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**SENATE BILL 5204**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Senators Hasegawa, Kuderer, Lias, Lovelett, Nguyen, Stanford, and Wilson, C.

Read first time 01/14/21. Referred to Committee on Health & Long Term Care.

1 AN ACT Relating to health care financing and development of the  
2 whole Washington health trust to ensure all Washington residents can  
3 enroll in nonprofit health insurance coverage providing an essential  
4 set of health benefits, including medical, dental, vision, and  
5 prescription drug benefits; adding new sections to chapter 82.02 RCW;  
6 adding a new section to chapter 82.32 RCW; adding a new section to  
7 chapter 82.04 RCW; adding a new chapter to Title 43 RCW; adding a new  
8 chapter to Title 50B RCW; adding a new chapter to Title 82 RCW;  
9 prescribing penalties; providing effective dates; providing a  
10 contingent effective date; and providing contingent expiration dates.

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

12 **Part I**

13 **Universal Essential Health Benefits Trust**

14 NEW SECTION. **Sec. 101.** UNIVERSAL COVERAGE PROTECTING HEALTH  
15 CARE CHOICES. During this time of uncertainty affecting the future  
16 options for thousands of Washingtonians to retain their health care  
17 coverage and thousands who face high out-of-pocket costs, the people  
18 of the state of Washington declare their intention to create a single  
19 primary nonprofit health financing entity called the whole Washington  
20 health trust. The trust will simplify health care financing,

1 eliminate administrative waste for providers, focus savings by  
2 promoting a health care delivery system that is responsive to the  
3 essential health needs of each county, and guarantee all residents  
4 may enroll for coverage of a single comprehensive set of essential  
5 health benefits as a basic human need that is essential for a  
6 productive society, without the burden of current high premiums,  
7 deductibles, or, with modest exceptions, copayments.

8 (1) All residents of the state of Washington are eligible for  
9 coverage through this chapter.

10 (2) Individuals enrolled for essential health benefits under this  
11 chapter may obtain health services from any participating  
12 institution, agency, or individual qualified to provide the service  
13 including participating providers outside the state.

14 (3) Nothing in this chapter limits a resident's right to obtain  
15 coverage for health care benefits in excess of those available under  
16 the trust, including additional benefits that an employer may provide  
17 to employees or their dependents or to former employees or their  
18 dependents.

19 (4) No person shall, on the basis of race, color, national  
20 origin, age, disability, or sex, including sex stereotyping, gender  
21 identity, sexual orientation, and pregnancy and related medical  
22 conditions, be excluded from participation in, be denied the benefits  
23 of, or be subjected to discrimination by any participating provider  
24 or any entity conducting, administering, or funding a health program  
25 or activity, including contracts of insurance, under this chapter.

26 (5) Nothing in this chapter requires a health care provider to  
27 furnish any health care service that is outside the scope of his or  
28 her practice or, in the health care provider's reasonable clinical  
29 judgment, when not consistent with the accepted standard of care as  
30 described in RCW 7.70.040.

31 (6) Nothing in this chapter limits a provider's right to receive  
32 payments from sources other than the trust. However, any provider who  
33 does accept payment from the trust for a service must accept that  
34 payment, along with applicable copayments, as payment in full.

35 (7) Any provider, institutions, agency, or individual that is  
36 qualified to provide a health care service covered under this  
37 chapter, is entitled to participate and receive reimbursement as  
38 described in section 109 of this act.

1        NEW SECTION.    **Sec. 102.**    DEFINITIONS. The definitions in this  
2 section apply throughout this chapter unless the context clearly  
3 requires otherwise.

4        (1) "Board" means the board of trustees of the whole Washington  
5 health trust, created in section 103 of this act.

6        (2) "Capitation" means a mechanism of payment in which a provider  
7 is paid a negotiated monthly sum and is obliged to provide all  
8 covered services for specific patients who enroll with that provider.

9        (3) "Case rate" means a method of payment based on diagnosis.  
10 Case rate assumes that a given set of services shall be provided and  
11 the rate is based on the total compensation for those services.

12        (4) "Chair" means the presiding officer of the board.

13        (5) "Community health provider" means a qualified provider  
14 electing participation in the trust as a coordinating nonprofit  
15 health care provider to negotiate reimbursements based on quality and  
16 availability of services for residents in each county as described in  
17 section 109 of this act.

18        (6) "Department" means the Washington state department of health.

19        (7) "Eligible nonresident" shall be defined by the board of  
20 trustees created in section 104 of this act, and includes nonresident  
21 students attending college within the state, nonresidents employed  
22 within the state, and the dependents of eligible nonresidents.

23        (8) (a) "Employee" means an individual who is in the employment of  
24 an employer.

25        (b) "Employee" does not include employees of the federal  
26 government.

27        (9) "Employer" has the meaning provided in section 201 of this  
28 act.

29        (10) "Essential benefits package" means a single comprehensive  
30 health insurance covering essential health benefits.

31        (11) "Essential health benefits" means any of the following items  
32 and services provided on an inpatient or outpatient basis when  
33 medically necessary or appropriate for the maintenance of health or  
34 for the diagnosis, treatment, or rehabilitation of a health  
35 condition:

36        (a) Hospital services, including hospital-based outpatient care  
37 and 24 hour emergency services;

38        (b) Ambulatory primary and preventive care services, including  
39 chronic disease management;

40        (c) Prescription drugs, medical devices, and biological products;

- 1 (d) Mental health and substance abuse treatment services;
- 2 (e) Laboratory and other diagnostic services, including
- 3 diagnostic imaging services;
- 4 (f) Reproductive, maternity, and newborn care;
- 5 (g) Pediatric primary and specialty care;
- 6 (h) Palliative care and end-of-life care services;
- 7 (i) Oral health, audiology, and vision services;
- 8 (j) Short-term rehabilitative and habilitative services and
- 9 devices.

10 (12) "Essential health benefits-benchmark plan" means the set of  
11 benefits that an issuer must include in nongrandfathered plans  
12 offered in the individual or small group market in Washington state,  
13 as defined in section 1302 of the affordable care act, 124 Stat. 119,  
14 P.L. 111-148 (2010), and 45 C.F.R. 156.100.

15 (13) "Federal poverty level" means the federal poverty guidelines  
16 determined annually by the United States department of health and  
17 human services or its successor agency.

18 (14) "Health care facility" or "facility" includes any of the  
19 following appropriately accredited entities: Hospices and home health  
20 agencies licensed pursuant to chapter 70.127 RCW; hospitals licensed  
21 pursuant to chapter 70.41 RCW; rural health care facilities as  
22 defined in RCW 70.175.020; psychiatric hospitals licensed pursuant to  
23 chapter 71.12 RCW; nursing homes licensed pursuant to chapter 18.51  
24 RCW; community mental health centers licensed pursuant to chapter  
25 71.05 or 71.24 RCW; kidney disease treatment centers; ambulatory  
26 surgical facilities licensed under chapter 70.230 RCW; approved drug  
27 and alcohol treatment facilities certified by the department of  
28 social and health services; such other facilities owned and operated  
29 by a political subdivision or instrumentality of the state; and such  
30 other facilities as required by federal law and implementing  
31 regulations.

32 (15) "Income" means the adjusted gross household income for  
33 federal income tax purposes.

34 (16) "Long-term care" means institutional, residential,  
35 outpatient, or community-based services that meet the individual  
36 needs of persons of all ages who are limited in their functional  
37 capacities or have disabilities and require assistance with  
38 performing two or more activities of daily living for an extended or  
39 indefinite period of time. These services include case management,

1 protective supervision, in-home care, nursing services, convalescent,  
2 custodial, chronic, and terminally ill care.

3 (17) "Native American" means an American Indian or Alaska native  
4 as defined under 25 U.S.C. Sec. 1603.

5 (18) "Participating provider" means a person, health care  
6 provider, practitioner, health care facility, or entity acting within  
7 their scope of practice that has negotiated a written contract to  
8 participate and receive reimbursement as described in section 109 of  
9 this act.

10 (19) "Qualified provider" means a person, health care provider,  
11 practitioner, health care facility, or entity acting within their  
12 scope of practice who is licensed or certified and meets: (a) All the  
13 requirements of state law to provide such services in the state where  
14 the services are provided; and (b) applicable requirements of federal  
15 law to provide such services. "Qualified provider" includes a  
16 licensed or certified hospital, clinic, health maintenance  
17 organization, or nursing home or an officer, director, employee, or  
18 agent thereof acting in the course and scope of his or her  
19 employment.

20 (20) "Resident" means an individual who presents evidence of  
21 established permanent residency in the state of Washington, who did  
22 not enter the state for the primary purpose of obtaining health  
23 services, and who meets residency requirements consistent with RCW  
24 46.16A.140. "Resident" also includes people and their accompanying  
25 family members who are residing in the state for the purpose of  
26 engaging in employment for at least one month. The confinement of a  
27 person in a nursing home, hospital, or other medical institution in  
28 the state may not by itself be sufficient to qualify such person as a  
29 resident.

30 (21) "Trust" means the whole Washington health trust created in  
31 section 103 of this act.

32 NEW SECTION. **Sec. 103.** WHOLE WASHINGTON HEALTH TRUST. The whole  
33 Washington health trust is created within the department. The purpose  
34 of the trust is to provide coverage for a set of essential health  
35 benefits to all Washington residents.

36 NEW SECTION. **Sec. 104.** THE BOARD OF TRUSTEES. (1) The trust  
37 must be governed by a board of trustees consisting of nine members  
38 with expertise in health care financing and delivery and representing

1 Washington citizens, business, labor, and health professions.  
2 Trustees must include individuals with knowledge of the health care  
3 needs of diverse populations, including low-income, Native American,  
4 undocumented, non-English speaking, disabled, rural, and other  
5 minority populations. Members of the board must have no pecuniary  
6 interest in any business subject to regulation by the board.

7 (2) (a) By March 1, 2022, the insurance commissioner and each of  
8 the two largest caucuses in both the house of representatives and the  
9 senate shall submit to the governor a list of five nominees who are  
10 not legislators or employees of the state or its political  
11 subdivisions, with no caucus or the insurance commissioner submitting  
12 the same nominee.

13 (b) By May 15, 2022, the governor shall appoint the initial  
14 trustees. The governor shall appoint one trustee from each of the  
15 lists submitted by the house of representatives and the senate and  
16 the insurance commissioner. If a caucus or the insurance commissioner  
17 fails to submit a list as required in (a) of this subsection or if  
18 the nominees on the list do not meet the qualifications specified in  
19 subsection (1) of this section, the governor shall appoint a  
20 substitute trustee meeting the qualifications specified in subsection  
21 (1) of this section at the governor's discretion. The governor shall  
22 appoint the remaining trustees meeting the qualifications specified  
23 in subsection (1) of this section at his or her discretion.

24 (c) Of the initial trustees, three shall be appointed to terms of  
25 two years, three shall be appointed to terms of four years, and three  
26 shall be appointed to terms of six years. Thereafter, trustees shall  
27 be appointed to six-year terms. Trustees may be appointed to multiple  
28 terms.

29 (d) The governor shall appoint one of the initial trustees as the  
30 chair of the board. The board shall elect its own chair from its  
31 members upon the expiration of the term of the initial chair or his  
32 or her departure from the board. The term of a chair elected by the  
33 board expires upon the expiration of his or her term on the board.

34 (3) If convinced by a preponderance of the evidence in a due  
35 process hearing that a trustee has failed to perform required duties  
36 or has a conflict with the public interest, the governor may remove  
37 that trustee and appoint another to serve the unexpired term.

38 (4) A trustee whose term has expired or who otherwise leaves the  
39 board must be replaced by gubernatorial appointment. When the person  
40 leaving was nominated by one of the caucuses of the house of

1 representatives or the senate, his or her replacement must be  
2 appointed from a list of five nominees submitted by that caucus  
3 within 30 days after the vacancy occurs. If the caucus or the  
4 insurance commissioner fails to submit the list of nominees or if the  
5 nominees do not meet the qualifications specified in subsection (1)  
6 of this section, the governor shall appoint a trustee meeting the  
7 qualifications specified in subsection (1) of this section at the  
8 governor's discretion. A person appointed to replace a trustee who  
9 leaves the board before the expiration of his or her term shall serve  
10 only the duration of the unexpired term.

11 (5) The initial board shall convene no later than three months  
12 following the initial appointment.

13 (6) Members of the board are subject to chapter 42.52 RCW.

14 (7) The trustees occupy their positions according to the bylaws,  
15 rules, and relevant governing documents of the board and are exempt  
16 from chapter 41.06 RCW. The board and its professional staff are  
17 subject to the public disclosure provisions of chapter 42.17A RCW.  
18 Trustees shall be paid a salary to be fixed by the governor in  
19 accordance with RCW 43.03.040. Six trustees constitute a quorum for  
20 the conduct of business.

21 NEW SECTION. **Sec. 105.** ADVISORY COMMITTEES. (1) Subject to the  
22 approval of the board, the chair shall appoint three standing  
23 advisory committees:

24 (a) A finance committee consisting of financial experts from the  
25 office of financial management, the office of the state treasurer,  
26 the employment security department, and the office of the insurance  
27 commissioner. The finance committee shall recommend specific details  
28 for major budget decisions and for appropriations, taxes, and other  
29 funding legislation necessary to conduct the operations of the whole  
30 Washington health trust;

31 (b) A citizen committee consisting of balanced representation  
32 from health experts, business, labor, and consumers. The citizen  
33 committee shall hold public hearings on priorities for inclusion in  
34 the set of health services, survey public satisfaction, investigate  
35 complaints, and identify and report on health care access and other  
36 priority issues for residents; and

37 (c) A provider committee consisting of members with broad  
38 experience in and knowledge of health care delivery, research, and  
39 policy, as well as public and private funding of health care

1 services. The provider committee shall make recommendations to the  
2 board on issues related to scope of covered benefits, quality  
3 improvement, continuity of care, resource utilization, and other  
4 issues as requested by the board.

5 (2) The board shall consult with the citizen committee at least  
6 quarterly, receive its reports and recommendations, and then report  
7 to the governor and legislature at least annually on board actions in  
8 response to citizen committee recommendations. The board shall  
9 regularly seek financial recommendations from the finance committee  
10 to establish and maintain the solvency of the trust. The board shall  
11 consult with the provider committee to promote development of policy  
12 and procedures for administration of reimbursements, negotiations for  
13 reimbursements, and related documentation.

14 (3) Subject to approval of the board, the chair may appoint other  
15 committees and task forces as needed.

16 (4) Members of committees shall serve without compensation for  
17 their services but shall be reimbursed for their expenses while  
18 attending meetings on behalf of the board in accordance with RCW  
19 43.03.050 and 43.03.060.

20 NEW SECTION. **Sec. 106.** AUTHORITIES OF THE BOARD CHAIR. The  
21 chair is the presiding officer of the board and has the following  
22 powers and duties:

23 (1) Appoint an executive director with the approval of the board;

24 (2) Enter into contracts on behalf of the board. All contracts  
25 are subject to review and binding legal opinions by the attorney  
26 general's office if disputed in a due process hearing by a party to  
27 such a contract;

28 (3) Subject to explicit approval of a majority of the board,  
29 accept and expend gifts, donations, grants, and other funds received  
30 by the board; and

31 (4) Delegate administrative functions of the board to the  
32 executive director and staff of the trust as necessary to ensure  
33 efficient administration.

34 NEW SECTION. **Sec. 107.** RESPONSIBILITIES OF THE BOARD. (1) With  
35 advice from the citizen committee and the provider committee, the  
36 board shall:



1 (a) Establish a single comprehensive essential benefits package  
2 covering essential health benefits to be financed by the trust, as  
3 provided in section 108 of this act;

4 (b) Subject to the funding mechanisms established under this  
5 chapter, seek all applicable waivers or demonstration project  
6 approvals, or both, so that current federal and state payments for  
7 health services to residents will be paid directly or are made  
8 otherwise available to the trust;

9 (c) Establish premiums necessary to operate the trust and make  
10 rules, policies, guidelines, and timetables needed for the trust to  
11 finance the essential benefits package for residents starting  
12 November 1, 2022;

13 (d) Develop or contract for development of a statewide, anonymous  
14 health care data system;

15 (e) Develop health care practice guidelines and quality standards  
16 for the trust;

17 (f) Develop policies to protect confidentiality of patient's  
18 records throughout the health care delivery system and the claims  
19 payment system;

20 (g) Make rules for eligible nonresidents;

21 (h) Develop or contract for development of an efficient  
22 enrollment mechanism for all who are eligible;

23 (i) Develop or contract for development of a streamlined uniform  
24 claims processing system that must pay providers in a timely manner  
25 for covered health services;

26 (j) Develop appeals procedures for residents and providers;

27 (k) Integrate functions with other state agencies;

28 (l) Work to balance benefits and provider payments with revenues,  
29 and develop effective measures to control excessive and unnecessary  
30 health care costs;

31 (m) Address nonfinancial barriers to health care access;

32 (n) Monitor population migration into Washington state to detect  
33 any trends related to availability of universal health care coverage;  
34 and

35 (o) Develop an annual budget for the trust.

36 (2) To the extent that the exercise of any of the powers and  
37 duties specified in this section may be inconsistent with the powers  
38 and duties of other state agencies, offices, or commissions, the  
39 authority of the board supersedes that of such other state agency,  
40 office, or commission.

1        NEW SECTION.    **Sec. 108.**    COMPREHENSIVE ESSENTIAL HEALTH BENEFITS  
2 PACKAGE. (1) The board shall establish a single comprehensive  
3 essential benefits package covering essential health benefits that  
4 are effective and necessary for the good health of residents and that  
5 emphasize preventive, primary, and integrated health care. The board  
6 shall ensure that the essential benefits package constitutes minimum  
7 essential coverage for purposes of the federal patient protection and  
8 affordable care act.

9        (2) The department shall, on an ongoing and regular basis,  
10 evaluate whether the essential health benefits should be improved or  
11 adjusted to promote the health of beneficiaries, account for changes  
12 in medical practice or new information from medical research, or  
13 respond to other relevant developments in health science, and shall  
14 make recommendations to the legislature regarding any such  
15 improvements or adjustments.

16        (3) Subject to a financial analysis demonstrating ongoing  
17 sufficient funds in the trust, long-term care shall be a covered  
18 benefit on January 1, 2025. Long-term care coverage shall include a  
19 uniform initial assessment and coordination between home health,  
20 adult day care, and nursing home services, and other treatment  
21 alternatives. The board may establish a copayment for long-term  
22 nursing home care, to cover some costs of room and board, for  
23 residents with incomes above 150 percent of the federal poverty  
24 level.

25        (4) The board must establish:

26        (a) A long-term care benefits package; and

27        (b) Eligibility requirements at least as generous as the medicaid  
28 standards for Washington on the effective date of this section.

29        (5) When the board establishes a long-term care benefits package  
30 beyond what is described in subsection (4) of this section, the  
31 board, in coordination with the office of the insurance commissioner,  
32 shall examine possible remedies for residents who have made previous  
33 payments for long-term care insurance.

34        (6) The board shall submit to the governor and legislature by  
35 December 1, 2022, and by December 1st of the following years:

36        (a) The essential benefits package; and

37        (b) An actuarial analysis of the cost of the package.

38        NEW SECTION.    **Sec. 109.**    PARTICIPATING PROVIDERS. (1) The board,  
39 in coordination with the health care authority, shall adopt rules and

1 mechanisms permitting qualified providers to collectively negotiate  
2 budgets, payment schedules, and other terms and conditions of trust  
3 participation.

4 (2) The board, in coordination with the health care authority and  
5 on an annual basis, shall collectively negotiate reimbursement rates  
6 with qualified providers not participating as community health  
7 providers on a fee-for-service or on a case-rate basis or on a  
8 combination of bases.

9 (3) Any qualified provider operating as a public hospital or  
10 health care facility or public or private nonprofit 501(c)  
11 organization with five or more individual practitioners coordinating  
12 to deliver essential health benefits may elect to participate as a  
13 community health provider.

14 (4) The board, in coordination with the health care authority,  
15 shall annually negotiate with each community health provider a  
16 prospective global budget for operational and other costs to be  
17 covered by the trust. Hospitals and other health care facilities  
18 shall be paid on a fee-for-service or case-rate basis, within the  
19 limits of their prospective annual budget. Individual practitioners  
20 who are employed by a community health provider may be paid by  
21 salary.

22 (5) The board shall make appropriate considerations and  
23 recommendations during annual negotiations with community health  
24 providers including:

- 25 (a) Regional health needs of residents in each county;
- 26 (b) The scope of services offered by provider;
- 27 (c) Quality and effectiveness of care standards and safety  
28 policies utilized by the provider;
- 29 (d) Quality of employment for those employed by the provider; and
- 30 (e) provider coordination with the department of social and  
31 health services on delivery of needs-based assistance for which  
32 residents in the county are eligible.

33 (6) The board shall study the feasibility of paying by capitation  
34 to providers, and how enrollment would take place under capitation.

35 (7) The board shall adopt rules ensuring that payment schedules  
36 and procedures for mental health services are comparable to other  
37 health care services included in the essential benefits package.

38 (8) The board shall study and develop provider payment methods  
39 that:

- 1 (a) Encourage an integrated multispecialty approach to disease
- 2 management;
- 3 (b) Reward education time spent with patients;
- 4 (c) Include a medical risk adjustment formula for providers whose
- 5 practices serve patients with higher than average health risks; and
- 6 (d) Include all categories of providers pursuant to rule and RCW
- 7 48.43.715.

8 NEW SECTION. **Sec. 110.** PHARMACEUTICALS, MEDICAL EQUIPMENT, AND  
9 BIOLOGICALS. (1) When consistent with federal law, the prices to be  
10 paid for covered pharmaceuticals, medical supplies including  
11 biological products, and medically necessary assistive equipment  
12 shall be negotiated annually by the board for all residents and  
13 eligible nonresidents enrolled in the trust.

14 (2)(a) The board shall establish a prescription drug formulary  
15 system, which:

- 16 (i) Encourages best practices in prescribing;
- 17 (ii) Discourages the use of ineffective, dangerous, or
- 18 excessively costly medications when better alternatives are
- 19 available;
- 20 (iii) Promotes the use of generic medications to the greatest
- 21 extent possible; and
- 22 (iv) Does not interfere with treatments necessary for appropriate
- 23 standards of care.

24 (b) The formulary shall be updated frequently, with advice from  
25 clinicians and patients, to add new pharmaceuticals or remove  
26 ineffective or dangerous medications from the formulary.

27 (3) The board shall develop rules for off-formulary medications  
28 which allow for patient access but do not compromise the formulary.

29 (4) The board may seek other means of financing drugs and durable  
30 medical equipment at the lowest possible cost, including bulk  
31 purchasing agreements with Washington state tribes.

32 (5) The board may set a cost-sharing schedule for prescription  
33 drugs and biological products for enrolled individuals that: (a) Is  
34 evidence-based and encourages the use of generic drugs; (b) does not  
35 apply to preventive drugs; and (c) does not exceed \$250 annually,  
36 adjusted annually for inflation.

37 NEW SECTION. **Sec. 111.** ENROLLMENT ELIGIBILITY. (1) Residents:  
38 (a) Under the age of 19; or

1 (b) With dual eligibility for medicare and medicaid;  
2 are exempt from the premium established under section 107 of this act  
3 and the employment contribution established under subsection (4) of  
4 this section or sole proprietors' self-employment contribution for  
5 enrollment in the whole Washington health trust.

6 (2) Residents with incomes below 200 percent of the federal  
7 poverty level are not subject to the premium established under  
8 section 107 of this act for enrollment in the whole Washington health  
9 trust.

10 (3) Premiums established under section 107 of this act must not  
11 exceed \$200 monthly.

12 (4) When a resident is employed, an employment contribution must  
13 be paid by the resident or their employer for enrollment in the whole  
14 Washington health trust except as provided in subsection (1) through  
15 (3) of this section. The employment contribution is equal to total  
16 required health care expenditures employers must pay to or on behalf  
17 of the employee as established in section 202 of this act.

18 (5) Until full integration of federally qualified trust funds is  
19 accomplished, residents, including but not limited to Native American  
20 residents, who are covered under federal health programs shall  
21 continue to use that coverage, and additional benefits provided by  
22 the trust shall extend only to costs not covered by the federal  
23 health programs when, subject to subsections (1) through (3) of this  
24 section:

25 (a) The resident voluntarily elects enrollment in the trust;

26 (b) The resident's wages and net earnings are considered in  
27 calculating either the employment contribution established under this  
28 section or the sole proprietor self-employment contribution  
29 established under section 203 of this act; and

30 (c) Either the individual or an employer pays the premium  
31 established under section 107 of this act.

32 (6) Pending full integration of federally qualified trust funds  
33 into the whole Washington health trust, residents who are retirees  
34 covered under the trusts are eligible for coverage through the whole  
35 Washington health trust when they pay the premium established under  
36 section 107 of this act. The board shall make rules and adopt  
37 mechanisms to reimburse residents with incomes below 200 percent of  
38 the federal poverty level and all residents who elect to enroll in  
39 the trust for medicare premiums paid until a federal waiver or  
40 demonstration project approval as applicable is granted integrating

1 the federally qualified trust funds into the whole Washington health  
2 trust.

3 NEW SECTION. **Sec. 112.** COVERAGE USE AND AVAILABILITY. (1) If an  
4 enrolled individual has other health insurance coverage for any  
5 essential health benefits provided in the state, the benefits  
6 provided in this chapter are secondary to that insurance coverage.  
7 Nonresidents are covered for emergency services and emergency  
8 transportation only, except when enrolled for eligible nonresident  
9 coverage as provided in section 102(7) of this act.

10 (2) The board shall make provisions for determining  
11 reimbursements for covered medical expenses for residents while they  
12 are out of the state.

13 (3) No cost sharing, including deductibles, coinsurance,  
14 copayments, or similar charges, may be imposed on an enrolled  
15 individual for any benefits provided under this chapter, except:

16 (a) Cost sharing may be contingent on the inclusion of long-term  
17 care coverage beyond what is provided under medicaid; and

18 (b) As provided in section 110 of this act.

19 (4) No cost sharing, including deductibles, coinsurance,  
20 copayments, or similar charges, may be imposed on enrolled:

21 (a) Persons under the age of 19;

22 (b) Residents who are dual eligible medicare and medicaid  
23 beneficiaries; or

24 (c) Adults earning under 200 percent of the federal poverty  
25 level.

26 (5) By October 1, 2022, the board must take all steps necessary,  
27 including seeking appropriate approvals from federal entities, to  
28 ensure the essential benefits package qualifies as an essential  
29 health benefits-benchmark plan for the purposes of contracting to  
30 administer all essential health benefits with the following entities  
31 as a managed health care system:

32 (a) The health care authority;

33 (b) The public employees' benefits board;

34 (c) Indian health services;

35 (d) Center for medicare and medicaid services;

36 (e) The department of social and health services; and

37 (f) Any other director, entity, or agency with authority to  
38 contract administration of essential health benefits to a managed  
39 health care system operating in Washington state.

1 (6) By October 1, 2022, the board shall establish premiums and  
2 cost-sharing requirements for eligible individuals enrolled in the  
3 program through the Washington health benefits exchange, collect  
4 premium and assessment payments from all enrolled eligible  
5 individuals, and deposit premium payments in the benefits account  
6 created in section 123 of this act. If the eligible individual  
7 qualifies for premium subsidies or cost-sharing reductions under the  
8 patient protection and affordable care act, the premium or cost-  
9 sharing amounts established under this subsection may not exceed the  
10 amounts the eligible individual would have paid if he or she had  
11 enrolled in a silver level qualified health plan through the  
12 Washington health benefit exchange. The portion of premiums, copays,  
13 and out-of-pocket costs enrollees are responsible for after eligible  
14 premium subsidies or cost-sharing reductions are applied must be  
15 consistent with this section.

16 (7) By November 1, 2023, the board shall:

17 (a) Begin offering coverage to all residents and eligible  
18 nonresidents;

19 (b) Contract with all entities in subsection (5) of this section  
20 for enrollment of residents who are eligible for essential health  
21 benefits coverage through a federal or federally funded state health  
22 program, except when contingent on approval for full integration of  
23 federally qualified trust funds into the whole Washington health  
24 trust;

25 (c) Ensure the operation of the whole Washington health trust  
26 consistent with this chapter; and

27 (d) Enable the state to provide equitable coverage for all  
28 enrolled, including those covered through medicaid and medicare, and  
29 maximize the use of appropriate federal funding in the whole  
30 Washington health trust.

31 (8) The board shall not contract the administration of covered  
32 benefits for an individual enrolled in the trust to a managed health  
33 care system operating for-profit except when the enrolled individual:

34 (a) Is enrolled in supplemental health insurance coverage through  
35 the managed health care system; and

36 (b) Has elected the benefits administration through the managed  
37 health care system.

38 NEW SECTION. **Sec. 113.** INTEGRATION OF FEDERAL HEALTH COVERAGE  
39 PROGRAMS. (1) The health care authority shall determine which state

1 and federal laws affect full integration of federally qualified  
2 trusts into the whole Washington health trust funds under this  
3 chapter, and report its recommendations for accomplishing such full  
4 integration, with any proposed revisions to the Revised Code of  
5 Washington, to the governor and the appropriate committees of the  
6 legislature by the first date following the effective date of this  
7 section.

8 (2) The governor, in consultation with the board and the health  
9 care authority, shall take the following steps in an effort to  
10 receive applicable waivers, exemptions, or approval for demonstration  
11 projects from federal agencies in order to fully integrate coverage  
12 and funding available through federally qualified trusts directing  
13 trust funds into the whole Washington health trust under this  
14 chapter:

15 (a) Negotiate with the federal department of health and human  
16 services' health care financing administration to obtain a statutory  
17 or regulatory waiver of provisions of the medical assistance statute,  
18 Title XIX of the federal social security act and the children's  
19 health insurance program including, but not limited to, application  
20 for an applicable demonstration project;

21 (b) Negotiate with the federal department of health and human  
22 services to obtain a statutory or regulatory waiver of provisions of  
23 the medicare statute, Title XVIII of the federal social security act,  
24 that currently constitute barriers to full integration of this  
25 chapter or to obtain approval for the whole Washington health trust  
26 to operate as a medicare advantage plan or other demonstration  
27 project allowing relevant federal funds to flow into the whole  
28 Washington health trust;

29 (c) Negotiate with the federal department of health and human  
30 services to obtain any statutory or regulatory waivers of provisions  
31 of the United States public health services act, or applicable  
32 demonstration project, necessary to ensure integration of federally  
33 funded community and migrant health clinics and other health services  
34 funded through the public health services act into the trust system  
35 under this chapter;

36 (d) Negotiate with the federal office of personnel management for  
37 the inclusion of federal employee health benefits in the trust under  
38 this chapter;

39 (e) Negotiate with the federal department of defense and other  
40 federal agencies for the inclusion of the civilian health and medical



1 program of the uniformed services in the trust under this chapter;  
2 and

3 (f) Request that the United States congress amend the internal  
4 revenue code to treat the assessments and the premiums established  
5 under this chapter as fully deductible from adjusted gross income.

6 (3) Beginning November 15, 2022, the health care authority shall  
7 submit annual progress reports to the appropriate legislative  
8 committees regarding the development of the waiver or demonstration  
9 project applications, or both, or other integration measures, and on  
10 enrollment of residents into health coverage managed by the health  
11 care authority, an entity within the health care authority, or the  
12 whole Washington health trust. The report submitted on November 15,  
13 2023, must include a list of any statutory changes necessary to  
14 implement full integration of federally qualified trust funds into  
15 the whole Washington health trust.

16 (4) Upon receipt of any waiver or approval for other integration  
17 measures under this chapter, the health care authority shall promptly  
18 notify in writing the office of the code reviser, the governor, and  
19 the appropriate committees of the legislature.

20 (5) Beginning no later than four years after the effective date  
21 of this section, the health care authority, including entities or  
22 agencies within the health care authority, shall not contract  
23 administration of essential health benefits available through the  
24 trust to a managed health care system operating for-profit except  
25 when the enrolled individual:

26 (a) Is also enrolled only in supplemental health insurance  
27 coverage through the managed health care system; and

28 (b) Has elected the benefits administration through the managed  
29 health care system.

30 (6) The health care authority, in coordination with the board and  
31 all other agencies within the state, shall take all steps necessary  
32 to align reimbursement rates for essential health benefits provided  
33 through a program managed by the health care authority or an agency  
34 within the state.

35 NEW SECTION. **Sec. 114.** A new section is added to chapter 82.02  
36 RCW to read as follows:

37 **TRANSITIONAL EMPLOYER PROVISIONS.** (1) Employers with employees  
38 represented by a union and with established health benefit plans  
39 negotiated before the effective date of this section:

1 (a) Shall maintain health benefits at least as comprehensive and  
2 affordable to covered employees and retired employees after the  
3 effective date of this section; and

4 (b) Are exempt from owing the health security assessment  
5 established in section 202 of this act and from collecting the  
6 personal health assessment established in section 203 of this act for  
7 each employee offered affordable minimum essential coverage, defined  
8 by the patient protection and affordable care act, through the  
9 existing employee health benefit plan until a supplemental health  
10 benefit plan is negotiated and becomes effective. The employer may  
11 pay any portion of the health security assessment on behalf of  
12 resident employees voluntarily.

13 (2) Resident employees of Washington employers and enrolled in a  
14 health benefit plan described in subsection (1) of this section may:

15 (a) Participate in the essential health options program defined  
16 in section 127 of this act; or

17 (b) Elect to pay the employment contribution and the premium,  
18 subject to the exclusions in section 111 of this act, to enroll in  
19 the essential benefits package as a primary health insurance. Any  
20 amount paid to the employment security department on behalf of an  
21 employee and not used to reimburse medical expenses for the employee  
22 may be applied to the employment contribution of enrollment in the  
23 trust at the time the resident employee elects enrollment.

24 (3) All sole proprietors operating in the state may apply for an  
25 exemption from the excise tax established in section 203 of this act  
26 if the individual is enrolled in minimal essential coverage, as  
27 defined by the patient protection and affordable care act.

28 (4) This section is subject to section 126 of this act and  
29 expires on the first January 1st following the effective date of  
30 section 115 of this act.

31 NEW SECTION. **Sec. 115.** ENROLLMENT CONDITIONAL PROVISIONS.

32 Within one year of the effective date of this section:

33 (1) Subject to ongoing sufficient funding, the board shall work  
34 to reduce deductibles, out-of-pocket costs, and premiums for enrolled  
35 adults with incomes exceeding 199 percent of the federal poverty  
36 level to the fullest extent possible; and

37 (2) The Washington state health care authority shall apply for a  
38 waiver from the provisions of the federal patient protection and

1 affordable care act, P.L. 111-148, as amended by the federal health  
2 care and education reconciliation act, P.L. 111-152, to:

3 (a) Suspend the operation of the Washington health benefit  
4 exchange established in chapter 43.71 RCW; and

5 (b) Enable the state to receive appropriate federal funding in  
6 lieu of the federal premium tax credits, federal cost-sharing  
7 subsidies, and other federal payments and tax credits that will no  
8 longer be necessary due to the suspension of the operations of the  
9 Washington health benefit exchange. The health care authority may use  
10 existing health benefit exchange resources to facilitate residents'  
11 ability to compare and purchase supplemental health insurance.

12 NEW SECTION. **Sec. 116.** ADMINISTRATIVE COST CONTROLS. (1)

13 Administrative expenses to operate and maintain the trust shall not  
14 exceed seven percent of the trust's annual budget. The board shall  
15 not shift administrative costs or duties of the trust to providers or  
16 to resident beneficiaries.

17 (2) The board shall work with providers to develop and apply  
18 scientifically based utilization standards, to use encounter and  
19 prescribing data to detect excessive utilization.

20 (3) The department shall develop due processes for enforcing  
21 appropriate utilization standards, and to identify and prosecute  
22 fraud that includes:

23 (a) Anonymous reporting of any suspected waste, fraud, and abuse;  
24 and

25 (b) An appeals process.

26 (4) The board may institute other cost-containment measures in  
27 order to maintain a balanced budget. The board shall pursue due  
28 diligence to ensure that cost-containment measures neither limit  
29 access to clinically necessary care or infringe upon legitimate  
30 clinical decision making by practitioners or the legitimate decisions  
31 of an enrolled individual to receive prescribed essential health  
32 benefits.

33 (5) Administrative expenses must include reasonable funding for  
34 the employment security department and department of revenue to carry  
35 out their respective obligations regarding enforcement of required  
36 health care expenditures and collection of the employment  
37 contribution established in section 202 of this act, the excise tax  
38 paid by sole proprietors established in section 203 of this act, and

1 the capital gains tax established in section 302 of this act that are  
2 among the trust's funding sources.

3 NEW SECTION. **Sec. 117.** ACTUARIAL ANALYSIS AND REPORTING.  
4 Beginning December 15, 2022, the board shall contract annually for an  
5 actuarial analysis of the funding needs of the whole Washington  
6 health trust created in section 103 of this act. The board shall  
7 report annually on the funding mechanisms to the appropriate standing  
8 committees of the house of representatives, the senate, and the  
9 governor, starting May 15, 2023. The funding mechanisms must contain  
10 the following elements:

11 (1) The employment contribution to be paid by participating  
12 employers in Washington state, established in section 111 of this act  
13 and under the exemption provided in section 114 of this act;

14 (2) The long-term capital gains assessment established in section  
15 302 of this act;

16 (3) The sole proprietor excise tax established in section 203 of  
17 this act and under the exemption provided in section 114 of this act;

18 (4) A premium, established in section 107 of this act and  
19 pursuant to sections 111 and 112 of this act, paid by enrolled adults  
20 with incomes exceeding 199 percent of the federal poverty level,  
21 their spouse, or an employer;

22 (5) A cost-sharing schedule, established in section 110 of this  
23 act and pursuant to section 112 of this act, paid by enrolled adults  
24 with incomes exceeding 199 percent of the federal poverty level,  
25 their spouse, or an employer; and

26 (6) Available federal health program funding either pursuant to  
27 waivers or other integration measures taken as described in sections  
28 113 and 115 of this act, or by contracting for administration of  
29 those benefits as described in section 112 of this act.

30 NEW SECTION. **Sec. 118.** ALLOCATION OF EXISTING FUNDING.  
31 Following the repeal, amendment, or waiver of existing state and  
32 federal laws delineated in sections 113 and 115 of this act, all  
33 other revenues currently deposited in the health services account for  
34 personal health care services shall be deposited to the reserve  
35 account created in section 121 of this act and the benefits account  
36 created in section 123 of this act.

1        NEW SECTION.        **Sec. 119.**        ALLOCATION OF NEW REVENUES. Revenue  
2 derived from the assessments established in sections 202, 203, and  
3 302 of this act and the premiums established under section 107 of  
4 this act shall be deposited to the reserve account created in section  
5 121 of this act and the benefits account created in section 123 of  
6 this act, and may not be used to pay for medical assistance currently  
7 provided under chapter 74.09 RCW or other existing federal and state  
8 health care programs. If existing federal and state sources of  
9 payment for health services are reduced or terminated after the  
10 effective date of this section, the legislature shall replace these  
11 appropriations from the general fund.

12        NEW SECTION.        **Sec. 120.**        START-UP APPROPRIATIONS. An  
13 appropriation by separate act of the legislature may be necessary for  
14 the fiscal year ending June 30, 2022, from the general fund to the  
15 benefits account of the whole Washington health trust for start-up  
16 moneys for purposes of this chapter during the period of July 1,  
17 2022, through the second June 30th following the effective date of  
18 section 115 of this act.

19        NEW SECTION.        **Sec. 121.**        RESERVE ACCOUNT. (1) The reserve account  
20 is created in the custody of the state treasurer. The reserve account  
21 will accumulate moneys until its value equals 10 percent of the total  
22 annual budgeted expenditures of the trust and then will be considered  
23 fully funded, unless the legislature determines that a different  
24 level of reserve is necessary and prudent. Whenever the reserve  
25 account is fully funded, additional moneys shall be transferred to  
26 the benefits account created in section 123 of this act.

27        (2) Expenditures from the reserve account may be used only for  
28 the purposes of health care services and maintenance of the trust.  
29 Only the board or the board's designee may authorize expenditures  
30 from the account. The account is subject to allotment procedures  
31 under chapter 43.88 RCW, but an appropriation is not required for  
32 expenditures.

33        NEW SECTION.        **Sec. 122.**        DISPLACED WORKER TRAINING ACCOUNT. (1)  
34 The displaced worker training account is created in the custody of  
35 the state treasurer. Expenditures from the account may be used only  
36 for retraining and job placement of workers displaced by the  
37 transition to the trust. Only the board or the board's designee may

1 authorize expenditures from the account. The account is subject to  
2 allotment procedures under chapter 43.88 RCW, but an appropriation is  
3 not required for expenditures.

4 (2) Any funds remaining in the account on the second December  
5 31st following the effective date of section 115 of this act must be  
6 deposited into the benefits account created in section 123 of this  
7 act.

8 (3) This section expires the third January 1st following the  
9 effective date of section 115 of this act.

10 NEW SECTION. **Sec. 123.** BENEFITS ACCOUNT. The benefits account  
11 is created in the custody of the state treasurer. Expenditures from  
12 the account may be used only for health care services and maintenance  
13 of the trust. Only the board or the board's designee may authorize  
14 expenditures from the account. The account is subject to allotment  
15 procedures under chapter 43.88 RCW, but an appropriation is not  
16 required for expenditures.

17 NEW SECTION. **Sec. 124.** ANNUAL BUDGET. (1) Beginning May 15,  
18 2023, the board shall adopt, in consultation with the office of  
19 financial management, an annual whole Washington health trust budget.  
20 If operation expenses exceed revenues generated in two consecutive  
21 years, the board shall recommend adjustments in revenues to the  
22 legislature.

23 (2) The recommended adjustments must also include recommended  
24 additional funding sources including, but not limited to, revenues  
25 collected under RCW 41.05.120, 41.05.130, 66.24.290, 82.24.020,  
26 82.26.020, 82.08.150, 43.79.480, and 41.05.220.

27 (3) The recommendations shall specify the amounts that must be  
28 deposited in the reserve account created in section 121 of this act,  
29 the displaced worker training account created in section 122 of this  
30 act, and the benefits account created in section 123 of this act.

31 (4) Prior to making its recommendations, the board shall conduct  
32 at least six public hearings in different geographic regions of the  
33 state seeking public input or comment on the recommended funding  
34 mechanism.

35 (5) The legislature shall enact legislation implementing the  
36 recommendations of the board during the regular legislative session  
37 following the recommendations.

1        NEW SECTION.    **Sec. 125.**    COST REPORTING. The board shall:

2            (1) Report annual changes in total Washington health care costs,  
3 along with the financial position and the status of the trust, to the  
4 governor and legislature at least once a year;

5            (2) Seek audits annually from the state auditor;

6            (3) Contract with the state auditor for a performance audit every  
7 two years;

8            (4) Adopt bylaws, rules, and other appropriate governance  
9 documents to assure accountability, open, fair, effective operations  
10 of the trust, including criteria under which reserve funds may be  
11 prudently invested subject to advice of the state treasurer and the  
12 director of the department of financial management; and

13           (5) Submit any internal rules or policies it adopts to the  
14 secretary of state. The internal rules or policies must be made  
15 available by the secretary of state for public inspection.

16        NEW SECTION.    **Sec. 126.**    CONFORMING EMPLOYER BENEFITS PLANS. (1)

17 Nothing in this chapter limits an employer's right to maintain  
18 employee benefit plans under the federal employee retirement income  
19 security act of 1974.

20           (2) Irrevocable expenditures.

21           (a) At least 50 percent of each required health care expenditure  
22 for calendar year 2022 must consist of irrevocable expenditures.  
23 Revocable expenditures that exceed 40 percent of required health care  
24 expenditures shall not be counted toward the employer spending  
25 requirement.

26           (b) At least 80 percent of each required health care expenditure  
27 for calendar year 2023 must consist of irrevocable expenditures.  
28 Revocable expenditures that exceed 20 percent of required health care  
29 expenditures shall not be counted toward the employer spending  
30 requirement.

31           (c) On and after January 1, 2024, only irrevocable health care  
32 expenditures shall be counted toward the employer spending  
33 requirement.

34           (d) Health care expenditures paid to the employment security  
35 department or the whole Washington health trust on behalf of an  
36 employee are not revocable.

37           (3) Revocable expenditures. Subject to the limitations in  
38 subsection (2) of this section, revocable health care expenditures

1 shall be counted toward the employer spending requirement, provided  
2 that:

3 (a) The expenditure is reasonably calculated to benefit the  
4 employee; and

5 (b) No portion of the expenditure is revoked prior to the  
6 earliest of: (i) Twenty-four months from the date of the expenditure;  
7 (ii) ninety days after separation from employment; or (iii) for  
8 revocable expenditures made prior to January 1, 2024, the date that  
9 the employee knowingly, voluntarily, and permanently waives in  
10 writing the unused portion of such expenditure; and

11 (c) The employee receives from the employer or its agent a  
12 written summary within 15 calendar days of the date of the  
13 expenditure that includes: (i) The name, address, email address, and  
14 telephone number of any third party to whom the expenditure was made;  
15 (ii) the date and amount of the expenditure; (iii) a summary of how  
16 the benefit may be used, including types of health care services  
17 available; (iv) restrictions on the use of this benefit, including  
18 maximum dollar value of benefits or account balances; and (v) the  
19 date on which any portion of this benefit will be revoked; and

20 (d) An employee who separates from employment with any amount of  
21 unused revocable expenditures receives, within three business days  
22 following the separation: (i) A written notice with a summary of how  
23 the benefit may be used, including types of health care services  
24 available; (ii) restrictions on the use of this benefit, including  
25 maximum dollar value of benefits or account balances; and (iii) the  
26 date on which the benefit will be revoked.

27 (4) Effect of court order. If the attorney general certifies to  
28 the governor and the legislature that a court of competent  
29 jurisdiction has struck down any provision of subsection (3) of this  
30 section, or permanently enjoined its enforcement, then only  
31 irrevocable expenditures shall count toward the employer spending  
32 requirement as of the first day of the next calendar quarter  
33 following the attorney general's certification.

34 (5) All employers operating in the state may pay the employment  
35 contribution for an employee directly to the trust for the purpose of  
36 establishing the employee's eligibility to enroll in the trust.

37 (6) Residents employed in the state and enrolled in minimum  
38 essential coverage, as defined by the patient protection and  
39 affordable care act, may:

40 (a) Participate in the medical reimbursement accounts; or



1 (b) Elect to apply any unused required health care expenditures  
2 an employer paid to the employment security department towards any  
3 employment contribution or premium required for enrollment in the  
4 trust established in section 103 of this act, subject to exclusions  
5 defined in section 111 of this act, to enroll in the whole Washington  
6 health trust as a primary health insurance.

7 NEW SECTION. **Sec. 127.** ESSENTIAL HEALTH OPTIONS PROGRAM. (1)  
8 The health care authority shall administer the essential health  
9 options program for residents not enrolled in the whole Washington  
10 health trust, which comprises essential community access and medical  
11 reimbursement accounts. The health care authority shall determine  
12 eligibility and benefits under the program component to maximize  
13 participants' overall access to health care services.

14 (2) Under essential community access, eligible uninsured  
15 Washington residents may obtain essential health care from any  
16 provider participating in the whole Washington health trust as  
17 community health providers. Essential community access is not an  
18 insurance plan.

19 (3) Essential community access shall be open to eligible,  
20 uninsured Washington residents except when they are eligible to  
21 receive benefits under medicare or medicaid. Additional eligibility  
22 criteria shall be established by the health care authority, but no  
23 person may be excluded from essential community access based on  
24 employment or immigration status or a preexisting condition.

25 (4) Essential community access may be funded from a variety of  
26 sources, including required health care expenditures paid by  
27 employers pursuant to section 202 of this act, from individuals, and  
28 from the whole Washington health trust. Funding from the whole  
29 Washington health trust must prioritize essential health care  
30 services for residents based on their ability to pay the employment  
31 contribution owed for participation in the whole Washington health  
32 trust.

33 (5) Essential community access shall use the rates established  
34 through annual negotiations by community health providers under the  
35 whole Washington health trust as defined in section 109 of this act.

36 (6) Essential community access shall provide payment for  
37 essential health benefits as defined in section 101 of this act to  
38 providers participating in the whole Washington health trust as  
39 community health providers as described in section 109 of this act.

1 (7) The employment security department shall be authorized to use  
2 payments made by employers to satisfy their health care expenditure  
3 requirements as set forth in section 202 of this act to establish and  
4 maintain medical reimbursement accounts from which employees may  
5 obtain reimbursement of health care expenditures in the amount and  
6 under the terms set by the board of the trust in annual negotiations  
7 with community health providers as established in section 109 of this  
8 act.

9 (8) The employment security department may coordinate with a  
10 third-party vendor to administer program operations, including  
11 enrollment, tracking service utilization, billing, and communication  
12 with the participants.

13 (9) The office of the treasurer shall ensure that any health care  
14 expenditures made by an employer to the employment security  
15 department pursuant to section 202 of this act are kept separate and  
16 apart from general funds and shall limit use of the expenditures to  
17 support the essential health options program or applied to an  
18 employment contribution or premium an employee owes for enrollment in  
19 the whole Washington health trust.

20 (10) The health care authority shall develop a plan to more  
21 directly integrate employer coverage for essential health benefits  
22 and to ensure that employer health care expenditures made to the  
23 employment security department pursuant to section 202 of this act  
24 can be used to maximize enrollment in health insurance through the  
25 whole Washington health trust or medicaid. This plan may include  
26 possible options for incenting employers to provide quality,  
27 affordable health insurance directly to employees. This plan shall be  
28 presented to the legislature annually beginning no later than  
29 December 1, 2025, so that it may be considered and approved for full  
30 implementation beginning during a marketplace open enrollment period  
31 no more than 20 months following approval. Until a plan to integrate  
32 employer essential health coverage directly into the whole Washington  
33 health trust is approved by the legislature, the employment security  
34 department shall continue to administer the essential community  
35 health options program, which includes essential community access and  
36 medical reimbursement accounts, in a manner that is consistent with  
37 section 101 of this act.

38 NEW SECTION. **Sec. 128.** CONFORMING FEDERALLY QUALIFIED TRUST  
39 FUNDS. By January 1, 2025, the board shall submit to the legislature

1 a proposal to integrate those current and future federally qualified  
2 trust funds that choose to participate in the trust.

3 NEW SECTION. **Sec. 129.** CONFORMING LABOR AND INDUSTRIES. By  
4 January 1, 2025, the board, in coordination with the department of  
5 labor and industries, shall study and make a report to the governor  
6 and appropriate committees of the legislature on the coordination of  
7 essential health benefits for injured workers under the trust.

8 **Part II**  
9 **Assessments and Revenues**

10 NEW SECTION. **Sec. 201.** DEFINITIONS. The definitions in this  
11 section apply throughout this chapter unless the context clearly  
12 requires otherwise.

13 (1) "Adjusted distributive shares" means aggregate gross  
14 distributive share of income, gain, or credit, except as otherwise  
15 provided in Title 26 U.S.C. Sec. 704 of the internal revenue code,  
16 paid to a Washington state resident less the Washington partnership  
17 exemption.

18 (2) "Adjusted net earnings from self-employment of sole  
19 proprietors" means "net earnings from self-employment of sole  
20 proprietors" as defined in section 1402 of the internal revenue code  
21 less a number equal to 15,000 reduced by 25 percent of an  
22 individual's total net earnings from self-employment of sole  
23 proprietors and allocated to the state as provided in section 203 of  
24 this act. All numbers less than zero equal zero.

25 (3) "Adjusted quarterly payroll" means aggregate gross payroll  
26 paid to a Washington state resident less the Washington payroll  
27 exemption.

28 (4) "Assessment" or "assessments" means the payments required by  
29 section 202 of this act when paid to the department by an employer.

30 (5) "Commissioner" means the commissioner of the employment  
31 security department or the commissioner's designee.

32 (6) "Department" means the employment security department.

33 (7) (a) "Employee" means an individual who is in the employment of  
34 an employer.

35 (b) "Employee" does not include employees of the federal  
36 government.

1           (8) (a) "Employer" means: (i) Any individual or type of  
2 organization, including any partnership, association, trust, estate,  
3 joint stock company, insurance company, limited liability company, or  
4 corporation, whether domestic or foreign, or the receiver, trustee in  
5 bankruptcy, trustee, or the legal representative of a deceased  
6 person, having any person in employment or, having become an  
7 employer, has not ceased to be an employer as provided in this title;  
8 (ii) the state, state institutions, and state agencies; and (iii) any  
9 unit of local government including, but not limited to, a county,  
10 city, town, municipal corporation, quasi-municipal corporation, or  
11 political subdivision.

12           (b) "Employer" does not include the federal government.

13           (9) "Employer spending requirement" means the sum total of  
14 required health care expenditures that an employer must make for all  
15 of its employees.

16           (10) (a) "Employment" means personal service, of whatever nature,  
17 unlimited by the relationship of master and servant as known to the  
18 common law or any other legal relationship performed for wages or  
19 under any contract calling for the performance of personal services,  
20 written or oral, express or implied. The term "employment" includes  
21 an individual's entire service performed within or without or both  
22 within and without this state, if:

23           (i) The service is localized in this state; or

24           (ii) The service is not localized in any state, but some of the  
25 service is performed in this state; and

26           (A) The base of operations of the employee is in the state, or if  
27 there is no base of operations, then the place from which such  
28 service is directed or controlled is in this state; or

29           (B) The base of operations or place from which such service is  
30 directed or controlled is not in any state in which some part of the  
31 service is performed, but the individual's residence is in this  
32 state.

33           (b) "Employment" does not include:

34           (i) Services for remuneration when it is shown to the  
35 satisfaction of the commissioner that:

36           (A) (I) Such individual has been and will continue to be free from  
37 control or direction over the performance of such service, both under  
38 his or her contract of service and in fact;

39           (II) Such service is either outside the usual course of business  
40 for which such service is performed, or that such service is

1 performed outside of all the places of business of the enterprises  
2 for which such service is performed; and

3 (III) Such individual is customarily engaged in an independently  
4 established trade, occupation, profession, or business, of the same  
5 nature as that involved in the contract of service; or

6 (B) As a separate alternative:

7 (I) Such individual has been and will continue to be free from  
8 control or direction over the performance of such service, both under  
9 his or her contract of service and in fact;

10 (II) Such service is either outside the usual course of business  
11 for which such service is performed, or that such service is  
12 performed outside of all the places of business of the enterprises  
13 for which such service is performed, or the individual is  
14 responsible, both under the contract and in fact, for the costs of  
15 the principal place of business from which the service is performed;

16 (III) Such individual is customarily engaged in an independently  
17 established trade, occupation, profession, or business, of the same  
18 nature as that involved in the contract of service, or such  
19 individual has a principal place of business for the work the  
20 individual is conducting that is eligible for a business deduction  
21 for federal income tax purposes;

22 (IV) On the effective date of the contract of service, such  
23 individual is responsible for filing at the next applicable filing  
24 period, both under the contract of service and in fact, a schedule of  
25 expenses with the internal revenue service for the type of business  
26 the individual is conducting;

27 (V) On the effective date of the contract of service, or within a  
28 reasonable period after the effective date of the contract, such  
29 individual has established an account with the department of revenue,  
30 and other state agencies as required by the particular case, for the  
31 business the individual is conducting for the payment of all state  
32 taxes normally paid by employers and businesses and has registered  
33 for and received a unified business identifier number from the state  
34 of Washington; and

35 (VI) On the effective date of the contract of service, such  
36 individual is maintaining a separate set of books or records that  
37 reflect all items of income and expenses of the business which the  
38 individual is conducting; or

39 (ii) Services that require registration under chapter 18.27 RCW  
40 or licensing under chapter 19.28 RCW rendered by an individual when:

1 (A) The individual has been and will continue to be free from  
2 control or direction over the performance of the service, both under  
3 the contract of service and in fact;

4 (B) The service is either outside the usual course of business  
5 for which the service is performed, or the service is performed  
6 outside of all the places of business of the enterprise for which the  
7 service is performed, or the individual is responsible, both under  
8 the contract and in fact, for the costs of the principal place of  
9 business from which the service is performed;

10 (C) The individual is customarily engaged in an independently  
11 established trade, occupation, profession, or business, of the same  
12 nature as that involved in the contract of service, or the individual  
13 has a principal place of business for the business the individual is  
14 conducting that is eligible for a business deduction for federal  
15 income tax purposes, other than that furnished by the employer for  
16 which the business has contracted to furnish services;

17 (D) On the effective date of the contract of service, the  
18 individual is responsible for filing at the next applicable filing  
19 period, both under the contract of service and in fact, a schedule of  
20 expenses with the internal revenue service for the type of business  
21 the individual is conducting;

22 (E) On the effective date of the contract of service, or within a  
23 reasonable period after the effective date of the contract, the  
24 individual has an active and valid certificate of registration with  
25 the department of revenue, and an active and valid account with any  
26 other state agencies as required by the particular case, for the  
27 business the individual is conducting for the payment of all state  
28 taxes normally paid by employers and businesses and has registered  
29 for and received a unified business identifier number from the state  
30 of Washington;

31 (F) On the effective date of the contract of service, the  
32 individual is maintaining a separate set of books or records that  
33 reflect all items of income and expenses of the business that the  
34 individual is conducting; and

35 (G) On the effective date of the contract of service, the  
36 individual has a valid contractor registration pursuant to chapter  
37 18.27 RCW or an electrical contractor license pursuant to chapter  
38 19.28 RCW.

39 (11) "Health care expenditure" means an amount paid by an  
40 employer to an employee or a trustee or a third party on behalf of

1 the employee for the purpose of providing or reimbursing the cost of  
2 health care services for employees and/or their spouses, domestic  
3 partners, children, or other dependents. "Health care expenditure"  
4 also means an amount paid by an employer to the whole Washington  
5 health trust on behalf of the employee to establish his or her  
6 enrollment in the whole Washington health trust in the manner and  
7 according to the terms set by the health care authority. "Health care  
8 expenditure" does not include any amount otherwise required to be  
9 paid by federal, state, or local law.

10 (12) "Health care services" means medical care, services, or  
11 goods that may qualify as tax deductible medical care expenses under  
12 section 213 of the internal revenue code, or medical care, services,  
13 or goods having substantially the same purpose or effect as such  
14 deductible expenses.

15 (13) "Individual" means a natural person.

16 (14) "Internal revenue code" means the United States internal  
17 revenue code of 1986, as amended, as of the effective date of this  
18 section, or such subsequent date as the department of revenue may  
19 provide by rule consistent with the purpose of this chapter.

20 (15) "Partnership" means an association of two or more persons to  
21 carry on as co-owners a business for profit formed under RCW  
22 25.05.055, predecessor law, or comparable law of another  
23 jurisdiction.

24 (16) "Payroll" means any amount paid to Washington state  
25 residents and defined as "wages" under section 3121 of the internal  
26 revenue code.

27 (17) "Premium" or "premiums" means the premium established under  
28 section 107 of this act and paid to the department for deposit in the  
29 benefits account created in section 123 of this act.

30 (18)(a) "Remuneration" means all compensation paid for personal  
31 services including commissions and bonuses and the cash value of all  
32 compensation paid in any medium other than cash.

33 (b) Previously accrued compensation, other than severance pay or  
34 payments received under plant closure agreements, when assigned to a  
35 specific period of time by virtue of a collective bargaining  
36 agreement, individual employment contract, customary trade practice,  
37 or request of the individual compensated, is considered remuneration  
38 for the period to which it is assigned. Assignment clearly occurs  
39 when the compensation serves to make the individual eligible for all

1 regular fringe benefits for the period to which the compensation is  
2 assigned.

3 (c) Remuneration also includes settlements or other proceeds  
4 received by an individual as a result of a negotiated settlement for  
5 termination of an individual written employment contract before its  
6 expiration date. The proceeds are deemed assigned in the same  
7 intervals and in the same amount for each interval as compensation is  
8 allocated under the contract.

9 (d) Remuneration does not include:

10 (i) The payment of tips;

11 (ii) Supplemental benefit payments made by an employer to an  
12 employee in addition to any Washington health trust benefits received  
13 by the employee; or

14 (iii) Payments to members of the armed forces of the United  
15 States, including the organized militia of the state of Washington,  
16 for the performance of duty for periods not exceeding 72 hours at a  
17 time.

18 (19) "Resident" means an individual who presents evidence of  
19 established permanent residency in the state of Washington, who did  
20 not enter the state for the primary purpose of obtaining health  
21 services, and who meets residency requirements consistent with RCW  
22 46.16A.140. "Resident" also includes an individual and the  
23 individual's accompanying family members who are residing in the  
24 state for the purpose of engaging in employment for at least one  
25 month. The confinement of a person in a nursing home, hospital, or  
26 other medical institution in the state may not by itself be  
27 sufficient to qualify such person as a resident.

28 (20) "Required health care expenditure" means the health care  
29 expenditure that an employer is required to make to or on behalf of  
30 an employee.

31 (21) "Service is localized in this state" has the meaning  
32 described in RCW 50.04.120.

33 (22) "Sole proprietor" means:

34 (a) Any self-employed person, including a sole proprietor or  
35 independent contractor; or

36 (b) A qualified joint venturer as described in Title 26 U.S.C.  
37 Sec. 761 of the internal revenue code.

38 (23) "Taxable year" means the taxpayer's taxable year as  
39 determined under the internal revenue code.



1 (24) "Taxpayer" means an individual subject to tax under this  
2 chapter.

3 (25) "Wage" or "wages" means:

4 (a) For the purpose of the health assessments, the remuneration  
5 paid by an employer to an employee. The maximum wages subject to an  
6 assessment are those wages as set by the commissioner under section  
7 202 of this act;

8 (b) For the purpose of payment of benefits, the remuneration paid  
9 by one or more employers to an employee for employment during the  
10 employee's qualifying period. At the request of an employee, wages  
11 may be calculated on the basis of remuneration payable. The  
12 department shall notify each employee that wages are calculated on  
13 the basis of remuneration paid, but at the employee's request a  
14 redetermination may be performed and based on remuneration payable.

15 (26) "Washington payroll exemption" and "Washington partnership  
16 exemption" means a number equal to 3,750 reduced by 25 percent of the  
17 total quarterly aggregate gross payroll paid to the employee or  
18 aggregate gross distributive shares paid to a partner and allocated  
19 to the state as provided in section 202 of this act. However, a  
20 number less than zero equals zero.

21 NEW SECTION. **Sec. 202.** A new section is added to chapter 82.02  
22 RCW to read as follows:

23 EMPLOYER REQUIRED HEALTH CARE EXPENDITURE AND HEALTH SECURITY  
24 ASSESSMENT. (1)(a) Beginning January 1, 2026, employers shall make  
25 required health care expenditures to or on behalf of each employee  
26 each quarter. The department shall assess for each individual in  
27 employment with an employer and for each sole proprietor a health  
28 security assessment based on the amount of the individual's wages  
29 subject to section 203 of this act.

30 (b) The assessment rate shall be equal to 10.5 percent of an  
31 employee's aggregate adjusted quarterly payroll or wages and less the  
32 employer's health care expenditures for that employee during the same  
33 reporting period.

34 (c) An employer may deduct up to two percent of the required  
35 health care expenditure from an employee's wages.

36 (d) An employer may elect to pay all or any portion of the  
37 employee's share of the required health care expenditure.

38 (2) The employer must collect from the employees the required  
39 health care expenditure and any surcharges provided under this

1 section through payroll deductions and remit the amounts collected to  
2 the department or make a health care expenditure to or on behalf of  
3 the employee.

4 (3) Assessments from employers and sole proprietors shall be  
5 collected in the manner and at such intervals as provided in this  
6 title and directed by the department.

7 (4) Health care expenditures paid to or on behalf of an employee  
8 exceeding the required health care expenditure for the employee must  
9 not be counted toward the employer spending requirement except as  
10 expressly permitted by the department.

11 (5) When an employer pays the entire required health care  
12 expenditure for an employee to the employment security department the  
13 employee is eligible for enrollment in the whole Washington health  
14 trust and the employment contribution required must be deposited in  
15 the benefits account created in section 123 of this act.

16 (6) Beginning January 1, 2023, until May 15, 2028, employers with  
17 fewer than 50 employees and that face financial hardship in paying  
18 the required health care expenditure may, upon application to the  
19 department, be eligible for waivers or reductions in the assessment.  
20 The department shall establish rules and procedures governing all  
21 aspects of the business assistance program, including application  
22 procedures, wages, profits, age of firm, and duration of assistance.

23 (7) Pending integration of any federally qualified trusts, the  
24 payroll of employees covered under these trusts is exempt from the  
25 health security assessment, although the employer may pay health care  
26 expenditures to the employment security department on behalf of the  
27 employee voluntarily.

28 (8) Unless repeal, amendment, waiver, or other integration  
29 measure for applicable state and federal laws described in section  
30 111 of this act, payroll of Native American residents who do not  
31 elect to enroll in the whole Washington health trust is exempt from  
32 the health security assessment.

33 (9) The department must deposit revenue collected under this  
34 section into the medical reimbursement accounts created in section  
35 127 of this act or the whole Washington health trust benefits account  
36 created in section 123 of this act.

37 (10) For the purposes of this section, the terms "employer" and  
38 "resident" have the same meaning as defined in section 102 of this  
39 act.

1        NEW SECTION.        **Sec. 203.**        EMPLOYEE HEALTH EXPENDITURES AND  
2 EMPLOYEE HEALTH ASSESSMENT. (1) Beginning January 1, 2026, an  
3 employee health assessment is imposed on the receipt of wages by  
4 residents employed in Washington state. All employers in Washington  
5 state must collect the employee health assessment on aggregate gross  
6 payroll paid to Washington state residents from employee wages and  
7 make required health care expenditures or pay the assessment to the  
8 department in quarterly installments. Except as provided in section  
9 114 of this act, the employee health assessment must be two percent  
10 of the employee's aggregate adjusted quarterly payroll.

11        (2) The pay or wages from employees who are exempt from the  
12 required health care expenditure established in section 202 of this  
13 act are exempt from owing the employee health assessment on those  
14 wages.

15        (3) Beginning January 1, 2024, residents operating as a sole  
16 proprietor must pay a sole proprietor health assessment in annual  
17 installments to the department of revenue equal to an excise tax of  
18 two percent on adjusted net earnings from self-employment.

19        NEW SECTION.        **Sec. 204.**        EMPLOYER WITHHOLDING ESTIMATED EMPLOYEE  
20 HEALTH ASSESSMENT. Every employer making a payment of wages or  
21 salaries earned in this state by Washington residents, regardless of  
22 the place where the payment is made, and who is required by the  
23 internal revenue code to withhold taxes, must deduct and withhold an  
24 employee health assessment as prescribed by the department by rule.  
25 The rules prescribed must reasonably reflect the quarterly tax  
26 liability of the employee under this chapter. Every employer making  
27 such a deduction and withholding must furnish to the employee a  
28 record of the amount of tax deducted and withheld from the employee  
29 on forms provided by the department.

30        NEW SECTION.        **Sec. 205.**        EMPLOYER IS LIABLE FOR TAX WITHHELD. Any  
31 person required to deduct and withhold the employee health assessment  
32 imposed by this chapter is liable under section 204 of this act to  
33 the department for the payment of the amount deducted and withheld,  
34 and is not liable to any other person for the amount of tax deducted  
35 and withheld under this chapter or for the act of withholding.

36        NEW SECTION.        **Sec. 206.**        CREDITS FOR WITHHELD EMPLOYEE HEALTH  
37 ASSESSMENTS. The amount deducted and withheld as tax under sections

1 204 through 251 of this act during any taxable year is allowed as a  
2 credit against the employee health assessment imposed for the taxable  
3 year by this chapter. If the liability of any individual for taxes,  
4 interest, penalties, or other amounts due the state of Washington is  
5 less than the total amount of the credit which the individual is  
6 entitled to claim under this section, the individual is entitled to a  
7 refund from the department in the amount of the excess of the credit  
8 over the tax otherwise due. If any individual entitled to claim a  
9 credit under this section is not otherwise required by this chapter  
10 to file a return with the department, a refund may be obtained in the  
11 amount of the credit by filing a return with the department, with  
12 applicable sections completed, to claim the refund. No credit or  
13 refund is allowed under this section unless the credit or refund is  
14 claimed on a return filed for the taxable year for which the amount  
15 was deducted and withheld.

16 NEW SECTION. **Sec. 207.** EMPLOYER RESPONSIBILITIES. (1) An  
17 employer shall:

18 (a) Maintain accurate records of health care expenditures,  
19 required health care expenditures, and proof of such expenditures  
20 made each quarter each year, and allow the department reasonable  
21 access to such records, provided, however, that employers are not  
22 required to maintain such records in any particular form; and

23 (b) Provide information to the department, or the department  
24 designee, on an annual basis containing additional information as the  
25 department requires, including information on the employer's  
26 compliance with this chapter. The department may not require an  
27 employer to provide information in violation of state or federal  
28 privacy laws. In the event the information required by the department  
29 is comingled with information protected by privacy laws, the employer  
30 shall redact the private information. If an employer uses a revocable  
31 expenditure to satisfy its obligation to make required health care  
32 expenditures for any of its employees, the employer shall also report  
33 to the department any conditions or restrictions on the employee's  
34 use of the expenditure, and the condition or conditions that permit  
35 any portion of the expenditure to be revoked by or returned to the  
36 employer.

37 (2) Where an employer does not maintain or retain adequate  
38 records documenting the health care expenditures made, or does not  
39 allow the department reasonable access to such records, it shall be

1 presumed that the employer did not make the required health care  
2 expenditures for the quarter for which records are lacking, absent  
3 clear and convincing evidence otherwise. The department of revenue  
4 and the health care authority have the authority to provide any and  
5 all nonfinancial information to the department necessary to fulfill  
6 the department responsibilities as the enforcing agency under this  
7 chapter. With regard to all such information provided by the  
8 department of revenue and the health care authority, the department  
9 shall be subject to the confidentiality provisions in RCW 82.32.330.

10 NEW SECTION. **Sec. 208.** PENALTIES FOR FAILURE TO PAY OR COLLECT  
11 WITHHOLDINGS. (1) The employee health assessment required by this  
12 chapter to be collected by the employer, and any health insurance  
13 premiums when collected by the employer on behalf of an employee or  
14 an employee's spouse, is deemed to be held in trust by the employer  
15 until the required health care expenditure is made or the assessment  
16 is paid to the department.

17 (2) In case any employer, or a responsible person within the  
18 meaning of internal revenue code section 6672, collected the tax and  
19 fails to pay it to the department, the employer or responsible person  
20 is personally liable to the state for the amount collected. The  
21 interest and penalty provisions of chapter 82.32 RCW apply to this  
22 section. An employer or other responsible person who appropriates or  
23 converts the employee health assessment is guilty of a gross  
24 misdemeanor as provided in chapter 9A.20 RCW.

25 (3) In case any employer or responsible person within the meaning  
26 of internal revenue code section 6672 fails to collect the employee  
27 health assessment herein imposed, the employer is still liable to the  
28 state for the amount owed.

29 NEW SECTION. **Sec. 209.** COLLECTION OF EMPLOYEE PREMIUMS. (1) By  
30 January 1, 2026, the department shall ensure all employers in  
31 Washington state may withhold the premium an employee or their spouse  
32 owes for enrollment into the trust created in section 103 of this act  
33 and pay the premium to the department in quarterly installments.

34 (2) An employer may pay all or a portion of the premium an  
35 employee or an employee's spouse is subject to for enrollment in the  
36 trust created in section 103 of this act as a benefit of employment.

37 (3) If an employer with fewer than 50 employees elects to pay all  
38 of the assessments and any premiums on behalf of an employee for the

1 purpose of making an employee eligible to enroll in the whole  
2 Washington health trust, the employer is considered eligible for  
3 assistance under the business assistance program established in  
4 section 202 of this act.

5 NEW SECTION. **Sec. 210.** OUT-OF-STATE EMPLOYERS OF WASHINGTON  
6 RESIDENTS. By January 1, 2026, the department shall develop policy,  
7 procedures, and forms allowing out-of-state employers employing one  
8 or more residents of Washington state to voluntarily:

9 (1) Pay the assessment established in section 202 of this act;  
10 and

11 (2) Collect the premium an employee or an employee's spouse is  
12 subject to for enrollment in the trust created in section 103 of this  
13 act on behalf of employees or an employee's spouse.

14 NEW SECTION. **Sec. 211.** EMPLOYER REQUIREMENTS. (1) In the form  
15 and at the times specified in this chapter and by the commissioner,  
16 an employer shall make reports, furnish information, and collect and  
17 remit assessments as required by this chapter to the department. If  
18 the employer is a temporary help company that provides employees on a  
19 temporary basis to its customers, the temporary help company is  
20 considered the employer for purposes of this section.

21 (2) (a) An employer must keep at the employer's place of business  
22 a record of employment, for a period of six years, from which the  
23 information needed by the department for purposes of this chapter may  
24 be obtained. This record shall at all times be open to the inspection  
25 of the commissioner.

26 (b) Information obtained under this chapter from employer records  
27 is confidential and not open to public inspection, other than to  
28 public employees in the performance of their official duties.  
29 However, an interested party shall be supplied with information from  
30 employer records to the extent necessary for the proper presentation  
31 of the case in question. An employer may authorize inspection of the  
32 employer's records by written consent.

33 (3) The requirements relating to the collection of the  
34 assessments are as provided in this chapter. Before issuing a warning  
35 letter, the department shall enforce the collection of assessments  
36 through conference and conciliation. These requirements apply to:

1 (a) An employer that fails under this chapter to make the  
2 required reports, or fails to remit the full amount of the  
3 assessments when due;

4 (b) An employer that willfully makes a false statement or  
5 misrepresentation regarding a material fact, or willfully fails to  
6 report a material fact, to avoid making the required reports or  
7 remitting the full amount of the assessment when due under this  
8 chapter;

9 (c) A successor in the manner specified in section 215 of this  
10 act; and

11 (d) An officer, member, or owner having control or supervision of  
12 payment and/or reporting of assessments, or who is charged with the  
13 responsibility for the filing of returns, in the manner specified in  
14 section 206 of this act.

15 NEW SECTION. **Sec. 212.** UNLAWFUL ACTS—EMPLOYERS. (1) It is  
16 unlawful for any employer to:

17 (a) Interfere with, restrain, or deny the exercise of, or the  
18 attempt to exercise, any valid right provided under this chapter; or

19 (b) Discharge or in any other manner discriminate against any  
20 employee for opposing any practice made unlawful by this chapter.

21 (2) It is unlawful for any person to discharge or in any other  
22 manner discriminate against any employee because the employee has:

23 (a) Filed any complaint, or has instituted or caused to be  
24 instituted any proceeding, under or related to this chapter;

25 (b) Given, or is about to give, any information in connection  
26 with any inquiry or proceeding relating to any right provided under  
27 this chapter; or

28 (c) Testified, or is about to testify, in any inquiry or  
29 proceeding relating to any right provided under this chapter.

30 NEW SECTION. **Sec. 213.** EMPLOYER PENALTIES. (1) An employer who  
31 willfully fails to make the required reports is subject to penalties  
32 as follows:

33 (a) For the second occurrence, the penalty is \$75;

34 (b) For the third occurrence, the penalty is \$150; and

35 (c) For the fourth occurrence and for each occurrence thereafter,  
36 the penalty is \$250.

37 (2) An employer who willfully fails to remit the full amount of  
38 the assessments when due is liable, in addition to the full amount of

1 assessments due and amounts assessed as interest under section 218 of  
2 this act, to a penalty equal to the assessments and interest.

3 (3) Any penalties under this section shall be deposited into the  
4 Washington health trust enforcement account.

5 (4) For the purposes of this section, "willful" means a knowing  
6 and intentional action that is neither accidental nor the result of a  
7 bona fide dispute.

8 (5) The department shall enforce the collection of penalties  
9 through conference and conciliation.

10 (6) These penalties may be appealed as provided in sections 230  
11 through 248 of this act.

12 NEW SECTION. **Sec. 214.** OUT-OF-STATE EMPLOYEES—ASSESSMENT  
13 WAIVER. (1) An employer may file an application with the department  
14 for a conditional waiver for the payment of assessments under section  
15 202 of this act for any employee who is:

16 (a) Physically based outside of the state;

17 (b) Employed in the state on a limited or temporary work  
18 schedule; and

19 (c) Not expected to be employed in the state for 820 hours or  
20 more in a qualifying period.

21 (2) The department must approve an application that has been  
22 signed by both the employee and employer verifying their belief that  
23 the conditions in this subsection will be met during the qualifying  
24 period.

25 (3) If the employee exceeds the 820 hours or more in a qualifying  
26 period, the conditional waiver expires and the employer and employee  
27 will be responsible for their shares of all assessments that would  
28 have been paid during the qualifying period in which the employee  
29 exceeded the 820 hours had the waiver not been granted. Upon payment  
30 of the missed assessments, the employee will be credited for the  
31 hours worked and will be eligible for benefits under this chapter as  
32 if the assessments were originally paid.

33 NEW SECTION. **Sec. 215.** TERMINATION OR DISPOSAL OF BUSINESS—  
34 ASSESSMENT PAYMENT—SUCCESSOR LIABILITY. Whenever any employer quits  
35 business, or sells out, exchanges, or otherwise disposes of the  
36 employer's business or stock of goods, any assessments payable under  
37 this chapter shall become immediately due and payable, and the



1 employer shall, within 10 days, make a return and pay the assessments  
2 due; and any person who becomes a successor to such business shall  
3 become liable for the full amount of the assessments and withhold  
4 from the purchase price a sum sufficient to pay any assessments due  
5 from the employer until such time as the employer produces a receipt  
6 from the department showing payment in full of any assessments due or  
7 a certificate that no assessment is due and, if such assessment is  
8 not paid by the employer within 10 days from the date of such sale,  
9 exchange, or disposal, the successor shall become liable for the  
10 payment of the full amount of assessments, and the payment thereof by  
11 such successor shall, to the extent thereof, be deemed a payment upon  
12 the purchase price, and if such payment is greater in amount than the  
13 purchase price the amount of the difference shall become a debt due  
14 such successor from the employer. A successor may not be liable for  
15 any assessments due from the person from whom that person has  
16 acquired a business or stock of goods if that person gives written  
17 notice to the department of such acquisition and no assessment is  
18 issued by the department within 180 days of receipt of such notice  
19 against the former operator of the business and a copy thereof mailed  
20 to such successor.

21 NEW SECTION. **Sec. 216.** DELINQUENCY—ORDER AND NOTICE OF  
22 ASSESSMENT. At any time after the commissioner shall find that any  
23 assessments, interest, or penalties have become delinquent, the  
24 commissioner may issue an order and notice of assessment specifying  
25 the amount due, which order and notice of assessment shall be served  
26 upon the delinquent employer in the manner prescribed for the service  
27 of a summons in a civil action, or using a method by which the  
28 mailing can be tracked or the delivery can be confirmed. Failure of  
29 the employer to receive such notice or order whether served or mailed  
30 shall not release the employer from any tax, or any interest or  
31 penalties thereon.

32 NEW SECTION. **Sec. 217.** JEOPARDIZED COLLECTION—IMMEDIATE  
33 ASSESSMENT. If the commissioner has reason to believe that an  
34 employer is insolvent or if any reason exists why the collection of  
35 any assessments accrued will be jeopardized by delaying collection,  
36 he or she may make an immediate assessment thereof and may proceed to  
37 enforce collection immediately, but interest and penalties shall not

1 begin to accrue upon any assessments until the date when such  
2 assessment would normally have become delinquent.

3 NEW SECTION. **Sec. 218.** DELINQUENCY—ACCRUAL OF INTEREST. If  
4 assessments are not paid on the date on which they are due and  
5 payable as prescribed by the commissioner, the whole or part thereof  
6 remaining unpaid shall bear interest at the rate of one percent per  
7 month or fraction thereof from and after such date until payment plus  
8 accrued interest is received by him or her. The date as of which  
9 payment of assessments, if mailed, is deemed to have been received  
10 may be determined by rule of the commissioner. Interest collected  
11 under this section shall be paid into the Washington health trust  
12 enforcement account. Interest shall not accrue on assessments from  
13 any estate in the hands of a receiver, executor, administrator,  
14 trustee in bankruptcy, common law assignee, or other liquidating  
15 officer subsequent to the date when such receiver, executor,  
16 administrator, trustee in bankruptcy, common law assignee, or other  
17 liquidating officer qualifies as such, but assessments accruing with  
18 respect to employment of persons by any receiver, executor,  
19 administrator, trustee in bankruptcy, common law assignee, or other  
20 liquidating officer shall become due and draw interest in the same  
21 manner as assessments due from other employers. Where adequate  
22 information has been furnished to the department and the department  
23 has failed to act or has advised the employer of no liability or  
24 inability to decide the issue, interest may be waived.

25 NEW SECTION. **Sec. 219.** COLLECTION BY DISTRAINT, SEIZURE, AND  
26 SALE. If the amount of assessments, interest, or penalties assessed  
27 by the commissioner by order and notice of assessment provided in  
28 this chapter is not paid within 10 days after the service or mailing  
29 of the order and notice of assessment, the commissioner or his or her  
30 duly authorized representative may collect the amount stated in the  
31 assessment by the distraint, seizure, and sale of the property,  
32 goods, chattels, and effects of the delinquent employer. There shall  
33 be exempt from distraint and sale under this section such goods and  
34 property as are exempt from execution under the laws of this state.

35 NEW SECTION. **Sec. 220.** COLLECTION BY DISTRAINT, SEIZURE, AND  
36 SALE—PROCEDURE. The commissioner, upon making a distraint, shall  
37 seize the property and shall make an inventory of the property

1   distrained, a copy of which shall be mailed to the owner of such  
2   property or personally delivered to him or her, and shall specify the  
3   time and place when said property shall be sold. A notice specifying  
4   the property to be sold and the time and place of sale shall be  
5   posted in at least two public places in the county wherein the  
6   seizure has been made. The time of sale shall be not less than 10 nor  
7   more than 20 days from the date of posting of such notices. The sale  
8   may be adjourned from time to time at the discretion of the  
9   commissioner, but not for a time to exceed in all 60 days. The sale  
10  shall be conducted by the commissioner or his or her authorized  
11  representative who shall proceed to sell such property by parcel or  
12  by lot at a public auction, and who may set a minimum price to  
13  include the expenses of making a levy and of advertising the sale. If  
14  the amount bid for the property at the sale is not equal to the  
15  minimum fixed price, the commissioner or his or her representative  
16  may declare the property to be purchased by the department for the  
17  minimum price. In this event the delinquent account shall be credited  
18  with the amount for which the property has been sold. Property  
19  acquired by the department may be sold by the commissioner or his or  
20  her representative at public or private sale, and the amount realized  
21  shall be placed in the Washington health trust enforcement account.  
22  In all cases of sale, the commissioner shall issue a bill of sale or  
23  a deed to the purchaser and the bill of sale or deed shall be prima  
24  facie evidence of the right of the commissioner to make the sale and  
25  conclusive evidence of the regularity of his or her proceeding in  
26  making the sale, and shall transfer to the purchaser all right,  
27  title, and interest of the delinquent employer in the property. The  
28  proceeds of this sale, except in those cases wherein the property has  
29  been acquired by the department, shall be first applied by the  
30  commissioner in satisfaction of the delinquent account, and out of  
31  any sum received in excess of the amount of delinquent assessments,  
32  interest, and penalties the administration fund shall be reimbursed  
33  for the costs of distraint and sale. Any excess which shall  
34  thereafter remain in the hands of the commissioner shall be refunded  
35  to the delinquent employer. Sums so refundable to a delinquent  
36  employer may be subject to seizure or distraint in the hands of the  
37  commissioner by any other taxing authority of the state or its  
38  political subdivisions.

1           NEW SECTION.       **Sec. 221.**       NOTICE AND ORDER TO WITHHOLD AND  
2 DELIVER. The commissioner may issue to any person, firm, corporation,  
3 political subdivision, or department of the state, a notice and order  
4 to withhold and deliver property of any kind whatsoever when the  
5 commissioner has reason to believe that there is in the possession of  
6 such person, firm, corporation, political subdivision, or department,  
7 property which is due, owing, or belonging to any person, firm, or  
8 corporation upon whom the department has served a benefit overpayment  
9 assessment or a notice and order of assessment for assessments,  
10 interest, or penalties. The effect of a notice to withhold and  
11 deliver shall be continuous from the date the notice and order to  
12 withhold and deliver is first made until the liability is satisfied  
13 or becomes unenforceable because of a lapse of time. The notice and  
14 order to withhold and deliver shall be served by the sheriff or the  
15 sheriff's deputy of the county where the service is made, using a  
16 method by which the mailing can be tracked or the delivery can be  
17 confirmed, or by a duly authorized representative of the  
18 commissioner. Any person, firm, corporation, political subdivision,  
19 or department upon whom service has been made must answer the notice  
20 within 20 days exclusive of the day of service, under oath and in  
21 writing, and shall make true answers to the matters inquired of in  
22 the notice. If there is in the possession of any such person, firm,  
23 corporation, political subdivision, or department, any property which  
24 may be subject to the claim of the department of the state, such  
25 property shall be delivered to the commissioner or the commissioner's  
26 duly authorized representative upon demand to be held in trust by the  
27 commissioner for application on the indebtedness involved or for  
28 return, without interest, in accordance with final determination of  
29 liability or nonliability, or in the alternative, there shall be  
30 furnished a good and sufficient bond satisfactory to the commissioner  
31 conditioned upon final determination of liability. Should any person,  
32 firm, or corporation fail to make answer to an order to withhold and  
33 deliver within the time prescribed, the court may, after the time to  
34 answer such order has expired, to render judgment by default against  
35 the person, firm, or corporation for the full amount claimed by the  
36 commissioner in the notice to withhold and deliver, together with  
37 costs.

38           NEW SECTION.       **Sec. 222.**       WARRANT FOR ASSESSMENT. When an order  
39 and notice of assessment or jeopardy assessment becomes final in

1 accordance with this chapter, the commissioner may file with the  
2 clerk of any county within the state a warrant in the amount of the  
3 notice of assessment plus interest, penalties, and a filing fee under  
4 RCW 36.18.012(10). The clerk of the county where the warrant is filed  
5 shall immediately designate a superior court cause number for the  
6 warrant, and the clerk shall cause to be entered in the judgment  
7 docket under the superior court cause number assigned to the warrant,  
8 the name of the employer mentioned in the warrant, the amount of the  
9 tax, interest, penalties, and filing fee, and the date when the  
10 warrant was filed. The aggregate amount of the warrant as docketed  
11 becomes a lien upon the title to, and interest in all real and  
12 personal property of the employer against whom the warrant is issued,  
13 the same as a judgment in a civil case duly docketed in the office of  
14 the clerk. The warrant is sufficient to support the issuance of writs  
15 of execution and writs of garnishment in favor of the state in the  
16 manner provided by law in the case of civil judgment, wholly or  
17 partially unsatisfied. The clerk of the court is entitled to a filing  
18 fee under RCW 36.18.012(10), which shall be added to the amount of  
19 the warrant, and charged by the commissioner to the employer or  
20 employing unit. A copy of the warrant shall be mailed to the employer  
21 or employing unit using a method by which the mailing can be tracked  
22 or the delivery can be confirmed within five days of filing with the  
23 clerk.

24 NEW SECTION. **Sec. 223.** LIENS. The claim of the department for  
25 any assessments, interest, or penalties not paid when due shall be a  
26 lien prior to all other liens or claims and on parity with prior tax  
27 liens against all property and rights to property, whether real or  
28 personal, belonging to the employer. In order to avail itself of the  
29 lien, the department shall file with any county auditor where  
30 property of the employer is located a statement and claim of lien  
31 specifying the amount of delinquent assessments, interest, and  
32 penalties claimed by the department. From the time of filing for  
33 record, the amount required to be paid shall constitute a lien upon  
34 all property and rights to property, whether real or personal, in the  
35 county, owned by the employer or acquired by him or her. The lien is  
36 not valid against any purchaser, holder of a security interest,  
37 mechanic's lien, or judgment lien creditor until notice thereof has  
38 been filed with the county auditor. This lien is separate and apart  
39 from, and in addition to, any other lien or claim created by, or

1 provided for in, this chapter. When any such notice of lien has been  
2 filed, the commissioner may release the same by filing a certificate  
3 of release when it appears that the amount of delinquent assessments,  
4 interest, and penalties have been paid, or when adequate assurance of  
5 payment is made. Fees for filing and releasing the lien may be  
6 charged to the employer and may be collected from the employer using  
7 the remedies provided in this chapter for the collection of  
8 assessments.

9 NEW SECTION. **Sec. 224.** LIENS—INSOLVENCY, DISSOLUTION, OR  
10 DISTRIBUTION OF ASSETS. In the event of any distribution of an  
11 employer's assets pursuant to an order of any court, including any  
12 receivership, probate, legal dissolution, or similar proceeding, or  
13 in case of any assignment for the benefit of creditors, composition,  
14 or similar proceeding, assessments, interest, or penalties then or  
15 thereafter due shall be a lien upon all the assets of the employer.  
16 The lien is prior to all other liens or claims except prior tax  
17 liens, other liens provided by this chapter, and claims for  
18 remuneration for services of not more than \$250 to each claimant  
19 earned within six months of the commencement of the proceeding. The  
20 existence of a condition of insolvency or the institution of any  
21 judicial proceeding for legal dissolution or of any proceeding for  
22 distribution of assets shall cause the lien to attach without action  
23 on behalf of the commissioner or the state. In the event of an  
24 employer's adjudication in bankruptcy, judicially confirmed extension  
25 proposal, or composition, under the federal bankruptcy act of 1898,  
26 as amended, assessments, interest, or penalties then or thereafter  
27 due are entitled to such priority as provided in that act.

28 NEW SECTION. **Sec. 225.** CIVIL ACTIONS—SERVICE OF PROCESS. (1) If  
29 after due notice, any employer defaults in any payment of  
30 assessments, interest, or penalties, the amount due may be collected  
31 by civil action in the name of the state, and the employer adjudged  
32 in default shall pay the cost of the action. Any lien created by this  
33 chapter may be foreclosed by decree of the court in any such action.  
34 Civil actions brought under this chapter to collect assessments,  
35 interest, or penalties from an employer shall be heard by the court  
36 at the earliest possible date and are entitled to preference upon the  
37 calendar of the court over all other civil actions except petitions  
38 for judicial review under this chapter, cases arising under the

1 unemployment compensation laws of this state, and cases arising under  
2 the industrial insurance laws of this state.

3 (2) Any employing unit that is not a resident of this state and  
4 that exercises the privilege of having one or more individuals  
5 perform service for it within this state, and any resident employing  
6 unit that exercises that privilege and thereafter removes from this  
7 state, shall be deemed thereby to appoint the secretary of state as  
8 its agent and attorney for the acceptance of process in any action  
9 under this chapter. In instituting such an action against any such  
10 employing unit, the commissioner shall cause such process or notice  
11 to be filed with the secretary of state and this service is  
12 sufficient service upon the employing unit, and is of the same force  
13 and validity as if served upon it personally within this state. The  
14 commissioner must send notice of service of process or notice,  
15 together with a copy thereof, by registered mail, return receipt  
16 requested, to the employing unit at its last known address and the  
17 return receipt, the commissioner's affidavit of compliance with this  
18 section, and a copy of the notice of service shall be appended to the  
19 original of the process filed in the court in which the action is  
20 pending.

21 NEW SECTION. **Sec. 226.** INJUNCTION FROM CONTINUING IN BUSINESS.

22 Any employer who is delinquent in the payment of assessments,  
23 interest, or penalties may be enjoined upon the suit of the state of  
24 Washington from continuing in business in this state or employing  
25 persons herein until the delinquent assessments, interest, and  
26 penalties have been paid, or until the employer has furnished a good  
27 and sufficient bond in a sum equal to double the amount of  
28 assessments, interest, and penalties already delinquent, plus such  
29 further sum as the court deems adequate to protect the department in  
30 the collection of assessments, interest, and penalties which become  
31 due from such employer during the next ensuing calendar year, the  
32 bond to be conditioned upon payment of all assessments, interest, and  
33 penalties due and owing within 30 days after the expiration of the  
34 next ensuing calendar year or at an earlier date as fixed by the  
35 court. Action under this section may be instituted in the superior  
36 court of any county of the state where the employer resides, has its  
37 principal place of business, or where it has anyone performing  
38 services for it, whether or not such services constitute employment.

1        NEW SECTION.    **Sec. 227.**    COMPROMISE OF CLAIMS. The commissioner  
2 may compromise any claim for assessments, interest, or penalties due  
3 and owing from an employer, and any amount owed by an individual  
4 because of benefit overpayments existing or arising under this  
5 chapter in any case where collection of the full amount due and  
6 owing, whether reduced to judgment or otherwise, would be against  
7 equity and good conscience. Whenever a compromise is made by the  
8 commissioner in the case of a claim for assessments, interest, or  
9 penalties, whether reduced to judgment or otherwise, there shall be  
10 placed on file in the department a statement of the amount of  
11 assessments, interest, and penalties imposed by law and claimed due,  
12 attorneys' fees and costs, if any, a complete record of the  
13 compromise agreement, and the amount actually paid in accordance with  
14 the terms of the compromise agreement. If any such compromise is  
15 accepted by the commissioner, within such time as may be stated in  
16 the compromise or agreed to, such compromise shall be final and  
17 conclusive and except upon showing of fraud or malfeasance or  
18 misrepresentation of a material fact the case shall not be reopened  
19 as to the matters agreed upon. In any suit, action, or proceeding,  
20 such agreement or any determination, collection, payment, adjustment,  
21 refund, or credit made in accordance therewith shall not be annulled,  
22 modified, set aside, or disregarded.

23        NEW SECTION.    **Sec. 228.**    UNCOLLECTIBLE ACCOUNTS. The commissioner  
24 may charge off as uncollectible and no longer an asset of the  
25 Washington health trust enforcement account, any delinquent  
26 assessments, interest, penalties, or credits if the commissioner is  
27 satisfied that there are no cost-effective means of collecting the  
28 assessments, interest, penalties, or credits.

29        NEW SECTION.    **Sec. 229.**    INSPECTION AND AUDIT. The department may  
30 inspect and audit employer files and records relating to the  
31 Washington health trust program.

32        NEW SECTION.    **Sec. 230.**    ENFORCEMENT ACCOUNT. The Washington  
33 health trust enforcement account is created in the custody of the  
34 state treasurer. Any penalties and interest collected under this  
35 chapter must be deposited into the account and shall be used only for  
36 the purposes of administering and enforcing this chapter. Only the  
37 commissioner may authorize expenditures from the account. The account



1 is subject to allotment procedures under chapter 43.88 RCW, but an  
2 appropriation is not required for expenditures.

3 NEW SECTION. **Sec. 231.** APPEALS—GENERALLY. (1) Any employer or  
4 sole proprietor who has received an assessment notice from the  
5 department may file an appeal from a determination or redetermination  
6 with the commissioner within 30 days after the date of notification  
7 or mailing, whichever is earlier, of the assessment notice to the  
8 person's last known address.

9 (2) If no appeal is taken from any determination or  
10 redetermination of assessment within the time allowed by this section  
11 for appeal, the determination or redetermination of assessment, shall  
12 be deemed to be correct except as provided in respect to  
13 reconsideration by the commissioner of any determination.

14 (3) Upon receipt of a notice of appeal, the commissioner shall  
15 request the assignment of an administrative law judge under chapter  
16 34.12 RCW to conduct a hearing in accordance with chapter 34.05 RCW  
17 and issue a proposed order.

18 NEW SECTION. **Sec. 232.** APPEALS—ASSESSMENTS. (1) When an order  
19 and notice of assessment has been served upon or mailed to a  
20 delinquent employer or sole proprietor, the employer or sole  
21 proprietor may within 30 days file an appeal with the department,  
22 stating that the assessment is unjust or incorrect and request a  
23 hearing. The appeal must set forth the reasons why the assessment is  
24 objected to and the amount of the assessment, if any, which the  
25 employer or sole proprietor admits to be due. If no appeal is filed,  
26 the assessment shall be conclusively deemed to be just and correct  
27 except that in this case, and in cases where payment of assessments,  
28 interest, or penalties have been made under a jeopardy assessment,  
29 the commissioner may entertain a subsequent application for refund.  
30 The filing of an appeal on a disputed assessment with the  
31 administrative law judge stays the distraint and sale proceeding  
32 provided for in this chapter until a final decision has been made,  
33 but the filing of an appeal does not affect the right of the  
34 commissioner to perfect a lien, as provided by this chapter, upon the  
35 property of the employer. The filing of a petition on a disputed  
36 assessment stays the accrual of interest and penalties on the  
37 disputed assessments until a final decision is made.

1 (2) Within 30 days after notice of denial of refund or adjustment  
2 has been mailed or delivered, whichever is the earlier, to an  
3 employer or sole proprietor, the employer or sole proprietor may file  
4 an appeal with the department for a hearing unless assessments have  
5 been appealed from and have become final. The employer or sole  
6 proprietor shall set forth the reasons why the hearing should be  
7 granted and the amount which the employer or sole proprietor believes  
8 should be adjusted or refunded. If no appeal is filed within 30 days,  
9 the determination of the commissioner as stated in the notice is  
10 final.

11 NEW SECTION. **Sec. 233.** APPEALS—ASSESSMENT REDETERMINATIONS. (1)  
12 A determination assessment becomes final in the absence of timely  
13 appeal. The commissioner may redetermine such determinations at any  
14 time within one year from delivery or mailing to correct an error in  
15 identity, omission of fact, or misapplication of law with respect to  
16 the facts.

17 (2) A redetermination may be made at any time: (a) To conform to  
18 a final court decision applicable to an assessment; or (b) in the  
19 case of misrepresentation or willful failure to report a material  
20 fact. Written notice of the redetermination shall be promptly given  
21 by mail or delivered to the interested parties notified of the  
22 assessment and any new interested party or parties who, under  
23 commissioner rule, would be an interested party.

24 NEW SECTION. **Sec. 234.** APPEALS—WHEN DEEMED FILED AND RECEIVED.  
25 The appeal or petition from a notice of assessment, appeals decision,  
26 or commissioner's decision is filed and received if properly  
27 addressed and with sufficient postage:

28 (1) If transmitted through the United States mail, on the date  
29 shown by the United States postal service cancellation mark;

30 (2) If mailed but not received by the addressee, or where  
31 received and the United States postal service cancellation mark is  
32 illegible, erroneous, or omitted, on the date it was mailed, if the  
33 sender establishes by competent evidence that the appeal or petition  
34 was deposited in the United States mail on or before the date due for  
35 filing; or

36 (3) In the case of a metered cancellation mark by the sender and  
37 a United States postal service cancellation mark on the same envelope  
38 or other wrapper, the latter shall control.

1        NEW SECTION.    **Sec. 235.**    APPEALS—ASSESSMENTS—PROCEDURE. In any  
2 proceeding before an administrative law judge involving an appeal  
3 from a disputed order and notice of assessment, the administrative  
4 law judge, after affording the parties a reasonable opportunity for  
5 hearing, shall affirm, modify, or set aside the notice of assessment.  
6 The parties must be notified of the decision together with the  
7 reasons, which shall be deemed to be the final decision unless within  
8 30 days after the date of notification or mailing, whichever is the  
9 earlier, of the decision, further appeal is perfected under this  
10 chapter relating to review by the commissioner.

11        NEW SECTION.    **Sec. 236.**    APPEALS—PROCEDURE. (1) In any proceeding  
12 before an administrative law judge involving a dispute of an employer  
13 or sole proprietor's assessment, all matters and provisions of this  
14 chapter relating to the assessment are deemed to be in issue  
15 irrespective of the particular ground or grounds set forth in the  
16 notice of appeal.

17        (2) In any proceeding before an administrative law judge  
18 involving an employer or sole proprietor's assessment, all parties  
19 shall be afforded an opportunity for hearing after not less than  
20 seven days' notice in accordance with RCW 34.05.434.

21        (3) In any proceeding involving an appeal relating to an employer  
22 or sole proprietor's assessment, the administrative law judge, after  
23 affording the parties reasonable opportunity for fair hearing, shall  
24 render its decision affirming, modifying, or setting aside the  
25 determination or decisions of the department. The parties shall be  
26 notified of the decision together with the reasons, which are deemed  
27 to be the final decision unless, within 30 days after the date of  
28 notification or mailing, whichever is the earlier, of such decision,  
29 further appeal is perfected pursuant to section 238 of this act.

30        NEW SECTION.    **Sec. 237.**    APPEALS—HEARING PROCEDURES. The manner  
31 in which any dispute is presented to the administrative law judge,  
32 and the conduct of hearings and appeals, shall be in accordance with  
33 rules adopted by the commissioner. A full and complete record shall  
34 be kept of all administrative law judge proceedings. All testimony at  
35 any appeal hearing shall be recorded, but need not be transcribed  
36 unless further appeal is taken.

1           NEW SECTION.   **Sec. 238.**   APPEALS—COMMISSIONER REVIEW—INITIATION.

2   Within 30 days from the date of notification or mailing, whichever is  
3   the earlier, of any decision of an administrative law judge, the  
4   commissioner on the commissioner's own order may, or upon petition of  
5   any interested party shall, take jurisdiction of the proceedings for  
6   the purpose of review. Appeal from any decision of an administrative  
7   law judge may be perfected so as to prevent finality of such decision  
8   if, within 30 days from the date of notification or mailing of the  
9   decision, whichever is the earlier, a petition in writing for review  
10  by the commissioner is received by the commissioner or by such  
11  representative of the commissioner as the commissioner by rule shall  
12  prescribe. The commissioner may also prevent finality of any decision  
13  of an administrative law judge and take jurisdiction of the  
14  proceedings for his or her review by entering an order so providing  
15  on his or her own motion and mailing a copy thereof to the interested  
16  parties within the same period allowed for receipt of a petition for  
17  review. The time limit provided for the commissioner's assumption of  
18  jurisdiction on his or her own motion for review shall be deemed to  
19  be jurisdictional.

20           NEW SECTION.   **Sec. 239.**   APPEALS—COMMISSIONER REVIEW—PROCEDURE.

21  After having acquired jurisdiction for review, the commissioner shall  
22  review the proceedings in question. Before rendering a decision, the  
23  commissioner may order the taking of additional evidence by an  
24  administrative law judge to be made a part of the record in the case.  
25  Upon the basis of evidence submitted to the administrative law judge  
26  and the additional evidence as the commissioner may order to be  
27  taken, the commissioner shall render a decision in writing affirming,  
28  modifying, or setting aside the decision of the administrative law  
29  judge. Alternatively, the commissioner may order further proceedings  
30  to be held before the administrative law judge, upon completion of  
31  which the administrative law judge shall issue a new decision in  
32  writing affirming, modifying, or setting aside the previous decision  
33  of the administrative law judge. The new decision of the  
34  administrative law judge may be appealed as provided under section  
35  238 of this act. The commissioner shall mail the decision of the  
36  commissioner to the interested parties at their last known addresses.

1        NEW SECTION.    **Sec. 240.**    APPEALS—COMMISSIONER REVIEW—WHEN FINAL  
2 —COMMISSIONER AS PARTY. Any decision of the commissioner involving a  
3 review of an administrative law judge decision, in the absence of a  
4 petition as provided in chapter 34.05 RCW, becomes final 30 days  
5 after notification or mailing, whichever is earlier. The commissioner  
6 shall be deemed to be a party to any judicial action involving any  
7 such decision and shall be represented in any such judicial action by  
8 the attorney general.

9        NEW SECTION.    **Sec. 241.**    APPEALS—APPLICABILITY OF FINDINGS,  
10 DETERMINATIONS, ETC. TO OTHER ACTIONS. Any finding, determination,  
11 conclusion, declaration, or final order made by the commissioner, or  
12 his or her representative or delegate, or by an appeal tribunal,  
13 administrative law judge, reviewing officer, or other agent of the  
14 department for the purposes of this chapter, shall not be conclusive,  
15 nor binding, nor admissible as evidence in any separate action  
16 outside the scope of this chapter between an employee and the  
17 employee's present or prior employer before an arbitrator, court, or  
18 judge of this state or the United States, regardless of whether the  
19 prior action was between the same or related parties or involved the  
20 same facts or was reviewed pursuant to section 244 of this act.

21        NEW SECTION.    **Sec. 242.**    APPEALS—WAIVER OF TIME LIMITATIONS. For  
22 good cause shown the administrative law judge or the commissioner may  
23 waive the time limitations for administrative appeals or petitions  
24 set forth in this chapter.

25        NEW SECTION.    **Sec. 243.**    APPEALS—JUDICIAL REVIEW. (1) In all  
26 court proceedings under this chapter, the decision of the  
27 commissioner shall be prima facie correct, and the burden of proof  
28 shall be upon the party attacking the decision.

29        (2) If the court determines that the commissioner has acted  
30 within the commissioner's power and has correctly construed the law,  
31 the decision of the commissioner shall be confirmed; otherwise, the  
32 decision shall be reversed or modified. In case of a modification or  
33 reversal the superior court shall refer the decision to the  
34 commissioner with an order directing the commissioner to proceed in  
35 accordance with the findings of the court.

1 (3) Whenever an order and notice of assessment becomes final in  
2 accordance with the provisions of this chapter, the court shall, upon  
3 application of the commissioner, enter a judgment in the amount  
4 provided for in the order and notice of assessment, and the judgment  
5 has the same effect as if entered under a civil action instituted in  
6 the court.

7 NEW SECTION. **Sec. 244.** APPEALS—JUDICIAL REVIEW—PROCEDURE.  
8 Judicial review of a decision of the commissioner involving the  
9 review of a decision of an administrative law judge under this  
10 chapter may be had only in accordance with the procedural  
11 requirements of RCW 34.05.452.

12 NEW SECTION. **Sec. 245.** APPEALS—JUDICIAL REVIEW—BOND—STAY. A  
13 commissioner's decision shall not be stayed by a petition for  
14 judicial review unless the petitioning employer or sole proprietor  
15 deposits an undertaking in an amount deemed by the commissioner to be  
16 due, if any, from the petitioning employer, together with interest  
17 thereon, if any, with the commissioner or in the registry of the  
18 court.

19 NEW SECTION. **Sec. 246.** APPEALS—JUDICIAL REVIEW—INTERSTATE  
20 PETITIONS. Petitions to the superior court from decisions of the  
21 commissioner dealing with assessments that were filed outside of this  
22 state with an authorized representative of the commissioner shall be  
23 filed with the superior court of Thurston county.

24 NEW SECTION. **Sec. 247.** APPEALS—COMMISSIONER'S EXPENSES. (1)  
25 When an appeal is taken from a decision of the commissioner to a  
26 court, all expenses and costs incurred by the commissioner, including  
27 court reporter costs and attorneys' fees and all costs taxed against  
28 the commissioner, shall be paid out of the Washington health trust  
29 enforcement account.

30 (2) Neither the commissioner nor the state shall be charged a fee  
31 for services rendered in connection with litigation under this  
32 chapter by the clerk of any court.

33 NEW SECTION. **Sec. 248.** APPEALS—REMEDIES EXCLUSIVE. The remedies  
34 provided in this chapter for determining the justness or correctness

1 of assessments, refunds, or adjustments are exclusive and no court  
2 may entertain any action to enjoin an assessment or require a refund  
3 or adjustment except in accordance with this chapter. Matters which  
4 may be determined by the procedures set out in this chapter shall not  
5 be the subject of any declaratory judgment.

6 NEW SECTION. **Sec. 249.** AGREEMENT TO WAIVE. (1) Any agreement to  
7 waive, release, or commute an individual's right to benefits or any  
8 other rights under this chapter is void.

9 (2) Any assignment, pledge, or encumbrance of any right to  
10 benefits that are or may become due or payable under this chapter is  
11 void. Such rights to benefits are exempt from levy, execution,  
12 attachment, or any other remedy whatsoever provided for the  
13 collection of debts. Any waiver of any exemption provided for in this  
14 section is void.

15 NEW SECTION. **Sec. 250.** ALLOCATION OF REVENUES TO BENEFITS  
16 ACCOUNT. All revenue from taxes collected by the department under  
17 this chapter, including penalties and interest on such taxes, must be  
18 deposited in the benefits account created in section 123 of this act.

19 NEW SECTION. **Sec. 251.** ADOPTION OF RULES. The commissioner  
20 shall have the authority to adopt, amend, or rescind rules  
21 interpreting and implementing the provisions of this chapter.

22 NEW SECTION. **Sec. 252.** CONFORMING RCW. To the extent not  
23 inconsistent with the provisions of this chapter, chapter 82.32 RCW  
24 applies to the administration of taxes imposed under section 203 of  
25 this act.

26 **Part III**  
27 **Capital Gains Assessment**

28 NEW SECTION. **Sec. 301.** DEFINITIONS. The definitions in this  
29 section apply throughout this chapter unless the context clearly  
30 requires otherwise.

31 (1) "Accessory dwelling unit" means a separate habitable living  
32 area that is subordinate to the principal single-family dwelling  
33 unit, which is either internal to, attached to, or located on the

1 same property tax parcel as, the principal single-family dwelling  
2 unit.

3 (2) "Adjusted capital gain" means federal net long-term capital  
4 gain:

5 (a) Plus any loss from a sale or exchange that is exempt from the  
6 tax imposed in this chapter, to the extent such loss was included in  
7 calculating federal net long-term capital gain; and

8 (b) Less any gain from a sale or exchange that is exempt from the  
9 tax imposed in this chapter, to the extent such gain was included in  
10 calculating federal net long-term capital gain.

11 (3) "Capital asset" has the same meaning as provided by Title 26  
12 U.S.C. Sec. 1221 of the internal revenue code and also includes any  
13 other property if the sale or exchange of the property results in a  
14 gain that is treated as a long-term capital gain under Title 26  
15 U.S.C. Sec. 1231 or any other provision of the internal revenue code.

16 (4) "Department" means the department of revenue.

17 (5) "Federal net long-term capital gain" means the net long-term  
18 capital gain reportable for federal income tax purposes.

19 (6) "Individual" means a natural person.

20 (7) "Internal revenue code" means the United States internal  
21 revenue code of 1986, as amended, as of the effective date of this  
22 section, or such subsequent date as the department of revenue may  
23 provide by rule consistent with the purpose of this chapter.

24 (8) "Long-term capital asset" means a capital asset that is held  
25 for more than one year.

26 (9) (a) "Resident" means an individual:

27 (i) Who is domiciled in Washington state during the taxable year,  
28 unless the individual:

29 (A) Maintained no permanent place of abode in Washington state  
30 during the entire taxable year;

31 (B) Maintained a permanent place of abode outside of Washington  
32 state during the entire taxable year; and

33 (C) Spent in the aggregate not more than 30 days of the taxable  
34 year in Washington state; or

35 (ii) Who is not domiciled in Washington state during the taxable  
36 year but maintained a place of abode in and was physically present in  
37 Washington for more than 183 days during the taxable year.

38 (b) An individual who is a resident under (a) of this subsection  
39 is a resident for that portion of a taxable year in which the



1 individual was domiciled in this state or maintained a place of abode  
2 in this state.

3 NEW SECTION. **Sec. 302.** LONG-TERM CAPITAL GAINS ASSESSMENT. (1)  
4 Beginning January 1, 2022, an excise tax is imposed on all  
5 individuals for the privilege of selling or exchanging long-term  
6 capital assets, or receiving Washington capital gains. The tax equals  
7 eight and one-half percent multiplied by the individual's Washington  
8 capital gains.

9 (2) If an individual's Washington capital gains are less than  
10 zero for a taxable year, no tax is due under this section. No such  
11 losses may be carried back or carried forward to another taxable  
12 year.

13 (3)(a) The tax imposed in this section applies to:

14 (i) The sale or exchange of long-term capital assets owned by the  
15 taxpayer, whether the taxpayer was the legal or a beneficial owner of  
16 such assets at the time of the sale or exchange; or

17 (ii) Washington capital gains otherwise realized by the taxpayer.

18 (b) For purposes of this chapter, an individual is a beneficial  
19 owner of long-term capital assets held by an entity that is a pass-  
20 through or disregarded entity for federal tax purposes, such as a  
21 partnership, limited liability company, S corporation, or trust, to  
22 the extent of the individual's ownership interest in the entity as  
23 reported for federal income tax purposes.

24 NEW SECTION. **Sec. 303.** EXEMPTS CERTAIN GAINS AND LOSSES. This  
25 chapter does not apply to the sale or exchange of:

26 (1) Any residential dwelling, along with the land upon which the  
27 dwelling is located. For the purposes of this subsection,  
28 "residential dwelling" means property consisting solely of:

29 (a) A single-family residence, a residential condominium unit, or  
30 a residential cooperative unit, including any accessory dwelling unit  
31 associated with such residence or residential unit;

32 (b) A multifamily residential building consisting of one or more  
33 common walls and fewer than four units; or

34 (c) A floating home as defined in RCW 82.45.032;

35 (2) Assets held under a retirement savings account under Title 26  
36 U.S.C. Sec. 401(k) of the internal revenue code, a tax-sheltered  
37 annuity or a custodial account described in Title 26 U.S.C. Sec.  
38 403(b) of the internal revenue code, a deferred compensation plan

1 under Title 26 U.S.C. Sec. 457(b) of the internal revenue code, an  
2 individual retirement account or an individual retirement annuity  
3 described in Title 26 U.S.C. Sec. 408 of the internal revenue code, a  
4 roth individual retirement account described in Title 26 U.S.C. Sec.  
5 408A of the internal revenue code, an employee defined contribution  
6 program, an employee defined benefit plan, or a similar retirement  
7 savings vehicle;

8 (3) Assets pursuant to or under imminent threat of condemnation  
9 proceedings by the United States, the state or any of its political  
10 subdivisions, or a municipal corporation;

11 (4) Cattle, horses, or breeding livestock held for more than 12  
12 months if, for the taxable year of the sale or exchange, more than 50  
13 percent of the taxpayer's gross income for the taxable year,  
14 including from the sale or exchange of capital assets, is from  
15 farming or ranching;

16 (5) Agricultural land by an individual who has regular,  
17 continuous, and substantial involvement in the operation of the  
18 agricultural land that meets the criteria for material participation  
19 in an activity under Title 26 U.S.C. Sec. 469(h) of the internal  
20 revenue code for the 10 years prior to the date of the sale or  
21 exchange of the agricultural land;

22 (6) Property used in a trade or business if the property  
23 qualifies for an income tax deduction under Title 26 U.S.C. Sec. 167  
24 or 179 of the internal revenue code; and

25 (7) Timber, timberland, or the receipt of Washington capital  
26 gains as dividends and distributions from real estate investment  
27 trusts derived from gains from the sale or exchange of timber.  
28 "Timber" means forest trees, standing or down, on privately or  
29 publicly owned land, and includes Christmas trees and short-rotation  
30 hardwoods. The sale or exchange of timber includes the cutting or  
31 disposal of timber qualifying for capital gains treatment under Title  
32 26 U.S.C. Sec. 631(a) or (b) of the internal revenue code.

33 NEW SECTION. **Sec. 304.** COMPUTATION OF TAX—DEDUCTION OF  
34 PROHIBITED AMOUNTS. In computing tax, there may be deducted from the  
35 measure of tax amounts that the state is prohibited from taxing under  
36 the state or federal Constitutions.

37 NEW SECTION. **Sec. 305.** QUALIFIED FAMILY-OWNED SMALL BUSINESS  
38 DEDUCTION. (1) In computing tax under this chapter for a taxable

1 year, a taxpayer may deduct from the measure of tax the amount of  
2 adjusted capital gain derived in the taxable year from the sale of  
3 substantially all of the fair market value of the assets of, or the  
4 transfer of substantially all of the taxpayer's interest in, a  
5 qualified family-owned small business.

6 (2) For purposes of this section, the following definitions  
7 apply:

8 (a) "Assets" means real property and personal property, including  
9 tangible personal property and intangible property.

10 (b) "Family" means the same as "member of the family" in RCW  
11 83.100.046.

12 (c) (i) "Materially participated" means an individual was involved  
13 in the operation of a business on a basis that is regular,  
14 continuous, and substantial.

15 (ii) The term "materially participated" must be interpreted  
16 consistently with the applicable treasury regulations for section 469  
17 of the internal revenue code, to the extent that such interpretation  
18 does not conflict with any provision of this section.

19 (d) "Qualified family-owned small business" means a business:

20 (i) In which the taxpayer held a qualifying interest for at least  
21 eight years immediately preceding the sale or transfer described in  
22 subsection (1) of this section;

23 (ii) In which the taxpayer or his or her family member materially  
24 participated in operating the business for at least five of the eight  
25 years immediately preceding the sale or transfer described in  
26 subsection (1) of this section, unless such sale or transfer was to a  
27 qualified heir;

28 (iii) (A) That had no more than 50 full-time employees at any time  
29 during the 12-month period immediately preceding the sale or transfer  
30 described in subsection (1) of this section.

31 (B) For purposes of this subsection (2) (d) (iii), "full-time  
32 employee" means an employee who is, or any combination of employees  
33 who are, paid by the business for at least 1,820 hours of employment,  
34 including paid leave, for the 12-month period described in  
35 (d) (iii) (A) of this subsection (2); and

36 (iv) That had worldwide gross revenue of \$7,000,000 or less in  
37 the 12-month period immediately preceding the sale or transfer  
38 described in subsection (1) of this section.

39 (e) "Qualified heir" means a member of the taxpayer's family.

40 (f) "Qualifying interest" means:

1 (i) An interest as a proprietor in a business carried on as a  
2 sole proprietorship; or

3 (ii) An interest in a business if at least:

4 (A) Fifty percent of the business is owned, directly or  
5 indirectly, by the taxpayer and members of the taxpayer's family;

6 (B) Thirty percent of the business is owned, directly or  
7 indirectly, by the taxpayer and members of the taxpayer's family, and  
8 at least:

9 (I) Seventy percent of the business is owned, directly or  
10 indirectly, by members of two families; or

11 (II) Ninety percent of the business is owned, directly or  
12 indirectly, by members of three families.

13 (g) "Substantially all" means at least 90 percent.

14 NEW SECTION. **Sec. 306.** ADJUSTED CAPITAL GAINS. (1) For purposes  
15 of the tax imposed under this chapter, adjusted capital gains are  
16 allocated as follows:

17 (a) Adjusted capital gains from the sale or exchange of real  
18 property are allocated to this state if the real property is located  
19 in this state or a majority of the fair market value of the real  
20 property is located in this state;

21 (b) Adjusted capital gains from the sale or exchange of tangible  
22 personal property are allocated to this state if the property was  
23 located in this state at the time of the sale or exchange. Adjusted  
24 capital gains from the sale or exchange of tangible personal property  
25 are also allocated to this state even though the property was not  
26 located in this state at the time of the sale or exchange if:

27 (i) The property was located in the state at any time during the  
28 taxable year in which the sale or exchange occurred or the  
29 immediately preceding taxable year;

30 (ii) The taxpayer was a resident at the time the sale or exchange  
31 occurred; and

32 (iii) The taxpayer is not subject to the payment of an income or  
33 excise tax legally imposed on the adjusted capital gain by another  
34 taxing jurisdiction; and

35 (c) Adjusted capital gains derived from intangible personal  
36 property are allocated to this state if the taxpayer was domiciled in  
37 this state at the time the sale or exchange occurred.

38 (2) (a) A credit is allowed against the tax imposed in section 302  
39 of this act equal to the amount of any legally imposed income or

1 excise tax paid by the taxpayer to another taxing jurisdiction on  
2 capital gains derived from capital assets within the other taxing  
3 jurisdiction to the extent such capital gains are included in the  
4 taxpayer's Washington capital gains. The amount of credit under this  
5 subsection may not exceed the total amount of tax due under this  
6 chapter, and there is no carryback or carryforward of any unused  
7 credits.

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

13 (3) A deduction is allowed against the tax imposed in sections  
14 202 and 203 of this act to the extent necessary to avoid taxing the  
15 same amounts under this chapter.

16 NEW SECTION. **Sec. 307.** DUAL RESIDENCE. If an individual is  
17 regarded as a resident both of this state and another jurisdiction  
18 for state tax purposes, the department must reduce the tax on that  
19 portion of the taxpayer's income which is subjected to tax in both  
20 jurisdictions solely by virtue of dual residence, if the other taxing  
21 jurisdiction allows a similar reduction.

22 NEW SECTION. **Sec. 308.** TREATMENT OF PARTNERSHIPS AND S  
23 CORPORATION INCOME. (1) Partnerships are not subject to the employee  
24 health assessment or the long-term capital gains assessment under  
25 this chapter. Partners are subject to the long-term capital gains  
26 assessment under this chapter in their separate or individual  
27 capacities. Partnerships are subject to the employment contribution  
28 established in section 202 of this act and are responsible for  
29 collecting the employee health assessment on behalf of employees as  
30 provided in section 203 of this act.

31 (2) S corporations are not subject to the personal employment  
32 contribution health assessment or the long-term capital gains  
33 assessment under this chapter. Shareholders of S corporations are  
34 subject to the long-term capital gains assessment under this chapter  
35 in their separate or individual capacities.

36 NEW SECTION. **Sec. 309.** PERSONS REQUIRED TO FILE A STATE RETURN.  
37 (1) Only individual and joint taxpayers with federal net long-term

1 capital gains or net earnings from self-employment of sole  
2 proprietors in excess of \$15,000 on their federal tax return are  
3 required to file a tax return with the department. The department  
4 must use the taxpayer's federal tax returns as a primary tool for  
5 obtaining taxpayers' information. The department must prescribe a  
6 simple supplement of no more than two pages for computing the excise  
7 tax owed under this chapter. Each person required to file a return  
8 under this chapter must, without assessment, notice, or demand, pay  
9 any tax due thereon to the department on or before the date fixed for  
10 the filing of the return.

11 (2) Except as otherwise provided in this chapter or RCW  
12 82.32.080, taxpayers owing tax under this chapter must file, on forms  
13 prescribed by the department, a return with the department on or  
14 before the date the taxpayer's federal income tax return for the  
15 taxable year is required to be filed along with all schedules and  
16 supporting documentation.

17 (3) If an adjustment to a taxpayer's federal return is made by  
18 the taxpayer or the internal revenue service, the taxpayer must,  
19 within 90 days of the final determination of the adjustment by the  
20 internal revenue service or within 30 days of the filing of a federal  
21 return adjusted by the taxpayer, file with the department on forms  
22 prescribed by the department a corrected return reflecting the  
23 adjustments as finally determined. The taxpayer must pay any  
24 additional tax due resulting from the finally determined internal  
25 revenue service adjustment or a taxpayer adjustment without notice  
26 and assessment. Notwithstanding any provision of this chapter or any  
27 other title to the contrary, the period of limitation for the  
28 collection of the additional tax, interest, and penalty due as a  
29 result of an adjustment by the taxpayer or a finally determined  
30 internal revenue service adjustment must begin at the later of 30  
31 days following the final determination of the adjustment or the date  
32 of the filing of the corrected return.

33 (4) If a taxpayer required to file a return under this section  
34 has obtained an extension of time for filing the federal tax return  
35 for the taxable year, the taxpayer is entitled to the same extension  
36 of time for filing the return required under this section if the  
37 taxpayer provides the department, before the due date provided in  
38 subsection (1) of this section, the extension confirmation number or  
39 other evidence satisfactory to the department confirming the federal  
40 extension. An extension under this subsection for the filing of a

1 return under this chapter is not an extension of time to pay the tax  
2 due under this chapter.

3 (5) (a) If any return due on long-term capital gains under  
4 subsection (1) of this section, along with a copy of the federal tax  
5 return, is not filed with the department by the due date or any  
6 extension granted by the department, the department must assess a  
7 penalty in the amount of five percent of the tax due for the taxable  
8 year covered by the return for each month or portion of a month that  
9 the return remains unfiled. The total penalty assessed under this  
10 subsection may not exceed 25 percent of the tax due for the taxable  
11 year covered by the delinquent return. The penalty under this  
12 subsection is in addition to any penalties assessed for the late  
13 payment of any tax due on the return.

14 (b) The department must waive or cancel the penalty imposed under  
15 this subsection if:

16 (i) The department is persuaded that the taxpayer's failure to  
17 file the return by the due date was due to circumstances beyond the  
18 taxpayer's control; or

19 (ii) The taxpayer has not been delinquent in filing any return  
20 due under this section during the preceding five calendar years.

21 NEW SECTION. **Sec. 310.** PENALTIES. (1) Any taxpayer who  
22 knowingly attempts to evade payment of the tax imposed under this  
23 chapter is guilty of a class C felony as provided in chapter 9A.20  
24 RCW.

25 (2) Any taxpayer who knowingly fails to pay tax, make returns,  
26 keep records, or supply information, as required under this title, is  
27 guilty of a gross misdemeanor as provided in chapter 9A.20 RCW.

28 NEW SECTION. **Sec. 311.** INSTRUCTIONS FOR JOINT FILING. (1) If  
29 the federal income tax liabilities of both spouses are determined on  
30 a joint federal return for the taxable year, they must file a joint  
31 return under this chapter.

32 (2) Except as otherwise provided in this subsection, if the  
33 federal income tax liability of either spouse is determined on a  
34 separate federal return for the taxable year, they must file separate  
35 returns under this chapter. State registered domestic partners may  
36 file a joint return under this chapter even if they filed separate  
37 federal returns for the taxable year.

1 (3) In any case in which a joint return is filed under this  
2 section, the liability of each spouse or state registered domestic  
3 partner is joint and several, unless:

4 (a) The spouse is relieved of liability for federal tax purposes  
5 as provided under Title 26 U.S.C. Sec. 6015 of the internal revenue  
6 code; or

7 (b) The department determines that the domestic partner qualifies  
8 for relief as provided by rule of the department. Such rule, to the  
9 extent possible without being inconsistent with this chapter, must  
10 follow Title 26 U.S.C. Sec. 6015.

11 (4) The department must take actions and adopt rules, forms, and  
12 procedures to implement this chapter consistently with RCW 26.60.015,  
13 notwithstanding any term or provision of this chapter.

14 NEW SECTION. **Sec. 312.** DUE DATES FOR RETURNS, PENALTIES. The  
15 due date of a return required to be filed with the department is the  
16 due date of the federal income tax return or informational return for  
17 federal income tax purposes. The department may grant extensions of  
18 time by which returns required to be filed by this chapter may be  
19 submitted. The department may grant extensions of time to pay tax  
20 with regard to taxes imposed by this chapter. Interest at the rate as  
21 specified in RCW 82.32.050 accrues during any extension period and  
22 the interest and penalty provisions of chapter 82.32 RCW apply to  
23 late payments and deficiencies. Notwithstanding the limitation of RCW  
24 82.32.090, in the case of the late filing of an informational return,  
25 there is imposed a penalty the amount of which is established by the  
26 department by rule. The penalty may not exceed \$50 per month for a  
27 maximum of 10 months. RCW 82.32.105 applies to this section.

28 NEW SECTION. **Sec. 313.** RECORDS AND RETURNS. (1) Every taxpayer  
29 with federal net long-term capital gains or net earnings from self-  
30 employment of sole proprietors in excess of \$15,000 annually must  
31 keep records, render statements, make returns, file reports, and  
32 perform other acts as the department requires by rule. Each return  
33 must be made under penalty of perjury and on forms prescribed by the  
34 department. The department may require other statements and reports  
35 be made under penalty of perjury and on forms prescribed by the  
36 department. The department may require any taxpayer and any person  
37 required to deduct and withhold the tax imposed under this chapter to  
38 furnish to the department a correct copy of any return or document



1 which the taxpayer has filed with the internal revenue service or  
2 received from the internal revenue service.

3 (2) All books and records and other papers and documents required  
4 to be kept under this chapter are subject to inspection by the  
5 department at all times during business hours of the day.

6 NEW SECTION. **Sec. 314.** INTERNAL REVENUE CODE CONTROL. (1) To  
7 the extent possible without being inconsistent with this chapter, all  
8 of the provisions of the internal revenue code relating to the  
9 following subjects apply to the taxes imposed under this chapter:

10 (a) Time of payment of tax deducted and withheld under sections  
11 204 through 251 of this act and this section;

12 (b) Liability of transferees;

13 (c) Time and manner of making returns, extensions of time for  
14 filing returns, verification of returns, and the time when a return  
15 is deemed filed.

16 (2) The department may adopt rules that provide modifications and  
17 exceptions to the provisions listed in subsection (1) of this  
18 section, if reasonably necessary to facilitate the prompt, efficient,  
19 and equitable collection of tax under this chapter.

20 NEW SECTION. **Sec. 315.** ALLOCATION OF REVENUES TO BENEFITS  
21 ACCOUNT. All revenue from taxes collected by the department under  
22 this chapter, including penalties and interest on such taxes, must be  
23 deposited in the benefits account created in section 123 of this act.

24 NEW SECTION. **Sec. 316.** ASSESSMENTS UNDER THIS CHAPTER IN  
25 ADDITION TO OTHER TAXES. The tax imposed under this chapter is in  
26 addition to any other taxes imposed by the state or any of its  
27 political subdivisions, or a municipal corporation, with respect to  
28 the same sale or exchange, including the taxes imposed in or under  
29 the authority of chapter 82.04, 82.08, 82.12, 82.14, 82.45, or 82.46  
30 RCW.

31 NEW SECTION. **Sec. 317.** REFUNDS FOR OVERPAYMENT. The department  
32 must refund all taxes improperly paid or collected by the department.

33 NEW SECTION. **Sec. 318.** A new section is added to chapter 82.32  
34 RCW to read as follows:

1       ALLOWS STATES TO COORDINATE. (1) The department may enter into  
2 reciprocal tax collection agreements with the taxing officials of any  
3 other state imposing a specific tax. Agreements authorized under this  
4 section must require each state to offset delinquent specified taxes  
5 owed by a taxpayer to one party to the agreement, including any  
6 associated penalties, interest, or other additions, against refunds  
7 of overpaid specified taxes owed to the taxpayer by the other party  
8 to the agreement. Such agreements may also include provisions  
9 governing the sharing of information relevant to the administration  
10 of specified taxes. However, the department may not share return or  
11 tax information with other states except as allowed under RCW  
12 82.32.330. Likewise, the department may not share federal tax  
13 information with other states without the express written consent of  
14 the internal revenue service.

15       (2) The definitions in this subsection apply throughout this  
16 section unless the context clearly requires otherwise.

17       (a) "Specific taxes" means generally applicable state and local  
18 sales tax and use taxes, broad-based state gross receipts taxes,  
19 state income taxes, and stand-alone state taxes on capital gains or  
20 interest and dividends. "Specified taxes" include, but are not  
21 limited to, the taxes imposed in or under the authority of chapters  
22 82.04, 82.08, 82.12, 82.14, 82.16, and 82.--- RCW (the new chapter  
23 created in section 401(3) of this act), and similar taxes imposed by  
24 another state. For purposes of this subsection (2)(a), "gross  
25 receipts tax," "income tax," "sales tax," and "use tax" have the  
26 meanings provided in RCW 82.56.010.

27       (b) "State" has the meaning provided in RCW 82.56.010.

28       NEW SECTION.       **Sec. 319.**       CONFORMING RCW. To the extent not  
29 inconsistent with the provisions of this chapter, the following  
30 statutes apply to the administration of taxes imposed under this  
31 chapter: RCW 82.32.050, 82.32.055, 82.32.060, 82.32.070, 82.32.080,  
32 82.32.085, 82.32.090, 82.32.100, 82.32.105, 82.32.110, 82.32.117,  
33 82.32.120, 82.32.130, 82.32.135, 82.32.150, 82.32.160, 82.32.170,  
34 82.32.180, 82.32.190, 82.32.200, 82.32.210, 82.32.212, 82.32.220,  
35 82.32.230, 82.32.235, 82.32.237, 82.32.240, 82.32.245, 82.32.265,  
36 82.32.300, 82.32.310, 82.32.320, 82.32.330, 82.32.340, 82.32.350,  
37 82.32.360, 82.32.410, 82.32.805, 82.32.808, and section 318 of this  
38 act.



1 (2) Sections 108 through 114, 116 through 119, and 121 through  
2 125 of this act take effect March 1, 2022.

3 (3) Sections 126 through 129 of this act take effect May 15,  
4 2023.

5 NEW SECTION. **Sec. 403.** CONTINGENT EFFECTIVE AND EXPIRATION  
6 DATES. (1) Section 115 of this act takes effect when 51 percent of  
7 residents are enrolled in health insurance coverage managed by:

8 (a) The health care authority;

9 (b) An entity within the health care authority; or

10 (c) The board created in section 104 of this act.

11 (2) The health care authority must provide notice of the  
12 effective date of section 115 of this act and the expiration dates of  
13 sections 114 and 122 of this act to affected parties, the chief clerk  
14 of the house of representatives, the secretary of the senate, the  
15 office of the code reviser, and others as deemed appropriate by the  
16 authority.

17 NEW SECTION. **Sec. 404.** SEVERABILITY. If any provision of this  
18 act or its application to any person or circumstance is held invalid,  
19 the remainder of the act or the application of the provision to other  
20 persons or circumstances is not affected.

--- END ---