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

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BILL REQ. #: Z-0730.1/08

ATTY/TYPIST: ML:ean

BRIEF DESCRIPTION: Enacting the uniform assignment of rents act.

1 AN ACT Relating to the uniform assignment of rents act; and adding  
2 a new chapter to Title 61 RCW.

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

4 NEW SECTION. **Sec. 1.** The definitions in this section apply  
5 throughout this chapter unless the context clearly requires otherwise.

6 (1) "Assignee" means a person entitled to enforce an assignment of  
7 rents.

8 (2) "Assignment of rents" means a transfer of an interest in rents  
9 in connection with an obligation secured by real property located in  
10 this state and from which the rents arise.

11 (3) "Assignor" means a person that makes an assignment of rents or  
12 the successor owner of the real property from which the rents arise.

13 (4) "Cash proceeds" means proceeds that are money, checks, deposit  
14 accounts, or the like.

15 (5) "Day" means calendar day.

16 (6) "Deposit account" means a demand, time, savings, passbook, or  
17 similar account maintained with a bank, savings bank, savings and loan  
18 association, credit union, or trust company.

1 (7) "Document" means information that is inscribed on a tangible  
2 medium or that is stored on an electronic or other medium and is  
3 retrievable in perceivable form.

4 (8) "Notification" means a document containing information that  
5 this chapter requires a person to provide to another, signed by the  
6 person required to provide the information.

7 (9) "Person" means an individual, corporation, business trust,  
8 estate, trust, partnership, limited liability company, association,  
9 joint venture, public corporation, government, or governmental  
10 subdivision, agency, or instrumentality, or any other legal or  
11 commercial entity.

12 (10) "Proceeds" means personal property that is received or  
13 collected on account of a tenant's obligation to pay rents.

14 (11) "Purchase" means to take by sale, lease, discount,  
15 negotiation, mortgage, pledge, lien, security interest, issue or  
16 reissue, gift, or any other voluntary transaction creating an interest  
17 in property.

18 (12) "Rents" means:

19 (a) Sums payable for the right to possess or occupy, or for the  
20 actual possession or occupation of, real property of another person;

21 (b) Sums payable to an assignor under a policy of rental  
22 interruption insurance covering real property;

23 (c) Claims arising out of a default in the payment of sums payable  
24 for the right to possess or occupy real property of another person;

25 (d) Sums payable to terminate an agreement to possess or occupy  
26 real property of another person;

27 (e) Sums payable to an assignor for payment or reimbursement of  
28 expenses incurred in owning, operating and maintaining, or constructing  
29 or installing improvements on, real property; or

30 (f) Any other sums payable under an agreement relating to the real  
31 property of another person that constitute rents under the law of this  
32 state other than this chapter.

33 (13) "Secured obligation" means an obligation the performance of  
34 which is secured by an assignment of rents.

35 (14) "Security instrument" means a document, however denominated,  
36 that creates or provides for a security interest in real property,  
37 whether or not it also creates or provides for a security interest in  
38 personal property.

1 (15) "Security interest" means an interest in property that arises  
2 by agreement and secures performance of an obligation.

3 (16) "Sign" means, with present intent to authenticate or adopt a  
4 document:

5 (a) To execute or adopt a tangible symbol; or

6 (b) To attach to or logically associate with the document an  
7 electronic sound, symbol, or process.

8 (17) "State" means a state of the United States, the District of  
9 Columbia, Puerto Rico, the United States Virgin Islands, or any  
10 territory or insular possession subject to the jurisdiction of the  
11 United States.

12 (18) "Submit for recording" means to submit a document complying  
13 with applicable legal standards, with required fees and taxes, to the  
14 appropriate governmental office under chapter 65.12 RCW.

15 (19) "Tenant" means a person that has an obligation to pay sums for  
16 the right to possess or occupy, or for possessing or occupying, the  
17 real property of another person.

18 NEW SECTION. **Sec. 2.** (1) Except as otherwise provided in  
19 subsections (3) and (4) of this section, a person gives a notification  
20 or a copy of a notification under this chapter:

21 (a) By depositing it with the United States postal service or with  
22 a commercially reasonable delivery service, properly addressed to the  
23 intended recipient's address as specified in subsection (2) of this  
24 section, with first-class postage or cost of delivery provided for; or

25 (b) If the recipient agreed to receive notification by facsimile  
26 transmission, electronic mail, or other electronic transmission, by  
27 sending it to the recipient in the agreed manner at the address  
28 specified in the agreement.

29 (2) The following rules determine the proper address for giving a  
30 notification under subsection (1) of this section:

31 (a) A person giving a notification to an assignee shall use the  
32 address for notices to the assignee provided in the document creating  
33 the assignment of rents, but if the assignee has provided the person  
34 giving the notification with a more recent address for notices, the  
35 person giving the notification shall use that address.

36 (b) A person giving a notification to an assignor shall use the  
37 address for notices to the assignor provided in the document creating

1 the assignment of rents, but if the assignor has provided the person  
2 giving the notification with a more recent address for notices, the  
3 person giving the notification shall use that address.

4 (c) If a tenant's agreement with an assignor provides an address  
5 for notices to the tenant and the person giving notification has  
6 received a copy of the agreement or knows the address for notices  
7 specified in the agreement, the person giving the notification shall  
8 use that address in giving a notification to the tenant. Otherwise,  
9 the person shall use the address of the premises covered by the  
10 agreement.

11 (3) If a person giving a notification pursuant to this chapter and  
12 the recipient have agreed to the method for giving a notification, any  
13 notification must be given by that method.

14 (4) If a notification is received by the recipient, it is effective  
15 even if it was not given in accordance with subsection (1) or (3) of  
16 this section.

17 NEW SECTION. **Sec. 3.** (1) An enforceable security instrument  
18 creates an assignment of rents arising from the real property described  
19 in the security instrument, unless the security instrument provides  
20 otherwise.

21 (2) An assignment of rents creates a presently effective security  
22 interest in all accrued and unaccrued rents arising from the real  
23 property described in the document creating the assignment, regardless  
24 of whether the document is in the form of an absolute assignment, an  
25 absolute assignment conditioned upon default, an assignment as  
26 additional security, or any other form. The security interest in rents  
27 is separate and distinct from any security interest held by the  
28 assignee in the real property.

29 NEW SECTION. **Sec. 4.** (1) A document creating an assignment of  
30 rents may be submitted for recording in the office of the county  
31 auditor in the same manner as any other document evidencing a  
32 conveyance of an interest in real property.

33 (2) Upon recording, the security interest in rents created by an  
34 assignment of rents is fully perfected, even if a provision of the  
35 document creating the assignment or law of this state other than this  
36 chapter would preclude or defer enforcement of the security interest

1 until the occurrence of a subsequent event, including a subsequent  
2 default of the assignor, the assignee's obtaining possession of the  
3 real property, or the appointment of a receiver.

4 (3) Except as otherwise provided in subsection (4) of this section,  
5 a perfected security interest in rents takes priority over the rights  
6 of a person that, after the security interest is perfected:

7 (a) Acquires a judicial lien against the rents or the real property  
8 from which the rents arise; or

9 (b) Purchases an interest in the rents or the real property from  
10 which the rents arise.

11 (4) A perfected security interest in rents has priority over the  
12 rights of a person described in subsection (3) of this section with  
13 respect to future advances to the same extent as the assignee's  
14 security interest in the real property has priority over the rights of  
15 that person with respect to future advances.

16 NEW SECTION. **Sec. 5.** (1) An assignee may enforce an assignment of  
17 rents using one or more of the methods specified in sections 6, 7, and  
18 8 of this act or any other method sufficient to enforce the assignment  
19 under the law of this state other than this chapter.

20 (2) From the date of enforcement, the assignee or, in the case of  
21 enforcement by appointment of a receiver under section 6 of this act,  
22 the receiver is entitled to collect all rents that:

23 (a) Have accrued but remain unpaid on that date; and

24 (b) Accrue on or after that date, as those rents accrue.

25 NEW SECTION. **Sec. 6.** (1) An assignee is entitled to the  
26 appointment of a receiver for the real property subject to the  
27 assignment of rents if:

28 (a) The assignor is in default and:

29 (i) The assignor has agreed in a signed document to the appointment  
30 of a receiver in the event of the assignor's default;

31 (ii) It appears likely that the real property may not be sufficient  
32 to satisfy the secured obligation;

33 (iii) The assignor has failed to turn over to the assignee proceeds  
34 that the assignee was entitled to collect; or

35 (iv) A subordinate assignee of rents obtains the appointment of a  
36 receiver for the real property; or

1 (b) Other circumstances exist that would justify the appointment of  
2 a receiver under the law of this state other than this chapter.

3 (2) An assignee may file a petition for the appointment of a  
4 receiver in connection with an action:

5 (a) To foreclose the security instrument;

6 (b) For specific performance of the assignment;

7 (c) Seeking a remedy on account of waste or threatened waste of the  
8 real property subject to the assignment; or

9 (d) Otherwise to enforce the secured obligation or the assignee's  
10 remedies arising from the assignment.

11 (3) An assignee that files a petition under subsection (2) of this  
12 section shall also give a copy of the petition in the manner specified  
13 in section 2 of this act to any other person that, ten days before the  
14 date the petition is filed, held a recorded assignment of rents arising  
15 from the real property.

16 (4) If an assignee enforces an assignment of rents under this  
17 section, the date of enforcement is the date on which the court enters  
18 an order appointing a receiver for the real property subject to the  
19 assignment.

20 (5) From the date of its appointment, a receiver is entitled to  
21 collect rents as provided in section 5(2) of this act. The receiver  
22 also has the authority provided in the order of appointment and the law  
23 of this state other than this chapter.

24 (6) The following rules govern priority among receivers:

25 (a) If more than one assignee qualifies under this section for the  
26 appointment of a receiver, a receivership requested by an assignee  
27 entitled to priority in rents under this chapter has priority over a  
28 receivership requested by a subordinate assignee, even if a court has  
29 previously appointed a receiver for the subordinate assignee.

30 (b) If a subordinate assignee obtains the appointment of a  
31 receiver, the receiver may collect the rents and apply the proceeds in  
32 the manner specified in the order appointing the receiver until a  
33 receiver is appointed under a senior assignment of rents.

34 NEW SECTION. **Sec. 7.** (1) Upon the assignor's default, or as  
35 otherwise agreed by the assignor, the assignee may give the assignor a  
36 notification demanding that the assignor pay over the proceeds of any  
37 rents that the assignee is entitled to collect under section 5 of this

1 act. The assignee shall also give a copy of the notification to any  
2 other person that, ten days before the notification date, held a  
3 recorded assignment of rents arising from the real property.

4 (2) If an assignee enforces an assignment of rents under this  
5 section, the date of enforcement is the date on which the assignor  
6 receives a notification under subsection (1) of this section.

7 (3) An assignee's failure to give a notification under subsection  
8 (1) of this section to any person holding a recorded assignment of  
9 rents does not affect the effectiveness of the notification as to the  
10 assignor, but the other person is entitled to any relief permitted  
11 under the law of this state other than this chapter.

12 (4) An assignee that holds a security interest in rents solely by  
13 virtue of section 3(1) of this act may not enforce the security  
14 interest under this section while the assignor occupies the real  
15 property as the assignor's primary residence.

16 NEW SECTION. **Sec. 8.** (1) Upon the assignor's default, or as  
17 otherwise agreed by the assignor, the assignee may give to a tenant of  
18 the real property a notification demanding that the tenant pay to the  
19 assignee all unpaid accrued rents and all unaccrued rents as they  
20 accrue. The assignee shall give a copy of the notification to the  
21 assignor and to any other person that, ten days before the notification  
22 date, held a recorded assignment of rents arising from the real  
23 property. The notification must be signed by the assignee and:

24 (a) Identify the tenant, assignor, assignee, premises covered by  
25 the agreement between the tenant and the assignor, and assignment of  
26 rents being enforced;

27 (b) Provide the recording data for the document creating the  
28 assignment or other reasonable proof that the assignment was made;

29 (c) State that the assignee has the right to collect rents in  
30 accordance with the assignment;

31 (d) Direct the tenant to pay to the assignee all unpaid accrued  
32 rents and all unaccrued rents as they accrue;

33 (e) Describe the manner in which subsections (3) and (4) of this  
34 section affect the tenant's payment obligations;

35 (f) Provide the name and telephone number of a contact person and  
36 an address to which the tenant can direct payment of rents and any



1 inquiry for additional information about the assignment or the  
2 assignee's right to enforce the assignment; and

3 (g) Contain a statement that the tenant may consult a lawyer if the  
4 tenant has questions about its rights and obligations.

5 (2) If an assignee enforces an assignment of rents under this  
6 section, the date of enforcement is the date on which the tenant  
7 receives a notification substantially complying with subsection (1) of  
8 this section.

9 (3) Subject to subsection (4) of this section and any other claim  
10 or defense that a tenant has under the law of this state other than  
11 this chapter, following receipt of a notification substantially  
12 complying with subsection (1) of this section:

13 (a) A tenant is obligated to pay to the assignee all unpaid accrued  
14 rents and all unaccrued rents as they accrue, unless the tenant has  
15 previously received a notification from another assignee of rents given  
16 by that assignee in accordance with this section and the other assignee  
17 has not canceled that notification;

18 (b) Unless the tenant occupies the premises as the tenant's primary  
19 residence, a tenant that pays rents to the assignor is not discharged  
20 from the obligation to pay rents to the assignee;

21 (c) A tenant's payment to the assignee of rents then due satisfies  
22 the tenant's obligation under the tenant's agreement with the assignor  
23 to the extent of the payment made; and

24 (d) A tenant's obligation to pay rents to the assignee continues  
25 until the tenant receives a court order directing the tenant to pay the  
26 rent in a different manner or a signed document from the assignee  
27 canceling its notification, whichever occurs first.

28 (4) A tenant that has received a notification under subsection (1)  
29 of this section is not in default for nonpayment of rents accruing  
30 within thirty days after the date the notification is received before  
31 the earlier of:

32 (a) Ten days after the date the next regularly scheduled rental  
33 payment would be due; or

34 (b) Thirty days after the date the tenant receives the  
35 notification.

36 (5) Upon receiving a notification from another creditor that is  
37 entitled to priority under section 4(3) of this act that the other  
38 creditor has enforced and is continuing to enforce its interest in

1 rents, an assignee that has given a notification to a tenant under  
2 subsection (1) of this section shall immediately give another  
3 notification to the tenant canceling the earlier notification.

4 (6) An assignee's failure to give a notification under subsection  
5 (1) of this section to any person holding a recorded assignment of  
6 rents does not affect the effectiveness of the notification as to the  
7 assignor and those tenants receiving the notification. However, the  
8 person entitled to the notification is entitled to any relief permitted  
9 by the law of this state other than this chapter.

10 (7) An assignee that holds a security interest in rents solely by  
11 virtue of section 3(1) of this act may not enforce the security  
12 interest under this section while the assignor occupies the real  
13 property as the assignor's primary residence.

14 NEW SECTION. **Sec. 9.** No particular phrasing is required for the  
15 notification specified in section 8 of this act. However, the  
16 following form of notification, when properly completed, is sufficient  
17 to satisfy the requirements of section 8 of this act:

18 NOTIFICATION TO PAY RENTS TO PERSON OTHER THAN LANDLORD  
19 Tenant: . . . . .  
20 Name of tenant  
21 Property Occupied by Tenant (the "Premises"): . . . . .  
22 Address  
23 Landlord: . . . . .  
24 Name of landlord  
25 Assignee: . . . . .  
26 Name of assignee  
27 Address of Assignee and Telephone Number of Contact Person:  
28 . . . . .  
29 Address of assignee  
30 . . . . .  
31 Telephone number of person to contact

32 1. The Assignee named above has become the person entitled to  
33 collect your rents on the Premises listed above under . . . . .  
34 Name of document  
35 (the "Assignment of Rents") dated . . . . ., and recorded at

1 . . . . .  
2 Date Recording data  
3 in the . . . . .

4 Appropriate governmental office under the recording act of this  
5 state

6 You may obtain additional information about the Assignment of Rents  
7 and the Assignee's right to enforce it at the address listed above.

8 2. The Landlord is in default under the Assignment of Rents.  
9 Under the Assignment of Rents, the Assignee is entitled to collect  
10 rents from the Premises.

11 3. This notification affects your rights and obligations under  
12 the agreement under which you occupy the Premises (your  
13 "Agreement"). In order to provide you with an opportunity to  
14 consult with a lawyer, if your next scheduled rental payment is due  
15 within 30 days after you receive this notification, neither the  
16 Assignee nor the Landlord can hold you in default under your  
17 Agreement for nonpayment of that rental payment until 10 days after  
18 the due date of that payment or 30 days following the date you  
19 receive this notification, whichever occurs first. You may consult  
20 a lawyer at your expense concerning your rights and obligations  
21 under your Agreement and the effect of this notification.

22 4. You must pay to the Assignee at the address listed above all  
23 rents under your Agreement which are due and payable on the date  
24 you receive this notification and all rents accruing under your  
25 Agreement after you receive this notification. If you pay rents to  
26 the Assignee after receiving this notification, the payment will  
27 satisfy your rental obligation to the extent of that payment.

28 5. Unless you occupy the Premises as your primary residence, if  
29 you pay any rents to the Landlord after receiving this  
30 notification, your payment to the Landlord will not discharge your  
31 rental obligation, and the Assignee may hold you liable for that  
32 rental obligation notwithstanding your payment to the Landlord.



1 (1) The assignee's reasonable expenses of enforcing its assignment  
2 of rents including, to the extent provided for by agreement and not  
3 prohibited by law of this state other than this chapter, reasonable  
4 attorneys' fees and costs incurred by the assignee;

5 (2) Reimbursement of any expenses incurred by the assignee to  
6 protect or maintain the real property subject to the assignment;

7 (3) Payment of the secured obligation;

8 (4) Payment of any obligation secured by a subordinate security  
9 interest or other lien on the rents if, before distribution of the  
10 proceeds, the assignor and assignee receive a notification from the  
11 holder of the interest or lien demanding payment of the proceeds; and

12 (5) The assignor.

13 NEW SECTION. **Sec. 12.** (1) Unless otherwise agreed by the  
14 assignee, and subject to subsection (3) of this section, an assignee  
15 that collects rents following enforcement under section 7 or 8 of this  
16 act need not apply them to the payment of expenses of protecting or  
17 maintaining the real property subject to the assignment.

18 (2) Unless a tenant has made an enforceable agreement not to assert  
19 claims or defenses, the right of the assignee to collect rents from the  
20 tenant is subject to the terms of the agreement between the assignor  
21 and tenant and any claim or defense arising from the assignor's  
22 nonperformance of that agreement.

23 (3) This chapter does not limit the standing or right of a tenant  
24 to request a court to appoint a receiver for the real property subject  
25 to the assignment or to seek other relief on the ground that the  
26 assignee's nonpayment of expenses of protecting or maintaining the real  
27 property has caused or threatened harm to the tenant's interest in the  
28 property. Whether the tenant is entitled to the appointment of a  
29 receiver or other relief is governed by the law of this state other  
30 than this chapter.

31 NEW SECTION. **Sec. 13.** (1) For the purposes of this section, "good  
32 faith" means honesty in fact and the observance of reasonable  
33 commercial standards of fair dealing.

34 (2) If an assignor collects rents that the assignee is entitled to  
35 collect under this chapter:

1 (a) The assignor shall turn over the proceeds to the assignee, less  
2 any amount representing payment of expenses authorized by the assignee;  
3 and

4 (b) The assignee continues to have a security interest in the  
5 proceeds so long as they are identifiable.

6 (3) For the purposes of this chapter, cash proceeds are  
7 identifiable if they are maintained in a segregated account or, if  
8 commingled with other funds, to the extent the assignee can identify  
9 them by a method of tracing, including application of equitable  
10 principles, that is permitted under the law of this state other than  
11 this chapter with respect to commingled funds.

12 (4) In addition to any other remedy available to the assignee under  
13 the law of this state other than this chapter, if an assignor fails to  
14 turn over proceeds to the assignee as required by subsection (2) of  
15 this section, the assignee may recover from the assignor in a civil  
16 action:

17 (a) The proceeds, or an amount equal to the proceeds, that the  
18 assignor was obligated to turn over under subsection (2) of this  
19 section; and

20 (b) Reasonable attorneys' fees and costs incurred by the assignee  
21 to the extent provided for by agreement and not prohibited by the law  
22 of this state other than this chapter.

23 (5) The assignee may maintain an action under subsection (4) of  
24 this section without bringing an action to foreclose any security  
25 interest that it may have in the real property. Any sums recovered in  
26 the action must be applied in the manner specified in section 11 of  
27 this act.

28 (6) Unless otherwise agreed, if an assignee entitled to priority  
29 under section 4(3) of this act enforces its interest in rents after  
30 another creditor holding a subordinate security interest in rents has  
31 enforced its interest under section 7 or 8 of this act, the creditor  
32 holding the subordinate security interest in rents is not obligated to  
33 turn over any proceeds that it collects in good faith before the  
34 creditor receives notification that the senior assignee has enforced  
35 its interest in rents. The creditor shall turn over to the senior  
36 assignee any proceeds that it collects after it receives the  
37 notification.

1        NEW SECTION.    **Sec. 14.** (1) The definitions in this subsection  
2 apply throughout this section unless the context clearly requires  
3 otherwise.

4        (a) "Article 9A" means Article 9A of the Uniform Commercial Code as  
5 codified in chapter 62.A.9A RCW or, to the extent applicable to any  
6 particular issue, Article 9A as adopted by the state whose laws govern  
7 that issue under the choice-of-laws rules contained in Article 9A as  
8 adopted by this state.

9        (b) "Conflicting interest" means an interest in proceeds, held by  
10 a person other than an assignee, that is:

11        (i) A security interest arising under Article 9A; or

12        (ii) Any other interest if Article 9A resolves the priority  
13 conflict between that person and a secured party with a conflicting  
14 security interest in the proceeds.

15        (2) An assignee's security interest in identifiable cash proceeds  
16 is perfected if its security interest in rents is perfected. An  
17 assignee's security interest in identifiable noncash proceeds is  
18 perfected only if the assignee perfects that interest in accordance  
19 with Article 9A.

20        (3) Except as otherwise provided in subsection (4) of this section,  
21 priority between an assignee's security interest in identifiable  
22 proceeds and a conflicting interest is governed by the priority rules  
23 in Article 9A.

24        (4) An assignee's perfected security interest in identifiable cash  
25 proceeds is subordinate to a conflicting interest that is perfected by  
26 control under Article 9A but has priority over a conflicting interest  
27 that is perfected other than by control.

28        NEW SECTION.    **Sec. 15.** This chapter does not preclude  
29 subordination by agreement as to rents or proceeds.

30        NEW SECTION.    **Sec. 16.** In applying and construing this chapter,  
31 consideration must be given to the need to promote uniformity of the  
32 law with respect to its subject matter among states that enact it.

33        NEW SECTION.    **Sec. 17.** This chapter modifies, limits, and  
34 supersedes the federal electronic signatures in global and national  
35 commerce act (15 U.S.C. Sec. 7001 et seq.) but does not modify, limit,

1 or supersede section 101(c) of that act (15 U.S.C. Sec. 7001(c)) or  
2 authorize electronic delivery of any of the notices described in  
3 section 103(b) of that act (15 U.S.C. Sec. 7003(b)).

4 NEW SECTION. **Sec. 18.** (1) Except as otherwise provided in this  
5 section, this chapter governs the enforcement of an assignment of rents  
6 and the perfection and priority of a security interest in rents, even  
7 if the document creating the assignment was signed and delivered before  
8 the effective date of this section.

9 (2) This chapter does not affect an action or proceeding commenced  
10 before the effective date of this section.

11 (3) Section 3(1) of this act does not apply to any security  
12 instrument signed and delivered before the effective date of this  
13 section.

14 (4) This chapter does not affect:

15 (a) The enforceability of an assignee's security interest in rents  
16 or proceeds if, immediately before the effective date of this section,  
17 that security interest was enforceable;

18 (b) The perfection of an assignee's security interest in rents or  
19 proceeds if, immediately before the effective date of this section,  
20 that security interest was perfected; or

21 (c) The priority of an assignee's security interest in rents or  
22 proceeds with respect to the interest of another person if, immediately  
23 before the effective date of this section, the interest of the other  
24 person was enforceable and perfected, and that priority was  
25 established.

26 NEW SECTION. **Sec. 19.** This chapter may be known and cited as the  
27 uniform assignment of rents act.

28 NEW SECTION. **Sec. 20.** Sections 1 through 19 of this act  
29 constitute a new chapter in Title 61 RCW.

--- END ---