## HOUSE BILL 1795

State of Washington 68th Legislature 2023 Regular Session

By Representatives Street and Ramel

- AN ACT Relating to making the estate tax more progressive; amending RCW 83.100.040, 83.100.047, 83.100.048, 83.100.050, and 83.100.220; reenacting and amending RCW 83.100.020; adding a new section to chapter 83.100 RCW; creating new sections; and providing an effective date.
- 6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:
- 7 **Sec. 1.** RCW 83.100.020 and 2013 2nd sp.s. c 2 s 2 are each 8 reenacted and amended to read as follows:
- 9 The definitions in this section apply throughout this chapter 10 unless the context clearly requires otherwise.
- 11 (1) (a) The "applicable exclusion amount" for the decedent's

  12 estate is the applicable exclusion amount in effect as of the date of

  13 the decedent's death. "Applicable exclusion amount" means:
- 14 (i) ((One million five hundred thousand dollars)) \$1,500,000 for decedents dying before January 1, 2006;
- (ii) (( $\frac{\text{Two million dollars}}{\text{million dollars}}$ ))  $\frac{$2,000,000}{\text{million dollars}}$  for estates of decedents dying on or after January 1, 2006, and before January 1, 2014; ( $\frac{\text{cand}}{\text{million dollars}}$ )
- 19 (iii) \$2,012,000 for estates of decedents dying on or after
  20 January 1, 2014, and before January 1, 2015;

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- 1 (iv) \$2,054,000 for estates of decedents dying on or after
  2 January 1, 2015, and before January 1, 2016;
- 3 (v) \$2,079,000 for estates of decedents dying on or after January 4 1, 2016, but before January 1, 2017;
- 5 (vi) \$2,129,000 for estates of decedents dying on or after 6 January 1, 2017, but before January 1, 2018;
- 7 (vii) \$2,193,000 for estates of decedents dying on or after 8 January 1, 2018, but before August 1, 2023;
- 9 <u>(viii) \$2,659,000 for estates of decedents dying on or after</u>
  10 August 1, 2023; and

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- (ix) For estates of decedents dying in calendar year ((2014)) 2025 and each calendar year thereafter, the amount in (a)(((ii))) (viii) of this subsection (1) must be adjusted annually, except as otherwise provided in this subsection (1)(a)(((iii))) (ix). The annual adjustment is determined by multiplying ((two million dellars)) \$2,659,000 by the sum of one plus the percentage by which the most recent October consumer price index exceeds the consumer price index for October ((2012)) 2023, and rounding the result to the nearest ((one thousand dollars)) \$1,000. No adjustment is made for a calendar year if the adjustment would result in the same or a lesser applicable exclusion amount than the applicable exclusion amount for the immediately preceding calendar year. ((The applicable exclusion amount under this subsection (1)(a)(iii) for the decedent's estate is the applicable exclusion amount in effect as of the date of the decedent's death.))
  - (b) For purposes of this subsection (1), "consumer price index" means the consumer price index for all urban consumers, all items, for the Seattle((-Tacoma-Bremerton)) metropolitan area as calculated by the United States bureau of labor statistics. For purposes of this subsection (1)(b), "Seattle metropolitan area" means the geographic area sample that includes Seattle and surrounding areas.
    - (2) "Decedent" means a deceased individual.
- (3) "Department" means the department of revenue, the director of that department, or any employee of the department exercising authority lawfully delegated to him or her by the director.
- 36 (4) "Federal return" means any tax return required by chapter 11 37 of the internal revenue code.
- 38 (5) "Federal tax" means a tax under chapter 11 of the internal 39 revenue code.

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(6) "Federal taxable estate" means the taxable estate as determined under chapter 11 of the internal revenue code without regard to: (a) The termination of the federal estate tax under section 2210 of the internal revenue code or any other provision of law, and (b) the deduction for state estate, inheritance, legacy, or succession taxes allowable under section 2058 of the internal revenue code.

- 8 (7) "Gross estate" means "gross estate" as defined and used in 9 section 2031 of the internal revenue code.
  - (8) "Internal revenue code" means the United States internal revenue code of 1986, as amended or renumbered as of January 1, 2005.
  - (9) "Person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate, or other entity and, to the extent permitted by law, any federal, state, or other governmental unit or subdivision or agency, department, or instrumentality thereof.
  - (10) "Person required to file the federal return" means any person required to file a return required by chapter 11 of the internal revenue code, such as the personal representative of an estate.
- 22 (11) "Property" means property included in the gross estate.
- 23 (12) "Resident" means a decedent who was domiciled in Washington 24 at time of death.
- 25 (13) "Taxpayer" means a person upon whom tax is imposed under 26 this chapter, including an estate or a person liable for tax under 27 RCW 83.100.120.
  - (14) "Transfer" means "transfer" as used in section 2001 of the internal revenue code and includes any shifting upon death of the economic benefit in property or any power or legal privilege incidental to the ownership or enjoyment of property. However, "transfer" does not include a qualified heir disposing of an interest in property qualifying for a deduction under RCW 83.100.046 or ceasing to use the property for farming purposes.
  - (15) "Washington taxable estate" means the federal taxable estate and includes, but is not limited to, the value of any property included in the gross estate under section 2044 of the internal revenue code, regardless of whether the decedent's interest in such property was acquired before May 17, 2005, (a) plus amounts required to be added to the Washington taxable estate under RCW 83.100.047,

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- 1 (b) less: (i) The applicable exclusion amount; (ii) the amount of any deduction allowed under RCW 83.100.046; (iii) amounts allowed to be deducted from the Washington taxable estate under RCW 83.100.047; and (iv) the amount of any deduction allowed under RCW 83.100.048.
- 5 **Sec. 2.** RCW 83.100.040 and 2013 2nd sp.s. c 2 s 4 are each amended to read as follows:
- 7 (1) A tax in an amount computed as provided in this section is 8 imposed on every transfer of property located in Washington. For the 9 purposes of this section, any intangible property owned by a resident 10 is located in Washington.
- 11 (2)(a) Except as provided in (b) of this subsection, the amount 12 of tax is the amount provided in the following table:

13					Of Washington
14					Taxable Estate Value
15	If Washington Taxable		The amount of Tax Equals		Greater than
16	Estate is at least	But Less Than	Initial Tax Amount	Plus Tax Rate %	
17	\$0	\$1,000,000	\$0	10.00%	\$0
18	\$1,000,000	\$2,000,000	\$100,000	14.00%	\$1,000,000
19	\$2,000,000	\$3,000,000	\$240,000	15.00%	\$2,000,000
20	\$3,000,000	\$4,000,000	\$390,000	((16.00%))	\$3,000,000
21				<u>18.00%</u>	
22	\$4,000,000	\$6,000,000	((\$550,000))	((18.00%))	\$4,000,000
23			<u>\$580,000</u>	<u>22.00%</u>	
24	\$6,000,000	\$7,000,000	((\$910,000))	((19.00%))	\$6,000,000
25			<u>\$1,020,000</u>	<u>24.00%</u>	
26	\$7,000,000	\$9,000,000	((\$1,100,000))	(( <del>19.50%</del> ))	\$7,000,000
27			<u>\$1,260,000</u>	<u>26.00%</u>	
28	\$9,000,000	<u>\$12,500,000</u>	((\$1,490,000))	((20.00%))	\$9,000,000
29			<u>\$1,780,000</u>	<u>28.00%</u>	
30	<u>\$12,500,000</u>	\$22,500,000	\$2,760,000	<u>29.00%</u>	<u>\$12,500,000</u>
31	<u>\$22,500,000</u>	\$100,000,000	<u>\$5,660,000</u>	30.00%	<u>\$22,500,000</u>
32	\$100,000,000	\$1,000,000,000	\$28,910,000	<u>35.00%</u>	\$100,000,000
33	\$1,000,000,000		<u>\$343,910,000</u>	40.00%	\$1,000,000,000

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(b) If any property in the decedent's estate is located outside of Washington, the amount of tax is the amount determined in (a) of this subsection multiplied by a fraction. The numerator of the fraction is the value of the property located in Washington. The denominator of the fraction is the value of the decedent's gross estate. Property qualifying for a deduction under RCW 83.100.046 must be excluded from the numerator and denominator of the fraction.

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- (3) The tax imposed under this section is a stand-alone estate tax that incorporates only those provisions of the internal revenue code as amended or renumbered as of January 1, 2005, that do not conflict with the provisions of this chapter. The tax imposed under this chapter is independent of any federal estate tax obligation and is not affected by termination of the federal estate tax.
- **Sec. 3.** RCW 83.100.047 and 2013 2nd sp.s. c 2 s 6 are each 15 amended to read as follows:
  - (1) (a) If the federal taxable estate on the federal return is determined by making an election under section 2056 or 2056A of the internal revenue code, or if no federal return is required to be filed, the department may provide by rule for a separate election on the Washington return, consistent with section 2056 or 2056A of the internal revenue code and (b) of this subsection, for the purpose of determining the amount of tax due under this chapter. The election is binding on the estate and the beneficiaries, consistent with the internal revenue code and (b) of this subsection. All other elections or valuations on the Washington return must be made in a manner consistent with the federal return, if a federal return is required, and such rules as the department may provide.
  - (b) The department must provide by rule that a state registered domestic partner is deemed to be a surviving spouse and entitled to a deduction from the Washington taxable estate for any interest passing from the decedent to his or her domestic partner, consistent with section 2056 or 2056A of the internal revenue code but regardless of whether such interest would be deductible from the federal gross estate under section 2056 or 2056A of the internal revenue code.
  - (2) (a) Amounts deducted for federal income tax purposes under section 642(g) of the internal revenue code of 1986 are not allowed as deductions in computing the amount of tax due under this chapter.

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- 1 (b) The following amounts deducted under section 2055 of the
  2 internal revenue code for bequests, legacies, devises, or other
  3 transfers to family foundations are disallowed as a deduction in
  4 computing the amount of tax under this chapter:
- 5 (i) 25 percent of the first \$100,000,000 deducted under section 6 2055 of the internal revenue code; and

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- (ii) 75 percent of any amount in excess of \$100,000,000 deducted under section 2055 of the internal revenue code.
- (3) Notwithstanding any department rule, if a taxpayer makes an election consistent with section 2056 of the internal revenue code as permitted under this section, the taxpayer's Washington taxable estate, and the surviving spouse's Washington taxable estate, must be adjusted as follows:
- (a) For the taxpayer that made the election, any amount deducted by reason of section 2056(b)(7) of the internal revenue code is added to, and the value of property for which a Washington election under this section was made is deducted from, the Washington taxable estate.
- (b) For the estate of the surviving spouse, the amount included in the estate's gross estate pursuant to section 2044 (a) and (b)(1)(A) of the internal revenue code is deducted from, and the value of any property for which an election under this section was previously made is added to, the Washington taxable estate.
- 24 <u>(4) For the purposes of this section, "family foundation" means a</u> 25 <u>foundation or charity that:</u>
- 26 (a) Is defined as a private foundation under section 509 of the 27 internal revenue code or a public charity excluded under section 28 509(a)(1), (2), (3), or (4) of the internal revenue code;
  - (b) The decedent, while alive, transferred money or assets to it;
- 30 <u>(c) The decedent, or a family member, has served on the governing</u>
  31 board of it in the past; and
- 32 <u>(d) A family member or employee currently serves on the governing</u> 33 <u>board.</u>
- 34 **Sec. 4.** RCW 83.100.048 and 2013 2nd sp.s. c 2 s 3 are each 35 amended to read as follows:
- (1) For the purposes of determining the tax due under this chapter, a deduction is allowed for the value of the decedent's qualified family-owned business interests((, not to)). With the exception of qualified family-owned business interests in a newspaper

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business, the deduction under this section may not exceed ((two million five hundred thousand dollars, if)) \$2,500,000. A deduction not to exceed \$5,000,000 is allowed for the value of the decedent's qualified family-owned business interest in a newspaper business. No deduction is allowed under this section unless:

- (a) The value of the decedent's qualified family-owned business interests exceed ((fifty)) 50 percent of the decedent's Washington taxable estate determined without regard to the deduction for the applicable exclusion amount. This subsection (1)(a) does not apply to qualified family-owned business interest in a newspaper business;
- (b) During the eight-year period ending on the date of the decedent's death, there have been periods aggregating five years or more during which:
- (i) Such interests were owned by the decedent or a member of the decedent's family;
  - (ii) There was material participation, within the meaning of section 2032A(e)(6) of the internal revenue code, by the decedent or a member of the decedent's family in the operation of the trade or business to which such interests relate;
  - (c) The qualified family-owned business interests are acquired by any qualified heir from, or passed to any qualified heir from, the decedent, within the meaning of RCW 83.100.046(2), and the decedent was at the time of his or her death a citizen or resident of the United States; and
- (d) The value of the decedent's qualified family-owned business interests is not more than ((six million dollars)) \$6,000,000. This subsection (1)(d) does not apply to qualified family-owned business interest in a newspaper business.
- 29 (2) (a) Only amounts included in the decedent's federal taxable 30 estate may be deducted under this subsection.
- 31 (b) Amounts deductible under RCW 83.100.046 may not be deducted 32 under this section.
  - (3) (a) There is imposed an additional estate tax on a qualified heir if, within three years of the decedent's death and before the date of the qualified heir's death:
- (i) The material participation requirements described in section 2032A(c)(6)(b)(ii) of the internal revenue code are not met with respect to the qualified family-owned business interest which was acquired or passed from the decedent;

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(ii) The qualified heir disposes of any portion of a qualified family-owned business interest, other than by a disposition to a member of the qualified heir's family or a person with an ownership interest in the qualified family-owned business or through a qualified conservation contribution under section 170(h) of the internal revenue code;

- (iii) The qualified heir loses United States citizenship within the meaning of section 877 of the internal revenue code or with respect to whom section 877(e)(1) applies, and such heir does not comply with the requirements of section 877(g) of the internal revenue code; or
- (iv) The principal place of business of a trade or business of the qualified family-owned business interest ceases to be located in the United States.
- (b) The amount of the additional estate tax imposed under this subsection is equal to the amount of tax savings under this section with respect to the qualified family-owned business interest acquired or passed from the decedent.
- (c) Interest applies to the tax due under this subsection for the period beginning on the date that the estate tax liability was due under this chapter and ending on the date the additional estate tax due under this subsection is paid. Interest under this subsection must be computed as provided in RCW 83.100.070(2).
- (d) The tax imposed by this subsection is due the day that is six months after any taxable event described in (a) of this subsection occurred and must be reported on a return as provided by the department.
- (e) The qualified heir is personally liable for the additional tax imposed by this subsection unless he or she has furnished a bond in favor of the department for such amount and for such time as the department determines necessary to secure the payment of amounts due under this subsection. The qualified heir, on furnishing a bond satisfactory to the department, is discharged from personal liability for any additional tax and interest under this subsection and is entitled to a receipt or writing showing such discharge.
- (f) Amounts due under this subsection attributable to any qualified family-owned business interest are secured by a lien in favor of the state on the property in respect to which such interest relates. The lien under this subsection (3)(f) arises at the time the Washington return is filed on which a deduction under this section is

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taken and continues in effect until: (i) The tax liability under this subsection has been satisfied or has become unenforceable by reason of lapse of time; or (ii) the department is satisfied that no further tax liability will arise under this subsection.

- (g) Security acceptable to the department may be substituted for the lien imposed by (f) of this subsection.
- (h) For purposes of the assessment or correction of an assessment for additional taxes and interest imposed under this subsection, the limitations period in RCW 83.100.095 begins to run on the due date of the return required under (d) of this subsection.
- (i) For purposes of this subsection, a qualified heir may not be treated as disposing of an interest described in section 2057(e)(1)(A) of the internal revenue code by reason of ceasing to be engaged in a trade or business so long as the property to which such interest relates is used in a trade or business by any member of the qualified heir's family.
- (4) (a) The department may require a taxpayer claiming a deduction under this section to provide the department with the names and contact information of all qualified heirs.
- (b) The department may also require any qualified heir to submit to the department on an ongoing basis such information as the department determines necessary or useful in determining whether the qualified heir is subject to the additional tax imposed in subsection (3) of this section. The department may not require such information more frequently than twice per year. The department may impose a penalty on a qualified heir who fails to provide the information requested within thirty days of the date the department's written request for the information was sent to the qualified heir. The amount of the penalty under this subsection is ((five hundred dollars)) \$500 and may be collected in the same manner as the tax imposed under subsection (3) of this section.
- 32 (5) For purposes of this section, references to section 2057 of 33 the internal revenue code refer to section 2057 of the internal revenue code, as existing on December 31, 2003.
- 35 (6) For purposes of this section, the following definitions 36 apply:
- 37 (a) "Member of the decedent's family" and "member of the 38 qualified heir's family" have the same meaning as "member of the 39 family" in RCW 83.100.046(10).

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(b) "Newspaper business" means a business, or that portion of a 1 business consisting of a newspaper as defined in RCW 82.04.214, that is distributed primarily to paying customers, including subscribers 3 and persons reselling the newspaper. 4

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- (c) "Qualified family-owned business interest" has the same 5 6 meaning as provided in section 2057(e) of the internal revenue code 7 of 1986.
- (((c))) (d) "Qualified heir" has the same meaning as provided in 8 section 2057(i) of the internal revenue code of 1986. 9
- (7) This section applies to the estates of decedents dying on or 10 after January 1, 2014. However, section 4, chapter . . ., Laws of 11 12 2023 (section 4 of this act) does not apply retrospectively and only applies to the estates of decedents dying on the effective date of 13 14 this section.
- 15 **Sec. 5.** RCW 83.100.050 and 2017 c 323 s 601 are each amended to read as follows: 16
  - (1) ((A)) Except as provided in subsection (7) of this section, a Washington return must be filed if the gross estate equals or exceeds the applicable exclusion amount.
- (2) If a Washington return is required as provided in subsection 20 21 (1) of this section:
  - (a) A person required to file a federal return must file with the department on or before the date the federal return is required to be filed, including any extension of time for filing under subsection (4) or (6) of this section, a Washington return for the tax due under this chapter.
  - (b) If no federal return is required to be filed, a taxpayer shall file with the department on or before the date a federal return would have been required to be filed, including any extension of time for filing under subsection (5) or (6) of this section, a Washington return for the tax due under this chapter.
  - (3) A Washington return delivered to the department by United States mail is considered to have been received by the department on the date of the United States postmark stamped on the cover in which the return is mailed, if the postmark date is within the time allowed for filing the Washington return, including extensions.
- (4) In addition to the Washington return required to be filed in 37 38 subsection (2) of this section, a person must file with the department on or before the date the federal return is or would have 39

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- been required to be filed all supporting documentation for completed Washington return schedules, and, if a federal return has been filed, a copy of the federal return. If the person required to file the federal return has obtained an extension of time for filing the federal return, the person must file the Washington return within the same time period and in the same manner as provided for the federal return. A copy of the federal extension must be filed with the department on or before the date the Washington return is due, not including any extension of time for filing, or within thirty days of issuance, whichever is later.
  - (5) A person may obtain an extension of time for filing the Washington return as provided by rule of the department, if the person is required to file a Washington return under subsection (2) of this section, but is not required to file a federal return.

- (6) During a state of emergency declared under RCW 43.06.010(12), the department, on its own motion or at the request of any taxpayer affected by the emergency, may extend the time for filing a Washington return under this section as the department deems proper.
- (7) (a) A Washington return is not required to be filed for a decedent's estate if:
  - (i) The estate is not subject to tax under this chapter; and
- (ii) The value of the decedent's gross estate less the value of the decedent's interest in a qualifying family residence that is included in the value of the decedent's gross estate is less than the applicable exclusion amount.
  - (b) The following definitions apply to this subsection:
- (i) "Principal place of residence" means a residence that, except as otherwise provided in this subsection (7) (b) (i), has been occupied by both the decedent and the decedent's spouse or domestic partner for more than six months of the 12 months immediately preceding the decedent's date of death. "Principal place of residence" also means a residence of the decedent and the decedent's spouse or domestic partner when, during the six-month period immediately preceding the decedent's date of death, the decedent, the decedent's spouse or domestic partner, or both the decedent and decedent's spouse or domestic partner, were confined to a hospital, nursing home, assisted living facility, adult family home, or home of a relative of the decedent or decedent's spouse or domestic partner for purposes of long-term care if the decedent and the decedent's spouse or domestic partner did not occupy any other residence for more than six months

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- of the 12 months immediately preceding the decedent's date of death, and during the six-month period immediately preceding the decedent's
- 3 <u>date of death:</u>

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- (A) The residence was temporarily unoccupied;
- 5 <u>(B) The residence was occupied by either or both (I) the</u> 6 <u>decedent's spouse or domestic partner, or (II) a person financially</u> 7 dependent on the decedent or the decedent's spouse or domestic
- 8 partner for support; or
- 9 (C) The residence or portion of the residence was rented for the 10 purposes of paying costs related to the care of the decedent or the 11 decedent's spouse or domestic partner in a nursing home, hospital, 12 assisted living facility, or adult family home.
- (ii) "Qualifying family residence" means the principal place of
  residence of the marital community or domestic partnership at the
  decedent's date of death.
- 16 <u>(iii) "Relative" has the same meaning as "member of the family"</u>
  17 <u>in RCW 83.100.046.</u>
- 18 <u>(iv) "Residence" means a single-family dwelling unit, whether</u>
  19 <u>such unit is separate or part of a multiunit dwelling, including the</u>
  20 <u>land on which such dwelling stands, regardless of whether ownership</u>
  21 <u>of the single-family dwelling unit and land on which the dwelling</u>
  22 unit stands is vested in the same person. "Residence" includes:
- (A) A single-family dwelling unit in a cooperative housing association, corporation, or partnership, when the decedent has an ownership share in such entity;
  - (B) A single-family dwelling unit situated upon lands the fee of which is vested in or held in trust by the United States or any of its instrumentalities, a federally recognized Indian tribe, a state of the United States or any of its political subdivisions, or a municipal corporation;
- 31 (C) A single-family dwelling unit consisting of a manufactured/
  32 mobile home or park model that has substantially lost its identity as
  33 a mobile unit by virtue of it being fixed in location and placed on a
  34 foundation with fixed pipe connections with sewer, water, or other
  35 utilities; and
- 36 <u>(D) A single-family dwelling unit consisting of a floating home</u> 37 <u>as defined in RCW 82.45.032.</u>
- 38 **Sec. 6.** RCW 83.100.220 and 2005 c 516 s 16 are each amended to 39 read as follows:

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- 1 ((All)) (1) Except as otherwise provided in subsection (2) of 2 this section, all receipts from taxes, penalties, interest, and fees 3 collected under this chapter must be deposited into the education 4 legacy trust account.
- 5 (2)(a) By November 1st and by May 1st of each year, the department must calculate the increased state estate tax collections
  7 due to the changes in rates and deductions made in this act as
  8 compared with the estate tax collections amount that would have been collected had this act not been enacted.
- 10 <u>(b) The department must notify the state treasurer of the</u>
  11 <u>incremental amount by December 1st and by June 1st each year. The</u>
  12 <u>treasurer must deposit the incremental amount into the progressive</u>
  13 <u>policy account created in section 7 of this act.</u>
- NEW SECTION. Sec. 7. A new section is added to chapter 83.100 RCW to read as follows:
- The progressive policy account is created in the state treasury. 16 17 All receipts from RCW 83.100.220(2) must be deposited into the 18 account. Moneys in the account may be spent only after appropriation. Expenditures from the account may only be used to address 19 20 intergenerational poverty. It is the intent of the legislature that moneys from this account in the 2023-2025 and 2025-2027 biennia be 21 22 used to implement recommendations from the legislative-executive WorkFirst poverty reduction oversight task force created in RCW 23 24 74.085A.505 and the homeownership disparities work group created in 25 section 128(100), chapter 297, Laws of 2022.
- NEW SECTION. Sec. 8. This act applies to decedents dying on or after August 1, 2023.
- NEW SECTION. Sec. 9. RCW 82.32.805 and 82.32.808 do not apply to this act.
- NEW SECTION. Sec. 10. This act takes effect August 1, 2023.

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