

Nos. 79878-8, 80309-9

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**SUPREME COURT OF THE STATE OF WASHINGTON**

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STATE OF WASHINGTON  
EMPLOYMENT SECURITY DEPARTMENT,  
Respondent,

v.

SARA D. SPAIN,  
Petitioner.

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STATE OF WASHINGTON  
EMPLOYMENT SECURITY DEPARTMENT,  
Petitioner,

v.

KUSUM BATEY,  
Respondent.

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**SUPPLEMENTAL BRIEF OF STATE OF WASHINGTON  
EMPLOYMENT SECURITY DEPARTMENT**

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ROBERT M. MCKENNA  
*Attorney General*  
JAY D. GECK, WSBA 17916  
*Deputy Solicitor General*  
JERRY ANDERSON, WSBA 8734  
*Senior Counsel*  
ERIKA UHL, WSBA 30581  
*Assistant Attorney General*  
1125 Washington Street SE  
OLYMPIA, WA 98504-0100  
(360) 586-2697

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## I. ISSUES PRESENTED

In 2003, the Legislature amended RCW 50.20.050 to disqualify persons from unemployment benefits if they quit voluntarily and do not satisfy one of ten statutorily identified exceptions. Second Engrossed S.B. 6097 (Laws of 2003, 2d Sp. Sess., ch. 4). The 2003 amendments applied to claims filed after January 4, 2004. In addition, the 2003 amendments deleted the discretion of the Commissioner of the Employment Security Department (ESD) to determine that there was “good cause” to quit based on factors “as the commissioner may deem pertinent”. Compare RCW 50.20.050(2) (claims after 2004) with RCW 50.20.050(1)(c) (claims before 2004).

Petitioner Spain and Respondent Batey were denied unemployment benefits because each quit her employment voluntarily, filed a claim for benefits after January 4, 2004, and it is undisputed that neither satisfies one of the ten exceptions to disqualification in RCW 50.20.050(2)(b). Ms. Batey, however, challenged the title of the bill containing the 2003 amendments. When the 2006 Legislature learned of her challenge, it reenacted the 2003 amendments, through Engrossed H.B. 3278 (Laws of 2006, ch. 12). Ms. Batey then revised her claim to challenge the title of this 2006 bill. EHB 3278. Thus, the issue in *Batey* is

whether the title of EHB 3278—“*AN ACT Relating to making adjustments in the unemployment insurance system to enhance benefit and tax equity . . .*”—adequately reflects the subject of the bill as required by article II, section 19 of the Washington Constitution.<sup>1</sup>

Ms. Spain did not challenge the title of the 2006 bill. Rather, she argues that the exceptions to disqualification in RCW 50.20.050(2)(b) are not the exclusive circumstances under which a person who voluntarily quits employment is nonetheless entitled to benefits. Therefore, the issue in *Spain* is whether the ten grounds in RCW 50.20.050(2)(b), under which a person who voluntarily quits employment may avoid disqualification from benefits, are exclusive.

## II. STATEMENT OF THE CASE

The 2003 Legislature passed 2ESB 6097, amending RCW 50.20.050, the statute that determines when a person qualifies for unemployment benefits after voluntarily quitting a job. As amended in 2003, the statute disqualifies from unemployment benefits persons who

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<sup>1</sup> The title of the 2003 bill was “AN ACT Relating to revising the unemployment compensation system through creating forty rate classes for determining employer contribution rates . . .” 2ESB 6097. No claim concerning the 2003 bill remains in this case.

quit voluntarily without good cause, (RCW 50.20.050(2)(a)), and provides ten circumstances under which such persons are not disqualified (RCW 50.20.050(2)(b)). Significantly, the 2003 amendments eliminated the language granting the ESD Commissioner discretion to determine the “other” factors amounted to good cause. *See* RCW 50.20.050(1)(c) (discretionary power for claims prior to January 4, 2004).

ESD applied the 2003 amendments to claims filed on or after January 4, 2004, concluding that persons who voluntarily quit must meet one of the ten circumstances set forth in RCW 50.20.050(2)(b) or be disqualified from receiving benefits. The Court of Appeals affirmed ESD’s position in *Starr v. Employment Security Department*, 130 Wn. App. 541, 123 P.3d 513 (2005), *review denied*, 157 Wn.2d 1019 (2006).

RCW 50.20.050(2)(b)(i)-(x) provides the exclusive list of good cause reasons for voluntarily quitting employment that will not disqualify a claimant from receiving unemployment compensation benefits.

*Starr*, 130 Wn. App. at 551.

**Batey Case.** Kusum Batey voluntarily quit her job with the Snohomish County Center For Battered Women in 2004. The administrative law judge (ALJ) and the Commissioner rejected

Ms. Batey's arguments that her work had been changed to offend moral beliefs or religious convictions. Instead, she quit based on disagreements over reasonable management decisions. Batey Comm'r's Rec. at 7-11.

On judicial review, Ms. Batey did not contest the conclusion that she failed to meet any of the ten exceptions in RCW 50.20.050(2)(b). Initially, her theory was that her case should be remanded and reconsidered under the statute as it existed prior to the 2003 amendments. She argued that the 2003 bill amending RCW 50.20.050 violated article II, section 19. Citing this constitutional issue, Ms. Batey asked the Court of Appeals to hear the petition for judicial review directly, skipping the superior court. Batey Appeal Br. at 7.

The 2006 Legislature learned of Ms. Batey's challenge to the 2003 title. Before any court ruled on Ms. Batey's claim, it passed EHB 3278 to reenact the 2003 amendments to RCW 50.20.050 and make them retroactive to claims filed as of January 4, 2004. Laws of 2006, ch. 12, §§ 1-2 (App. at 1a-6a); *see also* H.B. Report on Engrossed H.B. 3278, 59th Leg., Reg. Sess. (Wash. 2006) (App. at 7a-8a) ("In a lawsuit filed in 2005, the new limits were challenged as unconstitutionally enacted.").

After the Legislature reenacted the 2003 amendments in 2006 under EHB 3278, Ms. Batey challenged the title of EHB 3278. The Court of Appeals held that the 2006 reenactment of RCW 50.20.050 was not

reflected in the title of EHB 3278 (Laws of 2006, ch. 12). *Batey v. Empl. Sec. Dep't*, 137 Wn. App. 506, 154 P.3d 266 (2007).<sup>2</sup>

**Spain Case.** Sara Spain worked for Peterson Northwest, Inc., a roofing company. She started in February 2004 and quit June 18, 2004, after her supervisor verbally abused her, engaged in angry tirades that included kicking and throwing objects, and yelled at employees while making them stand in the rain. Spain Comm'r's Rec. at 10–13. An ALJ found that the company president was unprofessional and demeaning, but denied benefits because these circumstances did not satisfy any of the ten grounds in RCW 50.20.050(2)(b) under which an employee may voluntarily quit employment and still receive benefits. Spain Comm'r's Rec. at 48–49. The Commissioner adopted the findings and conclusions of the ALJ. Spain Comm'r's Rec. at 62–63.

The superior court reversed, rejecting ESD's conclusion that Ms. Spain was disqualified because she did not claim to satisfy any of the ten reasons for avoiding disqualification in RCW 50.20.050(2)(b). The

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<sup>2</sup> The Legislature also passed Engrossed Substitute S.B. 6885 in 2006, which prospectively reenacted RCW 50.20.050 as amended by the 2003 amendments with a minor amendment concerning quits by military spouses. *See* Laws of 2006, ch. 13, § 2. No party has disputed the validity of ESSB 6885. Ms. Batey and ESD agree that ESSB 6885 does not affect her case and that, "with respect to the subject-in-title requirement of article II, section 19, [the Legislature] properly amended RCW 50.20.050 prospectively in a manner similar to the 2003 amendments." *Batey*, 137 Wn. App. at 514 n.4.

Court of Appeals, however, reversed the superior court and followed the decision in *Starr*, affirming the denial of benefits to Ms. Spain.

The Court accepted Ms. Spain's petition for review and ESD's petition for review in *Batey* and consolidated the two cases.

### III. ARGUMENT

The consolidated cases involve judicial review of agency adjudicative orders under the Administrative Procedures Act based on a claimed constitutional defect in the statute and an error of statutory interpretation. RCW 34.05.570(3)(a), (d). This brief first addresses Ms. Batey's challenge to the title of the 2006 bill. It then addresses Ms. Spain's challenge to ESD's and Court of Appeals' construction that RCW 50.20.050(2) provides the exclusive circumstances for avoiding disqualification for a voluntary quit.

#### A. The Title Of EHB 3278 Adequately Expresses Its Subject

Article II, section 19 requires that the subject of a bill be expressed in its title. It reads: "No bill shall embrace more than one subject, and that shall be expressed in the title." For purposes of article II, section 19, the title of EHB 3278 is: "AN ACT Relating to making adjustments in the unemployment insurance system to enhance benefit and

tax equity . . . .”<sup>3</sup> Ms. Batey does not have a claim that the 2006 bill contains a double subject. Rather, she claims that the title does not express its subject. The Court should reject Ms. Batey’s argument and reverse the Court of Appeals, and affirm ESD.

**1. Article II, Section 19 Is To Be Construed Liberally To Effectuate Its Purposes And Not To Impede The Legislative Process**

The purpose of the constitutional requirement that the title of a bill express its subject is to inform the Legislature and the general public “on the subject matter of the measure they are voting on.” *Washington Ass’n of Neighborhood Stores v. State*, 149 Wn.2d 359, 371, 70 P.3d 920 (2003). The “requirement is to be liberally construed so as not to impose awkward and hampering restrictions upon the legislature.” *State Fin. Comm. v. O’Brien*, 105 Wn.2d 78, 81, 711 P.2d 993 (1986); *Pierce Cy. v. State*, 150 Wn.2d 422, 436, 78 P.3d 640 (2003). “The title to a bill need not be an index to its contents; nor is the title expected to give the details contained in the bill.” *Neighborhood Stores*, 149 Wn.2d at 371. “Any ‘objections to the title must be grave and the conflict between it and the constitution

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<sup>3</sup> The statutory references are not considered a subject in the title. *See State ex rel. Seattle Elec. Co. v. Superior Ct.*, 28 Wash. 317, 325, 68 P. 957 (1902) (“mere reference to a section in the title of an act does not state a subject”).

palpable before we will hold an act unconstitutional.’” *Neighborhood Stores*, 149 Wn.2d at 372 (quoting *Nat’l Ass’n of Creditors v. Brown*, 147 Wash. 1, 3, 264 P. 1005 (1928) (quoting *N. Cedar Co. v. French*, 131 Wash. 394, 419, 230 P. 837 (1924))).

We have held that this constitutional provision should be liberally construed and that the title need not be a complete index of the subject-matter of the act, but that it will be sufficient if it fairly covers the matter legislated upon, and that a general title will include all matters incidental and germane thereto, *and that objections to the title must be grave and the conflict between it and the constitution palpable before we will hold an act unconstitutional.*

*N. Cedar Co.*, 131 Wash. at 418–19 (emphasis added).

This framework reflects the respect that is due enactments of the coequal branch of government to which the constitution entrusts lawmaking power.

[T]he rule that plenary power resides in the legislature, in the absence of express or implied limitation, applies not only to the scope of the laws which it may enact when convened in session but also to its power to do those things necessarily incident to the enactment of laws. In other words, the power is procedural as well as substantive.

*State ex rel. Distilled Spirits Inst. v. Kinnear*, 80 Wn.2d 175, 182, 492 P.2d 1012 (1972); see *Washington State Leg. v. State*, 139 Wn.2d 129, 985 P.2d 353 (1999) (referring to the constitutional title requirement as a matter of legislative procedure).

**2. Whether Properly Considered General, Or Erroneously Considered Restrictive, The Title Of EHB 3278 Satisfies Article 2, Section 19**

Contrary to the conclusion reached by the Court of Appeals, the title of EHB 3278—“AN ACT Relating to making adjustments in the unemployment insurance system to enhance benefit and tax equity”—is properly considered a general title. It describes a very broad subject—adjustments to the unemployment insurance system relating to benefits and taxes. The words “making adjustments” are broad; “unemployment system” is general; and the statement of intent “to enhance benefit and tax equity” also describes a broad concept.

“In assessing whether a title is general, it is not necessary that the title contain a general statement of the subject of an act; ‘[a] few well-chosen words, suggestive of the general subject stated, is all that is necessary.’” *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 209, 11 P.3d 762 (2000) (alteration in original). Here, the combination of broad and general words does not create a restrictive title that carves out a narrow subject for legislation. *See, e.g., State v. Broadaway*, 133 Wn.2d 118, 127, 942 P.2d 363 (1997) (A restrictive title “is one where a particular part or branch of a subject is carved out and selected as the subject of the legislation.”) (citing *Gruen v. State Tax*

*Comm'n*, 35 Wn.2d 1, 23, 211 P.2d 651 (1949)). The Court of Appeals erred in concluding otherwise.

Properly viewed as general, “all matters incidental and germane” to the title of EHB 3278 come within its terms. *N. Cedar Co.*, 131 Wash. at 419. “Where a general title is used, all that is required is rational unity between the general subject and the incidental subjects.” *Amalgamated Transit*, 142 Wn.2d at 209. There is “rational unity” between the general subject expressed in the title—adjustments to the unemployment insurance system related to benefit and tax equity—and the unemployment benefit eligibility addressed in RCW 50.20.050. Certainly the terms on which people qualify for benefits are directly related to the equity of benefits. The title here provides inquiry notice that it concerns the unemployment insurance system and benefit equity. This inquiry notice is all that article II, section 19 requires.

Even if one were erroneously to consider the title of EHB 3278 restrictive, it still would satisfy article II, section 19. This is because qualification for unemployment benefits is a matter fairly encompassed within a bill title expressing that the bill relates to adjusting the unemployment insurance system to enhance benefit and tax equity. Compared to cases striking down titles, the subject of unemployment benefit qualification is not a subject hidden by a narrow title. This

contrasts with cases like *Patrice v. Murphy*, 136 Wn.2d 845, 966 P.2d 1271 (1998), where the Court held that “AN ACT relating to court costs” gave no notice of the challenged subject, which was a statute requiring translator during police investigations. *Patrice*, 136 Wn.2d at 853. Similarly, “An Act providing for the regulation and supervision of the issuance and sale of securities to prevent fraud in the sale thereof” did not give inquiry notice of the subject of bringing oil and gas leases into the securities act, again because that matter could not be said to be fairly encompassed in the subject expressed by the bill’s title. *See Petroleum Lease Properties Co. v. Huse*, 195 Wash. 254, 257, 260, 80 P.2d 774 (1938). The same reasons were applied in *State v. Thomas*, 103 Wn. App. 800, 809–10, 14 P.3d 854 (2000), where the title “AN ACT Relating to insurance fraud” did not express the subject of repealing the statute sunsetting the Criminal Profiteering Act, thus reenacting the crime of leading organized crime.

The title of EHB 3278 lacks such flaws. The title advises that the subject of the bill is “adjusting” the “unemployment insurance system” with respect to “benefits”. These words give inquiry notice sufficient to encompass the subject of benefit qualifications. Ms. Batey even

recognizes that there is some “extent to which *any* changes to eligibility might be said to affect benefit equity.” Br. Appellant Batey at 23.<sup>4</sup>

**3. The Court Of Appeals Erroneously Required The Title Of EHB 3278 To Be An Index To Its Contents**

The Court of Appeals committed a second error in holding that EHB 3278 violates article II, section 19. The court below invalidated EHB 3278 because, in its words, the title did not “signal that legislators had decided to change the good cause criteria for voluntary quit.” *Batey*, 137 Wn. App. at 513. The Court of Appeals suggests no way that the title would “signal” such content, apart from stating those details in the title.

Article II, section 19 does not require a bill title to provide a specific “signal” of the sort found lacking by the court below. The “signal” required by the Court of Appeals is tantamount to an index of the content of the bill, which is not the test. *Neighborhood Stores*, 149 Wn.2d at 371. Instead, the test is whether the matters addressed in the bill are fairly encompassed within the subject expressed in the title such that the title provides inquiry notice to parties who may be interested in its content.

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<sup>4</sup> Amicus Unemployment Law Project argued in passing that an average worker would understand the words “enhance benefit[s]” to mean increased benefits. Amicus Br. Opposing Review at 5. This approach to the title should be disregarded because the title does not claim to “enhance benefit[s]”. The words are “to enhance benefit and tax equity . . . .”

**4. The Court Of Appeals Overstepped Judicial Bounds In Invalidating EHB 3278 Based On The Content Of An Earlier Version Of The Bill**

The Court of Appeals erred by going beyond comparing the actual subject of the bill with the actual title. Instead, it examined the content of the bill when it passed the House. Citing to this one prior version of the bill, it found fault with the title because:

[The bill's] reference to "benefit and tax equity" disguised the fact that the bill no longer had anything to do with the special committee study on benefit equity, and had become instead a last minute vehicle to change the good cause criteria for voluntary quits.

*Batey*, 137 Wn. App. at 514.

This was error. It departs from the plain language of article II, section 19 which requires only that a bill's title express its subject. In contrast, the Court of Appeals' approach would limit the Legislature from amending bills during the legislative process, even where the title for the final bill complies with article II, section 19. There is no basis in the state constitution or the jurisprudence of this Court for such an approach, and it affords to the Legislature far less than the power that it possesses under article II, sections 1 and 19 of the Washington Constitution. Moreover, this approach is contrary to the rule that article II, section 19 is to be read liberally and "not to impose awkward and hampering restrictions" on the legislative process. *State Fin. Comm.*, 105 Wn.2d at 81.

Judicial resort to the former content of a bill to limit the meaning of a title erroneously expands the subject-in-title test to examine the legislative processes that involve proposal, debate, and amendment of bills. But these legislative processes are not addressed, let alone limited, by the text of article II, section 19. And, while a century of case law discusses the purposes of the subject-in-title requirement, it is not described as a limit on the legislative power to debate and amend bills. Instead, the Court has endorsed quite the opposite. “[A] title may be broader than the statute and still be good as to the subject it fairly indicates.” *Howlett v. Cheetham*, 17 Wash. 626, 635, 50 P. 522 (1897). Similarly, the “enrolled bill doctrine precludes inquiring into the legislative procedures preceding the enactment of a statute which is properly signed and fair upon its face.” *Schwarz v. State*, 85 Wn.2d 171, 175, 531 P.2d 1280 (1975). This is because the title satisfies article II, section 19 by expressing the subject of the bill as passed.<sup>5</sup>

The same principles apply in this case. It makes no difference that the title of EHB 3278 was sufficient to express the subject of an early version of the bill. It need only be sufficient to express the subject of the

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<sup>5</sup> See also *Brower v. State*, 137 Wn.2d 44, 70–71, 969 P.2d 42 (1998) (“Where the Legislature removes a provision from a bill by amendment, but a reference to that provision continues to appear in the title, no violation of art. II, § 19 occurs. . . . [T]he enrolled bill doctrine forbids an inquiry into whether the Legislature might have been misled by a continued reference in the title to material deleted from an act.”).

final bill. Thus, the fact that the title was once used to describe a task force report is irrelevant to deciding whether the ultimate subject of EHB 3278 is reflected in the title. The Court of Appeals erred in concluding otherwise.<sup>6</sup>

To the extent the decision below relies on *Patrice v. Murphy*, 136 Wn.2d 845, 854, 966 P.2d 1271 (1998), for this approach, it misreads that case. The holding in *Patrice* is a straightforward application of article II, section 19. The opinion does not announce a new constitutional inquiry where the courts are to examine the legislative amendment processes and limit the subject expressed in the title, based on bill content considered and rejected in the legislative process. Article II, section 19 has never been interpreted to limit the Legislature from using striking amendments or any other process to develop a final bill.

Last, but not least, the legislative record contradicts the theory that the phrase “to enhance benefit and tax equity” refers restrictively to the subject of “special committee study,” which further confirms the error of resorting to prior content to limit this title. Here, the “special committee study” was *not* a subject in the *original* version of HB 3278. As introduced January 31, 2006, HB 3278 had one section saying little more

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<sup>6</sup> ESD concurs in the arguments of the amicus Washington State Legislature, discussing at length the tension with the enrolled bill doctrine, and the impact of the Court of Appeals’ analysis on legislative processes.

than the “legislature intends to make adjustments to benefit and tax equity that ensure both the stability and solvency of the system.” *See* HB 3278, § 1 (Laws of 2006, ch. 12, § 1) (App. at 18a). The special committee study cited by the lower court was only mentioned in the version adopted by a striking amendment on February 14, 2006. *See* House Amendment 939 by Rep. Conway, HB 3278 (App. at 19a). Thus, it is implausible that the phrase “to enhance benefit and tax equity” was intended as a restrictive title addressing a two month delay for a study. Delaying the study was only added to the bill later in the legislative process.

**5. A Bill’s Title Should Not Be Read Narrowly Based On Technical Definitions Or Jargon**

Ms. Batey also defends the Court of Appeals by arguing that “benefit equity” should be restricted to narrow meanings based on policy reports from other states and law review articles. Batey Answer 10–11. Using such sources, Ms. Batey construes “benefit equity” to refer the topic of providing similar benefits to similar claimants, and benefits proportional to a situation. Batey Answer at 10. Her argument is contrary to the rule that words in the title of an act are to be given their common and ordinary meaning. *Washington State Grange v. Locke*, 153 Wn.2d 475, 492–93, 105 P.3d 9 (2005). The phrase “to enhance tax and benefit equity” should not be narrowly construed based on the understanding of a

segment of society. Article II, section 19 ensures inquiry notice to a legislator or lay person, not to specialized policy analysts and law review readers.

However, even if the rule were otherwise, the subject of EHB 3278 fits Ms. Batey's specialized reading of the words "benefit equity". RCW 50.20.050(2) affects the discretion of ESD to award benefits. Any legislative directive concerning benefit eligibility relates to uniformity among recipients and furthers the legislative sense of when benefits are appropriate. The subject thus fits Ms. Batey's suggested specialized meaning.

**B. The Analysis Employed By The Plurality In *Fircrest* Is At Odds With Article 2, Section 19 And Was Properly Disavowed In That Case**

The Court's order accepting review asked the parties to address *City of Fircrest v. Jensen*, 158 Wn.2d 384, 143 P.3d 776 (2006). In *City of Fircrest*, a four-justice plurality wrote:

We take this opportunity to explicitly reaffirm the *St. Paul* [*& Tacoma Timber Co. v. State*, 40 Wn.2d 347, 243 P.2d 474 (1952)] cases and hold that, for the purposes of article II, section 19 challenges, the title of an amendatory act is sufficient *if the title identifies and purports to amend the original act and the subject matter of the amendatory act is within the purview of the title of the original act.*

*City of Fircrest*, 158 Wn. 2d at 391 (emphasis added).

Although this plurality opinion addressing article II, section 19, relied on the “*St. Paul* rule,” five justices in *Fircrest*—three concurring (Owens, J., Fairhurst, J., and Chambers, J.) and two dissenting (Sanders, J., and J. Johnson, J.), disavow the “*St. Paul* rule”. *City of Fircrest*, 158 Wn.2d at 409, 412, 416–17.<sup>7</sup>

After considering of the reasons cogently expressed by the concurrence and the dissent in *Fircrest*, the State agrees that the “*St. Paul* rule” cannot be squared with the language of the subject-in-title requirement of article II, section 19, that it is harmful to its purpose and to the legislative process, and that a majority of the Court in *City of Fircrest* correctly disavowed the rule. The amicus brief of the Washington State Legislature sets forth numerous reasons, many expressed by the concurring and dissenting opinions in *City of Fircrest*, to support this conclusion. The State agrees with them and, in the interest of brevity, does not repeat those arguments.

Rather, the State adds only the observation that EHB 3278 is not an amendatory act and thus there is no basis to apply *St. Paul*

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<sup>7</sup> The Washington Reports, the official reporter for the *City of Fircrest* decision, recognizes this disavowal by five justices in headnote 5: “A challenge to the validity of a legislative amendment under the single subject and subject-in-title requirements of Const. art. II, § 19 is analyzed by considering the title of the amendatory legislation, not the title of the original act the legislation purports to amend. (*St. Paul & Tacoma Lumber Co. v. State*, 40 Wn.2d 347 (1952) is overruled insofar as it is inconsistent.) (See concurring opinion of Owens, J., and dissenting opinion of Sanders, J.)”.

here. Neither of its two sections amends a law. Accordingly, the “*St. Paul rule*” would not apply to EHB 3278 even if the rule had not already been disavowed in *City of Fircrest*.

**C. To Claim Benefits After An Admittedly Voluntary Quit, An Employee Must Meet RCW 50.20.050(2)(b)(i)–(x)**

The Court should affirm ESD’s denial of benefits to Ms. Spain because the new statute, RCW 50.20.050(2)(b), provides ten exclusive circumstances to avoid disqualification after a voluntary quit, and Ms. Spain does not claim to meet one. The Court should adopt the conclusion of the Commissioner and the Court of Appeals on this point for three reasons. First, the plain language of the amended statute describes exclusive circumstances to “avoid disqualification.” Second, the 2003 amendments deleted statutory language that previously gave the ESD open-ended power to determine whether a person quit voluntarily without good cause. Third, legislative history confirms this legislative understanding and intent.<sup>8</sup>

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<sup>8</sup> The standard of review for this issue is *de novo*, giving appropriate weight to the construction of ESD. “Construction of a statute is a question of law which we review *de novo* under the error of law standard.” *Waste Mgmt. of Seattle, Inc. v. Utils. & Transp. Comm’n*, 123 Wn.2d 621, 627, 869 P.2d 1034 (1994). “Where an agency is charged with administering a special field of law and endowed with quasi-judicial functions, such as the Department of Employment Security, because of the agency’s expertise in that field, its construction of words should be accorded substantial weight.” *Safeco Ins. Cos. v. Meyering*, 102 Wn.2d 385, 391, 687 P.2d 195 (1984).

**1. The Plain Language Describes Exclusive Circumstances For An Employee To Avoid Disqualification After Quitting Voluntarily**

For claims filed on or after January 4, 2004, a person who voluntarily quits is subject to RCW 50.20.050(2)(a) and (2)(b).

Subsection (2)(a) provides:

*An individual shall be disqualified from benefits beginning with the first day of the calendar week in which he or she has left work voluntarily without good cause . . .*

RCW 50.20.050(2)(a) (emphasis added). Subsection (2)(b) states:

*An individual is not disqualified from benefits under (a) of this subsection when [the employee meets one of the circumstances in (i) through (x)].*

RCW 50.20.050(2)(b) (emphasis added).

The new statutory language uses a parallel structure that differs from prior law. Under the new language, subsection (2)(a) addresses when an individual is “disqualified from benefits” and subsection (2)(b) addresses when an individual is “not disqualified from benefits” detailing ten circumstances. As the Court of Appeals recognized, the delineation of ten circumstances brings this statute under “the maxim *expressio unius est exclusio alterius*—specific inclusions exclude implication.” *Starr*, 130 Wn. App. at 549. Moreover, this maxim is particularly appropriate because subsection (2)(b) is conspicuously missing the common phrase “including but not limited to”. In contrast, the 2003 act uses the phrase

“including by not limited to” elsewhere, in the definition of misconduct. See RCW 50.04.294(2)(c); Laws 2003, 2d Sp. Sess., ch. 4, § 6.

Legislative intent is to be derived first from statutory language. *Lacey Nursing Ctr., Inc. v. Dep’t of Rev.*, 128 Wn.2d 40, 53, 905 P.2d 338 (1995). The Legislature’s intent is confirmed here by plain language: the natural reading of two parallel subsections, the intent shown by the deliberate omission of the phrase “including but not limited to”, and the inference applicable to a detailed list of exceptions. The Court of Appeals in *Spain* and *Starr* properly held that the plain language confirms that subsection (2)(b) provides exclusive exceptions to disqualification after a voluntary quit.

**2. The Deletion Of Previous Language Confirms That Benefits Are Limited To The Defined Circumstances**

The second reason to affirm ESD is that the 2003 and the 2006 laws eliminated a significant part of the Commissioner’s statutory authority to determine that a person is not disqualified. See RCW 50.20.050(1)(c), codifying former RCW 50.20.050(3). Under the language applicable to pre-2004 claims, the Commissioner could determine if a person left work voluntarily without good cause by considering “other” work-related factors deemed “pertinent”:

In determining under this subsection whether an individual has left work voluntarily without good cause,

the commissioner shall only consider . . . *and such other work connected factors* as the commissioner may deem pertinent . . . .

RCW 50.20.050(1)(c) (emphasis added).

The Legislature unambiguously eliminated this language which the Court should recognize as demonstrating legislative intent. As the Court has stated in connection with this same statute:

In construing statutes which re-enact, with certain changes, or repeal other statutes, or which contain revisions or codification of earlier laws, resort to repealed and superseded statutes may be had, and is of great importance in ascertaining the intention of the legislature, *for, where a material change is made in the wording of a statute, a change in legislative purpose must be presumed.*

*In re Bale*, 63 Wn.2d 83, 86, 385 P.2d 545 (1963) (quoting *Graffel v. Honeysuckle*, 30 Wn.2d 390, 191 P.2d 858 (1948)). Here, the statutory language unambiguously eliminates this previous open-ended authority in favor of an exclusive list of ten circumstances when a person who voluntarily quits employment can avoid disqualification.

This Court does not read language into a statute when omitted intentionally. *State v. Moses*, 145 Wn.2d 370, 374, 37 P.3d 1216 (2002); *Jepson v. Dep't of Labor & Indus.*, 89 Wn.2d 394, 403, 573 P.2d 10 (1977). The Court of Appeals therefore correctly concluded that, after the 2003 changes, the statute contains “no additional open-ended circumstance of any type.” *Starr*, 130 Wn. App. at 548. “Nothing in this

subsection or anywhere else in RCW 50.20.050 even hints that there could be other nondisqualifying circumstances.” *Starr*, 130 Wn. App. at 548.

### 3. Legislative History Confirms The Intent To Narrow The Qualifications For Benefits After A Voluntary Quit

If there is ambiguity after considering the plain language and the significant deletion of subsection (1)(c) power, additional legislative history supports the same conclusion: The 2003 House Bill Report on 2ESB 6097, at page 1, confirms that the bill “[n]arrows the reasons for ‘good cause’ quits . . . .” App. at 9a. At page 6 (App. at 14a), the same Report states: “The Commissioner’s *discretion* to determine that *other work-related factors are good cause* for leaving work is *eliminated*.” *Starr*, 130 Wn. App. at 550 n.7. The 2006 House Bill Report on EHB 3278 similarly describes the effect of the 2003 amendments. “These changes [in 2003] limited the reasons considered to be good cause and not disqualifying.” App. at 8a.

This legislative history is also consistent with the general rule that the Legislature is presumed to be aware of reported judicial constructions like *Starr*. See *Buchanan v. Int’l Bhd. of Teamsters, Chauffeurs, Warehousemen & Helpers*, 94 Wn.2d 508, 511, 617 P.2d 1004 (1980). Here, the 2006 Bill Report shows that the 2006 Legislature reenacted RCW 50.20.050(2) knowing of judicial challenges. In this circumstance

in particular, the 2006 reenactment ratifies the judicial construction in *Starr*, which was decided November 22, 2005.

**4. Spain Offers No Sound Reasons For A Different Construction Of RCW 50.20.050(2)**

In contrast to the above analysis, Ms. Spain's petition for review offers the Court an inadequate evaluation of the statute. Her primary argument is that because subsection (1)(b) was not interpreted as an exclusive list of four "good causes" prior to its amendment in 2003, the ten exceptions in subsection (2)(b) should be nonexclusive. Pet. at 14–16. This argument, however, ignores the effect of eliminating the Commissioner's previously existing power in subsection (1)(c) to identify other bases for "good cause" quits. The simple reason why the short list in subsection (1)(b) was not exclusive is that the Commissioner also exercised the open-ended power of subsection (1)(c).

**a. Spain Cites Commissioner Decisions Under The Former Statute**

Ms. Spain's failure to give effect to the elimination of the former statutory power of the Commissioner also undermines her reliance on three Commissioner's decisions. Each decision reflects the power in subsection (1)(c) applicable to pre-2004 claims. For example, *In re Pischel*, Comm'r Dec. 2d 672 (1981), arose under RCW 50.20.050(3) (the language recodified as subsection (1)(c)). The decision also implements

an agency rule providing for open-ended exceptions to voluntary quitting. See WAC 192-16-009 (quoted in *In re Pischel*). The 2003 Amendments limited subsection (1)(c) to pre-2004 claims, and the 2006 laws reenacted this change. Subsequently, ESD amended the rule in question to apply only to claims made before January 4, 2004. WAC 192-16-009 (2005).

Similarly, *In re Groth*, Comm'r Dec. 343 (1957), and *In re Simpson*, Comm'r Dec. 513 (1962), were decided under provisions analogous to subsection (1)(c). For example, the 1945 statute provided:

In determining . . . whether or not an individual has left work voluntarily without good cause, the Commissioner shall consider . . . *such other factors as the Commissioner may deem pertinent*, including state and national emergencies.

Laws of 1945, ch. 35, § 78 (emphasis added). See also *In re Bale*, 63 Wn.2d at 85 (describing Laws of 1953, 1st Ex. Sess., ch. 8, § 8).

The Court should not follow these decisions of the Commissioner because the Legislature has changed the underlying statutes.

**b. The Preamble To RCW Title 50 And Rules Of Liberal Construction Cannot Overwrite The Specific Language Of RCW 50.20.050**

Spain argues at length that it was the “fault” of her employer that she quit. Based on this characterization, she relies on the preamble to the Act as a basis for benefits. *E.g.*, Spain Pet. at 10 (quoting RCW 50.10.010 (a goal to help people out of work “through no fault of their own”)). She

similarly relies on general goal that RCW Title 50 “be liberally construed for the purpose of reducing involuntary unemployment and the suffering caused thereby to the minimum.” Resp. Br. at 22 (quoting RCW 50.10.010).

This Court has previously rejected reliance on the preamble section to bypass operative provisions of the Act. *Bale*, 63 Wn.2d at 87. In *Bale*, the employer, Boeing, challenged statutes authorizing the Commissioner to pay benefits to an employee who quit voluntarily where the good cause was personal and unrelated to work. Boeing relied on the preamble section and argued that benefits were limited to persons “unemployed through no fault of their own.” *Bale* held that the preamble “is not controlling, and must be read in context with the specific statute before us, RCW 50.20.050.” *Bale*, 63 Wn.2d at 87. Furthermore, the preamble did not create rights because it “is neither clear, unambiguous nor well understood.” *Id.*

Thus, Ms. Spain offers the same defective argument rejected in *Bale*. Regardless of her argument that it was her employer’s “fault”, the preamble section is simply a general statement of purpose. *See generally Judd v. Am. Tel. & Tel. Co.*, 152 Wn.2d 195, 203, 95 P.3d 337 (2004) (legislative policy statements do not give rise to enforceable rights). As in *Bale*, the statutory language and the changes to

RCW 50.20.050 determine the benefit qualifications, not the statement of purpose in the preamble.

**c. Spain's Alternative Argument—That Subsection (1)(c) Was Deleted To Expand The Commissioner's Authority—Is Without Merit**

Ms. Spain's petition also argues in the alternative that elimination of subsection (1)(c) in 2003 *broadened* the Commissioner's power. Spain Pet. at 2. This alternative argument relies on a defective analogy to the statutes construed in *Bale*.

*Bale* examined a 1945 statutory change. In 1943, benefits were allowed only when a person had "good cause *for reasons related to the work in question.*" *Bale*, 63 Wn.2d at 88. The Legislature removed the words about "work related" from the statute in 1945. *Bale* concluded that the change in wording reflected a legislative intent to grant the Commissioner broader discretion to find good cause, even if unrelated to work. *Id.* at 89. By analogy, Ms. Spain argues that eliminating subsection (1)(c), which focused on work related factors, implies that the Commissioner can now broadly consider personal factors.

The legislative action in 1945 is not analogous to the change in 2003. In 1945, the Legislature surgically removed words concerning "work related" and *Bale* simply gives effect to the resulting statute. In 2003, the Legislature restructured RCW 50.20.050 and eliminated all of

subsection (1)(c), which was the open-ended category allowing the Commissioner to identify additional “good cause” for voluntarily leaving employment. It substituted subsection (2)(b) which provides ten exclusive reasons that avoid disqualification. Accordingly, the powerful conclusion is that the 2003 changes eliminated the Commissioner’s open-ended powers in favor of the specific list.<sup>9</sup>

#### IV. CONCLUSION

ESD respectfully asks the Court to affirm the Court of Appeals in *Spain* and to reverse the Court of Appeals in *Batey*.

RESPECTFULLY SUBMITTED this 7th day of February, 2008.

ROBERT M. MCKENNA  
*Attorney General*



JAY D. GECK, WSBA 17916  
*Deputy Solicitor General*

JERRY ANDERSON, WSBA 8734  
*Senior Counsel*

ERIKA UHL, WSBA 30581  
*Assistant Attorney General*

1125 Washington Street SE  
OLYMPIA, WA 98504-0100  
(360) 586-2697

Attorneys for Appellant

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<sup>9</sup> The Court of Appeals in *Starr* also noted that the list in subsection (2)(b) contains both personal and work-connected factors. This further contradicts Ms. Spain’s alternative theory that elimination of subsection (1)(c) was done to broaden “good cause” to nonwork related causes. *Starr*, 130 Wn. App. at 550

# APPENDIX

CERTIFICATION OF ENROLLMENT

ENGROSSED HOUSE BILL 3278

Chapter 12, Laws of 2006

59th Legislature  
2006 Regular Session

UNEMPLOYMENT INSURANCE--DISQUALIFICATION

EFFECTIVE DATE: 6/07/06

Passed by the House March 3, 2006  
Yeas 98 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate March 3, 2006  
Yeas 49 Nays 0

BRAD OWEN

President of the Senate

Approved March 8, 2006.

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is ENGROSSED HOUSE BILL 3278 as passed by the House of Representatives and the Senate on the dates hereon set forth.

RICHARD NAFZIGER

Chief Clerk

FILED

March 8, 2006 - 2:20 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

Secretary of State  
State of Washington

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ENGROSSED HOUSE BILL 3278

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AS AMENDED BY THE SENATE

Passed Legislature - 2006 Regular Session

State of Washington                      59th Legislature                      2006 Regular Session

By Representatives Conway and Dickerson

Read first time 01/31/2006. Referred to Committee on Commerce & Labor.

1            AN ACT Relating to making adjustments in the unemployment insurance  
2 system to enhance benefit and tax equity; reenacting RCW 50.20.050; and  
3 creating a new section.

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

5            **Sec. 1.** RCW 50.20.050 and 2003 2nd sp.s. c 4 s 4 are each  
6 reenacted to read as follows:

7            (1) With respect to claims that have an effective date before  
8 January 4, 2004:

9            (a) An individual shall be disqualified from benefits beginning  
10 with the first day of the calendar week in which he or she has left  
11 work voluntarily without good cause and thereafter for seven calendar  
12 weeks and until he or she has obtained bona fide work in employment  
13 covered by this title and earned wages in that employment equal to  
14 seven times his or her weekly benefit amount.

15            The disqualification shall continue if the work obtained is a mere  
16 sham to qualify for benefits and is not bona fide work. In determining  
17 whether work is of a bona fide nature, the commissioner shall consider  
18 factors including but not limited to the following:

19            (i) The duration of the work;

1 (ii) The extent of direction and control by the employer over the  
2 work; and

3 (iii) The level of skill required for the work in light of the  
4 individual's training and experience.

5 (b) An individual shall not be considered to have left work  
6 voluntarily without good cause when:

7 (i) He or she has left work to accept a bona fide offer of bona  
8 fide work as described in (a) of this subsection;

9 (ii) The separation was because of the illness or disability of the  
10 claimant or the death, illness, or disability of a member of the  
11 claimant's immediate family if the claimant took all reasonable  
12 precautions, in accordance with any regulations that the commissioner  
13 may prescribe, to protect his or her employment status by having  
14 promptly notified the employer of the reason for the absence and by  
15 having promptly requested reemployment when again able to assume  
16 employment: PROVIDED, That these precautions need not have been taken  
17 when they would have been a futile act, including those instances when  
18 the futility of the act was a result of a recognized labor/management  
19 dispatch system;

20 (iii) He or she has left work to relocate for the spouse's  
21 employment that is due to an employer-initiated mandatory transfer that  
22 is outside the existing labor market area if the claimant remained  
23 employed as long as was reasonable prior to the move; or

24 (iv) The separation was necessary to protect the claimant or the  
25 claimant's immediate family members from domestic violence, as defined  
26 in RCW 26.50.010, or stalking, as defined in RCW 9A.46.110.

27 (c) In determining under this subsection whether an individual has  
28 left work voluntarily without good cause, the commissioner shall only  
29 consider work-connected factors such as the degree of risk involved to  
30 the individual's health, safety, and morals, the individual's physical  
31 fitness for the work, the individual's ability to perform the work, and  
32 such other work connected factors as the commissioner may deem  
33 pertinent, including state and national emergencies. Good cause shall  
34 not be established for voluntarily leaving work because of its distance  
35 from an individual's residence where the distance was known to the  
36 individual at the time he or she accepted the employment and where, in  
37 the judgment of the department, the distance is customarily traveled by  
38 workers in the individual's job classification and labor market, nor

1 because of any other significant work factor which was generally known  
2 and present at the time he or she accepted employment, unless the  
3 related circumstances have so changed as to amount to a substantial  
4 involuntary deterioration of the work factor or unless the commissioner  
5 determines that other related circumstances would work an unreasonable  
6 hardship on the individual were he or she required to continue in the  
7 employment.

8 (d) Subsection (1)(a) and (c) of this section shall not apply to an  
9 individual whose marital status or domestic responsibilities cause him  
10 or her to leave employment. Such an individual shall not be eligible  
11 for unemployment insurance benefits beginning with the first day of the  
12 calendar week in which he or she left work and thereafter for seven  
13 calendar weeks and until he or she has requalified, either by obtaining  
14 bona fide work in employment covered by this title and earning wages in  
15 that employment equal to seven times his or her weekly benefit amount  
16 or by reporting in person to the department during ten different  
17 calendar weeks and certifying on each occasion that he or she is ready,  
18 able, and willing to immediately accept any suitable work which may be  
19 offered, is actively seeking work pursuant to customary trade  
20 practices, and is utilizing such employment counseling and placement  
21 services as are available through the department. This subsection does  
22 not apply to individuals covered by (b)(ii) or (iii) of this  
23 subsection.

24 (2) With respect to claims that have an effective date on or after  
25 January 4, 2004:

26 (a) An individual shall be disqualified from benefits beginning  
27 with the first day of the calendar week in which he or she has left  
28 work voluntarily without good cause and thereafter for seven calendar  
29 weeks and until he or she has obtained bona fide work in employment  
30 covered by this title and earned wages in that employment equal to  
31 seven times his or her weekly benefit amount.

32 The disqualification shall continue if the work obtained is a mere  
33 sham to qualify for benefits and is not bona fide work. In determining  
34 whether work is of a bona fide nature, the commissioner shall consider  
35 factors including but not limited to the following:

36 (i) The duration of the work;

37 (ii) The extent of direction and control by the employer over the  
38 work; and

1 (iii) The level of skill required for the work in light of the  
2 individual's training and experience.

3 (b) An individual is not disqualified from benefits under (a) of  
4 this subsection when:

5 (i) He or she has left work to accept a bona fide offer of bona  
6 fide work as described in (a) of this subsection;

7 (ii) The separation was necessary because of the illness or  
8 disability of the claimant or the death, illness, or disability of a  
9 member of the claimant's immediate family if:

10 (A) The claimant pursued all reasonable alternatives to preserve  
11 his or her employment status by requesting a leave of absence, by  
12 having promptly notified the employer of the reason for the absence,  
13 and by having promptly requested reemployment when again able to assume  
14 employment. These alternatives need not be pursued, however, when they  
15 would have been a futile act, including those instances when the  
16 futility of the act was a result of a recognized labor/management  
17 dispatch system; and

18 (B) The claimant terminated his or her employment status, and is  
19 not entitled to be reinstated to the same position or a comparable or  
20 similar position;

21 (iii) He or she: (A) Left work to relocate for the spouse's  
22 employment that, due to a mandatory military transfer: (I) Is outside  
23 the existing labor market area; and (II) is in Washington or another  
24 state that, pursuant to statute, does not consider such an individual  
25 to have left work voluntarily without good cause; and (B) remained  
26 employed as long as was reasonable prior to the move;

27 (iv) The separation was necessary to protect the claimant or the  
28 claimant's immediate family members from domestic violence, as defined  
29 in RCW 26.50.010, or stalking, as defined in RCW 9A.46.110;

30 (v) The individual's usual compensation was reduced by twenty-five  
31 percent or more;

32 (vi) The individual's usual hours were reduced by twenty-five  
33 percent or more;

34 (vii) The individual's worksite changed, such change caused a  
35 material increase in distance or difficulty of travel, and, after the  
36 change, the commute was greater than is customary for workers in the  
37 individual's job classification and labor market;

1 (viii) The individual's worksite safety deteriorated, the  
2 individual reported such safety deterioration to the employer, and the  
3 employer failed to correct the hazards within a reasonable period of  
4 time;

5 (ix) The individual left work because of illegal activities in the  
6 individual's worksite, the individual reported such activities to the  
7 employer, and the employer failed to end such activities within a  
8 reasonable period of time; or

9 (x) The individual's usual work was changed to work that violates  
10 the individual's religious convictions or sincere moral beliefs.

11 NEW SECTION. **Sec. 2.** Section 1 of this act applies retroactively  
12 to claims that have an effective date on or after January 4, 2004.

Passed by the House March 3, 2006.

Passed by the Senate March 3, 2006.

Approved by the Governor March 8, 2006.

Filed in Office of Secretary of State March 8, 2006.

# HOUSE BILL REPORT

## EHB 3278

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### As Passed Legislature

**Title:** An act relating to making adjustments in the unemployment insurance system to enhance benefit and tax equity.

**Brief Description:** Extending the deadline for the report by the joint legislative task force on unemployment insurance benefit equity.

**Sponsors:** By Representatives Conway and Dickerson.

**Brief History:**

**Committee Activity:**

Commerce & Labor: 2/2/06 [DP].

**Floor Activity:**

Passed House: 2/14/06, 94-3.

Senate Amended.

Passed Senate: 3/3/06, 49-0.

House Concurred.

Passed House: 3/3/06, 98-0.

Passed Legislature.

### Brief Summary of Engrossed Bill

- Reenacts and makes retroactive the "good cause quit" section of 2ESB 6097 (2003).

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### HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** Do pass. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Hudgins, Kenney and McCoy.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Condotta, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Crouse and Holmquist.

**Staff:** Jill Reinmuth (786-7134).

**Background:**

An individual is eligible to receive regular unemployment benefits if he or she: (1) worked at least 680 hours in his or her base year; (2) was separated from employment through no fault of his or her own or quit work for good cause; and (3) is able to work and is actively seeking employment. An individual is disqualified from receiving benefits if he or she leaves work

voluntarily without good cause. The "good cause quit" section enumerates reasons for leaving work that are considered to be good cause and not disqualifying. In 2003 the Legislature enacted a number of changes to the unemployment insurance system, including changes to the "good cause quit" section. These changes limited the reasons considered to be good cause and not disqualifying. The new limits apply to unemployment claims that are effective on or after January 4, 2004. In a lawsuit filed in 2005, the new limits were challenged as unconstitutionally enacted.

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**Summary of Engrossed Bill:**

The "good cause quit" section of the 2003 legislation is reenacted and made to apply retroactively to claims that have an effective date on or after January 4, 2004.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** None.

**Testimony Against:** None.

**Persons Testifying:** None.

**Persons Signed In To Testify But Not Testifying:** None.

# HOUSE BILL REPORT

## 2ESB 6097

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**As Passed House - Amended:**

June 11, 2003

**Title:** An act relating to revising the unemployment compensation system through creating forty rate classes for determining employer contribution rates.

**Brief Description:** Revising the unemployment compensation system.

**Sponsors:** By Senators Honeyford and Mulliken.

**Brief History:**

**Second Special Session**

**Floor Activity:**

Passed House - Amended: 6/11/03, 52-38.

**Brief Summary of Second Engrossed Bill  
(As Amended by House)**

- Reduces the maximum weekly benefit amount to \$496 or 63 percent of the state average weekly wage, whichever is greater.
- Reduces the maximum benefit payable to the lesser of 26 times the weekly benefit amount or 1/3 of the total base year wages.
- Beginning in 2004, reduces an individual's weekly benefit amount to 3.9 percent of the average of the individual's wages in the two quarters of the base year in which wages were highest.
- Narrows the reasons for "good cause" quits and broadens the definitions of misconduct.
- Allows certain part-time workers to search for suitable part-time work.
- Creates a new tax array beginning in 2005 that has 40 rate classes and uses rates based on three factors.
- Caps the new tax rate at 6.0 percent for certain seasonal industries (fishing, agriculture, and food processing) and at 6.5 percent for other industries, except when a solvency surcharge applies.
- Requires that certain benefits are charged to the experience rating account of only the separating employer.

Establishes penalties for certain employer delinquencies and/or misrepresentations.

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## HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority/Minority Report:** None.

**Staff:** Jill Reinmuth (786-7134); Chris Cordes (786-7103).

### **Background:**

The unemployment compensation system is designed and intended to provide partial wage replacement for workers who are unemployed through no fault of their own. The Employment Security Department (Department) administers this system.

Under the Employment Security Act (Act), eligible unemployed workers receive benefits based on their earnings in their base year. Most covered employers pay contributions (payroll taxes) to finance benefits. The Act is to be liberally construed to reduce involuntary unemployment to the minimum.

### **I. BENEFITS**

#### **A. Eligibility**

Benefits are payable to eligible unemployed workers. An individual is eligible to receive benefits if he or she: (1) worked at least 680 hours in covered employment in his or her base year; (2) was separated from employment through no fault of his or her own or quit work for good cause; and (3) is able to work and is actively searching for suitable work.

Most employment is covered under the Act. Employment excluded from coverage includes work performed by certain corporate officers, employees of churches and certain nonprofit organizations, and certain nonresident aliens who are temporarily in the United States to work.

Claimants must search for work according to customary trade practices and through other methods when directed by the Commissioner of the Department (Commissioner).

"Suitable work" is employment in an occupation in keeping with the individual's prior work experience, education, or training (unless such work is not available in the general area). In most circumstances, "suitable work" is full-time. The Department must monitor the job search efforts of persons who have received five or more weeks of benefits.

## **B. Disqualification**

Individuals are disqualified from receiving benefits if they leave work voluntarily without good cause or are terminated for work-connected misconduct or a felony or gross misdemeanor.

Good cause, as specified in the Act, means leaving work: (1) to accept other work; (2) because of illness or disability, after taking precautions to preserve employment status with the employer; (3) to relocate for the spouse's employer-initiated mandatory job transfer; and (4) to protect the claimant or an immediate family member from domestic violence. In addition, the Commissioner may determine that other work-related factors are good cause for leaving work.

"Misconduct" is an act or failure to act in willful disregard of the employer's interest where the effect is to harm the employer's business. If an individual is discharged for misconduct, the individual is disqualified from benefits for seven weeks and until he or she earns seven times his or her weekly benefit amount. If an individual is discharged for a felony or gross misdemeanor, the individual loses his or her wage credits from that employment.

## **C. Duration and Amount**

The maximum amount payable in an individual's benefit year is the lesser of 30 times the individual's weekly benefit amount or 1/3 of the total gross wages in the base year. (This amount is commonly expressed in terms of duration. In those terms, the maximum duration of benefits is 30 weeks.)

The maximum weekly benefit amount may not exceed 70 percent of the average weekly wage, except that: (1) from July 1, 2002, through June 30, 2004, the maximum weekly benefit amount is frozen at \$496; and (2) from July 1, 2004, through June 30, 2010, the growth rate in the maximum weekly benefit amount is capped at 4 percent.

An individual's weekly benefit amount is  $\frac{1}{25}$  (4.0 percent) of the average of the individual's wages in the two quarters of the base year in which wages were highest.

## **II. FINANCING**

The unemployment compensation system requires covered employers to pay contributions on a percentage of their taxable payroll, except for certain employers that are exempt and certain employers that reimburse the Department for benefits paid to these employers' former workers. The contributions of covered employers are held in trust to pay benefits to unemployed workers.

### **A. Tax Rates**

For most covered employers, contribution rates are determined by the rate in the employer's assigned rate class under the tax schedule in effect for that calendar year. The employer's position in the tax array depends on the employer's layoff experience relative to other employers' experience. This relationship is determined by the calculation of a benefit ratio, which is the total benefits charged in the last four years to the employer's experience rating account divided by the employer's taxable payroll in the same period. Based on the relationship of employers' benefit ratios, employers are placed in one of 20 tax rate classes.

The rates in these classes are determined by the tax schedule in effect. The Act establishes seven different tax schedules, from the lowest schedule of AA through the highest schedule of F. The tax schedule in effect for any given calendar year depends on the fund balance ratio, which compares the unemployment insurance trust fund balance on June 30 of the previous year to the total payroll in covered employment in the state for the completed calendar year prior to that June 30. The tax schedule in effect for 2003 is schedule B.

Several types of covered employers are not qualified to be assigned a rate class. Nonqualified employers include those who do not report enough periods of employment during the previous two years. These new employers pay the average industry rate in their industry, as determined by the Commissioner, but not less than 1 percent. The average industry rate also applies to certain successor employers who were not employers at the time of acquiring a business. Until a new successor employer becomes a qualified employer, the rate for a successor employer is the lower of the rate assigned to its predecessor or the average industry rate with a 1 percent minimum rate. For delinquent employers, the contribution rate is 5.6 percent.

Both qualified and nonqualified employers also may be required to pay an insolvency surcharge of 0.15 percent. This surcharge is added to all contribution-paying employer rates for rate year 2004 (unless the fund balance ratio is above a specified level).

### **B. Taxable Wage Base**

The amount of tax that an employer pays is determined by multiplying the employer's tax rate by the employer's taxable wage base. The taxable wage base is the amount of each employee's wages subject to tax for a given rate year. This amount increases by 15 percent each year from the previous year's taxable wage base, with a cap of 80 percent of the state "average annual wage for contribution purposes." The "average annual wage for contribution purposes" is based on the average of the three previous years' wages. "Wages" includes "the cash value of all compensation paid in any medium other than cash."

### **C. Experience Rating**

Under the experience rating system, most benefits paid to claimants are charged to their base year employers' accounts. In the case of multiple base year employers, benefit charges are prorated in proportion to wages paid.

Some benefits, however, are pooled costs within the system and are generally referred to as socialized costs. One kind of socialized cost is "noncharged benefits." Benefits that are not charged to employer accounts include benefits paid to claimants who requalify after a "voluntary quit" and benefits paid to claimants found to be marginally attached to the labor force. Other socialized costs include "ineffective charges" that occur when the benefits charged to an employer's account exceed the contributions that the employer pays. Costs are also socialized when an employer has an "inactive account," such as after going out of business, and is unable to pay contributions that were assessed.

#### **D. Penalties**

Employers who fail to file timely and complete quarterly unemployment tax reports are subject to a minimum penalty of \$10 per violation plus a percent of the amount that is delinquent for the first, second, and third month of delinquency.

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#### **Summary of Amended Bill:**

Numerous provisions of the Act governing benefits and contributions are modified. The direction that the Act be liberally construed is deleted.

#### **I. BENEFITS**

##### **A. Eligibility**

Work by nonresident immigrants in the H-2A (agricultural guest worker) and H-2B (other guest worker) programs is excluded from covered employment.

Work search requirements are modified in several ways. Claimants who fail to actively search for work in accordance with the Act lose benefits for weeks in which they were not in compliance and must repay those benefits.

The customary trade practices that claimants must follow when searching for work are modified. If a labor agreement or dispatch rules applies, such customary trade practices must be in accordance with the applicable agreement or rules.

The requirement that "suitable work" be full-time work is modified. For part-time workers, "suitable work" includes work for 17 or fewer hours per week. "Part-time workers" are defined as those workers who earn wages in at least 40 weeks of the base year and who do not earn wages in more than 17 hours per week in any weeks of the

base year.

The Department's job search monitoring duties are increased. In addition to its existing duties, the Department must contract with employment security agencies in other states to ensure that out-of-state claimants in those states are actively engaged in searching for work in accordance with Washington job search requirements. The Department also may use certain electronic means to ensure that individuals are subject to job search monitoring, regardless of whether they reside in Washington or elsewhere.

These changes generally apply beginning with claims that are effective on or after January 4, 2004.

### **B. Disqualification**

The reasons specified in the Act as good cause for leaving work voluntarily are limited. Individuals are not disqualified from receiving benefits if they leave work voluntarily for the following reasons: (1) to accept other work; (2) illness or disability, so long as the individual is not entitled to reinstatement; (3) to relocate for the spouse's mandatory military transfer; (4) to protect the claimant or an immediate family member from domestic violence; (5) a reduction of 25 percent or more in compensation or hours; (6) a change in the worksite that causes increased distance or difficulty of travel; (7) deterioration of work site safety; (8) illegal activities in the worksite; or (9) a change in the individual's usual work that violates his or her religious convictions or sincere beliefs. The Commissioner's discretion to determine that other work-related factors are good cause for leaving work is eliminated.

The definition of "misconduct" is changed, and related requalification requirements are increased. "Misconduct" is redefined as willful or wanton disregard of the employer's or another employee's rights, deliberate violations or disregard of standards of behavior, carelessness or negligence that causes or would likely cause serious bodily harm to the employer or another employee, or carelessness or negligence that shows an intentional or substantial disregard of the employer's interest. An individual who is discharged for misconduct is disqualified from receiving benefits for 10 weeks and until he or she earns 10 times his or her weekly benefit amount.

A definition of "gross misconduct" is added, and related penalties are increased. "Gross misconduct" is defined as a criminal act in connection with an individual's work, or conduct that demonstrates a flagrant and wanton disregard for the employer's or another employee's rights. An individual who is discharged for gross misconduct has his or her wage credits based on that employment or 680 hours of wage credits, whichever is greater, cancelled.

These changes generally apply beginning with claims that are effective on or after

January 4, 2004.

### C. Duration and Amount

The maximum benefits payable are reduced. Beginning in the first month after the Commissioner finds that the state's unemployment rate is 6.8 percent or less, the maximum benefits payable are the lesser of 26 times the weekly benefit amount or 1/3 of the total gross wages in the base year. (The maximum duration of benefits is 26 weeks.)

The maximum weekly benefit amount is also reduced. For claims with an effective date on or after January 4, 2004, the maximum weekly benefit amount is 63 percent of the state average weekly wage or \$496, whichever is greater.

The formula for calculating an individual's weekly benefit amount is modified. For claims with an effective date on or after January 4, 2004, an individual's weekly benefit amount is 3.9 percent (instead of 4.0 percent) of the average of the individual's wages in the two quarters of the base year in which wages were highest.

## II. FINANCING

### A. Tax Rates

A new tax array with 40 rate classes is created beginning in rate year 2005. Employers are assigned one of the 40 rate classes based on the employer's benefit ratio.

Qualified employer rates are the sum of two separate rates:

- The array calculation factor rate is determined by the rate class, and ranges from 0.0 percent in rate class 1 to 5.4 percent in rate class 40.
- The graduated social cost factor rate is determined by calculating the flat social cost factor rate and multiplying by a graduated social cost factor that ranges from 78 percent to 120 percent of the flat social cost factor depending on the rate class.

The sum of the array calculation factor rate and the graduated social cost factor rate may not exceed 6.0 percent for certain seasonal industries (fishing, agriculture, and food processing) and 6.5 percent for other industries, except when a solvency surcharge applies.

Nonqualified employer rates are also the sum of two separate factors.

- For a new employer, the array calculation factor is the average industry rate plus 15 percent of that rate, but not more than 5.4 percent (the rate in rate class 40). The graduated social cost rate is the average industry rate plus 15 percent of that rate, but

not more than the rate assigned to rate class 40.

A successor employer with substantial continuity of ownership or management of the predecessor's business must pay at the rate assigned to the predecessors and will have the experience of the predecessors transferred to its account as part of the array calculation factor rate beginning in January following the transfer. A successor employer that has acquired two or more businesses must pay at the rate assigned to the predecessor employer with the largest taxable payroll, rather than the highest tax rate class, until it qualifies for its own rate.

For delinquent employers, the array calculation factor rate is 5.6 percent (two-tenths higher than the rate in rate class 40) and the graduated social cost rate is the same rate as the rate assigned to rate class 40.

A solvency surcharge of up to 0.2 percent replaces the insolvency surcharge. This surcharge is added to all contribution-paying employer rates for a particular rate year only if the fund balance is determined to be an amount that will provide fewer than six months of unemployment benefits.

#### **B. Taxable Wage Base**

Beginning in 2007, the state "average annual wage for contribution purposes" is determined using wage data from the previous year (rather than by averaging wage data from the three years prior to the calculation). Income attributable to the exercise of stock options is excluded from "wages" for contribution purposes.

#### **C. Experience Rating**

The charging of benefits paid to claimants who separated from employment for certain work-related reasons is changed beginning with benefits charged for claims that have an effective date on or after January 4, 2004. These benefits are charged to the experience rating account of only the separating employer. The work-related reasons are: (1) leave to accept other work; (2) reduction of 25 percent or more in compensation or hours; (3) change in work site that causes increased distance or difficulty of travel; (4) deterioration of work site safety; (4) illegal activities in the worksite; and (5) change in usual work that violates the individual's religious convictions or sincere beliefs.

The noncharging of benefits paid to claimants who are marginally attached to the labor force is eliminated.

#### **D. Penalties**

Penalties for certain employer delinquencies and/or misrepresentations are established. If quarterly tax reports are not timely or complete, the penalty is \$250 or 10 percent of the

contributions, whichever is less. If there is a knowing misrepresentation of payroll, the penalty is 10 times the amount of the difference in contributions that were paid and that should have been paid, and audit costs. If the delinquency is due to an intent to evade the successorship provisions, the penalty is the assignment of the maximum tax rate for five quarters.

### III. ADMINISTRATION

The Department must require claimants filing claims telephonically or electronically to provide additional proof of identity.

The Department must conduct several studies and report its findings and recommendations to the Legislature by December 1, 2003. In consultation with a business-labor advisory committee, the Department must identify programs funded with special administrative contributions. The Department also must review employer turnover in the unemployment compensation system. Finally, the Department must study the potential for year to year volatility in the rate classes to which employers are assigned.

The Act is modified to specify that various funds in the unemployment insurance system must be used solely for unemployment insurance purposes.

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**Appropriation:** Senate Bill 6099 appropriates \$11.5 million from Reed Act funds to implement Second Engrossed Substitute Bill 6097.

**Fiscal Note:** Not requested.

**Effective Date of Amended Bill:** The bill contains an emergency clause and takes effect immediately.

**Testimony For:** None.

**Testimony Against:** None.

**Testified:** None.

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HOUSE BILL 3278

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State of Washington

59th Legislature

2006 Regular Session

By Representatives Conway and Dickerson

Read first time 01/31/2006. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to making adjustments in the unemployment insurance  
2 system to enhance benefit and tax equity; and creating a new section.

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

4 NEW SECTION. **Sec. 1.** The legislature finds that it is in the best  
5 interest of unemployed workers, businesses, and the state to maintain  
6 a stable and solvent unemployment insurance system. The legislature  
7 intends to make adjustments to benefit and tax equity that ensure both  
8 the stability and solvency of the system.

--- END ---

HB 3278 - H AMD 939

By Representative Conway

ADOPTED 2/14/2006

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. Sec. 1. The legislature hereby recognizes that  
4 the joint legislative task force on unemployment insurance benefit  
5 equity has undertaken a comprehensive review of the unemployment  
6 insurance system, but has not yet reached agreement on its findings  
7 and recommendations. The legislature therefore intends to extend  
8 the deadline by which the task force must report to the legislature.

9 Sec. 2. 2005 c 133 s 9 (uncodified) is amended to read as  
10 follows:

11 (1) (a) The joint legislative task force on unemployment  
12 insurance benefit equity is established. The joint legislative task  
13 force shall consist of the following members:

14 (i) The chair and ranking minority member of the senate labor,  
15 commerce, research and development committee;

16 (ii) The chair and ranking minority member of the house  
17 commerce and labor committee;

18 (iii) Four members representing business, selected from  
19 nominations submitted by statewide business organizations  
20 representing a cross-section of industries and appointed jointly by  
21 the president of the senate and the speaker of the house of  
22 representatives; and

23 (iv) Four members representing labor, selected from nominations  
24 submitted by statewide labor organizations representing a cross-  
25 section of industries and appointed jointly by the president of the  
26 senate and the speaker of the house of representatives.

27 (b) In addition, the employment security department shall  
28 cooperate with the task force and maintain a liaison  
29 representative, who shall be a nonvoting member. The department

1 shall cooperate with the task force and provide information as the  
2 task force may reasonably request.

3 (2) The task force shall review the unemployment insurance  
4 system, including, but not limited to, whether the benefit  
5 structure provides for equitable benefits, whether the structure  
6 fairly accounts for changes in the work force and industry work  
7 patterns, including seasonality, and for claimants' annual work  
8 patterns, whether the tax structure provides for an equitable  
9 distribution of taxes, and whether the trust fund is adequate in  
10 the long term.

11 (3)(a) The task force shall use legislative facilities, and  
12 staff support shall be provided by senate committee services and  
13 the house of representatives office of program research. The task  
14 force may hire additional staff with specific technical expertise  
15 if such expertise is necessary to carry out the mandates of this study.

16 (b) Legislative members of the task force shall be reimbursed for  
17 travel expenses in accordance with RCW 44.04.120. Nonlegislative  
18 members, except those representing an employer or organization, are  
19 entitled to be reimbursed for travel expenses in accordance with  
20 RCW 43.03.050 and 43.03.060.

21 (c) The expenses of the task force shall be paid jointly by the  
22 senate and the house of representatives.

23 (5) The task force shall report its findings and  
24 recommendations to the legislature by (~~January~~) March 1, 2006.

25 (6) This section expires July 1, 2006."

**EFFECT:** Extends the deadline by which the Joint Legislative  
Task Force on Unemployment Insurance Benefit Equity must report  
to the Legislature from January 1, 2006, to March 1, 2006.