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**SENATE BILL 6352**

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**State of Washington 64th Legislature 2016 Regular Session**

**By** Senators Frockt, Pedersen, McAuliffe, Carlyle, Jayapal, Keiser, Cleveland, Rolfes, Darneille, Liias, Chase, and Habib

AN ACT Relating to creating an extreme risk protection order; amending RCW 9.41.047; adding new sections to chapter 10.79 RCW; adding a new chapter to Title 26 RCW; and prescribing penalties.

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

NEW SECTION. **Sec.**  The public has expressed an overwhelming interest in making sure firearms are kept out of the hands of those individuals who might use them to cause great harm. The legislature finds it has a public duty to enact common sense measures ensuring that where an individual may be an extreme risk to himself, herself, or another, the situation is not further exacerbated by access to firearms. To that end, it is the legislature's intent to empower family members, child welfare agencies, and members of law enforcement with the ability to seek a protection order to temporarily prevent an individual from possessing, accessing, or purchasing firearms while that individual poses a significant danger of harm.

NEW SECTION. **Sec.**  For the purposes of this chapter:

(1) "Family or household member" means spouses, domestic partners, former spouses, former domestic partners, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past year, persons sixteen years of age or older who are presently residing together or who have resided together in the past year and who have or have had a dating relationship, persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

(2) "Child welfare agency" means child protective services and children's advocacy center, as those terms are defined in RCW 26.44.020.

NEW SECTION. **Sec.**  (1) A family or household member of a person, a child welfare agency, or a law enforcement officer may file a petition requesting that the court issue an emergency extreme risk protection order on an ex parte basis, pending a full hearing, enjoining the subject of the petition from having in his or her custody or control, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm.

(2) Any person, including but not limited to school officials, may report to law enforcement an individual that the reporting person has reason to believe poses a significant danger in the near future of personal injury to himself, herself, or another by having in his or her custody or control, purchasing, possessing, or receiving a firearm. Law enforcement has the discretion to determine whether to investigate and file a petition under this chapter.

(3) A court may issue an emergency extreme risk protection order if the petition, supported by a written affidavit signed by the petitioner under oath, or an oral statement taken under section 4 of this act, and any additional information provided to the court, shows there is a substantial likelihood that both of the following are true:

(a) The subject of the petition poses a significant danger, in the near future, of personal injury to himself, herself, or another by having in his or her custody or control, purchasing, possessing, or receiving a firearm as determined by considering the factors listed in section 4 of this act; and

(b) An emergency extreme risk protection order is necessary to prevent personal injury to the subject of the petition or another because less restrictive alternatives either have been tried and found to be ineffective, or are inadequate or inappropriate for the circumstances of the subject of the petition.

(4) An affidavit supporting a petition for an emergency extreme risk protection order must set forth the facts tending to establish the grounds of the petition, or the reason for believing that they exist.

(5) The petition must describe the number, types, and locations of any firearms that the subject of the petition may have access to, own, possess, or control to the best of the petitioner's knowledge.

(6) An emergency extreme risk protection order must be issued or denied on the same day the petition is submitted to the court, unless the petition is filed too late in the day to permit effective review, in which case the order must be issued or denied on the next day of judicial business in sufficient time for the order to be filed that day with the clerk of the court. The court may hold the emergency hearing in person or by telephone.

(7) When the petitioner for an emergency extreme risk protection order is a law enforcement officer, a law enforcement officer shall make a good faith effort to provide notice to a family or household member of the subject of the petition, or to a known third party, who may be at risk of violence or stalking. The notice must include that the law enforcement officer intends to petition the court for an emergency extreme risk protection order, and referral to relevant domestic violence or stalking advocacy or counseling resources, if appropriate.

(8) Every person who files a petition for an emergency extreme risk protection order, knowing the information in the petition to be false, is guilty of false swearing under RCW 9A.72.040.

(9) Every person who purchases or possesses a firearm with knowledge that he or she is prohibited from doing so by an emergency extreme risk protection order is guilty of a misdemeanor and is prohibited from having in his or her custody or control, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm for a one-year period, to commence upon the expiration of the existing order.

NEW SECTION. **Sec.**  (1) The court, before issuing an emergency extreme risk protection order, may examine under penalty of perjury the petitioner and any witness the petitioner may produce.

(2) In lieu of examining the petitioner and any witness the petitioner may produce, the court may consider a written affidavit submitted by the petitioner and any witness, signed under penalty of perjury.

(3) In determining whether grounds for an emergency extreme risk protection order exist, the court shall consider all relevant evidence of the following:

(a) A recent threat of violence or act of violence by the subject of the petition directed toward himself, herself, or another;

(b) A violation of a protection order or no-contact order issued under chapter 7.90, 7.92, 10.14, 9A.46, 10.99, or 26.50 RCW;

(c) A pattern of violent acts or violent threats within the past twelve months including, but not limited to, threats of violence or acts of violence by the subject of the petition directed toward himself, herself, or another;

(d) A previous or existing extreme risk protection order;

(e) A violation of a previous or existing extreme risk protection order; and

(f) A conviction for a crime that constitutes domestic violence as defined in RCW 10.99.020.

(4) In determining whether grounds for an emergency extreme risk protection order exist, the court may consider any other relevant evidence of an increased risk for violence including, but not limited to, evidence of any of the following:

(a) The unlawful and reckless use, display, or brandishing of a firearm by the subject of the petition;

(b) The history of use, attempted use, or threatened use of physical force by the subject of the petition against another person;

(c) Any prior arrest of the subject of the petition for a felony offense;

(d) Corroborated evidence of the abuse of controlled substances or alcohol; and

(e) Evidence of recent acquisition of firearms or ammunition.

(5) For purposes of this section, "recent" means within the six months prior to the date the petition was filed.

(6) If the court determines that grounds to issue an emergency extreme risk protection order exist, it shall issue an emergency extreme risk protection order prohibiting the subject of the petition from having in his or her custody or control, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm, expiring no later than fourteen days from the date of the order.

(7) Within fourteen days after the date of issuance of the order, before the court that issued the order or another court in the same jurisdiction, the court shall hold a hearing pursuant to section 6 of this act to determine if an extreme risk protection order should be issued under this chapter.

NEW SECTION. **Sec.**  (1) An emergency extreme risk protection order issued under this chapter must include all of the following:

(a) A statement of the grounds supporting the issuance of the order;

(b) The date and time the order was issued;

(c) The date and time the order expires;

(d) The address of the superior court in which any responsive pleading should be filed;

(e) The date and time of the scheduled hearing; and

(f) The following statement:

"To the subject of this protection order: This order is valid until the expiration date and time noted above. You are required to surrender or sell all firearms that you possess or have in your custody or control, and you may not have in your custody or control, purchase, possess, or receive, or attempt to purchase or receive, a firearm while this order is in effect. A hearing will be held on the date and at the time noted above to determine if a more permanent extreme risk protection order should be issued. Failure to appear at that hearing may result in a court making an order against you that is valid for a minimum of one year and a maximum of five years. You may seek the advice of an attorney as to any matter connected with this order. The attorney should be consulted promptly so that the attorney may assist you in any matter connected with this order."

(2) An emergency extreme risk protection order must be personally served on the subject of the protection order by a law enforcement officer.

(a) At the time of service, the law enforcement officer must request that the subject of the order immediately surrender all firearms to the law enforcement officer.

(b) If the subject of the order declines to surrender all firearms at the time of service, a law enforcement officer shall make a good faith effort to notify any family or household members or known third parties who may be at risk of violence or stalking that the subject of the order continues to have firearms in his or her possession, custody, or control.

(c) If the subject of the order declines to surrender firearms at the time of service, the subject of the order must surrender or sell all firearms within forty-eight hours of the date and time of service and file with the clerk of the court a proof of surrender and receipt form, a declaration of nonsurrender form, or a proof of sale form by the day and time set for the extreme risk protection order hearing.

(d) If the subject of the order fails to sell or surrender his or her firearms within forty-eight hours of the date and time of service, the subject of the order must immediately surrender all firearms upon the request of a law enforcement officer. The law enforcement officer shall take possession of all firearms in the possession, custody, or control of the subject of the petition that are surrendered, in plain sight, or discovered pursuant to a lawful search.

(3) The clerk of the court shall enter an emergency extreme risk protection order issued under this section into a statewide judicial information system on the same day as issuance.

(4) If the court declines to issue an emergency extreme risk protection order, the court shall state the particular reasons for the court's denial. The court's denial of a motion for an emergency extreme risk protection order must be filed with the court.

NEW SECTION. **Sec.**  (1) A family or household member of a person, a child welfare agency, or a law enforcement officer may request that a court, after notice and a hearing, issue an extreme risk protection order enjoining the subject of the petition from having in his or her custody or control, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm for a period of one to five years.

(2) In determining whether to issue an extreme risk protection order pursuant to a petition filed under this section or pursuant to a hearing scheduled after the issuance of an emergency extreme risk protection order, the court must consider:

(a) A recent threat of violence or act of violence by the subject of the petition directed toward himself, herself, or another;

(b) Any violation of a protection order or no-contact order issued under chapter 7.90, 7.92, 10.14, 9A.46, 10.99, or 26.50 RCW;

(c) A pattern of violent acts or violent threats within the past twelve months including, but not limited to, threats of violence or acts of violence by the subject of the petition directed toward himself, herself, or another;

(d) A previous or existing extreme risk protection order;

(e) A violation of a previous or existing extreme risk protection order; and

(f) A conviction for a crime that constitutes domestic violence as defined in RCW 10.99.020.

(3) The court may also consider any other relevant evidence of an increased risk of violence including:

(a) The unlawful and reckless use, display, or brandishing of a firearm by the subject of the petition;

(b) The history of use, attempted use, or threatened use of physical force by the subject of the petition against another person;

(c) Any prior arrest of the subject of the petition for a felony offense;

(d) Corroborated evidence of the abuse of controlled substances or alcohol; and

(e) Evidence of recent acquisition of firearms or ammunition.

(4) For purposes of this section, "recent" means within the six months prior to the date the petition was filed.

(5) The petitioner has the burden of proving, by clear, cogent, and convincing evidence, that:

(a) The subject of the petition, or a person subject to an emergency extreme risk protection order, poses a significant danger of personal injury to himself, herself, or another by having in his or her custody or control, purchasing, possessing, or receiving a firearm; and

(b) An extreme risk protection order is necessary to prevent personal injury to the subject of the petition or the person subject to an emergency extreme risk protection order, or another, because less restrictive alternatives either have been tried and found to be ineffective, or are inadequate or inappropriate for the circumstances of the subject of the petition or the person subject to an emergency extreme risk protection order.

(6) If the court finds there is clear, cogent, and convincing evidence to issue an extreme risk protection order, the court shall issue an extreme risk protection order prohibiting the subject of the petition from having in his or her custody or control, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm.

(7) If the court finds there is not clear, cogent, and convincing evidence to support the issuance of an extreme risk protection order, the court shall dissolve any emergency extreme risk protection order then in effect.

(8) The extreme risk protection order issued under this section has a duration of a minimum of one year and a maximum of five years, subject to termination by further order of the court. The court has discretion to determine the duration of the protection order based on all relevant factors, including but not limited to the issuance of prior or existing extreme risk protection orders or violations of prior or existing extreme risk protection orders.

(9) During the hearing on the extreme risk protection order, the court shall consider whether a mental health evaluation or chemical dependency evaluation is appropriate. The court may order the subject of the order to undergo a mental health evaluation or chemical dependency evaluation if appropriate.

(10) Upon the sworn statement or testimony of the petitioner or any law enforcement officer alleging that the subject of the petition has failed to comply with the surrender or sale of firearms as required by an order issued under this chapter, the court shall determine whether probable cause exists to believe that the subject of the petition has failed to surrender or sell all firearms in his or her possession, custody, or control by the hearing date. If such a determination is made, the court shall issue a warrant for the search and seizure of such firearms.

(11) When the petitioner for an extreme risk protection order is a law enforcement officer, a law enforcement officer shall make a good faith effort to provide notice to a family or household member of the subject of the petition, or to a known third party, who may be at risk of violence or stalking. The notice must include that the law enforcement officer intends to petition the court for an extreme risk protection order, and referral to relevant domestic violence or stalking advocacy or counseling resources, if appropriate.

(12) Every person who files a petition for an extreme risk protection order issued after notice and a hearing, knowing the information in the petition to be false, is guilty of false swearing under RCW 9A.72.040.

(13)(a) A person who purchases or possesses a firearm with knowledge that he or she is prohibited from doing so by an extreme risk protection order issued after notice and a hearing is guilty of a misdemeanor and is prohibited from having in his or her custody or control, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm for a five-year period, to commence upon expiration of the existing extreme risk protection order. If a person has two or more misdemeanor convictions for violations of an extreme risk protection order, the prohibition from having in his or her custody or control, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm is extended to a ten-year period, to commence upon expiration of the existing extreme risk protection order.

(b) A person who purchases or possesses a firearm with knowledge that he or she is prohibited from doing so by an extreme risk protection order issued after notice and a hearing is guilty of a class C felony if the person has two or more previous convictions for violating an extreme risk protection order issued under this section.

NEW SECTION. **Sec.**  (1) An extreme risk protection order must include all of the following:

(a) A statement of the grounds supporting the issuance of the order;

(b) The date and time the order was issued;

(c) The date and time the order expires;

(d) Whether a mental health evaluation or chemical dependency evaluation of the subject of the order is required;

(e) The address of the superior court for the county in which the subject of the order resides; and

(f) The following statement:

"To the subject of this protection order: This order will last until the date and time noted above. If you have not done so already, you must surrender or sell all firearms that you possess or have in your custody or control. You may not have in your custody or control, purchase, possess, or receive, or attempt to purchase or receive, a firearm while this order is in effect. You have the right to request one hearing per year at any time during the effective period of this order to terminate this order. You may seek the advice of an attorney as to any matter connected with this order."

(2) When the court issues an extreme risk protection order, the court shall inform the subject of the protection order that he or she is entitled to one hearing per year at any time during the effective period of the order to request a termination of the order and shall provide the subject of the protection order with a form to request a hearing.

(3) If a person subject to an extreme risk protection order was not present in court at the time the order was issued or renewed, the extreme risk protection order must be personally served on the subject of the protection order by a law enforcement officer. The person's presence in court constitutes proof of service of notice of the terms of the order.

NEW SECTION. **Sec.**  (1) A person subject to an extreme risk protection order may submit one written request per year at any time during the effective period of the order for a hearing to terminate the order.

(2) If the court finds there is no longer clear, cogent, and convincing evidence to believe that section 6(5) of this act is true, the court must terminate the order.

NEW SECTION. **Sec.**  (1) A family or household member of a person, a child welfare agency, or a law enforcement officer may request a renewal of an extreme risk protection order at any time within the three months before the expiration of the order.

(2) The court must notify the petitioner of the impending expiration of an extreme risk protection order. Notice must be received by the petitioner one hundred five calendar days before the date the order expires.

(3) A court may, after notice and a hearing, renew an extreme risk protection order if the court finds there is clear, cogent, and convincing evidence that section 6(5) of this act continues to be true.

(4) In determining whether to renew an extreme risk protection order issued under this chapter, the court shall consider evidence of the facts identified in section 6 (2) through (4) of this act.

(5) If the renewal petition is supported by clear, cogent, and convincing evidence, the court shall renew the extreme risk protection order issued under this chapter.

(6) The renewal of an extreme risk protection order has a duration of at least one year and up to five years at the discretion of the court, subject to termination by further order of the court under section 8 of this act and further renewal by order of the court under this section.

NEW SECTION. **Sec.**  (1) A person subject to an extreme risk protection order may not have in his or her custody or control, purchase, possess, or receive, or attempt to purchase or receive, any firearms while the order is in effect.

(2) An extreme risk protection order must:

(a) Require the person to surrender or sell any firearm in his or her possession, custody, or control;

(b) Require the person to surrender any concealed pistol license issued under RCW 9.41.070;

(c) Prohibit the person from having in his or her custody or control, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm; and

(d) Prohibit the person from obtaining or possessing a concealed pistol license issued under RCW 9.41.070.

(3)(a) The court may require the subject of an extreme risk protection order to surrender or sell any firearm in his or her immediate possession, custody, or control or subject to his or her immediate possession, custody, or control to the sheriff of the county having jurisdiction of the proceeding or the chief of police of the municipality having jurisdiction.

(b) All law enforcement agencies must develop policies and procedures by January 1, 2017, regarding the acceptance, storage, and return of firearms required to be surrendered under this section.

(4)(a) If a person ordered to surrender or sell firearms and his or her concealed pistol license under this section was not subject to an emergency extreme risk protection order issued under sections 4 and 5 of this act, the person must file with the clerk of the court a proof of surrender and receipt form, a declaration of nonsurrender form, or a proof of sale form within five judicial days after entry of the order.

(b) By December 1, 2016, the administrative office of the courts shall develop: (i) A proof of surrender and receipt pattern form to be used to document that a respondent has complied with a requirement to surrender firearms and his or her concealed pistol license, as ordered under this section; (ii) a declaration of nonsurrender pattern form to document compliance when the respondent has no firearms or concealed pistol license; and (iii) a proof of sale pattern form to be used to document that a respondent has complied with a requirement to sell his or her firearms, as ordered under this section.

(5) If a person other than the subject of the protection order claims title to any firearms surrendered pursuant to this section, and the person is determined by the law enforcement agency to be the lawful owner of the firearm or firearms, the firearm or firearms shall be returned to the lawful owner, provided that the lawful owner agrees to maintain the firearm or firearms, while not in the lawful owner's direct custody or control, locked and separate from ammunition, and to ensure that the person subject to the protection order does not gain access, possession, custody, or control of the firearm or firearms.

NEW SECTION. **Sec.**  (1) The clerk of the court shall enter an extreme risk protection order issued under this chapter into a statewide judicial information system on the same day as issuance.

(2) The clerk of the court shall forward a copy of an extreme risk protection order on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order, the law enforcement agency shall enter the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. The order must remain in the computer-based criminal intelligence information system for the period stated in the order, and the law enforcement agency shall only expunge orders from the system that are expired or terminated. Entry into the computer-based criminal intelligence information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any county in the state.

(3) If an extreme risk protection order is terminated before its expiration date, the clerk of the court shall forward on or before the next judicial day a copy of the termination order to the department of licensing and the appropriate law enforcement agency specified in the termination order. Upon receipt of the order, the law enforcement agency shall promptly remove the order from the computer-based criminal intelligence information system.

NEW SECTION. **Sec.**  No filing fees may be charged for a petition filed by a law enforcement officer under this chapter.

NEW SECTION. **Sec.**  This chapter may not be construed to impose criminal or civil liability on any person or entity for acts or omissions related to reporting, declining to report, investigating, declining to investigate, filing, or declining to file an emergency extreme risk protection order or extreme risk protection order pursuant to this chapter.

**Sec.**  RCW 9.41.047 and 2011 c 193 s 2 are each amended to read as follows:

(1)(a) At the time a person is convicted or found not guilty by reason of insanity of an offense making the person ineligible to possess a firearm, or at the time a person is committed by court order under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, or chapter 10.77 RCW for mental health treatment, or at the time the court enters any type of extreme risk protection order under chapter 26.--- RCW (the new chapter created in section 17 of this act), the convicting ((~~or~~)), committing, or issuing court shall notify the person, orally and in writing, that the person must immediately surrender any concealed pistol license and that the person may not possess a firearm unless his or her right to do so is restored by a court of record. For purposes of this section a convicting court includes a court in which a person has been found not guilty by reason of insanity.

(b) The convicting ((~~or~~)), committing, or issuing court shall forward within three judicial days after conviction ((~~or~~)), entry of the commitment order, or issuance of any type of extreme risk protection order a copy of the person's driver's license or identicard, or comparable information, along with the date of conviction ((~~or~~)), commitment, or issuance, to the department of licensing. When a person is committed by court order under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, or chapter 10.77 RCW, for mental health treatment, the committing court also shall forward, within three judicial days after entry of the commitment order, a copy of the person's driver's license, or comparable information, along with the date of commitment, to the national instant criminal background check system index, denied persons file, created by the federal Brady handgun violence prevention act (P.L. 103-159).

(2) Upon receipt of the information provided for by subsection (1) of this section, the department of licensing shall determine if the convicted or committed person, or person subject to any type of extreme risk protection order, has a concealed pistol license. If the person does have a concealed pistol license, the department of licensing shall immediately notify the license-issuing authority which, upon receipt of such notification, shall immediately revoke the license.

(3)(a) A person who is prohibited from possessing a firearm, by reason of having been involuntarily committed for mental health treatment under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, chapter 10.77 RCW, or equivalent statutes of another jurisdiction may, upon discharge, petition the superior court to have his or her right to possess a firearm restored.

(b) The petition must be brought in the superior court that ordered the involuntary commitment or the superior court of the county in which the petitioner resides.

(c) Except as provided in (d) of this subsection, the court shall restore the petitioner's right to possess a firearm if the petitioner proves by a preponderance of the evidence that:

(i) The petitioner is no longer required to participate in court-ordered inpatient or outpatient treatment;

(ii) The petitioner has successfully managed the condition related to the commitment;

(iii) The petitioner no longer presents a substantial danger to himself or herself, or the public; and

(iv) The symptoms related to the commitment are not reasonably likely to recur.

(d) If a preponderance of the evidence in the record supports a finding that the person petitioning the court has engaged in violence and that it is more likely than not that the person will engage in violence after his or her right to possess a firearm is restored, the person shall bear the burden of proving by clear, cogent, and convincing evidence that he or she does not present a substantial danger to the safety of others.

(e) When a person's right to possess a firearm has been restored under this subsection, the court shall forward, within three judicial days after entry of the restoration order, notification that the person's right to possess a firearm has been restored to the department of licensing, the department of social and health services, and the national instant criminal background check system index, denied persons file.

(4) No person who has been found not guilty by reason of insanity may petition a court for restoration of the right to possess a firearm unless the person meets the requirements for the restoration of the right to possess a firearm under RCW 9.41.040(4).

NEW SECTION. **Sec.**  A new section is added to chapter 10.79 RCW to read as follows:

A court may issue a warrant to search for and seize firearms that are in the possession, custody, or control of a person subject to any type of extreme risk protection order as provided in chapter 26.--- RCW (the new chapter created in section 17 of this act), if:

(1) The subject of the protection order has been served with the order; and

(2) The subject of the protection order has failed to surrender or sell any firearm subject to the order as required under chapter 26.--- RCW (the new chapter created in section 17 of this act).

NEW SECTION. **Sec.**  A new section is added to chapter 10.79 RCW to read as follows:

(1) A law enforcement officer conducting a search and seizure pursuant to section 15 of this act must take custody of any firearm that is in the custody, control, or possession of a person who is subject to any type of extreme risk protection order.

(2) Any firearm found at a location subject to a search and seizure warrant issued pursuant to section 15 of this act that is owned by a person other than the subject of the protection order may not be seized if:

(a) The firearm is removed from the subject of the protection order's custody, control, or possession and stored in a manner such that the subject of the protection order does not have access to or control of the firearm; and

(b) The firearm is not otherwise unlawfully possessed by the owner.

(3) A locked firearm storage safe or case that is owned by a person other than the subject of the protection order may not be searched except in the owner's presence and with his or her consent or with a separately obtained search warrant.

NEW SECTION. **Sec.**  Sections 1 through 13 of this act constitute a new chapter in Title 26 RCW.

**--- END ---**