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**SUBSTITUTE SENATE BILL 5109**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Senate Labor & Commerce (originally sponsored by Senators Saldaña, Valdez, Dhingra, Frame, Hasegawa, Keiser, Kuderer, Liias, Lovelett, Nguyen, Nobles, Stanford, and C. Wilson)

AN ACT Relating to creating a wage replacement program for certain Washington workers excluded from unemployment insurance; reenacting and amending RCW 42.56.410; adding new chapters to Title 50C RCW; adding a new title to the Revised Code of Washington to be codified as Title 50C RCW; and prescribing penalties.

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

**GENERAL PROVISIONS**

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

(1) When unemployment insurance was established by the United States congress and the state legislature, the legislature explicitly recognized that economic insecurity caused by unemployment is the greatest hazard of our economic life that falls with crushing force upon the unemployed worker, which therefore requires the compulsory setting aside of unemployment reserves to reduce the suffering caused by unemployment to a minimum. Unemployment insurance is essential to ensure that individuals who lose income can survive and meet their basic needs during periods they are unable to find stable work.

(2) Many immigrant workers, however, are not eligible for unemployment insurance and have not received any assistance from this jointly administered state and federal insurance program. RCW 50.20.098 provides that unemployment insurance benefits shall not be payable unless the individual was lawfully admitted for permanent residence, was lawfully present for purposes of performing such services, or otherwise was permanently residing in the United States under color of law at the time such services were performed. Title 8 U.S.C. Sec. 1621(d) requires that states wishing to extend benefits beyond a short list of qualified immigrants must affirmatively do so. Those ineligible to receive unemployment benefits include workers without work authorization, workers whose work authorization has expired or is awaiting renewal, and workers who recently regularized their immigration status.

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

(4) To support the survival of Washington's immigrant workers and families during periods of crisis, particularly low-income households, and to provide the safety net that United States born Washington residents can access, the legislature intends to establish a weekly wage replacement state program similar to the state and federal unemployment insurance program for workers who are unemployed and not eligible for the state and federal unemployment insurance.

NEW SECTION. **Sec.**  In addition to the definitions provided in this section, the definitions provided in chapter 50.04 RCW apply throughout this title unless the context clearly requires otherwise.

(1) "Application for initial determination" has the meaning provided in RCW 50.20.140.

(2) "Benefit" or "benefits" means the compensation payable to a claimant, as provided in either Title 50 RCW or this title with respect to the claimant's unemployment.

(3) "Claimant" means an individual applying for benefits under this title.

(4) "Employment" has the meaning provided in RCW 50.04.100, subject to the provisions of RCW 50.04.110, 50.04.120 through 50.04.205, and 50.04.210 through 50.04.280. The provisions of RCW 50.04.206 do not apply to the definition of "employment" for this title.

(5)(a) "Resident of the state of Washington" means a claimant who takes actions indicating they intend to live in Washington state on more than a temporary or transient basis throughout the duration of receiving benefits under this title. Unless the department has information indicating otherwise, the department must presume that a claimant is a resident of the state of Washington if the claimant:

(i) Maintains a residence in Washington for personal use with a utility bill showing their full name and Washington state address;

(ii) Lives in a motor home or vessel that is not permanently attached to any real property if the claimant previously lived in this state and does not have a permanent residence in any other state;

(iii) Is attending school in this state and paying tuition as a Washington resident, is a custodial parent with a child attending a public school in this state, or has correspondence from a school in this state showing their full name and Washington state address;

(iv) Has a Washington state identification card showing their full name and Washington state address;

(v) Has a current library card issued in this state;

(vi) Has correspondence from a community or faith-based organization in this state showing their full name and Washington state address; or

(vii) Has a medical document showing their full name and Washington state address.

(b) The actions and documentation outlined in this subsection (5) are a nonexhaustive list and the department may adopt additional methods by which a claimant may prove they are a resident of the state of Washington.

(6) "Wage" or "wages" has the meaning provided in RCW 50.04.320, subject to the provisions of RCW 50.04.330 through 50.04.355.

(7) "Week of unemployment" means any week during which a claimant, including a self-employed claimant:

(a) Performs no services and with respect to which no remuneration is payable to the claimant; or

(b) Performs less than full-time work if the remuneration payable to the claimant with respect to such week is less than one and one-third times the individual's weekly benefit amount plus $5.00.

NEW SECTION. **Sec.**  The Washington wage replacement account is created in the custody of the state treasurer. Revenues to the account must consist of appropriations and transfers by the legislature and all other funding directed for deposit into the account. Expenditures from the account may be used only for providing benefits under this title to eligible and qualified claimants, contracting with community-based organizations to notify individuals who may be eligible for benefits under this title, and administrative expenses of the department under this act. Only the commissioner of the department or the commissioner's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

NEW SECTION. **Sec.**  (1) The department must appoint an advisory committee to review issues and topics of interest related to this title.

(2) The committee is composed of 11 members:

(a) Three members representing immigrants' interests;

(b) Two members representing workers' interests in unemployment, each of whom must be appointed from a list of names submitted by a recognized statewide organization of employees;

(c) Two members representing employers' interests in unemployment, each of whom must be appointed from a list of names submitted by a recognized statewide organization of employers;

(d) Three ex officio members, without a vote, representing the state commission on African American affairs, the state commission on Hispanic affairs, and the state commission on Asian Pacific American affairs; and

(e) One ex officio member, without a vote, representing the department and who will serve as the chair.

(3) The advisory committee must provide comment on department rule making, policies, implementation of this title, utilization of benefits under this title, and other initiatives, and study issues the advisory committee determines to require its consideration.

(4) The members must serve without compensation but are eligible for reimbursement of travel expenses as provided in RCW 43.03.050 and 43.03.060, and for stipends provided by the department under RCW 43.03.220. The advisory committee may utilize such personnel and facilities of the department as it needs, without charge. All expenses of the advisory committee must be paid by the Washington wage replacement account created in section 3 of this act.

**APPLICATION AND BENEFITS**

NEW SECTION. **Sec.**  Beginning January 1, 2026, a claimant is eligible to receive benefits under this title with respect to any week of unemployment in their benefit year if the department determines the following steps are satisfied in sequential order:

(1) The claimant files an application for initial determination of benefits under Title 50 RCW;

(2) The department denies the claimant's application for initial determination of benefits based on the claimant not being authorized to work in the United States at the time the work was performed or during the week for which the claimant is applying for unemployment benefits under Title 50 RCW;

(3) After a denial under subsection (2) of this section, the department invites the claimant to apply for benefits under this title; and

(4) The claimant meets the eligibility and qualification requirements under sections 6 and 7 of this act.

NEW SECTION. **Sec.**  To be eligible for benefits under this title, a claimant invited by the department to apply for benefits under section 5 of this act must then satisfy the steps in this section.

(1) The claimant must file an initial application for benefits under this title with the department, which includes information or documentation verifying the claimant:

(a) Is a resident of the state of Washington and has sufficient photographic identification confirming their identity;

(b) Worked 680 hours in employment in their base year or earned wages during their base year equal to 680 times the minimum wage set by RCW 49.46.020 in effect during the first quarter of the claimant's base year;

(c) Is unemployed through no fault of their own; and

(d) Has been unemployed for a waiting period of one week.

(2) If the claimant's wages are not verified by employer reports to the department under subsection (1)(b) of this section, the department must request additional information or documentation from the claimant verifying the claimant earned wages during their base year equal to 680 times the minimum wage set by RCW 49.46.020 in effect during the first quarter of the claimant's base year. If, after the department's request, the claimant fails to provide sufficient information or documentation, the claimant may be denied benefits under this title.

(3) The department may request information or documentation from the claimant's former employers to verify the circumstances under which the claimant separated from employment when determining the eligibility standard under subsection (1)(c) of this section. If an employer fails to respond to a request under this subsection (3), the department must consider the eligibility standard under subsection (1)(c) of this section satisfied unless the department has independent, verified information indicating the claimant failed to satisfy the eligibility standard.

(4) The department may contract with a third-party, community-based organization to assist claimants in gathering information or documentation required under this section.

(5) The department must make the final decision on whether the claimant is eligible for benefits under this title. The department may utilize information or documentation provided by the claimant or any third-party, community-based organization contracted under this section.

NEW SECTION. **Sec.**  (1) If the department determines the claimant is eligible for benefits under this title, the claimant may qualify for weekly benefits by self-attesting, in a form and manner adopted in rule by the department, that the claimant meets the following requirements for each week of unemployment in which the claimant is applying for benefits under this title:

(a) The claimant must be actively seeking work in any trade, occupation, profession, or business for which the claimant is reasonably fitted; and

(b) The claimant must report to the department any wages or remuneration the claimant received.

(2) For the purposes of this section, "actively seeking work" means participating in job search, educational, or professional development activities adopted in rule by the department. In developing these activities, the department must consider the unique circumstances of a claimant under this title.

(3) The department may conduct random audits to confirm the claimant's job search, educational, or professional development activities, and current unemployment status.

NEW SECTION. **Sec.**  (1) A claimant who is eligible and qualified for benefits under this title must receive a weekly benefit amount equal to the weekly benefit amount calculated in RCW 50.20.120.

(2) Benefits must be payable to any eligible and qualified claimant during the claimant's benefit year in a maximum amount equal to the lesser of 26 times the weekly benefit amount, as determined under subsection (1) of this section, or one-third of the claimant's base year wages under this title.

NEW SECTION. **Sec.**  A determination of the amount of benefits potentially payable under this title must not serve as a basis for appeal but must be subject to request by the claimant for reconsideration or redetermination by the department at any time within one year of the date of delivery or mailing of such determination, or any such redetermination.

NEW SECTION. **Sec.**  (1) If waiting period credit or the payment of benefits under this title are denied to any claimant for any week or weeks, the claimant must be promptly issued written notice of the denial and reasons for such denial.

(2) If the department believes the claimant's right to waiting period credit or benefits under this title is at issue because of the claimant's separation from work for any reason other than lack of work, the department must promptly issue a determination of allowance or denial of waiting period credit or benefits under this title and the reasons for such allowance or denial to the claimant.

(3) Notice that the waiting period credit or benefits under this title allowed or denied must suffice for the particular weeks stated in the notice or until the condition upon which the allowance or denial was based has been changed.

NEW SECTION. **Sec.**  (1) A claimant is disqualified for benefits under this title:

(a) If the department finds that a claimant:

(i) Left their most recent work voluntarily without good cause;

(ii) Was discharged for misconduct or gross misconduct connected with their most recent work; or

(iii) Knowingly made a false statement or representation involving a material fact or knowingly failed to report a material fact and, as a result, has obtained or attempted to obtain any benefits under this title; or

(b) For any week a claimant has received, is receiving, or will receive compensation, as determined by the governing state or federal agency under:

(i) Title 50 RCW;

(ii) Title 50A RCW;

(iii) RCW 51.32.060;

(iv) RCW 51.32.090; or

(v) Any other applicable federal unemployment compensation, industrial insurance, or state disability insurance laws.

(2) In making the determination under subsection (1) of this section, the department must use the provisions of RCW 50.20.050, 50.20.066, 50.20.070, and 50.20.085 as a guide while accounting for the unique circumstances of a claimant under this title.

(3) Cessation of operations by an employer for the purpose of granting vacations, whether by union contract or other reasons, must not be construed to be a voluntary quit or a voluntary unemployment on the part of the claimant.

(4) Durations of disqualifications in subsection (1) of this section must conform to comparable durations provided in RCW 50.20.050, 50.20.066, 50.20.070, and 50.20.085.

NEW SECTION. **Sec.**  (1) Benefits are due and payable under this title only to the extent provided in this title and to the extent that moneys are available in the Washington wage replacement account created in section 3 of this act.

(2) Neither the department nor the state are liable for any amount exceeding such sums.

**PRIVACY AND CONFIDENTIALITY**

NEW SECTION. **Sec.**  (1) If information provided to the department by another governmental agency is held private and confidential by state or federal laws, the department may not release such information.

(2) Information provided to the department by another governmental entity conditioned upon the privacy and confidentiality is to be held private and confidential according to the agreement between the department and other governmental entity.

(3) The department may hold private and confidential information obtained for statistical analysis, research, or study purposes if the information was supplied voluntarily, conditioned upon maintaining confidentiality of the information.

(4) Persons requesting disclosure of information held by the department under subsection (1) or (2) of this section must request such disclosure from the agency providing the information to the department rather than from the department.

NEW SECTION. **Sec.**  Any information or records concerning a claimant or employing unit obtained by the department pursuant to the administration of this title must be private and confidential, except as otherwise provided in this chapter. This chapter does not create a rule of evidence. Information or records may only be released by the department when the release is:

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

(2) Necessary to comply with a lawful court order, judicial warrant signed by a judge appointed pursuant to Article III of the United States Constitution, or judicial subpoena for specific records issued pursuant to the criminal procedure law or the civil practice law and rules; or

(3) Disclosed in a manner that could not be used to determine the identities of the claimants or employers to whom the data pertains, alone or in combination with other data.

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

(a) Soliciting from the claimant, orally or in written form, a claimant's nationality, race, ethnicity, place of birth, citizenship, or immigration status;

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

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

(d) Contacting a claimant's current, former, or prospective employers including, but not limited to, for the purposes of verifying employment status, except as authorized in section 6(3) of this act; and

(e) Attempting to ascertain a claimant's immigration or citizenship status, except to determine whether a claimant is excluded from benefits under Title 50 RCW and potentially eligible for benefits under this title.

(2) Except as the department determines necessary to comply with other legal requirements, the department must destroy all records containing information that were provided by a claimant or collected by the department to verify eligibility for the program within 15 days of a claimant's written statement that they are no longer using the program.

(3) As provided in RCW 42.56.410, any information under this title is not a public record and must not be disclosed or otherwise made accessible in response to any request for records except:

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

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

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

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

(5) Notwithstanding any other law, information and records containing information that are collected or obtained by the state, any state agency, or any subdivision of the state, including agents of the state universities and community colleges, in addition to any private persons contracted to administer public services or programs, must only be collected, used, and retained for the purpose of assessing eligibility for and providing those public services and programs created by this title.

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

(7) In carrying out the program created under this title, the department must establish prohibitions and safeguards against unauthorized access to, and use of, any information collected under this title by private or public entities. For the purposes of this subsection, "unauthorized access" includes, but is not limited to, access by anyone other than a claimant, an employee of the department, the office of administrative hearings, the department of enterprise services, or their successor agencies.

(8) The department may use state and local databases to exclude claimants who may be eligible for unemployment insurance benefits under Title 50 RCW or are otherwise ineligible or disqualified. An absence of information contained in state and local databases must not be a factor, by itself, to deny a claimant benefits under this title.

**Sec.**  RCW 42.56.410 and 2019 c 81 s 10 and 2019 c 13 s 68 are each reenacted and amended to read as follows:

The following information related to employment security is exempt from disclosure under this chapter:

(1) Records maintained by the employment security department and subject to chapter 50.13 or 50A.25 RCW if provided to another individual or organization for operational, research, or evaluation purposes ((~~are exempt from disclosure under this chapter; and~~));

(2) Any inventory or data map records created under RCW 50.13.120(1)(b) that reveal the location of personal information or the extent to which it is protected; and

(3) Any information or records maintained by the employment security department pursuant to Title 50C RCW (the new title created in section 27 of this act), except:

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

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

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

**MISCELLANEOUS PROVISIONS**

NEW SECTION. **Sec.**  The department must establish a procedure for review, hearings, and appeals under this title comparable to the provisions of chapter 50.32 RCW, which complies with the confidentiality and privacy protections under sections 13 through 16 of this act.

NEW SECTION. **Sec.**  (1) The department must create a process by which claimants can notify it of payment errors and for collection and forgiveness of such overpayments. In developing this process, the department must use the provisions of RCW 50.20.190 as a guide and is granted the same authority as provided in RCW 50.20.190(3).

(2) The department must create a process by which potential fraud can be reported.

(3) The penalties provided in RCW 50.36.010 apply to fraudulent activities under this title.

NEW SECTION. **Sec.**  Any assignment, pledge, or encumbrance of any right to benefits under this title which are or may become due or payable under this title must be void. Such rights to benefits under this title must be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debts. Benefits under this title received by any individual, so long as they are not commingled with other funds of the recipient, must be exempt from any remedy whatsoever for collection of all debts except debts incurred for necessaries furnished to such individual or their spouse or dependents during the time when such individual was unemployed. Any waiver of any exemption provided for in this section must be void. Any agreement by an individual to waive, release, or commute their rights to benefits or any other rights under this title must be void.

NEW SECTION. **Sec.**  The legislature reserves the right to amend or repeal all or any part of this title at any time; and there must be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this title or by acts done pursuant thereto must exist subject to the power of the legislature to amend or repeal this title at any time.

NEW SECTION. **Sec.**  The department must adopt rules as necessary to implement this title.

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

NEW SECTION. **Sec.**  Sections 1 through 4 of this act constitute a new chapter in Title 50C RCW (the new title created in section 27 of this act).

NEW SECTION. **Sec.**  Sections 5 through 12 of this act constitute a new chapter in Title 50C RCW (the new title created in section 27 of this act).

NEW SECTION. **Sec.**  Sections 13 through 15 of this act constitute a new chapter in Title 50C RCW (the new title created in section 27 of this act).

NEW SECTION. **Sec.**  Sections 17 through 20 of this act constitute a new chapter in Title 50C RCW (the new title created in section 27 of this act).

NEW SECTION. **Sec.**  Sections 1 through 15 and 17 through 21 of this act constitute a new title in the Revised Code of Washington, to be codified as Title 50C RCW.

**--- END ---**