CERTIFICATION OF ENROLLMENT

**ENGROSSED SUBSTITUTE SENATE BILL 5478**

67th Legislature

2021 Regular Session

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| Passed by the Senate April 24, 2021  Yeas 49 Nays 0  **President of the Senate**  Passed by the House April 22, 2021  Yeas 95 Nays 2  **Speaker of the House of Representatives** | CERTIFICATE  I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5478** as passed by the Senate and the House of Representatives on the dates hereon set forth.  Secretary |
| Approved |  |
| **Governor of the State of Washington** | **Secretary of State**  **State of Washington** |

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**ENGROSSED SUBSTITUTE SENATE BILL 5478**

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AS AMENDED BY THE HOUSE

Passed Legislature - 2021 Regular Session

**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.**  (1) The legislature finds that certain businesses in Washington have experienced significant and unanticipated impacts during the COVID-19 pandemic. The legislature intends to preemptively minimize the disproportionate impact COVID-19 economic closures have had on these businesses.

(2) Small businesses in particular have fewer reserves and fewer resources to rely upon in periods of downturn. Those businesses owned by historically disadvantaged groups, such as women, minority populations, and immigrants, often experience disproportionately more distress and burden due to the economic impacts of the COVID-19 pandemic compared to their counterparts across the remaining business community. These businesses are absolutely critical to the success of Washington's continued high ratings, number one gross domestic product, and are part of the backbone of Washington's diverse and resilient economy.

(3) The legislature finds that ESSB 5061, passed by the legislature and signed by the governor earlier in the 2021 session, mitigated immediate impacts to employers through caps on the social tax, suspension of the solvency surcharge, and relief of certain benefit charges.

(4) The legislature now intends to address the disproportionate impacts on small and other significantly impacted businesses beyond the limited time period addressed in ESSB 5061. The legislature intends to provide this targeted relief through the one-time application of funds, in order to provide critical support for many of the businesses that are essential to Washington's recovery and ongoing economic vitality, while maintaining a healthy unemployment insurance trust fund for Washington's 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, 4, 5, 6, 7, 8, and 9 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 December 20, 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. Total forgiven benefits for all approved category 1 employers may not exceed the available benefits for category 1.

(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:

(i) With 20 or fewer employees in the state as reported on the employer's fourth quarter report to the department for 2020;

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

(iii) Whose North American industry classification system code for rate year 2021 is within "323," "331," "448," "451," "453," "481," "485," "487," "512," "711," "712," "713," "721," "722," "812," and "814."

(c) "Available benefits for category 1" means $100,000,000 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 available benefits for category 1 by the total approved benefits. The forgiveness ratio cannot be more than one.

(f) "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 December 20, 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. Total forgiven benefits for all approved category 2 employers may not exceed the available benefits for category 2.

(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 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 2 employer" means a contribution paying employer:

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

(ii) Whose North American industry classification system code for rate year 2021 is within "323," "331," "448," "451," "453," "481," "485," "487," "512," "711," "712," "713," "721," "722," "812," and "814"; and

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

(c) "Available benefits for category 2" means the sum total of:

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

(ii) $175,000,000 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 available benefits for category 2 by the total approved benefits. The forgiveness ratio cannot be more than one.

(f) "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 December 20, 2021, the department must determine the forgiven benefits for approved category 3 employers to be reimbursed by the unemployment insurance relief account instead of charged to the employer's experience rating account. Total forgiven benefits for all approved category 3 employers may not exceed the available benefits for category 3.

(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 3 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 three 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 3 employer" means a contribution paying employer:

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

(ii) With 20 or fewer employees in the state as reported on the employer's fourth quarter report to the department for 2020; and

(iii) Who does not meet the definition of approved category 1 employer under section 3(3) of this act or approved category 2 employer under section 4(3) of this act.

(c) "Available benefits for category 3" means the sum total of:

(i) The difference between the available benefits for category 2, as defined under section 4 of this act, and the total forgiven benefits for approved category 2 employers, as defined under section 4 of this act; and

(ii) $75,000,000 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 available benefits for category 3 by the total approved benefits. The forgiveness ratio cannot be more than one.

(f) "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 December 20, 2021, the department must determine the forgiven benefits for approved category 4 employers to be reimbursed by the unemployment insurance relief account instead of charged to the employer's experience rating account. Total forgiven benefits for all approved category 4 employers may not exceed the available benefits for category 4.

(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 4 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 three 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 4 employer" means a contribution paying employer:

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

(ii) With at least 21 but fewer than 5,000 employees in the state as reported on the employer's fourth quarter report to the department for 2020; and

(iii) Who does not meet the definition of approved category 1 employer under section 3(3) of this act, approved category 2 employer under section 4(3) of this act, or approved category 3 employer under section 5(3) of this act.

(c) "Available benefits for category 4" means the sum total of:

(i) The difference between the available benefits for category 3, as defined under section 5 of this act, and the total forgiven benefits for approved category 3 employers, as defined under section 5 of this act; and

(ii) $150,000,000 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 available benefits for category 4 by the total approved benefits. The forgiveness ratio cannot be more than one.

(f) "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) If moneys remain in the unemployment insurance relief account after the department determines the forgiven benefits for all approved employers pursuant to sections 3 through 6 of this act, then by December 21, 2021, the department must again determine any 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. Total forgiven benefits for all approved category 1 employers may not exceed the available benefits for category 1.

(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 any remaining benefits paid to employees of an approved category 1 employer during the fiscal year ending June 30, 2021, that were not previously forgiven under section 3 of this act, 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" has the same meaning as defined in section 3 of this act.

(c) "Available benefits for category 1" means the total amount of money remaining in the unemployment insurance relief account after benefits are forgiven according to sections 3 through 6 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 available benefits for category 1 by the total approved benefits. The forgiveness ratio cannot be more than one.

(f) "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) If moneys remain in the unemployment insurance relief account after the department determines the forgiven benefits for approved category 1 employers pursuant to section 7 of this act, the department must again determine any 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. Total forgiven benefits for all approved category 2 employers may not exceed the available benefits for category 2.

(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 any remaining benefits paid to employees of an approved category 2 employer during the fiscal year ending June 30, 2021, that were not previously forgiven under section 4 of this act, 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 2 employer" has the same meaning as defined in section 4 of this act.

(c) "Available benefits for category 2" means the difference between the available benefits for category 1, as defined in section 7 of this act, and the total forgiven benefits for approved category 1 employers, as defined in section 7 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 available benefits for category 2 by the total approved benefits. The forgiveness ratio cannot be more than one.

(f) "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) If moneys remain in the unemployment insurance relief account after the department determines the forgiven benefits for approved category 2 employers pursuant to section 8 of this act, the department must again determine any forgiven benefits for approved category 3 employers to be reimbursed by the unemployment insurance relief account instead of charged to the employer's experience rating account. Total forgiven benefits for all approved category 3 employers may not exceed the available benefits for category 3.

(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 any remaining benefits paid to employees of an approved category 3 employer during the fiscal year ending June 30, 2021, that were not previously forgiven under section 5 of this act, not to exceed an amount that would reduce the employer's rate class increase to no more than a three 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 3 employer" has the same meaning as defined in section 5 of this act.

(c) "Available benefits for category 3" means the difference between the available benefits for category 2, as defined under section 8 of this act, and the total forgiven benefits for approved category 2 employers, as defined under section 8 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 available benefits for category 3 by the total approved benefits. The forgiveness ratio cannot be more than one.

(f) "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 September 1st of each year, the department must determine which employers have not paid all contributions, penalties, or interest due, and have not entered into a department-approved deferred payment contract, as of that date.

(2) By September 1st of each year, for each employer meeting the criteria in subsection (1) of this section, the department must notify the employer of the availability of deferred payment contracts with the department. The department must provide technical, and culturally and linguistically relevant, assistance as needed to the employer in navigating the process for entering into a department-approved payment contract.

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.

**--- END ---**