

ESSB 6037 - S AMD 13
By Senator Fairley

1 Strike everything after the enacting clause and insert the
2 following:

3 "PART 1
4 **EMPLOYMENT AGENCIES**

5 **Sec. 101.** RCW 19.31.020 and 1998 c 228 s 1 are each amended to
6 read as follows:

7 Unless a different meaning is clearly required by the context, the
8 following words and phrases, as hereinafter used in this chapter, shall
9 have the following meanings:

10 (1) "Employment agency" is synonymous with "agency" and shall mean
11 any business in which any part of the business gross or net income is
12 derived from a fee received from applicants, and in which any of the
13 following activities are engaged in:

14 (a) The offering, promising, procuring, or attempting to procure
15 employment for applicants;

16 (b) The giving of information regarding where and from whom
17 employment may be obtained; or

18 (c) The sale of a list of jobs or a list of names of persons or
19 companies accepting applications for specific positions, in any form.

20 In addition the term "employment agency" shall mean and include any
21 person, bureau, employment listing service, employment directory,
22 organization, or school which for profit, by advertisement or
23 otherwise, offers, as one of its main objects or purposes, to procure
24 employment for any person who pays for its services, or which collects
25 tuition, or charges for service of any nature, where the main object of
26 the person paying the same is to secure employment. It also includes
27 any business that provides a resume to an individual and provides that
28 person with a list of names to whom the resume may be sent or provides
29 that person with preaddressed envelopes to be mailed by the individual

1 or by the business itself, if the list of names or the preaddressed
2 envelopes have been compiled and are represented by the business as
3 having job openings. The term "employment agency" shall not include
4 labor union organizations, temporary service contractors, proprietary
5 schools operating within the scope of activities for which the school
6 is licensed under chapter 28C.10 RCW, nonprofit schools and colleges,
7 career guidance and counseling services, employment directories that
8 are sold in a manner that allows the applicant to examine the directory
9 before purchase, theatrical agencies, farm labor contractors, or the
10 Washington state employment agency.

11 (2) "Temporary service contractors" shall mean any person, firm,
12 association, or corporation conducting a business which consists of
13 employing individuals directly for the purpose of furnishing such
14 individuals on a part time or temporary help basis to others.

15 (3) "Theatrical agency" means any person who, for a fee or
16 commission, procures on behalf of an individual or individuals,
17 employment or engagements for circus, vaudeville, the variety field,
18 the legitimate theater, motion pictures, radio, television, phonograph
19 recordings, transcriptions, opera, concert, ballet, modeling, or other
20 entertainments, exhibitions, or performances. The term "theatrical
21 agency" does not include any person charging an applicant a fee prior
22 to or in advance of:

23 (a) Procuring employment for the applicant;

24 (b) Giving or providing the applicant information regarding where
25 or from whom employment may be obtained;

26 (c) Allowing or requiring the applicant to participate in any
27 instructional class, audition, or career guidance or counseling; or

28 (d) Allowing the applicant to be eligible for employment through
29 the person.

30 (4) "Farm labor contractor" means any person, or his agent, who,
31 for a fee, employs workers to render personal services in connection
32 with the production of any farm products, to, for, or under the
33 direction of an employer engaged in the growing, producing, or
34 harvesting of farm products, or who recruits, solicits, supplies, or
35 hires workers on behalf of an employer engaged in the growing,
36 producing, or harvesting of farm products or who provides in connection
37 with recruiting, soliciting, supplying, or hiring workers engaged in
38 the growing, producing, or harvesting of farm products, one or more of

1 the following services: Furnishes board, lodging, or transportation
2 for such workers, supervises, times, checks, counts, sizes, or
3 otherwise directs or measures their work; or disburses wage payments to
4 such persons.

5 (5) "Employer" means any person, firm, corporation, partnership, or
6 association employing or seeking to enter into an arrangement to employ
7 a person through the medium or service of an employment agency.

8 (6) "Applicant" (~~(, except when used to describe an applicant for an~~
9 ~~employment agency license,)~~) means any person, whether employed or
10 unemployed, seeking or entering into any arrangement for his employment
11 or change of his employment through the medium or service of an
12 employment agency.

13 (7) "Person" includes any individual, firm, corporation,
14 partnership, association, company, society, manager, contractor,
15 subcontractor, bureau, agency, service, office, or an agent or employee
16 of any of the foregoing.

17 (~~(8) ("Director" shall mean the director of licensing-~~

18 ~~+9))~~) "Resume" means a document of the applicant's employment
19 history that is approved, received, and paid for by the applicant.

20 (~~(+10))~~) (9) "Fee" means anything of value. The term includes
21 money or other valuable consideration or services or the promise of
22 money or other valuable consideration or services, received directly or
23 indirectly by an employment agency from a person seeking employment, in
24 payment for the service.

25 (~~(+11))~~) (10) "Employment listing service" means any business
26 operated by any person that provides in any form, including written or
27 verbal, lists of specified positions of employment available with any
28 employer other than itself or that holds itself out to applicants as
29 able to provide information about specific positions of employment
30 available with any employer other than itself, and that charges a fee
31 to the applicant for its services and does not set up interviews or
32 otherwise intercede between employer and applicant.

33 (~~(+12))~~) (11) "Employment directory" means any business operated by
34 any person that provides in any form, including written or verbal,
35 lists of employers, does not provide lists of specified positions of
36 employment, that holds itself out to applicants as able to provide
37 information on employment in specific industries or geographical areas,
38 and that charges a fee to the applicant for its services.

1 (~~(13)~~) (12) "Career guidance and counseling service" means any
2 person, firm, association, or corporation conducting a business that
3 engages in any of the following activities:

4 (a) Career assessment, planning, or testing through individual
5 counseling or group seminars, classes, or workshops;

6 (b) Skills analysis, resume writing, and preparation through
7 individual counseling or group seminars, classes, or workshops;

8 (c) Training in job search or interviewing skills through
9 individual counseling or group seminars, classes, or workshops:

10 PROVIDED, That the career guidance and counseling service does not
11 engage in any of the following activities:

12 (i) Contacts employers on behalf of an applicant or in any way
13 intercedes between employer and applicant;

14 (ii) Provides information on specific job openings;

15 (iii) Holds itself out as able to provide referrals to specific
16 companies or individuals who have specific job openings.

17 **Sec. 102.** RCW 19.31.030 and 1993 c 499 s 2 are each amended to
18 read as follows:

19 Each employment agency shall keep records of all services rendered
20 employers and applicants. These records shall contain the name and
21 address of the employer by whom the services were solicited; the name
22 and address of the applicant; kind of position ordered by the employer;
23 dates job orders or job listings are obtained; subsequent dates job
24 orders or job listings are verified as still being current; kind of
25 position accepted by the applicant; probable duration of the
26 employment, if known; rate of wage or salary to be paid the applicant;
27 amount of the employment agency's fee; dates and amounts of refund if
28 any, and reason for such refund; and the contract agreed to between the
29 agency and applicant. An employment listing service need not keep
30 records pertaining to the kind of position accepted by applicant and
31 probable duration of employment.

32 An employment directory shall keep records of all services rendered
33 to applicants. These records shall contain: The name and address of
34 the applicant; amount of the employment directory's fee; dates and
35 amounts of refund if any, and reason for the refund; the contract
36 agreed to between the employment directory and applicant; and the dates
37 of contact with employers made pursuant to RCW 19.31.190(~~(11)~~) (10).

1 The ((director)) attorney general, independently or under civil
2 investigative authority contained in RCW 19.86.110, shall have
3 authority to demand and to examine, at the employment agency's regular
4 place of business, all books, documents, and records in its possession
5 for inspection. ~~((Unless otherwise provided by rules or regulation~~
6 ~~adopted by the director, such))~~ Records shall be maintained for a
7 period of ((three)) four years from the date in which they are made.

8 **Sec. 103.** RCW 19.31.070 and 2002 c 86 s 269 are each amended to
9 read as follows:

10 ~~((The director shall administer the provisions of this chapter~~
11 ~~and shall issue from time to time reasonable rules and regulations for~~
12 ~~enforcing and carrying out the provisions and purposes of this chapter.~~

13 ~~((2) The director shall have supervisory and investigative authority~~
14 ~~over all employment agencies.))~~ Upon receiving a complaint against any
15 employment agency, the ((director)) attorney general shall have the
16 right to examine all books, documents, or records in its possession.
17 In addition, the ((director)) attorney general, independently or under
18 civil investigative authority contained in RCW 19.86.110, may examine
19 the office or offices where business is or shall be conducted by such
20 agency. The authority granted in this section is in addition to the
21 authority granted by RCW 19.31.030.

22 (2) When there is probable cause to believe that books, documents,
23 records, or property related to any complaint are in the possession or
24 control of any person other than the employment agency, any judge of
25 the superior or district court in the county in which the property is
26 located or jurisdiction is proper, may, upon the request of the
27 attorney general, issue a warrant directed to the person commanding the
28 search or seizure of the property described in the request for warrant.

29 (3) Application for, issuance, and execution and return of the
30 warrant authorized by this section and for return of any property
31 seized must be in accordance with the criminal rules of the superior
32 court and the justice court.

33 (4) The attorney general shall levy execution upon property seized
34 under this section as provided by law.

35 (5) Nothing in this section may require the application for and
36 issuance of any warrant not otherwise allowed by law.

1 **Sec. 104.** RCW 19.31.090 and 1977 ex.s. c 51 s 4 are each amended
2 to read as follows:

3 (1) Before conducting any business as an employment agency each
4 ~~((licensee))~~ employment agency shall file with the ~~((director))~~
5 attorney general and maintain a surety bond in the sum of ~~((two))~~
6 twenty thousand dollars running to the state of Washington, for the
7 benefit of any person injured or damaged as a result of any violation
8 by the ~~((licensee))~~ employment agency or his or her agent of any of the
9 provisions of this chapter ~~((or of any rule or regulation adopted by~~
10 ~~the director pursuant to RCW 19.31.070(1)))~~.

11 (2) ~~((In lieu of the surety bond required by this section the~~
12 ~~license applicant may file with the director a cash deposit or other~~
13 ~~negotiable security acceptable to the director: PROVIDED, HOWEVER, if~~
14 ~~the license applicant has filed a cash deposit, the director shall~~
15 ~~deposit such funds with the state treasurer. If the license applicant~~
16 ~~has deposited cash or other negotiable security with the director, the~~
17 ~~same shall be returned to the licensee at the expiration of one year~~
18 ~~after the employment agency's license has expired or been revoked, if~~
19 ~~no legal action has been instituted against the licensee or the surety~~
20 ~~deposit at the expiration of the year.~~

21 ~~(3))~~ Any person having a claim against an employment agency for
22 any violation of the provisions of this chapter ~~((or any rule or~~
23 ~~regulation promulgated thereunder))~~ may bring suit upon such bond or
24 deposit in an appropriate court of the county where the office of the
25 employment agency is located or of any county in which jurisdiction of
26 the employment agency may be had. Action upon such bond or deposit
27 shall be commenced by serving and filing of the complaint within one
28 year from the date of ~~((expiration of the employment agency license in~~
29 ~~force at the time))~~ the act for which the suit is brought occurred.
30 ~~((A copy of the complaint shall be served by registered or certified~~
31 ~~mail upon the director at the time the suit is started, and the~~
32 ~~director shall maintain a record, available for public inspection, of~~
33 ~~all suits so commenced. Such service on the director shall constitute~~
34 ~~service on the surety and the director shall transmit the complaint or~~
35 ~~a copy thereof to the surety within five business days after it shall~~
36 ~~have been received.))~~ The surety upon the bond shall not be liable in
37 an aggregate amount in excess of the amount named in the bond, but in
38 case claims pending at any one time exceed the amount of the bond,

1 claims shall be satisfied in the order of judgment rendered. (~~In the~~
2 ~~event that any final judgment shall impair the liability of the surety~~
3 ~~upon bond so furnished or the amount of the deposit so that there shall~~
4 ~~not be in effect a bond undertaking or deposit in the full amount~~
5 ~~prescribed in this section, the director shall suspend the license of~~
6 ~~such employment agency until the bond undertaking or deposit in the~~
7 ~~required amount, unimpaired by unsatisfied judgment claims, shall have~~
8 ~~been furnished.~~

9 ~~(4) In the event of a final judgment being entered against the~~
10 ~~deposit or security referred to in subsection (2) of this section, the~~
11 ~~director shall, upon receipt of a certified copy of the final judgment,~~
12 ~~order said judgment to be paid from the amount of the deposit or~~
13 ~~security.)~~

14 **Sec. 105.** RCW 19.31.160 and 1969 ex.s. c 228 s 16 are each amended
15 to read as follows:

16 Any employment agency which collects, receives, or retains a fee or
17 other payment contrary to the provisions of this chapter (~~or to the~~
18 ~~rules and regulations adopted pursuant to this chapter~~) shall return
19 the excessive portion of the fee (~~within seven days after receiving a~~
20 ~~demand therefor from the director~~).

21 **Sec. 106.** RCW 19.31.180 and 1969 ex.s. c 228 s 18 are each amended
22 to read as follows:

23 Each (~~licensee~~) employment agency shall post the following in a
24 conspicuous place in each office in which it conducts business: (1)
25 The substance of RCW 19.31.150 through 19.31.170; and (2) a (~~name and~~
26 ~~address provided by the director, in a form prescribed by him, of a~~
27 ~~person to whom~~) notice that complaints concerning possible violation
28 of this chapter may be made to the consumer protection unit of the
29 attorney general's office. All words required to be posted pursuant to
30 this section shall be printed in ten point bold face type.

31 **Sec. 107.** RCW 19.31.190 and 1993 c 499 s 7 are each amended to
32 read as follows:

33 In addition to the other provisions of this chapter the following
34 rules shall govern each and every employment agency:

1 (1) ~~((Every license or a verified copy thereof shall be displayed~~
2 ~~in a conspicuous place in each office of the employment agency;~~

3 ~~(+2))~~ No fee shall be solicited or accepted as an application or
4 registration fee by any employment agency solely for the purpose of
5 being registered as an applicant for employment;

6 ~~((+3))~~ (2) No ~~((licensee))~~ employment agency or agent of ~~((the~~
7 ~~licensee))~~ an employment agency shall solicit, persuade, or induce an
8 employee to leave any employment in which the ~~((licensee))~~ employment
9 agency or agent of ~~((the licensee))~~ an employment agency has placed the
10 employee; nor shall any ~~((licensee))~~ employment agency or agent of
11 ~~((the licensee))~~ an employment agency persuade or induce or solicit any
12 employer to discharge any employee;

13 ~~((+4))~~ (3) No employment agency shall ~~((knowingly))~~ cause to be
14 printed or published a false, deceptive, unfair, or ~~((fraudulent))~~
15 misleading notice or advertisement for obtaining work or employment.
16 All advertising by ~~((a licensee))~~ an employment agency shall signify
17 that it is an employment agency solicitation except an employment
18 listing service shall advertise it is an employment listing service;

19 ~~((+5))~~ (4) An employment directory shall include the following on
20 all advertisements:

21 "Directory provides information on possible employers and general
22 employment information but does not list actual job openings.";

23 ~~((+6))~~ (5) No ~~((licensee))~~ employment agency shall fail to state
24 in any advertisement, proposal or contract for employment that there is
25 a strike or lockout at the place of proposed employment, if ~~((he))~~ it
26 has knowledge that such condition exists;

27 ~~((+7))~~ (6) No ~~((licensee))~~ employment agency or agent of ~~((a~~
28 ~~licensee))~~ an employment agency shall directly or indirectly split,
29 divide, or share with an employer any fee, charge, or compensation
30 received from any applicant who has obtained employment with such
31 employer or with any other person connected with the business of such
32 employer;

33 ~~((+8))~~ (7) When an applicant is referred to the same employer by
34 two ~~((licensees))~~ employment agencies, the fee shall be paid to the
35 ~~((licensee))~~ employment agency who first contacted the applicant
36 concerning the position for that applicant: PROVIDED, That the
37 ~~((licensee))~~ employment agency has given the name of the employer to

1 the applicant and has within five working days arranged an interview
2 with the employer and the applicant was hired as the result of that
3 interview;

4 ~~((+9))~~ (8) No ~~((licensee))~~ employment agency shall require in any
5 manner that a potential employee or an employee of an employer make any
6 contract with any lending agency for the purpose of fulfilling a
7 financial obligation to the ~~((licensee))~~ employment agency;

8 ~~((+10))~~ (9) All job listings must be bona fide job listings. To
9 qualify as a bona fide job listing the following conditions must be
10 met:

11 (a) A bona fide job listing must be obtained from a representative
12 of the employer that reflects an actual current job opening;

13 (b) A representative of the employer must be aware of the fact that
14 the job listing will be made available to applicants by the employment
15 listing service and that applicants will be applying for the job
16 listing;

17 (c) All job listings and referrals must be current. To qualify as
18 a current job listing the employment listing service shall contact the
19 employer and verify the availability of the job listing no less than
20 once per week;

21 ~~((+11))~~ (10) All listings for employers listed in employment
22 directories shall be current. To qualify as a current employer, the
23 employment directory must contact the employer at least once per month
24 and verify that the employer is currently hiring(~~(+~~

25 ~~(12) Any aggrieved person, firm, corporation, or public officer may~~
26 ~~submit a written complaint to the director charging the holder of an~~
27 ~~employment agency license with violation of this chapter and/or the~~
28 ~~rules and regulations adopted pursuant to this chapter)).~~

29 NEW SECTION. **Sec. 108.** A new section is added to chapter 19.31
30 RCW to read as follows:

31 The legislature finds that the practices governed by this chapter
32 are matters vitally affecting the public interest for the purpose of
33 applying the consumer protection act, chapter 19.86 RCW. Any violation
34 of this chapter is not reasonable in relation to the development and
35 preservation of business and is an unfair and deceptive act or practice
36 and unfair method of competition in the conduct of trade or commerce in

1 violation of RCW 19.86.020. Remedies provided by chapter 19.86 RCW are
2 cumulative and not exclusive.

3 **Sec. 109.** RCW 19.31.250 and 1969 ex.s. c 228 s 25 are each amended
4 to read as follows:

5 ~~((1) The provisions of this chapter relating to the regulation of~~
6 ~~private employment agencies shall be exclusive.~~

7 ~~(2))~~) This chapter shall not be construed to affect or reduce the
8 authority of any political subdivision of the state of Washington to
9 provide for the licensing of private employment agencies (~~solely for~~
10 ~~revenue purposes~~)).

11 NEW SECTION. **Sec. 110.** The following acts or parts of acts are
12 each repealed:

13 (1) RCW 19.31.050 (Approval of contract, fee schedule) and 1969
14 ex.s. c 228 s 5;

15 (2) RCW 19.31.080 (License required--Penalty) and 1969 ex.s. c 228
16 s 8;

17 (3) RCW 19.31.100 (Application--Contents--Filing--Qualifications of
18 applicants and licensees--Waiver--Exceptions) and 1993 c 499 s 4, 1982
19 c 227 s 14, 1977 ex.s. c 51 s 5, & 1969 ex.s. c 228 s 10;

20 (4) RCW 19.31.110 (Expiration date of license--Reinstatement) and
21 1977 ex.s. c 51 s 6 & 1969 ex.s. c 228 s 11;

22 (5) RCW 19.31.120 (Transfer of license) and 1969 ex.s. c 228 s 12;

23 (6) RCW 19.31.130 (License sanction--Grounds--Support order,
24 noncompliance) and 2002 c 86 s 270, 1997 c 58 s 848, & 1969 ex.s. c 228
25 s 13;

26 (7) RCW 19.31.140 (Fees for licensees) and 1985 c 7 s 84, 1975 1st
27 ex.s. c 30 s 92, & 1969 ex.s. c 228 s 14;

28 (8) RCW 19.31.210 (Enforcement) and 1969 ex.s. c 228 s 21;

29 (9) RCW 19.31.245 (Registration or licensing prerequisite to suit
30 by employment agency--Action against unregistered or unlicensed
31 employment agency) and 1993 c 499 s 8, 1990 c 70 s 2, & 1977 ex.s. c 51
32 s 10;

33 (10) RCW 19.31.270 (Uniform regulation of business and professions
34 act) and 2002 c 86 s 271; and

35 (11) RCW 19.31.910 (Effective date--1969 ex.s. c 228) and 1969
36 ex.s. c 228 s 28.

- 1 (e) Ensure that each vessel has accessible an adequate first-aid
2 kit;
- 3 (f) Ensure that each vessel has a spare propelling device;
- 4 (g) Ensure that a repair kit and air pump are accessible to
5 inflatable vessel;
- 6 (h) Ensure that equipment to prevent and treat hypothermia is
7 accessible to all vessels on a trip; and
- 8 (i) Ensure that each vessel is operated by a guide who has complied
9 with the requirements of subsection (2) of this section.
- 10 (2) No person may act as a guide unless the individual is at least
11 eighteen years of age and has:
- 12 (a) Successfully completed a lifesaving training course meeting
13 standards adopted by the commission;
- 14 (b) Completed a program of guide training on whitewater rivers,
15 conducted by a guide instructor, which program must run for a minimum
16 of fifty hours on a whitewater river and must include at least the
17 following elements:
- 18 (i) Equipment preparation and boat rigging;
- 19 (ii) Reading river characteristics including currents, eddies,
20 rapids, and hazards;
- 21 (iii) Methods of scouting and running rapids;
- 22 (iv) River rescue techniques, including emergency procedures and
23 equipment recovery; and
- 24 (v) Communications with clients, including paddling and safety
25 instruction; and
- 26 (c) Completed at least one trip on an entire section of whitewater
27 river before carrying passengers for hire in a vessel on any such
28 section of whitewater river.
- 29 (3) A guide instructor must have traveled at least one thousand
30 five hundred river miles, seven hundred fifty of which must have been
31 while acting as a guide.
- 32 (4) Any person conducting guide training on whitewater rivers
33 shall, upon request of a guide trainee, issue proof of completion to
34 the guide completing the required training program.

35 **Sec. 204.** RCW 79A.60.440 and 2000 c 11 s 107 are each amended to
36 read as follows:

1 (1) No person may operate any vessel carrying passengers for hire
2 on whitewater rivers in a manner that interferes with other vessels or
3 with the free and proper navigation of the rivers of this state.

4 (2) Every operator of a vessel carrying passengers for hire on
5 whitewater rivers shall at all times operate the vessel in a careful
6 and prudent manner and at such a speed as to not endanger the life,
7 limb, or property of any person.

8 (3) No vessel carrying passengers for hire on whitewater rivers may
9 be loaded with passengers or cargo beyond its safe carrying capacity
10 taking into consideration the type and construction of the vessel and
11 other existing operating conditions. In the case of inflatable
12 vessels, safe carrying capacity in whitewater shall be considered as
13 less than the United States coast guard capacity rating for each
14 vessel. This subsection shall not apply in cases of an unexpected
15 emergency on the river.

16 (4) Individuals licensed under chapter 77.32 RCW and acting as
17 fishing guides are exempt from RCW 79A.60.420 (~~(and)~~), 79A.60.460
18 (~~(through 79A.60.480)~~), and 79A.60.470.

19 **Sec. 205.** RCW 79A.60.450 and 1997 c 391 s 5 are each amended to
20 read as follows:

21 (1) Whitewater river outfitters and guides on any trip carrying
22 passengers for hire on whitewater rivers of the state shall not allow
23 the use of alcohol during the course of a trip on a whitewater river
24 section in this state.

25 (2) Any vessel carrying passengers for hire on any whitewater river
26 section in this state must be accompanied by at least one other vessel
27 being operated by a (~~licensed~~) whitewater river outfitter or a guide
28 under the direction or control of a (~~licensed~~) whitewater river
29 outfitter.

30 NEW SECTION. **Sec. 206.** The following acts or parts of acts are
31 each repealed:

32 (1) RCW 79A.60.410 (Vessels carrying passengers for hire on
33 whitewater rivers--Whitewater river outfitter's license required) and
34 2000 c 11 s 105 & 1997 c 391 s 2;

35 (2) RCW 79A.60.480 (Vessels carrying passengers for hire on
36 whitewater rivers--Whitewater river outfitter's license--Application--

1 Fees--Insurance--Penalties--State immune from civil actions arising
2 from licensure) and 2002 c 86 s 327, 2000 c 11 s 109, 1997 c 391 s 7,
3 1995 c 399 s 216, & 1986 c 217 s 11;

4 (3) RCW 79A.60.485 (Vessels carrying passengers for hire on
5 whitewater rivers--Rules to implement RCW 79A.60.480--Fees) and 2000 c
6 11 s 110 & 1997 c 391 s 9;

7 (4) RCW 79A.60.490 (Vessels carrying passengers for hire on
8 whitewater rivers--License sanction for certain convictions) and 2002
9 c 86 s 328, 2000 c 11 s 111, & 1997 c 391 s 8; and

10 (5) RCW 79A.60.498 (Uniform regulation of business and professions
11 act) and 2002 c 86 s 329.

12 **PART 3**

13 **SELLERS OF TRAVEL**

14 **Sec. 301.** RCW 19.138.010 and 1994 c 237 s 1 are each amended to
15 read as follows:

16 The legislature finds and declares that advertising, sales, and
17 business practices of certain sellers of travel have worked financial
18 hardship upon the people of this state; that the travel business has a
19 significant impact upon the economy and well-being of this state and
20 its people; that problems have arisen regarding certain sales of
21 travel; and that the public welfare requires ((~~registration~~)
22 regulation of sellers of travel in order to eliminate unfair
23 advertising, sales and business practices. The legislature further
24 finds it necessary to establish standards that will safeguard the
25 people against financial hardship and to encourage fair dealing and
26 prosperity in the travel business.

27 **Sec. 302.** RCW 19.138.021 and 2001 c 44 s 1 are each amended to
28 read as follows:

29 Unless the context clearly requires otherwise, the definitions in
30 this section apply throughout this chapter.

31 (1) (~~("Department" means the department of licensing.~~

32 ~~(2) "Director" means the director of licensing or the director's~~
33 ~~designee.~~

34 ~~(3))~~ "Sale of travel-related benefits" means the sale of travel

1 services if the travel services are not identified at the time of the
2 sale with respect to dates, price, or location and includes:

3 (a) Sales of travel club memberships;

4 (b) Sales of vacation certificates or other documents that purport
5 to grant the holder of the certificate or other document the ability to
6 obtain future travel services, with or without additional
7 consideration; or

8 (c) Sales of travel-industry member benefits including those
9 through either or both the issuance and sale or the consulting with or
10 advising for consideration of persons in connection with the obtaining
11 of international airlines travel agent network identification cards or
12 memberships.

13 ~~((+4))~~ (2) "Travel club" means a seller of travel that sells
14 memberships to consumers, where the initial membership or maintenance
15 dues are at least twice the amount of the annual membership or
16 maintenance dues.

17 ~~((+5))~~ (3) "Seller of travel-related benefits" means a person,
18 firm, or corporation that transacts business with Washington consumers
19 for the sale of travel-related benefits.

20 ~~((+6))~~ (4) "Seller of travel" means a person, firm, or corporation
21 both inside and outside the state of Washington, who transacts business
22 with Washington consumers.

23 (a) "Seller of travel" includes a travel agent and any person who
24 is an independent contractor or outside agent for a travel agency or
25 other seller of travel whose principal duties include consulting with
26 and advising persons concerning travel arrangements or accommodations
27 in the conduct or administration of its business. ~~((If a seller of
28 travel is employed by a seller of travel who is registered under this
29 chapter, the employee need not also be registered.))~~

30 (b) "Seller of travel" does not include:

31 (i) An air carrier;

32 (ii) An owner or operator of a vessel, including an ocean common
33 carrier as defined in 46 U.S.C. App. 1702(18), an owner or charterer of
34 a vessel that is required to establish its financial responsibility in
35 accordance with the requirements of the federal maritime commission, 46
36 U.S.C. App. 817 (e), and a steamboat company whether or not operating
37 over and upon the waters of this state;

38 (iii) A motor carrier;

- 1 (iv) A rail carrier;
- 2 (v) A charter party carrier of passengers as defined in RCW
3 81.70.020;
- 4 (vi) An auto transportation company as defined in RCW 81.68.010;
- 5 (vii) A hotel or other lodging accommodation;
- 6 (viii) An affiliate of any person or entity described in (i)
7 through (vii) of this subsection (~~((+6+))~~) (4)(b) that is primarily
8 engaged in the sale of travel services provided by the person or
9 entity. For purposes of this subsection (~~((+6+))~~) (4)(b)(viii), an
10 "affiliate" means a person or entity owning, owned by, or under common
11 ownership, with "owning," "owned," and "ownership" referring to equity
12 holdings of at least eighty percent;
- 13 (ix) Direct providers of transportation by air, sea, or ground, or
14 hotel or other lodging accommodations who do not book or arrange any
15 other travel services.
- 16 (~~((+7+))~~) (5) "Travel services" includes transportation by air, sea,
17 or ground, hotel or any lodging accommodations, package tours, or
18 vouchers or coupons to be redeemed for future travel or accommodations
19 for a fee, commission, or other valuable consideration.
- 20 (~~((+8+))~~) (6) "Advertisement" includes, but is not limited to, a
21 written or graphic representation in a card, brochure, newspaper,
22 magazine, directory listing, or display, and oral, written, or graphic
23 representations made by radio, television, or cable transmission that
24 relates to travel services.
- 25 (~~((+9+))~~) (7) "Transacts business with Washington consumers" means to
26 directly offer or sell travel services or travel-related benefits to
27 Washington consumers, including the placement of advertising in media
28 based in the state of Washington or that is primarily directed to
29 Washington residents. Advertising placed in national print or
30 electronic media alone does not constitute "transacting business with
31 Washington consumers." Those entities who only wholesale travel
32 services are not "transacting business with Washington consumers" for
33 the purposes of this chapter.

34 **Sec. 303.** RCW 19.138.140 and 2003 c 38 s 1 are each amended to
35 read as follows:

36 (1) A seller of travel shall deposit in a trust account maintained
37 in a federally insured financial institution located in Washington

1 state(~~(, or other account approved by the director,~~) all sums held for
2 more than five business days that are received from a person or entity,
3 for retail travel services offered by the seller of travel. This
4 subsection does not apply to travel services sold by a seller of
5 travel, when payments for the travel services are made through the
6 airlines reporting corporation.

7 (2) The trust account (~~(or other approved account)~~) required by
8 this section shall be established and maintained for the benefit of any
9 person or entity paying money to the seller of travel. The seller of
10 travel shall not in any manner encumber the amounts in trust and shall
11 not withdraw money from the account except the following amounts may be
12 withdrawn at any time:

13 (a) Partial or full payment for travel services to the entity
14 directly providing the travel service;

15 (b) Refunds as required by this chapter;

16 (c) The amount of the sales commission;

17 (d) Interest earned and credited to the trust account (~~(or other
18 approved account)~~);

19 (e) Remaining funds of a purchaser once all travel services have
20 been provided or once tickets or other similar documentation binding
21 upon the ultimate provider of the travel services have been provided;
22 or

23 (f) Reimbursement to the seller of travel for agency operating
24 funds that are advanced for a customer's travel services.

25 (3) The seller of travel may deposit noncustomer funds into the
26 trust account as needed in an amount equal to a deficiency resulting
27 from dishonored customer payments made by check, draft, credit card,
28 debit card, or other negotiable instrument.

29 (~~(4) (At the time of registration, the seller of travel shall file
30 with the department the account number and the name of the financial
31 institution at which the trust account or other approved account is
32 held as set forth in RCW 19.138.110. The seller of travel shall notify
33 the department of any change in the account number or location within
34 one business day of the change.~~

35 (~~(5) The director, by rule, may allow for the use of other types of
36 funds or accounts only if the protection for consumers is no less than
37 that provided by this section.~~

1 ~~(6)~~) The seller of travel need not comply with the requirements of
2 this section if all of the following apply, except as exempted in
3 subsection (1) of this section:

4 (a) The payment is made by credit card;

5 (b) The seller of travel does not deposit, negotiate, or factor the
6 credit card charge or otherwise seek to obtain payment of the credit
7 card charge to any account over which the seller of travel has any
8 control; and

9 (c) If the charge includes transportation, the carrier that is to
10 provide the transportation processes the credit card charge, or if the
11 charge is only for services, the provider of services processes the
12 credit card charges.

13 ~~((7))~~ (5) The seller of travel need not maintain a trust account
14 nor comply with the trust account provisions of this section if the
15 seller of travel:

16 (a)~~((i) - Files - and)~~ Maintains ((a)) an adequate surety bond
17 ~~((approved by the director in an amount of not less than ten thousand
18 nor more than fifty thousand dollars, as determined by rule by the
19 director based on the gross income of business conducted for Washington
20 state residents by the seller of travel during the prior year. The
21 bond shall be executed by the applicant as obligor by a surety company
22 authorized to transact business in this state naming the state of
23 Washington as obligee for the benefit of any person or persons who have
24 suffered monetary loss by reason of the seller of travel's violation of
25 this chapter or a rule adopted under this chapter. The bond shall be
26 conditioned that the seller of travel will conform to and abide by this
27 chapter and all rules adopted under this chapter, and shall reimburse
28 any person or persons who suffer monetary loss by reason of a violation
29 of this chapter or a rule adopted under this chapter.~~

30 ~~(ii) The bond must be continuous and may be canceled by the surety
31 upon the surety giving written notice to the director of the surety's
32 intent to cancel the bond. The cancellation is effective thirty days
33 after the notice is received by the director.~~

34 ~~(iii) The applicant may obtain the bond directly from the surety or
35 through other bonding arrangement as approved by the director.~~

36 ~~(iv) In lieu of a surety bond, the applicant may, upon approval by
37 the director, file with the director a certificate of deposit, an~~

1 ~~irrevocable letter of credit, or such other instrument as is approved~~
2 ~~by the director by rule, drawn in favor of the director for an amount~~
3 ~~equal to the required bond.~~

4 ~~(v) Any person or persons who have suffered monetary loss by any~~
5 ~~act which constitutes a violation of this chapter or a rule adopted~~
6 ~~under this chapter may bring a civil action in court against the seller~~
7 ~~of travel and the surety upon such bond or approved alternate security~~
8 ~~of the seller of travel who committed the violation of this chapter or~~
9 ~~a rule adopted under this chapter or who employed the seller of travel~~
10 ~~who committed such violation. A civil action brought in court pursuant~~
11 ~~to the provisions of this section must be filed no later than one year~~
12 ~~following the later of the alleged violation of this chapter or a rule~~
13 ~~adopted under this chapter or completion of the travel by the~~
14 ~~customer)); or~~

15 (b) Is a member in good standing in a professional association,
16 such as the United States tour operators association or national tour
17 association, that ~~((is approved by the director and that))~~ provides or
18 requires a member to provide a minimum of one million dollars in errors
19 and professional liability insurance and provides a surety bond or
20 equivalent protection in an amount of at least two hundred fifty
21 thousand dollars for its member companies.

22 ~~((+8))~~ (6) If the seller of travel maintains its principal place
23 of business in another state and maintains a trust account or other
24 approved account in that state consistent with the requirement of this
25 section, and if that seller of travel has transacted business within
26 the state of Washington in an amount exceeding five million dollars for
27 the preceding year, the out-of-state trust account or other approved
28 account may be substituted for the in-state account required under this
29 section.

30 (7) Any person or persons who have suffered monetary loss by an act
31 which constitutes a violation of this chapter may bring a civil action
32 in court against the seller of travel and the surety upon such bond of
33 the seller of travel who committed the violation of this chapter or who
34 employed the seller of travel who committed the violation. A civil
35 action brought in court under this section must be filed no later than
36 one year following the later of the alleged violation of this chapter
37 or completion of the travel by the customer.

1 **Sec. 304.** RCW 19.138.160 and 2001 c 44 s 5 are each amended to
2 read as follows:

3 (1) A nonresident seller of travel soliciting business or selling
4 travel in the state of Washington, by mail, telephone, or otherwise,
5 either directly or indirectly, is deemed, absent any other appointment,
6 to have appointed the ((~~director~~)) secretary of state to be the seller
7 of travel's true and lawful attorney upon whom may be served any legal
8 process against that nonresident arising or growing out of a
9 transaction involving travel services or the sale of travel-related
10 benefits. That solicitation signifies the nonresident's agreement that
11 process against the nonresident that is served as provided in this
12 chapter is of the same legal force and validity as if served personally
13 on the nonresident seller of travel.

14 (2) Service of process upon a nonresident seller of travel shall be
15 made by leaving a copy of the process with the ((~~director~~)) secretary
16 of state. The fee for the service of process shall be determined by
17 the ((~~director~~)) secretary of state by rule. That service is
18 sufficient service upon the nonresident if the plaintiff or plaintiff's
19 attorney of record sends notice of the service and a copy of the
20 process by certified mail before service or immediately after service
21 to the defendant at the address given by the nonresident in a
22 solicitation furnished by the nonresident, and the sender's post office
23 receipt of sending and the plaintiff's or plaintiff's attorney's
24 affidavit of compliance with this section are returned with the process
25 in accordance with Washington superior court civil rules.
26 Notwithstanding the foregoing requirements, however, once service has
27 been made on the ((~~director~~)) secretary of state as provided in this
28 section, in the event of failure to comply with the requirement of
29 notice to the nonresident, the court may order that notice be given
30 that will be sufficient to apprise the nonresident.

31 **Sec. 305.** RCW 19.138.270 and 1994 c 237 s 24 are each amended to
32 read as follows:

33 (1) Each person who knowingly violates this chapter or who
34 knowingly gives false or incorrect information to the ((~~director~~))
35 attorney general((~~τ~~)) or county prosecuting attorney in filing
36 statements required by this chapter, whether or not the statement or

1 report is verified, is guilty of a gross misdemeanor punishable under
2 chapter 9A.20 RCW.

3 (2) A person who violates this chapter or who gives false or
4 incorrect information to the ((director~~_~~)) attorney general((~~_~~)) or
5 county prosecuting attorney in filing statements required by this
6 chapter, whether or not the statement or report is verified, is guilty
7 of a misdemeanor punishable under chapter 9A.20 RCW.

8 NEW SECTION. **Sec. 306.** The following acts or parts of acts are
9 each repealed:

10 (1) RCW 19.138.100 (Registration--Number posting, use--Duplicates--
11 Fee--Assignment, transfer--New owner--Exemption) and 2001 c 44 s 4,
12 1999 c 238 s 3, 1996 c 180 s 4, & 1994 c 237 s 3;

13 (2) RCW 19.138.110 (Registration--Application--Form--Rules--Report)
14 and 1996 c 180 s 5 & 1994 c 237 s 4;

15 (3) RCW 19.138.120 (Registration--Renewal--Refusal--Notice--
16 Hearing) and 2002 c 86 s 277, 1999 c 238 s 4, & 1994 c 237 s 5;

17 (4) RCW 19.138.130 (Unprofessional conduct--Grounds--Registration--
18 Revocation and reinstatement--Support order, noncompliance) and 2002 c
19 86 s 278, 1999 c 238 s 5, 1997 c 58 s 852, 1996 c 180 s 6, & 1994 c 237
20 s 6;

21 (5) RCW 19.138.170 (Director--Powers and duties) and 2002 c 86 s
22 279, 1999 c 238 s 7, & 1994 c 237 s 13;

23 (6) RCW 19.138.1701 (Reimbursement of appropriated funds--Fees) and
24 1994 c 237 s 30;

25 (7) RCW 19.138.180 (Director--Investigations--Publication of
26 violation) and 2002 c 86 s 280 & 1994 c 237 s 15;

27 (8) RCW 19.138.200 (Director or individuals acting on director's
28 behalf--Immunity) and 2002 c 86 s 281 & 1994 c 237 s 20;

29 (9) RCW 19.138.240 (Violations--Civil penalties--Failure to pay)
30 and 2002 c 86 s 282 & 1994 c 237 s 21;

31 (10) RCW 19.138.250 (Violation--Restitution assessed by director)
32 and 1994 c 237 s 22;

33 (11) RCW 19.138.260 (Registration prerequisite to suit) and 1994 c
34 237 s 23;

35 (12) RCW 19.138.310 (Filing public records--Making information
36 public for public interest) and 1994 c 237 s 26;

1 (13) RCW 19.138.330 (Uniform regulation of business and professions
2 act) and 2002 c 86 s 283; and
3 (14) RCW 19.138.904 (Implementation--1994 c 237) and 1994 c 237 s
4 35.

5 **PART 4**
6 **TELEMARKETING**

7 **Sec. 401.** RCW 19.158.020 and 2003 c 39 s 12 are each amended to
8 read as follows:

9 Unless the context requires otherwise, the definitions in this
10 section apply throughout this chapter.

11 (1) A "commercial telephone solicitor" is any person who engages in
12 commercial telephone solicitation, including service bureaus.

13 (2) "Commercial telephone solicitation" means:

14 (a) An unsolicited telephone call to a person initiated by a
15 salesperson and conversation for the purpose of inducing the person to
16 purchase or invest in property, goods, or services;

17 (b) Other communication with a person where:

18 (i) A free gift, award, or prize is offered to a purchaser who has
19 not previously purchased from the person initiating the communication;
20 and

21 (ii) A telephone call response is invited; and

22 (iii) The salesperson intends to complete a sale or enter into an
23 agreement to purchase during the course of the telephone call;

24 (c) Other communication with a person which misrepresents the
25 price, quality, or availability of property, goods, or services and
26 which invites a response by telephone or which is followed by a call to
27 the person by a salesperson;

28 (d) For purposes of this section, "other communication" means a
29 written or oral notification or advertisement transmitted through any
30 means.

31 (3) A "commercial telephone solicitor" does not include any of the
32 following:

33 (a) A person engaging in commercial telephone solicitation where:

34 (i) The solicitation is an isolated transaction and not done in the
35 course of a pattern of repeated transactions of like nature; or

1 (ii) Less than sixty percent of such person's prior year's sales
2 were made as a result of a commercial telephone solicitation as defined
3 in this chapter. Where more than sixty percent of a seller's prior
4 year's sales were made as a result of commercial telephone
5 solicitations, the service bureau contracting to provide commercial
6 telephone solicitation services to the seller shall be deemed a
7 commercial telephone solicitor;

8 (b) A person making calls for religious, charitable, political, or
9 other noncommercial purposes;

10 (c) A person soliciting business solely from purchasers who have
11 previously purchased from the business enterprise for which the person
12 is calling;

13 (d) A person soliciting:

14 (i) Without the intent to complete or obtain provisional acceptance
15 of a sale during the telephone solicitation; and

16 (ii) Who does not make the major sales presentation during the
17 telephone solicitation; and

18 (iii) Who only makes the major sales presentation or arranges for
19 the major sales presentation to be made at a later face-to-face meeting
20 between the salesperson and the purchaser;

21 (e) A person selling a security which is exempt from registration
22 under RCW 21.20.310;

23 (f) A person licensed under RCW (~~(18.85.090)~~) 18.85.101 when the
24 solicited transaction is governed by that law;

25 (g) A person registered under RCW 18.27.060 when the solicited
26 transaction is governed by that law;

27 (h) A person licensed under RCW 48.17.150 when the solicited
28 transaction is governed by that law;

29 (i) Any person soliciting the sale of a franchise who is registered
30 under RCW 19.100.140;

31 (j) A person primarily soliciting the sale of a newspaper of
32 general circulation, a magazine or periodical, or contractual plans,
33 including book or record clubs: (i) Under which the seller provides
34 the consumer with a form which the consumer may use to instruct the
35 seller not to ship the offered merchandise; and (ii) which is regulated
36 by the federal trade commission trade regulation concerning "use of
37 negative option plans by sellers in commerce";

1 (k) Any supervised financial institution or parent, subsidiary, or
2 affiliate thereof. As used in this section, "supervised financial
3 institution" means any commercial bank, trust company, savings and loan
4 association, mutual savings banks, credit union, industrial loan
5 company, personal property broker, consumer finance lender, commercial
6 finance lender, or insurer, provided that the institution is subject to
7 supervision by an official or agency of this state or the United
8 States;

9 (l) A person soliciting the sale of a prearrangement funeral
10 service contract registered under RCW 18.39.240 and 18.39.260;

11 (m) A person licensed to enter into prearrangement contracts under
12 RCW 68.05.155 when acting subject to that license;

13 (n) A person soliciting the sale of services provided by a cable
14 television system operating under authority of a franchise or permit;

15 (o) A person or affiliate of a person whose business is regulated
16 by the utilities and transportation commission or the federal
17 communications commission;

18 (p) A person soliciting the sale of agricultural products, as
19 defined in RCW 20.01.010 where the purchaser is a business;

20 (q) An issuer or subsidiary of an issuer that has a class of
21 securities that is subject to section 12 of the securities exchange act
22 of 1934 (15 U.S.C. Sec. 781) and that is either registered or exempt
23 from registration under paragraph (A), (B), (C), (E), (F), (G), or (H)
24 of subsection (g) of that section;

25 (r) A commodity broker-dealer as defined in RCW 21.30.010 and
26 registered with the commodity futures trading commission;

27 (s) A business-to-business sale where:

28 (i) The purchaser business intends to resell the property or goods
29 purchased, or

30 (ii) The purchaser business intends to use the property or goods
31 purchased in a recycling, reuse, remanufacturing or manufacturing
32 process;

33 (t) A person licensed under RCW 19.16.110 when the solicited
34 transaction is governed by that law;

35 (u) A person soliciting the sale of food intended for immediate
36 delivery to and immediate consumption by the purchaser;

37 (v) A person soliciting the sale of food fish or shellfish when
38 that person is licensed pursuant to the provisions of Title 77 RCW.

1 (4) "Purchaser" means a person who is solicited to become or does
2 become obligated to a commercial telephone solicitor.

3 (5) "Salesperson" means any individual employed, appointed, or
4 authorized by a commercial telephone solicitor, whether referred to by
5 the commercial telephone solicitor as an agent, representative, or
6 independent contractor, who attempts to solicit or solicits a sale on
7 behalf of the commercial telephone solicitor.

8 (6) "Service bureau" means a commercial telephone solicitor who
9 contracts with any person to provide commercial telephone solicitation
10 services.

11 (7) "Seller" means any person who contracts with any service bureau
12 to purchase commercial telephone solicitation services.

13 (8) "Person" includes any individual, firm, association,
14 corporation, partnership, joint venture, sole proprietorship, or any
15 other business entity.

16 (9) "Free gift, award, or prize" means a gratuity which the
17 purchaser believes of a value equal to or greater than the value of the
18 specific product, good, or service sought to be sold to the purchaser
19 by the seller.

20 (10) "Solicit" means to initiate contact with a purchaser for the
21 purpose of attempting to sell property, goods or services, where such
22 purchaser has expressed no previous interest in purchasing, investing
23 in, or obtaining information regarding the property, goods, or services
24 attempted to be sold.

25 **Sec. 402.** RCW 19.158.040 and 2002 c 86 s 284 are each amended to
26 read as follows:

27 ~~((In addition to the unprofessional conduct described in RCW
28 18.235.130, the director of the department of licensing may take
29 disciplinary action for any of the following conduct, acts, or
30 conditions:))~~

31 (1) It shall be unlawful for any person to engage in unfair or
32 deceptive commercial telephone solicitation.

33 (2) A commercial telephone solicitor shall not place calls to any
34 residence which will be received before 8:00 a.m. or after 9:00 p.m. at
35 the purchaser's local time.

36 (3) A commercial telephone solicitor may not engage in any conduct

1 the natural consequence of which is to harass, intimidate, or torment
2 any person in connection with the telephone call.

3 **Sec. 403.** RCW 19.158.070 and 1989 c 20 s 7 are each amended to
4 read as follows:

5 Each commercial telephone solicitor shall appoint the (~~director of~~
6 ~~the department of licensing~~) secretary of state as an agent to receive
7 civil process under this chapter if the commercial telephone solicitor
8 has no (~~properly registered~~) agent, if the agent has resigned, or if
9 the agent cannot, after reasonable diligence, be found.

10 **Sec. 404.** RCW 19.158.090 and 1989 c 20 s 9 are each amended to
11 read as follows:

12 (~~The director of the department of licensing may refer such~~
13 ~~evidence as may be available concerning violations of this chapter or~~
14 ~~of any rule or order hereunder to~~) The attorney general or the proper
15 prosecuting attorney(~~who~~) of the county wherein an alleged
16 violation arose may (~~in his or her discretion, with or without such a~~
17 ~~reference~~), in addition to any other action they might commence, bring
18 an action in the name of the state against any person to restrain and
19 prevent the doing of any act or practice herein prohibited or declared
20 unlawful: PROVIDED, That this chapter shall be considered in
21 conjunction with chapters 9.04 and 19.86 RCW and the powers and duties
22 of the attorney general and the prosecuting attorney as they may appear
23 in chapters 9.04 and 19.86 RCW shall apply against all persons subject
24 to this chapter.

25 **Sec. 405.** RCW 19.158.110 and 1989 c 20 s 11 are each amended to
26 read as follows:

27 (1) Within the first minute of the telephone call, a commercial
28 telephone solicitor or salesperson shall:

29 (a) Identify himself or herself, the company on whose behalf the
30 solicitation is being made, the property, goods, or services being
31 sold; and

32 (b) Terminate the telephone call within ten seconds if the
33 purchaser indicates he or she does not wish to continue the
34 conversation.

1 (2) If at any time during the telephone contact, the purchaser
2 states or indicates that he or she does not wish to be called again by
3 the commercial telephone solicitor or wants to have his or her name and
4 individual telephone number removed from the telephone lists used by
5 the commercial telephone solicitor:

6 (a) The commercial telephone solicitor shall not make any
7 additional commercial telephone solicitation of the called party at
8 that telephone number within a period of at least one year; and

9 (b) The commercial telephone solicitor shall not sell or give the
10 called party's name and telephone number to another commercial
11 telephone solicitor: PROVIDED, That the commercial telephone
12 solicitor may return the list, including the called party's name and
13 telephone number, to the company or organization from which it received
14 the list.

15 (3) The utilities and transportation commission shall by rule
16 ensure that telecommunications companies inform their residential
17 customers of the provisions of this section. The notification may be
18 made by:

19 (a) Annual inserts in the billing statements mailed to residential
20 customers; or

21 (b) Conspicuous publication of the notice in the consumer
22 information pages of local telephone directories.

23 (4) If a sale or an agreement to purchase is completed, the
24 commercial telephone solicitor must inform the purchaser of his or her
25 cancellation rights as enunciated in this chapter(~~(7-state-the~~
26 ~~registration number issued by the department of licensing,~~) and give
27 the street address of the seller.

28 (~~(5) ((If, at any time prior to sale or agreement to purchase, the~~
29 ~~commercial telephone solicitor's registration number is requested by~~
30 ~~the purchaser, it must be provided.~~

31 ~~(6))~~) All oral disclosures required by this section shall be made
32 in a clear and intelligible manner.

33 **Sec. 406.** RCW 19.158.120 and 1989 c 20 s 12 are each amended to
34 read as follows:

35 (1) A purchase of property, goods, or services ordered as a result
36 of a commercial telephone solicitation as defined in this chapter, if
37 not followed by a written confirmation, is not final. The confirmation

1 must contain an explanation of the consumer's rights under this section
2 and a statement indicating where notice of cancellation should be sent.
3 The purchaser may give notice of cancellation to the seller in writing
4 within three business days after receipt of the confirmation. If the
5 commercial telephone solicitor has not provided an address for receipt
6 of such notice, cancellation is effective by mailing the notice to the
7 (~~department of licensing~~) attorney general.

8 (2) Notice of cancellation shall be given by certified mail, return
9 receipt requested, and shall be effective when mailed. Notice of
10 cancellation given by the purchaser need not take a particular form and
11 is sufficient if it indicates by any form of written expression the
12 name, address, and telephone number of the purchaser and the
13 purchaser's stated intention not to be bound by the sale.

14 (3) If a commercial telephone solicitor or a seller, if different,
15 violates this chapter in making a sale, or fails to deliver an item
16 within forty-two calendar days, the contract is voidable by giving
17 written notice to the seller and the purchaser is entitled to a return
18 from the seller within fourteen days of all consideration paid. Upon
19 receipt by the purchaser of the consideration paid to the seller, the
20 purchaser shall make available to the seller, at a reasonable time and
21 place, the items received by the purchaser. Any cost of returning the
22 items received by the purchaser shall be borne by the seller, by
23 providing or guaranteeing payment for return shipping. If such payment
24 is not provided or guaranteed, the purchaser may keep without further
25 obligation the items received.

26 (4) Any contract, agreement to purchase, or written confirmation
27 executed by a seller which purports to waive the purchaser's rights
28 under this chapter is against public policy and shall be unenforceable:
29 PROVIDED, That an agreement between a purchaser and seller to extend
30 the delivery time of an item to more than forty-two days shall be
31 enforceable if the seller has a reasonable basis to expect that he or
32 she will be unable to ship the item within forty-two days and if the
33 agreement is included in the terms of the written confirmation.

34 (5) Where a contract or agreement to purchase confers on a
35 purchaser greater rights to cancellation, refund, or return than those
36 enumerated in this chapter, such contract shall be enforceable, and not
37 in violation of this chapter: PROVIDED, That all rights under such a

1 contract or agreement to purchase must be specifically stated in a
2 written confirmation sent pursuant to this section.

3 (6) The provisions of this section shall not reduce, restrict, or
4 eliminate any existing rights or remedies available to purchasers.

5 NEW SECTION. **Sec. 407.** The following acts or parts of acts are
6 each repealed:

7 (1) RCW 19.158.050 (Registration requirements--Unprofessional
8 conduct--Suspension of license or certificate for noncompliance with
9 support order--Reinstatement) and 2002 c 86 s 285, 1997 c 58 s 853, &
10 1989 c 20 s 5;

11 (2) RCW 19.158.080 (Duties of director) and 1989 c 20 s 8;

12 (3) RCW 19.158.150 (Registration required--Penalty) and 1989 c 20
13 s 15;

14 (4) RCW 19.158.170 (Uniform regulation of business and professions
15 act) and 2002 c 86 s 286; and

16 (5) RCW 19.158.901 (Effective date--1989 c 20) and 1989 c 20 s 20.

17 **PART 5**

18 **CAMP RESORTS**

19 **Sec. 501.** RCW 19.105.300 and 1988 c 159 s 1 are each amended to
20 read as follows:

21 As used in this chapter, unless the context clearly requires
22 otherwise:

23 (1) "Camping resort" means any enterprise, other than one that is
24 tax exempt under section 501(c)(3) of the Internal Revenue Code of
25 1986, as amended, that has as its primary purpose the ownership,
26 operation, or promotion of campgrounds that includes or will include
27 camping sites.

28 (2) "Camping resort contract" means an agreement evidencing a
29 purchaser's title to, estate or interest in, or right or license to use
30 for more than thirty days the campground of a camping resort.

31 (3) "Camping site" means a space designed and promoted for the
32 purpose of locating a trailer, tent, tent trailer, pick-up camper, or
33 other similar device used for land-based portable housing.

34 (4) "Purchaser" means a person who enters into a camping resort

1 contract and thereby obtains title to, an estate or interest in, or
2 license or the right to use the campground of a camping resort.

3 (5) "Person" means any individual, corporation, partnership, trust,
4 association, or other organization other than a government or a
5 subdivision thereof.

6 (~~(6)~~) (~~"Director" means the director of licensing.~~
7 ~~(7)~~) "Camping resort operator" means any person who establishes,
8 promotes, owns, or operates a camping resort.

9 (~~(8)~~) (7) "Advertisement" means any offer, written, printed,
10 audio, or visual, by general solicitation, including all material used
11 by an operator in a membership referral program.

12 (~~(9)~~) (8) "Offer" means any solicitation reasonably designed to
13 result in the entering into of a camping resort contract.

14 (~~(10)~~) (9) "Sale" or "sell" means entering into, or other
15 disposition, of a camping resort contract for value, but the term value
16 does not include a reasonable fee to offset the ministerial costs of
17 transfer of a camping resort contract if, in transferring the contract
18 or membership, the terms of the original contract or membership are not
19 changed by the camping resort operator.

20 (~~(11)~~) (10) "Salesperson" means any individual, other than a
21 camping resort operator, who is engaged in obtaining commitments of
22 persons to enter into camping resort contracts by making a sales
23 presentation to, or negotiating sales with, the persons, but does not
24 include members of a camping resort engaged in the referral of persons
25 without making a sales presentation to the persons.

26 (~~(12)~~) (11) "Affiliate" means any person who, directly or
27 indirectly through one or more intermediaries, controls or is
28 controlled by or is under common control of a registrant or camping
29 resort operator.

30 (~~(13)~~) (12) "Campground" means real property owned or operated by
31 a camping resort that is available for camping or outdoor recreation by
32 purchasers of camping resort contracts.

33 (~~(14)~~) ~~"Department" means the department of licensing.~~

34 ~~(15)~~) (13) "Resale camping resort contract" means a camping resort
35 contract offered or sold which is not the original offer, transfer, or
36 sale of such contract, and not a forfeited contract being reoffered by
37 an operator.

1 (~~(16)~~) (14) "Start-up camping resort contract" means a camping
2 resort contract that is being offered or sold for the first time or a
3 forfeited contract being resold by a camping resort operator.

4 (~~(17)~~) (15) "Blanket encumbrance" means any mortgage, deed of
5 trust, option to purchase, vendor's lien or interest under a contract
6 or agreement of sale, or other material financing lien or encumbrance
7 granted by the camping resort operator or affiliate that secures or
8 evidences the obligation to pay money or to sell or convey any
9 campgrounds made available to purchasers by the camping resort operator
10 or any portion thereof and that authorizes, permits, or requires the
11 foreclosure or other disposition of the campground affected.

12 (~~(18)~~) (16) "Nondisturbance agreement" means an instrument by
13 which the holder of a blanket encumbrance agrees that: (a) Its rights
14 in any campground made available to purchasers, prior or subsequent to
15 the agreement, by the camping resort operator shall be subordinate to
16 the rights of purchasers from and after the recording of the
17 instrument; (b) the holder and all successors and assignees, and any
18 person who acquires the campground through foreclosure or by deed in
19 lieu of foreclosure of such blanket encumbrance, shall take the
20 campground subject to the use rights of purchasers; and (c) the holder
21 or any successor acquiring the campground through the blanket
22 encumbrance shall not discontinue use, or cause the campground to be
23 used, in a manner which would materially prevent purchasers from using
24 or occupying the campground in a manner contemplated by the purchasers'
25 camping resort contracts. However, the holder has no obligation or
26 liability to assume the responsibilities or obligations of the camping
27 resort operator under camping resort contracts.

28 **Sec. 502.** RCW 19.105.336 and 1988 c 159 s 7 are each amended to
29 read as follows:

30 (1) With respect to every campground located within the state which
31 was not made available to purchasers of camping resort contracts prior
32 to June 20, 1988, and with respect to any new blanket encumbrance
33 placed against any campground in this state or any prior blanket
34 encumbrance against any campground in this state with respect to which
35 the underlying obligation is refinanced after June 20, 1988, the
36 camping resort operator shall not represent any such campground to be

1 available to purchasers of its camping resort contracts until one of
2 the following events has occurred with regard to each such blanket
3 encumbrance:

4 (a) The camping resort operator obtains and records as covenants to
5 run with the land a nondisturbance agreement from each holder of the
6 blanket encumbrance. The nondisturbance agreement shall be executed by
7 the camping resort operator and by each holder of the blanket
8 encumbrance and shall include the provisions set forth in RCW
9 19.105.300(~~((+18))~~) (16) and the following:

10 (i) The instrument may be enforced by individual purchasers of
11 camping resort contracts. If the camping resort operator is not in
12 default under its obligations to the holder of the blanket encumbrance,
13 the agreement may be enforced by the camping resort operator.

14 (ii) The agreement shall be effective as between each purchaser and
15 the holder of the blanket encumbrance despite any rejection or
16 cancellation of the purchaser's contract during any bankruptcy
17 proceedings of the camping resort operator.

18 (iii) The agreement shall be binding upon the successors in
19 interest of both the camping resort operator and the holder of the
20 blanket encumbrance.

21 (iv) A holder of the blanket encumbrance who obtains title or
22 possession or who causes a change in title or possession in a
23 campground by foreclosure or otherwise and who does not continue to
24 operate the campground upon conditions no less favorable to members
25 than existed prior to the change of title or possession shall either:

26 (A) Offer the title or possession to an association of members to
27 operate the campground; or

28 (B) Obtain a commitment from another entity which obtains title or
29 possession to undertake the responsibility of operating the campground.

30 (b) The camping resort operator (~~((posts))~~) maintains a bond or
31 irrevocable letter of credit (~~((with the director in a form satisfactory
32 to the director))~~) in the amount of the aggregate principal indebtedness
33 remaining due under the blanket encumbrance.

34 (c) The camping resort operator (~~((delivers))~~) has entered into an
35 encumbrance trust agreement (~~((in a form satisfactory to the director))~~),
36 as provided in subsection (2) of this section.

37 (~~((d) — The — camping — resort — operator — delivers — other — financial
38 assurances reasonably acceptable to the director.))~~)

1 (2) With respect to any campground located within the state other
2 than a campground described in subsection (1) of this section, the
3 camping resort operator shall not represent the campground to be
4 available to purchasers of camping resort contracts after June 20,
5 1988, until one of the following events has occurred with regard to
6 each blanket encumbrance:

7 (a) The camping resort operator obtains and records a
8 nondisturbance agreement to run with the land pursuant to subsection
9 (1) of this section from each holder of the blanket encumbrance.

10 (b) The camping resort operator (~~((posts))~~) maintains a surety bond
11 or irrevocable letter of credit (~~((with the director in a form
12 satisfactory to the director))~~) in the amount of the aggregate principal
13 indebtedness remaining due under the blanket encumbrance.

14 (c) The camping resort operator (~~((delivers to the director, in a
15 form satisfactory to the director,))~~) enters into an encumbrance trust
16 agreement (~~((among))~~) between the camping resort operator(~~((,))~~) and a
17 trustee (which can be either a corporate trustee licensed to act as a
18 trustee under Washington law, licensed escrow agent, or a licensed
19 attorney)(~~((, and the director))~~).

20 (d) The camping resort operator (~~((delivers evidence to the director
21 that any))~~) has obtained a hypothecation loan from a financial
22 institution that has (~~((made a hypothecation loan to the camping resort
23 operator (the "hypothecation lender") shall have))~~) a lien on, or
24 security interest in, the camping resort operator's interest in the
25 campground, and the hypothecation lender (~~((shall have))~~) has executed
26 and recorded a nondisturbance agreement in the real estate records of
27 the county in which the campground is located. Each person holding an
28 interest in a blanket encumbrance superior to the interest held by the
29 hypothecation lender shall have executed and recorded an instrument
30 stating that such person shall give the hypothecation lender notice of,
31 and at least thirty days to cure, any default under the blanket
32 encumbrance before the person commences any foreclosure action
33 affecting the campground. For the purposes of this subsection, a
34 hypothecation loan to a camping resort operator is a loan or line of
35 credit secured by the camping resort contracts receivable arising from
36 the sale of camping resort contracts by the camping resort operator,
37 which exceeds in the aggregate all outstanding indebtedness secured by

1 blanket encumbrances superior to the interest held by the hypothecation
2 lender.

3 ~~((e) — The — camping — resort — operator — delivers — other — financial~~
4 ~~assurances reasonably acceptable to the director.))~~

5 (3) Any camping resort operator which does not comply at all times
6 with subsection (1) or (2) of this section with regard to any blanket
7 encumbrance in connection with any applicable campground is prohibited
8 from offering any camping resort contracts for sale in Washington
9 during the period of noncompliance.

10 **Sec. 503.** RCW 19.105.340 and 1988 c 159 s 8 are each amended to
11 read as follows:

12 (1) In addition to other remedies authorized by chapter 19.86 RCW
13 if the ((director)) attorney general finds that ~~((the applicant or~~
14 ~~registrant))~~ a camping resort operator has not by other means assured
15 future availability to and quiet enjoyment of the campgrounds and
16 facilities, as required under this chapter, the ~~((director))~~ attorney
17 general may, notwithstanding the provisions of RCW 19.105.336, require
18 impoundment of the funds or membership receivables, or both, from
19 camping resort contract sales, including the impoundment of periodic
20 dues or assessments required of purchasers under the contracts, or
21 provide other assurances acceptable to the ~~((director))~~ attorney
22 general, until sufficient funds have been impounded or arrangements
23 made to alleviate the inadequacy. The ~~((director))~~ court upon petition
24 by the attorney general may, upon finding it reasonable and necessary,
25 for compliance with RCW 19.105.336 ~~((and 19.105.365))~~, and not
26 inconsistent with the protection of purchasers or owners of camping
27 resort contracts, provide for release to the ~~((applicant, registrant,))~~
28 camping resort operator or others of all or a portion of the impounded
29 funds, membership receivables, or other assets in the impound. The
30 ~~((director))~~ court may take appropriate measures to assure that the
31 impounded funds will be applied as required by this chapter.

32 (2) Funds placed in impounds under this section ~~((or reserve~~
33 ~~accounts under RCW 19.105.350))~~ are not subject to lien, attachment, or
34 the possession of lenders or creditors of the operator, trustees in
35 bankruptcy, receivers, or other third parties. In instances of
36 bankruptcy, foreclosure, attachment, or other contingency where the
37 ownership or beneficiary status of funds in depositories, or the

1 receivables and funds to be collected from receivables, may be at
2 issue, the purchasers of contracts under this chapter, as a class,
3 shall be deemed the beneficiary. No individual purchaser or group of
4 purchasers, other than the purchasers as a class, have any right to
5 possession, attachment, lien, or right of partition of funds or
6 receivables in the impound or reserve.

7 (3) It is unlawful for an operator or other person to assign,
8 hypothecate, sell, or pledge any contract or other asset placed into an
9 impound (~~(or reserve)~~) under this chapter without the express written
10 approval of the (~~(director)~~) attorney general or a court of competent
11 jurisdiction.

12 **Sec. 504.** RCW 19.105.370 and 1988 c 159 s 13 are each amended to
13 read as follows:

14 (~~(Except in a transaction exempt under RCW 19.105.325,))~~ Any
15 operator who offers or sells camping resort contracts in this state
16 shall provide the prospective purchaser with (~~(the)~~) a written
17 (~~(disclosures required to be filed under RCW 19.105.320(1)(b) in a form~~
18 ~~that is materially accurate and complete before the prospective~~
19 ~~purchaser signs a camping resort contract or gives any item of value~~
20 ~~for the purchase of a camping resort contract. The department may~~
21 ~~provide its own disclosures, supplementing those of the operator, in~~
22 ~~any format it deems appropriate. The department shall not be held~~
23 ~~liable for any alleged failure to disclose information or for~~
24 ~~deficiencies in the content of its disclosures when such disclosures~~
25 ~~are based upon information provided by the operator or a registrant.))~~
26 disclosure document before the prospective purchaser signs a camping
27 resort contract or gives any item of value for the purchase of a
28 camping resort contract. The disclosures must include:

29 (1) The name and address of the camping resort operator and any
30 material affiliate and, if the operator is other than a natural person,
31 the identity of each person owning a ten percent or greater share or
32 interest;

33 (2) A brief description of the camping resort operator's experience
34 in the camping resort business;

35 (3) A brief description of the nature of the purchaser's title to,
36 estate or interest in, or right to use the camping resort property or

1 facilities and whether or not the purchaser will obtain an estate,
2 title to, or interest in specified real property;

3 (4) The location and a brief description of the significant
4 facilities and recreation services then available for use by purchasers
5 and those which are represented to purchasers as being planned,
6 together with a statement whether any of the resort facilities or
7 recreation services will be available to nonpurchasers or the general
8 public;

9 (5) A brief description of the camping resort's ownership of or
10 other right to use the camping resort properties or facilities
11 represented to be available for use by purchasers, together with a
12 brief description of any material encumbrance, the duration of any
13 lease, real estate contract, license, franchise, reciprocal agreement,
14 or other agreement entitling the camping resort operator to use the
15 property, and any material provisions of the agreements which restrict
16 a purchaser's use of the property;

17 (6) A summary of any local or state health, environmental,
18 subdivision, or zoning requirements or permits that have not been
19 complied with for the resort property or facility represented to
20 purchasers as in or planned for the campground;

21 (7) A copy of the articles, bylaws, rules, restrictions, or
22 covenants regulating the purchaser's use of each property, the
23 facilities located on each property, and any recreation services
24 provided;

25 (8) A statement of whether and how the articles, declarations,
26 bylaws, rules, restrictions, or covenants used in structuring the
27 project may be changed and whether and how the members may participate
28 in the decision on the changes;

29 (9) A brief description of all payments of a purchaser under a
30 camping resort contract, including initial fees and any further fees,
31 charges, or assessments, together with any provisions for changing the
32 payments;

33 (10) A description of any restraints on the transfer of camping
34 resort contracts;

35 (11) A brief description of the policies relating to the
36 availability of camping sites and conditions under which reservations
37 are required and the availability of the sites to guests and family
38 members;

1 (12) A disclosure covering the right of the camping resort operator
2 and their heirs, assigns, and successors in interest to change,
3 substitute, or withdraw from use all or a portion of the camping resort
4 properties or facilities and the extent to which the operator is
5 obligated to replace camping resort facilities or properties withdrawn;

6 (13) A brief description of any grounds for forfeiture of a
7 purchaser's camping resort contract;

8 (14) A statement concerning the effect upon membership camping
9 resort contracts if there is a foreclosure affecting any of the
10 operator's properties, a bankruptcy, or creditor or lienholder action
11 affecting the operator or the camping resort properties; and

12 (15) A statement of the total number of camping resort contracts
13 then in effect, both within and without this state; and a statement of
14 the total number of camping resort contracts intended to be sold, both
15 within and without this state.

16 **Sec. 505.** RCW 19.105.390 and 1988 c 159 s 15 are each amended to
17 read as follows:

18 Any camping resort contract may be canceled at the option of the
19 purchaser, if the purchaser sends notice of the cancellation by
20 certified mail (return receipt requested) to the camping resort
21 operator at the address contained in the camping resort contract and if
22 the notice is postmarked not later than midnight of the third business
23 day following the day on which the contract is signed. (~~In addition~~
24 ~~to this cancellation right, any purchaser who signs a camping resort~~
25 ~~contract of any description required to be registered with the~~
26 ~~department without having received the written disclosures required by~~
27 ~~this chapter has cancellation rights until three business days~~
28 ~~following eventual receipt of the written disclosures.)) Purchasers
29 shall request cancellation of contracts by sending the notice of
30 cancellation by certified mail (return receipt requested), postmarked
31 not later than midnight of the third business day following the day on
32 which the contract is signed (~~or the day on which the disclosures were~~
33 ~~actually received, whichever event is later to)), the camping resort
34 operator at the address contained in the camping resort contract. In
35 computing the number of business days, the day on which the contract
36 was signed shall not be included as a "business day," nor shall
37 Saturday, Sunday, or legal holidays be included. Within three business~~~~

1 days following receipt of timely and proper notice of cancellation from
2 the purchaser, the camping resort operator shall provide evidence that
3 the contract has been cancelled. Thereafter, any money or other
4 consideration paid by the purchaser shall be promptly refunded.

5 Every camping resort contract, other than those being offered (~~and~~
6 ~~registered~~) as resales, shall include the following statement in at
7 least ten-point bold-face type immediately prior to the space for the
8 purchaser's signature:

9 "Purchaser's right to cancel: You may cancel this contract without
10 any cancellation fee or other penalty, or stated reason for doing so,
11 by sending notice of cancellation by certified mail, return receipt
12 requested, to (insert name and address of camping resort
13 operator). The notice must be postmarked by midnight of the third
14 business day following the day on which the contract is signed. In
15 computing the three business days, the day on which the contract is
16 signed shall not be included as a "business day," nor shall Saturday,
17 Sunday, or legal holidays be included."

18 If the purchaser has not inspected a camping resort property or
19 facility at which camping resort sites are located or planned, the
20 notice must contain the following additional language:

21 "If you sign this contract without having inspected a property at
22 which camping sites are located or planned, you may cancel this
23 contract by giving this notice within six (6) business days following
24 the day on which you signed the contract."

25 **Sec. 506.** RCW 19.105.400 and 1988 c 159 s 16 are each amended to
26 read as follows:

27 (1) Any camping resort contract entered into in violation of this
28 chapter may be voided by the purchaser and the purchaser's entire
29 consideration recovered at the option of the purchaser, but no suit
30 under this section may be brought after two years from the date the
31 contract is signed.

32 (2) In the event the operator sells or otherwise permanently
33 withdraws a camping resort from use by purchasers, those purchasers who
34 are then current in their obligations under resort contracts may, at
35 purchaser's option and in writing, elect to cancel their contracts and
36 receive fifty percent of the principal portion of the purchase price
37 they have already paid for the camping resort contract. If the

1 purchaser's camping resort contract entitles the purchaser to use of
2 multiple camping resorts located in Washington and operated by the
3 promoter named in purchaser's contract, the refund must be reduced to
4 forty percent if there are two remaining resorts, to thirty percent if
5 there are three remaining resorts, or to twenty percent if there are
6 four or more remaining resorts. Interest paid on purchase contracts
7 and annual dues and assessments may not be included in the calculation
8 of principal price paid.

9 (3) Purchasers who have paid the purchase price of their contract
10 in full and are then current in annual dues and assessments may cancel
11 their contracts. Cancellation must be in writing and sent to the
12 promoter's last known address by certified mail, return receipt
13 requested.

14 **Sec. 507.** RCW 19.105.470 and 2002 c 86 s 275 are each amended to
15 read as follows:

16 ~~((1) Whenever it appears to the director that any person has~~
17 ~~engaged or is about to engage in any act or practice constituting a~~
18 ~~violation of any provision of this chapter, any withdrawal of a camping~~
19 ~~resort property in violation of RCW 19.105.380(1)(o), or any rule,~~
20 ~~order, or permit issued under this chapter, the director may in his or~~
21 ~~her discretion issue an order directing the person to cease and desist~~
22 ~~from continuing the act or practice. The procedures in RCW 18.235.150~~
23 ~~apply to these cease and desist orders. However, the director may~~
24 ~~issue a temporary order pending the hearing which shall be effective~~
25 ~~immediately upon delivery to the person affected and which shall remain~~
26 ~~in effect until ten days after the hearing is held and which shall~~
27 ~~become final if the person to whom notice is addressed does not request~~
28 ~~a hearing.~~

29 ~~(2))~~ If it appears necessary in order to protect the interests of
30 members and purchasers, ~~((whether or not the director has issued a~~
31 ~~cease and desist order, the attorney general in the name of the state,~~
32 ~~the director, the proper prosecuting attorney,))~~ an affiliated members'
33 common-interest association, or a group of members as a class, may
34 bring an action in any court of competent jurisdiction to enjoin any
35 ~~((such))~~ acts or practices constituting a violation of this chapter and
36 to enforce compliance with this chapter ~~((or any rule, order, or permit~~
37 ~~under this chapter)).~~ Upon a proper showing, a permanent or temporary

1 injunction, restraining order, or writ of mandamus shall be granted and
2 a receiver or conservator may be appointed for the defendant, for the
3 defendant's assets, or to protect the interests or assets of a members'
4 common-interest association or the members of a camping resort as a
5 class. ~~((The state, the director,))~~ A members' common-interest
6 association, or members as a class shall not be required to post a bond
7 in such proceedings.

8 **Sec. 508.** RCW 19.105.480 and 2003 c 53 s 152 are each amended to
9 read as follows:

10 (1) ~~((Any person who willfully fails to register an offering of
11 camping resort contracts under this chapter is guilty of a gross
12 misdemeanor.~~

13 ~~(2))~~ It is a gross misdemeanor for any person in connection with
14 the offer or sale of any camping resort contracts willfully and
15 knowingly:

16 (a) To make any untrue or misleading statement of a material fact,
17 or to omit to state a material fact necessary in order to make the
18 statements made, in the light of the circumstances under which they are
19 made, not misleading;

20 (b) To employ any device, scheme, or artifice to defraud;

21 (c) To engage in any act, practice, or course of business which
22 operates or would operate as a fraud or deceit upon any person;

23 ~~((To file, or cause to be filed, with the director any document
24 which contains any untrue or misleading information;~~

25 ~~(e))~~ To breach any impound, escrow, trust, or other security
26 arrangement provided for by this chapter;

27 ~~((f))~~ (e) To cause the breaching of any trust, escrow, impound,
28 or other arrangement placed in a registration for compliance with RCW
29 19.105.336; or

30 ~~((g))~~ (f) To ~~((employ unlicensed salespersons or))~~ permit
31 salespersons or employees to make misrepresentations or violate this
32 chapter.

33 ~~((3))~~ (2) No indictment or information may be returned under this
34 chapter more than five years after the date of the event alleged to
35 have been a violation.

1 **Sec. 509.** RCW 19.105.490 and 1982 c 69 s 20 are each amended to
2 read as follows:

3 ~~((The director may refer such evidence as may be available~~
4 ~~concerning violations of this chapter or of any rule or order under~~
5 ~~this chapter to))~~ The attorney general or the proper prosecuting
6 attorney ((who)) of the county wherein an alleged violation arose may
7 ~~((in his discretion, with or without such a reference,))~~ institute the
8 appropriate civil or criminal proceedings under this chapter.

9 **Sec. 510.** RCW 19.105.500 and 1982 c 69 s 21 are each amended to
10 read as follows:

11 ~~((For the purposes of application of the consumer protection act,~~
12 ~~chapter 19.86 RCW, any material violation of the provisions of this~~
13 ~~chapter shall be construed to constitute an unfair or deceptive act or~~
14 ~~practice or unfair method of competition in the conduct of trade or~~
15 ~~commerce.))~~ The legislature finds that the practices governed by this
16 chapter are matters vitally affecting the public interest for the
17 purpose of applying the consumer protection act, chapter 19.86 RCW.
18 Any violation of this chapter is not reasonable in relation to the
19 development and preservation of business and is an unfair and deceptive
20 act or practice and unfair method of competition in the conduct of
21 trade or commerce in violation of RCW 19.86.020. Remedies provided by
22 chapter 19.86 RCW are cumulative and not exclusive.

23 NEW SECTION. **Sec. 511.** The following acts or parts of acts are
24 each repealed:

25 (1) RCW 19.105.310 (Unlawful to offer or sell contract unless
26 contract registered--Exemptions) and 2005 c 112 s 1, 1988 c 159 s 2, &
27 1982 c 69 s 2;

28 (2) RCW 19.105.320 (Registration--Filings required upon
29 application--Waiver) and 1988 c 159 s 3 & 1982 c 69 s 3;

30 (3) RCW 19.105.325 (Exemptions from chapter) and 2005 c 112 s 2 &
31 1988 c 159 s 4;

32 (4) RCW 19.105.330 (Registration--Effective, when--Completed form
33 of application required) and 2000 c 171 s 68, 1988 c 159 s 5, & 1982 c
34 69 s 4;

35 (5) RCW 19.105.333 (Signature of operator, trustee, or holder of

1 power of attorney required on application documentation) and 1988 c 159
2 s 6;

3 (6) RCW 19.105.345 (Persons licensed under chapter 18.85 RCW exempt
4 from salesperson registration requirements) and 1988 c 159 s 9;

5 (7) RCW 19.105.350 (Director may require reserve fund by order--
6 Actions against a registration) and 2002 c 86 s 272, 1988 c 159 s 10,
7 & 1982 c 69 s 6;

8 (8) RCW 19.105.360 (Filing of sales literature, contract form,
9 disclosure supplements) and 1988 c 159 s 11 & 1982 c 69 s 7;

10 (9) RCW 19.105.365 (Advertising promises of free gifts, awards, or
11 prizes--Provision of gift or substitute--Security arrangements after
12 violation--Advance fees placed in trust--Membership referral programs
13 considered promotional programs) and 1991 c 227 s 9 & 1988 c 159 s 12;

14 (10) RCW 19.105.380 (Unprofessional conduct/disciplinary action--
15 Grounds--Liability for administrative and legal costs--Assurances of
16 discontinuance--Support order, noncompliance) and 2005 c 25 s 3, 2002
17 c 86 s 273, 1997 c 58 s 850, 1988 c 159 s 14, & 1982 c 69 s 9;

18 (11) RCW 19.105.411 (Fees) and 1988 c 159 s 18;

19 (12) RCW 19.105.420 (Resort contracts--Registration, duration--
20 Renewal, amendment--Renewal of prior permits) and 1988 c 159 s 19 &
21 1982 c 69 s 13;

22 (13) RCW 19.105.430 (Unlawful to act as salesperson without
23 registering--Exemptions) and 1988 c 159 s 20 & 1982 c 69 s 14;

24 (14) RCW 19.105.440 (Registration as salesperson--Application--
25 Unprofessional conduct--Assurances of discontinuance--Renewal of
26 registration--Support order, noncompliance) and 2002 c 86 s 274, 1997
27 c 58 s 851, 1988 c 159 s 21, & 1982 c 69 s 15;

28 (15) RCW 19.105.450 (Investigations--Scope--Publishing information)
29 and 1988 c 159 s 22 & 1982 c 69 s 16;

30 (16) RCW 19.105.520 (Unlawful to represent director's
31 administrative approval as determination as to merits of resort--
32 Penalty) and 2003 c 53 s 153, 1988 c 159 s 26, & 1982 c 69 s 24;

33 (17) RCW 19.105.530 (Rules, forms, orders--Administration of
34 chapter) and 1988 c 159 s 27 & 1982 c 69 s 25;

35 (18) RCW 19.105.540 (Administrative procedure act application) and
36 1982 c 69 s 26;

37 (19) RCW 19.105.550 (Administration) and 1982 c 69 s 27;

1 (20) RCW 19.105.560 (Uniform regulation of business and professions
2 act) and 2002 c 86 s 276; and
3 (21) RCW 19.105.930 (Effective date--1982 c 69) and 1982 c 69 s 32.

4 **PART 6**
5 **AUCTIONEERS**

6 **Sec. 601.** RCW 18.11.050 and 1986 c 324 s 2 are each amended to
7 read as follows:

8 Unless the context clearly requires otherwise, the definitions in
9 this section apply throughout this chapter.

10 (1) "Auctioneer" means an individual who calls bids at an auction.

11 (2) "Auction" means a transaction conducted by means of exchanges
12 between an auctioneer and the members of his or her audience,
13 constituting a series of invitations for offers for the purchase of
14 goods or real property made by the auctioneer, offers by members of the
15 audience, and the acceptance of the highest or most favorable offer.

16 (3) "Auction mart" means any fixed or established place designed,
17 intended, or used for the conduct of auctions.

18 (4) "Auction company" means a sole proprietorship, partnership,
19 corporation, or other legal or commercial entity that sells or offers
20 to sell goods or real estate at auction or arranges, sponsors, or
21 manages auctions. The term "auction company" shall exclude any sole
22 proprietorship owned by an auctioneer licensed under this chapter whose
23 gross annual sales do not exceed twenty-five thousand dollars.

24 (~~(5) ("Department" means the department of licensing.~~

25 ~~(6) "Director" means the director of licensing.~~

26 ~~(7))~~) "Person" means an individual, partnership, association,
27 corporation, or any other form of business enterprise.

28 ~~((8))~~) (6) "Goods" mean wares, chattels, merchandise, or personal
29 property owned or consigned, which may be lawfully kept or offered for
30 sale.

31 ~~((9) "License" means state authority to operate as an auctioneer
32 or auction company, which authority is conferred by issuance of a
33 certificate of registration subject to annual renewal.~~

34 ~~(10) "Licensee" means an auctioneer or auction company registered
35 under this chapter.)~~)

1 **Sec. 602.** RCW 18.11.070 and 1999 c 398 s 1 are each amended to
2 read as follows:

3 ~~((1)) It is unlawful for any person to act as an auctioneer or for~~
4 ~~an auction company to engage in any business in this state without a~~
5 ~~license.~~

6 ~~(2))~~) This chapter does not apply to:

7 ~~((a))~~) (1) An auction of goods conducted by an individual who
8 personally owns those goods and who did not acquire those goods for
9 resale;

10 ~~((b))~~) (2) An auction conducted by or under the direction of a
11 public authority;

12 ~~((c))~~) (3) An auction held under judicial order in the settlement
13 of a decedent's estate;

14 ~~((d))~~) (4) An auction which is required by law to be at auction;

15 ~~((e))~~) (5) An auction conducted by or on behalf of a political
16 organization or a charitable corporation or association if the person
17 conducting the sale receives no compensation;

18 ~~((f))~~) (6) An auction of livestock or agricultural products which
19 is conducted under chapter 16.65 or 20.01 RCW. Auctions not regulated
20 under chapter 16.65 or 20.01 RCW shall be fully subject to the
21 provisions of this chapter;

22 ~~((g))~~) (7) An auction held under chapter 19.150 RCW;

23 ~~((h))~~) (8) An auction of an abandoned vehicle under chapter 46.55
24 RCW; or

25 ~~((i))~~) (9) An auction of fur pelts conducted by any cooperative
26 association organized under chapter 23.86 RCW or its wholly owned
27 subsidiary. In order to qualify for this exemption, the fur pelts must
28 be from members of the association. However, the association, without
29 loss of the exemption, may auction pelts that it purchased from
30 nonmembers for the purpose of completing lots or orders, so long as the
31 purchased pelts do not exceed fifteen percent of the total pelts
32 auctioned.

33 **Sec. 603.** RCW 18.11.100 and 2002 c 86 s 208 are each amended to
34 read as follows:

35 (1) Nonresident auctioneers and auction companies are required to
36 comply with the provisions of this chapter(~~(, chapter 18.235 RCW, and~~

1 ~~the rules of the department)) as a condition of conducting business in~~
2 ~~the state.~~

3 (2) ~~((The application of))~~ An auction held by a nonresident ~~((under~~
4 ~~this chapter))~~ auctioneer or auction company shall constitute the
5 appointment of the secretary of state as the ~~((applicant's))~~
6 auctioneer's or auction company's agent upon whom process may be served
7 in any action or proceeding against the ~~((applicant))~~ auctioneer or
8 auction company arising out of a transaction or operation connected
9 with or incidental to the business of an auctioneer or an auction
10 company.

11 **Sec. 604.** RCW 18.11.121 and 1987 c 336 s 2 are each amended to
12 read as follows:

13 (1) ~~((Except as provided in this section,))~~ Each auctioneer and
14 each auction company shall ~~((as a condition to the granting and~~
15 ~~retention of a license have on file with the department an approved))~~
16 obtain and maintain a surety bond ~~((or other security in lieu of a~~
17 ~~bond. However, if an auction company is a sole proprietorship or a~~
18 ~~partnership and has on file with the department a surety bond or other~~
19 ~~security approved by the director in the amount that would otherwise be~~
20 ~~required for an auction company to be granted or to retain a license~~
21 ~~under this section, then no separate bond or bonds shall be required~~
22 ~~for the sole proprietor or any individual partner to act as an~~
23 ~~auctioneer for the sole proprietorship or partnership. The bond or~~
24 ~~other security of an auctioneer shall be))~~ in the amount of five
25 thousand dollars for the benefit of any person injured or damaged as a
26 result of any violation by the auctioneer or auction company of any of
27 the provisions of this chapter.

28 (2) ~~((The bond or other security of an auction company shall be in~~
29 ~~an amount not less than five thousand dollars and not more than twenty-~~
30 ~~five thousand dollars. The amount shall be based on the value of the~~
31 ~~goods and real estate sold at auctions conducted, supervised, arranged,~~
32 ~~sponsored, or managed by the auction company during the previous~~
33 ~~calendar year or, for a new auction company, the estimated value of the~~
34 ~~goods and real estate to be sold at auction during the current calendar~~
35 ~~year. The director shall establish by rule the procedures to be used~~
36 ~~for determining the amount of auction company bonds or other security.~~

1 ~~(3) In lieu of a surety bond, an auctioneer or auction company may~~
2 ~~deposit with the department any of the following:~~

3 ~~(a) Savings accounts assigned to the director;~~

4 ~~(b) Certificates of deposit payable to the director;~~

5 ~~(c) Investment certificates or share accounts assigned to the~~
6 ~~director; or~~

7 ~~(d) Any other security acceptable to the director.~~

8 ~~All obligations and remedies relating to surety bonds authorized by~~
9 ~~this section shall apply to deposits filed with the director.~~

10 ~~(4))~~ Each bond shall comply with all of the following:

11 (a) Be executed by the ~~((person seeking the license))~~ auctioneer or
12 auction company as principal and by a corporate surety licensed to do
13 business in the state;

14 (b) Be payable to the state; and

15 (c) Be conditioned on compliance with all provisions of this
16 chapter ~~((and the agency rules adopted pursuant to this chapter,~~
17 ~~including payment of any administrative fines assessed against the~~
18 ~~licensee; and~~

19 ~~(d) Remain in effect for one year after expiration, revocation, or~~
20 ~~suspension of the license)).~~

21 ~~((5) If any licensee fails or is alleged to have failed to comply~~
22 ~~with the provisions of this chapter or the agency rules adopted~~
23 ~~pursuant to this chapter, the director may hold a hearing in accordance~~
24 ~~with chapter 34.05 RCW, determine those persons who are proven~~
25 ~~claimants under the bond, and, if appropriate, distribute the bond~~
26 ~~proceeds to the proven claimants.))~~ (3) The state or an injured person
27 may ~~((also))~~ bring an action against the bond in superior court for a
28 violation of this chapter. The liability of the surety shall be only
29 for actual damages and shall not exceed the amount of the bond.

30 ~~((6))~~ (4) Damages that exceed the amount of the bond may be
31 remedied by actions against the auctioneer or the auction company under
32 RCW 18.11.260 or other available remedies at law.

33 **Sec. 605.** RCW 18.11.130 and 1986 c 324 s 9 are each amended to
34 read as follows:

35 No goods or real estate shall be sold at auction until the
36 auctioneer or auction company has entered into a written contract or

1 agreement with the owner or consignor in duplicate which contains the
2 terms and conditions upon which the (~~licensee~~) auctioneer or auction
3 company receives or accepts the property for sale at auction.

4 (~~A person who violates this section shall be subject to an~~
5 ~~administrative fine in a sum not exceeding five hundred dollars for~~
6 ~~each violation.~~)

7 **Sec. 606.** RCW 18.11.140 and 1986 c 324 s 10 are each amended to
8 read as follows:

9 Every person engaged in the business of selling goods or real
10 estate at auction shall keep written records for a period of three
11 years available for inspection which indicate clearly the name and
12 address of the owner or consignor of the goods or real estate, the
13 terms of acceptance and sale, and a copy of the signed written contract
14 required by RCW 18.11.130. (~~A person who violates this section shall~~
15 ~~be subject to an administrative fine in a sum not exceeding five~~
16 ~~hundred dollars for each violation.~~)

17 **Sec. 607.** RCW 18.11.220 and 1987 c 336 s 3 are each amended to
18 read as follows:

19 The client of an auctioneer or auction company has a right to (1)
20 an accounting for any money that the auctioneer or auction company
21 receives from the sale of the client's goods, (2) payment of all money
22 due to the client within twenty-one calendar days unless the parties
23 have mutually agreed in writing to another time of payment, and (3)
24 bring an action against the surety bond (~~or other security filed in~~
25 ~~lieu of the surety bond~~) for any violation of this chapter (~~or the~~
26 ~~rules adopted pursuant to this chapter~~)).

27 **Sec. 608.** RCW 18.11.240 and 1986 c 324 s 22 are each amended to
28 read as follows:

29 The following requirements shall apply to bidding at auctions:

30 (1) An auctioneer conducting an auction and an auction company
31 where an auction is being held shall not bid on or offer to buy any
32 goods or real property at the auction unless the auctioneer or the
33 auction company discloses the name of the person on whose behalf the
34 bid or offer is being made.

1 (2) An auctioneer and an auction company shall not use any method
2 of bidding at an auction that will allow goods or real property to be
3 purchased in an undisclosed manner on behalf of the auctioneer or
4 auction company.

5 (3) At a public auction conducted or supervised by an auctioneer or
6 auction company, the auctioneer or auction company shall not
7 fictitiously raise any bid, knowingly permit any person to make a
8 fictitious bid, or employ or use another person to act as a bidder or
9 buyer.

10 (4) All goods or real property offered for sale at an auction shall
11 be subject to a reserve or a confirmation from the owner or consignor
12 unless otherwise indicated by the auctioneer or auction company.
13 Except as provided in this subsection, an auctioneer or auction company
14 shall not use any method of bidding at an auction that allows the
15 auctioneer or auction company to avoid selling any property offered for
16 sale at auction.

17 ~~((5) A licensee who violates any provision of this section shall
18 be subject to an administrative fine in a sum not exceeding five
19 hundred dollars for each violation.))~~

20 **Sec. 609.** RCW 18.11.260 and 1986 c 324 s 25 are each amended to
21 read as follows:

22 ~~((A violation of this chapter is hereby declared to affect the
23 public interest and to offend public policy. Any violation, act, or
24 practice by an auctioneer or auction company which is unfair or
25 deceptive, shall constitute an unfair or deceptive act or practice in
26 violation of RCW 19.86.020. The remedies and sanctions provided in
27 this section shall not preclude application of other available remedies
28 and sanctions.))~~ The legislature finds that the practices governed by
29 this chapter are matters vitally affecting the public interest for the
30 purpose of applying the consumer protection act, chapter 19.86 RCW.
31 Any violation of this chapter is not reasonable in relation to the
32 development and preservation of business and is an unfair and deceptive
33 act or practice and unfair method of competition in the conduct of
34 trade or commerce in violation of RCW 19.86.020. Remedies provided by
35 chapter 19.86 RCW are cumulative and not exclusive.

1 **Sec. 701.** RCW 18.235.020 and 2009 c 412 s 22 and 2009 c 102 s 5
2 are each reenacted and amended to read as follows:

3 (1) This chapter applies only to the director and the boards and
4 commissions having jurisdiction in relation to the businesses and
5 professions licensed under the chapters specified in this section.
6 This chapter does not apply to any business or profession not licensed
7 under the chapters specified in this section.

8 (2)(a) The director has authority under this chapter in relation to
9 the following businesses and professions:

10 (i) ~~((Auctioneers under chapter 18.11 RCW;~~
11 ~~(ii)))~~ Bail bond agents and bail bond recovery agents under chapter
12 18.185 RCW;

13 ~~((iii) Camping resorts' operators and salespersons under chapter~~
14 ~~19.105 RCW;~~

15 ~~(iv) Commercial telephone solicitors under chapter 19.158 RCW;~~

16 ~~(v))~~ (ii) Cosmetologists, barbers, manicurists, and estheticians
17 under chapter 18.16 RCW;

18 ~~((vi))~~ (iii) Court reporters under chapter 18.145 RCW;

19 ~~((vii))~~ (iv) Driver training schools and instructors under
20 chapter 46.82 RCW;

21 ~~((viii) Employment agencies under chapter 19.31 RCW;~~

22 ~~(ix))~~ (v) For hire vehicle operators under chapter 46.72 RCW;

23 ~~((x))~~ (vi) Limousines under chapter 46.72A RCW;

24 ~~((xi))~~ (vii) Notaries public under chapter 42.44 RCW;

25 ~~((xii))~~ (viii) Private investigators under chapter 18.165 RCW;

26 ~~((xiii))~~ (ix) Professional boxing, martial arts, and wrestling
27 under chapter 67.08 RCW;

28 ~~((xiv))~~ (x) Real estate appraisers under chapter 18.140 RCW;

29 ~~((xv))~~ (xi) Real estate brokers and salespersons under chapters
30 18.85 and 18.86 RCW;

31 ~~((xvi))~~ (xii) Security guards under chapter 18.170 RCW;

32 ~~((xvii) Sellers of travel under chapter 19.138 RCW;~~

33 ~~(xviii))~~ (xiii) Timeshares and timeshare salespersons under
34 chapter 64.36 RCW;

35 ~~((xix) Whitewater river outfitters under chapter 79A.60 RCW; and~~

36 ~~(xx))~~ (xiv) Home inspectors under chapter 18.280 RCW; and

37 ~~((xxi))~~ (xv) Body artists, body piercers, and tattoo artists, and

1 body art, body piercing, and tattooing shops and businesses, under
2 chapter 18.300 RCW.

3 (b) The boards and commissions having authority under this chapter
4 are as follows:

5 (i) The state board of registration for architects established in
6 chapter 18.08 RCW;

7 (ii) The Washington state collection agency board established in
8 chapter 19.16 RCW;

9 (iii) The state board of registration for professional engineers
10 and land surveyors established in chapter 18.43 RCW governing licenses
11 issued under chapters 18.43 and 18.210 RCW;

12 (iv) The funeral and cemetery board established in chapter 18.39
13 RCW governing licenses issued under chapters 18.39 and 68.05 RCW;

14 (v) The state board of registration for landscape architects
15 established in chapter 18.96 RCW; and

16 (vi) The state geologist licensing board established in chapter
17 18.220 RCW.

18 (3) In addition to the authority to discipline license holders, the
19 disciplinary authority may grant or deny licenses based on the
20 conditions and criteria established in this chapter and the chapters
21 specified in subsection (2) of this section. This chapter also governs
22 any investigation, hearing, or proceeding relating to denial of
23 licensure or issuance of a license conditioned on the applicant's
24 compliance with an order entered under RCW 18.235.110 by the
25 disciplinary authority.

26 **Sec. 702.** RCW 18.235.020 and 2009 c 412 s 22, 2009 c 370 s 20, and
27 2009 c 102 s 5 are each reenacted and amended to read as follows:

28 (1) This chapter applies only to the director and the boards and
29 commissions having jurisdiction in relation to the businesses and
30 professions licensed under the chapters specified in this section.
31 This chapter does not apply to any business or profession not licensed
32 under the chapters specified in this section.

33 (2)(a) The director has authority under this chapter in relation to
34 the following businesses and professions:

35 (i) (~~Auctioneers under chapter 18.11 RCW;~~
36 ~~(ii))~~) Bail bond agents and bail bond recovery agents under chapter
37 18.185 RCW;

1 ~~((iii) Camping resorts' operators and salespersons under chapter~~
2 ~~19.105 RCW;~~
3 ~~(iv) Commercial telephone solicitors under chapter 19.158 RCW;~~
4 ~~(v))~~ (ii) Cosmetologists, barbers, manicurists, and estheticians
5 under chapter 18.16 RCW;
6 ~~((vi))~~ (iii) Court reporters under chapter 18.145 RCW;
7 ~~((vii))~~ (iv) Driver training schools and instructors under
8 chapter 46.82 RCW;
9 ~~((viii) Employment agencies under chapter 19.31 RCW;~~
10 ~~(ix))~~ (v) For hire vehicle operators under chapter 46.72 RCW;
11 ~~((x))~~ (vi) Limousines under chapter 46.72A RCW;
12 ~~((xi))~~ (vii) Notaries public under chapter 42.44 RCW;
13 ~~((xii))~~ (viii) Private investigators under chapter 18.165 RCW;
14 ~~((xiii))~~ (ix) Professional boxing, martial arts, and wrestling
15 under chapter 67.08 RCW;
16 ~~((xiv))~~ (x) Real estate appraisers under chapter 18.140 RCW;
17 ~~((xv))~~ (xi) Real estate brokers and salespersons under chapters
18 18.85 and 18.86 RCW;
19 ~~((xvi))~~ (xii) Security guards under chapter 18.170 RCW;
20 ~~((xvii) Sellers of travel under chapter 19.138 RCW;~~
21 ~~(xviii))~~ (xiii) Timeshares and timeshare salespersons under
22 chapter 64.36 RCW;
23 ~~((xix) Whitewater river outfitters under chapter 79A.60 RCW; and~~
24 ~~(xx))~~ (xiv) Home inspectors under chapter 18.280 RCW; and
25 ~~((xxi))~~ (xv) Body artists, body piercers, and tattoo artists, and
26 body art, body piercing, and tattooing shops and businesses, under
27 chapter 18.300 RCW.
28 (b) The boards and commissions having authority under this chapter
29 are as follows:
30 (i) The state board of registration for architects established in
31 chapter 18.08 RCW;
32 (ii) The Washington state collection agency board established in
33 chapter 19.16 RCW;
34 (iii) The state board of registration for professional engineers
35 and land surveyors established in chapter 18.43 RCW governing licenses
36 issued under chapters 18.43 and 18.210 RCW;
37 (iv) The funeral and cemetery board established in chapter 18.39
38 RCW governing licenses issued under chapters 18.39 and 68.05 RCW;

1 (v) The state board of licensure for landscape architects
2 established in chapter 18.96 RCW; and

3 (vi) The state geologist licensing board established in chapter
4 18.220 RCW.

5 (3) In addition to the authority to discipline license holders, the
6 disciplinary authority may grant or deny licenses based on the
7 conditions and criteria established in this chapter and the chapters
8 specified in subsection (2) of this section. This chapter also governs
9 any investigation, hearing, or proceeding relating to denial of
10 licensure or issuance of a license conditioned on the applicant's
11 compliance with an order entered under RCW 18.235.110 by the
12 disciplinary authority.

13 **Sec. 703.** RCW 43.24.150 and 2009 c 429 s 4 and 2009 c 370 s 19 are
14 each reenacted and amended to read as follows:

15 (1) The business and professions account is created in the state
16 treasury. All receipts from business or professional licenses,
17 registrations, certifications, renewals, examinations, or civil
18 penalties assessed and collected by the department from the following
19 chapters must be deposited into the account:

- 20 (~~(a)~~) (~~Chapter 18.11 RCW, auctioneers;~~
21 ~~(b)~~) Chapter 18.16 RCW, cosmetologists, barbers, and manicurists;
22 (~~(c)~~) (b) Chapter 18.145 RCW, court reporters;
23 (~~(d)~~) (c) Chapter 18.165 RCW, private investigators;
24 (~~(e)~~) (d) Chapter 18.170 RCW, security guards;
25 (~~(f)~~) (e) Chapter 18.185 RCW, bail bond agents;
26 (~~(g)~~) (f) Chapter 18.280 RCW, home inspectors;
27 (~~(h)~~) (g) Chapter 19.16 RCW, collection agencies;
28 (~~(i)~~) ~~Chapter 19.31 RCW, employment agencies;~~
29 ~~(j)~~ Chapter 19.105 RCW, ~~camping resorts;~~
30 ~~(k)~~ Chapter 19.138 RCW, ~~sellers of travel;~~
31 ~~(l)~~) (h) Chapter 42.44 RCW, notaries public;
32 (~~(m)~~) (i) Chapter 64.36 RCW, timeshares; and
33 (~~(n)~~) (j) Chapter 67.08 RCW, boxing, martial arts, and wrestling.

34 Moneys in the account may be spent only after appropriation.
35 Expenditures from the account may be used only for expenses incurred in
36 carrying out these business and professions licensing activities of the

1 department. Any residue in the account shall be accumulated and shall
2 not revert to the general fund at the end of the biennium.

3 (2) The director shall biennially prepare a budget request based on
4 the anticipated costs of administering the business and professions
5 licensing activities listed in subsection (1) of this section, which
6 shall include the estimated income from these business and professions
7 fees.

8 **Sec. 704.** RCW 43.24.150 and 2009 c 429 s 4, 2009 c 412 s 21, and
9 2009 c 370 s 19 are each reenacted and amended to read as follows:

10 (1) The business and professions account is created in the state
11 treasury. All receipts from business or professional licenses,
12 registrations, certifications, renewals, examinations, or civil
13 penalties assessed and collected by the department from the following
14 chapters must be deposited into the account:

- 15 (a) (~~(Chapter 18.11 RCW, auctioneers;~~
- 16 ~~(b))~~) Chapter 18.16 RCW, cosmetologists, barbers, and manicurists;
- 17 (~~(c))~~) (b) Chapter 18.145 RCW, court reporters;
- 18 (~~(d))~~) (c) Chapter 18.165 RCW, private investigators;
- 19 (~~(e))~~) (d) Chapter 18.170 RCW, security guards;
- 20 (~~(f))~~) (e) Chapter 18.185 RCW, bail bond agents;
- 21 (~~(g))~~) (f) Chapter 18.280 RCW, home inspectors;
- 22 (~~(h))~~) (g) Chapter 19.16 RCW, collection agencies;
- 23 (~~(i) Chapter 19.31 RCW, employment agencies;~~
- 24 ~~(j) Chapter 19.105 RCW, camping resorts;~~
- 25 ~~(k) Chapter 19.138 RCW, sellers of travel;~~
- 26 ~~(l))~~) (h) Chapter 42.44 RCW, notaries public;
- 27 (~~(m))~~) (i) Chapter 64.36 RCW, timeshares;
- 28 (~~(n))~~) (j) Chapter 67.08 RCW, boxing, martial arts, and wrestling;
- 29 and
- 30 (~~(o))~~) (k) Chapter 18.300 RCW, body art, body piercing, and
31 tattooing.

32 Moneys in the account may be spent only after appropriation.
33 Expenditures from the account may be used only for expenses incurred in
34 carrying out these business and professions licensing activities of the
35 department. Any residue in the account shall be accumulated and shall
36 not revert to the general fund at the end of the biennium.

1 (2) The director shall biennially prepare a budget request based on
2 the anticipated costs of administering the business and professions
3 licensing activities listed in subsection (1) of this section, which
4 shall include the estimated income from these business and professions
5 fees.

6 **Sec. 705.** RCW 7.60.025 and 2006 c 52 s 1 are each amended to read
7 as follows:

8 (1) A receiver may be appointed by the superior court of this state
9 in the following instances, but except in any case in which a
10 receiver's appointment is expressly required by statute, or any case in
11 which a receiver's appointment is sought by a state agent whose
12 authority to seek the appointment of a receiver is expressly conferred
13 by statute, or any case in which a receiver's appointment with respect
14 to real property is sought under (b)(ii) of this subsection, a receiver
15 shall be appointed only if the court additionally determines that the
16 appointment of a receiver is reasonably necessary and that other
17 available remedies either are not available or are inadequate:

18 (a) On application of any party, when the party is determined to
19 have a probable right to or interest in property that is a subject of
20 the action and in the possession of an adverse party, or when the
21 property or its revenue-producing potential is in danger of being lost
22 or materially injured or impaired. A receiver may be appointed under
23 this subsection (1)(a) whether or not the application for appointment
24 of a receiver is combined with, or is ancillary to, an action seeking
25 a money judgment or other relief;

26 (b) Provisionally, during the pendency of any action to foreclose
27 upon any lien against or for forfeiture of any interest in real or
28 personal property, or after notice of a trustee's sale has been given
29 under RCW 61.24.040, or after notice of forfeiture has been given under
30 RCW 61.30.040, on application of any person, when the interest in the
31 property that is the subject of foreclosure or forfeiture of the person
32 seeking the receiver's appointment is determined to be probable and
33 either:

34 (i) The property or its revenue-producing potential is in danger of
35 being lost or materially injured or impaired; or

36 (ii) The appointment of a receiver with respect to the real or
37 personal property that is the subject of the action, the notice of

1 trustee's sale or notice of forfeiture is provided for by agreement or
2 is reasonably necessary to effectuate or enforce an assignment of rents
3 or other revenues from the property;

4 (c) After judgment, in order to give effect to the judgment;

5 (d) To dispose of property according to provisions of a judgment
6 dealing with its disposition;

7 (e) To the extent that property is not exempt from execution, at
8 the instance of a judgment creditor either before or after the issuance
9 of any execution, to preserve or protect it, or prevent its transfer;

10 (f) If and to the extent that property is subject to execution to
11 satisfy a judgment, to preserve the property during the pendency of an
12 appeal, or when an execution has been returned unsatisfied, or when an
13 order requiring a judgment debtor to appear for proceedings
14 supplemental to judgment has been issued and the judgment debtor fails
15 to submit to examination as ordered;

16 (g) Upon an attachment of real or personal property when the
17 property attached is of a perishable nature or is otherwise in danger
18 of waste, impairment, or destruction, or where the abandoned property's
19 owner has absconded with, secreted, or abandoned the property, and it
20 is necessary to collect, conserve, manage, control, or protect it, or
21 to dispose of it promptly, or when the court determines that the nature
22 of the property or the exigency of the case otherwise provides cause
23 for the appointment of a receiver;

24 (h) In an action by a transferor of real or personal property to
25 avoid or rescind the transfer on the basis of fraud, or in an action to
26 subject property or a fund to the payment of a debt;

27 (i) In an action against any person who is not an individual if the
28 object of the action is the dissolution of that person, or if that
29 person has been dissolved, or if that person is insolvent or is not
30 generally paying the person's debts as those debts become due unless
31 they are the subject of bona fide dispute, or if that person is in
32 imminent danger of insolvency;

33 (j) In accordance with RCW 7.08.030 (4) and (6), in cases in which
34 a general assignment for the benefit of creditors has been made;

35 (k) In quo warranto proceedings under chapter 7.56 RCW;

36 (l) As provided under RCW 11.64.022;

37 (m) In an action (~~by the department of licensing~~) under RCW
38 18.35.220(3) with respect to persons engaged in the business of

1 dispensing of hearing aids, RCW ((~~18.85.350~~)) 18.85.430 in the case of
2 persons engaged in the business of a real estate broker, associate real
3 estate broker, or real estate salesperson, or RCW 19.105.470 with
4 respect to persons engaged in the business of camping resorts;

5 (n) In an action under RCW 18.44.470 or 18.44.490 in the case of
6 persons engaged in the business of escrow agents;

7 (o) Upon a petition with respect to a nursing home in accordance
8 with and subject to receivership provisions under chapter 18.51 RCW;

9 (p) Under RCW 19.40.071(3), in connection with a proceeding for
10 relief with respect to a transfer fraudulent as to a creditor or
11 creditors;

12 (q) Under RCW 19.100.210(1), in an action by the attorney general
13 or director of financial institutions to restrain any actual or
14 threatened violation of the franchise investment protection act;

15 (r) In an action by the attorney general or by a prosecuting
16 attorney under RCW 19.110.160 with respect to a seller of business
17 opportunities;

18 (s) In an action by the director of financial institutions under
19 RCW 21.20.390 in cases involving actual or threatened violations of the
20 securities act of Washington or under RCW 21.30.120 in cases involving
21 actual or threatened violations of chapter 21.30 RCW with respect to
22 certain businesses and transactions involving commodities;

23 (t) In an action for or relating to dissolution of a business
24 corporation under RCW 23B.14.065, 23B.14.300, 23B.14.310, or
25 23B.14.320, for dissolution of a nonprofit corporation under RCW
26 24.03.270, for dissolution of a mutual corporation under RCW 24.06.305,
27 or in any other action for the dissolution or winding up of any other
28 entity provided for by Title 23, 23B, 24, or 25 RCW;

29 (u) In any action in which the dissolution of any public or private
30 entity is sought, in any action involving any dispute with respect to
31 the ownership or governance of such an entity, or upon the application
32 of a person having an interest in such an entity when the appointment
33 is reasonably necessary to protect the property of the entity or its
34 business or other interests;

35 (v) Under RCW 25.05.215, in aid of a charging order with respect to
36 a partner's interest in a partnership;

37 (w) Under and subject to RCW 30.44.100, 30.44.270, and 30.56.030,

1 in the case of a bank or trust company or, under and subject to RCW
2 32.24.070 through 32.24.090, in the case of a mutual savings bank;
3 (x) Under and subject to RCW 31.12.637 and 31.12.671 through
4 31.12.724, in the case of credit unions;
5 (y) Upon the application of the director of financial institutions
6 under RCW 31.35.090 in actions to enforce chapter 31.35 RCW applicable
7 to agricultural lenders, under RCW 31.40.120 in actions to enforce
8 chapter 31.40 RCW applicable to entities engaged in federally
9 guaranteed small business loans, under RCW 31.45.160 in actions to
10 enforce chapter 31.45 RCW applicable to persons licensed as check
11 cashers or check sellers, or under RCW 19.230.230 in actions to enforce
12 chapter 19.230 RCW applicable to persons licensed under the uniform
13 money services act;
14 (z) Under RCW 35.82.090 or 35.82.180, with respect to a housing
15 project;
16 (aa) Under RCW 39.84.160 or 43.180.360, in proceedings to enforce
17 rights under any revenue bonds issued for the purpose of financing
18 industrial development facilities or bonds of the Washington state
19 housing finance commission, or any financing document securing any such
20 bonds;
21 (bb) Under and subject to RCW 43.70.195, in an action by the
22 secretary of health or by a local health officer with respect to a
23 public water system;
24 (cc) As contemplated by RCW 61.24.030, with respect to real
25 property that is the subject of nonjudicial foreclosure proceedings
26 under chapter 61.24 RCW;
27 (dd) As contemplated by RCW 61.30.030(3), with respect to real
28 property that is the subject of judicial or nonjudicial forfeiture
29 proceedings under chapter 61.30 RCW;
30 (ee) Under RCW 64.32.200(2), in an action to foreclose upon a lien
31 for common expenses against a dwelling unit subject to the horizontal
32 property regimes act, chapter 64.32 RCW;
33 (ff) Under RCW 64.34.364(10), in an action by a unit owners'
34 association to foreclose a lien for nonpayment of delinquent
35 assessments against condominium units;
36 (gg) Upon application of the attorney general under RCW
37 64.36.220(3), in aid of any writ or order restraining or enjoining
38 violations of chapter 64.36 RCW applicable to timeshares;

1 (hh) Under RCW 70.95A.050(3), in aid of the enforcement of payment
2 or performance of municipal bonds issued with respect to facilities
3 used to abate, control, or prevent pollution;

4 (ii) Upon the application of the department of social and health
5 services under RCW 74.42.580, in cases involving nursing homes;

6 (jj) Upon the application of the utilities and transportation
7 commission under RCW 80.28.040, with respect to a water company that
8 has failed to comply with an order of such commission within the time
9 deadline specified therein;

10 (kk) Under RCW 87.56.065, in connection with the dissolution of an
11 irrigation district;

12 (ll) Upon application of the attorney general or the department of
13 licensing, in any proceeding that either of them are authorized by
14 statute to bring to enforce Title 18 or 19 RCW; the securities act of
15 Washington, chapter 21.20 RCW; the Washington commodities act, chapter
16 21.30 RCW; the land development act, chapter 58.19 RCW; or under
17 chapter 64.36 RCW relating to the regulation of timeshares;

18 (mm) Upon application of the director of financial institutions in
19 any proceeding that the director of financial institutions is
20 authorized to bring to enforce chapters 31.35, 31.40, and 31.45 RCW; or

21 (nn) In such other cases as may be provided for by law, or when, in
22 the discretion of the court, it may be necessary to secure ample
23 justice to the parties.

24 (2) The superior courts of this state shall appoint as receiver of
25 property located in this state a person who has been appointed by a
26 federal or state court located elsewhere as receiver with respect to
27 the property specifically or with respect to the owner's property
28 generally, upon the application of the person or of any party to that
29 foreign proceeding, and following the appointment shall give effect to
30 orders, judgments, and decrees of the foreign court affecting the
31 property in this state held by the receiver, unless the court
32 determines that to do so would be manifestly unjust or inequitable.
33 The venue of such a proceeding may be any county in which the person
34 resides or maintains any office, or any county in which any property
35 over which the receiver is to be appointed is located at the time the
36 proceeding is commenced.

37 (3) At least seven days' notice of any application for the
38 appointment of a receiver shall be given to the owner of property to be

1 subject thereto and to all other parties in the action, and to other
2 parties in interest as the court may require. If any execution by a
3 judgment creditor under Title 6 RCW or any application by a judgment
4 creditor for the appointment of a receiver, with respect to property
5 over which the receiver's appointment is sought, is pending in any
6 other action at the time the application is made, then notice of the
7 application for the receiver's appointment also shall be given to the
8 judgment creditor in the other action. The court may shorten or expand
9 the period for notice of an application for the appointment of a
10 receiver upon good cause shown.

11 (4) The order appointing a receiver in all cases shall reasonably
12 describe the property over which the receiver is to take charge, by
13 category, individual items, or both if the receiver is to take charge
14 of less than all of the owner's property. If the order appointing a
15 receiver does not expressly limit the receiver's authority to
16 designated property or categories of property of the owner, the
17 receiver is a general receiver with the authority to take charge over
18 all of the owner's property, wherever located.

19 (5) The court may condition the appointment of a receiver upon the
20 giving of security by the person seeking the receiver's appointment, in
21 such amount as the court may specify, for the payment of costs and
22 damages incurred or suffered by any person should it later be
23 determined that the appointment of the receiver was wrongfully
24 obtained.

25 **Sec. 706.** RCW 36.71.070 and 2009 c 549 s 4124 are each amended to
26 read as follows:

27 (1) If any person sells any goods, wares, or merchandise, at
28 auction or public outcry, or barter goods, wares or merchandise from
29 traveling boats, wagons, carts or vehicles of any kind, or from any
30 pack, basket or other package carried on foot without first having
31 obtained a license therefor from the board of county commissioners of
32 the county in which such goods are sold or bartered, he or she shall be
33 guilty of a misdemeanor, and upon conviction shall be fined not less
34 than five nor more than fifty dollars, and shall stand committed to the
35 county jail of the county in which the conviction is had until such
36 fine and cost of prosecution are paid, or discharged by due course of
37 law: PROVIDED, That this section shall not be construed as to apply to

1 any seagoing craft or to administrators or executors selling property
2 of deceased persons, or to private individuals selling their household
3 property, or furniture, or farming tools, implements, or livestock, or
4 any produce grown or raised by them, either at public auction or
5 private sale.

6 (2) Notwithstanding subsection (1) of this section, counties shall
7 not license auctioneers that (~~are licensed~~) maintain a surety bond as
8 required by the state under chapter 18.11 RCW.

9 **Sec. 707.** RCW 46.70.011 and 2006 c 364 s 1 are each amended to
10 read as follows:

11 As used in this chapter:

12 (1) "Vehicle" means and includes every device capable of being
13 moved upon a public highway and in, upon, or by which any persons or
14 property is or may be transported or drawn upon a public highway,
15 excepting devices moved by human or animal power or used exclusively
16 upon stationary rails or tracks.

17 (2) "Motor vehicle" means every vehicle which is self-propelled and
18 every vehicle which is propelled by electric power obtained from
19 overhead trolley wires, but not operated upon rails, and which is
20 required to be registered and titled under this title (~~46 RCW, Motor~~
21 ~~Vehicles~~)).

22 (3) "Recreational vehicle" means a travel trailer, motor home,
23 truck camper, or camping trailer that is primarily designed and used as
24 temporary living quarters, is either self-propelled or mounted on or
25 drawn by another vehicle, is transient, is not occupied as a primary
26 residence, and is not immobilized or permanently affixed to a mobile
27 home lot.

28 (4) "Vehicle dealer" means any person, firm, association,
29 corporation, or trust, not excluded by subsection (5) of this section,
30 engaged in the business of buying, selling, listing, exchanging,
31 offering, brokering, leasing with an option to purchase, auctioning,
32 soliciting, or advertising the sale of new or used vehicles, or
33 arranging or offering or attempting to solicit or negotiate on behalf
34 of others, a sale, purchase, or exchange of an interest in new or used
35 motor vehicles, irrespective of whether the motor vehicles are owned by
36 that person. Vehicle dealers shall be classified as follows:

1 (a) A "motor vehicle dealer" is a vehicle dealer that deals in new
2 or used motor vehicles, or both;

3 (b) A "mobile home and travel trailer dealer" is a vehicle dealer
4 that deals in mobile homes, park trailers, or travel trailers, or more
5 than one type of these vehicles;

6 (c) A "miscellaneous vehicle dealer" is a vehicle dealer that deals
7 in motorcycles or vehicles other than motor vehicles or mobile homes
8 and travel trailers or any combination of such vehicles;

9 (d) A "recreational vehicle dealer" is a vehicle dealer that deals
10 in travel trailers, motor homes, truck campers, or camping trailers
11 that are primarily designed and used as temporary living quarters, are
12 either self-propelled or mounted on or drawn by another vehicle, are
13 transient, are not occupied as a primary residence, and are not
14 immobilized or permanently affixed to a mobile home lot.

15 (5) The term "vehicle dealer" does not include, nor do the
16 licensing requirements of RCW 46.70.021 apply to, the following
17 persons, firms, associations, or corporations:

18 (a) Receivers, trustees, administrators, executors, guardians, or
19 other persons appointed by, or acting under a judgment or order of, any
20 court; or

21 (b) Public officers while performing their official duties; or

22 (c) Employees of vehicle dealers who are engaged in the specific
23 performance of their duties as such employees; or

24 (d) Any person engaged in an isolated sale of a vehicle in which
25 that person is the registered or legal owner, or both, thereof; or

26 (e) Any person, firm, association, corporation, or trust, engaged
27 in the selling of equipment other than vehicles, subject to
28 registration, used for agricultural or industrial purposes; or

29 (f) A real estate broker licensed under chapter 18.85 RCW, or an
30 affiliated licensee, who, on behalf of another negotiates the purchase,
31 sale, lease, or exchange of a manufactured or mobile home in
32 conjunction with the purchase, sale, exchange, rental, or lease of the
33 land upon which the manufactured or mobile home is, or will be,
34 located; or

35 (g) Owners who are also operators of the special highway
36 construction equipment or of the highway construction equipment for
37 which a vehicle license and display vehicle license number plate is
38 required as defined in RCW 46.16.010; or

1 (h) Any bank, trust company, savings bank, mutual savings bank,
2 savings and loan association, credit union, and any parent, subsidiary,
3 or affiliate thereof, authorized to do business in this state under
4 state or federal law with respect to the sale or other disposition of
5 a motor vehicle owned and used in their business; or with respect to
6 the acquisition and sale or other disposition of a motor vehicle in
7 which the entity has acquired an interest as a lessor, lessee, or
8 secured party; or

9 (i) Any person who is regularly engaged in the business of
10 acquiring leases or installment contracts by assignment, with respect
11 to the acquisition and sale or other disposition of a motor vehicle in
12 which the person has acquired an interest as a result of the business.

13 (6) "Vehicle salesperson" means any person who for any form of
14 compensation sells, auctions, leases with an option to purchase, or
15 offers to sell or to so lease vehicles on behalf of a vehicle dealer.

16 (7) "Department" means the department of licensing, which shall
17 administer and enforce the provisions of this chapter.

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

19 (9) "Manufacturer" means any person, firm, association,
20 corporation, or trust, resident or nonresident, who manufactures or
21 assembles new and unused vehicles or remanufactures vehicles in whole
22 or in part and further includes the terms:

23 (a) "Distributor," which means any person, firm, association,
24 corporation, or trust, resident or nonresident, who in whole or in part
25 offers for sale, sells, or distributes any new and unused vehicle to
26 vehicle dealers or who maintains factory representatives.

27 (b) "Factory branch," which means a branch office maintained by a
28 manufacturer for the purpose of selling or offering for sale, vehicles
29 to a distributor, wholesaler, or vehicle dealer, or for directing or
30 supervising in whole or in part factory or distributor representatives,
31 and further includes any sales promotion organization, whether a
32 person, firm, or corporation, which is engaged in promoting the sale of
33 new and unused vehicles in this state of a particular brand or make to
34 vehicle dealers.

35 (c) "Factory representative," which means a representative employed
36 by a manufacturer, distributor, or factory branch for the purpose of
37 making or promoting for the sale of their vehicles or for supervising
38 or contracting with their dealers or prospective dealers.

1 (10) "Established place of business" means a location meeting the
2 requirements of RCW 46.70.023(1) at which a vehicle dealer conducts
3 business in this state.

4 (11) "Principal place of business" means that dealer firm's
5 business location in the state, which place the dealer designates as
6 their principal place of business.

7 (12) "Subagency" means any place of business of a vehicle dealer
8 within the state, which place is physically and geographically
9 separated from the principal place of business of the firm or any place
10 of business of a vehicle dealer within the state, at which place the
11 firm does business using a name other than the principal name of the
12 firm, or both.

13 (13) "Temporary subagency" means a location other than the
14 principal place of business or subagency within the state where a
15 licensed vehicle dealer may secure a license to conduct the business
16 and is licensed for a period of time not to exceed ten days for a
17 specific purpose such as auto shows, shopping center promotions, tent
18 sales, exhibitions, or similar merchandising ventures. No more than
19 six temporary subagency licenses may be issued to a licensee in any
20 twelve-month period.

21 (14) "Wholesale vehicle dealer" means a vehicle dealer who buys and
22 sells other than at retail.

23 (15) "Retail vehicle dealer" means a vehicle dealer who may buy and
24 sell at both wholesale and retail.

25 (16) "Listing dealer" means a used mobile home dealer who makes
26 contracts with sellers who will compensate the dealer for obtaining a
27 willing purchaser for the seller's mobile home.

28 (17) "Auction" means a transaction conducted by means of exchanges
29 between an auctioneer and the members of the audience, constituting a
30 series of oral invitations for offers for the purchase of vehicles made
31 by the auctioneer, offers to purchase by members of the audience, and
32 the acceptance of the highest or most favorable offer to purchase.

33 (18) "Auction company" means a sole proprietorship, partnership,
34 corporation, or other legal or commercial entity (~~(licensed)~~) regulated
35 under chapter 18.11 RCW that only sells or offers to sell vehicles at
36 auction or only arranges or sponsors auctions.

37 (19) "Buyer's agent" means any person, firm, partnership,
38 association, limited liability company, limited liability partnership,

1 or corporation retained or employed by a consumer to arrange for or to
2 negotiate, or both, the purchase or lease of a new motor vehicle on
3 behalf of the consumer, and who is paid a fee or receives other
4 compensation from the consumer for its services.

5 (20) "New motor vehicle" means any motor vehicle that is self-
6 propelled and is required to be registered and titled under Title 46
7 RCW, has not been previously titled to a retail purchaser or lessee,
8 and is not a "used vehicle" as defined under RCW 46.04.660.

9 **Sec. 708.** RCW 46.70.051 and 2001 c 272 s 4 are each amended to
10 read as follows:

11 (1) After the application has been filed, the fee paid, and bond
12 posted, if required, the department shall, if no denial order is in
13 effect and no proceeding is pending under RCW 46.70.101, issue the
14 appropriate license, which license, in the case of a vehicle dealer,
15 shall designate the classification of the dealer. Nothing prohibits a
16 vehicle dealer from obtaining licenses for more than one
17 classification, and nothing prevents any vehicle dealer from dealing in
18 other classes of vehicles on an isolated basis.

19 (2) An auction company (~~(licensed)~~) regulated under chapter 18.11
20 RCW may sell at auction all classifications of vehicles under a motor
21 vehicle dealer's license issued under this chapter including motor
22 vehicles, miscellaneous type vehicles, and mobile homes and travel
23 trailers.

24 (3) At the time the department issues a vehicle dealer license, the
25 department shall provide to the dealer a current, up-to-date vehicle
26 dealer manual that may be provided electronically setting forth the
27 various statutes and rules applicable to vehicle dealers. In addition,
28 at the time any such license is renewed under RCW 46.70.083, the
29 department shall provide the dealer with any updates or current
30 revisions to the vehicle dealer manual. These updates or current
31 revisions may be provided electronically.

32 (4) The department may contract with responsible private parties to
33 provide them elements of the vehicle database on a regular basis. The
34 private parties may only disseminate this information to licensed
35 vehicle dealers.

36 (a) Subject to the disclosure agreement provisions of RCW 46.12.380

1 and the requirements of Executive Order 97-01, the department may
2 provide to the contracted private parties the following information:

3 (i) All vehicle and title data necessary to accurately disclose
4 known title defects, brands, or flags and odometer discrepancies;

5 (ii) All registered and legal owner information necessary to
6 determine true ownership of the vehicle and the existence of any
7 recorded liens, including but not limited to liens of the department of
8 social and health services or its successor; and

9 (iii) Any data in the department's possession necessary to
10 calculate the motor vehicle excise tax, license, and registration fees
11 including information necessary to determine the applicability of
12 regional transit authority excise and use tax surcharges.

13 (b) The department may provide this information in any form the
14 contracted private party and the department agree upon, but if the data
15 is to be transmitted over the Internet or similar public network from
16 the department to the contracted private party, it must be encrypted.

17 (c) The department shall give these contracted private parties
18 advance written notice of any change in the information referred to in
19 (a)(i), (ii), or (iii) of this subsection, including information
20 pertaining to the calculation of motor vehicle excise taxes.

21 (d) The department shall revoke a contract made under this
22 subsection (4) with a private party who disseminates information from
23 the vehicle database to anyone other than a licensed vehicle dealer.
24 A private party who obtains information from the vehicle database under
25 a contract with the department and disseminates any of that information
26 to anyone other than a licensed vehicle dealer is guilty of a gross
27 misdemeanor punishable under chapter 9A.20 RCW.

28 (e) Nothing in this subsection (4) authorizes a vehicle dealer or
29 any other organization or entity not otherwise appointed as a vehicle
30 licensing subagent under RCW 46.01.140 to perform any of the functions
31 of a vehicle licensing subagent so appointed.

32 **Sec. 709.** RCW 50.04.232 and 1995 c 242 s 1 are each amended to
33 read as follows:

34 The term "employment" shall not include service performed by an
35 outside agent who sells or arranges for travel services that are
36 provided to a travel agent as defined (~~and registered~~) under RCW

1 19.138.021, to the extent the outside agent is compensated by
2 commission.

3 NEW SECTION. **Sec. 710.** RCW 35.21.690 (Authority to regulate
4 auctioneers--Limitations) and 1984 c 189 s 2 are each repealed.

5 NEW SECTION. **Sec. 711.** Sections 701 and 703 of this act expire
6 July 1, 2010.

7 NEW SECTION. **Sec. 712.** Sections 702, 704, and 705 of this act
8 take effect July 1, 2010."

ESSB 6037 - S AMD
By Senator Fairley

9 On page 1, line 2 of the title, after "professions;" strike the
10 remainder of the title and insert "amending RCW 19.31.020, 19.31.030,
11 19.31.070, 19.31.090, 19.31.160, 19.31.180, 19.31.190, 19.31.250,
12 79A.60.400, 79A.60.420, 79A.60.430, 79A.60.440, 79A.60.450, 19.138.010,
13 19.138.021, 19.138.140, 19.138.160, 19.138.270, 19.158.020, 19.158.040,
14 19.158.070, 19.158.090, 19.158.110, 19.158.120, 19.105.300, 19.105.336,
15 19.105.340, 19.105.370, 19.105.390, 19.105.400, 19.105.470, 19.105.480,
16 19.105.490, 19.105.500, 18.11.050, 18.11.070, 18.11.100, 18.11.121,
17 18.11.130, 18.11.140, 18.11.220, 18.11.240, 18.11.260, 7.60.025,
18 36.71.070, 46.70.011, 46.70.051, and 50.04.232; reenacting and amending
19 RCW 18.235.020, 18.235.020, 43.24.150, and 43.24.150; adding a new
20 section to chapter 19.31 RCW; repealing RCW 19.31.050, 19.31.080,
21 19.31.100, 19.31.110, 19.31.120, 19.31.130, 19.31.140, 19.31.210,
22 19.31.245, 19.31.270, 19.31.910, 79A.60.410, 79A.60.480, 79A.60.485,
23 79A.60.490, 79A.60.498, 19.138.100, 19.138.110, 19.138.120, 19.138.130,
24 19.138.170, 19.138.1701, 19.138.180, 19.138.200, 19.138.240,
25 19.138.250, 19.138.260, 19.138.310, 19.138.330, 19.138.904, 19.158.050,
26 19.158.080, 19.158.150, 19.158.170, 19.158.901, 19.105.310, 19.105.320,
27 19.105.325, 19.105.330, 19.105.333, 19.105.345, 19.105.350, 19.105.360,

1 19.105.365, 19.105.380, 19.105.411, 19.105.420, 19.105.430, 19.105.440,
2 19.105.450, 19.105.520, 19.105.530, 19.105.540, 19.105.550, 19.105.560,
3 19.105.930, 18.11.060, 18.11.075, 18.11.085, 18.11.095, 18.11.150,
4 18.11.160, 18.11.170, 18.11.180, 18.11.190, 18.11.200, 18.11.205,
5 18.11.210, 18.11.270, 18.11.280, 18.11.901, 18.11.903, and 35.21.690;
6 providing an effective date; and providing an expiration date."

--- END ---