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**BILL REQUEST - CODE REVISER'S OFFICE**

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BILL REQ. #: Z-0405.1/11

ATTY/TYPIST: AL:crs

BRIEF DESCRIPTION: Regarding charitable solicitations.

AN ACT Relating to charitable solicitations; amending RCW 19.09.010, 19.09.020, 19.09.062, 19.09.065, 19.09.075, 19.09.079, 19.09.085, 19.09.097, 19.09.200, 19.09.210, 19.09.230, 19.09.271, 19.09.275, 19.09.276, 19.09.277, 19.09.279, 19.09.305, 19.09.315, 19.09.340, 19.09.355, 19.09.400, 19.09.430, and 19.09.440; reenacting and amending RCW 19.09.100; adding new sections to chapter 19.09 RCW; repealing RCW 19.09.076, 19.09.190, 19.09.240, 19.09.500, and 19.09.540; and prescribing penalties.

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

**Sec. 1.** RCW 19.09.010 and 2007 c 471 s 1 are each amended to read as follows:

The purpose of this chapter is to:

(1) Provide citizens of the state of Washington with information relating to (~~persons and organizations who~~) any entity that solicits funds from the public for public charitable purposes in order to prevent (a) deceptive and dishonest practices in the conduct of

soliciting funds for or in the name of charity; and (b) improper use of contributions intended for charitable purposes;

(2) Improve the transparency and accountability of organizations that solicit funds from the public for charitable purposes; and

(3) Develop and operate educational programs or partnerships for charitable organizations, board members, and the general public that help build public confidence and trust in organizations that solicit funds from the public for charitable purposes.

**Sec. 2.** RCW 19.09.020 and 2007 c 471 s 2 are each amended to read as follows:

When used in this chapter, unless the context otherwise requires:

(1) A "bona fide officer or employee" of a charitable organization is one (a) whose conduct is subject to direct control by such organization; (b) who does not act in the manner of an independent contractor in his or her relation with the organization; and (c) whose compensation is not computed on funds raised or to be raised.

(2) "Charitable organization" means any entity that solicits or collects contributions from the general public where the contribution is or is purported to be used to support a charitable purpose, but does not include any commercial fund-raiser, commercial fund-raising entity, commercial coventurer, or any fund-raising counsel, as defined in this section. Churches and their integrated auxiliaries, and political organizations are not charitable organizations, but both are subject to RCW 19.09.100 (~~((12),)~~) (15) (~~(, and)~~) through (18).

(3) "Charitable purpose" means any religious, charitable, scientific, testing for public safety, literary, or educational purpose or any other purpose that is beneficial to the community, including environmental, humanitarian, patriotic, or civic purposes, the support of national or international amateur sports competition, the prevention of cruelty to children or animals, the advancement of social welfare, or the benefit of law enforcement personnel, firefighters, and other persons who protect public safety. The term "charitable" is used in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged;

advancement of religion; advancement of education or science; erecting or maintaining public buildings, monuments, or works; lessening the burdens of government; lessening neighborhood tensions; eliminating prejudice and discrimination; defending human and civil rights secured by law; and combating community deterioration and juvenile delinquency.

(4) "Commercial coventurer" means any individual or corporation, partnership, sole proprietorship, limited liability company, limited partnership, limited liability partnership, or any other legal entity, that:

(a) Is regularly and primarily engaged in making sales of goods or services for profit directly to the general public;

(b) Is not otherwise regularly or primarily engaged in making (~~charitable~~) solicitations in this state or otherwise raising funds in this state for one or more charitable organizations;

(c) Represents to prospective purchasers that, if they purchase a good or service from the commercial coventurer, a portion of the sales price or a sum of money or some other specified thing of value will be donated to a named charitable organization; and

(d) Does not ask purchasers to make checks or other instruments payable to a named charitable organization or any entity other than the commercial coventurer itself under its regular commercial name.

(5) "Commercial fund-raiser" or "commercial fund-raising entity" means any entity that for compensation or other consideration within this state directly or indirectly solicits or receives contributions for or on behalf of any charitable organization or charitable purpose, or that is engaged in the business of or is held out to persons in this state as independently engaged in the business of soliciting or receiving contributions for such purposes. However, a commercial coventurer, fund-raising counsel, or consultant is not a commercial fund-raiser or commercial fund-raising entity.

(6) "Compensation" means salaries, wages, fees, commissions, or any other remuneration or valuable consideration.

(7) "Contribution" means the payment, donation, or promise, (~~or grant,~~) for consideration or otherwise, of any money or property of

any kind or value which contribution is wholly or partly induced by a solicitation. Reference to dollar amounts of "contributions" or "solicitations" in this chapter means in the case of payments or promises to pay for merchandise or rights of any description, the value of the total amount paid or promised to be paid for such merchandise or rights.

(8) "Cost of solicitation" means and includes all direct and indirect costs, expenditures, debts, obligations, salaries, wages, commissions, fees, or other money or thing of value paid or incurred in making a solicitation.

(9) "Entity" means an individual, organization, group, association, partnership, corporation, agency or unit of state government, or any combination thereof.

(10) "Fund-raising counsel" or "consultant" means any entity or individual who is retained by a charitable organization, for a fixed fee or rate, that is not computed on a percentage of funds raised, or to be raised, under a written agreement only to plan, advise, consult, or prepare materials for a solicitation of contributions in this state, but who does not manage, conduct, or carry on a fund-raising campaign and who does not solicit contributions or employ, procure, or engage any compensated person to solicit contributions, and who does not at any time have custody or control of contributions. A volunteer, employee, or salaried officer of a charitable organization maintaining a permanent establishment or office in this state is not a fund-raising counsel. An attorney, investment counselor, or banker who advises an individual, corporation, or association to make a charitable contribution is not a fund-raising counsel as a result of the advice.

(11) "General public" or "public" means any individual or entity located in Washington state without a membership or other official relationship with a charitable organization before a solicitation by the charitable organization.

(12) "Gross revenue" or "annual gross revenue" means, for any accounting period, the total value of revenue, excluding unrealized capital gains, but including noncash contributions of tangible,

personal property received by or on behalf of a charitable organization from all sources, without subtracting any costs or expenses.

(13) "Membership" means that for the payment of fees, dues, assessments, etc., an organization provides services and confers a bona fide right, privilege, professional standing, honor, or other direct benefit, in addition to the right to vote, elect officers, or hold office. The term "membership" does not include those persons who are granted a membership upon making a contribution as the result of solicitation.

~~((13))~~ (14) "Other employee" of a charitable organization means any person (a) whose conduct is subject to direct control by such organization; (b) who does not act in the manner of any independent contractor in his or her relation with the organization; and (c) who is not engaged in the business of or held out to persons in this state as independently engaged in the business of soliciting contributions for charitable purposes or religious activities.

~~((14))~~ (15) "Political organization" means those organizations whose activities are subject to chapter ~~((42.17))~~ 42.17A RCW or the Federal Elections Campaign Act of 1971, as amended.

~~((15))~~ (16) "Religious organization" means those entities that are not churches or integrated auxiliaries and includes nondenominational ministries, interdenominational and ecumenical organizations, mission organizations, speakers' organizations, faith-based social agencies, and other entities whose principal purpose is the study, practice, or advancement of religion.

~~((16))~~ (17) "Secretary" means the secretary of state.

~~((17))~~ (18) "Signed" means hand-written, or, if the secretary adopts rules facilitating electronic filing that pertain to this chapter, in the manner prescribed by those rules.

~~((18))~~ (19) (a) "Solicitation" means any oral or written request for a contribution, including the solicitor's offer or attempt to sell any property, rights, services, or other thing in connection with which:

(i) Any appeal is made for any charitable purpose;

(ii) The name of any charitable organization is used as an inducement for consummating the sale; or

(iii) Any statement is made that implies that the whole or any part of the proceeds from the sale will be applied toward any charitable purpose or donated to any charitable organization.

(b) The solicitation shall be deemed completed when made, whether or not the person making it receives any contribution or makes any sale.

(c) "Solicitation" does not include bingo activities, raffles, and amusement games conducted under chapter 9.46 RCW and applicable rules of the Washington state gambling commission.

(20) "Solicitation report" means the financial information the secretary requires pursuant to RCW 19.09.075 or 19.09.079.

NEW SECTION. **Sec. 3.** A new section is added to chapter 19.09 RCW to read as follows:

The application requirements of RCW 19.09.075 do not apply to:

(1) Any charitable organization raising less than an amount as set by rule adopted by the secretary in any accounting year when all the activities of the organization, including all fund-raising activities, are carried on by persons who are unpaid for their services and no part of the charitable organization's assets or income inures to the benefit of or is paid to any officer, director, member, or trustee of the organization, other than as part of a charitable class benefited by the charitable organization.

(2) Appeals for funds on behalf of a specific individual named in the solicitation, but only if all of the proceeds of the solicitation are given to or expended for the direct benefit of that individual.

**Sec. 4.** RCW 19.09.062 and 2010 1st sp.s. c 29 s 11 are each amended to read as follows:

The secretary of state (~~shall~~) must collect the following fees in accordance with this chapter:

(1) For an application for registration as a charitable organization, a fee of sixty dollars. Twenty dollars of this fee must

be deposited in the state general fund and the remaining forty dollars must be deposited in the charitable organization education account under RCW 19.09.530;

(2) For an annual renewal of registration as a charitable organization, a fee of forty dollars. Ten dollars of this fee must be deposited in the state general fund and the remaining thirty dollars must be deposited in the charitable organization education account under RCW 19.09.530;

(3) For an application for registration as a commercial fundraiser, a fee of three hundred dollars. Two hundred fifty dollars of this fee must be deposited in the state general fund and the remaining fifty dollars must be deposited in the charitable organization education account under RCW 19.09.530;

(4) For an annual renewal of registration as a commercial fundraiser, a fee of two hundred twenty-five dollars. One hundred seventy-five dollars of this fee must be deposited in the state general fund and the remaining fifty dollars must be deposited in the charitable organization education account under RCW 19.09.530;

(5) For a registration of a commercial fundraiser service contract, a fee of twenty dollars. Ten dollars of this fee must be deposited in the state general fund and the remaining ten dollars must be deposited in the charitable organization education account under RCW 19.09.530.

**Sec. 5.** RCW 19.09.065 and 1993 c 471 s 2 are each amended to read as follows:

(1) All charitable organizations and commercial fund-raisers (~~shall~~) must register with the secretary prior to conducting any solicitations.

(2) Failure to register as required by this chapter is a violation of this chapter.

(3) Information provided to the secretary pursuant to this chapter (~~shall be~~) is a public record except as (~~otherwise stated in this chapter~~) provided by law. Social security numbers and financial account numbers are not public information.



(4) Registration (~~(shall)~~) must not be considered or be represented as an endorsement by the secretary or the state of Washington.

NEW SECTION. **Sec. 6.** A new section is added to chapter 19.09 RCW, to be codified between RCW 19.09.065 and 19.09.075, to read as follows:

(1) Entities are deemed registered under RCW 19.09.075 or 19.09.079 no sooner than twenty days after receipt of the registration or renewal form by the secretary and may thereafter solicit contributions from the general public.

(2) If the secretary determines that the application for initial registration or renewal is incomplete, the secretary will notify the applicant of the information necessary to complete the application. The secretary may hold the application up to thirty days to allow the applicant time to provide additional information. If the applicant fails to provide complete information as requested by the secretary, the applicant will be deemed unregistered and must cease all solicitations as defined by this chapter.

(3) If an applicant fails to pay a required fee for any filing, the secretary will notify the applicant of the necessary fee to complete the application. The secretary may hold the application up to thirty days to allow the applicant time to submit the required payment. If the applicant fails to provide the required payment as requested by the secretary, the applicant will be deemed unregistered and must cease all solicitations as defined by this chapter.

NEW SECTION. **Sec. 7.** A new section is added to chapter 19.09 RCW, to be codified between section 6 of this act and RCW 19.09.075, to read as follows:

Charitable organizations must ensure that the financial information included in the solicitation report fairly represents, in all material respects, the financial condition and results of operations of the organization as of, and for, the period presented to the secretary for filing. If the financial information submitted to

the secretary is incorrect in any material way, the charitable organization may be subject to penalties as provided under RCW 19.09.279.

**Sec. 8.** RCW 19.09.075 and 2010 1st sp.s. c 29 s 12 are each amended to read as follows:

(1) An application for initial registration and renewal as a charitable organization ~~((shall))~~ must be submitted ~~((in))~~ on the form ~~((prescribed by rule))~~ approved by the secretary ~~((, containing, but not limited to, the following))~~ and must contain:

~~((1))~~ (a) The name, address, and telephone number of the charitable organization;

~~((2))~~ (b) The name(s) under which the charitable organization will solicit contributions;

~~((3))~~ (c) The name, address, and telephone number of the officers of or persons accepting responsibility for the charitable organization;

~~((4))~~ (d) The names of the three officers or employees receiving the greatest amount of compensation from the charitable organization;

~~((5))~~ (e) The purpose of the charitable organization;

~~((6-a))~~ (f) Whether the organization is exempt from federal income tax; and if so the organization shall attach to its application a copy of the letter by which the internal revenue service granted such status; ~~((and~~

~~((b))~~ (g) The name and address of the entity that prepares, reviews, or audits the financial statement of the charitable organization;

~~((7))~~ (h) A solicitation report of the charitable organization for the preceding, completed accounting year including:

~~((a))~~ (i) The types of solicitations conducted;

~~((b))~~ (ii) The ~~((total dollar value of contributions))~~ gross revenue received from ~~((solicitations and from))~~ all ~~((other))~~ sources ~~((received on behalf of the charitable purpose))~~ by or on behalf of the charitable organization before any expenses are paid or deducted;

~~((e)) (iii) The total ((amount of money applied to charitable purposes, fund-raising costs, and other expenses; and~~

~~(d) The name, address, and telephone number of any commercial fund-raiser used by the organization;~~

~~(8) An irrevocable appointment of the secretary to receive service of process in noncriminal proceedings as provided in RCW 19.09.305; and~~

~~(9) The total revenue of the preceding fiscal year.~~

~~The solicitation report required to be submitted under subsection (7) of this section shall be in the form prescribed by rule by the secretary, or as agreed to by the secretary and a charitable organization)) value of contributions received from all solicitations for or on behalf of the charitable organization before any expenses are paid or deducted;~~

(iv) The total value of funds expended for charitable purposes; and

(v) Total expenses, including expenditures for charitable purposes, fund-raising costs, and administrative expenses;

(i) The name, address, and telephone number of any commercial fund-raiser retained by the charitable organization; and

(j) An irrevocable appointment of the secretary to receive service of process in noncriminal proceedings as provided in RCW 19.09.305; and

(k) Such other information the secretary deems necessary by rule.

(2) The governing body or committee thereof must review and accept any financial report that the charitable organization may be required to file with the office of the secretary.

(3) Charitable organizations that are required under federal tax law to file an annual return in the form 990 series or any successor series is not required to file a copy of such annual return with the secretary: PROVIDED, That the charitable organization complies with all federal tax law with respect to public inspection of such annual return.

(4) The president, treasurer, or comparable officer of the organization must sign and date the application. The application

~~((shall))~~ must be submitted with a nonrefundable filing fee established in RCW 19.09.062. ~~((If the secretary determines that the application is complete, the application shall be filed and the applicant deemed registered.))~~

(5) Charitable organizations required to register and renew under this chapter must file a notice of change of information within thirty days of any change in the information contained in subsection (1)(a) through (k) of this section.

NEW SECTION. **Sec. 9.** A new section is added to chapter 19.09 RCW to read as follows:

The secretary is authorized to adopt rules, in accordance with chapter 34.05 RCW, that establish a set of tiered financial reporting requirements for charitable organizations required to register with the secretary pursuant to this chapter. Rules adopted under this section must include, but not be limited to, substantially the following:

(1) Tier one. Charitable organizations with one million dollars or less in annual gross revenue averaged over the three preceding, completed accounting years must meet the financial reporting requirements specified in RCW 19.09.075;

(2) Tier two. Charitable organizations with more than one million dollars and up to three million dollars in annual gross revenue averaged over the three preceding, completed accounting years must, in addition to the reporting requirements in RCW 19.09.075, make one of the following financial reporting requirements available in paper form to the public upon request, or accessible to the public on the internet:

(a) The federal financial reporting form (990, 990PF, 990EZ, 990T) the organization normally files with the IRS which must be prepared by a certified public accountant or other professional who normally prepares such forms in the ordinary course of their business; or

(b) An audited financial statement prepared by an independent certified public accountant for the preceding accounting year;

(3) Tier three. Charitable organizations with more than three million dollars in annual gross revenue averaged over the three preceding, completed accounting years must, in addition to the reporting requirements in RCW 19.09.075, obtain an independent, third-party audit of its financial records for the preceding accounting year. This audit report must be made available in paper form to the public upon request or accessible to the public on the internet.

**Sec. 10.** RCW 19.09.079 and 2010 1st sp.s. c 29 s 13 are each amended to read as follows:

An application for registration and renewal as a commercial fundraiser (~~shall~~) must be submitted (~~in~~) on the form (~~prescribed~~) approved by the secretary(~~, containing, but not limited to, the following~~) and must contain:

(1) The name, address, and telephone number of the commercial fund-raising entity;

(2) The name(s), address(es), and telephone number(s) of the owner(s) and principal officer(s) of the commercial fund-raising entity;

(3) The name, address, and telephone number of the individual responsible for the activities of the commercial fund-raising entity in Washington;

(4) The names of the three officers or employees receiving the greatest amount of compensation from the commercial fund-raising entity;

(5) The name and address of the entity that prepares, reviews, or audits the financial statement of the organization;

(6) A solicitation report of the commercial fund-raising entity for the preceding, completed accounting year, including:

(a) The types of fund-raising services conducted;

(b) The names of charitable organizations required to register under RCW (~~19.09.065~~) 19.09.075 for whom fund-raising services have been performed;

(c) The total value of contributions received on behalf of charitable organizations required to register under RCW (~~19.09.065~~)

19.09.075 by the commercial fund-raiser, affiliate of the commercial fund-raiser, or any entity retained by the commercial fund-raiser; and

(d) The amount of money disbursed to charitable organizations for charitable purposes, net of fund-raising costs paid by the charitable organization as stipulated in any agreement between charitable organizations and the commercial fund-raiser;

(7) The name, address, and telephone number of any other commercial fund-raiser that was retained in the conduct of providing fund-raising services; (~~and~~)

(8) An irrevocable appointment of the secretary to receive service of process in noncriminal proceedings as provided in RCW 19.09.305; and

(9) Such other information the secretary deems necessary by rule.

The application (~~shall~~) must be signed by an officer or owner of the commercial fund-raiser and (~~shall~~) must be submitted with a nonrefundable fee established in RCW 19.09.062. (~~If the secretary determines that the application is complete, the application shall be filed and the applicant deemed registered.~~)

Commercial fund-raisers required to register and renew under this chapter must file a notice of change of information within thirty days of any change in the information contained in subsections (1) through (7) and (9) of this section.

NEW SECTION. **Sec. 11.** A new section is added to chapter 19.09 RCW to read as follows:

(1) Every commercial fund-raiser must execute a surety bond if it:

(a) Directly or indirectly receives contributions from the public on behalf of any charitable organization;

(b) Is compensated based upon funds raised or to be raised, number of solicitations made or to be made, or any other similar method;

(c) Incurs or is authorized to incur expenses on behalf of the charitable organization; or

(d) Has not been registered with the secretary as a commercial fund-raiser for the preceding accounting year.

(2) The surety bond must be executed as principal in the amount prescribed by the secretary in rule. The issuer of the surety bond must be licensed to do business in this state, and must promptly notify the secretary when claims or payments are made against the bond or when the bond is canceled. The bond must be filed with the secretary in the form prescribed by the secretary. The bond must run to the state and to any person who may have a cause of action against the obligor of said bond for any malfeasance, misfeasance, or deceptive practice in the conduct of solicitations.

The secretary may also provide by rule for the reduction and reinstatement of the bond required by this section.

**Sec. 12.** RCW 19.09.085 and 2007 c 471 s 6 are each amended to read as follows:

(1) Registration under this chapter (~~(shall be)~~) is effective for one year or (~~(longer,)~~) as established by the secretary.

(2) (~~(Reregistration)~~) Renewals required under RCW 19.09.075 or 19.09.079 (~~(shall)~~) must be submitted to the secretary no later than the date established by the secretary by rule.

(3) (~~(Entities required to register under this chapter shall file a notice of change of information within thirty days of any change in the information contained in RCW 19.09.075 (1) through (9) or 19.09.079 (1) through (7).~~

~~—(4))~~ The secretary (~~(shall)~~) must notify entities registered under this chapter of the need to (~~(reregister)~~) renew upon the expiration of their current registration. The notification (~~(shall)~~) must be (~~(by mail, sent at least)~~) made approximately sixty days prior to the expiration (~~(of their current registration)~~) date and must be made through postal or electronic means. Failure to (~~(register)~~) renew shall not be excused by a failure of the secretary to (~~(mail)~~) send the notice or by an entity's failure to receive the notice.

(4) Entities required to register and renew under this chapter must file a notice of change of information within thirty days of any change in the information contained in RCW 19.09.075 (1)(a) through (k) or 19.09.079 (1) through (7) and (9).

(5) Entities are deemed registered under RCW 19.09.075 or 19.09.079 no sooner than twenty days after receipt of the registration or renewal form by the secretary and may thereafter solicit contributions from the general public.

(6) If the secretary determines that the application for initial registration or renewal is incomplete, the secretary must notify the applicant of the information necessary to complete the application. The secretary may hold the application up to thirty days to allow the applicant time to provide additional information. If the applicant fails to provide complete information as requested by the secretary, the applicant must be deemed unregistered and must cease all solicitations as defined by this chapter.

(7) If an applicant fails to pay a required fee for any filing, the secretary must notify the applicant of the necessary fee to complete the application. The secretary may hold the application up to thirty days to allow the applicant time to submit the required payment. If the applicant fails to provide the required payment as requested by the secretary, the applicant must be deemed unregistered and must cease all solicitations as defined by this chapter.

**Sec. 13.** RCW 19.09.097 and 2010 1st sp.s. c 29 s 14 are each amended to read as follows:

(1) No charitable organization may contract with a commercial fund-raiser for any fund-raising service or activity unless its contract requires that both parties comply with the law and permits officers of the charity reasonable access to:

(a) The fund-raisers' financial records relating to that charitable organization;

(b) The fund-raisers' operations including without limitation the right to be present during any telephone solicitation; and

(c) The names of all of the fund-raisers' employees or staff who are conducting fund-raising activities or (~~charitable~~) solicitations on behalf of the charitable organization. In addition, the contract shall specify the amount of raised funds that the charitable organization will receive or the method of computing that amount, the



amount of compensation of the commercial fund-raiser or the method of computing that amount, and whether the compensation is fixed or contingent.

(2) Before a charitable organization may contract with a commercial fund-raiser for any fund-raising service or activity, the charitable organization and commercial fund-raiser shall complete and file a registration form with the secretary. The registration ~~((shall))~~ must be filed by the charitable organization ~~((in))~~ on the form ~~((prescribed))~~ approved by the secretary~~((.~~~~—The registration shall))~~ and must contain~~((, but not be limited to, the following information))~~:

(a) The name and registration number of the commercial fund-raiser;

~~((b) ((The name of the surety or sureties issuing the bond required by RCW 19.09.190, the aggregate amount of such bond or bonds, the bond number(s), original effective date(s), and termination date(s);~~

~~—(c))~~ (c) The name and registration number of the charitable organization;

~~((d))~~ (d) The name of the representative of the commercial fund-raiser who will be responsible for the conduct of the fund-raising;

~~((e))~~ (e) The type(s) of service(s) to be provided by the commercial fund-raiser;

~~((f))~~ (f) The term dates of the contract and the dates such service(s) will begin and end;

~~((g))~~ (g) The terms of the ~~((agreement))~~ contract between the charitable organization and commercial fund-raiser relating to:

(i) Amount or percentages of amounts to inure to the charitable organization;

(ii) Limitations placed on the maximum amount to be raised by the fund-raiser, if the amount to inure to the charitable organization is not stated as a percentage of the amount raised;

(iii) Costs of fund-raising that will be the responsibility of the charitable organization, regardless of whether paid as a direct expense, deducted from the amounts disbursed, or otherwise; and

(iv) The manner in which contributions received directly by the charitable organization, not the result of services provided by the commercial fund-raiser, will be identified and used in computing the fee owed to the commercial fund-raiser; and

~~((h))~~ (g) The names of any entity, other than the contracting commercial fund-raiser to which ((more than ten percent)) any of the total anticipated fund-raising cost is to be paid, and whether any principal officer or owner of the commercial fund-raiser or relative by blood or marriage thereof is an owner or officer of any such entity.

(3) The registration form must be submitted with a nonrefundable filing fee established in RCW 19.09.062 and must be signed by an owner or principal officer of the commercial fund-raiser and the president, treasurer, trustee or comparable officer of the charitable organization.

(4) A correct copy of the contract shall be filed with the secretary before the commencement of any campaign.

~~((4) The registration form shall be submitted with a nonrefundable filing fee established in RCW 19.09.062 and shall be signed by an owner or principal officer of the commercial fund-raiser and the president, treasurer, or comparable officer of the charitable organization.))~~

(5) If the secretary determines that the application is incomplete, the secretary must notify the applicant of the information necessary to complete the application. The secretary may hold documents up to thirty days to allow the applicant time to provide additional information. If the applicant fails to provide complete information as requested by the secretary, the applicant must be deemed unregistered and the commercial fund-raiser must cease all solicitations under the terms of the contract.

(6) If an applicant fails to pay the required filing fee, the secretary must notify the applicant of the necessary fee to complete the application. The secretary may hold the application up to thirty days to allow the applicant time to submit the required payment. If the applicant fails to provide the required payment as requested by

the secretary, the applicant must be deemed unregistered and the commercial fund-raiser must cease all solicitations under the terms of the contract.

**Sec. 14.** RCW 19.09.100 and 2007 c 471 s 8 and 2007 c 218 s 64 are each reenacted and amended to read as follows:

All entities soliciting contributions for charitable purposes must comply with the requirements of this section except entities exempted from registration are not required to make the disclosures under subsections (1)(c), (4)(b) or (c), and (5)(b) of this section. The following conditions apply to solicitations as defined by RCW 19.09.020:

(1) (~~(A charitable organization, whether or not required to register pursuant to this chapter,)~~) Any entity that directly solicits contributions from the public in this state (~~(shall)~~) must make the following clear and conspicuous disclosures at the point of solicitation:

(a) The name of the individual making the solicitation;

(b) The identity of the charitable organization and the city of the principal place of business of the charitable organization;

(c) (~~(If requested by the solicitee,)~~) The published number (~~(in)~~) and web site of the office of the secretary, if requested, for the donor to obtain additional financial (~~(disclosure)~~) information on file with the secretary. The disclosure must be made during an oral solicitation of a contribution, and at the same time at which a written request for a contribution is made.

(2) A commercial fund-raiser (~~(shall)~~) must meet the required disclosures described in subsection (1) of this section clearly and conspicuously (~~(disclose)~~) at the point of solicitation(~~(+~~

~~(a) The name of the individual making the solicitation;~~

~~(b))~~) and must also disclose the name of the entity for which the fund-raiser is an agent or employee and the name and city of the charitable organization for which the solicitation is being conducted(~~(+ and~~

~~(c) If requested by the solicitee, the published number in the~~

~~office of the secretary for the donor to obtain additional financial disclosure information on file with the secretary. The disclosure must be made during an oral solicitation of a contribution, and at the same time at which a written request for a contribution is made).~~

(3) ~~((A person or organization soliciting charitable contributions by))~~ Telephone ~~((shall make))~~ solicitations must include the disclosures required under subsection (1) or (2) of this section ~~((in the course of the solicitation but))~~ prior to asking for a ~~((commitment for a))~~ contribution ~~((from the solicitee, and)).~~ The required disclosures must also be provided in writing within five business days to ~~((any solicitee that))~~ anyone who makes a pledge ~~((within five working days of making the pledge. If the person or organization sends any materials to the person or organization solicited before the receipt of any contribution, those materials shall include the disclosures required in subsection (1) or (2) of this section, whichever is applicable))~~ by telephone to donate.

(4) In the case of a solicitation by advertisement or mass distribution, including postal, electronic, posters, leaflets, automatic dialing machines, publications, and audio or video broadcasts, it ~~((shall))~~ must be clearly and conspicuously disclosed in the body of the solicitation material that:

(a) The solicitation is conducted by a named commercial fundraiser, if it is;

(b) The ~~((notice of solicitation))~~ registration required by the charitable solicitation act is on file with the secretary's office; and

(c) The potential donor can obtain additional financial ~~((disclosure))~~ information at a published number ~~((in))~~ and web site for the office of the secretary.

(5) A container or vending machine displaying a solicitation must ~~((also))~~ display:

(a) In a clear and conspicuous manner the name of the charitable organization for which funds are solicited, the name, business address, and telephone number of the individual ~~((and))~~ or any commercial fund-raiser responsible for collecting funds placed in the

containers or vending machines (~~(, and the following)~~);

(b) The statement: "This ((charity)) organization is currently registered with the secretary's office under the charitable solicitation act(~~(, registration number . . . .)~~) - call 1-800-332-4483." If the charitable organization for which funds are solicited is required to register under chapter 19.09 RCW.

(6) A commercial fund-raiser (~~(shall)~~) must not represent that tickets to any fund-raising event will be donated for use by another person unless all the following requirements are met:

(a) The commercial fund-raiser prior to conducting a solicitation has written commitments from persons stating that they will accept donated tickets and specifying the number of tickets they will accept;

(b) The written commitments are kept on file by the commercial fund-raiser for three years and are made available to the secretary, attorney general, or county prosecutor on demand;

(c) The contributions solicited for donated tickets may not be more than the amount representing the number of ticket commitments received from persons and kept on file under (a) of this subsection; and

(d) Not later than seven calendar days prior to the date of the event for which ticket donations are solicited, the commercial fund-raiser (~~(shall)~~) must give all donated tickets to the persons who made the written commitments to accept them.

(7) (~~(Each person or organization)~~) Any entity soliciting charitable contributions (~~(shall)~~) must not represent orally or in writing (~~(that)~~):

(a) (~~(The charitable contribution is tax deductible unless the charitable organization for which charitable contributions are being solicited or to which tickets for fund-raising events or other services or goods will be donated, has applied for and received from the internal revenue service a letter of determination granting tax deductible status to the charitable organization)~~) The tax deductibility of a contribution;

(b) That the person soliciting the charitable contribution is a volunteer or words of similar meaning or effect that create the

impression that the person soliciting is not a paid solicitor unless such person is unpaid for his or her services;

(c) That the person soliciting the charitable contribution is a member, staffer, helper, or employee of the charitable organization or words of similar meaning or effect that create the impression that the person soliciting is not a paid solicitor if the person soliciting is employed, contracted, or paid by a commercial fund-raiser.

(8) If the charitable organization is associated with, or has a name that is similar to, any unit of government (~~(each person or organization)~~) the entity soliciting contributions (~~(shall)~~) must disclose to each person solicited whether the charitable organization is or is not part of any unit of government and the true nature of its relationship to the unit of government. This subsection does not apply to a foundation or other charitable organization that is organized, operated, or controlled by or in connection with a registered public charity, including any governmental agency or unit, from which it derives its name.

(9) No (~~(person)~~) entity may, in conducting any solicitation, use the name "police," "sheriff," (~~("firefighter,")~~) "firefighters," or a similar name unless properly authorized by (~~(a bona fide)~~) the police, sheriff, or firefighter organization or police, sheriff, or fire department it is representing. (~~(A proper)~~) Authorization (~~(shall)~~) must be in writing and signed by two authorized officials of the organization or department (~~(and shall)~~). The written authorization must be (~~(filed with the secretary)~~) retained in accordance with RCW 19.09.200.

(10) (~~(A person)~~) An entity may not, in conducting any solicitation, use the name of a federally chartered or nationally recognized military veterans' service organization as determined by the United States veterans' administration unless authorized in writing by the highest ranking official of that organization in this state. The written authorization must be retained in accordance with RCW 19.09.200.

(11) (~~(A charitable organization shall)~~) Entities must comply with all local governmental regulations that apply to soliciting for or on behalf of charitable organizations.

(12) (~~(An entity soliciting contributions for a charitable purpose shall not include in any solicitation, or in any advertising material for a solicitation, or in any promotional plan for a solicitation, any statement that is false, misleading, or deceptive. All solicitations, advertising material, and promotional plans must fully and fairly disclose the identity of the entity on whose behalf the solicitation is made.)~~) Any entity required to register under this chapter must not engage in any solicitation for contributions unless it complies with all provisions of this chapter.

(13) Solicitations (~~(shall)~~) must not be conducted by a charitable organization or commercial fund-raiser that has, or if a corporation, its officers, directors, or principals have, been convicted of a crime involving solicitations for or on behalf of a charitable organization in this state, the United States, or any other state or foreign country within the past ten years or has been subject to any permanent injunction or administrative order or judgment under RCW 19.86.080 or 19.86.090, involving a violation or violations of RCW 19.86.020, within the past ten years, or of restraining a false or misleading promotional plan involving solicitations for charitable organizations.

(14) (~~(No charitable organization or commercial fund-raiser)~~) Any entity subject to this chapter (~~(may)~~) must not use or exploit the fact of registration under this chapter (~~(so as)~~) to lead the public to believe that registration constitutes an endorsement or approval by the state, but the use of the following is not deemed prohibited: "Currently registered with the Washington state secretary of state as required by law. Registration number . . . ."

(15) (~~(No entity may engage in any solicitation for contributions for or on behalf of any charitable organization or commercial fund-raiser unless the charitable organization or commercial fund-raiser is currently registered with the secretary.~~

~~(16) No charitable organization or commercial fund-raiser may engage in any solicitation for contributions unless it complies with~~

~~all provisions of this chapter.~~

~~(17))~~ Any entity soliciting contributions for a charitable purpose must not include in any solicitation, or in any advertising material for a solicitation, or in any promotional plan for a solicitation, any statement that is false, misleading, or deceptive. All solicitations, advertising materials, and promotional plans must fully and fairly disclose the identity of the entity on whose behalf the solicitation is made.

(16) No entity may place a telephone call to a donor or potential donor for the purpose of ((charitable solicitation)) soliciting contributions for a charitable purpose, before eight o'clock a.m. or after nine o'clock p.m. pacific time.

~~((18))~~ (17) No entity may, when contacting a donor or potential donor for the purpose of ((charitable solicitation)) soliciting contributions for a charitable purpose, engage in any conduct the natural consequence of which is to harass, intimidate, or torment any person in connection with the contact.

(18) Any entity that solicits contributions may not collect or attempt to collect contributions in person or by courier unless:

(a) The contributions are noncash items such as contributions of tangible personal property; or

(b) The solicitations are made in person and the collections, or attempts to collect, are made at the time of the solicitations; or

(c) The contributor has agreed to purchase goods or items in connection with the solicitation and the collection or attempt to collect is made at the time of delivery of the goods or items.

(19) Failure to comply with subsections (1) through (18) of this section is a violation of this chapter.

**Sec. 15.** RCW 19.09.200 and 1993 c 471 s 11 are each amended to read as follows:

(1) ((Charitable organizations and commercial fund-raisers shall)) All entities required to register pursuant to this chapter must maintain accurate, current, and readily available books and records at their usual business locations until at least three years have elapsed



following the effective period to which they relate. The books and records must contain, at a minimum, documentation supporting the information contained in the solicitation report and written authorization or authorizations required in RCW 19.09.100.

(2) All contracts between commercial fund-raisers and charitable organizations (~~shall~~) must be in writing, and true and correct copies of such contracts or records thereof (~~shall~~) must be kept on file in the various offices of the charitable organization and the commercial fund-raiser for a three-year period. Such records and contracts shall be available for inspection and examination by the secretary of state, attorney general, or by the county prosecuting attorney. A copy of such contract or record (~~shall~~) must be submitted by the charitable organization or commercial fund-raiser, within ten days, following receipt of a written demand (~~therefor~~) from the secretary of state, attorney general, or county prosecutor.

**Sec. 16.** RCW 19.09.210 and 2007 c 471 s 9 are each amended to read as follows:

Upon the request of the secretary of state, attorney general, or the county prosecutor, (~~a charitable organization or commercial fund-raiser shall~~) any entity subject to this chapter must submit a financial statement and all requested records containing, but not limited to, the following information:

(1) The gross amount of the contributions pledged and the gross amount collected.

(2) The amount thereof, given or to be given to charitable purposes represented together with details as to the manner of distribution as may be required.

(3) The aggregate amount paid and to be paid for the expenses of such solicitation.

(4) The amounts paid to and to be paid to commercial fund-raisers or charitable organizations.

(5) Copies of any annual or periodic reports furnished by the charitable organization or commercial fund-raiser of its activities during or for the same (~~fiscal~~) accounting period.

**Sec. 17.** RCW 19.09.230 and 1994 c 287 s 3 are each amended to read as follows:

No ~~((charitable organization, commercial fund-raiser, or other))~~ entity subject to this chapter may ~~((knowingly))~~:

(1) Use ~~((the))~~ an identical or deceptively similar name, symbol, statement, or emblem so closely related or similar that its use would confuse or mislead the public, of any other entity for the purpose of soliciting contributions from persons in this state without the written consent of such other entity. ~~((If the official name or the "doing business name" being registered is the same or deceptively similar as that of another entity, the secretary may request that a copy of the written consent from that entity be filed with the registration. Such consent may be deemed to have been given by anyone who is a director, trustee, or other authorized officer of that entity. A copy of the written consent must be kept on file by the charitable organization or commercial fund-raiser and made available to the secretary, attorney general, or county prosecutor upon demand. A person))~~ Written consent may be deemed to have been given by anyone who is a director, trustee, or other authorized officer or entity.

(2) A copy of the written consent must be retained on file by the charitable organization or commercial fund-raiser and made available to the secretary, attorney general, or county prosecutor upon demand. The secretary may revoke or deny an application for registration that violates this section.

(3) An entity may be deemed to have used the name of another ~~((person))~~ entity for the purpose of soliciting contributions if such latter ~~((person's))~~ entity's name is listed on any stationery, advertisement, brochure, or correspondence of the ~~((charitable organization or person))~~ entity or if such name is listed or represented to anyone who has contributed to, sponsored, or endorsed the ~~((charitable organization or person))~~ entity, or its ~~((or his))~~ activities.

~~((The secretary may revoke or deny any application for registration that violates this section.))~~ This section does not apply to a foundation or other charitable organization that is organized,

operated, or controlled by or in connection with a registered public charity, including any governmental agency or unit, from which it derives its name.

**Sec. 18.** RCW 19.09.271 and 1993 c 471 s 8 are each amended to read as follows:

(1) If the secretary or attorney general determines that any entity is soliciting in this state, directly or indirectly, by any means, and has not registered with the secretary as required by this chapter, the secretary may notify the charitable organization or commercial fund-raiser of its registration requirements by postal or electronic means.

(2) Any ((charitable organization or commercial fund-raiser)) entity who, after notification by the secretary, fails to properly register under this chapter is subject to a late filing fee in an amount to be established by rule by the end of the first business day following the issuance of the notice((, is liable for a late filing fee in an amount to be established by rule of the secretary)). The late filing fee is in addition to any other filing fee provided by this chapter.

~~((2) The secretary shall notify the attorney general of any entity liable for late filing fees under subsection (1) of this section.))~~ (3) If the secretary or attorney general determines that any entity is soliciting in this state, directly or indirectly, by any means, and the entity has not registered with the secretary as required by this chapter, the secretary, after five days notice sent by postal or electronic means to the charitable organization or commercial fund-raiser, may publish a press release in newspapers or on the internet, a notice to the public regarding the entity's unregistered status.

**Sec. 19.** RCW 19.09.275 and 2003 c 53 s 142 are each amended to read as follows:

(1) Any ~~((person))~~ entity who knowingly violates any provision of this chapter or who knowingly gives false or incorrect information to

the secretary, attorney general, or county prosecuting attorney in filing statements required by this chapter, whether or not such statement or report is verified is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW.

(2) Any ~~((person))~~ entity who violates any provisions of this chapter or who gives false or incorrect information to the secretary, attorney general, or county prosecuting attorney in filing statements required by this chapter, whether or not such statement or report is verified, is guilty of a misdemeanor punishable under chapter 9A.20 RCW.

**Sec. 20.** RCW 19.09.276 and 1994 c 287 s 4 are each amended to read as follows:

The secretary may waive penalties that have been set by rule and assessed by the secretary due from a registered ~~((charitable organization))~~ entity previously in good standing that would otherwise be penalized. ~~((A charitable organization))~~ An entity desiring to seek relief under this section must, within fifteen days of discovery of the missed filing or lapse by its ~~((corporate officials))~~ officers, directors, or other ~~((authorized officer of))~~ persons responsible for the missed filing or lapse, notify the secretary in writing. The notification must include the name and mailing address of the organization, the organization's officer to whom correspondence should be sent, and a statement under oath by a responsible officer of the organization, setting forth the nature of the missed filing or lapse, the circumstances giving rise to the missed filing or lapse, and the relief sought. Upon receipt of the notice, the secretary shall investigate the circumstances of the missed filing or lapse. If the secretary is satisfied that sufficient exigent or mitigating circumstances exist, that the ~~((organization))~~ entity has demonstrated good faith and a reasonable attempt to comply with the applicable ~~((corporate))~~ charitable solicitation statute~~((s))~~ of this state, the secretary may issue an order allowing relief from the penalty. If the secretary determines the request does not comply with the requirements for relief, the secretary shall deny the relief and state the reasons

for the denial. Notwithstanding chapter 34.05 RCW, a denial of relief by the secretary is not reviewable.

**Sec. 21.** RCW 19.09.277 and 1993 c 471 s 20 are each amended to read as follows:

If it appears to the attorney general that (~~(a person)~~) an entity has engaged or is about to engage in an act or practice constituting a violation of a provision of this chapter or a rule adopted or order issued under this chapter, the attorney general may, in the attorney general's discretion, issue an order directing the (~~(person)~~) entity to cease and desist from continuing the act or practice. Reasonable notice of and opportunity for a hearing shall be given. The attorney general may issue a temporary order pending the hearing, which shall remain in effect until ten days after the hearing is held and which shall become final if the (~~(person)~~) entity to whom the notice is addressed does not request a hearing within fifteen days after the receipt of the notice.

**Sec. 22.** RCW 19.09.279 and 2002 c 74 s 3 are each amended to read as follows:

(1) The secretary may assess against any (~~(person or organization who)~~) entity that violates this chapter, or any rule adopted under this chapter, a civil penalty of not more than one thousand dollars for each violation.

(2) (~~(Such person or organization shall)~~) The entity must be afforded the opportunity for a hearing, upon request made to the secretary within thirty days after the date of issuance of the notice of assessment. The hearing shall be conducted in accordance with chapter 34.05 RCW.

(3) If any (~~(person)~~) entity fails to pay an assessment after it has become a final and unappealable order, or after the court has entered final judgment in favor of the state, the attorney general may recover the amount assessed by action in the appropriate superior court. In such action, the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

**Sec. 23.** RCW 19.09.305 and 1993 c 471 s 16 are each amended to read as follows:

When ~~((a person or an organization))~~ an entity registered under this chapter, or its president, treasurer, or comparable officers, cannot be found after reasonably diligent effort, the secretary of state ~~((shall))~~ must be an agent of such ~~((person or organization))~~ entity upon whom process may be served. Service on the secretary ~~((shall))~~ must be made by delivering to the secretary or the secretary's designee duplicate copies of such process, and a filing fee to be established by rule of the secretary. Thereupon, the secretary ~~((shall))~~ must immediately cause one of the copies ~~((thereof))~~ to be forwarded to the registrant at the most current address shown in the secretary's files. Any service ~~((so had))~~ on the secretary ~~((shall))~~ must be returnable in not less than thirty days.

Any fee under this section ~~((shall))~~ may be taxable as costs in the action.

The secretary ~~((shall))~~ must maintain a record of all process served on the secretary under this section, and ~~((shall))~~ must record the date of service and the secretary's action ~~((with reference thereto))~~.

Nothing in this section limits or affects the right to serve process required or permitted to be served on a registrant in any other manner now or hereafter permitted by law.

**Sec. 24.** RCW 19.09.315 and 1993 c 471 s 17 are each amended to read as follows:

(1) The secretary may establish, by rule, standard forms and procedures for the efficient administration of this chapter.

(2) The secretary may provide by rule for the filing of a financial statement by registered entities.

(3) The secretary may issue such publications, reports, or information from the records as may be useful to the solicited public and charitable organizations. To defray the costs of any such publication, the secretary is authorized to charge a reasonable fee to

cover the costs of preparing, printing, and distributing such publications, in accordance with RCW 43.07.130.

**Sec. 25.** RCW 19.09.340 and 1983 c 265 s 12 are each amended to read as follows:

(1) ~~((The commission by any person of an act or practice prohibited by this chapter is hereby declared to be an unfair act or practice or unfair method of competition in the conduct of trade or commerce for the purpose of application of the Consumer Protection Act, chapter 19.86 RCW.))~~ The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. A violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW.

(2) The secretary may refer such evidence, as may be available, concerning violations of this chapter to the attorney general or the prosecuting attorney of the county wherein the alleged violation arose. In addition to any other action they might commence, the attorney general or the county prosecuting attorney may bring an action in the name of the state, with or without such reference, against any ~~((person))~~ entity to restrain and prevent the doing of any act or practice prohibited by this chapter: PROVIDED, That this chapter shall be considered in conjunction with chapters 9.04 and 19.86 RCW, as now or hereafter amended, and the powers and duties of the attorney general and the prosecuting attorney as they may appear in the aforementioned chapters, shall apply against all ~~((persons))~~ entities subject to this chapter.

**Sec. 26.** RCW 19.09.355 and 2010 1st sp.s. c 29 s 15 are each amended to read as follows:

Except as otherwise provided in this chapter, all fees and other moneys received by the secretary of state under this chapter ~~((shall))~~

must be transmitted to the state treasurer for deposit in the state general fund.

**Sec. 27.** RCW 19.09.400 and 1993 c 471 s 18 are each amended to read as follows:

The attorney general, in the attorney general's discretion, may:

(1) Annually, or more frequently, make such public or private investigations within or without this state as the attorney general deems necessary to determine whether any registration should be granted, denied, revoked, or suspended, or whether any ~~((person))~~ entity has violated or is about to violate a provision of this chapter or any rule adopted or order issued under this chapter, or to aid in the enforcement of this chapter or in the prescribing of rules and forms under this chapter; and

(2) Publish information concerning a violation of this chapter or a rule adopted or order issued under this chapter.

**Sec. 28.** RCW 19.09.430 and 1993 c 471 s 22 are each amended to read as follows:

The administrative procedure act, chapter 34.05 RCW, ~~((shall))~~ wherever applicable governs the rights, remedies, and procedures respecting the administration of this chapter.

**Sec. 29.** RCW 19.09.440 and 2007 c 471 s 10 are each amended to read as follows:

(1) Annually, the secretary of state ~~((shall))~~ may publish a report indicating:

(a) For each charitable organization registered under RCW 19.09.075 the percentage relationship between (i) the total amount of money applied to charitable purposes; and (ii) the dollar value of total expenditures, including the total amount of money applied to charitable purposes, fund-raising costs, and administrative expenses;

(b) For each commercial fund-raiser registered under RCW 19.09.079 the percentage relationship between (i) the amount of money disbursed to charitable organizations for charitable purposes; and (ii) the



total value of contributions received on behalf of charitable organizations by the commercial fund-raiser; and

(c) Such other information as the secretary of state deems appropriate.

(2) The secretary of state may use the latest information obtained pursuant to RCW 19.09.075, 19.09.079, or otherwise under chapter 19.09 RCW to prepare the report.

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

(1) RCW 19.09.076 (Charitable organizations--Application for registration--Exemptions--Soliciting contributions) and 2007 c 471 s 4, 1994 c 287 s 1, 1993 c 471 s 4, & 1986 c 230 s 5;

(2) RCW 19.09.190 (Commercial fund-raisers--Surety bond) and 1993 c 471 s 10, 1986 c 230 s 16, 1983 c 265 s 16, 1982 c 227 s 8, 1977 ex.s. c 222 s 9, & 1973 1st ex.s. c 13 s 19;

(3) RCW 19.09.240 (Using similar name, symbol, emblem, or statement) and 1993 c 471 s 14, 1986 c 230 s 15, & 1973 1st ex.s. c 13 s 24;

(4) RCW 19.09.500 (Charitable organizations--Financial reports and information) and 2007 c 471 s 11; and

(5) RCW 19.09.540 (Rules--Tiered independent financial reporting) and 2007 c 471 s 15.

NEW SECTION. **Sec. 31.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.