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**SENATE BILL 5316**

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**State of Washington**

**57th Legislature**

**2001 Regular Session**

**By** Senators Prentice and Winsley; by request of Employment Security Department

Read first time 01/18/2001. Referred to Committee on Labor, Commerce & Financial Institutions.

1 AN ACT Relating to reasonable assurance of employment for  
2 employees of educational institutions; amending RCW 50.44.053 and  
3 50.44.080; adding a new section to chapter 50.44 RCW; creating new  
4 sections; and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 50.44  
7 RCW to read as follows:

8 The legislature finds the interests of the state and its  
9 citizens are best served by a strong community and technical  
10 college system. As described by their establishing legislation,  
11 these two-year institutions are an independent, unique, and vital  
12 section of our state's higher education system, separate from both  
13 the common school system and other institutions of higher  
14 education. Paramount to that system's success is the attraction  
15 and retention of qualified instructors. In order to attract and  
16 retain instructors, those who are subject to uncertainties of  
17 employment must be provided assurance their economic needs are  
18 addressed. Over time, a change in hiring patterns has occurred, and

1 for the last decade a substantial portion of community and  
2 technical college faculty are hired on a contingent, as needed,  
3 basis. That contingent nature distinguishes them from the more  
4 stable, majority employment found in the common school system and  
5 in the other institutions of higher education. Contingent  
6 assurances of future employment are often speculative and do not  
7 rise to the level of other forms of assurance. As such, assurances  
8 conditioned on forecast enrollment, funding, or program decisions  
9 are typically not reasonable assurances of employment.

10 It is the intent of the legislature that reasonable assurance  
11 continue to apply to all employees of educational institutions as  
12 required by federal provisions and RCW 50.44.080.

13 **Sec. 2.** RCW 50.44.053 and 1998 c 233 s 3 are each amended to read  
14 as follows:

15 (1) The term "reasonable assurance," as used in RCW 50.44.050,  
16 means a written, verbal, or implied agreement that the employee  
17 will perform services in the same capacity during the ensuing  
18 academic year or term as in the first academic year or term. A  
19 person shall not be deemed to be performing services "in the same  
20 capacity" unless those services are rendered under the same terms  
21 or conditions of employment in the ensuing year as in the first  
22 academic year or term.

23 (2) An individual who is tenured or holds tenure track status  
24 is considered to have reasonable assurance, unless advised  
25 otherwise by the college. For the purposes of this section, tenure  
26 track status means a probationary faculty employee having an  
27 opportunity to be reviewed for tenure.

28 (3) In the case of community and technical colleges assigned  
29 the standard industrial classification code 8222 or the north  
30 American industry classification system code 611210 for services  
31 performed in a principal administrative, research, or  
32 instructional capacity, a person is presumed not to have  
33 reasonable assurance under an offer that is conditioned on  
34 enrollment, funding, or program changes. It is the college's  
35 burden to provide sufficient documentation to overcome this  
36 presumption. Reasonable assurance must be determined on a case-by-  
37 case basis by the total weight of evidence rather than the

1 existence of any one factor. Primary weight must be given to the  
2 contingent nature of an offer of employment based on enrollment,  
3 funding, and program changes.

4 **Sec. 3.** RCW 50.44.080 and 1971 c 3 s 25 are each amended to read  
5 as follows:

6 (~~RCW 50.44.010 through 50.44.070 have been enacted to meet the~~  
7 ~~requirements imposed by the federal unemployment tax act as~~  
8 ~~amended by 91-373. Internal references in any section of chapter 3,~~  
9 ~~Laws of 1971 to the provisions of that act are intended only to~~  
10 ~~apply to those provisions as they existed as of January 28,~~  
11 ~~1971.))~~

12 In view of the importance of compliance of this chapter ((~~3,~~  
13 ~~Laws of 1971~~)) with the federal unemployment tax act, any  
14 ambiguities contained herein should be resolved in a manner  
15 consistent with the provisions of that act. (~~Considerable weight~~  
16 ~~has been given to the commentary contained in that document~~  
17 ~~entitled "Draft Legislation to Implement the Employment Security~~  
18 ~~Amendments of 1970 . . . H.R. 14705", published by the United States~~  
19 ~~Department of Labor, Manpower Administration, and that commentary~~  
20 ~~should be referred to when interpreting the provisions of chapter~~  
21 ~~3, Laws of 1971.)) Department of labor guidelines implementing  
22 this act should be referred to when interpreting the provisions of  
23 this chapter.~~

24 Language in this chapter ((~~3, Laws of 1971~~)) concerning the  
25 extension of coverage to employers entitled to make payments in  
26 lieu of contributions should, in a manner consistent with the  
27 foregoing paragraph, be construed so as to have a minimum  
28 financial impact on the employers subject to the experience rating  
29 provisions of this title.

30 NEW SECTION. **Sec. 4.** If any part of this act is found to be in  
31 conflict with federal requirements that are a prescribed condition  
32 to the allocation of federal funds to the state or the eligibility  
33 of employers in this state for federal unemployment tax credits,  
34 the conflicting part of this act is inoperative solely to the  
35 extent of the conflict, and the finding or determination does not  
36 affect the operation of the remainder of this act. Rules adopted

1 under this act must meet federal requirements that are a necessary  
2 condition to the receipt of federal funds by the state or the  
3 granting of federal unemployment tax credits to employers in this  
4 state.

5 NEW SECTION. **Sec. 5.** If any provision of this act or its  
6 application to any person or circumstance is held invalid, the  
7 remainder of the act or the application of the provision to other  
8 persons or circumstances is not affected.

9 NEW SECTION. **Sec. 6.** This act applies to weeks that begin after  
10 March 31, 2001.

11 NEW SECTION. **Sec. 7.** This act is necessary for the immediate  
12 preservation of the public peace, health, or safety, or support of  
13 the state government and its existing public institutions, and  
14 takes effect immediately.

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