

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE HOUSE BILL 2613**

66th Legislature  
2020 Regular Session

Passed by the House February 16, 2020  
Yeas 96 Nays 0

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**Speaker of the House of  
Representatives**

Passed by the Senate March 4, 2020  
Yeas 46 Nays 0

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**President of the Senate**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2613** 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 2613**

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Passed Legislature - 2020 Regular Session

**State of Washington                      66th Legislature                      2020 Regular Session**

**By** House Labor & Workplace Standards (originally sponsored by Representatives Sells and Mosbrucker; by request of Employment Security Department)

READ FIRST TIME 01/24/20.

1            AN ACT Relating to granting relief of unemployment benefit  
2 charges when discharge is required by law and removing outdated  
3 statutory language; amending RCW 50.12.200, 50.20.190, 50.29.021,  
4 50.50.070, and 50A.05.070; creating a new section; and repealing RCW  
5 50.29.020.

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

7            **Sec. 1.** RCW 50.12.200 and 1982 1st ex.s. c 18 s 1 are each  
8 amended to read as follows:

9            (1) The commissioner shall appoint a state advisory council  
10 composed of not more than nine men and women, of which three shall be  
11 representatives of employers, three shall be representatives of  
12 employees, and three shall be representatives of the general public.  
13 Such council shall aid the commissioner in formulating policies and  
14 discussing problems related to the administration of this title and  
15 of assuring impartiality and freedom from political influence in the  
16 solution of such problems. The council shall serve without  
17 compensation. The commissioner may also appoint committees, and  
18 industrial or other special councils, to perform appropriate  
19 services. Advisory councilmembers shall be reimbursed for travel  
20 expenses incurred in accordance with RCW 43.03.050 and 43.03.060 as  
21 now existing or hereafter amended.

1 (2) Beginning in 2021 and ending in 2030, the commissioner shall  
2 annually report to the state advisory council the amount of benefits  
3 that were not charged to employers as a direct consequence of RCW  
4 50.29.021(3) (a) (viii).

5 **Sec. 2.** RCW 50.20.190 and 2013 c 189 s 4 are each amended to  
6 read as follows:

7 (1) An individual who is paid any amount as benefits under this  
8 title to which he or she is not entitled shall, unless otherwise  
9 relieved pursuant to this section, be liable for repayment of the  
10 amount overpaid. The department shall issue an overpayment assessment  
11 setting forth the reasons for and the amount of the overpayment. The  
12 amount assessed, to the extent not collected, may be deducted from  
13 any future benefits payable to the individual: PROVIDED, That in the  
14 absence of a back pay award, a settlement affecting the allowance of  
15 benefits, fraud, misrepresentation, or willful nondisclosure, every  
16 determination of liability shall be mailed or personally served not  
17 later than two years after the close of or final payment made on the  
18 individual's applicable benefit year for which the purported  
19 overpayment was made, whichever is later, unless the merits of the  
20 claim are subjected to administrative or judicial review in which  
21 event the period for serving the determination of liability shall be  
22 extended to allow service of the determination of liability during  
23 the six-month period following the final decision affecting the  
24 claim.

25 (2) The commissioner may waive an overpayment if the commissioner  
26 finds that the overpayment was not the result of fraud,  
27 misrepresentation, willful nondisclosure, or fault attributable to  
28 the individual and that the recovery thereof would be against equity  
29 and good conscience. When determining whether the recovery would be  
30 against equity and good conscience, the department must consider  
31 whether the employer or employer's agent failed to respond timely and  
32 adequately to a written request of the department for information  
33 relating to the claim or claims without establishing good cause for  
34 the failure pursuant to RCW 50.29.021(~~(+6)~~) (5). An overpayment  
35 waived under this subsection shall be charged against the  
36 individual's applicable entitlement for the eligibility period  
37 containing the weeks to which the overpayment was attributed as  
38 though such benefits had been properly paid.

1           (3) Any assessment herein provided shall constitute a  
2 determination of liability from which an appeal may be had in the  
3 same manner and to the same extent as provided for appeals relating  
4 to determinations in respect to claims for benefits: PROVIDED, That  
5 an appeal from any determination covering overpayment only shall be  
6 deemed to be an appeal from the determination which was the basis for  
7 establishing the overpayment unless the merits involved in the issue  
8 set forth in such determination have already been heard and passed  
9 upon by the appeal tribunal. If no such appeal is taken to the appeal  
10 tribunal by the individual within thirty days of the delivery of the  
11 notice of determination of liability, or within thirty days of the  
12 mailing of the notice of determination, whichever is the earlier, the  
13 determination of liability shall be deemed conclusive and final.  
14 Whenever any such notice of determination of liability becomes  
15 conclusive and final, the commissioner, upon giving at least twenty  
16 days' notice, using a method by which the mailing can be tracked or  
17 the delivery can be confirmed, may file with the superior court clerk  
18 of any county within the state a warrant in the amount of the notice  
19 of determination of liability plus a filing fee under RCW  
20 36.18.012(10). The clerk of the county where the warrant is filed  
21 shall immediately designate a superior court cause number for the  
22 warrant, and the clerk shall cause to be entered in the judgment  
23 docket under the superior court cause number assigned to the warrant,  
24 the name of the person(s) mentioned in the warrant, the amount of the  
25 notice of determination of liability, and the date when the warrant  
26 was filed. The amount of the warrant as docketed shall become a lien  
27 upon the title to, and any interest in, all real and personal  
28 property of the person(s) against whom the warrant is issued, the  
29 same as a judgment in a civil case duly docketed in the office of  
30 such clerk. A warrant so docketed shall be sufficient to support the  
31 issuance of writs of execution and writs of garnishment in favor of  
32 the state in the manner provided by law for a civil judgment. A copy  
33 of the warrant shall be mailed within five days of its filing with  
34 the clerk to the person(s) mentioned in the warrant using a method by  
35 which the mailing can be tracked or the delivery can be confirmed.

36           (4) On request of any agency which administers an employment  
37 security law of another state, the United States, or a foreign  
38 government and which has found in accordance with the provisions of  
39 such law that a claimant is liable to repay benefits received under  
40 such law, the commissioner may collect the amount of such benefits

1 from the claimant to be refunded to the agency. In any case in which  
2 under this section a claimant is liable to repay any amount to the  
3 agency of another state, the United States, or a foreign government,  
4 such amounts may be collected without interest by civil action in the  
5 name of the commissioner acting as agent for such agency if the other  
6 state, the United States, or the foreign government extends such  
7 collection rights to the employment security department of the state  
8 of Washington, and provided that the court costs be paid by the  
9 governmental agency benefiting from such collection.

10 (5) Any employer who is a party to a back pay award or settlement  
11 due to loss of wages shall, within thirty days of the award or  
12 settlement, report to the department the amount of the award or  
13 settlement, the name and social security number of the recipient of  
14 the award or settlement, and the period for which it is awarded. When  
15 an individual has been awarded or receives back pay, for benefit  
16 purposes the amount of the back pay shall constitute wages paid in  
17 the period for which it was awarded. For contribution purposes, the  
18 back pay award or settlement shall constitute wages paid in the  
19 period in which it was actually paid. The following requirements  
20 shall also apply:

21 (a) The employer shall reduce the amount of the back pay award or  
22 settlement by an amount determined by the department based upon the  
23 amount of unemployment benefits received by the recipient of the  
24 award or settlement during the period for which the back pay award or  
25 settlement was awarded;

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

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

33 (d) If the employer fails to reduce the amount of the back pay  
34 award or settlement as required in (a) of this subsection, the  
35 department shall issue an overpayment assessment against the  
36 recipient of the award or settlement in the amount that the back pay  
37 award or settlement should have been reduced; and

38 (e) If the employer fails to pay to the department an amount  
39 equal to the reduction as required in (b) of this subsection, the  
40 department shall issue an assessment of liability against the

1 employer which shall be collected pursuant to the procedures for  
2 collection of assessments provided herein and in RCW 50.24.110.

3 (6) When an individual fails to repay an overpayment assessment  
4 that is due and fails to arrange for satisfactory repayment terms,  
5 the commissioner shall impose an interest penalty of one percent per  
6 month of the outstanding balance. Interest shall accrue immediately  
7 on overpayments assessed pursuant to RCW 50.20.070 and shall be  
8 imposed when the assessment becomes final. For any other overpayment,  
9 interest shall accrue when the individual has missed two or more of  
10 the individual's monthly payments either partially or in full.

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

16 **Sec. 3.** RCW 50.29.021 and 2019 c 13 s 65 are each amended to  
17 read as follows:

18 (1) ~~((This section applies to benefits charged to the experience  
19 rating accounts of employers for claims that have an effective date  
20 on or after January 4, 2004.~~

21 ~~(2))~~ (a) An experience rating account shall be established and  
22 maintained for each employer, except employers as described in RCW  
23 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make  
24 payments in lieu of contributions, taxable local government employers  
25 as described in RCW 50.44.035, and those employers who are required  
26 to make payments in lieu of contributions, based on existing records  
27 of the employment security department.

28 (b) Benefits paid to an eligible individual shall be charged to  
29 the experience rating accounts of each of such individual's employers  
30 during the individual's base year in the same ratio that the wages  
31 paid by each employer to the individual during the base year bear to  
32 the wages paid by all employers to that individual during that base  
33 year, except as otherwise provided in this section.

34 (c) When the eligible individual's separating employer is a  
35 covered contribution paying base year employer, benefits paid to the  
36 eligible individual shall be charged to the experience rating account  
37 of only the individual's separating employer if the individual  
38 qualifies for benefits under:

1 (i) RCW 50.20.050 (1)(b)(i) or (2)(b)(i), as applicable, and  
2 became unemployed after having worked and earned wages in the bona  
3 fide work; or

4 (ii) RCW 50.20.050 (1)(b)(v) through (x) or (2)(b)(v) through  
5 (x).

6 (~~(3)~~) (2) The legislature finds that certain benefit payments,  
7 in whole or in part, should not be charged to the experience rating  
8 accounts of employers except those employers described in RCW  
9 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make  
10 payments in lieu of contributions, taxable local government employers  
11 described in RCW 50.44.035, and those employers who are required to  
12 make payments in lieu of contributions, as follows:

13 (a) Benefits paid to any individual later determined to be  
14 ineligible shall not be charged to the experience rating account of  
15 any contribution paying employer, except as provided in subsection  
16 (~~(5)~~) (4) of this section.

17 (b) Benefits paid to an individual filing under the provisions of  
18 chapter 50.06 RCW shall not be charged to the experience rating  
19 account of any contribution paying employer only if:

20 (i) The individual files under RCW 50.06.020(1) after receiving  
21 crime victims' compensation for a disability resulting from a  
22 nonwork-related occurrence; or

23 (ii) The individual files under RCW 50.06.020(2).

24 (c) Benefits paid which represent the state's share of benefits  
25 payable as extended benefits defined under RCW 50.22.010(6) shall not  
26 be charged to the experience rating account of any contribution  
27 paying employer.

28 (d) In the case of individuals who requalify for benefits under  
29 RCW 50.20.050 or 50.20.060, benefits based on wage credits earned  
30 prior to the disqualifying separation shall not be charged to the  
31 experience rating account of the contribution paying employer from  
32 whom that separation took place.

33 (e) Benefits paid to an individual who qualifies for benefits  
34 under RCW 50.20.050 (1)(b)(iv) or (xi) or (2)(b)(iv) or (xi), as  
35 applicable, shall not be charged to the experience rating account of  
36 any contribution paying employer.

37 (f) With respect to claims with an effective date on or after the  
38 first Sunday following April 22, 2005, benefits paid that exceed the  
39 benefits that would have been paid if the weekly benefit amount for  
40 the claim had been determined as one percent of the total wages paid

1 in the individual's base year shall not be charged to the experience  
2 rating account of any contribution paying employer. This subsection  
3 (~~((3))~~) (2)(f) does not apply to the calculation of contribution  
4 rates under RCW 50.29.025 for rate year 2010 and thereafter.

5 (g) The forty-five dollar increase paid as part of an  
6 individual's weekly benefit amount as provided in RCW 50.20.1201 and  
7 the twenty-five dollar increase paid as part of an individual's  
8 weekly benefit amount as provided in RCW 50.20.1202 shall not be  
9 charged to the experience rating account of any contribution paying  
10 employer.

11 (h) With respect to claims where the minimum amount payable  
12 weekly is increased to one hundred fifty-five dollars pursuant to RCW  
13 50.20.1201(3), benefits paid that exceed the benefits that would have  
14 been paid if the minimum amount payable weekly had been calculated  
15 pursuant to RCW 50.20.120 shall not be charged to the experience  
16 rating account of any contribution paying employer.

17 (i) Upon approval of an individual's training benefits plan  
18 submitted in accordance with RCW 50.22.155(2), an individual is  
19 considered enrolled in training, and regular benefits beginning with  
20 the week of approval shall not be charged to the experience rating  
21 account of any contribution paying employer.

22 (j) Training benefits paid to an individual under RCW 50.22.155  
23 shall not be charged to the experience rating account of any  
24 contribution paying employer.

25 (~~((4))~~) (3)(a) A contribution paying base year employer, except  
26 employers as provided in subsection (~~((6))~~) (5) of this section, not  
27 otherwise eligible for relief of charges for benefits under this  
28 section, may receive such relief if the benefit charges result from  
29 payment to an individual who:

30 (i) Last left the employ of such employer voluntarily for reasons  
31 not attributable to the employer;

32 (ii) Was discharged for misconduct or gross misconduct connected  
33 with his or her work not a result of inability to meet the minimum  
34 job requirements;

35 (iii) Is unemployed as a result of closure or severe curtailment  
36 of operation at the employer's plant, building, worksite, or other  
37 facility. This closure must be for reasons directly attributable to a  
38 catastrophic occurrence such as fire, flood, or other natural  
39 disaster;



1 (iv) Continues to be employed on a regularly scheduled permanent  
2 part-time basis by a base year employer and who at some time during  
3 the base year was concurrently employed and subsequently separated  
4 from at least one other base year employer. Benefit charge relief  
5 ceases when the employment relationship between the employer  
6 requesting relief and the claimant is terminated. This subsection  
7 does not apply to shared work employers under chapter 50.60 RCW;

8 (v) Continues to be employed on a regularly scheduled permanent  
9 part-time basis by a base year employer and who qualified for two  
10 consecutive unemployment claims where wages were attributable to at  
11 least one employer who employed the individual in both base years.  
12 Benefit charge relief ceases when the employment relationship between  
13 the employer requesting relief and the claimant is terminated. This  
14 subsection does not apply to shared work employers under chapter  
15 50.60 RCW;

16 (vi) Was hired to replace an employee who is a member of the  
17 military reserves or National Guard and was called to federal active  
18 military service by the president of the United States and is  
19 subsequently laid off when that employee is reemployed by their  
20 employer upon release from active duty within the time provided for  
21 reemployment in RCW 73.16.035; (~~(v)~~)

22 (vii) Worked for an employer for twenty weeks or less, and was  
23 laid off at the end of temporary employment when that employee  
24 temporarily replaced a permanent employee receiving family or medical  
25 leave benefits under Title 50A RCW, and the layoff is due to the  
26 return of that permanent employee. This subsection (~~((4))~~) (3)  
27 (a)(vii) applies to claims with an effective date on or after January  
28 1, 2020; or

29 (viii) Was discharged because the individual was unable to  
30 satisfy a job prerequisite required by law or administrative rule.

31 (b) The employer requesting relief of charges under this  
32 subsection must request relief in writing within thirty days  
33 following mailing to the last known address of the notification of  
34 the valid initial determination of such claim, stating the date and  
35 reason for the separation or the circumstances of continued  
36 employment. The commissioner, upon investigation of the request,  
37 shall determine whether relief should be granted.

38 (~~((5))~~) (4) When a benefit claim becomes invalid due to an  
39 amendment or adjustment of a report where the employer failed to  
40 report or inaccurately reported hours worked or remuneration paid, or

1 both, all benefits paid will be charged to the experience rating  
2 account of the contribution paying employer or employers that  
3 originally filed the incomplete or inaccurate report or reports. An  
4 employer who reimburses the trust fund for benefits paid to workers  
5 and who fails to report or inaccurately reported hours worked or  
6 remuneration paid, or both, shall reimburse the trust fund for all  
7 benefits paid that are based on the originally filed incomplete or  
8 inaccurate report or reports.

9 ~~((+6))~~ (5) An employer's experience rating account may not be  
10 relieved of charges for a benefit payment and an employer who  
11 reimburses the trust fund for benefit payments may not be credited  
12 for a benefit payment if a benefit payment was made because the  
13 employer or employer's agent failed to respond timely or adequately  
14 to a written request of the department for information relating to  
15 the claim or claims without establishing good cause for the failure  
16 and the employer or employer's agent has a pattern of such failures.  
17 The commissioner has the authority to determine whether the employer  
18 has good cause under this subsection.

19 (a) For the purposes of this subsection, "adequately" means  
20 providing accurate information of sufficient quantity and quality  
21 that would allow a reasonable person to determine eligibility for  
22 benefits.

23 (b) (i) For the purposes of this subsection, "pattern" means a  
24 benefit payment was made because the employer or employer's agent  
25 failed to respond timely or adequately to a written request of the  
26 department for information relating to a claim or claims without  
27 establishing good cause for the failure, if the greater of the  
28 following calculations for an employer is met:

29 (A) At least three times in the previous two years; or

30 (B) Twenty percent of the total current claims against the  
31 employer.

32 (ii) If an employer's agent is utilized, a pattern is established  
33 based on each individual client employer that the employer's agent  
34 represents.

35 **Sec. 4.** RCW 50.50.070 and 2001 1st sp.s. c 11 s 9 are each  
36 amended to read as follows:

37 Unless specifically addressed in this chapter, Indian tribes or  
38 their tribal units are subject to the same terms and conditions as  
39 are other employers subject to contributions under (~~(RCW 50.29.020)~~)

1 50.29.021 or other units of government under RCW 50.44.030 that make  
2 payments in lieu of contributions.

3 **Sec. 5.** RCW 50A.05.070 and 2019 c 13 s 34 are each amended to  
4 read as follows:

5 (1) The family and medical leave insurance account is created in  
6 the custody of the state treasurer. All receipts from premiums  
7 imposed under this title must be deposited in the account.  
8 Expenditures from the account may be used only for the purposes of  
9 the family and medical leave program. Only the commissioner or the  
10 commissioner's designee may authorize expenditures from the account.  
11 The account is subject to the allotment procedures under chapter  
12 43.88 RCW. An appropriation is required for administrative expenses,  
13 but not for benefit payments.

14 (2) Money deposited in the account shall remain a part of the  
15 account until expended pursuant to the requirements of this title or  
16 transferred in accordance with subsection (3) of this section. The  
17 commissioner shall maintain a separate record of the deposit,  
18 obligation, expenditure, and return of funds so deposited. Any money  
19 so deposited which either will not be obligated within the period  
20 specified by the appropriations act or remains unobligated at the end  
21 of the period, and any money which has been obligated within the  
22 period but will not be expended, shall be returned promptly to the  
23 family and medical leave insurance account.

24 (3) Money shall be transferred from the family and medical leave  
25 insurance account and deposited in the unemployment trust fund solely  
26 for the repayment of benefits not charged to employers as defined in  
27 RCW 50.29.021(~~((4))~~) (3)(a)(vii). The commissioner shall direct the  
28 transfer, which must occur on or before the cut-off date as defined  
29 in RCW 50.29.010.

30 (4) Money transferred as provided in subsection (3) of this  
31 section for the repayment of benefits not charged to employers shall  
32 be deposited in the unemployment compensation fund and shall remain a  
33 part of the unemployment compensation fund until expended pursuant to  
34 RCW 50.16.030. The commissioner shall maintain a separate record of  
35 the deposit, obligation, expenditure, and return of funds so  
36 deposited. Any money so deposited which either will not be obligated  
37 within the period specified by the appropriation law or remains  
38 unobligated at the end of the period, and any money which has been  
39 obligated within the period but will not be expended, shall be

1 returned promptly to the account of this state in the unemployment  
2 trust fund.

3 NEW SECTION. **Sec. 6.** RCW 50.29.020 (Experience rating accounts—  
4 Benefits not charged—Claims with an effective date before January 4,  
5 2004) and 2004 c 110 s 3 & 2003 2nd sp.s. c 4 s 20 are each repealed.

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

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