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**HOUSE BILL 2327**

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**State of Washington 68th Legislature 2024 Regular Session**

**By** Representatives Gregerson, Ryu, Davis, Doglio, Cortes, Macri, Ramel, and Ormsby

AN ACT Relating to providing a revenue stream to fund digital equity programs; amending RCW 82.32.145 and 80.36.710; adding a new section to chapter 82.08 RCW; adding a new section to chapter 28A.650 RCW; adding a new chapter to Title 82 RCW; creating a new section; prescribing penalties; providing an effective date; and providing an expiration date.

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

NEW SECTION. **Sec.**  INTENT. The legislature finds that many Washingtonians do not have access to adequate and affordable internet or internet-connected devices, making them unable to participate fully online. The legislature finds that connectivity to the internet enables residents to access school, work, job training, elder care and family connections, faith programs, health care, farming resources, civic participation, and much more. The legislature finds that this digital inequity affects communities all over the state, including rural, urban, and suburban areas, and on tribal lands.

The legislature finds that over 1,200,000 Washingtonians qualify for the affordable connectivity program operated by the federal communications commission, which subsidizes internet service and digital devices, and 330,000 have utilized this program as of December 2023. However, the legislature finds that future federal funding for the program is uncertain. The legislature finds that 225,000 households in Washington earn more than the income cutoff for the affordable connectivity program, but not enough to cover average living expenses according to the federal self-sufficiency standard developed by the University of Washington.

The legislature finds that state agencies need funding to adapt their programs to include digital access and adoption. The legislature further finds that there is a need to fund community-based organizations and to build public private partnerships to reach customers who qualify for subsidies and digital skill building.

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

(1) "Buyer" has the same meaning as in RCW 82.08.010.

(2)(a) "Retail sale" has the same meaning as in RCW 82.04.050.

(b) "Retail sale" also means the transfer of a smart wireless device to a buyer that is partially or fully discounted by the seller in exchange for the buyer purchasing other products or services furnished in connection with the smart wireless device.

(3) "Seller" has the same meaning as in RCW 82.08.010.

(4)(a) "Selling price" has the same meaning as in RCW 82.08.010.

(b) "Selling price" also means:

(i) In the case of a smart wireless device that is sold to the buyer under conditions where the selling price does not represent the true value of the smart wireless device and is sold together with other products or services for one nonitemized price, the retail selling price of the same product or similar products of like quality and character, sold in an arm's length transaction; and

(ii) In the case of installment sales of a smart wireless device, the total aggregate consideration to be paid by the buyer to the seller for the smart wireless device.

(5) "Smart wireless device" means any type of instrument, device, machine, or equipment that is capable of wireless access to the internet. This includes, but is not limited to, smart phones, laptop computers, tablets, wearable devices, smart speakers, gaming consoles, smart gyms, and smart televisions.

NEW SECTION. **Sec.**  WIRELESS DEVICE TAX. (1) There is levied and collected a tax on each retail sale in this state of a smart wireless device. The amount of the tax is $2 for a device with a selling price of more than $250.

(2) The revenue collected under this section must be deposited in the learning device and technology account created in section 9 of this act.

NEW SECTION. **Sec.**  PAYMENT OF TAX. (1) The tax imposed in this chapter must be paid by the buyer to the seller. Each seller must collect from the buyer the full amount of the tax payable with respect to each taxable sale.

(2) The tax required by this chapter, to be collected by the seller, is held in trust by the seller until paid to the department. Any seller who appropriates or converts the tax collected to the seller's own use or to any use other than the payment of the tax to the extent that the money required to be collected is not available for payment on the due date as prescribed in this chapter is guilty of a gross misdemeanor.

(3) If any seller fails to collect the tax imposed in this chapter or, having collected the tax, fails to pay it to the department in the manner prescribed by this chapter, whether such failure is the result of the seller's own acts or the result of acts or conditions beyond the seller's control, the seller is, nevertheless, personally liable to the state for the amount of the tax.

(4) The tax required by this chapter to be collected by the seller must be stated separately from the selling price in any sales invoice or other instrument of sale.

NEW SECTION. **Sec.**  ADMINISTRATION. Chapter 82.32 RCW applies to the administration of this chapter.

NEW SECTION. **Sec.**  A new section is added to chapter 82.08 RCW to read as follows:

QUARTERLY TRANSFER.

(1) Beginning January 1, 2025, at the beginning of each quarter, the treasurer shall transfer 50 percent of all revenues collected under this chapter on the sale of smart wireless devices to the learning device and technology account created in section 9 of this act.

(2) At least 30 days prior to the start of each new quarter, the department shall notify the treasurer of the amount of sales tax revenues to be transferred from the state general fund to the learning device and technology account.

(3) For the purposes of this section, "smart wireless device" has the same meaning as in section 2 of this act.

**Sec.**  RCW 82.32.145 and 2020 c 301 s 6 are each amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) "Trust fund taxes" means taxes collected from purchasers and held in trust under RCW 82.08.050, including taxes imposed under RCW 82.08.020, 82.08.150, ((~~and~~)) 82.51.010, and section 3 of this act and donations made under section 8 of this act.

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

NEW SECTION. **Sec.**  DONATIONS. (1) Beginning January 1, 2025, a radio communications service company must include along with, or as part of, its regular subscriber billings a request for voluntary contributions to the state digital equity account created in RCW 80.36.710.

(a) The request for voluntary contributions must be included in regular billings for each radio access line for subscribers whose place of primary use is located in the state.

(b) The radio communications service company must establish a process to collect the voluntary contributions and transmit them to the department.

(c) All funds received by a radio communications service company in response to such requests shall be transmitted to the department.

(2) Beginning January 1, 2025, a local exchange company must include along with, or as part of, its regular subscriber billings a request for voluntary contributions to the state digital equity account created in RCW 80.36.710.

(a) The request for voluntary contributions must be included in regular billings for each switched access line whose place of primary use is located in the state.

(b) The local exchange company must establish a process to collect the voluntary contributions and transmit them to the department.

(c) All funds received by a local exchange company in response to such requests shall be transmitted to the department.

(3) By January 1, 2025, an interconnected voice over internet protocol service company must include along with, or as part of, its regular subscriber billings a request for voluntary contributions to the state digital equity account created in RCW 80.36.710.

(a) The request for voluntary contributions must be included in regular billings for each interconnected voice over internet protocol service line whose place of primary use is located in the state.

(b) The interconnected voice over internet protocol service company must establish a process to collect the voluntary contributions and transmit them to the department.

(c) All funds received by an interconnected voice over internet protocol service company in response to such requests shall be transmitted to the department.

(4) The department must establish a process for voluntary contributions collected pursuant to this section to be transmitted to the department. All funds transmitted to the department as voluntary contributions pursuant to this section must be deposited into the digital equity account created in RCW 80.36.710.

(5) The following definitions apply throughout this section unless the context clearly requires otherwise.

(a) "Interconnected voice over internet protocol service" has the same meaning as provided by the federal communications commission in 47 C.F.R. Sec. 9.3 on January 1, 2009, or a subsequent date determined by the department.

(b) "Interconnected voice over internet protocol service line" means an interconnected voice over internet protocol service that offers an active telephone number or successor dialing protocol assigned by a voice over internet protocol service provider to a voice over internet protocol service customer that has inbound and outbound calling capability, which can directly access a public safety answering point when such a voice over internet protocol service customer has a place of primary use in the state.

(c) "Local exchange company" has the same meaning as in RCW 80.04.010.

(d) "Place of primary use" means the street address representative of where the subscriber's use of the radio access line or interconnected voice over internet protocol service line occurs, which must be:

(i) The residential street address or primary business street address of the subscriber; and

(ii) In the case of radio access lines, within the licensed service area of the home service provider.

(e) "Prepaid wireless telecommunications service" means a telecommunications service that provides the right to use mobile wireless service as well as other nontelecommunications services including the download of digital products delivered electronically, content, and ancillary services, which must be paid for in full in advance and sold in predetermined units or dollars of which the number declines with use in a known amount.

(f) "Private telecommunications system" has the same meaning as in RCW 80.04.010.

(g) "Radio access line" means the telephone number assigned to or used by a subscriber for two-way local wireless voice service available to the public for hire from a radio communications service company. "Radio access lines" includes, but is not limited to, radio-telephone communications lines used in cellular telephone service, personal communications services, and network radio access lines, or their functional and competitive equivalent. Radio access lines do not include lines that provide access to one-way signaling service, such as paging service, or to communications channels suitable only for data transmission, or to nonlocal radio access line service, such as wireless roaming service, or to a private telecommunications system.

(h) "Radio communications service company" means every corporation, company, association, joint stock, partnership, and person, their lessees, trustees, or receivers appointed by any court, and every city or town making available facilities to provide commercial mobile radio services, as defined by 47 U.S.C. Sec. 332(d)(1), or cellular communications services for hire, sale, and both facilities-based and nonfacilities-based resellers, and does not include radio paging providers.

(i) "Subscriber" means the retail purchaser of telecommunications service, a competitive telephone service, or interconnected voice over internet protocol service.

(j) "Switched access line" means the telephone service line which connects a subscriber's main telephone or equivalent main telephone to the local exchange company's switching office.

NEW SECTION. **Sec.**  A new section is added to chapter 28A.650 RCW to read as follows:

NEW ACCOUNT.

The learning device and technology account is created in the state treasury. Revenues to the account consist of revenues collected pursuant to section 3 of this act and transferred pursuant to section 6 of this act and appropriations, grants, and donations directed for deposit into the account. Expenditures from the account must be used for the purposes of this chapter and RCW 43.330.5393. Moneys in the account may be spent only after appropriation.

**Sec.**  RCW 80.36.710 and 2022 c 265 s 401 are each amended to read as follows:

(1) The digital equity account is created in the state treasury. Moneys in the account may be spent only after appropriation.

(2) Any amounts appropriated by the legislature to the account, private contributions, ((~~or~~)) donations pursuant to section 8 of this act, and any other source directed to the account, must be deposited into the account. Funds from sources outside the state, from private contributions, federal or other sources may be directed to the specific purposes of the digital equity opportunity program or digital equity planning grant program.

(3) The legislature may appropriate moneys in the account only for the purposes of:

(a) RCW 43.330.412, the digital equity opportunity program; and

(b) RCW 43.330.5393, the digital equity planning grant program.

NEW SECTION. **Sec.**  JOINT LEGISLATIVE AUDIT AND REVIEW COMMITTEE. (1) By January 1, 2031, the joint legislative audit and review committee must perform and study and review the effectiveness of the increased funding provided pursuant to this chapter to the various digital equity programs, including but not limited to the digital equity opportunity program created in RCW 43.330.412 and the digital equity planning grant program established in RCW 43.330.5393. The study must include:

(a) A review of the broad digital equity supports, including the number of devices distributed, amount spent on devices, the amount spent on software, the number of technology support full-time equivalents, the amount spent on technology support full-time equivalents, and the number of classes offered;

(b) A review of the office of the superintendent of public instruction digital equity programs, including the number of student devices, the number of instructional devices, the number of technology support full-time equivalents, the amount spent on student devices, the amount spent on instructional devices, the amount spent on technology full-time equivalents, the district's federal reduced-price lunch program participation percentage; and

(c) A review of the state board for community and technical colleges digital equity program, including credit and noncredit classes related to adult basic education digital skills, the cost to the colleges to provide digital skills instruction, the amount spent on technology support full-time equivalents, the amount spent by colleges on parking lot Wi-Fi, the amount spent by colleges on device lending, the costs associated with maintaining devices and services, the amount of device and software lending for students with disabilities, and the department of corrections and state board for community and technical college student devices and software purchases for incarcerated, or formerly incarcerated, individuals.

(2) This section expires January 1, 2032.

NEW SECTION. **Sec.**  Sections 2 through 5, 8, and 11 of this act constitute a new chapter in Title 82 RCW.

NEW SECTION. **Sec.**  This act takes effect January 1, 2025.

**--- END ---**