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By Representatives Ortiz-Self, Ryu, Berry, Ramel, Reed, Simmons, Ormsby, Fey, Kloba, Macri, Street, Fosse, Bergquist, Reeves, Wylie, and Pollet; by request of Employment Security Department

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1 AN ACT Relating to relieving individuals from paying interest on
2 certain unemployment insurance overpayment assessments; amending RCW
3 50.20.190; and creating a new section.

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

5 **Sec. 1.** RCW 50.20.190 and 2020 c 86 s 2 are each amended to read
6 as follows:

7 (1) An individual who is paid any amount as benefits under this
8 title to which (~~he or she is~~) they are not entitled shall, unless
9 otherwise relieved pursuant to this section, be liable for repayment
10 of the amount overpaid. The department shall issue an overpayment
11 assessment setting forth the reasons for and the amount of the
12 overpayment. The amount assessed, to the extent not collected, may be
13 deducted from any future benefits payable to the individual:
14 PROVIDED, That in the absence of a back pay award, a settlement
15 affecting the allowance of benefits, fraud, misrepresentation, or
16 willful nondisclosure, every determination of liability shall be
17 mailed or personally served not later than two years after the close
18 of or final payment made on the individual's applicable benefit year
19 for which the purported overpayment was made, whichever is later,
20 unless the merits of the claim are subjected to administrative or
21 judicial review in which event the period for serving the

1 determination of liability shall be extended to allow service of the
2 determination of liability during the six-month period following the
3 final decision affecting the claim.

4 (2) The commissioner may waive an overpayment if the commissioner
5 finds that the overpayment was not the result of fraud,
6 misrepresentation, willful nondisclosure, or fault attributable to
7 the individual and that the recovery thereof would be against equity
8 and good conscience. When determining whether the recovery would be
9 against equity and good conscience, the department must consider
10 whether the employer or employer's agent failed to respond timely and
11 adequately to a written request of the department for information
12 relating to the claim or claims without establishing good cause for
13 the failure pursuant to RCW 50.29.021(5). An overpayment waived under
14 this subsection shall be charged against the individual's applicable
15 entitlement for the eligibility period containing the weeks to which
16 the overpayment was attributed as though such benefits had been
17 properly paid.

18 (3) Any assessment herein provided shall constitute a
19 determination of liability from which an appeal may be had in the
20 same manner and to the same extent as provided for appeals relating
21 to determinations in respect to claims for benefits: PROVIDED, That
22 an appeal from any determination covering overpayment only shall be
23 deemed to be an appeal from the determination which was the basis for
24 establishing the overpayment unless the merits involved in the issue
25 set forth in such determination have already been heard and passed
26 upon by the appeal tribunal. If no such appeal is taken to the appeal
27 tribunal by the individual within thirty days of the delivery of the
28 notice of determination of liability, or within thirty days of the
29 mailing of the notice of determination, whichever is the earlier, the
30 determination of liability shall be deemed conclusive and final.
31 Whenever any such notice of determination of liability becomes
32 conclusive and final, the commissioner, upon giving at least twenty
33 days' notice, using a method by which the mailing can be tracked or
34 the delivery can be confirmed, may file with the superior court clerk
35 of any county within the state a warrant in the amount of the notice
36 of determination of liability plus a filing fee under RCW
37 36.18.012(10). The clerk of the county where the warrant is filed
38 shall immediately designate a superior court cause number for the
39 warrant, and the clerk shall cause to be entered in the judgment
40 docket under the superior court cause number assigned to the warrant,

1 the name of the person(s) mentioned in the warrant, the amount of the
2 notice of determination of liability, and the date when the warrant
3 was filed. The amount of the warrant as docketed shall become a lien
4 upon the title to, and any interest in, all real and personal
5 property of the person(s) against whom the warrant is issued, the
6 same as a judgment in a civil case duly docketed in the office of
7 such clerk. A warrant so docketed shall be sufficient to support the
8 issuance of writs of execution and writs of garnishment in favor of
9 the state in the manner provided by law for a civil judgment. A copy
10 of the warrant shall be mailed within five days of its filing with
11 the clerk to the person(s) mentioned in the warrant using a method by
12 which the mailing can be tracked or the delivery can be confirmed.

13 (4) On request of any agency which administers an employment
14 security law of another state, the United States, or a foreign
15 government and which has found in accordance with the provisions of
16 such law that a claimant is liable to repay benefits received under
17 such law, the commissioner may collect the amount of such benefits
18 from the claimant to be refunded to the agency. In any case in which
19 under this section a claimant is liable to repay any amount to the
20 agency of another state, the United States, or a foreign government,
21 such amounts may be collected without interest by civil action in the
22 name of the commissioner acting as agent for such agency if the other
23 state, the United States, or the foreign government extends such
24 collection rights to the employment security department of the state
25 of Washington, and provided that the court costs be paid by the
26 governmental agency benefiting from such collection.

27 (5) Any employer who is a party to a back pay award or settlement
28 due to loss of wages shall, within thirty days of the award or
29 settlement, report to the department the amount of the award or
30 settlement, the name and social security number of the recipient of
31 the award or settlement, and the period for which it is awarded. When
32 an individual has been awarded or receives back pay, for benefit
33 purposes the amount of the back pay shall constitute wages paid in
34 the period for which it was awarded. For contribution purposes, the
35 back pay award or settlement shall constitute wages paid in the
36 period in which it was actually paid. The following requirements
37 shall also apply:

38 (a) The employer shall reduce the amount of the back pay award or
39 settlement by an amount determined by the department based upon the
40 amount of unemployment benefits received by the recipient of the

1 award or settlement during the period for which the back pay award or
2 settlement was awarded;

3 (b) The employer shall pay to the unemployment compensation fund,
4 in a manner specified by the commissioner, an amount equal to the
5 amount of such reduction;

6 (c) The employer shall also pay to the department any taxes due
7 for unemployment insurance purposes on the entire amount of the back
8 pay award or settlement notwithstanding any reduction made pursuant
9 to (a) of this subsection;

10 (d) If the employer fails to reduce the amount of the back pay
11 award or settlement as required in (a) of this subsection, the
12 department shall issue an overpayment assessment against the
13 recipient of the award or settlement in the amount that the back pay
14 award or settlement should have been reduced; and

15 (e) If the employer fails to pay to the department an amount
16 equal to the reduction as required in (b) of this subsection, the
17 department shall issue an assessment of liability against the
18 employer which shall be collected pursuant to the procedures for
19 collection of assessments provided herein and in RCW 50.24.110.

20 (6) (a) When an individual fails to repay an overpayment
21 assessment that is due and fails to arrange for satisfactory
22 repayment terms, the commissioner shall impose an interest penalty of
23 one percent per month of the outstanding balance. Interest shall
24 accrue immediately on overpayments assessed pursuant to RCW 50.20.070
25 and shall be imposed when the assessment becomes final. For any other
26 overpayment, interest shall accrue when the individual has missed two
27 or more of the individual's monthly payments either partially or in
28 full.

29 (b) The department shall not charge interest on overpayment
30 assessments for benefits paid for the week beginning February 2,
31 2020, through the week ending September 4, 2021, until January 1,
32 2025, unless the overpayment assessment is a result of a
33 determination by the department that the individual was disqualified
34 from receiving those benefits under RCW 50.20.070. If an individual
35 had previously paid interest to the department on overpayment
36 assessments for benefits paid for the week beginning February 2,
37 2020, through the week ending September 4, 2021, the department shall
38 choose, in its sole discretion, one of the following options:

39 (i) Apply those payments toward any principal balance, penalties,
40 or interest owed by the individual; or

1 (ii) Refund those payments to the individual.

2 (7) The department shall: (a) Conduct social security number
3 cross-match audits or engage in other more effective activities that
4 ensure that individuals are entitled to all amounts of benefits that
5 they are paid; and (b) engage in other detection and recovery of
6 overpayment and collection activities.

7 NEW SECTION. **Sec. 2.** This act applies retroactively to February
8 2, 2020.

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