

# SENATE BILL REPORT

## ESSB 5478

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As Amended by House, 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:** Ways & Means: 3/30/21, 4/02/21 [DPS, w/oRec].

**Floor Activity:** Passed Senate: 4/9/21, 49-0.

Passed House: 4/21/21, 97-0; 4/22/21, 95-2.

### Brief Summary of Engrossed First Substitute Bill

- Creates the Unemployment Insurance Relief Account (UI Relief account).
- Requires the Employment Security Department (ESD) determine forgiven benefits, based on a calculation, for certain employers which will be reimbursed by the UI Relief account instead of charged to the employers' experience rating accounts.
- Mandates ESD transfer from the UI Relief account to the unemployment compensation fund an amount equal to the forgiven benefits.

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Substitute Senate Bill No. 5478 be substituted therefor, and the substitute bill do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Capital; Robinson, Vice Chair, Operating & Revenue; Wilson, L., Ranking Member; Brown, Assistant Ranking Member,

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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 part of the legislation nor does it constitute a statement of legislative intent.*

Operating; Braun, Carlyle, Conway, Darneille, Dhingra, Gildon, Hasegawa, Hunt, Keiser, Lias, Mullet, Muzzall, Pedersen, Rivers, Van De Wege, Wagoner, Warnick and Wellman.

**Minority Report:** That it be referred without recommendation.

Signed by Senators Honeyford, Assistant Ranking Member, Capital; Schoesler, Assistant Ranking Member, Capital.

**Staff:** Sarah Emmans (786-7478)

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

Unemployment Insurance Contributions. 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. A benefit ratio is computed for each qualified employer 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 the benefit ratio, the employer is assigned a rate class from 1 to 40. The rate class determines the experience rate for the employer. The experience rates range from zero to 5.4 percent. In addition to the experience-rated tax, employers may pay a graduated social cost tax and a solvency surcharge. The graduated social tax is flat social cost factor multiplied by the percentage assigned to each rate class. Except as provided in ESSB 5061, the maximum flat social tax is 1.22 percent and the assigned percentages range from 40 to 120 percent.

Charging Unemployment Insurance Benefits Paid. UI benefits paid are charged to the experience rating of base year 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 benefits, such as those paid for certain good cause quits, are charged only to the separating employer, or are not charged to any employer.

Previously Enacted Legislation. ESSB 5061 enacted this session, provided certain UI benefits and relief to claimants and employers. For certain employers, benefits were not charged to the experience rating account, including the one-week waiting period waived under the CARES Act and UI benefits paid for all weeks starting with the week ending March 28, 2020 through May 30, 2020. A contribution paying employer may also now request that benefits paid not be charged to the employer's experience rating when the benefits paid are a result of closure or severe curtailment of operation at the employer's plant, building, worksite, or other 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 plant, building, worksite, or other facility. ESSB 5061 also reduced the maximum flat

social tax and suspended the solvency tax for five years.

EHB 2965, enacted in 2020, provided \$25 million to the state COVID-19 unemployment account for the ESD to forgive certain unemployment insurance benefits for eligible employers who applied for relief. The funds were spread proportionally across the total amount of benefits requested to be forgiven by eligible employers, and were sufficient to provide 23.75 percent of approved relief.

North American Industry Classification System Code. The North American Industry Classification System (NAICS) was developed as the standard for use by Federal statistical agencies in classifying business establishments for collection, analysis, and publication of statistical data related to the business economy of the United States. NAICS was developed by the federal Office of Management and Budget, and adopted in 1997 to replace the old Standard Industrial Classification system. The following are certain three digit NAICS codes and industry descriptions:

323	Printing and Related Support Activities
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
713	Amusement, Gambling, and Recreation Industries
721	Accommodation
722	Food Services and Drinking Places
812	Personal and Laundry Services
814	Private Households

**Summary of Engrossed First Substitute Bill:** Unemployment Insurance Relief Account Created. The unemployment insurance relief account (UI Relief account) is created. Revenues to the UI Relief account consist of appropriations and all other funding directed for deposit into the UI Relief account. Only the ESD commissioner may authorize expenditures from the UI Relief account, which may be used only for reimbursing the unemployment compensation fund for forgiven benefits. By July 1, 2022, the ESD commissioner must certify to the treasurer the amount of any unobligated moneys in the UI Relief account that were appropriated by the Legislature from the general fund during the 2021-2023 fiscal biennium. The treasurer must transfer the unobligated moneys back to the general fund.

Forgiven Benefits—Noncharged and Paid From the Unemployment Insurance Relief Account. By November 1, 2021, ESD must determine the forgiven benefits for approved category 1 and category 2 employers to be reimbursed by the UI Relief account instead of being charged to the employer's experience rating account. ESD must transfer from the UI Relief account to the unemployment compensation fund an amount equal to the forgiven benefits.

Category 1 Employers' Forgiven Benefits. An approved category 1 employer means a contribution paying employer, excluding any ineligible employer, who:

- has an experience rating under that has increased by two or more rate classes from rate year 2021 to rate year 2022; and
- belongs to NAICS codes 323, 448, 451, 453, 481, 485, 487, 512, 516, 711, 713, 721, 722, 812, or 814 for rate year 2021; or
- is a grocery store with 25 or fewer employees, located near a closed international border, and has an experience rating that has increased by two or more rate classes from rate year 2021 to rate year 2022.

Forgiven benefits for category 1 employers are the approved benefits for an individual employer multiplied by the forgiveness ratio, which is computed by dividing the amount of money available for approved category 1 employers, or 50 percent of the total amount of money in the UI Relief account, by the total approved benefits. Total approved benefits are the sum total of all 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.

Category 2 Employers' Forgiven Benefits. An approved category 2 employer is a contribution paying employer, excluding any ineligible employer:

- whose experience rating has increased by six or more rate classes from rate year 2021 to rate year 2022;
- with fewer than 40,000 employees in the state as reported on the employer's fourth quarter report to ESD for 2019; and
- who does not meet the definition of approved category 1 employer.

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 amount of money available for approved category 2 employers by the total approved benefits. The amount of money available for category 2 employers is 50 percent of the total amount of money in the fund, plus any remaining amount after the forgiveness of category 1 employer benefits. Total approved benefits are the sum total of all 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 four rate class increase.

Ineligible Employers. Any employer that has not paid all contributions, penalties, and interest due by September 30, 2021, or has not entered into a department-approved deferred payment contract by September 30, 2021 is not eligible to have their benefits forgiven and paid from the UI Relief account.

Miscellaneous. Approved benefits do not include benefits not charged to the employer's experience rating. ESD must adopt such rules as are necessary to carry out the forgiven benefits UI relief. This relief expires July 30, 2022. Legislative intent is provided.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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

**Staff Summary of Public Testimony on Original Bill:** *The committee recommended a different version of the bill than what was heard.* PRO: We are trying to address the very uneven impact that the pandemic has had on our economy and employers. Many large employers are doing fine. Many small employers and fitness, tourism, retail, and hospitality industries have been severely impacted. The Legislature already passed a large bill that went after large systematic UI issues and prevented \$1.7 billion in tax increases for employers. This bill is direct assistance from the state general fund budget of \$500 million for certain categories of employers for their 2022 taxes. The budget also includes money to cover the fraud to the unemployment trust fund.

Parts of the economy that were hardest hit are still not seeing a recovery, even a year later and after being shut down. The UI taxes are based on four years of UI experience and the impact will continue to impact these employers' taxes. The bill will provide relief to those employers hardest hit in our communities. We tried to find the NAICS code industries that were severely impacted.

The bill takes the right approach to target industries hardest hit. It helps certain small businesses, including fitness and health facilities, that were forced to close and to lay off employees. Many businesses were closed and are still only allowed 25 percent capacity. The bill provides another tool for small businesses to get back to hiring people. Fitness clubs are starting to rebound and this bill will help them continue. The pandemic has also disproportionately impacted the hospitality industry. Movie theaters in Washington have been hit harder than in any other state. Fifty-five percent of the theaters are still closed.

We hope that over time all businesses can be relieved of UI tax hikes from the pandemic. All businesses are in an ecosystem and we are hoping relief can be provided to all businesses so they can recover together. We believe SB 5478 is a positive step toward this

goal.

The \$500 million relief is appreciated, but the total relief needed is estimated to be up to \$2 billion.

OTHER: There are two concerns with the bill. The first is the scale of the assistance. The amount in the budget is not enough. This is a good start but \$500 million will not get us to the finish line. Without additional relief, there will be big increases in UI taxes.

The second concern is that the bill picks winners and losers for the bulk of the assistance. There will be a lot of situations where businesses do not qualify, but they have been impacted, such as a grocery store in Point Roberts with limited access to their business. Many construction companies have been impacted by the pandemic. The relief should be for any company that has a certain rate class increase, such as a 4 rate class increase, and not based on NAICS codes.

**Persons Testifying:** PRO: Senator Karen Keiser, Prime Sponsor; Bruce Beckett, Washinton Retail Association and Washington Fitness Alliance; Shelly Stockman, Bainbridge Athletic Club; Blair Mchaney, Worx of Wenatchee Valley; Julia Gorton, Washington Hospitality Association; Scott Hazlegrove, National Association of Theatre Owners.

OTHER: Tammie Hetrick, Washington Food Industry Association; Ali Hayton, Point Roberts International Marketplace; Tom Kwieciak, Building Industry Association of Wahington; Jerry VanderWood, AGC of Washington; Robert Battles, Association of Washington Business.

**Persons Signed In To Testify But Not Testifying:** No one.

#### **EFFECT OF HOUSE AMENDMENT(S):**

- Creates four categories of employers eligible for forgiven benefits, rather than two.
- Limits three of the categories by size of employer, as measured by the number of employees, with two categories limited to employers with 20 or fewer employees and one category limited to employers with fewer than 5,000 employees.
- Changes the rate increase thresholds for eligible employers to three or more for categories 1 and 2 and four or more for categories 3 and 4.
- Adds two sectors—Primary Metal Manufacturers, and Museums, Parks, and Historical Districts—to the industry-limited categories, and removes one—Administrative and Support Services—and certain small grocery stores near closed international borders.
- Makes the approved benefits in the forgiven benefits calculation no more than a two rate class increase for categories 1 and 2 and a three rate class increase for categories 3 and 4.
- Assumes that at least \$500 million is available for unemployment insurance relief.
- Changes the deadline for the calculation of forgiven benefits from November 1, 2021, to

December 20, 2021 for all categories.

- Adds a second round of benefit forgiveness for categories 1, 2, and 3 employers, if funding remains in the account after the first round of forgiveness.
- Removes the ineligibility of employers who are delinquent in UI payments, and requires ESD to provide outreach.