

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 1495

Chapter 191, Laws of 1992
(partial veto)

52nd Legislature
1992 Regular Session

CONSUMER PROTECTION IN SALE OF LAND

EFFECTIVE DATE: 6/11/92

Passed by the House March 9, 1992
Yeas 96 Nays 0

JOE KING

**Speaker of the
House of Representatives**

Passed by the Senate March 3, 1992
Yeas 36 Nays 11

JOEL PRITCHARD

President of the Senate

Approved April 2, 1992, with the
exception of section 3, which is
vetoed.

BOOTH GARDNER

Governor of the State of Washington

CERTIFICATE

I, Alan Thompson, Chief Clerk of the
House of Representatives of the State
of Washington, do hereby certify that
the attached is **ENGROSSED SUBSTITUTE
HOUSE BILL 1495** as passed by the House
of Representatives and the Senate on
the dates hereon set forth.

ALAN THOMPSON

Chief Clerk

FILED
April 2, 1992 - 11:21 a.m.

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1495

AS AMENDED BY THE SENATE

Passed Legislature - 1992 Regular Session

State of Washington 52nd Legislature 1991 Regular Session

By House Committee on Commerce & Labor (originally sponsored by Representatives Heavey and Hargrove; by request of Department of Licensing).

Read first time March 5, 1991.

1 AN ACT Relating to the protection of consumers in the sale of
2 lands; amending RCW 58.19.010, 58.19.020, 58.19.030, 58.19.120,
3 58.19.180, 58.19.190, 58.19.270, 58.19.300, and 58.19.940; adding new
4 sections to chapter 58.19 RCW; and repealing RCW 58.19.040, 58.19.050,
5 58.19.060, 58.19.070, 58.19.080, 58.19.090, 58.19.100, 58.19.110,
6 58.19.150, 58.19.160, 58.19.170, 58.19.200, 58.19.210, 58.19.220,
7 58.19.230, 58.19.240, 58.19.250, 58.19.260, 58.19.290, 58.19.900,
8 58.19.910, and 58.19.930.

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

10 **Sec. 1.** RCW 58.19.010 and 1973 1st ex.s. c 12 s 1 are each amended
11 to read as follows:

12 The legislature finds and declares that the sale and offering for
13 sale of land or of interests in associations which provide for the use
14 or occupancy of land touches and affects a great number of the citizens
15 of this state and that full and complete disclosure to prospective

1 purchasers of pertinent information concerning land developments,
2 including any encumbrances or liens (~~((which might attach))~~) attached to
3 the land and the physical characteristics of the development (~~((as well
4 as the surrounding land,))~~) is essential. The legislature further finds
5 and declares that (~~((a program of state registration and of publication
6 and))~~) delivery to prospective purchasers of a complete and accurate
7 public offering statement is necessary in order to adequately protect
8 both the economic and physical welfare of the citizens of this state.
9 It is the purpose of this chapter to provide for (~~((a))~~) the reasonable
10 (~~((program of state registration and))~~) regulation of the sale and
11 offering for sale of any interest in significant land developments
12 within or without the state of Washington, so that the prospective
13 purchasers of such interests might be provided with full, complete, and
14 accurate information of all pertinent circumstances affecting their
15 purchase.

16 **Sec. 2.** RCW 58.19.020 and 1979 c 158 s 208 are each amended to
17 read as follows:

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

19 (1) "Affiliate of a developer" means any person who controls, is
20 controlled by, or is under common control with a developer.

21 (a) A person controls a developer if the person: (i) Is a general
22 partner, officer, director, or employer of the developer; (ii) directly
23 or indirectly or acting in concert with one or more other persons, or
24 through one or more subsidiaries, owns, controls, holds with power to
25 vote, or holds proxies representing, more than twenty percent of the
26 voting interest in the developer; (iii) controls in any manner the
27 election of a majority of the directors of the developer; or (iv) has
28 contributed more than twenty percent of the capital of the developer.

1 (b) A person is controlled by a developer if the developer: (i) Is
2 a general partner, officer, director, or employer of the person; (ii)
3 directly or indirectly or acting in concert with one of more other
4 persons, or through one or more subsidiaries, owns, controls, holds
5 with the power to vote, or holds proxies representing, more than twenty
6 percent of the voting interest in the person; (iii) controls in any
7 manner the election of a majority of the directors of the person; or
8 (iv) has contributed more than twenty percent of the capital of the
9 person. Control does not exist if the powers described in this
10 subsection are held solely as security for an obligation and are not
11 exercised.

12 (2) "Blanket encumbrance" shall mean a trust deed, mortgage,
13 mechanic's lien, or any other lien or encumbrance, securing or
14 evidencing the payment of money and affecting the land to be developed
15 or affecting more than one lot or parcel of developed land, or an
16 agreement affecting more than one such lot or parcel by which the
17 developer holds said development under option, contract, sale, or trust
18 agreement. The term shall not include taxes and assessments levied by
19 a public authority.

20 ~~((2) "Director" means the director of licensing or his authorized~~
21 ~~designee.))~~

22 (3) "Common promotional plan" means an offering of related
23 developed lands in a common promotional plan of disposition. Elements
24 relevant to whether the related developed lands are being offered as
25 part of a common promotional plan include but are not limited to:
26 Whether purchasers of interests in the offered land will share in the
27 use of common amenities, or other rights or privileges; whether the
28 offered lands are known, designated, or advertised as a common unit or
29 by a common name; whether a common broker or sales personnel, common
30 sales office or facilities, or common promotional methods are utilized;

1 and whether cross-referrals of prospective purchasers between sales
2 operations is utilized.

3 (4) "Developer" means any owner of a development who offers it for
4 disposition, or the principal agent of an inactive owner.

5 ~~((4))~~ (5) "Development" or "developed lands" means land which is
6 divided or is proposed to be divided for the purpose of disposition
7 into ~~((ten))~~ twenty-six or more lots, parcels, or units (excluding
8 interests in camping ~~((clubs))~~ resorts regulated under chapter 19.105
9 RCW and interests in condominiums regulated under chapter 64.34 RCW)
10 ~~((and))~~ or any other land whether contiguous or not, if ~~((ten))~~ twenty-
11 six or more lots, parcels, units, or interests are offered as a part of
12 a common promotional plan of advertising and sale.

13 ~~((5))~~ (6) "Disposition" includes any sale, lease, assignment, or
14 exchange of any interest in any real property which is a part of or
15 included within a development, and also includes the offering of
16 property as a prize or gift when a monetary charge or consideration for
17 whatever purpose is required in conjunction therewith, and any other
18 transaction concerning a development if undertaken for gain or profit.

19 ~~((6) "Offer" includes every inducement, solicitation, or media~~
20 ~~advertisement which has as a principal aim to encourage a person to~~
21 ~~acquire an interest in land.))~~

22 (7) ~~(("Hazard" means all existing or proposed unusual conditions~~
23 ~~relating to the location of the development, noise, safety, or other~~
24 ~~nuisance which affect or might affect the development))~~ "Foreclosure"
25 means a forfeiture or judicial or nonjudicial foreclosure of a
26 mortgage, deed of trust, or real estate contract, or a deed in lieu
27 thereof.

28 (8) "Improvements" include all existing, advertised, and
29 governmentally required facilities such as streets, water, electricity,

1 natural gas, telephone lines, drainage control systems, and sewage
2 disposal systems.

3 (9) "Offer" includes every inducement, solicitation, or media
4 advertisement which has as a principal aim to encourage a person to
5 acquire an interest in land.

6 (10) "Owners association" means any profit or nonprofit
7 corporation, unincorporated association, or other organization or legal
8 entity, a membership or other interest in which is appurtenant to or
9 based upon owing an interest in a development.

10 (11) "Person" means an individual, corporation, government or
11 governmental subdivision or agency, business trust, estate, trust,
12 partnership, unincorporated association, two or more of any of the
13 foregoing having a joint or common interest, or any other legal or
14 commercial entity.

15 ~~((9))~~ (12) "Physical hazard" means a physical condition which
16 poses, or may very likely pose, a material risk of either: Material
17 damage to the development and improvements thereon; or material
18 endangerment to the safety and health of persons using the development
19 and improvements thereon.

20 (13) "Purchaser" means a person who acquires or attempts to acquire
21 or succeeds to any interest in land.

22 ~~((10))~~ (14) "Related developed lands" means two or more
23 developments which are owned by the same developer or an affiliate or
24 affiliates of that developer and which are physically located within
25 the same five-mile radius area.

26 (15) "Residential buildings" shall mean premises that are actually
27 intended or used ~~((as permanent residences of))~~ primarily for
28 residential or recreational purposes by the purchasers ~~((and that are~~
29 not devoted exclusively to any other purpose)).

1 *

2 Sec. 3. RCW 58.19.030 and 1979 c 158 s 209 are each amended to
3 read as follows:

4 ~~((1) Unless the method of disposition is adopted for the purpose~~
5 ~~of evasion of this chapter,))~~ The provisions of this chapter shall not
6 apply to ((land and offers or dispositions)):

7 ~~((a) By))~~ (1) An offer or disposition of any interest in a
8 development to a purchaser of developed lands for his or her own
9 account in a single or isolated transaction, except that this exemption
10 shall not apply to offers or dispositions by a developer who at any
11 time owns twenty-six or more lots, parcels, or interests in the
12 development and who at the time of the offer or disposition still owns
13 more than nine lots, parcels, or interests in the development;

14 ~~((b) If fewer than ten separate lots, parcels, units, or interests~~
15 ~~in developed lands are offered by a person in a period of twelve~~
16 ~~months;~~

17 ~~(c))~~ (2) A development if each lot offered in the development is
18 one one-hundred-twenty-eighth of a section of land or larger, or five
19 acres or ((more)) larger if the land is not capable of description as
20 a fraction of a section of land. For purposes of computing the size of
21 a lot under this subsection that borders on a street or road the lot
22 size shall be expanded to include that area which would be bounded by
23 the center line of the road or street and the side lot lines of the lot
24 running perpendicular to such center line;

25 ~~((d))~~ (3) Any lot, parcel, unit, or interest on which there is a
26 residential, commercial, or industrial building, or as to which there
27 is a legal obligation on the part of the seller to construct such a
28 building within two years from date of disposition;

1 ~~((e) To))~~ (4) Any person who acquires ((such)) lots, parcels,
2 units, or interests ((therein)) in a development for the purpose of
3 engaging in the business of constructing residential, commercial, or
4 industrial buildings or for the purpose of resale or lease or other
5 disposition of such lots to persons engaged in such business or
6 businesses;

7 ~~((f) Any lot, parcel, unit or interest if the development is~~
8 ~~located within an area incorporated prior to January 1, 1974;~~

9 ~~(g))~~ (5) A development or part of a development if it became an
10 incorporated city or a part of an incorporated city prior to January 1,
11 1974;

12 (6) Offers or dispositions pursuant to court order; ((or

13 ~~(h))~~ (7) Offers or dispositions as cemetery lots or
14 interests((-))i

15 ~~((2) Unless the method of disposition is adopted for the purpose~~
16 ~~of evasion of this chapter, the provisions of this chapter shall not~~
17 ~~apply to:~~

18 ~~(a))~~ (8) Offers or dispositions of evidence of indebtedness
19 secured by a mortgage or deed of trust of real estate;

20 ~~((b))~~ (9) Offers or dispositions of securities or units of
21 interest issued by a real estate investment trust regulated under any
22 state or federal statute;

23 ~~((c) A development as to which the director has waived the~~
24 ~~provisions of this chapter as provided in RCW 58.19.040;~~

25 ~~(d))~~ (10) Offers or dispositions of securities currently
26 registered with the ((business and professions administration in the))
27 department of licensing;

28 ~~((e))~~ (11) Offers or dispositions of any interest in oil, gas, or
29 other minerals or any royalty interest therein if the offers or
30 dispositions of such interests are regulated as securities by the

1 *United States or by ((the business and professions administration in))*
2 *the department of licensing;*

3 *(12) Offers or dispositions of any interest in a condominium*
4 *created under chapter 64.32 or 64.34 RCW;*

5 *(13) Offers or dispositions by a government or governmental agency;*

6 *(14) Offers or dispositions by foreclosure, except that this*
7 *exemption shall not apply to offers or dispositions occurring after*
8 *foreclosure by a person who acquired title to an interest to a*
9 *development as a result of foreclosure;*

10 *(15) Offers that may be cancelled at any time and for any reason by*
11 *the purchaser without penalty; or*

12 *(16) Any property located within a county or city that has adopted*
13 *a comprehensive land use plan and development regulation under chapter*
14 *36.70A RCW.*

15 *Sec. 3 was vetoed, see message at end of chapter.

16 NEW SECTION. **Sec. 4.** A new section is added to chapter 58.19 RCW
17 to read as follows:

18 (1) A developer shall prepare a public offering statement
19 conforming to the requirements of section 5 of this act unless the
20 development or the transaction is exempt under RCW 58.19.030.

21 (2) Any agent, attorney, or other person assisting the developer in
22 preparing the public offering statement may rely upon information
23 provided by the developer without independent investigation. The
24 agent, attorney, or other person shall not be liable for any material
25 misrepresentation in or omissions of material facts from the public
26 offering statement unless the person had actual knowledge of the
27 misrepresentation or omission at the time the public offering statement
28 was prepared. The developer shall be liable for any misrepresentation
29 contained in the public offering statement or for any omission of

1 material fact therefrom if the developer had actual knowledge of the
2 misrepresentation or omission or, in the exercise of reasonable care,
3 should have known of the misrepresentation or omission.

4 (3) Unless the development or the transaction is exempt under RCW
5 58.19.030, a developer shall provide a purchaser of a lot, parcel,
6 unit, or interest with a copy of the public offering statement and all
7 material amendments thereto before conveyance of that lot, parcel,
8 unit, or interest. Unless a purchaser is given the public offering
9 statement more than two days before execution of a contract for the
10 purchase of a lot, parcel, unit, or interest, the purchaser, before
11 conveyance, shall have the right to cancel the contract within two days
12 after first receiving the public offering statement and, if necessary
13 to have two days to review the public offering statement and cancel the
14 contract, to extend the closing date for conveyance to a date not more
15 than two days after first receiving the public offering statement. The
16 purchaser shall have no right to cancel the contract upon receipt of an
17 amendment unless the purchaser would have that right under generally
18 applicable legal principles. The two-day period shall not include
19 Saturdays, Sundays, or legal holidays.

20 (4) If a purchaser elects to cancel a contract pursuant to
21 subsection (3) of this section, the purchaser may do so by hand-
22 delivering notice thereof to the developer or by mailing notice thereof
23 by prepaid United States mail to the developer for service of process.
24 If cancellation is by mailing notice, the date of the postmark on the
25 mail shall be the official date of cancellation. Cancellation is
26 without penalty, and all payments made by the purchaser before
27 cancellation shall be refunded within thirty days from the date of
28 cancellation.

29 (5) If a person required to deliver a public offering statement
30 pursuant to subsection (1) of this section fails to provide a purchaser

1 to whom a lot, parcel, unit, or interest is conveyed with that public
2 offering statement and all material amendments thereto as required by
3 subsection (3) of this section, the purchaser is entitled to receive
4 from that person an amount equal to the actual damages suffered by the
5 purchaser as a result of the public offering statement not being
6 delivered. There shall be no liability for failure to deliver any
7 amendment unless such failure would have entitled the purchaser under
8 generally applicable legal principles to cancel the contract for the
9 purchase of the lot, parcel, unit, or interest had the undisclosed
10 information been evident to the purchaser before the closing of the
11 purchase.

12 (6) A purchaser may not rely on any representation or express
13 warranty unless it is contained in the public offering statement or
14 made in writing signed by the developer or developer's agent identified
15 in the public offering statement.

16 NEW SECTION. **Sec. 5.** A new section is added to chapter 58.19 RCW
17 to read as follows:

18 (1) A public offering statement shall contain the following
19 information:

20 (a) The name, and the address or approximate location, of the
21 development;

22 (b) The name and address of the developer;

23 (c) The name and address of the management company, if any, for the
24 development;

25 (d) The relationship of the management company to the developer, if
26 any;

27 (e) The nature of the interest being offered for sale;

28 (f) A brief description of the permitted uses and use restrictions
29 pertaining to the development and the purchaser's interest therein;

1 (g) The number of existing lots, parcels, units, or interests in
2 the development and either the maximum number that may be added to the
3 development or the fact that such maximum number has not yet been
4 determined;

5 (h) A list of the principal common amenities in the development
6 which materially affect the value of the development and those that
7 will or may be added to the development;

8 (i) The identification of any real property not in the development,
9 the owner of which has access to any of the development, and a
10 description of the terms of such access;

11 (j) The identification of any real property not in the development
12 to which owners in the development have access and a description of the
13 terms of such access;

14 (k) The status of construction of improvements in the development,
15 including either the estimated dates of completion if not completed or
16 the fact that such estimated completion dates have not yet been
17 determined; and the estimated costs, if any, to be paid by the
18 purchaser;

19 (l) The estimated current owners' association expense, if any, for
20 which a purchaser would be liable;

21 (m) An estimate of any payment with respect to any owners'
22 association expense for which the purchaser would be liable at closing;

23 (n) The estimated current amount and purpose of any fees not
24 included in any owners' association assessments and charged by the
25 developer or any owners' association for the use of any of the
26 development or improvements thereto;

27 (o) Any assessments which have been agreed to or are known to the
28 developer and which, if not paid, may constitute a lien against any
29 portion of the development in favor of any governmental agency;

1 (p) The identification of any parts of the development which any
2 purchaser will have the responsibility for maintaining;

3 (q) A brief description of any blanket encumbrance which is subject
4 to the provisions of RCW 58.19.180;

5 (r) A list of any physical hazards known to the developer which
6 particularly affect the development or the immediate vicinity in which
7 the development is located and which are not readily ascertainable by
8 the purchaser;

9 (s) A brief description of any construction warranties to be
10 provided to the purchaser;

11 (t) Any building code violation citations received by the developer
12 in connection with the development which have not been corrected;

13 (u) A statement of any unsatisfied judgments or pending suits
14 against any owners' association involved in the development and a
15 statement of the status of any pending suits material to the
16 development of which the developer has actual knowledge;

17 (v) A notice which describes a purchaser's right to cancel the
18 purchase agreement or extend the closing under section 4(3) of this
19 act, including applicable time frames and procedures;

20 (w) A list of the documents which the prospective purchaser is
21 entitled to receive from the developer before the rescission period
22 commences;

23 (x) A notice which states:

24 "A purchaser may not rely on any representation or express warranty
25 unless it is contained in the public offering statement or made in
26 writing signed by the developer or by any person identified in the
27 public offering statement as the declarant's agent";

28 (y) A notice which states:

1 "This public offering statement is only a summary of some of the
2 significant aspects of purchasing an interest in this development and
3 any documents which may govern or affect the development may be
4 complex, may contain other important information, and create binding
5 legal obligations. You should consider seeking assistance of legal
6 counsel"; and

7 (z) Any other information and cross-references which the developer
8 believes will be helpful in describing the development to the
9 recipients of the public offering statement, all of which may be
10 included or not included at the option of the developer.

11 (2) The public offering statement shall include copies of each of
12 the following documents: Any declaration of covenants, conditions,
13 restrictions, and reservations affecting the development; any survey,
14 plat, or subdivision map; the articles of incorporation of any owners'
15 association; the bylaws of any owners' association; the rules and
16 regulations, if any, of any owners' association; current or proposed
17 budget for any owners' association; and the balance sheet of any
18 owners' association current within ninety days if assessments have been
19 collected for ninety days or more.

20 If any of the foregoing documents listed in this subsection are not
21 available because they have not yet been executed, adopted, or
22 recorded, drafts of such documents shall be provided with the public
23 offering statement, and, before closing the sale of an interest in the
24 development, the purchaser shall be given copies of any material
25 changes between the draft of the proposed documents and the final
26 documents.

27 (3) The disclosures required by subsection (1)(v), (x), and (y) of
28 this section shall be located at the top of the first page of the

1 public offering statement and be typed or printed in ten-point bold
2 face type size.

3 **Sec. 6.** RCW 58.19.120 and 1973 1st ex.s. c 12 s 12 are each
4 amended to read as follows:

5 The developer shall immediately (~~report to the director~~) amend
6 the public offering statement to include any material changes (~~in the~~
7 ~~information contained in his application for registration~~) affecting
8 the development. No change in the substance of the promotional plan or
9 plan of disposition or completion of the development may be made
10 (~~after registration without notifying the director and~~) without first
11 making an appropriate amendment of the public offering statement. A
12 public offering statement is not current unless it incorporates all
13 amendments.

14 **Sec. 7.** RCW 58.19.180 and 1973 1st ex.s. c 12 s 18 are each
15 amended to read as follows:

16 It shall be unlawful for the developer to make a sale of lots or
17 parcels within a development which is subject to a blanket encumbrance
18 which does not contain, within its terms or by supplementary agreement,
19 a provision which shall unconditionally provide that the purchaser of
20 a lot or parcel encumbered thereby can obtain the legal title, or other
21 interest contracted for, free and clear of the lien of such blanket
22 encumbrance upon compliance with the terms and conditions of the
23 purchase agreement, unless the developer shall elect and comply with
24 one of the following alternative conditions:

25 (1) The developer shall deposit earnest moneys and all subsequent
26 payments on the obligation in (~~an~~) a neutral escrow depository
27 (~~acceptable to the director: In cases where the blanket encumbrance~~
28 ~~does not provide for partial release, all or such portions of the money~~

1 ~~paid or advanced by the purchaser on any such lot or parcel within said~~
2 ~~development as the director shall determine to be sufficient to protect~~
3 ~~the interest of the purchaser; or in cases where the blanket~~
4 ~~encumbrance provides for partial releases thereof which are not~~
5 ~~unconditional, the developer shall deposit, at such time as the balance~~
6 ~~due to the developer from such purchasers is equal to the sum necessary~~
7 ~~to procure a release of such lots or parcels contracted for from the~~
8 ~~lien of such blanket encumbrance, all of the sums thereafter received~~
9 ~~from such purchasers until either)), or real estate trust account~~
10 ~~regulated under RCW 18.85.310, until such time as all payments on the~~
11 ~~obligation have been made and clear title is delivered, or any of the~~
12 ~~following occurs:~~

13 (a) A proper release is obtained from such blanket encumbrance;

14 (b) Either the developer or the purchaser defaults under the sales
15 contract and there is a forfeiture of the interest of the purchaser or
16 there is a determination as to the disposition of such moneys, as the
17 case may be; or

18 (c) The developer orders a return of such moneys to such purchaser.

19 (2) The title to the development is held in trust under an
20 agreement of trust (~~acceptable to the director~~) until the proper
21 release of such blanket encumbrance is obtained.

22 (3) (~~A bond to the state of Washington or such other proof of~~
23 ~~financial responsibility is furnished to the director for the benefit~~
24 ~~and protection of purchasers of such lots or parcels in such an amount~~
25 ~~and subject to such terms, as may be approved by the director, which~~
26 ~~shall provide for the return of moneys paid or advanced by any~~
27 ~~purchaser on account of a sale of any such lot or parcel if a proper~~
28 ~~release from such blanket encumbrance is not obtained: PROVIDED, That~~
29 ~~if it should be determined that such purchaser, by reason of default,~~
30 ~~or otherwise, is not entitled to the return of such moneys or any~~

1 ~~portion thereof, such bond or other proof of financial responsibility~~
2 ~~shall be exonerated to the extent and in the amount thereof. The~~
3 ~~amount of the bond or other proof of financial responsibility may be~~
4 ~~increased or decreased or a bond may be waived from time to time as the~~
5 ~~director shall determine)) The purchaser shall receive title insurance~~
6 ~~from a licensed title insurance company against such blanket~~
7 ~~encumbrance.~~

8 **Sec. 8.** RCW 58.19.190 and 1973 1st ex.s. c 12 s 19 are each
9 amended to read as follows:

10 No person shall publish in this state any advertisement concerning
11 a development subject to the ((registration)) requirements of this
12 chapter ((after the director finds that the advertisement)) which
13 contains any statements that are materially false, misleading, or
14 deceptive ((and so notifies the person in writing. Such notification
15 may be given summarily without notice or hearing. At any time after
16 the issuance of a notification under this section the person desiring
17 to use the advertisement may in writing request the order be rescinded.
18 Upon receipt of such a written request, the matter shall be set down
19 for hearing to commence within fourteen days after such receipt unless
20 the person making the request consents to a later date. After such
21 hearing, which shall be conducted in accordance with the provisions of
22 the Administrative Procedure Act, chapter 34.04 RCW, the director shall
23 determine whether to affirm and to continue or to rescind such order
24 and shall have all powers granted under such act)).

25 NEW SECTION. **Sec. 9.** A new section is added to chapter 58.19 RCW
26 to read as follows:

27 If a developer, or any other person subject to this chapter, fails
28 to comply with any provision of this chapter, any person or class of

1 persons adversely affected by the failure to comply may seek
2 appropriate relief through an action for damages or an injunctive court
3 order. The court, in an appropriate case, may award attorneys' fees.

4 **Sec. 10.** RCW 58.19.270 and 1973 1st ex.s. c 12 s 27 are each
5 amended to read as follows:

6 (1) The commission by any person of an act or practice prohibited
7 by this chapter is hereby declared to be a matter affecting the public
8 interest for the purpose of applying chapter 19.86 RCW and is not
9 reasonable in relation to the development and preservation of business.
10 A violation of this chapter constitutes an unfair or deceptive act or
11 practice or unfair method of competition in the conduct of trade or
12 commerce for the purpose of the ((application of)) attorney general
13 bringing an action in the name of the state under the consumer
14 protection act, ((chapter 19.86 RCW, as now or hereafter amended))
15 pursuant to RCW 19.86.080.

16 (2) ((The director may refer such)) Evidence ((as may be available
17 to him)) concerning violations of this chapter ((or of any rule or
18 regulation adopted hereunder)) may be referred to the attorney general
19 ((or the prosecuting attorney of the county wherein the alleged
20 violation arose)), who may, in ((their)) his or her discretion, with or
21 without such a reference, in addition to any other action ((they)) the
22 attorney general might commence, bring an action in the name of the
23 state against any person to restrain and prevent the doing of any act
24 or practice prohibited by this chapter((:—PROVIDED, That)). This
25 chapter shall be considered in conjunction with chapters 9.04 and 19.86
26 RCW, ((as now or hereafter amended,)) and the powers and duties of the
27 attorney general ((and the prosecuting attorney)) as ((they may)) such
28 powers and duties appear in ((the aforementioned)) chapters((,)) 9.04
29 and 19.86 RCW shall apply against all persons subject to this chapter.

1 (3) Only the attorney general can bring an action under the
2 consumer protection act, chapter 19.86 RCW, pursuant to this section.

3 **Sec. 11.** RCW 58.19.300 and 1973 1st ex.s. c 12 s 30 are each
4 amended to read as follows:

5 If, ~~((after))~~ before disposition of all or any portion of a
6 development which is covered by this chapter, a condition constituting
7 a physical hazard is discovered on or around the immediate vicinity of
8 the development, the developer or government agency discovering such
9 condition shall notify the ~~((director immediately. After receiving~~
10 ~~such notice, the director shall forthwith take all steps necessary to~~
11 ~~notify the owners))~~ purchasers of the affected lands either by
12 transmitting notice through the appropriate county assessor's office or
13 such other steps as might reasonably give actual notice to the
14 ~~((owners))~~ purchasers.

15 **Sec. 12.** RCW 58.19.940 and 1973 1st ex.s. c 12 s 35 are each
16 amended to read as follows:

17 This chapter may be cited as the Land Development Act ~~((of 1973))~~.

18 NEW SECTION. **Sec. 13.** The following acts or parts of acts are
19 each repealed:

- 20 (1) RCW 58.19.040 and 1973 1st ex.s. c 12 s 4;
- 21 (2) RCW 58.19.050 and 1973 1st ex.s. c 12 s 5;
- 22 (3) RCW 58.19.060 and 1973 1st ex.s. c 12 s 6;
- 23 (4) RCW 58.19.070 and 1973 1st ex.s. c 12 s 7;
- 24 (5) RCW 58.19.080 and 1973 1st ex.s. c 12 s 8;
- 25 (6) RCW 58.19.090 and 1973 1st ex.s. c 12 s 9;
- 26 (7) RCW 58.19.100 and 1973 1st ex.s. c 12 s 10;
- 27 (8) RCW 58.19.110 and 1973 1st ex.s. c 12 s 11;

- 1 (9) RCW 58.19.150 and 1973 1st ex.s. c 12 s 15;
2 (10) RCW 58.19.160 and 1973 1st ex.s. c 12 s 16;
3 (11) RCW 58.19.170 and 1973 1st ex.s. c 12 s 17;
4 (12) RCW 58.19.200 and 1973 1st ex.s. c 12 s 20;
5 (13) RCW 58.19.210 and 1973 1st ex.s. c 12 s 21;
6 (14) RCW 58.19.220 and 1973 1st ex.s. c 12 s 22;
7 (15) RCW 58.19.230 and 1973 1st ex.s. c 12 s 23;
8 (16) RCW 58.19.240 and 1973 1st ex.s. c 12 s 24;
9 (17) RCW 58.19.250 and 1973 1st ex.s. c 12 s 25;
10 (18) RCW 58.19.260 and 1973 1st ex.s. c 12 s 26;
11 (19) RCW 58.19.290 and 1973 1st ex.s. c 12 s 29;
12 (20) RCW 58.19.900 and 1973 1st ex.s. c 12 s 31;
13 (21) RCW 58.19.910 and 1973 1st ex.s. c 12 s 32; and
14 (22) RCW 58.19.930 and 1973 1st ex.s. c 12 s 34.

15 NEW SECTION. **Sec. 14.** If any provision of this act or its
16 application to any person or circumstances is held invalid, the
17 remainder of the act or the application of the provision to other
18 persons or circumstances is not affected.

Passed the House March 9, 1992.
Passed the Senate March 3, 1992.
Approved by the Governor April 2, 1992, with the exception of
certain items which were vetoed.
Filed in Office of Secretary of State April 2, 1992.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 3, Engrossed Substitute House Bill No. 1495 entitled:

"AN ACT Relating to the protection of consumers in the sale of lands."

Section 3 of Engrossed Substitute House Bill No. 1495 provides conditions under which developers are exempt from complying with the consumer protections afforded under the land development act. Section 3(16) exempts from regulation certain developments in cities and counties with comprehensive land use plans and development regulations under the Growth Management Act. It is inappropriate to replace a consumer protection law with an environmental protection law. This provides an opportunity for unscrupulous developers to circumvent the entire chapter just because the property being sold is located in a county with a comprehensive plan. Additional unacceptable opportunities for circumventing the provisions of this chapter exist in section 3(15).

For these reasons, I have vetoed section 3 of Engrossed Substitute House Bill No. 1495.

With the exception of section 3, Engrossed Substitute House Bill No. 1495 is approved."