
SUBSTITUTE SENATE BILL 6551

State of Washington

61st Legislature

2010 Regular Session

By Senate Ways & Means (originally sponsored by Senator Tom; by request of Department of Revenue)

READ FIRST TIME 02/04/10.

1 AN ACT Relating to documenting wholesale sales for excise tax
2 purposes; amending RCW 82.32.780, 82.32.783, 82.32.785, 82.32.787, and
3 82.32.290; amending 2009 c 563 § 101 (uncodified); reenacting and
4 amending RCW 82.04.470, 82.08.050, 82.08.130, 82.32.087, 82.32.291,
5 82.32.330, 82.04.050, and 34.05.328; adding a new section to chapter
6 82.32 RCW; creating a new section; and providing an effective date.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 **Sec. 1.** 2009 c 563 s 101 (uncodified) is amended to read as
9 follows:

10 The legislature finds that the department of revenue's 2008
11 compliance study estimates that sales tax noncompliance exceeds well
12 over one hundred million dollars annually in unpaid state and local
13 sales and use taxes.

14 The legislature intends to address this significant problem by
15 eliminating the use of resale certificates to document wholesale
16 purchases. Resale certificates will be replaced with (~~seller's~~)
17 reseller permits, which will be issued by the department of revenue
18 only to those businesses that make wholesale purchases, such as

1 retailers, wholesalers, manufacturers, and qualified contractors.
2 Businesses that do not make wholesale purchases, such as most service
3 businesses, will not be entitled to a ((~~seller's~~)) reseller permit.

4 **Sec. 2.** RCW 82.32.780 and 2009 c 563 s 201 are each amended to
5 read as follows:

6 (1)(a) Taxpayers seeking to obtain a new ((~~seller's~~)) reseller
7 permit or to renew or reinstate a ((~~seller's~~)) reseller permit, other
8 than taxpayers subject to the provisions of RCW 82.32.783, must apply
9 to the department in a form and manner prescribed by the department.
10 The department must use its best efforts to rule on applications within
11 sixty days of receiving a complete application. If the department
12 fails to rule on an application within sixty days of receiving a
13 complete application, the taxpayer may either request a review as
14 provided in subsection (6) of this section or resubmit the application.
15 Nothing in this subsection may be construed as preventing the
16 department from ruling on an application more than sixty days after the
17 department received the application.

18 (b) An application must be denied if:

19 (i) The department determines that, based on the nature of the
20 applicant's business, the applicant is not entitled to make purchases
21 at wholesale or is otherwise prohibited from using a ((~~seller's~~))
22 reseller permit.

23 (ii) The application contains any material misstatement; or

24 (iii) The application is incomplete.

25 (c) The department may also deny an application if it determines
26 that denial would be in the best interest of collecting taxes due under
27 this title.

28 (d) The department's decision ((~~whether~~)) to approve or deny an
29 application may be based on tax returns previously filed with the
30 department by the applicant, a current or previous examination of the
31 applicant's books and records by the department, information provided
32 by the applicant in the master application and the ((~~seller's~~))
33 reseller permit application, and other information available to the
34 department.

35 (e) The department must refuse to accept an application to renew a
36 reseller permit that is received more than ninety days before the
37 expiration of the reseller permit.

1 (2) Notwithstanding subsection (1) of this section, the department
2 may issue or renew a ~~((seller's))~~ reseller permit ~~((to))~~ for a taxpayer
3 that has not applied for the permit or renewal of the permit if it
4 appears to the department's satisfaction, based on the nature of the
5 taxpayer's business activities and any other information available to
6 the department, that the taxpayer is entitled to make purchases at
7 wholesale.

8 ~~((Seller's permits issued by the department will be in a form
9 prescribed by the department, which may include an electronic form, and
10 must contain a unique identifying number assigned by the department.~~

11 ~~(4))~~(a) Except as otherwise provided in this section, ~~((seller's))~~
12 reseller permits issued, renewed, or reinstated under this section will
13 be valid for a period of forty-eight months from the date of issuance,
14 renewal, or reinstatement.

15 (b)(i) A ~~((seller's))~~ reseller permit ~~((issued to taxpayers who
16 register with the department under RCW 82.32.030 after January 1,
17 2009,))~~ is valid for a period of twenty-four months and may be renewed
18 for the period prescribed in (a) of this subsection ~~((4))~~ (3) if the
19 permit is issued to a taxpayer who:

20 (A) Is not registered with the department under RCW 82.32.030;

21 (B) Has been registered with the department under RCW 82.32.030 for
22 a continuous period of less than one year as of the date that the
23 department received the taxpayer's application for a reseller permit;

24 (C) Was on nonreporting status as authorized under RCW 82.32.045(4)
25 at the time that the department received the taxpayer's application for
26 a reseller permit or to renew or reinstate a reseller permit;

27 (D) Has filed tax returns reporting no business activity for
28 purposes of sales and business and occupation taxes for the twelve-
29 month period immediately preceding the date that the department
30 received the taxpayer's application for a reseller permit or to renew
31 or reinstate a reseller permit; or

32 (E) Has failed to file tax returns covering any part of the twelve-
33 month period immediately preceding the department's receipt of the
34 taxpayer's application for a reseller permit or to renew or reinstate
35 a reseller permit.

36 (ii) The provisions of this subsection (3)(b) do not apply to
37 reseller permits issued to any business owned by a federally recognized
38 Indian tribe or by an enrolled member of a federally recognized Indian

1 tribe, if the business does not engage in any business activity that
2 subjects the business to any tax imposed by the state under chapter
3 82.04 RCW. Permits issued to such businesses are valid for the period
4 provided in (a) of this subsection (3).

5 (iii) Nothing in this subsection (3)(b) may be construed as
6 affecting the department's right to deny a taxpayer's application for
7 a reseller permit or to renew or reinstate a reseller permit as
8 provided in subsection (1)(b) and (c) of this section.

9 (c) A ~~((seller's))~~ reseller permit is no longer valid if the permit
10 holder's certificate of registration is revoked, the permit holder's
11 tax reporting account is closed by the department, or the ~~((person))~~
12 permit holder otherwise ceases to engage in business.

13 (d) The department may provide by rule for a uniform expiration
14 date for reseller permits issued, renewed, or reinstated under this
15 section, if the department determines that a uniform expiration date
16 for reseller permits will improve administrative efficiency for the
17 department. If the department adopts a uniform expiration date by
18 rule, the department may extend or shorten the twenty-four or forty-
19 eight month period provided in (a) and (b) of this subsection for a
20 period not to exceed six months as necessary to conform the reseller
21 permit to the uniform expiration date.

22 ~~((+5))~~ (4)(a) The department may revoke a ((seller's)) taxpayer's
23 reseller permit ((of a taxpayer)) for any of the following reasons:

24 (i) The taxpayer used or allowed or caused its ~~((seller's))~~
25 reseller permit to be used to purchase any item or service without
26 payment of sales tax, but the taxpayer or other purchaser was not
27 entitled to use the ~~((seller's))~~ reseller permit for the purchase;

28 (ii) The department issued the ~~((seller's))~~ reseller permit to the
29 taxpayer in error;

30 (iii) The department determines that the taxpayer is no longer
31 entitled to make purchases at wholesale; or

32 (iv) The department determines that revocation of the ~~((seller's))~~
33 reseller permit would be in the best interest of collecting taxes due
34 under this title.

35 (b) The notice of revocation must be in writing and is effective on
36 the date specified in the revocation notice. The notice must also
37 advise the taxpayer of its right to a review by the department.

1 (c) The department may refuse to reinstate a (~~seller's~~) reseller
2 permit revoked under (a)(i) of this subsection until all taxes,
3 penalties, and interest due on any improperly purchased item or service
4 have been paid in full. In the event a taxpayer whose (~~seller's~~)
5 reseller permit has been revoked under this subsection reorganizes, the
6 new business resulting from the reorganization is not entitled to a
7 (~~seller's~~) reseller permit until all taxes, penalties, and interest
8 due on any improperly purchased item or service have been paid in full.

9 (d) For purposes of this subsection, "reorganize" or
10 "reorganization" means: (i) The transfer, however effected, of a
11 majority of the assets of one business to another business where any of
12 the persons having an interest in the ownership or management in the
13 former business maintain an ownership or management interest in the new
14 business, either directly or indirectly; (ii) a mere change in identity
15 or form of ownership, however effected; or (iii) the new business is a
16 mere continuation of the former business based on significant shared
17 features such as owners, personnel, assets, or general business
18 activity.

19 (~~(+6)~~) (5) The department may provide (~~(lists of valid and revoked~~
20 ~~seller's~~) the public with access to reseller permit numbers on its web
21 site, including the name of the permit holder, the status of the
22 reseller permit, the expiration date of the permit, and any other
23 information that is disclosable under RCW 82.32.330(3)(1).

24 (~~(+7)~~) (6) The department must provide by rule for the review of
25 the department's decision to deny, revoke, or refuse to reinstate a
26 (~~seller's~~) reseller permit or the department's failure to rule on an
27 application within the time prescribed in subsection (1)(a) of this
28 section. Such review must be consistent with the requirements of
29 chapter 34.05 RCW.

30 (~~(+8)~~) (7) As part of its continuing efforts to educate taxpayers
31 on their sales and use tax responsibilities, the department will
32 educate taxpayers on the appropriate use of a (~~seller's~~) reseller
33 permit or (~~uniform exemption certificate~~) other documentation
34 authorized under RCW 82.04.470 and the consequences of misusing such
35 permits or (~~exemption certificates~~) other documentation.

36 **Sec. 3.** RCW 82.32.783 and 2009 c 563 s 202 are each amended to
37 read as follows:

1 (1)(a) Contractors seeking a new (~~seller's~~) reseller permit or to
2 renew or reinstate a (~~seller's~~) reseller permit must apply to the
3 department in a form and manner prescribed by the department.

4 (b) As part of the application, the contractor must report the
5 total combined dollar amount of all purchases of materials and labor
6 during the preceding (~~twelve~~) twenty-four months for retail
7 construction activity, wholesale construction activity, speculative
8 building, public road construction, and government contracting. If the
9 contractor was not engaged in business as a contractor during the
10 preceding (~~twelve~~) twenty-four months, the contractor may provide an
11 estimate of the dollar amount of purchases of materials and labor for
12 retail construction activity, wholesale construction activity,
13 speculative building, public road construction, and government
14 contracting during the twelve-month or twenty-four month period for
15 which the (~~seller's~~) reseller permit will be valid. The contractor
16 must also report the percentage of its total dollar amount of actual
17 or, if applicable, estimated material and labor purchases that was for
18 retail and wholesale construction activity performed by the applicant.

19 (c) The department must use its best efforts to rule on
20 applications within sixty days of receiving a complete application. If
21 the department fails to rule on an application within sixty days of
22 receiving a complete application, the taxpayer may either request a
23 review as provided in subsection (6) of this section or resubmit the
24 application. Nothing in this subsection may be construed as preventing
25 the department from ruling on an application more than sixty days after
26 the department received the application.

27 (d)(i) An application must be denied if:

28 (A) The department determines that the applicant is not entitled to
29 make purchases at wholesale or is otherwise prohibited from using a
30 reseller permit;

31 (B) The application contains any material misstatement;

32 (C) The application is incomplete; or

33 (D) Less than twenty-five percent of the taxpayer's total dollar
34 amount of actual or, if applicable, estimated material and labor
35 purchases as reported on the application is for retail and wholesale
36 construction activity performed by the applicant. However, the
37 department may approve an application not meeting the criteria in this

1 subsection (1)(d)(i)(D) if the department is satisfied that approval is
2 unlikely to jeopardize collection of the taxes due under this title.

3 (ii) The department may also deny an application if the department
4 determines that denial would be in the best interest of collecting
5 taxes due under this title.

6 (iii) The department's decision to approve or deny an application
7 may be based on tax returns previously filed with the department by the
8 applicant, a current or previous examination of the applicant's books
9 and records by the department, information provided by the applicant in
10 the master application and the reseller permit application, and other
11 information available to the department.

12 (e) The department must refuse to accept an application((s)) to
13 renew a ((seller's)) reseller permit ((may not be made)) that is
14 received more than ninety days before the expiration of the
15 ((seller's)) reseller permit.

16 (2) ~~((Sellers' permits issued by the department will be in a form~~
17 ~~prescribed by the department, which may include an electronic form, and~~
18 ~~must contain a unique identifying number assigned by the department.))~~
19 Notwithstanding subsection (1) of this section, the department may
20 issue or renew a reseller permit for a contractor that has not applied
21 for the permit or renewal of the permit if the department is satisfied
22 that the contractor is entitled to make purchases at wholesale and that
23 issuing or renewing the reseller permit is unlikely to jeopardize
24 collection of sales taxes due under this title based on criteria
25 established by the department by rule. Such criteria may include but
26 is not limited to whether the taxpayer has a previous history of
27 misusing resale certificates or reseller permits or there is any other
28 indication that issuing or renewing the reseller permit would
29 jeopardize collection of sales taxes due from the contractor.

30 (3)(a) ~~((Sellers'))~~ Except as otherwise provided in (b) of this
31 subsection:

32 (i) Except as provided in (a)(ii) of this subsection, until June
33 30, 2013, reseller permits issued, renewed, or reinstated under this
34 section will be valid for a period of twelve months from the date of
35 issuance, renewal, or reinstatement((-

36 (b))); and

37 (ii) Beginning July 1, 2013, reseller permits issued, renewed, or
38 reinstated under this section will be valid for a period of twenty-four

1 months from the date of issuance, renewal, or reinstatement. However,
2 the department may issue, renew, or reinstate permits for a period of
3 twenty-four months beginning July 1, 2011, if the department is
4 satisfied in the same manner as set forth in subsection (2) of this
5 section.

6 (b)(i) A ((seller's)) reseller permit is no longer valid if the
7 permit holder's certificate of registration is revoked, the permit
8 holder's tax reporting account is closed by the department, or the
9 ((person)) permit holder otherwise ceases to engage in business.

10 (ii) The department may provide by rule for a uniform expiration
11 date for reseller permits issued, renewed, or reinstated under this
12 section, if the department determines that a uniform expiration date
13 for reseller permits will improve administrative efficiency for the
14 department. If the department adopts a uniform expiration date by
15 rule, the department may extend or shorten the twelve or twenty-four
16 month period provided in (a)(i) and (ii) of this subsection for a
17 period not to exceed six months as necessary to conform the reseller
18 permit to the uniform expiration date.

19 (4)(a) The department may revoke a ((seller's)) contractor's
20 reseller permit ((of a contractor)) for any of the following reasons:

21 (i) The contractor used or allowed or caused its ((seller's))
22 reseller permit to be used to purchase any item or service without
23 payment of sales tax, but the contractor or other purchaser was not
24 entitled to use the ((seller's)) reseller permit for the purchase;

25 (ii) The department issued the ((seller's)) reseller permit to the
26 contractor in error;

27 (iii) The department determines that the contractor is no longer
28 entitled to make purchases at wholesale; or

29 (iv) The department determines that revocation of the ((seller's))
30 reseller permit would be in the best interest of collecting taxes due
31 under this title.

32 (b) The notice of revocation must be in writing and is effective on
33 the date specified in the revocation notice. The notice must also
34 advise the contractor of its right to a review by the department.

35 (c) The department may refuse to reinstate a ((seller's)) reseller
36 permit revoked under (a)(i) of this subsection until all taxes,
37 penalties, and interest due on any improperly purchased item or service
38 have been paid in full. In the event a contractor whose ((seller's))

1 reseller permit has been revoked under this subsection reorganizes, the
2 new business resulting from the reorganization is not entitled to a
3 (~~seller's~~) reseller permit until all taxes, penalties, and interest
4 due on any improperly purchased item or service have been paid in full.

5 (d) For purposes of this subsection, "reorganize" or
6 "reorganization" means: (i) The transfer, however effected, of a
7 majority of the assets of one business to another business where any of
8 the persons having an interest in the ownership or management in the
9 former business maintain an ownership or management interest in the new
10 business, either directly or indirectly; (ii) a mere change in identity
11 or form of ownership, however effected; or (iii) the new business is a
12 mere continuation of the former business based on significant shared
13 features such as owners, personnel, assets, or general business
14 activity.

15 (5) The department may provide (~~lists of valid and revoked~~
16 ~~sellers'~~) the public with access to reseller permit numbers on its web
17 site, including the name of the permit holder, the status of the
18 reseller permit, the expiration date of the permit, and any other
19 information that is disclosable under RCW 82.32.330(3)(1).

20 (6) The department must provide by rule for the review of the
21 department's decision to deny, revoke, or refuse to reinstate a
22 (~~seller's~~) reseller permit or the department's failure to rule on an
23 application within the time prescribed in subsection (1)(a) of this
24 section. Such review must be consistent with the requirements of
25 chapter 34.05 RCW.

26 (7) As part of its continuing efforts to educate taxpayers on their
27 sales and use tax responsibilities, the department will educate
28 taxpayers on the appropriate use of a (~~seller's~~) reseller permit or
29 (~~uniform exemption certificate~~) other documentation authorized under
30 RCW 82.04.470 and the consequences of misusing such permits or
31 (~~exemption certificates~~) other documentation.

32 (8) As used in this section, the following definitions apply:

33 (a) "Contractor" means a person (~~who engages in any retail~~
34 ~~construction activity, or who engages in any activity that brings the~~
35 ~~person within the definition of consumer in RCW 82.04.190 (3) or (6),~~
36 ~~or who is a speculative builder as defined by rule of the department)~~
37 whose primary business activity is as a contractor as defined in RCW
38 18.27.010 or an electrical contractor as defined in RCW 19.28.006.

1 (b) "Government contracting" means the activity described in RCW
2 82.04.190(6).

3 (c) "Public road construction" means the activity described in RCW
4 82.04.190(3).

5 (d) "Retail construction activity" means any activity defined as a
6 retail sale in RCW 82.04.050(2) (b) or (c).

7 (e) "Speculative building" means the activities of a speculative
8 builder as the term "speculative builder" is defined by rule of the
9 department.

10 (f) "Wholesale construction activity" means labor and services
11 rendered for persons who are not consumers in respect to real property,
12 if such labor and services are expressly defined as a retail sale by
13 RCW 82.04.050 when rendered to or for consumers. For purposes of this
14 subsection (8)(f), "consumer" has the same meaning as in RCW 82.04.190.

15 NEW SECTION. Sec. 4. A new section is added to chapter 82.32 RCW
16 to read as follows:

17 (1) Reseller permits issued by the department, as provided under
18 RCW 82.32.780 and 82.32.783, will be in a form prescribed by the
19 department, which may include an electronic form. Reseller permits
20 must contain the following information:

21 (a) A unique identifying number assigned by the department;

22 (b) The name and address of the permit holder;

23 (c) The type of business engaged in;

24 (d) The date the permit was issued, renewed, or reinstated by the
25 department; and

26 (e) The expiration date of the permit.

27 (2) Reseller permits may also contain such other information as
28 required by the department, including, but not limited to:

29 (a) The categories of items or services to be purchased for resale
30 or that are otherwise to be purchased at wholesale;

31 (b) The date that the permit was provided to the seller;

32 (c) A statement that the items or services purchased either: (i)
33 Are purchased for resale in the regular course of business; or (ii) are
34 otherwise purchased at wholesale;

35 (d) A statement that the permit holder acknowledges that misuse of
36 reseller permit or reseller permit number subjects the permit holder to

1 revocation of the reseller permit, penalties as provided in RCW
2 82.32.290 and 82.32.291, in addition to the tax, interest, and any
3 other penalties imposed by law;

4 (e) Instructions for renewing the permit;

5 (f) A statement that the department is authorized to obtain
6 information concerning the permit holder's purchase of items or
7 services under the permit from the seller to verify whether the permit
8 holder was authorized to purchase such items or services without
9 payment of retail sales tax; and

10 (g) The signature of the permit holder, unless a copy of the permit
11 is provided to the seller in a format other than paper.

12 **Sec. 5.** RCW 82.32.785 and 2009 c 563 s 203 are each amended to
13 read as follows:

14 The department of revenue must, by January 1, 2011, develop a
15 system, as resources permit, allowing sellers to voluntarily verify
16 through electronic means (~~((the validity of sellers' permits presented
17 to sellers from))~~) whether their customers' reseller permits are valid.

18 **Sec. 6.** RCW 82.32.787 and 2009 c 563 s 204 are each amended to
19 read as follows:

20 A person must, upon request of the department, provide the
21 department with (~~((a copy))~~) paper or electronic copies of all
22 (~~((sellers'))~~) reseller permits, or (~~((uniform exemption certificates))~~)
23 other documentation as authorized in RCW 82.04.470, accepted by that
24 person during the period specified by the department to substantiate
25 wholesale sales. If, instead of the documentation specified in this
26 subsection, the seller has retained the relevant data elements from
27 such permits or other documentation authorized in RCW 82.04.470, as
28 allowed under the streamlined sales and use tax agreement, the seller
29 must provide such data elements to the department.

30 **Sec. 7.** RCW 82.04.470 and 2009 c 563 s 205 and 2009 c 535 s 411
31 are each reenacted and amended to read as follows:

32 (1) (~~((Unless a seller has taken from the buyer a seller's permit,
33 the burden of proving that a sale of tangible personal property, or of
34 services, was not a sale at retail shall be upon the person who made
35 it.~~

1 ~~(2) If a seller does not receive a seller's permit at the time of~~
2 ~~the sale, have a seller's permit on file at the time of the sale, or~~
3 ~~obtain a seller's permit from the buyer within a reasonable time after~~
4 ~~the sale, the seller shall remain liable for the tax as provided in RCW~~
5 ~~82.08.050, unless the seller can demonstrate facts and circumstances~~
6 ~~according to rules adopted by the department that show the sale was~~
7 ~~properly made without payment of retail sales tax.~~

8 ~~(3) A seller's permit must contain such information as required by~~
9 ~~the department, which may include, but is not limited to:~~

10 ~~(a) The name and address of the buyer;~~

11 ~~(b) The seller's permit number issued by the department;~~

12 ~~(c) The type of business engaged in;~~

13 ~~(d) The categories of items or services to be purchased for resale~~
14 ~~or that are otherwise to be purchased at wholesale, unless the buyer~~
15 ~~presents a blanket seller's permit;~~

16 ~~(e) The date on which the permit was provided to the seller;~~

17 ~~(f) A statement that the items or services purchased either:—(i)~~
18 ~~Are purchased for resale in the regular course of business; or (ii) are~~
19 ~~otherwise purchased at wholesale;~~

20 ~~(g) A statement that the buyer acknowledges that the buyer is~~
21 ~~solely responsible for purchasing within the categories specified on~~
22 ~~the permit and that misuse of the resale privilege claimed on the~~
23 ~~permit subjects the buyer to revocation of the seller's permit,~~
24 ~~penalties as provided in RCW 82.32.290 and 82.32.291, in addition to~~
25 ~~the tax, interest, and any other penalties imposed by law;~~

26 ~~(h) The name of the individual authorized to sign the permit,~~
27 ~~printed in a legible fashion;~~

28 ~~(i) The signature of the authorized individual;~~

29 ~~(j) The name of the seller;~~

30 ~~(k) The date the permit was issued, renewed, or reinstated by the~~
31 ~~department;~~

32 ~~(l) The date that the permit expires;~~

33 ~~(m) Instructions for renewing the permit; and~~

34 ~~(n) A statement that the department is authorized to obtain~~
35 ~~information concerning the buyer's purchase of items or services under~~
36 ~~the permit from the seller to verify whether the buyer was authorized~~
37 ~~to purchase such items or services without payment of retail sales tax.~~

1 ~~(4) Subsection (3)(h) and (i) of this section does not apply if the~~
2 ~~permit is provided in a format other than paper. If the permit is~~
3 ~~provided in a format other than paper, the name of the individual~~
4 ~~providing the permit must be included in the permit.~~

5 ~~(5)(a) In lieu of a seller's permit issued by the department under~~
6 ~~RCW 82.32.780 or 82.32.783, a seller may accept from a buyer that is~~
7 ~~not required to be registered with the department under RCW 82.32.030~~
8 ~~a properly completed:~~

9 ~~(i) Uniform sales and use tax exemption certificate developed by~~
10 ~~the multistate tax commission; or~~

11 ~~(ii) Uniform exemption certificate approved by the streamlined~~
12 ~~sales and use tax agreement governing board.~~

13 ~~(b) A seller who accepts a properly completed exemption certificate~~
14 ~~as authorized in (a) of this subsection is relieved of the obligation~~
15 ~~to collect and remit retail sales tax.~~

16 ~~(6) In lieu of a seller's permit issued by the department under RCW~~
17 ~~82.32.780 or 82.32.783, a seller may accept from a buyer that is~~
18 ~~required to be registered with the department under RCW 82.32.030 a~~
19 ~~properly completed uniform exemption certificate approved by the~~
20 ~~streamlined sales and use tax agreement governing board as long as that~~
21 ~~certificate includes the seller's permit number issued by the~~
22 ~~department to the buyer.~~

23 ~~(7) As used in this section, "seller's permit" means documentation~~
24 ~~issued by the department under RCW 82.32.780 or 82.32.783 and provided~~
25 ~~by a buyer to a seller to substantiate a wholesale sale.)) The burden~~
26 ~~of proving that a sale is a wholesale sale rather than a retail sale is~~
27 ~~on the seller. A seller may meet its burden of proving a sale is a~~
28 ~~wholesale sale rather than a retail sale by taking from the buyer, at~~
29 ~~the time of sale or within a reasonable time after the sale as provided~~
30 ~~by rule of the department, a copy of a reseller permit issued to the~~
31 ~~buyer by the department under RCW 82.32.780 or 82.32.783.~~

32 (2)(a) In lieu of a copy of a reseller permit issued by the
33 department, a seller may accept from a buyer that is required to be
34 registered with the department under RCW 82.32.030:

35 (i) A properly completed uniform exemption certificate approved by
36 the streamlined sales and use tax agreement governing board; or

37 (ii) Any other exemption certificate as may be authorized by the
38 department and properly completed by the buyer.

1 (b) Certificates authorized under (a)(i) and (ii) of this
2 subsection (2) must include the reseller permit number issued by the
3 department to the buyer.

4 (c) A seller who accepts exemption certificates authorized in (a)
5 of this subsection (2) is not required to verify with the department
6 whether the buyer is required to be registered with the department
7 under RCW 82.32.030. Nothing in this subsection (2)(c) may be
8 construed to modify any of the provisions of RCW 82.08.050.

9 (3)(a) In lieu of a copy of a reseller permit issued by the
10 department, a seller may accept from a buyer that is not required to be
11 registered with the department under RCW 82.32.030:

12 (i) A properly completed uniform sales and use tax exemption
13 certificate developed by the multistate tax commission;

14 (ii) A properly completed uniform exemption certificate approved by
15 the streamlined sales and use tax agreement governing board; or

16 (iii) Any other exemption certificate as may be authorized by the
17 department and properly completed by the buyer.

18 (b) A seller who accepts exemption certificates authorized in (a)
19 of this subsection (3) is not required to verify with the department
20 whether the buyer is not required to be registered with the department
21 under RCW 82.32.030. Nothing in this subsection (3)(b) may be
22 construed to modify any of the provisions of RCW 82.08.050.

23 (4) In lieu of obtaining the documentation in subsection (1), (2),
24 or (3) of this section, a seller may capture the relevant data elements
25 as allowed under the streamlined sales and use tax agreement.

26 (5) A seller that does not comply with subsection (1), (2), (3), or
27 (4) of this section may meet its burden of proving that a sale is a
28 wholesale sale rather than a retail sale by demonstrating facts and
29 circumstances, according to rules adopted by the department, that show
30 the sale was properly made without payment of retail sales tax.

31 (6) Notwithstanding anything in this section to the contrary, a
32 seller who maintains records establishing that it uses electronic means
33 to verify, at least once per calendar year, the validity of its
34 customers' reseller permits need not take a copy of a reseller permit
35 or other documentation or the data elements as authorized in subsection
36 (1), (2), (3), or (4) of this section for wholesale sales to those
37 customers with valid reseller permits as confirmed by the department
38 for all sales occurring within twelve months following the date that

1 the seller last electronically verified the validity of its customers'
2 reseller permits. A seller that meets the requirements of this
3 subsection will be deemed to have met its burden of proving a sale is
4 a wholesale sale rather than a retail sale.

5 (7) As used in this section "reseller permit" means documentation
6 issued by the department under RCW 82.32.780 or 82.32.783, which is
7 used to substantiate a wholesale sale.

8 **Sec. 8.** RCW 82.08.050 and 2009 c 563 s 206 and 2009 c 289 s 2 are
9 each reenacted and amended to read as follows:

10 (1) The tax (~~hereby~~) imposed (~~shall~~) in this chapter must be
11 paid by the buyer to the seller(~~, and~~). Each seller (~~shall~~) must
12 collect from the buyer the full amount of the tax payable in respect to
13 each taxable sale in accordance with the schedule of collections
14 adopted by the department (~~pursuant to~~) under the provisions of RCW
15 82.08.060.

16 (2) The tax required by this chapter, to be collected by the
17 seller, (~~shall be~~) is deemed to be held in trust by the seller until
18 paid to the department(~~, and~~). Any seller who appropriates or
19 converts the tax collected to (~~his or her~~) the seller's own use or to
20 any use other than the payment of the tax to the extent that the money
21 required to be collected is not available for payment on the due date
22 as prescribed in this chapter is guilty of a gross misdemeanor.

23 (3) (~~In case~~) Except as otherwise provided in this section, if
24 any seller fails to collect the tax (~~herein~~) imposed in this chapter
25 or, having collected the tax, fails to pay it to the department in the
26 manner prescribed by this chapter, whether such failure is the result
27 of (~~his or her~~) the seller's own acts or the result of acts or
28 conditions beyond (~~his or her~~) the seller's control, (~~he or she~~
29 shall) the seller is, nevertheless, (~~be~~) personally liable to the
30 state for the amount of the tax(~~, unless the seller has taken from the~~
31 buyer a seller's permit or uniform exemption certificate authorized
32 under RCW 82.04.470, a copy of a direct pay permit issued under RCW
33 82.32.087, a direct mail form as provided in RCW 82.32.730(5), an
34 exemption certificate claiming direct mail as provided in RCW
35 82.32.730(6), or other information required under the streamlined sales
36 and use tax agreement, or information required under rules adopted by
37 the department)).

1 (4) Sellers (~~shall~~) are not (~~be~~) relieved from personal
2 liability for the amount of the tax unless they maintain proper records
3 of exempt or nontaxable transactions and provide them to the department
4 when requested.

5 (5) Sellers are not relieved from personal liability for the amount
6 of tax if they fraudulently fail to collect the tax or if they solicit
7 purchasers to participate in an unlawful claim of exemption.

8 (6) Sellers are not relieved from personal liability for the amount
9 of tax if they accept an exemption certificate from a purchaser
10 claiming an entity-based exemption if:

11 (a) The subject of the transaction sought to be covered by the
12 exemption certificate is actually received by the purchaser at a
13 location operated by the seller in Washington; and

14 (b) Washington provides an exemption certificate that clearly and
15 affirmatively indicates that the claimed exemption is not available in
16 Washington. Graying out exemption reason types on a uniform form and
17 posting it on the department's web site is a clear and affirmative
18 indication that the grayed out exemptions are not available.

19 (7)(a) Sellers are relieved from personal liability for the amount
20 of tax if they obtain a fully completed exemption certificate or
21 capture the relevant data elements required under the streamlined sales
22 and use tax agreement within ninety days, or a longer period as may be
23 provided by rule by the department, subsequent to the date of sale.

24 (b) If the seller has not obtained an exemption certificate or all
25 relevant data elements required under the streamlined sales and use tax
26 agreement within the period allowed subsequent to the date of sale, the
27 seller may, within one hundred twenty days, or a longer period as may
28 be provided by rule by the department, subsequent to a request for
29 substantiation by the department, either prove that the transaction was
30 not subject to tax by other means or obtain a fully completed exemption
31 certificate from the purchaser, taken in good faith.

32 (c) Sellers are relieved from personal liability for the amount of
33 tax if they obtain a blanket exemption certificate for a purchaser with
34 which the seller has a recurring business relationship. The department
35 may not request from a seller renewal of blanket exemption certificates
36 or updates of exemption certificate information or data elements if
37 there is a recurring business relationship between the buyer and

1 seller. For purposes of this subsection (7)(c), a "recurring business
2 relationship" means at least one sale transaction within a period of
3 twelve consecutive months.

4 (d) Sellers are relieved from personal liability for the amount of
5 tax if they obtain a copy of a direct pay permit issued under RCW
6 82.32.087.

7 (8) The amount of tax, until paid by the buyer to the seller or to
8 the department, (~~shall~~) constitutes a debt from the buyer to the
9 seller (~~and~~). Any seller who fails or refuses to collect the tax as
10 required with intent to violate the provisions of this chapter or to
11 gain some advantage or benefit, either direct or indirect, and any
12 buyer who refuses to pay any tax due under this chapter is guilty of a
13 misdemeanor.

14 (9) Except as otherwise provided in this subsection, the tax
15 required by this chapter to be collected by the seller (~~shall~~) must
16 be stated separately from the selling price in any sales invoice or
17 other instrument of sale. On all retail sales through vending
18 machines, the tax need not be stated separately from the selling price
19 or collected separately from the buyer. Except as otherwise provided
20 in this subsection, for purposes of determining the tax due from the
21 buyer to the seller and from the seller to the department it (~~shall~~)
22 must be conclusively presumed that the selling price quoted in any
23 price list, sales document, contract or other agreement between the
24 parties does not include the tax imposed by this chapter(~~7~~). But if
25 the seller advertises the price as including the tax or that the seller
26 is paying the tax, the advertised price (~~shall~~) may not be considered
27 the selling price.

28 (10) Where a buyer has failed to pay to the seller the tax imposed
29 by this chapter and the seller has not paid the amount of the tax to
30 the department, the department may, in its discretion, proceed directly
31 against the buyer for collection of the tax(~~7 in which case~~). If the
32 department proceeds directly against the buyer for collection of the
33 tax as authorized in this subsection, the department may add a penalty
34 of ten percent (~~may be added~~) of the unpaid tax to the amount of the
35 tax due for failure of the buyer to pay the (~~same~~) tax to the seller,
36 regardless of when the tax may be collected by the department(~~7 and~~).
37 In addition to the penalty authorized in this subsection, all of the
38 provisions of chapter 82.32 RCW, including those relative to interest

1 and penalties, (~~shall~~) apply (~~in addition; and,~~). For the sole
2 purpose of applying the various provisions of chapter 82.32 RCW, the
3 twenty-fifth day of the month following the tax period in which the
4 purchase was made (~~shall~~) will be considered as the due date of the
5 tax.

6 (11) Notwithstanding subsections (1) through (10) of this section,
7 any person making sales is not obligated to collect the tax imposed by
8 this chapter if:

9 (a) The person's activities in this state, whether conducted
10 directly or through another person, are limited to:

- 11 (i) The storage, dissemination, or display of advertising;
- 12 (ii) The taking of orders; or
- 13 (iii) The processing of payments; and

14 (b) The activities are conducted electronically via a web site on
15 a server or other computer equipment located in Washington that is not
16 owned or operated by the person making sales into this state nor owned
17 or operated by an affiliated person. "Affiliated persons" has the same
18 meaning as provided in RCW 82.04.424.

19 (12) Subsection (11) of this section expires when: (a) The United
20 States congress grants individual states the authority to impose sales
21 and use tax collection duties on remote sellers; or (b) it is
22 determined by a court of competent jurisdiction, in a judgment not
23 subject to review, that a state can impose sales and use tax collection
24 duties on remote sellers.

25 (13) For purposes of this section(~~(7)~~):

26 (a) "Exemption certificate" means documentation furnished by a
27 buyer to a seller to claim an exemption from sales tax. An exemption
28 certificate includes a reseller permit or other documentation
29 authorized in RCW 82.04.470 furnished by a buyer to a seller to
30 substantiate a wholesale sale; and

31 (b) "Seller" includes a certified service provider, as defined in
32 RCW 82.32.020, acting as agent for the seller.

33 **Sec. 9.** RCW 82.08.130 and 2009 c 563 s 207 and 2009 c 535 s 1106
34 are each reenacted and amended to read as follows:

35 (1) If a buyer normally is engaged in both consuming and reselling
36 certain types of personal property, the retail sale of which is taxable
37 under this chapter, and the buyer is not able to determine at the time

1 of purchase whether the particular property acquired will be consumed
2 or resold, the buyer may use a (~~seller's~~) reseller permit or(~~, if~~
3 ~~eligible, a uniform exemption certificate~~) other documentation
4 authorized under RCW 82.04.470 for the entire purchase if the buyer
5 principally resells the (~~articles~~) property according to the general
6 nature of the buyer's business. The buyer (~~shall~~) must account for
7 the value of any articles purchased with a (~~seller's~~) reseller permit
8 or (~~uniform exemption certificate~~) other documentation authorized
9 under RCW 82.04.470 that (~~are~~) is used by the buyer and remit the
10 deferred sales tax on the (~~articles~~) property to the department.

11 (2) A buyer who pays a tax on all purchases and subsequently
12 resells (~~an article~~) property or services at retail, without
13 intervening use by the buyer, (~~shall~~) must collect the tax from the
14 purchaser as otherwise provided by law and is entitled to a deduction
15 (~~or credit~~) on the buyer's tax return equal to(~~, in the case of a~~
16 ~~deduction,~~) the cost to the buyer of the property or service resold
17 upon which retail sales tax has been paid(~~, and in the case of a~~
18 ~~credit, the amount of state and local sales taxes paid with respect to~~
19 ~~the property or service resold~~). The deduction (~~or credit~~) is
20 allowed only if the taxpayer keeps and preserves records that (~~show~~)
21 include the names of the persons from whom the (~~articles~~) property or
22 services were purchased, the date of the purchase, the type of
23 (~~articles~~) property or services, the amount of the purchase, and the
24 tax that was paid.

25 (3) The department must provide by rule for the refund or credit of
26 retail sales tax paid by a buyer for purchases that are later resold
27 without intervening use by the buyer or for purchases that would
28 otherwise have met the definition of wholesale sale if the buyer had
29 provided the seller with a (~~seller's~~) reseller permit or (~~uniform~~
30 ~~exemption certificate~~) other documentation as authorized in RCW
31 82.04.470.

32 (4) Nothing in this section may be construed to authorize a
33 deduction or credit in respect to the purchase of services if the
34 services are not of a type that can be sold at wholesale under the
35 definition of wholesale sale in RCW 82.04.060.

36 **Sec. 10.** RCW 82.32.087 and 2009 c 563 s 210 and 2009 c 176 s 5 are
37 each reenacted and amended to read as follows:

1 (1) The director may grant a direct pay permit to a taxpayer who
2 demonstrates, to the satisfaction of the director, that the taxpayer
3 meets the requirements of this section. The direct pay permit allows
4 the taxpayer to accrue and remit directly to the department use tax on
5 the acquisition of tangible personal property or sales tax on the sale
6 of or charges made for labor and/or services, in accordance with all of
7 the applicable provisions of this title. Any taxpayer that uses a
8 direct pay permit shall remit state and local sales or use tax directly
9 to the department. The agreement by the purchaser to remit tax
10 directly to the department, rather than pay sales or use tax to the
11 seller, relieves the seller of the obligation to collect sales or use
12 tax and requires the buyer to pay use tax on the tangible personal
13 property and sales tax on the sale of or charges made for labor and/or
14 services.

15 (2)(a) A taxpayer may apply for a permit under this section if:
16 (i) The taxpayer's cumulative tax liability is reasonably expected to
17 be two hundred forty thousand dollars or more in the current calendar
18 year; or (ii) the taxpayer makes purchases subject to the taxes imposed
19 under chapter 82.08 or 82.12 RCW in excess of ten million dollars per
20 calendar year. For the purposes of this section, "tax liability" means
21 the amount required to be remitted to the department for taxes
22 administered under this chapter, except for the taxes imposed or
23 authorized by chapters 82.14A, 82.14B, 82.24, 82.27, 82.29A, and 84.33
24 RCW.

25 (b) Application for a permit must be made in writing to the
26 director in a form and manner prescribed by the department. A taxpayer
27 who transacts business in two or more locations may submit one
28 application to cover the multiple locations.

29 (c) The director must review a direct pay permit application in a
30 timely manner and shall notify the applicant, in writing, of the
31 approval or denial of the application. The department must approve or
32 deny an application based on the applicant's ability to comply with
33 local government use tax coding capabilities and responsibilities;
34 requirements for vendor notification; recordkeeping obligations;
35 electronic data capabilities; and tax reporting procedures.
36 Additionally, an application may be denied if the director determines
37 that denial would be in the best interest of collecting taxes due under
38 this title. The department must provide a direct pay permit to an

1 approved applicant with the notice of approval. The direct pay permit
2 shall clearly state that the holder is solely responsible for the
3 accrual and payment of the tax imposed under chapters 82.08 and 82.12
4 RCW and that the seller is relieved of liability to collect tax imposed
5 under chapters 82.08 and 82.12 RCW on all sales to the direct pay
6 permit holder. The taxpayer may petition the director for
7 reconsideration of a denial.

8 (d) A taxpayer who uses a direct pay permit must continue to
9 maintain records that are necessary to a determination of the tax
10 liability in accordance with this title. A direct pay permit is not
11 transferable and the use of a direct pay permit may not be assigned to
12 a third party.

13 (3) Taxes for which the direct pay permit is used are due and
14 payable on the tax return for the reporting period in which the
15 taxpayer (a) receives the tangible personal property purchased or in
16 which the labor and/or services are performed or (b) receives an
17 invoice for such property or such labor and/or services, whichever
18 period is earlier.

19 (4) The holder of a direct pay permit must furnish a copy of the
20 direct pay permit to each vendor with whom the taxpayer has opted to
21 use a direct pay permit. Sellers who make sales upon which the sales
22 or use tax is not collected by reason of the provisions of this
23 section, in addition to existing requirements under this title, must
24 maintain a copy of the direct pay permit and any such records or
25 information as the department may specify.

26 (5) A direct pay permit is subject to revocation by the director at
27 any time the department determines that the taxpayer has violated any
28 provision of this section or that revocation would be in the best
29 interests of collecting the taxes due under this title. The notice of
30 revocation must be in writing and is effective either as of the end of
31 the taxpayer's next normal reporting period or a date deemed
32 appropriate by the director and identified in the revocation notice.
33 The taxpayer may petition the director for reconsideration of a
34 revocation and reinstatement of the permit.

35 (6) Any taxpayer who chooses to no longer use a direct pay permit
36 or whose permit is revoked by the department, must return the permit to
37 the department and immediately make a good faith effort to notify all

1 vendors to whom the permit was given, advising them that the permit is
2 no longer valid.

3 (7) Except as provided in this subsection, the direct pay permit
4 may be used for any purchase of tangible personal property and any
5 retail sale under RCW 82.04.050. The direct pay permit may not be used
6 for:

7 (a) Purchases of meals or beverages;

8 (b) Purchases of motor vehicles, trailers, boats, airplanes, and
9 other property subject to requirements for title transactions by the
10 department of licensing;

11 (c) Purchases for which a (~~seller's~~) reseller permit or (~~uniform~~
12 ~~exemption certificate~~) other documentation authorized under RCW
13 82.04.470 may be used;

14 (d) Purchases that meet the definitions of RCW 82.04.050 (2) (e)
15 and (f), (3) (a) through (d), (f), and (g), and (5); or

16 (e) Other activities subject to tax under chapter 82.08 or 82.12
17 RCW that the department by rule designates, consistent with the
18 purposes of this section, as activities for which a direct pay permit
19 is not appropriate and may not be used.

20 **Sec. 11.** RCW 82.32.290 and 2009 c 563 s 211 are each amended to
21 read as follows:

22 (1)(a) It shall be unlawful:

23 (i) For any person to engage in business without having obtained a
24 certificate of registration as provided in this chapter;

25 (ii) For the president, vice president, secretary, treasurer, or
26 other officer of any company to cause or permit the company to engage
27 in business without having obtained a certificate of registration as
28 provided in this chapter;

29 (iii) For any person to tear down or remove any order or notice
30 posted by the department;

31 (iv) For any person to aid or abet another in any attempt to evade
32 the payment of any tax or any part thereof;

33 (v) For any purchaser to fraudulently sign or furnish to a seller
34 (~~a seller's permit or uniform exemption certificate~~) documentation
35 authorized under RCW 82.04.470 without intent to resell the property
36 purchased or with intent to otherwise use the property in a manner
37 inconsistent with the claimed wholesale purchase; or

1 (vi) For any person to fail or refuse to permit the examination of
2 any book, paper, account, record, or other data by the department or
3 its duly authorized agent; or to fail or refuse to permit the
4 inspection or appraisal of any property by the department or its duly
5 authorized agent; or to refuse to offer testimony or produce any record
6 as required.

7 (b) Any person violating any of the provisions of this subsection
8 (1) shall be guilty of a gross misdemeanor in accordance with chapter
9 9A.20 RCW.

10 (2)(a) It shall be unlawful:

11 (i) For any person to engage in business after revocation of a
12 certificate of registration;

13 (ii) For the president, vice president, secretary, treasurer, or
14 other officer of any company to cause or permit the company to engage
15 in business after revocation of a certificate of registration; or

16 (iii) For any person to make any false or fraudulent return or
17 false statement in any return, with intent to defraud the state or
18 evade the payment of any tax or part thereof.

19 (b) Any person violating any of the provisions of this subsection
20 (2) shall be guilty of a class C felony in accordance with chapter
21 9A.20 RCW.

22 (3) In addition to the foregoing penalties, any person who
23 knowingly swears to or verifies any false or fraudulent return, or any
24 return containing any false or fraudulent statement with the intent
25 aforesaid, shall be guilty of the offense of perjury in the second
26 degree; and any company for which a false return, or a return
27 containing a false statement, as aforesaid, is made, shall be punished,
28 upon conviction thereof, by a fine of not more than one thousand
29 dollars. All penalties or punishments provided in this section shall
30 be in addition to all other penalties provided by law.

31 **Sec. 12.** RCW 82.32.291 and 2009 c 563 s 212 and 2009 c 289 s 4 are
32 each reenacted and amended to read as follows:

33 (1) Except as otherwise provided in this section, if any ((person
34 who)) buyer improperly uses a ((seller's)) reseller permit number,
35 reseller permit, or other documentation authorized under RCW 82.04.470
36 to purchase items or services at retail without payment of sales tax((or
37 or who uses a uniform exemption certificate developed by the multistate

1 ~~tax commission or approved by the streamlined sales and use tax~~
2 ~~agreement governing board to claim a purchase for resale exemption, and~~
3 ~~who is not entitled to use the seller's permit or exemption certificate~~
4 ~~for the purchase shall be assessed)) that was legally due on the~~
5 ~~purchase, the department must assess against that buyer a penalty of~~
6 ~~fifty percent of the tax due, in addition to all other taxes,~~
7 ~~penalties, and interest due, on the improperly purchased item or~~
8 ~~service.~~

9 (2) The department ((may)) must waive the penalty imposed under
10 subsection (1) of this section if it finds that the use of the
11 ((seller's)) reseller permit ((or exemption certificate)) number,
12 reseller permit, or other documentation authorized under RCW 82.04.470
13 was due to circumstances beyond the taxpayer's control or if the
14 ((seller's)) reseller permit ((or exemption certificate)) number,
15 reseller permit, or other documentation authorized under RCW 82.04.470
16 was properly used for purchases for dual purposes. The department
17 ((shall)) must define by rule what circumstances are considered to be
18 beyond the taxpayer's control.

19 (3) A buyer that purchases items or services at retail without
20 payment of sales tax legally due on the purchase is deemed to have
21 improperly used a reseller permit number, reseller permit, or other
22 documentation authorized under RCW 82.04.470 to purchase the items or
23 services without payment of sales tax and is subject to the penalty in
24 subsection (1) of this section if the buyer:

25 (a) Furnished to the seller a reseller permit number, a reseller
26 permit or copy of a reseller permit, or other documentation authorized
27 under RCW 82.04.470 to avoid payment of sales tax legally due on the
28 purchase; or

29 (b) Made the purchase from a seller that had previously used
30 electronic means to verify the validity of the buyer's reseller permit
31 with the department and, as a result, did not require the buyer to
32 provide a copy of its reseller permit or furnish other documentation
33 authorized under RCW 82.04.470 to document the wholesale nature of the
34 purchase. In such cases, the buyer bears the burden of proving that it
35 did not improperly use its reseller permit to make the purchase without
36 payment of sales tax.

1 **Sec. 13.** RCW 82.32.330 and 2009 c 563 s 213 and 2009 c 309 s 2 are
2 each reenacted and amended to read as follows:

3 (1) For purposes of this section:

4 (a) "Disclose" means to make known to any person in any manner
5 whatever a return or tax information;

6 (b) "Return" means a tax or information return or claim for refund
7 required by, or provided for or permitted under, the laws of this state
8 which is filed with the department of revenue by, on behalf of, or with
9 respect to a person, and any amendment or supplement thereto, including
10 supporting schedules, attachments, or lists that are supplemental to,
11 or part of, the return so filed;

12 (c) "Tax information" means (i) a taxpayer's identity, (ii) the
13 nature, source, or amount of the taxpayer's income, payments, receipts,
14 deductions, exemptions, credits, assets, liabilities, net worth, tax
15 liability deficiencies, overassessments, or tax payments, whether taken
16 from the taxpayer's books and records or any other source, (iii)
17 whether the taxpayer's return was, is being, or will be examined or
18 subject to other investigation or processing, (iv) a part of a written
19 determination that is not designated as a precedent and disclosed
20 pursuant to RCW 82.32.410, or a background file document relating to a
21 written determination, and (v) other data received by, recorded by,
22 prepared by, furnished to, or collected by the department of revenue
23 with respect to the determination of the existence, or possible
24 existence, of liability, or the amount thereof, of a person under the
25 laws of this state for a tax, penalty, interest, fine, forfeiture, or
26 other imposition, or offense. However, data, material, or documents
27 that do not disclose information related to a specific or identifiable
28 taxpayer do not constitute tax information under this section. Except
29 as provided by RCW 82.32.410, nothing in this chapter (~~shall~~)
30 requires any person possessing data, material, or documents made
31 confidential and privileged by this section to delete information from
32 such data, material, or documents so as to permit its disclosure;

33 (d) "State agency" means every Washington state office, department,
34 division, bureau, board, commission, or other state agency;

35 (e) "Taxpayer identity" means the taxpayer's name, address,
36 telephone number, registration number, or any combination thereof, or
37 any other information disclosing the identity of the taxpayer; and

1 (f) "Department" means the department of revenue or its officer,
2 agent, employee, or representative.

3 (2) Returns and tax information are confidential and privileged,
4 and except as authorized by this section, neither the department of
5 revenue nor any other person may disclose any return or tax
6 information.

7 (3) This section does not prohibit the department of revenue from:

8 (a) Disclosing such return or tax information in a civil or
9 criminal judicial proceeding or an administrative proceeding:

10 (i) In respect of any tax imposed under the laws of this state if
11 the taxpayer or its officer or other person liable under this title
12 (~~82-RCW~~) is a party in the proceeding;

13 (ii) In which the taxpayer about whom such return or tax
14 information is sought and another state agency are adverse parties in
15 the proceeding; or

16 (iii) Brought by the department under RCW 18.27.040 or 19.28.071;

17 (b) Disclosing, subject to such requirements and conditions as the
18 director prescribes by rules adopted pursuant to chapter 34.05 RCW,
19 such return or tax information regarding a taxpayer to such taxpayer or
20 to such person or persons as that taxpayer may designate in a request
21 for, or consent to, such disclosure, or to any other person, at the
22 taxpayer's request, to the extent necessary to comply with a request
23 for information or assistance made by the taxpayer to such other
24 person. However, tax information not received from the taxpayer must
25 not be so disclosed if the director determines that such disclosure
26 would compromise any investigation or litigation by any federal, state,
27 or local government agency in connection with the civil or criminal
28 liability of the taxpayer or another person, or that such disclosure
29 would identify a confidential informant, or that such disclosure is
30 contrary to any agreement entered into by the department that provides
31 for the reciprocal exchange of information with other government
32 agencies which agreement requires confidentiality with respect to such
33 information unless such information is required to be disclosed to the
34 taxpayer by the order of any court;

35 (c) Disclosing the name of a taxpayer with a deficiency greater
36 than five thousand dollars and against whom a warrant under RCW
37 82.32.210 has been either issued or filed and remains outstanding for
38 a period of at least ten working days. The department is not required

1 to disclose any information under this subsection if a taxpayer: (i)
2 Has been issued a tax assessment; (ii) has been issued a warrant that
3 has not been filed; and (iii) has entered a deferred payment
4 arrangement with the department of revenue and is making payments upon
5 such deficiency that will fully satisfy the indebtedness within twelve
6 months;

7 (d) Disclosing the name of a taxpayer with a deficiency greater
8 than five thousand dollars and against whom a warrant under RCW
9 82.32.210 has been filed with a court of record and remains
10 outstanding;

11 (e) Publishing statistics so classified as to prevent the
12 identification of particular returns or reports or items thereof;

13 (f) Disclosing such return or tax information, for official
14 purposes only, to the governor or attorney general, or to any state
15 agency, or to any committee or subcommittee of the legislature dealing
16 with matters of taxation, revenue, trade, commerce, the control of
17 industry or the professions;

18 (g) Permitting the department of revenue's records to be audited
19 and examined by the proper state officer, his or her agents and
20 employees;

21 (h) Disclosing any such return or tax information to a peace
22 officer as defined in RCW 9A.04.110 or county prosecuting attorney, for
23 official purposes. The disclosure may be made only in response to a
24 search warrant, subpoena, or other court order, unless the disclosure
25 is for the purpose of criminal tax enforcement. A peace officer or
26 county prosecuting attorney who receives the return or tax information
27 may disclose that return or tax information only for use in the
28 investigation and a related court proceeding, or in the court
29 proceeding for which the return or tax information originally was
30 sought;

31 (i) Disclosing any such return or tax information to the proper
32 officer of the internal revenue service of the United States, the
33 Canadian government or provincial governments of Canada, or to the
34 proper officer of the tax department of any state or city or town or
35 county, for official purposes, but only if the statutes of the United
36 States, Canada or its provincial governments, or of such other state or
37 city or town or county, as the case may be, grants substantially
38 similar privileges to the proper officers of this state;

1 (j) Disclosing any such return or tax information to the United
2 States department of justice, including the bureau of alcohol, tobacco,
3 firearms and explosives, the department of defense, the immigration and
4 customs enforcement and the customs and borde protection agencies of
5 the United States department of homeland security, the United States
6 coast guard, the alcohol and tobacco tax and trade bureau of the United
7 States department of treasury, and the United States department of
8 transportation, or any authorized representative of these federal
9 agencies, for official purposes;

10 (k) Publishing or otherwise disclosing the text of a written
11 determination designated by the director as a precedent pursuant to RCW
12 82.32.410;

13 (l) Disclosing, in a manner that is not associated with other tax
14 information, the taxpayer name, entity type, business address, mailing
15 address, revenue tax registration numbers, (~~seller's~~) reseller permit
16 numbers and the expiration date and status of such permits, North
17 American industry classification system or standard industrial
18 classification code of a taxpayer, and the dates of opening and closing
19 of business. This subsection must not be construed as giving authority
20 to the department to give, sell, or provide access to any list of
21 taxpayers for any commercial purpose;

22 (m) Disclosing such return or tax information that is also
23 maintained by another Washington state or local governmental agency as
24 a public record available for inspection and copying under the
25 provisions of chapter 42.56 RCW or is a document maintained by a court
26 of record and is not otherwise prohibited from disclosure;

27 (n) Disclosing such return or tax information to the United States
28 department of agriculture for the limited purpose of investigating food
29 stamp fraud by retailers;

30 (o) Disclosing to a financial institution, escrow company, or title
31 company, in connection with specific real property that is the subject
32 of a real estate transaction, current amounts due the department for a
33 filed tax warrant, judgment, or lien against the real property;

34 (p) Disclosing to a person against whom the department has asserted
35 liability as a successor under RCW 82.32.140 return or tax information
36 pertaining to the specific business of the taxpayer to which the person
37 has succeeded;

1 (q) Disclosing such return or tax information in the possession of
2 the department relating to the administration or enforcement of the
3 real estate excise tax imposed under chapter 82.45 RCW, including
4 information regarding transactions exempt or otherwise not subject to
5 tax;

6 (r) Disclosing to local taxing jurisdictions the identity of
7 sellers granted relief under RCW 82.32.430(5)(b)(i) and the period for
8 which relief is granted; or

9 (s) Disclosing such return or tax information to the court in
10 respect to the department's application for a subpoena under RCW
11 82.32.115.

12 (4)(a) The department may disclose return or taxpayer information
13 to a person under investigation or during any court or administrative
14 proceeding against a person under investigation as provided in this
15 subsection (4). The disclosure must be in connection with the
16 department's official duties relating to an audit, collection activity,
17 or a civil or criminal investigation. The disclosure may occur only
18 when the person under investigation and the person in possession of
19 data, materials, or documents are parties to the return or tax
20 information to be disclosed. The department may disclose return or tax
21 information such as invoices, contracts, bills, statements, resale or
22 exemption certificates, or checks. However, the department may not
23 disclose general ledgers, sales or cash receipt journals, check
24 registers, accounts receivable/payable ledgers, general journals,
25 financial statements, expert's workpapers, income tax returns, state
26 tax returns, tax return workpapers, or other similar data, materials,
27 or documents.

28 (b) Before disclosure of any tax return or tax information under
29 this subsection (4), the department must, through written
30 correspondence, inform the person in possession of the data, materials,
31 or documents to be disclosed. The correspondence must clearly identify
32 the data, materials, or documents to be disclosed. The department may
33 not disclose any tax return or tax information under this subsection
34 (4) until the time period allowed in (c) of this subsection has expired
35 or until the court has ruled on any challenge brought under (c) of this
36 subsection.

37 (c) The person in possession of the data, materials, or documents
38 to be disclosed by the department has twenty days from the receipt of

1 the written request required under (b) of this subsection to petition
2 the superior court of the county in which the petitioner resides for
3 injunctive relief. The court (~~shall~~) must limit or deny the request
4 of the department if the court determines that:

5 (i) The data, materials, or documents sought for disclosure are
6 cumulative or duplicative, or are obtainable from some other source
7 that is more convenient, less burdensome, or less expensive;

8 (ii) The production of the data, materials, or documents sought
9 would be unduly burdensome or expensive, taking into account the needs
10 of the department, the amount in controversy, limitations on the
11 petitioner's resources, and the importance of the issues at stake; or

12 (iii) The data, materials, or documents sought for disclosure
13 contain trade secret information that, if disclosed, could harm the
14 petitioner.

15 (d) The department must reimburse reasonable expenses for the
16 production of data, materials, or documents incurred by the person in
17 possession of the data, materials, or documents to be disclosed.

18 (e) Requesting information under (b) of this subsection that may
19 indicate that a taxpayer is under investigation does not constitute a
20 disclosure of tax return or tax information under this section.

21 (5) Service of a subpoena issued under RCW 82.32.115 does not
22 constitute a disclosure of return or tax information under this
23 section. Notwithstanding anything else to the contrary in this
24 section, a person served with a subpoena under RCW 82.32.115 may
25 disclose the existence or content of the subpoena to that person's
26 legal counsel.

27 (6) Any person acquiring knowledge of any return or tax information
28 in the course of his or her employment with the department of revenue
29 and any person acquiring knowledge of any return or tax information as
30 provided under subsection (3)(f), (g), (h), (i), (j), or (n) of this
31 section, who discloses any such return or tax information to another
32 person not entitled to knowledge of such return or tax information
33 under the provisions of this section, is guilty of a misdemeanor. If
34 the person guilty of such violation is an officer or employee of the
35 state, such person must forfeit such office or employment and is
36 incapable of holding any public office or employment in this state for
37 a period of two years thereafter.

1 **Sec. 14.** RCW 82.04.050 and 2009 c 563 s 301 and 2009 c 535 s 301
2 are each reenacted and amended to read as follows:

3 (1) "Sale at retail" or "retail sale" means every sale of tangible
4 personal property (including articles produced, fabricated, or
5 imprinted) to all persons irrespective of the nature of their business
6 and including, among others, without limiting the scope hereof, persons
7 who install, repair, clean, alter, improve, construct, or decorate real
8 or personal property of or for consumers other than a sale to a person
9 (~~who presents a seller's permit or uniform exemption certificate in~~
10 ~~conformity with RCW 82.04.470 and~~) who:

11 (a) Purchases for the purpose of resale as tangible personal
12 property in the regular course of business without intervening use by
13 such person, but a purchase for the purpose of resale by a regional
14 transit authority under RCW 81.112.300 is not a sale for resale; or

15 (b) Installs, repairs, cleans, alters, imprints, improves,
16 constructs, or decorates real or personal property of or for consumers,
17 if such tangible personal property becomes an ingredient or component
18 of such real or personal property without intervening use by such
19 person; or

20 (c) Purchases for the purpose of consuming the property purchased
21 in producing for sale a new article of tangible personal property or
22 substance, of which such property becomes an ingredient or component or
23 is a chemical used in processing, when the primary purpose of such
24 chemical is to create a chemical reaction directly through contact with
25 an ingredient of a new article being produced for sale; or

26 (d) Purchases for the purpose of consuming the property purchased
27 in producing ferrosilicon which is subsequently used in producing
28 magnesium for sale, if the primary purpose of such property is to
29 create a chemical reaction directly through contact with an ingredient
30 of ferrosilicon; or

31 (e) Purchases for the purpose of providing the property to
32 consumers as part of competitive telephone service, as defined in RCW
33 82.04.065. The term (~~shall~~) includes every sale of tangible personal
34 property which is used or consumed or to be used or consumed in the
35 performance of any activity classified as a "sale at retail" or "retail
36 sale" even though such property is resold or utilized as provided in
37 (a), (b), (c), (d), or (e) of this subsection following such use. The

1 term also means every sale of tangible personal property to persons
2 engaged in any business which is taxable under RCW 82.04.280 (2) and
3 (7), 82.04.290, and 82.04.2908; or

4 (f) Purchases for the purpose of satisfying the person's
5 obligations under an extended warranty as defined in subsection (7) of
6 this section, if such tangible personal property replaces or becomes an
7 ingredient or component of property covered by the extended warranty
8 without intervening use by such person.

9 (2) The term "sale at retail" or "retail sale" includes the sale of
10 or charge made for tangible personal property consumed and/or for labor
11 and services rendered in respect to the following:

12 (a) The installing, repairing, cleaning, altering, imprinting, or
13 improving of tangible personal property of or for consumers, including
14 charges made for the mere use of facilities in respect thereto, but
15 excluding charges made for the use of self-service laundry facilities,
16 and also excluding sales of laundry service to nonprofit health care
17 facilities, and excluding services rendered in respect to live animals,
18 birds and insects;

19 (b) The constructing, repairing, decorating, or improving of new or
20 existing buildings or other structures under, upon, or above real
21 property of or for consumers, including the installing or attaching of
22 any article of tangible personal property therein or thereto, whether
23 or not such personal property becomes a part of the realty by virtue of
24 installation, and (~~shall~~) also includes the sale of services or
25 charges made for the clearing of land and the moving of earth excepting
26 the mere leveling of land used in commercial farming or agriculture;

27 (c) The constructing, repairing, or improving of any structure
28 upon, above, or under any real property owned by an owner who conveys
29 the property by title, possession, or any other means to the person
30 performing such construction, repair, or improvement for the purpose of
31 performing such construction, repair, or improvement and the property
32 is then reconveyed by title, possession, or any other means to the
33 original owner;

34 (d) The cleaning, fumigating, razing, or moving of existing
35 buildings or structures, but (~~may~~) does not include the charge made
36 for janitorial services; and for purposes of this section the term
37 "janitorial services" (~~shall~~) means those cleaning and caretaking
38 services ordinarily performed by commercial janitor service businesses

1 including, but not limited to, wall and window washing, floor cleaning
2 and waxing, and the cleaning in place of rugs, drapes and upholstery.
3 The term "janitorial services" does not include painting, papering,
4 repairing, furnace or septic tank cleaning, snow removal or
5 sandblasting;

6 (e) Automobile towing and similar automotive transportation
7 services, but not in respect to those required to report and pay taxes
8 under chapter 82.16 RCW;

9 (f) The furnishing of lodging and all other services by a hotel,
10 rooming house, tourist court, motel, trailer camp, and the granting of
11 any similar license to use real property, as distinguished from the
12 renting or leasing of real property, and it is presumed that the
13 occupancy of real property for a continuous period of one month or more
14 constitutes a rental or lease of real property and not a mere license
15 to use or enjoy the same. For the purposes of this subsection, it
16 (~~shall be~~) is presumed that the sale of and charge made for the
17 furnishing of lodging for a continuous period of one month or more to
18 a person is a rental or lease of real property and not a mere license
19 to enjoy the same;

20 (g) The installing, repairing, altering, or improving of digital
21 goods for consumers;

22 (h) Persons taxable under (a), (b), (c), (d), (e), (f), and (g) of
23 this subsection when such sales or charges are for property, labor and
24 services which are used or consumed in whole or in part by such persons
25 in the performance of any activity defined as a "sale at retail" or
26 "retail sale" even though such property, labor and services may be
27 resold after such use or consumption. Nothing contained in this
28 subsection (~~shall~~) may be construed to modify subsection (1) of this
29 section and nothing contained in subsection (1) of this section may be
30 construed to modify this subsection.

31 (3) The term "sale at retail" or "retail sale" includes the sale of
32 or charge made for personal, business, or professional services
33 including amounts designated as interest, rents, fees, admission, and
34 other service emoluments however designated, received by persons
35 engaging in the following business activities:

36 (a) Amusement and recreation services including but not limited to
37 golf, pool, billiards, skating, bowling, ski lifts and tows, day trips
38 for sightseeing purposes, and others, when provided to consumers;

1 (b) Abstract, title insurance, and escrow services;
2 (c) Credit bureau services;
3 (d) Automobile parking and storage garage services;
4 (e) Landscape maintenance and horticultural services but excluding
5 (i) horticultural services provided to farmers and (ii) pruning,
6 trimming, repairing, removing, and clearing of trees and brush near
7 electric transmission or distribution lines or equipment, if performed
8 by or at the direction of an electric utility;
9 (f) Service charges associated with tickets to professional
10 sporting events; and
11 (g) The following personal services: Physical fitness services,
12 tanning salon services, tattoo parlor services, steam bath services,
13 turkish bath services, escort services, and dating services.
14 (4)(a) The term also includes:
15 (i) The renting or leasing of tangible personal property to
16 consumers; and
17 (ii) Providing tangible personal property along with an operator
18 for a fixed or indeterminate period of time. A consideration of this
19 is that the operator is necessary for the tangible personal property to
20 perform as designed. For the purpose of this subsection (4)(a)(ii), an
21 operator must do more than maintain, inspect, or set up the tangible
22 personal property.
23 (b) The term does not include the renting or leasing of tangible
24 personal property where the lease or rental is for the purpose of
25 sublease or subrent.
26 (5) The term also includes the providing of "competitive telephone
27 service," "telecommunications service," or "ancillary services," as
28 those terms are defined in RCW 82.04.065, to consumers.
29 (6)(a) The term also includes the sale of prewritten computer
30 software (~~((other than a sale))~~) to a (~~((person who presents a seller's~~
31 ~~permit or uniform exemption certificate in conformity with RCW~~
32 ~~82.04.470))~~) consumer, regardless of the method of delivery to the end
33 user. For purposes of this subsection (6)(a), the sale of prewritten
34 computer software includes the sale of or charge made for a key or an
35 enabling or activation code, where the key or code is required to
36 activate prewritten computer software and put the software into use.
37 There is no separate sale of the key or code from the prewritten

1 computer software, regardless of how the sale may be characterized by
2 the vendor or by the purchaser.

3 The term "retail sale" does not include the sale of or charge made
4 for:

- 5 (i) Custom software; or
- 6 (ii) The customization of prewritten computer software.
- 7 (b) The term also includes the charge made to consumers for the
8 right to access and use prewritten computer software, where possession
9 of the software is maintained by the seller or a third party,
10 regardless of whether the charge for the service is on a per use, per
11 user, per license, subscription, or some other basis.

12 (7) The term also includes the sale of or charge made for an
13 extended warranty to a consumer. For purposes of this subsection,
14 "extended warranty" means an agreement for a specified duration to
15 perform the replacement or repair of tangible personal property at no
16 additional charge or a reduced charge for tangible personal property,
17 labor, or both, or to provide indemnification for the replacement or
18 repair of tangible personal property, based on the occurrence of
19 specified events. The term "extended warranty" does not include an
20 agreement, otherwise meeting the definition of extended warranty in
21 this subsection, if no separate charge is made for the agreement and
22 the value of the agreement is included in the sales price of the
23 tangible personal property covered by the agreement. For purposes of
24 this subsection, "sales price" has the same meaning as in RCW
25 82.08.010.

26 (8)(a) The term also includes the following sales to consumers of
27 digital goods, digital codes, and digital automated services:

- 28 (i) Sales in which the seller has granted the purchaser the right
29 of permanent use;
- 30 (ii) Sales in which the seller has granted the purchaser a right of
31 use that is less than permanent;
- 32 (iii) Sales in which the purchaser is not obligated to make
33 continued payment as a condition of the sale; and
- 34 (iv) Sales in which the purchaser is obligated to make continued
35 payment as a condition of the sale.

36 (b) A retail sale of digital goods, digital codes, or digital
37 automated services under this subsection (8) includes any services

1 provided by the seller exclusively in connection with the digital
2 goods, digital codes, or digital automated services, whether or not a
3 separate charge is made for such services.

4 (c) For purposes of this subsection, "permanent" means perpetual or
5 for an indefinite or unspecified length of time. A right of permanent
6 use is presumed to have been granted unless the agreement between the
7 seller and the purchaser specifies or the circumstances surrounding the
8 transaction suggest or indicate that the right to use terminates on the
9 occurrence of a condition subsequent.

10 (9) The term does not include the sale of or charge made for labor
11 and services rendered in respect to the building, repairing, or
12 improving of any street, place, road, highway, easement, right-of-way,
13 mass public transportation terminal or parking facility, bridge,
14 tunnel, or trestle which is owned by a municipal corporation or
15 political subdivision of the state or by the United States and which is
16 used or to be used primarily for foot or vehicular traffic including
17 mass transportation vehicles of any kind.

18 (10) The term also does not include sales of chemical sprays or
19 washes to persons for the purpose of postharvest treatment of fruit for
20 the prevention of scald, fungus, mold, or decay, nor does it include
21 sales of feed, seed, seedlings, fertilizer, agents for enhanced
22 pollination including insects such as bees, and spray materials to:
23 (a) Persons who participate in the federal conservation reserve
24 program, the environmental quality incentives program, the wetlands
25 reserve program, and the wildlife habitat incentives program, or their
26 successors administered by the United States department of agriculture;
27 (b) farmers for the purpose of producing for sale any agricultural
28 product; and (c) farmers acting under cooperative habitat development
29 or access contracts with an organization exempt from federal income tax
30 under Title 26 U.S.C. Sec. 501(c)(3) or the Washington state department
31 of fish and wildlife to produce or improve wildlife habitat on land
32 that the farmer owns or leases.

33 (11) The term does not include the sale of or charge made for labor
34 and services rendered in respect to the constructing, repairing,
35 decorating, or improving of new or existing buildings or other
36 structures under, upon, or above real property of or for the United
37 States, any instrumentality thereof, or a county or city housing
38 authority created pursuant to chapter 35.82 RCW, including the

1 installing, or attaching of any article of tangible personal property
2 therein or thereto, whether or not such personal property becomes a
3 part of the realty by virtue of installation. Nor does the term
4 include the sale of services or charges made for the clearing of land
5 and the moving of earth of or for the United States, any
6 instrumentality thereof, or a county or city housing authority. Nor
7 does the term include the sale of services or charges made for cleaning
8 up for the United States, or its instrumentalities, radioactive waste
9 and other byproducts of weapons production and nuclear research and
10 development.

11 (12) The term does not include the sale of or charge made for
12 labor, services, or tangible personal property pursuant to agreements
13 providing maintenance services for bus, rail, or rail fixed guideway
14 equipment when a regional transit authority is the recipient of the
15 labor, services, or tangible personal property, and a transit agency,
16 as defined in RCW 81.104.015, performs the labor or services.

17 **Sec. 15.** RCW 34.05.328 and 2003 c 165 s 2 and 2003 c 39 s 13 are
18 each reenacted and amended to read as follows:

19 (1) Before adopting a rule described in subsection (5) of this
20 section, an agency shall:

21 (a) Clearly state in detail the general goals and specific
22 objectives of the statute that the rule implements;

23 (b) Determine that the rule is needed to achieve the general goals
24 and specific objectives stated under (a) of this subsection, and
25 analyze alternatives to rule making and the consequences of not
26 adopting the rule;

27 (c) Provide notification in the notice of proposed rule making
28 under RCW 34.05.320 that a preliminary cost-benefit analysis is
29 available. The preliminary cost-benefit analysis must fulfill the
30 requirements of the cost-benefit analysis under (d) of this subsection.
31 If the agency files a supplemental notice under RCW 34.05.340, the
32 supplemental notice shall include notification that a revised
33 preliminary cost-benefit analysis is available. A final cost-benefit
34 analysis shall be available when the rule is adopted under RCW
35 34.05.360;

36 (d) Determine that the probable benefits of the rule are greater

1 than its probable costs, taking into account both the qualitative and
2 quantitative benefits and costs and the specific directives of the
3 statute being implemented;

4 (e) Determine, after considering alternative versions of the rule
5 and the analysis required under (b), (c), and (d) of this subsection,
6 that the rule being adopted is the least burdensome alternative for
7 those required to comply with it that will achieve the general goals
8 and specific objectives stated under (a) of this subsection;

9 (f) Determine that the rule does not require those to whom it
10 applies to take an action that violates requirements of another federal
11 or state law;

12 (g) Determine that the rule does not impose more stringent
13 performance requirements on private entities than on public entities
14 unless required to do so by federal or state law;

15 (h) Determine if the rule differs from any federal regulation or
16 statute applicable to the same activity or subject matter and, if so,
17 determine that the difference is justified by the following:

18 (i) A state statute that explicitly allows the agency to differ
19 from federal standards; or

20 (ii) Substantial evidence that the difference is necessary to
21 achieve the general goals and specific objectives stated under (a) of
22 this subsection; and

23 (i) Coordinate the rule, to the maximum extent practicable, with
24 other federal, state, and local laws applicable to the same activity or
25 subject matter.

26 (2) In making its determinations pursuant to subsection (1)(b)
27 through (h) of this section, the agency shall place in the rule-making
28 file documentation of sufficient quantity and quality so as to persuade
29 a reasonable person that the determinations are justified.

30 (3) Before adopting rules described in subsection (5) of this
31 section, an agency shall place in the rule-making file a rule
32 implementation plan for rules filed under each adopting order. The
33 plan shall describe how the agency intends to:

34 (a) Implement and enforce the rule, including a description of the
35 resources the agency intends to use;

36 (b) Inform and educate affected persons about the rule;

37 (c) Promote and assist voluntary compliance; and

1 (d) Evaluate whether the rule achieves the purpose for which it was
2 adopted, including, to the maximum extent practicable, the use of
3 interim milestones to assess progress and the use of objectively
4 measurable outcomes.

5 (4) After adopting a rule described in subsection (5) of this
6 section regulating the same activity or subject matter as another
7 provision of federal or state law, an agency shall do all of the
8 following:

9 ~~(a) ((Provide to the business assistance center a list citing by
10 reference the other federal and state laws that regulate the same
11 activity or subject matter;~~

12 ~~(b))~~ Coordinate implementation and enforcement of the rule with
13 the other federal and state entities regulating the same activity or
14 subject matter by making every effort to do one or more of the
15 following:

16 (i) Deferring to the other entity;

17 (ii) Designating a lead agency; or

18 (iii) Entering into an agreement with the other entities specifying
19 how the agency and entities will coordinate implementation and
20 enforcement.

21 If the agency is unable to comply with this subsection (4)~~((b))~~
22 (a), the agency shall report to the legislature pursuant to ~~((e))~~ (b)
23 of this subsection;

24 ~~((e))~~ (b) Report to the joint administrative rules review
25 committee:

26 (i) The existence of any overlap or duplication of other federal or
27 state laws, any differences from federal law, and any known overlap,
28 duplication, or conflict with local laws; and

29 (ii) Make recommendations for any legislation that may be necessary
30 to eliminate or mitigate any adverse effects of such overlap,
31 duplication, or difference.

32 (5)(a) Except as provided in (b) of this subsection, this section
33 applies to:

34 (i) Significant legislative rules of the departments of ecology,
35 labor and industries, health, revenue, social and health services, and
36 natural resources, the employment security department, the forest
37 practices board, the office of the insurance commissioner, and to the

1 legislative rules of the department of fish and wildlife implementing
2 chapter 77.55 RCW; and

3 (ii) Any rule of any agency, if this section is voluntarily made
4 applicable to the rule by the agency, or is made applicable to the rule
5 by a majority vote of the joint administrative rules review committee
6 within forty-five days of receiving the notice of proposed rule making
7 under RCW 34.05.320.

8 (b) This section does not apply to:

9 (i) Emergency rules adopted under RCW 34.05.350;

10 (ii) Rules relating only to internal governmental operations that
11 are not subject to violation by a nongovernment party;

12 (iii) Rules adopting or incorporating by reference without material
13 change federal statutes or regulations, Washington state statutes,
14 rules of other Washington state agencies, shoreline master programs
15 other than those programs governing shorelines of statewide
16 significance, or, as referenced by Washington state law, national
17 consensus codes that generally establish industry standards, if the
18 material adopted or incorporated regulates the same subject matter and
19 conduct as the adopting or incorporating rule;

20 (iv) Rules that only correct typographical errors, make address or
21 name changes, or clarify language of a rule without changing its
22 effect;

23 (v) Rules the content of which is explicitly and specifically
24 dictated by statute;

25 (vi) Rules that set or adjust fees or rates pursuant to legislative
26 standards; (~~(vii)~~)

27 (vii) Rules of the department of social and health services
28 relating only to client medical or financial eligibility and rules
29 concerning liability for care of dependents; or

30 (viii) Rules of the department of revenue that adopt a uniform
31 expiration date for reseller permits as authorized in RCW 82.32.780 and
32 82.32.783.

33 (c) For purposes of this subsection:

34 (i) A "procedural rule" is a rule that adopts, amends, or repeals
35 (A) any procedure, practice, or requirement relating to any agency
36 hearings; (B) any filing or related process requirement for making
37 application to an agency for a license or permit; or (C) any policy

1 statement pertaining to the consistent internal operations of an
2 agency.

3 (ii) An "interpretive rule" is a rule, the violation of which does
4 not subject a person to a penalty or sanction, that sets forth the
5 agency's interpretation of statutory provisions it administers.

6 (iii) A "significant legislative rule" is a rule other than a
7 procedural or interpretive rule that (A) adopts substantive provisions
8 of law pursuant to delegated legislative authority, the violation of
9 which subjects a violator of such rule to a penalty or sanction; (B)
10 establishes, alters, or revokes any qualification or standard for the
11 issuance, suspension, or revocation of a license or permit; or (C)
12 adopts a new, or makes significant amendments to, a policy or
13 regulatory program.

14 (d) In the notice of proposed rule making under RCW 34.05.320, an
15 agency shall state whether this section applies to the proposed rule
16 pursuant to (a)(i) of this subsection, or if the agency will apply this
17 section voluntarily.

18 (6) By January 31, 1996, and by January 31st of each even-numbered
19 year thereafter, the office of financial management, after consulting
20 with state agencies, counties, and cities, and business, labor, and
21 environmental organizations, shall report to the governor and the
22 legislature regarding the effects of this section on the regulatory
23 system in this state. The report shall document:

24 (a) The rules proposed to which this section applied and to the
25 extent possible, how compliance with this section affected the
26 substance of the rule, if any, that the agency ultimately adopted;

27 (b) The costs incurred by state agencies in complying with this
28 section;

29 (c) Any legal action maintained based upon the alleged failure of
30 any agency to comply with this section, the costs to the state of such
31 action, and the result;

32 (d) The extent to which this section has adversely affected the
33 capacity of agencies to fulfill their legislatively prescribed mission;

34 (e) The extent to which this section has improved the acceptability
35 of state rules to those regulated; and

36 (f) Any other information considered by the office of financial
37 management to be useful in evaluating the effect of this section.

1 NEW SECTION. **Sec. 16.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

5 NEW SECTION. **Sec. 17.** (1) Except as provided in subsection (2) of
6 this section, this act applies retroactively to January 1, 2010, as
7 well as prospectively.

8 (2) Sections 2, 3, 11, 12, and 15 of this act apply prospectively
9 only.

10 NEW SECTION. **Sec. 18.** Sections 2, 3, 11, 12, and 15 of this act
11 take effect July 1, 2010.

--- END ---