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HOUSE BILL 1339

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State of Washington

52nd Legislature

1991 Regular Session

By Representatives Heavey and O'Brien; by request of Employment Security Department.

Read first time January 25, 1991. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to unemployment compensation; amending RCW  
2 50.04.030 and 50.20.190; adding a new section to chapter 50.24 RCW;  
3 creating a new section; providing effective dates; and declaring an  
4 emergency.

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

6 **Sec. 1.** RCW 50.04.030 and 1990 c 245 s 1 are each amended to read  
7 as follows:

8 "Benefit year" with respect to each individual, means the fifty-two  
9 consecutive week period beginning with the first day of the calendar  
10 week in which the individual files an application for an initial  
11 determination and thereafter the fifty-two consecutive week period  
12 beginning with the first day of the calendar week in which the  
13 individual next files an application for an initial determination after  
14 the expiration of the individual's last preceding benefit year:  
15 PROVIDED, HOWEVER, That the foregoing limitation shall not be deemed to

1 preclude the establishment of a new benefit year under the laws of  
2 another state pursuant to any agreement providing for the interstate  
3 combining of employment and wages and the interstate payment of  
4 benefits nor shall this limitation be deemed to preclude the  
5 commissioner from backdating an initial application at the request of  
6 the claimant either for the convenience of the department of employment  
7 security or for any other reason deemed by the commissioner to be good  
8 cause.

9 An individual's benefit year shall be extended to be fifty-three  
10 weeks when at the expiration of fifty-two weeks the establishment of a  
11 new benefit year would result in the use of a quarter of wages in the  
12 new base year that had been included in the individual's prior base  
13 year.

14 No benefit year will be established unless it is determined that  
15 the individual earned wages in "employment" in not less than six  
16 hundred eighty hours of the individual's base year: PROVIDED, HOWEVER,  
17 That a benefit year cannot be established if the base year wages  
18 include wages earned prior to the establishment of a prior benefit year  
19 unless the individual worked and earned wages since the ~~((initial))~~  
20 last separation from employment immediately before the application for  
21 initial determination in the previous benefit year of not less than six  
22 times the weekly benefit amount computed for the individual's new  
23 benefit year.

24 If an individual's prior benefit year was based on the last four  
25 completed calendar quarters, a new benefit year shall not be  
26 established until the new base year does not include any hours used in  
27 the establishment of the prior benefit year.

28 If the wages of an individual are not based upon a fixed duration  
29 of time or if the individual's wages are paid at irregular intervals or  
30 in such manner as not to extend regularly over the period of

1 employment, the wages for any week shall be determined in such manner  
2 as the commissioner may by regulation prescribe. Such regulation  
3 shall, so far as possible, secure results reasonably similar to those  
4 which would prevail if the individual were paid his or her wages at  
5 regular intervals.

6 **Sec. 2.** RCW 50.20.190 and 1990 c 245 s 5 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 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 the individual's benefit year  
18 in which the purported overpayment was made unless the merits of the  
19 claim are subjected to administrative or judicial review in which event  
20 the period for serving the determination of liability shall be extended  
21 to allow service of the determination of liability during the six-month  
22 period following the final decision affecting the claim.

23 (2) The commissioner may waive an overpayment if the commissioner  
24 finds that said overpayment was not the result of fraud,  
25 misrepresentation, willful nondisclosure, or fault attributable to the  
26 individual and that the recovery thereof would be against equity and  
27 good conscience: PROVIDED, HOWEVER, That the overpayment so waived  
28 shall be charged against the individual's applicable entitlement for

1 the eligibility period containing the weeks to which the overpayment  
2 was attributed as though such benefits had been properly paid.

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

1 in the office of such clerk. A warrant so docketed shall be sufficient  
2 to support the issuance of writs of execution and writs of garnishment  
3 in favor of the state in the manner provided by law for a civil  
4 judgment. A copy of the warrant shall be mailed to the person(s)  
5 mentioned in the warrant by certified mail to the person's last known  
6 address within five days of its filing with the clerk.

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

21 ~~(5) ((When an individual has been awarded or receives back pay, the~~  
22 ~~amount of the back pay shall constitute wages paid in the period for~~  
23 ~~which it was awarded. No person is liable for the amount of benefits~~  
24 ~~if the amount of the back pay award or settlement was reduced by the~~  
25 ~~amount of benefits received. When the amount of the back pay award or~~  
26 ~~settlement was reduced by the amount of benefits received, the employer~~  
27 ~~shall pay to the unemployment compensation fund an amount equal to the~~  
28 ~~amount of such reduction. An employer who is a party to any back pay~~  
29 ~~award or settlement shall, within thirty days of the settlement, report~~  
30 ~~to the department the amount of benefits by which the award or~~

1 ~~settlement was reduced, if any, and the name and social security number~~  
2 ~~of the person who received the award or settlement))~~ Any employer who  
3 is a party to a back pay award or settlement due to loss of wages  
4 shall, within thirty days of the award or settlement, report to the  
5 department the amount of the award or settlement, the name and social  
6 security number of the recipient of the award or settlement, and the  
7 period for which it is awarded. The back pay award or settlement shall  
8 constitute wages paid in the period in which it was actually paid. The  
9 following requirements shall also apply:

10       (a) The employer shall reduce the amount of the back pay award or  
11 settlement by an amount determined by the department based upon the  
12 amount of unemployment benefits received by the recipient of the award  
13 or settlement during the period for which the back pay award or  
14 settlement was awarded;

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

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

22       (d) If the employer fails to reduce the amount of the back pay  
23 award or settlement as required in (a) of this subsection, the  
24 department shall issue an overpayment assessment against the recipient  
25 of the award or settlement in the amount that the back pay award or  
26 settlement should have been reduced; and

27       (e) If the employer fails to pay to the department an amount equal  
28 to the reduction as required in (b) of this subsection, the department  
29 shall issue an assessment of liability against the employer which shall

1 be collected pursuant to the procedures for collection of assessments  
2 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, the  
5 commissioner shall impose an interest penalty of one percent of the  
6 outstanding balance for each month that payments are not made in a  
7 timely fashion. Interest shall accrue immediately on overpayments  
8 assessed pursuant to RCW 50.20.070. For any other overpayment,  
9 interest shall accrue when the individual has missed two or more of  
10 their monthly payments either partially or in full. The interest  
11 penalty shall be used to fund detection and recovery of overpayment and  
12 collection activities.

13 NEW SECTION. **Sec. 3.** A new section is added to chapter 50.24 RCW  
14 to read as follows:

15 Whenever any employer quits business, or sells out, exchanges, or  
16 otherwise disposes of the employer's business or stock of goods, any  
17 contributions payable under this title shall become immediately due and  
18 payable, and the employer shall, within ten days, make a return and pay  
19 the contributions due; and any person who becomes a successor to such  
20 business shall become liable for the full amount of the contributions  
21 and withhold from the purchase price a sum sufficient to pay any  
22 contributions due from the employer until such time as the employer  
23 produces a receipt from the employment security department showing  
24 payment in full of any contributions due or a certificate that no  
25 contribution is due and, if such contribution is not paid by the  
26 employer within ten days from the date of such sale, exchange, or  
27 disposal, the successor shall become liable for the payment of the full  
28 amount of contributions, and the payment thereof by such successor  
29 shall, to the extent thereof, be deemed a payment upon the purchase

1 price, and if such payment is greater in amount than the purchase price  
2 the amount of the difference shall become a debt due such successor  
3 from the employer.

4 No successor may be liable for any contributions due from the  
5 person from whom that person has acquired a business or stock of goods  
6 if that person gives written notice to the employment security  
7 department of such acquisition and no assessment is issued by the  
8 department within one hundred eighty days of receipt of such notice  
9 against the former operator of the business and a copy thereof mailed  
10 to such successor.

11 NEW SECTION. **Sec. 4.** If any part of this act is found to be in  
12 conflict with federal requirements which are a prescribed condition to  
13 the allocation of federal funds to the state or the eligibility of  
14 employers in this state for federal unemployment tax credits, the  
15 conflicting part of this act is hereby declared to be inoperative  
16 solely to the extent of the conflict, and such finding or determination  
17 shall not affect the operation of the remainder of this act. The rules  
18 under this act shall meet federal requirements which are a necessary  
19 condition to the receipt of federal funds by the state or the granting  
20 of federal unemployment tax credits to employers in this state.

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

25 NEW SECTION. **Sec. 6.** This act is necessary for the immediate  
26 preservation of the public peace, health, or safety, or support of the  
27 state government and its existing public institutions, and sections 1

1 and 3 shall take effect July 1, 1991, and section 2 shall take effect  
2 July 7, 1991, for new claims filed on or after July 7, 1991.