

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE HOUSE BILL 2491**

62nd Legislature  
2012 1st Special Session

Passed by the House April 6, 2012  
Yeas 94 Nays 0

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**Speaker of the House of Representatives**

Passed by the Senate April 10, 2012  
Yeas 40 Nays 0

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**President of the Senate**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2491** as passed by the House of Representatives and the Senate on the dates hereon set forth.

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**Chief Clerk**

FILED

**Secretary of State  
State of Washington**

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**SUBSTITUTE HOUSE BILL 2491**

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Passed Legislature - 2012 1st Special Session

**State of Washington                      62nd Legislature                      2012 Regular Session**

**By** House Labor & Workforce Development (originally sponsored by Representatives Upthegrove and Orwall)

READ FIRST TIME 01/31/12.

1            AN ACT Relating to specifying when predecessor-successor  
2 relationships do not exist for purposes of unemployment experience  
3 rating; amending RCW 50.29.062; and creating a new section.

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

5            **Sec. 1.** RCW 50.29.062 and 2010 c 25 s 2 are each amended to read  
6 as follows:

7            ~~((Except as provided in RCW 50.29.063))~~ (1) If the department finds  
8 that a significant purpose of the transfer of the business is to obtain  
9 a reduced array calculation factor rate, contribution rates shall be  
10 computed and penalties and other sanctions shall apply as specified in  
11 RCW 50.29.063.

12            (2) If subsection (1) of this section and RCW 50.29.063 do not  
13 apply and if the department finds that an employer is a successor, or  
14 partial successor, to a predecessor business, predecessor and successor  
15 employer contribution rates shall be computed in the following manner:

16            ~~((+1))~~(a) If the successor is an employer, as defined in RCW  
17 50.04.080, at the time of the transfer of a business, the following  
18 applies:

1        ~~((a))~~ (i) The successor's contribution rate shall remain  
2 unchanged for the remainder of the rate year in which the transfer  
3 occurs~~((and))~~.

4        ~~((b))~~ (ii) Beginning January 1st following the transfer, the  
5 successor's contribution rate for each rate year shall be based on a  
6 combination of the following:

7        ~~((i))~~ (A) The successor's experience with payrolls and benefits;  
8 and

9        ~~((ii))~~ (B) Any experience assigned to the predecessor involved in  
10 the transfer. If only a portion of the business was transferred, then  
11 the experience attributable to the acquired portion is assigned to the  
12 successor.

13       ~~((2))~~ (b) If the successor is not an employer at the time of the  
14 transfer, the following applies:

15       ~~((a))~~ (i) For transfers before January 1, 2005:

16       ~~((i))~~ (A) Except as provided in ~~((ii))~~ (b)(i)(B) of this  
17 subsection ~~((a))~~, the successor shall pay contributions at the  
18 lowest rate determined under either of the following:

19       ~~((A))~~ (I) The contribution rate of the rate class assigned to the  
20 predecessor employer at the time of the transfer for the remainder of  
21 that rate year. Any experience relating to the assignment of that rate  
22 class attributable to the predecessor is transferred to the successor.  
23 Beginning with the January 1st following the transfer, the successor's  
24 contribution rate shall be based on a combination of the transferred  
25 experience of the acquired business and the successor's experience  
26 after the transfer; or

27       ~~((B))~~ (II) The contribution rate equal to the average industry  
28 rate as determined by the commissioner, but not less than one percent,  
29 and continuing until the successor qualifies for a different rate in  
30 its own right. Assignment of employers by the commissioner to  
31 industrial classification, for purposes of this subsection, must be in  
32 accordance with established classification practices found in the North  
33 American industry classification system issued by the federal office of  
34 management and budget to the fourth digit provided in the North  
35 American industry classification system.

36       ~~((ii))~~ (B) If the successor simultaneously acquires the business  
37 or a portion of the business of two or more employers in different rate  
38 classes, its rate, from the date the transfer occurred until the end of

1 that rate year and until it qualifies in its own right for a new rate,  
2 shall be the rate of the highest rate class applicable at the time of  
3 the acquisition to any predecessor employer who is a party to the  
4 acquisition, but not less than one percent.

5 ~~((b))~~ (ii) For transfers on or after January 1, 2005:

6 ~~((i))~~ (A) Except as provided in ~~((ii) and (iii))~~ (b)(ii)(B) and  
7 (C) of this subsection ~~(2)((b))~~, the successor shall pay  
8 contributions:

9 ~~((A))~~ (I) At the contribution rate assigned to the predecessor  
10 employer at the time of the transfer for the remainder of that rate  
11 year. Any experience attributable to the predecessor relating to the  
12 assignment of the predecessor's rate class is transferred to the  
13 successor.

14 ~~((B))~~ (II) Beginning January 1st following the transfer, the  
15 successor's contribution rate for each rate year shall be based on an  
16 array calculation factor rate that is a combination of the following:  
17 The successor's experience with payrolls and benefits; and any  
18 experience assigned to the predecessor involved in the transfer. If  
19 only a portion of the business was transferred, then the experience  
20 attributable to the acquired portion is assigned to the successor if  
21 qualified under RCW 50.29.010 by including the transferred experience.  
22 If not qualified under RCW 50.29.010, the contribution rate shall equal  
23 the sum of the rates determined by the commissioner under RCW 50.29.025  
24 (1)(d)(ii) or (2)(d) and 50.29.041, if applicable, and continuing until  
25 the successor qualifies for a different rate, including the transferred  
26 experience.

27 ~~((iii))~~ (B) If there is a substantial continuity of ownership,  
28 control, or management by the successor of the business of the  
29 predecessor, the successor shall pay contributions at the contribution  
30 rate determined for the predecessor employer at the time of the  
31 transfer for the remainder of that rate year. Any experience  
32 attributable to the predecessor relating to the assignment of the  
33 predecessor's rate class is transferred to the successor. Beginning  
34 January 1st following the transfer, the successor's array calculation  
35 factor rate shall be based on a combination of the transferred  
36 experience of the acquired business and the successor's experience  
37 after the transfer.

1       (~~(iii)~~) (C) If the successor simultaneously acquires the business  
2 or a portion of the business of two or more employers with different  
3 contribution rates, the successor's rate, from the date the transfer  
4 occurred until the end of that rate year and until it qualifies in its  
5 own right for a new rate, shall be the sum of the rates determined by  
6 the commissioner under RCW 50.29.025 (1) (a) and (b) or (2) (a) and  
7 (b), and 50.29.041, applicable at the time of the acquisition, to the  
8 predecessor employer who, among the parties to the acquisition, had the  
9 largest total payroll in the completed calendar quarter immediately  
10 preceding the date of transfer, but not less than the sum of the rates  
11 determined by the commissioner under RCW 50.29.025 (1)(d)(ii) or (2)(d)  
12 and 50.29.041, if applicable.

13       (~~(3)~~) (c) With respect to predecessor employers:

14       (~~(a)~~) (i) The contribution rate on any payroll retained by a  
15 predecessor employer shall remain unchanged for the remainder of the  
16 rate year in which the transfer occurs.

17       (~~(b)~~) (ii) In all cases, beginning January 1st following the  
18 transfer, the predecessor's contribution rate or the predecessor's  
19 array calculation factor for each rate year shall be based on its  
20 experience with payrolls and benefits as of the regular computation  
21 date for that rate year excluding the experience of the transferred  
22 business or transferred portion of business as that experience has  
23 transferred to the successor:       PROVIDED, That if all of the  
24 predecessor's business is transferred to a successor or successors, the  
25 predecessor shall not be a qualified employer until it satisfies the  
26 requirements of a "qualified employer" as set forth in RCW 50.29.010.

27       (3) A predecessor-successor relationship does not exist for  
28 purposes of subsection (2) of this section when a significant purpose  
29 of the transfer of a business or its operating assets is for the  
30 employer to move or expand an existing business, or for an employer to  
31 establish a substantially similar business under common ownership,  
32 management, and control. However, if an employer transfers its  
33 business to another employer, and both employers are at the time of  
34 transfer under substantially common ownership, management, or control,  
35 then the unemployment experience attributable to the transferred  
36 business shall also be transferred to, and combined with the  
37 unemployment experience attributable to, the employer to whom such

1 business is so transferred as specified in subsection (2)(a) of this  
2 section.

3 (4) For purposes of this section, "transfer of a business" means  
4 the same as RCW 50.29.063(4)(c).

5 NEW SECTION. **Sec. 2.** If any part of this act is found to be in  
6 conflict with federal requirements that are a prescribed condition to  
7 the allocation of federal funds to the state or the eligibility of  
8 employers in this state for federal unemployment tax credits, the  
9 conflicting part of this act is inoperative solely to the extent of the  
10 conflict, and the finding or determination does not affect the  
11 operation of the remainder of this act. Rules adopted under this act  
12 must meet federal requirements that are a necessary condition to the  
13 receipt of federal funds by the state or the granting of federal  
14 unemployment tax credits to employers in this state.

15 NEW SECTION. **Sec. 3.** If any provision of this act or its  
16 application to any person or circumstance is held invalid, the  
17 remainder of the act or the application of the provision to other  
18 persons or circumstances is not affected.

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