

ESSB 6885 - H AMD 1108

By Representative Conway

ADOPTED 03/02/2006

1 Strike everything after the enacting clause and insert the  
2 following:

3 "PART I - BENEFIT PROVISIONS

4 **Sec. 1.** RCW 50.20.120 and 2005 c 133 s 3 are each amended to read  
5 as follows:

6 (1)(a) Subject to the other provisions of this title, benefits  
7 shall be payable to any eligible individual during the individual's  
8 benefit year in a maximum amount equal to the lesser of thirty times  
9 the weekly benefit amount, as determined in subsection (2) of this  
10 section, or one-third of the individual's base year wages under this  
11 title: PROVIDED, That as to any week which falls in an extended  
12 benefit period as defined in RCW 50.22.010(1), an individual's  
13 eligibility for maximum benefits in excess of twenty-six times his or  
14 her weekly benefit amount will be subject to the terms and conditions  
15 set forth in RCW 50.22.020.

16 (b) With respect to claims that have an effective date on or after  
17 the first Sunday of the calendar month immediately following the month  
18 in which the commissioner finds that the state unemployment rate is six  
19 and eight-tenths percent or less, benefits shall be payable to any  
20 eligible individual during the individual's benefit year in a maximum  
21 amount equal to the lesser of twenty-six times the weekly benefit  
22 amount, as determined in subsection (2) of this section, or one-third  
23 of the individual's base year wages under this title.

24 (2)(a) For claims with an effective date before January 4, 2004, an  
25 individual's weekly benefit amount shall be an amount equal to one  
26 twenty-fifth of the average quarterly wages of the individual's total  
27 wages during the two quarters of the individual's base year in which  
28 such total wages were highest.

1 (b) With respect to claims with an effective date on or after  
2 January 4, 2004, and before January 2, 2005, an individual's weekly  
3 benefit amount shall be an amount equal to one twenty-fifth of the  
4 average quarterly wages of the individual's total wages during the  
5 three quarters of the individual's base year in which such total wages  
6 were highest.

7 (c)(i) With respect to claims with an effective date on or after  
8 January 2, 2005, except as provided in (c)(ii) of this subsection, an  
9 individual's weekly benefit amount shall be an amount equal to one  
10 percent of the total wages paid in the individual's base year.

11 (ii) With respect to claims with an effective date on or after the  
12 first Sunday following April 22, 2005, (~~and before July 1, 2007,~~) an  
13 individual's weekly benefit amount shall be an amount equal to three  
14 and eighty-five one-hundredths percent of the average quarterly wages  
15 of the individual's total wages during the two quarters of the  
16 individual's base year in which such total wages were highest.

17 (3) The maximum and minimum amounts payable weekly shall be  
18 determined as of each June 30th to apply to benefit years beginning in  
19 the twelve-month period immediately following such June 30th.

20 (a)(i) With respect to claims that have an effective date before  
21 January 4, 2004, the maximum amount payable weekly shall be seventy  
22 percent of the "average weekly wage" for the calendar year preceding  
23 such June 30th.

24 (ii) With respect to claims that have an effective date on or after  
25 January 4, 2004, the maximum amount payable weekly shall be either four  
26 hundred ninety-six dollars or sixty-three percent of the "average  
27 weekly wage" for the calendar year preceding such June 30th, whichever  
28 is greater.

29 (b) The minimum amount payable weekly shall be fifteen percent of  
30 the "average weekly wage" for the calendar year preceding such June  
31 30th.

32 (4) If any weekly benefit, maximum benefit, or minimum benefit  
33 amount computed herein is not a multiple of one dollar, it shall be  
34 reduced to the next lower multiple of one dollar.

35 **Sec. 2.** RCW 50.20.050 and 2003 2nd sp.s. c 4 s 4 are each amended  
36 to read as follows:

1 (1) With respect to claims that have an effective date before  
2 January 4, 2004:

3 (a) An individual shall be disqualified from benefits beginning  
4 with the first day of the calendar week in which he or she has left  
5 work voluntarily without good cause and thereafter for seven calendar  
6 weeks and until he or she has obtained bona fide work in employment  
7 covered by this title and earned wages in that employment equal to  
8 seven times his or her weekly benefit amount.

9 The disqualification shall continue if the work obtained is a mere  
10 sham to qualify for benefits and is not bona fide work. In determining  
11 whether work is of a bona fide nature, the commissioner shall consider  
12 factors including but not limited to the following:

13 (i) The duration of the work;

14 (ii) The extent of direction and control by the employer over the  
15 work; and

16 (iii) The level of skill required for the work in light of the  
17 individual's training and experience.

18 (b) An individual shall not be considered to have left work  
19 voluntarily without good cause when:

20 (i) He or she has left work to accept a bona fide offer of bona  
21 fide work as described in (a) of this subsection;

22 (ii) The separation was because of the illness or disability of the  
23 claimant or the death, illness, or disability of a member of the  
24 claimant's immediate family if the claimant took all reasonable  
25 precautions, in accordance with any regulations that the commissioner  
26 may prescribe, to protect his or her employment status by having  
27 promptly notified the employer of the reason for the absence and by  
28 having promptly requested reemployment when again able to assume  
29 employment: PROVIDED, That these precautions need not have been taken  
30 when they would have been a futile act, including those instances when  
31 the futility of the act was a result of a recognized labor/management  
32 dispatch system;

33 (iii) He or she has left work to relocate for the spouse's  
34 employment that is due to an employer-initiated mandatory transfer that  
35 is outside the existing labor market area if the claimant remained  
36 employed as long as was reasonable prior to the move; or

37 (iv) The separation was necessary to protect the claimant or the

1 claimant's immediate family members from domestic violence, as defined  
2 in RCW 26.50.010, or stalking, as defined in RCW 9A.46.110.

3 (c) In determining under this subsection whether an individual has  
4 left work voluntarily without good cause, the commissioner shall only  
5 consider work-connected factors such as the degree of risk involved to  
6 the individual's health, safety, and morals, the individual's physical  
7 fitness for the work, the individual's ability to perform the work, and  
8 such other work connected factors as the commissioner may deem  
9 pertinent, including state and national emergencies. Good cause shall  
10 not be established for voluntarily leaving work because of its distance  
11 from an individual's residence where the distance was known to the  
12 individual at the time he or she accepted the employment and where, in  
13 the judgment of the department, the distance is customarily traveled by  
14 workers in the individual's job classification and labor market, nor  
15 because of any other significant work factor which was generally known  
16 and present at the time he or she accepted employment, unless the  
17 related circumstances have so changed as to amount to a substantial  
18 involuntary deterioration of the work factor or unless the commissioner  
19 determines that other related circumstances would work an unreasonable  
20 hardship on the individual were he or she required to continue in the  
21 employment.

22 (d) Subsection (1)(a) and (c) of this section shall not apply to an  
23 individual whose marital status or domestic responsibilities cause him  
24 or her to leave employment. Such an individual shall not be eligible  
25 for unemployment insurance benefits beginning with the first day of the  
26 calendar week in which he or she left work and thereafter for seven  
27 calendar weeks and until he or she has requalified, either by obtaining  
28 bona fide work in employment covered by this title and earning wages in  
29 that employment equal to seven times his or her weekly benefit amount  
30 or by reporting in person to the department during ten different  
31 calendar weeks and certifying on each occasion that he or she is ready,  
32 able, and willing to immediately accept any suitable work which may be  
33 offered, is actively seeking work pursuant to customary trade  
34 practices, and is utilizing such employment counseling and placement  
35 services as are available through the department. This subsection does  
36 not apply to individuals covered by (b)(ii) or (iii) of this  
37 subsection.

1 (2) With respect to claims that have an effective date on or after  
2 January 4, 2004:

3 (a) An individual shall be disqualified from benefits beginning  
4 with the first day of the calendar week in which he or she has left  
5 work voluntarily without good cause and thereafter for seven calendar  
6 weeks and until he or she has obtained bona fide work in employment  
7 covered by this title and earned wages in that employment equal to  
8 seven times his or her weekly benefit amount.

9 The disqualification shall continue if the work obtained is a mere  
10 sham to qualify for benefits and is not bona fide work. In determining  
11 whether work is of a bona fide nature, the commissioner shall consider  
12 factors including but not limited to the following:

13 (i) The duration of the work;

14 (ii) The extent of direction and control by the employer over the  
15 work; and

16 (iii) The level of skill required for the work in light of the  
17 individual's training and experience.

18 (b) An individual is not disqualified from benefits under (a) of  
19 this subsection when:

20 (i) He or she has left work to accept a bona fide offer of bona  
21 fide work as described in (a) of this subsection;

22 (ii) The separation was necessary because of the illness or  
23 disability of the claimant or the death, illness, or disability of a  
24 member of the claimant's immediate family if:

25 (A) The claimant pursued all reasonable alternatives to preserve  
26 his or her employment status by requesting a leave of absence, by  
27 having promptly notified the employer of the reason for the absence,  
28 and by having promptly requested reemployment when again able to assume  
29 employment. These alternatives need not be pursued, however, when they  
30 would have been a futile act, including those instances when the  
31 futility of the act was a result of a recognized labor/management  
32 dispatch system; and

33 (B) The claimant terminated his or her employment status, and is  
34 not entitled to be reinstated to the same position or a comparable or  
35 similar position;

36 (iii)(A) With respect to claims that have an effective date before  
37 July 2, 2006, he or she: ((+A)) (I) Left work to relocate for the  
38 spouse's employment that, due to a mandatory military transfer:

1 ((+I+)) (1) Is outside the existing labor market area; and ((+II+)) (2)  
2 is in Washington or another state that, pursuant to statute, does not  
3 consider such an individual to have left work voluntarily without good  
4 cause; and ((+B+)) (II) remained employed as long as was reasonable  
5 prior to the move;

6 (B) With respect to claims that have an effective date on or after  
7 July 2, 2006, he or she: (I) Left work to relocate for the spouse's  
8 employment that, due to a mandatory military transfer, is outside the  
9 existing labor market area; and (II) remained employed as long as was  
10 reasonable prior to the move;

11 (iv) The separation was necessary to protect the claimant or the  
12 claimant's immediate family members from domestic violence, as defined  
13 in RCW 26.50.010, or stalking, as defined in RCW 9A.46.110;

14 (v) The individual's usual compensation was reduced by twenty-five  
15 percent or more;

16 (vi) The individual's usual hours were reduced by twenty-five  
17 percent or more;

18 (vii) The individual's worksite changed, such change caused a  
19 material increase in distance or difficulty of travel, and, after the  
20 change, the commute was greater than is customary for workers in the  
21 individual's job classification and labor market;

22 (viii) The individual's worksite safety deteriorated, the  
23 individual reported such safety deterioration to the employer, and the  
24 employer failed to correct the hazards within a reasonable period of  
25 time;

26 (ix) The individual left work because of illegal activities in the  
27 individual's worksite, the individual reported such activities to the  
28 employer, and the employer failed to end such activities within a  
29 reasonable period of time; or

30 (x) The individual's usual work was changed to work that violates  
31 the individual's religious convictions or sincere moral beliefs.

32 NEW SECTION. Sec. 3. 2005 c 133 s 10 (uncodified) is repealed.

33 **PART II - TAX PROVISIONS**

34 **Sec. 4.** RCW 50.29.025 and 2005 c 133 s 5 are each amended to read  
35 as follows:

1 (1) Except as provided in subsection (2) of this section, the  
2 contribution rate for each employer subject to contributions under RCW  
3 50.24.010 shall be determined under this subsection.

4 (a) A fund balance ratio shall be determined by dividing the  
5 balance in the unemployment compensation fund as of the September 30th  
6 immediately preceding the rate year by the total remuneration paid by  
7 all employers subject to contributions during the second calendar year  
8 preceding the rate year and reported to the department by the following  
9 March 31st. The division shall be carried to the fourth decimal place  
10 with the remaining fraction, if any, disregarded. The fund balance  
11 ratio shall be expressed as a percentage.

12 (b) The interval of the fund balance ratio, expressed as a  
13 percentage, shall determine which tax schedule in (e) of this  
14 subsection shall be in effect for assigning tax rates for the rate  
15 year. The intervals for determining the effective tax schedule shall  
16 be:

17	Interval of the	
18	Fund Balance Ratio	Effective
19	Expressed as a Percentage	Tax Schedule
20	2.90 and above	AA
21	2.10 to 2.89	A
22	1.70 to 2.09	B
23	1.40 to 1.69	C
24	1.00 to 1.39	D
25	0.70 to 0.99	E
26	Less than 0.70	F

27 (c) An array shall be prepared, listing all qualified employers in  
28 ascending order of their benefit ratios. The array shall show for each  
29 qualified employer: (i) Identification number; (ii) benefit ratio;  
30 (iii) taxable payrolls for the four calendar quarters immediately  
31 preceding the computation date and reported to the department by the  
32 cut-off date; (iv) a cumulative total of taxable payrolls consisting of  
33 the employer's taxable payroll plus the taxable payrolls of all other  
34 employers preceding him or her in the array; and (v) the percentage  
35 equivalent of the cumulative total of taxable payrolls.

(d) Each employer in the array shall be assigned to one of twenty rate classes according to the percentage intervals of cumulative taxable payrolls set forth in (e) of this subsection: PROVIDED, That if an employer's taxable payroll falls within two or more rate classes, the employer and any other employer with the same benefit ratio shall be assigned to the lowest rate class which includes any portion of the employer's taxable payroll.

(e) Except as provided in RCW 50.29.026, the contribution rate for each employer in the array shall be the rate specified in the following tables for the rate class to which he or she has been assigned, as determined under (d) of this subsection, within the tax schedule which is to be in effect during the rate year:

		Percent of		Schedules of Contributions Rates							
		Cumulative		for Effective Tax Schedule							
		Taxable Payrolls									
		Rate									
From	To	Class	AA	A	B	C	D	E	F		
0.00	5.00	1	0.47	0.47	0.57	0.97	1.47	1.87	2.47		
5.01	10.00	2	0.47	0.47	0.77	1.17	1.67	2.07	2.67		
10.01	15.00	3	0.57	0.57	0.97	1.37	1.77	2.27	2.87		
15.01	20.00	4	0.57	0.73	1.11	1.51	1.90	2.40	2.98		
20.01	25.00	5	0.72	0.92	1.30	1.70	2.09	2.59	3.08		
25.01	30.00	6	0.91	1.11	1.49	1.89	2.29	2.69	3.18		
30.01	35.00	7	1.00	1.29	1.69	2.08	2.48	2.88	3.27		
35.01	40.00	8	1.19	1.48	1.88	2.27	2.67	3.07	3.47		
40.01	45.00	9	1.37	1.67	2.07	2.47	2.87	3.27	3.66		
45.01	50.00	10	1.56	1.86	2.26	2.66	3.06	3.46	3.86		
50.01	55.00	11	1.84	2.14	2.45	2.85	3.25	3.66	3.95		
55.01	60.00	12	2.03	2.33	2.64	3.04	3.44	3.85	4.15		
60.01	65.00	13	2.22	2.52	2.83	3.23	3.64	4.04	4.34		
65.01	70.00	14	2.40	2.71	3.02	3.43	3.83	4.24	4.54		
70.01	75.00	15	2.68	2.90	3.21	3.62	4.02	4.43	4.63		
75.01	80.00	16	2.87	3.09	3.42	3.81	4.22	4.53	4.73		
80.01	85.00	17	3.27	3.47	3.77	4.17	4.57	4.87	4.97		
85.01	90.00	18	3.67	3.87	4.17	4.57	4.87	4.97	5.17		
90.01	95.00	19	4.07	4.27	4.57	4.97	5.07	5.17	5.37		
95.01	100.00	20	5.40	5.40	5.40	5.40	5.40	5.40	5.40		

(f) The contribution rate for each employer not qualified to be in the array shall be as follows:



1 (i) Employers who do not meet the definition of "qualified  
2 employer" by reason of failure to pay contributions when due shall be  
3 assigned a contribution rate two-tenths higher than that in rate class  
4 20 for the applicable rate year, except employers who have an approved  
5 agency-deferred payment contract by September 30 of the previous rate  
6 year. If any employer with an approved agency-deferred payment  
7 contract fails to make any one of the succeeding deferred payments or  
8 fails to submit any succeeding tax report and payment in a timely  
9 manner, the employer's tax rate shall immediately revert to a  
10 contribution rate two-tenths higher than that in rate class 20 for the  
11 applicable rate year; and

12 (ii) For all other employers not qualified to be in the array, the  
13 contribution rate shall be a rate equal to the average industry rate as  
14 determined by the commissioner; however, the rate may not be less than  
15 one percent.

16 (2) Beginning with contributions assessed for rate year 2005, the  
17 contribution rate for each employer subject to contributions under RCW  
18 50.24.010 shall be the sum of the array calculation factor rate and the  
19 graduated social cost factor rate determined under this subsection, and  
20 the solvency surcharge determined under RCW 50.29.041, if any.

21 (a) The array calculation factor rate shall be determined as  
22 follows:

23 (i) An array shall be prepared, listing all qualified employers in  
24 ascending order of their benefit ratios. The array shall show for each  
25 qualified employer: (A) Identification number; (B) benefit ratio; and  
26 (C) taxable payrolls for the four consecutive calendar quarters  
27 immediately preceding the computation date and reported to the  
28 employment security department by the cut-off date.

29 (ii) Each employer in the array shall be assigned to one of forty  
30 rate classes according to his or her benefit ratio as follows, and,  
31 except as provided in RCW 50.29.026, the array calculation factor rate  
32 for each employer in the array shall be the rate specified in the rate  
33 class to which the employer has been assigned:

	Benefit Ratio	Rate	Rate
34			
35	At least	Less than	Class (percent)
36		0.000001	1 0.00

1	0.000001	0.001250	2	0.13
2	0.001250	0.002500	3	0.25
3	0.002500	0.003750	4	0.38
4	0.003750	0.005000	5	0.50
5	0.005000	0.006250	6	0.63
6	0.006250	0.007500	7	0.75
7	0.007500	0.008750	8	0.88
8	0.008750	0.010000	9	1.00
9	0.010000	0.011250	10	1.15
10	0.011250	0.012500	11	1.30
11	0.012500	0.013750	12	1.45
12	0.013750	0.015000	13	1.60
13	0.015000	0.016250	14	1.75
14	0.016250	0.017500	15	1.90
15	0.017500	0.018750	16	2.05
16	0.018750	0.020000	17	2.20
17	0.020000	0.021250	18	2.35
18	0.021250	0.022500	19	2.50
19	0.022500	0.023750	20	2.65
20	0.023750	0.025000	21	2.80
21	0.025000	0.026250	22	2.95
22	0.026250	0.027500	23	3.10
23	0.027500	0.028750	24	3.25
24	0.028750	0.030000	25	3.40
25	0.030000	0.031250	26	3.55
26	0.031250	0.032500	27	3.70
27	0.032500	0.033750	28	3.85
28	0.033750	0.035000	29	4.00
29	0.035000	0.036250	30	4.15
30	0.036250	0.037500	31	4.30
31	0.037500	0.040000	32	4.45
32	0.040000	0.042500	33	4.60
33	0.042500	0.045000	34	4.75
34	0.045000	0.047500	35	4.90
35	0.047500	0.050000	36	5.05
36	0.050000	0.052500	37	5.20
37	0.052500	0.055000	38	5.30

1	0.055000	0.057500	39	5.35
2	0.057500		40	5.40

3 (b) The graduated social cost factor rate shall be determined as  
4 follows:

5 (i)(A) Except as provided in (b)(i)(B)(~~(7)~~) and (C)(~~(7 and (D))~~) of  
6 this subsection, the commissioner shall calculate the flat social cost  
7 factor for a rate year by dividing the total social cost by the total  
8 taxable payroll. The division shall be carried to the second decimal  
9 place with the remaining fraction disregarded unless it amounts to five  
10 hundredths or more, in which case the second decimal place shall be  
11 rounded to the next higher digit. The flat social cost factor shall be  
12 expressed as a percentage.

13 (B) If, on the cut-off date, the balance in the unemployment  
14 compensation fund is determined by the commissioner to be an amount  
15 that will provide more than ten months of unemployment benefits, the  
16 commissioner shall calculate the flat social cost factor for the rate  
17 year immediately following the cut-off date by reducing the total  
18 social cost by the dollar amount that represents the number of months  
19 for which the balance in the unemployment compensation fund on the cut-  
20 off date will provide benefits above ten months and dividing the result  
21 by the total taxable payroll. However, the calculation under this  
22 subsection (2)(b)(i)(B) for a rate year may not result in a flat social  
23 cost factor that is more than (~~two-tenths~~) four-tenths lower than the  
24 calculation under (b)(i)(A) of this subsection for that rate year.

25 For the purposes of this subsection, the commissioner shall  
26 determine the number of months of unemployment benefits in the  
27 unemployment compensation fund using the benefit cost rate for the  
28 average of the three highest calendar benefit cost rates in the twenty  
29 consecutive completed calendar years immediately preceding the cut-off  
30 date or a period of consecutive calendar years immediately preceding  
31 the cut-off date that includes three recessions, if longer.

32 (C) The minimum flat social cost factor calculated under this  
33 subsection (2)(b) shall be six-tenths of one percent, except that if  
34 the balance in the unemployment compensation fund is determined by the  
35 commissioner to be an amount that will provide:

36 (I) At least twelve months but less than fourteen months of  
37 unemployment benefits, the minimum shall be five-tenths of one percent;  
38 or

1 (II) At least fourteen months of unemployment benefits, the minimum  
2 shall be five-tenths of one percent, except that, for employers in rate  
3 class 1, the minimum shall be forty-five hundredths of one percent.

4 ~~((D) With respect to rate year 2007, the flat social cost factor~~  
5 ~~shall be the lesser of:~~

6 ~~(I) The flat social cost factor determined under (b)(i)(A) through~~  
7 ~~(C) of this subsection; or~~

8 ~~(II) The flat social cost factor that would be determined under~~  
9 ~~(b)(i)(A) through (C) of this subsection if RCW 50.20.120(2)(c)(i) had~~  
10 ~~been in effect during the immediately preceding rate year.)~~

11 (ii)(A) Except as provided in (b)(ii)(B) of this subsection, the  
12 graduated social cost factor rate for each employer in the array is the  
13 flat social cost factor multiplied by the percentage specified as  
14 follows for the rate class to which the employer has been assigned in  
15 (a)(ii) of this subsection, except that the sum of an employer's array  
16 calculation factor rate and the graduated social cost factor rate may  
17 not exceed six and five-tenths percent or, for employers whose North  
18 American industry classification system code is within "111," "112,"  
19 "1141," "115," "3114," "3117," ~~((or))~~ "42448," or "49312," may not  
20 exceed six percent through rate year 2007 and may not exceed five and  
21 seven-tenths percent for rate year 2008 and thereafter:

22 (I) Rate class 1 - 78 percent;

23 (II) Rate class 2 - 82 percent;

24 (III) Rate class 3 - 86 percent;

25 (IV) Rate class 4 - 90 percent;

26 (V) Rate class 5 - 94 percent;

27 (VI) Rate class 6 - 98 percent;

28 (VII) Rate class 7 - 102 percent;

29 (VIII) Rate class 8 - 106 percent;

30 (IX) Rate class 9 - 110 percent;

31 (X) Rate class 10 - 114 percent;

32 (XI) Rate class 11 - 118 percent; and

33 (XII) Rate classes 12 through 40 - 120 percent.

34 (B) For contributions assessed beginning July 1, 2005, through  
35 ~~((June 30,))~~ December 31, 2007, for employers whose North American  
36 industry classification system code is "111," "112," "1141," "115,"  
37 "3114," "3117," "42448," or "49312," the graduated social cost factor  
38 rate is zero.

1 (iii) For the purposes of this section:  
2 (A) "Total social cost" means(~~(+~~  
3 ~~(I) Except as provided in (b)(iii)(A)(II) of this subsection,~~) the  
4 amount calculated by subtracting the array calculation factor  
5 contributions paid by all employers with respect to the four  
6 consecutive calendar quarters immediately preceding the computation  
7 date and paid to the employment security department by the cut-off date  
8 from the total unemployment benefits paid to claimants in the same four  
9 consecutive calendar quarters. To calculate the flat social cost  
10 factor for rate year 2005, the commissioner shall calculate the total  
11 social cost using the array calculation factor contributions that would  
12 have been required to be paid by all employers in the calculation  
13 period if (a) of this subsection had been in effect for the relevant  
14 period.

15 ~~((II) For rate year 2007, the amount calculated under  
16 (b)(iii)(A)(I) of this subsection reduced by the amount of benefits  
17 charged that exceed the contributions paid in the four consecutive  
18 calendar quarters immediately preceding the applicable computation date  
19 because, as applicable, specified employers are subject to the social  
20 cost contributions under (b)(ii)(B) of this subsection, and/or because  
21 the social cost factor contributions are paid under (b)(i)(D)(II) of  
22 this subsection.))~~

23 (B) "Total taxable payroll" means the total amount of wages subject  
24 to tax, as determined under RCW 50.24.010, for all employers in the  
25 four consecutive calendar quarters immediately preceding the  
26 computation date and reported to the employment security department by  
27 the cut-off date.

28 (c) The array calculation factor rate for each employer not  
29 qualified to be in the array shall be as follows:

30 (i) Employers who do not meet the definition of "qualified  
31 employer" by reason of failure to pay contributions when due shall be  
32 assigned an array calculation factor rate two-tenths higher than that  
33 in rate class 40, except employers who have an approved agency-deferred  
34 payment contract by September 30th of the previous rate year. If any  
35 employer with an approved agency-deferred payment contract fails to  
36 make any one of the succeeding deferred payments or fails to submit any  
37 succeeding tax report and payment in a timely manner, the employer's

1 tax rate shall immediately revert to an array calculation factor rate  
2 two-tenths higher than that in rate class 40; and

3 (ii) For all other employers not qualified to be in the array, the  
4 array calculation factor rate shall be a rate equal to the average  
5 industry array calculation factor rate as determined by the  
6 commissioner, plus fifteen percent of that amount; however, the rate  
7 may not be less than one percent or more than the array calculation  
8 factor rate in rate class 40.

9 (d) The graduated social cost factor rate for each employer not  
10 qualified to be in the array shall be as follows:

11 (i) For employers whose array calculation factor rate is determined  
12 under (c)(i) of this subsection, the social cost factor rate shall be  
13 the social cost factor rate assigned to rate class 40 under (b)(ii) of  
14 this subsection.

15 (ii) For employers whose array calculation factor rate is  
16 determined under (c)(ii) of this subsection, the social cost factor  
17 rate shall be a rate equal to the average industry social cost factor  
18 rate as determined by the commissioner, plus fifteen percent of that  
19 amount, but not more than the social cost factor rate assigned to rate  
20 class 40 under (b)(ii) of this subsection.

21 (3) Assignment of employers by the commissioner to industrial  
22 classification, for purposes of this section, shall be in accordance  
23 with established classification practices found in the "Standard  
24 Industrial Classification Manual" issued by the federal office of  
25 management and budget to the third digit provided in the standard  
26 industrial classification code, or in the North American industry  
27 classification system code.

28 **Sec. 5.** RCW 50.29.041 and 2003 2nd sp.s. c 4 s 16 are each amended  
29 to read as follows:

30 Beginning with contributions assessed for rate year 2005, the  
31 contribution rate of each employer subject to contributions under RCW  
32 50.24.010 shall include a solvency surcharge determined as follows:

33 (1) This section shall apply to employers' contributions for a rate  
34 year immediately following a cut-off date only if, on the cut-off date,  
35 the balance in the unemployment compensation fund is determined by the  
36 commissioner to be an amount that will provide fewer than (~~six~~) seven  
37 months of unemployment benefits.

1 (2) The solvency surcharge shall be the lowest rate necessary, as  
2 determined by the commissioner, but not more than two-tenths of one  
3 percent, to provide revenue during the applicable rate year that will  
4 fund unemployment benefits for the number of months that is the  
5 difference between (~~eight~~) nine months and the number of months for  
6 which the balance in the unemployment compensation fund on the cut-off  
7 date will provide benefits.

8 (3) The basis for determining the number of months of unemployment  
9 benefits shall be the same basis used in RCW 50.29.025(2)(b)(i)(B).

10 **Sec. 6.** RCW 50.29.021 and 2005 c 133 s 4 are each amended to read  
11 as follows:

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

15 (2)(a) An experience rating account shall be established and  
16 maintained for each employer, except employers as described in RCW  
17 50.44.010 and 50.44.030 who have properly elected to make payments in  
18 lieu of contributions, taxable local government employers as described  
19 in RCW 50.44.035, and those employers who are required to make payments  
20 in lieu of contributions, based on existing records of the employment  
21 security department.

22 (b) Benefits paid to an eligible individual shall be charged to the  
23 experience rating accounts of each of such individual's employers  
24 during the individual's base year in the same ratio that the wages paid  
25 by each employer to the individual during the base year bear to the  
26 wages paid by all employers to that individual during that base year,  
27 except as otherwise provided in this section.

28 (c) When the eligible individual's separating employer is a covered  
29 contribution paying base year employer, benefits paid to the eligible  
30 individual shall be charged to the experience rating account of only  
31 the individual's separating employer if the individual qualifies for  
32 benefits under:

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

35 (ii) RCW 50.20.050(2)(b)(v) through (x).

36 (3) The legislature finds that certain benefit payments, in whole  
37 or in part, should not be charged to the experience rating accounts of

1 employers except those employers described in RCW 50.44.010 and  
2 50.44.030 who have properly elected to make payments in lieu of  
3 contributions, taxable local government employers described in RCW  
4 50.44.035, and those employers who are required to make payments in  
5 lieu of contributions, as follows:

6 (a) Benefits paid to any individual later determined to be  
7 ineligible shall not be charged to the experience rating account of any  
8 contribution paying employer.

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

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

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

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

20 (d) In the case of individuals who requalify for benefits under RCW  
21 50.20.050 or 50.20.060, benefits based on wage credits earned prior to  
22 the disqualifying separation shall not be charged to the experience  
23 rating account of the contribution paying employer from whom that  
24 separation took place.

25 (e) Individuals who qualify for benefits under RCW  
26 50.20.050(2)(b)(iv), as applicable, shall not have their benefits  
27 charged to the experience rating account of any contribution paying  
28 employer.

29 (f) With respect to claims with an effective date on or after the  
30 first Sunday following April 22, 2005, (~~and before July 1, 2007,~~)  
31 benefits paid that exceed the benefits that would have been paid if the  
32 weekly benefit amount for the claim had been determined as one percent  
33 of the total wages paid in the individual's base year shall not be  
34 charged to the experience rating account of any contribution paying  
35 employer.

36 (4)(a) A contribution paying base year employer, not otherwise  
37 eligible for relief of charges for benefits under this section, may



1 receive such relief if the benefit charges result from payment to an  
2 individual who:

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

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

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

13 (iv) Continues to be employed on a regularly scheduled permanent  
14 part-time basis by a base year employer and who at some time during the  
15 base year was concurrently employed and subsequently separated from at  
16 least one other base year employer. Benefit charge relief ceases when  
17 the employment relationship between the employer requesting relief and  
18 the claimant is terminated. This subsection does not apply to shared  
19 work employers under chapter 50.60 RCW.

20 (b) The employer requesting relief of charges under this subsection  
21 must request relief in writing within thirty days following mailing to  
22 the last known address of the notification of the valid initial  
23 determination of such claim, stating the date and reason for the  
24 separation or the circumstances of continued employment. The  
25 commissioner, upon investigation of the request, shall determine  
26 whether relief should be granted.

27 **Sec. 7.** RCW 50.16.030 and 2005 c 133 s 6 are each amended to read  
28 as follows:

29 (1)(a) Except as provided in (b) (~~and (c)~~) of this subsection,  
30 moneys shall be requisitioned from this state's account in the  
31 unemployment trust fund solely for the payment of benefits and  
32 repayment of loans from the federal government to guarantee solvency of  
33 the unemployment compensation fund in accordance with regulations  
34 prescribed by the commissioner, except that money credited to this  
35 state's account pursuant to section 903 of the social security act, as  
36 amended, shall be used exclusively as provided in RCW 50.16.030(5).  
37 The commissioner shall from time to time requisition from the

1 unemployment trust fund such amounts, not exceeding the amounts  
2 standing to its account therein, as he or she deems necessary for the  
3 payment of benefits for a reasonable future period. Upon receipt  
4 thereof the treasurer shall deposit such moneys in the benefit account  
5 and shall issue his or her warrants for the payment of benefits solely  
6 from such benefits account.

7 (b) Moneys for the payment of regular benefits as defined in RCW  
8 50.22.010 shall be requisitioned during fiscal year(~~s~~) 2006 (~~and~~  
9 ~~2007~~) in the following order:

10 (i) First, from the moneys credited to this state's account in the  
11 unemployment trust fund pursuant to section 903 of the social security  
12 act, as amended in section 209 of the temporary extended unemployment  
13 compensation act of 2002 (42 U.S.C. Sec. 1103(d)), the amount equal to  
14 the amount of benefits charged that exceed the contributions paid in  
15 the four consecutive calendar quarters ending on June 30, 2006, (~~for~~  
16 ~~the fiscal year 2006 calculation, and ending on June 30, 2007, for the~~  
17 ~~fiscal year 2007 calculation,~~) because the social cost factor  
18 contributions that employers are subject to under RCW  
19 50.29.025(2)(b)(ii)(B) are less than the social cost factor  
20 contributions that these employers would have been subject to if RCW  
21 50.29.025(2)(b)(ii)(A) had applied to these employers; and

22 (ii) Second, after the requisitioning required under (b)(i) of this  
23 subsection (~~in the respective fiscal year~~), from all other moneys  
24 credited to this state's account in the unemployment trust fund.

25 (~~(c) After the requisitioning required under (b) of this~~  
26 ~~subsection, if applicable, moneys for the payment of regular benefits~~  
27 ~~as defined in RCW 50.22.010 shall be requisitioned during calendar year~~  
28 ~~2007 in the following order:~~

29 (~~i) First, from the moneys credited to this state's account in the~~  
30 ~~unemployment trust fund pursuant to section 903 of the social security~~  
31 ~~act, as amended in section 209 of the temporary extended unemployment~~  
32 ~~compensation act of 2002 (42 U.S.C. Sec. 1103(d)), the amount equal to~~  
33 ~~the amount of benefits paid under RCW 50.20.120(2)(c)(ii) beginning on~~  
34 ~~the first Sunday following April 22, 2005, and ending on June 30, 2007,~~  
35 ~~that exceed the amount of benefits that would have been paid if the~~  
36 ~~weekly benefit amount had been determined as one percent of the total~~  
37 ~~wages paid in the individual's base year; and~~

1       ~~(ii) Second, after the requisitioning required under (c)(i) of this~~  
2 ~~subsection in the respective calendar year, from all other moneys~~  
3 ~~credited to this state's account in the unemployment trust fund.)~~

4       (2) Expenditures of such moneys in the benefit account and refunds  
5 from the clearing account shall not be subject to any provisions of law  
6 requiring specific appropriations or other formal release by state  
7 officers of money in their custody, and RCW 43.01.050, as amended,  
8 shall not apply. All warrants issued by the treasurer for the payment  
9 of benefits and refunds shall bear the signature of the treasurer and  
10 the countersignature of the commissioner, or his or her duly authorized  
11 agent for that purpose.

12       (3) Any balance of moneys requisitioned from the unemployment trust  
13 fund which remains unclaimed or unpaid in the benefit account after the  
14 expiration of the period for which sums were requisitioned shall either  
15 be deducted from estimates for, and may be utilized for the payment of,  
16 benefits during succeeding periods, or in the discretion of the  
17 commissioner, shall be redeposited with the secretary of the treasury  
18 of the United States of America to the credit of this state's account  
19 in the unemployment trust fund.

20       (4) Money credited to the account of this state in the unemployment  
21 trust fund by the secretary of the treasury of the United States of  
22 America pursuant to section 903 of the social security act, as amended,  
23 may be requisitioned and used for the payment of expenses incurred for  
24 the administration of this title pursuant to a specific appropriation  
25 by the legislature, provided that the expenses are incurred and the  
26 money is requisitioned after the enactment of an appropriation law  
27 which:

28       (a) Specifies the purposes for which such money is appropriated and  
29 the amounts appropriated therefor;

30       (b) Limits the period within which such money may be obligated to  
31 a period ending not more than two years after the date of the enactment  
32 of the appropriation law; and

33       (c) Limits the amount which may be obligated during a twelve-month  
34 period beginning on July 1st and ending on the next June 30th to an  
35 amount which does not exceed the amount by which (i) the aggregate of  
36 the amounts credited to the account of this state pursuant to section  
37 903 of the social security act, as amended, during the same twelve-  
38 month period and the thirty-four preceding twelve-month periods,

1 exceeds (ii) the aggregate of the amounts obligated pursuant to RCW  
2 50.16.030 (4), (5) and (6) and charged against the amounts credited to  
3 the account of this state during any of such thirty-five twelve-month  
4 periods. For the purposes of RCW 50.16.030 (4), (5) and (6), amounts  
5 obligated during any such twelve-month period shall be charged against  
6 equivalent amounts which were first credited and which are not already  
7 so charged; except that no amount obligated for administration during  
8 any such twelve-month period may be charged against any amount credited  
9 during such a twelve-month period earlier than the thirty-fourth  
10 twelve-month period preceding such period: PROVIDED, That any amount  
11 credited to this state's account under section 903 of the social  
12 security act, as amended, which has been appropriated for expenses of  
13 administration, whether or not withdrawn from the trust fund shall be  
14 excluded from the unemployment compensation fund balance for the  
15 purpose of experience rating credit determination.

16 (5) Money credited to the account of this state pursuant to section  
17 903 of the social security act, as amended, may not be withdrawn or  
18 used except for the payment of benefits and for the payment of expenses  
19 of administration and of public employment offices pursuant to RCW  
20 50.16.030 (4), (5) and (6). However, moneys credited because of excess  
21 amounts in federal accounts in federal fiscal years 1999, 2000, and  
22 2001 shall be used solely for the administration of the unemployment  
23 compensation program and are not subject to appropriation by the  
24 legislature for any other purpose.

25 (6) Money requisitioned as provided in RCW 50.16.030 (4), (5) and  
26 (6) for the payment of expenses of administration shall be deposited in  
27 the unemployment compensation fund, but until expended, shall remain a  
28 part of the unemployment compensation fund. The commissioner shall  
29 maintain a separate record of the deposit, obligation, expenditure and  
30 return of funds so deposited. Any money so deposited which either will  
31 not be obligated within the period specified by the appropriation law  
32 or remains unobligated at the end of the period, and any money which  
33 has been obligated within the period but will not be expended, shall be  
34 returned promptly to the account of this state in the unemployment  
35 trust fund.

36 **PART III - REENACTED PROVISIONS**

1           **Sec. 8.** RCW 50.04.293 and 2003 2nd sp.s. c 4 s 5 are each  
2 reenacted to read as follows:

3           With respect to claims that have an effective date before January  
4 4, 2004, "misconduct" means an employee's act or failure to act in  
5 willful disregard of his or her employer's interest where the effect of  
6 the employee's act or failure to act is to harm the employer's  
7 business.

8           **Sec. 9.** RCW 50.04.294 and 2003 2nd sp.s. c 4 s 6 are each  
9 reenacted to read as follows:

10          With respect to claims that have an effective date on or after  
11 January 4, 2004:

12          (1) "Misconduct" includes, but is not limited to, the following  
13 conduct by a claimant:

14           (a) Willful or wanton disregard of the rights, title, and interests  
15 of the employer or a fellow employee;

16           (b) Deliberate violations or disregard of standards of behavior  
17 which the employer has the right to expect of an employee;

18           (c) Carelessness or negligence that causes or would likely cause  
19 serious bodily harm to the employer or a fellow employee; or

20           (d) Carelessness or negligence of such degree or recurrence to show  
21 an intentional or substantial disregard of the employer's interest.

22          (2) The following acts are considered misconduct because the acts  
23 signify a willful or wanton disregard of the rights, title, and  
24 interests of the employer or a fellow employee. These acts include,  
25 but are not limited to:

26           (a) Insubordination showing a deliberate, willful, or purposeful  
27 refusal to follow the reasonable directions or instructions of the  
28 employer;

29           (b) Repeated inexcusable tardiness following warnings by the  
30 employer;

31           (c) Dishonesty related to employment, including but not limited to  
32 deliberate falsification of company records, theft, deliberate  
33 deception, or lying;

34           (d) Repeated and inexcusable absences, including absences for which  
35 the employee was able to give advance notice and failed to do so;

36           (e) Deliberate acts that are illegal, provoke violence or violation

1 of laws, or violate the collective bargaining agreement. However, an  
2 employee who engages in lawful union activity may not be disqualified  
3 due to misconduct;

4 (f) Violation of a company rule if the rule is reasonable and if  
5 the claimant knew or should have known of the existence of the rule; or

6 (g) Violations of law by the claimant while acting within the scope  
7 of employment that substantially affect the claimant's job performance  
8 or that substantially harm the employer's ability to do business.

9 (3) "Misconduct" does not include:

10 (a) Inefficiency, unsatisfactory conduct, or failure to perform  
11 well as the result of inability or incapacity;

12 (b) Inadvertence or ordinary negligence in isolated instances; or

13 (c) Good faith errors in judgment or discretion.

14 (4) "Gross misconduct" means a criminal act in connection with an  
15 individual's work for which the individual has been convicted in a  
16 criminal court, or has admitted committing, or conduct connected with  
17 the individual's work that demonstrates a flagrant and wanton disregard  
18 of and for the rights, title, or interest of the employer or a fellow  
19 employee.

20 **Sec. 10.** RCW 50.20.010 and 2003 2nd sp.s. c 4 s 3 are each  
21 reenacted to read as follows:

22 (1) An unemployed individual shall be eligible to receive waiting  
23 period credits or benefits with respect to any week in his or her  
24 eligibility period only if the commissioner finds that:

25 (a) He or she has registered for work at, and thereafter has  
26 continued to report at, an employment office in accordance with such  
27 regulation as the commissioner may prescribe, except that the  
28 commissioner may by regulation waive or alter either or both of the  
29 requirements of this subdivision as to individuals attached to regular  
30 jobs and as to such other types of cases or situations with respect to  
31 which the commissioner finds that the compliance with such requirements  
32 would be oppressive, or would be inconsistent with the purposes of this  
33 title;

34 (b) He or she has filed an application for an initial determination  
35 and made a claim for waiting period credit or for benefits in  
36 accordance with the provisions of this title;

1 (c) He or she is able to work, and is available for work in any  
2 trade, occupation, profession, or business for which he or she is  
3 reasonably fitted.

4 (i) With respect to claims that have an effective date before  
5 January 4, 2004, to be available for work an individual must be ready,  
6 able, and willing, immediately to accept any suitable work which may be  
7 offered to him or her and must be actively seeking work pursuant to  
8 customary trade practices and through other methods when so directed by  
9 the commissioner or the commissioner's agents.

10 (ii) With respect to claims that have an effective date on or after  
11 January 4, 2004, to be available for work an individual must be ready,  
12 able, and willing, immediately to accept any suitable work which may be  
13 offered to him or her and must be actively seeking work pursuant to  
14 customary trade practices and through other methods when so directed by  
15 the commissioner or the commissioner's agents. If a labor agreement or  
16 dispatch rules apply, customary trade practices must be in accordance  
17 with the applicable agreement or rules;

18 (d) He or she has been unemployed for a waiting period of one week;

19 (e) He or she participates in reemployment services if the  
20 individual has been referred to reemployment services pursuant to the  
21 profiling system established by the commissioner under RCW 50.20.011,  
22 unless the commissioner determines that:

23 (i) The individual has completed such services; or

24 (ii) There is justifiable cause for the claimant's failure to  
25 participate in such services; and

26 (f) As to weeks beginning after March 31, 1981, which fall within  
27 an extended benefit period as defined in RCW 50.22.010, the individual  
28 meets the terms and conditions of RCW 50.22.020 with respect to  
29 benefits claimed in excess of twenty-six times the individual's weekly  
30 benefit amount.

31 (2) An individual's eligibility period for regular benefits shall  
32 be coincident to his or her established benefit year. An individual's  
33 eligibility period for additional or extended benefits shall be the  
34 periods prescribed elsewhere in this title for such benefits.

35 **Sec. 11.** RCW 50.20.060 and 2003 2nd sp.s. c 4 s 7 are each  
36 reenacted to read as follows:

37 With respect to claims that have an effective date before January

1 4, 2004, an individual shall be disqualified from benefits beginning  
2 with the first day of the calendar week in which he or she has been  
3 discharged or suspended for misconduct connected with his or her work  
4 and thereafter for seven calendar weeks and until he or she has  
5 obtained bona fide work in employment covered by this title and earned  
6 wages in that employment equal to seven times his or her weekly benefit  
7 amount. Alcoholism shall not constitute a defense to disqualification  
8 from benefits due to misconduct.

9 **Sec. 12.** RCW 50.20.065 and 2003 2nd sp.s. c 4 s 8 are each  
10 reenacted to read as follows:

11 With respect to claims that have an effective date before January  
12 4, 2004:

13 (1) An individual who has been discharged from his or her work  
14 because of a felony or gross misdemeanor of which he or she has been  
15 convicted, or has admitted committing to a competent authority, and  
16 that is connected with his or her work shall have all hourly wage  
17 credits based on that employment canceled.

18 (2) The employer shall notify the department of such an admission  
19 or conviction, not later than six months following the admission or  
20 conviction.

21 (3) The claimant shall disclose any conviction of the claimant of  
22 a work-connected felony or gross misdemeanor occurring in the previous  
23 two years to the department at the time of application for benefits.

24 (4) All benefits that are paid in error based on wage/hour credits  
25 that should have been removed from the claimant's base year are  
26 recoverable, notwithstanding RCW 50.20.190 or 50.24.020 or any other  
27 provisions of this title.

28 **Sec. 13.** RCW 50.20.066 and 2003 2nd sp.s. c 4 s 9 are each  
29 reenacted to read as follows:

30 With respect to claims that have an effective date on or after  
31 January 4, 2004:

32 (1) An individual shall be disqualified from benefits beginning  
33 with the first day of the calendar week in which he or she has been  
34 discharged or suspended for misconduct connected with his or her work  
35 and thereafter for ten calendar weeks and until he or she has obtained  
36 bona fide work in employment covered by this title and earned wages in



1 that employment equal to ten times his or her weekly benefit amount.  
2 Alcoholism shall not constitute a defense to disqualification from  
3 benefits due to misconduct.

4 (2) An individual who has been discharged from his or her work  
5 because of gross misconduct shall have all hourly wage credits based on  
6 that employment or six hundred eighty hours of wage credits, whichever  
7 is greater, canceled.

8 (3) The employer shall notify the department of a felony or gross  
9 misdemeanor of which an individual has been convicted, or has admitted  
10 committing to a competent authority, not later than six months  
11 following the admission or conviction.

12 (4) The claimant shall disclose any conviction of the claimant of  
13 a work-connected felony or gross misdemeanor occurring in the previous  
14 two years to the department at the time of application for benefits.

15 (5) All benefits that are paid in error based on this section are  
16 recoverable, notwithstanding RCW 50.20.190 or 50.24.020 or any other  
17 provisions of this title.

18 **Sec. 14.** RCW 50.20.100 and 2004 c 110 s 2 are each reenacted to  
19 read as follows:

20 (1) Suitable work for an individual is employment in an occupation  
21 in keeping with the individual's prior work experience, education, or  
22 training and if the individual has no prior work experience, special  
23 education, or training for employment available in the general area,  
24 then employment which the individual would have the physical and mental  
25 ability to perform. In determining whether work is suitable for an  
26 individual, the commissioner shall also consider the degree of risk  
27 involved to the individual's health, safety, and morals, the  
28 individual's physical fitness, the individual's length of unemployment  
29 and prospects for securing local work in the individual's customary  
30 occupation, the distance of the available work from the individual's  
31 residence, and such other factors as the commissioner may deem  
32 pertinent, including state and national emergencies.

33 (2) For individuals with base year work experience in agricultural  
34 labor, any agricultural labor available from any employer shall be  
35 deemed suitable unless it meets conditions in RCW 50.20.110 or the  
36 commissioner finds elements of specific work opportunity unsuitable for  
37 a particular individual.

1 (3) For part-time workers as defined in RCW 50.20.119, suitable  
2 work includes suitable work under subsection (1) of this section that  
3 is for seventeen or fewer hours per week.

4 (4) For individuals who have qualified for unemployment  
5 compensation benefits under RCW 50.20.050 (1)(b)(iv) or (2)(b)(iv), as  
6 applicable, an evaluation of the suitability of the work must consider  
7 the individual's need to address the physical, psychological, legal,  
8 and other effects of domestic violence or stalking.

9 **Sec. 15.** RCW 50.20.119 and 2003 2nd sp.s. c 4 s 12 are each  
10 reenacted to read as follows:

11 (1) With respect to claims that have an effective date on or after  
12 January 2, 2005, an otherwise eligible individual may not be denied  
13 benefits for any week because the individual is a part-time worker and  
14 is available for, seeks, applies for, or accepts only work of seventeen  
15 or fewer hours per week by reason of the application of RCW  
16 50.20.010(1)(c), 50.20.080, or 50.22.020(1) relating to availability  
17 for work and active search for work, or failure to apply for or refusal  
18 to accept suitable work.

19 (2) For purposes of this section, "part-time worker" means an  
20 individual who: (a) Earned wages in "employment" in at least forty  
21 weeks in the individual's base year; and (b) did not earn wages in  
22 "employment" in more than seventeen hours per week in any weeks in the  
23 individual's base year.

24 **Sec. 16.** RCW 50.20.240 and 2004 c 110 s 1 are each reenacted to  
25 read as follows:

26 (1)(a) To ensure that following the initial application for  
27 benefits, an individual is actively engaged in searching for work, the  
28 employment security department shall implement a job search monitoring  
29 program. Effective January 4, 2004, the department shall contract with  
30 employment security agencies in other states to ensure that individuals  
31 residing in those states and receiving benefits under this title are  
32 actively engaged in searching for work in accordance with the  
33 requirements of this section. The department may use interactive voice  
34 technology and other electronic means to ensure that individuals are  
35 subject to comparable job search monitoring, regardless of whether they  
36 reside in Washington or elsewhere.

1 (b) Except for those individuals with employer attachment or union  
2 referral, individuals who qualify for unemployment compensation under  
3 RCW 50.20.050 (1)(b)(iv) or (2)(b)(iv), as applicable, and individuals  
4 in commissioner-approved training, an individual who has received five  
5 or more weeks of benefits under this title, regardless of whether the  
6 individual resides in Washington or elsewhere, must provide evidence of  
7 seeking work, as directed by the commissioner or the commissioner's  
8 agents, for each week beyond five in which a claim is filed. With  
9 regard to claims with an effective date before January 4, 2004, the  
10 evidence must demonstrate contacts with at least three employers per  
11 week or documented in-person job search activity at the local  
12 reemployment center. With regard to claims with an effective date on  
13 or after January 4, 2004, the evidence must demonstrate contacts with  
14 at least three employers per week or documented in-person job search  
15 activities at the local reemployment center at least three times per  
16 week.

17 (c) In developing the requirements for the job search monitoring  
18 program, the commissioner or the commissioner's agents shall utilize an  
19 existing advisory committee having equal representation of employers  
20 and workers.

21 (2) Effective January 4, 2004, an individual who fails to comply  
22 fully with the requirements for actively seeking work under RCW  
23 50.20.010 shall lose all benefits for all weeks during which the  
24 individual was not in compliance, and the individual shall be liable  
25 for repayment of all such benefits under RCW 50.20.190.

26 **Sec. 17.** RCW 50.04.335 and 2003 2nd sp.s. c 4 s 2 are each  
27 reenacted to read as follows:

28 After December 31, 2003, for the purpose of the payment of  
29 contributions, the term "wages" does not include an employee's income  
30 attributable to the transfer of shares of stock to the employee  
31 pursuant to his or her exercise of a stock option granted for any  
32 reason connected with his or her employment.

33 **Sec. 18.** RCW 50.16.010 and 2005 c 518 s 933 are each reenacted to  
34 read as follows:

35 (1) There shall be maintained as special funds, separate and apart  
36 from all public moneys or funds of this state an unemployment

1 compensation fund, an administrative contingency fund, and a federal  
2 interest payment fund, which shall be administered by the commissioner  
3 exclusively for the purposes of this title, and to which RCW 43.01.050  
4 shall not be applicable.

5 (2)(a) The unemployment compensation fund shall consist of:

6 (i) All contributions collected under RCW 50.24.010 and payments in  
7 lieu of contributions collected pursuant to the provisions of this  
8 title;

9 (ii) Any property or securities acquired through the use of moneys  
10 belonging to the fund;

11 (iii) All earnings of such property or securities;

12 (iv) Any moneys received from the federal unemployment account in  
13 the unemployment trust fund in accordance with Title XII of the social  
14 security act, as amended;

15 (v) All money recovered on official bonds for losses sustained by  
16 the fund;

17 (vi) All money credited to this state's account in the unemployment  
18 trust fund pursuant to section 903 of the social security act, as  
19 amended;

20 (vii) All money received from the federal government as  
21 reimbursement pursuant to section 204 of the federal-state extended  
22 compensation act of 1970 (84 Stat. 708-712; 26 U.S.C. Sec. 3304); and

23 (viii) All moneys received for the fund from any other source.

24 (b) All moneys in the unemployment compensation fund shall be  
25 commingled and undivided.

26 (3)(a) Except as provided in (b) of this subsection, the  
27 administrative contingency fund shall consist of:

28 (i) All interest on delinquent contributions collected pursuant to  
29 this title;

30 (ii) All fines and penalties collected pursuant to the provisions  
31 of this title;

32 (iii) All sums recovered on official bonds for losses sustained by  
33 the fund; and

34 (iv) Revenue received under RCW 50.24.014.

35 (b) All fees, fines, forfeitures, and penalties collected or  
36 assessed by a district court because of the violation of this title or  
37 rules adopted under this title shall be remitted as provided in chapter  
38 3.62 RCW.

1 (c) Moneys available in the administrative contingency fund, other  
2 than money in the special account created under RCW 50.24.014(1)(a),  
3 shall be expended upon the direction of the commissioner, with the  
4 approval of the governor, whenever it appears to him or her that such  
5 expenditure is necessary solely for:

6 (i) The proper administration of this title and no federal funds  
7 are available for the specific purpose to which such expenditure is to  
8 be made, provided, the moneys are not substituted for appropriations  
9 from federal funds which, in the absence of such moneys, would be made  
10 available.

11 (ii) The proper administration of this title for which purpose  
12 appropriations from federal funds have been requested but not yet  
13 received, provided, the administrative contingency fund will be  
14 reimbursed upon receipt of the requested federal appropriation.

15 (iii) The proper administration of this title for which compliance  
16 and audit issues have been identified that establish federal claims  
17 requiring the expenditure of state resources in resolution. Claims  
18 must be resolved in the following priority: First priority is to  
19 provide services to eligible participants within the state; second  
20 priority is to provide substitute services or program support; and last  
21 priority is the direct payment of funds to the federal government.

22 (d) During the 2005-2007 fiscal biennium, the cost of the job  
23 skills program at community and technical colleges as appropriated by  
24 the legislature.

25 Money in the special account created under RCW 50.24.014(1)(a) may  
26 only be expended, after appropriation, for the purposes specified in  
27 this section and RCW 50.62.010, 50.62.020, 50.62.030, 50.24.014,  
28 50.44.053, and 50.22.010.

29 **Sec. 19.** RCW 50.16.015 and 2003 2nd sp.s. c 4 s 24 are each  
30 reenacted to read as follows:

31 A separate and identifiable fund to provide for the payment of  
32 interest on advances received from this state's account in the federal  
33 unemployment trust fund shall be established and administered under the  
34 direction of the commissioner. This fund shall be known as the federal  
35 interest payment fund and shall consist of contributions paid under RCW  
36 50.16.070. All money in this fund shall be expended solely for the

1 payment of interest on advances received from this state's account in  
2 the federal unemployment trust fund and for no other purposes  
3 whatsoever.

4 **Sec. 20.** RCW 50.24.014 and 2003 2nd sp.s. c 4 s 25 are each  
5 reenacted to read as follows:

6 (1)(a) A separate and identifiable account to provide for the  
7 financing of special programs to assist the unemployed is established  
8 in the administrative contingency fund. All money in this account  
9 shall be expended solely for the purposes of this title and for no  
10 other purposes whatsoever. Contributions to this account shall accrue  
11 and become payable by each employer, except employers as described in  
12 RCW 50.44.010 and 50.44.030 who have properly elected to make payments  
13 in lieu of contributions, taxable local government employers as  
14 described in RCW 50.44.035, and those employers who are required to  
15 make payments in lieu of contributions, at a basic rate of two one-  
16 hundredths of one percent. The amount of wages subject to tax shall be  
17 determined under RCW 50.24.010.

18 (b) A separate and identifiable account is established in the  
19 administrative contingency fund for financing the employment security  
20 department's administrative cost under RCW 50.22.150 and the costs  
21 under RCW 50.22.150(9). All money in this account shall be expended  
22 solely for the purposes of this title and for no other purposes  
23 whatsoever. Contributions to this account shall accrue and become  
24 payable by each employer, except employers as described in RCW  
25 50.44.010 and 50.44.030 who have properly elected to make payments in  
26 lieu of contributions, taxable local government employers as described  
27 in RCW 50.44.035, those employers who are required to make payments in  
28 lieu of contributions, those employers described under RCW  
29 50.29.025(1)(f)(ii), and those qualified employers assigned rate class  
30 20 or rate class 40, as applicable, under RCW 50.29.025, at a basic  
31 rate of one one-hundredth of one percent. The amount of wages subject  
32 to tax shall be determined under RCW 50.24.010. Any amount of  
33 contributions payable under this subsection (1)(b) that exceeds the  
34 amount that would have been collected at a rate of four one-thousandths  
35 of one percent must be deposited in the unemployment compensation trust  
36 fund.

1 (c) For the first calendar quarter of 1994 only, the basic two one-  
2 hundredths of one percent contribution payable under (a) of this  
3 subsection shall be increased by one-hundredth of one percent to a  
4 total rate of three one-hundredths of one percent. The proceeds of  
5 this incremental one-hundredth of one percent shall be used solely for  
6 the purposes described in section 22, chapter 483, Laws of 1993, and  
7 for the purposes of conducting an evaluation of the call center  
8 approach to unemployment insurance under section 5, chapter 161, Laws  
9 of 1998. During the 1997-1999 fiscal biennium, any surplus from  
10 contributions payable under this subsection (c) may be deposited in the  
11 unemployment compensation trust fund, used to support tax and wage  
12 automated systems projects that simplify and streamline employer  
13 reporting, or both.

14 (2)(a) Contributions under this section shall become due and be  
15 paid by each employer under rules as the commissioner may prescribe,  
16 and shall not be deducted, in whole or in part, from the remuneration  
17 of individuals in the employ of the employer. Any deduction in  
18 violation of this section is unlawful.

19 (b) In the payment of any contributions under this section, a  
20 fractional part of a cent shall be disregarded unless it amounts to  
21 one-half cent or more, in which case it shall be increased to one cent.

22 (3) If the commissioner determines that federal funding has been  
23 increased to provide financing for the services specified in chapter  
24 50.62 RCW, the commissioner shall direct that collection of  
25 contributions under this section be terminated on the following January  
26 1st.

27 **Sec. 21.** RCW 50.20.190 and 2005 c 518 s 934 are each reenacted to  
28 read as follows:

29 (1) An individual who is paid any amount as benefits under this  
30 title to which he or she is not entitled shall, unless otherwise  
31 relieved pursuant to this section, be liable for repayment of the  
32 amount overpaid. The department shall issue an overpayment assessment  
33 setting forth the reasons for and the amount of the overpayment. The  
34 amount assessed, to the extent not collected, may be deducted from any  
35 future benefits payable to the individual: PROVIDED, That in the  
36 absence of a back pay award, a settlement affecting the allowance of  
37 benefits, fraud, misrepresentation, or willful nondisclosure, every

1 determination of liability shall be mailed or personally served not  
2 later than two years after the close of or final payment made on the  
3 individual's applicable benefit year for which the purported  
4 overpayment was made, whichever is later, unless the merits of the  
5 claim are subjected to administrative or judicial review in which event  
6 the period for serving the determination of liability shall be extended  
7 to allow service of the determination of liability during the six-month  
8 period following the final decision affecting the claim.

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

17 (3) Any assessment herein provided shall constitute a determination  
18 of liability from which an appeal may be had in the same manner and to  
19 the same extent as provided for appeals relating to determinations in  
20 respect to claims for benefits: PROVIDED, That an appeal from any  
21 determination covering overpayment only shall be deemed to be an appeal  
22 from the determination which was the basis for establishing the  
23 overpayment unless the merits involved in the issue set forth in such  
24 determination have already been heard and passed upon by the appeal  
25 tribunal. If no such appeal is taken to the appeal tribunal by the  
26 individual within thirty days of the delivery of the notice of  
27 determination of liability, or within thirty days of the mailing of the  
28 notice of determination, whichever is the earlier, the determination of  
29 liability shall be deemed conclusive and final. Whenever any such  
30 notice of determination of liability becomes conclusive and final, the  
31 commissioner, upon giving at least twenty days notice by certified mail  
32 return receipt requested to the individual's last known address of the  
33 intended action, may file with the superior court clerk of any county  
34 within the state a warrant in the amount of the notice of determination  
35 of liability plus a filing fee under RCW 36.18.012(10). The clerk of  
36 the county where the warrant is filed shall immediately designate a  
37 superior court cause number for the warrant, and the clerk shall cause  
38 to be entered in the judgment docket under the superior court cause



1 number assigned to the warrant, the name of the person(s) mentioned in  
2 the warrant, the amount of the notice of determination of liability,  
3 and the date when the warrant was filed. The amount of the warrant as  
4 docketed shall become a lien upon the title to, and any interest in,  
5 all real and personal property of the person(s) against whom the  
6 warrant is issued, the same as a judgment in a civil case duly docketed  
7 in the office of such clerk. A warrant so docketed shall be sufficient  
8 to support the issuance of writs of execution and writs of garnishment  
9 in favor of the state in the manner provided by law for a civil  
10 judgment. A copy of the warrant shall be mailed to the person(s)  
11 mentioned in the warrant by certified mail to the person's last known  
12 address within five days of its filing with the clerk.

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

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

37 (a) The employer shall reduce the amount of the back pay award or  
38 settlement by an amount determined by the department based upon the

1 amount of unemployment benefits received by the recipient of the award  
2 or settlement during the period for which the back pay award or  
3 settlement was awarded;

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

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

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

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

21 (6) When an individual fails to repay an overpayment assessment  
22 that is due and fails to arrange for satisfactory repayment terms, the  
23 commissioner shall impose an interest penalty of one percent per month  
24 of the outstanding balance. Interest shall accrue immediately on  
25 overpayments assessed pursuant to RCW 50.20.070 and shall be imposed  
26 when the assessment becomes final. For any other overpayment, interest  
27 shall accrue when the individual has missed two or more of the  
28 individual's monthly payments either partially or in full. The  
29 interest penalty shall be used, first, to fully fund either social  
30 security number cross-match audits or other more effective activities  
31 that ensure that individuals are entitled to all amounts of benefits  
32 that they are paid, second, to fund other detection and recovery of  
33 overpayment and collection activities, and third, during the 2005-07  
34 fiscal biennium, the cost of the job skills program at community and  
35 technical colleges as appropriated by the legislature.

36 **Sec. 22.** RCW 50.04.206 and 2003 2nd sp.s. c 4 s 27 are each  
37 reenacted to read as follows:



1        NEW SECTION.    **Sec. 25.**    Part headings used in this act are not any  
2 part of the law.

3        NEW SECTION.    **Sec. 26.**    Sections 4 and 5 of this act apply to rate  
4 years beginning on or after January 1, 2007.

5        NEW SECTION.    **Sec. 27.**    If any provision of this act or its  
6 application to any person or circumstance is held invalid, the  
7 remainder of the act or the application of the provision to other  
8 persons or circumstances is not affected.

9        NEW SECTION.    **Sec. 28.**    If any part of this act is found to be in  
10 conflict with federal requirements that are a prescribed condition to  
11 the allocation of federal funds to the state or the eligibility of  
12 employers in this state for federal unemployment tax credits, the  
13 conflicting part of this act is inoperative solely to the extent of the  
14 conflict, and the finding or determination does not affect the  
15 operation of the remainder of this act. Rules adopted under this act  
16 must meet federal requirements that are a necessary condition to the  
17 receipt of federal funds by the state or the granting of federal  
18 unemployment tax credits to employers in this state."

19        Correct the title.

EFFECT:        The amendment makes the following unemployment benefit  
and tax changes:

Benefit changes

(1) Makes the "good cause quit" related to military transfer apply  
to new claims after July 1, 2006.

(2) Reenacts, retroactively, certain sections of Second Engrossed  
Senate Bill No. 6097 (sections that were potentially under challenge in  
Batey v. Employment Security Department).

Tax changes

(3) Deletes the provision that would have changed the taxable wage  
base to 75 percent of the average annual wage (from 80 percent).

(4) Deletes the requirement to use 16 months of data to compute the  
social cost factor (instead of 4 months).

(5) Makes permanent the charging of benefits to employer accounts  
as if the benefits were being paid based on four-quarter averaging.

(6) Modifies the provisions relating to the social cost factor by:

(a) Making the maximum tax rate of 5.7 percent for agriculture and other specified industries begin in 2008.

(b) Changing the adjustments in the flat social cost rate to allow a 0.4 reduction (instead of a graduated reduction depending on the trust fund balance).

(c) Changing the minimum flat social cost rate to 0.5 percent (instead of 0.55 percent) when the trust fund has from 12 to 13 months of benefits, and allowing a reduction of 0.45 for employers in rate class 1 when the trust fund has 14 or more months of benefits.

(7) Changes the trigger for the solvency surcharge, applying the surcharge when there are fewer than seven months of benefits in the trust fund (instead of eight months).

#### Studies

(8) Deletes the study on "voluntary quits" and adds that the Employment Security Department will study repeat episodes of unemployment, employers in rate class 40, employer turnover, fraud prevention methods related to corporate officer coverage and liability for taxes, and make recommendations by December 1, 2006.

#### Other

(9) Deletes the emergency clause.

--- END ---