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HOUSE BILL 2353

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State of Washington

65th Legislature

2018 Regular Session

**By** Representatives Orwall, Van Werven, Goodman, McCabe, Hansen, Peterson, Johnson, Morris, Wylie, Kilduff, Chapman, Sells, Kagi, Senn, McDonald, Kirby, Stanford, Blake, Reeves, Macri, Stambaugh, Jinkins, Steele, Appleton, Doglio, Griffey, Kraft, Pollet, Valdez, Riccelli, Young, and Dolan

Prefiled 12/29/17. Read first time 01/08/18. Referred to Committee on Public Safety.

1 AN ACT Relating to supporting sexual assault survivors; amending  
2 RCW 43.101.272, 70.125.090, and 82.32.145; amending 2017 c 290 s 2  
3 (uncodified); reenacting and amending RCW 43.84.092; adding new  
4 sections to chapter 70.125 RCW; adding a new chapter to Title 82 RCW;  
5 creating new sections; providing an effective date; and providing an  
6 expiration date.

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

8 **Sec. 1.** 2017 c 290 s 2 (uncodified) is amended to read as  
9 follows:

10 (1)(a) The joint legislative task force on sexual assault  
11 forensic examination best practices is established for the purpose of  
12 reviewing best practice models for managing all aspects of sexual  
13 assault (~~(examinations)~~) investigations and for reducing the number  
14 of untested sexual assault examination kits in Washington state  
15 (~~(that were collected prior to the effective date of this section)~~).

16 (i) The caucus leaders from the senate shall appoint one member  
17 from each of the two largest caucuses of the senate.

18 (ii) The caucus leaders from the house of representatives shall  
19 appoint one member from each of the two largest caucuses of the house  
20 of representatives.

1 (iii) The president of the senate and the speaker of the house of  
2 representatives shall jointly appoint:

3 (A) One member representing each of the following:

4 (I) The Washington state patrol;

5 (II) The Washington association of sheriffs and police chiefs;

6 (III) The Washington association of prosecuting attorneys;

7 (IV) The Washington defender association or the Washington  
8 association of criminal defense lawyers;

9 (V) The Washington association of cities;

10 (VI) The Washington association of county officials;

11 (VII) The Washington coalition of sexual assault programs;

12 (VIII) The office of crime victims advocacy;

13 (IX) The Washington state hospital association;

14 (X) The Washington state forensic investigations council;

15 (XI) A public institution of higher education as defined in RCW  
16 28B.10.016;

17 (XII) A private higher education institution as defined in RCW  
18 28B.07.020; (~~and~~)

19 (XIII) The office of the attorney general; and

20 (XIV) A sexual assault nurse examiner; and

21 (B) Two members representing survivors of sexual assault.

22 (b) The task force shall choose two cochairs from among its  
23 legislative membership. The legislative membership shall convene the  
24 initial meeting of the task force.

25 (2) The duties of the task force include, but are not limited to:

26 (a) Researching and determining the number of untested sexual  
27 assault examination kits in Washington state;

28 (b) Researching the locations where the untested sexual assault  
29 examination kits are stored;

30 (c) Researching, reviewing, and making recommendations regarding  
31 legislative policy options for reducing the number of untested sexual  
32 assault examination kits;

33 (d) Researching the best practice models both in state and from  
34 other states for collaborative responses to victims of sexual assault  
35 from the point the sexual assault examination kit is collected to the  
36 conclusion of the investigation and prosecution of a case, and  
37 providing recommendations regarding any existing gaps in Washington  
38 and resources that may be necessary to address those gaps; (~~and~~)

1 (e) Researching, identifying, and making recommendations for  
2 securing nonstate funding for testing the sexual assault examination  
3 kits, and reporting on progress made toward securing such funding;

4 (f) Monitoring implementation of state and federal legislative  
5 changes;

6 (g) Collaborating with the office of the attorney general to  
7 implement reforms pursuant to federal grant requirements; and

8 (h) Making recommendations for institutional reforms necessary to  
9 prevent sexual assault and improve the experiences of sexual assault  
10 survivors in the criminal justice system.

11 (3) Staff support for the task force must be provided by the  
12 senate committee services and the house of representatives office of  
13 program research.

14 (4) Legislative members of the task force must be reimbursed for  
15 travel expenses in accordance with RCW 44.04.120. Nonlegislative  
16 members, except those representing an employer or organization, are  
17 entitled to be reimbursed for travel expenses in accordance with RCW  
18 43.03.050 and 43.03.060.

19 (5) The expenses of the task force must be paid jointly by the  
20 senate and the house of representatives. Task force meetings and  
21 expenditures are subject to approval by the senate facilities and  
22 operations committee and the house of representatives executive rules  
23 committee, or their successor committees.

24 (6) The first meeting of the task force must occur prior to  
25 October 1, 2015. The task force shall submit a preliminary report  
26 regarding its initial findings and recommendations to the appropriate  
27 committees of the legislature and the governor no later than December  
28 1, 2015.

29 (7) The task force must meet no less than twice annually.

30 (8) The task force shall report its findings and recommendations  
31 to the appropriate committees of the legislature and the governor by  
32 September 30, 2016, and by December 1st of ~~((the following))~~ each  
33 subsequent year.

34 (9) This section expires ~~((June))~~ September 30, ~~((2018))~~ 2020.

35 **Sec. 2.** RCW 43.101.272 and 2017 c 290 s 3 are each amended to  
36 read as follows:

37 (1) Subject to the availability of amounts appropriated for this  
38 specific purpose, the commission shall provide ongoing specialized,  
39 intensive, and integrative training for persons responsible for

1 investigating sexual assault cases involving adult victims. The  
2 training must be based on a victim-centered, trauma-informed approach  
3 to responding to sexual assault. Among other subjects, the training  
4 must include content on the neurobiology of trauma and trauma-  
5 informed interviewing, counseling, and investigative techniques.

6 (2) The training must: Be based on research-based practices and  
7 standards; offer participants an opportunity to practice interview  
8 skills and receive feedback from instructors; minimize the trauma of  
9 all persons who are interviewed during abuse investigations; provide  
10 methods of reducing the number of investigative interviews necessary  
11 whenever possible; assure, to the extent possible, that investigative  
12 interviews are thorough, objective, and complete; recognize needs of  
13 special populations; recognize the nature and consequences of  
14 victimization; require investigative interviews to be conducted in a  
15 manner most likely to permit the interviewed persons the maximum  
16 emotional comfort under the circumstances; address record retention  
17 and retrieval; ~~((and))~~ address documentation of investigative  
18 interviews; and educate investigators on the best practices for  
19 notifying victims of the results of forensic analysis of sexual  
20 assault kits and other significant events in the investigative  
21 process, including for active investigations and cold cases.

22 (3) In developing the training, the commission shall seek advice  
23 from the Washington association of sheriffs and police chiefs, the  
24 Washington coalition of sexual assault programs, and experts on  
25 sexual assault and the neurobiology of trauma. The commission shall  
26 consult with the Washington association of prosecuting attorneys in  
27 an effort to design training containing consistent elements for all  
28 professionals engaged in interviewing and interacting with sexual  
29 assault victims in the criminal justice system.

30 (4) The commission shall develop the training and begin offering  
31 it by July 1, 2018. Officers assigned to regularly investigate sexual  
32 assault involving adult victims shall complete the training within  
33 one year of being assigned or by July 1, 2020, whichever is later.

34 **Sec. 3.** RCW 70.125.090 and 2015 c 247 s 1 are each amended to  
35 read as follows:

36 (1) When a law enforcement agency receives a sexual assault  
37 examination kit, the law enforcement agency must, within thirty days  
38 of its receipt, submit a request for laboratory examination to the  
39 Washington state patrol crime laboratory for prioritization for

1 testing by it or another accredited laboratory that holds an  
2 outsourcing agreement with the Washington state patrol if:

3 (a) Consent has been given by the victim; or

4 (b) The victim is a person under the age of eighteen who is not  
5 emancipated pursuant to chapter 13.64 RCW.

6 (2) Subject to available funding, the Washington state patrol  
7 crime laboratory must give priority to the laboratory examination of  
8 sexual assault examination kits at the request of a local law  
9 enforcement agency for:

10 (a) Active investigations and cases with impending court dates;

11 (b) Active investigations where public safety is an immediate  
12 concern;

13 (c) Violent crimes investigations, including active sexual  
14 assault investigations;

15 (d) Postconviction cases; and

16 (e) Other crimes' investigations and nonactive investigations,  
17 such as previously unsubmitted older sexual assault kits or recently  
18 collected sexual assault kits that the submitting agency has  
19 determined to be lower priority based on their initial investigation.

20 (3) The failure of a law enforcement agency to submit a request  
21 for laboratory examination within the time prescribed under this  
22 section does not constitute grounds in any criminal proceeding for  
23 challenging the validity of a DNA evidence association, and any  
24 evidence obtained from the sexual assault examination kit may not be  
25 excluded by a court on those grounds.

26 (4) A person accused or convicted of committing a crime against a  
27 victim has no standing to object to any failure to comply with the  
28 requirements of this section, and the failure to comply with the  
29 requirements of this section is not grounds for setting aside the  
30 conviction or sentence.

31 (5) Nothing in this section may be construed to create a private  
32 right of action or claim on the part of any individual, entity, or  
33 agency against any law enforcement agency or any contractor of any  
34 law enforcement agency.

35 (6) This section applies prospectively only and not  
36 retroactively. It only applies to sexual assault examinations  
37 performed on or after July 24, 2015.

38 (7)(a) Until June 30, (~~2018~~) 2022, the Washington state patrol  
39 shall compile the following information related to the sexual assault

1 examination kits identified in this section and section 4 of this  
2 act:

3 (i) The number of requests for laboratory examination made for  
4 sexual assault examination kits and the law enforcement agencies that  
5 submitted the requests; and

6 (ii) The progress made towards testing the sexual assault  
7 examination kits, including the status of requests for laboratory  
8 examination made by each law enforcement agency.

9 (b) The Washington state patrol shall make recommendations for  
10 increasing the progress on testing any untested sexual assault  
11 examination kits.

12 (c) Beginning in 2015, the Washington state patrol shall report  
13 its findings and recommendations annually to the appropriate  
14 committees of the legislature and the governor by December 1st of  
15 each year.

16 NEW SECTION. Sec. 4. A new section is added to chapter 70.125  
17 RCW to read as follows:

18 (1) Law enforcement agencies shall submit requests for forensic  
19 analysis of all sexual assault kits collected prior to July 24, 2015,  
20 and in the possession of the agencies to the Washington state patrol  
21 crime laboratory by January 1, 2019, except submission for forensic  
22 analysis is not required when: (a) Forensic analysis has previously  
23 been conducted; (b) there is documentation of an adult victim or  
24 emancipated minor victim expressing that he or she does not want his  
25 or her sexual assault kit submitted for forensic analysis; or (c) a  
26 sexual assault kit is noninvestigatory and held by a law enforcement  
27 agency pursuant to an agreement with a hospital or other medical  
28 provider. The requirements of this subsection apply regardless of the  
29 statute of limitations or the status of any related investigation.

30 (2) The Washington state patrol crime laboratory may consult with  
31 local law enforcement agencies to coordinate the efficient submission  
32 of requests for forensic analysis under this section in conjunction  
33 with the implementation of the statewide tracking system under RCW  
34 43.43.545, provided that all requests are submitted by January 1,  
35 2019. The Washington state patrol crime laboratory shall facilitate  
36 the forensic analysis of all sexual assault kits submitted under this  
37 section by December 1, 2021. The analysis may be conducted by the  
38 Washington state patrol laboratory or an accredited laboratory  
39 holding a contract or agreement with the Washington state patrol. The

1 Washington state patrol shall process the forensic analysis of sexual  
2 assault kits in accordance with the priorities in RCW 70.125.090(2).

3 (3) The failure of a law enforcement agency to submit a request  
4 for laboratory examination within the time prescribed under this  
5 section does not constitute grounds in any criminal proceeding for  
6 challenging the validity of a DNA evidence association, and any  
7 evidence obtained from the sexual assault kit may not be excluded by  
8 a court on those grounds.

9 (4) A person accused or convicted of committing a crime against a  
10 victim has no standing to object to any failure to comply with the  
11 requirements of this section, and the failure to comply with the  
12 requirements of this section is not grounds for setting aside the  
13 conviction or sentence.

14 (5) Nothing in this section may be construed to create a private  
15 right of action or claim on the part of any individual, entity, or  
16 agency against any law enforcement agency or any contractor of any  
17 law enforcement agency.

18 NEW SECTION. **Sec. 5.** A new section is added to chapter 70.125  
19 RCW to read as follows:

20 (1) In addition to all other rights provided in law, a sexual  
21 assault survivor has the right to:

22 (a) Receive a medical forensic examination at no cost;

23 (b) Consult with a sexual assault survivor's advocate during any  
24 medical evidentiary examination and during any interview by law  
25 enforcement officers, prosecuting attorneys, or defense attorneys,  
26 unless an advocate cannot be summoned in a timely manner, and  
27 regardless of whether a survivor has waived the right in a previous  
28 examination or interview;

29 (c) Be informed, upon the request of a survivor, of when the  
30 forensic analysis of his or her sexual assault kit and other related  
31 physical evidence will be or was completed, the results of the  
32 forensic analysis, and whether the analysis yielded a DNA profile and  
33 match, provided that the disclosure is made at an appropriate time so  
34 as to not impede or compromise an ongoing investigation;

35 (d) Receive notice prior to the destruction or disposal of his or  
36 her sexual assault kit;

37 (e) Receive a copy of the police report related to the  
38 investigation without charge; and

1 (f) Review his or her statement before law enforcement refers a  
2 case to the prosecuting attorney.

3 (2) A sexual assault survivor retains all the rights of this  
4 section regardless of whether the survivor agrees to participate in  
5 the criminal justice system and regardless of whether the survivor  
6 agrees to receive a forensic examination to collect evidence.

7 (3) Nothing contained in this section may be construed to provide  
8 grounds for error in favor of a criminal defendant in a criminal  
9 proceeding, nor may anything in this section be construed to grant a  
10 new cause of action or remedy against the state, its political  
11 subdivisions, law enforcement agencies, or prosecuting attorneys. The  
12 failure of a person to make a reasonable effort to protect or adhere  
13 to the rights enumerated in this section may not result in civil  
14 liability against that person. This section does not limit other  
15 civil remedies or defenses of the sexual assault survivor or the  
16 offender.

17 (4) For the purposes of this section:

18 (a) "Law enforcement officer" means a general authority  
19 Washington peace officer, as defined in RCW 10.93.020, or any person  
20 employed by a private police agency at a public school as described  
21 in RCW 28A.150.010 or an institution of higher education, as defined  
22 in RCW 28B.10.016.

23 (b) "Sexual assault survivor" means any person who is a victim,  
24 as defined in RCW 7.69.020, of sexual assault. However, if a victim  
25 is incapacitated, deceased, or a minor, sexual assault survivor also  
26 includes any lawful representative of the victim, including a parent,  
27 guardian, spouse, or other designated representative, unless the  
28 person is an alleged perpetrator or suspect.

29 (c) "Sexual assault survivor's advocate" means any person who is  
30 defined in RCW 5.60.060 as a sexual assault advocate, or a crime  
31 victim advocate.

32 NEW SECTION. **Sec. 6.** The office of the attorney general is  
33 authorized and encouraged to facilitate the hosting of the sexual  
34 assault kit initiative summit in conjunction with any conditions of  
35 federal funds granted to the state through the sexual assault kit  
36 initiative. The attorney general may use its contracting authority  
37 and use, when appropriate, public and private moneys for the purpose  
38 of hosting the summit.



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

11        The legislature finds that in Washington state, sexually oriented  
12 businesses featuring live adult entertainment earn more than twenty-  
13 five million dollars per year in revenue. Of the millions of female  
14 victims of human trafficking, seventy percent are trafficked into the  
15 commercial sex industry, including being recruited to work as  
16 hostesses, waitresses, or exotic dancers in sexually oriented  
17 businesses featuring adult entertainment. Exotic dancers are more  
18 likely to be victims of sexual violence, including sexual assault and  
19 rape. In addition to the extensive research literature finding a  
20 connection between the industry and sexual violence, the legislature  
21 has received reports of exotic dancers paying the security staff of  
22 these businesses to escort them to and from their vehicles. This is  
23 just one of many practices highlighting the serious risks for women  
24 working in this industry.

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

38        NEW SECTION.    **Sec. 8.**    (1) There is levied and collected a fee  
39 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 sexually oriented live entertainment patron fee  
13 account established in section 10 of this act.

14 (4) For the purposes of this section:

15 (a) "Adult entertainment" means:

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

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

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

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

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

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

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

38 (d) "Patron" means any individual who is admitted to a sexually  
39 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. 9.** (1) The fees required to be collected by  
11 the operator under section 8 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 8 of this act or having collected the fees, fails to pay the  
20 collected fees to the department of revenue in the manner prescribed  
21 in section 8 of this act, whether such failure is the result of his  
22 or her own acts or the result of acts or conditions beyond the  
23 operator's control, the operator is nevertheless, personally liable  
24 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. 10.** (1) The sexually oriented live  
33 entertainment patron fee account is created in the state treasury.  
34 All revenues from the sexually oriented live adult entertainment  
35 establishment admission fee established in section 8 of this act must  
36 be deposited into the account. Moneys in the account may only be  
37 spent after appropriation.

1 (2) The legislature must prioritize appropriations from the  
2 account for: The Washington sexual assault kit initiative project  
3 under RCW 36.28A.430; the Washington state patrol for the purpose of  
4 funding the statewide sexual assault kit tracking system and the  
5 forensic analysis of sexual assault kits; and for the establishment  
6 of training for operators and employees of sexually oriented live  
7 adult entertainment establishments to improve awareness, reduce the  
8 occurrence, and increase reporting of sexual assault and sex  
9 trafficking directly or indirectly associated with those  
10 establishments.

11 **Sec. 11.** RCW 82.32.145 and 2015 c 188 s 121 are each amended to  
12 read as follows:

13 (1) Whenever the department has issued a warrant under RCW  
14 82.32.210 for the collection of unpaid trust fund taxes from a  
15 limited liability business entity and that business entity has been  
16 terminated, dissolved, or abandoned, or is insolvent, the department  
17 may pursue collection of the entity's unpaid trust fund taxes,  
18 including penalties and interest on those taxes, against any or all  
19 of the responsible individuals. For purposes of this subsection,  
20 "insolvent" means the condition that results when the sum of the  
21 entity's debts exceeds the fair market value of its assets. The  
22 department may presume that an entity is insolvent if the entity  
23 refuses to disclose to the department the nature of its assets and  
24 liabilities.

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

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

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

36 (4)(a) Except as provided in this subsection (4)(a), a  
37 responsible individual who is the current or a former chief executive  
38 or chief financial officer is liable under this section only for  
39 trust fund tax liability accrued during the period that he or she was

1 the chief executive or chief financial officer. However, if the  
2 responsible individual had the responsibility or duty to remit  
3 payment of the limited liability business entity's trust fund taxes  
4 to the department during any period of time that the person was not  
5 the chief executive or chief financial officer, that individual is  
6 also liable for trust fund tax liability that became due during the  
7 period that he or she had the duty to remit payment of the limited  
8 liability business entity's taxes to the department but was not the  
9 chief executive or chief financial officer.

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

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

19 (6) Any person having been issued a notice of assessment under  
20 this section is entitled to the appeal procedures under RCW  
21 82.32.160, 82.32.170, 82.32.180, 82.32.190, and 82.32.200.

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

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

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

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

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

39 (c) "Limited liability business entity" means a type of business  
40 entity that generally shields its owners from personal liability for

1 the debts, obligations, and liabilities of the entity, or a business  
2 entity that is managed or owned in whole or in part by an entity that  
3 generally shields its owners from personal liability for the debts,  
4 obligations, and liabilities of the entity. Limited liability  
5 business entities include corporations, limited liability companies,  
6 limited liability partnerships, trusts, general partnerships and  
7 joint ventures in which one or more of the partners or parties are  
8 also limited liability business entities, and limited partnerships in  
9 which one or more of the general partners are also limited liability  
10 business entities.

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

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

15 (f) "Officer" means any officer or assistant officer of a  
16 corporation, including the president, vice president, secretary, and  
17 treasurer.

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

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

26 (iii) Whenever any taxpayer has one or more limited liability  
27 business entities as a member, manager, or partner, "responsible  
28 individual" also includes any current and former officers, members,  
29 or managers of the limited liability business entity or entities or  
30 of any other limited liability business entity involved directly in  
31 the management of the taxpayer. For purposes of this subsection  
32 (9)(g)(iii), "taxpayer" means a limited liability business entity  
33 with an unpaid tax warrant issued against it by the department.

34 (h) "Trust fund taxes" means taxes collected from purchasers and  
35 held in trust under RCW 82.08.050, including taxes imposed under RCW  
36 82.08.020 and 82.08.150, and the sexually oriented live entertainment  
37 patron fee collected from patrons and held in trust under section 9  
38 of this act.

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

4 **Sec. 12.** RCW 43.84.092 and 2017 3rd sp.s. c 25 s 50, 2017 3rd  
5 sp.s. c 12 s 12, and 2017 c 290 s 8 are each reenacted and amended to  
6 read as follows:

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

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

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

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

1 (a) The following accounts and funds shall receive their  
2 proportionate share of earnings based upon each account's and fund's  
3 average daily balance for the period: The aeronautics account, the  
4 aircraft search and rescue account, the Alaskan Way viaduct  
5 replacement project account, the brownfield redevelopment trust fund  
6 account, the budget stabilization account, the capital vessel  
7 replacement account, the capitol building construction account, the  
8 Cedar River channel construction and operation account, the Central  
9 Washington University capital projects account, the charitable,  
10 educational, penal and reformatory institutions account, the Chehalis  
11 basin account, the cleanup settlement account, the Columbia river  
12 basin water supply development account, the Columbia river basin  
13 taxable bond water supply development account, the Columbia river  
14 basin water supply revenue recovery account, the common school  
15 construction fund, the community forest trust account, the connecting  
16 Washington account, the county arterial preservation account, the  
17 county criminal justice assistance account, the deferred compensation  
18 administrative account, the deferred compensation principal account,  
19 the department of licensing services account, the department of  
20 retirement systems expense account, the developmental disabilities  
21 community trust account, the diesel idle reduction account, the  
22 drinking water assistance account, the drinking water assistance  
23 administrative account, the early learning facilities development  
24 account, the early learning facilities revolving account, the Eastern  
25 Washington University capital projects account, the Interstate 405  
26 express toll lanes operations account, the education construction  
27 fund, the education legacy trust account, the election account, the  
28 electric vehicle charging infrastructure account, the energy freedom  
29 account, the energy recovery act account, the essential rail  
30 assistance account, The Evergreen State College capital projects  
31 account, the federal forest revolving account, the ferry bond  
32 retirement fund, the freight mobility investment account, the freight  
33 mobility multimodal account, the grade crossing protective fund, the  
34 public health services account, the high capacity transportation  
35 account, the state higher education construction account, the higher  
36 education construction account, the highway bond retirement fund, the  
37 highway infrastructure account, the highway safety fund, the high  
38 occupancy toll lanes operations account, the hospital safety net  
39 assessment fund, the industrial insurance premium refund account, the  
40 judges' retirement account, the judicial retirement administrative



1 account, the judicial retirement principal account, the local  
2 leasehold excise tax account, the local real estate excise tax  
3 account, the local sales and use tax account, the marine resources  
4 stewardship trust account, the medical aid account, the mobile home  
5 park relocation fund, the money-purchase retirement savings  
6 administrative account, the money-purchase retirement savings  
7 principal account, the motor vehicle fund, the motorcycle safety  
8 education account, the multimodal transportation account, the  
9 multiuse roadway safety account, the municipal criminal justice  
10 assistance account, the natural resources deposit account, the oyster  
11 reserve land account, the pension funding stabilization account, the  
12 perpetual surveillance and maintenance account, the pollution  
13 liability insurance agency underground storage tank revolving  
14 account, the public employees' retirement system plan 1 account, the  
15 public employees' retirement system combined plan 2 and plan 3  
16 account, the public facilities construction loan revolving account  
17 beginning July 1, 2004, the public health supplemental account, the  
18 public works assistance account, the Puget Sound capital construction  
19 account, the Puget Sound ferry operations account, the Puget Sound  
20 taxpayer accountability account, the real estate appraiser commission  
21 account, the recreational vehicle account, the regional mobility  
22 grant program account, the resource management cost account, the  
23 rural arterial trust account, the rural mobility grant program  
24 account, the rural Washington loan fund, the sexual assault  
25 prevention and response account, the sexually oriented live  
26 entertainment patron fee account, the site closure account, the  
27 skilled nursing facility safety net trust fund, the small city  
28 pavement and sidewalk account, the special category C account, the  
29 special wildlife account, the state employees' insurance account, the  
30 state employees' insurance reserve account, the state investment  
31 board expense account, the state investment board commingled trust  
32 fund accounts, the state patrol highway account, the state route  
33 number 520 civil penalties account, the state route number 520  
34 corridor account, the state wildlife account, the supplemental  
35 pension account, the Tacoma Narrows toll bridge account, the  
36 teachers' retirement system plan 1 account, the teachers' retirement  
37 system combined plan 2 and plan 3 account, the tobacco prevention and  
38 control account, the tobacco settlement account, the toll facility  
39 bond retirement account, the transportation 2003 account (nickel  
40 account), the transportation equipment fund, the transportation

1 future funding program account, the transportation improvement  
2 account, the transportation improvement board bond retirement  
3 account, the transportation infrastructure account, the  
4 transportation partnership account, the traumatic brain injury  
5 account, the tuition recovery trust fund, the University of  
6 Washington bond retirement fund, the University of Washington  
7 building account, the volunteer firefighters' and reserve officers'  
8 relief and pension principal fund, the volunteer firefighters' and  
9 reserve officers' administrative fund, the Washington judicial  
10 retirement system account, the Washington law enforcement officers'  
11 and firefighters' system plan 1 retirement account, the Washington  
12 law enforcement officers' and firefighters' system plan 2 retirement  
13 account, the Washington public safety employees' plan 2 retirement  
14 account, the Washington school employees' retirement system combined  
15 plan 2 and 3 account, the Washington state health insurance pool  
16 account, the Washington state patrol retirement account, the  
17 Washington State University building account, the Washington State  
18 University bond retirement fund, the water pollution control  
19 revolving administration account, the water pollution control  
20 revolving fund, the Western Washington University capital projects  
21 account, the Yakima integrated plan implementation account, the  
22 Yakima integrated plan implementation revenue recovery account, and  
23 the Yakima integrated plan implementation taxable bond account.  
24 Earnings derived from investing balances of the agricultural  
25 permanent fund, the normal school permanent fund, the permanent  
26 common school fund, the scientific permanent fund, the state  
27 university permanent fund, and the state reclamation revolving  
28 account shall be allocated to their respective beneficiary accounts.

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

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

38 NEW SECTION. **Sec. 13.** Sections 8 through 10 of this act  
39 constitute a new chapter in Title 82 RCW.

1        NEW SECTION.    **Sec. 14.**    Sections 8 through 10 of this act take  
2 effect October 1, 2018.

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