
SECOND SUBSTITUTE SENATE BILL 5230

State of Washington

60th Legislature

2007 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Kohl-Welles, Keiser, Prentice, Franklin and Kline; by request of Employment Security Department)

READ FIRST TIME 02/28/07.

1 AN ACT Relating to funding the administration of Title 50 RCW,
2 unemployment compensation; amending RCW 50.20.190, 50.24.014,
3 50.29.063, and 50.16.010; creating a new section; providing an
4 effective date; and declaring an emergency.

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

6 **Sec. 1.** RCW 50.20.190 and 2006 c 13 s 21 are each amended to read
7 as follows:

8 (1) An individual who is paid any amount as benefits under this
9 title to which he or she is not entitled shall, unless otherwise
10 relieved pursuant to this section, be liable for repayment of the
11 amount overpaid. The department shall issue an overpayment assessment
12 setting forth the reasons for and the amount of the overpayment. The
13 amount assessed, to the extent not collected, may be deducted from any
14 future benefits payable to the individual: PROVIDED, That in the
15 absence of a back pay award, a settlement affecting the allowance of
16 benefits, fraud, misrepresentation, or willful nondisclosure, every
17 determination of liability shall be mailed or personally served not
18 later than two years after the close of or final payment made on the
19 individual's applicable benefit year for which the purported

1 overpayment was made, whichever is later, unless the merits of the
2 claim are subjected to administrative or judicial review in which event
3 the period for serving the determination of liability shall be extended
4 to allow service of the determination of liability during the six-month
5 period following the final decision affecting the claim.

6 (2) The commissioner may waive an overpayment if the commissioner
7 finds that the overpayment was not the result of fraud,
8 misrepresentation, willful nondisclosure, or fault attributable to the
9 individual and that the recovery thereof would be against equity and
10 good conscience: PROVIDED, HOWEVER, That the overpayment so waived
11 shall be charged against the individual's applicable entitlement for
12 the eligibility period containing the weeks to which the overpayment
13 was attributed as though such benefits had been properly paid.

14 (3) Any assessment herein provided shall constitute a determination
15 of liability from which an appeal may be had in the same manner and to
16 the same extent as provided for appeals relating to determinations in
17 respect to claims for benefits: PROVIDED, That an appeal from any
18 determination covering overpayment only shall be deemed to be an appeal
19 from the determination which was the basis for establishing the
20 overpayment unless the merits involved in the issue set forth in such
21 determination have already been heard and passed upon by the appeal
22 tribunal. If no such appeal is taken to the appeal tribunal by the
23 individual within thirty days of the delivery of the notice of
24 determination of liability, or within thirty days of the mailing of the
25 notice of determination, whichever is the earlier, the determination of
26 liability shall be deemed conclusive and final. Whenever any such
27 notice of determination of liability becomes conclusive and final, the
28 commissioner, upon giving at least twenty days notice by certified mail
29 return receipt requested to the individual's last known address of the
30 intended action, may file with the superior court clerk of any county
31 within the state a warrant in the amount of the notice of determination
32 of liability plus a filing fee under RCW 36.18.012(10). The clerk of
33 the county where the warrant is filed shall immediately designate a
34 superior court cause number for the warrant, and the clerk shall cause
35 to be entered in the judgment docket under the superior court cause
36 number assigned to the warrant, the name of the person(s) mentioned in
37 the warrant, the amount of the notice of determination of liability,
38 and the date when the warrant was filed. The amount of the warrant as

1 docketed shall become a lien upon the title to, and any interest in,
2 all real and personal property of the person(s) against whom the
3 warrant is issued, the same as a judgment in a civil case duly docketed
4 in the office of such clerk. A warrant so docketed shall be sufficient
5 to support the issuance of writs of execution and writs of garnishment
6 in favor of the state in the manner provided by law for a civil
7 judgment. A copy of the warrant shall be mailed to the person(s)
8 mentioned in the warrant by certified mail to the person's last known
9 address within five days of its filing with the clerk.

10 (4) On request of any agency which administers an employment
11 security law of another state, the United States, or a foreign
12 government and which has found in accordance with the provisions of
13 such law that a claimant is liable to repay benefits received under
14 such law, the commissioner may collect the amount of such benefits from
15 the claimant to be refunded to the agency. In any case in which under
16 this section a claimant is liable to repay any amount to the agency of
17 another state, the United States, or a foreign government, such amounts
18 may be collected without interest by civil action in the name of the
19 commissioner acting as agent for such agency if the other state, the
20 United States, or the foreign government extends such collection rights
21 to the employment security department of the state of Washington, and
22 provided that the court costs be paid by the governmental agency
23 benefiting from such collection.

24 (5) Any employer who is a party to a back pay award or settlement
25 due to loss of wages shall, within thirty days of the award or
26 settlement, report to the department the amount of the award or
27 settlement, the name and social security number of the recipient of the
28 award or settlement, and the period for which it is awarded. When an
29 individual has been awarded or receives back pay, for benefit purposes
30 the amount of the back pay shall constitute wages paid in the period
31 for which it was awarded. For contribution purposes, the back pay
32 award or settlement shall constitute wages paid in the period in which
33 it was actually paid. The following requirements shall also apply:

34 (a) The employer shall reduce the amount of the back pay award or
35 settlement by an amount determined by the department based upon the
36 amount of unemployment benefits received by the recipient of the award
37 or settlement during the period for which the back pay award or
38 settlement was awarded;

1 (b) The employer shall pay to the unemployment compensation fund,
2 in a manner specified by the commissioner, an amount equal to the
3 amount of such reduction;

4 (c) The employer shall also pay to the department any taxes due for
5 unemployment insurance purposes on the entire amount of the back pay
6 award or settlement notwithstanding any reduction made pursuant to (a)
7 of this subsection;

8 (d) If the employer fails to reduce the amount of the back pay
9 award or settlement as required in (a) of this subsection, the
10 department shall issue an overpayment assessment against the recipient
11 of the award or settlement in the amount that the back pay award or
12 settlement should have been reduced; and

13 (e) If the employer fails to pay to the department an amount equal
14 to the reduction as required in (b) of this subsection, the department
15 shall issue an assessment of liability against the employer which shall
16 be collected pursuant to the procedures for collection of assessments
17 provided herein and in RCW 50.24.110.

18 (6) When an individual fails to repay an overpayment assessment
19 that is due and fails to arrange for satisfactory repayment terms, the
20 commissioner shall impose an interest penalty of one percent per month
21 of the outstanding balance. Interest shall accrue immediately on
22 overpayments assessed pursuant to RCW 50.20.070 and shall be imposed
23 when the assessment becomes final. For any other overpayment, interest
24 shall accrue when the individual has missed two or more of the
25 individual's monthly payments either partially or in full. ~~((The
26 interest penalty shall be used, first, to fully fund either social
27 security number cross-match audits or other more effective activities
28 that ensure that individuals are entitled to all amounts of benefits
29 that they are paid, second, to fund other detection and recovery of
30 overpayment and collection activities, and third, during the 2005-07
31 fiscal biennium, the cost of the job skills program at community and
32 technical colleges as appropriated by the legislature.))~~

33 (7) The department shall: (a) Conduct social security number
34 cross-match audits or engage in other more effective activities that
35 ensure that individuals are entitled to all amounts of benefits that
36 they are paid; and (b) engage in other detection and recovery of
37 overpayment and collection activities.

1 **Sec. 2.** RCW 50.24.014 and 2006 c 13 s 20 are each amended to read
2 as follows:

3 (1)(a) A separate and identifiable account to provide for the
4 financing of special programs to assist the unemployed is established
5 in the administrative contingency fund. All money in this account
6 shall be expended solely for the purposes of this title and for no
7 other purposes whatsoever. Contributions to this account shall accrue
8 and become payable by each employer, except employers as described in
9 RCW 50.44.010 and 50.44.030 who have properly elected to make payments
10 in lieu of contributions, taxable local government employers as
11 described in RCW 50.44.035, and those employers who are required to
12 make payments in lieu of contributions, at a basic rate of two one-
13 hundredths of one percent. The amount of wages subject to tax shall be
14 determined under RCW 50.24.010.

15 (b) A separate and identifiable account is established in the
16 administrative contingency fund for financing the employment security
17 department's administrative cost under RCW 50.22.150 and the costs
18 under RCW 50.22.150(~~(+9)~~) (10). All money in this account shall be
19 expended solely for the purposes of this title and for no other
20 purposes whatsoever. Contributions to this account shall accrue and
21 become payable by each employer, except employers as described in RCW
22 50.44.010 and 50.44.030 who have properly elected to make payments in
23 lieu of contributions, taxable local government employers as described
24 in RCW 50.44.035, those employers who are required to make payments in
25 lieu of contributions, those employers described under RCW
26 50.29.025(1)(f)(ii), and those qualified employers assigned rate class
27 20 or rate class 40, as applicable, under RCW 50.29.025, at a basic
28 rate of one one-hundredth of one percent. The amount of wages subject
29 to tax shall be determined under RCW 50.24.010. Any amount of
30 contributions payable under this subsection (1)(b) that exceeds the
31 amount that would have been collected at a rate of four one-thousandths
32 of one percent must be deposited in the (~~unemployment compensation~~
33 ~~trust fund~~).

34 ~~(c) For the first calendar quarter of 1994 only, the basic two one-~~
35 ~~hundredths of one percent contribution payable under (a) of this~~
36 ~~subsection shall be increased by one hundredth of one percent to a~~
37 ~~total rate of three one hundredths of one percent. The proceeds of~~
38 ~~this incremental one hundredth of one percent shall be used solely for~~

1 ~~the purposes described in section 22, chapter 483, Laws of 1993, and~~
2 ~~for the purposes of conducting an evaluation of the call center~~
3 ~~approach to unemployment insurance under section 5, chapter 161, Laws~~
4 ~~of 1998. During the 1997-1999 fiscal biennium, any surplus from~~
5 ~~contributions payable under this subsection (c) may be deposited in the~~
6 ~~unemployment compensation trust fund, used to support tax and wage~~
7 ~~automated systems projects that simplify and streamline employer~~
8 ~~reporting, or both)) account created in (a) of this subsection.~~

9 (2)(a) Contributions under this section shall become due and be
10 paid by each employer under rules as the commissioner may prescribe,
11 and shall not be deducted, in whole or in part, from the remuneration
12 of individuals in the employ of the employer. Any deduction in
13 violation of this section is unlawful.

14 (b) In the payment of any contributions under this section, a
15 fractional part of a cent shall be disregarded unless it amounts to
16 one-half cent or more, in which case it shall be increased to one cent.

17 (3) If the commissioner determines that federal funding has been
18 increased to provide financing for the services specified in chapter
19 50.62 RCW, the commissioner shall direct that collection of
20 contributions under this section be terminated on the following January
21 1st.

22 **Sec. 3.** RCW 50.29.063 and 2006 c 47 s 1 are each amended to read
23 as follows:

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

27 (a) If the successor was an employer at the time of the transfer,
28 then the experience rating accounts of the employers involved shall be
29 combined into a single account and the employers assigned the higher of
30 the predecessor or successor array calculation factor rate to take
31 effect as of the date of the transfer.

32 (b) If the successor was not an employer at the time of the
33 transfer, then the experience rating account of the acquired business
34 must not be transferred and, instead, the sum of the rate determined by
35 the commissioner under RCW 50.29.025(2) (c)(ii) and (d)(ii), and
36 50.29.041 if applicable, shall be assigned.

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

6 (a) The commissioner shall, for the rate year in which the
7 commissioner makes the determination under this subsection and for each
8 of the three consecutive rate years following that rate year, assign to
9 the employer or business the total rate, which is the sum of the
10 recalculated array calculation factor rate and a civil penalty
11 assessment rate, calculated as follows:

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

15 (ii) Calculate a civil penalty assessment rate in an amount that,
16 when added to the array calculation factor rate determined under (a)(i)
17 of this subsection for the applicable rate year, results in a total
18 rate equal to the maximum array calculation factor rate under RCW
19 50.29.025 plus two percent, which total rate is not limited by any
20 maximum array calculation factor rate established in RCW
21 50.29.025(2)(b)(ii);

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

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

27 (3) If the person knowingly evading the successorship provisions,
28 or knowingly attempting to evade these provisions, or knowingly
29 promoting the evasion of these provisions, is not an employer, the
30 person is subject to a civil penalty assessment of five thousand
31 dollars per occurrence. In addition, the person is subject to the
32 penalties prescribed in RCW 50.36.020 as if the person were an
33 employer. The person must also pay for the employment security
34 department's reasonable expenses of auditing his or her books and
35 collecting the civil penalty assessment.

36 (4) For purposes of this section:

37 (a) "Knowingly" means having actual knowledge of or acting with

1 deliberate ignorance or reckless disregard for the prohibition involved
2 and includes, but is not limited to, intent to evade,
3 misrepresentation, or willful nondisclosure.

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

6 (c) "Transfer of a business" includes the transfer or acquisition
7 of substantially all or a portion of the operating assets, which may
8 include the employer's work force.

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

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

15 ~~(7) ((All penalties and interest collected under this section shall
16 be expended solely for prevention, detection, and collection activities
17 related to evasion of the successorship provisions of RCW 50.29.062 and
18 this section, and for no other purposes.~~

19 ~~(8))~~ The commissioner shall engage in prevention, detection, and
20 collection activities related to evasion of the successorship
21 provisions of RCW 50.29.062 and this section, and establish procedures
22 to enforce this section.

23 **Sec. 4.** RCW 50.16.010 and 2006 c 13 s 18 are each amended to read
24 as follows:

25 (1) There shall be maintained as special funds, separate and apart
26 from all public moneys or funds of this state an unemployment
27 compensation fund, an administrative contingency fund, and a federal
28 interest payment fund, which shall be administered by the commissioner
29 exclusively for the purposes of this title, and to which RCW 43.01.050
30 shall not be applicable.

31 (2)(a) The unemployment compensation fund shall consist of:

32 (i) All contributions collected under RCW 50.24.010 and payments in
33 lieu of contributions collected pursuant to the provisions of this
34 title;

35 (ii) Any property or securities acquired through the use of moneys
36 belonging to the fund;

37 (iii) All earnings of such property or securities;

1 (iv) Any moneys received from the federal unemployment account in
2 the unemployment trust fund in accordance with Title XII of the social
3 security act, as amended;

4 (v) All money recovered on official bonds for losses sustained by
5 the fund;

6 (vi) All money credited to this state's account in the unemployment
7 trust fund pursuant to section 903 of the social security act, as
8 amended;

9 (vii) All money received from the federal government as
10 reimbursement pursuant to section 204 of the federal-state extended
11 compensation act of 1970 (84 Stat. 708-712; 26 U.S.C. Sec. 3304); and

12 (viii) All moneys received for the fund from any other source.

13 (b) All moneys in the unemployment compensation fund shall be
14 commingled and undivided.

15 (3)(a) Except as provided in (b) of this subsection, the
16 administrative contingency fund shall consist of:

17 (i) All interest on delinquent contributions collected pursuant to
18 this title;

19 (ii) All fines and penalties collected pursuant to the provisions
20 of this title;

21 (iii) All sums recovered on official bonds for losses sustained by
22 the fund; and

23 (iv) Revenue received under RCW 50.24.014.

24 (b) All fees, fines, forfeitures, and penalties collected or
25 assessed by a district court because of the violation of this title or
26 rules adopted under this title shall be remitted as provided in chapter
27 3.62 RCW.

28 (c) Moneys available in the administrative contingency fund, other
29 than money in the special account created under RCW 50.24.014(1)(a),
30 shall be expended upon the direction of the commissioner, with the
31 approval of the governor, whenever it appears to him or her that such
32 expenditure is necessary solely for:

33 (i) The proper administration of this title and ~~((no))~~ that
34 insufficient federal funds are available for the specific purpose to
35 which such expenditure is to be made, provided, the moneys are not
36 substituted for appropriations from federal funds which, in the absence
37 of such moneys, would be made available.

1 (ii) The proper administration of this title for which purpose
2 appropriations from federal funds have been requested but not yet
3 received, provided, the administrative contingency fund will be
4 reimbursed upon receipt of the requested federal appropriation.

5 (iii) The proper administration of this title for which compliance
6 and audit issues have been identified that establish federal claims
7 requiring the expenditure of state resources in resolution. Claims
8 must be resolved in the following priority: First priority is to
9 provide services to eligible participants within the state; second
10 priority is to provide substitute services or program support; and last
11 priority is the direct payment of funds to the federal government.

12 ~~((d) During the 2005-2007 fiscal biennium, the cost of the job
13 skills program at community and technical colleges as appropriated by
14 the legislature.))~~

15 Money in the special account created under RCW 50.24.014(1)(a) may
16 only be expended, after appropriation, for the purposes specified in
17 this section and RCW 50.62.010, 50.62.020, 50.62.030, 50.24.014,
18 50.44.053, and 50.22.010.

19 NEW SECTION. **Sec. 5.** If any provision of this act or its
20 application to any person or circumstance is held invalid, the
21 remainder of the act or the application of the provision to other
22 persons or circumstances is not affected.

23 NEW SECTION. **Sec. 6.** If any part of this act is found to be in
24 conflict with federal requirements that are a prescribed condition to
25 the allocation of federal funds to the state or the eligibility of
26 employers in this state for federal unemployment tax credits, the
27 conflicting part of this act is inoperative solely to the extent of the
28 conflict, and the finding or determination does not affect the
29 operation of the remainder of this act. Rules adopted under this act
30 must meet federal requirements that are a necessary condition to the
31 receipt of federal funds by the state or the granting of federal
32 unemployment tax credits to employers in this state.

33 NEW SECTION. **Sec. 7.** This act is necessary for the immediate
34 preservation of the public peace, health, or safety, or support of the

1 state government and its existing public institutions, and takes effect
2 July 1, 2007.

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