

HOUSE BILL REPORT

HB 1095

As Reported by House Committee On:
Labor & Workplace Standards

Title: An act relating to creating a wage replacement program for certain Washington workers excluded from unemployment insurance.

Brief Description: Creating a wage replacement program for certain Washington workers excluded from unemployment insurance.

Sponsors: Representatives Walen, Ortiz-Self, Berry, Reed, Ramel, Pollet, Doglio, Macri, Simmons, Reeves, Wylie, Alvarado, Santos and Ormsby.

Brief History:

Committee Activity:

Labor & Workplace Standards: 1/13/23, 2/14/23 [DPS].

Brief Summary of Substitute Bill

- Establishes a state wage replacement program for certain qualified unemployed workers who are ineligible for benefits through the unemployment insurance system as a result of not being authorized to work in the United States.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Berry, Chair; Fosse, Vice Chair; Bronoske, Doglio, Ormsby and Ortiz-Self.

Minority Report: Do not pass. Signed by 3 members: Representatives Robertson, Ranking Minority Member; Schmidt, Assistant Ranking Minority Member; Connors.

Staff: Kelly Leonard (786-7147).

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.

Background:

Unemployment Insurance System.

The unemployment insurance (UI) system, administered by the Employment Security Department (ESD), is designed to provide partial wage replacement for workers who are unemployed. Its primary purpose is to alleviate the hardships that result from the loss of wage income during unemployment.

Eligibility. A claimant is eligible to receive UI benefits if the claimant: (1) worked at least 680 hours in the base year; (2) was separated from employment through no fault of his or her own or quit work for good cause; and (3) is available to work and is actively searching for work. In addition, UI benefits may not be paid unless the claimant 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 certain conditions. Federal regulations require a claimant to declare under penalty of perjury whether the claimant is a citizen or national of the United States. Otherwise, the claimant must present appropriate registration documentation to verify that he or she is authorized to work in the United States, which is then confirmed by the ESD.

Benefits. Regular UI benefits are based on the claimant's earnings in his or her base year, adjusted based on a statutory formula. The weekly benefit amount varies from claimant-to-claimant, but can be no greater than \$999.

Funding for Benefits. Funding for the UI system and UI benefits are sourced from state and federal taxes. At the state level, most employers pay contributions, referred to as payroll taxes, to finance UI benefits. An employer's tax rate is experience-rated so that the rate is determined, in part, by the UI benefits paid to its employees. In addition, employers pay a social cost factor rate, which is graduated based on their experience rate classes. These state payroll taxes are deposited into a trust fund, which can only be used to pay UI benefits. At the federal level, employers pay a federal unemployment tax, which is then passed down to states for the administration of UI systems.

Federal Restrictions. Federal law places certain restrictions on the state UI system. To enforce these restrictions, federal funding provided to the state for the administration of the UI system is conditioned on compliance with federal law, which includes verifying the immigration status of claimants. Individual employers also receive a credit on their federal unemployment taxes so long as the state complies with applicable federal law.

Public Records Act.

The Public Records Act (PRA) requires state and local agencies to make written records available to the public for inspection and copying upon request, unless a specific statutory exemption applies. The stated policy of the PRA favors disclosure and requires narrow application of the statutory exemptions.

Report on Unemployment Insurance Benefits for Undocumented Workers.

In the 2021 Operating Budget, the Legislature directed the ESD to study the feasibility of replicating a UI program for and expanding other social net programs to individuals regardless of their citizenship status. The ESD completed the study and submitted a report to the Legislature in December of 2021.

Summary of Substitute Bill:

Wage Replacement Program.

The Employment Security Department (ESD) is required to administer a weekly Wage Replacement Program (Program) similar to the UI system for workers who are not eligible for UI benefits as a result of not being authorized to work in the United States.

General Eligibility Requirements. Beginning January 1, 2026, a claimant is eligible to receive benefits under the Program with respect to any week of unemployment in their benefit year if the ESD determines the following steps are satisfied in sequential order:

1. the claimant files an application for initial determination of benefits through the UI system;
2. the ESD denies the claimant's application for initial determination of UI benefits based on the claimant not being authorized to work in the United States at the time the work was performed or during the week for which the claimant is applying for UI benefits; and
3. after a denial, the ESD invites the claimant to apply for benefits under the Program.

The claimant must then file an application for benefits under the Program, which includes providing information or documentation verifying that the claimant:

- is a state resident and has sufficient photographic identification confirming his or her identity;
- worked 680 hours in employment in the base year or earned wages during the base year equal to 680 times the minimum wage in effect during the first quarter of the base year;
- is unemployed through no fault of his or her own; and
- has been unemployed for a waiting period of one week.

Proving residency. To be considered a state resident, the claimant must have taken actions indicating that he or she intends to live in the state on more than a temporary or transient basis while receiving benefits. Unless there is information indicating otherwise, the ESD must presume that a claimant is a state resident if the claimant:

- maintains a residence in Washington for personal use with a utility bill showing the claimant's full name and Washington address;
- lives in a motor home or vessel that is not permanently attached to any real property if the claimant previously lived in this state and does not have a permanent residence in any other state;

- is attending school in this state and paying tuition as a Washington resident, is a custodial parent with a child attending a public school in this state, or has correspondence from a school in this state showing the claimant's full name and Washington address;
- has a state identification card showing the claimant's full name and Washington address;
- has a current library card issued in this state;
- has correspondence from a community or faith-based organization in this state showing the claimant's full name and Washington address; or
- has a medical document showing the claimant's full name and Washington address.

The ESD may adopt additional methods by which claimants may prove they are state residents.

Verifying Wages. In circumstances where a claimant's wages cannot be verified by employers' reports to the ESD, the ESD may request information or documentation from the claimant's former employers. Further, the ESD must request information and documentation from the claimant. If the employer fails to respond, then the ESD must presume that the claimant is eligible, unless the claimant also fails to provide sufficient information and documentation or the ESD receives independent, verified information that the claimant is at fault for the employment separation.

The ESD may contract with a third-party, community-based organization to assist claimants in gathering information or documentation. The ESD is responsible for making the final decision on whether a claimant is eligible for benefits.

Qualifying for Benefits. An eligible claimant may qualify for weekly benefits by self-attesting that he or she is actively seeking work in any trade, occupation, profession, or business for which the claimant is reasonably fitted, and he or she reports to the ESD any wages or remuneration that he or she receives. A claimant is disqualified for benefits under certain circumstances, including, for example, if the claimant left their work voluntarily without good cause or was discharged for misconduct, or if the claimant knowingly made a false statement or representation to obtain benefits.

An eligible and qualified claimant must receive a weekly benefit amount calculated based on the state formula for UI benefits. The maximum benefits allowable under the Program are the same as those for UI benefits.

Review and Appeals. A determination of the amount of benefits by the ESD does not serve as a basis for appeal; instead, the claimant may request reconsideration or redetermination within one year. If the ESD denies a claimant benefits, the ESD must promptly issue written notice with the reasons. The ESD is required to establish a procedure for hearings and appeals, as well as receiving and reviewing reports of fraud, comparable to those for the UI system. The same penalties for fraud in the UI system apply to the Program.

Funding for Benefits. Benefits are due and payable to a claimant only to the extent that moneys are available in the Washington Wage Replacement Account (Account), which is established in the bill. Revenues to the Account must 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 benefits, contracting with community-based organizations to notify individuals who may be eligible for benefits, and administrative expenses of the ESD.

Restrictions on Collecting and Maintaining Certain Information.

In administering the Program, the ESD is prohibited from taking specified actions, including:

- soliciting from the claimant, orally or in written form, a claimant's nationality, race, ethnicity, place of birth, citizenship, or immigration status;
- indicating in its records which documents the claimant used to prove their age or identity;
- compelling a claimant 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;
- contacting a claimant's current, former, or prospective employers including, but not limited to, for the purposes of verifying employment status, except for the purposes of verifying wages; and
- attempting to ascertain a claimant's immigration or citizenship status, except to determine whether a claimant is excluded from UI benefits and potentially eligible for benefits under the Program.

Public Records, Destruction of Records, and Confidentiality.

Except when otherwise necessary to comply with other legal requirements, the ESD must destroy all records containing information that were provided by a claimant or collected by the ESD to verify eligibility for the Program within 15 days of a claimant's written statement that they are no longer using the Program. Any information or records concerning a claimant or employing unit obtained by the ESD for the purposes of administering the Program must be private and confidential, unless the release is:

- to the person who is the subject of such records or an authorized representative;
- 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 judicial subpoena for specific records issued pursuant to the criminal procedure law or the civil practice law and rules; or
- disclosed in a manner that could not be used to determine the identities of the claimants or employers to whom the data pertains, alone or in combination with other data.

All information and records maintained by the ESD for the Program are exempt from disclosure under the PRA, except when released under one of the three circumstances above. If a lawful court order, judicial warrant, or judicial subpoena is made for individual

records, only those records specifically sought by such court order, warrant, or subpoena may be disclosed. Information collected under the Program may not be used for purposes of investigating, locating, or apprehending claimants for federal immigration-related violations.

Additional requirements for maintaining confidentiality of records are established. If information provided to the ESD by another governmental agency is held private and confidential by state or federal laws, the ESD may not release it. Further, the ESD must comply with certain agreements where information is provided on the condition of privacy and confidentiality. The ESD must establish additional prohibitions and safeguards against unauthorized access to, and use of, any information collected under the Program by private or public entities.

Advisory Committee.

The ESD must appoint an advisory committee, composed of 11 specified members, for the purposes of reviewing issues and topics of interest related to the administration of the Program. The advisory committee must provide comment on related rule making, policies, implementation, utilization of benefits, and study relevant issues.

Substitute Bill Compared to Original Bill:

The substitute bill:

- adds language providing that a person is eligible for benefits under the Program if the ESD determines the person meets the qualification requirements, in addition to the other criteria specified in the underlying bill;
- allows the ESD to consider a claimant ineligible for benefits if it receives independent, verified information that the claimant is at fault for the employment separation, regardless of whether an employer responds to requests for information;
- specifies that benefits are payable to an eligible and qualified claimant during their benefit year in a maximum amount equal to the lesser of 26 times the weekly benefit amount, as determined by RCW 50.20.120, or one-third of the claimant's base year wages (thereby clarifying that the maximum benefit amount aligns with the maximum benefit for unemployment insurance);
- removes language prohibiting the ESD from asking the claimant if they are eligible or ineligible for a social security number; and
- establishes an exception to the requirement for the ESD to destroy records upon the request of a claimant for when the ESD determines that not destroying the records is necessary to comply with other legal requirements.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 14, 2023.

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

Staff Summary of Public Testimony:

(In support) Employers and employees share a common problem: the broken federal immigration system. There are thousands of undocumented workers in the state who help to build and support all sectors of the economy. Many of those workers have been state residents for decades. They are hard workers and they pay the same taxes as everyone else. Yet they are deprived of the critical safety net of many federal and state programs, putting them at greater risk of economic insecurity. During the pandemic, undocumented workers and their families were left without stimulus money or UI benefits. They were left vulnerable, despite being critical to the state economy and providing important services to communities. The bill fills an important gap by establishing a state-funded UI program for undocumented workers. Colorado passed the same measure with bipartisan support, as well as the support of business and labor. Washington should do the same. This bill recognizes the dignity of all workers and addresses deep injustices. All workers deserve respect, regardless of their immigration status. This is not about politics. Stakeholders are working toward addressing the concerns of the business community.

(Opposed) Many businesses cannot do their work without undocumented workers. They are critical to our economy, and they should be treated equally. It is unfair that they cannot access UI benefits. The UI system is an important social safety net for all persons. Businesses want to see these problems addressed, and many have been advocating for immigration reform at the federal level for many years. However, there are significant workability and legal issues with the bill. Federal restrictions on employers cannot be ignored. First, the bill creates circumstances where an employer will be made aware of the immigration status of these workers, either through actual or constructive notice. Federal law then prohibits that employer from hiring the person again. This is significant for seasonal workers. Second, UI benefits are conditional on a person being available for, and actively seeking, work. How can a person attest to searching for work when he or she cannot legally work? Both employers and employees will need to violate federal law in order to comply with the bill, and this creates untenable legal risks for all parties. Third, the bill allows for a third-party entity to collect information on behalf of claimants. There are potential liability issues to employers who share sensitive information with those third parties. Fourth, there is no funding provided for the Program. There are going to be substantial costs for these benefits, and the state cannot rely on the UI system to fund those costs.

(Other) Businesses and workers alike share an understanding of the problems with the current system. There is a critical need for immigration reform. While the proponents of the bill have good intentions, the bill is going to create significant unintended consequences and problems for employers and workers. Employers will end up with constructive knowledge regarding immigration status, and they will be prohibited from employing those

persons in the future. These problems are compounded by the use of third-party entities. It is unclear how this is going to work effectively. The Legislature should exercise caution before going in this direction.

Persons Testifying: (In support) Representative Amy Walen, prime sponsor; Yahaira Padilla, Luis Amado, and Vicky Barron-Zuniga, Washington Immigrant Solidarity Network; Giovanni Severino, Progreso: Latino Progress; Laura Gonzalez, Lilian Garcia, and Gloria Medina, Fairwork Center; Nelly Prieto, Service Employees International Union 775; Heather Villanueva, Hand in Hand; Audel Ramirez and Juven Ruiz-Garcia, OneAmerica; and Antonio Ginatta, Columbia Legal Services.

(Opposed) Julia Gorton, Washington Hospitality Association; Tom Kwieciak, Building Industry Association of Washington; Bob Battles, Association of Washington Business; and Albert Zepeda, Kyle Mathison Orchards, Washington Farm Bureau.

(Other) Jon DeVaney, Washington State Tree Fruit Association.

Persons Signed In To Testify But Not Testifying: None.