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**SENATE BILL 5438**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Senators Saldaña, Nobles, Cleveland, Darneille, Das, Dhingra, Hasegawa, Hunt, Kuderer, Lias, Lovelett, Nguyen, Robinson, Stanford, Wellman, and Wilson, C.

Read first time 02/09/21. Referred to Committee on Labor, Commerce & Tribal Affairs.

1 AN ACT Relating to providing unemployment benefits to workers who  
2 are unemployed as a result of the COVID-19 pandemic and not eligible  
3 for unemployment benefits due to immigration status; adding a new  
4 chapter to Title 49 RCW; making an appropriation; providing an  
5 expiration date.

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

7 NEW SECTION. **Sec. 1.** The legislature finds and declares:

8 (1) Unemployment insurance was established by the legislature  
9 because it explicitly recognized that economic insecurity caused by  
10 unemployment is the "greatest hazard of our economic life" that  
11 "falls with crushing force upon the unemployed worker and his or her  
12 family" which therefore requires "the compulsory setting aside of  
13 unemployment reserves" to reduce the suffering caused by unemployment  
14 to a minimum. Unemployment insurance is essential to ensure that  
15 individuals who lose income are able to survive and meet their basic  
16 needs during periods they are unable to find stable work.

17 (2) Most Washington unemployed workers are eligible to receive  
18 unemployment insurance to survive and meet their basic needs in times  
19 of crisis, as the legislature intended. The COVID-19 pandemic has  
20 presented the worst unemployment crisis in decades. According to the  
21 employment security department, one in three Washington workers filed

1 for unemployment during the initial months of the COVID-19 crisis and  
2 by August 2020, the state had paid out \$10,000,000,000 in  
3 unemployment insurance to unemployed workers.

4 (3) Many immigrant workers, however, are not eligible for  
5 unemployment insurance or pandemic unemployment assistance and have  
6 not received any assistance from the program. RCW 50.20.098 provides  
7 that unemployment insurance benefits shall not be payable unless the  
8 individual "was lawfully admitted for permanent residence, was  
9 lawfully present for purposes of performing such services, or  
10 otherwise was permanently residing in the United States under color  
11 of law at the time such services were performed...". Federal law, 8  
12 U.S.C. Sec. 1621(d), requires that states wishing to extend benefits  
13 beyond a short list of "qualified" immigrants must affirmatively do  
14 so. Those ineligible to receive unemployment benefits include workers  
15 without work authorization, workers whose work authorization is  
16 awaiting renewal, and workers who recently regularized their  
17 immigration status.

18 (4) Ineligibility for unemployment benefits has devastated  
19 immigrant communities during the pandemic economic crisis,  
20 particularly immigrants working in low-wage industries. Several of  
21 the industries that have experienced the highest rates of job loss in  
22 Washington due to the pandemic are low-wage sectors with the highest  
23 numbers of immigrant workers including the restaurant, hotel, retail,  
24 and construction industries. Economists predict large-scale permanent  
25 job loss and long-term unemployment as the effects of the pandemic  
26 similar to the great recession of 2008. Without access to  
27 unemployment benefits among other critical safety net programs  
28 Washington's immigrant communities face deep economic devastation for  
29 years to come. Prior to the pandemic, the poverty rate of immigrants  
30 in Washington was already high, with 18 percent of the state's  
31 immigrant residents living in poverty compared to 12 percent of  
32 United States born residents. The crisis is expected to significantly  
33 expand this disparity.

34 (5) To support the survival of Washington's immigrant workers and  
35 families during periods of crisis, particularly low-income  
36 households, and to provide the safety net that United States born  
37 Washington residents are able to access, the legislature intends to  
38 establish a weekly unemployment benefits program similar to the state  
39 unemployment insurance program for workers not eligible for state or  
40 federal unemployment insurance benefits and unemployed as a result of

1 the COVID-19 pandemic. Additionally, this bill would direct the  
2 agency to develop proposals for the creation of a permanent weekly  
3 unemployment benefits program for unemployed immigrant workers and,  
4 until the permanent program can be created, an interim program to  
5 cover excluded immigrant workers during disasters.

6 NEW SECTION. **Sec. 2.** (1) A Washington income replacement for  
7 immigrant workers program is created.

8 (2) The purpose of this chapter is to provide unemployment  
9 benefits to low-income workers who are unemployed as a result of the  
10 COVID-19 pandemic and not eligible for state or federal unemployment  
11 benefits administered by the employment security department due to  
12 immigration status.

13 (3) It is the intent of the legislature to allow persons who are  
14 not lawfully present in the United States, as members of the class of  
15 workers excluded from unemployment insurance benefits, to participate  
16 in, and receive disbursements from, the Washington unemployment  
17 benefits for immigrant workers program. This chapter is therefore  
18 enacted pursuant to 8 U.S.C. Sec. 1621(d).

19 NEW SECTION. **Sec. 3.** The definitions in this section apply  
20 throughout this chapter unless the context clearly requires  
21 otherwise.

22 (1) "COVID-19" means the illness caused by the severe acute  
23 respiratory syndrome coronavirus 2 (SARS-CoV-2).

24 (2) "COVID-19 pandemic" means the worldwide epidemic of COVID-19  
25 declared a pandemic by the world health organization on March 11,  
26 2020.

27 (3) "Department" means the department of labor and industries.

28 (4) "Income" means any and all compensation for personal services  
29 but does not include any payment received by a member of the national  
30 guard or reserve component of the armed forces for inactive duty  
31 training, annual training, or emergency state active duty.

32 (5) "Individual" means a person who is applying for benefits  
33 under this chapter.

34 (6) "Information" means all types of information collected under  
35 this chapter, whether written or oral including, but not limited to,  
36 that made or kept by any public officer or agency for the purpose of  
37 assessing an individual's eligibility for, or administering the  
38 benefits authorized by, this chapter.

1 (7) "Week of unemployment" means:

2 (a) For an unemployed individual, any week during which the  
3 individual is totally or partially unemployed.

4 (i) A week of total unemployment is a week during which the  
5 individual performs no work and earns no income.

6 (ii) A week of partial unemployment is a week during which the  
7 individual works less than regular, full-time hours as a result of  
8 the COVID-19 pandemic and earns less than one and one-third times the  
9 weekly benefit amount, as defined in RCW 50.20.120, plus \$5.

10 (b) For an unemployed, self-employed individual, any week during  
11 which the individual is totally or partially unemployed.

12 (i) A week of total unemployment is a week during which the  
13 individual performs no work and earns no income.

14 (ii) A week of partial unemployment is a week during which the  
15 individual performs less than the customary services in self-  
16 employment, as a result of the COVID-19 pandemic, and earns less than  
17 one and one-third times the weekly benefit amount, as defined in RCW  
18 50.20.120, plus \$5.

19 NEW SECTION. **Sec. 4.** The department may enact rules to  
20 implement this chapter.

21 NEW SECTION. **Sec. 5.** (1) An individual is eligible to receive  
22 benefits under this chapter if the individual resides in Washington  
23 and the individual:

24 (a) Experienced a week of unemployment during the eligibility  
25 period set forth in section 7(1) of this act due to one of the  
26 following COVID-19 related reasons:

27 (i) The individual's place of employment is closed as a direct  
28 result of COVID-19;

29 (ii) The individual was laid off or their hours were reduced as a  
30 direct result of COVID-19;

31 (iii) The individual had to quit their job as a direct result of  
32 COVID-19 or the COVID-19 pandemic;

33 (iv) The individual has been diagnosed with COVID-19 or is  
34 experiencing symptoms of COVID-19 and is seeking a medical diagnosis;

35 (v) The individual is unable to work because a health care  
36 provider advised them to self-quarantine due to concerns related to  
37 COVID-19;

1 (vi) A member of the individual's household has been diagnosed  
2 with COVID-19;

3 (vii) The individual needs to provide care for a family member or  
4 a member of the individual's household who has been diagnosed with  
5 COVID-19;

6 (viii) The school or day care the individual's child attends is  
7 physically closed due to COVID-19 or the COVID-19 pandemic, and the  
8 individual is unable to find alternative child care;

9 (ix) The individual has become the breadwinner or major support,  
10 as defined in the federal pandemic unemployment assistance program in  
11 existence on the effective date of this section, for a household  
12 because the head of the household has died as a direct result of  
13 COVID-19;

14 (x) The individual was scheduled to start a job that is now  
15 unavailable as a direct result of the COVID-19 pandemic; or

16 (xi) The individual is unable to reach the place of employment as  
17 a direct result of the COVID-19 pandemic;

18 (b) Is not eligible to receive regular unemployment insurance due  
19 to immigration status under RCW 50.20.098 or 50.04.206;

20 (c) Is not eligible to receive federal pandemic unemployment  
21 assistance due to immigration status; and

22 (d) Had income from work during the eligibility period described  
23 in section 7(1) of this act.

24 (2) Individuals may prove that they meet the eligibility  
25 requirements set forth in subsection (1) of this section by  
26 documentation or, in the absence of documentation, by submitting an  
27 affidavit to the department on a form prescribed by the department.

28 (3) Under subsection (1)(b) and (c) of this section, the  
29 department may not request or require the individual to state why the  
30 individual believes themselves to be ineligible for the programs.

31 (4) An individual may not receive benefits under this chapter for  
32 any week in which benefits are paid or payable under Title 50, 50A,  
33 or 51 RCW or under federal pandemic unemployment assistance.

34 NEW SECTION. **Sec. 6.** (1) In administering the program under  
35 this chapter, the department is prohibited from taking any of the  
36 following actions:

37 (a) Soliciting, orally or in written form, an individual's  
38 nationality, race, ethnicity, place of birth, eligibility or

1 ineligibility for a social security number, citizenship, or  
2 immigration status;

3 (b) Indicating in its records which documents the individual used  
4 to prove their age or identity;

5 (c) Compelling an individual to admit in writing whether they  
6 have proof of lawful presence in the United States or to explain why  
7 they are ineligible for a social security number;

8 (d) Contacting an individual's current, former, or prospective  
9 employers including, but not limited to, for the purposes of  
10 verifying employment status; and

11 (e) Attempting to ascertain an individual's immigration or  
12 citizenship status.

13 (2) The department must destroy all records containing  
14 information that were provided by an individual or collected by the  
15 department to verify eligibility for the program within 15 days of an  
16 individual's written statement that they are no longer using the  
17 program.

18 (3) Any information under this chapter is not a public record and  
19 shall not be disclosed or otherwise made accessible in response to  
20 any request for records except:

21 (a) To the person who is the subject of such records or an  
22 authorized representative;

23 (b) Where necessary to comply with a lawful court order, judicial  
24 warrant signed by a judge appointed pursuant to Article III of the  
25 United States Constitution, or subpoena for individual records issued  
26 pursuant to the criminal procedure law or the civil practice law and  
27 rules; or

28 (c) If disclosed in a manner that could not be used to determine  
29 the identities of the individuals or employers to whom the data  
30 pertains, alone or in combination with other data.

31 (4) For the purposes of this section, whenever a lawful court  
32 order, judicial warrant, or subpoena for individual records properly  
33 issued pursuant to the criminal procedure law or the civil practice  
34 law and rules is presented to a court, only those records, documents,  
35 and information specifically sought by such court order, warrant, or  
36 subpoena may be disclosed.

37 (5) Notwithstanding any other law, information and records  
38 containing information that are collected or obtained by the state,  
39 any state agency, or any subdivision of the state, including agents  
40 of the state universities and community colleges, as well as any

1 private persons contracted to administer public services or programs,  
2 shall only be collected, used, and retained for the purpose of  
3 assessing eligibility for and providing those public services and  
4 programs created by this chapter.

5 (6) No information collected under this chapter may be used for  
6 purposes of investigating, locating, or apprehending individuals for  
7 immigration-related violations including, but not exclusive to,  
8 queries or inquiries under 8 U.S.C. Secs. 1324, 1325, and 1326.

9 (7) In carrying out the benefits and program created under this  
10 chapter, the department must establish prohibitions and safeguards  
11 against unauthorized access to, and use of, any information collected  
12 under this chapter by private or public entities. For purposes of  
13 this section, "unauthorized access" includes, but is not limited to,  
14 access by anyone other than a department employee.

15 NEW SECTION. **Sec. 7.** (1) Any individual found eligible for  
16 benefits under section 4 of this act will receive a \$400 payment for  
17 each week of unemployment occurring:

18 (a) After January 1, 2021; and

19 (b) Before June 30, 2022.

20 (2) The total number of weeks an eligible individual may receive  
21 benefits under this chapter shall not exceed 39 weeks.

22 (3) Payments shall be made available retroactively to the first  
23 week of eligibility under subsection (1)(a) of this section.

24 NEW SECTION. **Sec. 8.** (1) The department must develop proposals  
25 for:

26 (a) A permanent program to provide unemployment benefits for  
27 unemployed workers who are excluded from regular unemployment  
28 insurance on the basis of citizenship or immigration status; and

29 (b) An interim program to provide unemployment benefits for  
30 workers facing full or partial unemployment due to disasters declared  
31 as such by local, state, or federal governments who are excluded from  
32 existing programs due to immigration status.

33 (2) The department must develop the proposals under this section  
34 based on considerations and information including, but not limited  
35 to, evaluation of the program under this chapter, research on the  
36 target population, assessment of the options for how to fund and  
37 administer the program, and stakeholder input.

1 (3) The department must submit a preliminary report on the  
2 proposals under this section to the appropriate committees of the  
3 legislature by December 1, 2021, and a final report by December 1,  
4 2022.

5 (4) This section expires December 31, 2022.

6 NEW SECTION. **Sec. 9.** The unemployment benefits for undocumented  
7 workers account is created in the custody of the state treasurer.  
8 Revenues to the account shall consist of appropriations and transfers  
9 by the legislature and all other funding directed for deposit in the  
10 account. Only the director or the director's designee may authorize  
11 expenditures from the account. Expenditures from the account may be  
12 used only for the payment of benefits under sections 3, 4, 5, and 6  
13 of this act. The account is subject to allotment procedures under  
14 chapter 43.88 RCW, but an appropriation is not required for  
15 expenditures.

16 NEW SECTION. **Sec. 10.** The sum of \$350,000,000 is appropriated  
17 for the fiscal year ending June 30, 2022, from the general fund to  
18 the unemployment benefits for undocumented workers account for the  
19 purposes of this act.

20 NEW SECTION. **Sec. 11.** Sections 1 through 9 of this act  
21 constitute a new chapter in Title 49 RCW.

22 NEW SECTION. **Sec. 12.** If any provision of this act or its  
23 application to any person or circumstance is held invalid, the  
24 remainder of the act or the application of the provision to other  
25 persons or circumstances is not affected.

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