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**ENGROSSED SUBSTITUTE SENATE BILL 5478**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Keiser, Mullet, Billig, Cleveland, Conway, Das, Hunt, King, Kuderer, Lias, Lovelett, Nguyen, Randall, Rolfes, Saldaña, Stanford, Van De Wege, and Wilson, C.)

READ FIRST TIME 04/02/21.

1       AN ACT Relating to unemployment insurance relief for certain  
2 employers; adding a new section to chapter 50.16 RCW; adding new  
3 sections to chapter 50.29 RCW; creating new sections; providing  
4 expiration dates; and declaring an emergency.

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

6       NEW SECTION.   **Sec. 1.** Amid unprecedented and ongoing stresses on  
7 our unemployment compensation fund and a sharp increase in the need  
8 for benefits during the COVID-19 public health emergency, the  
9 legislature intends to minimize the impact of public health  
10 precautionary measures on certain employers and the resulting impact  
11 on the experience rate component of their unemployment insurance  
12 premium rate. The first bill passed by the 2021 legislature and  
13 signed by the governor, Engrossed Substitute Senate Bill No. 5061,  
14 provided immediate relief to all employers by noncharging \$1.2  
15 billion in benefits paid during the 11 weeks of the initial COVID-19  
16 closures, reducing the social tax component for five years, and  
17 suspending the solvency surcharge until 2025. This swift action led  
18 to the state's average unemployment insurance tax rate in 2021  
19 increasing by only 0.03 percent, instead of 0.85 percent as was  
20 expected if the legislature had not acted. The legislature now  
21 intends to prepare for 2022 by preemptively minimizing the

1 disproportionate impact COVID-19 economic closures have had on  
2 certain businesses, while continuing to ensure a healthy unemployment  
3 compensation fund that can maintain critical economic support to  
4 Washington workers.

5 NEW SECTION. **Sec. 2.** A new section is added to chapter 50.16  
6 RCW to read as follows:

7 (1) The unemployment insurance relief account is created in the  
8 custody of the state treasurer. Revenues to the account consist of  
9 appropriations and transfers by the legislature and all other funding  
10 directed for deposit into the account. Only the commissioner of the  
11 employment security department or the commissioner's designee may  
12 authorize expenditures from the account. Expenditures from the  
13 account may be used only for reimbursing the unemployment  
14 compensation fund created in RCW 50.16.010 for forgiven benefits for  
15 COVID-19 impacted businesses pursuant to sections 3 and 4 of this  
16 act. The account is subject to the allotment procedures under chapter  
17 43.88 RCW, but an appropriation is not required for expenditures.

18 (2) By July 1, 2022, the commissioner must certify to the state  
19 treasurer the amount of any unobligated moneys in the unemployment  
20 insurance relief account that were appropriated by the legislature  
21 from the general fund during the 2021-2023 fiscal biennium, and the  
22 treasurer must transfer those moneys back to the general fund.

23 NEW SECTION. **Sec. 3.** A new section is added to chapter 50.29  
24 RCW to read as follows:

25 (1) By November 1, 2021, the department must determine the  
26 forgiven benefits for approved category 1 employers to be reimbursed  
27 by the unemployment insurance relief account instead of charged to  
28 the employer's experience rating account.

29 (2) The department will not charge the forgiven benefits to the  
30 employer's experience rating account. The commissioner must instead  
31 transfer from the unemployment insurance relief account to the  
32 unemployment compensation fund created in RCW 50.16.010 an amount  
33 equal to the forgiven benefits.

34 (3) For the purposes of this section, the following definitions  
35 apply:

36 (a) "Approved benefits" means benefits paid to employees of an  
37 approved category 1 employer during the fiscal year ending June 30,  
38 2021, not to exceed an amount that would reduce the employer's rate

1 class increase to no more than a two rate class increase. Approved  
2 benefits must not include benefits that were not charged to the  
3 employer's experience rating account or benefits otherwise relieved  
4 under RCW 50.29.021.

5 (b) "Approved category 1 employer" means a contribution paying  
6 employer, excluding any ineligible employer:

7 (i) Whose experience rating under RCW 50.29.025(1)(a)(ii) has  
8 increased by two or more rate classes from rate year 2021 to rate  
9 year 2022; and

10 (ii)(A) Whose North American industry classification system code  
11 for rate year 2021 is within "323," "448," "451," "453," "481,"  
12 "485," "487," "512," "561," "711," "713," "721," "722," "812," and  
13 "814;" or

14 (B) Which is a grocery store which: (I) Had fewer than 25  
15 employees in the state as reported on the employer's fourth quarter  
16 report to the department for 2019 and (II) was located within five  
17 miles of an international border, which was closed at any time in  
18 2021 due to COVID-19.

19 (c) "Amount available for approved category 1 employers" means 50  
20 percent of the total amount of money in the unemployment insurance  
21 relief account.

22 (d) "Forgiven benefits" means the approved benefits for an  
23 individual employer multiplied by the forgiveness ratio.

24 (e) "Forgiveness ratio" is computed by dividing the amount  
25 available for approved category 1 employers by the total approved  
26 benefits. The forgiveness ratio cannot be more than one.

27 (f) "Ineligible employer" means any employer that has not paid  
28 all contributions, penalties, and interest due by September 30, 2021,  
29 or has not entered into a department-approved deferred payment  
30 contract by September 30, 2021.

31 (g) "Total approved benefits" means the sum total of all approved  
32 benefits.

33 (4) The department must adopt such rules as are necessary to  
34 carry out the purposes of this section.

35 (5) This section expires July 30, 2022.

36 NEW SECTION. **Sec. 4.** A new section is added to chapter 50.29  
37 RCW to read as follows:

38 (1) By November 1, 2021, the department must determine the  
39 forgiven benefits for approved category 2 employers to be reimbursed

1 by the unemployment insurance relief account instead of charged to  
2 the employer's experience rating account.

3 (2) The department will not charge the forgiven benefits to the  
4 employer's experience rating account. The commissioner must instead  
5 transfer from the unemployment insurance relief account to the  
6 unemployment compensation fund created in RCW 50.16.010 an amount  
7 equal to the forgiven benefits.

8 (3) For the purposes of this section, the following definitions  
9 apply:

10 (a) "Approved benefits" means benefits paid to employees of an  
11 approved category 2 employer during the fiscal year ending June 30,  
12 2021, not to exceed an amount that would reduce the employer's rate  
13 class increase to no more than a four rate class increase. Approved  
14 benefits must not include benefits that were not charged to the  
15 employer's experience rating account or benefits otherwise relieved  
16 under RCW 50.29.021.

17 (b) "Approved category 2 employer" means a contribution paying  
18 employer, excluding any ineligible employer:

19 (i) Whose experience rating under RCW 50.29.025(1)(a)(ii) has  
20 increased by six or more rate classes from rate year 2021 to rate  
21 year 2022;

22 (ii) With fewer than 40,000 employees in the state as reported on  
23 the employer's fourth quarter report to the department for 2019; and

24 (iii) Who does not meet the definition of approved category 1  
25 employer under section 3(3)(b) of this act.

26 (c) "Amount available for approved category 2 employers" means:

27 (i) Fifty percent of the total amount of money in the  
28 unemployment insurance relief account; and

29 (ii) The difference between the amount available for approved  
30 category 1 employers and the forgiven benefits for approved category  
31 1 employers, as defined in section 3 of this act.

32 (d) "Forgiven benefits" means the approved benefits for an  
33 individual employer multiplied by the forgiveness ratio.

34 (e) "Forgiveness ratio" is computed by dividing the amount  
35 available for approved category 2 employers by the total approved  
36 benefits. The forgiveness ratio cannot be more than one.

37 (f) "Ineligible employer" means any employer that has not paid  
38 all contributions, penalties, and interest due by September 30, 2021,  
39 or has not entered into a department-approved deferred payment  
40 contract by September 30, 2021.

1 (g) "Total approved benefits" means the sum total of all approved  
2 benefits.

3 (4) The department must adopt such rules as are necessary to  
4 carry out the purposes of this section.

5 (5) This section expires July 30, 2022.

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  
11 the 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.** This act is necessary for the immediate  
17 preservation of the public peace, health, or safety, or support of  
18 the state government and its existing public institutions, and takes  
19 effect immediately.

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