

CERTIFICATION OF ENROLLMENT

HOUSE BILL 1339

52nd Legislature
1991 Regular Session

Passed by the House March 12, 1991
Yeas 98 Nays 0

**Speaker of the
House of Representatives**

Passed by the Senate April 18, 1991
Yeas 47 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Alan Thompson, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 1339** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

Secretary of State
State of Washington

HOUSE BILL 1339

AS AMENDED BY THE SENATE

Passed Legislature - 1991 Regular Session

State of Washington 52nd Legislature 1991 Regular Session

By Representatives Heavey and O'Brien; by request of Employment Security Department.

Read first time January 25, 1991. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to unemployment compensation; amending RCW
2 50.04.030, 50.20.085, and 50.20.190; adding a new section to chapter
3 50.24 RCW; creating a new section; providing effective dates; and
4 declaring an emergency.

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

6 **Sec. 1.** RCW 50.04.030 and 1990 c 245 s 1 are each amended to read
7 as follows:

8 "Benefit year" with respect to each individual, means the fifty-two
9 consecutive week period beginning with the first day of the calendar
10 week in which the individual files an application for an initial
11 determination and thereafter the fifty-two consecutive week period
12 beginning with the first day of the calendar week in which the
13 individual next files an application for an initial determination after
14 the expiration of the individual's last preceding benefit year:
15 PROVIDED, HOWEVER, That the foregoing limitation shall not be deemed to

1 preclude the establishment of a new benefit year under the laws of
2 another state pursuant to any agreement providing for the interstate
3 combining of employment and wages and the interstate payment of
4 benefits nor shall this limitation be deemed to preclude the
5 commissioner from backdating an initial application at the request of
6 the claimant either for the convenience of the department of employment
7 security or for any other reason deemed by the commissioner to be good
8 cause.

9 An individual's benefit year shall be extended to be fifty-three
10 weeks when at the expiration of fifty-two weeks the establishment of a
11 new benefit year would result in the use of a quarter of wages in the
12 new base year that had been included in the individual's prior base
13 year.

14 No benefit year will be established unless it is determined that
15 the individual earned wages in "employment" in not less than six
16 hundred eighty hours of the individual's base year: PROVIDED, HOWEVER,
17 That a benefit year cannot be established if the base year wages
18 include wages earned prior to the establishment of a prior benefit year
19 unless the individual worked and earned wages since the ~~((initial))~~
20 last separation from employment immediately before the application for
21 initial determination in the previous benefit year if the applicant was
22 an unemployed individual at the time of application, or since the
23 initial separation in the previous benefit year if the applicant was
24 not an unemployed individual at the time of filing an application for
25 initial determination for the previous benefit year, of not less than
26 six times the weekly benefit amount computed for the individual's new
27 benefit year.

28 If an individual's prior benefit year was based on the last four
29 completed calendar quarters, a new benefit year shall not be

1 established until the new base year does not include any hours used in
2 the establishment of the prior benefit year.

3 If the wages of an individual are not based upon a fixed duration
4 of time or if the individual's wages are paid at irregular intervals or
5 in such manner as not to extend regularly over the period of
6 employment, the wages for any week shall be determined in such manner
7 as the commissioner may by regulation prescribe. Such regulation
8 shall, so far as possible, secure results reasonably similar to those
9 which would prevail if the individual were paid his or her wages at
10 regular intervals.

11 **Sec. 2.** RCW 50.20.085 and 1986 c 75 s 1 are each amended to read
12 as follows:

13 An individual is disqualified from benefits with respect to any day
14 or days (~~in~~) for which he or she is receiving, has received, or will
15 receive compensation under RCW 51.32.060 or 51.32.090.

16 **Sec. 3.** RCW 50.20.190 and 1990 c 245 s 5 are each amended to read
17 as follows:

18 (1) An individual who is paid any amount as benefits under this
19 title to which he or she is not entitled shall, unless otherwise
20 relieved pursuant to this section, be liable for repayment of the
21 amount overpaid. The department shall issue an overpayment assessment
22 setting forth the reasons for and the amount of the overpayment. The
23 amount assessed, to the extent not collected, may be deducted from any
24 future benefits payable to the individual: PROVIDED, That in the
25 absence of fraud, misrepresentation, or willful nondisclosure, every
26 determination of liability shall be mailed or personally served not
27 later than two years after the close of the individual's benefit year
28 in which the purported overpayment was made unless the merits of the

1 claim are subjected to administrative or judicial review in which event
2 the period for serving the determination of liability shall be extended
3 to allow service of the determination of liability during the six-month
4 period following the final decision affecting the claim.

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

13 (3) Any assessment herein provided shall constitute a determination
14 of liability from which an appeal may be had in the same manner and to
15 the same extent as provided for appeals relating to determinations in
16 respect to claims for benefits: PROVIDED, That an appeal from any
17 determination covering overpayment only shall be deemed to be an appeal
18 from the determination which was the basis for establishing the
19 overpayment unless the merits involved in the issue set forth in such
20 determination have already been heard and passed upon by the appeal
21 tribunal. If no such appeal is taken to the appeal tribunal by the
22 individual within thirty days of the delivery of the notice of
23 determination of liability, or within thirty days of the mailing of the
24 notice of determination, whichever is the earlier, said determination
25 of liability shall be deemed conclusive and final. Whenever any such
26 notice of determination of liability becomes conclusive and final, the
27 commissioner, upon giving at least twenty days notice by certified mail
28 return receipt requested to the individual's last known address of the
29 intended action, may file with the superior court clerk of any county
30 within the state a warrant in the amount of the notice of determination

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

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

1 (5) (~~(When an individual has been awarded or receives back pay, the~~
2 ~~amount of the back pay shall constitute wages paid in the period for~~
3 ~~which it was awarded. No person is liable for the amount of benefits~~
4 ~~if the amount of the back pay award or settlement was reduced by the~~
5 ~~amount of benefits received. When the amount of the back pay award or~~
6 ~~settlement was reduced by the amount of benefits received, the employer~~
7 ~~shall pay to the unemployment compensation fund an amount equal to the~~
8 ~~amount of such reduction. An employer who is a party to any back pay~~
9 ~~award or settlement shall, within thirty days of the settlement, report~~
10 ~~to the department the amount of benefits by which the award or~~
11 ~~settlement was reduced, if any, and the name and social security number~~
12 ~~of the person who received the award or settlement)) Any employer who
13 is a party to a back pay award or settlement due to loss of wages
14 shall, within thirty days of the award or settlement, report to the
15 department the amount of the award or settlement, the name and social
16 security number of the recipient of the award or settlement, and the
17 period for which it is awarded. When an individual has been awarded or
18 receives back pay, for benefit purposes the amount of the back pay
19 shall constitute wages paid in the period for which it was awarded.
20 For contribution purposes, the back pay award or settlement shall
21 constitute wages paid in the period in which it was actually paid. The
22 following requirements shall also apply:~~

23 (a) The employer shall reduce the amount of the back pay award or
24 settlement by an amount determined by the department based upon the
25 amount of unemployment benefits received by the recipient of the award
26 or settlement during the period for which the back pay award or
27 settlement was awarded;

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

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

5 (d) If the employer fails to reduce the amount of the back pay
6 award or settlement as required in (a) of this subsection, the
7 department shall issue an overpayment assessment against the recipient
8 of the award or settlement in the amount that the back pay award or
9 settlement should have been reduced; and

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

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

25 NEW SECTION. Sec. 4. A new section is added to chapter 50.24 RCW
26 to read as follows:

27 Whenever any employer quits business, or sells out, exchanges, or
28 otherwise disposes of the employer's business or stock of goods, any
29 contributions payable under this title shall become immediately due and

1 payable, and the employer shall, within ten days, make a return and pay
2 the contributions due; and any person who becomes a successor to such
3 business shall become liable for the full amount of the contributions
4 and withhold from the purchase price a sum sufficient to pay any
5 contributions due from the employer until such time as the employer
6 produces a receipt from the employment security department showing
7 payment in full of any contributions due or a certificate that no
8 contribution is due and, if such contribution is not paid by the
9 employer within ten days from the date of such sale, exchange, or
10 disposal, the successor shall become liable for the payment of the full
11 amount of contributions, and the payment thereof by such successor
12 shall, to the extent thereof, be deemed a payment upon the purchase
13 price, and if such payment is greater in amount than the purchase price
14 the amount of the difference shall become a debt due such successor
15 from the employer.

16 No successor may be liable for any contributions due from the
17 person from whom that person has acquired a business or stock of goods
18 if that person gives written notice to the employment security
19 department of such acquisition and no assessment is issued by the
20 department within one hundred eighty days of receipt of such notice
21 against the former operator of the business and a copy thereof mailed
22 to such successor.

23 NEW SECTION. **Sec. 5.** If any part of this act is found to be in
24 conflict with federal requirements which are a prescribed condition to
25 the allocation of federal funds to the state or the eligibility of
26 employers in this state for federal unemployment tax credits, the
27 conflicting part of this act is hereby declared to be inoperative
28 solely to the extent of the conflict, and such finding or determination
29 shall not affect the operation of the remainder of this act. The rules

1 under this act shall meet federal requirements which are a necessary
2 condition to the receipt of federal funds by the state or the granting
3 of federal unemployment tax credits to employers in this state.

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

8 NEW SECTION. **Sec. 7.** This act is necessary for the immediate
9 preservation of the public peace, health, or safety, or support of the
10 state government and its existing public institutions, and sections 1
11 and 4 shall take effect July 1, 1991, and section 3 shall take effect
12 July 7, 1991, for new claims filed on or after July 7, 1991.