
SENATE BILL 5222

State of Washington

66th Legislature

2019 Regular Session

By Senator Hasegawa

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

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

12 **Part I**

13 **Universal Essential Health Benefits Trust**

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

1 administrative waste for providers, focus savings by promoting a
2 health care delivery system that is responsive to the essential
3 health needs of each county, and guarantee all residents may enroll
4 for coverage of a single comprehensive set of essential health
5 benefits as a basic human need, essential for a productive society.

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

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

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

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

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

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

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

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

- 1 (1) "Board" means the board of trustees of the whole Washington
2 health trust, created in section 103 of this act.
- 3 (2) "Capitation" means a mechanism of payment in which a provider
4 is paid a negotiated monthly sum and is obliged to provide all
5 covered services for specific patients who enroll with that provider.
- 6 (3) "Case rate" means a method of payment based on diagnosis.
7 Case rate assumes that a given set of services shall be provided and
8 the rate is based on the total compensation for those services.
- 9 (4) "Chair" means the presiding officer of the board.
- 10 (5) "Community health provider" means a qualified provider
11 electing participation in the trust as a coordinating nonprofit
12 health care provider to negotiate reimbursements based on quality and
13 availability of services for residents in each county as described in
14 section 109 of this act.
- 15 (6) "Department" means the Washington state department of health.
- 16 (7) "Eligible nonresident" shall be defined by the board of
17 trustees created in section 104 of this act, and includes nonresident
18 students attending college within the state, nonresidents employed
19 within the state, and the dependents of eligible nonresidents.
- 20 (8) (a) "Employee" means an individual who is in the employment of
21 an employer.
- 22 (b) "Employee" does not include employees of the federal
23 government.
- 24 (9) "Employer" has the meaning provided in section 201 of this
25 act.
- 26 (10) "Essential benefits package" means a single comprehensive
27 health insurance covering essential health benefits.
- 28 (11) "Essential health benefits" means any of the following items
29 and services provided on an inpatient or outpatient basis when
30 medically necessary or appropriate for the maintenance of health or
31 for the diagnosis, treatment, or rehabilitation of a health
32 condition:
- 33 (a) Hospital services, including hospital-based outpatient care
34 and twenty-four hour emergency services;
- 35 (b) Ambulatory primary and preventive care services, including
36 chronic disease management;
- 37 (c) Prescription drugs, medical devices, and biological products;
- 38 (d) Mental health and substance abuse treatment services;
- 39 (e) Laboratory and other diagnostic services, including
40 diagnostic imaging services;

1 (f) Reproductive, maternity, and newborn care;
2 (g) Pediatric primary and specialty care;
3 (h) Palliative care and end-of-life care services;
4 (i) Oral health, audiology, and vision services;
5 (j) Short-term rehabilitative and habilitative services and
6 devices.

7 (12) "Essential health benefits-benchmark plan" means the set of
8 benefits that an issuer must include in nongrandfathered plans
9 offered in the individual or small group market in Washington state,
10 as defined in section 1302 of the affordable care act and 45 C.F.R.
11 156.100.

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

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

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

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

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

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

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

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

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

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

32 NEW SECTION. **Sec. 104.** THE BOARD OF TRUSTEES. (1) The trust
33 must be governed by a board of trustees consisting of nine members
34 with expertise in health care financing and delivery and representing
35 Washington citizens, business, labor, and health professions.
36 Trustees must include individuals with knowledge of the health care
37 needs of diverse populations, including low-income, Native American,
38 undocumented, non-English speaking, disabled, rural, and other

1 minority populations. Members of the board must have no pecuniary
2 interest in any business subject to regulation by the board.

3 (2) (a) By March 1, 2020, the insurance commissioner and each of
4 the two largest caucuses in both the house of representatives and the
5 senate shall submit to the governor a list of five nominees who are
6 not legislators or employees of the state or its political
7 subdivisions, with no caucus or the insurance commissioner submitting
8 the same nominee.

9 (b) By May 15, 2020, the governor shall appoint the initial
10 trustees. The governor shall appoint one trustee from each of the
11 lists submitted by the house of representatives and the senate and
12 the insurance commissioner. If a caucus or the insurance commissioner
13 fails to submit a list as required in (a) of this subsection or if
14 the nominees on the list do not meet the qualifications specified in
15 subsection (1) of this section, the governor shall appoint a
16 substitute trustee meeting the qualifications specified in subsection
17 (1) of this section at the governor's discretion. The governor shall
18 appoint the remaining trustees meeting the qualifications specified
19 in subsection (1) of this section at his or her discretion.

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

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

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

34 (4) A trustee whose term has expired or who otherwise leaves the
35 board must be replaced by gubernatorial appointment. When the person
36 leaving was nominated by one of the caucuses of the house of
37 representatives or the senate, his or her replacement must be
38 appointed from a list of five nominees submitted by that caucus
39 within thirty days after the vacancy occurs. If the caucus or the
40 insurance commissioner fails to submit the list of nominees or if the

1 nominees do not meet the qualifications specified in subsection (1)
2 of this section, the governor shall appoint a trustee meeting the
3 qualifications specified in subsection (1) of this section at the
4 governor's discretion. A person appointed to replace a trustee who
5 leaves the board before the expiration of his or her term shall serve
6 only the duration of the unexpired term.

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

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

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

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

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

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

33 (c) A provider committee consisting of members with broad
34 experience in and knowledge of health care delivery, research, and
35 policy, as well as public and private funding of health care
36 services. The provider committee shall make recommendations to the
37 board on issues related to scope of covered benefits, quality
38 improvement, continuity of care, resource utilization, and other
39 issues as requested by the board.

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

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

12 (4) Members of committees shall serve without compensation for
13 their services but shall be reimbursed for their expenses while
14 attending meetings on behalf of the board in accordance with RCW
15 43.03.050 and 43.03.060.

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

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

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

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

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

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

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

36 (b) Subject to the funding mechanisms established under this
37 chapter, seek all necessary waivers so that current federal and state

1 payments for health services to residents will be paid directly to
2 the trust;

3 (c) Establish premiums necessary to operate the trust and make
4 rules, policies, guidelines, and timetables needed for the trust to
5 finance the essential benefits package for residents starting
6 November 1, 2020;

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

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

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

14 (g) Make rules for eligible nonresidents;

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

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

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

21 (k) Integrate functions with other state agencies;

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

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

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

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

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

35 NEW SECTION. **Sec. 108.** COMPREHENSIVE ESSENTIAL HEALTH BENEFITS
36 PACKAGE. (1) The board shall establish a single comprehensive
37 essential benefits package covering essential health benefits that
38 are effective and necessary for the good health of residents and that
39 emphasize preventive, primary, and integrated health care. The board

1 shall ensure that the essential benefits package constitutes minimum
2 essential coverage for purposes of the federal patient protection and
3 affordable care act.

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

11 (3) Subject to a financial analysis demonstrating ongoing
12 sufficient funds in the trust, long-term care shall be a covered
13 benefit on January 1, 2023. Long-term care coverage shall include a
14 uniform initial assessment and coordination between home health,
15 adult day care, and nursing home services, and other treatment
16 alternatives. The board may establish a copayment for long-term
17 nursing home care, to cover some costs of room and board, for
18 residents with incomes above one hundred fifty percent of the federal
19 poverty level.

20 (4) The board must establish:

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

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

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

29 (6) The board shall submit to the governor and legislature by
30 December 1, 2020, and by December 1st of the following years:

31 (a) The essential benefits package; and

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

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

38 (2) The board, in coordination with the health care authority and
39 on an annual basis, shall collectively negotiate reimbursement rates

1 with qualified providers not participating as community health
2 providers on a fee-for-service or on a case-rate basis or on a
3 combination of bases.

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

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

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

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

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

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

33 (8) The board shall study and develop provider payment methods
34 that:

- 35 (a) Encourage an integrated multispecialty approach to disease
36 management;
- 37 (b) Reward education time spent with patients;
- 38 (c) Include a medical risk adjustment formula for providers whose
39 practices serve patients with higher than average health risks; and

1 (d) Include all categories of providers pursuant to rule and RCW
2 48.43.715.

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

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

11 (i) Encourages best practices in prescribing;

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

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

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

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

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

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

27 (5) The board may set a cost-sharing schedule for prescription
28 drugs and biological products for enrolled individuals that: (a) Is
29 evidence-based and encourages the use of generic drugs; (b) does not
30 apply to preventive drugs; and (c) does not exceed two hundred fifty
31 dollars annually, adjusted annually for inflation.

32 NEW SECTION. **Sec. 111.** ENROLLMENT ELIGIBILITY. (1) Residents:
33 (a) Under the age of nineteen; or
34 (b) With dual eligibility for medicare and medicaid;
35 are exempt from the premium established under section 107 of this
36 act, the health security assessment established under section 202 of
37 this act, and the personal health assessment under section 203 of
38 this act for enrollment in the whole Washington health trust.

1 (2) Residents with incomes below two hundred percent of the
2 federal poverty level are not subject to the premium established
3 under section 107 of this act for enrollment in the whole Washington
4 health trust.

5 (3) Premiums established under section 107 of this act must not
6 exceed two hundred dollars monthly.

7 (4) Until federal waivers are accomplished, residents covered
8 under federal health programs shall continue to use that coverage,
9 and additional benefits provided by the trust shall extend only to
10 costs not covered by the federal health programs when, subject to
11 subsections (1) through (3) of this section:

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

13 (b) The resident's wages and net earnings from self-employment
14 are considered in calculating the health security assessment
15 established under section 202 of this act and the personal health
16 assessment established under section 203 of this act; and

17 (c) Either the employer or the employee pays the premium
18 established under section 107 of this act.

19 (5) Pending integration of federally qualified trusts into the
20 whole Washington health trust, employees covered under the trusts are
21 eligible for coverage through the whole Washington health trust when,
22 subject to subsections (1) through (3) of this section:

23 (a) The employee's wage is considered in calculating the health
24 security assessment established under section 202 of this act; and

25 (b) Either the employer or the employee pays the premium
26 established under section 107 of this act.

27 (6) Pending integration of federally qualified trusts into the
28 whole Washington health trust, residents who are retirees covered
29 under the trusts are eligible for coverage through the whole
30 Washington health trust when they pay the premium established under
31 section 107 of this act. The board shall make rules and adopt
32 mechanisms to reimburse residents with incomes below two hundred
33 percent of the federal poverty level and all residents who elect to
34 enroll in the trust for medicare premiums paid until a federal waiver
35 is granted integrating the program into the trust.

36 (7) Unless integration of federally qualified trusts into the
37 whole Washington health trust, Native American residents are eligible
38 for coverage through the whole Washington health trust when, subject
39 to subsections (1) through (3) of this section:

1 (a) The resident's wage and net earnings from self-employment are
2 considered in calculating the health security assessment established
3 under section 202 of this act and the personal health assessment
4 established under section 203 of this act; and

5 (b) Either the employer or the resident pays any premium
6 established in section 107 of this act.

7 NEW SECTION. **Sec. 112.** COVERAGE USE AND AVAILABILITY. (1) If an
8 enrolled individual has other health insurance coverage for any
9 essential health benefits provided in the state, the benefits
10 provided in this chapter are secondary to that insurance coverage.
11 Nonresidents are covered for emergency services and emergency
12 transportation only, except when enrolled for coverage.

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

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

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

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

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

24 (a) Persons under the age of nineteen;

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

27 (c) Adults earning under two hundred percent of the federal
28 poverty level.

29 (5) By October 1, 2020, the board must take all steps necessary
30 to ensure the essential benefits package qualifies as an essential
31 health benefits-benchmark plan for the purposes of contracting to
32 administrate all essential health benefits with the following
33 entities as a managed health care system:

34 (a) The health care authority;

35 (b) The public employees' benefits board;

36 (c) Indian health services;

37 (d) Center for medicare and medicaid services;

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

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

4 (6) By October 1, 2020, the board shall establish premiums and
5 cost-sharing requirements for eligible individuals enrolled in the
6 program through the Washington health benefits exchange, collect
7 premium and assessment payments from all enrolled eligible
8 individuals, and deposit premium payments in the benefits account
9 created in section 123 of this act. If the eligible individual
10 qualifies for premium subsidies or cost-sharing reductions under the
11 patient protection and affordable care act, the premium or cost-
12 sharing amounts established under this subsection may not exceed the
13 amounts the eligible individual would have paid if he or she had
14 enrolled in a silver level qualified health plan through the
15 Washington health benefit exchange. The portion of premiums, copays,
16 and out-of-pocket costs enrollees are responsible for after eligible
17 premium subsidies or cost-sharing reductions are applied must be
18 consistent with this section.

19 (7) By November 1, 2021, the board shall:

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

22 (b) Contract with all entities in subsection (5) of this section
23 for enrollment of residents who are eligible for essential health
24 benefits coverage through a federal or state health program, except
25 when federal waivers are accomplished by integrating a federal health
26 program into the whole Washington health trust;

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

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

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

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

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

1 NEW SECTION. **Sec. 113.** FEDERAL WAIVERS AND PROGRAMS. (1) The
2 health care authority shall determine the state and federal laws that
3 need to be repealed, amended, or waived to implement this chapter,
4 and report its recommendations, with proposed revisions to the
5 Revised Code of Washington, to the governor and the appropriate
6 committees of the legislature by the first date following the
7 effective date of this section.

8 (2) The governor, in consultation with the board and the health
9 care authority, shall take the following steps in an effort to
10 receive waivers or exemptions from federal statutes necessary to
11 fully implement this chapter:

12 (a) Negotiate with the federal department of health and human
13 services, health care financing administration, to obtain a statutory
14 or regulatory waiver of provisions of the medical assistance statute,
15 Title XIX of the federal social security act and the children's
16 health insurance program;

17 (b) Negotiate with the federal department of health and human
18 services to obtain a statutory or regulatory waiver of provisions of
19 the medicare statute, Title XVIII of the federal social security act,
20 that currently constitute barriers to full implementation of this
21 chapter;

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

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

31 (e) Negotiate with the federal department of defense and other
32 federal agencies for the inclusion of the civilian health and medical
33 program of the uniformed services in the trust under this chapter;
34 and

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

38 (3) Beginning November 15, 2020, the health care authority shall
39 submit annual progress reports to the appropriate legislative
40 committees regarding the development of the waiver applications and

1 on enrollment of residents into health coverage managed by the health
2 care authority, an entity within the health care authority, or the
3 whole Washington health trust. The report submitted on November 15,
4 2021, must include a list of any statutory changes necessary to
5 implement waivers.

6 (4) Upon receipt of the waivers, the health care authority shall
7 promptly notify in writing the office of the code reviser, the
8 governor, and the appropriate committees of the legislature.

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

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

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

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

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

26 TRANSITIONAL HEALTH SECURITY ASSESSMENT EXEMPTION. (1) All
27 employers operating in the state may apply for an exemption from the
28 health security assessment established in section 202 of this act and
29 the personal health assessment established in section 203 of this act
30 for each employee and partner offered other affordable minimum
31 essential coverage, defined by the patient protection and affordable
32 care act, as a benefit of employment.

33 (2) Residents employed in the state may:

34 (a) Enroll in the essential benefits package as a secondary
35 health insurance by paying the premiums established in section 107 of
36 this act and subject to exclusions defined in section 111 of this
37 act; or

38 (b) Elect to pay the health security assessment and the premium
39 directly to the trust established in section 103 of this act, subject

1 to exclusions defined in section 111 of this act, to enroll in the
2 essential benefits package as a primary health insurance when their
3 employer has been granted an exemption from the health security
4 assessment.

5 (3) All sole proprietors operating in the state may apply for an
6 exemption from the personal health assessment established in section
7 203 of this act if the individual is enrolled in minimal essential
8 coverage, as defined by the patient protection and affordable care
9 act.

10 (4) This section expires on the first January 1st following the
11 effective date of section 115 of this act.

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

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

14 (1) Subject to ongoing sufficient funding, the board shall work
15 to reduce deductibles, out-of-pocket costs, and premiums for enrolled
16 adults with incomes exceeding one hundred ninety-nine percent of the
17 federal poverty level to the fullest extent possible; and

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

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

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

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

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

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

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

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

6 (b) An appeals process.

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

14 (5) Administrative expenses must include reasonable funding for
15 the Washington state employment security department and department of
16 revenue to carry out their respective obligations regarding
17 collection of the health security assessment established in section
18 202 of this act, the personal health assessment established in
19 section 203 of this act, and the capital gains tax established in
20 section 302 of this act that are among the trust's funding sources.

21 NEW SECTION. **Sec. 117.** ACTUARIAL ANALYSIS AND REPORTING.

22 Beginning December 15, 2020, the board shall contract annually for an
23 actuarial analysis of the funding needs of the whole Washington
24 health trust created in section 103 of this act. The board shall
25 report annually on the funding mechanisms to the appropriate standing
26 committees of the house of representatives, the senate, and the
27 governor, starting May 15, 2021. The funding mechanisms must contain
28 the following elements:

29 (1) The health security assessment to be paid by all employers in
30 Washington state, established in section 202 of this act and under
31 the exemption provided in section 114 of this act;

32 (2) The long-term capital gains assessment established in section
33 302 of this act;

34 (3) The personal health assessment established in section 203 of
35 this act;

36 (4) A premium, established in section 107 of this act and
37 pursuant to sections 111 and 112 of this act, paid by enrolled adults
38 with incomes exceeding one hundred ninety-nine percent of the federal
39 poverty level, their spouse, or an employer;

1 (5) A cost-sharing schedule, established in section 110 of this
2 act and pursuant to section 112 of this act, paid by enrolled adults
3 with incomes exceeding one hundred ninety-nine percent of the federal
4 poverty level, their spouse, or an employer; and

5 (6) Available federal health program funding either pursuant to
6 the waivers established under sections 113 and 115 of this act or by
7 contracting for administration of those benefits as described in
8 section 112 of this act.

9 NEW SECTION. **Sec. 118.** ALLOCATION OF EXISTING FUNDING.
10 Following the repeal, amendment, or waiver of existing state and
11 federal laws delineated in sections 113 and 115 of this act, all
12 other revenues currently deposited in the health services account for
13 personal health care services shall be deposited to the reserve
14 account created in section 121 of this act and the benefits account
15 created in section 123 of this act.

16 NEW SECTION. **Sec. 119.** ALLOCATION OF NEW REVENUES. Revenue
17 derived from the assessments established in sections 202, 203, and
18 302 of this act and the premiums established under section 107 of
19 this act shall be deposited to the reserve account created in section
20 121 of this act and the benefits account created in section 123 of
21 this act, and may not be used to pay for medical assistance currently
22 provided under chapter 74.09 RCW or other existing federal and state
23 health care programs. If existing federal and state sources of
24 payment for health services are reduced or terminated after the
25 effective date of this section, the legislature shall replace these
26 appropriations from the general fund.

27 NEW SECTION. **Sec. 120.** START-UP APPROPRIATIONS. An
28 appropriation by separate act of the legislature may be necessary for
29 the fiscal year ending June 30, 2020, from the general fund to the
30 benefits account of the whole Washington health trust for start-up
31 moneys for purposes of this chapter during the period of July 1,
32 2020, through the second June 30th following the effective date of
33 section 115 of this act.

34 NEW SECTION. **Sec. 121.** RESERVE ACCOUNT. (1) The reserve account
35 is created in the custody of the state treasurer. The reserve account
36 will accumulate moneys until its value equals ten percent of the

1 total annual budgeted expenditures of the trust and then will be
2 considered fully funded, unless the legislature determines that a
3 different level of reserve is necessary and prudent. Whenever the
4 reserve account is fully funded, additional moneys shall be
5 transferred to the benefits account created in section 123 of this
6 act.

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

13 NEW SECTION. **Sec. 122.** DISPLACED WORKER TRAINING ACCOUNT. (1)
14 The displaced worker training account is created in the custody of
15 the state treasurer. Expenditures from the account may be used only
16 for retraining and job placement of workers displaced by the
17 transition to the trust. Only the board or the board's designee may
18 authorize expenditures from the account. The account is subject to
19 allotment procedures under chapter 43.88 RCW, but an appropriation is
20 not required for expenditures.

21 (2) Any funds remaining in the account on the second December
22 31st following the effective date of section 115 of this act must be
23 deposited into the benefits account created in section 123 of this
24 act.

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

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

34 NEW SECTION. **Sec. 124.** ANNUAL BUDGET. (1) Beginning May 15,
35 2021, the board shall adopt, in consultation with the office of
36 financial management, an annual whole Washington health trust budget.
37 If operation expenses exceed revenues generated in two consecutive

1 years, the board shall recommend adjustments in revenues to the
2 legislature.

3 (2) The recommended adjustments must also include recommended
4 additional funding sources including, but not limited to, revenues
5 collected under RCW 41.05.120, 41.05.130, 66.24.290, 82.24.020,
6 82.26.020, 82.08.150, 43.79.480, and 41.05.220.

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

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

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

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

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

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

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

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

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

33 NEW SECTION. **Sec. 126.** CONFORMING EMPLOYER BENEFITS PLANS. (1)
34 Nothing in this chapter limits an employer's right to maintain
35 employee benefit plans under the federal employee retirement income
36 security act of 1974.

37 (2) To ensure no reduction of health coverage for employees or
38 nonresident retirees enrolled in existing employer-sponsored coverage

1 through a Washington employer, employers maintaining existing
2 employee benefit plans and employers with employees represented by a
3 union with established health benefits plans negotiated before the
4 effective date of this section:

5 (a) Must maintain health benefits at least as comprehensive and
6 affordable to their employees and retired employees after the
7 effective date of this section;

8 (b) Are exempt from owing the health security assessment
9 established in section 202 of this act and from collecting the
10 personal health assessment established in section 203 of this act for
11 each employee offered coverage through the existing employee health
12 benefit plan until a supplemental health benefit plan is negotiated
13 and becomes effective although the employer may pay the health
14 security assessment and the personal health assessment on behalf of
15 resident employees voluntarily.

16 (3) Resident employees of Washington employers maintaining health
17 benefits described in subsection (2) of this section may:

18 (a) Enroll in the essential benefits package as a secondary
19 health insurance by paying the premiums established in section 107 of
20 this act and subject to the exclusions in section 111 of this act; or

21 (b) Elect to pay the health security assessment and the premium,
22 subject to the exclusions in section 111 of this act, to enroll in
23 the essential benefits package as a primary health insurance when
24 their employer has been granted an exemption from the health security
25 assessment.

26 NEW SECTION. **Sec. 127.** CONFORMING FEDERALLY QUALIFIED TRUSTS.
27 By January 1, 2023, the board shall submit to the legislature a
28 proposal to integrate those current and future federally qualified
29 trusts that choose to participate in the trust.

30 NEW SECTION. **Sec. 128.** CONFORMING LABOR AND INDUSTRIES. By
31 January 1, 2023, the board, in coordination with the department of
32 labor and industries, shall study and make a report to the governor
33 and appropriate committees of the legislature on the coordination of
34 essential health benefits for injured workers under the trust.

35 **Part II**
36 **Assessments and Revenues**

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

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

9 (2) "Adjusted net earnings from self-employment" means "net
10 earnings from self-employment" as defined in section 1402 of the
11 internal revenue code less a number equal to fifteen thousand reduced
12 by twenty-five percent of an individual's total net earnings from
13 self-employment and allocated to the state as provided in section 203
14 of this act. All numbers less than zero equal zero.

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

18 (4) "Assessment" or "assessments" means the payments required by
19 section 202 of this act and paid to the department for deposit in the
20 benefits account under section 123 of this act.

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

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

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

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

28 (8) (a) "Employer" means: (i) Any individual or type of
29 organization, including any partnership, association, trust, estate,
30 joint stock company, insurance company, limited liability company, or
31 corporation, whether domestic or foreign, or the receiver, trustee in
32 bankruptcy, trustee, or the legal representative of a deceased
33 person, having any person in employment or, having become an
34 employer, has not ceased to be an employer as provided in this title;
35 (ii) the state, state institutions, and state agencies; and (iii) any
36 unit of local government including, but not limited to, a county,
37 city, town, municipal corporation, quasi-municipal corporation, or
38 political subdivision.

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

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

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

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

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

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

18 (b) "Employment" does not include:

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

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

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

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

31 (B) As a separate alternative:

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

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

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

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

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

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

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

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

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

35 (C) The individual is customarily engaged in an independently
36 established trade, occupation, profession, or business, of the same
37 nature as that involved in the contract of service, or the individual
38 has a principal place of business for the business the individual is
39 conducting that is eligible for a business deduction for federal

1 income tax purposes, other than that furnished by the employer for
2 which the business has contracted to furnish services;

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

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

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

21 (G) On the effective date of the contract of service, the
22 individual has a valid contractor registration pursuant to chapter
23 18.27 RCW or an electrical contractor license pursuant to chapter
24 19.28 RCW.

25 (10) "Individual" means a natural person.

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

30 (12) "Partnership" means an association of two or more persons to
31 carry on as co-owners a business for profit formed under RCW
32 25.05.055, predecessor law, or comparable law of another
33 jurisdiction.

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

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

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

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

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

19 (d) Remuneration does not include:

20 (i) The payment of tips;

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

24 (iii) Payments to members of the armed forces of the United
25 States, including the organized militia of the state of Washington,
26 for the performance of duty for periods not exceeding seventy-two
27 hours at a time.

28 (16) "Resident" means an individual who presents evidence of
29 established permanent residency in the state of Washington, who did
30 not enter the state for the primary purpose of obtaining health
31 services, and who meets residency requirements consistent with RCW
32 46.16A.140. "Resident" also includes an individual and the
33 individual's accompanying family members who are residing in the
34 state for the purpose of engaging in employment for at least one
35 month. The confinement of a person in a nursing home, hospital, or
36 other medical institution in the state may not by itself be
37 sufficient to qualify such person as a resident.

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

40 (18) "Sole proprietor" means:

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

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

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

7 (20) "Taxpayer" means an individual subject to tax under this
8 chapter.

9 (21) "Wage" or "wages" means:

10 (a) For the purpose of the health assessments, the remuneration
11 paid by an employer to an employee. The maximum wages subject to an
12 assessment are those wages as set by the commissioner under section
13 202 of this act;

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

21 (22) "Washington payroll exemption" and "Washington partnership
22 exemption" means a number equal to three thousand seven hundred fifty
23 reduced by twenty-five percent of the total quarterly aggregate gross
24 payroll paid to the employee or aggregate gross distributive shares
25 paid to a partner and allocated to the state as provided in section
26 202 of this act. However, a number less than zero equals zero.

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

29 HEALTH SECURITY ASSESSMENT. (1)(a) Beginning January 1, 2024, the
30 department shall assess for each individual in employment with an
31 employer and for each sole proprietor an assessment based on the
32 amount of the individual's wages subject to section 203 of this act.

33 (b) The assessment rate for Washington health trust benefits
34 shall be equal to ten and one-half percent of an employee's wages.

35 (c) An employer may deduct up to two percent of the assessment
36 amount from an employee's wages.

37 (d) An employer may elect to pay all or any portion of the
38 employee's share of the assessment.

1 (2) The employer must collect from the employees the assessments
2 and any surcharges provided under this section through payroll
3 deductions and remit the amounts collected to the department.

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

7 (4) Beginning January 1, 2021, until May 15, 2026, employers with
8 fewer than fifty employees and that face financial hardship in paying
9 the health security assessment may, upon application to the
10 department, be eligible for waivers or reductions in the assessment.
11 The department shall establish rules and procedures governing all
12 aspects of the business assistance program, including application
13 procedures, wages, profits, age of firm, and duration of assistance.

14 (5) Pending integration of any federally qualified trusts, the
15 payroll of employees covered under these trusts is exempt from the
16 health security assessment, although the employer may pay it
17 voluntarily.

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

22 (7) The department must deposit revenue collected under this
23 section into the benefits account created in section 123 of this act.

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

27 NEW SECTION. **Sec. 203.** PERSONAL HEALTH ASSESSMENT. (1)
28 Beginning January 1, 2024, a personal health assessment is imposed on
29 the receipt of wages by residents employed in Washington state. All
30 employers in Washington state must collect the personal health
31 assessment on aggregate gross payroll paid to Washington state
32 residents from employee wages and pay the assessment to the
33 department in quarterly installments. Except as provided in section
34 114 of this act, the personal health assessment must be two percent
35 of the employee's aggregate adjusted quarterly payroll.

36 (2) The pay or wages from employees who are exempt from the
37 health security assessment established in section 202 of this act are
38 exempt from owing the personal health assessment on those wages.

1 (3) Beginning January 1, 2022, residents operating as a sole
2 proprietor must pay in annual installments to the department of
3 revenue an excise tax of two percent on adjusted net earnings from
4 self-employment as defined in section 1402 of the internal revenue
5 code.

6 NEW SECTION. **Sec. 204.** EMPLOYER WITHHOLDING ESTIMATED PERSONAL
7 HEALTH ASSESSMENT. Every employer making a payment of wages or
8 salaries earned in this state by Washington residents, regardless of
9 the place where the payment is made, and who is required by the
10 internal revenue code to withhold taxes, must deduct and withhold a
11 personal health assessment as prescribed by the department by rule.
12 The rules prescribed must reasonably reflect the quarterly tax
13 liability of the employee under this chapter. Every employer making
14 such a deduction and withholding must furnish to the employee a
15 record of the amount of tax deducted and withheld from the employee
16 on forms provided by the department.

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

23 NEW SECTION. **Sec. 206.** CREDITS FOR INCOME TAX WITHHELD. The
24 amount deducted and withheld as tax under sections 204 through 250 of
25 this act during any taxable year is allowed as a credit against the
26 personal health assessment imposed for the taxable year by this
27 chapter. If the liability of any individual for taxes, interest,
28 penalties, or other amounts due the state of Washington is less than
29 the total amount of the credit which the individual is entitled to
30 claim under this section, the individual is entitled to a refund from
31 the department in the amount of the excess of the credit over the tax
32 otherwise due. If any individual entitled to claim a credit under
33 this section is not otherwise required by this chapter to file a
34 return with the department, a refund may be obtained in the amount of
35 the credit by filing a return with the department, with applicable
36 sections completed, to claim the refund. No credit or refund is
37 allowed under this section unless the credit or refund is claimed on

1 a return filed for the taxable year for which the amount was deducted
2 and withheld.

3 NEW SECTION. **Sec. 207.** PENALTIES FOR FAILURE TO PAY OR COLLECT
4 WITHHOLDINGS. (1) The personal health assessment required by this
5 chapter to be collected by the employer and the premiums when
6 collected by the employer on behalf of an employee or an employee's
7 spouse is deemed to be held in trust by the employer until paid to
8 the department.

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

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

21 NEW SECTION. **Sec. 208.** COLLECTION OF EMPLOYEE PREMIUMS. (1) By
22 January 1, 2024, the department shall ensure all employers in
23 Washington state may withhold the premium an employee or their spouse
24 owes for enrollment into the trust created in section 103 of this act
25 and pay the premium to the department in quarterly installments.

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

29 (3) If an employer with fewer than fifty employees elects to pay
30 all or a portion of the assessments and premiums on behalf of an
31 employee, the employer is considered eligible for assistance under
32 the business assistance program established in section 202 of this
33 act.

34 NEW SECTION. **Sec. 209.** OUT-OF-STATE EMPLOYERS OF WASHINGTON
35 RESIDENTS. By January 1, 2024, the department shall develop policy,
36 procedures, and forms allowing out-of-state employers employing one
37 or more residents of Washington state to voluntarily:

- 1 (1) Pay the health security assessment established in section 202
2 of this act; and
3 (2) Collect the premium on behalf of employees or an employee's
4 spouse.

5 NEW SECTION. **Sec. 210.** EMPLOYER REQUIREMENTS. (1) In the form
6 and at the times specified in this chapter and by the commissioner,
7 an employer shall make reports, furnish information, and collect and
8 remit assessments as required by this chapter to the department. If
9 the employer is a temporary help company that provides employees on a
10 temporary basis to its customers, the temporary help company is
11 considered the employer for purposes of this section.

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

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

24 (3) The requirements relating to the collection of Washington
25 health trust assessments are as provided in this chapter. Before
26 issuing a warning letter, the department shall enforce the collection
27 of assessments through conference and conciliation. These
28 requirements apply to:

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

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

37 (c) A successor in the manner specified in section 214 of this
38 act; and

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

5 NEW SECTION. **Sec. 211.** UNLAWFUL ACTS—EMPLOYERS. (1) It is
6 unlawful for any employer to:

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

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

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

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

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

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

20 NEW SECTION. **Sec. 212.** EMPLOYER PENALTIES. (1) An employer who
21 willfully fails to make the required reports is subject to penalties
22 as follows:

23 (a) For the second occurrence, the penalty is seventy-five
24 dollars;

25 (b) for the third occurrence, the penalty is one hundred fifty
26 dollars; and

27 (c) for the fourth occurrence and for each occurrence thereafter,
28 the penalty is two hundred fifty dollars.

29 (2) An employer who willfully fails to remit the full amount of
30 the assessments when due is liable, in addition to the full amount of
31 assessments due and amounts assessed as interest under section 217 of
32 this act, to a penalty equal to the assessments and interest.

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

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

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

3 (6) These penalties may be appealed as provided in sections 230
4 through 247 of this act.

5 NEW SECTION. **Sec. 213.** OUT-OF-STATE EMPLOYEES—ASSESSMENT
6 WAIVER. (1) An employer may file an application with the department
7 for a conditional waiver for the payment of Washington health trust
8 assessments, assessed under section 202 of this act, for any employee
9 who is:

10 (a) Physically based outside of the state;

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

13 (c) Not expected to be employed in the state for eight hundred
14 twenty hours or more in a qualifying period.

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

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

28 NEW SECTION. **Sec. 214.** TERMINATION OR DISPOSAL OF BUSINESS—
29 ASSESSMENT PAYMENT—SUCCESSOR LIABILITY. Whenever any employer quits
30 business, or sells out, exchanges, or otherwise disposes of the
31 employer's business or stock of goods, any assessments payable under
32 this chapter shall become immediately due and payable, and the
33 employer shall, within ten days, make a return and pay the
34 assessments due; and any person who becomes a successor to such
35 business shall become liable for the full amount of the assessments
36 and withhold from the purchase price a sum sufficient to pay any
37 assessments due from the employer until such time as the employer

1 produces a receipt from the department showing payment in full of any
2 assessments due or a certificate that no assessment is due and, if
3 such assessment is not paid by the employer within ten days from the
4 date of such sale, exchange, or disposal, the successor shall become
5 liable for the payment of the full amount of assessments, and the
6 payment thereof by such successor shall, to the extent thereof, be
7 deemed a payment upon the purchase price, and if such payment is
8 greater in amount than the purchase price the amount of the
9 difference shall become a debt due such successor from the employer.
10 A successor may not be liable for any assessments due from the person
11 from whom that person has acquired a business or stock of goods if
12 that person gives written notice to the department of such
13 acquisition and no assessment is issued by the department within one
14 hundred eighty days of receipt of such notice against the former
15 operator of the business and a copy thereof mailed to such successor.

16 NEW SECTION. **Sec. 215.** DELINQUENCY—ORDER AND NOTICE OF
17 ASSESSMENT. At any time after the commissioner shall find that any
18 assessments, interest, or penalties have become delinquent, the
19 commissioner may issue an order and notice of assessment specifying
20 the amount due, which order and notice of assessment shall be served
21 upon the delinquent employer in the manner prescribed for the service
22 of a summons in a civil action, or using a method by which the
23 mailing can be tracked or the delivery can be confirmed. Failure of
24 the employer to receive such notice or order whether served or mailed
25 shall not release the employer from any tax, or any interest or
26 penalties thereon.

27 NEW SECTION. **Sec. 216.** JEOPARDIZED COLLECTION—IMMEDIATE
28 ASSESSMENT. If the commissioner has reason to believe that an
29 employer is insolvent or if any reason exists why the collection of
30 any assessments accrued will be jeopardized by delaying collection,
31 he or she may make an immediate assessment thereof and may proceed to
32 enforce collection immediately, but interest and penalties shall not
33 begin to accrue upon any assessments until the date when such
34 assessment would normally have become delinquent.

35 NEW SECTION. **Sec. 217.** DELINQUENCY—ACCRUAL OF INTEREST. If
36 assessments are not paid on the date on which they are due and

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

21 NEW SECTION. **Sec. 218.** COLLECTION BY DISTRAINT, SEIZURE, AND
22 SALE. If the amount of assessments, interest, or penalties assessed
23 by the commissioner by order and notice of assessment provided in
24 this chapter is not paid within ten days after the service or mailing
25 of the order and notice of assessment, the commissioner or his or her
26 duly authorized representative may collect the amount stated in the
27 assessment by the distraint, seizure, and sale of the property,
28 goods, chattels, and effects of the delinquent employer. There shall
29 be exempt from distraint and sale under this section such goods and
30 property as are exempt from execution under the laws of this state.

31 NEW SECTION. **Sec. 219.** COLLECTION BY DISTRAINT, SEIZURE, AND
32 SALE—PROCEDURE. The commissioner, upon making a distraint, shall
33 seize the property and shall make an inventory of the property
34 distrained, a copy of which shall be mailed to the owner of such
35 property or personally delivered to him or her, and shall specify the
36 time and place when said property shall be sold. A notice specifying
37 the property to be sold and the time and place of sale shall be
38 posted in at least two public places in the county wherein the

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

34 NEW SECTION. **Sec. 220.** NOTICE AND ORDER TO WITHHOLD AND
35 DELIVER. The commissioner may issue to any person, firm, corporation,
36 political subdivision, or department of the state, a notice and order
37 to withhold and deliver property of any kind whatsoever when the
38 commissioner has reason to believe that there is in the possession of
39 such person, firm, corporation, political subdivision, or department,

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

32 NEW SECTION. **Sec. 221.** WARRANT FOR ASSESSMENT. When an order
33 and notice of assessment or jeopardy assessment becomes final in
34 accordance with this chapter, the commissioner may file with the
35 clerk of any county within the state a warrant in the amount of the
36 notice of assessment plus interest, penalties, and a filing fee under
37 RCW 36.18.012(10). The clerk of the county where the warrant is filed
38 shall immediately designate a superior court cause number for the
39 warrant, and the clerk shall cause to be entered in the judgment

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

18 NEW SECTION. **Sec. 222.** LIENS. The claim of the department for
19 any assessments, interest, or penalties not paid when due shall be a
20 lien prior to all other liens or claims and on parity with prior tax
21 liens against all property and rights to property, whether real or
22 personal, belonging to the employer. In order to avail itself of the
23 lien, the department shall file with any county auditor where
24 property of the employer is located a statement and claim of lien
25 specifying the amount of delinquent assessments, interest, and
26 penalties claimed by the department. From the time of filing for
27 record, the amount required to be paid shall constitute a lien upon
28 all property and rights to property, whether real or personal, in the
29 county, owned by the employer or acquired by him or her. The lien is
30 not valid against any purchaser, holder of a security interest,
31 mechanic's lien, or judgment lien creditor until notice thereof has
32 been filed with the county auditor. This lien is separate and apart
33 from, and in addition to, any other lien or claim created by, or
34 provided for in, this chapter. When any such notice of lien has been
35 filed, the commissioner may release the same by filing a certificate
36 of release when it appears that the amount of delinquent assessments,
37 interest, and penalties have been paid, or when adequate assurance of
38 payment is made. Fees for filing and releasing the lien may be
39 charged to the employer and may be collected from the employer using

1 the remedies provided in this chapter for the collection of
2 assessments.

3 NEW SECTION. **Sec. 223.** LIENS—INSOLVENCY, DISSOLUTION, OR
4 DISTRIBUTION OF ASSETS. In the event of any distribution of an
5 employer's assets pursuant to an order of any court, including any
6 receivership, probate, legal dissolution, or similar proceeding, or
7 in case of any assignment for the benefit of creditors, composition,
8 or similar proceeding, assessments, interest, or penalties then or
9 thereafter due shall be a lien upon all the assets of the employer.
10 The lien is prior to all other liens or claims except prior tax
11 liens, other liens provided by this chapter, and claims for
12 remuneration for services of not more than two hundred fifty dollars
13 to each claimant earned within six months of the commencement of the
14 proceeding. The existence of a condition of insolvency or the
15 institution of any judicial proceeding for legal dissolution or of
16 any proceeding for distribution of assets shall cause the lien to
17 attach without action on behalf of the commissioner or the state. In
18 the event of an employer's adjudication in bankruptcy, judicially
19 confirmed extension proposal, or composition, under the federal
20 bankruptcy act of 1898, as amended, assessments, interest, or
21 penalties then or thereafter due are entitled to such priority as
22 provided in that act.

23 NEW SECTION. **Sec. 224.** CIVIL ACTIONS—SERVICE OF PROCESS. (1) If
24 after due notice, any employer defaults in any payment of
25 assessments, interest, or penalties, the amount due may be collected
26 by civil action in the name of the state, and the employer adjudged
27 in default shall pay the cost of the action. Any lien created by this
28 chapter may be foreclosed by decree of the court in any such action.
29 Civil actions brought under this chapter to collect assessments,
30 interest, or penalties from an employer shall be heard by the court
31 at the earliest possible date and are entitled to preference upon the
32 calendar of the court over all other civil actions except petitions
33 for judicial review under this chapter, cases arising under the
34 unemployment compensation laws of this state, and cases arising under
35 the industrial insurance laws of this state.

36 (2) Any employing unit that is not a resident of this state and
37 that exercises the privilege of having one or more individuals
38 perform service for it within this state, and any resident employing

1 unit that exercises that privilege and thereafter removes from this
2 state, shall be deemed thereby to appoint the secretary of state as
3 its agent and attorney for the acceptance of process in any action
4 under this chapter. In instituting such an action against any such
5 employing unit, the commissioner shall cause such process or notice
6 to be filed with the secretary of state and this service is
7 sufficient service upon the employing unit, and is of the same force
8 and validity as if served upon it personally within this state. The
9 commissioner must send notice of service of process or notice,
10 together with a copy thereof, by registered mail, return receipt
11 requested, to the employing unit at its last known address and the
12 return receipt, the commissioner's affidavit of compliance with this
13 section, and a copy of the notice of service shall be appended to the
14 original of the process filed in the court in which the action is
15 pending.

16 NEW SECTION. **Sec. 225.** INJUNCTION FROM CONTINUING IN BUSINESS.
17 Any employer who is delinquent in the payment of assessments,
18 interest, or penalties may be enjoined upon the suit of the state of
19 Washington from continuing in business in this state or employing
20 persons herein until the delinquent assessments, interest, and
21 penalties have been paid, or until the employer has furnished a good
22 and sufficient bond in a sum equal to double the amount of
23 assessments, interest, and penalties already delinquent, plus such
24 further sum as the court deems adequate to protect the department in
25 the collection of assessments, interest, and penalties which become
26 due from such employer during the next ensuing calendar year, the
27 bond to be conditioned upon payment of all assessments, interest, and
28 penalties due and owing within thirty days after the expiration of
29 the next ensuing calendar year or at an earlier date as fixed by the
30 court. Action under this section may be instituted in the superior
31 court of any county of the state where the employer resides, has its
32 principal place of business, or where it has anyone performing
33 services for it, whether or not such services constitute employment.

34 NEW SECTION. **Sec. 226.** COMPROMISE OF CLAIMS. The commissioner
35 may compromise any claim for assessments, interest, or penalties due
36 and owing from an employer, and any amount owed by an individual
37 because of benefit overpayments existing or arising under this
38 chapter in any case where collection of the full amount due and

1 owing, whether reduced to judgment or otherwise, would be against
2 equity and good conscience. Whenever a compromise is made by the
3 commissioner in the case of a claim for assessments, interest, or
4 penalties, whether reduced to judgment or otherwise, there shall be
5 placed on file in the department a statement of the amount of
6 assessments, interest, and penalties imposed by law and claimed due,
7 attorneys' fees and costs, if any, a complete record of the
8 compromise agreement, and the amount actually paid in accordance with
9 the terms of the compromise agreement. If any such compromise is
10 accepted by the commissioner, within such time as may be stated in
11 the compromise or agreed to, such compromise shall be final and
12 conclusive and except upon showing of fraud or malfeasance or
13 misrepresentation of a material fact the case shall not be reopened
14 as to the matters agreed upon. In any suit, action, or proceeding,
15 such agreement or any determination, collection, payment, adjustment,
16 refund, or credit made in accordance therewith shall not be annulled,
17 modified, set aside, or disregarded.

18 NEW SECTION. **Sec. 227.** UNCOLLECTIBLE ACCOUNTS. The commissioner
19 may charge off as uncollectible and no longer an asset of the
20 Washington health trust enforcement account, any delinquent
21 assessments, interest, penalties, or credits if the commissioner is
22 satisfied that there are no cost-effective means of collecting the
23 assessments, interest, penalties, or credits.

24 NEW SECTION. **Sec. 228.** INSPECTION AND AUDIT. The department may
25 inspect and audit employer files and records relating to the
26 Washington health trust program.

27 NEW SECTION. **Sec. 229.** ENFORCEMENT ACCOUNT. The Washington
28 health trust enforcement account is created in the custody of the
29 state treasurer. Any penalties and interest collected under this
30 chapter must be deposited into the account and shall be used only for
31 the purposes of administering and enforcing this chapter. Only the
32 commissioner may authorize expenditures from the account. The account
33 is subject to allotment procedures under chapter 43.88 RCW, but an
34 appropriation is not required for expenditures.

35 NEW SECTION. **Sec. 230.** APPEALS—GENERALLY. (1) Any employer or
36 sole proprietor who has received an assessment notice from the

1 department may file an appeal from a determination or redetermination
2 with the commissioner within thirty days after the date of
3 notification or mailing, whichever is earlier, of the assessment
4 notice to the person's last known address.

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

10 (3) Upon receipt of a notice of appeal, the commissioner shall
11 request the assignment of an administrative law judge under chapter
12 34.12 RCW to conduct a hearing in accordance with chapter 34.05 RCW
13 and issue a proposed order.

14 NEW SECTION. **Sec. 231.** APPEALS—ASSESSMENTS. (1) When an order
15 and notice of assessment has been served upon or mailed to a
16 delinquent employer or sole proprietor, the employer or sole
17 proprietor may within thirty days file an appeal with the department,
18 stating that the assessment is unjust or incorrect and request a
19 hearing. The appeal must set forth the reasons why the assessment is
20 objected to and the amount of the assessment, if any, which the
21 employer or sole proprietor admits to be due. If no appeal is filed,
22 the assessment shall be conclusively deemed to be just and correct
23 except that in this case, and in cases where payment of assessments,
24 interest, or penalties have been made under a jeopardy assessment,
25 the commissioner may entertain a subsequent application for refund.
26 The filing of an appeal on a disputed assessment with the
27 administrative law judge stays the distraint and sale proceeding
28 provided for in this chapter until a final decision has been made,
29 but the filing of an appeal does not affect the right of the
30 commissioner to perfect a lien, as provided by this chapter, upon the
31 property of the employer. The filing of a petition on a disputed
32 assessment stays the accrual of interest and penalties on the
33 disputed assessments until a final decision is made.

34 (2) Within thirty days after notice of denial of refund or
35 adjustment has been mailed or delivered, whichever is the earlier, to
36 an employer or sole proprietor, the employer or sole proprietor may
37 file an appeal with the department for a hearing unless assessments
38 have been appealed from and have become final. The employer or sole
39 proprietor shall set forth the reasons why the hearing should be

1 granted and the amount which the employer or sole proprietor believes
2 should be adjusted or refunded. If no appeal is filed within thirty
3 days, the determination of the commissioner as stated in the notice
4 is final.

5 NEW SECTION. **Sec. 232.** APPEALS—ASSESSMENT REDETERMINATIONS. (1)
6 A determination assessment becomes final in the absence of timely
7 appeal. The commissioner may redetermine such determinations at any
8 time within one year from delivery or mailing to correct an error in
9 identity, omission of fact, or misapplication of law with respect to
10 the facts.

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

18 NEW SECTION. **Sec. 233.** APPEALS—WHEN DEEMED FILED AND RECEIVED.
19 The appeal or petition from a notice of assessment, appeals decision,
20 or commissioner's decision is filed and received if properly
21 addressed and with sufficient postage:

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

24 (2) If mailed but not received by the addressee, or where
25 received and the United States postal service cancellation mark is
26 illegible, erroneous, or omitted, on the date it was mailed, if the
27 sender establishes by competent evidence that the appeal or petition
28 was deposited in the United States mail on or before the date due for
29 filing; or

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

33 NEW SECTION. **Sec. 234.** APPEALS—ASSESSMENTS—PROCEDURE. In any
34 proceeding before an administrative law judge involving an appeal
35 from a disputed order and notice of assessment, the administrative
36 law judge, after affording the parties a reasonable opportunity for

1 hearing, shall affirm, modify, or set aside the notice of assessment.
2 The parties must be notified of the decision together with the
3 reasons, which shall be deemed to be the final decision unless within
4 thirty days after the date of notification or mailing, whichever is
5 the earlier, of the decision, further appeal is perfected under this
6 chapter relating to review by the commissioner.

7 NEW SECTION. **Sec. 235.** APPEALS—PROCEDURE. (1) In any proceeding
8 before an administrative law judge involving a dispute of an employer
9 or sole proprietor's assessment, all matters and provisions of this
10 chapter relating to the assessment are deemed to be in issue
11 irrespective of the particular ground or grounds set forth in the
12 notice of appeal.

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

17 (3) In any proceeding involving an appeal relating to an employer
18 or sole proprietor's assessment, the administrative law judge, after
19 affording the parties reasonable opportunity for fair hearing, shall
20 render its decision affirming, modifying, or setting aside the
21 determination or decisions of the department. The parties shall be
22 notified of the decision together with the reasons, which are deemed
23 to be the final decision unless, within thirty days after the date of
24 notification or mailing, whichever is the earlier, of such decision,
25 further appeal is perfected pursuant to section 237 of this act.

26 NEW SECTION. **Sec. 236.** APPEALS—HEARING PROCEDURES. The manner
27 in which any dispute is presented to the administrative law judge,
28 and the conduct of hearings and appeals, shall be in accordance with
29 rules adopted by the commissioner. A full and complete record shall
30 be kept of all administrative law judge proceedings. All testimony at
31 any appeal hearing shall be recorded, but need not be transcribed
32 unless further appeal is taken.

33 NEW SECTION. **Sec. 237.** APPEALS—COMMISSIONER REVIEW—INITIATION.
34 Within thirty days from the date of notification or mailing,
35 whichever is the earlier, of any decision of an administrative law
36 judge, the commissioner on the commissioner's own order may, or upon

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

16 NEW SECTION. **Sec. 238.** APPEALS—COMMISSIONER REVIEW—PROCEDURE.
17 After having acquired jurisdiction for review, the commissioner shall
18 review the proceedings in question. Before rendering a decision, the
19 commissioner may order the taking of additional evidence by an
20 administrative law judge to be made a part of the record in the case.
21 Upon the basis of evidence submitted to the administrative law judge
22 and the additional evidence as the commissioner may order to be
23 taken, the commissioner shall render a decision in writing affirming,
24 modifying, or setting aside the decision of the administrative law
25 judge. Alternatively, the commissioner may order further proceedings
26 to be held before the administrative law judge, upon completion of
27 which the administrative law judge shall issue a new decision in
28 writing affirming, modifying, or setting aside the previous decision
29 of the administrative law judge. The new decision of the
30 administrative law judge may be appealed as provided under section
31 237 of this act. The commissioner shall mail the decision of the
32 commissioner to the interested parties at their last known addresses.

33 NEW SECTION. **Sec. 239.** APPEALS—COMMISSIONER REVIEW—WHEN FINAL
34 —COMMISSIONER AS PARTY. Any decision of the commissioner involving a
35 review of an administrative law judge decision, in the absence of a
36 petition as provided in chapter 34.05 RCW, becomes final thirty days
37 after notification or mailing, whichever is earlier. The commissioner

1 shall be deemed to be a party to any judicial action involving any
2 such decision and shall be represented in any such judicial action by
3 the attorney general.

4 NEW SECTION. **Sec. 240.** APPEALS—APPLICABILITY OF FINDINGS,
5 DETERMINATIONS, ETC. TO OTHER ACTIONS. Any finding, determination,
6 conclusion, declaration, or final order made by the commissioner, or
7 his or her representative or delegate, or by an appeal tribunal,
8 administrative law judge, reviewing officer, or other agent of the
9 department for the purposes of this chapter, shall not be conclusive,
10 nor binding, nor admissible as evidence in any separate action
11 outside the scope of this chapter between an employee and the
12 employee's present or prior employer before an arbitrator, court, or
13 judge of this state or the United States, regardless of whether the
14 prior action was between the same or related parties or involved the
15 same facts or was reviewed pursuant to section 243 of this act.

16 NEW SECTION. **Sec. 241.** APPEALS—WAIVER OF TIME LIMITATIONS. For
17 good cause shown the administrative law judge or the commissioner may
18 waive the time limitations for administrative appeals or petitions
19 set forth in this chapter.

20 NEW SECTION. **Sec. 242.** APPEALS—JUDICIAL REVIEW. (1) In all
21 court proceedings under this chapter, the decision of the
22 commissioner shall be prima facie correct, and the burden of proof
23 shall be upon the party attacking the decision.

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

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

1 NEW SECTION. **Sec. 243.** APPEALS—JUDICIAL REVIEW—PROCEDURE.
2 Judicial review of a decision of the commissioner involving the
3 review of a decision of an administrative law judge under this
4 chapter may be had only in accordance with the procedural
5 requirements of RCW 34.05.452.

6 NEW SECTION. **Sec. 244.** APPEALS—JUDICIAL REVIEW—BOND—STAY. A
7 commissioner's decision shall not be stayed by a petition for
8 judicial review unless the petitioning employer or sole proprietor
9 deposits an undertaking in an amount deemed by the commissioner to be
10 due, if any, from the petitioning employer, together with interest
11 thereon, if any, with the commissioner or in the registry of the
12 court.

13 NEW SECTION. **Sec. 245.** APPEALS—JUDICIAL REVIEW—INTERSTATE
14 PETITIONS. Petitions to the superior court from decisions of the
15 commissioner dealing with assessments that were filed outside of this
16 state with an authorized representative of the commissioner shall be
17 filed with the superior court of Thurston county.

18 NEW SECTION. **Sec. 246.** APPEALS—COMMISSIONER'S EXPENSES. (1)
19 When an appeal is taken from a decision of the commissioner to a
20 court, all expenses and costs incurred by the commissioner, including
21 court reporter costs and attorneys' fees and all costs taxed against
22 the commissioner, shall be paid out of the Washington health trust
23 enforcement account.

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

27 NEW SECTION. **Sec. 247.** APPEALS—REMEDIES EXCLUSIVE. The remedies
28 provided in this chapter for determining the justness or correctness
29 of assessments, refunds, or adjustments are exclusive and no court
30 may entertain any action to enjoin an assessment or require a refund
31 or adjustment except in accordance with this chapter. Matters which
32 may be determined by the procedures set out in this chapter shall not
33 be the subject of any declaratory judgment.

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

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

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

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

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

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

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

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

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

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

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

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

28 (ii) Who is not domiciled in Washington state during the taxable
29 year but maintained a place of abode in and was physically present in
30 Washington for more than one hundred eighty-three days during the
31 taxable year.

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

36 NEW SECTION. **Sec. 302.** LONG-TERM CAPITAL GAINS ASSESSMENT. (1)
37 Beginning January 1, 2020, an excise tax is imposed on all
38 individuals for the privilege of selling or exchanging long-term
39 capital assets, or receiving Washington capital gains. The tax equals

1 eight and one-half percent multiplied by the individual's Washington
2 capital gains.

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

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

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

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

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

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

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

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

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

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

29 (2) Assets held under a retirement savings account under Title 26
30 U.S.C. Sec. 401(k) of the internal revenue code, a tax-sheltered
31 annuity or a custodial account described in Title 26 U.S.C. Sec.
32 403(b) of the internal revenue code, a deferred compensation plan
33 under Title 26 U.S.C. Sec. 457(b) of the internal revenue code, an
34 individual retirement account or an individual retirement annuity
35 described in Title 26 U.S.C. Sec. 408 of the internal revenue code, a
36 roth individual retirement account described in Title 26 U.S.C. Sec.
37 408A of the internal revenue code, an employee defined contribution
38 program, an employee defined benefit plan, or a similar retirement
39 savings vehicle;

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

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

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

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

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

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

30 NEW SECTION. **Sec. 305.** ADJUSTED CAPITAL GAINS. (1) For purposes
31 of the tax imposed under this chapter, adjusted capital gains are
32 allocated as follows:

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

37 (b) Adjusted capital gains from the sale or exchange of tangible
38 personal property are allocated to this state if the property was

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

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

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

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

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

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

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

30 (3) A deduction is allowed against the tax imposed in sections
31 202 and 203 of this act to the extent necessary to avoid taxing the
32 same amounts under this chapter.

33 NEW SECTION. **Sec. 306.** DUAL RESIDENCE. If an individual is
34 regarded as a resident both of this state and another jurisdiction
35 for state tax purposes, the department must reduce the tax on that
36 portion of the taxpayer's income which is subjected to tax in both
37 jurisdictions solely by virtue of dual residence, if the other taxing
38 jurisdiction allows a similar reduction.

1 NEW SECTION. **Sec. 307.** TREATMENT OF PARTNERSHIPS AND S

2 CORPORATION INCOME. (1) Partnerships are not subject to the personal
3 health assessment or the long-term capital gains assessment under
4 this chapter. Partners are subject to the long-term capital gains
5 assessment under this chapter in their separate or individual
6 capacities. Partnerships are subject to the health security
7 assessment established in section 202 of this act and are responsible
8 for collecting the personal health assessment on behalf of employees
9 as provided in section 203 of this act.

10 (2) S corporations are not subject to the personal health
11 assessment or the long-term capital gains assessment under this
12 chapter. Shareholders of S corporations are subject to the long-term
13 capital gains assessment under this chapter in their separate or
14 individual capacities.

15 NEW SECTION. **Sec. 308.** PERSONS REQUIRED TO FILE A STATE RETURN.

16 (1) Only individual and joint taxpayers with federal net long-term
17 capital gains or net earnings from self-employment in excess of
18 fifteen thousand dollars on their federal tax return are required to
19 file a tax return with the department. The department must use the
20 taxpayer's federal tax returns as a primary tool for obtaining
21 taxpayers' information. The department must prescribe a simple
22 supplement of no more than two pages for computing the excise tax
23 owed under this chapter. Each person required to file a return under
24 this chapter must, without assessment, notice, or demand, pay any tax
25 due thereon to the department on or before the date fixed for the
26 filing of the return.

27 (2) Except as otherwise provided in this chapter or RCW
28 82.32.080, taxpayers owing tax under this chapter must file, on forms
29 prescribed by the department, a return with the department on or
30 before the date the taxpayer's federal income tax return for the
31 taxable year is required to be filed along with all schedules and
32 supporting documentation.

33 (3) If an adjustment to a taxpayer's federal return is made by
34 the taxpayer or the internal revenue service, the taxpayer must,
35 within ninety days of the final determination of the adjustment by
36 the internal revenue service or within thirty days of the filing of a
37 federal return adjusted by the taxpayer, file with the department on
38 forms prescribed by the department a corrected return reflecting the
39 adjustments as finally determined. The taxpayer must pay any

1 additional tax due resulting from the finally determined internal
2 revenue service adjustment or a taxpayer adjustment without notice
3 and assessment. Notwithstanding any provision of this chapter or any
4 other title to the contrary, the period of limitation for the
5 collection of the additional tax, interest, and penalty due as a
6 result of an adjustment by the taxpayer or a finally determined
7 internal revenue service adjustment must begin at the later of thirty
8 days following the final determination of the adjustment or the date
9 of the filing of the corrected return.

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

20 (5) (a) If any return due on long-term capital gains under
21 subsection (1) of this section, along with a copy of the federal tax
22 return, is not filed with the department by the due date or any
23 extension granted by the department, the department must assess a
24 penalty in the amount of five percent of the tax due for the taxable
25 year covered by the return for each month or portion of a month that
26 the return remains unfiled. The total penalty assessed under this
27 subsection may not exceed twenty-five percent of the tax due for the
28 taxable year covered by the delinquent return. The penalty under this
29 subsection is in addition to any penalties assessed for the late
30 payment of any tax due on the return.

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

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

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

38 NEW SECTION. **Sec. 309.** PENALTIES. (1) Any taxpayer who
39 knowingly attempts to evade payment of the tax imposed under this

1 chapter is guilty of a class C felony as provided in chapter 9A.20
2 RCW.

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

6 NEW SECTION. **Sec. 310.** INSTRUCTIONS FOR JOINT FILING. (1) If
7 the federal income tax liabilities of both spouses are determined on
8 a joint federal return for the taxable year, they must file a joint
9 return under this chapter.

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

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

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

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

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

29 NEW SECTION. **Sec. 311.** DUE DATES FOR RETURNS, PENALTIES. The
30 due date of a return required to be filed with the department is the
31 due date of the federal income tax return or informational return for
32 federal income tax purposes. The department may grant extensions of
33 time by which returns required to be filed by this chapter may be
34 submitted. The department may grant extensions of time to pay tax
35 with regard to taxes imposed by this chapter. Interest at the rate as
36 specified in RCW 82.32.050 accrues during any extension period and
37 the interest and penalty provisions of chapter 82.32 RCW apply to
38 late payments and deficiencies. Notwithstanding the limitation of RCW

1 82.32.090, in the case of the late filing of an informational return,
2 there is imposed a penalty the amount of which is established by the
3 department by rule. The penalty may not exceed fifty dollars per
4 month for a maximum of ten months. RCW 82.32.105 applies to this
5 section.

6 NEW SECTION. **Sec. 312.** RECORDS AND RETURNS. (1) Every taxpayer
7 with federal net long-term capital gains or net earnings from self-
8 employment in excess of fifteen thousand dollars annually must keep
9 records, render statements, make returns, file reports, and perform
10 other acts as the department requires by rule. Each return must be
11 made under penalty of perjury and on forms prescribed by the
12 department. The department may require other statements and reports
13 be made under penalty of perjury and on forms prescribed by the
14 department. The department may require any taxpayer and any person
15 required to deduct and withhold the tax imposed under this chapter to
16 furnish to the department a correct copy of any return or document
17 which the taxpayer has filed with the internal revenue service or
18 received from the internal revenue service.

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

22 NEW SECTION. **Sec. 313.** INTERNAL REVENUE CODE CONTROL. (1) To
23 the extent possible without being inconsistent with this chapter, all
24 of the provisions of the internal revenue code relating to the
25 following subjects apply to the taxes imposed under this chapter:

26 (a) Time of payment of tax deducted and withheld under sections
27 204 through 250 of this act and this section;

28 (b) Liability of transferees;

29 (c) Time and manner of making returns, extensions of time for
30 filing returns, verification of returns, and the time when a return
31 is deemed filed.

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

36 NEW SECTION. **Sec. 314.** ALLOCATION OF REVENUES TO BENEFITS
37 ACCOUNT. All revenue from taxes collected by the department under

1 this chapter, including penalties and interest on such taxes, must be
2 deposited in the benefits account created in section 123 of this act.

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

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

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

14 ALLOWS STATES TO COORDINATE. (1) The department may enter into
15 reciprocal tax collection agreements with the taxing officials of any
16 other state imposing a specific tax. Agreements authorized under this
17 section must require each state to offset delinquent specified taxes
18 owed by a taxpayer to one party to the agreement, including any
19 associated penalties, interest, or other additions, against refunds
20 of overpaid specified taxes owed to the taxpayer by the other party
21 to the agreement. Such agreements may also include provisions
22 governing the sharing of information relevant to the administration
23 of specified taxes. However, the department may not share return or
24 tax information with other states except as allowed under RCW
25 82.32.330. Likewise, the department may not share federal tax
26 information with other states without the express written consent of
27 the internal revenue service.

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

30 (a) "Specific taxes" means generally applicable state and local
31 sales tax and use taxes, broad-based state gross receipts taxes,
32 state income taxes, and stand-alone state taxes on capital gains or
33 interest and dividends. "Specified taxes" include, but are not
34 limited to, the taxes imposed in or under the authority of chapters
35 82.04, 82.08, 82.12, 82.14, 82.16, and 82.--- RCW (the new chapter
36 created in section 401(3) of this act), and similar taxes imposed by
37 another state. For purposes of this subsection (2)(a), "gross

1 receipts tax," "income tax," "sales tax," and "use tax" have the
2 meanings provided in RCW 82.56.010.

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

4 NEW SECTION. **Sec. 318.** CONFORMING RCW. To the extent not
5 inconsistent with the provisions of this chapter, the following
6 statutes apply to the administration of taxes imposed under this
7 chapter: RCW 82.32.050, 82.32.055, 82.32.060, 82.32.070, 82.32.080,
8 82.32.085, 82.32.090, 82.32.100, 82.32.105, 82.32.110, 82.32.117,
9 82.32.120, 82.32.130, 82.32.135, 82.32.150, 82.32.160, 82.32.170,
10 82.32.180, 82.32.190, 82.32.200, 82.32.210, 82.32.212, 82.32.220,
11 82.32.230, 82.32.235, 82.32.237, 82.32.240, 82.32.245, 82.32.265,
12 82.32.300, 82.32.310, 82.32.320, 82.32.330, 82.32.340, 82.32.350,
13 82.32.360, 82.32.410, 82.32.805, 82.32.808, and section 317 of this
14 act.

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

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

20 NEW SECTION. **Sec. 320.** RULES. The employment security
21 department and the department may adopt rules for the administration
22 and enforcement of this act. The rules may prescribe forms and other
23 processes for either department. Any such rules must follow the
24 internal revenue code and the regulations and rulings of the United
25 States treasury department with respect to the federal income tax.
26 Any portions of the internal revenue code and federal treasury
27 department regulations and rulings, in whole or in part, may be
28 adopted as part of rule making under this section.

29 NEW SECTION. **Sec. 321.** APPEALS. The board of tax appeals has
30 jurisdiction over appeals relating to tax deficiencies and refunds,
31 including penalties and interest, under this chapter. The taxpayer
32 may elect a formal or informal hearing pursuant to RCW 82.03.140.

33 NEW SECTION. **Sec. 322.** Notwithstanding any common law rule of
34 strict construction of statutes imposing taxes, this chapter, being

1 necessary for the welfare of the state and its inhabitants, must be
2 liberally construed in support of application of the tax.

3 **Part IV**
4 **Miscellaneous**

5 NEW SECTION. **Sec. 401.** CODIFICATION. (1) Sections 101 through
6 113 and 115 through 128 of this act constitute a new chapter in Title
7 43 RCW.

8 (2) Sections 201 and 203 through 251 of this act constitute a new
9 chapter in a new title to be codified as Title 50B RCW.

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

12 NEW SECTION. **Sec. 402.** EFFECTIVE DATES. (1) Sections 101
13 through 107 of this act take effect February 1, 2020.

14 (2) Sections 108 through 114, 116 through 119, and 121 through
15 125 of this act take effect March 1, 2020.

16 (3) Sections 126 through 128 of this act take effect May 15,
17 2021.

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

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

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

31 NEW SECTION. **Sec. 404.** SEVERABILITY. If any provision of this
32 act or its application to any person or circumstance is held invalid,

1 the remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

--- **END** ---