S-4169.1

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**SUBSTITUTE SENATE BILL 5911**

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**State of Washington 67th Legislature 2022 Regular Session**

**By** Senate Labor, Commerce & Tribal Affairs (originally sponsored by Senators Cleveland, Keiser, Billig, Conway, Das, Lovelett, Lovick, Nguyen, Randall, Saldaña, Stanford, and Trudeau)

AN ACT Relating to providing hazard pay retention bonuses to certain health care employees; creating new sections; providing an expiration date; and declaring an emergency.

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

NEW SECTION. **Sec.**  (1) The legislature finds that Washington health care workers have suffered direct effects from the COVID-19 pandemic. Due to the unprecedented stress of providing health care during the COVID-19 pandemic, many health care facilities are experiencing acute staffing shortages among certain health care workforces. The legislature finds surges in infections have strained hospital capacity necessitating gubernatorial action to delay nonurgent health services and deploying the national guard to assist emergency departments.

(2) Therefore, the legislature intends to provide a financial incentive to certain health care employees working in emergency departments, intensive care units, or urgent care facilities to retain their service during the COVID-19 pandemic.

(3) The legislature intends to utilize federal funding from the coronavirus state fiscal recovery fund of the American rescue plan act of 2021 to provide this financial assistance to certain COVID-19 impacted health care workers to ensure a robust health care workforce to serve Washingtonians.

NEW SECTION. **Sec.**  (1)(a) A covered employee is eligible for a one-time hazard pay retention bonus if the employee worked 240 hours for a covered employer in the fourth calendar quarter of 2021.

(b) The hazard pay retention bonus must be paid in addition to all other compensation due including, but not limited to, salaries, wages, overtime, commissions, piece rates, paid rest and meal breaks, paid leave, and reimbursement for covered employer expenses.

(c) The hazard pay retention bonus must not be considered part of the covered employee's regular rate of pay or compensation, including serving as a basis for determining overtime eligibility.

(2)(a) By July 1, 2022, a covered employer must provide to the department, in a manner approved by the department, the following information for each covered employee it employs:

(i) Legal full name;

(ii) Total hours worked during the fourth calendar quarter of 2021;

(iii) Mailing address; and

(iv) Taxpayer identification number.

(b) A covered employer must notify all employees it employs whether the covered employer considers the employee to be a covered employee. In addition, a covered employer must notify all covered employees that their information was provided to the department for the purpose of receiving a hazard pay retention bonus from the state.

(3) It is unlawful for a covered employer to discharge, lay off, or reduce any compensation or hours worked by a covered employee to prevent, in whole or in part, the covered employee from receiving a hazard pay retention bonus.

(4) To determine the amount of the hazard pay retention bonus, the department must divide the sum available for expenditure in the health care employee hazard pay account created in section 3 of this act, minus the sum of the department's administrative costs plus $100,000, by the total number of unique, eligible covered employees. In no event may the hazard pay retention bonus equate to more than $13 per hour for the covered employee.

(5) As soon as practicable, but no later than October 14, 2022, the department must issue a hazard pay retention bonus in the amount determined under subsection (4) of this section to a covered employee eligible under subsection (1) of this section. Each eligible covered employee may only receive one hazard pay retention bonus, regardless of the total number of hours worked or the number of employers for whom they worked.

(6) A covered employee denied eligibility under subsection (1) of this section may appeal to the department by providing an affidavit and supporting documentation demonstrating their eligibility under subsection (1) of this section. The department must review submitted documentation and follow up with the covered employee and covered employer. If the department determines the covered employee is eligible, it must issue a hazard pay retention bonus to the covered employee in the amount determined under subsection (4) of this section.

(7) The department may:

(a) Enforce violations of this act consistent with RCW 49.48.040;

(b) Adopt additional eligibility criteria if such criteria are necessary to comply with federal funding requirements; and

(c) Enter into data sharing agreements with other state agencies for the purpose of verifying hazard pay retention bonus eligibility.

(8) The department must keep information submitted under subsection (2)(a) of this section confidential.

(9) Hazard pay retention bonuses under this section are only available until moneys contained in the health care employee hazard pay account are exhausted.

(10) Unless additional eligibility criteria are adopted under subsection (7)(b) of this section, the department may presume, without additional review, a covered employee is eligible under subsection (1) of this section if a covered employer indicates the covered employee worked at least 240 hours in the fourth calendar quarter of 2021.

(11) For the purposes of this section:

(a) "Calendar quarter" means the period of three consecutive calendar months ending on March 31st, June 30th, September 30th, or December 31st.

(b)(i) "Covered employee" means an individual who worked at a health care facility, as defined in RCW 9A.50.010, and was directly involved in the delivery of health services.

(ii) "Covered employee" does not include an individual who:

(A) Is a contract employee or volunteer;

(B) Has total annual earnings, including any premium or hazard pay received, greater than $100,305 for the covered employer; or

(C) Is exempt from the overtime pay provisions of the federal fair labor standards act, 29 U.S.C. Sec. 207.

(c) "Covered employer" means an employer that employs a covered employee.

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

(e) "Employ" or "employs" means to engage, suffer, or permit to work.

NEW SECTION. **Sec.**  The health care employee hazard pay 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 into the account. Expenditures from the account may be used only for providing hazard pay retention bonuses and up to seven percent for associated administrative costs of the department. Only the director of the department of labor and industries or the director's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. Any amounts remaining in the account upon expiration of this act must be transferred into the state general fund.

NEW SECTION. **Sec.**  The department of labor and industries may adopt rules to implement this act.

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

NEW SECTION. **Sec.**  This act expires June 30, 2023.

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