

HOUSE BILL REPORT

ESSB 5478

As Passed House - Amended:

April 22, 2021

Title: An act relating to unemployment insurance relief for certain employers.

Brief Description: Concerning unemployment insurance relief for certain employers.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Keiser, Mullet, Billig, Cleveland, Conway, Das, Hunt, King, Kuderer, Lias, Lovelett, Nguyen, Randall, Rolfes, Saldaña, Stanford, Van De Wege and Wilson, C.).

Brief History:

Committee Activity:

Appropriations: 4/19/21, 4/20/21 [DPA].

Floor Activity:

Passed House: 4/22/21, 95-2.

Brief Summary of Engrossed Substitute Bill (As Amended By House)

- Creates the Unemployment Insurance Relief Account (UI Relief Account).
- Requires the Employment Security Department (ESD) to determine forgiven benefits for four categories of employers that will be reimbursed by the UI Relief Account instead of being charged to the employers' experience rating accounts.
- Requires the ESD to transfer from the UI Relief Account to the Unemployment Compensation Account an amount equal to the total forgiven benefits.

HOUSE COMMITTEE ON APPROPRIATIONS

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

Majority Report: Do pass as amended. Signed by 33 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke, Caldier, Chandler, Chopp, Cody, Dolan, Dye, Fitzgibbon, Frame, Hansen, Harris, Hoff, Jacobsen, Johnson, J., Lekanoff, Pollet, Rude, Ryu, Schmick, Senn, Springer, Steele, Stonier, Sullivan and Tharinger.

Staff: Jordan Clarke (786-7123).

Background:

Unemployment Insurance Benefits.

An unemployed individual (claimant) is eligible to receive unemployment insurance benefits (UI benefits) if the claimant: (1) worked at least 680 hours in the base year; (2) was separated from employment through no fault of the claimant's, or quit work for good cause; and (3) is able to work, is available to work, and is actively searching for suitable work. The Employment Security Department (ESD) administers Washington State's unemployment insurance program.

Charging Unemployment Insurance Benefits Paid.

Unemployment insurance benefits are charged to employers on a pro rata basis according to the amount of wages paid to the claimant by the employer in the claimant's base year compared to the wages paid by all employers. Some UI benefits, such as those paid for certain good cause quits, are charged only to the separating employer, or are not charged to any employer. Other UI benefits may be noncharged if the employer requests relief from charging.

Employer Taxes.

Most employers pay contributions to finance unemployment benefits. A contribution-paying employer's tax rate is experience-rated so the rate is determined, in part, by the benefits paid to its employees. An employer's benefit ratio is computed by dividing the total amount of benefits charged to the account of the employer by the taxable payrolls over a four-year period. Based on this benefit ratio, the employer is assigned a rate class from 1 to 40. The rate class determines the experience rate for the employer, which may range from 0 to 5.4 percent.

In addition to the experience-rated tax, employers may pay a social tax and a solvency surcharge. The social tax is calculated from a flat social cost factor that is then graduated for each employer based on their experience rate class. The flat social cost factor is generally calculated by the difference between total UI benefits paid and taxes paid, divided by the total payroll. Except for rate years 2021 through 2025, the maximum flat social cost factor is 1.22 percent. A solvency surcharge applies if there are fewer than seven months of UI benefits in the Unemployment Insurance Trust Fund.

Previously Enacted Legislation.

Engrossed Substitute Senate Bill 5061 (ESSB 5061), enacted during the 2021 Legislative Session, provided certain UI benefits and relief to claimants and employers. Benefits were not charged to the experience rating account, including the one-week waiting period waiver under the Coronavirus Aid, Relief, and Economic Security (CARES) Act and UI benefits paid for all weeks starting with the week ending March 28, 2020, through May 30, 2020. An employer may also request that benefits paid not be charged to the employer's experience rating if the benefits paid are a result of closure or severe curtailment of operations at the employer's facility and the closure resulted from the presence of any dangerous, contagious, or infectious disease that is the subject of a public health emergency at the facility. Engrossed Substitute Senate Bill 5061 also reduced the maximum flat social tax and suspended the solvency tax for five years.

Engrossed House Bill 2965, enacted in 2020, provided \$25 million to the state COVID-19 Unemployment Account for the ESD to forgive certain UI benefits for eligible employers who applied for relief. The funds were spread proportionally across the total amount of benefits requested to be forgiven by employers. The \$25 million was sufficient to provide 23.75 percent of approved relief.

North American Industry Classification System Code.

The North American Industry Classification System (NAICS) was developed in cooperation with the United States, Canada, and Mexico. The NAICS uses a production-oriented conceptual framework to group establishments into industries based on the activity in which they are primarily engaged. Establishments using similar raw material inputs, similar capital equipment, and similar labor are classified in the same industry. The NAICS was introduced in 1997 and is periodically revised to reflect changes in the industrial structure of the United States and North American economy.

The following are certain three-digit NAICS codes and industry descriptions:

323	Printing and Related Support Activities
331	Primary Metal Manufacturing
448	Clothing and Clothing Accessories Stores
451	Sporting Goods, Hobby, Book, and Music Stores
453	Miscellaneous Store Retailers
481	Air Transportation
485	Transit and Ground Passenger Transportation
487	Scenic and Sightseeing Transportation
512	Motion Picture and Sound Recording Industries
561	Administrative and Support Services
711	Performing Arts, Spectator Sports, and Related Industries

712	Museums, Historical Sites, and Similar Institutions
713	Amusement, Gambling, and Recreation Industries
721	Accommodation
722	Food Services and Drinking Places
812	Personal and Laundry Services
814	Private Households

Summary of Amended Bill:

Unemployment Insurance Relief Account.

The Unemployment Insurance Relief Account (UI Relief Account) is created in the custody of the State Treasurer. Revenues to the UI Relief Account consist of appropriations and transfers by the Legislature and all other funding directed for deposit into the UI Relief Account. Only the Commissioner of the ESD (Commissioner) or the Commissioner's designee may authorize expenditures from the UI Relief Account. Expenditures from the UI Relief Account may be used only for reimbursing the Unemployment Compensation Account for forgiven benefits for certain COVID-19-impacted businesses. By July 1, 2022, the Commissioner must certify to the State Treasurer the amount of any unobligated moneys in the UI Relief Account that were appropriated by the Legislature from the State General Fund during the 2021-23 fiscal biennium. The State Treasurer must transfer the unobligated moneys back to the State General Fund.

Forgiven Benefits Noncharged and Paid from the Unemployment Insurance Relief Account.

The ESD must determine the amount of the forgiven benefits for approved category 1, 2, 3 and 4 employers that are being reimbursed by the UI Relief Account instead of being charged to the employer's experience rating account by December 20, 2021. The ESD must transfer an amount equal to the forgiven benefits from the UI Relief Account to the Unemployment Compensation Account.

Category 1 Employers' Forgiven Benefits.

An approved category 1 employer means a contribution-paying employer:

- with 20 or fewer employees in the state as reported on the employer's fourth quarter report to the ESD for 2020;
- whose experience rating has increased by three or more rate classes from rate year 2021 to rate year 2022; and
- whose NAICS code for rate year 2021 is within 323, 331, 448, 451, 453, 481, 485, 487, 512, 711, 712, 713, 721, 722, 812, and 814.

Forgiven benefits for category 1 employers are the approved benefits for an individual employer multiplied by the forgiveness ratio, which is computed by dividing \$100 million of the total amount of money in the UI Relief Account by the total approved benefits. Approved benefits are the benefits paid to employees of an approved category 1 employer during the fiscal year ending June 30, 2021, not to exceed an amount that would reduce the

employer's rate class increase to no more than a two rate-class increase. The forgiveness ratio cannot be more than one.

Category 2 Employers' Forgiven Benefits.

An approved category 2 employer means a contribution-paying employer:

- with more than 20 employees in the state as reported on the employer's fourth quarter report to the ESD for 2020;
- whose experience rating has increased by three or more rate classes from rate year 2021 to rate year 2022; and
- whose NAICS code for rate year 2021 is within 323, 331, 448, 451, 453, 481, 485, 487, 512, 711, 712, 713, 721, 722, 812, and 814.

Forgiven benefits for category 2 employers are the approved benefits for an individual employer multiplied by the forgiveness ratio, which is computed by dividing the sum total of: (1) the difference between the available benefits for category 1 and the total approved benefits for approved category 1 employees; and (2) \$175 million of the total amount of money in the UI Relief Account, by the total approved benefits. Approved benefits are the benefits paid to employees of an approved category 2 employer during the fiscal year ending June 30, 2021, not to exceed an amount that would reduce the employer's rate class increase to no more than a two rate-class increase. The forgiveness ratio cannot be more than one.

Category 3 Employers' Forgiven Benefits.

An approved category 3 employer means a contribution-paying employer:

- with 20 or fewer employees in the state as reported on the employer's fourth quarter report to the ESD for 2020; and
- whose experience rating has increased by four or more rate classes from rate year 2021 to rate year 2022.

Forgiven benefits for category 3 employers are the approved benefits for an individual employer multiplied by the forgiveness ratio, which is computed by dividing the sum total of: (1) the difference between the available benefits for category 2 and the total approved benefits for approved category 2 employees; and (2) \$75 million of the total amount of money in the UI Relief Account, by the total approved benefits. Approved benefits are the benefits paid to employees of an approved category 3 employer during the fiscal year ending June 30, 2021, not to exceed an amount that would reduce the employer's rate class increase to no more than a three rate-class increase. The forgiveness ratio cannot be more than one.

Category 4 Employers' Forgiven Benefits.

An approved category 4 employer means a contribution-paying employer:

- with at least 21 but fewer than 5,000 employees in the state as reported on the employer's fourth quarter report to the ESD for 2020; and
- whose experience rating has increased by four or more rate classes from rate year

2021 to rate year 2022.

Forgiven benefits for category 4 employers are the approved benefits for an individual employer multiplied by the forgiveness ratio, which is computed by dividing the sum total of: (1) the difference between the available benefits for category 3 and the total approved benefits for approved category 3 employees; and (2) \$150 million of the total amount of money in the UI Relief Account, by the total approved benefits. Approved benefits are the benefits paid to employees of an approved category 4 employer during the fiscal year ending June 30, 2021, not to exceed an amount that would reduce the employer's rate class increase to no more than a three rate-class increase. The forgiveness ratio cannot be more than one.

Distribution of Remaining Moneys.

If moneys remain in the UI Relief Account after the ESD determines the forgiven benefits for all approved employers in categories 1, 2, 3, and 4, then by December 21, 2021, the ESD must again determine any forgiven benefits for approved category 1 employers to be reimbursed by the UI Relief Account. If moneys remain in the UI Relief Account after the ESD determines the second round of forgiven benefits for all approved category 1 employers, then the ESD must again determine any forgiven benefits for approved category 2 employers to be reimbursed by the UI Relief Account. If moneys remain in the UI Relief Account after the ESD determines the second round of forgiven benefits for all approved category 2 employers, then the ESD must again determine any forgiven benefits for approved category 3 employers to be reimbursed by the UI Relief Account.

Miscellaneous.

By September 1 of each year, the ESD must determine which employers are delinquent in payments and have not entered into an ESD-approved deferred payment contract. The ESD must notify employers of the availability of deferred payment contracts with the department and must provide technical assistance to employers as needed for entering into a department-approved contract. Approved benefits do not include benefits not charged to the employer's experience rating. The ESD must adopt such rules as are necessary to carry out the forgiven benefits unemployment insurance relief. This relief expires July 30, 2022.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) Although the Legislature previously provided other significant rate relief, businesses are still experiencing large tax increases, and more relief such as this is needed. The bill will help those small businesses that were deemed nonessential, forced to lay off

employees, and have continued to face operating restrictions. Certain sectors, such as hospitality, have had disproportionate impacts, and are still paying more in unemployment insurance taxes while struggling to survive. This bill provides relief to those significantly and disproportionately impacted. While this is a good start, the extent of the rate increase issue is estimated to be closer to \$2 billion, so the amount of money assumed for this bill is not sufficient to address the actual issue. An across-the-board commitment is sought to continue to address this issue. This bill does create some winners and losers, and fiscal relief provided should be both broad and fair. This approach is supported because the relative positions of businesses within the adjusted categories are still maintained. Further relief should be explored in the next legislative session as well.

(Opposed) None.

(Other) It can take years for a business to recover from the impacts of a period of bad experience rates. This version of the bill is an improvement on the Senate version. Although not enough money is provided, this is a good start. The Point Roberts store has experienced uniquely adverse impacts for a grocery store, is not covered by other support efforts, and should not be left out of this relief. Women- and minority-owned businesses should also be given particular consideration to ensure fairness. Brewers, distillers, and wineries have experienced similar impacts as the rest of the hospitality industry, but they are left out of categories 1 and 2 of the bill. This industry is essential to Washington's recovery and should be specifically included in these categories. A new section is requested to require the ESD to create a working group to examine the actual impact on small businesses, explore additional improvements to ensure equity and fairness in relief, and make recommendations for the next legislative session.

Persons Testifying: (In support) Ali Hayton, Point Roberts Marketplace; Tammie Hetrick, Washington Food Industry Association; Robert Battles, Association of Washington Business; Jerry VanderWood, Associated General Contractors of Washington; Bruce Beckett, Washington Retail Association and Washington Fitness Alliance; and Julia Gorton, Washington Hospitality Association.

(Other) Jim King, Independent Business Association; Lloyd Smith; Annie McGrath, Washington Brewers Guild; Josh McDonald, Washington Wine Institute; and Jim Hedrick, Washington Distillers Guild.

Persons Signed In To Testify But Not Testifying: None.