

SENATE BILL REPORT

SB 5438

As of February 1, 2022

Title: An act relating to providing unemployment benefits to workers who are unemployed as a result of the COVID-19 pandemic and not eligible for unemployment benefits due to immigration status.

Brief Description: Providing unemployment benefits to workers who are unemployed as a result of the COVID-19 pandemic and not eligible for unemployment benefits due to immigration status.

Sponsors: Senators Saldaña, Nobles, Cleveland, Darneille, Das, Dhingra, Hasegawa, Hunt, Kuderer, Liias, Lovelett, Nguyen, Robinson, Stanford, Wellman and Wilson, C..

Brief History:

Committee Activity: Labor, Commerce & Tribal Affairs: 2/15/21; 2/02/22.

Brief Summary of Bill

- Establishes the Washington Unemployment Benefits for Immigrant Workers Program, which provides certain unemployment benefits to workers excluded from state unemployment insurance benefits due to immigration or citizenship status.
- Directs the Employment Security Department (ESD) to administer the program and adopt rules, and contains provisions on eligibility, application, benefit amount, disqualification, and information confidentiality.
- Creates the Unemployment Benefits for Immigrant Workers Account.
- Requires ESD to appoint an advisory committee to review issues and topics of interest related to the new program.

SENATE COMMITTEE ON LABOR, COMMERCE & TRIBAL AFFAIRS

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.

Staff: Matt Shepard-Koningsor (786-7627)

Background: Unemployment Benefit Eligibility. An unemployed individual (claimant) is eligible to receive unemployment insurance benefits if the individual:

- worked at least 680 hours in the base year;
- was separated from employment through no fault of the claimant's or quit work for good cause; and
- is able to work, available to work, and is actively searching for suitable work.

The Employment Security Department (ESD) administers Washington State's unemployment insurance program. A claimant who was laid off due to COVID-19 is likely eligible for regular unemployment benefits.

Unemployment & Immigration Status. Under current law, unemployment insurance benefits must not be paid on the basis of services performed by persons unless the person is an individual who was lawfully admitted for permanent residence, was lawfully present for purposes of performing such services, or otherwise was permanently residing in the U.S. under certain conditions. The term employment does not include services performed by a non-resident person for the period the person is temporarily present in the U.S. as a non-immigrant under federal law.

As a condition of eligibility for unemployment insurance benefits, federal regulations require each claimant declare under penalty of perjury whether the person is a citizen or national of the U.S. An individual who is neither must present appropriate registration documentation to verify the person is authorized to work in the U.S. ESD verifies a person's immigration status. Federal law allows a state to provide certain services to a person who is not lawfully present in the U.S., which the person would not otherwise be eligible for, if affirmatively provided for in state law.

Public Records Act. A public record is any writing prepared, owned, used, or retained by any state or local government agency, and which contains information that relates to the conduct of government, or the performance of any governmental or proprietary function. Public record is defined broadly under the Washington Public Records Act (PRA) to include photos, maps, videos, voicemails, emails, text messages, tweets, and other internet content. All public records maintained by state and local agencies must be made available to all members of the public, unless the public record is explicitly exempted from disclosure. There are a number of exemptions from disclosure under the PRA, other state laws, and federal laws, which must be narrowly applied and generally err on the side of disclosure.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): The Washington Unemployment Benefits for Immigrant Workers Program (program) is created.

Definitions. The following terms are defined:

- "average annual wage" and "average weekly wage" mean the results of the annual calculations for each under the Washington Employment Security Act (UI Program);
- "base year" and "benefit year" have the same meaning as in the Unemployment Insurance (UI) Program;
- "benefits" means the compensation payable to an individual, as provided in the program, with respect to the individual's unemployment;
- "calendar quarter" means the period of three consecutive calendar months ending on March 31st, June 30th, September 30th, or December 31st;
- "Department" means the Employment Security Department (ESD);
- "income" means all compensation for personal services during the individual's base year, but does not include any payment received by a member of the National Guard or reserve component of the armed forces for inactive duty training, annual training, or emergency state active duty;
- "individual" means a person applying for benefits under the program;
- "information" means all types of information collected under the program, whether written or oral, including, but not limited to, information made or kept by any public officer or agency for the purpose of assessing an individual's eligibility for, or administering the benefits authorized by, the program;
- "resident of the state of Washington" means an individual who takes actions indicating they intend to live in Washington on more than a temporary or transient basis; if an individual takes certain specified actions, ESD must presume the person is a resident of Washington;
- "typical workweek hours" means the average number of hours an individual works per week within a month;
- "week" means a period of seven consecutive calendar days beginning on Sunday at 12:00 a.m. and ending the following Saturday at 11:59 p.m.; and
- "week of unemployment" means any week during which the individual, including self-employed individuals, is totally or partially unemployed:
 - a week of total unemployment is a week during which the individual performs no work and earns no income; and
 - a week of partial unemployment is a week during which the individual works less than the typical workweek hours.

Eligibility. An individual is eligible to receive benefits with respect to any week, for up to 26 weeks, in their benefit year if the individual files an application for benefits, is a resident of the state of Washington, experienced a week of unemployment through no fault of their own, and is not eligible for benefits under the UI Program due to their immigration or citizenship status.

Application and Benefits. *Standard Benefit Amount.* An individual applying for the standard benefit amount must submit an application including verification of photo identification, which can be established by several examples, and verification of work

history and recent unemployment. An eligible individual must receive a weekly benefit amount equal to 20 percent of the average weekly wage.

Higher Benefit Amount. An individual applying for the higher benefit amount must submit an application including verification of income in addition to the requirements of an application submitted for the standard benefit amount. An eligible individual must receive a weekly benefit amount equal to the weekly benefit amount calculated under the UI program.

The maximum and minimum benefit amounts must be determined by June 30th each year and must apply to benefit years beginning in the 12-month period immediately following June 30th. The maximum amount payable weekly must be either \$496 or 63 percent of the average weekly wage for the calendar year preceding June 30th, whichever is greater. The minimum amount payable weekly must equal 20 percent of the average weekly wage, that is, the standard benefit amount. An individual is disqualified for benefits under the program if:

- ESD determines the individual left their most recent work voluntarily without good cause or if they were discharged for misconduct;
- for any week, the individual has received, is receiving, or will receive compensation under the UI program, the Paid Family and Medical Leave Program, or industrial insurance relative to temporary or permanent total disability; or
- any other applicable federal unemployment compensation, industrial insurance, or state disability insurance laws.

Information Confidentiality. ESD is prohibited from soliciting information relating to the individual, indicating which documents the individual used to prove their age or identity, compelling admission regarding the individual's immigration status, contacting the individual's employer to verify employment status, and otherwise attempting to ascertain an individual's immigration or citizenship status. ESD must destroy collected information and documentation within 15 days of an individual's written statement indicating they are no longer using the program. ESD must establish prohibitions and safeguards to protect against unauthorized disclosure of information collected under the program. Unless otherwise inconsistent or otherwise in conflict with the program provisions, the confidentiality and privacy provisions in the UI Program apply to this program. No information collected under the program may be used to investigate, locate, or apprehend individuals for immigration-related violations.

Public Records Act. Information collected under the program is explicitly exempt from the PRA, except: to the person who is the subject of such records or an authorized representative; where necessary to comply with a lawful court order, federal judicial warrant or subpoena; or if disclosed in a manner that could not be used to determine individual or employer identities.

Appeals. ESD must establish an appeals procedure similar to procedures contained in the UI program, which complies with the confidentiality and privacy protections provided in

the program.

Advisory Committee. ESD must appoint an advisory committee to review topics of interested related to the program. The advisory committee must have the following 13 members:

- five members representing immigrants' interests;
- two members representing employees' interests in unemployment, each of whom must be appointed from a list of names submitted by a recognized statewide organization of employees;
- two members representing employers' interests in unemployment, appointed in the same manner;
- three non-voting ex officio members representing the state commissions on African American, Hispanic, and Asian Pacific American Affairs; and
- one non-voting ex officio member representing ESD, who will serve as chair of the advisory committee.

The advisory committee must comment on ESD rulemaking, policies, implementation of the program, use of benefits, and other initiatives, and study issues determined to require consideration. The members serve without compensation, but are eligible for travel reimbursements. The advisory committee may use ESD facilities at no charge. All expenses of the advisory committee must be paid by the Washington Unemployment Benefits for Immigrant Workers Account.

Other. The Washington Unemployment Benefits for Immigrant Workers Account is created.

The bill has other provisions also contained in the UI program relative to legislative amendment or repeal, providing that rights to benefits under the program are neither assignable nor subject to collection for debts, unless collected to pay for certain necessities provided to an individual, their spouse, or dependents during the time of unemployment.

ESD must adopt rules to implement the program. A state severability clause is included.

Appropriation: None.

Fiscal Note: Requested on January 25, 2022.

Creates Committee/Commission/Task Force that includes Legislative members: Yes.

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