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**ENGROSSED SUBSTITUTE SENATE BILL 5478**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Keiser, Mullet, Billig, Cleveland, Conway, Das, Hunt, King, Kuderer, Liias, Lovelett, Nguyen, Randall, Rolfes, Saldaña, Stanford, Van De Wege, and Wilson, C.)

AN ACT Relating to unemployment insurance relief for certain employers; adding a new section to chapter 50.16 RCW; adding new sections to chapter 50.29 RCW; creating new sections; providing expiration dates; and declaring an emergency.

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

NEW SECTION. **Sec.**  Amid unprecedented and ongoing stresses on our unemployment compensation fund and a sharp increase in the need for benefits during the COVID-19 public health emergency, the legislature intends to minimize the impact of public health precautionary measures on certain employers and the resulting impact on the experience rate component of their unemployment insurance premium rate. The first bill passed by the 2021 legislature and signed by the governor, Engrossed Substitute Senate Bill No. 5061, provided immediate relief to all employers by noncharging $1.2 billion in benefits paid during the 11 weeks of the initial COVID-19 closures, reducing the social tax component for five years, and suspending the solvency surcharge until 2025. This swift action led to the state's average unemployment insurance tax rate in 2021 increasing by only 0.03 percent, instead of 0.85 percent as was expected if the legislature had not acted. The legislature now intends to prepare for 2022 by preemptively minimizing the disproportionate impact COVID-19 economic closures have had on certain businesses, while continuing to ensure a healthy unemployment compensation fund that can maintain critical economic support to Washington workers.

NEW SECTION. **Sec.**  A new section is added to chapter 50.16 RCW to read as follows:

(1) The unemployment insurance relief account is created in the custody of the state treasurer. Revenues to the account consist of appropriations and transfers by the legislature and all other funding directed for deposit into the account. Only the commissioner of the employment security department or the commissioner's designee may authorize expenditures from the account. Expenditures from the account may be used only for reimbursing the unemployment compensation fund created in RCW 50.16.010 for forgiven benefits for COVID-19 impacted businesses pursuant to sections 3 and 4 of this act. The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) By July 1, 2022, the commissioner must certify to the state treasurer the amount of any unobligated moneys in the unemployment insurance relief account that were appropriated by the legislature from the general fund during the 2021-2023 fiscal biennium, and the treasurer must transfer those moneys back to the general fund.

NEW SECTION. **Sec.**  A new section is added to chapter 50.29 RCW to read as follows:

(1) By November 1, 2021, the department must determine the forgiven benefits for approved category 1 employers to be reimbursed by the unemployment insurance relief account instead of charged to the employer's experience rating account.

(2) The department will not charge the forgiven benefits to the employer's experience rating account. The commissioner must instead transfer from the unemployment insurance relief account to the unemployment compensation fund created in RCW 50.16.010 an amount equal to the forgiven benefits.

(3) For the purposes of this section, the following definitions apply:

(a) "Approved benefits" means 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. Approved benefits must not include benefits that were not charged to the employer's experience rating account or benefits otherwise relieved under RCW 50.29.021.

(b) "Approved category 1 employer" means a contribution paying employer, excluding any ineligible employer:

(i) Whose experience rating under RCW 50.29.025(1)(a)(ii) has increased by two or more rate classes from rate year 2021 to rate year 2022; and

(ii)(A) Whose North American industry classification system code for rate year 2021 is within "323," "448," "451," "453," "481," "485," "487," "512," "561," "711," "713," "721," "722," "812," and "814;" or

(B) Which is a grocery store which: (I) Had fewer than 25 employees in the state as reported on the employer's fourth quarter report to the department for 2019 and (II) was located within five miles of an international border, which was closed at any time in 2021 due to COVID-19.

(c) "Amount available for approved category 1 employers" means 50 percent of the total amount of money in the unemployment insurance relief account.

(d) "Forgiven benefits" means the approved benefits for an individual employer multiplied by the forgiveness ratio.

(e) "Forgiveness ratio" is computed by dividing the amount available for approved category 1 employers by the total approved benefits. The forgiveness ratio cannot be more than one.

(f) "Ineligible employer" means 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.

(g) "Total approved benefits" means the sum total of all approved benefits.

(4) The department must adopt such rules as are necessary to carry out the purposes of this section.

(5) This section expires July 30, 2022.

NEW SECTION. **Sec.**  A new section is added to chapter 50.29 RCW to read as follows:

(1) By November 1, 2021, the department must determine the forgiven benefits for approved category 2 employers to be reimbursed by the unemployment insurance relief account instead of charged to the employer's experience rating account.

(2) The department will not charge the forgiven benefits to the employer's experience rating account. The commissioner must instead transfer from the unemployment insurance relief account to the unemployment compensation fund created in RCW 50.16.010 an amount equal to the forgiven benefits.

(3) For the purposes of this section, the following definitions apply:

(a) "Approved benefits" means 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. Approved benefits must not include benefits that were not charged to the employer's experience rating account or benefits otherwise relieved under RCW 50.29.021.

(b) "Approved category 2 employer" means a contribution paying employer, excluding any ineligible employer:

(i) Whose experience rating under RCW 50.29.025(1)(a)(ii) has increased by six or more rate classes from rate year 2021 to rate year 2022;

(ii) With fewer than 40,000 employees in the state as reported on the employer's fourth quarter report to the department for 2019; and

(iii) Who does not meet the definition of approved category 1 employer under section 3(3)(b) of this act.

(c) "Amount available for approved category 2 employers" means:

(i) Fifty percent of the total amount of money in the unemployment insurance relief account; and

(ii) The difference between the amount available for approved category 1 employers and the forgiven benefits for approved category 1 employers, as defined in section 3 of this act.

(d) "Forgiven benefits" means the approved benefits for an individual employer multiplied by the forgiveness ratio.

(e) "Forgiveness ratio" is computed by dividing the amount available for approved category 2 employers by the total approved benefits. The forgiveness ratio cannot be more than one.

(f) "Ineligible employer" means 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.

(g) "Total approved benefits" means the sum total of all approved benefits.

(4) The department must adopt such rules as are necessary to carry out the purposes of this section.

(5) This section expires July 30, 2022.

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

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

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