

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE SENATE BILL 5769**

54th Legislature  
1995 Regular Session

Passed by the Senate March 11, 1995  
YEAS 43 NAYS 0

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**President of the Senate**

Passed by the House April 6, 1995  
YEAS 95 NAYS 0

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**Speaker of the  
House of Representatives**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Marty Brown, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5769** as passed by the Senate and the House of Representatives on the dates hereon set forth.

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**Secretary**

FILED

**Secretary of State  
State of Washington**

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**SUBSTITUTE SENATE BILL 5769**

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Passed Legislature - 1995 Regular Session

**State of Washington**

**54th Legislature**

**1995 Regular Session**

**By** Senate Committee on Labor, Commerce & Trade (originally sponsored by Senator Deccio; by request of Employment Security Department)

Read first time 02/23/95.

1       AN ACT Relating to recovery of unemployment insurance overpayments;  
2 amending RCW 50.20.190; creating new sections; and declaring an  
3 emergency.

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

5       **Sec. 1.** RCW 50.20.190 and 1993 c 483 s 13 are each amended to read  
6 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 any  
13 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 (~~in~~) for which the purported  
19 overpayment was made, whichever is later, unless the merits of the

1 claim are subjected to administrative or judicial review in which event  
2 the period for serving the determination of liability shall be extended  
3 to allow service of the determination of liability during the six-month  
4 period following the final decision affecting the claim.

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

13 (3) Any assessment herein provided shall constitute a determination  
14 of liability from which an appeal may be had in the same manner and to  
15 the same extent as provided for appeals relating to determinations in  
16 respect to claims for benefits: PROVIDED, That an appeal from any  
17 determination covering overpayment only shall be deemed to be an appeal  
18 from the determination which was the basis for establishing the  
19 overpayment unless the merits involved in the issue set forth in such  
20 determination have already been heard and passed upon by the appeal  
21 tribunal. If no such appeal is taken to the appeal tribunal by the  
22 individual within thirty days of the delivery of the notice of  
23 determination of liability, or within thirty days of the mailing of the  
24 notice of determination, whichever is the earlier, said determination  
25 of liability shall be deemed conclusive and final. Whenever any such  
26 notice of 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 to the person's last known  
7 address within five days of its filing with the clerk.

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

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

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

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

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

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

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

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

25 NEW SECTION. **Sec. 2.** If any part of this act is found to be in  
26 conflict with federal requirements that are a prescribed condition to  
27 the allocation of federal funds to the state or the eligibility of  
28 employers in this state for federal unemployment tax credits, the  
29 conflicting part of this act is hereby declared to be inoperative  
30 solely to the extent of the conflict, and such finding or determination  
31 shall not affect the operation of the remainder of this act. The rules  
32 under this act shall meet federal requirements that are a necessary  
33 condition to the receipt of federal funds by the state or the granting  
34 of federal unemployment tax credits to employers in this state.

35 NEW SECTION. **Sec. 3.** This act applies to job separations  
36 occurring after July 1, 1995.

1        NEW SECTION.    **Sec. 4.**    This act is necessary for the immediate  
2 preservation of the public peace, health, or safety, or support of the  
3 state government and its existing public institutions, and shall take  
4 effect immediately.

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