
SECOND SUBSTITUTE HOUSE BILL 2530

State of Washington

64th Legislature

2016 Regular Session

By House Appropriations (originally sponsored by Representatives Orwall, McCabe, Appleton, Wylie, Tarleton, Senn, McBride, Kagi, Ryu, Hudgins, S. Hunt, Gregerson, Reykdal, Farrell, Pollet, Ortiz-Self, Harris, Bergquist, Lytton, Kochmar, Blake, Cody, Stambaugh, Wilson, Jinkins, Kuderer, Muri, Van De Wege, Frame, Hargrove, Ormsby, Sells, Pettigrew, and Stanford)

READ FIRST TIME 02/09/16.

1 AN ACT Relating to protecting victims of sex crimes; amending RCW
2 36.27.020 and 82.32.145; reenacting and amending RCW 42.56.240 and
3 43.79A.040; adding new sections to chapter 43.43 RCW; adding a new
4 section to chapter 35.21 RCW; adding a new section to chapter 36.28
5 RCW; adding a new section to chapter 70.41 RCW; adding a new section
6 to chapter 43.31 RCW; adding a new chapter to Title 82 RCW; creating
7 a new section; prescribing penalties; providing an effective date;
8 and providing an expiration date.

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

10 **PART I - TRACKING AND TESTING OF SEXUAL ASSAULT KITS**

11 NEW SECTION. **Sec. 1.** The legislature recognizes the deep pain
12 and suffering experienced by victims of sexual assault. Sexual
13 assault is an extreme violation of a person's body and sense of self
14 and safety. Sexual violence is a pervasive social problem. National
15 studies indicate that approximately one in four women will be
16 sexually assaulted in their lifetimes. Survivors often turn to
17 hospitals and local law enforcement for help, and many volunteer to
18 have professionals collect a sexual assault kit to preserve physical
19 evidence from their bodies. The process of collecting a sexual
20 assault kit is extremely invasive and difficult.

1 The legislature finds that, when forensic analysis is completed,
2 the biological evidence contained inside sexual assault kits can be
3 an incredibly powerful tool for law enforcement to solve and prevent
4 crime. Forensic analysis of all sexual assault kits sends a message
5 to survivors that they matter. It sends a message to perpetrators
6 that they will be held accountable for their crimes. The legislature
7 is committed to bringing healing and justice to survivors of sexual
8 assault.

9 The legislature recognizes the laudable and successful efforts of
10 law enforcement in the utilization of forensic analysis of sexual
11 assault kits in the investigation and prosecution of crimes in
12 Washington state. In 2015, the legislature enhanced utilization of
13 this tool by requiring the preservation and forensic analysis of
14 sexual assault kits. The legislature intends to continue building on
15 its efforts through the establishment of the statewide sexual assault
16 kit tracking system. The system will be designed to track all sexual
17 assault kits in Washington state, regardless of when they were
18 collected, in order to further empower survivors with information,
19 assist law enforcement with investigations and crime prevention, and
20 create transparency and foster public trust.

21 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.43
22 RCW to read as follows:

23 (1) The Washington state patrol shall create and operate a
24 statewide sexual assault kit tracking system. The Washington state
25 patrol may contract with state or nonstate entities including, but
26 not limited to, private software and technology providers, for the
27 creation, operation, and maintenance of the system.

28 (2) The statewide sexual assault kit tracking system must:

29 (a) Track the location and status of sexual assault kits
30 throughout the criminal justice process, including the initial
31 collection in examinations performed at medical facilities, receipt
32 and storage at law enforcement agencies, receipt and analysis at
33 forensic laboratories, and storage and any destruction after
34 completion of analysis;

35 (b) Allow medical facilities performing sexual assault forensic
36 examinations, law enforcement agencies, prosecutors, the Washington
37 state patrol bureau of forensic laboratory services, and other
38 entities in the custody of sexual assault kits to update and track
39 the status and location of sexual assault kits;

1 (c) Allow victims of sexual assault to anonymously track or
2 receive updates regarding the status of their sexual assault kits;
3 and

4 (d) Use electronic technology or technologies allowing continuous
5 access.

6 (3) The Washington state patrol may use a phased implementation
7 process in order to launch the system and facilitate entry and use of
8 the system for required participants. The Washington state patrol may
9 phase initial participation according to region, volume, or other
10 appropriate classifications. All entities in the custody of sexual
11 assault kits shall fully participate in the system no later than June
12 1, 2018.

13 (4) The Washington state patrol must submit a quarterly report on
14 the statewide sexual assault kit tracking system to the joint
15 legislative task force on sexual assault forensic examination best
16 practices, the appropriate committees of the legislature, and the
17 governor. The Washington state patrol may publish the current
18 quarterly report on its web site. The first quarterly report is due
19 on July 31, 2017, and subsequent quarterly reports are due on October
20 31st, January 31st, April 30th, and July 31st of each year. The
21 report must include the following:

22 (a) The total number of sexual assault kits in the system
23 statewide and by jurisdiction;

24 (b) The total and quarterly number of sexual assault kits where
25 forensic analysis has been completed statewide and by jurisdiction;

26 (c) The number of sexual assault kits added to the system in the
27 quarter statewide and by jurisdiction;

28 (d) The total and quarterly number of sexual assault kits where
29 forensic analysis has been requested but not completed statewide and
30 by jurisdiction;

31 (e) The average and median length of time for sexual assault kits
32 to be submitted for forensic analysis after being added to the
33 system, including separate sets of data for all sexual assault kits
34 in the system statewide and by jurisdiction and for sexual assault
35 kits added to the system in the quarter statewide and by
36 jurisdiction;

37 (f) The average and median length of time for forensic analysis
38 to be completed on sexual assault kits after being submitted for
39 analysis, including separate sets of data for all sexual assault kits
40 in the system statewide and by jurisdiction and for sexual assault

1 kits added to the system in the quarter statewide and by
2 jurisdiction;

3 (g) The total and quarterly number of sexual assault kits
4 destroyed or removed from the system statewide and by jurisdiction;

5 (h) The total number of sexual assault kits, statewide and by
6 jurisdiction, where forensic analysis has not been completed and six
7 months or more have passed since those sexual assault kits were added
8 to the system; and

9 (i) The total number of sexual assault kits, statewide and by
10 jurisdiction, where forensic analysis has not been completed and one
11 year or more has passed since those sexual assault kits were added to
12 the system.

13 (5) For the purpose of reports under subsection (4) of this
14 section, a sexual assault kit must be assigned to the jurisdiction
15 associated with the law enforcement agency anticipated to receive the
16 sexual assault kit or otherwise in the custody of the sexual assault
17 kit. If a participating jurisdiction receives or adds less than five
18 sexual assault kits in a quarter, then the Washington state patrol
19 shall combine the quarterly data with one or more adjacent or
20 overlapping jurisdictions to create a multijurisdictional or regional
21 report. The multijurisdictional or regional report must list the
22 included jurisdictions.

23 (6) Any public agency or entity, including its officials and
24 employees, and any hospital and its employees providing services to
25 victims of sexual assault may not be held civilly liable for damages
26 arising from any release of information or the failure to release
27 information related to the statewide sexual assault kit tracking
28 system, so long as the release was without gross negligence.

29 NEW SECTION. **Sec. 3.** A new section is added to chapter 35.21
30 RCW to read as follows:

31 Local law enforcement agencies shall participate in the statewide
32 sexual assault kit tracking system established in section 2 of this
33 act for the purpose of tracking the status of all sexual assault kits
34 in the custody of local law enforcement agencies and other entities
35 contracting with local law enforcement agencies. Local law
36 enforcement agencies shall begin full participation in the system
37 according to the implementation schedule established by the
38 Washington state patrol.

1 NEW SECTION. **Sec. 4.** A new section is added to chapter 36.28
2 RCW to read as follows:

3 A sheriff and his or her deputies shall participate in the
4 statewide sexual assault kit tracking system established in section 2
5 of this act for the purpose of tracking the status of all sexual
6 assault kits in the custody of the department and other entities
7 contracting with the department. A sheriff shall begin full
8 participation in the system according to the implementation schedule
9 established by the Washington state patrol.

10 NEW SECTION. **Sec. 5.** A new section is added to chapter 43.43
11 RCW to read as follows:

12 The Washington state patrol bureau of forensic laboratory
13 services shall participate in the statewide sexual assault kit
14 tracking system established in section 2 of this act for the purpose
15 of tracking the status of all sexual assault kits in the custody of
16 the Washington state patrol and other entities contracting with the
17 Washington state patrol. The Washington state patrol bureau of
18 forensic laboratory services shall begin full participation in the
19 system according to the implementation schedule established by the
20 Washington state patrol.

21 NEW SECTION. **Sec. 6.** A new section is added to chapter 70.41
22 RCW to read as follows:

23 Hospitals licensed under this chapter shall participate in the
24 statewide sexual assault kit tracking system established in section 2
25 of this act for the purpose of tracking the status of all sexual
26 assault kits collected by or in the custody of hospitals and other
27 entities contracting with hospitals. Hospitals shall begin full
28 participation in the system according to the implementation schedule
29 established by the Washington state patrol.

30 **Sec. 7.** RCW 36.27.020 and 2012 1st sp.s. c 5 s 2 are each
31 amended to read as follows:

32 The prosecuting attorney shall:

33 (1) Be legal adviser of the legislative authority, giving it his
34 or her written opinion when required by the legislative authority or
35 the chairperson thereof touching any subject which the legislative
36 authority may be called or required to act upon relating to the
37 management of county affairs;

1 (2) Be legal adviser to all county and precinct officers and
2 school directors in all matters relating to their official business,
3 and when required draw up all instruments of an official nature for
4 the use of said officers;

5 (3) Appear for and represent the state, county, and all school
6 districts subject to the supervisory control and direction of the
7 attorney general in all criminal and civil proceedings in which the
8 state or the county or any school district in the county may be a
9 party;

10 (4) Prosecute all criminal and civil actions in which the state
11 or the county may be a party, defend all suits brought against the
12 state or the county, and prosecute actions upon forfeited
13 recognizances and bonds and actions for the recovery of debts, fines,
14 penalties, and forfeitures accruing to the state or the county;

15 (5) Attend and appear before and give advice to the grand jury
16 when cases are presented to it for consideration and draw all
17 indictments when required by the grand jury;

18 (6) Institute and prosecute proceedings before magistrates for
19 the arrest of persons charged with or reasonably suspected of
20 felonies when the prosecuting attorney has information that any such
21 offense has been committed and the prosecuting attorney shall for
22 that purpose attend when required by them if the prosecuting attorney
23 is not then in attendance upon the superior court;

24 (7) Carefully tax all cost bills in criminal cases and take care
25 that no useless witness fees are taxed as part of the costs and that
26 the officers authorized to execute process tax no other or greater
27 fees than the fees allowed by law;

28 (8) Receive all cost bills in criminal cases before district
29 judges at the trial of which the prosecuting attorney was not
30 present, before they are lodged with the legislative authority for
31 payment, whereupon the prosecuting attorney may retax the same and
32 the prosecuting attorney must do so if the legislative authority
33 deems any bill exorbitant or improperly taxed;

34 (9) Present all violations of the election laws which may come to
35 the prosecuting attorney's knowledge to the special consideration of
36 the proper jury;

37 (10) Examine once in each year the official bonds of all county
38 and precinct officers and report to the legislative authority any
39 defect in the bonds of any such officer;

1 (11) Seek to reform and improve the administration of criminal
2 justice and stimulate efforts to remedy inadequacies or injustice in
3 substantive or procedural law;

4 (12) Participate in the statewide sexual assault kit tracking
5 system established in section 2 of this act for the purpose of
6 tracking the status of all sexual assault kits connected to criminal
7 investigations and prosecutions within the county. Prosecuting
8 attorneys shall begin full participation in the system according to
9 the implementation schedule established by the Washington state
10 patrol.

11 **Sec. 8.** RCW 42.56.240 and 2015 c 224 s 3 and 2015 c 91 s 1 are
12 each reenacted and amended to read as follows:

13 The following investigative, law enforcement, and crime victim
14 information is exempt from public inspection and copying under this
15 chapter:

16 (1) Specific intelligence information and specific investigative
17 records compiled by investigative, law enforcement, and penology
18 agencies, and state agencies vested with the responsibility to
19 discipline members of any profession, the nondisclosure of which is
20 essential to effective law enforcement or for the protection of any
21 person's right to privacy;

22 (2) Information revealing the identity of persons who are
23 witnesses to or victims of crime or who file complaints with
24 investigative, law enforcement, or penology agencies, other than the
25 commission, if disclosure would endanger any person's life, physical
26 safety, or property. If at the time a complaint is filed the
27 complainant, victim, or witness indicates a desire for disclosure or
28 nondisclosure, such desire shall govern. However, all complaints
29 filed with the commission about any elected official or candidate for
30 public office must be made in writing and signed by the complainant
31 under oath;

32 (3) Any records of investigative reports prepared by any state,
33 county, municipal, or other law enforcement agency pertaining to sex
34 offenses contained in chapter 9A.44 RCW or sexually violent offenses
35 as defined in RCW 71.09.020, which have been transferred to the
36 Washington association of sheriffs and police chiefs for permanent
37 electronic retention and retrieval pursuant to RCW 40.14.070(2)(b);

1 (4) License applications under RCW 9.41.070; copies of license
2 applications or information on the applications may be released to
3 law enforcement or corrections agencies;

4 (5) Information revealing the identity of child victims of sexual
5 assault who are under age eighteen. Identifying information means the
6 child victim's name, address, location, photograph, and in cases in
7 which the child victim is a relative or stepchild of the alleged
8 perpetrator, identification of the relationship between the child and
9 the alleged perpetrator;

10 (6) Information contained in a local or regionally maintained
11 gang database as well as the statewide gang database referenced in
12 RCW 43.43.762;

13 (7) Data from the electronic sales tracking system established in
14 RCW 69.43.165;

15 (8) Information submitted to the statewide unified sex offender
16 notification and registration program under RCW 36.28A.040(6) by a
17 person for the purpose of receiving notification regarding a
18 registered sex offender, including the person's name, residential
19 address, and email address;

20 (9) Personally identifying information collected by law
21 enforcement agencies pursuant to local security alarm system programs
22 and vacation crime watch programs. Nothing in this subsection shall
23 be interpreted so as to prohibit the legal owner of a residence or
24 business from accessing information regarding his or her residence or
25 business;

26 (10) The felony firearm offense conviction database of felony
27 firearm offenders established in RCW 43.43.822;

28 (11) The identity of a state employee or officer who has in good
29 faith filed a complaint with an ethics board, as provided in RCW
30 42.52.410, or who has in good faith reported improper governmental
31 action, as defined in RCW 42.40.020, to the auditor or other public
32 official, as defined in RCW 42.40.020;

33 (12) The following security threat group information collected
34 and maintained by the department of corrections pursuant to RCW
35 72.09.745: (a) Information that could lead to the identification of a
36 person's security threat group status, affiliation, or activities;
37 (b) information that reveals specific security threats associated
38 with the operation and activities of security threat groups; and (c)
39 information that identifies the number of security threat group
40 members, affiliates, or associates; ((and))

1 (13) The global positioning system data that would indicate the
2 location of the residence of an employee or worker of a criminal
3 justice agency as defined in RCW 10.97.030; and

4 (14) Any personally identifiable records and information
5 contained within the statewide sexual assault kit tracking system
6 established in section 2 of this act. Personally identifiable records
7 and information includes: (a) A person's name, initials, address,
8 location, phone number, email address, date of birth, social security
9 number, driver's license number, or emergency and familial contact
10 information; and (b) any barcode or other identifier associated with
11 a specific sexual assault kit or its contents.

12 **PART II - ACCEPTING DONATIONS FOR PROTECTING VICTIMS**

13 NEW SECTION. **Sec. 9.** A new section is added to chapter 43.31
14 RCW to read as follows:

15 (1) The Washington sexual assault kit program is created within
16 the department for the purpose of accepting private funds conducting
17 forensic analysis of sexual assault kits in the possession of law
18 enforcement agencies but not submitted for analysis as of July 24,
19 2015. The director may accept gifts, grants, donations, or moneys
20 from any source for deposit in the Washington sexual assault kit
21 account created under subsection (2) of this section.

22 (2) The Washington sexual assault kit account is created in the
23 custody of the state treasurer. Funds deposited in the Washington
24 sexual assault kit account may be used for the Washington sexual
25 assault kit program established under this section. The Washington
26 sexual assault kit account is subject to allotment procedures under
27 chapter 43.88 RCW, but an appropriation is not required for
28 expenditures.

29 (3) Funds deposited in the Washington sexual assault kit account
30 must be transferred and used exclusively for the following:

31 (a) Eighty-five percent of the funds for the Washington state
32 patrol bureau of forensic laboratory services for the purpose of
33 conducting forensic analysis of sexual assault kits in the possession
34 of law enforcement agencies but not submitted for forensic analysis
35 as of July 24, 2015; and

36 (b) Fifteen percent of the funds for the office of crime victims
37 advocacy in the department for the purpose of funding grants for
38 sexual assault nurse examiner services and training.

1 (4) This section expires June 30, 2022.

2 **PART III - SEXUALLY ORIENTED BUSINESS FEE**

3 NEW SECTION. **Sec. 10.** The legislature finds the state has a
4 substantial interest in protecting and preserving the quality of life
5 for its communities against the adverse secondary effects of live
6 adult entertainment. The legislature recognizes local governments
7 have an important role in regulating businesses engaged in live adult
8 entertainment, including reasonable location and licensing
9 restrictions, for the purpose of minimizing adverse secondary
10 effects. However, the adoption of a statewide fee can provide further
11 assistance to the victims of crimes directly and indirectly resulting
12 from these businesses.

13 The legislature finds that in Washington state, sexually oriented
14 businesses featuring live adult entertainment earn more than twenty-
15 five million dollars per year in revenue. Of the millions of female
16 victims of human trafficking, seventy percent are trafficked into the
17 commercial sex industry, including being recruited to work as
18 hostesses, waitresses, or exotic dancers in sexually oriented
19 businesses featuring adult entertainment. Exotic dancers are more
20 likely to be victims of sexual violence, including sexual assault and
21 rape. The office of crime victims advocacy plays a critical role in
22 providing support to victims of both human trafficking and sexual
23 assault.

24 The legislature hereby establishes the sexually oriented business
25 fee to fund policies and programming for investigating sex crimes and
26 supporting trafficking and sex crime victims in Washington. The
27 sexually oriented business fee does not regulate or prohibit any kind
28 of speech. The legislature's interest in preventing harmful secondary
29 effects is not related to the suppression of expression in nude
30 dancing. Citizens are still free to engage in such forms of
31 expression to the extent it complies with other legally established
32 time, place, and manner restrictions. Instead, the sexually oriented
33 business fee offsets the impacts of crime and the other deleterious
34 effects caused by the presence of sexually oriented businesses in
35 Washington.

36 NEW SECTION. **Sec. 11.** (1) There is levied and collected a fee
37 upon the admission to a sexually oriented live adult entertainment

1 establishment, in an amount equal to four dollars. The fee imposed
2 under this section must be paid by the patron to the operator of the
3 establishment. Each operator must collect from the patron the full
4 amount of the fee in respect to each admission and without respect to
5 any cover charges that the operator may charge. The fee collected
6 from the patron by the operator must be paid to the department of
7 revenue in accordance with RCW 82.32.045.

8 (2) All other applicable provisions of chapter 82.32 RCW have
9 full force and application with respect to the fee imposed under this
10 section. The department of revenue must administer this section.

11 (3) Receipts from the fee imposed in this section must be
12 deposited into the Washington sexually oriented business fee account
13 established in section 13 of this act.

14 (4) For the purposes of this section, the following definitions
15 apply:

16 (a) "Adult entertainment" means:

17 (i) Any live exhibition, performance, or dance of any type
18 conducted by an individual who is unclothed or in such costume,
19 attire, or clothing as to expose any portion of the female breast
20 below the top of the areola or any portion of the pubic region, anus,
21 buttocks, vulva, or genitals;

22 (ii) Any performance of the following acts or of acts which
23 simulate, or use artificial devices or inanimate objects which
24 depict:

25 (A) Sexual intercourse, masturbation, sodomy, bestiality, oral
26 copulation, flagellation, or any sexual acts that are prohibited by
27 law;

28 (B) The touching, caressing, or fondling of the breast, buttocks,
29 anus, or genitals; or

30 (C) The displaying of the pubic hair, anus, vulva, or genitals.

31 (b) "Cover charge" means a charge, regardless of its label, to
32 enter a sexually oriented live adult entertainment establishment or
33 added to the patron's bill by an operator of an establishment or
34 otherwise collected after entrance to the establishment, and the
35 patron is provided the opportunity to enter and view adult
36 entertainment in exchange for payment of the charge.

37 (c) "Operator" means any person who operates, conducts, or
38 maintains a sexually oriented adult entertainment establishment.

39 (d) "Patron" means any individual who is admitted to a sexually
40 oriented live adult entertainment establishment.

1 (e) "Person" means any individual, partnership, corporation,
2 trust, incorporated or unincorporated association, marital community,
3 joint venture, governmental entity, or other entity or group of
4 persons, however organized.

5 (f) "Sexually oriented live adult entertainment establishment"
6 means an adult cabaret, erotic dance venue, strip club, or any other
7 commercial premises where live adult entertainment is provided during
8 at least thirty days within a calendar year or a proportional number
9 of days if the establishment was not open for a full calendar year.

10 NEW SECTION. **Sec. 12.** (1) The fees required to be collected by
11 the operator under section 11 of this act are deemed to be held in
12 trust by the operator until paid to the department of revenue, and
13 any operator who appropriates or converts the fees collected to his
14 or her own use or to any use other than the payment of the fees to
15 the extent that the money required to be collected is not available
16 for payment on the due date as prescribed in this chapter is guilty
17 of a gross misdemeanor.

18 (2) If any operator fails to collect the fees imposed under
19 section 11 of this act or, having collected the fees, fails to pay
20 the collected fees to the department of revenue in the manner
21 prescribed in section 11 of this act, whether such failure is the
22 result of his or her own acts or the result of acts or conditions
23 beyond the operator's control, the operator is nevertheless,
24 personally liable to the state for the amount of the fees.

25 (3) The amount of the fees, until paid by the patron to the
26 operator or to the department of revenue, constitutes a debt from the
27 patron to the operator. Any operator who fails or refuses to collect
28 the fees as required with intent to violate the provisions of this
29 chapter or to gain some advantage or benefit, either direct or
30 indirect, and any patron who refuses to pay any fees due under this
31 chapter is guilty of a misdemeanor.

32 NEW SECTION. **Sec. 13.** (1) The Washington sexually oriented
33 business fee account is created in the state treasury. All revenues
34 from the sexually oriented live adult entertainment business
35 admission fee established in section 11 of this act must be deposited
36 into the account. Moneys in the account may only be spent after
37 appropriation.

1 (2) As a first priority, the legislature must appropriate from
2 the account for the creation, maintenance, and operation of the
3 statewide sexual assault kit tracking system as established in
4 section 2 of this act.

5 (3) It is the intent of the legislature to additionally provide
6 resources for the priorities as enumerated in this subsection. To the
7 extent that moneys are available in the Washington sexually oriented
8 business fee account after appropriation for purposes of subsection
9 (2) of this section, appropriations may be made for the following,
10 with priority according to their order:

11 (a) The Harborview center for sexual assault and traumatic stress
12 for the sole purpose of conducting statewide sexual assault nurse
13 examiner trainings for health care professionals in order to
14 facilitate the provision of forensic sexual assault examination
15 services;

16 (b) The office of crime victims advocacy in the department of
17 commerce for the purposes of providing services and support,
18 including educational and vocational training opportunities, to
19 victims of human trafficking;

20 (c) The Washington state patrol bureau of forensic laboratory
21 services for the purpose of conducting forensic analysis of sexual
22 assault kits in the possession of law enforcement agencies but not
23 submitted for forensic analysis as of July 24, 2015; or

24 (d) The Washington state patrol bureau of forensic laboratory
25 services for the purpose of conducting forensic analysis of sexual
26 assault kits, regardless of the date of submission.

27 **Sec. 14.** RCW 82.32.145 and 2015 c 188 s 121 are each amended to
28 read as follows:

29 (1) Whenever the department has issued a warrant under RCW
30 82.32.210 for the collection of unpaid trust fund taxes from a
31 limited liability business entity and that business entity has been
32 terminated, dissolved, or abandoned, or is insolvent, the department
33 may pursue collection of the entity's unpaid trust fund taxes,
34 including penalties and interest on those taxes, against any or all
35 of the responsible individuals. For purposes of this subsection,
36 "insolvent" means the condition that results when the sum of the
37 entity's debts exceeds the fair market value of its assets. The
38 department may presume that an entity is insolvent if the entity

1 refuses to disclose to the department the nature of its assets and
2 liabilities.

3 (2) Personal liability under this section may be imposed for
4 state and local trust fund taxes.

5 (3)(a) For a responsible individual who is the current or a
6 former chief executive or chief financial officer, liability under
7 this section applies regardless of fault or whether the individual
8 was or should have been aware of the unpaid trust fund tax liability
9 of the limited liability business entity.

10 (b) For any other responsible individual, liability under this
11 section applies only if he or she willfully fails to pay or to cause
12 to be paid to the department the trust fund taxes due from the
13 limited liability business entity.

14 (4)(a) Except as provided in this subsection (4)(a), a
15 responsible individual who is the current or a former chief executive
16 or chief financial officer is liable under this section only for
17 trust fund tax liability accrued during the period that he or she was
18 the chief executive or chief financial officer. However, if the
19 responsible individual had the responsibility or duty to remit
20 payment of the limited liability business entity's trust fund taxes
21 to the department during any period of time that the person was not
22 the chief executive or chief financial officer, that individual is
23 also liable for trust fund tax liability that became due during the
24 period that he or she had the duty to remit payment of the limited
25 liability business entity's taxes to the department but was not the
26 chief executive or chief financial officer.

27 (b) All other responsible individuals are liable under this
28 section only for trust fund tax liability that became due during the
29 period he or she had the responsibility or duty to remit payment of
30 the limited liability business entity's taxes to the department.

31 (5) Persons described in subsection (3)(b) of this section are
32 exempt from liability under this section in situations where
33 nonpayment of the limited liability business entity's trust fund
34 taxes is due to reasons beyond their control as determined by the
35 department by rule.

36 (6) Any person having been issued a notice of assessment under
37 this section is entitled to the appeal procedures under RCW
38 82.32.160, 82.32.170, 82.32.180, 82.32.190, and 82.32.200.

1 (7) This section does not relieve the limited liability business
2 entity of its trust fund tax liability or otherwise impair other tax
3 collection remedies afforded by law.

4 (8) Collection authority and procedures prescribed in this
5 chapter apply to collections under this section.

6 (9) The definitions in this subsection apply throughout this
7 section unless the context clearly requires otherwise.

8 (a) "Chief executive" means: The president of a corporation; or
9 for other entities or organizations other than corporations or if the
10 corporation does not have a president as one of its officers, the
11 highest ranking executive manager or administrator in charge of the
12 management of the company or organization.

13 (b) "Chief financial officer" means: The treasurer of a
14 corporation; or for entities or organizations other than corporations
15 or if a corporation does not have a treasurer as one of its officers,
16 the highest senior manager who is responsible for overseeing the
17 financial activities of the entire company or organization.

18 (c) "Limited liability business entity" means a type of business
19 entity that generally shields its owners from personal liability for
20 the debts, obligations, and liabilities of the entity, or a business
21 entity that is managed or owned in whole or in part by an entity that
22 generally shields its owners from personal liability for the debts,
23 obligations, and liabilities of the entity. Limited liability
24 business entities include corporations, limited liability companies,
25 limited liability partnerships, trusts, general partnerships and
26 joint ventures in which one or more of the partners or parties are
27 also limited liability business entities, and limited partnerships in
28 which one or more of the general partners are also limited liability
29 business entities.

30 (d) "Manager" has the same meaning as in RCW 25.15.006.

31 (e) "Member" has the same meaning as in RCW 25.15.006, except
32 that the term only includes members of member-managed limited
33 liability companies.

34 (f) "Officer" means any officer or assistant officer of a
35 corporation, including the president, vice president, secretary, and
36 treasurer.

37 (g)(i) "Responsible individual" includes any current or former
38 officer, manager, member, partner, or trustee of a limited liability
39 business entity with an unpaid tax warrant issued by the department.

1 (ii) "Responsible individual" also includes any current or former
2 employee or other individual, but only if the individual had the
3 responsibility or duty to remit payment of the limited liability
4 business entity's unpaid trust fund tax liability reflected in a tax
5 warrant issued by the department.

6 (iii) Whenever any taxpayer has one or more limited liability
7 business entities as a member, manager, or partner, "responsible
8 individual" also includes any current and former officers, members,
9 or managers of the limited liability business entity or entities or
10 of any other limited liability business entity involved directly in
11 the management of the taxpayer. For purposes of this subsection
12 (9)(g)(iii), "taxpayer" means a limited liability business entity
13 with an unpaid tax warrant issued against it by the department.

14 (h) "Trust fund taxes" means taxes collected from purchasers and
15 held in trust under RCW 82.08.050, including taxes imposed under RCW
16 82.08.020 and 82.08.150, and the sexually oriented business fees
17 collected from patrons and held in trust under section 12 of this
18 act.

19 (i) "Willfully fails to pay or to cause to be paid" means that
20 the failure was the result of an intentional, conscious, and
21 voluntary course of action.

22 **Sec. 15.** RCW 43.79A.040 and 2013 c 251 s 5 and 2013 c 88 s 1 are
23 each reenacted and amended to read as follows:

24 (1) Money in the treasurer's trust fund may be deposited,
25 invested, and reinvested by the state treasurer in accordance with
26 RCW 43.84.080 in the same manner and to the same extent as if the
27 money were in the state treasury, and may be commingled with moneys
28 in the state treasury for cash management and cash balance purposes.

29 (2) All income received from investment of the treasurer's trust
30 fund must be set aside in an account in the treasury trust fund to be
31 known as the investment income account.

32 (3) The investment income account may be utilized for the payment
33 of purchased banking services on behalf of treasurer's trust funds
34 including, but not limited to, depository, safekeeping, and
35 disbursement functions for the state treasurer or affected state
36 agencies. The investment income account is subject in all respects to
37 chapter 43.88 RCW, but no appropriation is required for payments to
38 financial institutions. Payments must occur prior to distribution of
39 earnings set forth in subsection (4) of this section.

1 (4)(a) Monthly, the state treasurer must distribute the earnings
2 credited to the investment income account to the state general fund
3 except under (b), (c), and (d) of this subsection.

4 (b) The following accounts and funds must receive their
5 proportionate share of earnings based upon each account's or fund's
6 average daily balance for the period: The Washington promise
7 scholarship account, the Washington advanced college tuition payment
8 program account, the accessible communities account, the community
9 and technical college innovation account, the agricultural local
10 fund, the American Indian scholarship endowment fund, the foster care
11 scholarship endowment fund, the foster care endowed scholarship trust
12 fund, the contract harvesting revolving account, the Washington state
13 combined fund drive account, the commemorative works account, the
14 county enhanced 911 excise tax account, the toll collection account,
15 the developmental disabilities endowment trust fund, the energy
16 account, the fair fund, the family leave insurance account, the food
17 animal veterinarian conditional scholarship account, the fruit and
18 vegetable inspection account, the future teachers conditional
19 scholarship account, the game farm alternative account, the GET ready
20 for math and science scholarship account, the Washington global
21 health technologies and product development account, the grain
22 inspection revolving fund, the industrial insurance rainy day fund,
23 the juvenile accountability incentive account, the law enforcement
24 officers' and firefighters' plan 2 expense fund, the local tourism
25 promotion account, the multiagency permitting team account, the
26 pilotage account, the produce railcar pool account, the regional
27 transportation investment district account, the rural rehabilitation
28 account, the Washington sexual assault kit account, the stadium and
29 exhibition center account, the youth athletic facility account, the
30 self-insurance revolving fund, the children's trust fund, the
31 Washington horse racing commission Washington bred owners' bonus fund
32 and breeder awards account, the Washington horse racing commission
33 class C purse fund account, the individual development account
34 program account, the Washington horse racing commission operating
35 account, the life sciences discovery fund, the Washington state
36 heritage center account, the reduced cigarette ignition propensity
37 account, the center for childhood deafness and hearing loss account,
38 the school for the blind account, the Millersylvania park trust fund,
39 the public employees' and retirees' insurance reserve fund, and the
40 radiation perpetual maintenance fund.

1 (c) The following accounts and funds must receive eighty percent
2 of their proportionate share of earnings based upon each account's or
3 fund's average daily balance for the period: The advanced right-of-
4 way revolving fund, the advanced environmental mitigation revolving
5 account, the federal narcotics asset forfeitures account, the high
6 occupancy vehicle account, the local rail service assistance account,
7 and the miscellaneous transportation programs account.

8 (d) Any state agency that has independent authority over accounts
9 or funds not statutorily required to be held in the custody of the
10 state treasurer that deposits funds into a fund or account in the
11 custody of the state treasurer pursuant to an agreement with the
12 office of the state treasurer shall receive its proportionate share
13 of earnings based upon each account's or fund's average daily balance
14 for the period.

15 (5) In conformance with Article II, section 37 of the state
16 Constitution, no trust accounts or funds shall be allocated earnings
17 without the specific affirmative directive of this section.

18 NEW SECTION. **Sec. 16.** Sections 10 through 13 of this act
19 constitute a new chapter in Title 82 RCW.

20 NEW SECTION. **Sec. 17.** Sections 10 through 13 of this act take
21 effect October 1, 2016.

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