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SENATE BILL 5702

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State of Washington

53rd Legislature

1993 Regular Session

By Senators Prentice, Wojahn and Franklin; by request of Employment Security Department

Read first time 02/10/93. Referred to Committee on Labor & Commerce.

1 AN ACT Relating to unemployment insurance; amending RCW 50.13.040,  
2 50.16.010, 50.20.190, 50.29.020, and 50.29.025; adding a new section to  
3 chapter 50.20 RCW; creating new sections; providing effective dates;  
4 and declaring an emergency.

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

6 **Sec. 1.** RCW 50.13.040 and 1977 ex.s. c 153 s 4 are each amended to  
7 read as follows:

8 (1) An individual shall have access to all records and information  
9 concerning that individual held by the department of employment  
10 security, unless the information is exempt from disclosure under RCW  
11 42.17.310.

12 (2) An employing unit shall have access to its own records and to  
13 any records and information relating to a benefit claim by an  
14 individual if the employing unit is either the individual's last  
15 employer or is the individual's base year employer.

16 (3) An employing unit shall have access to any records and  
17 information relating to any decision to allow or deny benefits if:

18 (a) The decision is based on employment or an offer of employment  
19 with the employing unit; or

1       (b) If the decision is based on material information provided by  
2 the employing unit.

3       (4) An employing unit shall have access to general summaries of  
4 benefit claims by individuals whose benefits are chargeable to the  
5 employing unit's experience rating or reimbursement account.

6       **Sec. 2.** RCW 50.16.010 and 1991 sp.s. c 13 s 59 are each amended to  
7 read as follows:

8       There shall be maintained as special funds, separate and apart from  
9 all public moneys or funds of this state an unemployment compensation  
10 fund, an administrative contingency fund, and a federal interest  
11 payment fund, which shall be administered by the commissioner  
12 exclusively for the purposes of this title, and to which RCW 43.01.050  
13 shall not be applicable. The unemployment compensation fund shall  
14 consist of

15       (1) all contributions and payments in lieu of contributions  
16 collected pursuant to the provisions of this title,

17       (2) any property or securities acquired through the use of moneys  
18 belonging to the fund,

19       (3) all earnings of such property or securities,

20       (4) any moneys received from the federal unemployment account in  
21 the unemployment trust fund in accordance with Title XII of the social  
22 security act, as amended,

23       (5) all money recovered on official bonds for losses sustained by  
24 the fund,

25       (6) all money credited to this state's account in the unemployment  
26 trust fund pursuant to section 903 of the social security act, as  
27 amended,

28       (7) all money received from the federal government as reimbursement  
29 pursuant to section 204 of the federal-state extended compensation act  
30 of 1970 (84 Stat. 708-712; 26 U.S.C. Sec. 3304), and

31       (8) all moneys received for the fund from any other source.

32       All moneys in the unemployment compensation fund shall be  
33 commingled and undivided.

34       The administrative contingency fund shall consist of all interest  
35 on delinquent contributions collected pursuant to this title, all fines  
36 and penalties collected pursuant to the provisions of this title, all  
37 sums recovered on official bonds for losses sustained by the fund, and  
38 revenue received under RCW 50.24.014: PROVIDED, That all fees, fines,

1 forfeitures and penalties collected or assessed by a district court  
2 because of the violation of a state law shall be remitted as provided  
3 in chapter 3.62 RCW as now exists or is later amended. Moneys  
4 available in the administrative contingency fund, other than money in  
5 the special account created under RCW 50.24.014, shall be expended upon  
6 the direction of the commissioner, with the approval of the governor,  
7 whenever it appears to him or her that such expenditure is necessary  
8 for:

9 (a) The proper administration of this title and no federal funds  
10 are available for the specific purpose to which such expenditure is to  
11 be made, provided, the moneys are not substituted for appropriations  
12 from federal funds which, in the absence of such moneys, would be made  
13 available.

14 (b) The proper administration of this title for which purpose  
15 appropriations from federal funds have been requested but not yet  
16 received, provided, the administrative contingency fund will be  
17 reimbursed upon receipt of the requested federal appropriation.

18 (c) The proper administration of this title for which compliance  
19 and audit issues have been identified that establish federal claims  
20 requiring the expenditure of state resources in resolution. Claims  
21 must be resolved in the following priority: First priority is to  
22 provide services to eligible participants within the state; second  
23 priority is to provide substitute services or program support; and last  
24 priority is the direct payment of funds to the federal government.

25 Money in the special account created under RCW 50.24.014 may only  
26 be expended, after appropriation, for the purposes specified in RCW  
27 ((74.09.035, 74.09.510, 74.09.520, and 74.09.700)) 50.62.010,  
28 50.62.020, 50.62.030, 50.04.070, 50.04.072, 50.16.010, 50.29.025,  
29 50.24.014, 50.44.053, and 50.22.010.

30 **Sec. 3.** RCW 50.20.190 and 1991 c 117 s 3 are each amended to read  
31 as follows:

32 (1) An individual who is paid any amount as benefits under this  
33 title to which he or she is not entitled shall, unless otherwise  
34 relieved pursuant to this section, be liable for repayment of the  
35 amount overpaid. The department shall issue an overpayment assessment  
36 setting forth the reasons for and the amount of the overpayment. The  
37 amount assessed, to the extent not collected, may be deducted from any  
38 future benefits payable to the individual: PROVIDED, That in the

1 absence of fraud, misrepresentation, or willful nondisclosure, every  
2 determination of liability shall be mailed or personally served not  
3 later than two years after the close of the individual's benefit year  
4 in which the purported overpayment was made unless the merits of the  
5 claim are subjected to administrative or judicial review in which event  
6 the period for serving the determination of liability shall be extended  
7 to allow service of the determination of liability during the six-month  
8 period following the final decision affecting the claim.

9 (2) The commissioner may waive an overpayment if the commissioner  
10 finds that said overpayment was not the result of fraud,  
11 misrepresentation, willful nondisclosure, or fault attributable to the  
12 individual and that the recovery thereof would be against equity and  
13 good conscience: PROVIDED, HOWEVER, That the overpayment so waived  
14 shall be charged against the individual's applicable entitlement for  
15 the eligibility period containing the weeks to which the overpayment  
16 was attributed as though such benefits had been properly paid.

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

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

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

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

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

1 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 for  
7 unemployment insurance purposes on the entire amount of the back pay  
8 award or settlement notwithstanding any reduction made pursuant to (a)  
9 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 recipient  
13 of the award or settlement in the amount that the back pay award or  
14 settlement should have been reduced; and

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

20 (6) When an individual fails to repay an overpayment assessment  
21 that is due and fails to arrange for satisfactory repayment terms, the  
22 commissioner shall impose an interest penalty of one percent per month  
23 ~~of the outstanding balance ((for each month that payments are not made~~  
24 ~~in a timely fashion))~~. Interest shall accrue immediately on  
25 overpayments assessed pursuant to RCW 50.20.070 and shall be imposed  
26 when the assessment becomes final. For any other overpayment, interest  
27 shall accrue when the individual has missed two or more of their  
28 monthly payments either partially or in full. The interest penalty  
29 shall be used to fund detection and recovery of overpayment and  
30 collection activities.

31 NEW SECTION. Sec. 4. A new section is added to chapter 50.20 RCW  
32 to read as follows:

33 All receipts from interest assessed against unemployment insurance  
34 claimants shall be deposited in the administrative contingency account  
35 and shall be used for the purpose of RCW 50.20.190(3).

1        NEW SECTION.    **Sec. 5.**    Sections 3 and 4 of this act apply to  
2 individuals with outstanding overpayment balances on and after July 1,  
3 1994.

4        **Sec. 6.**    RCW 50.29.020 and 1991 c 129 s 1 are each amended to read  
5 as follows:

6        (1) An experience rating account shall be established and  
7 maintained for each employer, except employers as described in RCW  
8 50.44.010 and 50.44.030 who have properly elected to make payments in  
9 lieu of contributions, taxable local government employers as described  
10 in RCW 50.44.035, and those employers who are required to make payments  
11 in lieu of contributions, based on existing records of the employment  
12 security department. Benefits paid to any eligible individuals shall  
13 be charged to the experience rating accounts of each of such  
14 individual's employers during the individual's base year in the same  
15 ratio that the wages paid by each employer to the individual during the  
16 base year bear to the wages paid by all employers to that individual  
17 during that base year, except as otherwise provided in this section.

18        (2) The legislature finds that certain benefit payments, in whole  
19 or in part, should not be charged to the experience rating accounts of  
20 employers except those employers described in RCW 50.44.010 and  
21 50.44.030 who have properly elected to make payments in lieu of  
22 contributions, taxable local government employers described in RCW  
23 50.44.035, and those employers who are required to make payments in  
24 lieu of contributions, as follows:

25        (a) Benefits paid to any individuals later determined to be  
26 ineligible shall not be charged to the experience rating account of any  
27 contribution paying employer.

28        (b) Benefits paid to an individual under the provisions of RCW  
29 50.12.050 shall not be charged to the account of any contribution  
30 paying employer if the wage credits earned in this state by the  
31 individual during his or her base year are less than the minimum amount  
32 necessary to qualify the individual for unemployment benefits.

33        (c) Benefits paid to an individual filing under the provisions of  
34 chapter 50.06 RCW shall not be charged to the experience rating account  
35 of any contribution paying employer.

36        (d) Benefits paid which represent the state's share of benefits  
37 payable under chapter 50.22 RCW shall not be charged to the experience  
38 rating account of any contribution paying employer.

1 (e) In the case of individuals who requalify for benefits under RCW  
2 50.20.050 or 50.20.060, benefits based on wage credits earned prior to  
3 the disqualifying separation shall not be charged to the experience  
4 rating account of the contribution paying employer from whom that  
5 separation took place.

6 (f)(i) Benefits paid to an individual as the result of a  
7 determination by the commissioner that no stoppage of work exists,  
8 pursuant to RCW 50.20.090, shall not be charged to the experience  
9 rating account of any contribution paying employer.

10 (ii) Benefits paid to an individual under RCW 50.20.090(1) for  
11 weeks of unemployment ending before February 20, 1987, shall not be  
12 charged to the experience rating account of any base year employer.

13 (g) In the case of individuals identified under RCW 50.20.015,  
14 benefits paid with respect to a calendar quarter, which exceed the  
15 total amount of wages earned in the state of Washington in the higher  
16 of two corresponding calendar quarters included within the individual's  
17 determination period, as defined in RCW 50.20.015, shall not be charged  
18 to the experience rating account of any contribution paying employer.

19 (h) Benefits paid to an individual who does not successfully  
20 complete an approved on-the-job training program under RCW 50.12.240  
21 may not be charged to the experience rating account of the  
22 contribution-paying employer who provided the approved on-the-job  
23 training.

24 (i) Beginning July 1, 1985, a contribution-paying base year  
25 employer, not otherwise eligible for relief of charges for benefits  
26 under this section, may receive such relief if the benefit charges  
27 result from payment to an individual who:

28 (i) ~~((The benefit charges result from payment to an individual~~  
29 ~~who)) Last left the employ of such employer voluntarily for reasons not~~  
30 ~~attributable to the employer(, or was discharged for misconduct~~  
31 ~~connected with his or her work; and))i~~

32 (ii) ~~((The employer requests relief of charges in writing within~~  
33 ~~thirty days following mailing to the last known address of the~~  
34 ~~notification of the initial determination of such a claim, stating the~~  
35 ~~date and reason for the last leaving; and~~

36 (iii) ~~Upon investigation of the separation, the commissioner rules~~  
37 ~~that the relief should be granted.~~

38 (i) ~~An employer who employed a claimant during the claimant's base~~  
39 ~~year, and who continues to employ the claimant, is eligible for relief~~



1 of benefit charges if relief is requested in writing within thirty days  
2 of notification by the department of the claimant's application for  
3 initial determination of eligibility. Relief of benefit charges shall  
4 cease when the employment relationship with the claimant ends. This  
5 subsection shall not apply to shared work employers under chapter 50.60  
6 RCW.

7 (j) Benefits paid to an individual who does not successfully  
8 complete an approved on the job training program under RCW 50.12.240  
9 shall not be charged to the experience rating account of the  
10 contribution paying employer who provided the approved on the job  
11 training.

12 (k) Benefits paid resulting from a closure or severe curtailment of  
13 operations at the employer's plant, building, work site, or facility  
14 due to damage caused by fire, flood, or other natural disaster shall  
15 not be charged to the experience rating account of the employer if:

16 (i)) Was discharged for misconduct connected with his or her work  
17 not a result of inability to meet the minimum job requirements;

18 (iii) Is unemployed as a result of closure or severe curtailment of  
19 operation at the employer's plant, building, work site, or other  
20 facility. This closure must be for reasons directly attributable to a  
21 catastrophic occurrence such as fire, flood, or other natural disaster;  
22 or

23 (iv) Continues to be employed on a regularly scheduled permanent  
24 part-time basis by a base year employer and who at some time during the  
25 base year was concurrently employed and subsequently separated from at  
26 least one other base year employer. Benefit charge relief ceases when  
27 the employment relationship between that employer and the claimant is  
28 terminated. This subsection does not apply to shared work employers  
29 under chapter 50.60 RCW.

30 (j) The employer ((petitions for)) requests relief of charges((+)  
31 and

32 (ii) The commissioner approves granting relief of charges)) in  
33 writing within thirty days following mailing to the last known address  
34 of the notification of the initial determination of such claim, stating  
35 the date and reason for the separation or the circumstances of  
36 continued employment, and, upon investigation of the request, the  
37 commissioner rules that relief should be granted.

1        NEW SECTION.    **Sec. 7.**    Sections 6 of this act applies to requests  
2 for relief of charges received after June 30, 1993.

3        **Sec. 8.**    RCW 50.29.025 and 1990 c 245 s 7 are each amended to read  
4 as follows:

5        The contribution rate for each employer shall be determined under  
6 this section.

7        (1) A fund balance ratio shall be determined by dividing the  
8 balance in the unemployment compensation fund as of the June 30th  
9 immediately preceding the rate year by the total remuneration paid by  
10 all employers subject to contributions during the second calendar year  
11 preceding the rate year and reported to the department by the following  
12 March 31st. The division shall be carried to the fourth decimal place  
13 with the remaining fraction, if any, disregarded. The fund balance  
14 ratio shall be expressed as a percentage.

15        (2) The interval of the fund balance ratio, expressed as a  
16 percentage, shall determine which tax schedule in subsection (5) of  
17 this section shall be in effect for assigning tax rates for the rate  
18 year. The intervals for determining the effective tax schedule shall  
19 be:

20	Interval of the	
21	Fund Balance Ratio	Effective
22	Expressed as a Percentage	Tax Schedule
23	3.40 and above	A
24	2.90 to 3.39	B
25	2.40 to 2.89	C
26	1.90 to 2.39	D
27	1.40 to 1.89	E
28	Less than 1.40	F

29        (3) An array shall be prepared, listing all qualified employers in  
30 ascending order of their benefit ratios. The array shall show for each  
31 qualified employer: (a) Identification number; (b) benefit ratio; (c)  
32 taxable payrolls for the four calendar quarters immediately preceding  
33 the computation date and reported to the department by the cut-off  
34 date; (d) a cumulative total of taxable payrolls consisting of the  
35 employer's taxable payroll plus the taxable payrolls of all other  
36 employers preceding him or her in the array; and (e) the percentage  
37 equivalent of the cumulative total of taxable payrolls.

1 (4) Each employer in the array shall be assigned to one of twenty  
 2 rate classes according to the percentage intervals of cumulative  
 3 taxable payrolls set forth in subsection (5) of this section:  
 4 PROVIDED, That if an employer's taxable payroll falls within two or  
 5 more rate classes, the employer and any other employer with the same  
 6 benefit ratio shall be assigned to the lowest rate class which includes  
 7 any portion of the employer's taxable payroll.

8 (5) The contribution rate for each employer in the array shall be  
 9 the rate specified in the following table for the rate class to which  
 10 he or she has been assigned, as determined under subsection (4) of this  
 11 section, within the tax schedule which is to be in effect during the  
 12 rate year:

Percent of Cumulative Taxable Payrolls			Schedule of Contribution Rates for Effective Tax Schedule						
From	To	Rate Class	A	B	C	D	E	F	
0.00	5.00	1	0.48	0.58	0.98	1.48	1.88	2.48	
5.01	10.00	2	0.48	0.78	1.18	1.68	2.08	2.68	
10.01	15.00	3	0.58	0.98	1.38	1.78	2.28	2.88	
15.01	20.00	4	0.78	1.18	1.58	1.98	2.48	3.08	
20.01	25.00	5	0.98	1.38	1.78	2.18	2.68	3.18	
25.01	30.00	6	1.18	1.58	1.98	2.38	2.78	3.28	
30.01	35.00	7	1.38	1.78	2.18	2.58	2.98	3.38	
35.01	40.00	8	1.58	1.98	2.38	2.78	3.18	3.58	
40.01	45.00	9	1.78	2.18	2.58	2.98	3.38	3.78	
45.01	50.00	10	1.98	2.38	2.78	3.18	3.58	3.98	
50.01	55.00	11	2.28	2.58	2.98	3.38	3.78	4.08	
55.01	60.00	12	2.48	2.78	3.18	3.58	3.98	4.28	
60.01	65.00	13	2.68	2.98	3.38	3.78	4.18	4.48	
65.01	70.00	14	2.88	3.18	3.58	3.98	4.38	4.68	
70.01	75.00	15	3.08	3.38	3.78	4.18	4.58	4.78	
75.01	80.00	16	3.28	3.58	3.98	4.38	4.68	4.88	
80.01	85.00	17	3.48	3.78	4.18	4.58	4.88	4.98	
85.01	90.00	18	3.88	4.18	4.58	4.88	4.98	5.18	
90.01	95.00	19	4.28	4.58	4.98	5.08	5.18	5.38	
95.01	100.00	20	5.40	5.40	5.40	5.40	5.40	5.40	

1 (6) The contribution rate for each employer not qualified to be in  
2 the array shall be as follows:

3 (a) Employers who do not meet the definition of "qualified  
4 employer" by reason of failure to pay contributions when due shall be  
5 assigned the contribution rate of five and (~~four-tenths~~) six-tenths  
6 percent, except employers who have an approved agency-deferred payment  
7 contract by September 30 of the previous rate year. If any employer  
8 with an approved agency-deferred payment contract fails to make any one  
9 of the succeeding deferred payments or fails to submit any succeeding  
10 tax report and payment in a timely manner, the employer's tax rate  
11 shall immediately revert to five and (~~four-tenths~~) six-tenths percent  
12 for the current rate year;

13 (b) The contribution rate for employers exempt as of December 31,  
14 1989, who are newly covered under the section 78, chapter 380, Laws of  
15 1989 amendment to RCW 50.04.150 and not yet qualified to be in the  
16 array shall be 2.5 percent for employers whose standard industrial code  
17 is "013", "016", "017", "018", "019", "021", or "081"; and

18 (c) For all other employers not qualified to be in the array, the  
19 contribution rate shall be a rate equal to the average industry rate as  
20 determined by the commissioner; however, the rate may not be less than  
21 one percent. Assignment of employers by the commissioner to industrial  
22 classification, for purposes of this subsection, shall be in accordance  
23 with established classification practices found in the "Standard  
24 Industrial Classification Manual" issued by the federal office of  
25 management and budget to the third digit provided in the Standard  
26 Industrial Classification code.

27 NEW SECTION. **Sec. 9.** If any part of this act is found to be in  
28 conflict with federal requirements that are a prescribed condition to  
29 the allocation of federal funds to the state or the eligibility of  
30 employers in this state for federal unemployment tax credits, the  
31 conflicting part of this act is hereby declared to be inoperative  
32 solely to the extent of the conflict, and such finding or determination  
33 shall not affect the operation of the remainder of this act. The rules  
34 under this act shall meet federal requirements that are a necessary  
35 condition to the receipt of federal funds by the state or the granting  
36 of federal unemployment tax credits to employers in this state.

1        NEW SECTION.   **Sec. 10.**   (1) Sections 2, 6, 7, and 9 of this act are  
2 necessary for the immediate preservation of the public peace, health,  
3 or safety, or support of the state government and its existing public  
4 institutions, and shall take effect July 1, 1993.

5        (2) Section 8 of this act takes effect July 1, 1994.

--- END ---