
SUBSTITUTE SENATE BILL 5230

State of Washington

60th Legislature

2007 Regular Session

By Senate Committee on Labor, Commerce, Research & Development
(originally sponsored by Senators Kohl-Welles, Keiser, Prentice,
Franklin and Kline; by request of Employment Security Department)

READ FIRST TIME 02/13/07.

1 AN ACT Relating to funding the administration of Title 50 RCW,
2 unemployment compensation; amending RCW 50.20.190, 50.24.014,
3 50.29.063, and 50.16.010; and creating a new section.

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

5 **Sec. 1.** RCW 50.20.190 and 2006 c 13 s 21 are each amended to read
6 as follows:

7 (1) An individual who is paid any amount as benefits under this
8 title to which he or she is not entitled shall, unless otherwise
9 relieved pursuant to this section, be liable for repayment of the
10 amount overpaid. The department shall issue an overpayment assessment
11 setting forth the reasons for and the amount of the overpayment. The
12 amount assessed, to the extent not collected, may be deducted from any
13 future benefits payable to the individual: PROVIDED, That in the
14 absence of a back pay award, a settlement affecting the allowance of
15 benefits, fraud, misrepresentation, or willful nondisclosure, every
16 determination of liability shall be mailed or personally served not
17 later than two years after the close of or final payment made on the
18 individual's applicable benefit year for which the purported
19 overpayment was made, whichever is later, unless the merits of the

1 claim are subjected to administrative or judicial review in which event
2 the period for serving the determination of liability shall be extended
3 to allow service of the determination of liability during the six-month
4 period following the final decision affecting the claim.

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

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

1 all real and personal property of the person(s) against whom the
2 warrant is issued, the same as a judgment in a civil case duly docketed
3 in the office of such clerk. A warrant so docketed shall be sufficient
4 to support the issuance of writs of execution and writs of garnishment
5 in favor of the state in the manner provided by law for a civil
6 judgment. A copy of the warrant shall be mailed to the person(s)
7 mentioned in the warrant by certified mail to the person's last known
8 address within five days of its filing with the clerk.

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

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

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

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

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

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

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

18 (6) When an individual fails to repay an overpayment assessment
19 that is due and fails to arrange for satisfactory repayment terms, the
20 commissioner shall impose an interest penalty of one percent per month
21 of the outstanding balance. Interest shall accrue immediately on
22 overpayments assessed pursuant to RCW 50.20.070 and shall be imposed
23 when the assessment becomes final. For any other overpayment, interest
24 shall accrue when the individual has missed two or more of the
25 individual's monthly payments either partially or in full. ~~((The
26 interest penalty shall be used, first, to fully fund either social
27 security number cross-match audits or other more effective activities
28 that ensure that individuals are entitled to all amounts of benefits
29 that they are paid, second, to fund other detection and recovery of
30 overpayment and collection activities, and third, during the 2005-07
31 fiscal biennium, the cost of the job skills program at community and
32 technical colleges as appropriated by the legislature.))~~

33 **Sec. 2.** RCW 50.24.014 and 2006 c 13 s 20 are each amended to read
34 as follows:

35 (1)(a) A separate and identifiable account to provide for the
36 financing of special programs to assist the unemployed is established
37 in the administrative contingency fund. All money in this account

1 shall be expended solely for the purposes of this title and for no
2 other purposes whatsoever. Contributions to this account shall accrue
3 and become payable by each employer, except employers as described in
4 RCW 50.44.010 and 50.44.030 who have properly elected to make payments
5 in lieu of contributions, taxable local government employers as
6 described in RCW 50.44.035, and those employers who are required to
7 make payments in lieu of contributions, at a basic rate of two one-
8 hundredths of one percent. The amount of wages subject to tax shall be
9 determined under RCW 50.24.010.

10 (b) A separate and identifiable account is established in the
11 administrative contingency fund for financing the employment security
12 department's administrative cost under RCW 50.22.150 and the costs
13 under RCW 50.22.150(~~(+9)~~) (10). All money in this account shall be
14 expended solely for the purposes of this title and for no other
15 purposes whatsoever. Contributions to this account shall accrue and
16 become payable by each employer, except employers as described in RCW
17 50.44.010 and 50.44.030 who have properly elected to make payments in
18 lieu of contributions, taxable local government employers as described
19 in RCW 50.44.035, those employers who are required to make payments in
20 lieu of contributions, those employers described under RCW
21 50.29.025(1)(f)(ii), and those qualified employers assigned rate class
22 20 or rate class 40, as applicable, under RCW 50.29.025, at a basic
23 rate of one one-hundredth of one percent. The amount of wages subject
24 to tax shall be determined under RCW 50.24.010. Any amount of
25 contributions payable under this subsection (1)(b) that exceeds the
26 amount that would have been collected at a rate of four one-thousandths
27 of one percent must be deposited in the (~~unemployment compensation~~
28 ~~trust fund~~).

29 ~~(c) For the first calendar quarter of 1994 only, the basic two one-~~
30 ~~hundredths of one percent contribution payable under (a) of this~~
31 ~~subsection shall be increased by one hundredth of one percent to a~~
32 ~~total rate of three one hundredths of one percent. The proceeds of~~
33 ~~this incremental one hundredth of one percent shall be used solely for~~
34 ~~the purposes described in section 22, chapter 483, Laws of 1993, and~~
35 ~~for the purposes of conducting an evaluation of the call center~~
36 ~~approach to unemployment insurance under section 5, chapter 161, Laws~~
37 ~~of 1998. During the 1997-1999 fiscal biennium, any surplus from~~
38 ~~contributions payable under this subsection (c) may be deposited in the~~

1 ~~unemployment compensation trust fund, used to support tax and wage~~
2 ~~automated systems projects that simplify and streamline employer~~
3 ~~reporting, or both)) account created in (a) of this subsection.~~

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

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

12 (3) If the commissioner determines that federal funding has been
13 increased to provide financing for the services specified in chapter
14 50.62 RCW, the commissioner shall direct that collection of
15 contributions under this section be terminated on the following January
16 1st.

17 **Sec. 3.** RCW 50.29.063 and 2006 c 47 s 1 are each amended to read
18 as follows:

19 (1) If it is found that a significant purpose of the transfer of a
20 business was to obtain a reduced array calculation factor rate, then
21 the following applies:

22 (a) If the successor was an employer at the time of the transfer,
23 then the experience rating accounts of the employers involved shall be
24 combined into a single account and the employers assigned the higher of
25 the predecessor or successor array calculation factor rate to take
26 effect as of the date of the transfer.

27 (b) If the successor was not an employer at the time of the
28 transfer, then the experience rating account of the acquired business
29 must not be transferred and, instead, the sum of the rate determined by
30 the commissioner under RCW 50.29.025(2) (c)(ii) and (d)(ii), and
31 50.29.041 if applicable, shall be assigned.

32 (2) If any part of a delinquency for which an assessment is made
33 under this title is due to an intent to knowingly evade the
34 successorship provisions of RCW 50.29.062 and this section, then with
35 respect to the employer, and to any business found to be knowingly
36 promoting the evasion of such provisions:

1 (a) The commissioner shall, for the rate year in which the
2 commissioner makes the determination under this subsection and for each
3 of the three consecutive rate years following that rate year, assign to
4 the employer or business the total rate, which is the sum of the
5 recalculated array calculation factor rate and a civil penalty
6 assessment rate, calculated as follows:

7 (i) Recalculate the array calculation factor rate as the array
8 calculation factor rate that should have applied to the employer or
9 business under RCW 50.29.025 and 50.29.062; and

10 (ii) Calculate a civil penalty assessment rate in an amount that,
11 when added to the array calculation factor rate determined under (a)(i)
12 of this subsection for the applicable rate year, results in a total
13 rate equal to the maximum array calculation factor rate under RCW
14 50.29.025 plus two percent, which total rate is not limited by any
15 maximum array calculation factor rate established in RCW
16 50.29.025(2)(b)(ii);

17 (b) The employer or business may be prosecuted under the penalties
18 prescribed in RCW 50.36.020; and

19 (c) The employer or business must pay for the employment security
20 department's reasonable expenses of auditing the employer's or
21 business's books and collecting the civil penalty assessment.

22 (3) If the person knowingly evading the successorship provisions,
23 or knowingly attempting to evade these provisions, or knowingly
24 promoting the evasion of these provisions, is not an employer, the
25 person is subject to a civil penalty assessment of five thousand
26 dollars per occurrence. In addition, the person is subject to the
27 penalties prescribed in RCW 50.36.020 as if the person were an
28 employer. The person must also pay for the employment security
29 department's reasonable expenses of auditing his or her books and
30 collecting the civil penalty assessment.

31 (4) For purposes of this section:

32 (a) "Knowingly" means having actual knowledge of or acting with
33 deliberate ignorance or reckless disregard for the prohibition involved
34 and includes, but is not limited to, intent to evade,
35 misrepresentation, or willful nondisclosure.

36 (b) "Person" means and includes an individual, a trust, estate,
37 partnership, association, company, or corporation.

1 (c) "Transfer of a business" includes the transfer or acquisition
2 of substantially all or a portion of the operating assets, which may
3 include the employer's work force.

4 (5) Any decision to assess a penalty under this section shall be
5 made by the chief administrative officer of the tax branch or his or
6 her designee.

7 (6) Nothing in this section shall be construed to deny an employer
8 the right to appeal the assessment of a penalty in the manner provided
9 in RCW 50.32.030.

10 ~~(7) ((All penalties and interest collected under this section shall
11 be expended solely for prevention, detection, and collection activities
12 related to evasion of the successorship provisions of RCW 50.29.062 and
13 this section, and for no other purposes.~~

14 ~~(8))~~ The commissioner shall establish procedures to enforce this
15 section.

16 **Sec. 4.** RCW 50.16.010 and 2006 c 13 s 18 are each amended to read
17 as follows:

18 (1) There shall be maintained as special funds, separate and apart
19 from all public moneys or funds of this state an unemployment
20 compensation fund, an administrative contingency fund, and a federal
21 interest payment fund, which shall be administered by the commissioner
22 exclusively for the purposes of this title, and to which RCW 43.01.050
23 shall not be applicable.

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

25 (i) All contributions collected under RCW 50.24.010 and payments in
26 lieu of contributions collected pursuant to the provisions of this
27 title;

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

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

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

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

36 (vi) All money credited to this state's account in the unemployment

1 trust fund pursuant to section 903 of the social security act, as
2 amended;

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

6 (viii) All moneys received for the fund from any other source.

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

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

11 (i) All interest on delinquent contributions collected pursuant to
12 this title;

13 (ii) All fines and penalties collected pursuant to the provisions
14 of this title;

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

17 (iv) Revenue received under RCW 50.24.014.

18 (b) All fees, fines, forfeitures, and penalties collected or
19 assessed by a district court because of the violation of this title or
20 rules adopted under this title shall be remitted as provided in chapter
21 3.62 RCW.

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

27 (i) The proper administration of this title and ~~((no))~~ that
28 insufficient federal funds are available for the specific purpose to
29 which such expenditure is to be made, provided, the moneys are not
30 substituted for appropriations from federal funds which, in the absence
31 of such moneys, would be made available.

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

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

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

5 ~~((d) During the 2005-2007 fiscal biennium, the cost of the job
6 skills program at community and technical colleges as appropriated by
7 the legislature.))~~

8 Money in the special account created under RCW 50.24.014(1)(a) may
9 only be expended, after appropriation, for the purposes specified in
10 this section and RCW 50.62.010, 50.62.020, 50.62.030, 50.24.014,
11 50.44.053, and 50.22.010.

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

16 NEW SECTION. **Sec. 6.** If any part of this act is found to be in
17 conflict with federal requirements that are a prescribed condition to
18 the allocation of federal funds to the state or the eligibility of
19 employers in this state for federal unemployment tax credits, the
20 conflicting part of this act is inoperative solely to the extent of the
21 conflict, and the finding or determination does not affect the
22 operation of the remainder of this act. Rules adopted under this act
23 must meet federal requirements that are a necessary condition to the
24 receipt of federal funds by the state or the granting of federal
25 unemployment tax credits to employers in this state.

--- END ---