

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2649

61st Legislature
2010 Regular Session

Passed by the House January 28, 2010
Yeas 97 Nays 0

Speaker of the House of Representatives

Passed by the Senate March 3, 2010
Yeas 46 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2649** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 2649

Passed Legislature - 2010 Regular Session

State of Washington 61st Legislature 2010 Regular Session

By House Commerce & Labor (originally sponsored by Representatives Green, Conway, Moeller, and Williams; by request of Employment Security Department)

READ FIRST TIME 01/21/10.

1 AN ACT Relating to correcting references in RCW 50.29.021(2)(c)(i),
2 (c)(ii), and (3)(e), RCW 50.29.062(2)(b)(i)(B) and (2)(b)(iii), and RCW
3 50.29.063(1)(b) and (2)(a)(ii) to unemployment insurance statutes
4 concerning employer experience rating accounts and contribution rates;
5 amending RCW 50.29.062 and 50.29.063; reenacting and amending RCW
6 50.29.021; creating a new section; and declaring an emergency.

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

8 **Sec. 1.** RCW 50.29.021 and 2009 c 493 s 1, 2009 c 50 s 1, and 2009
9 c 3 s 13 are each reenacted and amended to read as follows:

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

13 (2)(a) An experience rating account shall be established and
14 maintained for each employer, except employers as described in RCW
15 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make
16 payments in lieu of contributions, taxable local government employers
17 as described in RCW 50.44.035, and those employers who are required to
18 make payments in lieu of contributions, based on existing records of
19 the employment security department.

1 (b) Benefits paid to an eligible individual shall be charged to the
2 experience rating accounts of each of such individual's employers
3 during the individual's base year in the same ratio that the wages paid
4 by each employer to the individual during the base year bear to the
5 wages paid by all employers to that individual during that base year,
6 except as otherwise provided in this section.

7 (c) When the eligible individual's separating employer is a covered
8 contribution paying base year employer, benefits paid to the eligible
9 individual shall be charged to the experience rating account of only
10 the individual's separating employer if the individual qualifies for
11 benefits under:

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

15 (ii) RCW 50.20.050 (1)(b) (v) through (x) or (2)(b) (v) through
16 (x).

17 (3) The legislature finds that certain benefit payments, in whole
18 or in part, should not be charged to the experience rating accounts of
19 employers except those employers described in RCW 50.44.010, 50.44.030,
20 and 50.50.030 who have properly elected to make payments in lieu of
21 contributions, taxable local government employers described in RCW
22 50.44.035, and those employers who are required to make payments in
23 lieu of contributions, as follows:

24 (a) Benefits paid to any individual later determined to be
25 ineligible shall not be charged to the experience rating account of any
26 contribution paying employer. However, when a benefit claim becomes
27 invalid due to an amendment or adjustment of a report where the
28 employer failed to report or inaccurately reported hours worked or
29 remuneration paid, or both, all benefits paid will be charged to the
30 experience rating account of the contribution paying employer or
31 employers that originally filed the incomplete or inaccurate report or
32 reports. An employer who reimburses the trust fund for benefits paid
33 to workers and who fails to report or inaccurately reported hours
34 worked or remuneration paid, or both, shall reimburse the trust fund
35 for all benefits paid that are based on the originally filed incomplete
36 or inaccurate report or reports.

37 (b) Benefits paid to an individual filing under the provisions of

1 chapter 50.06 RCW shall not be charged to the experience rating account
2 of any contribution paying employer only if:

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

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

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

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

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

20 (f) With respect to claims with an effective date on or after the
21 first Sunday following April 22, 2005, benefits paid that exceed the
22 benefits that would have been paid if the weekly benefit amount for the
23 claim had been determined as one percent of the total wages paid in the
24 individual's base year shall not be charged to the experience rating
25 account of any contribution paying employer. This subsection (3)(f)
26 does not apply to the calculation of contribution rates under RCW
27 50.29.025 for rate year 2010 and thereafter.

28 (g) The forty-five dollar increase paid as part of an individual's
29 weekly benefit amount as provided in RCW 50.20.1201 shall not be
30 charged to the experience rating account of any contribution paying
31 employer.

32 (h) With respect to claims where the minimum amount payable weekly
33 is increased to one hundred fifty-five dollars pursuant to RCW
34 50.20.1201(3), benefits paid that exceed the benefits that would have
35 been paid if the minimum amount payable weekly had been calculated
36 pursuant to RCW 50.20.120 shall not be charged to the experience rating
37 account of any contribution paying employer.

1 (i) Training benefits paid to an individual under RCW 50.22.155
2 shall not be charged to the experience rating account of any
3 contribution paying employer.

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

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

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

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

17 (iv) Continues to be employed on a regularly scheduled permanent
18 part-time basis by a base year employer and who at some time during the
19 base year was concurrently employed and subsequently separated from at
20 least one other base year employer. Benefit charge relief ceases when
21 the employment relationship between the employer requesting relief and
22 the claimant is terminated. This subsection does not apply to shared
23 work employers under chapter 50.06 RCW; or

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

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

1 **Sec. 2.** RCW 50.29.062 and 2009 c 225 s 1 are each amended to read
2 as follows:

3 Except as provided in RCW 50.29.063, predecessor and successor
4 employer contribution rates shall be computed in the following manner:

5 (1) If the successor is an employer, as defined in RCW 50.04.080,
6 at the time of the transfer of a business, the following applies:

7 (a) The successor's contribution rate shall remain unchanged for
8 the remainder of the rate year in which the transfer occurs; and

9 (b) Beginning January 1st following the transfer, the successor's
10 contribution rate for each rate year shall be based on a combination of
11 the following:

12 (i) The successor's experience with payrolls and benefits; and

13 (ii) Any experience assigned to the predecessor involved in the
14 transfer. If only a portion of the business was transferred, then the
15 experience attributable to the acquired portion is assigned to the
16 successor.

17 (2) If the successor is not an employer at the time of the
18 transfer, the following applies:

19 (a) For transfers before January 1, 2005:

20 (i) Except as provided in (ii) of this subsection (2)(a), the
21 successor shall pay contributions at the lowest rate determined under
22 either of the following:

23 (A) The contribution rate of the rate class assigned to the
24 predecessor employer at the time of the transfer for the remainder of
25 that rate year. Any experience relating to the assignment of that rate
26 class attributable to the predecessor is transferred to the successor.
27 Beginning with the January 1st following the transfer, the successor's
28 contribution rate shall be based on a combination of the transferred
29 experience of the acquired business and the successor's experience
30 after the transfer; or

31 (B) The contribution rate equal to the average industry rate as
32 determined by the commissioner, but not less than one percent, and
33 continuing until the successor qualifies for a different rate in its
34 own right. Assignment of employers by the commissioner to industrial
35 classification, for purposes of this subsection, must be in accordance
36 with established classification practices found in the North American
37 industry classification system issued by the federal office of

1 management and budget to the fourth digit provided in the North
2 American industry classification system.

3 (ii) If the successor simultaneously acquires the business or a
4 portion of the business of two or more employers in different rate
5 classes, its rate, from the date the transfer occurred until the end of
6 that rate year and until it qualifies in its own right for a new rate,
7 shall be the rate of the highest rate class applicable at the time of
8 the acquisition to any predecessor employer who is a party to the
9 acquisition, but not less than one percent.

10 (b) For transfers on or after January 1, 2005:

11 (i) Except as provided in (ii) and (iii) of this subsection (2)(b),
12 the successor shall pay contributions:

13 (A) At the contribution rate assigned to the predecessor employer
14 at the time of the transfer for the remainder of that rate year. Any
15 experience attributable to the predecessor relating to the assignment
16 of the predecessor's rate class is transferred to the successor.

17 (B) Beginning January 1st following the transfer, the successor's
18 contribution rate for each rate year shall be based on an array
19 calculation factor rate that is a combination of the following: The
20 successor's experience with payrolls and benefits; and any experience
21 assigned to the predecessor involved in the transfer. If only a
22 portion of the business was transferred, then the experience
23 attributable to the acquired portion is assigned to the successor if
24 qualified under RCW 50.29.010(~~((+6+))~~) by including the transferred
25 experience. If not qualified under RCW 50.29.010(~~((+6+))~~), the
26 contribution rate shall equal the sum of the rates determined by the
27 commissioner under RCW 50.29.025 (~~((+2+))~~) (1)(d)(ii) or (2)(d) and
28 50.29.041, if applicable, and continuing until the successor qualifies
29 for a different rate, including the transferred experience.

30 (ii) If there is a substantial continuity of ownership, control, or
31 management by the successor of the business of the predecessor, the
32 successor shall pay contributions at the contribution rate determined
33 for the predecessor employer at the time of the transfer for the
34 remainder of that rate year. Any experience attributable to the
35 predecessor relating to the assignment of the predecessor's rate class
36 is transferred to the successor. Beginning January 1st following the
37 transfer, the successor's array calculation factor rate shall be based

1 on a combination of the transferred experience of the acquired business
2 and the successor's experience after the transfer.

3 (iii) If the successor simultaneously acquires the business or a
4 portion of the business of two or more employers with different
5 contribution rates, the successor's rate, from the date the transfer
6 occurred until the end of that rate year and until it qualifies in its
7 own right for a new rate, shall be the sum of the rates determined by
8 the commissioner under RCW 50.29.025 (1) (a) and (b) or (2) (a) and
9 (b), and 50.29.041, applicable at the time of the acquisition, to the
10 predecessor employer who, among the parties to the acquisition, had the
11 largest total payroll in the completed calendar quarter immediately
12 preceding the date of transfer, but not less than the sum of the rates
13 determined by the commissioner under RCW 50.29.025 ~~((+2))~~ (1)(d)(ii)
14 or (2)(d) and 50.29.041, if applicable.

15 (3) With respect to predecessor employers:

16 (a) The contribution rate on any payroll retained by a predecessor
17 employer shall remain unchanged for the remainder of the rate year in
18 which the transfer occurs.

19 (b) In all cases, beginning January 1st following the transfer, the
20 predecessor's contribution rate or the predecessor's array calculation
21 factor for each rate year shall be based on its experience with
22 payrolls and benefits as of the regular computation date for that rate
23 year excluding the experience of the transferred business or
24 transferred portion of business as that experience has transferred to
25 the successor: PROVIDED, That if all of the predecessor's business is
26 transferred to a successor or successors, the predecessor shall not be
27 a qualified employer until it satisfies the requirements of a
28 "qualified employer" as set forth in RCW 50.29.010.

29 (4) For purposes of this section, "transfer of a business" means
30 the same as RCW 50.29.063(4)(c).

31 **Sec. 3.** RCW 50.29.063 and 2009 c 225 s 2 are each amended to read
32 as follows:

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

36 (a) If the successor was an employer at the time of the transfer,
37 then the experience rating accounts of the employers involved shall be

1 combined into a single account and the employers assigned the higher of
2 the predecessor or successor array calculation factor rate to take
3 effect as of the date of the transfer.

4 (b) If the successor was not an employer at the time of the
5 transfer, then the experience rating account of the acquired business
6 must not be transferred and, instead, the sum of the rate determined by
7 the commissioner under RCW 50.29.025 (~~((+2))~~) (1)(d)(ii) or (2)(d) and
8 50.29.041, if applicable, shall be assigned.

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

14 (a) The commissioner shall, for the rate year in which the
15 commissioner makes the determination under this subsection and for each
16 of the three consecutive rate years following that rate year, assign to
17 the employer or business the total rate, which is the sum of the
18 recalculated array calculation factor rate and a civil penalty
19 assessment rate, calculated as follows:

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

23 (ii) Calculate a civil penalty assessment rate in an amount that,
24 when added to the array calculation factor rate determined under (a)(i)
25 of this subsection for the applicable rate year, results in a total
26 rate equal to the maximum array calculation factor rate under RCW
27 50.29.025 plus two percent, which total rate is not limited by any
28 maximum array calculation factor rate established in RCW 50.29.025
29 (1)(b)(ii) or (2)(b)(ii);

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

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

35 (3) If the person knowingly evading the successorship provisions,
36 or knowingly attempting to evade these provisions, or knowingly
37 promoting the evasion of these provisions, is not an employer, the
38 person is subject to a civil penalty assessment of five thousand

1 dollars per occurrence. In addition, the person is subject to the
2 penalties prescribed in RCW 50.36.020 as if the person were an
3 employer. The person must also pay for the employment security
4 department's reasonable expenses of auditing his or her books and
5 collecting the civil penalty assessment.

6 (4) For purposes of this section:

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

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

13 (c) "Transfer of a business" includes the transfer or acquisition
14 of substantially all or a portion of the operating assets, which may
15 include the employer's workforce.

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

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

22 (7) The commissioner shall engage in prevention, detection, and
23 collection activities related to evasion of the successorship
24 provisions of RCW 50.29.062 and this section, and establish procedures
25 to enforce this section.

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

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

5 NEW SECTION. **Sec. 6.** Section 1 of this act is necessary for the
6 immediate preservation of the public peace, health, or safety, or
7 support of the state government and its existing public institutions,
8 and takes effect immediately.

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