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**SENATE BILL 5438**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Senators Saldaña, Nobles, Cleveland, Darneille, Das, Dhingra, Hasegawa, Hunt, Kuderer, Liias, Lovelett, Nguyen, Robinson, Stanford, Wellman, and Wilson, C.

AN ACT Relating to providing unemployment benefits to workers who are unemployed as a result of the COVID-19 pandemic and not eligible for unemployment benefits due to immigration status; adding a new chapter to Title 49 RCW; making an appropriation; providing an expiration date.

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

NEW SECTION. **Sec.**  The legislature finds and declares:

(1) Unemployment insurance was established by the legislature because it explicitly recognized that economic insecurity caused by unemployment is the "greatest hazard of our economic life" that "falls with crushing force upon the unemployed worker and his or her family" which therefore requires "the compulsory setting aside of unemployment reserves" to reduce the suffering caused by unemployment to a minimum. Unemployment insurance is essential to ensure that individuals who lose income are able to survive and meet their basic needs during periods they are unable to find stable work.

(2) Most Washington unemployed workers are eligible to receive unemployment insurance to survive and meet their basic needs in times of crisis, as the legislature intended. The COVID-19 pandemic has presented the worst unemployment crisis in decades. According to the employment security department, one in three Washington workers filed for unemployment during the initial months of the COVID-19 crisis and by August 2020, the state had paid out $10,000,000,000 in unemployment insurance to unemployed workers.

(3) Many immigrant workers, however, are not eligible for unemployment insurance or pandemic unemployment assistance and have not received any assistance from the program. RCW 50.20.098 provides that unemployment insurance benefits shall not be payable unless the individual "was lawfully admitted for permanent residence, was lawfully present for purposes of performing such services, or otherwise was permanently residing in the United States under color of law at the time such services were performed...". Federal law, 8 U.S.C. Sec. 1621(d), requires that states wishing to extend benefits beyond a short list of "qualified" immigrants must affirmatively do so. Those ineligible to receive unemployment benefits include workers without work authorization, workers whose work authorization is awaiting renewal, and workers who recently regularized their immigration status.

(4) Ineligibility for unemployment benefits has devastated immigrant communities during the pandemic economic crisis, particularly immigrants working in low-wage industries. Several of the industries that have experienced the highest rates of job loss in Washington due to the pandemic are low-wage sectors with the highest numbers of immigrant workers including the restaurant, hotel, retail, and construction industries. Economists predict large-scale permanent job loss and long-term unemployment as the effects of the pandemic similar to the great recession of 2008. Without access to unemployment benefits among other critical safety net programs Washington's immigrant communities face deep economic devastation for years to come. Prior to the pandemic, the poverty rate of immigrants in Washington was already high, with 18 percent of the state's immigrant residents living in poverty compared to 12 percent of United States born residents. The crisis is expected to significantly expand this disparity.

(5) To support the survival of Washington's immigrant workers and families during periods of crisis, particularly low-income households, and to provide the safety net that United States born Washington residents are able to access, the legislature intends to establish a weekly unemployment benefits program similar to the state unemployment insurance program for workers not eligible for state or federal unemployment insurance benefits and unemployed as a result of the COVID-19 pandemic. Additionally, this bill would direct the agency to develop proposals for the creation of a permanent weekly unemployment benefits program for unemployed immigrant workers and, until the permanent program can be created, an interim program to cover excluded immigrant workers during disasters.

NEW SECTION. **Sec.**  (1) A Washington income replacement for immigrant workers program is created.

(2) The purpose of this chapter is to provide unemployment benefits to low-income workers who are unemployed as a result of the COVID-19 pandemic and not eligible for state or federal unemployment benefits administered by the employment security department due to immigration status.

(3) It is the intent of the legislature to allow persons who are not lawfully present in the United States, as members of the class of workers excluded from unemployment insurance benefits, to participate in, and receive disbursements from, the Washington unemployment benefits for immigrant workers program. This chapter is therefore enacted pursuant to 8 U.S.C. Sec. 1621(d).

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "COVID-19" means the illness caused by the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

(2) "COVID-19 pandemic" means the worldwide epidemic of COVID-19 declared a pandemic by the world health organization on March 11, 2020.

(3) "Department" means the department of labor and industries.

(4) "Income" means any and all compensation for personal services but does not include any payment received by a member of the national guard or reserve component of the armed forces for inactive duty training, annual training, or emergency state active duty.

(5) "Individual" means a person who is applying for benefits under this chapter.

(6) "Information" means all types of information collected under this chapter, whether written or oral including, but not limited to, that made or kept by any public officer or agency for the purpose of assessing an individual's eligibility for, or administering the benefits authorized by, this chapter.

(7) "Week of unemployment" means:

(a) For an unemployed individual, any week during which the individual is totally or partially unemployed.

(i) A week of total unemployment is a week during which the individual performs no work and earns no income.

(ii) A week of partial unemployment is a week during which the individual works less than regular, full-time hours as a result of the COVID-19 pandemic and earns less than one and one-third times the weekly benefit amount, as defined in RCW 50.20.120, plus $5.

(b) For an unemployed, self-employed individual, any week during which the individual is totally or partially unemployed.

(i) A week of total unemployment is a week during which the individual performs no work and earns no income.

(ii) A week of partial unemployment is a week during which the individual performs less than the customary services in self-employment, as a result of the COVID-19 pandemic, and earns less than one and one-third times the weekly benefit amount, as defined in RCW 50.20.120, plus $5.

NEW SECTION. **Sec.**  The department may enact rules to implement this chapter.

NEW SECTION. **Sec.**  (1) An individual is eligible to receive benefits under this chapter if the individual resides in Washington and the individual:

(a) Experienced a week of unemployment during the eligibility period set forth in section 7(1) of this act due to one of the following COVID-19 related reasons:

(i) The individual's place of employment is closed as a direct result of COVID-19;

(ii) The individual was laid off or their hours were reduced as a direct result of COVID-19;

(iii) The individual had to quit their job as a direct result of COVID-19 or the COVID-19 pandemic;

(iv) The individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;

(v) The individual is unable to work because a health care provider advised them to self-quarantine due to concerns related to COVID-19;

(vi) A member of the individual's household has been diagnosed with COVID-19;

(vii) The individual needs to provide care for a family member or a member of the individual's household who has been diagnosed with COVID-19;

(viii) The school or day care the individual's child attends is physically closed due to COVID-19 or the COVID-19 pandemic, and the individual is unable to find alternative child care;

(ix) The individual has become the breadwinner or major support, as defined in the federal pandemic unemployment assistance program in existence on the effective date of this section, for a household because the head of the household has died as a direct result of COVID-19;

(x) The individual was scheduled to start a job that is now unavailable as a direct result of the COVID-19 pandemic; or

(xi) The individual is unable to reach the place of employment as a direct result of the COVID-19 pandemic;

(b) Is not eligible to receive regular unemployment insurance due to immigration status under RCW 50.20.098 or 50.04.206;

(c) Is not eligible to receive federal pandemic unemployment assistance due to immigration status; and

(d) Had income from work during the eligibility period described in section 7(1) of this act.

(2) Individuals may prove that they meet the eligibility requirements set forth in subsection (1) of this section by documentation or, in the absence of documentation, by submitting an affidavit to the department on a form prescribed by the department.

(3) Under subsection (1)(b) and (c) of this section, the department may not request or require the individual to state why the individual believes themselves to be ineligible for the programs.

(4) An individual may not receive benefits under this chapter for any week in which benefits are paid or payable under Title 50, 50A, or 51 RCW or under federal pandemic unemployment assistance.

NEW SECTION. **Sec.**  (1) In administering the program under this chapter, the department is prohibited from taking any of the following actions:

(a) Soliciting, orally or in written form, an individual's nationality, race, ethnicity, place of birth, eligibility or ineligibility for a social security number, citizenship, or immigration status;

(b) Indicating in its records which documents the individual used to prove their age or identity;

(c) Compelling an individual to admit in writing whether they have proof of lawful presence in the United States or to explain why they are ineligible for a social security number;

(d) Contacting an individual's current, former, or prospective employers including, but not limited to, for the purposes of verifying employment status; and

(e) Attempting to ascertain an individual's immigration or citizenship status.

(2) The department must destroy all records containing information that were provided by an individual or collected by the department to verify eligibility for the program within 15 days of an individual's written statement that they are no longer using the program.

(3) Any information under this chapter is not a public record and shall not be disclosed or otherwise made accessible in response to any request for records except:

(a) To the person who is the subject of such records or an authorized representative;

(b) Where necessary to comply with a lawful court order, judicial warrant signed by a judge appointed pursuant to Article III of the United States Constitution, or subpoena for individual records issued pursuant to the criminal procedure law or the civil practice law and rules; or

(c) If disclosed in a manner that could not be used to determine the identities of the individuals or employers to whom the data pertains, alone or in combination with other data.

(4) For the purposes of this section, whenever a lawful court order, judicial warrant, or subpoena for individual records properly issued pursuant to the criminal procedure law or the civil practice law and rules is presented to a court, only those records, documents, and information specifically sought by such court order, warrant, or subpoena may be disclosed.

(5) Notwithstanding any other law, information and records containing information that are collected or obtained by the state, any state agency, or any subdivision of the state, including agents of the state universities and community colleges, as well as any private persons contracted to administer public services or programs, shall only be collected, used, and retained for the purpose of assessing eligibility for and providing those public services and programs created by this chapter.

(6) No information collected under this chapter may be used for purposes of investigating, locating, or apprehending individuals for immigration-related violations including, but not exclusive to, queries or inquiries under 8 U.S.C. Secs. 1324, 1325, and 1326.

(7) In carrying out the benefits and program created under this chapter, the department must establish prohibitions and safeguards against unauthorized access to, and use of, any information collected under this chapter by private or public entities. For purposes of this section, "unauthorized access" includes, but is not limited to, access by anyone other than a department employee.

NEW SECTION. **Sec.**  (1) Any individual found eligible for benefits under section 4 of this act will receive a $400 payment for each week of unemployment occurring:

(a) After January 1, 2021; and

(b) Before June 30, 2022.

(2) The total number of weeks an eligible individual may receive benefits under this chapter shall not exceed 39 weeks.

(3) Payments shall be made available retroactively to the first week of eligibility under subsection (1)(a) of this section.

NEW SECTION. **Sec.**  (1) The department must develop proposals for:

(a) A permanent program to provide unemployment benefits for unemployed workers who are excluded from regular unemployment insurance on the basis of citizenship or immigration status; and

(b) An interim program to provide unemployment benefits for workers facing full or partial unemployment due to disasters declared as such by local, state, or federal governments who are excluded from existing programs due to immigration status.

(2) The department must develop the proposals under this section based on considerations and information including, but not limited to, evaluation of the program under this chapter, research on the target population, assessment of the options for how to fund and administer the program, and stakeholder input.

(3) The department must submit a preliminary report on the proposals under this section to the appropriate committees of the legislature by December 1, 2021, and a final report by December 1, 2022.

(4) This section expires December 31, 2022.

NEW SECTION. **Sec.**  The unemployment benefits for undocumented workers account is created in the custody of the state treasurer. Revenues to the account shall consist of appropriations and transfers by the legislature and all other funding directed for deposit in the account. Only the director or the director's designee may authorize expenditures from the account. Expenditures from the account may be used only for the payment of benefits under sections 3, 4, 5, and 6 of this act. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

NEW SECTION. **Sec.**  The sum of $350,000,000 is appropriated for the fiscal year ending June 30, 2022, from the general fund to the unemployment benefits for undocumented workers account for the purposes of this act.

NEW SECTION. **Sec.**  Sections 1 through 9 of this act constitute a new chapter in Title 49 RCW.

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

**--- END ---**