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**Labor & Workplace Standards  
Committee**

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**HB 1095**

**Brief Description:** Creating a wage replacement program for certain Washington workers excluded from unemployment insurance.

**Sponsors:** Representatives Walen, Ortiz-Self, Berry, Reed, Ramel, Pollet, Doglio, Macri, Simmons, Reeves, Wylie, Alvarado, Santos and Ormsby.

**Brief Summary of Bill**

- Establishes a state wage replacement program for certain qualified unemployed workers who are ineligible for benefits through the unemployment insurance system as a result of not being authorized to work in the United States.

**Hearing Date:** 1/13/23

**Staff:** Kelly Leonard (786-7147).

**Background:**

Unemployment Insurance System.

The unemployment insurance (UI) system, administered by the Employment Security Department (ESD), is designed to provide partial wage replacement for workers who are unemployed. Its primary purpose is to alleviate the hardships that result from the loss of wage income during unemployment.

*Eligibility.* A claimant is eligible to receive UI benefits if the claimant: (1) worked at least 680 hours in the base year; (2) was separated from employment through no fault of his or her own or quit work for good cause; and (3) is available to work and is actively searching for work. In

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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.*

addition, UI benefits may not be paid unless the claimant was lawfully admitted for permanent residence, was lawfully present for purposes of performing such services, or otherwise was permanently residing in the United States under certain conditions. Federal regulations require a claimant to declare under penalty of perjury whether the claimant is a citizen or national of the United States. Otherwise, the claimant must present appropriate registration documentation to verify that he or she is authorized to work in the United States, which is then confirmed by the ESD.

*Benefits.* Regular UI benefits are based on the claimant's earnings in his or her base year, adjusted based on a statutory formula. The weekly benefit amount varies from claimant-to-claimant, but can be no greater than \$999.

*Funding for Benefits.* Funding for the UI system and UI benefits are sourced from state and federal taxes. At the state level, most employers pay contributions, referred to as payroll taxes, to finance UI benefits. An employer's tax rate is experience-rated so that the rate is determined, in part, by the UI benefits paid to its employees. In addition, employers pay a social cost factor rate, which is graduated based on their experience rate classes. These state payroll taxes are deposited into a trust fund, which can only be used to pay UI benefits. At the federal level, employers pay a federal unemployment tax, which is then passed down to states for the administration of UI systems.

*Federal Restrictions.* Federal law places certain restrictions on the state UI system. To enforce these restrictions, federal funding provided to the state for the administration of the UI system is conditioned on compliance with federal law, which includes verifying the immigration status of claimants. Individual employers also receive a credit on their federal unemployment taxes so long as the state complies with applicable federal law.

#### Public Records Act.

The Public Records Act (PRA) requires state and local agencies to make written records available to the public for inspection and copying upon request, unless a specific statutory exemption applies. The stated policy of the PRA favors disclosure and requires narrow application of the statutory exemptions.

#### Report on UI Benefits for Undocumented Workers.

In the 2021 Operating Budget, the Legislature directed the ESD to study the feasibility of replicating a UI program for and expanding other social net programs to individuals regardless of their citizenship status. The ESD completed the study and submitted a report to the Legislature in December of 2021.

#### **Summary of Bill:**

##### Wage Replacement Program.

The Employment Security Department (ESD) is required to administer a weekly wage replacement program (program) similar to the UI system for workers who are not eligible for UI

benefits as a result of not being authorized to work in the United States.

*General Eligibility Requirements.* Beginning January 1, 2026, a claimant is eligible to receive benefits under the program with respect to any week of unemployment in their benefit year if the ESD determines the following steps are satisfied in sequential order:

1. the claimant files an application for initial determination of benefits through the UI system;
2. the ESD denies the claimant's application for initial determination of UI benefits based on the claimant not being authorized to work in the United States at the time the work was performed or during the week for which the claimant is applying for UI benefits; and
3. after a denial, the ESD invites the claimant to apply for benefits under the program.

The claimant must then file an application for benefits under the program, which includes providing information or documentation verifying that the claimant:

- is a state resident and has sufficient photographic identification confirming his or her identity;
- worked 680 hours in employment in the base year or earned wages during the base year equal to 680 times the minimum wage in effect during the first quarter of the base year;
- is unemployed through no fault of his or her own; and
- has been unemployed for a waiting period of one week.

*Proving residency.* To be considered a state resident, the claimant must have taken actions indicating that he or she intends to live in the state on more than a temporary or transient basis while receiving benefits. Unless there is information indicating otherwise, the ESD must presume that a claimant is a state resident if the claimant:

- maintains a residence in Washington for personal use with a utility bill showing the claimant's full name and Washington state address;
- lives in a motor home or vessel that is not permanently attached to any real property if the claimant previously lived in this state and does not have a permanent residence in any other state;
- is attending school in this state and paying tuition as a Washington resident, is a custodial parent with a child attending a public school in this state, or has correspondence from a school in this state showing the claimant's full name and Washington state address;
- has a Washington state identification card showing the claimant's full name and Washington state address;
- has a current library card issued in this state;
- has correspondence from a community or faith-based organization in this state showing the claimant's full name and Washington state address; or
- has a medical document showing the claimant's full name and Washington state address.

The ESD may adopt additional methods by which claimants may prove they are state residents.

*Verifying Wages.* In circumstances where a claimant's wages cannot be verified by employers' reports to the ESD, the ESD may request information or documentation from the claimant's

former employers. Further, the ESD must request information and documentation from the claimant. If the employer fails to respond, then the ESD must presume that the claimant is eligible, unless the claimant also fails to provide sufficient information and documentation. The ESD may contract with a third-party, community-based organization to assist claimants in gathering information or documentation. The ESD is responsible for making the final decision on whether a claimant is eligible for benefits.

*Qualifying for Benefits.* An eligible claimant may qualify for weekly benefits by self-attesting that he or she is actively seeking work in any trade, occupation, profession, or business for which the claimant is reasonably fitted, and he or she reports to the ESD any wages or remuneration that he or she receives. A claimant is disqualified for benefits under certain circumstances, including, for example, if the claimant left their work voluntarily without good cause or was discharged for misconduct, or if the claimant knowingly made a false statement or representation to obtain benefits.

An eligible and qualified claimant must receive a weekly benefit amount calculated based on the state formula for UI benefits.

*Review and Appeals.* A determination of the amount of benefits by the ESD does not serve as a basis for appeal; instead, the claimant may request reconsideration or redetermination within one year. If the ESD denies a claimant benefits, the ESD must promptly issue written notice with the reasons. The ESD is required to establish a procedure for hearings and appeals, as well as receiving and reviewing reports of fraud, comparable to those for the UI system. The same penalties for fraud in the UI system apply to the program.

*Funding for Benefits.* Benefits are due and payable to a claimant only to the extent that moneys are available in the Washington Wage Replacement Account (Account), which is established in the bill. Revenues to the Account must consist of appropriations and transfers by the Legislature and all other funding directed for deposit into the Account. Expenditures from the Account may be used only for providing benefits, contracting with community-based organizations to notify individuals who may be eligible for benefits, and administrative expenses of the ESD.

#### Restrictions on Collecting and Maintaining Certain Information.

In administering the program, the ESD is prohibited from taking specified actions, including:

- soliciting from the claimant, orally or in written form, a claimant's nationality, race, ethnicity, place of birth, eligibility or ineligibility for a social security number, citizenship, or immigration status;
- indicating in its records which documents the claimant used to prove their age or identity;
- compelling a claimant to admit in writing whether they have proof of lawful presence in the United States or to explain why they are ineligible for a social security number;
- contacting a claimant's current, former, or prospective employers including, but not limited to, for the purposes of verifying employment status, except for the purposes of verifying wages; and
- attempting to ascertain a claimant's immigration or citizenship status, except to determine

whether a claimant is excluded from UI benefits and potentially eligible for benefits under the program.

Public Records, Destruction of Records, and Confidentiality.

The ESD must destroy all records containing information that were provided by a claimant or collected by the ESD to verify eligibility for the program within 15 days of a claimant's written statement that they are no longer using the program. Any information or records concerning a claimant or employing unit obtained by the ESD for the purposes of administering the program must be private and confidential, unless the release is:

- to the person who is the subject of such records or an authorized representative;
- necessary to comply with a lawful court order, judicial warrant signed by a judge appointed pursuant to Article III of the United States Constitution, or judicial subpoena for specific records issued pursuant to the criminal procedure law or the civil practice law and rules; or
- disclosed in a manner that could not be used to determine the identities of the claimants or employers to whom the data pertains, alone or in combination with other data.

All information and records maintained by the ESD for the program are exempt from disclosure under the PRA, except when released under one of the three circumstances above. If a lawful court order, judicial warrant, or judicial subpoena is made for individual records, only those records specifically sought by such court order, warrant, or subpoena may be disclosed. Information collected under the program may not be used for purposes of investigating, locating, or apprehending claimants for federal immigration-related violations.

Additional requirements for maintaining confidentiality of records are established. If information provided to the ESD by another governmental agency is held private and confidential by state or federal laws, the ESD may not release it. Further, the ESD must comply with certain agreements where information is provided on the condition of privacy and confidentiality. The ESD must establish additional prohibitions and safeguards against unauthorized access to, and use of, any information collected under the program by private or public entities.

Advisory Committee.

The ESD must appoint an advisory committee, composed of 11 specified members, for the purposes of reviewing issues and topics of interest related to the administration of the program. The advisory committee must provide comment on related rule making, policies, implementation, utilization of benefits, and study relevant issues.

**Appropriation:** None.

**Fiscal Note:** Requested on January 6, 2023.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.