

# HOUSE BILL REPORT

## HB 2697

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**As Reported by House Committee On:**  
Commerce & Labor

**Title:** An act relating to improving unemployment insurance collection and penalty tools.

**Brief Description:** Improving unemployment insurance collection and penalty tools.

**Sponsors:** Representatives Hudgins, Conway, McCoy, Kenney, Simpson and Roberts; by request of Employment Security Department.

**Brief History:**

**Committee Activity:**

Commerce & Labor: 1/26/06, 2/2/06 [DPS].

**Brief Summary of Substitute Bill**

- Modifies the penalties applicable to employers that file untimely or incomplete unemployment tax reports.

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### HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Conway, Chair; Wood, Vice Chair; Condotta, Ranking Minority Member; Crouse, Hudgins, Kenney, Kenney, and McCoy.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Chandler, Assistant Ranking Minority Member; and Holmquist.

**Staff:** Chris Cordes (786-7103).

**Background:**

The unemployment insurance system is a federal/state program under which employers pay contributions under both federal and state law to fund unemployment compensation for unemployed workers. Washington's program is administered by the Employment Security Department (ESD).

Most employment in the state is covered for unemployment insurance. Each covered employer is required to pay contributions on a percentage of his or her taxable payroll, except for certain employers who reimburse the ESD for benefits the agency pays to these employers' former workers.

If an employer fails to file unemployment tax reports in a timely and complete manner, the employer is subject to a penalty, as determined by the Commissioner of the ESD (Commissioner), of up to \$250 or 10 percent of the quarterly contributions, whichever is less. Under the ESD rules: (1) if a report is filed late, the employer is subject to a \$25 penalty, unless waived; and (2) if a report is incomplete or filed in the incorrect format, the employer's penalty ranges from \$75 to \$250 depending on which standard was violated and whether the violation is the first or subsequent occurrence.

Unemployment insurance tax penalties also include a penalty for an employer who is delinquent in paying unemployment taxes because of an intent to evade the successorship requirements and for any business that promotes such evasion. This penalty requires assigning these employers, or other persons violating this requirement, the highest contribution rate, plus 2 percent, for that calendar year in which the Commissioner makes the penalty determination.

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### **Summary of Substitute Bill:**

The penalty of up to \$250 or 10 percent of the quarterly contributions, whichever is less, for failure to file a timely or complete report is modified as follows:

- (1) If an employer fails to file a timely report, the penalty is \$25 per violation, unless waived.
- (2) If an employer files an incomplete or incorrectly formatted report, the employer will receive a warning letter for the first occurrence. Except for certain willful violations, for subsequent occurrences the employer is subject to a penalty of:
  - if no contributions are due, \$75 for the second occurrence, \$150 for the third occurrence, and \$250 for subsequent occurrences.
  - if contributions are due, 10 percent of the quarterly contributions due, but not more than \$250 or less than \$75 for the second occurrence or less than \$150 for the third occurrence, and, for subsequent occurrences, \$250.
- (3) If an employer files an incomplete or incorrectly formatted report more than five times in a five-year period, the penalty is doubled from the previous penalty at each occurrence (e. g., the sixth occurrence is \$500) if the Commissioner finds that the violation was willful. The Commissioner may waive penalties for an employer's failure to file a complete report, as well as a timely report, if the failure was not due to the employer's fault.

The penalty is deleted that applies the maximum contribution rate to employers who are delinquent because of an intent to evade the successorship provisions or to businesses that promote such evasions.

### **Substitute Bill Compared to Original Bill:**

The substitute bill: (1) except for certain willful violations, adds a maximum penalty of \$250 for the amount assessed when contributions are due on an incomplete or incorrectly formatted report; (2) increases the penalty for employers that file an incomplete or incorrectly formatted

report more than five times in a five-year period by doubling the previous penalty at each occurrence when the Commissioner finds the violation to be willful; and (3) makes the penalty waiver language consistent by referencing the Commissioner, rather than the ESD.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** (In support) The bill brings forward several technical changes to the 2003 law. There were inadvertent inequalities that need to be fixed. The penalty requirements result in minimal penalties, some less than \$1. The ESD is attempting to put more emphasis on compliance and would like to give first violations a warning with no penalty. The employer would have one calendar quarter to correct the problem. There would be a flat penalty amount, or a waiver where appropriate, for late reports. This will result in more consistent treatment of employers. Out of 12,000 employers who got a warning, most corrected the problem, and only 73 got the maximum penalty.

(In support with amendment) The bill should include a maximum penalty in addition to the minimum penalty that is specified.

(With concerns) Employers give positive feedback on the electronic filing option. However, there needs to be a fix for the problem that arises when the employee's Social Security number is invalid. The employer is unable to file the report with that number and cannot file it without a number. This causes a penalty and then the employer must request a waiver.

**Testimony Against:** None.

**Persons Testifying:** (In support) Representative Hudgins, prime sponsor; and Annette Copeland, Employment Security Department.

(In support with amendment) Mellani McAllenan, Association of Washington Business.

(With concerns) Dan Fazio, Washington Farm Bureau.

**Persons Signed In To Testify But Not Testifying:** None.