

SB 6097 - S AMD
By Senator

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

3 "Sec. 1. RCW 50.01.010 and 1945 c 35 s 2 are each amended to read as
4 follows:

5 Whereas, economic insecurity due to unemployment is a serious
6 menace to the health, morals and welfare of the people of this state;
7 involuntary unemployment is, therefore, a subject of general interest
8 and concern which requires appropriate action by the legislature to
9 prevent its spread and to lighten its burden which now so often falls
10 with crushing force upon the unemployed worker and his family. Social
11 security requires protection against this greatest hazard of our
12 economic life. This can be provided only by application of the
13 insurance principle of sharing the risks, and by the systematic
14 accumulation of funds during periods of employment to provide benefits
15 for periods of unemployment, thus maintaining purchasing powers and
16 limiting the serious social consequences of relief assistance. The
17 state of Washington, therefore, exercising herein its police and
18 sovereign power endeavors by this title to remedy any widespread
19 unemployment situation which may occur and to set up safeguards to
20 prevent its recurrence in the years to come. The legislature,
21 therefore, declares that in its considered judgment the public good,
22 and the general welfare of the citizens of this state require the
23 enactment of this measure, under the police powers of the state, for
24 the compulsory setting aside of unemployment reserves to be used for
25 the benefit of persons unemployed through no fault of their own(~~(, and~~
26 ~~that this title shall be liberally construed for the purpose of~~
27 ~~reducing involuntary unemployment and the suffering caused thereby to~~
28 ~~the minimum))).~~

29 **PART I - UNEMPLOYMENT ELIGIBILITY AND COMPENSATION**

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 50.04 RCW
2 to read as follows:

3 After December 31, 2003, the term "wages" does not include an
4 employee's income attributable to the transfer of shares of stock to
5 the employee pursuant to his or her exercise of a stock option granted
6 for any reason connected with his or her employment.

7 **Sec. 3.** RCW 50.20.010 and 1995 c 381 s 1 are each amended to read
8 as follows:

9 (1) An unemployed individual shall be eligible to receive waiting
10 period credits or benefits with respect to any week in his or her
11 eligibility period only if the commissioner finds that:

12 (~~(1)~~) (a) He or she has registered for work at, and thereafter
13 has continued to report at, an employment office in accordance with
14 such regulation as the commissioner may prescribe, except that the
15 commissioner may by regulation waive or alter either or both of the
16 requirements of this subdivision as to individuals attached to regular
17 jobs and as to such other types of cases or situations with respect to
18 which the commissioner finds that the compliance with such requirements
19 would be oppressive, or would be inconsistent with the purposes of this
20 title;

21 (~~(2)~~) (b) He or she has filed an application for an initial
22 determination and made a claim for waiting period credit or for
23 benefits in accordance with the provisions of this title;

24 (~~(3)~~) (c) He or she is able to work, and is available for work in
25 any trade, occupation, profession, or business for which he or she is
26 reasonably fitted.

27 (i) With respect to claims that have an effective date before
28 January 4, 2004, to be available for work an individual must be ready,
29 able, and willing, immediately to accept any suitable work which may be
30 offered to him or her and must be actively seeking work pursuant to
31 customary trade practices and through other methods when so directed by
32 the commissioner or the commissioner's agents.

33 (ii) With respect to claims that have an effective date on or after
34 January 4, 2004, to be available for work an individual must be ready,
35 able, and willing, immediately to accept any suitable work which may be
36 offered to him or her and must be actively seeking work pursuant to
37 customary trade practices and through other methods when so directed by
38 the commissioner or the commissioner's agents. If a labor agreement or

1 dispatch rules apply, customary trade practices must be in accordance
2 with the applicable agreement or rules;

3 ((+4)) (d) He or she has been unemployed for a waiting period of
4 one week;

5 ((+5)) (e) He or she participates in reemployment services if the
6 individual has been referred to reemployment services pursuant to the
7 profiling system established by the commissioner under RCW 50.20.011,
8 unless the commissioner determines that:

9 ((+a)) (i) The individual has completed such services; or

10 ((+b)) (ii) There is justifiable cause for the claimant's failure
11 to participate in such services; and

12 ((+6)) (f) As to weeks beginning after March 31, 1981, which fall
13 within an extended benefit period as defined in RCW 50.22.010, the
14 individual meets the terms and conditions of RCW 50.22.020 with respect
15 to benefits claimed in excess of twenty-six times the individual's
16 weekly benefit amount.

17 (2) An individual's eligibility period for regular benefits shall
18 be coincident to his or her established benefit year. An individual's
19 eligibility period for additional or extended benefits shall be the
20 periods prescribed elsewhere in this title for such benefits.

21 **Sec. 4.** RCW 50.20.050 and 2002 c 8 s 1 are each amended to read as
22 follows:

23 (1) With respect to claims that have an effective date before
24 January 4, 2004:

25 (a) An individual shall be disqualified from benefits beginning
26 with the first day of the calendar week in which he or she has left
27 work voluntarily without good cause and thereafter for seven calendar
28 weeks and until he or she has obtained bona fide work in employment
29 covered by this title and earned wages in that employment equal to
30 seven times his or her weekly benefit amount.

31 The disqualification shall continue if the work obtained is a mere
32 sham to qualify for benefits and is not bona fide work. In determining
33 whether work is of a bona fide nature, the commissioner shall consider
34 factors including but not limited to the following:

35 ((+a)) (i) The duration of the work;

36 ((+b)) (ii) The extent of direction and control by the employer
37 over the work; and

1 ~~((c))~~ (iii) The level of skill required for the work in light of
2 the individual's training and experience.

3 ~~((2))~~ (b) An individual shall not be considered to have left work
4 voluntarily without good cause when:

5 ~~((a))~~ (i) He or she has left work to accept a bona fide offer of
6 bona fide work as described in ~~((subsection—(1)))~~ (a) of this
7 ~~((section))~~ subsection;

8 ~~((b))~~ (ii) The separation was because of the illness or
9 disability of the claimant or the death, illness, or disability of a
10 member of the claimant's immediate family if the claimant took all
11 reasonable precautions, in accordance with any regulations that the
12 commissioner may prescribe, to protect his or her employment status by
13 having promptly notified the employer of the reason for the absence and
14 by having promptly requested reemployment when again able to assume
15 employment: PROVIDED, That these precautions need not have been taken
16 when they would have been a futile act, including those instances when
17 the futility of the act was a result of a recognized labor/management
18 dispatch system;

19 ~~((c))~~ (iii) He or she has left work to relocate for the spouse's
20 employment that is due to an employer-initiated mandatory transfer that
21 is outside the existing labor market area if the claimant remained
22 employed as long as was reasonable prior to the move; or

23 ~~((d))~~ (iv) The separation was necessary to protect the claimant
24 or the claimant's immediate family members from domestic violence, as
25 defined in RCW 26.50.010, or stalking, as defined in RCW 9A.46.110.

26 ~~((3))~~ (c) In determining under this ~~((section))~~ subsection
27 whether an individual has left work voluntarily without good cause, the
28 commissioner shall only consider work-connected factors such as the
29 degree of risk involved to the individual's health, safety, and morals,
30 the individual's physical fitness for the work, the individual's
31 ability to perform the work, and such other work connected factors as
32 the commissioner may deem pertinent, including state and national
33 emergencies. Good cause shall not be established for voluntarily
34 leaving work because of its distance from an individual's residence
35 where the distance was known to the individual at the time he or she
36 accepted the employment and where, in the judgment of the department,
37 the distance is customarily traveled by workers in the individual's job
38 classification and labor market, nor because of any other significant
39 work factor which was generally known and present at the time he or she

1 accepted employment, unless the related circumstances have so changed
2 as to amount to a substantial involuntary deterioration of the work
3 factor or unless the commissioner determines that other related
4 circumstances would work an unreasonable hardship on the individual
5 were he or she required to continue in the employment.

6 ~~((+4))~~ (d) Subsection~~((s))~~ (1)(a) and ~~((+3))~~ (c) of this section
7 shall not apply to an individual whose marital status or domestic
8 responsibilities cause him or her to leave employment. Such an
9 individual shall not be eligible for unemployment insurance benefits
10 beginning with the first day of the calendar week in which he or she
11 left work and thereafter for seven calendar weeks and until he or she
12 has requalified, either by obtaining bona fide work in employment
13 covered by this title and earning wages in that employment equal to
14 seven times his or her weekly benefit amount or by reporting in person
15 to the department during ten different calendar weeks and certifying on
16 each occasion that he or she is ready, able, and willing to immediately
17 accept any suitable work which may be offered, is actively seeking work
18 pursuant to customary trade practices, and is utilizing such employment
19 counseling and placement services as are available through the
20 department. This subsection does not apply to individuals covered by
21 ~~((subsection (2)(b) or (c) of this section))~~ (b)(ii) or (iii) of this
22 subsection.

23 (2) With respect to claims that have an effective date on or after
24 January 4, 2004:

25 (a) An individual shall be disqualified from benefits beginning
26 with the first day of the calendar week in which he or she has left
27 work voluntarily without good cause and thereafter for seven calendar
28 weeks and until he or she has obtained bona fide work in employment
29 covered by this title and earned wages in that employment equal to
30 seven times his or her weekly benefit amount.

31 The disqualification shall continue if the work obtained is a mere
32 sham to qualify for benefits and is not bona fide work. In determining
33 whether work is of a bona fide nature, the commissioner shall consider
34 factors including but not limited to the following:

35 (i) The duration of the work;

36 (ii) The extent of direction and control by the employer over the
37 work; and

38 (iii) The level of skill required for the work in light of the
39 individual's training and experience.

1 (b) An individual is not disqualified from benefits under (a) of
2 this subsection when:

3 (i) He or she has left work to accept a bona fide offer of bona
4 fide work as described in (a) of this subsection;

5 (ii) The separation was necessary because of the illness or
6 disability of the claimant or the death, illness, or disability of a
7 member of the claimant's immediate family if:

8 (A) The claimant pursued all reasonable alternatives to preserve
9 his or her employment status by requesting a leave of absence, by
10 having promptly notified the employer of the reason for the absence,
11 and by having promptly requested reemployment when again able to assume
12 employment. These alternatives need not be pursued, however, when they
13 would have been a futile act, including those instances when the
14 futility of the act was a result of a recognized labor/management
15 dispatch system; and

16 (B) The claimant terminated his or her employment status, and is
17 not entitled to be reinstated to the same position or a comparable or
18 similar position;

19 (iii) He or she has left work to relocate for the spouse's
20 employment that is due to an employer-initiated mandatory transfer that
21 is outside the existing labor market area if the claimant remained
22 employed as long as was reasonable prior to the move;

23 (iv) The separation was necessary to protect the claimant or the
24 claimant's immediate family members from domestic violence, as defined
25 in RCW 26.50.010, or stalking, as defined in RCW 9A.46.110;

26 (v) The individual's usual compensation was reduced by twenty-five
27 percent or more;

28 (vi) The individual's usual hours were reduced by twenty-five
29 percent or more;

30 (vii) The individual's worksite changed, such change caused a
31 material increase in distance or difficulty of travel, and, after the
32 change, the commute was greater than is customary for workers in the
33 individual's job classification and labor market;

34 (viii) The individual's worksite safety deteriorated, the
35 individual reported such safety deterioration to the employer, and the
36 employer failed to correct the hazards within a reasonable period of
37 time;

38 (ix) The individual left work because of illegal activities in the
39 individual's worksite, the individual reported such activities to the

1 employer, and the employer failed to end such activities within a
2 reasonable period of time; or

3 (x) The individual's usual work was changed to work that violates
4 the individual's religious convictions or sincere moral beliefs.

5 **Sec. 5.** RCW 50.04.293 and 1993 c 483 s 1 are each amended to read
6 as follows:

7 With respect to claims that have an effective date before January
8 4, 2004, "misconduct" means an employee's act or failure to act in
9 willful disregard of his or her employer's interest where the effect of
10 the employee's act or failure to act is to harm the employer's
11 business.

12 **NEW SECTION. Sec. 6.** A new section is added to chapter 50.04 RCW
13 to read as follows:

14 With respect to claims that have an effective date on or after
15 January 4, 2004:

16 (1) "Misconduct" includes, but is not limited to, the following
17 conduct by a claimant:

18 (a) Willful or wanton disregard of the rights, title, and interests
19 of the employer or a fellow employee;

20 (b) Deliberate violations or disregard of standards of behavior
21 which the employer has the right to expect of an employee;

22 (c) Carelessness or negligence that causes or would likely cause
23 serious bodily harm to the employer or a fellow employee; or

24 (d) Carelessness or negligence of such degree or recurrence to show
25 an intentional or substantial disregard of the employer's interest.

26 (2) The following acts are considered misconduct because the acts
27 signify a willful or wanton disregard of the rights, title, and
28 interests of the employer or a fellow employee. These acts include,
29 but are not limited to:

30 (a) Insubordination showing a deliberate, willful, or purposeful
31 refusal to follow the reasonable directions or instructions of the
32 employer;

33 (b) Repeated inexcusable tardiness following warnings by the
34 employer;

35 (c) Dishonesty related to employment, including but not limited to
36 deliberate falsification of company records, theft, deliberate
37 deception, or lying;

1 (d) Repeated and inexcusable absences, including absences for which
2 the employee was able to give advance notice and failed to do so;

3 (e) Deliberate acts that are illegal, provoke violence or violation
4 of laws, or violate the collective bargaining agreement. However, an
5 employee who engages in lawful union activity may not be disqualified
6 due to misconduct;

7 (f) Violation of a company rule if the rule is reasonable and if
8 the claimant knew or should have known of the existence of the rule; or

9 (g) Violations of law by the claimant while acting within the scope
10 of employment that substantially affect the claimant's job performance
11 or that substantially harm the employer's ability to do business.

12 (3) "Misconduct" does not include:

13 (a) Inefficiency, unsatisfactory conduct, or failure to perform
14 well as the result of inability or incapacity;

15 (b) Inadvertence or ordinary negligence in isolated instances; or

16 (c) Good faith errors in judgment or discretion.

17 (4) "Gross misconduct" means a criminal act in connection with an
18 individual's work for which the individual has been convicted in a
19 criminal court, or has admitted committing, or conduct connected with
20 the individual's work that demonstrates a flagrant and wanton disregard
21 of and for the rights, title, or interest of the employer or a fellow
22 employee.

23 **Sec. 7.** RCW 50.20.060 and 2000 c 2 s 13 are each amended to read
24 as follows:

25 With respect to claims that have an effective date before January
26 4, 2004, an individual shall be disqualified from benefits beginning
27 with the first day of the calendar week in which he or she has been
28 discharged or suspended for misconduct connected with his or her work
29 and thereafter for seven calendar weeks and until he or she has
30 obtained bona fide work in employment covered by this title and earned
31 wages in that employment equal to seven times his or her weekly benefit
32 amount. Alcoholism shall not constitute a defense to disqualification
33 from benefits due to misconduct.

34 **Sec. 8.** RCW 50.20.065 and 1993 c 483 s 11 are each amended to read
35 as follows:

36 With respect to claims that have an effective date before January
37 4, 2004:

1 (1) An individual who has been discharged from his or her work
2 because of a felony or gross misdemeanor of which he or she has been
3 convicted, or has admitted committing to a competent authority, and
4 that is connected with his or her work shall have all hourly wage
5 credits based on that employment canceled.

6 (2) The employer shall notify the department of such an admission
7 or conviction, not later than six months following the admission or
8 conviction.

9 (3) The claimant shall disclose any conviction of the claimant of
10 a work-connected felony or gross misdemeanor occurring in the previous
11 two years to the department at the time of application for benefits.

12 (4) All benefits that are paid in error based on wage/hour credits
13 that should have been removed from the claimant's base year are
14 recoverable, notwithstanding RCW 50.20.190 or 50.24.020 or any other
15 provisions of this title.

16 NEW SECTION. **Sec. 9.** A new section is added to chapter 50.20 RCW
17 to read as follows:

18 With respect to claims that have an effective date on or after
19 January 4, 2004:

20 (1) An individual shall be disqualified from benefits beginning
21 with the first day of the calendar week in which he or she has been
22 discharged or suspended for misconduct connected with his or her work
23 and thereafter for ten calendar weeks and until he or she has obtained
24 bona fide work in employment covered by this title and earned wages in
25 that employment equal to ten times his or her weekly benefit amount.
26 Alcoholism shall not constitute a defense to disqualification from
27 benefits due to misconduct.

28 (2) An individual who has been discharged from his or her work
29 because of gross misconduct shall have all hourly wage credits based on
30 that employment or six hundred eighty hours of wage credits, whichever
31 is greater, canceled.

32 (3) The employer shall notify the department of a felony or gross
33 misdemeanor of which an individual has been convicted, or has admitted
34 committing to a competent authority, not later than six months
35 following the admission or conviction.

36 (4) The claimant shall disclose any conviction of the claimant of
37 a work-connected felony or gross misdemeanor occurring in the previous
38 two years to the department at the time of application for benefits.

1 (5) All benefits that are paid in error based on this section are
2 recoverable, notwithstanding RCW 50.20.190 or 50.24.020 or any other
3 provisions of this title.

4 **Sec. 10.** RCW 50.20.240 and 2002 c 8 s 3 are each amended to read
5 as follows:

6 (1)(a) To ensure that following the initial application for
7 benefits, an individual is actively engaged in searching for work,
8 (~~effective July 1, 1999,~~) the employment security department shall
9 implement a job search monitoring program. Effective January 4, 2004,
10 the department shall contract with employment security agencies in
11 other states to ensure that individuals residing in those states and
12 receiving benefits under this title are actively engaged in searching
13 for work in accordance with the requirements of this section. The
14 department may use interactive voice technology and other electronic
15 means to ensure that individuals are subject to comparable job search
16 monitoring, regardless of whether they reside in Washington or
17 elsewhere.

18 (b) Except for those individuals with employer attachment or union
19 referral, individuals who qualify for unemployment compensation under
20 RCW 50.20.050(~~(2)(d)~~) (1)(b)(iii) or (2)(b)(v), as applicable, and
21 individuals in commissioner-approved training, an individual who has
22 received five or more weeks of benefits under this title, regardless of
23 whether the individual resides in Washington or elsewhere, must provide
24 evidence of seeking work, as directed by the commissioner or the
25 commissioner's agents, for each week beyond five in which a claim is
26 filed. With regard to claims with an effective date before January 4,
27 2004, the evidence must demonstrate contacts with at least three
28 employers per week or documented in-person job search activity at the
29 local reemployment center. With regard to claims with an effective
30 date on or after January 4, 2004, the evidence must demonstrate
31 contacts with at least three employers per week or documented in-person
32 job search activities at the local reemployment center at least three
33 times per week.

34 (c) In developing the requirements for the job search monitoring
35 program, the commissioner or the commissioner's agents shall utilize an
36 existing advisory committee having equal representation of employers
37 and workers.

1 (2) Effective January 4, 2004, an individual who fails to comply
2 fully with the requirements for actively seeking work under RCW
3 50.20.010 shall lose all benefits for all weeks during which the
4 individual was not in compliance, and the individual shall be liable
5 for repayment of all such benefits under RCW 50.20.190.

6 **Sec. 11.** RCW 50.20.120 and 2002 c 149 s 4 are each amended to read
7 as follows:

8 (1) (a) For claims with an effective date before January 4, 2004,
9 subject to the other provisions of this title, benefits shall be
10 payable to any eligible individual during the individual's benefit year
11 in a maximum amount equal to the lesser of thirty times the weekly
12 benefit amount (~~((determined hereinafter))~~), as determined in
13 subsection (2) of this section, or one-third of the individual's base
14 year wages under this title: PROVIDED, That as to any week (~~((beginning~~
15 on and after March 31, 1981,)) which falls in an extended benefit
16 period as defined in RCW 50.22.010(1), (~~((as now or hereafter amended,))~~)
17 an individual's eligibility for maximum benefits in excess of twenty-
18 six times his or her weekly benefit amount will be subject to the terms
19 and conditions set forth in RCW 50.22.020(~~(, as now or hereafter~~
20 amended)).

21 (b) With respect to claims that have an effective date on or after
22 January 4, 2004, benefits shall be payable to any eligible individual
23 during the individual's benefit year in a maximum amount equal to the
24 lesser of twenty-six times the weekly benefit amount, as determined in
25 subsection (2) of this section, or one-third of the individual's base
26 year wages under this title.

27 (2)(a) For claims with an effective date before January 4, 2004, an
28 individual's weekly benefit amount shall be an amount equal to one
29 twenty-fifth of the average quarterly wages of the individual's total
30 wages during the two quarters of the individual's base year in which
31 such total wages were highest.

32 (b) With respect to claims that have an effective date on or after
33 January 4, 2004, an individual's weekly benefit amount shall be an
34 amount equal to three and nine-tenths percent of the average quarterly
35 wages of the individual's total wages during the two quarters of the
36 individual's base year in which such total wages were highest.

37 (3) The maximum and minimum amounts payable weekly shall be
38 determined as of each June 30th to apply to benefit years beginning in

1 the twelve-month period immediately following such June 30th. (~~Except~~
2 ~~as provided in RCW 50.20.125,~~)

3 (a)(i) With respect to claims that have an effective date on or
4 after January 4, 2004, and before January 4, 2009, the maximum amount
5 payable weekly shall be ((seventy percent of the "average weekly wage"
6 for the calendar year preceding such June 30th))four hundred ninety-six
7 dollars.

8 (ii) With respect to claims that have an effective date on or after
9 January 4, 2009, the maximum amount payable weekly shall be four
10 hundred ninety-six dollars or sixty-three percent of the "average
11 weekly wage" for the calendar year preceding such June 30th, whichever
12 is greater.

13 (b) The minimum amount payable weekly shall be fifteen percent of
14 the "average weekly wage" for the calendar year preceding such June
15 30th.

16 (4) If any weekly benefit, maximum benefit, or minimum benefit
17 amount computed herein is not a multiple of one dollar, it shall be
18 reduced to the next lower multiple of one dollar.

19 **Sec. 12.** RCW 50.20.100 and 2002 c 8 s 2 are each amended to read
20 as follows:

21 (1) Suitable work for an individual is employment in an occupation
22 in keeping with the individual's prior work experience, education, or
23 training and if the individual has no prior work experience, special
24 education, or training for employment available in the general area,
25 then employment which the individual would have the physical and mental
26 ability to perform. In determining whether work is suitable for an
27 individual, the commissioner shall also consider the degree of risk
28 involved to the individual's health, safety, and morals, the
29 individual's physical fitness, the individual's length of unemployment
30 and prospects for securing local work in the individual's customary
31 occupation, the distance of the available work from the individual's
32 residence, and such other factors as the commissioner may deem
33 pertinent, including state and national emergencies.

34 (2) For individuals with base year work experience in agricultural
35 labor, any agricultural labor available from any employer shall be
36 deemed suitable unless it meets conditions in RCW 50.20.110 or the
37 commissioner finds elements of specific work opportunity unsuitable for
38 a particular individual.

1 (3) For part-time workers, suitable work includes suitable work
2 under subsection (1) of this section that is for twenty or fewer hours
3 per week.

4 (5) For individuals who have qualified for unemployment
5 compensation benefits under RCW 50.20.050(~~((2)(d))~~) (1) (b) (iii) or
6 (2) (b) (v), as applicable, an evaluation of the suitability of the
7 work must consider the individual's need to address the physical,
8 psychological, legal, and other effects of domestic violence or
9 stalking.

10 **NEW SECTION. Sec. 13.** A new section is added to chapter 50.20 RCW
11 to read as follows:

12 With respect to claims with an effective date on or after January
13 2, 2005 an otherwise eligible individual may not be denied benefits for
14 any week because the individual is a part-time worker and is available
15 for, seeks, applies for, or accepts only work of twenty or fewer hours
16 per week by reason of the application of RCW 50.20.010(1)(c),
17 50.20.080, or 50.22.020(1) relating to availability for work and active
18 search for work, or failure to apply for or refusal to accept suitable
19 work commensurate with the worker's employment history.

20 **PART II - FINANCING UNEMPLOYMENT COMPENSATION**

21 **Sec. 14.** RCW 50.29.025 and 2003 c 4 (SHB 1832) s 1 are each
22 amended to read as follows:

23 (1) Except as provided in subsection (2) of this section, the
24 contribution rate for each employer subject to contributions under RCW
25 50.24.010 shall be determined under this (~~(section)~~) subsection.

26 (~~((1))~~) (a) A fund balance ratio shall be determined by dividing
27 the balance in the unemployment compensation fund as of the September
28 30th immediately preceding the rate year by the total remuneration paid
29 by all employers subject to contributions during the second calendar
30 year preceding the rate year and reported to the department by the
31 following March 31st. The division shall be carried to the fourth
32 decimal place with the remaining fraction, if any, disregarded. The
33 fund balance ratio shall be expressed as a percentage.

34 (~~((2))~~) (b) The interval of the fund balance ratio, expressed as a
35 percentage, shall determine which tax schedule in (e) of this
36 subsection (~~((5) of this section)~~) shall be in effect for assigning tax

1 rates for the rate year. The intervals for determining the effective
2 tax schedule shall be:

3	Interval of the	
4	Fund Balance Ratio	
5	Expressed as a	Effective
6	Percentage	Tax Schedule
	2.90 and above	AA
	2.10 to 2.89	A
	1.70 to 2.09	B
	1.40 to 1.69	C
	1.00 to 1.39	D
	0.70 to 0.99	E
	Less than 0.70	F

7 ~~((3))~~ (c) An array shall be prepared, listing all qualified
8 employers in ascending order of their benefit ratios. The array shall
9 show for each qualified employer: ~~((a))~~ (i) Identification number;
10 ~~((b))~~ (ii) benefit ratio; ~~((c))~~ (iii) taxable payrolls for the four
11 calendar quarters immediately preceding the computation date and
12 reported to the department by the cut-off date; ~~((d))~~ (iv) a
13 cumulative total of taxable payrolls consisting of the employer's
14 taxable payroll plus the taxable payrolls of all other employers
15 preceding him or her in the array; and ~~((e))~~ (v) the percentage
16 equivalent of the cumulative total of taxable payrolls.

17 ~~((4))~~ (d) Each employer in the array shall be assigned to one of
18 twenty rate classes according to the percentage intervals of cumulative
19 taxable payrolls set forth in (e) of this subsection ~~((5) of this~~
20 ~~section))~~: PROVIDED, That if an employer's taxable payroll falls
21 within two or more rate classes, the employer and any other employer
22 with the same benefit ratio shall be assigned to the lowest rate class
23 which includes any portion of the employer's taxable payroll.

24 ~~((5))~~ (e) Except as provided in RCW 50.29.026, the contribution
25 rate for each employer in the array shall be the rate specified in the
26 following tables for the rate class to which he or she has been
27 assigned, as determined under (d) of this subsection ~~((4) of this~~

1 section)), within the tax schedule which is to be in effect during the
 2 rate year:

	Percent of		Schedules of							
	Cumulative		Contributions Rates							
	Taxable		for Effective Tax							
	Payrolls		Schedule							
	Rate		Class							
	From	To	ss	AA	A	B	C	D	E	F
3										
4										
5										
6										
7	0.00	5.00	1	0.40	0.40	0.50	0.91	1.41	1.82	2.4
8				7	7	7	7	7	7	7
9	5.01	10.0	2	0.40	0.40	0.71	1.11	1.62	2.02	2.6
		0		7	7	7	7	7	7	7
10	10.01	15.0	3	0.50	0.50	0.91	1.31	1.72	2.22	2.8
11		1 0		7	7	7	7	7	7	7
12	15.02	20.0	4	0.50	0.71	1.11	1.51	1.92	2.42	2.9
13		1 0		7	3	1	1	0	0	8
14	20.02	25.0	5	0.70	0.91	1.31	1.72	2.02	2.53	3.0
15		1 0		2	2	0	0	9	9	8
16	25.03	30.0	6	0.91	1.11	1.41	1.82	2.22	2.63	3.1
17		1 0		1	1	9	9	9	9	8
18	30.03	35.0	7	1.01	1.21	1.62	2.02	2.42	2.83	3.2
19		1 0		0	9	9	8	8	8	7
20	35.04	40.0	8	1.11	1.41	1.82	2.22	2.63	3.03	3.4
21		1 0		9	8	8	7	7	7	7
22	40.04	45.0	9	1.31	1.62	2.02	2.42	2.83	3.23	3.6
23		1 0		7	7	7	7	7	7	6
24	45.05	50.0	10	1.51	1.82	2.22	2.63	3.03	3.43	3.8
25		1 0		6	6	6	6	6	6	6
26	50.05	55.0	11	1.82	2.12	2.42	2.83	3.23	3.63	3.9
27		1 0		4	4	5	5	5	6	5
28	55.06	60.0	12	2.02	2.32	2.63	3.03	3.43	3.84	4.1
29		1 0		3	3	4	4	4	5	5

1	60.065.0	13	2.22.52.83.23.64.04.3
2	1	0	2 2 3 3 4 4 4
3	65.070.0	14	2.42.73.03.43.84.24.5
4	1	0	0 1 2 3 3 4 4
5	70.075.0	15	2.62.93.23.64.04.44.6
6	1	0	8 0 1 2 2 3 3
7	75.080.0	16	2.83.03.43.84.24.54.7
8	1	0	7 9 2 1 2 3 3
9	80.085.0	17	3.23.43.74.14.54.84.9
10	1	0	7 7 7 7 7 7 7
11	85.090.0	18	3.63.84.14.54.84.95.1
12	1	0	7 7 7 7 7 7 7
13	90.095.0	19	4.04.24.54.95.05.15.3
14	1	0	7 7 7 7 7 7 7
15	95.0100.0	20	5.45.45.45.45.45.45.4
16	1	00	0 0 0 0 0 0 0

17 ((+6)) (f) The contribution rate for each employer not qualified
 18 to be in the array shall be as follows:

19 ((+a)) (i) Employers who do not meet the definition of "qualified
 20 employer" by reason of failure to pay contributions when due shall be
 21 assigned a contribution rate two-tenths higher than that in rate class
 22 20 for the applicable rate year, except employers who have an approved
 23 agency-deferred payment contract by September 30 of the previous rate
 24 year. If any employer with an approved agency-deferred payment
 25 contract fails to make any one of the succeeding deferred payments or
 26 fails to submit any succeeding tax report and payment in a timely
 27 manner, the employer's tax rate shall immediately revert to a
 28 contribution rate two-tenths higher than that in rate class 20 for the
 29 applicable rate year; and

30 ((+b)) (ii) For all other employers not qualified to be in the
 31 array, the contribution rate shall be a rate equal to the average
 32 industry rate as determined by the commissioner; however, the rate may
 33 not be less than one percent. (~~Assignment of employers by the~~
 34 ~~commissioner to industrial classification, for purposes of this~~
 35 ~~section, shall be in accordance with established classification~~
 36 ~~practices found in the "Standard Industrial Classification Manual"~~

1 ~~issued by the federal office of management and budget to the third~~
2 ~~digit provided in the standard industrial classification code, or in~~
3 ~~the North American industry classification system code.)~~

4 (2) Beginning with contributions assessed for rate year 2005, the
5 contribution rate for each employer subject to contributions under RCW
6 50.24.010 shall be the sum of the array calculation factor rate and the
7 graduated social cost factor rate determined under this subsection, and
8 the solvency surcharge determined under section 17 of this act, if any.

9 (a) The array calculation factor rate shall be determined as
10 follows:

11 (i) An array shall be prepared, listing all qualified employers in
12 ascending order of their benefit ratios. The array shall show for each
13 qualified employer: (A) Identification number; (B) benefit ratio; and
14 (C) taxable payrolls for the four consecutive calendar quarters
15 immediately preceding the computation date and reported to the
16 employment security department by the cut-off date.

17 (ii) Each employer in the array shall be assigned to one of forty
18 rate classes according to his or her benefit ratio as follows, and,
19 except as provided in RCW 50.29.026, the array calculation factor rate
20 for each employer in the array shall be the rate specified in the rate
21 class to which the employer has been assigned:

<u>Benefit Ratio</u>		<u>Rate</u>	<u>Rate</u>
<u>At least</u>	<u>Less than</u>	<u>Class</u>	<u>(percent</u>
			<u>)</u>
	<u>0.000001</u>	<u>1</u>	<u>0.00</u>
<u>0.000001</u>	<u>0.001250</u>	<u>2</u>	<u>0.13</u>
<u>0.001250</u>	<u>0.002500</u>	<u>3</u>	<u>0.25</u>
<u>0.002500</u>	<u>0.003750</u>	<u>4</u>	<u>0.38</u>
<u>0.003750</u>	<u>0.005000</u>	<u>5</u>	<u>0.50</u>
<u>0.005000</u>	<u>0.006250</u>	<u>6</u>	<u>0.63</u>
<u>0.006250</u>	<u>0.007500</u>	<u>7</u>	<u>0.75</u>
<u>0.007500</u>	<u>0.008750</u>	<u>8</u>	<u>0.88</u>
<u>0.008750</u>	<u>0.010000</u>	<u>9</u>	<u>1.00</u>
<u>0.010000</u>	<u>0.011250</u>	<u>10</u>	<u>1.15</u>
<u>0.011250</u>	<u>0.012500</u>	<u>11</u>	<u>1.30</u>

1	<u>0.012500</u>	<u>0.013750</u>	<u>12</u>	<u>1.45</u>
2	<u>0.013750</u>	<u>0.015000</u>	<u>13</u>	<u>1.60</u>
3	<u>0.015000</u>	<u>0.016250</u>	<u>14</u>	<u>1.75</u>
4	<u>0.016250</u>	<u>0.017500</u>	<u>15</u>	<u>1.90</u>
5	<u>0.017500</u>	<u>0.018750</u>	<u>16</u>	<u>2.05</u>
6	<u>0.018750</u>	<u>0.020000</u>	<u>17</u>	<u>2.20</u>
7	<u>0.020000</u>	<u>0.021250</u>	<u>18</u>	<u>2.35</u>
8	<u>0.021250</u>	<u>0.022500</u>	<u>19</u>	<u>2.50</u>
9	<u>0.022500</u>	<u>0.023750</u>	<u>20</u>	<u>2.65</u>
10	<u>0.023750</u>	<u>0.025000</u>	<u>21</u>	<u>2.80</u>
11	<u>0.025000</u>	<u>0.026250</u>	<u>22</u>	<u>2.95</u>
12	<u>0.026250</u>	<u>0.027500</u>	<u>23</u>	<u>3.10</u>
13	<u>0.027500</u>	<u>0.028750</u>	<u>24</u>	<u>3.25</u>
14	<u>0.028750</u>	<u>0.030000</u>	<u>25</u>	<u>3.40</u>
15	<u>0.030000</u>	<u>0.031250</u>	<u>26</u>	<u>3.55</u>
16	<u>0.031250</u>	<u>0.032500</u>	<u>27</u>	<u>3.70</u>
17	<u>0.032500</u>	<u>0.033750</u>	<u>28</u>	<u>3.85</u>
18	<u>0.033750</u>	<u>0.035000</u>	<u>29</u>	<u>4.00</u>
19	<u>0.035000</u>	<u>0.036250</u>	<u>30</u>	<u>4.15</u>
20	<u>0.036250</u>	<u>0.037500</u>	<u>31</u>	<u>4.30</u>
21	<u>0.037500</u>	<u>0.040000</u>	<u>32</u>	<u>4.45</u>
22	<u>0.040000</u>	<u>0.042500</u>	<u>33</u>	<u>4.60</u>
23	<u>0.042500</u>	<u>0.045000</u>	<u>34</u>	<u>4.75</u>
24	<u>0.045000</u>	<u>0.047500</u>	<u>35</u>	<u>4.90</u>
25	<u>0.047500</u>	<u>0.050000</u>	<u>36</u>	<u>5.05</u>
26	<u>0.050000</u>	<u>0.052500</u>	<u>37</u>	<u>5.20</u>
27	<u>0.052500</u>	<u>0.055000</u>	<u>38</u>	<u>5.30</u>
28	<u>0.055000</u>	<u>0.057500</u>	<u>39</u>	<u>5.35</u>
29	<u>0.057500</u>		<u>40</u>	<u>5.40</u>

1 (b) The graduated social cost factor rate shall be determined as
2 follows:

3 (i)(A) Except as provided in (b)(i)(B) and (C) of this subsection,
4 the commissioner shall calculate the flat social cost factor for a rate
5 year by dividing the total social cost by the total taxable payroll.
6 The division shall be carried to the second decimal place with the
7 remaining fraction disregarded unless it amounts to five hundredths or
8 more, in which case the second decimal place shall be rounded to the
9 next higher digit. The flat social cost factor shall be expressed as
10 a percentage.

11 (B) If, on the cut-off date, the balance in the unemployment
12 compensation fund is determined by the commissioner to be an amount
13 that will provide more than ten months of unemployment benefits, the
14 commissioner shall calculate the flat social cost factor for the rate
15 year immediately following the cut-off date by reducing the total
16 social cost by the dollar amount that represents the number of months
17 for which the balance in the unemployment compensation fund on the cut-
18 off date will provide benefits above ten months and dividing the result
19 by the total taxable payroll. However, the calculation under this
20 subsection (2)(b)(i)(B) for a rate year may not result in a flat social
21 cost factor that is more than two-tenths lower than the calculation
22 under (b)(i)(A) of this subsection for that rate year. For the
23 purposes of this subsection, the commissioner shall determine the
24 number of months of unemployment benefits in the unemployment
25 compensation fund using the benefit cost rate for the average of the
26 three highest calendar benefit cost rates in the twenty consecutive
27 completed calendar years immediately preceding the cut-off date or a
28 period of consecutive calendar years immediately preceding the cut-off
29 date that includes three recessions, if longer.

30 (C) The minimum flat social cost factor calculated under this
31 subsection (2)(b) shall be six-tenths of one percent.

32 (ii) The graduated social cost factor rate for each employer in the
33 array is the flat social cost factor multiplied by the percentage
34 specified as follows for the rate class to which the employer has been
35 assigned in (a)(ii) of this subsection, except that the sum of an
36 employer's array calculation factor rate and the graduated social cost
37 factor rate may not exceed six and five-tenths percent:

38 (A) Rate class 1 - 78 percent;

39 (B) Rate class 2 - 82 percent;

- 1 (C) Rate class 3 - 86 percent;
- 2 (D) Rate class 4 - 90 percent;
- 3 (E) Rate class 5 - 94 percent;
- 4 (F) Rate class 6 - 98 percent;
- 5 (G) Rate class 7 - 102 percent;
- 6 (H) Rate class 8 - 106 percent;
- 7 (I) Rate class 9 - 110 percent;
- 8 (J) Rate class 10 - 114 percent;
- 9 (K) Rate class 11 - 118 percent; and
- 10 (L) Rate classes 12 through 40 - 120 percent.

11 (iii) For the purposes of this section:

12 (A) "Total social cost" means the amount calculated by subtracting
13 the array calculation factor contributions paid by all employers with
14 respect to the four consecutive calendar quarters immediately preceding
15 the computation date and paid to the employment security department by
16 the cut-off date from the total unemployment benefits paid to claimants
17 in the same four consecutive calendar quarters. To calculate the flat
18 social cost factor for rate year 2005, the commissioner shall calculate
19 the total social cost using the array calculation factor contributions
20 that would have been required to be paid by all employers in the
21 calculation period if (a) of this subsection had been in effect for the
22 relevant period.

23 (B) "Total taxable payroll" means the total amount of wages subject
24 to tax, as determined under RCW 50.24.010, for all employers in the
25 four consecutive calendar quarters immediately preceding the
26 computation date and reported to the employment security department by
27 the cut-off date.

28 (c) The array calculation factor rate for each employer not
29 qualified to be in the array shall be as follows:

30 (i) Employers who do not meet the definition of "qualified
31 employer" by reason of failure to pay contributions when due shall be
32 assigned an array calculation factor rate two-tenths higher than that
33 in rate class 40, except employers who have an approved agency-deferred
34 payment contract by September 30th of the previous rate year. If any
35 employer with an approved agency-deferred payment contract fails to
36 make any one of the succeeding deferred payments or fails to submit any
37 succeeding tax report and payment in a timely manner, the employer's
38 tax rate shall immediately revert to an array calculation factor rate
39 two-tenths higher than that in rate class 40; and

1 (ii) For all other employers not qualified to be in the array, the
2 array calculation factor rate shall be a rate equal to the average
3 industry array calculation factor rate as determined by the
4 commissioner plus fifteen percent of that amount; however, the rate may
5 not be less than one percent or more than the array calculation factor
6 rate in rate class 40.

7 (d) The graduated social cost factor rate for each employer not
8 qualified to be in the array shall be as follows:

9 (i) For employers whose array calculation factor rate is determined
10 under (c)(i) of this subsection, the social cost factor rate shall be
11 the social cost factor rate assigned to rate class 40 under (b)(ii) of
12 this subsection.

13 (ii) For employers whose array calculation factor rate is
14 determined under (c)(ii) of this subsection, the social cost factor
15 rate shall be a rate equal to the average industry social cost factor
16 rate as determined by the commissioner, plus fifteen percent of that
17 amount, but not more than the social cost factor rate assigned to rate
18 class 40 under (b)(ii) of this subsection.

19 (3) Assignment of employers by the commissioner to industrial
20 classification, for purposes of this section, shall be in accordance
21 with established classification practices found in the "Standard
22 Industrial Classification Manual" issued by the federal office of
23 management and budget to the third digit provided in the standard
24 industrial classification code, or in the North American industry
25 classification system code.

26 **Sec. 15.** RCW 50.04.355 and 2000 c 2 s 1 are each amended to read
27 as follows:

28 (1) For computations made before January 1, 2007, the employment
29 security department shall compute, on or before the fifteenth day of
30 June of each year, an "average annual wage", an "average weekly wage",
31 and an "average annual wage for contributions purposes" (~~shall be~~
32 computed)) from information for the specified preceding calendar years
33 including corrections thereof reported within three months after the
34 close of the final year of the specified years by all employers as
35 defined in RCW 50.04.080.

36 ((+1)) (a) The "average annual wage" is the quotient derived by
37 dividing the total remuneration reported by all employers for the
38 preceding calendar year by the average number of workers reported for

1 all months of the preceding calendar year and if the result is not a
2 multiple of one dollar, rounding the result to the next lower multiple
3 of one dollar.

4 ~~((+2))~~ (b) The "average weekly wage" is the quotient derived by
5 dividing the "average annual wage" obtained under ~~((+1))~~ (a) of this
6 subsection by fifty-two and if the result is not a multiple of one
7 dollar, rounding the result to the next lower multiple of one dollar.

8 ~~((+3))~~ (c) The "average annual wage for ~~((contribution[s]))~~
9 contributions purposes" is the quotient derived by dividing by three
10 the total remuneration reported by all employers subject to
11 contributions for the preceding three consecutive calendar years and
12 dividing this amount by the average number of workers reported for all
13 months of these three years by these same employers and if the result
14 is not a multiple of one dollar, rounding the result to the next lower
15 multiple of one dollar.

16 (2) For computations made on or after January 1, 2007, the
17 employment security department shall compute, on or before the
18 fifteenth day of June of each year, an "average annual wage," an
19 "average weekly wage," and an "average annual wage for contributions
20 purposes" from information for the preceding calendar year including
21 corrections thereof reported within three months after the close of
22 that year by all employers as defined in RCW 50.04.080.

23 (a) The "average annual wage" is the quotient derived by dividing
24 the total remuneration reported by all employers by the average number
25 of workers reported for all months and if the result is not a multiple
26 of one dollar, rounding the result to the next lower multiple of one
27 dollar.

28 (b) The "average weekly wage" is the quotient derived by dividing
29 the "average annual wage" obtained under (a) of this subsection by
30 fifty-two and if the result is not a multiple of one dollar, rounding
31 the result to the next lower multiple of one dollar.

32 (c) The "average annual wage for contributions purposes" is the
33 quotient derived by dividing the total remuneration reported by all
34 employers subject to contributions by the average number of workers
35 reported for all months by these same employers and if the result is
36 not a multiple of one dollar, rounding the result to the next lower
37 multiple of one dollar.

1 **NEW SECTION. Sec. 16.** A new section is added to chapter 50.29 RCW
2 to read as follows:

3 Beginning with contributions assessed for rate year 2005, the
4 contribution rate of each employer subject to contributions under RCW
5 50.24.010 shall include an solvency surcharge determined as follows:

6 (1) This section shall apply to employers' contributions for a
7 rate year immediately following a cut-off date only if, on the cut-
8 off date, the balance in the unemployment compensation fund is
9 determined by the commissioner to be an amount that will provide
10 fewer than four months of unemployment benefits.

11 (2) The solvency surcharge shall be the lowest rate necessary, as
12 determined by the commissioner, to provide revenue during the
13 applicable rate year that will fund unemployment benefits for the
14 number of months that is the difference between six months and the
15 number of months for which the balance in the unemployment
16 compensation fund on the cut-off date will provide benefits.

17 (3) The basis for determining the number of months of
18 unemployment benefits shall be the same basis used in RCW
19 50.29.025(2)(b)(i)(B).

20 **Sec. 17.** RCW 50.29.026 and 2000 c 2 s 5 are each amended to read
21 as follows:

22 (1) Beginning with contributions assessed for rate year 1996, a
23 qualified employer's contribution rate applicable for rate years
24 beginning before January 1, 2005, or array calculation factor rate
25 applicable for rate years beginning on or after January 1, 2005,
26 determined under RCW 50.29.025 may be modified as follows:

27 (a) Subject to the limitations of this subsection, an employer
28 may make a voluntary contribution of an amount equal to part or all
29 of the benefits charged to the employer's account during the two
30 years most recently ended on June 30th that were used for the purpose
31 of computing the employer's contribution rate applicable for rate
32 years beginning before January 1, 2005, or array calculation factor
33 rate applicable for rate years beginning on or after January 1, 2005.
34 On receiving timely payment of a voluntary contribution, plus a
35 surcharge of ten percent of the amount of the voluntary contribution,
36 the commissioner shall cancel the benefits equal to the amount of the
37 voluntary contribution, excluding the surcharge, and compute a new
38 benefit ratio for the employer. The employer shall then be assigned

1 the contribution rate applicable for rate years beginning before
2 January 1, 2005, or array calculation factor rate applicable for rate
3 years beginning on or after January 1, 2005, applicable to the rate
4 class within which the recomputed benefit ratio is included. The
5 minimum amount of a voluntary contribution, excluding the surcharge,
6 must be an amount that will result in a recomputed benefit ratio that
7 is in a rate class at least two rate classes lower than the rate
8 class that included the employer's original benefit ratio.

9 (b) Payment of a voluntary contribution is considered timely if
10 received by the department during the period beginning on the date of
11 mailing to the employer the notice of contribution rate applicable
12 for rate years beginning before January 1, 2005, or notice of array
13 calculation factor rate applicable for rate years beginning on or
14 after January 1, 2005, required under this title for the rate year
15 for which the employer is seeking a modification of his or her
16 ((contribution)) rate and ending on February 15th of that rate year
17 or, for voluntary contributions for rate year 2000, ending on March
18 31, 2000.

19 (c) A benefit ratio may not be recomputed nor a ((contribution))
20 rate be reduced under this section as a result of a voluntary
21 contribution received after the payment period prescribed in (b) of
22 this subsection.

23 (2) This section does not apply to any employer who has not had
24 an increase of at least six rate classes from the previous tax rate
25 year.

26 **Sec. 18.** RCW 50.29.062 and 1996 c 238 s 1 are each amended to
27 read as follows:

28 Predecessor and successor employer contribution rates shall be
29 computed in the following manner:

30 (1) If the successor is an employer, as defined in RCW 50.04.080,
31 at the time of the transfer, its contribution rate shall remain
32 unchanged for the remainder of the rate year in which the transfer
33 occurs. From and after January 1 following the transfer, the
34 successor's contribution rate for each rate year shall be based on
35 its experience with payrolls and benefits including the experience of
36 the acquired business or portion of a business from the date of
37 transfer, as of the regular computation date for that rate year.

1 (2) For transfers before January 1, 2005, the following applies
2 if the successor is not an employer at the time of the transfer((7
3 it)). The successor shall pay contributions at the lowest rate
4 determined under either of the following:

5 (a)(i) For transfers before January 1, 1997, the contribution
6 rate of the rate class assigned to the predecessor employer at the
7 time of the transfer for the remainder of that rate year and
8 continuing until the successor qualifies for a different rate in its
9 own right;

10 (ii) For transfers on or after January 1, 1997, the contribution
11 rate of the rate class assigned to the predecessor employer at the
12 time of the transfer for the remainder of that rate year. Any
13 experience relating to the assignment of that rate class attributable
14 to the predecessor is transferred to the successor. Beginning with
15 the January 1 following the transfer, the successor's contribution
16 rate shall be based on the transferred experience of the acquired
17 business and the successor's experience after the transfer; or

18 (b) The contribution rate equal to the average industry rate as
19 determined by the commissioner, but not less than one percent, and
20 continuing until the successor qualifies for a different rate in its
21 own right. Assignment of employers by the commissioner to industrial
22 classification, for purposes of this subsection, must be in
23 accordance with established classification practices found in the
24 "Standard Industrial Classification Manual" issued by the federal
25 office of management and budget to the third digit provided in the
26 standard industrial classification code, or in the North American
27 industry classification code system.

28 (3) For transfers before January 1, 2005, if the successor is not
29 an employer at the time of the transfer and simultaneously acquires
30 the business or a portion of the business of two or more employers in
31 different rate classes, its rate from the date the transfer occurred
32 until the end of that rate year and until it qualifies in its own
33 right for a new rate, shall be the highest rate class applicable at
34 the time of the acquisition to any predecessor employer who is a
35 party to the acquisition, but not less than one percent.

36 (4) For transfers on or after January 1, 2005, the following
37 applies if the successor is not an employer at the time of the
38 transfer:

1 (a) Except as provided in (b) of this subsection, the successor
2 shall pay contributions:

3 (i) At the contribution rate determined for the predecessor
4 employer at the time of the transfer for the remainder of the rate
5 year. Any experience attributable to the predecessor relating to the
6 assignment of the predecessor's rate class is transferred to the
7 successor. On and after January 1st following the transfer, the
8 successor's array calculation factor rate shall be based on the
9 transferred experience of the acquired business and the successor's
10 experience after the transfer; or

11 (ii) At the contribution rate equal to the sum of the rates
12 determined by the commissioner under RCW 50.29.025(2) (c)(ii) and
13 (d)(ii), and section 17 of this act, if applicable, and continuing
14 until the successor qualifies for a different rate in its own right.

15 (b) If there is a substantial continuity of ownership or
16 management by the successor of the business of the predecessor, the
17 successor shall pay contributions at the contribution rate determined
18 for the predecessor employer at the time of the transfer for the
19 remainder of that rate year. Any experience attributable to the
20 predecessor relating to the assignment of the predecessor's rate
21 class is transferred to the successor. On and after January 1st
22 following the transfer, the successor's array calculation factor rate
23 shall be based on the transferred experience of the acquired business
24 and the successor's experience after the transfer.

25 (c) If the successor simultaneously acquires the business or a
26 portion of the business of two or more employers with different
27 contribution rates, the successor's rate from the date the transfer
28 occurred until the end of that rate year and until it qualifies in
29 its own right for a new rate, shall be the sum of the rates
30 determined by the commissioner under RCW 50.29.025(2)(a) and (b), and
31 section 17 of this act, applicable at the time of the acquisition to
32 the predecessor employer who, among the parties to the acquisition,
33 had the largest taxable payroll in the completed calendar quarter
34 immediately preceding the date of transfer, but not less than the sum
35 of the rates determined by the commissioner under RCW 50.29.025(2)
36 (c)(ii) and (d)(ii), and section 17 of this act, if applicable.

37 (5) The contribution rate on any payroll retained by a
38 predecessor employer shall remain unchanged for the remainder of the
39 rate year in which the transfer occurs.

1 ~~((+5+))~~ (6) In all cases, from and after January 1 following the
2 transfer, the predecessor's contribution rate or, beginning January
3 1, 2005, the predecessor's array calculation factor for each rate
4 year shall be based on its experience with payrolls and benefits as
5 of the regular computation date for that rate year including the
6 experience of the acquired business or portion of business up to the
7 date of transfer: PROVIDED, That if all of the predecessor's
8 business is transferred to a successor or successors, the predecessor
9 shall not be a qualified employer until it satisfies the requirements
10 of a "qualified employer" as set forth in RCW 50.29.010.

11 **Sec. 19.** RCW 50.29.070 and 1990 c 245 s 8 are each amended to
12 read as follows:

13 (1) Within a reasonable time after the computation date each
14 employer shall be notified of the employer's rate of contribution as
15 determined for the succeeding rate year and factors used in the
16 calculation. Beginning with rate year 2005, the notice must include
17 the amount of the contribution rate that is attributable to each
18 component of the rate under RCW 50.29.025(2).

19 (2) Any employer dissatisfied with the benefit charges made to
20 the employer's account for the twelve-month period immediately
21 preceding the computation date or with his or her determined rate may
22 file a request for review and redetermination with the commissioner
23 within thirty days of the mailing of the notice to the employer,
24 showing the reason for such request. Should such request for review
25 and redetermination be denied, the employer may, within thirty days
26 of the mailing of such notice of denial, file with the appeal
27 tribunal a petition for hearing which shall be heard in the same
28 manner as a petition for denial of refund. The appellate procedure
29 prescribed by this title for further appeal shall apply to all
30 denials of review and redetermination under this section.

31 **Sec. 20.** RCW 50.29.020 and 2002 c 149 s 6 and 2002 c 8 s 4 are
32 each reenacted and amended to read as follows:

33 (1) This section applies to benefits charged to the experience
34 rating accounts of employers for claims that have an effective date
35 before January 4, 2004.

36 (2) An experience rating account shall be established and
37 maintained for each employer, except employers as described in RCW

1 50.44.010 and 50.44.030 who have properly elected to make payments in
2 lieu of contributions, taxable local government employers as
3 described in RCW 50.44.035, and those employers who are required to
4 make payments in lieu of contributions, based on existing records of
5 the employment security department. Benefits paid to any eligible
6 individuals shall be charged to the experience rating accounts of
7 each of such individual's employers during the individual's base year
8 in the same ratio that the wages paid by each employer to the
9 individual during the base year bear to the wages paid by all
10 employers to that individual during that base year, except as
11 otherwise provided in this section.

12 ((+2)) (3) The legislature finds that certain benefit payments,
13 in whole or in part, should not be charged to the experience rating
14 accounts of employers except those employers described in RCW
15 50.44.010 and 50.44.030 who have properly elected to make payments in
16 lieu of contributions, taxable local government employers described
17 in RCW 50.44.035, and those employers who are required to make
18 payments in lieu of contributions, as follows:

19 (a) Benefits paid to any individuals later determined to be
20 ineligible shall not be charged to the experience rating account of
21 any contribution paying employer.

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

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

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

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

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

1 (e) Individuals who qualify for benefits under RCW
2 50.20.050(~~((2)(d))~~) (1)(b)(iii) shall not have their benefits charged
3 to the experience rating account of any contribution paying employer.

4 (f) In the case of individuals identified under RCW 50.20.015,
5 benefits paid with respect to a calendar quarter, which exceed the
6 total amount of wages earned in the state of Washington in the higher
7 of two corresponding calendar quarters included within the
8 individual's determination period, as defined in RCW 50.20.015, shall
9 not be charged to the experience rating account of any contribution
10 paying employer.

11 (~~((3)(a))~~) (4)(a) A contribution-paying base year employer, not
12 otherwise eligible for relief of charges for benefits under this
13 section, may receive such relief if the benefit charges result from
14 payment to an individual who:

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

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

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

24 (iv) Continues to be employed on a regularly scheduled permanent
25 part-time basis by a base year employer and who at some time during
26 the base year was concurrently employed and subsequently separated
27 from at least one other base year employer. Benefit charge relief
28 ceases when the employment relationship between the employer
29 requesting relief and the claimant is terminated. This subsection
30 does not apply to shared work employers under chapter 50.60 RCW.

31 (b) The employer requesting relief of charges under this
32 subsection must request relief in writing within thirty days
33 following mailing to the last known address of the notification of
34 the valid initial determination of such claim, stating the date and
35 reason for the separation or the circumstances of continued
36 employment. The commissioner, upon investigation of the request,
37 shall determine whether relief should be granted.

1 NEW SECTION. **Sec. 21.** A new section is added to chapter 50.29
2 RCW to read 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
5 on 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 and 50.44.030 who have properly elected to make payments in
9 lieu of contributions, taxable local government employers as
10 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
14 the experience rating accounts of each of such individual's employers
15 during the individual's base year in the same ratio that the wages
16 paid by each employer to the individual during the base year bear to
17 the wages paid by all employers to that individual during that base
18 year, except as otherwise provided in this section.

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

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

26 (ii) RCW 50.20.050(2)(b)(v) through (x).

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

34 (a) Benefits paid to any individual later determined to be
35 ineligible shall not be charged to the experience rating account of
36 any contribution paying employer.

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

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

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

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

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

14 (e) Individuals who qualify for benefits under RCW
15 50.20.050(2)(b)(iv), as applicable, shall not have their benefits
16 charged to the experience rating account of any contribution paying
17 employer.

18 (f) Benefits paid to an individual under section 12(1)(a)(ii)
19 that are paid for weeks that do not fall within a period designated
20 by the commissioner as a seasonal work period of any of the
21 individual's base year employers shall not be charged to the
22 experience rating account of any contribution paying employer.

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

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

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

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

37 (iv) Continues to be employed on a regularly scheduled permanent
38 part-time basis by a base year employer and who at some time during
39 the base year was concurrently employed and subsequently separated

1 from at least one other base year employer. Benefit charge relief
2 ceases when the employment relationship between the employer
3 requesting relief and the claimant is terminated. This subsection
4 does not apply to shared work employers under chapter 50.60 RCW.

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

12 **Sec. 22.** RCW 50.12.220 and 1987 c 111 s 2 are each amended to
13 read as follows:

14 (1)(a) If an employer fails to file in a timely and complete
15 manner a report required by RCW 50.12.070 (~~as now or hereafter~~
16 ~~amended~~), or the rules adopted pursuant thereto, the employer shall
17 be subject to a ((minimum)) penalty ((of ten dollars per violation))
18 to be determined by the commissioner, but not to exceed two hundred
19 fifty dollars or ten percent of the quarterly contributions for each
20 such offense, whichever is less.

21 (b) If an employer knowingly misrepresents to the employment
22 security department the amount of his or her payroll upon which
23 contributions under this title are based, the employer shall be
24 liable to the state for up to ten times the amount of the difference
25 in contributions paid, if any, and the amount the employer should
26 have paid and for the reasonable expenses of auditing his or her
27 books and collecting such sums. Such liability may be enforced in
28 the name of the department.

29 (c) If any part of a delinquency for which an assessment is made
30 under this title is due to an intent to evade the successorship
31 provisions of RCW 50.29.062, the commissioner shall assign to the
32 employer, and to any business found to be promoting the evasion of
33 such provisions, the tax rate determined under RCW 50.29.025 for rate
34 class 20 or rate class 40, as applicable, for five consecutive
35 calendar quarters, beginning with the calendar quarter in which the
36 intent to evade such provision is found.

37 (2) If contributions are not paid on the date on which they are
38 due and payable as prescribed by the commissioner, there shall be

1 assessed a penalty of five percent of the amount of the contributions
2 for the first month or part thereof of delinquency; there shall be
3 assessed a total penalty of ten percent of the amount of the
4 contributions for the second month or part thereof of delinquency;
5 and there shall be assessed a total penalty of twenty percent of the
6 amount of the contributions for the third month or part thereof of
7 delinquency. No penalty so added shall be less than ten dollars.
8 These penalties are in addition to the interest charges assessed
9 under RCW 50.24.040.

10 (3) Penalties shall not accrue on contributions from an estate in
11 the hands of a receiver, executor, administrator, trustee in
12 bankruptcy, common law assignee, or other liquidating officer
13 subsequent to the date when such receiver, executor, administrator,
14 trustee in bankruptcy, common law assignee, or other liquidating
15 officer qualifies as such, but contributions accruing with respect to
16 employment of persons by a receiver, executor, administrator, trustee
17 in bankruptcy, common law assignee, or other liquidating officer
18 shall become due and shall be subject to penalties in the same manner
19 as contributions due from other employers.

20 (4) Where adequate information has been furnished to the
21 department and the department has failed to act or has advised the
22 employer of no liability or inability to decide the issue, penalties
23 shall be waived by the commissioner. Penalties may also be waived
24 for good cause if the commissioner determines that the failure to
25 timely file reports or pay contributions was not due to the
26 employer's fault.

27 (5) Any decision to assess a penalty as provided by this section
28 shall be made by the chief administrative officer of the tax branch
29 or his or her designee.

30 (6) Nothing in this section shall be construed to deny an
31 employer the right to appeal the assessment of any penalty. Such
32 appeal shall be made in the manner provided in RCW 50.32.030.

33 **Sec. 23.** RCW 50.16.010 and 2002 c 371 s 914 are each amended to
34 read as follows:

35 (1) There shall be maintained as special funds, separate and
36 apart from all public moneys or funds of this state an unemployment
37 compensation fund, an administrative contingency fund, and a federal
38 interest payment fund, which shall be administered by the

1 commissioner exclusively for the purposes of this title, and to which
2 RCW 43.01.050 shall not be applicable.

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

4 ~~((1))~~ (i) All contributions collected under RCW 50.24.010 and
5 payments in lieu of contributions collected pursuant to the
6 provisions of this title~~((7))~~;

7 ~~((2))~~ (ii) Any property or securities acquired through the use
8 of moneys belonging to the fund~~((7))~~;

9 ~~((3))~~ (iii) All earnings of such property or securities~~((7))~~;

10 ~~((4))~~ (iv) Any moneys received from the federal unemployment
11 account in the unemployment trust fund in accordance with Title XII
12 of the social security act, as amended~~((7))~~;

13 ~~((5))~~ (v) All money recovered on official bonds for losses
14 sustained by the fund~~((7))~~;

15 ~~((6))~~ (vi) All money credited to this state's account in the
16 unemployment trust fund pursuant to section 903 of the social
17 security act, as amended~~((7))~~;

18 ~~((7))~~ (vii) All money received from the federal government as
19 reimbursement pursuant to section 204 of the federal-state extended
20 compensation act of 1970 (84 Stat. 708-712; 26 U.S.C. Sec.
21 3304)~~((7))~~; and

22 ~~((8))~~ (viii) All moneys received for the fund from any other
23 source.

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

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

28 (i) All interest on delinquent contributions collected pursuant
29 to this title~~((7))~~;

30 (ii) All fines and penalties collected pursuant to the provisions
31 of this title~~((7))~~;

32 (iii) All sums recovered on official bonds for losses sustained
33 by the fund~~((7))~~; and

34 (iv) Revenue received under RCW 50.24.014~~((:—PROVIDED, That))~~.

35 (b) All fees, fines, forfeitures, and penalties collected or
36 assessed by a district court because of the violation of ~~((a state~~
37 ~~law))~~ this title or rules adopted under this title shall be remitted
38 as provided in chapter 3.62 RCW ~~((as now exists or is later~~
39 ~~amended))~~.

1 (c) Moneys available in the administrative contingency fund,
2 other than money in the special account created under RCW
3 50.24.014(1)(a), shall be expended upon the direction of the
4 commissioner, with the approval of the governor, whenever it appears
5 to him or her that such expenditure is necessary solely for:

6 ((a)) (i) The proper administration of this title and no
7 federal funds are available for the specific purpose to which such
8 expenditure is to be made, provided, the moneys are not substituted
9 for appropriations from federal funds which, in the absence of such
10 moneys, would be made available.

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

15 ((c)) (iii) The proper administration of this title for which
16 compliance and audit issues have been identified that establish
17 federal claims requiring the expenditure of state resources in
18 resolution. Claims must be resolved in the following priority:
19 First priority is to provide services to eligible participants within
20 the state; second priority is to provide substitute services or
21 program support; and last priority is the direct payment of funds to
22 the federal government.

23 (d) ~~((During the 2001-2003 fiscal biennium, the cost of worker
24 retraining programs at community and technical colleges as
25 appropriated by the legislature.))~~

26 Money in the special account created under RCW 50.24.014(1)(a)
27 may only be expended, after appropriation, for the purposes specified
28 in this section and RCW 50.62.010, 50.62.020, 50.62.030, ~~((50.04.070,
29 50.04.072, 50.16.010, 50.29.025,))~~ 50.24.014, 50.44.053, and
30 50.22.010.

31 **Sec. 24.** RCW 50.16.015 and 1983 1st ex.s. c 13 s 6 are each
32 amended to read as follows:

33 A separate and identifiable fund to provide for the payment of
34 interest on advances received from this state's account in the
35 federal unemployment trust fund shall be established and administered
36 under the direction of the commissioner. This fund shall be known as
37 the federal interest payment fund and shall consist of contributions
38 paid under RCW 50.16.070. All money in this fund shall be expended

1 solely for the payment of interest on advances received from this
2 state's account in the federal unemployment trust fund and for no
3 other purposes whatsoever.

4 **Sec. 25.** RCW 50.24.014 and 2000 c 2 s 15 are each amended to
5 read as follows:

6 (1)(a) A separate and identifiable account to provide for the
7 financing of special programs to assist the unemployed is established
8 in the administrative contingency fund. All money in this account
9 shall be expended solely for the purposes of this title and for no
10 other purposes whatsoever. Contributions to this account shall
11 accrue and become payable by each employer, except employers as
12 described in RCW 50.44.010 and 50.44.030 who have properly elected to
13 make payments in lieu of contributions, taxable local government
14 employers as described in RCW 50.44.035, and those employers who are
15 required to make payments in lieu of contributions, at a basic rate
16 of two one-hundredths of one percent. The amount of wages subject to
17 tax shall be determined under RCW 50.24.010.

18 (b) A separate and identifiable account is established in the
19 administrative contingency fund for financing the employment security
20 department's administrative cost under RCW 50.22.150 and the costs
21 under RCW 50.22.150(9). All money in this account shall be expended
22 solely for the purposes of this title and for no other purposes
23 whatsoever. Contributions to this account shall accrue and become
24 payable by each employer, except employers as described in RCW
25 50.44.010 and 50.44.030 who have properly elected to make payments in
26 lieu of contributions, taxable local government employers as
27 described in RCW 50.44.035, those employers who are required to make
28 payments in lieu of contributions, those employers described under
29 RCW 50.29.025(~~(+6)(b)~~) (1)(f)(ii), and those qualified employers
30 assigned rate class 20 or rate class 40, as applicable, under RCW
31 50.29.025, at a basic rate of one one-hundredth of one percent. The
32 amount of wages subject to tax shall be determined under RCW
33 50.24.010. Any amount of contributions payable under this subsection
34 (1)(b) that exceeds the amount that would have been collected at a
35 rate of four one-thousandths of one percent must be deposited in the
36 unemployment compensation trust fund.

37 (c) For the first calendar quarter of 1994 only, the basic two
38 one-hundredths of one percent contribution payable under (a) of this

1 subsection shall be increased by one-hundredth of one percent to a
2 total rate of three one-hundredths of one percent. The proceeds of
3 this incremental one-hundredth of one percent shall be used solely
4 for the purposes described in section 22, chapter 483, Laws of 1993,
5 and for the purposes of conducting an evaluation of the call center
6 approach to unemployment insurance under section 5, chapter 161, Laws
7 of 1998. During the 1997-1999 fiscal biennium, any surplus from
8 contributions payable under this subsection (c) may be deposited in
9 the unemployment compensation trust fund, used to support tax and
10 wage automated systems projects that simplify and streamline employer
11 reporting, or both.

12 (2)(a) Contributions under this section shall become due and be
13 paid by each employer under rules as the commissioner may prescribe,
14 and shall not be deducted, in whole or in part, from the remuneration
15 of individuals in the employ of the employer. Any deduction in
16 violation of this section is unlawful.

17 (b) In the payment of any contributions under this section, a
18 fractional part of a cent shall be disregarded unless it amounts to
19 one-half cent or more, in which case it shall be increased to one
20 cent.

21 (3) If the commissioner determines that federal funding has been
22 increased to provide financing for the services specified in chapter
23 50.62 RCW, the commissioner shall direct that collection of
24 contributions under this section be terminated on the following
25 January 1st.

26 **Sec. 26.** RCW 50.20.190 and 2002 c 371 s 915 are each amended to
27 read as follows:

28 (1) An individual who is paid any amount as benefits under this
29 title to which he or she is not entitled shall, unless otherwise
30 relieved pursuant to this section, be liable for repayment of the
31 amount overpaid. The department shall issue an overpayment
32 assessment setting forth the reasons for and the amount of the
33 overpayment. The amount assessed, to the extent not collected, may
34 be deducted from any future benefits payable to the individual:
35 PROVIDED, That in the absence of a back pay award, a settlement
36 affecting the allowance of benefits, fraud, misrepresentation, or
37 willful nondisclosure, every determination of liability shall be
38 mailed or personally served not later than two years after the close

1 of or final payment made on the individual's applicable benefit year
2 for which the purported overpayment was made, whichever is later,
3 unless the merits of the claim are subjected to administrative or
4 judicial review in which event the period for serving the
5 determination of liability shall be extended to allow service of the
6 determination of liability during the six-month period following the
7 final decision affecting the claim.

8 (2) The commissioner may waive an overpayment if the commissioner
9 finds that the overpayment was not the result of fraud,
10 misrepresentation, willful nondisclosure, or fault attributable to
11 the individual and that the recovery thereof would be against equity
12 and good conscience: PROVIDED, HOWEVER, That the overpayment so
13 waived shall be charged against the individual's applicable
14 entitlement for the eligibility period containing the weeks to which
15 the overpayment was attributed as though such benefits had been
16 properly paid.

17 (3) Any assessment herein provided shall constitute a
18 determination of liability from which an appeal may be had in the
19 same manner and to the same extent as provided for appeals relating
20 to determinations in respect to claims for benefits: PROVIDED, That
21 an appeal from any determination covering overpayment only shall be
22 deemed to be an appeal from the determination which was the basis for
23 establishing the overpayment unless the merits involved in the issue
24 set forth in such determination have already been heard and passed
25 upon by the appeal tribunal. If no such appeal is taken to the
26 appeal tribunal by the individual within thirty days of the delivery
27 of the notice of determination of liability, or within thirty days of
28 the mailing of the notice of determination, whichever is the earlier,
29 the determination of liability shall be deemed conclusive and final.
30 Whenever any such notice of determination of liability becomes
31 conclusive and final, the commissioner, upon giving at least twenty
32 days notice by certified mail return receipt requested to the
33 individual's last known address of the intended action, may file with
34 the superior court clerk of any county within the state a warrant in
35 the amount of the notice of determination of liability plus a filing
36 fee under RCW 36.18.012(10). The clerk of the county where the
37 warrant is filed shall immediately designate a superior court cause
38 number for the warrant, and the clerk shall cause to be entered in
39 the judgment docket under the superior court cause number assigned to

1 the warrant, the name of the person(s) mentioned in the warrant, the
2 amount of the notice of determination of liability, and the date when
3 the warrant was filed. The amount of the warrant as docketed shall
4 become a lien upon the title to, and any interest in, all real and
5 personal property of the person(s) against whom the warrant is
6 issued, the same as a judgment in a civil case duly docketed in the
7 office of such clerk. A warrant so docketed shall be sufficient to
8 support the issuance of writs of execution and writs of garnishment
9 in favor of the state in the manner provided by law for a civil
10 judgment. A copy of the warrant shall be mailed to the person(s)
11 mentioned in the warrant by certified mail to the person's last known
12 address within five days of its filing with the clerk.

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

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

38 (a) The employer shall reduce the amount of the back pay award or
39 settlement by an amount determined by the department based upon the

1 amount of unemployment benefits received by the recipient of the
2 award or settlement during the period for which the back pay award or
3 settlement was awarded;

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

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

11 (d) If the employer fails to reduce the amount of the back pay
12 award or settlement as required in (a) of this subsection, the
13 department shall issue an overpayment assessment against the
14 recipient of the award or settlement in the amount that the back pay
15 award or settlement should have been reduced; and

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

21 (6) When an individual fails to repay an overpayment assessment
22 that is due and fails to arrange for satisfactory repayment terms,
23 the commissioner shall impose an interest penalty of one percent per
24 month of the outstanding balance. Interest shall accrue immediately
25 on overpayments assessed pursuant to RCW 50.20.070 and shall be
26 imposed when the assessment becomes final. For any other
27 overpayment, interest shall accrue when the individual has missed two
28 or more of ~~((their))~~ the individual's monthly payments either
29 partially or in full. The interest penalty shall be used, first, to
30 fully fund either social security number cross-match audits or other
31 more effective activities that ensure that individuals are entitled
32 to all amounts of benefits that they are paid and, second, to fund
33 other detection and recovery of overpayment and collection activities
34 ~~((and, during the 2001-2003 fiscal biennium, the cost of worker~~
35 ~~retraining programs at community and technical colleges as~~
36 ~~appropriated by the legislature))~~.

37 **Sec. 27.** RCW 50.04.206 and 1990 c 245 s 3 are each amended to
38 read as follows:

1 The term "employment" shall not include service that is performed
2 by a nonresident alien for the period he or she is temporarily
3 present in the United States as a nonimmigrant under subparagraph
4 (F), (H)(ii), (H)(iii), or (J) of section 101(a)(15) of the federal
5 immigration and naturalization act, as amended, and that is performed
6 to carry out the purpose specified in the applicable subparagraph of
7 the federal immigration and naturalization act.

8 **PART III - ADMINISTRATION**

9 **Sec. 28.** RCW 50.20.140 and 1998 c 161 s 2 are each amended to
10 read as follows:

11 (1) An application for initial determination, a claim for waiting
12 period, or a claim for benefits shall be filed in accordance with
13 such rules as the commissioner may prescribe. An application for an
14 initial determination may be made by any individual whether
15 unemployed or not. Each employer shall post and maintain printed
16 statements of such rules in places readily accessible to individuals
17 in his or her employment and shall make available to each such
18 individual at the time he or she becomes unemployed, a printed
19 statement of such rules and such notices, instructions, and other
20 material as the commissioner may by rule prescribe. Such printed
21 material shall be supplied by the commissioner to each employer
22 without cost to the employer.

23 (2) The term "application for initial determination" shall mean a
24 request in writing, or by other means as determined by the
25 commissioner, for an initial determination. The term "claim for
26 waiting period" shall mean a certification, after the close of a
27 given week, that the requirements stated herein for eligibility for
28 waiting period have been met. The term "claim for benefits" shall
29 mean a certification, after the close of a given week, that the
30 requirements stated herein for eligibility for receipt of benefits
31 have been met.

32 (3) A representative designated by the commissioner shall take
33 the application for initial determination and for the claim for
34 waiting period credits or for benefits. When an application for
35 initial determination has been made, the employment security
36 department shall promptly make an initial determination which shall
37 be a statement of the applicant's base year wages, his or her weekly

1 benefit amount, his or her maximum amount of benefits potentially
2 payable, and his or her benefit year. Such determination shall fix
3 the general conditions under which waiting period credit shall be
4 granted and under which benefits shall be paid during any period of
5 unemployment occurring within the benefit year fixed by such
6 determination.

7 (4) The legislature finds that the shift by the employment
8 security department from in-person written applications for
9 unemployment insurance benefits to call centers and internet
10 applications has increased the potential for fraud. Therefore, the
11 employment security department must require claimants filing initial
12 and weekly claims telephonically or electronically to provide
13 additional proof of identity, such as a valid driver's license, a
14 valid identification card, or other similar proof specified in rule
15 by the department.

16 NEW SECTION. Sec. 29. The employment security department shall:

17 (1) In consultation with an advisory committee equally
18 representing business and labor, identify the programs funded by
19 special administrative contributions under Title 50 RCW and report to
20 the advisory committee the expenditures for these programs annually
21 and cumulatively since enactment. Following its report to the
22 advisory committee, the department shall report its findings and any
23 recommendations to the appropriate committees of the legislature by
24 December 1, 2003.

25 (2) Conduct a review of the type, rate, and causes of employer
26 turnover in the unemployment compensation system, using unified
27 business identifier information or other relevant data bases and
28 methods. The department shall report its findings and any
29 recommendations to the appropriate committees of the legislature by
30 December 1, 2003.

31 (3) Conduct a study of the potential for year to year volatility,
32 if any, in the rate classes to which employers in the array are
33 assigned under section 15(2)(a)(ii) of this act. The department
34 shall report its findings and any recommendations for minimizing the
35 potential for year to year volatility to the appropriate committees
36 of the legislature by December 1, 2003.

PART IV - MISCELLANEOUS

Sec. 30. RCW 50.20.043 and 1985 c 40 s 1 are each amended to read as follows:

No otherwise eligible individual shall be denied benefits for any week because the individual is in training with the approval of the commissioner, nor shall such individual be denied benefits with respect to any week in which the individual is satisfactorily progressing in a training program with the approval of the commissioner by reason of the application of RCW 50.20.010(~~(+3)~~) (1)(c), (~~(50.20.015)~~) 50.20.080, or 50.22.020(1) relating to availability for work and active search for work, or failure to apply for or refusal to accept suitable work.

An individual who the commissioner determines to be a dislocated worker as defined by RCW 50.04.075 and who is satisfactorily progressing in a training program approved by the commissioner shall be considered to be in training with the approval of the commissioner.

Sec. 31. RCW 50.20.160 and 1990 c 245 s 4 are each amended to read as follows:

(1) A determination of amount of benefits potentially payable issued pursuant to the provisions of RCW 50.20.120 and 50.20.140 shall not serve as a basis for appeal but shall be subject to request by the claimant for reconsideration and/or for redetermination by the commissioner at any time within one year from the date of delivery or mailing of such determination, or any redetermination thereof:

PROVIDED, That in the absence of fraud or misrepresentation on the part of the claimant, any benefits paid prior to the date of any redetermination which reduces the amount of benefits payable shall not be subject to recovery under the provisions of RCW 50.20.190. A denial of a request to reconsider or a redetermination shall be furnished the claimant in writing and provide the basis for appeal under the provisions of RCW 50.32.020.

(2) A determination of denial of benefits issued under the provisions of RCW 50.20.180 shall become final, in absence of timely appeal therefrom: PROVIDED, That the commissioner may reconsider and redetermine such determinations at any time within one year from

1 delivery or mailing to correct an error in identity, omission of
2 fact, or misapplication of law with respect to the facts.

3 (3) A determination of allowance of benefits shall become final,
4 in absence of a timely appeal therefrom: PROVIDED, That the
5 commissioner may redetermine such allowance at any time within two
6 years following the benefit year in which such allowance was made in
7 order to recover any benefits improperly paid and for which recovery
8 is provided under the provisions of RCW 50.20.190: AND PROVIDED
9 FURTHER, That in the absence of fraud, misrepresentation, or
10 nondisclosure, this provision or the provisions of RCW 50.20.190
11 shall not be construed so as to permit redetermination or recovery of
12 an allowance of benefits which having been made after consideration
13 of the provisions of RCW 50.20.010(~~(+3+)~~) (1)(c), or the provisions
14 of RCW 50.20.050, 50.20.060, 50.20.080, or 50.20.090 has become
15 final.

16 (4) A redetermination may be made at any time: (a) To conform to
17 a final court decision applicable to either an initial determination
18 or a determination of denial or allowance of benefits; (b) in the
19 event of a back pay award or settlement affecting the allowance of
20 benefits; or (c) in the case of fraud, misrepresentation, or willful
21 nondisclosure. Written notice of any such redetermination shall be
22 promptly given by mail or delivered to such interested parties as
23 were notified of the initial determination or determination of denial
24 or allowance of benefits and any new interested party or parties who,
25 pursuant to such regulation as the commissioner may prescribe, would
26 be an interested party.

27 **Sec. 32.** RCW 50.32.040 and 1989 c 175 s 117 are each amended to
28 read as follows:

29 In any proceeding before an appeal tribunal involving a dispute
30 of an individual's initial determination, all matters covered by such
31 initial determination shall be deemed to be in issue irrespective of
32 the particular ground or grounds set forth in the notice of appeal.

33 In any proceeding before an appeal tribunal involving a dispute
34 of an individual's claim for waiting period credit or claim for
35 benefits, all matters and provisions of this title relating to the
36 individual's right to receive such credit or benefits for the period
37 in question, including but not limited to the question and nature of
38 the claimant's availability for work within the meaning of RCW

1 50.20.010(~~(+3)~~) (1)(c) and 50.20.080, shall be deemed to be in issue
2 irrespective of the particular ground or grounds set forth in the
3 notice of appeal in single claimant cases. The claimant's
4 availability for work shall be determined apart from all other
5 matters.

6 In any proceeding before an appeal tribunal involving an
7 individual's right to benefits, all parties shall be afforded an
8 opportunity for hearing after not less than seven days' notice in
9 accordance with RCW 34.05.434.

10 In any proceeding involving an appeal relating to benefit
11 determinations or benefit claims, the appeal tribunal, after
12 affording the parties reasonable opportunity for fair hearing, shall
13 render its decision affirming, modifying, or setting aside the
14 determination or decisions of the unemployment compensation division.
15 The parties shall be duly notified of such appeal tribunal's decision
16 together with its reasons therefor, which shall be deemed to be the
17 final decision on the initial determination or the claim for waiting
18 period credit or the claim for benefits unless, within thirty days
19 after the date of notification or mailing, whichever is the earlier,
20 of such decision, further appeal is perfected pursuant to the
21 provisions of this title relating to review by the commissioner.

22 **Sec. 33.** RCW 28B.50.030 and 1997 c 367 s 13 are each amended to
23 read as follows:

24 As used in this chapter, unless the context requires otherwise,
25 the term:

26 (1) "System" shall mean the state system of community and
27 technical colleges, which shall be a system of higher education.

28 (2) "Board" shall mean the work force training and education
29 coordinating board.

30 (3) "College board" shall mean the state board for community and
31 technical colleges created by this chapter.

32 (4) "Director" shall mean the administrative director for the
33 state system of community and technical colleges.

34 (5) "District" shall mean any one of the community and technical
35 college districts created by this chapter.

36 (6) "Board of trustees" shall mean the local community and
37 technical college board of trustees established for each college
38 district within the state.

1 (7) "Occupational education" shall mean that education or
2 training that will prepare a student for employment that does not
3 require a baccalaureate degree.

4 (8) "K-12 system" shall mean the public school program including
5 kindergarten through the twelfth grade.

6 (9) "Common school board" shall mean a public school district
7 board of directors.

8 (10) "Community college" shall include those higher education
9 institutions that conduct education programs under RCW 28B.50.020.

10 (11) "Technical college" shall include those higher education
11 institutions with the sole mission of conducting occupational
12 education, basic skills, literacy programs, and offering on short
13 notice, when appropriate, programs that meet specific industry needs.
14 The programs of technical colleges shall include, but not be limited
15 to, continuous enrollment, competency-based instruction, industry-
16 experienced faculty, curriculum integrating vocational and basic
17 skills education, and curriculum approved by representatives of
18 employers and labor. For purposes of this chapter, technical
19 colleges shall include Lake Washington Vocational-Technical
20 Institute, Renton Vocational-Technical Institute, Bates Vocational-
21 Technical Institute, Clover Park Vocational Institute, and Bellingham
22 Vocational-Technical Institute.

23 (12) "Adult education" shall mean all education or instruction,
24 including academic, vocational education or training, basic skills
25 and literacy training, and "occupational education" provided by
26 public educational institutions, including common school districts
27 for persons who are eighteen years of age and over or who hold a high
28 school diploma or certificate. However, "adult education" shall not
29 include academic education or instruction for persons under twenty-
30 one years of age who do not hold a high school degree or diploma and
31 who are attending a public high school for the sole purpose of
32 obtaining a high school diploma or certificate, nor shall "adult
33 education" include education or instruction provided by any four year
34 public institution of higher education.

35 (13) "Dislocated forest product worker" shall mean a forest
36 products worker who: (a)(i) Has been terminated or received notice
37 of termination from employment and is unlikely to return to
38 employment in the individual's principal occupation or previous
39 industry because of a diminishing demand for his or her skills in

1 that occupation or industry; or (ii) is self-employed and has been
2 displaced from his or her business because of the diminishing demand
3 for the (~~business's~~) business' services or goods; and (b) at the
4 time of last separation from employment, resided in or was employed
5 in a rural natural resources impact area.

6 (14) "Forest products worker" shall mean a worker in the forest
7 products industries affected by the reduction of forest fiber
8 enhancement, transportation, or production. The workers included
9 within this definition shall be determined by the employment security
10 department, but shall include workers employed in the industries
11 assigned the major group standard industrial classification codes
12 "24" and "26" and the industries involved in the harvesting and
13 management of logs, transportation of logs and wood products,
14 processing of wood products, and the manufacturing and distribution
15 of wood processing and logging equipment. The commissioner may adopt
16 rules further interpreting these definitions. For the purposes of
17 this subsection, "standard industrial classification code" means the
18 code identified in RCW 50.29.025(~~(+6)(e)~~) (3).

19 (15) "Dislocated salmon fishing worker" means a finfish products
20 worker who: (a)(i) Has been terminated or received notice of
21 termination from employment and is unlikely to return to employment
22 in the individual's principal occupation or previous industry because
23 of a diminishing demand for his or her skills in that occupation or
24 industry; or (ii) is self-employed and has been displaced from his or
25 her business because of the diminishing demand for the business's
26 services or goods; and (b) at the time of last separation from
27 employment, resided in or was employed in a rural natural resources
28 impact area.

29 (16) "Salmon fishing worker" means a worker in the finfish
30 industry affected by 1994 or future salmon disasters. The workers
31 included within this definition shall be determined by the employment
32 security department, but shall include workers employed in the
33 industries involved in the commercial and recreational harvesting of
34 finfish including buying and processing finfish. The commissioner
35 may adopt rules further interpreting these definitions.

36 (17) "Rural natural resources impact area" means:

37 (a) A nonmetropolitan county, as defined by the 1990 decennial
38 census, that meets three of the five criteria set forth in subsection
39 (18) of this section;

1 (b) A nonmetropolitan county with a population of less than forty
2 thousand in the 1990 decennial census, that meets two of the five
3 criteria as set forth in subsection (18) of this section; or

4 (c) A nonurbanized area, as defined by the 1990 decennial census,
5 that is located in a metropolitan county that meets three of the five
6 criteria set forth in subsection (18) of this section.

7 (18) For the purposes of designating rural natural resources
8 impact areas, the following criteria shall be considered:

9 (a) A lumber and wood products employment location quotient at or
10 above the state average;

11 (b) A commercial salmon fishing employment location quotient at
12 or above the state average;

13 (c) Projected or actual direct lumber and wood products job
14 losses of one hundred positions or more;

15 (d) Projected or actual direct commercial salmon fishing job
16 losses of one hundred positions or more; and

17 (e) An unemployment rate twenty percent or more above the state
18 average. The counties that meet these criteria shall be determined
19 by the employment security department for the most recent year for
20 which data is available. For the purposes of administration of
21 programs under this chapter, the United States post office five-digit
22 zip code delivery areas will be used to determine residence status
23 for eligibility purposes. For the purpose of this definition, a zip
24 code delivery area of which any part is ten miles or more from an
25 urbanized area is considered nonurbanized. A zip code totally
26 surrounded by zip codes qualifying as nonurbanized under this
27 definition is also considered nonurbanized. The office of financial
28 management shall make available a zip code listing of the areas to
29 all agencies and organizations providing services under this chapter.

30 NEW SECTION. **Sec. 34.** The commissioner of the employment
31 security department may adopt such rules as are necessary to
32 implement this act.

33 NEW SECTION. **Sec. 35.** The following acts or parts of acts are
34 each repealed:

35 (1) RCW 50.20.015 (Person with marginal labor force attachment)
36 and 1986 c 106 s 1, 1985 c 285 s 3, & 1984 c 205 s 9;

1 (2) RCW 50.20.045 (Employee separated from employment due to wage
2 garnishment not disqualified) and 1969 ex.s. c 264 s 35;
3 (3) RCW 50.20.125 (Maximum amount payable weekly) and 2002 c 149
4 s 3; and
5 (4) RCW 50.29.045 (Contribution rate--Insolvency surcharge) and
6 2002 c 149 s 9.

7 NEW SECTION. **Sec. 36.** If any part of this act is found to be in
8 conflict with federal requirements that are a prescribed condition to
9 the allocation of federal funds to the state or the eligibility of
10 employers in this state for federal unemployment tax credits, the
11 conflicting part of this act is inoperative solely to the extent of
12 the conflict, and the finding or determination does not affect the
13 operation of the remainder of this act. Rules adopted under this act
14 must meet federal requirements that are a necessary condition to the
15 receipt of federal funds by the state or the granting of federal
16 unemployment tax credits to employers in this state.

17 NEW SECTION. **Sec. 37.** If any provision of this act or its
18 application to any person or circumstance is held invalid, the
19 remainder of the act or the application of the provision to other
20 persons or circumstances is not affected.

21 NEW SECTION. **Sec. 38.** Section 30 of this act expires January 1,
22 2004.

23 NEW SECTION. **Sec. 39.** This act is necessary for the immediate
24 preservation of the public peace, health, or safety, or support of
25 the state government and its existing public institutions, and takes
26 effect immediately."

27 **SB 6097** - S AMD
28 By Senator

29
30 On page 1, line 1 of the title, after "rates;" strike the
31 remainder of the title and insert "amending RCW 50.01.010, 50.20.010,
32 50.20.050, 50.04.293, 50.20.060, 50.20.065, 50.20.240, 50.20.120,

1 50.29.025, 50.04.355, 50.29.026, 50.29.062, 50.29.070, 50.12.220,
2 50.16.010, 50.16.015, 50.24.014, 50.20.190, 50.04.206, 50.20.080,
3 50.20.140, 50.20.043, 50.20.160, 50.32.040, 50.20.100, and
4 28B.50.030; reenacting and amending RCW 50.29.020; adding a new
5 section to chapter 50.04 RCW; adding a new section to chapter 50.20
6 RCW; adding a new section to chapter 50.29 RCW; creating new
7 sections; repealing RCW 50.20.015, 50.20.045, 50.20.125, and
8 50.29.045; providing expiration dates; and declaring an emergency."

--- END ---