

SB 5355 - H COMM AMD

By Committee on Labor & Workforce Development

ADOPTED 04/09/2013

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 50.16.010 and 2012 c 198 s 11 are each amended to
4 read as follows:

5 (1) There shall be maintained as special funds, separate and apart
6 from all public moneys or funds of this state an unemployment
7 compensation fund and an administrative contingency fund, which shall
8 be administered by the commissioner exclusively for the purposes of
9 this title, and to which RCW 43.01.050 shall not be applicable.

10 (2)(a) The unemployment compensation fund shall consist of:

11 (i) All contributions collected under RCW 50.24.010 and payments in
12 lieu of contributions collected pursuant to the provisions of this
13 title;

14 (ii) Any property or securities acquired through the use of moneys
15 belonging to the fund;

16 (iii) All earnings of such property or securities;

17 (iv) Any moneys received from the federal unemployment account in
18 the unemployment trust fund in accordance with Title XII of the social
19 security act, as amended;

20 (v) All money recovered on official bonds for losses sustained by
21 the fund;

22 (vi) All money credited to this state's account in the unemployment
23 trust fund pursuant to section 903 of the social security act, as
24 amended;

25 (vii) All money received from the federal government as
26 reimbursement pursuant to section 204 of the federal-state extended
27 compensation act of 1970 (84 Stat. 708-712; 26 U.S.C. Sec. 3304);
28 ((and))

29 (viii) The portion of the additional penalties as provided in RCW

1 50.20.070(2) that is fifteen percent of the amount of benefits overpaid
2 or deemed overpaid; and

3 (ix) All moneys received for the fund from any other source.

4 (b) All moneys in the unemployment compensation fund shall be
5 commingled and undivided.

6 (3)(a) Except as provided in (b) of this subsection, the
7 administrative contingency fund shall consist of:

8 (i) All interest on delinquent contributions collected pursuant to
9 this title;

10 (ii) All fines and penalties collected pursuant to the provisions
11 of this title, except the portion of the additional penalties as
12 provided in RCW 50.20.070(2) that is fifteen percent of the amount of
13 benefits overpaid or deemed overpaid;

14 (iii) All sums recovered on official bonds for losses sustained by
15 the fund; and

16 (iv) Revenue received under RCW 50.24.014.

17 (b) All fees, fines, forfeitures, and penalties collected or
18 assessed by a district court because of the violation of this title or
19 rules adopted under this title shall be remitted as provided in chapter
20 3.62 RCW.

21 (c) Except as provided in (d) of this subsection, moneys available
22 in the administrative contingency fund, other than money in the special
23 account created under RCW 50.24.014, shall be expended upon the
24 direction of the commissioner, with the approval of the governor,
25 whenever it appears to him or her that such expenditure is necessary
26 solely for:

27 (i) The proper administration of this title and that insufficient
28 federal funds are available for the specific purpose to which such
29 expenditure is to be made, provided, the moneys are not substituted for
30 appropriations from federal funds which, in the absence of such moneys,
31 would be made available.

32 (ii) The proper administration of this title for which purpose
33 appropriations from federal funds have been requested but not yet
34 received, provided, the administrative contingency fund will be
35 reimbursed upon receipt of the requested federal appropriation.

36 (iii) The proper administration of this title for which compliance
37 and audit issues have been identified that establish federal claims
38 requiring the expenditure of state resources in resolution. Claims

1 must be resolved in the following priority: First priority is to
2 provide services to eligible participants within the state; second
3 priority is to provide substitute services or program support; and last
4 priority is the direct payment of funds to the federal government.

5 (d)(i) During the 2007-2009 fiscal biennium, moneys available in
6 the administrative contingency fund, other than money in the special
7 account created under RCW 50.24.014(1)(a), shall be expended as
8 appropriated by the legislature for: (A) The cost of the job skills or
9 worker retraining programs at the community and technical colleges and
10 administrative costs at the state board for community and technical
11 colleges; and (B) reemployment services such as business and project
12 development assistance, local economic development capacity building,
13 and local economic development financial assistance at the department
14 of commerce. The remaining appropriation may be expended as specified
15 in (c) of this subsection.

16 (ii) During the 2009-2011 fiscal biennium, moneys available in the
17 administrative contingency fund, other than money in the special
18 account created under RCW 50.24.014(1)(a), shall be expended by the
19 department of social and health services as appropriated by the
20 legislature for employment and training services and programs in the
21 WorkFirst program, and for the administrative costs of state agencies
22 participating in the WorkFirst program. The remaining appropriation
23 may be expended as specified in (c) of this subsection.

24 (4) Money in the special account created under RCW 50.24.014(1)(a)
25 may only be expended, after appropriation, for the purposes specified
26 in this section and RCW 50.62.010, 50.62.020, 50.62.030, 50.24.014,
27 50.44.053, and 50.22.010.

28 **Sec. 2.** RCW 50.20.070 and 2007 c 146 s 7 are each amended to read
29 as follows:

30 (1) With respect to determinations delivered or mailed before
31 January 1, 2008, an individual is disqualified for benefits for any
32 week he or she has knowingly made a false statement or representation
33 involving a material fact or knowingly failed to report a material fact
34 and, as a result, has obtained or attempted to obtain any benefits
35 under the provisions of this title, and for an additional twenty-six
36 weeks beginning with the first week for which he or she completes an
37 otherwise compensable claim for waiting period credit or benefits

1 following the date of the delivery or mailing of the determination of
2 disqualification under this section. However, such disqualification
3 shall not be applied after two years have elapsed from the date of the
4 delivery or mailing of the determination of disqualification under this
5 section.

6 (2) With respect to determinations delivered or mailed on or after
7 January 1, 2008:

8 (a) An individual is disqualified for benefits for any week he or
9 she has knowingly made a false statement or representation involving a
10 material fact or knowingly failed to report a material fact and, as a
11 result, has obtained or attempted to obtain any benefits under the
12 provisions of this title;

13 (b) An individual disqualified for benefits under this subsection
14 for the first time is also:

15 (i) Disqualified for an additional twenty-six weeks beginning with
16 the Sunday of the week in which the determination is mailed or
17 delivered; and

18 (ii) With respect to determinations delivered or mailed on or after
19 October 20, 2013, subject to an additional penalty of fifteen percent
20 of the amount of benefits overpaid or deemed overpaid;

21 (c) An individual disqualified for benefits under this subsection
22 for the second time is also disqualified for an additional fifty-two
23 weeks beginning with the Sunday of the week in which the determination
24 is mailed or delivered, and is subject to an additional penalty of
25 twenty-five percent of the amount of benefits overpaid or deemed
26 overpaid;

27 (d) An individual disqualified for benefits under this subsection
28 a third time and any time thereafter is also disqualified for an
29 additional one hundred four weeks beginning with the Sunday of the week
30 in which the determination is mailed or delivered, and is subject to an
31 additional penalty of fifty percent of the amount of benefits overpaid
32 or deemed overpaid.

33 (3) All penalties collected under this section must be expended for
34 the proper administration of this title as authorized under RCW
35 50.16.010 and for no other purposes.

36 (4) All overpayments and penalties established by such
37 determination of disqualification must be collected as otherwise
38 provided by this title.

1 **Sec. 3.** RCW 50.29.021 and 2011 c 4 s 14 are each amended to read
2 as follows:

3 (1) This section applies to benefits charged to the experience
4 rating accounts of employers for claims that have an effective date on
5 or after January 4, 2004.

6 (2)(a) An experience rating account shall be established and
7 maintained for each employer, except employers as described in RCW
8 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make
9 payments in lieu of contributions, taxable local government employers
10 as described in RCW 50.44.035, and those employers who are required to
11 make payments in lieu of contributions, based on existing records of
12 the employment security department.

13 (b) Benefits paid to an eligible individual shall be charged to the
14 experience rating accounts of each of such individual's employers
15 during the individual's base year in the same ratio that the wages paid
16 by each employer to the individual during the base year bear to the
17 wages paid by all employers to that individual during that base year,
18 except as otherwise provided in this section.

19 (c) When the eligible individual's separating employer is a covered
20 contribution paying base year employer, benefits paid to the eligible
21 individual shall be charged to the experience rating account of only
22 the individual's separating employer if the individual qualifies for
23 benefits under:

24 (i) RCW 50.20.050 (1)(b)(i) or (2)(b)(i), as applicable, and became
25 unemployed after having worked and earned wages in the bona fide work;
26 or

27 (ii) RCW 50.20.050 (1)(b) (v) through (x) or (2)(b) (v) through
28 (x).

29 (3) The legislature finds that certain benefit payments, in whole
30 or in part, should not be charged to the experience rating accounts of
31 employers except those employers described in RCW 50.44.010, 50.44.030,
32 and 50.50.030 who have properly elected to make payments in lieu of
33 contributions, taxable local government employers described in RCW
34 50.44.035, and those employers who are required to make payments in
35 lieu of contributions, as follows:

36 (a) Benefits paid to any individual later determined to be
37 ineligible shall not be charged to the experience rating account of any
38 contribution paying employer(~~(. — However, when a benefit claim becomes~~

1 ~~invalid due to an amendment or adjustment of a report where the~~
2 ~~employer failed to report or inaccurately reported hours worked or~~
3 ~~remuneration paid, or both, all benefits paid will be charged to the~~
4 ~~experience rating account of the contribution paying employer or~~
5 ~~employers that originally filed the incomplete or inaccurate report or~~
6 ~~reports. An employer who reimburses the trust fund for benefits paid~~
7 ~~to workers and who fails to report or inaccurately reported hours~~
8 ~~worked or remuneration paid, or both, shall reimburse the trust fund~~
9 ~~for all benefits paid that are based on the originally filed incomplete~~
10 ~~or inaccurate report or reports)), except as provided in subsection (5)~~
11 ~~of this section.~~

12 (b) Benefits paid to an individual filing under the provisions of
13 chapter 50.06 RCW shall not be charged to the experience rating account
14 of any contribution paying employer only if:

15 (i) The individual files under RCW 50.06.020(1) after receiving
16 crime victims' compensation for a disability resulting from a nonwork-
17 related occurrence; or

18 (ii) The individual files under RCW 50.06.020(2).

19 (c) Benefits paid which represent the state's share of benefits
20 payable as extended benefits defined under RCW 50.22.010(6) shall not
21 be charged to the experience rating account of any contribution paying
22 employer.

23 (d) In the case of individuals who requalify for benefits under RCW
24 50.20.050 or 50.20.060, benefits based on wage credits earned prior to
25 the disqualifying separation shall not be charged to the experience
26 rating account of the contribution paying employer from whom that
27 separation took place.

28 (e) Benefits paid to an individual who qualifies for benefits under
29 RCW 50.20.050 (1)(b) (iv) or (xi) or (2)(b) (iv) or (xi), as
30 applicable, shall not be charged to the experience rating account of
31 any contribution paying employer.

32 (f) With respect to claims with an effective date on or after the
33 first Sunday following April 22, 2005, benefits paid that exceed the
34 benefits that would have been paid if the weekly benefit amount for the
35 claim had been determined as one percent of the total wages paid in the
36 individual's base year shall not be charged to the experience rating
37 account of any contribution paying employer. This subsection (3)(f)

1 does not apply to the calculation of contribution rates under RCW
2 50.29.025 for rate year 2010 and thereafter.

3 (g) The forty-five dollar increase paid as part of an individual's
4 weekly benefit amount as provided in RCW 50.20.1201 and the twenty-five
5 dollar increase paid as part of an individual's weekly benefit amount
6 as provided in RCW 50.20.1202 shall not be charged to the experience
7 rating account of any contribution paying employer.

8 (h) With respect to claims where the minimum amount payable weekly
9 is increased to one hundred fifty-five dollars pursuant to RCW
10 50.20.1201(3), benefits paid that exceed the benefits that would have
11 been paid if the minimum amount payable weekly had been calculated
12 pursuant to RCW 50.20.120 shall not be charged to the experience rating
13 account of any contribution paying employer.

14 (i) Upon approval of an individual's training benefits plan
15 submitted in accordance with RCW 50.22.155(2), an individual is
16 considered enrolled in training, and regular benefits beginning with
17 the week of approval shall not be charged to the experience rating
18 account of any contribution paying employer.

19 (j) Training benefits paid to an individual under RCW 50.22.155
20 shall not be charged to the experience rating account of any
21 contribution paying employer.

22 (4)(a) A contribution paying base year employer, except employers
23 as provided in subsection (6) of this section, not otherwise eligible
24 for relief of charges for benefits under this section, may receive such
25 relief if the benefit charges result from payment to an individual who:

26 (i) Last left the employ of such employer voluntarily for reasons
27 not attributable to the employer;

28 (ii) Was discharged for misconduct or gross misconduct connected
29 with his or her work not a result of inability to meet the minimum job
30 requirements;

31 (iii) Is unemployed as a result of closure or severe curtailment of
32 operation at the employer's plant, building, worksite, or other
33 facility. This closure must be for reasons directly attributable to a
34 catastrophic occurrence such as fire, flood, or other natural disaster;

35 (iv) Continues to be employed on a regularly scheduled permanent
36 part-time basis by a base year employer and who at some time during the
37 base year was concurrently employed and subsequently separated from at
38 least one other base year employer. Benefit charge relief ceases when

1 the employment relationship between the employer requesting relief and
2 the claimant is terminated. This subsection does not apply to shared
3 work employers under chapter (~~50.06~~~~[50.60]~~) 50.60 RCW; or

4 (v) Was hired to replace an employee who is a member of the
5 military reserves or National Guard and was called to federal active
6 military service by the president of the United States and is
7 subsequently laid off when that employee is reemployed by their
8 employer upon release from active duty within the time provided for
9 reemployment in RCW 73.16.035.

10 (b) The employer requesting relief of charges under this subsection
11 must request relief in writing within thirty days following mailing to
12 the last known address of the notification of the valid initial
13 determination of such claim, stating the date and reason for the
14 separation or the circumstances of continued employment. The
15 commissioner, upon investigation of the request, shall determine
16 whether relief should be granted.

17 (5) When a benefit claim becomes invalid due to an amendment or
18 adjustment of a report where the employer failed to report or
19 inaccurately reported hours worked or remuneration paid, or both, all
20 benefits paid will be charged to the experience rating account of the
21 contribution paying employer or employers that originally filed the
22 incomplete or inaccurate report or reports. An employer who reimburses
23 the trust fund for benefits paid to workers and who fails to report or
24 inaccurately reported hours worked or remuneration paid, or both, shall
25 reimburse the trust fund for all benefits paid that are based on the
26 originally filed incomplete or inaccurate report or reports.

27 (6) An employer's experience rating account may not be relieved of
28 charges for a benefit payment and an employer who reimburses the trust
29 fund for benefit payments may not be credited for a benefit payment if
30 a benefit payment was made because the employer or employer's agent
31 failed to respond timely or adequately to a written request of the
32 department for information relating to the claim or claims without
33 establishing good cause for the failure and the employer or employer's
34 agent has a pattern of such failures. The commissioner has the
35 authority to determine whether the employer has good cause under this
36 subsection.

37 (a) For the purposes of this subsection, "adequately" means

1 providing accurate information of sufficient quantity and quality that
2 would allow a reasonable person to determine eligibility for benefits.

3 (b)(i) For the purposes of this subsection, "pattern" means a
4 benefit payment was made because the employer or employer's agent
5 failed to respond timely or adequately to a written request of the
6 department for information relating to a claim or claims without
7 establishing good cause for the failure, if the greater of the
8 following calculations for an employer is met:

9 (A) At least three times in the previous two years; or

10 (B) Twenty percent of the total current claims against the
11 employer.

12 (ii) If an employer's agent is utilized, a pattern is established
13 based on each individual client employer that the employer's agent
14 represents.

15 **Sec. 4.** RCW 50.20.190 and 2011 c 301 s 17 are each amended to read
16 as follows:

17 (1) An individual who is paid any amount as benefits under this
18 title to which he or she is not entitled shall, unless otherwise
19 relieved pursuant to this section, be liable for repayment of the
20 amount overpaid. The department shall issue an overpayment assessment
21 setting forth the reasons for and the amount of the overpayment. The
22 amount assessed, to the extent not collected, may be deducted from any
23 future benefits payable to the individual: PROVIDED, That in the
24 absence of a back pay award, a settlement affecting the allowance of
25 benefits, fraud, misrepresentation, or willful nondisclosure, every
26 determination of liability shall be mailed or personally served not
27 later than two years after the close of or final payment made on the
28 individual's applicable benefit year for which the purported
29 overpayment was made, whichever is later, unless the merits of the
30 claim are subjected to administrative or judicial review in which event
31 the period for serving the determination of liability shall be extended
32 to allow service of the determination of liability during the six-month
33 period following the final decision affecting the claim.

34 (2) The commissioner may waive an overpayment if the commissioner
35 finds that the overpayment was not the result of fraud,
36 misrepresentation, willful nondisclosure, or fault attributable to the
37 individual and that the recovery thereof would be against equity and

1 good conscience(~~(:—PROVIDED, HOWEVER, That the)~~). When determining
2 whether the recovery would be against equity and good conscience, the
3 department must consider whether the employer or employer's agent
4 failed to respond timely and adequately to a written request of the
5 department for information relating to the claim or claims without
6 establishing good cause for the failure pursuant to RCW 50.29.021(6).
7 An overpayment ((~~so~~)) waived under this subsection shall be charged
8 against the individual's applicable entitlement for the eligibility
9 period containing the weeks to which the overpayment was attributed as
10 though such benefits had been properly paid.

11 (3) Any assessment herein provided shall constitute a determination
12 of liability from which an appeal may be had in the same manner and to
13 the same extent as provided for appeals relating to determinations in
14 respect to claims for benefits: PROVIDED, That an appeal from any
15 determination covering overpayment only shall be deemed to be an appeal
16 from the determination which was the basis for establishing the
17 overpayment unless the merits involved in the issue set forth in such
18 determination have already been heard and passed upon by the appeal
19 tribunal. If no such appeal is taken to the appeal tribunal by the
20 individual within thirty days of the delivery of the notice of
21 determination of liability, or within thirty days of the mailing of the
22 notice of determination, whichever is the earlier, the determination of
23 liability shall be deemed conclusive and final. Whenever any such
24 notice of determination of liability becomes conclusive and final, the
25 commissioner, upon giving at least twenty days' notice, using a method
26 by which the mailing can be tracked or the delivery can be confirmed,
27 may file with the superior court clerk of any county within the state
28 a warrant in the amount of the notice of determination of liability
29 plus a filing fee under RCW 36.18.012(10). The clerk of the county
30 where the warrant is filed shall immediately designate a superior court
31 cause number for the warrant, and the clerk shall cause to be entered
32 in the judgment docket under the superior court cause number assigned
33 to the warrant, the name of the person(s) mentioned in the warrant, the
34 amount of the notice of determination of liability, and the date when
35 the warrant was filed. The amount of the warrant as docketed shall
36 become a lien upon the title to, and any interest in, all real and
37 personal property of the person(s) against whom the warrant is issued,
38 the same as a judgment in a civil case duly docketed in the office of

1 such clerk. A warrant so docketed shall be sufficient to support the
2 issuance of writs of execution and writs of garnishment in favor of the
3 state in the manner provided by law for a civil judgment. A copy of
4 the warrant shall be mailed within five days of its filing with the
5 clerk to the person(s) mentioned in the warrant using a method by which
6 the mailing can be tracked or the delivery can be confirmed.

7 (4) On request of any agency which administers an employment
8 security law of another state, the United States, or a foreign
9 government and which has found in accordance with the provisions of
10 such law that a claimant is liable to repay benefits received under
11 such law, the commissioner may collect the amount of such benefits from
12 the claimant to be refunded to the agency. In any case in which under
13 this section a claimant is liable to repay any amount to the agency of
14 another state, the United States, or a foreign government, such amounts
15 may be collected without interest by civil action in the name of the
16 commissioner acting as agent for such agency if the other state, the
17 United States, or the foreign government extends such collection rights
18 to the employment security department of the state of Washington, and
19 provided that the court costs be paid by the governmental agency
20 benefiting from such collection.

21 (5) Any employer who is a party to a back pay award or settlement
22 due to loss of wages shall, within thirty days of the award or
23 settlement, report to the department the amount of the award or
24 settlement, the name and social security number of the recipient of the
25 award or settlement, and the period for which it is awarded. When an
26 individual has been awarded or receives back pay, for benefit purposes
27 the amount of the back pay shall constitute wages paid in the period
28 for which it was awarded. For contribution purposes, the back pay
29 award or settlement shall constitute wages paid in the period in which
30 it was actually paid. The following requirements shall also apply:

31 (a) The employer shall reduce the amount of the back pay award or
32 settlement by an amount determined by the department based upon the
33 amount of unemployment benefits received by the recipient of the award
34 or settlement during the period for which the back pay award or
35 settlement was awarded;

36 (b) The employer shall pay to the unemployment compensation fund,
37 in a manner specified by the commissioner, an amount equal to the
38 amount of such reduction;

1 (c) The employer shall also pay to the department any taxes due for
2 unemployment insurance purposes on the entire amount of the back pay
3 award or settlement notwithstanding any reduction made pursuant to (a)
4 of this subsection;

5 (d) If the employer fails to reduce the amount of the back pay
6 award or settlement as required in (a) of this subsection, the
7 department shall issue an overpayment assessment against the recipient
8 of the award or settlement in the amount that the back pay award or
9 settlement should have been reduced; and

10 (e) If the employer fails to pay to the department an amount equal
11 to the reduction as required in (b) of this subsection, the department
12 shall issue an assessment of liability against the employer which shall
13 be collected pursuant to the procedures for collection of assessments
14 provided herein and in RCW 50.24.110.

15 (6) When an individual fails to repay an overpayment assessment
16 that is due and fails to arrange for satisfactory repayment terms, the
17 commissioner shall impose an interest penalty of one percent per month
18 of the outstanding balance. Interest shall accrue immediately on
19 overpayments assessed pursuant to RCW 50.20.070 and shall be imposed
20 when the assessment becomes final. For any other overpayment, interest
21 shall accrue when the individual has missed two or more of the
22 individual's monthly payments either partially or in full.

23 (7) The department shall: (a) Conduct social security number
24 cross-match audits or engage in other more effective activities that
25 ensure that individuals are entitled to all amounts of benefits that
26 they are paid; and (b) engage in other detection and recovery of
27 overpayment and collection activities.

28 NEW SECTION. **Sec. 5.** If any part of this act is found to be in
29 conflict with federal requirements that are a prescribed condition to
30 the allocation of federal funds to the state or the eligibility of
31 employers in this state for federal unemployment tax credits, the
32 conflicting part of this act is inoperative solely to the extent of the
33 conflict, and the finding or determination does not affect the
34 operation of the remainder of this act. Rules adopted under this act
35 must meet federal requirements that are a necessary condition to the
36 receipt of federal funds by the state or the granting of federal
37 unemployment tax credits to employers in this state.

1 NEW SECTION. **Sec. 6.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

5 NEW SECTION. **Sec. 7.** This act takes effect October 20, 2013."

6 Correct the title.

EFFECT: Adds a provision requiring the Commissioner of the
Employment Security Department (Commissioner), when determining whether
recovery of an overpayment would be against equity and good conscience,
to consider whether the employer or employer's agent failed to respond
timely and adequately to an information request relating to the claim
without good cause for the failure.

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