
HOUSE BILL 2530

State of Washington

64th Legislature

2016 Regular Session

By Representatives Orwall, McCabe, Appleton, Wylie, Tarleton, Senn, McBride, Kagi, Ryu, Hudgins, S. Hunt, Gregerson, Reykdal, Farrell, Pollet, Ortiz-Self, Harris, Bergquist, Lytton, Kochmar, Blake, Cody, Stambaugh, Wilson, Jinkins, Kuderer, Muri, Van De Wege, Frame, Hargrove, Ormsby, Sells, Pettigrew, and Stanford

Read first time 01/14/16. Referred to Committee on Public Safety.

1 AN ACT Relating to protecting victims of sex crimes; amending RCW
2 36.27.020, 43.43.670, and 82.32.145; reenacting and amending RCW
3 42.56.240; adding new sections to chapter 36.28A RCW; adding a new
4 section to chapter 35.21 RCW; adding a new section to chapter 36.28
5 RCW; adding a new section to chapter 43.43 RCW; adding a new section
6 to chapter 70.41 RCW; adding a new section to chapter 43.31 RCW;
7 adding a new chapter to Title 82 RCW; creating a new section;
8 prescribing penalties; providing an effective date; and providing an
9 expiration date.

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

11 **PART I - TRACKING AND TESTING OF SEXUAL ASSAULT KITS**

12 NEW SECTION. **Sec. 1.** A new section is added to chapter 36.28A
13 RCW to read as follows:

14 (1) When funded, the association shall create and operate a
15 statewide sexual assault kit tracking system.

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

17 (a) Track the location and status of sexual assault kits
18 throughout the criminal justice process, including the initial
19 collection in examinations performed at medical facilities, receipt
20 and storage at law enforcement agencies, receipt and testing at

1 forensic laboratories, and storage and any destruction after
2 completion of testing;

3 (b) Allow medical facilities performing sexual assault forensic
4 examinations, law enforcement agencies, prosecutors, the Washington
5 state patrol, and other entities in the custody of sexual assault
6 kits to update and track the status and location of sexual assault
7 kits; and

8 (c) Allow victims of sexual assault to anonymously track or
9 receive updates regarding the status of their sexual assault kits.

10 (3) Any appointed or elected official, public employee, or public
11 agency as defined in RCW 4.24.470, or combination of units of
12 government and its employees, as provided in RCW 36.28A.010, and
13 hospitals and hospital employees that provide services to victims of
14 sexual assault are immune from liability for damages for any release
15 of information or the failure to release information related to the
16 statewide sexual assault kit tracking system, so long as the release
17 was without gross negligence. The immunity provided under this
18 subsection applies to the release of relevant and necessary
19 information to other public officials, public employees, or public
20 agencies, and to the public.

21 NEW SECTION. **Sec. 2.** A new section is added to chapter 35.21
22 RCW to read as follows:

23 Local law enforcement agencies shall participate in the statewide
24 sexual assault kit tracking system established in section 1 of this
25 act for the purpose of tracking the status of sexual assault kits in
26 the custody of local law enforcement agencies and other entities
27 contracting with local law enforcement agencies.

28 NEW SECTION. **Sec. 3.** A new section is added to chapter 36.28
29 RCW to read as follows:

30 A sheriff and his or her deputies shall participate in the
31 statewide sexual assault kit tracking system established in section 1
32 of this act for the purpose of tracking the status of sexual assault
33 kits in the custody of the department and other entities contracting
34 with the department.

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

1 The Washington state patrol shall participate in the statewide
2 sexual assault kit tracking system established in section 1 of this
3 act for the purpose of tracking the status of sexual assault kits in
4 the custody of the Washington state patrol and other entities
5 contracting with the Washington state patrol.

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

8 Hospitals licensed under this chapter shall participate in the
9 statewide sexual assault kit tracking system established in section 1
10 of this act for the purpose of tracking the status of sexual assault
11 kits collected by or in the custody of hospitals and other entities
12 contracting with hospitals.

13 **Sec. 6.** RCW 36.27.020 and 2012 1st sp.s. c 5 s 2 are each
14 amended to read as follows:

15 The prosecuting attorney shall:

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

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

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

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

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

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

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

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

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

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

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

26 (12) Participate in the statewide sexual assault kit tracking
27 system established under section 1 of this act for the purpose of
28 tracking the status of sexual assault kits connected to criminal
29 investigations and prosecutions within the county.

30 **Sec. 7.** RCW 42.56.240 and 2015 c 224 s 3 and 2015 c 91 s 1 are
31 each reenacted and amended to read as follows:

32 The following investigative, law enforcement, and crime victim
33 information is exempt from public inspection and copying under this
34 chapter:

35 (1) Specific intelligence information and specific investigative
36 records compiled by investigative, law enforcement, and penology
37 agencies, and state agencies vested with the responsibility to
38 discipline members of any profession, the nondisclosure of which is

1 essential to effective law enforcement or for the protection of any
2 person's right to privacy;

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

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

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

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

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

31 (7) Data from the electronic sales tracking system established in
32 RCW 69.43.165;

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

38 (9) Personally identifying information collected by law
39 enforcement agencies pursuant to local security alarm system programs
40 and vacation crime watch programs. Nothing in this subsection shall

1 be interpreted so as to prohibit the legal owner of a residence or
2 business from accessing information regarding his or her residence or
3 business;

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

6 (11) The identity of a state employee or officer who has in good
7 faith filed a complaint with an ethics board, as provided in RCW
8 42.52.410, or who has in good faith reported improper governmental
9 action, as defined in RCW 42.40.020, to the auditor or other public
10 official, as defined in RCW 42.40.020;

11 (12) The following security threat group information collected
12 and maintained by the department of corrections pursuant to RCW
13 72.09.745: (a) Information that could lead to the identification of a
14 person's security threat group status, affiliation, or activities;
15 (b) information that reveals specific security threats associated
16 with the operation and activities of security threat groups; and (c)
17 information that identifies the number of security threat group
18 members, affiliates, or associates; (~~and~~)

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

22 (14) Any records and information contained within the statewide
23 sexual assault kit tracking system established under section 1 of
24 this act.

25 **Sec. 8.** RCW 43.43.670 and 1999 c 40 s 6 are each amended to read
26 as follows:

27 (1) There is created in the Washington state patrol a bureau of
28 forensic laboratory services system which is authorized to:

29 (a) Provide laboratory services for the purpose of analyzing and
30 scientifically handling any physical evidence relating to any crime.

31 (b) Provide training assistance for local law enforcement
32 personnel.

33 (c) Provide all necessary toxicology services requested by all
34 coroners, medical examiners, and prosecuting attorneys.

35 (2) The bureau of forensic laboratory services shall assign
36 priority to a request for services with due regard to whether the
37 case involves criminal activity against persons. The Washington state
38 forensic investigations council shall assist the bureau of forensic
39 laboratory services in devising policies to promote the most

1 efficient use of laboratory services consistent with this section.
2 The forensic investigations council shall be actively involved in the
3 preparation of the bureau of forensic laboratory services budget and
4 shall approve the bureau of forensic laboratory services budget prior
5 to its formal submission by the state patrol to the office of
6 financial management pursuant to RCW 43.88.030. The bureau of
7 forensic laboratory services, in consultation with the Washington
8 state forensic investigations council, shall develop budget
9 submissions to the office of financial management sufficient to
10 increase capacity to test all evidence submitted from crimes against
11 persons by 2020, and all evidence submitted from property crimes by
12 2025.

13 **PART II - GRANTS TO LAW ENFORCEMENT AGENCIES**

14 NEW SECTION. **Sec. 9.** The legislature finds that, as of July 24,
15 2015, there were approximately six thousand sexual assault kits in
16 the possession of Washington's law enforcement agencies, which have
17 not been submitted for forensic examination. The legislature finds
18 all of these kits should undergo forensic testing and receive a
19 follow up reinvestigation of the underlying case once forensic
20 testing is complete. To ensure the follow up reinvestigation, the
21 legislature intends to utilize state, federal, and private resources
22 to fund regional task forces composed of local law enforcement
23 agencies partnered with victims' advocates. The legislature intends
24 to fund the regional task forces with a five-year grant program
25 through the Washington association of sheriffs and police chiefs. The
26 grant moneys are intended for reinvestigation of all cases where a
27 sexual assault kit was in the possession of a Washington law
28 enforcement agency but not submitted for forensic testing as of July
29 24, 2015.

30 NEW SECTION. **Sec. 10.** A new section is added to chapter 36.28A
31 RCW to read as follows:

32 The definitions in this section apply throughout this chapter
33 unless the context clearly requires otherwise.

34 "Association" means the Washington association of sheriffs and
35 police chiefs.

1 NEW SECTION. **Sec. 11.** A new section is added to chapter 36.28A
2 RCW to read as follows:

3 (1) When funded, the association shall establish and administer a
4 grant program for law enforcement agencies and regional task forces
5 composed of local law enforcement agencies for the purpose of
6 reinvestigating all cases where a sexual assault kit was in the
7 possession of a law enforcement agency but not submitted for forensic
8 testing as of July 24, 2015.

9 (2) Grant recipients must:

10 (a) Conduct investigations or reinvestigations of cases where a
11 sexual assault kit was in the possession of a law enforcement agency
12 but not submitted for forensic testing as of July 24, 2015;

13 (b) Employ and use a victims' advocate within the investigative
14 unit responsible for investigations funded by the grant;

15 (c) Develop and use protocols for the notification of victims
16 regarding results of forensic testing of sexual assault kits; and

17 (d) Submit data and information necessary for the association to
18 comply with subsection (4) of this section.

19 (3) Grant awards may not be used to supplant preexisting funding
20 for investigations of sexual assaults.

21 (4) The association must submit a report on the grant program
22 established under this section to the sexual assault forensic
23 examination best practices task force, the appropriate committees of
24 the legislature, and the governor by November 1, 2017, and by
25 November 1st of each subsequent year. The report must include the
26 following:

27 (a) The named recipients of grants and their jurisdictions;

28 (b) The amount of funding awarded with each grant;

29 (c) The number of investigations conducted with grant funding by
30 each grant recipient and statewide;

31 (d) The number of CODIS entries and hits associated with
32 investigations conducted with grant funding by each grant recipient
33 and statewide;

34 (e) The number of serial offenders associated with investigations
35 conducted with grant funding by each grant recipient and statewide;

36 (f) The number of convictions and pleas arising from
37 investigations conducted with grant funding by each grant recipient
38 and statewide; and

39 (g) Recommendations for the state and local agencies to improve
40 the investigations of sexual assaults in Washington.

1 **PART III - ACCEPTING DONATIONS FOR PROTECTING VICTIMS**

2 NEW SECTION. **Sec. 12.** A new section is added to chapter 43.31
3 RCW to read as follows:

4 (1) The Washington sexual assault kit program is created within
5 the department for the purpose of accepting private funds for testing
6 sexual assault kits and conducting related investigations where a
7 sexual assault kit was in the possession of a law enforcement agency
8 but not submitted for forensic testing as of July 24, 2015. The
9 director may accept gifts, grants, donations, or moneys from any
10 source for deposit in the Washington sexual assault kit account
11 created under subsection (2) of this section.

12 (2) The Washington sexual assault kit account is created in the
13 state treasury. Funds deposited in the Washington sexual assault kit
14 account may be used for the Washington sexual assault kit testing
15 program established under this section. The Washington sexual assault
16 kit account is subject to allotment procedures under chapter 43.88
17 RCW, but an appropriation is not required for expenditures.

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

20 (a) Forty-five percent of the funds for the Washington state
21 patrol bureau of forensic laboratory services for the purpose of
22 testing sexual assault kits in the possession of a law enforcement
23 agency but not submitted for forensic testing as of July 24, 2015;

24 (b) Forty percent of the funds for the Washington association of
25 sheriffs and police chiefs for the purpose of funding the grant
26 program established under section 11 of this act; and

27 (c) Fifteen percent of the funds for the office of crime victims'
28 advocacy in the department for the purpose of funding grants for
29 sexual assault nurse examiner services and training.

30 **PART IV - SEXUALLY ORIENTED BUSINESS FEE**

31 NEW SECTION. **Sec. 13.** The legislature finds the state has a
32 substantial interest in protecting and preserving the quality of life
33 for its communities against the adverse secondary effects of live
34 adult entertainment. The legislature recognizes local governments
35 have an important role in regulating businesses engaged in live adult
36 entertainment, including reasonable location and licensing
37 restrictions, for the purpose of minimizing adverse secondary

1 effects. However, the adoption of a statewide fee can provide further
2 assistance to the victims of crimes directly and indirectly resulting
3 from these businesses.

4 The legislature finds that in Washington state, sexually oriented
5 businesses featuring live adult entertainment earn more than twenty-
6 five million dollars per year in revenue. Of the millions of female
7 victims of human trafficking, seventy percent are trafficked into the
8 commercial sex industry, including being recruited to work as
9 hostesses, waitresses, or exotic dancers in sexually oriented
10 businesses featuring adult entertainment. Exotic dancers are more
11 likely to be victims of sexual violence, including sexual assault and
12 rape. The office of crime victims' advocacy plays a critical role in
13 providing support to victims of both human trafficking and sexual
14 assault.

15 The legislature hereby establishes the sexually oriented business
16 fee to fund policies and programming for investigating sex crimes and
17 supporting trafficking and sex crime victims in Washington. The
18 sexually oriented business fee does not regulate or prohibit any kind
19 of speech. The legislature's interest in preventing harmful secondary
20 effects is not related to the suppression of expression in nude
21 dancing. Citizens are still free to engage in such forms of
22 expression to the extent it complies with other legally established
23 time, place, and manner restrictions. Instead, the sexually oriented
24 business fee offsets the impacts of crime and the other deleterious
25 effects caused by the presence of sexually oriented businesses in
26 Washington.

27 NEW SECTION. **Sec. 14.** (1) There is levied and collected a fee
28 upon the admission to a sexually oriented live adult entertainment
29 establishment, in an amount equal to four dollars. The fee imposed
30 under this section must be paid by the patron to the operator of the
31 establishment. Each operator must collect from the patron the full
32 amount of the fee in respect to each admission and without respect to
33 any cover charges that the operator may charge. The fee collected
34 from the patron by the operator must be paid to the department of
35 revenue in accordance with RCW 82.32.045.

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

1 (3) Receipts from the fee imposed in this section must be
2 deposited into the sexually oriented business fee account established
3 in section 16 of this act.

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

6 (a) "Adult entertainment" means:

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

12 (ii) Any performance of the following acts or of acts which
13 simulate, or use artificial devices or inanimate objects which
14 depict:

15 (A) Sexual intercourse, masturbation, sodomy, bestiality, oral
16 copulation, flagellation, or any sexual acts that are prohibited by
17 law;

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

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

21 (b) "Cover charge" means a charge, regardless of its label, to
22 enter a sexually oriented live adult entertainment establishment or
23 added to the patron's bill by an operator of an establishment or
24 otherwise collected after entrance to the establishment, and the
25 patron is provided the opportunity to enter and view adult
26 entertainment in exchange for payment of the charge.

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

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

31 (e) "Person" means any individual, partnership, corporation,
32 trust, incorporated or unincorporated association, marital community,
33 joint venture, governmental entity, or other entity or group of
34 persons, however organized.

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

1 NEW SECTION. **Sec. 15.** (1) The fees required to be collected by
2 the operator under section 14 of this act, are deemed to be held in
3 trust by the operator until paid to the department of revenue, and
4 any operator who appropriates or converts the fees collected to his
5 or her own use or to any use other than the payment of the fees to
6 the extent that the money required to be collected is not available
7 for payment on the due date as prescribed in this chapter is guilty
8 of a gross misdemeanor.

9 (2) If any operator fails to collect the fees imposed under
10 section 14 of this act or having collected the fees, fails to pay the
11 collected fees to the department of revenue in the manner prescribed
12 in section 14 of this act, whether such failure is the result of his
13 or her own acts or the result of acts or conditions beyond the
14 operator's control, the operator is nevertheless, personally liable
15 to the state for the amount of the fees.

16 (3) The amount of the fees, until paid by the patron to the
17 operator or to the department of revenue, constitutes a debt from the
18 patron to the operator. Any operator who fails or refuses to collect
19 the fees as required with intent to violate the provisions of this
20 chapter or to gain some advantage or benefit, either direct or
21 indirect, and any patron who refuses to pay any fees due under this
22 chapter is guilty of a misdemeanor.

23 NEW SECTION. **Sec. 16.** (1) The Washington sexually oriented
24 business fee account is created in the state treasury. The office of
25 crime victims advocacy within the department of commerce is
26 authorized as an administrator of the account. Receipts from the fee
27 imposed in section 14 of this act must be deposited into the account
28 created in this section. The Washington sexually oriented business
29 fee account is subject to allotment procedures under chapter 43.88
30 RCW, but an appropriation is not required for expenditures.

31 (2) Funds deposited in the Washington sexually oriented business
32 fee account must be transferred and used exclusively for the
33 following purposes:

34 (a) Prior to July 1, 2021:

35 (i) Beginning on June 30, 2017, and each year thereafter, fifty
36 percent of the funds must be transferred to the Washington state
37 patrol for use by the Washington state patrol bureau of forensic
38 laboratory services for the purpose of testing sexual assault kits in

1 the possession of a law enforcement agency but not submitted for
2 forensic testing as of July 24, 2015;

3 (ii) Twenty-five percent of the funds must be used by the office
4 of crime victims advocacy within the department of commerce for the
5 purposes of providing services or support to victims of sexual abuse;
6 and

7 (iii) Twenty-five percent of the funds must be used by the office
8 of crime victims advocacy in the department of commerce for the
9 purposes of providing services and support, including educational and
10 vocational training opportunities, to victims of human trafficking.

11 (b) Beginning on July 1, 2021:

12 (i) Thirty percent of the funds must be transferred on June 30,
13 2022, and each year thereafter, to the Washington state patrol bureau
14 of forensic laboratory services for the purpose of testing sexual
15 assault kits;

16 (ii) Thirty-five percent of the funds must be used by the office
17 of crime victims advocacy in the department of commerce for the
18 purposes of providing services or support to victims of sexual abuse;
19 and

20 (iii) Thirty-five percent of the funds must be used by the office
21 of crime victims advocacy in the department of commerce for the
22 purposes of providing services and support, including educational and
23 vocational training opportunities, to victims of human trafficking.

24 **Sec. 17.** RCW 82.32.145 and 2015 c 188 s 121 are each amended to
25 read as follows:

26 (1) Whenever the department has issued a warrant under RCW
27 82.32.210 for the collection of unpaid trust fund taxes from a
28 limited liability business entity and that business entity has been
29 terminated, dissolved, or abandoned, or is insolvent, the department
30 may pursue collection of the entity's unpaid trust fund taxes,
31 including penalties and interest on those taxes, against any or all
32 of the responsible individuals. For purposes of this subsection,
33 "insolvent" means the condition that results when the sum of the
34 entity's debts exceeds the fair market value of its assets. The
35 department may presume that an entity is insolvent if the entity
36 refuses to disclose to the department the nature of its assets and
37 liabilities.

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

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

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

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

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

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

32 (6) Any person having been issued a notice of assessment under
33 this section is entitled to the appeal procedures under RCW
34 82.32.160, 82.32.170, 82.32.180, 82.32.190, and 82.32.200.

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

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

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

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

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

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

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

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

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

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

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

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

9 (h) "Trust fund taxes" means taxes collected from purchasers and
10 held in trust under RCW 82.08.050, including taxes imposed under RCW
11 82.08.020 and 82.08.150, and the sexually oriented business fees
12 collected from patrons and held in trust under section 15 of this
13 act.

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

17 NEW SECTION. **Sec. 18.** Sections 13 through 16 of this act
18 constitute a new chapter in Title 82 RCW.

19 NEW SECTION. **Sec. 19.** Sections 13 through 16 of this act take
20 effect October 1, 2016.

21 NEW SECTION. **Sec. 20.** Sections 9, 11, and 12 of this act expire
22 June 1, 2022.

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