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**SUBSTITUTE HOUSE BILL 2679**

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**State of Washington 66th Legislature 2020 Regular Session**

**By** House Appropriations (originally sponsored by Representatives Robinson, Macri, Cody, Chopp, Tarleton, Frame, Stonier, Ormsby, Riccelli, Tharinger, Ortiz-Self, Davis, Pollet, and Kloba)

AN ACT Relating to funding for individuals who are not eligible for federal insurance subsidies and for foundational public health services; amending RCW 48.14.080; reenacting and amending RCW 43.84.092; adding a new section to chapter 48.43 RCW; adding a new section to chapter 43.70 RCW; adding a new chapter to Title 82 RCW; creating a new section; and providing an effective date.

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

NEW SECTION. **Sec.**  (1) The legislature finds that nonprofit health insurance carriers in the state must:

(a) Be committed to a nonprofit corporate structure;

(b) Provide individuals, businesses, and other groups with affordable and accessible health insurance; and

(c) Recognize a responsibility to contribute to the improvement of the overall health status of the residents of the jurisdictions in which they operate.

(2) The legislature further finds that access to health insurance and public services play a critical role in improving the health status of Washington residents.

NEW SECTION. **Sec.**  A new section is added to chapter 48.43 RCW to read as follows:

(1) By July 1, 2021, and annually thereafter, nonprofit health carriers must submit to the commissioner the amount of the carrier's surplus.

(2)(a) By October 1, 2021, and annually thereafter, the commissioner must determine whether a nonprofit health carrier's surplus is excessive.

(b) The surplus of a nonprofit health carrier must be determined to be excessive if the surplus is greater than six hundred percent of the nonprofit health carrier's RBC requirements, in accordance with the formula set forth in the RBC instructions.

(3) Except when a reduction in payment is permitted under subsection (4) of this section, if the commissioner determines the surplus of a nonprofit health carrier to be excessive, within ninety days of the determination the nonprofit health carrier must pay three percent of the excessive surplus to the commissioner's office for deposit into the fund.

(4)(a) Within thirty days of a determination by the commissioner that a nonprofit health carrier's surplus is excessive, a nonprofit health carrier may request a hearing by the commissioner to consider a reduction in the required amount of excessive surplus payment to the fund.

(b) The commissioner may only reduce a nonprofit health carrier's payment to the fund if the nonprofit health carrier presents clear and compelling evidence to the commissioner that the required amount of excessive surplus payment would render the nonprofit health carrier financially impaired under the laws of this state or any other state in which the nonprofit health carrier is authorized to do business.

(c) The hearing must be conducted in accordance with chapter 34.05 RCW.

(5) The commissioner may adopt rules to implement this section.

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

(a) "Excessive surplus" means the amount of a nonprofit health carrier's surplus above six hundred percent of the nonprofit health carrier's RBC requirements, as determined in subsection (2) of this section.

(b) "Fund" means the nonprofit health carrier community benefit fund created in section 9 of this act.

(c) "RBC" means risk-based capital.

(d) "RBC instructions" has the same meaning as in RCW 48.43.300.

(e) "Surplus" means the amount by which a nonprofit health carrier's assets exceed its liabilities.

NEW SECTION. **Sec.**  As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Covered health carrier" means a for-profit health carrier, as defined in RCW 48.43.005.

(2) "Depreciation deduction" means depreciation deductions, allocated to Washington pursuant to section 5 of this act, and taken pursuant to Title 26 U.S.C. Sec. 167 or 179 of the internal revenue code, as existed on the effective date of this section or such subsequent date as may be provided by the department by rule, consistent with the purposes of this act.

(3) "Tax year" means a twelve-month period from January 1st to December 31st.

NEW SECTION. **Sec.**  (1) A tax is imposed on depreciation expenses claimed by covered health carriers. The tax is three percent of all depreciation deductions, allocated to Washington pursuant to section 5 of this act, and taken pursuant to Title 26 U.S.C. Sec. 167 or 179 of the internal revenue code on the covered health carrier's annual federal tax return for the previous tax year.

(2) The tax imposed under this section is due by September 1st for the previous tax year.

(3) The tax imposed under this section is in addition to any other tax imposed in Titles 48, 82, and 84 RCW.

NEW SECTION. **Sec.**  For purposes of the tax imposed under this chapter, depreciation deductions are allocated as follows:

(1) Depreciation deductions attributable to real property are allocated to this state if the real property is located in this state or a majority of the fair market value of the real property is located in this state.

(2) Depreciation deductions from tangible personal property are allocated to this state if the property was located in this state at the time of the deduction. Depreciation deductions from tangible personal property are also allocated to this state even though the property was not located in this state at the time of the deduction if:

(a) The property was located in the state at any time during the taxable year or the immediately preceding taxable year;

(b) The taxpayer was a resident at the time of the deduction; and

(c) The taxpayer is not subject to the payment of an income or excise tax legally imposed on the depreciation deduction by another taxing jurisdiction.

(3) Depreciation deduction derived from intangible personal property are allocated to this state if the taxpayer was domiciled in this state at the time the deduction occurred.

NEW SECTION. **Sec.**  (1) A credit is allowed against the tax imposed in section 4 of this act equal to the amount of any legally imposed income or excise tax paid by the taxpayer to another taxing jurisdiction on the depreciated assets within the other taxing jurisdiction to the extent depreciated assets are included in the taxpayer's Washington capital gains. The amount of credit under this subsection may not exceed the total amount of tax due under this chapter, and there is no carryback or carryforward of any unused credits.

(2) As used in this section, "taxing jurisdiction" means a state of the United States other than the state of Washington, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision of a foreign country.

NEW SECTION. **Sec.**  All proceeds from this tax must be deposited in the nonprofit health carrier community benefit fund created in section 9 of this act.

NEW SECTION. **Sec.**  The provisions of chapter 82.32 RCW apply to this chapter.

NEW SECTION. **Sec.**  A new section is added to chapter 43.70 RCW to read as follows:

(1) The nonprofit health carrier community benefit fund is created in the state treasury. Moneys in the account may be spent only after appropriation.

(2) All receipts from nonprofit health carrier excessive surplus payments collected by the insurance commissioner pursuant to section 2 of this act and proceeds of the tax imposed pursuant to section 4 of this act and collected by the department of revenue must be deposited in the nonprofit health carrier community benefit fund.

(3) Expenditures from the nonprofit health carrier community benefit fund must be used exclusively for:

(a) Subsidies for individuals purchasing individual market insurance coverage who are not eligible for federal insurance subsidies; and

(b) Foundational public health services pursuant to RCW 43.70.515.

**Sec.**  RCW 43.84.092 and 2019 c 421 s 15, 2019 c 403 s 14, 2019 c 365 s 19, 2019 c 287 s 19, and 2019 c 95 s 6 are each reenacted and amended to read as follows:

(1) All earnings of investments of surplus balances in the state treasury shall be deposited to the treasury income account, which account is hereby established in the state treasury.

(2) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the cash management improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

(3) Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased banking services on behalf of treasury funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasury and affected state agencies. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

(4) Monthly, the state treasurer shall distribute the earnings credited to the treasury income account. The state treasurer shall credit the general fund with all the earnings credited to the treasury income account except:

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The abandoned recreational vehicle disposal account, the aeronautics account, the aircraft search and rescue account, the Alaskan Way viaduct replacement project account, the brownfield redevelopment trust fund account, the budget stabilization account, the capital vessel replacement account, the capitol building construction account, the Cedar River channel construction and operation account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the Chehalis basin account, the cleanup settlement account, the Columbia river basin water supply development account, the Columbia river basin taxable bond water supply development account, the Columbia river basin water supply revenue recovery account, the common school construction fund, the community forest trust account, the connecting Washington account, the county arterial preservation account, the county criminal justice assistance account, the deferred compensation administrative account, the deferred compensation principal account, the department of licensing services account, the department of licensing tuition recovery trust fund, the department of retirement systems expense account, the developmental disabilities community trust account, the diesel idle reduction account, the drinking water assistance account, the drinking water assistance administrative account, the early learning facilities development account, the early learning facilities revolving account, the Eastern Washington University capital projects account, the education construction fund, the education legacy trust account, the election account, the electric vehicle account, the energy freedom account, the energy recovery act account, the essential rail assistance account, The Evergreen State College capital projects account, the federal forest revolving account, the ferry bond retirement fund, the freight mobility investment account, the freight mobility multimodal account, the grade crossing protective fund, the nonprofit health carrier community benefit fund, the public health services account, the state higher education construction account, the higher education construction account, the highway bond retirement fund, the highway infrastructure account, the highway safety fund, the hospital safety net assessment fund, the industrial insurance premium refund account, the Interstate 405 and state route number 167 express toll lanes account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the marine resources stewardship trust account, the medical aid account, the mobile home park relocation fund, the money-purchase retirement savings administrative account, the money-purchase retirement savings principal account, the motor vehicle fund, the motorcycle safety education account, the multimodal transportation account, the multiuse roadway safety account, the municipal criminal justice assistance account, the natural resources deposit account, the oyster reserve land account, the pension funding stabilization account, the perpetual surveillance and maintenance account, the pollution liability insurance agency underground storage tank revolving account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3 account, the public facilities construction loan revolving account beginning July 1, 2004, the public health supplemental account, the public works assistance account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the Puget Sound Gateway facility account, the Puget Sound taxpayer accountability account, the real estate appraiser commission account, the recreational vehicle account, the regional mobility grant program account, the resource management cost account, the rural arterial trust account, the rural mobility grant program account, the rural Washington loan fund, the sexual assault prevention and response account, the site closure account, the skilled nursing facility safety net trust fund, the small city pavement and sidewalk account, the special category C account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the state patrol highway account, the state route number 520 civil penalties account, the state route number 520 corridor account, the state wildlife account, the statewide broadband account, the statewide tourism marketing account, the student achievement council tuition recovery trust fund, the supplemental pension account, the Tacoma Narrows toll bridge account, the teachers' retirement system plan 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the toll facility bond retirement account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation future funding program account, the transportation improvement account, the transportation improvement board bond retirement account, the transportation infrastructure account, the transportation partnership account, the traumatic brain injury account, the tuition recovery trust fund, the University of Washington bond retirement fund, the University of Washington building account, the voluntary cleanup account, the volunteer firefighters' and reserve officers' relief and pension principal fund, the volunteer firefighters' and reserve officers' administrative fund, the vulnerable roadway user education account, the Washington judicial retirement system account, the Washington law enforcement officers' and firefighters' system plan 1 retirement account, the Washington law enforcement officers' and firefighters' system plan 2 retirement account, the Washington public safety employees' plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state health insurance pool account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving administration account, the water pollution control revolving fund, the Western Washington University capital projects account, the Yakima integrated plan implementation account, the Yakima integrated plan implementation revenue recovery account, and the Yakima integrated plan implementation taxable bond account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, the state university permanent fund, and the state reclamation revolving account shall be allocated to their respective beneficiary accounts.

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

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

**Sec.**  RCW 48.14.080 and 2010 1st sp.s. c 23 s 520 are each amended to read as follows:

(1) As to insurers, other than title insurers and taxpayers under RCW 48.14.0201, the taxes imposed by this title are in lieu of all other taxes, except as otherwise provided in this section.

(2) Subsection (1) of this section does not apply with respect to:

(a) Taxes on real and tangible personal property;

(b) Excise taxes on the sale, purchase, use, or possession of (i) real property; (ii) tangible personal property; (iii) extended warranties; (iv) services, including digital automated services as defined in RCW 82.04.192; and (v) digital goods and digital codes as those terms are defined in RCW 82.04.192; ((~~and~~))

(c) The tax imposed in section 4 of this act, regarding covered health carriers; and

(d) The tax imposed in RCW 82.04.260((~~(9)~~)) (10), regarding public and nonprofit hospitals.

(3) For the purposes of this section, the term "taxes" includes taxes imposed by the state or any county, city, town, municipal corporation, quasi‑municipal corporation, or other political subdivision.

NEW SECTION. **Sec.**  Sections 3 through 8 of this act constitute a new chapter in Title 82 RCW.

NEW SECTION. **Sec.**  The provisions of RCW 82.32.805 and 82.32.808 do not apply to this act.

NEW SECTION. **Sec.**  This act takes effect January 1, 2021.

**--- END ---**