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HOUSE BILL 1780

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State of Washington

54th Legislature

1995 Regular Session

By Representatives Lisk and Romero

Read first time 02/08/95. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to mailing notices by certified mail; and amending  
2 RCW 50.20.190.

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

4 **Sec. 1.** RCW 50.20.190 and 1993 c 483 s 13 are each amended to read  
5 as follows:

6 (1) An individual who is paid any amount as benefits under this  
7 title to which he or she is not entitled shall, unless otherwise  
8 relieved pursuant to this section, be liable for repayment of the  
9 amount overpaid. The department shall issue an overpayment assessment  
10 setting forth the reasons for and the amount of the overpayment. The  
11 amount assessed, to the extent not collected, may be deducted from any  
12 future benefits payable to the individual(~~(:—PROVIDED, That))~~).  
13 However, in the absence of fraud, misrepresentation, or willful  
14 nondisclosure, every determination of liability shall be mailed by  
15 certified mail return receipt requested or personally served not later  
16 than two years after the close of the individual's benefit year in  
17 which the purported overpayment was made unless the merits of the claim  
18 are subjected to administrative or judicial review in which event the  
19 period for serving the determination of liability shall be extended to

1 allow service of the determination of liability during the six-month  
2 period following the final decision affecting the claim.

3 (2) The commissioner may waive an overpayment if the commissioner  
4 finds that ~~((said))~~ the overpayment was not the result of fraud,  
5 misrepresentation, willful nondisclosure, or fault attributable to the  
6 individual and that the recovery ~~((thereof))~~ of the overpayment would  
7 be against equity and good conscience~~((:—PROVIDED, HOWEVER, That))~~.  
8 However, the overpayment so waived shall be charged against the  
9 individual's applicable entitlement for the eligibility period  
10 containing the weeks to which the overpayment was attributed as though  
11 such benefits had been properly paid.

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

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

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

23 (5) Any employer who is a party to a back pay award or settlement  
24 due to loss of wages shall, within thirty days of the award or  
25 settlement, report to the department the amount of the award or  
26 settlement, the name and social security number of the recipient of the  
27 award or settlement, and the period for which it is awarded. When an  
28 individual has been awarded or receives back pay, for benefit purposes  
29 the amount of the back pay shall constitute wages paid in the period  
30 for which it was awarded. For contribution purposes, the back pay  
31 award or settlement shall constitute wages paid in the period in which  
32 it was actually paid. The following requirements shall also apply:

33 (a) The employer shall reduce the amount of the back pay award or  
34 settlement by an amount determined by the department based upon the  
35 amount of unemployment benefits received by the recipient of the award  
36 or settlement during the period for which the back pay award or  
37 settlement was awarded;

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

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

8 (d) If the employer fails to reduce the amount of the back pay  
9 award or settlement as required in (a) of this subsection, the  
10 department shall issue an overpayment assessment against the recipient  
11 of the award or settlement in the amount that the back pay award or  
12 settlement should have been reduced; and

13 (e) If the employer fails to pay to the department an amount equal  
14 to the reduction as required in (b) of this subsection, the department  
15 shall issue an assessment of liability against the employer which shall  
16 be collected pursuant to the procedures for collection of assessments  
17 provided (~~herein~~) in this section and in RCW 50.24.110.

18 (6) When an individual fails to repay an overpayment assessment  
19 that is due and fails to arrange for satisfactory repayment terms, the  
20 commissioner shall impose an interest penalty of one percent per month  
21 of the outstanding balance. Interest shall accrue immediately on  
22 overpayments assessed pursuant to RCW 50.20.070 and shall be imposed  
23 when the assessment becomes final. For any other overpayment, interest  
24 shall accrue when the individual has missed two or more of (~~their~~)  
25 his or her monthly payments either partially or in full. The interest  
26 penalty shall be used to fund detection and recovery of overpayment and  
27 collection activities.

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