

**Chapter 5.40 RCW**  
**PROOF—GENERAL PROVISIONS**

**Sections**

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*Public documents, records and publications: Title 40 RCW.*

*Stolen property as evidence: RCW 9.54.130.*

*Tampering with physical evidence: RCW 9A.72.150.*

**RCW 5.40.010 Pleadings do not constitute proof.** Pleadings sworn to by either party in any case shall not, on the trial, be deemed proof of the facts alleged therein, nor require other or greater proof on the part of the adverse party. [Code 1881 § 741; 1877 p 151 § 746; 1854 p 219 § 484; RRS § 283.]

**RCW 5.40.020 Written finding of presumed death as prima facie evidence.** A written finding of presumed death, made by the secretary of war, the secretary of the navy, or other officer or employee of the United States authorized to make such finding, pursuant to the federal missing persons act (56 Stat. 143, 1092, and P.L. 408, Ch. 371, 2d Sess. 78th Cong.; U.S.C. App. Supp. 1001-17), as now or hereafter amended, or a duly certified copy of such finding, shall be received in any court, office, or other place in this state as prima facie evidence of the death of the person therein found to be dead, and the date, circumstances, and place of his or her disappearance. [2011 c 336 § 136; 1945 c 101 § 1; Rem. Supp. 1945 § 1257-1.]

**Severability—1945 c 101:** "If any provision of this act or the application thereof to any person or circumstance be held invalid, such invalidity shall not affect any other provision or application of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable." [1945 c 101 § 4.] This applies to RCW 5.40.020 through 5.40.040.

**RCW 5.40.030 Proof of missing in action, capture by enemy, etc.** An official written report or record, or duly certified copy thereof, that a person is missing, missing in action, interned in a neutral country, or beleaguered, besieged or captured by an enemy, or is dead, or is alive, made by any officer or employee of the United States authorized by the act referred to in RCW 5.40.020 or by any other law of the United States to make same, shall be received in any court, office or other place in this state as prima facie evidence that such

person is missing, missing in action, interned in a neutral country, or beleaguered, besieged or captured by an enemy, or is dead, or is alive, as the case may be. [1945 c 101 § 2; Rem. Supp. 1945 § 1257-2.]

**RCW 5.40.040 Proof of authenticity of signature to report or of certification.** For the purposes of RCW 5.40.020 and 5.40.030 any finding, report or record, or duly certified copy thereof, purporting to have been signed by such an officer or employee of the United States as is described in said sections, shall prima facie be deemed to have been signed and issued by such an officer or employee pursuant to law, and the person signing same shall prima facie be deemed to have acted within the scope of his or her authority. If a copy purports to have been certified by a person authorized by law to certify the same, such certified copy shall be prima facie evidence of his or her authority so to certify. [2011 c 336 § 137; 1945 c 101 § 3; Rem. Supp. 1945 § 1257-3.]

**RCW 5.40.050 Breach of duty—Evidence of negligence—Negligence per se.** A breach of a duty imposed by statute, ordinance, or administrative rule shall not be considered negligence per se, but may be considered by the trier of fact as evidence of negligence; however, any breach of duty as provided by statute, ordinance, or administrative rule relating to: (1) Electrical fire safety, (2) the use of smoke alarms, (3) sterilization of needles and instruments used by persons engaged in the practice of body art, body piercing, tattooing, or electrology, or other precaution against the spread of disease, as required under RCW 70.54.350, or (4) driving while under the influence of intoxicating liquor or any drug, shall be considered negligence per se. [2009 c 412 § 20; 2001 c 194 § 5; 1986 c 305 § 901.]

**Effective date—2009 c 412 §§ 1-21:** See RCW 18.300.901.

**Short title—Implementation—2009 c 412:** See RCW 18.300.900 and 18.300.902.

**Preamble—Report to legislature—Applicability—Severability—1986 c 305:** See notes following RCW 4.16.160.

*Definition of body art, body piercing, and tattooing: RCW 18.300.010.*

**RCW 5.40.060 Defense to personal injury or wrongful death action—Intoxicating liquor or any drug.** (1) Except as provided in subsection (2) of this section, it is a complete defense to an action for damages for personal injury or wrongful death that the person injured or killed was under the influence of intoxicating liquor or any drug at the time of the occurrence causing the injury or death and that such condition was a proximate cause of the injury or death and the trier of fact finds such person to have been more than fifty percent at fault. The standard for determining whether a person was under the influence of intoxicating liquor or drugs shall be the same standard established for criminal convictions under RCW 46.61.502, and

evidence that a person was under the influence of intoxicating liquor or drugs under the standard established by RCW 46.61.502 shall be conclusive proof that such person was under the influence of intoxicating liquor or drugs.

(2) In an action for damages for personal injury or wrongful death that is brought against the driver of a motor vehicle who was under the influence of intoxicating liquor or any drug at the time of the occurrence causing the injury or death and whose condition was a proximate cause of the injury or death, subsection (1) of this section does not create a defense against the action notwithstanding that the person injured or killed was also under the influence so long as such person's condition was not a proximate cause of the occurrence causing the injury or death. [1994 c 275 § 30; 1987 c 212 § 1001; 1986 c 305 § 902.]

**Retroactive application—1994 c 275 § 30:** "Section 30 of this act is remedial in nature and shall apply retroactively." [1994 c 275 § 31.]

**Short title—Effective date—1994 c 275:** See notes following RCW 46.04.015.

**Preamble—Report to legislature—Applicability—Severability—1986 c 305:** See notes following RCW 4.16.160.