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SENATE BILL 5230

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State of Washington

60th Legislature

2007 Regular Session

By Senators Kohl-Welles, Keiser, Prentice, Franklin and Kline; by request of Employment Security Department

Read first time 01/15/2007. Referred to Committee on Labor, Commerce, Research & Development.

1 AN ACT Relating to funding the administration of Title 50 RCW,  
2 unemployment compensation; amending RCW 50.20.190, 50.24.014,  
3 50.29.063, and 50.16.010; and creating a new section.

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

5 **Sec. 1.** RCW 50.20.190 and 2006 c 13 s 21 are each amended to read  
6 as follows:

7 (1) An individual who is paid any amount as benefits under this  
8 title to which he or she is not entitled shall, unless otherwise  
9 relieved pursuant to this section, be liable for repayment of the  
10 amount overpaid. The department shall issue an overpayment assessment  
11 setting forth the reasons for and the amount of the overpayment. The  
12 amount assessed, to the extent not collected, may be deducted from any  
13 future benefits payable to the individual: PROVIDED, That in the  
14 absence of a back pay award, a settlement affecting the allowance of  
15 benefits, fraud, misrepresentation, or willful nondisclosure, every  
16 determination of liability shall be mailed or personally served not  
17 later than two years after the close of or final payment made on the  
18 individual's applicable benefit year for which the purported  
19 overpayment was made, whichever is later, 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 the 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, the determination of  
25 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  
31 of liability plus a filing fee under RCW 36.18.012(10). The clerk of  
32 the county where the warrant is filed shall immediately designate a  
33 superior court cause number for the warrant, and the clerk shall cause  
34 to be entered in the judgment docket under the superior court cause  
35 number assigned to the warrant, the name of the person(s) mentioned in  
36 the warrant, the amount of the notice of determination of liability,  
37 and the date when the warrant was filed. The amount of the warrant as  
38 docketed shall become a lien upon the title to, and any interest in,

1 all real and personal property of the person(s) against whom the  
2 warrant is issued, the same as a judgment in a civil case duly docketed  
3 in the office of such clerk. A warrant so docketed shall be sufficient  
4 to support the issuance of writs of execution and writs of garnishment  
5 in favor of the state in the manner provided by law for a civil  
6 judgment. A copy of the warrant shall be mailed to the person(s)  
7 mentioned in the warrant by certified mail to the person's last known  
8 address within five days of its filing with the clerk.

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

23 (5) Any employer who is a party to a back pay award or settlement  
24 due to loss of wages shall, within thirty days of the award or  
25 settlement, report to the department the amount of the award or  
26 settlement, the name and social security number of the recipient of the  
27 award or settlement, and the period for which it is awarded. When an  
28 individual has been awarded or receives back pay, for benefit purposes  
29 the amount of the back pay shall constitute wages paid in the period  
30 for which it was awarded. For contribution purposes, the back pay  
31 award or settlement shall constitute wages paid in the period in which  
32 it was actually paid. The following requirements shall also apply:

33 (a) The employer shall reduce the amount of the back pay award or  
34 settlement by an amount determined by the department based upon the  
35 amount of unemployment benefits received by the recipient of the award  
36 or settlement during the period for which the back pay award or  
37 settlement was awarded;

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

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

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

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

18 (6) When an individual fails to repay an overpayment assessment  
19 that is due and fails to arrange for satisfactory repayment terms, the  
20 commissioner shall impose an interest penalty of one percent per month  
21 of the outstanding balance. Interest shall accrue immediately on  
22 overpayments assessed pursuant to RCW 50.20.070 and shall be imposed  
23 when the assessment becomes final. For any other overpayment, interest  
24 shall accrue when the individual has missed two or more of the  
25 individual's monthly payments either partially or in full. The  
26 interest penalty shall be used(~~(, first, to fully fund either social  
27 security number cross-match audits or other more effective activities  
28 that ensure that individuals are entitled to all amounts of benefits  
29 that they are paid, second, to fund other detection and recovery of  
30 overpayment and collection activities, and third, during the 2005-07  
31 fiscal biennium, the cost of the job skills program at community and  
32 technical colleges as appropriated by the legislature)) solely for the  
33 proper administration of this title's programs managed by the  
34 employment security department as authorized under RCW 50.16.010 and  
35 for no other purposes.~~

36 **Sec. 2.** RCW 50.24.014 and 2006 c 13 s 20 are each amended to read  
37 as follows:

1 (1)(a) A separate and identifiable account to provide for the  
2 financing of special programs to assist the unemployed is established  
3 in the administrative contingency fund. All money in this account  
4 shall be expended solely for the purposes of this title and for no  
5 other purposes whatsoever. Contributions to this account shall accrue  
6 and become payable by each employer, except employers as described in  
7 RCW 50.44.010 and 50.44.030 who have properly elected to make payments  
8 in lieu of contributions, taxable local government employers as  
9 described in RCW 50.44.035, and those employers who are required to  
10 make payments in lieu of contributions, at a basic rate of two one-  
11 hundredths of one percent. The amount of wages subject to tax shall be  
12 determined under RCW 50.24.010.

13 (b) A separate and identifiable account is established in the  
14 administrative contingency fund for financing the employment security  
15 department's administrative cost under RCW 50.22.150 and the costs  
16 under RCW 50.22.150(9). All money in this account shall be expended  
17 solely for the purposes of this title and for no other purposes  
18 whatsoever. Contributions to this account shall accrue and become  
19 payable by each employer, except employers as described in RCW  
20 50.44.010 and 50.44.030 who have properly elected to make payments in  
21 lieu of contributions, taxable local government employers as described  
22 in RCW 50.44.035, those employers who are required to make payments in  
23 lieu of contributions, those employers described under RCW  
24 50.29.025(1)(f)(ii), and those qualified employers assigned rate class  
25 20 or rate class 40, as applicable, under RCW 50.29.025, at a basic  
26 rate of one one-hundredth of one percent. The amount of wages subject  
27 to tax shall be determined under RCW 50.24.010. Any amount of  
28 contributions payable under this subsection (1)(b) that exceeds the  
29 amount that would have been collected at a rate of four one-thousandths  
30 of one percent must be deposited in the (~~unemployment compensation~~  
31 ~~trust fund~~) special account created in (a) of this subsection.  
32 Contributions must be expended for the proper administration of this  
33 title's programs managed by the employment security department as  
34 authorized under RCW 50.16.010 and for no other purposes.

35 (~~(c) For the first calendar quarter of 1994 only, the basic two~~  
36 ~~one hundredths of one percent contribution payable under (a) of this~~  
37 ~~subsection shall be increased by one hundredth of one percent to a~~  
38 ~~total rate of three one hundredths of one percent. The proceeds of~~

1 ~~this incremental one hundredth of one percent shall be used solely for~~  
2 ~~the purposes described in section 22, chapter 483, Laws of 1993, and~~  
3 ~~for the purposes of conducting an evaluation of the call center~~  
4 ~~approach to unemployment insurance under section 5, chapter 161, Laws~~  
5 ~~of 1998. During the 1997-1999 fiscal biennium, any surplus from~~  
6 ~~contributions payable under this subsection (c) may be deposited in the~~  
7 ~~unemployment compensation trust fund, used to support tax and wage~~  
8 ~~automated systems projects that simplify and streamline employer~~  
9 ~~reporting, or both.)~~)

10 (2)(a) Contributions under this section shall become due and be  
11 paid by each employer under rules as the commissioner may prescribe,  
12 and shall not be deducted, in whole or in part, from the remuneration  
13 of individuals in the employ of the employer. Any deduction in  
14 violation of this section is unlawful.

15 (b) In the payment of any contributions under this section, a  
16 fractional part of a cent shall be disregarded unless it amounts to  
17 one-half cent or more, in which case it shall be increased to one cent.

18 (3) If the commissioner determines that federal funding has been  
19 increased to provide financing for the services specified in chapter  
20 50.62 RCW, the commissioner shall direct that collection of  
21 contributions under this section be terminated on the following January  
22 1st.

23 **Sec. 3.** RCW 50.29.063 and 2006 c 47 s 1 are each amended to read  
24 as follows:

25 (1) If it is found that a significant purpose of the transfer of a  
26 business was to obtain a reduced array calculation factor rate, then  
27 the following applies:

28 (a) If the successor was an employer at the time of the transfer,  
29 then the experience rating accounts of the employers involved shall be  
30 combined into a single account and the employers assigned the higher of  
31 the predecessor or successor array calculation factor rate to take  
32 effect as of the date of the transfer.

33 (b) If the successor was not an employer at the time of the  
34 transfer, then the experience rating account of the acquired business  
35 must not be transferred and, instead, the sum of the rate determined by  
36 the commissioner under RCW 50.29.025(2) (c)(ii) and (d)(ii), and  
37 50.29.041 if applicable, shall be assigned.

1 (2) If any part of a delinquency for which an assessment is made  
2 under this title is due to an intent to knowingly evade the  
3 successorship provisions of RCW 50.29.062 and this section, then with  
4 respect to the employer, and to any business found to be knowingly  
5 promoting the evasion of such provisions:

6 (a) The commissioner shall, for the rate year in which the  
7 commissioner makes the determination under this subsection and for each  
8 of the three consecutive rate years following that rate year, assign to  
9 the employer or business the total rate, which is the sum of the  
10 recalculated array calculation factor rate and a civil penalty  
11 assessment rate, calculated as follows:

12 (i) Recalculate the array calculation factor rate as the array  
13 calculation factor rate that should have applied to the employer or  
14 business under RCW 50.29.025 and 50.29.062; and

15 (ii) Calculate a civil penalty assessment rate in an amount that,  
16 when added to the array calculation factor rate determined under (a)(i)  
17 of this subsection for the applicable rate year, results in a total  
18 rate equal to the maximum array calculation factor rate under RCW  
19 50.29.025 plus two percent, which total rate is not limited by any  
20 maximum array calculation factor rate established in RCW  
21 50.29.025(2)(b)(ii);

22 (b) The employer or business may be prosecuted under the penalties  
23 prescribed in RCW 50.36.020; and

24 (c) The employer or business must pay for the employment security  
25 department's reasonable expenses of auditing the employer's or  
26 business's books and collecting the civil penalty assessment.

27 (3) If the person knowingly evading the successorship provisions,  
28 or knowingly attempting to evade these provisions, or knowingly  
29 promoting the evasion of these provisions, is not an employer, the  
30 person is subject to a civil penalty assessment of five thousand  
31 dollars per occurrence. In addition, the person is subject to the  
32 penalties prescribed in RCW 50.36.020 as if the person were an  
33 employer. The person must also pay for the employment security  
34 department's reasonable expenses of auditing his or her books and  
35 collecting the civil penalty assessment.

36 (4) For purposes of this section:

37 (a) "Knowingly" means having actual knowledge of or acting with

1 deliberate ignorance or reckless disregard for the prohibition involved  
2 and includes, but is not limited to, intent to evade,  
3 misrepresentation, or willful nondisclosure.

4 (b) "Person" means and includes an individual, a trust, estate,  
5 partnership, association, company, or corporation.

6 (c) "Transfer of a business" includes the transfer or acquisition  
7 of substantially all or a portion of the operating assets, which may  
8 include the employer's work force.

9 (5) Any decision to assess a penalty under this section shall be  
10 made by the chief administrative officer of the tax branch or his or  
11 her designee.

12 (6) Nothing in this section shall be construed to deny an employer  
13 the right to appeal the assessment of a penalty in the manner provided  
14 in RCW 50.32.030.

15 (7) All penalties and interest collected under this section shall  
16 be expended solely for (~~prevention, detection, and collection~~  
17 ~~activities related to evasion of the successorship provisions of RCW~~  
18 ~~50.29.062 and this section,)) the proper administration of this title's  
19 programs managed by the employment security department as authorized  
20 under RCW 50.16.010 and for no other purposes.~~

21 (8) The commissioner shall establish procedures to enforce this  
22 section.

23 **Sec. 4.** RCW 50.16.010 and 2006 c 13 s 18 are each amended to read  
24 as follows:

25 (1) There shall be maintained as special funds, separate and apart  
26 from all public moneys or funds of this state an unemployment  
27 compensation fund, an administrative contingency fund, and a federal  
28 interest payment fund, which shall be administered by the commissioner  
29 exclusively for the purposes of this title, and to which RCW 43.01.050  
30 shall not be applicable.

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

32 (i) All contributions collected under RCW 50.24.010 and payments in  
33 lieu of contributions collected pursuant to the provisions of this  
34 title;

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

37 (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); and

12 (viii) All moneys received for the fund from any other source.

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

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

17 (i) All interest on delinquent contributions collected pursuant to  
18 this title;

19 (ii) All fines and penalties collected pursuant to the provisions  
20 of this title;

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

23 (iv) Revenue received under RCW 50.24.014.

24 (b) All fees, fines, forfeitures, and penalties collected or  
25 assessed by a district court because of the violation of this title or  
26 rules adopted under this title shall be remitted as provided in chapter  
27 3.62 RCW.

28 (c) Moneys available in the administrative contingency fund, other  
29 than money in the special account created under RCW 50.24.014(1)(a),  
30 shall be expended upon the direction of the commissioner, with the  
31 approval of the governor, whenever it appears to him or her that such  
32 expenditure is necessary solely for:

33 (i) The proper administration of this title and no federal funds  
34 are available for the specific purpose to which such expenditure is to  
35 be made, provided, the moneys are not substituted for appropriations  
36 from federal funds which, in the absence of such moneys, would be made  
37 available. If the department determines that federal funds

1 appropriated are not sufficient to meet the needs of the department,  
2 the moneys may be expended for the proper administration of this  
3 title's programs managed by the employment security department.

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

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

15 ~~((d) During the 2005-2007 fiscal biennium, the cost of the job  
16 skills program at community and technical colleges as appropriated by  
17 the legislature.))~~

18 Money in the special account created under RCW 50.24.014(1)(a) may  
19 only be expended, after appropriation, for the purposes specified in  
20 this section and RCW 50.62.010, 50.62.020, 50.62.030, 50.24.014,  
21 50.44.053, and 50.22.010.

22 NEW SECTION. Sec. 5. 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.

26 NEW SECTION. Sec. 6. If any part of this act is found to be in  
27 conflict with federal requirements that are a prescribed condition to  
28 the allocation of federal funds to the state or the eligibility of  
29 employers in this state for federal unemployment tax credits, the  
30 conflicting part of this act is inoperative solely to the extent of the  
31 conflict, and the finding or determination does not affect the  
32 operation of the remainder of this act. Rules adopted under this act  
33 must meet federal requirements that are a necessary condition to the  
34 receipt of federal funds by the state or the granting of federal

1 unemployment tax credits to employers in this state.

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