

2SHB 2530 - S COMM AMD

By Committee on Law & Justice

ADOPTED 03/03/2016

1 Strike everything after the enacting clause and insert the
2 following:

3 **"PART I - TRACKING AND TESTING OF SEXUAL ASSAULT KITS**

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

14 The legislature finds that, when forensic analysis is completed,
15 the biological evidence contained inside sexual assault kits can be
16 an incredibly powerful tool for law enforcement to solve and prevent
17 crime. Forensic analysis of all sexual assault kits sends a message
18 to survivors that they matter. It sends a message to perpetrators
19 that they will be held accountable for their crimes. The legislature
20 is committed to bringing healing and justice to survivors of sexual
21 assault.

22 The legislature recognizes the laudable and successful efforts of
23 law enforcement in the utilization of forensic analysis of sexual
24 assault kits in the investigation and prosecution of crimes in
25 Washington state. In 2015, the legislature enhanced utilization of
26 this tool by requiring the preservation and forensic analysis of
27 sexual assault kits. The legislature intends to continue building on
28 its efforts through the establishment of the statewide sexual assault
29 kit tracking system. The system will be designed to track all sexual
30 assault kits in Washington state, regardless of when they were
31 collected, in order to further empower survivors with information,

1 assist law enforcement with investigations and crime prevention, and
2 create transparency and foster public trust.

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

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

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

11 (a) Track the location and status of sexual assault kits
12 throughout the criminal justice process, including the initial
13 collection in examinations performed at medical facilities, receipt
14 and storage at law enforcement agencies, receipt and analysis at
15 forensic laboratories, and storage and any destruction after
16 completion of analysis;

17 (b) Allow medical facilities performing sexual assault forensic
18 examinations, law enforcement agencies, prosecutors, the Washington
19 state patrol bureau of forensic laboratory services, and other
20 entities in the custody of sexual assault kits to update and track
21 the status and location of sexual assault kits;

22 (c) Allow victims of sexual assault to anonymously track or
23 receive updates regarding the status of their sexual assault kits;
24 and

25 (d) Use electronic technology or technologies allowing continuous
26 access.

27 (3) The Washington state patrol may use a phased implementation
28 process in order to launch the system and facilitate entry and use of
29 the system for required participants. The Washington state patrol may
30 phase initial participation according to region, volume, or other
31 appropriate classifications. All entities in the custody of sexual
32 assault kits shall fully participate in the system no later than June
33 1, 2018. The Washington state patrol shall submit a report on the
34 current status and plan for launching the system, including the plan
35 for phased implementation, to the joint legislative task force on
36 sexual assault forensic examination best practices, the appropriate
37 committees of the legislature, and the governor no later than January
38 1, 2017.

1 (4) The Washington state patrol shall submit a semiannual report
2 on the statewide sexual assault kit tracking system to the joint
3 legislative task force on sexual assault forensic examination best
4 practices, the appropriate committees of the legislature, and the
5 governor. The Washington state patrol may publish the current report
6 on its web site. The first report is due July 31, 2018, and
7 subsequent reports are due January 31st and July 31st of each year.
8 The report must include the following:

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

11 (b) The total and semiannual number of sexual assault kits where
12 forensic analysis has been completed statewide and by jurisdiction;

13 (c) The number of sexual assault kits added to the system in the
14 reporting period statewide and by jurisdiction;

15 (d) The total and semiannual number of sexual assault kits where
16 forensic analysis has been requested but not completed statewide and
17 by jurisdiction;

18 (e) The average and median length of time for sexual assault kits
19 to be submitted for forensic analysis after being added to the
20 system, including separate sets of data for all sexual assault kits
21 in the system statewide and by jurisdiction and for sexual assault
22 kits added to the system in the reporting period statewide and by
23 jurisdiction;

24 (f) The average and median length of time for forensic analysis
25 to be completed on sexual assault kits after being submitted for
26 analysis, including separate sets of data for all sexual assault kits
27 in the system statewide and by jurisdiction and for sexual assault
28 kits added to the system in the reporting period statewide and by
29 jurisdiction;

30 (g) The total and semiannual number of sexual assault kits
31 destroyed or removed from the system statewide and by jurisdiction;

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

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

1 (5) For the purpose of reports under subsection (4) of this
2 section, a sexual assault kit must be assigned to the jurisdiction
3 associated with the law enforcement agency anticipated to receive the
4 sexual assault kit or otherwise in the custody of the sexual assault
5 kit.

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

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

14 Local law enforcement agencies shall participate in the statewide
15 sexual assault kit tracking system established in section 2 of this
16 act for the purpose of tracking the status of all sexual assault kits
17 in the custody of local law enforcement agencies and other entities
18 contracting with local law enforcement agencies. Local law
19 enforcement agencies shall begin full participation in the system
20 according to the implementation schedule established by the
21 Washington state patrol.

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

24 A sheriff and his or her deputies shall participate in the
25 statewide sexual assault kit tracking system established in section 2
26 of this act for the purpose of tracking the status of all sexual
27 assault kits in the custody of the department and other entities
28 contracting with the department. A sheriff shall begin full
29 participation in the system according to the implementation schedule
30 established by the Washington state patrol.

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

33 The Washington state patrol bureau of forensic laboratory
34 services shall participate in the statewide sexual assault kit
35 tracking system established in section 2 of this act for the purpose
36 of tracking the status of all sexual assault kits in the custody of
37 the Washington state patrol and other entities contracting with the

1 Washington state patrol. The Washington state patrol bureau of
2 forensic laboratory services shall begin full participation in the
3 system according to the implementation schedule established by the
4 Washington state patrol.

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

7 Hospitals licensed under this chapter shall participate in the
8 statewide sexual assault kit tracking system established in section 2
9 of this act for the purpose of tracking the status of all sexual
10 assault kits collected by or in the custody of hospitals and other
11 entities contracting with hospitals. Hospitals shall begin full
12 participation in the system according to the implementation schedule
13 established by the Washington state patrol.

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

16 The prosecuting attorney shall:

17 (1) Be legal adviser of the legislative authority, giving it his
18 or her written opinion when required by the legislative authority or
19 the chairperson thereof touching any subject which the legislative
20 authority may be called or required to act upon relating to the
21 management of county affairs;

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

26 (3) Appear for and represent the state, county, and all school
27 districts subject to the supervisory control and direction of the
28 attorney general in all criminal and civil proceedings in which the
29 state or the county or any school district in the county may be a
30 party;

31 (4) Prosecute all criminal and civil actions in which the state
32 or the county may be a party, defend all suits brought against the
33 state or the county, and prosecute actions upon forfeited
34 recognizances and bonds and actions for the recovery of debts, fines,
35 penalties, and forfeitures accruing to the state or the county;

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

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

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

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

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

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

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

26 (12) Participate in the statewide sexual assault kit tracking
27 system established in section 2 of this act for the purpose of
28 tracking the status of all sexual assault kits connected to criminal
29 investigations and prosecutions within the county. Prosecuting
30 attorneys shall begin full participation in the system according to
31 the implementation schedule established by the Washington state
32 patrol.

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

35 The following investigative, law enforcement, and crime victim
36 information is exempt from public inspection and copying under this
37 chapter:

38 (1) Specific intelligence information and specific investigative
39 records compiled by investigative, law enforcement, and penology

1 agencies, and state agencies vested with the responsibility to
2 discipline members of any profession, the nondisclosure of which is
3 essential to effective law enforcement or for the protection of any
4 person's right to privacy;

5 (2) Information revealing the identity of persons who are
6 witnesses to or victims of crime or who file complaints with
7 investigative, law enforcement, or penology agencies, other than the
8 commission, if disclosure would endanger any person's life, physical
9 safety, or property. If at the time a complaint is filed the
10 complainant, victim, or witness indicates a desire for disclosure or
11 nondisclosure, such desire shall govern. However, all complaints
12 filed with the commission about any elected official or candidate for
13 public office must be made in writing and signed by the complainant
14 under oath;

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

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

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

30 (6) Information contained in a local or regionally maintained
31 gang database as well as the statewide gang database referenced in
32 RCW 43.43.762;

33 (7) Data from the electronic sales tracking system established in
34 RCW 69.43.165;

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

1 (9) Personally identifying information collected by law
2 enforcement agencies pursuant to local security alarm system programs
3 and vacation crime watch programs. Nothing in this subsection shall
4 be interpreted so as to prohibit the legal owner of a residence or
5 business from accessing information regarding his or her residence or
6 business;

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

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

14 (12) The following security threat group information collected
15 and maintained by the department of corrections pursuant to RCW
16 72.09.745: (a) Information that could lead to the identification of a
17 person's security threat group status, affiliation, or activities;
18 (b) information that reveals specific security threats associated
19 with the operation and activities of security threat groups; and (c)
20 information that identifies the number of security threat group
21 members, affiliates, or associates; (~~and~~)

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

25 (14) Any records and information contained within the statewide
26 sexual assault kit tracking system established in section 2 of this
27 act.

28 PART II - ACCEPTING DONATIONS FOR PROTECTING VICTIMS

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

31 (1) The Washington sexual assault kit program is created within
32 the department for the purpose of accepting private funds conducting
33 forensic analysis of sexual assault kits in the possession of law
34 enforcement agencies but not submitted for analysis as of July 24,
35 2015. The director may accept gifts, grants, donations, or moneys
36 from any source for deposit in the Washington sexual assault kit
37 account created under subsection (2) of this section.

1 (2) The Washington sexual assault kit account is created in the
2 custody of the state treasurer. Funds deposited in the Washington
3 sexual assault kit account may be used for the Washington sexual
4 assault kit program established under this section. The Washington
5 sexual assault kit account is subject to allotment procedures under
6 chapter 43.88 RCW, but an appropriation is not required for
7 expenditures.

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

10 (a) Eighty-five percent of the funds for the Washington state
11 patrol bureau of forensic laboratory services for the purpose of
12 conducting forensic analysis of sexual assault kits in the possession
13 of law enforcement agencies but not submitted for forensic analysis
14 as of July 24, 2015; and

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

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

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

20 NEW SECTION. **Sec. 10.** The legislature finds the state has a
21 substantial interest in protecting and preserving the quality of life
22 for its communities against the adverse secondary effects of live
23 adult entertainment. The legislature recognizes local governments
24 have an important role in regulating businesses engaged in live adult
25 entertainment, including reasonable location and licensing
26 restrictions, for the purpose of minimizing adverse secondary
27 effects. However, the adoption of a statewide fee can provide further
28 assistance to the victims of crimes directly and indirectly resulting
29 from these businesses.

30 The legislature finds that in Washington state, sexually oriented
31 businesses featuring live adult entertainment earn more than twenty-
32 five million dollars per year in revenue. Of the millions of female
33 victims of human trafficking, seventy percent are trafficked into the
34 commercial sex industry, including being recruited to work as
35 hostesses, waitresses, or exotic dancers in sexually oriented
36 businesses featuring adult entertainment. Exotic dancers are more
37 likely to be victims of sexual violence, including sexual assault and
38 rape. The office of crime victims advocacy plays a critical role in

1 providing support to victims of both human trafficking and sexual
2 assault.

3 The legislature hereby establishes the sexually oriented business
4 fee to fund policies and programming for investigating sex crimes and
5 supporting trafficking and sex crime victims in Washington. The
6 sexually oriented business fee does not regulate or prohibit any kind
7 of speech. The legislature's interest in preventing harmful secondary
8 effects is not related to the suppression of expression in nude
9 dancing. Citizens are still free to engage in such forms of
10 expression to the extent it complies with other legally established
11 time, place, and manner restrictions. Instead, the sexually oriented
12 business fee offsets the impacts of crime and the other deleterious
13 effects caused by the presence of sexually oriented businesses in
14 Washington.

15 NEW SECTION. **Sec. 11.** (1) There is levied and collected a fee
16 upon the admission to a sexually oriented live adult entertainment
17 establishment, in an amount equal to four dollars. The fee imposed
18 under this section must be paid by the patron to the operator of the
19 establishment. Each operator must collect from the patron the full
20 amount of the fee in respect to each admission and without respect to
21 any cover charges that the operator may charge. The fee collected
22 from the patron by the operator must be paid to the department of
23 revenue in accordance with RCW 82.32.045.

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

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

30 (4) For the purposes of this section, the following definitions
31 apply:

32 (a) "Adult entertainment" means:

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

1 (ii) Any performance of the following acts or of acts which
2 simulate, or use artificial devices or inanimate objects which
3 depict:

4 (A) Sexual intercourse, masturbation, sodomy, bestiality, oral
5 copulation, flagellation, or any sexual acts that are prohibited by
6 law;

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

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

10 (b) "Cover charge" means a charge, regardless of its label, to
11 enter a sexually oriented live adult entertainment establishment or
12 added to the patron's bill by an operator of an establishment or
13 otherwise collected after entrance to the establishment, and the
14 patron is provided the opportunity to enter and view adult
15 entertainment in exchange for payment of the charge.

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

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

20 (e) "Person" means any individual, partnership, corporation,
21 trust, incorporated or unincorporated association, marital community,
22 joint venture, governmental entity, or other entity or group of
23 persons, however organized.

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

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

37 (2) If any operator fails to collect the fees imposed under
38 section 11 of this act or, having collected the fees, fails to pay
39 the collected fees to the department of revenue in the manner

1 prescribed in section 11 of this act, whether such failure is the
2 result of his or her own acts or the result of acts or conditions
3 beyond the operator's control, the operator is nevertheless,
4 personally liable to the state for the amount of the fees.

5 (3) The amount of the fees, until paid by the patron to the
6 operator or to the department of revenue, constitutes a debt from the
7 patron to the operator. Any operator who fails or refuses to collect
8 the fees as required with intent to violate the provisions of this
9 chapter or to gain some advantage or benefit, either direct or
10 indirect, and any patron who refuses to pay any fees due under this
11 chapter is guilty of a misdemeanor.

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

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

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

28 (a) The Harborview center for sexual assault and traumatic stress
29 for the sole purpose of conducting statewide sexual assault nurse
30 examiner trainings for health care professionals in order to
31 facilitate the provision of forensic sexual assault examination
32 services;

33 (b) The office of crime victims advocacy in the department of
34 commerce for the purposes of providing services and support,
35 including educational and vocational training opportunities, to
36 victims of human trafficking;

37 (c) The Washington state patrol bureau of forensic laboratory
38 services for the purpose of conducting forensic analysis of sexual

1 assault kits in the possession of law enforcement agencies but not
2 submitted for forensic analysis as of July 24, 2015; or

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

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

8 (1) Whenever the department has issued a warrant under RCW
9 82.32.210 for the collection of unpaid trust fund taxes from a
10 limited liability business entity and that business entity has been
11 terminated, dissolved, or abandoned, or is insolvent, the department
12 may pursue collection of the entity's unpaid trust fund taxes,
13 including penalties and interest on those taxes, against any or all
14 of the responsible individuals. For purposes of this subsection,
15 "insolvent" means the condition that results when the sum of the
16 entity's debts exceeds the fair market value of its assets. The
17 department may presume that an entity is insolvent if the entity
18 refuses to disclose to the department the nature of its assets and
19 liabilities.

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

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

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

31 (4)(a) Except as provided in this subsection (4)(a), a
32 responsible individual who is the current or a former chief executive
33 or chief financial officer is liable under this section only for
34 trust fund tax liability accrued during the period that he or she was
35 the chief executive or chief financial officer. However, if the
36 responsible individual had the responsibility or duty to remit
37 payment of the limited liability business entity's trust fund taxes
38 to the department during any period of time that the person was not
39 the chief executive or chief financial officer, that individual is

1 also liable for trust fund tax liability that became due during the
2 period that he or she had the duty to remit payment of the limited
3 liability business entity's taxes to the department but was not the
4 chief executive or chief financial officer.

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

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

14 (6) Any person having been issued a notice of assessment under
15 this section is entitled to the appeal procedures under RCW
16 82.32.160, 82.32.170, 82.32.180, 82.32.190, and 82.32.200.

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

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

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

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

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

34 (c) "Limited liability business entity" means a type of business
35 entity that generally shields its owners from personal liability for
36 the debts, obligations, and liabilities of the entity, or a business
37 entity that is managed or owned in whole or in part by an entity that
38 generally shields its owners from personal liability for the debts,
39 obligations, and liabilities of the entity. Limited liability
40 business entities include corporations, limited liability companies,

1 limited liability partnerships, trusts, general partnerships and
2 joint ventures in which one or more of the partners or parties are
3 also limited liability business entities, and limited partnerships in
4 which one or more of the general partners are also limited liability
5 business entities.

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

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

10 (f) "Officer" means any officer or assistant officer of a
11 corporation, including the president, vice president, secretary, and
12 treasurer.

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

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

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

29 (h) "Trust fund taxes" means taxes collected from purchasers and
30 held in trust under RCW 82.08.050, including taxes imposed under RCW
31 82.08.020 and 82.08.150, and the sexually oriented business fees
32 collected from patrons and held in trust under section 12 of this
33 act.

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

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

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

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

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

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

20 (b) The following accounts and funds must receive their
21 proportionate share of earnings based upon each account's or fund's
22 average daily balance for the period: The Washington promise
23 scholarship account, the Washington advanced college tuition payment
24 program account, the accessible communities account, the community
25 and technical college innovation account, the agricultural local
26 fund, the American Indian scholarship endowment fund, the foster care
27 scholarship endowment fund, the foster care endowed scholarship trust
28 fund, the contract harvesting revolving account, the Washington state
29 combined fund drive account, the commemorative works account, the
30 county enhanced 911 excise tax account, the toll collection account,
31 the developmental disabilities endowment trust fund, the energy
32 account, the fair fund, the family leave insurance account, the food
33 animal veterinarian conditional scholarship account, the fruit and
34 vegetable inspection account, the future teachers conditional
35 scholarship account, the game farm alternative account, the GET ready
36 for math and science scholarship account, the Washington global
37 health technologies and product development account, the grain
38 inspection revolving fund, the industrial insurance rainy day fund,
39 the juvenile accountability incentive account, the law enforcement
40 officers' and firefighters' plan 2 expense fund, the local tourism

1 promotion account, the multiagency permitting team account, the
2 pilotage account, the produce railcar pool account, the regional
3 transportation investment district account, the rural rehabilitation
4 account, the Washington sexual assault kit account, the stadium and
5 exhibition center account, the youth athletic facility account, the
6 self-insurance revolving fund, the children's trust fund, the
7 Washington horse racing commission Washington bred owners' bonus fund
8 and breeder awards account, the Washington horse racing commission
9 class C purse fund account, the individual development account
10 program account, the Washington horse racing commission operating
11 account, the life sciences discovery fund, the Washington state
12 heritage center account, the reduced cigarette ignition propensity
13 account, the center for childhood deafness and hearing loss account,
14 the school for the blind account, the Millersylvania park trust fund,
15 the public employees' and retirees' insurance reserve fund, and the
16 radiation perpetual maintenance fund.

17 (c) The following accounts and funds must receive eighty percent
18 of their proportionate share of earnings based upon each account's or
19 fund's average daily balance for the period: The advanced right-of-
20 way revolving fund, the advanced environmental mitigation revolving
21 account, the federal narcotics asset forfeitures account, the high
22 occupancy vehicle account, the local rail service assistance account,
23 and the miscellaneous transportation programs account.

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

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

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

36 NEW SECTION. **Sec. 17.** Sections 10 through 13 of this act take
37 effect October 1, 2016."

2SHB 2530 - S COMM AMD

By Committee on Law & Justice

ADOPTED 03/03/2016

1 On page 1, line 1 of the title, after "crimes;" strike the
2 remainder of the title and insert "amending RCW 36.27.020 and
3 82.32.145; reenacting and amending RCW 42.56.240 and 43.79A.040;
4 adding new sections to chapter 43.43 RCW; adding a new section to
5 chapter 35.21 RCW; adding a new section to chapter 36.28 RCW; adding
6 a new section to chapter 70.41 RCW; adding a new section to chapter
7 43.31 RCW; adding a new chapter to Title 82 RCW; creating a new
8 section; prescribing penalties; providing an effective date; and
9 providing an expiration date."

EFFECT: The Washington state patrol submits an implementation plan by January 1, 2017, and semiannual reports, rather than quarterly thereafter. Smaller jurisdictions cannot delay reporting. All records within the tracking system are exempt from public disclosure, rather than just personally identifiable records.

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