before this benefit is paid in full benefits shall be paid to the victim's child or children and the spouse shall not receive further payment. If there is no child or children no further payments will be made.

(9) The benefits for disposition of remains or burial expenses shall not exceed five thousand seven hundred fifty dollars per claim(;) and

((b) An application for benefits relating to payment for burial expenses, pursuant to this subsection, must be received within twelve months of the date upon which the death of the victim is officially recognized as a homicide. If there is a delay in the recovery of remains or the release of remains for burial, application for benefits must be received within twelve months of the date of the release of the remains for burial)) to receive reimbursement for expenses related to the disposition of remains or burial, the department must receive an itemized statement from a provider of services within twelve months of the date upon which the death of the victim is officially recognized as a homicide. If there is a delay in the recovery of remains or the release of remains for disposition or burial, an itemized statement from a provider of services must be received within twelve months of the date of the release of the remains.

((5) The benefits established in RCW 51.32.060 for permanent total disability proximately caused by the criminal act shall be the benefits obtainable under this chapter, and provisions relating to payment contained in that section apply under this chapter, except that if a victim becomes permanently and totally disabled as a proximate result of the criminal act, the victim shall receive monthly during the period of the disability the following percentages, where applicable, of the average monthly wage determined as of the date of the criminal act pursuant to RCW 51.08.018:

(a) If married at the time of the criminal act, twenty-nine percent of the average monthly wage.

(b) If married with one child at the time of the criminal act, thirty-four percent of the average monthly wage.

(c) If married with two children at the time of the criminal act, thirty-eight percent of the average monthly wage.

(d) If married with three children at the time of the criminal act, forty-one percent of the average monthly wage.

(e) If married with four children at the time of the criminal act, forty-four percent of the average monthly wage.

(f) If married with five or more children at the time of the criminal act, forty-seven percent of the average monthly wage.

(g) If unmarried at the time of the criminal act, twenty-five percent of the average monthly wage.

(h) If unmarried with one child at the time of the criminal act, thirty percent of the average monthly wage.

(i) If unmarried with two children at the time of the criminal act, thirty-four percent of the average monthly wage.

(j) If unmarried with three children at the time of the criminal act, thirty-seven percent of the average monthly wage.

(k) If unmarried with four children at the time of the criminal act, forty percent of the average monthly wage.

(l) If unmarried with five or more children at the time of the criminal act, forty-three percent of the average monthly wage.

(6) The benefits established in RCW 51.32.080 for permanent partial disability shall be the benefits obtainable under this chapter, and provisions relating to payment contained in that section equally apply under this chapter, but shall not exceed seven thousand dollars per claim.

(7) The benefits established in RCW 51.32.090 for temporary total disability shall be the benefits obtainable under this chapter, and provisions relating to payment contained in that section apply

under this chapter, except that no person is eligible for temporary total disability benefits under this chapter if such person was not gainfully employed at the time of the criminal act.

(8) The benefits established in RCW 51.32.095 for continuation of benefits during vocational rehabilitation shall be benefits obtainable under this chapter, and provisions relating to payment contained in that section apply under this chapter, except that benefits shall not exceed five thousand dollars for any single injury.

(9) The provisions for lump sum payment of benefits upon death or permanent total disability as contained in RCW 51.32.130 apply under this chapter.

(10) The provisions relating to payment of benefits to, for or on behalf of workers contained in RCW 51.32.040, 51.32.055, 51.32.100, 51.32.110, 51.32.120, 51.32.135, 51.32.140, 51.32.150, 51.32.160, and 51.32.210 are applicable to payment of benefits to, for or on behalf of victims under this chapter.

(11) No person or spouse, child, or dependent of such person is entitled to benefits under this chapter where the person making a claim for such benefits has refused to give reasonable cooperation to state or local law enforcement agencies in their efforts to apprehend and convict the perpetrator(s) of the criminal act which gave rise to the claim.

(12) In addition to other benefits provided under this chapter, victims of sexual assault are entitled to receive appropriate counseling. Fees for such counseling shall be determined by the department in accordance with RCW 51.04.030, subject to the limitations of RCW 7.68.080. Counseling services may include, if determined appropriate by the department, counseling of members of the victim's immediate family, other than the perpetrator of the assault.

(13) Notwithstanding other provisions of this chapter and Title 51 RCW, benefits payable for total temporary disability under subsection (7) of this section, shall be limited to fifteen thousand dollars.

(14)) (10) Any person who is responsible for the victim's injuries, or who would otherwise be unjustly enriched as a result of the victim's injuries, shall not be a beneficiary under this chapter.

((45)) (11) Crime victims' compensation is not available to pay for services covered under chapter 74.09 RCW or Title XIX of the federal social security act((, except to the extent that the costs for such services exceed service limits established by the department of social and health services or, during the 1993-95 fiscal biennium, to the extent necessary to provide matching funds for federal medicaid reimbursement)).

((16) In addition to other benefits provided under this chapter, immediate family members of a homicide victim may receive appropriate counseling to assist in dealing with the immediate, near-term consequences of the related effects of the homicide. Fees for counseling shall be determined by the department in accordance with RCW 51.04.030, subject to the limitations of RCW 7.68.080. Payment of counseling benefits under this section may not be provided to the perpetrator of the homicide. The benefits under this subsection may be provided only with respect to homicides committed on or after July 1, 1992.

(17) A dependent mother, father, stepmother, or stepfather, as defined in RCW 51.08.050, who is a survivor of her or his child's homicide, who has been requested by a law enforcement agency or a prosecutor to assist in the judicial proceedings related to the death of the victim, and who is not domiciled in Washington state at the time of the request, may receive a lump-sum payment upon arrival in this state. Total benefits under this subsection may not exceed seven thousand five hundred dollars. If more than one dependent parent is eligible for this benefit, the lump-sum payment of seven thousand five hundred dollars shall be divided equally among the dependent parents.

(18)) (12) A victim whose crime occurred in another state who

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qualifies for benefits under RCW 7.68.060((4)) (6) may receive appropriate mental health counseling to address distress arising from participation in the civil commitment proceedings. Fees for counseling shall be determined by the department in accordance with RCW 51.04.030, subject to the limitations of RCW 7.68.080.

((19) A victim is not eligible for benefits under this act if such victim:

(a) Has been convicted of a felony offense within five years preceding the criminal act for which they are applying where the felony offense is a violent offense under RCW 9.94A.030 or a crime against persons under RCW 9.94A.411, or is convicted of such a felony offense after applying; and

(b) Has not completely satisfied all legal financial obligations owed prior to applying for benefits.)

(13) If the provisions of this title relative to compensation for injuries to or death of victims become invalid because of any adjudication, or are repealed, the period intervening between the occurrence of an injury or death, not previously compensated for under this title by lump payment or completed monthly payments, and such repeal or the rendition of the final adjudication of invalidity shall not be computed as a part of the time limited by law for the commencement of any action relating to such injury or death.

(14) The benefits established in RCW 51.32.080 for permanent partial disability will not be provided to any crime victim or for any claim submitted on or after July 1, 2011.

Sec. 402. RCW 7.68.070 and 2010 c 289 s 6 are each amended to read as follows:

The ~~((right to))~~ eligibility for benefits under this chapter and the amount thereof will be governed insofar as is applicable by the provisions contained in this chapter ~~((51.32 RCW except as provided in this section))~~.

(1) ((The provisions contained in RCW 51.32.015, 51.32.030, 51.32.072, 51.32.073, 51.32.180, 51.32.190, and 51.32.200 are not applicable to this chapter.

(2)) Each victim injured as a result of a criminal act, including criminal acts committed between July 1, 1981, and January 1, 1983, or the victim's family or ((dependents)) beneficiary in case of death of the victim, are ((entitled to)) eligible for benefits in accordance with this chapter, subject to the limitations under RCW 7.68.015. ((The rights, duties, responsibilities, limitations, and procedures applicable to a worker as contained in RCW 51.32.010 are applicable to this chapter.

(3)(a) The limitations contained in RCW 51.32.020 are applicable to claims under this chapter. In addition, no person or spouse, child, or dependent of such person is entitled to benefits under this chapter when the injury for which benefits are sought, was:

(i) The result of consent, provocation, or incitement by the victim, unless an injury resulting from a criminal act caused the death of the victim;

(ii) Sustained while the crime victim was engaged in the attempt to commit, or the commission of, a felony; or

(iii) Sustained while the victim was confined in any county or city jail, federal jail or prison or in any other federal institution, or any state correctional institution maintained and operated by the department of social and health services or the department of corrections, prior to release from lawful custody; or confined or living in any other institution maintained and operated by the department of social and health services or the department of corrections.

(b) A person identified as the "minor" in the charge of commercial sexual abuse of a minor under RCW 9.68A.100, promoting commercial sexual abuse of a minor under RCW 9.68A.101, or promoting travel for commercial sexual abuse of a minor under RCW 9.68A.102 is considered a victim of a criminal

act for the purpose of the right to benefits under this chapter even if the person is also charged with prostitution under RCW 9A.88.030.

(4) The benefits established upon the death of a worker and contained in RCW 51.32.050 shall be the benefits obtainable under this chapter and provisions relating to payment contained in that section shall equally apply under this chapter. Benefits for burial expenses shall not exceed the amount paid by the department in case of the death of a worker as provided in chapter 51.32 RCW in any claim. If the criminal act results in the death of a victim who was not gainfully employed at the time of the criminal act, and who was not so employed for at least three consecutive months of the twelve months immediately preceding the criminal act;

(a) Benefits payable to an eligible surviving spouse, where there are no children of the victim at the time of the criminal act who have survived the victim or where such spouse has legal custody of all of his or her children, shall be limited to burial expenses and a lump sum payment of seven thousand five hundred dollars without reference to number of children, if any;

(b) Where any such spouse has legal custody of one or more but not all of such children, then such burial expenses shall be paid, and such spouse shall receive a lump sum payment of three thousand seven hundred fifty dollars and any such child or children not in the legal custody of such spouse shall receive a lump sum of three thousand seven hundred fifty dollars to be divided equally among such child or children;

(c) If any such spouse does not have legal custody of any of the children, the burial expenses shall be paid and the spouse shall receive a lump sum payment of up to three thousand seven hundred fifty dollars and any such child or children not in the legal custody of the spouse shall receive a lump sum payment of up to three thousand seven hundred fifty dollars to be divided equally among the child or children;

(d) If no such spouse survives, then such burial expenses shall be paid, and each surviving child of the victim at the time of the criminal act shall receive a lump sum payment of three thousand seven hundred fifty dollars up to a total of two such children and where there are more than two such children the sum of seven thousand five hundred dollars shall be divided equally among such children.

No other benefits may be paid or payable under these circumstances.

(5) The benefits established in RCW 51.32.060 for permanent total disability proximately caused by the criminal act shall be the benefits obtainable under this chapter, and provisions relating to payment contained in that section apply under this chapter: PROVIDED, That if a victim becomes permanently and totally disabled as a proximate result of the criminal act and was not gainfully employed at the time of the criminal act, the victim shall receive monthly during the period of the disability the following percentages, where applicable, of the average monthly wage determined as of the date of the criminal act pursuant to RCW 51.08.018:

(a) If married at the time of the criminal act, twenty-nine percent of the average monthly wage.

(b) If married with one child at the time of the criminal act, thirty-four percent of the average monthly wage.

(c) If married with two children at the time of the criminal act, thirty-eight percent of the average monthly wage.

(d) If married with three children at the time of the criminal act, forty-one percent of the average monthly wage.

(e) If married with four children at the time of the criminal act, forty-four percent of the average monthly wage.

(f) If married with five or more children at the time of the criminal act, forty-seven percent of the average monthly wage.

(g) If unmarried at the time of the criminal act, twenty-five

percent of the average monthly wage.

(h) If unmarried with one child at the time of the criminal act, thirty percent of the average monthly wage.

(i) If unmarried with two children at the time of the criminal act, thirty-four percent of the average monthly wage.

(j) If unmarried with three children at the time of the criminal act, thirty-seven percent of the average monthly wage.

(k) If unmarried with four children at the time of the criminal act, forty percent of the average monthly wage.

(l) If unmarried with five or more children at the time of the criminal act, forty-three percent of the average monthly wage.

(6) The benefits established in RCW 51.32.080 for permanent partial disability shall be the benefits obtainable under this chapter, and provisions relating to payment contained in that section equally apply under this chapter.

(7) The benefits established in RCW 51.32.090 for temporary total disability shall be the benefits obtainable under this chapter, and provisions relating to payment contained in that section apply under this chapter. No person is eligible for temporary total disability benefits under this chapter if such person was not gainfully employed at the time of the criminal act, and was not so employed for at least three consecutive months of the twelve months immediately preceding the criminal act.

(8) The benefits established in RCW 51.32.095 for continuation of benefits during vocational rehabilitation shall be benefits obtainable under this chapter, and provisions relating to payment contained in that section apply under this chapter. Benefits shall not exceed five thousand dollars for any single injury.

(9) The provisions for lump sum payment of benefits upon death or permanent total disability as contained in RCW 51.32.130 apply under this chapter.

(10) The provisions relating to payment of benefits to, for or on behalf of workers contained in RCW 51.32.040, 51.32.055, 51.32.100, 51.32.110, 51.32.120, 51.32.135, 51.32.140, 51.32.150, 51.32.160, and 51.32.210 are applicable to payment of benefits to, for or on behalf of victims under this chapter.

(11) No person or spouse, child, or dependent of such person is entitled to benefits under this chapter where the person making a claim for such benefits has refused to give reasonable cooperation to state or local law enforcement agencies in their efforts to apprehend and convict the perpetrator(s) of the criminal act which gave rise to the claim.

(12) In addition to other benefits provided under this chapter, victims of sexual assault are entitled to receive appropriate counseling. Fees for such counseling shall be determined by the department in accordance with RCW 51.04.030, subject to the limitations of RCW 7.68.080. Counseling services may include, if determined appropriate by the department, counseling of members of the victim's immediate family, other than the perpetrator of the assault.

(13) Except for medical benefits authorized under RCW 7.68.080, no more than thirty thousand dollars shall be granted as a result of a single injury or death, except that benefits granted as the result of total permanent disability or death shall not exceed forty thousand dollars.

(14) Notwithstanding other provisions of this chapter and Title 51 RCW, benefits payable for total temporary disability under subsection (7) of this section, shall be limited to fifteen thousand dollars)) Of the entire amount paid in total per claim, nonmedical benefits shall not exceed forty thousand dollars of the entire claim. Benefits may include a combination of burial expenses, financial support for lost wages, and medical expenses.

(a) Benefits payable for temporary total disability that results in financial support for lost wages shall not exceed fifteen thousand dollars.

(b) Benefits payable for a permanent total disability or fatality

that results in financial support for lost wages shall not exceed forty thousand dollars. After at least twelve monthly payments have been paid, the department shall have the sole discretion to make a final lump sum payment of the balance remaining.

(c) Benefits for disposition of remains or burial expenses shall not exceed seven thousand seven hundred dollars per claim.

(2) If the victim was not gainfully employed at the time of the criminal act, no financial support for lost wages will be paid to the victim or any beneficiaries.

(3) No victim or beneficiary shall receive compensation for or during the day on which the injury was received.

(4) If a victim's employer continues to pay the victim wages that he or she was earning at the time of the crime, the victim shall not receive any financial support for lost wages.

(5) When the director determines that a temporary total disability results in a loss of wages, the victim shall receive monthly subject to subsection (1) of this section, during the period of disability, sixty percent of the victim's monthly wage but no more than one hundred percent of the state's average monthly wage as defined in RCW 7.68.020. The minimum monthly payment shall be no less than five hundred dollars. Monthly wages shall be based upon employer wage statements, employment security records, or documents reported to and certified by the internal revenue service. Monthly wages must be determined using the actual documented monthly wage or averaging the total wages earned for up to twelve successive calendar months preceding the injury. In cases where the victim's wages and hours are fixed, they shall be determined by multiplying the daily wage the victim was receiving at the time of the injury:

(a) By five, if the victim was normally employed one day a week;

(b) By nine, if the victim was normally employed two days a week;

(c) By thirteen, if the victim was normally employed three days a week;

(d) By eighteen, if the victim was normally employed four days a week;

(e) By twenty-two, if the victim was normally employed five days a week;

(f) By twenty-six, if the victim was normally employed six days a week; or

(g) By thirty, if the victim was normally employed seven days a week.

(6) When the director determines that a permanent total disability or death results in a loss of wages the victim or eligible spouse shall receive the monthly payments established in this subsection, not to exceed forty thousand dollars or the limits established in this chapter.

(7) If the director determines that the victim is voluntarily retired and is no longer attached to the workforce, benefits shall not be paid under this section.

(8) In the case of death, if there is no eligible spouse, benefits shall be paid to the child or children of the deceased victim. If there is no spouse or children, no payments shall be made under this section. If the spouse remarries before this benefit is paid in full benefits shall be paid to the victim's child or children and the spouse shall not receive further payment. If there is no child or children no further payments will be made.

(9) To receive reimbursement for expenses related to the disposition of remains or burial, the department must receive an itemized statement from a provider of services within twelve months of the date upon which the death of the victim is officially recognized as a homicide. If there is a delay in the recovery of remains or the release of remains for disposition or burial, an itemized statement from a provider of services must be received within twelve months of the date of the release of the remains.

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~~((45))~~ (10) Any person who is responsible for the victim's injuries, or who would otherwise be unjustly enriched as a result of the victim's injuries, shall not be a beneficiary under this chapter.

~~((46))~~ (11) Crime victims' compensation is not available to pay for services covered under chapter 74.09 RCW or Title XIX of the federal social security act (~~(except to the extent that the costs for such services exceed service limits established by the department of social and health services or, during the 1993-95 fiscal biennium, to the extent necessary to provide matching funds for federal medical reimbursement)~~).

((17)) In addition to other benefits provided under this chapter, immediate family members of a homicide victim may receive appropriate counseling to assist in dealing with the immediate, near-term consequences of the related effects of the homicide. Fees for counseling shall be determined by the department in accordance with RCW 51.04.030, subject to the limitations of RCW 7.68.080. Payment of counseling benefits under this section may not be provided to the perpetrator of the homicide. The benefits under this subsection may be provided only with respect to homicides committed on or after July 1, 1992.

(18) A dependent mother, father, stepmother, or stepfather, as defined in RCW 51.08.050, who is a survivor of her or his child's homicide, who has been requested by a law enforcement agency or a prosecutor to assist in the judicial proceedings related to the death of the victim, and who is not domiciled in Washington state at the time of the request, may receive a lump-sum payment upon arrival in this state. Total benefits under this subsection may not exceed seven thousand five hundred dollars. If more than one dependent parent is eligible for this benefit, the lump-sum payment of seven thousand five hundred dollars shall be divided equally among the dependent parents.

(19)) (12) A victim whose crime occurred in another state who qualifies for benefits under RCW 7.68.060(~~((4))~~) (6) may receive appropriate mental health counseling to address distress arising from participation in the civil commitment proceedings. Fees for counseling shall be determined by the department in accordance with RCW 51.04.030, subject to the limitations of RCW 7.68.080.

(13) If the provisions of this title relative to compensation for injuries to or death of victims become invalid because of any adjudication, or are repealed, the period intervening between the occurrence of an injury or death, not previously compensated for under this title by lump payment or completed monthly payments, and such repeal or the rendition of the final adjudication of invalidity shall not be computed as a part of the time limited by law for the commencement of any action relating to such injury or death.

(14) Beginning July 1, 2015, applying only prospectively to criminal acts occurring on or after July 1, 2015, the benefits established in RCW 51.32.080 for permanent partial disability shall be obtainable under this chapter, and provisions relating to payment contained in that section shall equally apply under this chapter, but shall not exceed seven thousand dollars per claim.

(15) Beginning July 1, 2015, applying only prospectively to criminal acts occurring on or after July 1, 2015, the department may make payments for home or vehicle modifications solely according to the following terms and limitations:

(a) Whenever in the sole discretion of the director it is reasonable and necessary to provide residence modifications necessary to meet the needs and requirements of the victim who has sustained catastrophic injury, the department may be ordered to pay an amount not to exceed the state's average annual wage for one year as determined under RCW 50.04.355, as now existing or hereafter amended, toward the cost of such modifications or construction. Such payment shall only be made for the construction or modification of a residence in which the injured victim resides. Only one residence of any victim may be modified or constructed

under this subsection, although the director may order more than one payment for any one home, up to the maximum amount permitted under RCW 7.68.070.

(b) Whenever in the sole discretion of the director it is reasonable and necessary to modify a motor vehicle owned by a victim who has become an amputee or becomes paralyzed because of a criminal act, the director may order up to fifty percent of the state's average annual wage for one year, as determined under RCW 50.04.355, to be paid by the department toward the costs thereof.

(c) In the sole discretion of the director after his or her review, the amount paid under this subsection may be increased by no more than four thousand dollars by written order of the director.

NEW SECTION. Sec. 403. (1) Benefits for permanent total disability shall be determined under the director's supervision, only after the injured victim's condition becomes fixed.

(2) All determinations of permanent total disabilities shall be made by the department. The victim may make a request or the inquiry may be initiated by the director. Determinations shall be required in every instance where permanent total disability is likely to be present.

(3) A request for determination of permanent total disability shall be examined by the department, and the department shall issue an order in accordance with RCW 51.52.050.

NEW SECTION. Sec. 404. (1) If aggravation, diminution, or termination of disability takes place, the director may, upon the application of the beneficiary, made within seven years from the date the first closing order becomes final, or at any time upon his or her own motion, readjust the rate of compensation in accordance with the rules in this section provided for the same, or in a proper case terminate the payment. The director may, upon application of the victim made at any time, provide proper and necessary medical and surgical services as authorized under section 507 of this act.

(2) "Closing order" as used in this section means an order based on factors which include medical recommendation, advice, examination, or the maximum benefit has been met.

NEW SECTION. Sec. 405. (1) For persons receiving compensation for temporary total disability pursuant to the provisions of this chapter, such compensation shall be reduced by an amount equal to the benefits payable under the federal old-age, survivors, and disability insurance act as now or hereafter amended not to exceed the amount of the reduction established pursuant to 42 U.S.C. Sec. 424a. However, such reduction shall not apply when the combined compensation provided pursuant to this chapter and the federal old-age, survivors, and disability insurance act is less than the total benefits to which the federal reduction would apply, pursuant to 42 U.S.C. 424a. Where any person described in this section refuses to authorize the release of information concerning the amount of benefits payable under said federal act the department's estimate of said amount shall be deemed to be correct unless and until the actual amount is established and no adjustment shall be made for any period of time covered by any such refusal.

(2) Any reduction under subsection (1) of this section shall be effective the month following the month in which the department is notified by the federal social security administration that the person is receiving disability benefits under the federal old-age, survivors, and disability insurance act. In the event of an overpayment of benefits, the department may not recover more than the overpayments for the six months immediately preceding the date on which the department notifies the victim that an overpayment has occurred. Upon determining that there has been an overpayment, the department shall immediately notify the person who received the overpayment that he or she shall be required to make repayment pursuant to this section and section 702 of this act.

(3) Recovery of any overpayment must be taken from future temporary or permanent total disability benefits or permanent partial

disability benefits provided by this chapter. In the case of temporary or permanent total disability benefits, the recovery shall not exceed twenty-five percent of the monthly amount due from the department or one-sixth of the total overpayment, whichever is the lesser.

(4) No reduction may be made unless the victim receives notice of the reduction prior to the month in which the reduction is made.

(5) In no event shall the reduction reduce total benefits to less than the greater amount the victim may be eligible under this chapter or the federal old-age, survivors, and disability insurance act.

(6) The director, pursuant to rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise his or her discretion to waive, in whole or in part, the amount of any overpayment where the recovery would be against equity and good conscience.

(7) Subsection (1) of this section applies to:

(a) Victims under the age of sixty-two whose effective entitlement to total disability compensation begins before January 2, 1983;

(b) Victims under the age of sixty-five whose effective entitlement to total disability compensation begins after January 1, 1983; and

(c) Victims who will become sixty-five years of age on or after June 10, 2004.

(8)(a) If the federal social security administration makes a retroactive reduction in the federal social security disability benefit entitlement of a victim for periods of temporary total, temporary partial, or total permanent disability for which the department also reduced the victim's benefit amounts under this section, the department shall make adjustments in the calculation of benefits and pay the additional benefits to the victim as appropriate. However, the department shall not make changes in the calculation or pay additional benefits unless the victim submits a written request, along with documentation satisfactory to the director of an overpayment assessment by the social security administration, to the department.

(b) Additional benefits paid under this subsection:

(i) Are paid without interest and without regard to whether the victim's claim under this chapter is closed; and

(ii) Do not affect the status or the date of the claim's closure.

(c) This subsection does not apply to requests on claims for which a determination on the request has been made and is not subject to further appeal.

NEW SECTION. Sec. 406. Victims otherwise eligible for compensation under this chapter may also claim compensation for loss of or damage to the victim's personal clothing or footwear incurred in the course of emergency medical treatment for injuries.

NEW SECTION. Sec. 407. A beneficiary shall at all times furnish the department with proof satisfactory to the director of the nature, amount, and extent of the contribution made by the deceased victim.

V. MEDICAL BENEFITS

Sec. 501. RCW 7.68.080 and 1990 c 3 s 503 are each amended to read as follows:

(The provisions of chapter 51.36 RCW as now or hereafter amended govern the provision of medical aid under this chapter to victims injured as a result of a criminal act, including criminal acts committed between July 1, 1981, and January 1, 1983, except that:

(1) The provisions contained in RCW 51.36.030, 51.36.040, and 51.36.080 as now or hereafter amended do not apply to this chapter;

(2) The specific provisions of RCW 51.36.020 as now or hereafter amended relating to supplying emergency transportation do not apply: PROVIDED, That:

(a)) (1) When the injury to any victim is so serious as to require

the victim's being taken from the place of injury to a place of treatment, reasonable transportation costs to the nearest place of proper treatment shall be reimbursed ((from the fund established pursuant to RCW 7.68.090; and)) by the department as part of the victim's total claim under RCW 7.68.070(1).

((b)) (2) In the case of alleged rape or molestation of a child, the reasonable costs of a colposcope examination shall be reimbursed ((from the fund pursuant to RCW 7.68.090)) by the department as part of the victim's total claim under RCW 7.68.070(1).

(3) The director shall adopt rules for fees and charges for hospital, clinic, ((and)) medical ((charges along with all related fees under this chapter shall conform to regulations promulgated by the director), and other health care services, including fees and costs for durable medical equipment, eye glasses, hearing aids, and other medically necessary devices for crime victims under this chapter.

The director shall set these service levels and fees at a level no lower than those established by the department of social and health services under Title 74 RCW. In establishing fees for medical and other health care services, the director shall consider the director's duty to purchase health care in a prudent, cost-effective manner. The director shall establish rules adopted in accordance with chapter 34.05 RCW. Nothing in this chapter may be construed to require the payment of interest on any billing, fee, or charge.

(4) Whenever the director deems it necessary in order to resolve any medical issue, a victim shall submit to examination by a physician or physicians selected by the director, with the rendition of a report to the person ordering the examination. The department shall provide the physician performing an examination with all relevant medical records from the victim's claim file. The director, in his or her discretion, may charge the cost of such examination or examinations to the crime victims' compensation fund. If the examination is paid for by the victim, then the cost of said examination shall be reimbursed to the victim for reasonable costs connected with the examination as part of the victim's total claim under RCW 7.68.070(1).

(5) Victims of sexual assault are eligible to receive appropriate counseling. Fees for such counseling shall be determined by the department. Counseling services may include, if determined appropriate by the department, counseling of members of the victim's immediate family, other than the perpetrator of the assault.

(6) Immediate family members of a homicide victim may receive appropriate counseling to assist in dealing with the immediate, near-term consequences of the related effects of the homicide. Up to twelve counseling sessions may be received for one year after the crime victim's claim has been allowed. Fees for counseling shall be determined by the department in accordance with and subject to this section. Payment of counseling benefits under this section may not be provided to the perpetrator of the homicide. The benefits under this subsection may be provided only with respect to homicides committed on or after July 1, 1992.

(7) Pursuant to RCW 7.68.070(12), a victim of a sex offense that occurred outside of Washington may be eligible to receive mental health counseling related to participation in proceedings to civilly commit a perpetrator.

(8) The crime victims' compensation program shall consider payment of benefits solely for the effects of the criminal act.

(9) The legislature finds and declares it to be in the public interest of the state of Washington that a proper regulatory and inspection program be instituted in connection with the provision of any services provided to crime victims pursuant to this chapter. In order to effectively accomplish such purpose and to assure that the victim receives such services as are paid for by the state of Washington, the acceptance by the victim of such services, and the request by a provider of services for reimbursement for providing such services, shall authorize the director of the department or the

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director's authorized representative to inspect and audit all records in connection with the provision of such services. In the conduct of such audits or investigations, the director or the director's authorized representatives may:

(a) Examine all records, or portions thereof, including patient records, for which services were rendered by a health care provider and reimbursed by the department, notwithstanding the provisions of any other statute which may make or purport to make such records privileged or confidential, except that no original patient records shall be removed from the premises of the health care provider, and that the disclosure of any records or information obtained under authority of this section by the department is prohibited and constitutes a violation of RCW 42.52.050, unless such disclosure is directly connected to the official duties of the department. The disclosure of patient information as required under this section shall not subject any physician, licensed advanced registered nurse practitioner, or other health care provider to any liability for breach of any confidential relationships between the provider and the patient. The director or the director's authorized representative shall destroy all copies of patient medical records in their possession upon completion of the audit, investigation, or proceedings;

(b) Approve or deny applications to participate as a provider of services furnished to crime victims pursuant to this title;

(c) Terminate or suspend eligibility to participate as a provider of services furnished to victims pursuant to this title; and

(d) Pursue collection of unpaid overpayments and/or penalties plus interest accrued from health care providers pursuant to RCW 51.32.240(6).

(10) When contracting for health care services and equipment, the department, upon request of a contractor, shall keep confidential financial and valuable trade information, which shall be exempt from public inspection and copying under chapter 42.56 RCW.

Sec. 502. RCW 7.68.085 and 2010 c 122 s 2 are each amended to read as follows:

(1) This section has no force or effect from April 1, 2010, until July 1, 2015.

(2) The director of labor and industries shall institute a cap on medical benefits of one hundred fifty thousand dollars per injury or death. ~~((Payment for medical services in excess of the cap shall be made available to any innocent victim under the same conditions as other medical services and if the medical services are:~~

- ~~—(a) Necessary for a previously accepted condition;~~
- ~~—(b) Necessary to protect the victim's life or prevent deterioration of the victim's previously accepted condition; and~~
- ~~—(c) Not available from an alternative source.))~~

For the purposes of this section, an individual will not be required to use his or her assets other than funds recovered as a result of a civil action or criminal restitution, for medical expenses or pain and suffering, in order to qualify for an alternative source of payment.

The director shall, in cooperation with the department of social and health services, establish by October 1, 1989, a process to aid crime victims in identifying and applying for appropriate alternative benefit programs, if any, administered by the department of social and health services.

(3) This section applies prospectively only to criminal acts that occur on or after July 1, 2015.

Sec. 503. RCW 7.68.085 and 2009 c 479 s 9 are each amended to read as follows:

(1) The director of labor and industries shall institute a cap on medical benefits of one hundred fifty thousand dollars per injury or death. ~~((Payment for medical services in excess of the cap shall be made available to any innocent victim under the same conditions as other medical services and if the medical services are:~~

- ~~—(1) Necessary for a previously accepted condition;~~
- ~~—(2) Necessary to protect the victim's life or prevent deterioration of the victim's previously accepted condition; and~~
- ~~—(3) Not available from an alternative source.))~~

For the purposes of this section, an individual will not be required to use his or her assets other than funds recovered as a result of a civil action or criminal restitution, for medical expenses or pain and suffering, in order to qualify for an alternative source of payment.

The director shall, in cooperation with the department of social and health services, establish by October 1, 1989, a process to aid crime victims in identifying and applying for appropriate alternative benefit programs, if any, administered by the department of social and health services.

(2) This section applies prospectively only to criminal acts that occur on or after July 1, 2015.

NEW SECTION. Sec. 504. Health care professionals providing treatment or services to crime victims shall maintain all proper credentials and educational standards as required by law, and be registered with the department of health. The crime victims' compensation program does not pay for experimental or controversial treatment. Treatment shall be evidence-based and curative.

NEW SECTION. Sec. 505. The department shall examine the credentials of persons conducting special medical examinations and shall monitor the quality and objectivity of examinations and reports. The department shall adopt rules to ensure that examinations are performed only by qualified persons meeting department standards.

NEW SECTION. Sec. 506. (1) Any victim eligible to receive any benefits or claiming such under this title shall, if requested by the department submit himself or herself for medical examination, at a time and from time to time, at a place reasonably convenient for the victim as may be provided by the rules of the department. An injured victim, whether an alien or other injured victim, who is not residing in the United States at the time that a medical examination is requested may be required to submit to an examination at any location in the United States determined by the department.

(2) If the victim refuses to submit to medical examination, or obstructs the same, or, if any injured victim shall persist in unsanitary or injurious practices which tend to imperil or retard his or her recovery, or shall refuse to submit to such medical or surgical treatment as is reasonably essential to his or her recovery does not cooperate in reasonable efforts at such rehabilitation, the department may suspend any further action on any claim of such victim so long as such refusal, obstruction, noncooperation, or practice continues and thus, the department may reduce, suspend, or deny any compensation for such period. The department may not suspend any further action on any claim of a victim or reduce, suspend, or deny any compensation if a victim has good cause for refusing to submit to or to obstruct any examination, evaluation, treatment, or practice requested by the department or required under this section.

(3) If the victim necessarily incurs traveling expenses in attending the examination pursuant to the request of the department, such traveling expenses shall be repaid to him or her upon proper voucher and audit.

(4) If the medical examination required by this section causes the victim to be absent from his or her work without pay, the victim shall be paid compensation in an amount equal to his or her usual wages for the time lost from work while attending the medical examination when the victim is insured by the department.

NEW SECTION. Sec. 507. Upon the occurrence of any injury to a victim eligible for compensation under the provisions of this chapter, he or she shall receive proper and necessary medical

and surgical services using his or her private or public insurance or if no insurance, using a provider of his or her own choice. In all accepted claims, treatment shall be limited in point of duration as follows:

(1) No treatment shall be provided once the victim has received the maximum compensation under this chapter.

(2) In case of temporary disability, treatment shall not extend beyond the time when monthly allowances to him or her shall cease. After any injured victim has returned to his or her work, his or her medical and surgical treatment may be continued if, and so long as, such continuation is determined by the director to be necessary to his or her recovery, and as long as the victim has not received the maximum compensation under this chapter.

NEW SECTION. Sec. 508. Any medical provider who fails, neglects, or refuses to file a report with the director, as required by this chapter, within five days of the date of treatment, showing the condition of the injured victim at the time of treatment, a description of the treatment given, and an estimate of the probable duration of the injury, or who fails or refuses to render all necessary assistance to the injured victim, as required by this chapter, shall be subject to a civil penalty determined by the director but not to exceed two hundred fifty dollars. The amount shall be paid into the crime victims' compensation account.

VI. APPEALS

NEW SECTION. Sec. 601. (1)(a) If the victim or beneficiary in a claim prevails in an appeal by any party to the department or the court, the department shall comply with the department or court's order with respect to the payment of compensation within the later of the following time periods:

(i) Sixty days after the compensation order has become final and is not subject to review or appeal; or

(ii) If the order has become final and is not subject to review or appeal and the department has, within the period specified in (a)(i) of this subsection, requested the filing by the victim or beneficiary of documents necessary to make payment of compensation, sixty days after all requested documents are filed with the department.

The department may extend the sixty-day time period for an additional thirty days for good cause.

(b) If the department fails to comply with (a) of this subsection, any person eligible for compensation under the order may institute proceedings for injunctive or other appropriate relief for enforcement of the order. These proceedings may be instituted in the superior court for the county in which the claimant resides, or, if the claimant is not then a resident of this state, in the superior court for Thurston county.

(2) In a proceeding under this section, the court shall enforce obedience to the order by proper means, enjoining compliance upon the person obligated to comply with the compensation order. The court may issue such writs and processes as are necessary to carry out its orders and may award a penalty of up to one thousand dollars to the person eligible for compensation under the order.

(3) A proceeding under this section does not preclude other methods of enforcement provided for in this chapter.

VII. ERRONEOUS PAYMENT DUE TO ERROR OR PAYMENT DUE TO MISREPRESENTATION

Sec. 701. RCW 7.68.125 and 1995 c 33 s 2 are each amended to read as follows:

(1)(a) Whenever any payment ((under this chapter is made because of clerical error, mistake of identity, innocent misrepresentation by or on behalf of the recipient thereof mistakenly acted upon, or any other circumstance of a similar nature, all not

induced by fraud, the recipient thereof shall repay it and recoupment may be made from any future payments due to the recipient under this chapter. The department must make claim for such repayment or recoupment within one year of the making of any such payment or it will be deemed that any claim therefor has been waived. The department may exercise its discretion to waive, in whole or in part, the amount of any such timely claim.

(2) Whenever any payment under this chapter has been made pursuant to an adjudication by the department, board, or any court and timely appeal therefrom has been made and 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 under this chapter. The department may exercise its discretion to waive, in whole or in part, the amount thereof.

(3) Whenever any payment under this chapter has been induced by fraud 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 under this chapter and the amount of the penalty shall be placed in the fund or funds established pursuant to RCW 7.68.090.

(4) If the department issues an order contending a debt due and owing under this section, the order is subject to chapter 51.52 RCW. If the order becomes final under chapter 51.52 RCW, the director or the director's designee may file with the clerk of any county within the state a warrant in the amount stated in the order plus interest accruing from the date the order became final. The clerk of the county in which the warrant is filed shall immediately enter the warrant in the execution docket. The amount of the warrant as docketed becomes a lien upon all real and personal property of the person against whom the warrant is issued, the same as a judgment in a civil case. The warrant shall then be subject to execution, garnishment, and other procedures for the collection of judgments. The filing fee must be added to the amount of the warrant. The department shall mail a conformed copy of the warrant to the person named within seven working days of filing with the clerk.

(5)(a) The director, or the director's designee, may issue to any person or organization an order to withhold and deliver property of any kind if there is reason to believe that the person or organization possesses property that is due, owing, or belonging to any person against whom a final order of debt due and owing has been entered. For purposes of this subsection, "person or organization" includes any individual, firm, association, corporation, political subdivision of the state, or agency of the state.

(b) The order to withhold and deliver must be served in the manner prescribed for the service of a summons in a civil action or by certified mail, return receipt requested. Any person or organization upon whom service has been made shall answer the order within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of therein.

(c) If there is in the possession of the person or organization served with the order any property that might be subject to the claim of the department, the person or organization must immediately withhold such property and deliver the property to the director or the director's authorized representative immediately upon demand.

(d) If the person or organization served the order fails to timely answer the order, the court may render judgment by default against the person or organization for the full amount claimed by the director in the order plus costs.

(e) If an order to withhold and deliver is served upon an employer and the property found to be subject to the notice is wages, the employer may assert in the answer all exemptions to which the wage earner might be entitled as provided by RCW 6.27.150)) of benefits under this chapter is made because of clerical error, mistake

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of identity, innocent misrepresentation by or on behalf of the recipient thereof mistakenly acted upon, or any other circumstance of a similar nature, all not induced by willful misrepresentation, the recipient thereof shall repay it and recoupment may be made from any future payments due to the recipient on any claim with the crime victims' compensation program. The department must make claim for such repayment or recoupment within one year of the making of any such payment or it will be deemed any claim therefor has been waived.

(b) Except as provided in subsections (3) and (4) of this section, the department may only assess an overpayment of benefits because of adjudicator error when the order upon which the overpayment is based is not yet final as provided in RCW 51.52.050 and 51.52.060. "Adjudicator error" includes the failure to consider information in the claim file, failure to secure adequate information, or an error in judgment.

(c) The director, pursuant to rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise his or her discretion to waive, in whole or in part, the amount of any such timely claim where the recovery would be against equity and good conscience.

(2) Whenever the department fails to pay benefits because of clerical error, mistake of identity, or innocent misrepresentation, all not induced by recipient willful misrepresentation, the recipient may request an adjustment of benefits to be paid from the crime victims' compensation programs subject to the following:

(a) The recipient must request an adjustment in benefits within one year from the date of the incorrect payment or it will be deemed any claim therefore has been waived.

(b) The recipient may not seek an adjustment of benefits because of adjudicator error. Adjustments due to adjudicator error are addressed by the filing of a written request for reconsideration with the department or an appeal with the department within ninety days from the date the order is communicated as provided in RCW 51.52.050. "Adjudicator error" includes the failure to consider information in the claim file, failure to secure adequate information, or an error in judgment.

(3) Whenever any payment of benefits under this chapter has been made pursuant to an adjudication by the department or by order of any court and timely appeal therefrom has been made where the final decision is that any such payment was made pursuant to an erroneous adjudication, the recipient thereof shall repay it and recoupment may be made from any future payments due to the recipient on any claim.

(a) The director, pursuant to rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise discretion to waive, in whole or in part, the amount of any such payments where the recovery would be against equity and good conscience.

(b) The department shall first attempt recovery of overpayments for health services from any entity that provided health insurance to the victim to the extent that the health insurance entity would have provided health insurance benefits.

(4)(a) Whenever any payment of benefits under this chapter has been induced by willful misrepresentation the recipient thereof shall repay any such payment together with a penalty of fifty percent of the total of any such payments and the amount of such total sum may be recouped from any future payments due to the recipient on any claim with the crime victims' compensation program against whom the willful misrepresentation was committed and the amount of such penalty shall be placed in the crime victims' compensation fund. Such repayment or recoupment must be demanded or ordered within three years of the discovery of the willful misrepresentation.

(b) For purposes of this subsection (4), it is willful

misrepresentation for a person to obtain payments or other benefits under this chapter in an amount greater than that to which the person otherwise would be entitled. Willful misrepresentation includes:

(i) Willful false statement; or

(ii) Willful misrepresentation, omission, or concealment of any material fact.

(c) For purposes of this subsection (4), "willful" means a conscious or deliberate false statement, misrepresentation, omission, or concealment of a material fact with the specific intent of obtaining, continuing, or increasing benefits under this chapter.

(d) For purposes of this subsection (4), failure to disclose a work-type activity must be willful in order for a misrepresentation to have occurred.

(e) For purposes of this subsection (4), a material fact is one which would result in additional, increased, or continued benefits, including but not limited to facts about physical restrictions, or work-type activities which either result in wages or income or would be reasonably expected to do so. Wages or income include the receipt of any goods or services. For a work-type activity to be reasonably expected to result in wages or income, a pattern of repeated activity must exist. For those activities that would reasonably be expected to result in wages or produce income, but for which actual wage or income information cannot be reasonably determined, the department shall impute wages.

(5) The victim, beneficiary, or other person affected thereby shall have the right to contest an order assessing an overpayment pursuant to this section in the same manner and to the same extent as provided under RCW 51.52.050 and 51.52.060. In the event such an order becomes final under chapter 51.52 RCW and notwithstanding the provisions of subsections (1) through (4) of this section, the director or director's designee may file with the clerk in any county within the state a warrant in the amount of the sum representing the unpaid overpayment and/or penalty plus interest accruing from the date the order became final. The clerk of the county in which the warrant is filed shall immediately designate a superior court cause number for such warrant and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the victim, beneficiary, or other person mentioned in the warrant, the amount of the unpaid overpayment and/or penalty plus interest accrued, and the date the warrant was filed. The amount of the warrant as docketed shall become a lien upon the title to and interest in all real and personal property of the victim, beneficiary, or other person against whom the warrant is issued, the same as a judgment in a civil case docketed in the office of such clerk. The sheriff shall then proceed in the same manner and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgment in the superior court. Such warrant so docketed shall be sufficient to support the issuance of writs of garnishment in favor of the department in the manner provided by law in the case of judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee under RCW 36.18.012(10), which shall be added to the amount of the warrant. A copy of such warrant shall be mailed to the victim, beneficiary, or other person within three days of filing with the clerk.

The director or director's designee may issue to any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, a notice to withhold and deliver property of any kind if there is reason to believe that there is in the possession of such person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, property that is due, owing, or belonging to any victim, beneficiary, or other person upon whom a warrant has been served for payments due the department. The notice and order to withhold and deliver shall be served by certified

mail accompanied by an affidavit of service by mailing or served by the sheriff of the county, or by the sheriff's deputy, or by any authorized representative of the director or director's designee, or by electronic means or other methods authorized by law. Any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state upon whom service has been made shall answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired or in the notice and order to withhold and deliver. In the event there is in the possession of the party named and served with such notice and order, any property that may be subject to the claim of the department, such property shall be delivered forthwith to the director or the director's authorized representative upon demand. If the party served and named in the notice and order fails to answer the notice and order within the time prescribed in this section, the court may, after the time to answer such order has expired, render judgment by default against the party named in the notice for the full amount, plus costs, claimed by the director or the director's designee in the notice. In the event that a notice to withhold and deliver is served upon an employer and the property found to be subject thereto is wages, the employer may assert in the answer all exemptions provided for by chapter 6.27 RCW to which the wage earner may be entitled.

This subsection shall only apply to orders assessing an overpayment which are issued on or after July 28, 1991. This subsection shall apply retroactively to all orders assessing an overpayment resulting from willful misrepresentation, civil or criminal.

(6) Orders assessing an overpayment which are issued on or after July 28, 1991, shall include a conspicuous notice of the collection methods available to the department.

NEW SECTION. Sec. 702. Notwithstanding any other provisions of law, any overpayments previously recovered under the provisions of section 405 of this act as now or hereafter amended shall be limited to six months' overpayments. Where greater recovery has already been made, the director, in his or her discretion, may make restitution in those cases where an extraordinary hardship has been created.

Sec. 703. RCW 7.68.130 and 1995 c 33 s 3 are each amended to read as follows:

(1) Benefits payable pursuant to this chapter shall be reduced by the amount of any other public or private insurance available, less a proportionate share of reasonable attorneys' fees and costs, if any, incurred by the victim in obtaining recovery from the insurer. Calculation of a proportionate share of attorneys' fees and costs shall be made under the formula established in RCW ~~((51.24.060))~~ 7.68.050 (9) through (14). The department or the victim may require court approval of costs and attorneys' fees or may petition a court for determination of the reasonableness of costs and attorneys' fees.

(2) Benefits payable after 1980 to victims injured or killed before 1980 shall be reduced by any other public or private insurance including but not limited to social security.

(3) Payment by the department under this chapter shall be secondary to other insurance benefits, notwithstanding the provision of any contract or coverage to the contrary. In the case of private life insurance proceeds, the first forty thousand dollars of the proceeds shall not be considered for purposes of any reduction in benefits.

(4) If the department determines that a victim is likely to be eligible for other public insurance or support services, the department may require the applicant to apply for such services before awarding benefits under RCW 7.68.070. If the department determines that a victim shall apply for such services and the victim refuses or does not apply for those services, the department may deny any further benefits under this chapter. The department may

require an applicant to provide a copy of their determination of eligibility before providing benefits under this chapter.

(5) Before payment of benefits will be considered victims shall use their private insurance coverage.

(6) For the purposes of this section, the collection methods available under RCW 7.68.125~~((4))~~ (5) apply.

Sec. 704. RCW 7.68.050 and 1998 c 91 s 1 are each amended to read as follows:

(1) No right of action at law for damages incurred as a consequence of a criminal act shall be lost as a consequence of being entitled to benefits under the provisions of this chapter. The victim or his beneficiary may elect to seek damages from the person or persons liable for the claimed injury or death, and such victim or beneficiary is entitled to the full compensation and benefits provided by this chapter regardless of any election or recovery made pursuant to this section.

(2) For the purposes of this section, the rights, privileges, responsibilities, duties, limitations, and procedures contained in ~~((RCW 51.24.050 through 51.24.110))~~ subsections (3) through (25) of this section apply.

(3) (If the recovery involved is against the state, the lien of the department includes the interest on the benefits paid by the department to or on behalf of such person under this chapter computed at the rate of eight percent per annum from the date of payment.) (a) If a third person is or may become liable to pay damages on account of a victim's injury for which benefits and compensation are provided under this chapter, the injured victim or beneficiary may elect to seek damages from the third person.

(b) In every action brought under this section, the plaintiff shall give notice to the department when the action is filed. The department may file a notice of statutory interest in recovery. When such notice has been filed by the department, the parties shall thereafter serve copies of all notices, motions, pleadings, and other process on the department. The department may then intervene as a party in the action to protect its statutory interest in recovery.

(c) For the purposes of this subsection, "injury" includes any physical or mental condition, disease, ailment, or loss, including death, for which compensation and benefits are paid or payable under this chapter.

(d) For the purposes of this chapter, "recovery" includes all damages and insurance benefits, including life insurance, paid in connection with the victim's injuries or death.

(4) An election not to proceed against the third person operates as an assignment of the cause of action to the department, which may prosecute or compromise the action in its discretion in the name of the victim, beneficiary, or legal representative.

(5) If an injury to a victim results in the victim's death, the department to which the cause of action has been assigned may petition a court for the appointment of a special personal representative for the limited purpose of maintaining an action under this chapter and chapter 4.20 RCW.

(6) If a beneficiary is a minor child, an election not to proceed against a third person on such beneficiary's cause of action may be exercised by the beneficiary's legal custodian or guardian.

(7) Any recovery made by the department shall be distributed as follows:

(a) The department shall be paid the expenses incurred in making the recovery including reasonable costs of legal services;

(b) The victim or beneficiary shall be paid twenty-five percent of the balance of the recovery made, which shall not be subject to subsection (8) of this section, except that in the event of a compromise and settlement by the parties, the victim or beneficiary may agree to a sum less than twenty-five percent;

(c) The department shall be paid the amount paid to or on behalf of the victim or beneficiary by the department; and

(d) The victim or beneficiary shall be paid any remaining

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balance.

(8) Thereafter no payment shall be made to or on behalf of a victim or beneficiary by the department for such injury until any further amount payable shall equal any such remaining balance. Thereafter, such benefits shall be paid by the department to or on behalf of the victim or beneficiary as though no recovery had been made from a third person.

(9) If the victim or beneficiary elects to seek damages from the third person, any recovery made shall be distributed as follows:

(a) The costs and reasonable attorneys' fees shall be paid proportionately by the victim or beneficiary and the department. The department may require court approval of costs and attorneys' fees or may petition a court for determination of the reasonableness of costs and attorneys' fees;

(b) The victim or beneficiary shall be paid twenty-five percent of the balance of the award, except that in the event of a compromise and settlement by the parties, the victim or beneficiary may agree to a sum less than twenty-five percent;

(c) The department shall be paid the balance of the recovery made, but only to the extent necessary to reimburse the department for the amount paid;

(i) The department shall bear its proportionate share of the costs and reasonable attorneys' fees incurred by the victim or beneficiary to the extent of the benefits paid under this title. The department's proportionate share shall not exceed one hundred percent of the costs and reasonable attorneys' fees;

(ii) The department's proportionate share of the costs and reasonable attorneys' fees shall be determined by dividing the gross recovery amount into the benefits paid amount and multiplying this percentage times the costs and reasonable attorneys' fees incurred by the victim or beneficiary;

(iii) The department's reimbursement share shall be determined by subtracting their proportionate share of the costs and reasonable attorneys' fees from the benefits paid amount;

(d) Any remaining balance shall be paid to the victim or beneficiary; and

(e) Thereafter no payment shall be made to or on behalf of a victim or beneficiary by the department for such injury until the amount of any further amount payable shall equal any such remaining balance minus the department's proportionate share of the costs and reasonable attorneys' fees in regards to the remaining balance. This proportionate share shall be determined by dividing the gross recovery amount into the remaining balance amount and multiplying this percentage times the costs and reasonable attorneys' fees incurred by the victim or beneficiary. Thereafter, such benefits shall be paid by the department to or on behalf of the victim or beneficiary as though no recovery had been made from a third person.

(10) The recovery made shall be subject to a lien by the department for its share under this section. Notwithstanding RCW 48.18.410, a recovery made from life insurance shall be subject to a lien by the department.

(11) The department has sole discretion to compromise the amount of its lien. In deciding whether or to what extent to compromise its lien, the department shall consider at least the following:

(a) The likelihood of collection of the award or settlement as may be affected by insurance coverage, solvency, or other factors relating to the third person;

(b) Factual and legal issues of liability as between the victim or beneficiary and the third person. Such issues include but are not limited to possible contributory negligence and novel theories of liability; and

(c) Problems of proof faced in obtaining the award or settlement.

(12) It shall be the duty of the person to whom any recovery is paid before distribution under this section to advise the department of the fact and amount of such recovery, the costs and reasonable attorneys' fees associated with the recovery, and to distribute the recovery in compliance with this section.

(13) The distribution of any recovery made by award or settlement of the third party action shall be confirmed by department order, served by electronic, registered or certified mail, and shall be subject to chapter 51.52 RCW. In the event the order of distribution becomes final under chapter 51.52 RCW, the director or the director's designee may file with the clerk of any county within the state a warrant in the amount of the sum representing the unpaid lien plus interest accruing from the date the order became final. The clerk of the county in which the warrant is filed shall immediately designate a superior court cause number for such warrant and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of such victim or beneficiary mentioned in the warrant, the amount of the unpaid lien plus interest accrued and the date when the warrant was filed. The amount of such warrant as docketed shall become a lien upon the title to and interest in all real and personal property of the victim or beneficiary against whom the warrant is issued, the same as a judgment in a civil case docketed in the office of such clerk. The sheriff shall then proceed in the same manner and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgment in the superior court. Such warrant so docketed shall be sufficient to support the issuance of writs of garnishment in favor of the department in the manner provided by law in the case of judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee under RCW 36.18.012(10), which shall be added to the amount of the warrant. A copy of such warrant shall be mailed to the victim or beneficiary within three days of filing with the clerk.

(14) The director, or the director's designee, may issue to any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, a notice and order to withhold and deliver property of any kind if he or she has reason to believe that there is in the possession of such person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, property which is due, owing, or belonging to any victim or beneficiary upon whom a warrant has been served by the department for payments due to the crime victims' compensation program. The notice and order to withhold and deliver shall be served by the sheriff of the county or by the sheriff's deputy; by certified mail, return receipt requested; or by any authorized representatives of the director. Any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state upon whom service has been made shall answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the notice and order to withhold and deliver. In the event there is in the possession of the party named and served with such notice and order, any property which may be subject to the claim of the department, such property shall be delivered forthwith to the director or the director's authorized representative upon demand. If the party served and named in the notice and order fails to answer the notice and order within the time prescribed in this section, the court may, after the time to answer such order has expired, render judgment by default against the party named in the notice for the full amount claimed by the director in the notice together with costs. In the event that a notice to withhold and deliver is served upon an employer and the property found to be subject thereto is wages, the employer may assert in the answer to all

exemptions provided for by chapter 6.27 RCW to which the wage earner may be entitled.

(15) The department may require the victim or beneficiary to exercise the right of election under this chapter by serving a written demand by electronic mail, registered mail, certified mail, or personal service on the victim or beneficiary.

(16) Unless an election is made within sixty days of the receipt of the demand, and unless an action is instituted or settled within the time granted by the department, the victim or beneficiary is deemed to have assigned the action to the department. The department shall allow the victim or beneficiary at least ninety days from the election to institute or settle the action. When a beneficiary is a minor child the demand shall be served upon the legal custodian or guardian of such beneficiary.

(17) If an action which has been filed is not diligently prosecuted, the department may petition the court in which the action is pending for an order assigning the cause of action to the department. Upon a sufficient showing of a lack of diligent prosecution the court in its discretion may issue the order.

(18) If the department has taken an assignment of the third party cause of action under subsection (16) of this section, the victim or beneficiary may, at the discretion of the department, exercise a right of reelection and assume the cause of action subject to reimbursement of litigation expenses incurred by the department.

(19) If the victim or beneficiary elects to seek damages from the third person, notice of the election must be given to the department. The notice shall be by registered mail, certified mail, or personal service. If an action is filed by the victim or beneficiary, a copy of the complaint must be sent by registered mail to the department.

(20) A return showing service of the notice on the department shall be filed with the court but shall not be part of the record except as necessary to give notice to the defendant of the lien imposed by subsection (10) of this section.

(21) Any compromise or settlement of the third party cause of action by the victim or beneficiary which results in less than the entitlement under this title is void unless made with the written approval of the department. For the purposes of this chapter, "entitlement" means benefits and compensation paid and estimated by the department to be paid in the future.

(22) If a compromise or settlement is void because of subsection (21) of this section, the department may petition the court in which the action was filed for an order assigning the cause of action to the department. If an action has not been filed, the department may proceed as provided in chapter 7.24 RCW.

(23) The fact that the victim or beneficiary is entitled to compensation under this title shall not be pleaded or admissible in evidence in any third-party action under this chapter. Any challenge of the right to bring such action shall be made by supplemental pleadings only and shall be decided by the court as a matter of law.

(24) Actions against third persons that are assigned by the claimant to the department, voluntarily or by operation of law in accordance with this chapter, may be prosecuted by special assistant attorneys general.

(25) The attorney general shall select special assistant attorneys general from a list compiled by the department and the Washington state bar association. The attorney general, in conjunction with the department and the Washington state bar association, shall adopt rules and regulations outlining the criteria and the procedure by which private attorneys may have their names placed on the list of attorneys available for appointment as special assistant attorneys general to litigate third-party actions under subsection (24) of this section.

(26) The 1980 amendments to this section apply only to injuries which occur on or after April 1, 1980.

VIII. MISCELLANEOUS

NEW SECTION. **Sec. 801.** RCW 7.68.100 (Physicians' reporting) and 1973 1st ex.s. c 122 s 10 are each repealed.

NEW SECTION. **Sec. 802.** This act applies retroactively for claims of victims of criminal acts that occurred on or after July 1, 1981, in which a closing order has not been issued or become final and binding as of July 1, 2011, except that victims receiving time loss or loss of support on or before July 1, 2011, may continue to receive time loss at the rate established prior to July 1, 2011. Aggravation applications filed by crime victims who had claims prior to July 1, 2011, will be adjudicated under the laws in effect on or after the effective date of this section. This act does not affect the retroactive application of chapter 122, Laws of 2010.

NEW SECTION. **Sec. 803.** Sections 201 through 205, 302 through 307, 403 through 407, 504 through 508, 601, and 702 of this act are each added to chapter 7.68 RCW.

NEW SECTION. **Sec. 804.** Sections 401 and 502 of this act expire July 1, 2015.

NEW SECTION. **Sec. 805.** Sections 402 and 503 of this act take effect July 1, 2015.

NEW SECTION. **Sec. 806.** Except for sections 402 and 503 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2011."

Correct the title.

On page 33, line 27 of the amendment, after "of a" strike "colposcope" and insert "~~((colposcope))~~ colposcopy"

On page 33, line 28 of the amendment, after "department" insert ". Costs for a colposcopy examination given under this subsection shall not be included"

On page 36, beginning on line 30 of the amendment, strike all material through "July 1, 2015." on line 31 and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Hargrove moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5691.

Senator Hargrove spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Hargrove that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5691.

The motion by Senator Hargrove carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 5691 by voice vote.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 5691, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 5691, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 47; Nays, 0; Absent, 0; Excused, 2.

Voting yea: Senators Baumgartner, Baxter, Becker, Benton, Brown, Carrell, Chase, Conway, Eide, Ericksen, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Pflug, Prentice, Pridemore, Ranker, Regala, Roach,

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Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom, White and Zarelli

Excused: Senators Delvin and Parlette

SUBSTITUTE SENATE BILL NO. 5691, as amended by the House, 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 White, Senator Brown was excused.

MOTION

On motion of Senator Ranker, Senator Hargrove was excused.

MESSAGE FROM THE HOUSE

April 20, 2011

MR. PRESIDENT:

The House receded from its amendment(s) to SENATE BILL NO. 5625. Under suspension of the rules, the bill was returned to second reading for the purpose of an amendment. The House adopted the following amendment: 5625 AMH ROBE H2691.1, and passed the bill as amended by the House.

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 43.215.260 and 2006 c 265 s 307 are each amended to read as follows:

(1) Each agency shall make application for a license or ((renewal or)) the continuation of a full license to the department on forms prescribed by the department. Upon receipt of such application, the department shall either grant or deny a license or continuation of a full license within ninety days. A license or continuation shall be granted if the agency meets the minimum requirements set forth in this chapter and the departmental requirements consistent with ((the {this})) this chapter, except that an initial license may be issued as provided in RCW 43.215.280. The department shall consider whether an agency is in good standing, as defined in subsection (4)(b) of this section, before granting a continuation of a full license. Full licenses provided for in this chapter shall ((be issued for a period of three years)) continue to remain valid so long as the licensee meets the requirements for a nonexpiring license in subsection (2) of this section. The licensee, however, shall advise the director of any material change in circumstances which might constitute grounds for reclassification of license as to category. The license issued under this chapter is not transferable and applies only to the licensee and the location stated in the application. For licensed family day care homes having an acceptable history of child care, the license may remain in effect for two weeks after a move.

(2) In order to qualify for a nonexpiring full license, a licensee must meet the following requirements on an annual basis as established from the date of initial licensure:

- (a) Submit the annual licensing fee;
 - (b) Submit a declaration to the department indicating the licensee's intent to continue operating a licensed child care program, or the intent to cease operation on a date certain;
 - (c) Submit a declaration of compliance with all licensing rules; and
 - (d) Submit background check applications on the schedule established by the department.
- (3) If a licensee fails to meet the requirements in subsection (2) of this section for continuation of a full license the license expires

and the licensee must submit a new application for licensure under this chapter.

(4)(a) Nothing about the nonexpiring license process may interfere with the department's established monitoring practice.

(b) For the purpose of this section, an agency is considered to be in good standing if in the intervening period between monitoring visits the agency does not have any of the following:

- (i) Valid complaints;
- (ii) A history of noncompliance related to those valid complaints or pending from prior monitoring visits; or
- (iii) Other information that when evaluated would result in a finding of noncompliance with this section.

(c) The department shall consider whether an agency is in good standing when determining the most appropriate approach and process for monitoring visits, for the purposes of administrative efficiency while protecting children, consistent with this chapter. If the department determines that an agency is not in good standing, the department may issue a probationary license, as provided in RCW 43.215.290.

Sec. 2. RCW 43.215.290 and 2006 c 265 s 310 are each amended to read as follows:

(1) The department may issue a probationary license to a licensee who has had ((a)) an initial, expiring, or other license but is temporarily unable to comply with a rule or has been the subject of multiple complaints or concerns about noncompliance if:

(a) The noncompliance does not present an immediate threat to the health and well-being of the children but would be likely to do so if allowed to continue; and

(b) The licensee has a plan approved by the department to correct the area of noncompliance within the probationary period.

(2) Before issuing a probationary license, the department shall, in writing, refer the licensee to the child care resource and referral network or other appropriate resource for technical assistance. The department may issue a probationary license pursuant to subsection (1) of this section if within fifteen working days after the department has sent its referral:

(a) The licensee, in writing, has refused the department's referral for technical assistance; or

(b) The licensee has failed to respond in writing to the department's referral for technical assistance.

(3) If the licensee accepts the department's referral for technical assistance issued under subsection (2) of this section, the department, the licensee, and the technical assistance provider shall meet within thirty days after the licensee's acceptance. The licensee and the department, in consultation with the technical assistance provider, shall develop a plan to correct the areas of noncompliance identified by the department. If, after sixty days, the licensee has not corrected the areas of noncompliance identified in the plan developed in consultation with the technical assistance provider, the department may issue a probationary license pursuant to subsection (1) of this section.

(4) A probationary license may be issued for up to six months, and at the discretion of the department it may be extended for an additional six months. The department shall immediately terminate the probationary license, if at any time the noncompliance for which the probationary license was issued presents an immediate threat to the health or well-being of the children.

~~((3))~~ (5) The department may, at any time, issue a probationary license for due cause that states the conditions of probation.

~~((4))~~ (6) An existing license is invalidated when a probationary license is issued.

~~((5))~~ (7) At the expiration of the probationary license, the department shall reinstate the original license for the remainder of its term, issue a new license, or revoke the original license.

~~((6))~~ (8) A right to an adjudicative proceeding shall not accrue to the licensee whose license has been placed on probationary status unless the licensee does not agree with the placement on probationary status and the department then suspends, revokes, or modifies the license.

Sec. 3. RCW 43.215.270 and 2006 c 265 s 308 are each amended to read as follows:

(1) If a licensee desires to apply for a renewal of its license, a request for a renewal shall be filed ninety days before the expiration date of the license. If the department has failed to act at the time of the expiration date of the license, the license shall continue in effect until such time as the department acts.

(2) License renewal under this section does not apply to nonexpiring licenses described in RCW 43.215.260."

Correct the title.

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Harper moved that the Senate concur in the House amendment(s) to Senate Bill No. 5625.

Senator Harper spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Harper that the Senate concur in the House amendment(s) to Senate Bill No. 5625.

The motion by Senator Harper carried and the Senate concurred in the House amendment(s) to Senate Bill No. 5625 by voice vote.

The President declared the question before the Senate to be the final passage of Senate Bill No. 5625, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Senate Bill No. 5625, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 46; Nays, 0; Absent, 0; Excused, 3.

Voting yea: Senators Baumgartner, Baxter, Becker, Benton, Carrell, Chase, Conway, Eide, Ericksen, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Pflug, Prentice, Pridmore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom, White and Zarelli

Excused: Senators Brown, Delvin and Parlette

SENATE BILL NO. 5625, as amended by the House, 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.

MESSAGE FROM THE HOUSE

April 7, 2011

MR. PRESIDENT:

The House passed SUBSTITUTE SENATE BILL NO. 5023 with the following amendment(s): 5023-S AMH ENGR H2272.E

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 19.154.010 and 1989 c 117 s 1 are each amended to read as follows:

The legislature finds and declares that ~~((assisting persons regarding immigration matters))~~ the practice by nonlawyers and other unauthorized persons of providing legal advice and legal services to others in immigration matters substantially affects the public interest. The practice~~((s))~~ of ~~((immigration assistants have a significant impact on the residents of the state of Washington))~~ nonlawyers and other unauthorized persons providing immigration-related legal advice and legal services for compensation may impact the ability of their customers to reside and work within the United States and to establish and maintain stable families and business relationships. The legislature further finds and declares that the previous scheme for regulating the behavior of nonlawyers and other unauthorized persons who provide immigration-related services is inadequate to address the level of unfair and deceptive practices that exists in the marketplace and often contributes to the unauthorized practice of law. It is the intent of the legislature, through this act, to ~~((establish rules of practice and conduct for immigration assistants to promote honesty and fair dealing with residents and to preserve public confidence))~~ prohibit nonlawyers and other unauthorized persons from providing immigration-related services that constitute the practice of law.

Sec. 2. RCW 19.154.020 and 1989 c 117 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) ("Immigration assistant" means every person who, for compensation or the expectation of compensation, gives nonlegal assistance on an immigration matter. That assistance is limited to:

(a) Transcribing responses to a government agency form selected by the customer which is related to an immigration matter, but does not include advising a person as to his or her answers on those forms;

(b) Translating a person's answer to questions posed on those forms;

(c) Securing for a person supporting documents currently in existence, such as birth and marriage certificates, which may be needed to submit with those forms;

(d) Making referrals to attorneys who could undertake legal representation for a person in an immigration matter.

(2)) "Immigration matter" means any proceeding, filing, or action affecting the nonimmigrant, immigrant, or citizenship status of any person ~~((which arises))~~ arising under immigration and naturalization law, executive order, or presidential proclamation, or ~~((which arises under))~~ pursuant to any action of the United States citizenship and immigration ~~((and naturalization))~~ services, the United States department of labor, ~~((or))~~ the United States department of state, the United States department of justice, the United States department of homeland security, the board of immigration appeals, or any other entity or agency having jurisdiction over immigration law.

~~((3))~~ (2) "Compensation" means money, property, or anything else of value.

(3) "Practice of law" has the definition given to it by the supreme court of Washington whether by rule or decision, and includes all exceptions and exclusions to that definition currently in place or hereafter created, whether by rule or decision.

Sec. 3. RCW 19.154.060 and 1989 c 117 s 6 are each amended to read as follows:

~~((Immigration assistants shall offer or provide only nonlegal assistance in an immigration matter as defined in RCW 19.154.020.))~~ (1) Persons, other than those licensed to practice law in this state or otherwise permitted to practice law or represent others under federal law in an immigration matter, are prohibited from engaging in the practice of law in an immigration matter for compensation.

(2) Persons, other than those licensed to practice law in this state

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or otherwise permitted to practice law or represent others under federal law in an immigration matter, are prohibited from engaging in the following acts or practices, for compensation:

(a) Advising or assisting another person in determining the person's legal or illegal status for the purpose of an immigration matter;

(b) Selecting or assisting another in selecting, or advising another as to his or her answers on, a government agency form or document in an immigration matter;

(c) Selecting or assisting another in selecting, or advising another in selecting, a benefit, visa, or program to apply for in an immigration matter;

(d) Soliciting to prepare documents for, or otherwise representing the interests of, another in a judicial or administrative proceeding in an immigration matter;

(e) Explaining, advising, or otherwise interpreting the meaning or intent of a question on a government agency form in an immigration matter;

(f) Charging a fee for referring another to a person licensed to practice law;

(g) Selecting, drafting, or completing legal documents affecting the legal rights of another in an immigration matter.

(3) Persons, other than those holding an active license to practice law issued by the Washington state bar association or otherwise permitted to practice law or represent others under federal law in an immigration matter, are prohibited from engaging in the following acts or practices, regardless of whether compensation is sought:

(a) Representing, either orally or in any document, letterhead, advertisement, stationery, business card, web site, or other comparable written material, that he or she is a notario publico, notario, immigration assistant, immigration consultant, immigration specialist, or using any other designation or title, in any language, that conveys or implies that he or she possesses professional legal skills in the area of immigration law;

(b) Representing, in any language, either orally or in any document, letterhead, advertisement, stationery, business card, web site, or other comparable written material, that he or she can or is willing to provide services in an immigration matter, if such services would constitute the practice of law.

(4)(a) The prohibitions of subsections (1) through (3) of this section shall not apply to the activities of nonlawyer assistants acting under the supervision of a person holding an active license to practice law issued by the Washington state bar association or otherwise permitted to practice law or represent others under federal law in an immigration matter.

(b) This section does not prohibit a person from offering translation services, regardless of whether compensation is sought. Translating words contained on a government form from English to another language and translating a person's words from another language to English does not constitute the unauthorized practice of law.

(5) In addition to complying with the prohibitions of subsections (1) through (3) of this section, persons licensed as a notary public under chapter 42.44 RCW who do not hold an active license to practice law issued by the Washington state bar association shall not use the term notario publico, notario, immigration assistant, immigration consultant, immigration specialist, or any other designation or title, in any language, that conveys or implies that he or she possesses professional legal skills in the areas of immigration law, when advertising notary public services in the conduct of their business. A violation of any provision of this chapter by a person licensed as a notary public under chapter 42.44 RCW shall constitute unprofessional conduct

under the uniform regulation of business and professions act, chapter 18.235 RCW.

NEW SECTION. Sec. 4. A new section is added to chapter 19.154 RCW to read as follows:

Persons who are not licensed to practice law in this state or who are not otherwise permitted to represent others under federal law in an immigration matter may engage in the following services for compensation:

(1) Translate words on a government form that the person seeking services presents to the person providing translation services;

(2) Secure existing documents for the person seeking services. Existing documents include, for example, birth and marriage certificates; and

(3) Offer other immigration related services that are not prohibited under this chapter or any other provision of law or do not constitute the practice of law.

Sec. 5. RCW 19.154.090 and 1989 c 117 s 9 are each amended to read as follows:

(1) The legislature finds and declares that any violation of this chapter substantially affects the public interest and is an unfair and deceptive act or practice and unfair method of competition in the conduct of trade or commerce as set forth in RCW 19.86.020.

(2) In addition to all remedies available in chapter 19.86 RCW, a person injured by a violation of this chapter may bring a civil action to recover the actual damages proximately caused by a violation of this chapter, or one thousand dollars, whichever is greater.

Sec. 6. RCW 42.44.030 and 2002 c 86 s 287 are each amended to read as follows:

(1) In addition to the unprofessional conduct specified in RCW 18.235.130, the director may deny appointment as a notary public to any person based on the following conduct, acts, or conditions:

~~((+))~~ (a) Has had disciplinary action taken against any professional license in this or any other state; ~~((~~

~~2))~~ (b) Has engaged in official misconduct as defined in RCW 42.44.160(1), whether or not criminal penalties resulted; or

(c) Has violated any of the provisions of chapter 19.154 RCW.

(2) The director shall deliver a certificate evidencing the appointment to each person appointed as a notary public. The certificate may be signed in facsimile by the governor, the secretary of state, and the director or the director's designee. The certificate must bear a printed seal of the state of Washington.

NEW SECTION. Sec. 7. A new section is added to chapter 19.154 RCW to read as follows:

Nothing in this chapter shall apply to or regulate any business to the extent such regulation is prohibited or preempted by federal law.

Sec. 8. RCW 19.154.900 and 1989 c 117 s 11 are each amended to read as follows:

This chapter shall be known and cited as the "immigration ~~((assistant practices))~~ services fraud prevention act."

NEW SECTION. Sec. 9. (1)(a) The legislature recognizes that immigrants in Washington need legal services to assist them in immigration matters, and it is difficult for existing organizations to meet those needs because of high case loads and limited resources.

(b) The legislature also recognizes that the difference between offering nonlegal services and offering legal services in immigration matters is sometimes difficult to distinguish. Not understanding or recognizing the distinction between nonlegal services and legal services in immigration matters can result in a person engaging in the unauthorized practice of law and can result in irreparable consequences for immigrants who seek assistance.

(2) Therefore, the legislature respectfully requests that the supreme court's practice of law board, within available resources, evaluate the following:

(a) The specific services nonattorneys may provide to immigrants that do not rise to the level of the practice of law in immigration matters;

(b) The level of access to and the quality of nonlegal and legal services immigrants have and the ways in which access and quality can be improved;

(c) The level of need immigrants have for nonlegal services compared to the need for legal services in immigration matters.

(3) A report of the board's findings and recommendations must be presented to the legislature no later than December 1, 2011.

NEW SECTION. Sec. 10. The following acts or parts of acts are each repealed:

(1) RCW 19.154.030 (Exemptions) and 1989 c 117 s 3;

(2) RCW 19.154.040 (Registration required) and 1989 c 117 s 4;

(3) RCW 19.154.050 (Change of address) and 1989 c 117 s 5;

(4) RCW 19.154.070 (Written contract--Requirements--Right to rescind) and 1989 c 117 s 7;

(5) RCW 19.154.080 (Prohibited activities) and 1989 c 117 s 8; and

(6) RCW 19.154.902 (Effective date--1989 c 117) and 1989 c 117 s 15.

NEW SECTION. Sec. 11. This act takes effect one hundred eighty days after final adjournment of the legislative session in which it is enacted."

Correct the title.
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Prentice moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5023.

Senators Prentice and Pflug spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Prentice that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5023.

The motion by Senator Prentice carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 5023 by voice vote.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 5023, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 5023, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 42; Nays, 4; Absent, 0; Excused, 3.

Voting yea: Senators Baumgartner, Baxter, Becker, Benton, Carrell, Chase, Conway, Eide, Ericksen, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hill, Hobbs, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Pflug, Prentice, Pridemore, Ranker, Regala, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and White

Voting nay: Senators Hewitt, Holmquist Newbry, Roach and Zarelli

Excused: Senators Brown, Delvin and Parlette

SUBSTITUTE SENATE BILL NO. 5023, as amended by the House, 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.

MESSAGE FROM THE HOUSE

April 19, 2011

MR. PRESIDENT:

The House refuses to concur in the Senate amendment(s) to SUBSTITUTE HOUSE BILL NO. 1874 and asks the Senate to recede therefrom.

and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Hargrove moved that the Senate insist on its position in the Senate amendment(s) to Substitute House Bill No. 1874 and ask the House to concur thereon.

Senator Hargrove spoke in favor of the motion.

The President declared the question before the Senate to be motion by Senator Hargrove that the Senate insist on its position in the Senate amendment(s) to Substitute House Bill No. 1874 and ask the House to concur thereon.

The motion by Senator Hargrove carried and the Senate insisted on its position in the Senate amendment(s) to Substitute House Bill No. 1874 and asked the House to concur thereon by voice vote.

MOTION

On motion of Senator White, Senator Ranker was excused.

MOTION

On motion of Senator Eide, Substitute House Bill No. 1874 was immediately transmitted to the House of Representatives.

MOTION

At 3:22 p.m., on motion of Senator Eide, the Senate was declared to be at ease subject to the call of the President.

EVENING SESSION

The Senate was called to order at 4:50 p.m. by President Owen.

MOTION

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

SECOND READING

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 1599, by House Committee on Ways & Means (originally sponsored by Representatives Probst, Haler, Maxwell, Orwall, Haigh, Santos, Dammeier, Seaquist, Liias, Reykdal, Kagi, Roberts, Kenney and Ormsby)

Establishing the pay for actual student success dropout prevention program.

The measure was read the second time.

MOTION

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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. (1) The legislature finds that:

(a) Providing students with the opportunity to graduate from high school with the knowledge and skills to be successful in today's world is now clearly part of Washington's definition of a basic education. Some students will only achieve this objective with supplemental interventions, support, and counseling;

(b) Dropout prevention is a fundamental strategy for strengthening society, building the economy, reducing crime, reducing government spending, and increasing individual freedom and opportunity;

(c) There are known and proven strategies to reduce the dropout rate, including ones that are successful for high-risk and troubled students. For example, the opportunity internship program, the jobs for America's graduates program, the building bridges program, and individualized student support services provided by the college success foundation have all had a measurable impact on helping at-risk students be successful in school. In addition, the Everett school district successfully increased its extended graduation rate from fifty-three percent in 2003 to ninety percent in 2010 by tracking the progress toward graduation of each student and assigning success coordinators to ensure students pursued all possible avenues to complete and make up credits. The Renton school district, through a combination of leadership, community partnerships and resources, and high expectations for all students, has increased its graduation rate to ninety percent, with ninety-six percent of graduating seniors in 2010 meeting proficiency on the state high school assessments. However, these types of models have never been brought to scale; and

(d) For every dropout prevented, the chances of that person committing a crime are reduced by twenty percent, and that person stands to increase his or her lifetime earnings by three hundred thousand dollars in today's dollars. In addition, for every dropout prevented, taxpayers save an estimated ten thousand five hundred dollars per year for each year of the individual's life between the ages of twenty and sixty-five.

(2) Therefore, the state should use a dual strategy of making front-end investments in proven programs in order to expand them into an effective dropout prevention and intervention system, while simultaneously recognizing and rewarding actual success in reducing the dropout rate by investing a portion of the savings generated from each prevented dropout in the public schools.

(3) The legislature recognizes that the current fiscal climate in the state is a likely contributing factor to an increase in dropout rates. Reductions in state funding for schools are often felt first in student support services, counseling, supplemental instruction and tutoring, and increased class size, all of which affect struggling students. A poor economy negatively affects families through unemployment, uncertainty, and reduced public services, and students bring these stresses with them to school. If allowed to go unaddressed, these economic and fiscal circumstances are likely to slow or reverse progress on improving high school completion rates. Therefore, a concentrated effort at improvement is required at this time.

NEW SECTION. Sec. 2. A new section is added to chapter 28A.175 RCW to read as follows:

(1) The pay for actual student success (PASS) program is created under this section and sections 3 through 8 of this act to invest in proven dropout prevention and intervention programs as provided in section 3 of this act and provide a financial award for high schools that demonstrate improvement in the dropout prevention indicators established under section 4 of this act. The

legislature finds that increased accumulation of credits and reductions in incidents of student discipline lead to improved graduation rates.

(2) The office of the superintendent of public instruction, the workforce training and education coordinating board, the building bridges working group, the higher education coordinating board, and the college scholarship organization under section 3(4) of this act shall collaborate to assure that the programs under section 3 of this act operate systematically and are expanded to include as many additional students and schools as possible.

NEW SECTION. Sec. 3. A new section is added to chapter 28A.175 RCW to read as follows:

Subject to funds appropriated for this purpose, funds shall be allocated as specified in the omnibus appropriations act to support the PASS program through the following programs:

(1) The opportunity internship program under RCW 28C.18.160 through 28C.18.168;

(2) The jobs for America's graduates program administered through the office of the superintendent of public instruction;

(3) The building bridges program under RCW 28A.175.025, to be used to expand programs that have been implemented by building bridges partnerships and determined by the building bridges work group to be successful in reducing dropout rates, or to replicate such programs in new partnerships; and

(4) Individualized student support services provided by a college scholarship organization with expertise in managing scholarships for low-income, high potential students and foster care youth under contract with the higher education coordinating board, including but not limited to college and career advising, counseling, tutoring, community mentor programs, and leadership development.

NEW SECTION. Sec. 4. A new section is added to chapter 28A.175 RCW to read as follows:

(1) The office of the superintendent of public instruction, in consultation with the state board of education, must:

(a) Calculate the annual extended graduation rate for each high school, which is the rate at which a class of students enters high school as freshmen and graduates with a high school diploma, including students who receive a high school diploma after the year they were expected to graduate. The office may statistically adjust the rate for student demographics in the high school, including the number of students eligible for free and reduced price meals, special education and English language learner students, students of various racial and ethnic backgrounds, and student mobility;

(b) Annually calculate the proportion of students at grade level for each high school, which shall be measured by the number of credits a student has accumulated at the end of each school year compared to the total number required for graduation. For the purposes of this subsection (1)(b), the office shall adopt a standard definition of "at grade level" for each high school grade;

(c) Annually calculate the proportion of students in each high school who are suspended or expelled from school, as reported by the high school. In-school suspensions shall not be included in the calculation. Improvement on the indicator under this subsection (1)(c) shall be measured by a reduction in the number of students suspended or expelled from school; and

(d) Beginning with the 2012-13 school year, annually measure student attendance in each high school as provided under section 10 of this act.

(2) The office of the superintendent of public instruction may add dropout prevention indicators to the list of indicators under subsection (1) of this section, such as student grades, state assessment mastery, or student retention.

(3) To the maximum extent possible, the office of the superintendent of public instruction shall rely on data collected through the comprehensive education data and research system to

calculate the dropout prevention indicators under this section and shall minimize additional data collection from schools and school districts unless necessary to meet the requirements of this section.

(4) The office of the superintendent of public instruction shall develop a metric for measuring the performance of each high school on the indicators under subsection (1) of this section that assigns points for each indicator and results in a single numeric dropout prevention score for each high school. The office shall weight the extended graduation rate indicator within the metric so that a high school does not qualify for an award under section 5 of this act without an increase in its extended graduation rate. The metric used through the 2012-13 school year shall include the indicators in subsection (1)(a) through (c) of this section and shall measure improvement against the 2010-11 school year as the baseline year. Beginning in the 2013-14 school year, the metric shall also include the indicator in subsection (1)(d) of this section, with improvement in this indicator measured against the 2012-13 school year as the baseline year. The office may establish a minimum level of improvement in a high school's dropout prevention score for the high school to qualify for a PASS program award under section 5 of this act.

NEW SECTION. Sec. 5. A new section is added to chapter 28A.175 RCW to read as follows:

(1)(a) Subject to funds appropriated for this purpose or otherwise available in the account established in section 7 of this act, beginning in the 2011-12 school year and each year thereafter, a high school that demonstrates improvement in its dropout prevention score compared to the baseline school year as calculated under section 4 of this act may receive a PASS program award as provided under this section. The legislature intends to recognize and reward continuous improvement by using a baseline year for calculating eligibility for PASS program awards so that a high school retains previously earned award funds from one year to the next unless its performance declines.

(b) The office of the superintendent of public instruction must determine the amount of PASS program awards based on appropriated funds and eligible high schools. The intent of the legislature is to provide an award to each eligible high school commensurate with the degree of improvement in the high school's dropout prevention score and the size of the high school. The office must establish a minimum award amount. If funds available for PASS program awards are not sufficient to provide an award to each eligible high school, the office of the superintendent of public instruction shall establish objective criteria to prioritize awards based on eligible high schools with the greatest need for additional dropout prevention and intervention services. The office of the superintendent of public instruction shall encourage and may require a high school receiving a PASS program award to demonstrate an amount of community matching funds or an amount of in-kind community services to support dropout prevention and intervention.

(c) Ninety percent of an award under this section must be allocated to the eligible high school to be used for dropout prevention activities in the school as specified in subsection (2) of this section. The principal of the high school shall determine the use of funds after consultation with parents and certificated and classified staff of the school.

(d) Ten percent of an award under this section must be allocated to the school district in which the eligible high school is located to be used for dropout prevention activities as specified in subsection (2) of this section in the high school or in other schools in the district.

(e) The office of the superintendent of public instruction may withhold distribution of award funds under this section to an otherwise eligible high school or school district if the superintendent of public instruction issues a finding that the school or school district has willfully manipulated the dropout prevention indicators under

section 4 of this act, for example by expelling, suspending, transferring, or refusing to enroll students at risk of dropping out of school or at risk of low achievement.

(2) High schools and school districts may use PASS program award funds for any programs or activities that support the development of a dropout prevention, intervention, and reengagement system as described in RCW 28A.175.074, offered directly by the school or school district or under contract with education agencies or community-based organizations, including but not limited to educational service districts, workforce development councils, and boys and girls clubs. Such programs or activities may include but are not limited to the following:

(a) Strategies to close the achievement gap for disadvantaged students and minority students;

(b) Use of graduation coaches as defined in section 6 of this act;

(c) Opportunity internship activities under RCW 28C.18.164;

(d) Dropout reengagement programs provided by community-based organizations or community and technical colleges;

(e) Comprehensive guidance and planning programs as defined under RCW 28A.600.045, including but not limited to the navigation 101 program;

(f) Reduced class sizes, extended school day, extended school year, and tutoring programs for students identified as at risk of dropping out of school, including instruction to assist these students in meeting graduation requirements in mathematics and science;

(g) Outreach and counseling targeted to students identified as at risk of dropping out of school, or who have dropped out of school, to encourage them to consider learning alternatives such as preapprenticeship programs, skill centers, running start, technical high schools, and other options for completing a high school diploma;

(h) Preapprenticeship programs or running start for the trades initiatives under RCW 49.04.190;

(i) Mentoring programs for students;

(j) Development and use of dropout early warning data systems;

(k) Counseling, resource and referral services, and intervention programs to address social, behavioral, and health factors associated with dropping out of school;

(l) Implementing programs for in-school suspension or other strategies to avoid excluding middle and high school students from the school whenever possible;

(m) Parent engagement activities such as home visits and off-campus parent support group meetings related to dropout prevention and reengagement; and

(n) Early learning programs for prekindergarten students.

(3) High schools and school districts are encouraged to implement dropout prevention and reengagement strategies in a comprehensive and systematic manner, using strategic planning, school improvement plans, evaluation and feedback, and response to intervention tools.

NEW SECTION. Sec. 6. A new section is added to chapter 28A.175 RCW to read as follows:

For the purposes of section 5 of this act, a "graduation coach" means a staff person, working in consultation with counselors, who is assigned to identify and provide intervention services to students who have dropped out or are at risk of dropping out of school or of not graduating on time through the following activities:

(1) Monitoring and advising on individual student progress toward graduation;

(2) Providing student support services and case management;

(3) Motivating students to focus on a graduation plan;

(4) Encouraging parent and community involvement;

(5) Connecting parents and students with appropriate school and community resources;

(6) Securing supplemental academic services for students;

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(7) Implementing schoolwide dropout prevention programs and interventions; and

(8) Analyzing data to identify at-risk students.

NEW SECTION. Sec. 7. A new section is added to chapter 28A.175 RCW to read as follows:

The high school completion account is created in the custody of the state treasurer. Revenues to the account shall consist of appropriations made by the legislature, federal funds, gifts or grants from the private sector or foundations, and other sources deposited in the account. Expenditures from the account may be used only for proven dropout prevention and intervention programs identified under section 3 of this act and to make PASS program awards under section 5 of this act. Only the superintendent of public instruction or the superintendent's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

NEW SECTION. Sec. 8. A new section is added to chapter 28A.175 RCW to read as follows:

The office of the superintendent of public instruction must regularly inform high schools and school districts about the opportunities under section 3 of this act to receive funding to implement programs that have been proven to reduce dropout rates and increase graduation rates, as well as the opportunities under section 5 of this act for high schools to receive a financial incentive for success. Within available funds, the office shall develop systemic, ongoing strategies for identifying and disseminating successful dropout prevention and reengagement programs and strategies and for incorporating dropout prevention and reengagement into high school and school district strategic planning and improvement. The office may offer support and assistance to schools and districts through regional networks. The office shall make every effort to keep dropout prevention and reduction of the dropout rate a top priority for school directors, administrators, and teachers.

Sec. 9. RCW 28A.175.035 and 2007 c 408 s 3 are each amended to read as follows:

(1) The office of the superintendent of public instruction shall:

(a) Identify criteria for grants and evaluate proposals for funding in consultation with the workforce training and education coordinating board;

(b) Develop and monitor requirements for grant recipients to:

(i) Identify students who both fail the Washington assessment of student learning and drop out of school;

(ii) Identify their own strengths and gaps in services provided to youth;

(iii) Set their own local goals for program outcomes;

(iv) Use research-based and emerging best practices that lead to positive outcomes in implementing the building bridges program; and

(v) Coordinate an outreach campaign to bring public and private organizations together and to provide information about the building bridges program to the local community;

(c) In setting the requirements under (b) of this subsection, encourage creativity and provide for flexibility in implementing the local building bridges program;

(d) Identify and disseminate successful practices;

(e) Develop requirements for grant recipients to collect and report data, including, but not limited to:

(i) The number of and demographics of students served including, but not limited to, information regarding a student's race and ethnicity, a student's household income, a student's housing status, whether a student is a foster youth or youth involved in the juvenile justice system, whether a student is disabled, and the primary language spoken at a student's home;

(ii) Washington assessment of student learning scores;

(iii) Dropout rates;

(iv) On-time graduation rates;

(v) Extended graduation rates;

(vi) Credentials obtained;

(vii) Absenteeism rates;

(viii) Truancy rates; and

(ix) Credit retrieval;

(f) Contract with a third party to evaluate the infrastructure and implementation of the partnership including the leveraging of outside resources that relate to the goal of the partnership. The third-party contractor shall also evaluate the performance and effectiveness of the partnerships relative to the type of entity, as identified in RCW 28A.175.045, serving as the lead agency for the partnership; and

(g) Report to the legislature by December 1, 2008.

(2) In performing its duties under this section, the office of the superintendent of public instruction is encouraged to consult with the work group identified in RCW 28A.175.075.

(3) In selecting recipients for grant funds appropriated under section 3 of this act, the office of the superintendent of public instruction shall use a streamlined and expedited application and review process for those programs that have already proven to be successful in dropout prevention.

NEW SECTION. Sec. 10. A new section is added to chapter 28A.300 RCW to read as follows:

(1)(a) The superintendent of public instruction shall adopt rules establishing a standard definition of student absence from school. In adopting the definition, the superintendent shall review current practices in Washington school districts, definitions used in other states, and any national standards or definitions used by the national center for education statistics or other national groups. The superintendent shall also consult with the building bridges work group established under RCW 28A.175.075.

(b) Using the definition of student absence adopted under this section, the superintendent shall establish an indicator for measuring student attendance in high schools for purposes of the PASS program under section 2 of this act.

(2)(a) The K-12 data governance group under RCW 28A.300.507 shall establish the parameters and an implementation schedule for statewide collection through the comprehensive education and data research system of: (i) Student attendance data using the definitions of student absence adopted under this section; and (ii) student discipline data with a focus on suspensions and expulsions from school.

(b) At a minimum, school districts must collect and submit student attendance data and student discipline data for high school students through the comprehensive education and data research system for purposes of the PASS program under section 2 of this act beginning in the 2012-13 school year.

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, 2011, in the omnibus appropriations act, this act is null and void."

Senators McAuliffe and Litzow spoke in favor of adoption of the committee striking amendment.

MOTION

On motion of Senator White, Senator Brown was excused.

MOTION

On motion of Senator Ericksen, Senator Benton was excused.

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. 1599.

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 2 of the title, after "program;" strike the remainder of the title and insert "amending RCW 28A.175.035; adding new sections to chapter 28A.175 RCW; adding a new section to chapter 28A.300 RCW; and creating new sections."

MOTION

On motion of Senator McAuliffe, the rules were suspended, Engrossed Second Substitute House Bill No. 1599 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 McAuliffe 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. 1599 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Second Substitute House Bill No. 1599 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 40; Nays, 6; Absent, 0; Excused, 3.

Voting yea: Senators Baumgartner, Becker, Benton, Chase, Conway, Eide, Ericksen, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Kastama, Keiser, Kilmer, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Pflug, Prentice, Pridemore, Ranker, Regala, Rockefeller, Schoesler, Sheldon, Shin, Swecker, Tom, White and Zarelli

Voting nay: Senators Baxter, Carrell, Honeyford, King, Roach and Stevens

Excused: Senators Brown, Delvin and Parlette

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 1599 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

April 21, 2011

MR. PRESIDENT:

The House has passed SUBSTITUTE SENATE BILL NO. 5385, and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

MESSAGE FROM THE HOUSE

April 21, 2011

MR. PRESIDENT:

The House has passed SECOND SUBSTITUTE SENATE BILL NO. 5622.

and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

MESSAGE FROM THE HOUSE

April 21, 2011

MR. PRESIDENT:

The House receded from its amendment(s) to SUBSTITUTE SENATE BILL NO. 5531. Under suspension of the rules, the bill was returned to second reading for the purpose of an amendment. The House adopted the following amendment: 5531-S AMH PEDE ADAM 059, and passed the bill as amended by the House.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. The legislature recognizes that counties that host evaluation and treatment beds incur costs by providing judicial services associated with civil commitments under chapters 71.05 and 71.34 RCW. Because evaluation and treatment beds are not evenly distributed across the state, these commitments frequently occur in a different county from the county in which the person was originally detained. The intent of this act is to create a process for the state to reimburse counties through the regional support networks for the counties' reasonable direct costs incurred in providing these judicial services, and to prevent the burden of these costs from falling disproportionately on the counties or regional support networks in which the commitments are most likely to occur. The legislature recognizes that the costs of judicial services may vary across the state based on different factors and conditions.

NEW SECTION. Sec. 2. A new section is added to chapter 71.05 RCW to read as follows:

(1) A county may apply to its regional support network on a quarterly basis for reimbursement of its direct costs in providing judicial services for civil commitment cases under this chapter and chapter 71.34 RCW. The regional support network shall in turn be entitled to reimbursement from the regional support network that serves the county of residence of the individual who is the subject of the civil commitment case. Reimbursements under this section shall be paid out of the regional support network's nonmedicaid appropriation.

(2) Reimbursement for judicial services shall be provided per civil commitment case at a rate to be determined based on an independent assessment of the county's actual direct costs. This assessment must be based on an average of the expenditures for judicial services within the county over the past three years. In the event that a baseline cannot be established because there is no significant history of similar cases within the county, the reimbursement rate shall be equal to eighty percent of the median reimbursement rate of counties included in the independent assessment.

(3) For the purposes of this section:

(a) "Civil commitment case" includes all judicial hearings related to a single episode of hospitalization, or less restrictive alternative detention in lieu of hospitalization, except that the filing of a petition for a one hundred eighty-day commitment under this chapter or a petition for a successive one hundred eighty-day commitment under chapter 71.34 RCW shall be considered to be a new case regardless of whether there has been a break in detention. "Civil commitment case" does not include the filing of a petition for

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a one hundred eighty-day commitment under this chapter on behalf of a patient at a state psychiatric hospital.

(b) "Judicial services" means a county's reasonable direct costs in providing prosecutor services, assigned counsel and defense services, court services, and court clerk services for civil commitment cases under this chapter and chapter 71.34 RCW.

(4) To the extent that resources have shared purpose, the regional support network may only reimburse counties to the extent such resources are necessary for and devoted to judicial services as described in this section.

(5) No filing fee may be charged or collected for any civil commitment case subject to reimbursement under this section.

NEW SECTION. Sec. 3. A new section is added to chapter 71.05 RCW to read as follows:

(1) The joint legislative audit and review committee shall conduct an independent assessment of the direct costs of providing judicial services under this chapter and chapter 71.34 RCW as defined in section 2 of this act. The assessment shall include a review and analysis of the reasons for differences in costs among counties. The assessment shall be conducted for any county in which more than twenty civil commitment cases were conducted during the year prior to the study. The assessment must be completed by June 1, 2012.

(2) The administrative office of the courts and the department shall provide the joint legislative audit and review committee with assistance and data required to complete the assessment.

(3) The joint legislative audit and review committee shall present recommendations as to methods for updating the costs identified in the assessment to reflect changes over time.

NEW SECTION. Sec. 4. A new section is added to chapter 71.34 RCW to read as follows:

A county may apply to its regional support network for reimbursement of its direct costs in providing judicial services for civil commitment cases under this chapter, as provided in section 2 of this act.

Sec. 5. RCW 71.05.110 and 1997 c 112 s 7 are each amended to read as follows:

Attorneys appointed for persons pursuant to this chapter shall be compensated for their services as follows: (1) The person for whom an attorney is appointed shall, if he or she is financially able pursuant to standards as to financial capability and indigency set by the superior court of the county in which the proceeding is held, bear the costs of such legal services; (2) if such person is indigent pursuant to such standards, the ~~((costs of such services shall be borne by))~~ regional support network shall reimburse the county in which the proceeding is held ~~((, subject however to the responsibility for costs provided in RCW 71.05.320(2)))~~ for the direct costs of such legal services, as provided in section 2 of this act.

Sec. 6. RCW 71.24.160 and 2001 c 323 s 15 are each amended to read as follows:

The regional support networks shall make satisfactory showing to the secretary that state funds shall in no case be used to replace local funds from any source being used to finance mental health services prior to January 1, 1990. Maintenance of effort funds devoted to judicial services related to involuntary commitment reimbursed under section 2 of this act must be expended for other purposes that further treatment for mental health and chemical dependency disorders.

Sec. 7. RCW 71.34.300 and 1985 c 354 s 14 are each amended to read as follows:

(1) The county or combination of counties is responsible for development and coordination of the evaluation and treatment program for minors, for incorporating the program into the county mental health plan, and for coordination of evaluation and treatment

services and resources with the community mental health program required under chapter 71.24 RCW.

(2) The county shall be responsible for maintaining its support of involuntary treatment services for minors at its 1984 level, adjusted for inflation, with the department responsible for additional costs to the county resulting from this chapter. Maintenance of effort funds devoted to judicial services related to involuntary commitment reimbursed under section 2 of this act must be expended for other purposes that further treatment for mental health and chemical dependency disorders.

Sec. 8. RCW 71.34.330 and 1985 c 354 s 23 are each amended to read as follows:

Attorneys appointed for minors under this chapter shall be compensated for their services as follows:

(1) Responsible others shall bear the costs of such legal services if financially able according to standards set by the court of the county in which the proceeding is held.

(2) If all responsible others are indigent as determined by these standards, the ~~((costs of these legal services shall be borne by))~~ regional support network shall reimburse the county in which the proceeding is held for the direct costs of such legal services, as provided in section 2 of this act.

Sec. 9. RCW 71.05.230 and 2009 c 217 s 2 and 2009 c 293 s 3 are each reenacted and amended to read as follows:

A person detained for seventy-two hour evaluation and treatment may be detained for not more than fourteen additional days of involuntary intensive treatment or ninety additional days of a less restrictive alternative to involuntary intensive treatment. ~~((There shall be no fee for filing petitions for fourteen days of involuntary intensive treatment.))~~ A petition may only be filed if the following conditions are met:

(1) The professional staff of the agency or facility providing evaluation services has analyzed the person's condition and finds that the condition is caused by mental disorder and either results in a likelihood of serious harm, or results in the detained person being gravely disabled and are prepared to testify those conditions are met; and

(2) The person has been advised of the need for voluntary treatment and the professional staff of the facility has evidence that he or she has not in good faith volunteered; and

(3) The facility providing intensive treatment is certified to provide such treatment by the department; and

(4) The professional staff of the agency or facility or the designated mental health professional has filed a petition for fourteen day involuntary detention or a ninety day less restrictive alternative with the court. The petition must be signed either by:

- (a) Two physicians;
- (b) One physician and a mental health professional;
- (c) Two psychiatric advanced registered nurse practitioners;
- (d) One psychiatric advanced registered nurse practitioner and a mental health professional; or

(e) A physician and a psychiatric advanced registered nurse practitioner. The persons signing the petition must have examined the person. If involuntary detention is sought the petition shall state facts that support the finding that such person, as a result of mental disorder, presents a likelihood of serious harm, or is gravely disabled and that there are no less restrictive alternatives to detention in the best interest of such person or others. The petition shall state specifically that less restrictive alternative treatment was considered and specify why treatment less restrictive than detention is not appropriate. If an involuntary less restrictive alternative is sought, the petition shall state facts that support the finding that such person, as a result of mental disorder, presents a likelihood of serious harm, or is gravely disabled and shall set forth the less restrictive alternative proposed by the facility; and

(5) A copy of the petition has been served on the detained person, his or her attorney and his or her guardian or conservator, if any, prior to the probable cause hearing; and

(6) The court at the time the petition was filed and before the probable cause hearing has appointed counsel to represent such person if no other counsel has appeared; and

(7) The petition reflects that the person was informed of the loss of firearm rights if involuntarily committed; and

(8) At the conclusion of the initial commitment period, the professional staff of the agency or facility or the designated mental health professional may petition for an additional period of either ninety days of less restrictive alternative treatment or ninety days of involuntary intensive treatment as provided in RCW 71.05.290; and

(9) If the hospital or facility designated to provide outpatient treatment is other than the facility providing involuntary treatment, the outpatient facility so designated has agreed to assume such responsibility.

NEW SECTION. Sec. 10. Except for section 3 of this act, this act takes effect July 1, 2012."

Correct the title.

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator King moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5531.

Senator King spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator King that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 5531.

The motion by Senator King carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 5531 by voice vote.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 5531, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 5531, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 46; Nays, 0; Absent, 0; Excused, 3.

Voting yea: Senators Baumgartner, Baxter, Becker, Benton, Carrell, Chase, Conway, Eide, Ericksen, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom, White and Zarelli

Excused: Senators Brown, Delvin and Parlette

SUBSTITUTE SENATE BILL NO. 5531, as amended by the House, 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.

PERSONAL PRIVILEGE

Senator King: "Well, there's been a lot of work that's gone into the bill that we just passed and we've been working on this diligently since the start of session and I would be remiss if I

didn't thank you Heather from the Democratic staff for her work as well as Senator Eide and particularly Senator Hargrove for their efforts in getting us to this point. I just wanted to say thank you for all their efforts. Thank you Mr. President."

MESSAGE FROM THE HOUSE

April 21, 2011

MR. PRESIDENT:

The House refuses to concur in the Senate amendment(s) to SUBSTITUTE HOUSE BILL NO. 1053 and asks the Senate to recede therefrom.

and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Kline moved that the Senate recede from its position in the Senate amendment(s) to Substitute House Bill No. 1053.

The President declared the question before the Senate to be motion by Senator Kline that the Senate recede from its position in the Senate amendment(s) to Substitute House Bill No. 1053.

The motion by Senator Kline carried and the Senate receded from its position in the Senate amendment(s) to Substitute House Bill No. 1053 by voice vote.

MOTION

On motion of Senator Kline, the rules were suspended and Substitute House Bill No. 1053 was returned to second reading for the purpose of amendment.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 1053, by House Committee on Judiciary (originally sponsored by Representatives Moeller, Kenney, Ladenburg, Appleton, Roberts, Darneille and Upthegrove)

Implementing recommendations from the Washington state bar association elder law section's executive committee report of the guardianship task force.

The measure was read the second time.

MOTION

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

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 11.88.020 and 1997 c 312 s 1 are each amended to read as follows:

(1) Any suitable person over the age of eighteen years, or any parent under the age of eighteen years or, if the petition is for appointment of a professional guardian, any individual or guardianship service that meets any certification requirements established by the administrator for the courts, may, if not otherwise disqualified, be appointed guardian or limited guardian of the person and/or the estate of an incapacitated person. A financial institution subject to the jurisdiction of the department of financial institutions and authorized to exercise trust powers, and a federally chartered financial institution when authorized to do so, may act as a guardian

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of the estate of an incapacitated person without having to meet the certification requirements established by the administrator for the courts. No person is qualified to serve as a guardian who is

(a) under eighteen years of age except as otherwise provided herein;

(b) of unsound mind;

(c) convicted of a felony or of a misdemeanor involving moral turpitude;

(d) a nonresident of this state who has not appointed a resident agent to accept service of process in all actions or proceedings with respect to the estate and caused such appointment to be filed with the court;

(e) a corporation not authorized to act as a fiduciary, guardian, or limited guardian in the state;

(f) a person whom the court finds unsuitable.

(2) The professional guardian certification requirements required under this section shall not apply to a testamentary guardian appointed under RCW 11.88.080.

(3) If a guardian or limited guardian is not a certified professional guardian or financial institution authorized under this section, the guardian or limited guardian shall complete any standardized training video or web cast for lay guardians made available by the administrative office of the courts and the superior court where the petition is filed unless granted a waiver by the court under RCW 11.92.043 or 11.92.040. The training video or web cast must be provided at no cost to the guardian or limited guardian.

(a) If a petitioner requests the appointment of a specific individual to act as a guardian or limited guardian, the petition for guardianship or limited guardianship shall include evidence of the successful completion of the required training video or web cast by the proposed guardian or limited guardian. The superior court may defer the completion of the training requirement to a date no later than ninety days after appointment if the petitioner requests expedited appointment due to emergent circumstances.

(b) If no person is identified to be appointed guardian or limited guardian at the time the petition is filed, then the court shall require the completion of the required training video or web cast by a date no later than ninety days after the appointment.

Sec. 2. RCW 11.88.030 and 2009 c 521 s 36 are each amended to read as follows:

(1) Any person or entity may petition for the appointment of a qualified person, ~~((trust company, national bank, or nonprofit corporation))~~ certified professional guardian, or financial institution authorized in RCW 11.88.020 as the guardian or limited guardian of an incapacitated person. No liability for filing a petition for guardianship or limited guardianship shall attach to a petitioner acting in good faith and upon reasonable basis. A petition for guardianship or limited guardianship shall state:

(a) The name, age, residence, and post office address of the alleged incapacitated person;

(b) The nature of the alleged incapacity in accordance with RCW 11.88.010;

(c) The approximate value and description of property, including any compensation, pension, insurance, or allowance, to which the alleged incapacitated person may be entitled;

(d) Whether there is, in any state, a guardian or limited guardian, or pending guardianship action for the person or estate of the alleged incapacitated person;

(e) The residence and post office address of the person whom petitioner asks to be appointed guardian or limited guardian;

(f) The names and addresses, and nature of the relationship, so far as known or can be reasonably ascertained, of the persons most closely related by blood, marriage, or state registered domestic partnership to the alleged incapacitated person;

(g) The name and address of the person or facility having the care and custody of the alleged incapacitated person;

(h) The reason why the appointment of a guardian or limited guardian is sought and the interest of the petitioner in the appointment, and whether the appointment is sought as guardian or limited guardian of the person, the estate, or both;

(i) A description of any alternate arrangements previously made by the alleged incapacitated person, such as trusts or powers of attorney, including identifying any guardianship nominations contained in a power of attorney, and why a guardianship is nevertheless necessary;

(j) The nature and degree of the alleged incapacity and the specific areas of protection and assistance requested and the limitation of rights requested to be included in the court's order of appointment;

(k) The requested term of the limited guardianship to be included in the court's order of appointment; and

(l) Whether the petitioner is proposing a specific individual to act as guardian ad litem and, if so, the individual's knowledge of or relationship to any of the parties, and why the individual is proposed.

(2) The petition shall include evidence of successful completion of any training required under RCW 11.88.020 by the proposed guardian or limited guardian unless the petitioner requests expedited appointment due to emergent circumstances.

~~((2))~~ (3)(a) The attorney general may petition for the appointment of a guardian or limited guardian in any case in which there is cause to believe that a guardianship is necessary and no private party is able and willing to petition.

(b) Prepayment of a filing fee shall not be required in any guardianship or limited guardianship brought by the attorney general. Payment of the filing fee shall be ordered from the estate of the incapacitated person at the hearing on the merits of the petition, unless in the judgment of the court, such payment would impose a hardship upon the incapacitated person, in which case the filing shall be waived.

~~((3))~~ (4) No filing fee shall be charged by the court for filing either a petition for guardianship or a petition for limited guardianship if the petition alleges that the alleged incapacitated person has total assets of a value of less than three thousand dollars.

~~((4))~~ (5)(a) Notice that a guardianship proceeding has been commenced shall be personally served upon the alleged incapacitated person and the guardian ad litem along with a copy of the petition for appointment of a guardian. Such notice shall be served not more than five court days after the petition has been filed.

(b) Notice under this subsection shall include a clear and easily readable statement of the legal rights of the alleged incapacitated person that could be restricted or transferred to a guardian by a guardianship order as well as the right to counsel of choice and to a jury trial on the issue of incapacity. Such notice shall be in substantially the following form and shall be in capital letters, double-spaced, and in a type size not smaller than ten-point type:

IMPORTANT NOTICE PLEASE READ
CAREFULLY

A PETITION TO HAVE A GUARDIAN APPOINTED FOR YOU HAS BEEN FILED IN THE COUNTY SUPERIOR COURT BY IF A GUARDIAN IS APPOINTED, YOU COULD LOSE ONE OR MORE OF THE FOLLOWING RIGHTS:

- (1) TO MARRY, DIVORCE, OR ENTER INTO OR END A STATE REGISTERED DOMESTIC PARTNERSHIP;
- (2) TO VOTE OR HOLD AN ELECTED OFFICE;

(3) TO ENTER INTO A CONTRACT OR MAKE OR REVOKE A WILL;

(4) TO APPOINT SOMEONE TO ACT ON YOUR BEHALF;

(5) TO SUE AND BE SUED OTHER THAN THROUGH A GUARDIAN;

(6) TO POSSESS A LICENSE TO DRIVE;

(7) TO BUY, SELL, OWN, MORTGAGE, OR LEASE PROPERTY;

(8) TO CONSENT TO OR REFUSE MEDICAL TREATMENT;

(9) TO DECIDE WHO SHALL PROVIDE CARE AND ASSISTANCE;

(10) TO MAKE DECISIONS REGARDING SOCIAL ASPECTS OF YOUR LIFE.

UNDER THE LAW, YOU HAVE CERTAIN RIGHTS.

YOU HAVE THE RIGHT TO BE REPRESENTED BY A LAWYER OF YOUR OWN CHOOSING. THE COURT WILL APPOINT A LAWYER TO REPRESENT YOU IF YOU ARE UNABLE TO PAY OR PAYMENT WOULD RESULT IN A SUBSTANTIAL HARDSHIP TO YOU.

YOU HAVE THE RIGHT TO ASK FOR A JURY TO DECIDE WHETHER OR NOT YOU NEED A GUARDIAN TO HELP YOU.

YOU HAVE THE RIGHT TO BE PRESENT IN COURT AND TESTIFY WHEN THE HEARING IS HELD TO DECIDE WHETHER OR NOT YOU NEED A GUARDIAN. IF A GUARDIAN AD LITEM IS APPOINTED, YOU HAVE THE RIGHT TO REQUEST THE COURT TO REPLACE THAT PERSON.

~~((5))~~ (6) All petitions filed under the provisions of this section shall be heard within sixty days unless an extension of time is requested by a party or the guardian ad litem within such sixty day period and granted for good cause shown. If an extension is granted, the court shall set a new hearing date.

Sec. 3. RCW 11.92.043 and 1991 c 289 s 11 are each amended to read as follows:

It shall be the duty of the guardian or limited guardian of the person:

(1) To file within three months after appointment a personal care plan for the incapacitated person which shall include (a) an assessment of the incapacitated person's physical, mental, and emotional needs and of such person's ability to perform or assist in activities of daily living, and (b) the guardian's specific plan for meeting the identified and emerging personal care needs of the incapacitated person.

(2) To file annually or, where a guardian of the estate has been appointed, at the time an account is required to be filed under RCW 11.92.040, a report on the status of the incapacitated person, which shall include:

(a) The address and name of the incapacitated person and all residential changes during the period;

(b) The services or programs which the incapacitated person receives;

(c) The medical status of the incapacitated person;

(d) The mental status of the incapacitated person;

(e) Changes in the functional abilities of the incapacitated person;

(f) Activities of the guardian for the period;

(g) Any recommended changes in the scope of the authority of the guardian;

(h) The identity of any professionals who have assisted the incapacitated person during the period;

(i)(i) Evidence of the guardian or limited guardian's successful completion of any standardized training video or web cast for guardians or limited guardians made available by the administrative office of the courts and the superior court when the guardian or limited guardian: (A) Was appointed prior to the effective date of this section; (B) is not a certified professional guardian or financial institution authorized under RCW 11.88.020; and (C) has not previously completed the requirements of RCW 11.88.020(3). The training video or web cast must be provided at no cost to the guardian or limited guardian.

(ii) The superior court may, upon (A) petition by the guardian or limited guardian; or (B) any other method as provided by local court rule:

(I) For good cause, waive this requirement for guardians appointed prior to the effective date of this section. Good cause shall require evidence that the guardian already possesses the requisite knowledge to serve as a guardian without completing the training. When determining whether there is good cause to waive the training requirement, the court shall consider, among other facts, the length of time the guardian has been serving the incapacitated person; whether the guardian has timely filed all required reports with the court; whether the guardian is monitored by other state or local agencies; and whether there have been any allegations of abuse, neglect, or a breach of fiduciary duty against the guardian; or

(II) Extend the time period for completion of the training requirement for ninety days; and

(j) Evidence of the guardian or limited guardian's successful completion of any additional or updated training video or web cast offered by the administrative office of the courts and the superior court as is required at the discretion of the superior court unless the guardian or limited guardian is a certified professional guardian or financial institution authorized under RCW 11.88.020. The training video or web cast must be provided at no cost to the guardian or limited guardian.

(3) To report to the court within thirty days any substantial change in the incapacitated person's condition, or any changes in residence of the incapacitated person.

(4) Consistent with the powers granted by the court, to care for and maintain the incapacitated person in the setting least restrictive to the incapacitated person's freedom and appropriate to the incapacitated person's personal care needs, assert the incapacitated person's rights and best interests, and if the incapacitated person is a minor or where otherwise appropriate, to see that the incapacitated person receives appropriate training and education and that the incapacitated person has the opportunity to learn a trade, occupation, or profession.

(5) Consistent with RCW 7.70.065, to provide timely, informed consent for health care of the incapacitated person, except in the case of a limited guardian where such power is not expressly provided for in the order of appointment or subsequent modifying order as provided in RCW 11.88.125 as now or hereafter amended, the standby guardian or standby limited guardian may provide timely, informed consent to necessary medical procedures if the guardian or limited guardian cannot be located within four hours after the need for such consent arises. No guardian, limited guardian, or standby guardian may involuntarily commit for mental health treatment, observation, or evaluation an alleged incapacitated person who is unable or unwilling to give informed consent to such commitment unless the procedures for involuntary commitment set forth in chapter 71.05 or 72.23 RCW are followed. Nothing in this section shall be construed to allow a guardian, limited guardian, or standby guardian to consent to:

(a) Therapy or other procedure which induces convulsion;

(b) Surgery solely for the purpose of psychosurgery;

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(c) Other psychiatric or mental health procedures that restrict physical freedom of movement, or the rights set forth in RCW ((71.05.370)) 71.05.217.

A guardian, limited guardian, or standby guardian who believes these procedures are necessary for the proper care and maintenance of the incapacitated person shall petition the court for an order unless the court has previously approved the procedure within the past thirty days. The court may order the procedure only after an attorney is appointed in accordance with RCW 11.88.045 if no attorney has previously appeared, notice is given, and a hearing is held in accordance with RCW 11.88.040.

Sec. 4. RCW 11.88.095 and 1995 c 297 s 5 are each amended to read as follows:

(1) In determining the disposition of a petition for guardianship, the court's order shall be based upon findings as to the capacities, condition, and needs of the alleged incapacitated person, and shall not be based solely upon agreements made by the parties.

(2) Every order appointing a full or limited guardian of the person or estate shall include:

(a) Findings as to the capacities, condition, and needs of the alleged incapacitated person;

(b) The amount of the bond, if any, or a bond review period;

(c) ~~((When the next report of the guardian is due;~~

~~(d))~~ The date the account or report shall be filed. The date of filing an account or report shall be within ninety days after the anniversary date of the appointment;

(d) A date for the court to review the account or report and enter its order. The court shall conduct the review within one hundred twenty days after the anniversary date of the appointment and follow the provisions of RCW 11.92.050. The court may review and approve an account or report without conducting a hearing;

(e) A directive to the clerk of court to issue letters of guardianship as specified in section 6 of this act;

(f) Whether the guardian ad litem shall continue acting as guardian ad litem;

~~((g))~~ (g) Whether a review hearing shall be required upon the filing of the inventory;

~~((h))~~ (h) Whether a review hearing is required upon filing the initial personal care plan;

(i) The authority of the guardian, if any, for investment and expenditure of the ward's estate; ~~(and~~

~~(g))~~ (j) Names and addresses of those persons described in RCW 11.88.090(5)(d), if any, whom the court believes should receive copies of further pleadings filed by the guardian with respect to the guardianship. The guardian, within ninety days from the date of the appointment, shall, in writing, notify the persons identified by the court of their right to request special notice of proceedings as described in RCW 11.92.150; and

(k) A guardianship summary placed directly below the case caption or on a separate cover page in the following form, or a substantially similar form, containing the following information:

GUARDIANSHIP SUMMARY

Date Guardian Appointed:

Due Date for Report and Accounting:

Date of Next Review:

Letters Expire On:

Bond Amount: \$.....

Restricted Account
Agreements Required:
Due Date for Inventory:

Due Date for Care Plan:

Guardian of: Estate Person

Incapacitated Person (IP)

Name: Name:

Address: Address:

Phone: Phone:

Facsimile: Facsimile:

Interested Parties Address Relation to IP

<u>Interested Parties</u>	<u>Address</u>	<u>Relation to IP</u>

(3) If the court determines that a limited guardian should be appointed, the order shall specifically set forth the limits by either stating exceptions to the otherwise full authority of the guardian or by stating the specific authority of the guardian.

(4) In determining the disposition of a petition for appointment of a guardian or limited guardian of the estate only, the court shall consider whether the alleged incapacitated person is capable of giving informed medical consent or of making other personal decisions and, if not, whether a guardian or limited guardian of the person of the alleged incapacitated person should be appointed for that purpose.

(5) Unless otherwise ordered, any powers of attorney or durable powers of attorney shall be revoked upon appointment of a guardian or limited guardian of the estate.

If there is an existing medical power of attorney, the court must make a specific finding of fact regarding the continued validity of that medical power of attorney before appointing a guardian or limited guardian for the person.

Sec. 5. RCW 11.88.125 and 2008 c 6 s 805 are each amended to read as follows:

(1) The person appointed by the court as either guardian or limited guardian of the person and/or estate of an incapacitated person((g)) shall file in writing with the court, within ninety days from the date of appointment, a notice designating a standby limited guardian or guardian to serve as limited guardian or guardian at the death or legal incapacity of the court-appointed guardian or limited guardian. The notice shall state the name, address, zip code, and telephone number of the designated standby or limited guardian. Notice of the guardian's designation of the standby guardian shall be given to the standby guardian, the incapacitated person and his or her spouse or domestic partner and adult children, any facility in which the incapacitated person resides, and any person entitled to special notice under RCW 11.92.150 or any person entitled to receive pleadings pursuant to RCW 11.88.095(2)((g)) (j). Such standby guardian or limited guardian shall have all the powers,

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(b) By an adjudication of capacity or an adjudication of termination of incapacity;

(c) By the death of the incapacitated person;

(d) By expiration of the term of limited guardianship specified in the order appointing the limited guardian, unless prior to such expiration a petition has been filed and served, as provided in RCW 11.88.040 as now or hereafter amended, seeking an extension of such term.

(2) TERMINATION OF GUARDIANSHIP FOR A MINOR BY DECLARATION OF COMPLETION. A guardianship for the benefit of a minor may be terminated upon the minor's attainment of legal age, as defined in RCW 26.28.010 as now or hereafter amended, by the guardian filing a declaration that states:

(a) The date the minor attained legal age;

(b) That the guardian has paid all of the minor's funds in the guardian's possession to the minor, who has signed a receipt for the funds, and that the receipt has been filed with the court;

(c) That the guardian has completed the administration of the minor's estate and the guardianship is ready to be closed; and

(d) The amount of fees paid or to be paid to each of the following: (i) The guardian, (ii) lawyer or lawyers, (iii) accountant or accountants; and that the guardian believes the fees are reasonable and does not intend to obtain court approval of the amount of the fees or to submit a guardianship accounting to the court for approval. Subject to the requirement of notice as provided in this section, unless the minor petitions the court either for an order requiring the guardian to obtain court approval of the amount of fees paid or to be paid to the guardian, lawyers, or accountants, or for an order requiring an accounting, or both, within thirty days from the filing of the declaration of completion of guardianship, the guardian shall be automatically discharged without further order of the court. The guardian's powers will cease thirty days after filing the declaration of completion of guardianship. The declaration of completion of guardianship shall, at the time, be the equivalent of an entry of a decree terminating the guardianship, distributing the assets, and discharging the guardian for all legal intents and purposes.

Within five days of the date of filing the declaration of completion of guardianship, the guardian or the guardian's lawyer shall mail a copy of the declaration of completion to the minor together with a notice that shall be substantially as follows:

CAPTION OF CASE NOTICE OF FILING A DECLARATION OF COMPLETION OF GUARDIANSHIP

NOTICE IS GIVEN that the attached Declaration of Completion of Guardianship was filed by the undersigned in the above-entitled court on the day of, 19 . . . ; unless you file a petition in the above-entitled court requesting the court to review the reasonableness of the fees, or for an accounting, or both, and serve a copy of the petition on the guardian or the guardian's lawyer, within thirty days after the filing date, the amount of fees paid or to be paid will be deemed reasonable, the acts of the guardian will be deemed approved, the guardian will be automatically discharged without further order of the court and the Declaration of Completion of Guardianship will be final and deemed the equivalent of an order terminating the guardianship, discharging the guardian and decreeing the distribution of the guardianship assets.

If you file and serve a petition within the period specified, the undersigned will request the court to fix a time and place for the hearing of your petition, and you will be notified of the time and place of the hearing, by mail, or

by personal service, not less than ten days before the hearing on the petition.

DATED this day of, 19 . . .

.....
Guardian

If the minor, after reaching legal age, waives in writing the notice required by this section, the guardian will be automatically discharged without further order of the court and the declaration of completion of guardianship will be effective as an order terminating the guardianship without an accounting upon filing the declaration. If the guardian has been required to furnish a bond, and a declaration of completion of guardianship is filed according to this section, any bond furnished by the guardian shall be automatically discharged upon the discharge of the guardian.

(3) TERMINATION ON COURT ORDER. A guardianship or limited guardianship may be terminated by court order after such notice as the court may require if the guardianship or limited guardianship is no longer necessary.

The guardian or limited guardian shall, within (~~thirty~~) ninety days of the date of termination of the guardianship, unless the court orders a different deadline for good cause, prepare and file with the court a final verified account of administration. The final verified account of administration shall contain the same information as required for (a) an intermediate verified account of administration of the estate under RCW 11.92.040(2) and (b) an intermediate personal care status report under RCW 11.92.043(2).

(4) EFFECT OF TERMINATION. When a guardianship or limited guardianship terminates other than by the death of the incapacitated person, the powers of the guardian or limited guardian cease, except that a guardian or limited guardian of the estate may make disbursements for claims that are or may be allowed by the court, for liabilities already properly incurred for the estate or for the incapacitated person, and for expenses of administration. When a guardianship or limited guardianship terminates by death of the incapacitated person, the guardian or limited guardian of the estate may proceed under RCW 11.88.150 as now or hereafter amended, but the rights of all creditors against the incapacitated person's estate shall be determined by the law of decedents' estates.

Sec. 8. RCW 11.92.053 and 1995 c 297 s 7 are each amended to read as follows:

Within ninety days, unless the court orders a different deadline for good cause, after the termination of a guardianship for any reason, the guardian or limited guardian of the estate shall petition the court for an order settling his or her account as filed in accordance with RCW 11.92.040(2) with regard to any receipts, expenditures, and investments made and acts done by the guardian to the date of the termination. Upon the filing of the petition, the court shall set a date for the hearing of the petition after notice has been given in accordance with RCW 11.88.040. Any person interested may file objections to the petition or may appear at the time and place fixed for the hearing thereof and present his or her objections thereto. The court may take such testimony as it deems proper or necessary to determine whether an order settling the account should be issued and the transactions of the guardian be approved, and the court may appoint a guardian ad litem to review the report.

At the hearing on the petition of the guardian or limited guardian, if the court is satisfied that the actions of the guardian or limited guardian have been proper, and that the guardian has in all respects discharged his or her trust with relation to the receipts, expenditures, investments, and acts, then, in such event, the court shall enter an order approving the account, and the order shall be

final and binding upon the incapacitated person, subject only to the right of appeal as upon a final order. However, within one year after the incompetent attains his or her majority any such account may be challenged by the incapacitated person on the ground of fraud.

Sec. 9. RCW 11.92.040 and 1991 c 289 s 10 are each amended to read as follows:

It shall be the duty of the guardian or limited guardian of an estate:

(1) To file within three months after the guardian's appointment a verified inventory of all the property of the incapacitated person which comes into the guardian's possession or knowledge, including a statement of all encumbrances, liens, and other secured charges on any item;

(2) To file annually, within ninety days after the anniversary date of the guardian's or limited guardian's appointment, and also within ~~((thirty))~~ ninety days after termination of the appointment, unless the court for good cause orders a different deadline to file following termination, a written verified account of the administration for court approval, which account shall contain at least the following information:

(a) Identification of property of the guardianship estate as of the date of the last account or, in the case of the initial account, as of the date of inventory;

(b) Identification of all additional property received into the guardianship, including income by source;

(c) Identification of all expenditures made during the account period by major categories;

(d) Any adjustments to the guardianship estate required to establish its present fair market value, including gains or losses on sale or other disposition and any mortgages, deeds of trust or other encumbrances against the guardianship estate; and

(e) Identification of all property held in the guardianship estate as of the date of account, the assessed value of any real property and the guardian's estimate of the present fair market values of other property (including the basis on which such estimate is made), and the total net fair market value of the guardianship estate. In addition, immediately following such statement of present fair market value, the account shall set forth a statement of current amount of the guardian's bond and any other court-ordered protection for the security of the guardianship assets;

(3) The court in its discretion may allow reports at intervals of up to thirty-six months for estates with assets (exclusive of real property) having a value of not more than twice the homestead exemption. Notwithstanding contrary provisions of this section, the guardian or limited guardian of an estate need not file an annual report with the court if the funds of the guardianship are held for the benefit of a minor in a blocked account unless the guardian requests a withdrawal from such account, in which case the guardian shall provide a written verified account of the administration of the guardianship estate along with the guardian's petition for the withdrawal. The guardian or limited guardian shall report any substantial change in income or assets of the guardianship estate within thirty days of the occurrence of the change. A hearing shall be scheduled for court review and determination of provision for increased bond or other provision in accordance with RCW 11.88.100;

(4) All court orders approving accounts or reports filed by a guardian or limited guardian must contain a guardianship summary placed directly below the case caption or on a separate cover page in the following form, or a substantially similar form, containing the following information:

GUARDIANSHIP SUMMARY

Date Guardian Appointed:

Due Date for Report and

Accounting:

Date of Next Review:

Letters Expire On:

Bond Amount: \$.....

Restricted Account:

Agreements Required:

Incapacitated Person Guardian of: Estate Person
(IP)

<u>Name:</u>	<u>Name:</u>
<u>Address:</u>	<u>Address:</u>
<u>Phone:</u>	<u>Phone:</u>
<u>Facsimile:</u>	<u>Facsimile:</u>
<u>Standby Guardian</u>	<u>Address</u> <u>Relation to IP</u>
<u>Interested Parties</u>	<u>Address</u> <u>Relation to IP</u>

(5) To protect and preserve the guardianship estate, to apply it as provided in this chapter, to account for it faithfully, to perform all of the duties required by law, and at the termination of the guardianship or limited guardianship, to deliver the assets of the incapacitated person to the persons entitled thereto. Except as provided to the contrary herein, the court may authorize a guardian or limited guardian to do anything that a trustee can do under the provisions of RCW 11.98.070 for a period not exceeding one year from the date of the order or for a period corresponding to the interval in which the guardian's or limited guardian's report is required to be filed by the court pursuant to subsection (2) of this section, whichever period is longer;

~~((5))~~ (6) To invest and reinvest the property of the incapacitated person in accordance with the rules applicable to investment of trust estates by trustees as provided in chapter 11.100 RCW, except that:

(a) No investments shall be made without prior order of the court in any property other than unconditional interest bearing obligations of this state or of the United States and in obligations the interest and principal of which are unconditionally guaranteed by the United States, and in share accounts or deposits which are insured by an agency of the United States government. Such prior order of the court may authorize specific investments, or, in the discretion of the court, may authorize the guardian or limited guardian to invest and reinvest as provided in chapter 11.100 RCW without further order of the court;

(b) If it is for the best interests of the incapacitated person that a specific property be used by the incapacitated person rather than sold and the proceeds invested, the court may so order;

~~((6))~~ (7) To apply to the court no later than the filing of the inventory for an order authorizing disbursements on behalf of the incapacitated person (~~PROVIDED, HOWEVER, That~~), However, the guardian or limited guardian of the estate, or the person, department, bureau, agency, or charitable organization having the care and custody of an incapacitated person, may apply to the court for an order directing the guardian or limited guardian of the estate to pay to the person, department, bureau, agency, or charitable organization having the care and custody of an

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incapacitated person, or if the guardian or limited guardian of the estate has the care and custody of the incapacitated person, directing the guardian or limited guardian of the estate to apply an amount weekly, monthly, quarterly, semi-annually, or annually, as the court may direct, to be expended in the care, maintenance, and education of the incapacitated person and of his or her dependents. In proper cases, the court may order payment of amounts directly to the incapacitated person for his or her maintenance or incidental expenses. The amounts authorized under this section may be decreased or increased from time to time by direction of the court. If payments are made to another under an order of the court, the guardian or limited guardian of the estate is not bound to see to the application thereof.

(8) To provide evidence of the guardian or limited guardian's successful completion of any standardized training video or web cast for guardians or limited guardians made available by the administrative office of the courts and the superior court when the guardian or limited guardian: (a) Was appointed prior to the effective date of this section; (b) is not a certified professional guardian or financial institution authorized under RCW 11.88.020; and (c) has not previously completed the requirements of RCW 11.88.020(3). The training video or web cast must be provided at no cost to the guardian or limited guardian. The superior court may, upon (i) petition by the guardian or limited guardian; or (ii) any other method as provided by local court rule: (A) For good cause, waive this requirement for guardians appointed prior to the effective date of this section. Good cause shall require evidence that the guardian already possesses the requisite knowledge to serve as a guardian without completing the training. When determining whether there is good cause to waive the training requirement, the court shall consider, among other facts, the length of time the guardian has been serving the incapacitated person; whether the guardian has timely filed all required reports with the court; whether the guardian is monitored by other state or local agencies; and whether there have been any allegations of abuse, neglect, or a breach of fiduciary duty against the guardian; or (B) extend the time period for completion of the training requirement for ninety days; and

(9) To provide evidence of the guardian or limited guardian's successful completion of any additional or updated training video or web cast offered by the administrative office of the courts and the superior court as is required at the discretion of the superior court unless the guardian or limited guardian is a certified professional guardian or financial institution authorized under RCW 11.88.020. The training video or web cast must be provided at no cost to the guardian or limited guardian.

Sec. 10. RCW 11.92.050 and 1995 c 297 s 6 are each amended to read as follows:

(1) Upon the filing of any intermediate guardianship or limited guardianship account or report required by statute, or of any intermediate account or report required by court rule or order, the ~~((guardian or limited guardian may petition the court for))~~ court shall enter an order settling ~~((his or her))~~ the guardianship account or report with regard to any receipts, expenditures, and investments made and acts done by the guardian or limited guardian to the date of the interim report.

(2) Upon such ((petition)) account or report being filed, the court may, in its discretion, ((where the size or condition of the estate warrants it,)) set a date for the hearing ((of the petition)) and require the service of the ((petition)) guardian's report or account and a notice of the hearing as provided in RCW 11.88.040 as now or hereafter amended or as specified by the court; and, in the event a hearing is ordered, the court may also appoint a guardian ad litem, whose duty it shall be to investigate the account or report of the

guardian or limited guardian of the estate and to advise the court thereon at the hearing, in writing.

(3) At the hearing on or upon the court's review of the account or report of the guardian or limited guardian, if the court is satisfied that the actions of the guardian or limited guardian have been proper, and that the guardian or limited guardian has in all respects discharged his or her trust with relation to the receipts, expenditures, investments, and acts, then, in such event, the court shall enter an order approving such account or report.

(4) If a guardian or limited guardian fails to file the account or report or fails to appear at the hearing, the court shall enter an order for one or more of the following actions:

(a) Entering an order to show cause and requiring the guardian to appear at a show cause hearing. At the hearing the court may take action to protect the incapacitated person, including, but not limited to, removing the guardian or limited guardian pursuant to RCW 11.88.120 and appointing a successor;

(b) Directing the clerk to extend the letters, for good cause shown, for no more than ninety days, to permit the guardian to file his or her account or report;

(c) Requiring the completion of any approved guardianship training made available to the guardian by the court;

(d) Appointing a guardian ad litem subject to the requirements in RCW 11.88.090;

(e) Providing other and further relief the court deems just and equitable.

(5) If the court has appointed a guardian ad litem, the order shall be final and binding upon the incapacitated person, subject only to the right of appeal as upon a final order; provided that at the time of final account of said guardian or limited guardian or within one year after the incapacitated person attains his or her majority any such interim account may be challenged by the incapacitated person on the ground of fraud.

~~((2))~~ (6) The procedure established in ((subsection (4) of)) this section for financial accounts by guardians or limited guardians of the estate shall apply to personal care reports filed by guardians or limited guardians of the person under RCW 11.92.043.

Sec. 11. RCW 36.18.016 and 2009 c 417 s 2 are each amended to read as follows:

(1) Revenue collected under this section is not subject to division under RCW 36.18.025 or 27.24.070.

(2)(a) For the filing of a petition for modification of a decree of dissolution or paternity, within the same case as the original action, and any party filing a counterclaim, cross-claim, or third-party claim in any such action, a fee of thirty-six dollars must be paid.

(b) The party filing the first or initial petition for dissolution, legal separation, or declaration concerning the validity of marriage shall pay, at the time and in addition to the filing fee required under RCW 36.18.020, a fee of thirty dollars. The clerk of the superior court shall transmit monthly twenty-four dollars of the thirty-dollar fee collected under this subsection to the state treasury for deposit in the domestic violence prevention account. The remaining six dollars shall be retained by the county for the purpose of supporting community-based services within the county for victims of domestic violence, except for five percent of the six dollars, which may be retained by the court for administrative purposes.

(3)(a) The party making a demand for a jury of six in a civil action shall pay, at the time, a fee of one hundred twenty-five dollars; if the demand is for a jury of twelve, a fee of two hundred fifty dollars. If, after the party demands a jury of six and pays the required fee, any other party to the action requests a jury of twelve, an additional one hundred twenty-five dollar fee will be required of the party demanding the increased number of jurors.

(b) Upon conviction in criminal cases a jury demand charge of one hundred twenty-five dollars for a jury of six, or two hundred

fifty dollars for a jury of twelve may be imposed as costs under RCW 10.46.190.

(4) For preparing a certified copy of an instrument on file or of record in the clerk's office, for the first page or portion of the first page, a fee of five dollars, and for each additional page or portion of a page, a fee of one dollar must be charged. For authenticating or exemplifying an instrument, a fee of two dollars for each additional seal affixed must be charged. For preparing a copy of an instrument on file or of record in the clerk's office without a seal, a fee of fifty cents per page must be charged. When copying a document without a seal or file that is in an electronic format, a fee of twenty-five cents per page must be charged. For copies made on a compact disc, an additional fee of twenty dollars for each compact disc must be charged.

(5) For executing a certificate, with or without a seal, a fee of two dollars must be charged.

(6) For a garnishee defendant named in an affidavit for garnishment and for a writ of attachment, a fee of twenty dollars must be charged.

(7) For filing a supplemental proceeding, a fee of twenty dollars must be charged.

(8) For approving a bond, including justification on the bond, in other than civil actions and probate proceedings, a fee of two dollars must be charged.

(9) For the issuance of a certificate of qualification and a certified copy of letters of administration, letters testamentary, or letters of guardianship, there must be a fee of five dollars.

(10) For the preparation of a passport application, the clerk may collect an execution fee as authorized by the federal government.

(11) For clerk's services such as performing historical searches, compiling statistical reports, and conducting exceptional record searches, the clerk may collect a fee not to exceed thirty dollars per hour.

(12) For processing ex parte orders, the clerk may collect a fee of thirty dollars.

(13) For duplicated recordings of court's proceedings there must be a fee of ten dollars for each audio tape and twenty-five dollars for each video tape or other electronic storage medium.

(14) For registration of land titles, Torrens Act, under RCW 65.12.780, a fee of twenty dollars must be charged.

(15) For the issuance of extension of judgment under RCW 6.17.020 and chapter 9.94A RCW, a fee of two hundred dollars must be charged. When the extension of judgment is at the request of the clerk, the two hundred dollar charge may be imposed as court costs under RCW 10.46.190.

(16) A facilitator surcharge of up to twenty dollars must be charged as authorized under RCW 26.12.240.

(17) For filing a water rights statement under RCW 90.03.180, a fee of twenty-five dollars must be charged.

(18) For filing a claim of frivolous lien under RCW 60.04.081, a fee of thirty-five dollars must be charged.

(19) For preparation of a change of venue, a fee of twenty dollars must be charged by the originating court in addition to the per page charges in subsection (4) of this section.

(20) A service fee of five dollars for the first page and one dollar for each additional page must be charged for receiving faxed documents, pursuant to Washington state rules of court, general rule 17.

(21) For preparation of clerk's papers under RAP 9.7, a fee of fifty cents per page must be charged.

(22) For copies and reports produced at the local level as permitted by RCW 2.68.020 and supreme court policy, a variable fee must be charged.

(23) Investment service charge and earnings under RCW 36.48.090 must be charged.

(24) Costs for nonstatutory services rendered by clerk by authority of local ordinance or policy must be charged.

(25) For filing a request for mandatory arbitration, a filing fee may be assessed against the party filing a statement of arbitrability not to exceed two hundred twenty dollars as established by authority of local ordinance. This charge shall be used solely to offset the cost of the mandatory arbitration program.

(26) For filing a request for trial de novo of an arbitration award, a fee not to exceed two hundred fifty dollars as established by authority of local ordinance must be charged.

(27) A public agency may not charge a fee to a law enforcement agency, for preparation, copying, or mailing of certified copies of the judgment and sentence, information, affidavit of probable cause, and/or the notice of requirement to register, of a sex offender convicted in a Washington court, when such records are necessary for risk assessment, preparation of a case for failure to register, or maintenance of a sex offender's registration file.

(28) For the filing of a will or codicil under the provisions of chapter 11.12 RCW, a fee of twenty dollars must be charged.

(29) For the collection of unpaid legal financial obligations, the clerk may impose an annual fee of up to one hundred dollars, pursuant to RCW 9.94A.780.

(30) A surcharge of up to twenty dollars may be charged in dissolution and legal separation actions as authorized by RCW 26.12.260.

(31) For the filing of accounts required under RCW 11.92.040(2), a fee must be charged to the estate of the incapacitated person. The amount of the fee is determined by the total net fair market value of the guardianship estate identified pursuant to RCW 11.92.040(2)(e). If the total fair market value of the guardianship estate is less than or equal to one hundred thousand dollars, a filing fee is not required. If the superior court finds that payment of the filing fee would result in substantial hardship upon the incapacitated person, the superior court may waive or reduce the filing fee. The amount of the fee is as follows:

(a) Seventy-five dollars for guardianship estates with a total net fair market value greater than one hundred thousand dollars but not exceeding five hundred thousand dollars;

(b) One hundred fifty dollars for guardianship estates with a total net fair market value greater than five hundred thousand dollars but not exceeding one million dollars; or

(c) Two hundred fifty dollars for guardianship estates with a total net fair market value greater than one million dollars.

(32) The revenue to counties from the fees established in this section shall be deemed to be complete reimbursement from the state for the state's share of benefits paid to the superior court judges of the state prior to July 24, 2005, and no claim shall lie against the state for such benefits."

Senators Kline and Pflug 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 Kline and Pflug to Substitute House Bill No. 1053.

The motion by Senator Kline 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 3 of the title, after "force;" strike the remainder of the title and insert "amending RCW 11.88.020, 11.88.030, 11.92.043, 11.88.095, 11.88.125, 11.88.140, 11.92.053, 11.92.040, 11.92.050, and 36.18.016; and adding a new section to chapter 11.88 RCW."

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MOTION

On motion of Senator Kline, the rules were suspended, Substitute House Bill No. 1053 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 Kline 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. 1053 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 1053 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 46; Nays, 0; Absent, 0; Excused, 3.

Voting yea: Senators Baumgartner, Baxter, Becker, Benton, Carrell, Chase, Conway, Eide, Ericksen, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom, White and Zarelli

Excused: Senators Brown, Delvin and Parlette

SUBSTITUTE HOUSE BILL NO. 1053 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.

MESSAGE FROM THE HOUSE

April 21, 2011

MR. PRESIDENT:

The House insists on its position regarding the Senate amendment(s) to SUBSTITUTE HOUSE BILL NO. 1081 and again asks the Senate to recede therefrom. and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Rockefeller moved that the Senate adhere to its position in the Senate amendment(s) to Substitute House Bill No. 1081 and ask the House to concur thereon.

Senator Rockefeller spoke in favor of the motion.

The President declared the question before the Senate to be motion by Senator Rockefeller that the Senate adhere to its position in the Senate amendment(s) to Substitute House Bill No. 1081 and ask the House to concur thereon.

The motion by Senator Rockefeller carried and the Senate adhered to its position in the Senate amendment(s) to Substitute House Bill No. 1081 and asked the House to concur thereon by voice vote.

MESSAGE FROM THE HOUSE

April 13, 2011

MR. PRESIDENT:

The House refuses to concur in the Senate amendment(s) to HOUSE BILL NO. 1229 and asks the Senate to recede therefrom. and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Haugen moved that the Senate recede from its position on the Senate amendments to House Bill No. 1229.

The President declared the question before the Senate to be motion by Senator Haugen that the Senate recede from its position on the Senate amendments to House Bill No. 1229.

The motion by Senator Haugen carried and the Senate receded from its amendments to House Bill No. 1229 by voice vote.

MOTION

On motion of Senator Haugen, the rules were suspended and House Bill No. 1229 was returned to second reading for the purposes of amendment.

SECOND READING

HOUSE BILL NO. 1229, by Representatives Moscoso, Armstrong and Kenney

Concerning the certification of commercial driver's license holders and applicants. (REVISED FOR PASSED LEGISLATURE: Concerning certain commercial motor vehicle provisions.)

The measure was read the second time.

MOTION

Senator Haugen moved that the following striking amendment by Senators Haugen and King be adopted:

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 46.25.010 and 2009 c 181 s 2 are each amended to read as follows:

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

(1) "Alcohol" means any substance containing any form of alcohol, including but not limited to ethanol, methanol, propanol, and isopropanol.

(2) "Alcohol concentration" means:

(a) The number of grams of alcohol per one hundred milliliters of blood; or

(b) The number of grams of alcohol per two hundred ten liters of breath.

(3) "Commercial driver's license" (CDL) means a license issued to an individual under chapter 46.20 RCW that has been endorsed in accordance with the requirements of this chapter to authorize the individual to drive a class of commercial motor vehicle.

(4) The "commercial driver's license information system" (CDLIS) is the information system established pursuant to ~~(the CMVSA)~~ 49 U.S.C. Sec. 31309 to serve as a clearinghouse for locating information related to the licensing and identification of commercial motor vehicle drivers.

(5) "Commercial driver's instruction permit" means a permit issued under RCW 46.25.060(5).

(6) "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

(a) Has a gross vehicle weight rating of 11,794 kilograms or more (26,001 pounds or more) inclusive of a towed unit with a gross vehicle weight rating of more than 4,536 kilograms (10,000 pounds or more); or

(b) Has a gross vehicle weight rating of 11,794 kilograms or more (26,001 pounds or more); or

(c) Is designed to transport sixteen or more passengers, including the driver; or

(d) Is of any size and is used in the transportation of hazardous materials as defined in this section; or

(e) Is a school bus regardless of weight or size.

(7) "Conviction" means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court cost, entry into a deferred prosecution program under chapter 10.05 RCW, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.

(8) "Disqualification" means a prohibition against driving a commercial motor vehicle.

(9) "Drive" means to drive, operate, or be in physical control of a motor vehicle in any place open to the general public for purposes of vehicular traffic. For purposes of RCW 46.25.100, 46.25.110, and 46.25.120, "drive" includes operation or physical control of a motor vehicle anywhere in the state.

(10) "Drugs" are those substances as defined by RCW 69.04.009, including, but not limited to, those substances defined by 49 C.F.R. Sec. 40.3.

(11) "Employer" means any person, including the United States, a state, or a political subdivision of a state, who owns or leases a commercial motor vehicle, or assigns a person to drive a commercial motor vehicle.

(12) "Gross vehicle weight rating" (GVWR) means the value specified by the manufacturer as the maximum loaded weight of a single vehicle. The GVWR of a combination or articulated vehicle, commonly referred to as the "gross combined weight rating" or GCWR, is the GVWR of the power unit plus the GVWR of the towed unit or units. If the GVWR of any unit cannot be determined, the actual gross weight will be used. If a vehicle with a GVWR of less than 11,794 kilograms (26,001 pounds or less) has been structurally modified to carry a heavier load, then the actual gross weight capacity of the modified vehicle, as determined by RCW 46.44.041 and 46.44.042, will be used as the GVWR.

(13) "Hazardous materials" means any material that has been designated as hazardous under 49 U.S.C. Sec. 5103 and is required to be placarded under subpart F of 49 C.F.R. Part 172 or any quantity of a material listed as a select agent or toxin in 42 C.F.R. Part 73.

(14) "Motor vehicle" means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power used on highways, or any other vehicle required to be registered under the laws of this state, but does not include a vehicle, machine, tractor, trailer, or semitrailer operated exclusively on a rail.

(15) "Out-of-service order" means a declaration by an authorized enforcement officer of a federal, state, Canadian, Mexican, or local jurisdiction that a driver, a commercial motor vehicle, or a motor carrier operation is out-of-service pursuant to 49 C.F.R. Secs. 386.72, 392.5, 395.13, 396.9, or compatible laws, or the North American uniform out-of-service criteria.

(16) "Positive alcohol confirmation test" means an alcohol confirmation test that:

(a) Has been conducted by a breath alcohol technician under 49 C.F.R. Part 40; and

(b) Indicates an alcohol concentration of 0.04 or more.

A report that a person has refused an alcohol test, under circumstances that constitute the refusal of an alcohol test under 49 C.F.R. Part 40, will be considered equivalent to a report of a positive alcohol confirmation test for the purposes of this chapter.

(17) "School bus" means a commercial motor vehicle used to transport preprimary, primary, or secondary school students from home to school, from school to home, or to and from school-sponsored events. School bus does not include a bus used as a common carrier.

(18) "Serious traffic violation" means:

(a) Excessive speeding, defined as fifteen miles per hour or more in excess of the posted limit;

(b) Reckless driving, as defined under state or local law;

(c) A violation of a state or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with an accident or collision resulting in death to any person;

(d) Driving a commercial motor vehicle without obtaining a commercial driver's license;

(e) Driving a commercial motor vehicle without a commercial driver's license in the driver's possession; however, any individual who provides proof to the court by the date the individual must appear in court or pay any fine for such a violation, that the individual held a valid CDL on the date the citation was issued, is not guilty of a "serious traffic offense";

(f) Driving a commercial motor vehicle without the proper class of commercial driver's license endorsement or endorsements for the specific vehicle group being operated or for the passenger or type of cargo being transported; and

(g) Any other violation of a state or local law relating to motor vehicle traffic control, other than a parking violation, that the department determines by rule to be serious.

(19) "State" means a state of the United States and the District of Columbia.

(20) "Substance abuse professional" means an alcohol and drug specialist meeting the credentials, knowledge, training, and continuing education requirements of 49 C.F.R. Sec. 40.281.

(21) "Tank vehicle" means a vehicle that is designed to transport a liquid or gaseous material within a tank that is either permanently or temporarily attached to the vehicle or the chassis. Tank vehicles include, but are not limited to cargo tanks and portable tanks. However, this definition does not include portable tanks having a rated capacity under one thousand gallons.

(22) "Type of driving" means one of the following:

(a) "Nonexcepted interstate," which means the CDL holder or applicant operates or expects to operate in interstate commerce, is both subject to and meets the qualification requirements under 49 C.F.R. Part 391 as it existed on the effective date of this section, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section, and is required to obtain a medical examiner's certificate under 49 C.F.R. Sec. 391.45 as it existed on the effective date of this section, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section;

(b) "Excepted interstate," which means the CDL holder or applicant operates or expects to operate in interstate commerce, but engages exclusively in transportation or operations excepted under 49 C.F.R. Secs. 390.3(f), 391.2, 391.68, or 398.3, as they existed on the effective date of this section, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section, from all or parts of the qualification requirements of 49 C.F.R. Part 391 as it existed on the effective date of this section, or

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such subsequent date as may be provided by the department by rule, consistent with the purposes of this section, and is therefore not required to obtain a medical examiner's certificate under 49 C.F.R. Sec. 391.45 as it existed on the effective date of this section, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section;

(c) "Nonexcepted intrastate," which means the CDL holder or applicant operates only in intrastate commerce and is therefore subject to state driver qualification requirements; or

(d) "Excepted intrastate," which means the CDL holder or applicant operates in intrastate commerce, but engages exclusively in transportation or operations excepted from all or parts of the state driver qualification requirements.

(23) "United States" means the fifty states and the District of Columbia.

~~((23))~~ (24) "Verified positive drug test" means a drug test result or validity testing result from a laboratory certified under the authority of the federal department of health and human services that:

(a) Indicates a drug concentration at or above the cutoff concentration established under 49 C.F.R. Sec. 40.87; and

(b) Has undergone review and final determination by a medical review officer.

A report that a person has refused a drug test, under circumstances that constitute the refusal of a federal department of transportation drug test under 49 C.F.R. Part 40, will be considered equivalent to a report of a verified positive drug test for the purposes of this chapter.

Sec. 2. RCW 46.25.080 and 2004 c 249 s 8 and 2004 c 187 s 5 are each reenacted and amended to read as follows:

(1) The commercial driver's license must be marked "commercial driver's license" or "CDL," and must be, to the maximum extent practicable, tamperproof. It must include, but not be limited to, the following information:

(a) The name and residence address of the person;

(b) The person's color photograph;

(c) A physical description of the person including sex, height, weight, and eye color;

(d) Date of birth;

(e) The person's social security number or any number or identifier deemed appropriate by the department;

(f) The person's signature;

(g) The class or type of commercial motor vehicle or vehicles that the person is authorized to drive, together with any endorsements or restrictions;

(h) The name of the state; and

(i) The dates between which the license is valid.

(2) Commercial driver's licenses may be issued with the classifications, endorsements, and restrictions set forth in this subsection. The holder of a valid commercial driver's license may drive all vehicles in the class for which that license is issued and all lesser classes of vehicles except motorcycles and vehicles that require an endorsement, unless the proper endorsement appears on the license.

(a) Licenses may be classified as follows:

(i) Class A is a combination of vehicles with a gross combined weight rating (GCWR) of 26,001 pounds or more, if the GVWR of the vehicle or vehicles being towed is in excess of 10,000 pounds.

(ii) Class B is a single vehicle with a GVWR of 26,001 pounds or more, and any such vehicle towing a vehicle not in excess of 10,000 pounds.

(iii) Class C is a single vehicle with a GVWR of less than 26,001 pounds or any such vehicle towing a vehicle with a GVWR not in excess of 10,000 pounds consisting of:

(A) Vehicles designed to transport sixteen or more passengers, including the driver; or

(B) Vehicles used in the transportation of hazardous materials.

(b) The following endorsements and restrictions may be placed on a license:

(i) "H" authorizes the driver to drive a vehicle transporting hazardous materials.

(ii) "K" restricts the driver to vehicles not equipped with air brakes.

(iii) "T" authorizes driving double and triple trailers.

(iv) "P1" authorizes driving all vehicles, other than school buses, carrying passengers.

(v) "P2" authorizes driving vehicles with a GVWR of less than 26,001 pounds, other than school buses, carrying sixteen or more passengers, including the driver.

(vi) "N" authorizes driving tank vehicles.

(vii) "X" represents a combination of hazardous materials and tank vehicle endorsements.

(viii) "S" authorizes driving school buses.

(ix) "V" means that the driver has been issued a medical variance.

The license may be issued with additional endorsements and restrictions as established by rule of the director.

(3) All school bus drivers must have either a "P1" or "P2" endorsement depending on the GVWR of the school bus being driven.

(4) Before issuing a commercial driver's license, the department shall obtain driving record information:

(a) Through the commercial driver's license information system;

(b) Through the national driver register;

(c) From the current state of record; and

(d) From all states where the applicant was previously licensed over the last ten years to drive any type of motor vehicle.

A check under (d) of this subsection need be done only once, either at the time of application for a new commercial driver's license, or upon application for a renewal of a commercial driver's license for the first time after July 1, 2005, provided a notation is made on the driver's record confirming that the driving record check has been made and noting the date it was completed.

(5) Within ten days after issuing a commercial driver's license, the department must notify the commercial driver's license information system of ~~((that fact,))~~ the information required under 49 C.F.R. Sec. 383.73 as it existed on the effective date of this section, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section and provide all information required to ensure identification of the person.

(6) A commercial driver's license shall expire in the same manner as provided in RCW 46.20.181.

(7) When applying for renewal of a commercial driver's license, the applicant shall:

(a) Complete the application form required by RCW 46.25.070(1), providing updated information and required certifications;

(b) Submit the application to the department in person; and

(c) If the applicant wishes to retain a hazardous materials endorsement, take and pass the written test for a hazardous materials endorsement.

NEW SECTION. Sec. 3. A new section is added to chapter 46.25 RCW to read as follows:

(1)(a) Any person applying for a CDL must certify that he or she is or expects to be engaged in one of the following types of driving:

(i) Nonexcepted interstate;

(ii) Excepted interstate;

(iii) Nonexcepted intrastate; or

(iv) Excepted intrastate.

(b) From January 30, 2012, to January 30, 2014, the department may require that any person holding a CDL prior to the effective date of this section must provide the department with the certification required under (a) of this subsection. The CDL of a person failing to submit the required certification is subject to downgrade under subsection (4) of this section.

(2) A CDL applicant or holder who certifies under subsection (1)(a)(i) of this section that he or she is or expects to be engaged in nonexcepted interstate commerce must provide a copy of a medical examiner's certificate prepared by a medical examiner, as defined in 49 C.F.R. Sec. 390.5 as it existed on the effective date of this section, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section. Upon submission, a copy of the medical examiner's certificate must be date-stamped by the department. A CDL holder who certifies under subsection (1)(a)(i) of this section must submit a copy of each subsequently issued medical examiner's certificate.

(3) For each operator of a commercial motor vehicle required to have a commercial driver's license, the department must meet the following requirements:

(a)(i) The driver's self-certification of type of driving under subsection (1) of this section must be maintained on the driver's record and the CDLIS driver record;

(ii) The copy of a medical examiner's certificate, when submitted under subsection (2) of this section, must be retained for three years beyond the date the certificate was issued; and

(iii) When a medical examiner's certificate is submitted under subsection (2) of this section, the information required under 49 C.F.R. Sec. 383.73(j)(1)(iii) as it existed on the effective date of this section, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section must be posted to the CDLIS driver record within ten calendar days from the date submitted. The indicator of medical certification status, such as "certified" or "not-certified," must be maintained on the driver's record.

(b) Within ten calendar days of the driver's medical certification status expiring or a medical variance expiring or being rescinded, the medical certification status of the driver must be updated to "not-certified."

(c) Within ten calendar days of receiving information from the federal motor carrier safety administration regarding issuance or renewal of a medical variance for a driver, the department must update the CDLIS driver record to include the medical variance information.

(4)(a) If a driver's medical certification or medical variance expires, or the federal motor carrier safety administration notifies the department that a medical variance was removed or rescinded, the department must:

(i) Notify the driver of his or her "not-certified" medical certification status and that the CDL privilege will be removed from the driver's license unless the driver submits a current medical certificate or medical variance, or changes his or her self-certification to driving only in excepted or intrastate commerce; and

(ii) Initiate procedures for downgrading the license. The CDL downgrade must be completed and recorded within sixty days of the driver's medical certification status becoming "not-certified" to operate a commercial motor vehicle.

(b) Beginning January 30, 2014, if a driver fails to provide the department with the certification required in subsection (1) of this section, or a current medical examiner's certificate if the driver self-certifies under subsection (1)(a)(i) of this section that he or she is operating in nonexcepted interstate commerce as required in subsection (2) of this section, the department must mark the CDLIS driver record as "not-certified" and initiate a CDL downgrade in accordance with (a)(ii) of this subsection.

(c) A driver whose CDL has been downgraded under this subsection may restore the CDL privilege by providing the necessary certifications or medical variance information to the department.

Sec. 4. RCW 46.25.090 and 2006 c 327 s 4 are each amended to read as follows:

(1) A person is disqualified from driving a commercial motor vehicle for a period of not less than one year if a report has been received by the department pursuant to RCW 46.20.308 or 46.25.120, or if the person has been convicted of a first violation, within this or any other jurisdiction, of:

(a) Driving a motor vehicle under the influence of alcohol or any drug;

(b) Driving a commercial motor vehicle while the alcohol concentration in the person's system is 0.04 or more, or driving a noncommercial motor vehicle while the alcohol concentration in the person's system is 0.08 or more, or is 0.02 or more if the person is under age twenty-one, as determined by any testing methods approved by law in this state or any other state or jurisdiction;

(c) Leaving the scene of an accident involving a motor vehicle driven by the person;

(d) Using a motor vehicle in the commission of a felony;

(e) Refusing to submit to a test or tests to determine the driver's alcohol concentration or the presence of any drug while driving a motor vehicle;

(f) Driving a commercial motor vehicle when, as a result of prior violations committed while operating a commercial motor vehicle, the driver's commercial driver's license is revoked, suspended, or canceled, or the driver is disqualified from operating a commercial motor vehicle;

(g) Causing a fatality through the negligent operation of a commercial motor vehicle, including but not limited to the crimes of vehicular homicide and negligent homicide.

If any of the violations set forth in this subsection occurred while transporting hazardous material, the person is disqualified for a period of not less than three years.

(2) A person is disqualified for life if it has been determined that the person has committed or has been convicted of two or more violations of any of the offenses specified in subsection (1) of this section, or any combination of those offenses, arising from two or more separate incidents.

(3) The department may adopt rules, in accordance with federal regulations, establishing guidelines, including conditions, under which a disqualification for life under subsection (2) of this section may be reduced to a period of not less than ten years.

(4) A person is disqualified from driving a commercial motor vehicle for life who uses a motor vehicle in the commission of a felony involving the manufacture, distribution, or dispensing of a controlled substance, as defined by chapter 69.50 RCW, or possession with intent to manufacture, distribute, or dispense a controlled substance, as defined by chapter 69.50 RCW.

(5)(a) A person is disqualified from driving a commercial motor vehicle for a period of:

(i) Not less than sixty days if:

(A) Convicted of or found to have committed a second serious traffic violation while driving a commercial motor vehicle; or

(B) Convicted of reckless driving, where there has been a prior serious traffic violation; or

(ii) Not less than one hundred twenty days if:

(A) Convicted of or found to have committed a third or subsequent serious traffic violation while driving a commercial motor vehicle; or

(B) Convicted of reckless driving, where there has been two or more prior serious traffic violations.

(b) The disqualification period under (a)(ii) of this subsection must be in addition to any other previous period of disqualification.

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(c) For purposes of determining prior serious traffic violations under this subsection, each conviction of or finding that a driver has committed a serious traffic violation while driving a commercial motor vehicle or noncommercial motor vehicle, arising from a separate incident occurring within a three-year period, must be counted.

(6) A person is disqualified from driving a commercial motor vehicle for a period of:

(a) Not less than ~~((ninety))~~ one hundred eighty days nor more than one year if convicted of or found to have committed a first violation of an out-of-service order while driving a commercial vehicle;

(b) Not less than ~~((one))~~ two years nor more than five years if, during a ten-year period, the person is convicted of or is found to have committed two violations of out-of-service orders while driving a commercial motor vehicle in separate incidents;

(c) Not less than three years nor more than five years if, during a ten-year period, the person is convicted of or is found to have committed three or more violations of out-of-service orders while driving commercial motor vehicles in separate incidents;

(d) Not less than one hundred eighty days nor more than two years if the person is convicted of or is found to have committed a first violation of an out-of-service order while transporting hazardous materials, or while operating motor vehicles designed to transport sixteen or more passengers, including the driver. A person is disqualified for a period of not less than three years nor more than five years if, during a ten-year period, the person is convicted of or is found to have committed subsequent violations of out-of-service orders, in separate incidents, while transporting hazardous materials, or while operating motor vehicles designed to transport sixteen or more passengers, including the driver.

(7) A person is disqualified from driving a commercial motor vehicle if a report has been received by the department under RCW 46.25.125 that the person has received a verified positive drug test or positive alcohol confirmation test as part of the testing program conducted under 49 C.F.R. 40. A disqualification under this subsection remains in effect until the person undergoes a drug and alcohol assessment by a substance abuse professional meeting the requirements of 49 C.F.R. 40, and the person presents evidence of satisfactory participation in or successful completion of a drug or alcohol treatment and/or education program as recommended by the substance abuse professional, and until the person has met the requirements of RCW 46.25.100. The substance abuse professional shall forward a diagnostic evaluation and treatment recommendation to the department of licensing for use in determining the person's eligibility for driving a commercial motor vehicle. Persons who are disqualified under this subsection more than twice in a five-year period are disqualified for life.

(8)(a) A person is disqualified from driving a commercial motor vehicle for the period of time specified in (b) of this subsection if he or she is convicted of or is found to have committed one of the following six offenses at a railroad-highway grade crossing while operating a commercial motor vehicle in violation of a federal, state, or local law or regulation:

(i) For drivers who are not required to always stop, failing to slow down and check that the tracks are clear of an approaching train;

(ii) For drivers who are not required to always stop, failing to stop before reaching the crossing, if the tracks are not clear;

(iii) For drivers who are always required to stop, failing to stop before driving onto the crossing;

(iv) For all drivers, failing to have sufficient space to drive completely through the crossing without stopping;

(v) For all drivers, failing to obey a traffic control device or the directions of an enforcement officer at the crossing;

(vi) For all drivers, failing to negotiate a crossing because of insufficient undercarriage clearance.

(b) A person is disqualified from driving a commercial motor vehicle for a period of:

(i) Not less than sixty days if the driver is convicted of or is found to have committed a first violation of a railroad-highway grade crossing violation;

(ii) Not less than one hundred twenty days if the driver is convicted of or is found to have committed a second railroad-highway grade crossing violation in separate incidents within a three-year period;

(iii) Not less than one year if the driver is convicted of or is found to have committed a third or subsequent railroad-highway grade crossing violation in separate incidents within a three-year period.

(9) A person is disqualified from driving a commercial motor vehicle for not more than one year if a report has been received by the department from the federal motor carrier safety administration that the person's driving has been determined to constitute an imminent hazard as defined by 49 C.F.R. 383.5. A person who is simultaneously disqualified from driving a commercial motor vehicle under this subsection and under other provisions of this chapter, or under 49 C.F.R. 383.52, shall serve those disqualification periods concurrently.

(10) Within ten days after suspending, revoking, or canceling a commercial driver's license or disqualifying a driver from operating a commercial motor vehicle, the department shall update its records to reflect that action.

Sec. 5. RCW 46.32.100 and 2010 c 161 s 1116 are each amended to read as follows:

(1)(a) In addition to all other penalties provided by law, and except as provided otherwise in (a)(i), (ii), or (iii) of this subsection, a commercial motor vehicle that is subject to compliance reviews under this chapter and an officer, agent, or employee of a company operating a commercial motor vehicle who violates or who procures, aids, or abets in the violation of this title or any order or rule of the state patrol is liable for a penalty of one hundred dollars for each violation.

(i) It is a violation of this chapter for a person operating a commercial motor vehicle to fail to comply with the requirements of 49 C.F.R. Pt. 382, controlled substances and alcohol use and testing, 49 C.F.R. Sec. 391.15, disqualification of drivers, and 49 C.F.R. Sec. 396.9(c)(2), moving a vehicle placed out of service before the out of service defects have been satisfactorily repaired. For each violation the person is liable for a penalty of five hundred dollars.

(ii) The driver of a commercial motor vehicle who ~~((violates))~~ is convicted of violating an out-of-service order is liable for a penalty of at least ~~((one))~~ two thousand ~~((one))~~ five hundred dollars ~~((but not more than two thousand seven hundred fifty dollars for each))~~ for a first violation, and not less than five thousand dollars for second or subsequent violation.

(iii) An employer who allows ~~((a driver to operate))~~ the operation of a commercial motor vehicle when there is an out-of-service order is liable for a penalty of at least two thousand seven hundred fifty dollars but not more than ~~((eleven))~~ twenty-five thousand dollars for each violation.

(iv) Each violation under this subsection (1)(a) is a separate and distinct offense, and in case of a continuing violation every day's continuance is a separate and distinct violation.

(b) In addition to all other penalties provided by law, any motor carrier, company, or any officer or agent of a motor carrier or company operating a commercial motor vehicle subject to compliance reviews under this chapter who refuses entry or to make the required records, documents, and vehicles available to a duly authorized agent of the state patrol is liable for a penalty of at least

five thousand dollars as well as an out-of-service order being placed on the department of transportation number, as defined in RCW 46.16A.010, and vehicle registration to operate. Each violation is a separate and distinct offense, and in case of a continuing violation every day's continuance is a separate and distinct violation.

(c) A motor carrier operating a commercial motor vehicle after receiving a final unsatisfactory rating or being placed out of service is liable for a penalty of not more than eleven thousand dollars for each violation. Each violation is a separate and distinct offense, and in case of a continuing violation every day's continuance is a separate and distinct violation.

(d) A high-risk carrier is liable for double the amount of the penalty of a prior violation if the high-risk carrier repeats the same violation during a follow-up compliance review. Each repeat violation is a separate and distinct offense, and in case of a repeat continuing violation every day's continuance is a separate and distinct violation.

(2) The Washington state patrol may place an out-of-service order on a department of transportation number, as defined in RCW 46.16A.010, for violations of this chapter or for nonpayment of any monetary penalties assessed by the state patrol or the utilities and transportation commission, as a result of compliance reviews, or for violations of cease and desist orders issued by the utilities and transportation commission. The state patrol shall notify the department of licensing when an out-of-service order has been placed on a motor carrier's department of transportation number. The state patrol shall notify the motor carrier when there has been an out-of-service order placed on the motor carrier's department of transportation number and the vehicle registrations have been revoked by sending a notice by first-class mail using the last known address for the registered or legal owner or owners, and recording the transmittal on an affidavit of first-class mail. Notices under this section fulfill the requirements of RCW 46.12.550. Motor carriers may not be eligible for a new department of transportation number, vehicle registration, or temporary permits to operate unless the violations that resulted in the out-of-service order have been corrected.

(3) Any penalty provided in this section is due and payable when the person incurring it receives a notice in writing from the state patrol describing the violation and advising the person that the penalty is due.

(a)(i) Any motor carrier who incurs a penalty as provided in this section, except for a high-risk carrier that incurs a penalty for a repeat violation during a follow-up compliance review, may, upon written application, request that the state patrol mitigate the penalty. An application for mitigation must be received by the state patrol within twenty days of the receipt of notice.

(ii) The state patrol may decline to consider any application for mitigation.

(b) Any motor carrier who incurs a penalty as provided in this section has a right to an administrative hearing under chapter 34.05 RCW to contest the violation or the penalty imposed, or both. In all such hearings, the procedure and rules of evidence are as specified in chapter 34.05 RCW except as otherwise provided in this chapter. Any request for an administrative hearing must be made in writing and must be received by the state patrol within twenty days after the later of (i) receipt of the notice imposing the penalty, or (ii) disposition of a request for mitigation, or the right to a hearing is waived.

(c) All penalties recovered under this section shall be paid into the state treasury and credited to the state patrol highway account of the motor vehicle fund.

Sec. 6. RCW 46.20.049 and 2005 c 314 s 309 are each amended to read as follows:

There shall be an additional fee for issuing any class of commercial driver's license in addition to the prescribed fee required

for the issuance of the original driver's license. The additional fee for each class shall be ~~((thirty))~~ sixty-one dollars for the original commercial driver's license or subsequent renewals. If the commercial driver's license is renewed or extended for a period other than five years, the fee for each class shall be ~~((six))~~ twelve dollars and twenty cents for each year that the commercial driver's license is renewed or extended. The fee shall be deposited in the highway safety fund.

NEW SECTION. Sec. 7. Sections 1 through 3 of this act take effect January 30, 2012."

Senator Haugen 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 Haugen and King to House Bill No. 1229.

The motion by Senator Haugen 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 "Relating to" strike the remainder of the title and insert "certain commercial motor vehicle provisions; amending RCW 46.25.010, 46.25.090, 46.32.100, and 46.20.049; reenacting and amending RCW 46.25.080; adding a new section to chapter 46.25 RCW; prescribing penalties; and providing an effective date."

MOTION

On motion of Senator Haugen, the rules were suspended, House Bill No. 1229 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

The President declared the question before the Senate to be the final passage of House Bill No. 1229 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 1229 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 40; Nays, 5; Absent, 1; Excused, 3.

Voting yea: Senators Baumgartner, Becker, Benton, Carrell, Chase, Conway, Eide, Ericksen, Fain, Fraser, Hargrove, Harper, Hatfield, Hewitt, Hill, Hobbs, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Murray, Nelson, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Shin, Swecker, Tom, White and Zarelli

Voting nay: Senators Baxter, Holmquist Newbry, Morton, Sheldon and Stevens

Absent: Senator Haugen

Excused: Senators Brown, Delvin and Parlette

HOUSE BILL NO. 1229 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.

MESSAGE FROM THE HOUSE

April 13, 2011

MR. PRESIDENT:

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The House refuses to concur in the Senate amendment(s) to ENGROSSED SUBSTITUTE HOUSE BILL NO. 1026 and asks the Senate to recede therefrom. and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Kline moved that the Senate recede from its position on the Senate amendments to Engrossed Substitute House Bill No. 1026.

The President declared the question before the Senate to be motion by Senator Kline that the Senate recede from its position on the Senate amendments to Engrossed Substitute House Bill No. 1026.

The motion by Senator Kline carried and the Senate receded from its amendments to Engrossed Substitute House Bill No. 1026 by voice vote.

MOTION

On motion of Senator Kline, the rules were suspended and Engrossed Substitute House Bill No. 1026 was returned to second reading for the purpose of amendment.

SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1026, by House Committee on Judiciary (originally sponsored by Representatives Rolfes, Orcutt, Carlyle, Blake, Angel and McCune)

Specifying procedures for adverse possession actions. Revised for 1st Substitute: Changing provisions relating to adverse possession claims.

The measure was read the second time.

MOTION

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

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. A new section is added to chapter 7.28 RCW to read as follows:

(1) A party who prevails against the holder of record title at the time an action asserting title to real property by adverse possession was filed, or against a subsequent purchaser from such holder, may be required to:

(a) Reimburse such holder or purchaser for part or all of any taxes or assessments levied on the real property during the period the prevailing party was in possession of the real property in question and which are proven by competent evidence to have been paid by such holder or purchaser; and

(b) Pay to the treasurer of the county in which the real property is located part or all of any taxes or assessments levied on the real property after the filing of the adverse possession claim and which are due and remain unpaid at the time judgment on the claim is entered.

(2) If the court orders reimbursement for taxes or assessments paid or payment of taxes or assessments due under subsection (1) of this section, the court shall determine how to allocate taxes or assessments between the property acquired by adverse possession

and the property retained by the title holder. In making its determination, the court shall consider all the facts and shall order such reimbursement or payment as appears equitable and just.

(3) The prevailing party in an action asserting title to real property by adverse possession may request the court to award costs and reasonable attorneys' fees. The court may award all or a portion of costs and reasonable attorneys' fees to the prevailing party if, after considering all the facts, the court determines such an award is equitable and just.

NEW SECTION. Sec. 2. This act applies to actions filed on or after July 1, 2012."

Senators Kline and Pflug 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 Kline and Pflug to Engrossed Substitute House Bill No. 1026.

The motion by Senator Kline 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 "possession;" strike the remainder of the title and insert "adding a new section to chapter 7.28 RCW; and creating a new section."

MOTION

On motion of Senator Kline, the rules were suspended, Engrossed Substitute House Bill No. 1026 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 Kline 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. 1026 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 1026 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 Baumgartner, Baxter, Becker, Benton, Brown, Carrell, Chase, Conway, Eide, Ericksen, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom, White and Zarelli

Excused: Senators Delvin and Parlette

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1026 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.

MESSAGE FROM THE HOUSE

April 14, 2011

MR. PRESIDENT:

The House refuses to concur in the Senate amendment(s) to ENGROSSED SUBSTITUTE HOUSE BILL NO. 1547 and asks the Senate to recede therefrom. and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Hargrove moved that the Senate recede from its position on the Senate amendments to Engrossed Substitute House Bill No. 1547.

The President declared the question before the Senate to be motion by Senator Hargrove that the Senate recede from its position on the Senate amendments to Engrossed Substitute House Bill No. 1547.

The motion by Senator Hargrove carried and the Senate receded from its amendments to Engrossed Substitute House Bill No. 1547 by voice vote.

MOTION

On motion of Senator Hargrove, the rules were suspended and Engrossed Substitute House Bill No. 1547 was returned to second reading for the purpose of amendment.

SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1547, by House Committee on Ways & Means (originally sponsored by Representatives Darneille, Hunter, Dickerson, Cody, Hunt, Kagi, Sullivan and Kenney)

Concerning the deportation of criminal alien offenders.

The measure was read the second time.

MOTION

Senator Hargrove moved that the following striking amendment by Senators Hargrove, Carrell and Stevens be adopted:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 9.94A.685 and 1993 c 419 s 1 are each amended to read as follows:

(1) Subject to the limitations of this section, any alien offender committed to the custody of the department under the sentencing reform act of 1981, chapter 9.94A RCW, who has been found by the United States attorney general to be subject to a final order of deportation or exclusion, may be placed on conditional release status and released to the immigration and ~~((naturalization service))~~ customs enforcement agency for deportation at any time prior to the expiration of the offender's term of confinement. Conditional release shall continue until the expiration of the statutory maximum sentence provided by law for the crime or crimes of which the offender was convicted. If the offender has multiple current convictions, the statutory maximum sentence allowed by law for each crime shall run concurrently.

(2) No offender may be released under this section unless the secretary or the secretary's designee ~~((find [finds] that such release is in the best interests of the state of Washington. Further, releases under this section may occur only with the approval of the sentencing court and the prosecuting attorney of the county of conviction))~~ has reached an agreement with the immigration and

customs enforcement agency that the alien offender placed on conditional release status will be detained in total confinement at a facility operated by the immigration and customs enforcement agency pending the offender's return to the country of origin or other location designated in the final deportation or exclusion order.

~~((3))~~ No offender may be released under this section who is serving a sentence for a violent offense or sex offense, as defined in RCW 9.94A.030 ~~((, or any other offense that is a crime against a person)).~~

~~((4))~~ (3) The unserved portion of the term of confinement of any offender released under this section shall be tolled at the time the offender is released to the immigration and ~~((naturalization service))~~ customs enforcement agency for deportation. Upon the release of an offender to the immigration and ~~((naturalization service))~~ customs enforcement agency, the department shall issue a warrant for the offender's arrest within the United States. This warrant shall remain in effect ~~((until the expiration of the offender's conditional release))~~ indefinitely.

~~((5))~~ (4) Upon arrest of an offender, the department ~~((shall))~~ may seek extradition as necessary and the offender ~~((shall))~~ may be returned to the department for completion of the unserved portion of the offender's term of total confinement. If returned, the offender shall also be required to fully comply with all the terms and conditions of the sentence.

~~((6))~~ (5) Alien offenders released to the immigration and ~~((naturalization service))~~ customs enforcement agency for deportation under this section are not thereby relieved of their obligation to pay restitution or other legal financial obligations ordered by the sentencing court.

~~((7))~~ (6) Any offender released pursuant to this section who returns illegally to the United States may not thereafter be released again pursuant to this section.

~~((8))~~ (7) The secretary is authorized to take all reasonable actions to implement this section and shall assist federal authorities in prosecuting alien offenders who may illegally reenter the United States and enter the state of Washington.

(8) The provisions of this section apply to persons convicted before, on, or after the effective date of this section.

NEW SECTION. Sec. 2. A new section is added to chapter 9.94A RCW to read as follows:

(1) The department shall provide a written notice of rights in removal proceedings to all offenders in the department's custody who are subject to early release pursuant to RCW 9.94A.685. The notice shall be provided as early in the removal process as feasible.

(2) The department shall work in conjunction with a qualified nonprofit legal services organization in the state recognized by the department of justice pursuant to 8 C.F.R. 1003.61, to create the written notice required by subsection (1) of this section. A written notice containing the advisals given to an individual at the first master calendar hearing in a removal proceeding meets the requirements of this section.

Sec. 3. RCW 10.40.200 and 1983 c 199 s 1 are each amended to read as follows:

(1) The legislature finds and declares that in many instances involving an individual who is not a citizen of the United States charged with an offense punishable as a crime under state law, a plea of guilty is entered without the defendant knowing that a conviction of such offense is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States. Therefore, it is the intent of the legislature in enacting this section to promote fairness to such accused individuals by requiring in such cases that acceptance of a guilty plea be preceded by an appropriate warning of the special consequences for such a defendant which may result from the plea. It is further the intent of the legislature that at the time of the plea no defendant be required to disclose his or her legal status to the court.

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ROLL CALL

(2) Prior to acceptance of a plea of guilty to any offense punishable as a crime under state law, except offenses designated as infractions under state law, the court shall determine that the defendant has been advised of the following potential consequences of conviction for a defendant who is not a citizen of the United States: Deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States. A defendant signing a guilty plea statement containing the advisement required by this subsection shall be presumed to have received the required advisement. If, after September 1, 1983, the defendant has not been advised as required by this section and the defendant shows that conviction of the offense to which the defendant pleaded guilty may have the consequences for the defendant of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States, the court, on defendant's motion, shall vacate the judgment and permit the defendant to withdraw the plea of guilty and enter a plea of not guilty. Absent a written acknowledgement by the defendant of the advisement required by this subsection, the defendant shall be presumed not to have received the required advisement.

(3) With respect to pleas accepted prior to September 1, 1983, it is not the intent of the legislature that a defendant's failure to receive the advisement required by subsection (2) of this section should require the vacation of judgment and withdrawal of the plea or constitute grounds for finding a prior conviction invalid.

(4) Prior to acceptance of a plea of guilty to any offense punishable as a crime under state law, except offenses designated as infractions under state law, the court shall advise the defendant that, pursuant to RCW 9.94A.685, the defendant may be subject to early release from custody for removal from the United States as a consequence of conviction and that the defendant may be able to contest a removal order.

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."

Senators Hargrove and Carrell 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 Hargrove, Carrell and Stevens to Engrossed Substitute House Bill No. 1547.

The motion by Senator Hargrove 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 "offenders;" strike the remainder of the title and insert "amending RCW 9.94A.685 and 10.40.200; adding a new section to chapter 9.94A RCW; and declaring an emergency."

MOTION

On motion of Senator Hargrove, the rules were suspended, Engrossed Substitute House Bill No. 1547 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 1547 as amended by the Senate.

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 1547 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 Baumgartner, Baxter, Becker, Benton, Brown, Carrell, Chase, Conway, Eide, Ericksen, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom, White and Zarelli

Excused: Senators Delvin and Parlette

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1547 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, Engrossed Substitute House Bill No. 1547 was immediately transmitted to the House of Representatives.

MESSAGE FROM THE HOUSE

April 20, 2011

MR. PRESIDENT:

The House refuses to concur in the Senate amendment(s) to SUBSTITUTE HOUSE BILL NO. 1899 and asks the Senate to recede therefrom. and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Pridemore moved that the Senate recede from its position on Substitute House Bill No. 1899 and consider the bill without the Senate amendment(s).

Senator Pridemore spoke in favor of the motion.

The President declared the question before the Senate to be motion by Senator Pridemore that the Senate recede from its position on Substitute House Bill No. 1899 and consider the bill without Senate amendment(s).

The motion by Senator Pridemore carried and the Senate receded from its position on Substitute House Bill No. 1899 and consider the bill without the Senate amendment(s) by voice vote.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 1899 without the Senate amendments.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 1899, without the Senate amendment(s), and the bill passed the Senate by the following vote: Yeas, 47; Nays, 0; Absent, 0; Excused, 2.

Voting yea: Senators Baumgartner, Baxter, Becker, Benton, Brown, Carrell, Chase, Conway, Eide, Ericksen, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray,

Nelson, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom, White and Zarelli

Excused: Senators Delvin and Parlette

SUBSTITUTE HOUSE BILL NO. 1899, without the Senate amendment(s), 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.

MESSAGE FROM THE HOUSE

April 13, 2011

MR. PRESIDENT:

The House refuses to concur in the Senate amendment(s) to ENGROSSED SUBSTITUTE HOUSE BILL NO. 1725 and asks the Senate to recede therefrom.

and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Kohl-Welles moved that the Senate recede from its position on the Senate amendments to Engrossed Substitute House Bill No. 1725.

The President declared the question before the Senate to be motion by Senator Kohl-Welles that the Senate recede from its position on the Senate amendments to Engrossed Substitute House Bill No. 1725.

The motion by Senator Kohl-Welles carried and the Senate receded from its amendments to Engrossed Substitute House Bill No. 1725.

MOTION

On motion of Senator Kohl-Welles, the rules were suspended and Engrossed Substitute House Bill No. 1725 was returned to second reading for the purpose of amendment.

SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1725, by House Committee on Labor & Workforce Development (originally sponsored by Representatives Sells, Reykdal, Ormsby, Kenney and Upthegrove)

Addressing administrative efficiencies for the workers' compensation program.

The measure was read the second time.

MOTION

Senator Kastama moved that the following striking amendment by Senators Kastama, Holmquist Newbry and Kohl-Welles be adopted:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 51.04.030 and 2004 c 65 s 1 are each amended to read as follows:

(1) The director shall supervise the providing of prompt and efficient care and treatment, including care provided by physician assistants governed by the provisions of chapters 18.57A and 18.71A RCW, acting under a supervising physician, including

chiropractic care, and including care provided by licensed advanced registered nurse practitioners, to workers injured during the course of their employment at the least cost consistent with promptness and efficiency, without discrimination or favoritism, and with as great uniformity as the various and diverse surrounding circumstances and locations of industries will permit and to that end shall, from time to time, establish and adopt and supervise the administration of printed forms, rules, regulations, and practices for the furnishing of such care and treatment: **PROVIDED**, That the medical coverage decisions of the department do not constitute a "rule" as used in RCW 34.05.010(16), nor are such decisions subject to the rule-making provisions of chapter 34.05 RCW except that criteria for establishing medical coverage decisions shall be adopted by rule after consultation with the workers' compensation advisory committee established in RCW 51.04.110: **PROVIDED FURTHER**, That the department may recommend to an injured worker particular health care services and providers where specialized treatment is indicated or where cost effective payment levels or rates are obtained by the department: **AND PROVIDED FURTHER**, That the department may enter into contracts for goods and services including, but not limited to, durable medical equipment so long as statewide access to quality service is maintained for injured workers.

(2) The director shall, in consultation with interested persons, establish and, in his or her discretion, periodically change as may be necessary, and make available a fee schedule of the maximum charges to be made by any physician, surgeon, chiropractor, hospital, druggist, licensed advanced registered nurse practitioner, physicians' assistants as defined in chapters 18.57A and 18.71A RCW, acting under a supervising physician or other agency or person rendering services to injured workers. The department shall coordinate with other state purchasers of health care services to establish as much consistency and uniformity in billing and coding practices as possible, taking into account the unique requirements and differences between programs. No service covered under this title, including services provided to injured workers, whether aliens or other injured workers, who are not residing in the United States at the time of receiving the services, shall be charged or paid at a rate or rates exceeding those specified in such fee schedule, and no contract providing for greater fees shall be valid as to the excess. The establishment of such a schedule, exclusive of conversion factors, does not constitute "agency action" as used in RCW 34.05.010(3), nor does such a fee schedule and its associated billing or payment instructions and policies constitute a "rule" as used in RCW 34.05.010(16).

(3) The director or self-insurer, as the case may be, shall make a record of the commencement of every disability and the termination thereof and, when bills are rendered for the care and treatment of injured workers, shall approve and pay those which conform to the adopted rules, regulations, established fee schedules, and practices of the director and may reject any bill or item thereof incurred in violation of the principles laid down in this section or the rules, regulations, or the established fee schedules and rules and regulations adopted under it.

Sec. 2. RCW 51.04.082 and 1986 c 9 s 2 are each amended to read as follows:

Any notice or order required by this title to be mailed to any employer may be served in the manner prescribed by law for personal service of summons and complaint in the commencement of actions in the superior courts of the state, but if the notice or order is mailed, it shall be addressed to the address of the employer as shown by the records of the department, or, if no such address is shown, to such address as the department is able to ascertain by reasonable effort. If requested by the employer, any notice or order may be sent by secure electronic means except orders communicating the closure of a claim. Correspondence and notices

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sent electronically are considered received on the date sent by the department. Failure of the employer to receive such notice or order whether served or mailed shall not release the employer from any tax or any increases or penalties thereon.

NEW SECTION. Sec. 3. A new section is added to chapter 51.18 RCW to read as follows:

Payment by an employer for direct primary care services as defined in RCW 48.150.010 when used for medical services on an allowed industrial injury or occupational disease claim does not disqualify: (1) the employer from participating in a retrospective rating plan; (2) any related group sponsor from promoting a retrospective rating plan; or (3) any related plan administrator from administering a retrospective rating plan, provided the employer or group sponsor or plan administrator provides any medical cost or payment information that may be required by the department. Prior to the first retrospective rating adjustment for the plan year beginning January 1, 2012, the department shall determine the information needed and any changes to the retrospective rating premium and claim cost calculations to maintain appropriate and equitable retrospective rating refunds when employers pay for direct primary care services. These changes shall apply beginning with the January 1, 2012 plan year.

The department may adopt rules to implement this section.

Sec. 4. RCW 51.24.060 and 2001 c 146 s 9 are each amended to read as follows:

(1) If the injured worker or beneficiary elects to seek damages from the third person, any recovery made shall be distributed as follows:

(a) The costs and reasonable attorneys' fees shall be paid proportionately by the injured worker or beneficiary and the department and/or self-insurer: **PROVIDED**, That the department and/or self-insurer may require court approval of costs and attorneys' fees or may petition a court for determination of the reasonableness of costs and attorneys' fees;

(b) The injured worker or beneficiary shall be paid twenty-five percent of the balance of the award: **PROVIDED**, That in the event of a compromise and settlement by the parties, the injured worker or beneficiary may agree to a sum less than twenty-five percent;

(c) The department and/or self-insurer shall be paid the balance of the recovery made, but only to the extent necessary to reimburse the department and/or self-insurer for benefits paid;

(i) The department and/or self-insurer shall bear its proportionate share of the costs and reasonable attorneys' fees incurred by the worker or beneficiary to the extent of the benefits paid under this title: **PROVIDED**, That the department's and/or self-insurer's proportionate share shall not exceed one hundred percent of the costs and reasonable attorneys' fees;

(ii) The department's and/or self-insurer's proportionate share of the costs and reasonable attorneys' fees shall be determined by dividing the gross recovery amount into the benefits paid amount and multiplying this percentage times the costs and reasonable attorneys' fees incurred by the worker or beneficiary;

(iii) The department's and/or self-insurer's reimbursement share shall be determined by subtracting their proportionate share of the costs and reasonable attorneys' fees from the benefits paid amount;

(d) Any remaining balance shall be paid to the injured worker or beneficiary; and

(e) Thereafter no payment shall be made to or on behalf of a worker or beneficiary by the department and/or self-insurer for such injury until the amount of any further compensation and benefits shall equal any such remaining balance minus the department's and/or self-insurer's proportionate share of the costs and reasonable attorneys' fees in regards to the remaining balance. This proportionate share shall be determined by dividing the gross recovery amount into the remaining balance amount and

multiplying this percentage times the costs and reasonable attorneys' fees incurred by the worker or beneficiary. Thereafter, such benefits shall be paid by the department and/or self-insurer to or on behalf of the worker or beneficiary as though no recovery had been made from a third person.

(2) The recovery made shall be subject to a lien by the department and/or self-insurer for its share under this section.

(3) The department or self-insurer has sole discretion to compromise the amount of its lien. In deciding whether or to what extent to compromise its lien, the department or self-insurer shall consider at least the following:

(a) The likelihood of collection of the award or settlement as may be affected by insurance coverage, solvency, or other factors relating to the third person;

(b) Factual and legal issues of liability as between the injured worker or beneficiary and the third person. Such issues include but are not limited to possible contributory negligence and novel theories of liability; and

(c) Problems of proof faced in obtaining the award or settlement.

(4) In an action under this section, the self-insurer may act on behalf and for the benefit of the department to the extent of any compensation and benefits paid or payable from state funds.

(5) It shall be the duty of the person to whom any recovery is paid before distribution under this section to advise the department or self-insurer of the fact and amount of such recovery, the costs and reasonable attorneys' fees associated with the recovery, and to distribute the recovery in compliance with this section.

(6) The distribution of any recovery made by award or settlement of the third party action shall be confirmed by department order, served by ~~((registered or certified mail))~~ a method for which receipt can be confirmed or tracked, and shall be subject to chapter 51.52 RCW. In the event the order of distribution becomes final under chapter 51.52 RCW, the director or the director's designee may file with the clerk of any county within the state a warrant in the amount of the sum representing the unpaid lien plus interest accruing from the date the order became final. The clerk of the county in which the warrant is filed shall immediately designate a superior court cause number for such warrant and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of such worker or beneficiary mentioned in the warrant, the amount of the unpaid lien plus interest accrued and the date when the warrant was filed. The amount of such warrant as docketed shall become a lien upon the title to and interest in all real and personal property of the injured worker or beneficiary against whom the warrant is issued, the same as a judgment in a civil case docketed in the office of such clerk. The sheriff shall then proceed in the same manner and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgment in the superior court. Such warrant so docketed shall be sufficient to support the issuance of writs of garnishment in favor of the department in the manner provided by law in the case of judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee under RCW 36.18.012(10), which shall be added to the amount of the warrant. A copy of such warrant shall be mailed to the injured worker or beneficiary within three days of filing with the clerk.

(7) The director, or the director's designee, may issue to any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, a notice and order to withhold and deliver property of any kind if he or she has reason to believe that there is in the possession of such person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state,

property which is due, owing, or belonging to any worker or beneficiary upon whom a warrant has been served by the department for payments due to the state fund. The notice and order to withhold and deliver shall be served by the sheriff of the county or by the sheriff's deputy; by ~~((certified mail, return receipt requested))~~ a method for which receipt can be confirmed or tracked; or by any authorized representatives of the director. Any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state upon whom service has been made shall answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the notice and order to withhold and deliver. In the event there is in the possession of the party named and served with such notice and order, any property which may be subject to the claim of the department, such property shall be delivered forthwith to the director or the director's authorized representative upon demand. If the party served and named in the notice and order fails to answer the notice and order within the time prescribed in this section, the court may, after the time to answer such order has expired, render judgment by default against the party named in the notice for the full amount claimed by the director in the notice together with costs. In the event that a notice to withhold and deliver is served upon an employer and the property found to be subject thereto is wages, the employer may assert in the answer to all exemptions provided for by chapter 6.27 RCW to which the wage earner may be entitled.

NEW SECTION. Sec. 5. A new section is added to Chapter 51.36 RCW to read as follows:

The department shall report to the appropriate committees of the legislature by December 1, 2011 on statutory changes needed to ensure an injured worker may receive care from a health care provider who furnishes primary care services through a direct agreement in compliance with chapter 48.150 RCW and that the injured worker is not paying directly for medical services related to their industrial injury or occupational disease. The report shall provide a timeline for rule development with a goal to have necessary changes in place by July 1, 2013, and include the data required from direct care providers necessary to establish premium rates, experience modification factors, and retrospective rating adjustments; medical cost or payment information that may be required from retrospective rating participants; any requirements specific to direct primary care providers in order for them participate in the statewide medical provider network and to ensure the department has information to efficiently manage worker claims; and any other issues or barriers to participation of direct primary care providers in the workers' compensation system.

Sec. 6. RCW 51.32.240 and 2008 c 280 s 2 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 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) 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 whether state fund or self-insured.

(a) The director, pursuant to rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise discretion to waive, in whole or in part, the amount of any such payments where the recovery would be against equity and good conscience. However, if the director waives in whole or in part any such payments due a self-insurer, the self-insurer shall be reimbursed the amount waived from the self-insured employer overpayment reimbursement fund.

(b) The department shall collect information regarding self-insured claim overpayments resulting from final decisions of the board and the courts, and recoup such overpayments on behalf of the self-insurer from any open, new, or reopened state fund or self-insured claims. The department shall forward the amounts collected to the self-insurer to whom the payment is owed. The department may provide information as needed to any self-insurers from whom payments may be collected on behalf of the department or another self-insurer. Notwithstanding RCW 51.32.040, any self-insurer requested by the department to forward payments to the department pursuant to this subsection shall pay the department directly. The department shall credit the amounts recovered to the appropriate fund, or forward amounts collected to the appropriate self-insurer, as the case may be.

(c) If a self-insurer is not fully reimbursed within twenty-four months of the first attempt at recovery through the collection

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process pursuant to this subsection and by means of processes pursuant to subsection (6) of this section, the self-insurer shall be reimbursed for the remainder of the amount due from the self-insured employer overpayment reimbursement fund.

(d) For purposes of this subsection, "recipient" does not include health service providers whose treatment or services were authorized by the department or self-insurer.

(e) The department or self-insurer shall first attempt recovery of 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.

(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 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~~) a method for which receipt can be confirmed or tracked 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.

Sec. 7. RCW 51.48.120 and 1995 c 160 s 5 are each amended to read as follows:

If any employer should default in any payment due to the state fund the director or the director's designee may issue a notice of assessment certifying the amount due, which notice shall be served upon the employer by mailing such notice to the employer by

~~((certified mail))~~ a method for which receipt can be confirmed or tracked to the employer's last known address or served in the manner prescribed for the service of a summons in a civil action. Such notice shall contain the information that an appeal must be filed with the board of industrial insurance appeals and the director by mail or personally within thirty days of the date of service of the notice of assessment in order to appeal the assessment unless a written request for reconsideration is filed with the department of labor and industries.

Sec. 8. RCW 51.48.150 and 1995 c 160 s 6 are each amended to read as follows:

The director or the director's designee is hereby authorized to issue to any person, firm, corporation, municipal corporation, political subdivision of the state, a public corporation, or any agency of the state, a notice and order to withhold and deliver property of any kind whatsoever when he or she has reason to believe that there is in the possession of such person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or any agency of the state, property which is or shall become due, owing, or belonging to any employer upon whom a notice of assessment has been served by the department for payments due to the state fund. The effect of a notice and order to withhold and deliver shall be continuous from the date such notice and order to withhold and deliver is first made until the liability out of which such notice and order to withhold and deliver arose is satisfied or becomes unenforceable because of lapse of time. The department shall release the notice and order to withhold and deliver when the liability out of which the notice and order to withhold and deliver arose is satisfied or becomes unenforceable by reason of lapse of time and shall notify the person against whom the notice and order to withhold and deliver was made that such notice and order to withhold and deliver has been released.

The notice and order to withhold and deliver shall be served by the sheriff of the county or by the sheriff's deputy, by ~~((certified mail, return receipt requested))~~ a method for which receipt can be confirmed or tracked, or by any duly authorized representatives of the director. Any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation or any agency of the state upon whom service has been made is hereby required to answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the notice and order to withhold and deliver. In the event there is in the possession of the party named and served with a notice and order to withhold and deliver, any property which may be subject to the claim of the department, such property shall be delivered forthwith to the director or the director's duly authorized representative upon service of the notice to withhold and deliver which will be held in trust by the director for application on the employer's indebtedness to the department, or for return without interest, in accordance with a final determination of a petition for review, or in the alternative such party shall furnish a good and sufficient surety bond satisfactory to the director conditioned upon final determination of liability. Should any party served and named in the notice to withhold and deliver fail to make answer to such notice and order to withhold and deliver, within the time prescribed herein, it shall be lawful for the court, after the time to answer such order has expired, to render judgment by default against the party named in the notice to withhold and deliver for the full amount claimed by the director in the notice to withhold and deliver together with costs. In the event that a notice to withhold and deliver is served upon an employer and the property found to be subject thereto is wages, then the employer shall be entitled to assert in the answer to all exemptions provided for by chapter 6.27 RCW to which the wage earner may be entitled.

Sec. 9. RCW 51.52.050 and 2008 c 280 s 1 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))~~ or if the worker, beneficiary, employer, or other person affected thereby chooses, the department may send correspondence and other legal notices by secure electronic means except for orders communicating the closure of a claim. Persons who choose to receive correspondence and other legal notices electronically shall be provided information to assist them in ensuring all electronic documents and communications are received. Correspondence and notices must be addressed to such a person at his or her last known postal or electronic address as shown by the records of the department. Correspondence and notices sent electronically are considered received on the date sent by 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. 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 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.

(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. If a self-insured employer prevails on the

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merits, any benefits paid may be recouped pursuant to RCW 51.32.240.

(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."

Senators Kastama and Holmquist Newbry 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 Kastama, Holmquist Newbry and Kohl-Welles to Engrossed Substitute House Bill No. 1725.

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

MOTION

On motion of Senator Kohl-Welles, the rules were suspended, Engrossed Substitute House Bill No. 1725 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.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 1725 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 1725 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 Baumgartner, Baxter, Becker, Benton, Brown, Carrell, Chase, Conway, Eide, Ericksen, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom, White and Zarelli

Excused: Senators Delvin and Parlette

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1725 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, Engrossed Substitute House Bill No. 1725 was immediately transmitted to the House of Representatives.

MOTION

At 5:46 p.m., on motion of Senator Eide, the Senate adjourned until 10:00 a.m. Friday, April 22, 2011.

BRAD OWEN, President of the Senate

THOMAS HOEMANN, Secretary of the Senate

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