

Initiative No. 1362

April 20, 2021

BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: I-4181.1/21

ATTY/TYPIST: MW:akl

BRIEF DESCRIPTION:

AN ACT Relating to health care financing and development of the whole Washington health trust to ensure that all Washington residents can enroll in nonprofit health insurance coverage providing an essential set of health benefits, including medical, dental, vision, and prescription drug benefits; adding a new section to chapter 82.32 RCW; adding a new section to chapter 82.04 RCW; adding a new chapter to Title 43 RCW; adding a new title to the Revised Code of Washington to be codified as Title 50C RCW; adding a new chapter to Title 82 RCW; prescribing penalties; providing effective dates; providing a contingent effective date; and providing contingent expiration dates.

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

Part I

Universal Essential Health Benefits Trust

NEW SECTION. **Sec. 101.** UNIVERSAL COVERAGE PROTECTING HEALTH CARE CHOICES. During this time of uncertainty affecting the future options for thousands of Washingtonians to retain their health care coverage and thousands who face high out-of-pocket costs, the people of the state of Washington declare their intention to create a single primary nonprofit health financing entity called the whole Washington health trust. The trust will simplify health care financing, eliminate administrative waste for providers, focus savings by promoting a health care delivery system that is responsive to the essential health needs of each county, and guarantee all residents may enroll for coverage of a single comprehensive set of essential health benefits as a basic human need that is essential for a productive society without the burden of current high premiums, deductibles, or, with modest exceptions, copayments.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) "Essential health benefits" means any of the following items and services provided on an inpatient or outpatient basis when medically necessary or appropriate for the maintenance of health or

for the diagnosis, treatment, or rehabilitation of a health condition:

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

(b) Ambulatory primary and specialty services, including preventative care and chronic disease management;

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

(d) Mental health and substance use disorder treatment services;

(e) Laboratory and other diagnostic services, including diagnostic imaging services;

(f) Reproductive, maternity, and newborn care;

(g) Pediatric primary and specialty care;

(h) Palliative care and end-of-life care services;

(i) Oral health, audiology, and vision services;

(j) Short-term rehabilitative and habilitative services and devices.

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

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

(14) "Health care facility" or "facility" includes any of the following appropriately accredited entities: Hospices and home health agencies licensed pursuant to chapter 70.127 RCW; hospitals licensed pursuant to chapter 70.41 RCW; rural health care facilities as defined in RCW 70.175.020; psychiatric hospitals licensed pursuant to chapter 71.12 RCW; nursing homes licensed pursuant to chapter 18.51 RCW; community mental health centers licensed pursuant to chapter 71.05 or 71.24 RCW; kidney disease treatment centers; ambulatory surgical facilities licensed under chapter 70.230 RCW;

approved drug and alcohol treatment facilities certified by the department of social and health services; such other facilities owned and operated by a political subdivision or instrumentality of the state; and such other facilities as required by federal law and implementing regulations.

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

(16) "Long-term care" means institutional, residential, outpatient, or community-based services that meet the individual needs of persons of all ages who are limited in their functional capacities or have disabilities and require assistance with performing two or more activities of daily living for an extended or indefinite period of time. These services include case management, protective supervision, in-home care, nursing services, convalescent, custodial, chronic, and terminally ill care.

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

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

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

(20) "Resident" means an individual who presents evidence of established permanent residency in the state of Washington, who did

not enter the state for the primary purpose of obtaining health services, and who meets residency requirements consistent with RCW 46.16A.140. "Resident" also includes people and their accompanying family members who are residing in the state for the purpose of engaging in employment for at least one month. The confinement of a person in a nursing home, hospital, or other medical institution in the state may not by itself be sufficient to qualify such person as a resident.

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

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

NEW SECTION. **Sec. 104.** THE BOARD OF TRUSTEES. (1) The trust must be governed by a board of trustees consisting of nine members with expertise in health care financing and delivery and representing Washington citizens, business, labor, and health professions. Trustees must include individuals with knowledge of the health care needs of diverse populations, including low-income, Native American, undocumented, non-English-speaking, disabled, rural, and other minority populations. Members of the board must have no pecuniary interest in any business subject to regulation by the board.

(2) (a) By March 1, 2023, the insurance commissioner and each of the two largest caucuses in both the house of representatives and the senate shall submit to the governor a list of five nominees who are not legislators or employees of the state or its political subdivisions, with no caucus or the insurance commissioner submitting the same nominee.

(b) By May 15, 2023, the governor shall appoint the initial trustees. The governor shall appoint one trustee from each of the

lists submitted by the house of representatives and the senate and the insurance commissioner. If a caucus or the insurance commissioner fails to submit a list as required in (a) of this subsection or if the nominees on the list do not meet the qualifications specified in subsection (1) of this section, the governor shall appoint a substitute trustee meeting the qualifications specified in subsection (1) of this section at the governor's discretion. The governor shall appoint the remaining trustees meeting the qualifications specified in subsection (1) of this section at his or her discretion.

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

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

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

(4) A trustee whose term has expired or who otherwise leaves the board must be replaced by gubernatorial appointment. When the person leaving was nominated by one of the caucuses of the house of representatives or the senate, his or her replacement must be appointed from a list of five nominees submitted by that caucus within 30 days after the vacancy occurs. If the caucus or the insurance commissioner fails to submit the list of nominees or if the nominees do not meet the qualifications specified in subsection (1) of this section, the governor shall appoint a trustee meeting the qualifications specified in subsection (1) of this section at

the governor's discretion. A person appointed to replace a trustee who leaves the board before the expiration of his or her term shall serve only the duration of the unexpired term.

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

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

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

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

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

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

(c) A provider committee consisting of members with broad experience in and knowledge of health care delivery, research, and policy, as well as public and private funding of health care services. The provider committee shall make recommendations to the

board on issues related to scope of covered benefits, quality improvement, continuity of care, resource utilization, and other issues as requested by the board.

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

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

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

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

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

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

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

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

NEW SECTION. **Sec. 107.** RESPONSIBILITIES OF THE BOARD. (1)

With advice from the citizen committee and the provider committee, the board shall:

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

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

(c) Establish premiums necessary to operate the trust and make rules, policies, guidelines, and timetables needed for the trust to finance the essential benefits package for residents starting November 1, 2023;

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

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

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

(g) Make rules for eligible nonresidents;

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

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

(j) Develop appeals procedures for residents and providers;

(k) Integrate functions with other state agencies;

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

(m) Address nonfinancial barriers to health care access including, but not limited to, developing specific goals, plans, and considerations to identify and address the needs of vulnerable populations that are most susceptible to health care disparities, particularly targeting those disease prevention and health promotion, medical, mental/behavioral health, and public health issues that disproportionately affect the diverse populations where disparities are known to exist, in order to ensure equitable, appropriate, effective, safe, and high quality care for all, with no gaps in services based on any medically irrelevant factor;

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

(o) Develop an annual budget for the trust.

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

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

(2) The board and the department shall, on an ongoing and regular basis, evaluate whether the essential health benefits should be improved or adjusted to promote the health of beneficiaries, account for changes in medical practice or new information from medical research, or respond to other relevant developments in

health science, and shall make recommendations to the legislature regarding any such improvements or adjustments.

(3) Subject to a financial analysis demonstrating ongoing sufficient funds in the trust, long-term care shall be a covered benefit on January 1, 2026. Long-term care coverage shall include a uniform initial assessment and coordination between home health, adult day care, and nursing home services, and other treatment alternatives. The board may establish a copayment for long-term nursing home care, to cover some costs of room and board, for residents with household incomes above 150 percent of the federal poverty level.

(4) The board must establish:

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

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

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

(6) The board shall submit to the governor and legislature by December 1, 2023, and by December 1st of the following years:

(a) The essential benefits package; and

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

NEW SECTION. **Sec. 109.** PARTICIPATING PROVIDERS. (1) The board, in coordination with the health care authority, shall adopt rules and mechanisms permitting qualified providers to collectively negotiate budgets, payment schedules, and other terms and conditions of trust participation.

(2) The board, in coordination with the health care authority and on an annual basis, shall collectively negotiate reimbursement rates with qualified providers not participating as community health

providers on a fee-for-service or on a case-rate basis or on a combination of bases.

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

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

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

- (a) Regional health needs of residents in each county;
 - (b) The scope of services offered by provider;
 - (c) Quality and effectiveness of care standards and safety policies utilized by the provider;
 - (d) Quality of employment for those employed by the provider;
- and

(e) Provider coordination with the department of social and health services on delivery of needs-based assistance for which residents in the county are eligible.

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

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

(8) The board shall adopt rules ensuring that payment schedules for care provided via telemedicine, as defined in RCW 70.41.020, are at parity levels with equivalent care provided in person.

(9) The board shall study and develop provider payment methods that:

(a) Encourage an integrated multispecialty approach to disease management;

(b) Reward education time spent with patients;

(c) Include a medical risk adjustment formula for providers whose practices serve patients with higher than average health risks; and

(d) Include all categories of providers pursuant to rule and RCW 48.43.715.

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

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

(i) Encourages best practices in prescribing;

(ii) Discourages the use of ineffective, dangerous, or excessively costly medications when better alternatives are available;

(iii) Promotes the use of generic medications to the greatest extent possible; and

(iv) Does not interfere with treatments necessary for appropriate standards of care.

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

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

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

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

NEW SECTION. **Sec. 111.** ENROLLMENT ELIGIBILITY. (1) Residents:

(a) Under the age of 19; or

(b) With dual eligibility for medicare and medicaid;

are exempt from the premium established under section 107 of this act and the employment contribution established under subsection (4) of this section or sole proprietor self-employment contribution for enrollment in the trust.

(2) Residents with household incomes below 200 percent of the federal poverty level are not subject to the premium established under section 107 of this act for enrollment in the trust.

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

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

(5) Until full integration of federally qualified trust funds is accomplished, residents, including but not limited to Native American residents, who are covered under federal health programs shall continue to use that coverage, and additional benefits provided by the trust shall extend only to costs not covered by the

federal health programs when, subject to subsections (1) through (3) of this section:

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

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

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

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

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

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

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

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

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

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

(a) Persons under the age of 19;

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

(c) Adults whose household income is under 200 percent of the federal poverty level.

(5) By October 1, 2023, the board must take all steps necessary, including seeking appropriate approvals from federal entities, to ensure the essential benefits package qualifies as an essential health benefits-benchmark plan for the purposes of contracting to administer all essential health benefits with the following entities as a managed health care system:

(a) The health care authority;

(b) The public employees' benefits board;

(c) Indian health services;

(d) Center for medicare and medicaid services;

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

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

(6) By October 1, 2023, the board shall establish premiums and cost-sharing requirements for eligible individuals enrolled in the program through the Washington health benefits exchange, collect premium and assessment payments from all enrolled eligible individuals, and deposit premium payments in the benefits account created in section 123 of this act. If the eligible individual qualifies for premium subsidies or cost-sharing reductions under the patient protection and affordable care act, the premium or cost-sharing amounts established under this subsection may not exceed the amounts the eligible individual would have paid if he or she had

enrolled in a silver level qualified health plan through the Washington health benefit exchange. The portion of premiums, copays, and out-of-pocket costs enrollees are responsible for after eligible premium subsidies or cost-sharing reductions are applied must be consistent with this section.

(7) By November 1, 2024, the board shall:

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

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

(c) Ensure the operation of the trust consistent with this chapter; and

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

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

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

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

NEW SECTION. **Sec. 113.** INTEGRATION OF FEDERAL HEALTH COVERAGE PROGRAMS. (1) The health care authority shall determine which state and federal laws affect full integration of federally qualified trust funds into the trust under this chapter, and report its recommendations for accomplishing such full integration, with any proposed revisions to the Revised Code of Washington, to the

governor and the appropriate committees of the legislature by the first date following the effective date of this section.

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

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

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

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

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

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

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

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

(3) Beginning November 15, 2023, the health care authority shall submit annual progress reports to the appropriate legislative committees regarding the development of the waiver or demonstration project applications, or both, or other integration measures, and on enrollment of residents into health coverage managed by the health care authority, an entity within the health care authority, or the trust. The report submitted on November 15, 2024, must include a list of any statutory changes necessary to implement full integration of federally qualified trust funds into the trust.

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

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

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

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

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

NEW SECTION. **Sec. 114.** TRANSITIONAL EMPLOYER PROVISIONS. (1)

Employers with employees represented by a union and with established health benefit plans negotiated before the effective date of this section:

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

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

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

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

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

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

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

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

Within one year of the effective date of this section:

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

(2) The Washington state health care authority shall apply for a waiver from the provisions of the federal patient protection and affordable care act, P.L. 111-148, as amended by the federal health care and education reconciliation act, P.L. 111-152, to:

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

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

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

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

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

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

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

(b) An appeals process.

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

(5) Administrative expenses must include reasonable funding for the employment security department to carry out its obligations regarding enforcement of required health care expenditures and collection of the employment contribution established in section 202 of this act, the contribution paid by sole proprietors established in section 203 of this act, and the capital gains tax established in section 302 of this act that are among the trust's funding sources.

NEW SECTION. **Sec. 117.** ACTUARIAL ANALYSIS AND REPORTING. Beginning December 15, 2023, the board shall contract annually for an actuarial analysis of the funding needs of the trust created in section 103 of this act. The board shall report annually on the funding mechanisms to the appropriate standing committees of the house of representatives, the senate, and the governor, starting May 15, 2024. The funding mechanisms must contain the following elements:

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

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

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

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

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

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

NEW SECTION. **Sec. 118.** ALLOCATION OF EXISTING FUNDING. Following the repeal, amendment, or waiver of existing state and federal laws delineated in sections 113 and 115 of this act, all other revenues currently deposited in the public health services account pursuant to RCW 43.72.902 shall be deposited to the reserve account created in section 121 of this act and the benefits account created in section 123 of this act.

NEW SECTION. **Sec. 119.** ALLOCATION OF NEW REVENUES. Revenue derived from the assessments established in sections 202, 203, and 302 of this act and the premiums established under section 107 of this act shall be deposited to the reserve account created in section 121 of this act and the benefits account created in section 123 of this act, and may not be used to pay for medical assistance currently provided under chapter 74.09 RCW or other existing federal and state health care programs. If existing federal and state sources of payment for health services are reduced or terminated

after the effective date of this section, the legislature shall replace these appropriations from the general fund.

NEW SECTION. **Sec. 120.** START-UP APPROPRIATIONS. An appropriation by separate act of the legislature may be necessary for the fiscal year ending June 30, 2023, from the general fund to the benefits account of the trust for start-up moneys for purposes of this chapter during the period of July 1, 2023, through the second June 30th following the effective date of section 115 of this act.

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

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

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

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

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

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

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

NEW SECTION. **Sec. 124.** ANNUAL BUDGET. (1) Beginning May 15, 2024, the board shall adopt, in consultation with the office of financial management, an annual whole Washington health trust budget. If operation expenses exceed revenues generated in two consecutive years, the board shall recommend adjustments in revenues to the legislature.

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

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

(4) Prior to making its recommendations, the board shall conduct at least six public hearings in different geographic regions of the

state seeking public input or comment on the recommended funding mechanism.

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

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

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

(2) Seek audits annually from the state auditor;

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

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

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

NEW SECTION. **Sec. 126.** CONFORMING EMPLOYER BENEFITS PLANS.

(1) Nothing in this chapter limits an employer's right to maintain employee benefits plans under the federal employee retirement income security act of 1974.

(2) Irrevocable expenditures. (a) At least 50 percent of each required health care expenditure for calendar year 2023 must consist of irrevocable expenditures. Revocable expenditures that exceed 40 percent of required health care expenditures shall not be counted toward the employer spending requirement.

(b) At least 80 percent of each required health care expenditure for calendar year 2024 must consist of irrevocable expenditures. Revocable expenditures that exceed 20 percent of required health

care expenditures shall not be counted toward the employer spending requirement.

(c) On and after January 1, 2025, only irrevocable health care expenditures shall be counted toward the employer spending requirement.

(d) Health care expenditures paid to the employment security department or the trust on behalf of an employee are not revocable.

(3) Revocable expenditures. Subject to the limitations in subsection (2) of this section, revocable health care expenditures shall be counted toward the employer spending requirement, provided that:

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

(b) No portion of the expenditure is revoked prior to the earliest of: (i) 24 months from the date of the expenditure; (ii) 90 days after separation from employment; or (iii) for revocable expenditures made prior to January 1, 2025, the date that the employee knowingly, voluntarily, and permanently waives in writing the unused portion of such expenditure;

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

(d) An employee who separates from employment with any amount of unused revocable expenditures receives, within three business days following the separation: (i) A written notice with a summary of how the benefit may be used, including types of health care services available; (ii) restrictions on the use of this benefit, including

maximum dollar value of benefits or account balances; and (iii) the date on which the benefit will be revoked.

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

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

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

(a) Participate in the medical reimbursement accounts; or

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

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

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

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

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

(5) Essential community access shall use the rates established through annual negotiations by community health providers under the trust as described in section 109 of this act.

(6) Essential community access shall provide payment for essential health benefits as defined in section 102 of this act to providers participating in the trust as community health providers as described in section 109 of this act.

(7) The employment security department shall be authorized to transfer payments made by employers to satisfy their health care expenditure requirements as set forth in section 202 of this act to the health care authority for purposes of establishing and maintaining medical reimbursement accounts from which employees may obtain reimbursement of health care expenditures in the amount and under the terms set by the board of the trust in annual negotiations with community health providers as established in section 109 of this act.

(8) The health care authority may coordinate with a third-party vendor to administer program operations, including enrollment, tracking service utilization, billing, and communication with the participants.

(9) The health care authority shall develop a plan to more directly integrate employer coverage for essential health benefits

and to ensure that employer health care expenditures made to the employment security department pursuant to section 202 of this act can be used to maximize enrollment in health insurance through the trust or medicaid. This plan may include possible options for incenting employers to provide quality, affordable health insurance directly to employees. This plan shall be presented to the legislature annually beginning no later than December 1, 2026, so that it may be considered and approved for full implementation beginning during a marketplace open enrollment period no more than 20 months following approval. Until a plan to integrate employer essential health coverage directly into the trust is approved by the legislature, the health care authority shall continue to administer the essential community health options program, which includes essential community access and medical reimbursement accounts, in a manner that is consistent with section 101 of this act.

NEW SECTION. **Sec. 128.** CONFORMING FEDERALLY QUALIFIED TRUST FUNDS. By January 1, 2026, the board shall submit to the legislature a proposal to integrate those current and future federally qualified trust funds that choose to participate in the trust.

NEW SECTION. **Sec. 129.** CONFORMING LABOR AND INDUSTRIES. By January 1, 2026, the board, in coordination with the department of labor and industries, shall study and make a report to the governor and appropriate committees of the legislature on the coordination of essential health benefits for injured workers under the trust.

Part II

Assessments and Revenues

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

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

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

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

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

(5) "Commissioner" means the commissioner of the department or the commissioner's designee.

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

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

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

(8) (a) "Employer" means: (i) Any individual or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, limited liability company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or the legal representative of a deceased person, having any person in employment or, having become an employer, has not ceased to be an employer as provided in this title; (ii) the state, state institutions, and state agencies; and (iii) any unit of local government including, but not limited to, a

county, city, town, municipal corporation, quasi-municipal corporation, or political subdivision.

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

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

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

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

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

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

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

(b) "Employment" does not include:

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

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

(II) Such service is either outside the usual course of business for which such service is performed, or that such service is performed outside of all the places of business of the enterprises for which such service is performed; and

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

(B) As a separate alternative:

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

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

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

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

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

(VI) On the effective date of the contract of service, such individual is maintaining a separate set of books or records that

reflect all items of income and expenses of the business which the individual is conducting; or

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

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

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

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

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

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

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

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

(11) "Health care expenditure" means an amount paid by an employer to an employee or a trustee or a third party on behalf of the employee for the purpose of providing or reimbursing the cost of health care services for employees or their spouses, or both, domestic partners, children, or other dependents. "Health care expenditure" also means an amount paid by an employer to the whole Washington health trust on behalf of the employee to establish his or her enrollment in the whole Washington health trust in the manner and according to the terms set by the health care authority. "Health care expenditure" does not include any amount otherwise required to be paid by federal, state, or local law.

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

(13) "Individual" means a natural person.

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

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

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

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

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

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

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

(d) Remuneration does not include:

(i) The payment of tips;

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

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

(19) "Required health care expenditure" means the health care expenditure that an employer is required to make to, or on behalf of, an employee.

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

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

(22) "Sole proprietor" means:

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

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

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

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

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

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

(b) For the purpose of payment of benefits, the remuneration paid by one or more employers to an employee for employment during the employee's qualifying period. At the request of an employee, wages may be calculated on the basis of remuneration payable. The department shall notify each employee that wages are calculated on

the basis of remuneration paid, but at the employee's request a redetermination may be performed and based on remuneration payable;

(c) Adjusted net earnings from self-employment of sole proprietors.

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

NEW SECTION. **Sec. 202.** EMPLOYER REQUIRED HEALTH CARE EXPENDITURE AND HEALTH SECURITY ASSESSMENT—PROCEDURE. (1) (a) Beginning January 1, 2027, employers shall make required health care expenditures to or on behalf of each employee each quarter. The department shall assess for each individual in employment with an employer and for each sole proprietor a health security assessment based on the amount of the individual's wages subject to section 203 of this act.

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

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

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

(2) The employer must collect from the employees the required health care expenditure and any surcharges provided under this section through payroll deductions and remit the amounts collected to the department or make a health care expenditure to or on behalf of the employee.

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

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

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

(6) Beginning January 1, 2024, until May 15, 2028, employers with fewer than 50 employees and that face financial hardship in paying the required health care expenditure may, upon application to the department, be eligible for waivers or reductions in the assessment. The department shall establish rules and procedures governing all aspects of the business assistance program, including application procedures, wages, profits, age of firm, and duration of assistance.

(7) Pending integration of any federally qualified trust funds, the payroll of employees covered under these trust funds is exempt from the health security assessment, although the employer may pay health care expenditures to the department on behalf of the employee voluntarily.

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

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

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

NEW SECTION. **Sec. 203.** EMPLOYEE HEALTH EXPENDITURES AND EMPLOYEE HEALTH ASSESSMENT—APPLICABILITY. (1) Beginning January 1, 2027, an employee health assessment is imposed on the receipt of wages by residents employed in Washington state. All employers in Washington state must collect the employee health assessment on aggregate gross payroll paid to Washington state residents from employee wages and make required health care expenditures or pay the assessment to the department in quarterly installments. Except as provided in section 114 of this act, the employee health assessment must be two percent of the employee's aggregate adjusted quarterly payroll.

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

(3) Beginning January 1, 2025, residents operating as sole proprietors must pay a sole proprietor health assessment in annual installments to the department equal to two percent on adjusted net earnings from self-employment.

(4) Partnerships are subject to the employment contribution established in section 202 of this act and are responsible for collecting the employee health assessment on behalf of employees as provided in this section.

(5) S corporations are not subject to the personal employment contribution health assessment under this chapter.

NEW SECTION. **Sec. 204.** EMPLOYER WITHHOLDING ESTIMATED EMPLOYEE HEALTH ASSESSMENT. Every employer making a payment of wages or salaries earned in this state by Washington residents, regardless of the place where the payment is made, and who is required by the

internal revenue code to withhold taxes, must deduct and withhold an employee health assessment as prescribed by the department by rule. The rules prescribed must reasonably reflect the quarterly tax liability of the employee under this chapter. Every employer making such a deduction and withholding must furnish to the employee a record of the amount of tax deducted and withheld from the employee on forms provided by the department.

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

NEW SECTION. **Sec. 206.** CREDITS FOR WITHHELD EMPLOYEE HEALTH ASSESSMENTS. The amount deducted and withheld as tax under sections 204 through 251 of this act during any taxable year is allowed as a credit against the employee health assessment imposed for the taxable year by this chapter. If the liability of any individual for taxes, interest, penalties, or other amounts due the state of Washington is less than the total amount of the credit which the individual is entitled to claim under this section, the individual is entitled to a refund from the department in the amount of the excess of the credit over the tax otherwise due. If any individual entitled to claim a credit under this section is not otherwise required by this chapter to file a return with the department, a refund may be obtained in the amount of the credit by filing a return with the department, with applicable sections completed, to claim the refund. No credit or refund is allowed under this section unless the credit or refund is claimed on a return filed for the taxable year for which the amount was deducted and withheld.

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

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

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

(2) Where an employer does not maintain or retain adequate records documenting the health care expenditures made, or does not allow the department reasonable access to such records, it shall be presumed that the employer did not make the required health care expenditures for the quarter for which records are lacking, absent clear and convincing evidence otherwise. The department of revenue and the health care authority have the authority to provide any and all nonfinancial information to the department necessary to fulfill the department responsibilities as the enforcing agency under this chapter. With regard to all such information provided by the department of revenue and the health care authority, the department shall be subject to the confidentiality provisions in RCW 82.32.330.

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

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

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

NEW SECTION. **Sec. 209.** COLLECTION OF EMPLOYEE PREMIUMS. (1) By January 1, 2027, the department shall ensure all employers in Washington state may withhold the premium an employee or their spouse owes for enrollment into the trust created in section 103 of this act and pay the premium to the department in quarterly installments.

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

(3) If an employer with fewer than 50 employees elects to pay all of the assessments and any premiums on behalf of an employee for the purpose of making an employee eligible to enroll in the whole Washington health trust, the employer is considered eligible for

assistance under the business assistance program established in section 202 of this act.

NEW SECTION. **Sec. 210.** OUT-OF-STATE EMPLOYERS OF WASHINGTON RESIDENTS. By January 1, 2027, the department shall develop policy, procedures, and forms allowing out-of-state employers employing one or more residents of Washington state to voluntarily:

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

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

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

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

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

(3) The requirements relating to the collection of the assessments are as provided in this chapter. Before issuing a

warning letter, the department shall enforce the collection of assessments through conference and conciliation. These requirements apply to:

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

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

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

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

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

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

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

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

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

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

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

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

- (a) For the second occurrence, the penalty is \$75;
- (b) For the third occurrence, the penalty is \$150; and
- (c) For the fourth occurrence and for each occurrence thereafter, the penalty is \$250.

(2) An employer who willfully fails to remit the full amount of the assessments when due is liable, in addition to the full amount of assessments due and amounts assessed as interest under section 218 of this act, to a penalty equal to the assessments and interest.

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

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

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

(6) These penalties may be appealed as provided in sections 231 through 248 of this act.

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

- (a) Physically based outside of the state;
- (b) Employed in the state on a limited or temporary work schedule; and
- (c) Not expected to be employed in the state for 820 hours or more in a qualifying period.

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

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

NEW SECTION. **Sec. 215.** TERMINATION OR DISPOSAL OF BUSINESS—ASSESSMENT PAYMENT—SUCCESSOR LIABILITY. Whenever any employer quits business, or sells out, exchanges, or otherwise disposes of the employer's business or stock of goods, any assessments payable under this chapter shall become immediately due and payable, and the employer shall, within 10 days, make a return and pay the assessments due; and any person who becomes a successor to such business shall become liable for the full amount of the assessments and withhold from the purchase price a sum sufficient to pay any assessments due from the employer until such time as the employer produces a receipt from the department showing payment in full of any assessments due or a certificate that no assessment is due and, if such assessment is not paid by the employer within 10 days from the date of such sale, exchange, or disposal, the successor shall become liable for the payment of the full amount of assessments, and the payment thereof by such successor shall, to the extent thereof, be deemed a payment upon the purchase price, and if such payment is greater in amount than the purchase price the amount of the difference shall become a debt due such successor from the employer. A successor may not be liable for any assessments due from the person from whom that person has acquired a business or stock of goods if that person gives written notice to the department of such acquisition and no assessment is issued by the department within 180 days of receipt of such notice against the former operator of the business and a copy thereof mailed to such successor.

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

NEW SECTION. **Sec. 217.** JEOPARDIZED COLLECTION—IMMEDIATE ASSESSMENT. If the commissioner has reason to believe that an employer is insolvent or if any reason exists why the collection of any assessments accrued will be jeopardized by delaying collection, he or she may make an immediate assessment thereof and may proceed to enforce collection immediately, but interest and penalties shall not begin to accrue upon any assessments until the date when such assessment would normally have become delinquent.

NEW SECTION. **Sec. 218.** DELINQUENCY—ACCRUAL OF INTEREST. If assessments are not paid on the date on which they are due and payable as prescribed by the commissioner, the whole or part thereof remaining unpaid shall bear interest at the rate of one percent per month or fraction thereof from and after such date until payment plus accrued interest is received by him or her. The date as of which payment of assessments, if mailed, is deemed to have been received may be determined by rule of the commissioner. Interest collected under this section shall be paid into the Washington health trust enforcement account. Interest shall not accrue on assessments from any estate in the hands of a receiver, executor, administrator, trustee in bankruptcy, common law assignee, or other liquidating officer subsequent to the date when such receiver,

executor, administrator, trustee in bankruptcy, common law assignee, or other liquidating officer qualifies as such, but assessments accruing with respect to employment of persons by any receiver, executor, administrator, trustee in bankruptcy, common law assignee, or other liquidating officer shall become due and draw interest in the same manner as assessments due from other employers. Where adequate information has been furnished to the department and the department has failed to act or has advised the employer of no liability or inability to decide the issue, interest may be waived.

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

NEW SECTION. **Sec. 220.** COLLECTION BY DISTRAINT, SEIZURE, AND SALE—PROCEDURE. The commissioner, upon making a distraint, shall seize the property and shall make an inventory of the property distrained, a copy of which shall be mailed to the owner of such property or personally delivered to him or her, and shall specify the time and place when said property shall be sold. A notice specifying the property to be sold and the time and place of sale shall be posted in at least two public places in the county wherein the seizure has been made. The time of sale shall be not less than 10 nor more than 20 days from the date of posting of such notices. The sale may be adjourned from time to time at the discretion of the commissioner, but not for a time to exceed in all 60 days. The sale shall be conducted by the commissioner or his or her authorized

representative who shall proceed to sell such property by parcel or by lot at a public auction, and who may set a minimum price to include the expenses of making a levy and of advertising the sale. If the amount bid for the property at the sale is not equal to the minimum fixed price, the commissioner or his or her representative may declare the property to be purchased by the department for the minimum price. In this event the delinquent account shall be credited with the amount for which the property has been sold. Property acquired by the department may be sold by the commissioner or his or her representative at public or private sale, and the amount realized shall be placed in the Washington health trust enforcement account. In all cases of sale, the commissioner shall issue a bill of sale or a deed to the purchaser and the bill of sale or deed shall be prima facie evidence of the right of the commissioner to make the sale and conclusive evidence of the regularity of his or her proceeding in making the sale, and shall transfer to the purchaser all right, title, and interest of the delinquent employer in the property. The proceeds of this sale, except in those cases wherein the property has been acquired by the department, shall be first applied by the commissioner in satisfaction of the delinquent account, and out of any sum received in excess of the amount of delinquent assessments, interest, and penalties the administration fund shall be reimbursed for the costs of distraint and sale. Any excess which shall thereafter remain in the hands of the commissioner shall be refunded to the delinquent employer. Sums so refundable to a delinquent employer may be subject to seizure or distraint in the hands of the commissioner by any other taxing authority of the state or its political subdivisions.

NEW SECTION. **Sec. 221.** NOTICE AND ORDER TO WITHHOLD AND DELIVER. The commissioner may issue to any person, firm, corporation, political subdivision, or department of the state, a notice and order to withhold and deliver property of any kind whatsoever when the commissioner has reason to believe that there is

in the possession of such person, firm, corporation, political subdivision, or department, property which is due, owing, or belonging to any person, firm, or corporation upon whom the department has served a benefit overpayment assessment or a notice and order of assessment for assessments, interest, or penalties. The effect of a notice to withhold and deliver shall be continuous from the date the notice and order to withhold and deliver is first made until the liability is satisfied or becomes unenforceable because of a lapse of time. The notice and order to withhold and deliver shall be served by the sheriff or the sheriff's deputy of the county where the service is made, using a method by which the mailing can be tracked or the delivery can be confirmed, or by a duly authorized representative of the commissioner. Any person, firm, corporation, political subdivision, or department upon whom service has been made must answer the notice within 20 days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the notice. If there is in the possession of any such person, firm, corporation, political subdivision, or department, any property which may be subject to the claim of the department of the state, such property shall be delivered to the commissioner or the commissioner's duly authorized representative upon demand to be held in trust by the commissioner for application on the indebtedness involved or for return, without interest, in accordance with final determination of liability or nonliability, or in the alternative, there shall be furnished a good and sufficient bond satisfactory to the commissioner conditioned upon final determination of liability. Should any person, firm, or corporation fail to make answer to an order to withhold and deliver within the time prescribed, the court may, after the time to answer such order has expired, to render judgment by default against the person, firm, or corporation for the full amount claimed by the commissioner in the notice to withhold and deliver, together with costs.

NEW SECTION. **Sec. 222.** WARRANT FOR ASSESSMENT. When an order and notice of assessment or jeopardy assessment becomes final in accordance with this chapter, the commissioner may file with the clerk of any county within the state a warrant in the amount of the notice of assessment plus interest, penalties, and a filing fee under RCW 36.18.012(10). The clerk of the county where the warrant is filed shall immediately designate a superior court cause number for the warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the employer mentioned in the warrant, the amount of the tax, interest, penalties, and filing fee, and the date when the warrant was filed. The aggregate amount of the warrant as docketed becomes a lien upon the title to, and interest in all real and personal property of the employer against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of the clerk. The warrant is sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state in the manner provided by law in the case of civil judgment, wholly or partially unsatisfied. The clerk of the court is entitled to a filing fee under RCW 36.18.012(10), which shall be added to the amount of the warrant, and charged by the commissioner to the employer or employing unit. A copy of the warrant shall be mailed to the employer or employing unit using a method by which the mailing can be tracked or the delivery can be confirmed within five days of filing with the clerk.

NEW SECTION. **Sec. 223.** LIENS. The claim of the department for any assessments, interest, or penalties not paid when due shall be a lien prior to all other liens or claims and on parity with prior tax liens against all property and rights to property, whether real or personal, belonging to the employer. In order to avail itself of the lien, the department shall file with any county auditor where property of the employer is located a statement and claim of lien specifying the amount of delinquent assessments, interest, and

penalties claimed by the department. From the time of filing for record, the amount required to be paid shall constitute a lien upon all property and rights to property, whether real or personal, in the county, owned by the employer or acquired by him or her. The lien is not valid against any purchaser, holder of a security interest, mechanic's lien, or judgment lien creditor until notice thereof has been filed with the county auditor. This lien is separate and apart from, and in addition to, any other lien or claim created by, or provided for in, this chapter. When any such notice of lien has been filed, the commissioner may release the same by filing a certificate of release when it appears that the amount of delinquent assessments, interest, and penalties have been paid, or when adequate assurance of payment is made. Fees for filing and releasing the lien may be charged to the employer and may be collected from the employer using the remedies provided in this chapter for the collection of assessments.

NEW SECTION. **Sec. 224.** LIENS—INSOLVENCY, DISSOLUTION, OR DISTRIBUTION OF ASSETS. In the event of any distribution of an employer's assets pursuant to an order of any court, including any receivership, probate, legal dissolution, or similar proceeding, or in case of any assignment for the benefit of creditors, composition, or similar proceeding, assessments, interest, or penalties then or thereafter due shall be a lien upon all the assets of the employer. The lien is prior to all other liens or claims except prior tax liens, other liens provided by this chapter, and claims for remuneration for services of not more than \$250 to each claimant earned within six months of the commencement of the proceeding. The existence of a condition of insolvency or the institution of any judicial proceeding for legal dissolution or of any proceeding for distribution of assets shall cause the lien to attach without action on behalf of the commissioner or the state. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the federal bankruptcy act

of 1898, as amended, assessments, interest, or penalties then or thereafter due are entitled to such priority as provided in that act.

NEW SECTION. **Sec. 225.** CIVIL ACTIONS—SERVICE OF PROCESS. (1)

If after due notice, any employer defaults in any payment of assessments, interest, or penalties, the amount due may be collected by civil action in the name of the state, and the employer adjudged in default shall pay the cost of the action. Any lien created by this chapter may be foreclosed by decree of the court in any such action. Civil actions brought under this chapter to collect assessments, interest, or penalties from an employer shall be heard by the court at the earliest possible date and are entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this chapter, cases arising under the unemployment compensation laws of this state, and cases arising under the industrial insurance laws of this state.

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

the original of the process filed in the court in which the action is pending.

NEW SECTION. **Sec. 226.** INJUNCTION FROM CONTINUING IN BUSINESS. Any employer who is delinquent in the payment of assessments, interest, or penalties may be enjoined upon the suit of the state of Washington from continuing in business in this state or employing persons herein until the delinquent assessments, interest, and penalties have been paid, or until the employer has furnished a good and sufficient bond in a sum equal to double the amount of assessments, interest, and penalties already delinquent, plus such further sum as the court deems adequate to protect the department in the collection of assessments, interest, and penalties which become due from such employer during the next ensuing calendar year, the bond to be conditioned upon payment of all assessments, interest, and penalties due and owing within 30 days after the expiration of the next ensuing calendar year or at an earlier date as fixed by the court. Action under this section may be instituted in the superior court of any county of the state where the employer resides, has its principal place of business, or where it has anyone performing services for it, whether or not such services constitute employment.

NEW SECTION. **Sec. 227.** COMPROMISE OF CLAIMS. The commissioner may compromise any claim for assessments, interest, or penalties due and owing from an employer, and any amount owed by an individual because of benefit overpayments existing or arising under this chapter in any case where collection of the full amount due and owing, whether reduced to judgment or otherwise, would be against equity and good conscience. Whenever a compromise is made by the commissioner in the case of a claim for assessments, interest, or penalties, whether reduced to judgment or otherwise, there shall be placed on file in the department a statement of the amount of assessments, interest, and penalties imposed by law and claimed due, attorneys' fees and costs, if any, a complete record of the

compromise agreement, and the amount actually paid in accordance with the terms of the compromise agreement. If any such compromise is accepted by the commissioner, within such time as may be stated in the compromise or agreed to, such compromise shall be final and conclusive and except upon showing of fraud or malfeasance or misrepresentation of a material fact the case shall not be reopened as to the matters agreed upon. In any suit, action, or proceeding, such agreement or any determination, collection, payment, adjustment, refund, or credit made in accordance therewith shall not be annulled, modified, set aside, or disregarded.

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

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

NEW SECTION. **Sec. 230.** ENFORCEMENT ACCOUNT. The Washington health trust enforcement account is created in the custody of the state treasurer. Any penalties and interest collected under this chapter must be deposited into the account and shall be used only for the purposes of administering and enforcing this chapter. Only the commissioner may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

NEW SECTION. **Sec. 231.** APPEALS—GENERALLY. (1) Any employer or sole proprietor who has received an assessment notice from the department may file an appeal from a determination or

redetermination with the commissioner within 30 days after the date of notification or mailing, whichever is earlier, of the assessment notice to the person's last known address.

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

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

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

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

NEW SECTION. **Sec. 233.** APPEALS—ASSESSMENT REDETERMINATIONS.

(1) A determination assessment becomes final in the absence of timely appeal. The commissioner may redetermine such determinations at any time within one year from delivery or mailing to correct an error in identity, omission of fact, or misapplication of law with respect to the facts.

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

NEW SECTION. **Sec. 234.** APPEALS—WHEN DEEMED FILED AND RECEIVED.

The appeal or petition from a notice of assessment, appeals decision, or commissioner's decision is filed and received if properly addressed and with sufficient postage:

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

(2) If mailed but not received by the addressee, or where received and the United States postal service cancellation mark is illegible, erroneous, or omitted, on the date it was mailed, if the

sender establishes by competent evidence that the appeal or petition was deposited in the United States mail on or before the date due for filing; or

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

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

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

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

(3) In any proceeding involving an appeal relating to an employer or sole proprietor's assessment, the administrative law judge, after affording the parties reasonable opportunity for fair hearing, shall render its decision affirming, modifying, or setting aside the determination or decisions of the department. The parties shall be notified of the decision together with the reasons, which

are deemed to be the final decision unless, within 30 days after the date of notification or mailing, whichever is the earlier, of such decision, further appeal is perfected pursuant to section 238 of this act.

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

NEW SECTION. **Sec. 238.** APPEALS—COMMISSIONER REVIEW—INITIATION. Within 30 days from the date of notification or mailing, whichever is the earlier, of any decision of an administrative law judge, the commissioner on the commissioner's own order may, or upon petition of any interested party shall, take jurisdiction of the proceedings for the purpose of review. Appeal from any decision of an administrative law judge may be perfected so as to prevent finality of such decision if, within 30 days from the date of notification or mailing of the decision, whichever is the earlier, a petition in writing for review by the commissioner is received by the commissioner or by such representative of the commissioner as the commissioner by rule shall prescribe. The commissioner may also prevent finality of any decision of an administrative law judge and take jurisdiction of the proceedings for his or her review by entering an order so providing on his or her own motion and mailing a copy thereof to the interested parties within the same period allowed for receipt of a petition for review. The time limit provided for the commissioner's assumption of jurisdiction on his or her own motion for review shall be deemed to be jurisdictional.

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

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

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

NEW SECTION. **Sec. 241.** APPEALS—APPLICABILITY OF FINDINGS, DETERMINATIONS, ETC. TO OTHER ACTIONS. Any finding, determination, conclusion, declaration, or final order made by the commissioner, or his or her representative or delegate, or by an appeal tribunal, administrative law judge, reviewing officer, or other agent of the department for the purposes of this chapter, shall not be

conclusive, nor binding, nor admissible as evidence in any separate action outside the scope of this chapter between an employee and the employee's present or prior employer before an arbitrator, court, or judge of this state or the United States, regardless of whether the prior action was between the same or related parties or involved the same facts or was reviewed pursuant to section 244 of this act.

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

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

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

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

NEW SECTION. **Sec. 244.** APPEALS—JUDICIAL REVIEW—PROCEDURE. Judicial review of a decision of the commissioner involving the review of a decision of an administrative law judge under this

chapter may be had only in accordance with the procedural requirements of RCW 34.05.452.

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

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

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

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

NEW SECTION. **Sec. 248.** APPEALS—REMEDIES EXCLUSIVE. The remedies provided in this chapter for determining the justness or correctness of assessments, refunds, or adjustments are exclusive and no court may entertain any action to enjoin an assessment or require a refund or adjustment except in accordance with this chapter. Matters which may be determined by the procedures set out

in this chapter shall not be the subject of any declaratory judgment.

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

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

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

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

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

Part III

Capital Gains Assessment

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

(1) "Accessory dwelling unit" means a separate habitable living area that is subordinate to the principal single-family dwelling unit, which is either internal to, attached to, or located on the same property tax parcel as, the principal single-family dwelling unit.

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

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

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

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

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

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

(6) "Individual" means a natural person.

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

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

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

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

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

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

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

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

(b) An individual who is a resident under (a) of this subsection is a resident for that portion of a taxable year in which the individual was domiciled in this state or maintained a place of abode in this state.

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

(11) "Taxpayer" means an individual subject to tax under this chapter.

(12) "Washington capital gains" means an individual's annual adjusted capital gain under this chapter, for each return filed under this chapter.

NEW SECTION. **Sec. 302.** LONG-TERM CAPITAL GAINS TAX. (1) Beginning January 1, 2023, an excise tax is imposed on all individuals for the privilege of selling or exchanging long-term capital assets, or receiving Washington capital gains. The tax equals eight and one-half percent multiplied by the individual's Washington capital gains.

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

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

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

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

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

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

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

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

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

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

(2) Assets held under a retirement savings account under Title 26 U.S.C. Sec. 401(k) of the internal revenue code, a tax-sheltered annuity or a custodial account described in Title 26 U.S.C. Sec. 403(b) of the internal revenue code, a deferred compensation plan under Title 26 U.S.C. Sec. 457(b) of the internal revenue code, an individual retirement account or an individual retirement annuity described in Title 26 U.S.C. Sec. 408 of the internal revenue code, a roth individual retirement account described in Title 26 U.S.C. Sec. 408A of the internal revenue code, an employee defined contribution program, an employee defined benefit plan, or a similar retirement savings vehicle;

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

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

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

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

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

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

NEW SECTION. **Sec. 305.** QUALIFIED FAMILY-OWNED SMALL BUSINESS DEDUCTION. (1) In computing tax under this chapter for a taxable year, a taxpayer may deduct adjusted capital gains, to the extent they are included in Washington capital gains, derived in the taxable year from the sale of substantially all of the fair market

value of the assets of, or the transfer of substantially all of the taxpayer's interest in, a qualified family-owned small business.

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

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

(b) "Family" has the same meaning as "member of the family" in RCW 83.100.046.

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

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

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

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

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

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

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

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

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

(f) "Qualifying interest" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) (a) A credit is allowed against the tax imposed in section 302 of this act equal to the amount of any legally imposed income or excise tax paid by the taxpayer to another taxing jurisdiction on capital gains derived from capital assets within the other taxing jurisdiction to the extent such capital gains are included in the taxpayer's Washington capital gains. The amount of credit under this subsection may not exceed the total amount of tax due under this chapter, and there is no carryback or carryforward of any unused credits.

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

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

NEW SECTION. **Sec. 307.** DUAL RESIDENCE. (1) A credit is allowed against the tax imposed in section 302 of this act equal to the amount of any legally imposed income or excise tax paid by the taxpayer to another taxing jurisdiction on capital gains derived from capital assets within the other taxing jurisdiction to the

extent such capital gains are included in the taxpayer's Washington capital gains. The amount of credit under this subsection may not exceed the total amount of tax due under this chapter, and there is no carryback or carryforward of any unused credits.

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

NEW SECTION. **Sec. 308.** TREATMENT OF PARTNERSHIPS AND S CORPORATION INCOME. (1) Partnerships are not subject to the long-term capital gains tax under this chapter. Partners are subject to the long-term capital gains tax under this chapter in their separate or individual capacities.

(2) S corporations are not subject to the long-term capital gains tax under this chapter. Shareholders of S corporations are subject to the long-term capital gains tax under this chapter in their separate or individual capacities.

NEW SECTION. **Sec. 309.** PERSONS REQUIRED TO FILE A STATE RETURN. (1) Only individual and joint taxpayers with federal net long-term capital gains or net earnings from self-employment of sole proprietors in excess of \$15,000 on their federal tax return are required to file a capital gains tax return with the department. Each person required to file a return under this chapter must, without assessment, notice, or demand, pay any tax due thereon to the department on or before the date fixed for the filing of the return.

(2) Except as otherwise provided in this chapter or RCW 82.32.080, taxpayers owing tax under this chapter must file, on forms prescribed by the department, a return with the department on or before the date the taxpayer's federal income tax return for the

taxable year is required to be filed along with all schedules and supporting documentation.

(3) If an adjustment to a taxpayer's federal return is made by the taxpayer or the internal revenue service, the taxpayer must, within 90 days of the final determination of the adjustment by the internal revenue service or within 30 days of the filing of a federal return adjusted by the taxpayer, file with the department on forms prescribed by the department a corrected return reflecting the adjustments as finally determined; however, such an amendment of the state return may take place only when the original filing was made in error. The taxpayer must pay any additional tax due resulting from the finally determined internal revenue service adjustment or a taxpayer adjustment without notice and assessment. Notwithstanding any provision of this chapter or any other title to the contrary, the period of limitation for the collection of the additional tax, interest, and penalty due as a result of such an adjustment by the taxpayer or a finally determined internal revenue service adjustment must begin at the later of 30 days following the final determination of the adjustment or the date of the filing of the corrected return.

(4) If a taxpayer required to file a return under this section has obtained an extension of time for filing the federal tax return for the taxable year, the taxpayer is entitled to the same extension of time for filing the return required under this section if the taxpayer provides the department, before the due date provided in subsection (1) of this section, the extension confirmation number or other evidence satisfactory to the department confirming the federal extension. An extension under this subsection for the filing of a return under this chapter is not an extension of time to pay the tax due under this chapter.

(5) (a) If any return due on long-term capital gains under subsection (1) of this section, along with a copy of the federal tax return, is not filed with the department by the due date or any extension granted by the department, the department must assess a penalty in the amount of five percent of the tax due for the taxable

year covered by the return for each month or portion of a month that the return remains unfiled. The total penalty assessed under this subsection may not exceed 25 percent of the tax due for the taxable year covered by the delinquent return. The penalty under this subsection is in addition to any penalties assessed for the late payment of any tax due on the return.

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

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

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

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

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

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

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

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

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

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

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

NEW SECTION. **Sec. 312.** DUE DATES FOR RETURNS, PENALTIES. The due date of a return required to be filed with the department is the due date of the applicable federal income tax return for federal income tax purposes. The department may grant extensions of time by which returns required to be filed by this chapter may be submitted. The department may grant extensions of time to pay tax with regard to taxes imposed by this chapter. Interest at the rate as specified in RCW 82.32.050 accrues during any extension period and the interest and penalty provisions of chapter 82.32 RCW apply to late payments and deficiencies. RCW 82.32.105 applies to this section.

NEW SECTION. **Sec. 313.** RECORDS AND RETURNS. (1) Every taxpayer with federal net long-term capital gains or net earnings from self-employment of sole proprietors in excess of \$15,000 annually must keep records, render statements, make returns, file reports, and perform other acts as the department requires by rule. Each return must be made under penalty of perjury and on forms prescribed by the department. The department may require other statements and reports be made under penalty of perjury and on forms prescribed by the department. The department may require any

taxpayer and any person required to deduct and withhold the tax imposed under this chapter to furnish to the department a correct copy of any return or document which the taxpayer has filed with the internal revenue service or received from the internal revenue service.

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

NEW SECTION. **Sec. 314.** ALLOCATION OF REVENUES TO BENEFITS ACCOUNT. All revenue from taxes collected by the department under this chapter, including penalties and interest on such taxes, must be deposited in the benefits account created in section 123 of this act.

NEW SECTION. **Sec. 315.** TAXES UNDER THIS CHAPTER IN ADDITION TO OTHER TAXES. The tax imposed under this chapter is in addition to any other taxes imposed by the state or any of its political subdivisions, or a municipal corporation, with respect to the same sale or exchange, including the taxes imposed in or under the authority of chapter 82.04, 82.08, 82.12, 82.14, 82.45, or 82.46 RCW.

NEW SECTION. **Sec. 316.** REFUNDS FOR OVERPAYMENT. The department must refund all taxes improperly paid or collected by the department.

NEW SECTION. **Sec. 317.** A new section is added to chapter 82.32 RCW to read as follows:

ALLOWS STATES TO COORDINATE.

(1) The department may enter into reciprocal tax collection agreements with the taxing officials of any other state imposing a specific tax. Agreements authorized under this section must require each state to offset delinquent specified taxes owed by a taxpayer

to one party to the agreement, including any associated penalties, interest, or other additions, against refunds of overpaid specified taxes owed to the taxpayer by the other party to the agreement. Such agreements may also include provisions governing the sharing of information relevant to the administration of specified taxes. However, the department may not share return or tax information with other states except as allowed under RCW 82.32.330. Likewise, the department may not share federal tax information with other states without the express written consent of the internal revenue service.

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

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

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

NEW SECTION. **Sec. 318.** CONFORMING RCW. To the extent not inconsistent with the provisions of this chapter, the following statutes apply to the administration of taxes imposed under this chapter: RCW 82.32.050, 82.32.055, 82.32.060, 82.32.070, 82.32.080, 82.32.085, 82.32.090, 82.32.100, 82.32.105, 82.32.110, 82.32.117, 82.32.120, 82.32.130, 82.32.135, 82.32.150, 82.32.160, 82.32.170, 82.32.180, 82.32.190, 82.32.200, 82.32.210, 82.32.212, 82.32.220, 82.32.230, 82.32.235, 82.32.237, 82.32.240, 82.32.245, 82.32.265, 82.32.300, 82.32.310, 82.32.320, 82.32.330, 82.32.340, 82.32.350, 82.32.360, 82.32.410, 82.32.805, 82.32.808, and section 317 of this act.

NEW SECTION. **Sec. 319.** A new section is added to chapter 82.04 RCW to read as follows:

A deduction is allowed against a person's gross income of the business to the extent necessary to avoid taxing the same amounts under this chapter and section 302 of this act.

NEW SECTION. **Sec. 320.** RULES. The department may adopt rules for the administration and enforcement of this act.

NEW SECTION. **Sec. 321.** APPEALS. The board of tax appeals has jurisdiction over appeals relating to tax deficiencies and refunds, including penalties and interest, under this chapter. The taxpayer may elect a formal or informal hearing pursuant to RCW 82.03.140. Before appealing to the board of tax appeals, the taxpayer may first elect to address disputes through the department's administrative review process.

NEW SECTION. **Sec. 322.** Notwithstanding any common law rule of strict construction of statutes imposing taxes, this chapter, being necessary for the welfare of the state and its inhabitants, must be liberally construed in support of application of the tax.

Part IV
Miscellaneous

NEW SECTION. **Sec. 401.** CODIFICATION. (1) Sections 101 through 113 and 115 through 129 of this act constitute a new chapter in Title 43 RCW.

(2) Sections 114 and 201 through 252 of this act constitute a new chapter in a new title to be codified as Title 50C RCW.

(3) Sections 301 through 316, 318, and 320 through 322 of this act constitute a new chapter in Title 82 RCW.

NEW SECTION. **Sec. 402.** EFFECTIVE DATES. (1) Sections 101 through 107 of this act take effect February 1, 2023.

(2) Sections 108 through 114, 116 through 119, and 121 through 125 of this act take effect March 1, 2023.

(3) Sections 126 through 129 of this act take effect May 15, 2024.

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

- (a) The health care authority;
- (b) An entity within the health care authority; or
- (c) The board created in section 104 of this act.

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

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

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