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## Appropriations Committee

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### ESSB 5478

**Brief Description:** Concerning unemployment insurance relief for certain employers.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Keiser, Mullet, Billig, Cleveland, Conway, Das, Hunt, King, Kuderer, Lias, Lovelett, Nguyen, Randall, Rolfes, Saldaña, Stanford, Van De Wege and Wilson, C.).

#### Brief Summary of Engrossed Substitute Bill

- Creates the Unemployment Insurance Relief Account (UI Relief Account).
- Requires the Employment Security Department (ESD) to determine forgiven benefits for two categories of employers which will be reimbursed by the UI Relief Account instead of charged to the employers' experience rating accounts.
- Requires the ESD to transfer from the UI Relief Account to the Unemployment Compensation Account an amount equal to the total forgiven benefits.

**Hearing Date:**

**Staff:** Jordan Clarke (786-7123).

**Background:**

#### Unemployment Insurance Benefits.

An unemployed individual (claimant) is eligible to receive unemployment insurance benefits (UI benefits) if the claimant: (1) worked at least 680 hours in the base year; (2) was separated from employment through no fault of the claimant's, or quit work for good cause; and (3) is able to work, is available to work, and is actively searching for suitable work. The Employment

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

Security Department (ESD) administers Washington State's unemployment insurance program.

#### Charging Unemployment Insurance Benefits Paid.

Unemployment insurance benefits are charged to employers on a pro rata basis according to the amount of wages paid to the claimant by the employer in the claimant's base year compared to the wages paid by all employers. Some UI benefits, such as those paid for certain good cause quits, are charged only to the separating employer, or are not charged to any employer. Other UI benefits may be noncharged if the employer requests relief from charging.

#### Employer Taxes.

Most employers pay contributions to finance unemployment benefits. A contribution-paying employer's tax rate is experience-rated so the rate is determined, in part, by the benefits paid to its employees. An employer's benefit ratio is computed by dividing the total amount of benefits charged to the account of the employer by the taxable payrolls over a four-year period. Based on this benefit ratio, the employer is assigned a rate class from 1 to 40. The rate class determines the experience rate for the employer, which may range from zero to 5.4 percent.

In addition to the experience-rated tax, employers may pay a social tax and a solvency surcharge. The social tax is calculated from a flat social cost factor that is then graduated for each employer based on their experience rate class. The flat social cost factor is generally calculated by the difference between total UI benefits paid and taxes paid, divided by the total payroll. Except for rate years 2021 through 2025, the maximum flat social cost factor is 1.22 percent. A solvency surcharge applies if there are fewer than seven months of UI benefits in the Unemployment Insurance Trust Fund.

#### Previously Enacted Legislation.

Engrossed Substitute Senate Bill 5061 (ESSB 5061), enacted during the 2021 session, provided certain UI benefits and relief to claimants and employers. Benefits were not charged to the experience rating account, including the one-week waiting period waiver under the Coronavirus Aid, Relief, and Economic Security (CARES) Act and UI benefits paid for all weeks starting with the week ending March 28, 2020, through May 30, 2020. An employer may also request that benefits paid not be charged to the employer's experience rating if the benefits paid are a result of closure or severe curtailment of operations at the employer's facility and the closure resulted from the presence of any dangerous, contagious, or infectious disease that is the subject of a public health emergency at the facility. ESSB 5061 also reduced the maximum flat social tax and suspended the solvency tax for five years.

Engrossed House Bill 2965, enacted in 2020, provided \$25 million to the state COVID-19 Unemployment Account for the ESD to forgive certain unemployment insurance benefits for eligible employers who applied for relief. The funds were spread proportionally across the total amount of benefits requested to be forgiven by employers. The \$25 million was sufficient to provide 23.75 percent of approved relief.

#### North American Industry Classification System Code.

The North American Industry Classification System (NAICS) was developed in cooperation with the United States, Canada, and Mexico. The NAICS uses a production-oriented conceptual framework to group establishments into industries based on the activity in which they are primarily engaged. Establishments using similar raw material inputs, similar capital equipment, and similar labor are classified in the same industry. The NAICS was introduced in 1997 and is periodically revised to reflect changes in the industrial structure of the United States and North American economy.

The following are certain three digit NAICS codes and industry descriptions:

323	Printing and Related Support Activities
448	Clothing and Clothing Accessories Stores
451	Sporting Goods, Hobby, Book, and Music Stores
453	Miscellaneous Store Retailers
481	Air Transportation
485	Transit and Ground Passenger Transportation
487	Scenic and Sightseeing Transportation
512	Motion Picture and Sound Recording Industries
561	Administrative and Support Services
711	Performing Arts, Spectator Sports, and Related Industries
713	Amusement, Gambling, and Recreation Industries
721	Accommodation
722	Food Services and Drinking Places
812	Personal and Laundry Services
814	Private Households

**Summary of Bill:**

Unemployment Insurance Relief Account.

The Unemployment Insurance Relief Account (UI Relief Account) is created in the custody of the State Treasurer. Revenues to the UI Relief Account consist of appropriations and transfers by the Legislature and all other funding directed for deposit into the UI Relief Account. Only the Commissioner of the ESD (Commissioner) or the Commissioner's designee may authorize expenditures from the UI Relief Account. Expenditures from the UI Relief Account may be used only for reimbursing the Unemployment Compensation Account for forgiven benefits for certain COVID-19-impacted businesses. By July 1, 2022, the Commissioner must certify to the State Treasurer the amount of any unobligated moneys in the UI Relief Account that were appropriated by the Legislature from the State General Fund during the 2021-23 fiscal biennium. The State Treasurer must transfer the unobligated moneys back to the State General Fund.

Forgiven Benefits Noncharged and Paid from the UI Relief Account.

The ESD must determine the forgiven benefits for approved category 1 or 2 employers to be reimbursed by the UI Relief Account instead of being charged to the employer's experience rating account. The ESD must transfer an amount equal to the forgiven benefits from the UI Relief Account to the Unemployment Compensation Account.

#### Category 1 Employers' Forgiven Benefits.

The ESD must determine the forgiven benefits for approved category 1 employers by November 1, 2021. An approved category 1 employer means a contribution-paying employer, excluding any ineligible employer, who:

- has an experience rating that has increased by two or more rate classes from rate year 2021 to rate year 2022; and
- belongs to a NAICS code for rate year 2021 that is within 323, 448, 451, 453, 481, 485, 487, 512, 561, 711, 713, 721, 722, 812, and 814; or
- is a grocery store with 25 or fewer employees, located near a closed international border, and has an experience rating that has increased by two or more rate classes from rate year 2021 to rate year 2022.

Forgiven benefits for category 1 employers are the approved benefits for an individual employer multiplied by the forgiveness ratio, which is computed by dividing 50 percent of the total amount of money in the UI Relief Account by the total approved benefits. Approved benefits are the benefits paid to employees of an approved category 1 employer during the fiscal year ending June 30, 2021, not to exceed an amount that would reduce the employer's rate class increase to no more than a two rate class increase. The forgiveness ratio cannot be more than one.

#### Category 2 Employers' Forgiven Benefits.

The ESD must determine the forgiven benefits for approved category 2 employers by November 1, 2021. An approved category 2 employer means a contribution-paying employer, excluding any ineligible employer:

- whose experience rating has increased by six or more rate classes from rate year 2021 to rate year 2022;
- with fewer than 40,000 employees in the state as reported on the employer's fourth quarter report to the ESD for 2019; and
- who does not meet the definition of an approved category 1 employer.

Forgiven benefits for category 2 employers are the approved benefits for an individual employer multiplied by the forgiveness ratio, which is computed by dividing 50 percent of the total amount of money in the UI Relief Account by the total approved benefits. Approved benefits are the benefits paid to employees of an approved category 2 employer during the fiscal year ending June 30, 2021, not to exceed an amount that would reduce the employer's rate class increase to no more than a four rate class increase. The forgiveness ratio cannot be more than one.

#### Ineligible Employers.

Any employer that has not paid all contributions, penalties, and interest due by September 30, 2021, or has not entered into an ESD-approved deferred payment contract by September 30,

2021, is not eligible to have their benefits forgiven and paid from the UI Relief Account.

Miscellaneous.

Approved benefits do not include benefits not charged to the employer's experience rating. The ESD must adopt such rules as are necessary to carry out the forgiven benefits unemployment insurance relief. This relief expires July 30, 2022. Legislative intent is provided.

**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on April 15, 2021.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.