

CERTIFICATION OF ENROLLMENT

SENATE BILL 5355

63rd Legislature
2013 Regular Session

Passed by the Senate April 19, 2013
YEAS 47 NAYS 0

President of the Senate

Passed by the House April 9, 2013
YEAS 89 NAYS 4

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5355** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SENATE BILL 5355

AS AMENDED BY THE HOUSE

Passed Legislature - 2013 Regular Session

State of Washington 63rd Legislature 2013 Regular Session

By Senators Holmquist Newbry, Conway, Kohl-Welles, and Keiser; by request of Employment Security Department

Read first time 01/28/13. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to implementing the unemployment insurance
2 integrity provisions of the federal trade adjustment assistance
3 extension act of 2011; amending RCW 50.16.010, 50.20.070, 50.29.021,
4 and 50.20.190; creating a new section; and providing an effective date.

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

6 **Sec. 1.** RCW 50.16.010 and 2012 c 198 s 11 are each amended to read
7 as follows:

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

13 (2)(a) The unemployment compensation fund shall consist of:

14 (i) All contributions collected under RCW 50.24.010 and payments in
15 lieu of contributions collected pursuant to the provisions of this
16 title;

17 (ii) Any property or securities acquired through the use of moneys
18 belonging to the fund;

19 (iii) All earnings of such property or securities;

1 (iv) Any moneys received from the federal unemployment account in
2 the unemployment trust fund in accordance with Title XII of the social
3 security act, as amended;

4 (v) All money recovered on official bonds for losses sustained by
5 the fund;

6 (vi) All money credited to this state's account in the unemployment
7 trust fund pursuant to section 903 of the social security act, as
8 amended;

9 (vii) All money received from the federal government as
10 reimbursement pursuant to section 204 of the federal-state extended
11 compensation act of 1970 (84 Stat. 708-712; 26 U.S.C. Sec. 3304);
12 (~~and~~)

13 (viii) The portion of the additional penalties as provided in RCW
14 50.20.070(2) that is fifteen percent of the amount of benefits overpaid
15 or deemed overpaid; and

16 (ix) All moneys received for the fund from any other source.

17 (b) All moneys in the unemployment compensation fund shall be
18 commingled and undivided.

19 (3)(a) Except as provided in (b) of this subsection, the
20 administrative contingency fund shall consist of:

21 (i) All interest on delinquent contributions collected pursuant to
22 this title;

23 (ii) All fines and penalties collected pursuant to the provisions
24 of this title, except the portion of the additional penalties as
25 provided in RCW 50.20.070(2) that is fifteen percent of the amount of
26 benefits overpaid or deemed overpaid;

27 (iii) All sums recovered on official bonds for losses sustained by
28 the fund; and

29 (iv) Revenue received under RCW 50.24.014.

30 (b) All fees, fines, forfeitures, and penalties collected or
31 assessed by a district court because of the violation of this title or
32 rules adopted under this title shall be remitted as provided in chapter
33 3.62 RCW.

34 (c) Except as provided in (d) of this subsection, moneys available
35 in the administrative contingency fund, other than money in the special
36 account created under RCW 50.24.014, shall be expended upon the
37 direction of the commissioner, with the approval of the governor,

1 whenever it appears to him or her that such expenditure is necessary
2 solely for:

3 (i) The proper administration of this title and that insufficient
4 federal funds are available for the specific purpose to which such
5 expenditure is to be made, provided, the moneys are not substituted for
6 appropriations from federal funds which, in the absence of such moneys,
7 would be made available.

8 (ii) The proper administration of this title for which purpose
9 appropriations from federal funds have been requested but not yet
10 received, provided, the administrative contingency fund will be
11 reimbursed upon receipt of the requested federal appropriation.

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

19 (d)(i) During the 2007-2009 fiscal biennium, moneys available in
20 the administrative contingency fund, other than money in the special
21 account created under RCW 50.24.014(1)(a), shall be expended as
22 appropriated by the legislature for: (A) The cost of the job skills or
23 worker retraining programs at the community and technical colleges and
24 administrative costs at the state board for community and technical
25 colleges; and (B) reemployment services such as business and project
26 development assistance, local economic development capacity building,
27 and local economic development financial assistance at the department
28 of commerce. The remaining appropriation may be expended as specified
29 in (c) of this subsection.

30 (ii) During the 2009-2011 fiscal biennium, moneys available in the
31 administrative contingency fund, other than money in the special
32 account created under RCW 50.24.014(1)(a), shall be expended by the
33 department of social and health services as appropriated by the
34 legislature for employment and training services and programs in the
35 WorkFirst program, and for the administrative costs of state agencies
36 participating in the WorkFirst program. The remaining appropriation
37 may be expended as specified in (c) of this subsection.

1 (4) Money in the special account created under RCW 50.24.014(1)(a)
2 may only be expended, after appropriation, for the purposes specified
3 in this section and RCW 50.62.010, 50.62.020, 50.62.030, 50.24.014,
4 50.44.053, and 50.22.010.

5 **Sec. 2.** RCW 50.20.070 and 2007 c 146 s 7 are each amended to read
6 as follows:

7 (1) With respect to determinations delivered or mailed before
8 January 1, 2008, an individual is disqualified for benefits for any
9 week he or she has knowingly made a false statement or representation
10 involving a material fact or knowingly failed to report a material fact
11 and, as a result, has obtained or attempted to obtain any benefits
12 under the provisions of this title, and for an additional twenty-six
13 weeks beginning with the first week for which he or she completes an
14 otherwise compensable claim for waiting period credit or benefits
15 following the date of the delivery or mailing of the determination of
16 disqualification under this section. However, such disqualification
17 shall not be applied after two years have elapsed from the date of the
18 delivery or mailing of the determination of disqualification under this
19 section.

20 (2) With respect to determinations delivered or mailed on or after
21 January 1, 2008:

22 (a) An individual is disqualified for benefits for any week he or
23 she has knowingly made a false statement or representation involving a
24 material fact or knowingly failed to report a material fact and, as a
25 result, has obtained or attempted to obtain any benefits under the
26 provisions of this title;

27 (b) An individual disqualified for benefits under this subsection
28 for the first time is also:

29 (i) Disqualified for an additional twenty-six weeks beginning with
30 the Sunday of the week in which the determination is mailed or
31 delivered; and

32 (ii) With respect to determinations delivered or mailed on or after
33 October 20, 2013, subject to an additional penalty of fifteen percent
34 of the amount of benefits overpaid or deemed overpaid;

35 (c) An individual disqualified for benefits under this subsection
36 for the second time is also disqualified for an additional fifty-two
37 weeks beginning with the Sunday of the week in which the determination

1 is mailed or delivered, and is subject to an additional penalty of
2 twenty-five percent of the amount of benefits overpaid or deemed
3 overpaid;

4 (d) An individual disqualified for benefits under this subsection
5 a third time and any time thereafter is also disqualified for an
6 additional one hundred four weeks beginning with the Sunday of the week
7 in which the determination is mailed or delivered, and is subject to an
8 additional penalty of fifty percent of the amount of benefits overpaid
9 or deemed overpaid.

10 (3) All penalties collected under this section must be expended for
11 the proper administration of this title as authorized under RCW
12 50.16.010 and for no other purposes.

13 (4) All overpayments and penalties established by such
14 determination of disqualification must be collected as otherwise
15 provided by this title.

16 **Sec. 3.** RCW 50.29.021 and 2011 c 4 s 14 are each amended to read
17 as follows:

18 (1) This section applies to benefits charged to the experience
19 rating accounts of employers for claims that have an effective date on
20 or after January 4, 2004.

21 (2)(a) An experience rating account shall be established and
22 maintained for each employer, except employers as described in RCW
23 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make
24 payments in lieu of contributions, taxable local government employers
25 as described in RCW 50.44.035, and those employers who are required to
26 make payments in lieu of contributions, based on existing records of
27 the employment security department.

28 (b) Benefits paid to an eligible individual shall be charged to the
29 experience rating accounts of each of such individual's employers
30 during the individual's base year in the same ratio that the wages paid
31 by each employer to the individual during the base year bear to the
32 wages paid by all employers to that individual during that base year,
33 except as otherwise provided in this section.

34 (c) When the eligible individual's separating employer is a covered
35 contribution paying base year employer, benefits paid to the eligible
36 individual shall be charged to the experience rating account of only

1 the individual's separating employer if the individual qualifies for
2 benefits under:

3 (i) RCW 50.20.050 (1)(b)(i) or (2)(b)(i), as applicable, and became
4 unemployed after having worked and earned wages in the bona fide work;
5 or

6 (ii) RCW 50.20.050 (1)(b) (v) through (x) or (2)(b) (v) through
7 (x).

8 (3) The legislature finds that certain benefit payments, in whole
9 or in part, should not be charged to the experience rating accounts of
10 employers except those employers described in RCW 50.44.010, 50.44.030,
11 and 50.50.030 who have properly elected to make payments in lieu of
12 contributions, taxable local government employers described in RCW
13 50.44.035, and those employers who are required to make payments in
14 lieu of contributions, as follows:

15 (a) Benefits paid to any individual later determined to be
16 ineligible shall not be charged to the experience rating account of any
17 contribution paying employer(~~(. However, when a benefit claim becomes~~
18 ~~invalid due to an amendment or adjustment of a report where the~~
19 ~~employer failed to report or inaccurately reported hours worked or~~
20 ~~remuneration paid, or both, all benefits paid will be charged to the~~
21 ~~experience rating account of the contribution paying employer or~~
22 ~~employers that originally filed the incomplete or inaccurate report or~~
23 ~~reports. An employer who reimburses the trust fund for benefits paid~~
24 ~~to workers and who fails to report or inaccurately reported hours~~
25 ~~worked or remuneration paid, or both, shall reimburse the trust fund~~
26 ~~for all benefits paid that are based on the originally filed incomplete~~
27 ~~or inaccurate report or reports)), except as provided in subsection (5)
28 of this section.~~

29 (b) Benefits paid to an individual filing under the provisions of
30 chapter 50.06 RCW shall not be charged to the experience rating account
31 of any contribution paying employer only if:

32 (i) The individual files under RCW 50.06.020(1) after receiving
33 crime victims' compensation for a disability resulting from a nonwork-
34 related occurrence; or

35 (ii) The individual files under RCW 50.06.020(2).

36 (c) Benefits paid which represent the state's share of benefits
37 payable as extended benefits defined under RCW 50.22.010(6) shall not

1 be charged to the experience rating account of any contribution paying
2 employer.

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

8 (e) Benefits paid to an individual who qualifies for benefits under
9 RCW 50.20.050 (1)(b) (iv) or (xi) or (2)(b) (iv) or (xi), as
10 applicable, shall not be charged to the experience rating account of
11 any contribution paying employer.

12 (f) With respect to claims with an effective date on or after the
13 first Sunday following April 22, 2005, benefits paid that exceed the
14 benefits that would have been paid if the weekly benefit amount for the
15 claim had been determined as one percent of the total wages paid in the
16 individual's base year shall not be charged to the experience rating
17 account of any contribution paying employer. This subsection (3)(f)
18 does not apply to the calculation of contribution rates under RCW
19 50.29.025 for rate year 2010 and thereafter.

20 (g) The forty-five dollar increase paid as part of an individual's
21 weekly benefit amount as provided in RCW 50.20.1201 and the twenty-five
22 dollar increase paid as part of an individual's weekly benefit amount
23 as provided in RCW 50.20.1202 shall not be charged to the experience
24 rating account of any contribution paying employer.

25 (h) With respect to claims where the minimum amount payable weekly
26 is increased to one hundred fifty-five dollars pursuant to RCW
27 50.20.1201(3), benefits paid that exceed the benefits that would have
28 been paid if the minimum amount payable weekly had been calculated
29 pursuant to RCW 50.20.120 shall not be charged to the experience rating
30 account of any contribution paying employer.

31 (i) Upon approval of an individual's training benefits plan
32 submitted in accordance with RCW 50.22.155(2), an individual is
33 considered enrolled in training, and regular benefits beginning with
34 the week of approval shall not be charged to the experience rating
35 account of any contribution paying employer.

36 (j) Training benefits paid to an individual under RCW 50.22.155
37 shall not be charged to the experience rating account of any
38 contribution paying employer.

1 (4)(a) A contribution paying base year employer, except employers
2 as provided in subsection (6) of this section, not otherwise eligible
3 for relief of charges for benefits under this section, may receive such
4 relief if the benefit charges result from payment to an individual who:

5 (i) Last left the employ of such employer voluntarily for reasons
6 not attributable to the employer;

7 (ii) Was discharged for misconduct or gross misconduct connected
8 with his or her work not a result of inability to meet the minimum job
9 requirements;

10 (iii) Is unemployed as a result of closure or severe curtailment of
11 operation at the employer's plant, building, worksite, or other
12 facility. This closure must be for reasons directly attributable to a
13 catastrophic occurrence such as fire, flood, or other natural disaster;

14 (iv) Continues to be employed on a regularly scheduled permanent
15 part-time basis by a base year employer and who at some time during the
16 base year was concurrently employed and subsequently separated from at
17 least one other base year employer. Benefit charge relief ceases when
18 the employment relationship between the employer requesting relief and
19 the claimant is terminated. This subsection does not apply to shared
20 work employers under chapter ((50.06-[50.60])) 50.60 RCW; or

21 (v) Was hired to replace an employee who is a member of the
22 military reserves or National Guard and was called to federal active
23 military service by the president of the United States and is
24 subsequently laid off when that employee is reemployed by their
25 employer upon release from active duty within the time provided for
26 reemployment in RCW 73.16.035.

27 (b) The employer requesting relief of charges under this subsection
28 must request relief in writing within thirty days following mailing to
29 the last known address of the notification of the valid initial
30 determination of such claim, stating the date and reason for the
31 separation or the circumstances of continued employment. The
32 commissioner, upon investigation of the request, shall determine
33 whether relief should be granted.

34 (5) When a benefit claim becomes invalid due to an amendment or
35 adjustment of a report where the employer failed to report or
36 inaccurately reported hours worked or remuneration paid, or both, all
37 benefits paid will be charged to the experience rating account of the
38 contribution paying employer or employers that originally filed the

1 incomplete or inaccurate report or reports. An employer who reimburses
2 the trust fund for benefits paid to workers and who fails to report or
3 inaccurately reported hours worked or remuneration paid, or both, shall
4 reimburse the trust fund for all benefits paid that are based on the
5 originally filed incomplete or inaccurate report or reports.

6 (6) An employer's experience rating account may not be relieved of
7 charges for a benefit payment and an employer who reimburses the trust
8 fund for benefit payments may not be credited for a benefit payment if
9 a benefit payment was made because the employer or employer's agent
10 failed to respond timely or adequately to a written request of the
11 department for information relating to the claim or claims without
12 establishing good cause for the failure and the employer or employer's
13 agent has a pattern of such failures. The commissioner has the
14 authority to determine whether the employer has good cause under this
15 subsection.

16 (a) For the purposes of this subsection, "adequately" means
17 providing accurate information of sufficient quantity and quality that
18 would allow a reasonable person to determine eligibility for benefits.

19 (b)(i) For the purposes of this subsection, "pattern" means a
20 benefit payment was made because the employer or employer's agent
21 failed to respond timely or adequately to a written request of the
22 department for information relating to a claim or claims without
23 establishing good cause for the failure, if the greater of the
24 following calculations for an employer is met:

25 (A) At least three times in the previous two years; or

26 (B) Twenty percent of the total current claims against the
27 employer.

28 (ii) If an employer's agent is utilized, a pattern is established
29 based on each individual client employer that the employer's agent
30 represents.

31 **Sec. 4.** RCW 50.20.190 and 2011 c 301 s 17 are each amended to read
32 as follows:

33 (1) An individual who is paid any amount as benefits under this
34 title to which he or she is not entitled shall, unless otherwise
35 relieved pursuant to this section, be liable for repayment of the
36 amount overpaid. The department shall issue an overpayment assessment
37 setting forth the reasons for and the amount of the overpayment. The

1 amount assessed, to the extent not collected, may be deducted from any
2 future benefits payable to the individual: PROVIDED, That in the
3 absence of a back pay award, a settlement affecting the allowance of
4 benefits, fraud, misrepresentation, or willful nondisclosure, every
5 determination of liability shall be mailed or personally served not
6 later than two years after the close of or final payment made on the
7 individual's applicable benefit year for which the purported
8 overpayment was made, whichever is later, unless the merits of the
9 claim are subjected to administrative or judicial review in which event
10 the period for serving the determination of liability shall be extended
11 to allow service of the determination of liability during the six-month
12 period following the final decision affecting the claim.

13 (2) The commissioner may waive an overpayment if the commissioner
14 finds that the overpayment was not the result of fraud,
15 misrepresentation, willful nondisclosure, or fault attributable to the
16 individual and that the recovery thereof would be against equity and
17 good conscience(~~(:—PROVIDED, HOWEVER, That the)~~). When determining
18 whether the recovery would be against equity and good conscience, the
19 department must consider whether the employer or employer's agent
20 failed to respond timely and adequately to a written request of the
21 department for information relating to the claim or claims without
22 establishing good cause for the failure pursuant to RCW 50.29.021(6).
23 An overpayment ((se)) waived under this subsection shall be charged
24 against the individual's applicable entitlement for the eligibility
25 period containing the weeks to which the overpayment was attributed as
26 though such benefits had been properly paid.

27 (3) Any assessment herein provided shall constitute a determination
28 of liability from which an appeal may be had in the same manner and to
29 the same extent as provided for appeals relating to determinations in
30 respect to claims for benefits: PROVIDED, That an appeal from any
31 determination covering overpayment only shall be deemed to be an appeal
32 from the determination which was the basis for establishing the
33 overpayment unless the merits involved in the issue set forth in such
34 determination have already been heard and passed upon by the appeal
35 tribunal. If no such appeal is taken to the appeal tribunal by the
36 individual within thirty days of the delivery of the notice of
37 determination of liability, or within thirty days of the mailing of the
38 notice of determination, whichever is the earlier, the determination of

1 liability shall be deemed conclusive and final. Whenever any such
2 notice of determination of liability becomes conclusive and final, the
3 commissioner, upon giving at least twenty days' notice, using a method
4 by which the mailing can be tracked or the delivery can be confirmed,
5 may file with the superior court clerk of any county within the state
6 a warrant in the amount of the notice of determination of liability
7 plus a filing fee under RCW 36.18.012(10). The clerk of the county
8 where the warrant is filed shall immediately designate a superior court
9 cause number for the warrant, and the clerk shall cause to be entered
10 in the judgment docket under the superior court cause number assigned
11 to the warrant, the name of the person(s) mentioned in the warrant, the
12 amount of the notice of determination of liability, and the date when
13 the warrant was filed. The amount of the warrant as docketed shall
14 become a lien upon the title to, and any interest in, all real and
15 personal property of the person(s) against whom the warrant is issued,
16 the same as a judgment in a civil case duly docketed in the office of
17 such clerk. A warrant so docketed shall be sufficient to support the
18 issuance of writs of execution and writs of garnishment in favor of the
19 state in the manner provided by law for a civil judgment. A copy of
20 the warrant shall be mailed within five days of its filing with the
21 clerk to the person(s) mentioned in the warrant using a method by which
22 the mailing can be tracked or the delivery can be confirmed.

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

37 (5) Any employer who is a party to a back pay award or settlement
38 due to loss of wages shall, within thirty days of the award or

1 settlement, report to the department the amount of the award or
2 settlement, the name and social security number of the recipient of the
3 award or settlement, and the period for which it is awarded. When an
4 individual has been awarded or receives back pay, for benefit purposes
5 the amount of the back pay shall constitute wages paid in the period
6 for which it was awarded. For contribution purposes, the back pay
7 award or settlement shall constitute wages paid in the period in which
8 it was actually paid. The following requirements shall also apply:

9 (a) The employer shall reduce the amount of the back pay award or
10 settlement by an amount determined by the department based upon the
11 amount of unemployment benefits received by the recipient of the award
12 or settlement during the period for which the back pay award or
13 settlement was awarded;

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

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

21 (d) If the employer fails to reduce the amount of the back pay
22 award or settlement as required in (a) of this subsection, the
23 department shall issue an overpayment assessment against the recipient
24 of the award or settlement in the amount that the back pay award or
25 settlement should have been reduced; and

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

31 (6) When an individual fails to repay an overpayment assessment
32 that is due and fails to arrange for satisfactory repayment terms, the
33 commissioner shall impose an interest penalty of one percent per month
34 of the outstanding balance. Interest shall accrue immediately on
35 overpayments assessed pursuant to RCW 50.20.070 and shall be imposed
36 when the assessment becomes final. For any other overpayment, interest
37 shall accrue when the individual has missed two or more of the
38 individual's monthly payments either partially or in full.

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

6 NEW SECTION. **Sec. 5.** If any part of this act is found to be in
7 conflict with federal requirements that are a prescribed condition to
8 the allocation of federal funds to the state or the eligibility of
9 employers in this state for federal unemployment tax credits, the
10 conflicting part of this act is inoperative solely to the extent of the
11 conflict, and the finding or determination does not affect the
12 operation of the remainder of this act. Rules adopted under this act
13 must meet federal requirements that are a necessary condition to the
14 receipt of federal funds by the state or the granting of federal
15 unemployment tax credits to employers in this state.

16 NEW SECTION. **Sec. 6.** If any provision of this act or its
17 application to any person or circumstance is held invalid, the
18 remainder of the act or the application of the provision to other
19 persons or circumstances is not affected.

20 NEW SECTION. **Sec. 7.** This act takes effect October 20, 2013.

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