

# SENATE BILL REPORT

## SSB 5963

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As Amended by House, April 10, 2009

**Title:** An act relating to unemployment insurance.

**Brief Description:** Regarding unemployment insurance.

**Sponsors:** Senate Committee on Labor, Commerce & Consumer Protection (originally sponsored by Senators Kohl-Welles, Holmquist, King, Honeyford, Keiser, Franklin, Kline, Hewitt, Marr, Parlette, McCaslin, Schoesler and Morton).

**Brief History:**

**Committee Activity:** Labor, Commerce & Consumer Protection: 2/10/09, 2/24/09 [DPS].  
Passed Senate: 3/11/09, 38-11.  
Passed House: 4/10/09, 53-45.

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### SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

**Majority Report:** That Substitute Senate Bill No. 5963 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kohl-Welles, Chair; Keiser, Vice Chair; Holmquist, Ranking Minority Member; Franklin, Honeyford, King and Kline.

**Staff:** Mac Nicholson (786-7445)

**Background:** Conformity. In 2006 the federal Department of Labor informed the Employment Security Department (ESD) that a provision of Washington law is out of conformity with federal unemployment insurance laws. The state provision in question governs the way unemployment benefits are paid and charged back to the employer. Unemployment benefits are calculated based on a percentage of how much a claimant earned in the two quarters of the base year in which the claimant earned the most money. Benefits are charged to the employer based on the worker's wages in all four quarters of the base year, not just the two quarters in which the claimant earned the most money. This process is commonly known as "pay at 2, charge at 4." In the "pay at 2, charge at 4" system, the amount of benefits paid out doesn't necessarily match the amount of benefits charged back to an employer. The difference between benefits paid out and benefits charged back to an employer is spread across all employers as a social cost. The federal government believes "pay at 2, charge at 4" is out of conformity because federal law requires that unemployment tax rates reflect actual benefits paid.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Employer Contributions. The total amount of unemployment insurance (UI) contributions or taxes paid by an employer includes an experience rated tax and a social tax. The experience rated tax is determined based on an employer's benefit ratio and falls into one of 40 rate classes ranging from 0.0 percent in rate class 1 to 5.40 percent in rate class 40. The social tax covers social costs and is calculated using the flat social cost factor, which is then graduated based on the employer's rate class. The flat social cost factor is 0.6 percent, and varies depending on the number of months of benefits in the UI trust fund. If there are 12 to 14 months of benefits, the flat social cost factor is 0.5 percent, and if there are more than 14 months then the flat social cost factor is 0.45 percent for employers in rate class 1. The combined social tax and experience rated tax is capped at 5.7 percent for certain agriculture, forestry, and fishing employers and at 6.5 percent for all other contribution paying employers.

Voluntary Quits. An individual is disqualified from UI benefits if the individual left work voluntarily without good cause. State law specifies 11 good cause quit provisions. In 2008 the state Supreme Court released its decision on the consolidated *Spain v. ESD* and *Batey v. ESD* cases. The court found that the state's good cause quit statute is ambiguous, and that the 11 listed good cause quit provisions are not an exclusive list. Rather, the court found that an individual who left work without good cause can collect benefits if compelling personal reasons created good cause to leave employment as determined by ESD.

**Summary of Substitute Bill:** Conformity. UI benefits are charged back to employers in the same amount that benefits are paid out ("pay at 2, charge at 4" is changed to "pay at 2, charge at 2").

Employer Contributions. Beginning with rate year 2010, the experience rated taxes for rate classes 2 through 39 are reduced by 0.02 percent to 0.05 percent depending on the specific rate class. The flat social cost factor adjusts depending on the months of benefits in the trust fund as follows:

Months of benefits in trust fund	Flat social cost factor
10-11	0.5 percent
11-12	0.4 percent
13-15	0.35 percent
15-17	0.25 percent
17-18	0.15 percent
18+	0.15 percent through rate year 2010 and 0 percent thereafter.

The combined social tax and experience rated tax is capped at 5.4 percent for certain agriculture, forestry, and fishing employers and at 6.0 percent for all other contribution paying employers.

Voluntary Quits. An individual has good cause and is not disqualified from UI benefits only if the individual quit for one of the specified reasons listed in statute. An additional good cause quit provision is established for individuals who left work to relocate for the employment of a spouse or domestic partner that is outside the existing labor market area if the claimant remained employed as long as was reasonable prior to moving.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: This is an extremely important issue for the business community. This bill is the product of seven months of work to address the conformity issue. The legislation moves to pay at 2 charge at 2, but under the legislation, 98 percent of businesses will stay at same rate they are now or will get a small tax cut. The legislation will right size the UI trust fund, as 22 months is excessive and employers have been overtaxed. The legislation is a responsible approach, and the conformity piece needs to remain intact as the bill moves along the process. The proposal was developed with every industry in mind and all industries support the bill. The bill provides tax reduction in a system that has overtaxed employers. The measure maintains benefits and solvency of the UI trust fund while protecting jobs. The bill confirms the intent of the Legislature regarding voluntary quits.

OTHER: ESD is neutral on the bill. Portions of the legislation concerning UI taxes adequately address the conformity issue and provide for an average of 12 to 15 months in the UI trust fund. The legislation incorporates quit to follow, allowing Washington to take full advantage of the federal UI Modernization Act. The labor community has been reviewing the conformity issue as well and is looking at data from ESD to determine the impact of the proposal. The conformity piece should include some benefit changes as well. The quit to follow provision in the legislation allows a worker to leave employment if that worker's spouse has moved, and is good public policy. There are compelling work-related reasons for leaving employment and under the proposal, ESD would not be able to consider those factors in determining UI eligibility. The Spain/Batey decision should be kept intact, allowing ESD to look at compelling work-related reasons for leaving employment. Commissioner discretion is important. Agricultural employers are concerned about increased costs and the amount of experience charges.

**Persons Testifying:** PRO: Donna Steward, Association of Washington Business; Jan Teague, Washington Retail Association; Nancy Hiteshue, Washington Roundtable; Christine Swanson, Associated General Contractors; Trent House, Boeing.

OTHER: Karen Lee, ESD; Bob Abbott, Laborers District Council; Pam Crone, Northwest Women's Law Center; Dan Fazio, Washington Farm Bureau.

**House Amendment(s):** The multiplier used to calculate an individual's weekly benefit amount is changed from 3.85 to 4.0 for claims with an effective date on or after January 3, 2010. Until 2016 the multiplier will be 3.85 if the Commissioner of ESD determines that additional UI compensation is payable pursuant to state or federal law, or if the balance in the UI trust fund is an amount that will provide fewer than eight months of benefits.

For separations that occur after September 6, 2009, an individual will not be disqualified from UI benefits if the individual left work because continuing in employment would work an unreasonable hardship on the individual. An unreasonable hardship is a result not due to the individual's voluntary action that would cause a reasonable person to leave that employment. An individual seeking to demonstrate unreasonable hardship must show that the individual left work primarily for work-connected reasons; the work-connected reasons were of such a compelling nature they would have caused a reasonably prudent person to leave work; and the individual first exhausted all reasonable alternatives before leaving work.

The eligibility period for extended benefits for certain individuals who are eligible for emergency unemployment compensation is modified. An emergency clause is added for the section making this change.