

80309-9

NO. 57513-9

**COURT OF APPEALS FOR DIVISION I
STATE OF WASHINGTON**

KUSUM L. BATEY,

Petitioner,

v.

STATE OF WASHINGTON EMPLOYMENT SECURITY
DEPARTMENT,

Respondent,

**ANSWER OF STATE OF WASHINGTON DEPARTMENT OF
EMPLOYMENT SECURITY TO MOTION FOR
DISCRETIONARY REVIEW**

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COMES NOW, the Employment Security Department (“Department”), by and through its attorneys, ROB MCKENNA, Attorney General, and JERALD R. ANDERSON and BRUCE L. TURCOTT, Assistant Attorneys General, and submits the following brief in response to Petitioner Kusum Batey’s application for direct review by the Court of Appeals of the final agency order of the Department’s Commissioner.

I. INTRODUCTION

The Department agrees with Batey that this case is appropriate for direct review by the Court of Appeals, inasmuch as it meets the criteria for direct review set out in RCW 34.05.518(2). However, the Department disagrees with Batey’s characterization of the issue presented for review by this case. This case does not involve the constitutionality of all amendments to the unemployment compensation system enacted in 2003 by 2ESB 6097. In actuality, this case involves the constitutionality of section 4 of 2ESB 6097, which amended RCW 50.20.050 and upon which the denial of benefits to Batey was based. As to the other provisions of 2ESB 6097, Batey is not an aggrieved party and lacks standing to appeal their constitutionality. RAP 3.1.

II. COUNTERSTATEMENT OF ISSUE PRESENTED FOR REVIEW

The Department agrees with Batey that this case presents a single issue of law under the Constitution of the State of Washington. However, she has stated that issue too broadly in her Issue Presented for Review.¹ The Department offers the following counterstatement of the issue presented for review by this case:

Is RCW 50.20.050, the statute which was the basis for the denial of unemployment benefits to Batey, unconstitutional as a result of the failure of 2ESB 6097 (a 2003 bill which amended RCW 50.20.050) to meet the “subject-in-title” requirement of Article II, Section 19 of the Washington State Constitution?

III. STATEMENT OF THE CASE

In 2003, the Legislature enacted Second Engrossed Senate Bill 6097 (hereafter 2ESB 6097) (Chapter 4, Laws of 2003, Second Special Session), making various changes to the unemployment compensation system. (A copy of 2ESB 6097 is attached hereto as Attachment A.) One of the changes made by 2ESB 6097 was the amendment of RCW 50.20.050. RCW 50.20.050 generally disqualifies those who have “left

¹ The Issue Presented for Review in Batey’s Motion is the first place where she plainly states the issue which she seeks to have reviewed, although she earlier mentioned in passing the supposed unconstitutionality of most provisions of 2ESB 6097. For the reasons set out in Section IV(C) below, Batey lacks standing under RAP 3.1 to challenge provisions of 2ESB 6097 other than the amendments to RCW 50.20.050.

work voluntarily without good cause” from receiving unemployment benefits for a specified period of time. RCW 50.20.050(2)(a). It also defines the circumstances under which voluntarily leaving work does not result in a disqualification from receiving unemployment benefits. RCW 50.20.050(2)(b).

The Department denied unemployment benefits to Batey after finding she left her job voluntarily for reasons that did not amount to “good cause” to receive benefits under the Employment Security Act (Title 50 RCW) (Act). At the administrative hearing, she argued that the 2003 amendments to the Act violated the subject-in-title rule contained in article II, section 19 of the Washington State Constitution. She argued this alleged constitutional violation invalidated the changes the Legislature made in 2003 to the voluntary quit statute at RCW 50.20.050. Under well-established law, the Department was unable to rule on the constitutionality of the statute it is required to administer. Therefore, the Commissioner declined to provide Batey the relief she was seeking and applied RCW 50.20.050 to her claim for benefits, finding she did not qualify.

Batey timely petitioned for judicial review to the Snohomish County Superior Court from the Commissioner’s final order. In her Superior Court brief she admitted she “chose to voluntarily terminate employment for reasons that do not amount to ‘good cause’ under the

current voluntary quit statute....” Petitioner’s Memorandum of Authority at 3. (A copy of the Memorandum of Authority is attached hereto as Appendix B.) She is therefore challenging the 2003 amendments to the voluntary quit statute as unconstitutional and suggests that “Plaintiff’s reasons [for voluntarily terminating employment] may have been sufficient to establish ‘good cause’ under the voluntary quit provision existing prior to the 2003 amendments.” *Id.*

Batey timely applied to the Superior Court for an order certifying her appeal for direct review by the Court of Appeals. The Superior Court granted her request and issued an order certifying case for direct review. Pursuant to RAP 6.3 and RAP 6.2, she filed a motion for discretionary review with this Court. This is a case considered upon the administrative record and it is governed by the Administrative Procedure Act (APA) at chapter 34.05 RCW.

IV. ARGUMENT

A. **RCW 50.20.050 Is Presumed Constitutional And Therefore Was Properly Applied To Batey’s Claim For Benefits.**

A statute is presumed to be constitutional, and the “party asserting that an act violates the state constitution bears the heavy burden of establishing its unconstitutionality beyond a reasonable doubt.” *Washington State Grange v. Locke*, 153 Wn.2d 475, 486, 105 P.3d 9

(2005). The court must resolve “any reasonable doubts . . . in favor of constitutionality.” *Locke*, 153 Wn.2d at 486. Further, the Washington Supreme Court has repeatedly held that “Const. art. 2, § 19 is to be liberally construed in favor of the legislation.” *Washington Fed’n of State Employees v. State*, 127 Wn.2d 544, 555, 901 P.2d 1028 (1995) (citations omitted).

Upon consideration of the merits of this matter, the Court should presume the statute is constitutional, apply it to the case at bar, and uphold the Commissioner’s decision. For the reasons set out below, and notwithstanding its position concerning the constitutionality of RCW 50.20.050, the Department agrees that the issue of the constitutionality of RCW 50.20.050 is appropriate for direct review by the Court of Appeals.

B. The Standard For Obtaining ‘Direct Review’ Of A Final Agency Order By The Court Of Appeals Is Provided By The Administrative Procedure Act.

The process for bypassing the Superior Court for a decision and seeking review in the Court of Appeals is provided in the APA. RCW 34.05. Under the APA, “direct review” is judicial review by the Court of Appeals without a prior decision by the Superior Court.² Direct review is

² Under the Rules of Appellate Procedure, the term “direct review” is used differently. Under RAP 4.2, “direct review” means review by the Supreme Court of a Superior Court decision, without a prior decision by the Court of Appeals. By contrast, “direct review” under the APA means judicial review by the Court of Appeals without a prior decision by the Superior Court. RCW 34.05.518.

limited to cases involving petitions for review of a “final decision of an administrative agency in an adjudicative proceeding.” RCW 34.05.518. Moreover, the Superior Court may certify a case for direct review only if judicial review is limited to the record of the agency proceeding. RCW 34.05.518(2).

As Batey correctly notes, RCW 34.05.518 sets forth the procedures for obtaining direct review by the Court of Appeals. *See also* RAP 2.1(c) & RAP 6.3. The appeal process has two steps. The first step has occurred at the Superior Court. Batey applied to the Superior Court for direct review of the Commissioner’s decision by the Court of Appeals. RCW 34.05.518(1), (2); CR 7 (b).³ The Superior Court certified the case based on the record of the agency proceeding, RCW 34.05.518(2), and the following criteria:

- (a) Fundamental and urgent issues affecting the future administrative process of the public interest are involved which require a prompt determination;
- (b) Delay in obtaining a final and prompt determination of such issues would be detrimental to any party or the public interest;
- (c) An appeal to the court of appeals would be likely regardless of the determination of the superior court; and

³ CR 7(b) states: “An application to the [Superior Court] for an order shall be by motion . . .” Accordingly the procedural requirements for motions under the Civil Rules of Procedure relating to form, filing and service requirements apply to an application for direct review. The criteria, or substance of the application, would be governed by RCW 34.05.518.

- (d) The appellate court's determination in the proceeding would have significant precedential value.

RCW 34.05.518(2)(a)-(d).

The second step is for the Court of Appeals to accept or deny review. The Court of Appeals accepts the case only by granting a motion for discretionary review. RCW 35.05.522 ("The court of appeals may refuse to accept direct review of a case pursuant to RCW 34.05.518 if it finds that the case does not meet the applicable standard in RCW 34.05.518(2) or (5). Rules of Appellate Procedure 2.3 do not apply in this instance"). The decision refusing discretionary review is not appealable. RCW 34.05.522.

1. Fundamental and urgent issues affecting the public interest are involved which would benefit from a prompt determination. RCW 34.05.518(2)(a).

The validity of the 2003 amendments to RCW 50.20.050 is a significant issue that affects the public interest. Numerous claims for unemployment benefits before the Department involve the application of RCW 50.20.050. Batey notes that whether a person quit for good cause is one of the two major issues decided in the over 40,000 contested unemployment compensation hearings decided by the Office of Administrative Hearings in 2004. A final appellate published decision upholding the constitutionality of the amendments to RCW 50.40.050

could likely settle by *stare decisis* the issue in a way that a decision of the Superior Court would not and, apparently, Batey would appeal from any adverse decision of the Superior Court. Motion for Discretionary Review at 5-6. While under the APA the Court can rule only upon the case before it, other unemployment compensation claims affecting workers' benefits would be potentially affected if the statute at issue is invalidated or upheld on constitutional grounds in a final appellate decision.

The Department, therefore, does not object to direct review of this matter by the Court of Appeals under the first criterion of RCW 34.05.518(2).

2. Delay would be detrimental to all parties and the Public interest. RCW 34.05.518(2)(b).

While neither the Department nor Batey would suffer irreparable injury if this matter were first considered by the Superior Court, reducing delay in obtaining final published appellate opinion would be valuable to the parties and meets the criteria of RCW 34.05.518(2)(b).

3. An appeal to The Court Of Appeals would be likely regardless of the determination of the superior court. RCW 34.05.518(2)(c).

As noted above, an appeal to the Court of Appeals appears likely should the Superior Court uphold the constitutionality of the statute. It is equally likely that, if the Superior Court were to find in favor of Batey, the

Department would seek an appeal. Thus the third criterion of RCW 34.05.518(2)(c) is satisfied.

4. The Appellate Court's determination in the proceeding would have significant precedential value. RCW 34.05.518(2)(d).

Finally, given the likelihood of further appeal beyond the Superior Court, a final appellate decision could have value to the parties as precedent, considering the strong public policies underlying the administration of the unemployment insurance system. A decision either by Superior Court would be instructive, but a published final appellate decision would have precedential value to the parties.

C. Although Direct Review Of This Case Is Appropriate, Review Should Be Limited To The Constitutionality Of RCW 50.20.050, The Only Issue On Which Batey Is An "Aggrieved Party" And, Hence, The Only Issue She Has Standing To Appeal Under RAP 3.1.

1. RAP 3.1 and standing.

RAP 3.1 states that: "Only an aggrieved party may seek review by the appellate court." "An aggrieved party is one whose proprietary, pecuniary, or personal rights are substantially affected." *Breda v. B.P.O. Elks Lake City*, 120 Wn. App. 351, 353, 90 P.3d 1079 (2004). RAP 3.1. One who is not an aggrieved party lacks standing to seek review by the appellate court. *Tacoma v. Taxpayers of the City of Tacoma*, 108 Wn.2d 679, 685, 743 P.2d 793 (1987).

2. RCW 50.20.050 is the only section of 2ESB 6097 under which Batey is “aggrieved.”

2ESB 6097 was an extensive bill, consisting of thirty-nine sections, one of which was vetoed and many of which apply only to employers. Appendix A *passim*. The amendments to RCW 50.20.050 are contained in section 4 of the bill. *Id.* at 4-7. Batey’s Motion makes it clear she considers that she was denied unemployment benefits under RCW 50.20.050:

Ms. Batey was denied unemployment compensation benefits under amended RCW 50.20.050, the “voluntary quit” statute, following her voluntary decision to terminate her employment with the Snohomish County Center for Battered Women.

Motion for Discretionary Review at 1. Batey contends that she suffered pecuniary loss in the form of denial of unemployment compensation benefits as a result of the amendments to RCW 50.20.050 to her benefits appeal.⁴ Thus, she clearly is “aggrieved” for purposes of RAP 3.1 and has standing to appeal the denial of unemployment compensation benefits.

Nowhere in her Motion does Batey contend that her denial of unemployment compensation was based on any other supposedly

⁴ Admittedly, this begs the question of whether she would have fared any better under RCW 50.20.050 as it existed prior to its amendment by 2ESB 6097. In her Superior Court Memorandum of Authority, Batey merely states that her “reasons [for voluntarily terminating employment] *may* have been sufficient to establish ‘good cause’ under the voluntary quit provision existing prior to the 2003 amendments.” (Emphasis supplied.) Appendix B at 3.

unconstitutional provision of 2ESB 6097. Her “proprietary, pecuniary, or personal rights” have not been affected by the other provisions of 2ESB 6097 and she cannot be considered an “aggrieved person” as to them. Thus, Batey lacks standing under RAP 3.1 to expand her appeal to encompass a challenge under Article II, Section 19 to parts of 2ESB 6097 other than Section 4.

V. CONCLUSION

For the foregoing reasons, the Department does not object to direct review by the Court of Appeals of this case. However, the issue before the Court should be limited to the significant question of whether the 2003 amendments to RCW 50.20.050 are constitutional under Article II, Section 19.

RESPECTFULLY SUBMITTED this 23^d day of January, 2006.

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CERTIFICATION OF ENROLLMENT

SECOND ENGROSSED SENATE BILL 6097

Chapter 4, Laws of 2003

(partial veto)

58th Legislature
2003 2nd Special Session

UNEMPLOYMENT COMPENSATION--SYSTEM REVISED

EFFECTIVE DATE: 6/20/03

Passed by the Senate June 11, 2003
YEAS 31 NAYS 9

BRAD OWEN

President of the Senate

Passed by the House June 11, 2003
YEAS 57 NAYS 33

FRANK CHOPP

Speaker of the House of Representatives

Approved June 20, 2003, with the
exception of section 28, which is
vetoed.

GARY LOCKE

Governor of the State of Washington

CERTIFICATE

I, Milton H. Doumit, Jr.,
Secretary of the Senate of the
State of Washington, do hereby
certify that the attached is
SECOND ENGROSSED SENATE BILL 6097
as passed by the Senate and the
House of Representatives on the
dates hereon set forth.

MILTON H. DOUMIT JR.

Secretary

FILED

June 20, 2003 - 9:10 a.m.

Secretary of State
State of Washington

SECOND ENGROSSED SENATE BILL 6097

Passed Legislature - 2003 2nd Special Session

State of Washington 58th Legislature 2003 1st Special Session

By Senators Honeyford and Mulliken

Read first time . Referred to .

1 AN ACT Relating to revising the unemployment compensation system
2 through creating forty rate classes for determining employer
3 contribution rates; amending RCW 50.01.010, 50.20.010, 50.20.050,
4 50.04.293, 50.20.060, 50.20.065, 50.20.240, 50.20.120, 50.20.100,
5 50.29.025, 50.04.355, 50.29.026, 50.29.062, 50.29.070, 50.12.220,
6 50.16.010, 50.16.015, 50.24.014, 50.20.190, 50.04.206, 50.20.140,
7 50.20.043, 50.20.160, 50.32.040, and 28B.50.030; reenacting and
8 amending RCW 50.29.020; adding new sections to chapter 50.04 RCW;
9 adding new sections to chapter 50.20 RCW; adding new sections to
10 chapter 50.29 RCW; creating new sections; repealing RCW 50.20.015,
11 50.20.045, 50.20.125, and 50.29.045; providing an expiration date; and
12 declaring an emergency.

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

14 **Sec. 1.** RCW 50.01.010 and 1945 c 35 s 2 are each amended to read
15 as follows:

16 Whereas, economic insecurity due to unemployment is a serious
17 menace to the health, morals and welfare of the people of this state;
18 involuntary unemployment is, therefore, a subject of general interest
19 and concern which requires appropriate action by the legislature to

1 prevent its spread and to lighten its burden which now so often falls
2 with crushing force upon the unemployed worker and his family. Social
3 security requires protection against this greatest hazard of our
4 economic life. This can be provided only by application of the
5 insurance principle of sharing the risks, and by the systematic
6 accumulation of funds during periods of employment to provide benefits
7 for periods of unemployment, thus maintaining purchasing powers and
8 limiting the serious social consequences of relief assistance. The
9 state of Washington, therefore, exercising herein its police and
10 sovereign power endeavors by this title to remedy any widespread
11 unemployment situation which may occur and to set up safeguards to
12 prevent its recurrence in the years to come. The legislature,
13 therefore, declares that in its considered judgment the public good,
14 and the general welfare of the citizens of this state require the
15 enactment of this measure, under the police powers of the state, for
16 the compulsory setting aside of unemployment reserves to be used for
17 the benefit of persons unemployed through no fault of their own (~~and~~
18 ~~that this title shall be liberally construed for the purpose of~~
19 ~~reducing involuntary unemployment and the suffering caused thereby to~~
20 ~~the minimum~~)).

21 **PART I - UNEMPLOYMENT ELIGIBILITY AND COMPENSATION**

22 NEW SECTION. **Sec. 2.** A new section is added to chapter 50.04 RCW
23 to read as follows:

24 After December 31, 2003, for the purpose of the payment of
25 contributions, the term "wages" does not include an employee's income
26 attributable to the transfer of shares of stock to the employee
27 pursuant to his or her exercise of a stock option granted for any
28 reason connected with his or her employment.

29 **Sec. 3.** RCW 50.20.010 and 1995 c 381 s 1 are each amended to read
30 as follows:

31 (1) An unemployed individual shall be eligible to receive waiting
32 period credits or benefits with respect to any week in his or her
33 eligibility period only if the commissioner finds that:

34 ~~((1))~~ (a) He or she has registered for work at, and thereafter
35 has continued to report at, an employment office in accordance with

1 such regulation as the commissioner may prescribe, except that the
2 commissioner may by regulation waive or alter either or both of the
3 requirements of this subdivision as to individuals attached to regular
4 jobs and as to such other types of cases or situations with respect to
5 which the commissioner finds that the compliance with such requirements
6 would be oppressive, or would be inconsistent with the purposes of this
7 title;

8 ~~((2))~~ (b) He or she has filed an application for an initial
9 determination and made a claim for waiting period credit or for
10 benefits in accordance with the provisions of this title;

11 ~~((3))~~ (c) He or she is able to work, and is available for work in
12 any trade, occupation, profession, or business for which he or she is
13 reasonably fitted.

14 (i) With respect to claims that have an effective date before
15 January 4, 2004, to be available for work an individual must be ready,
16 able, and willing, immediately to accept any suitable work which may be
17 offered to him or her and must be actively seeking work pursuant to
18 customary trade practices and through other methods when so directed by
19 the commissioner or the commissioner's agents.

20 (ii) With respect to claims that have an effective date on or after
21 January 4, 2004, to be available for work an individual must be ready,
22 able, and willing, immediately to accept any suitable work which may be
23 offered to him or her and must be actively seeking work pursuant to
24 customary trade practices and through other methods when so directed by
25 the commissioner or the commissioner's agents. If a labor agreement or
26 dispatch rules apply, customary trade practices must be in accordance
27 with the applicable agreement or rules;

28 ~~((4))~~ (d) He or she has been unemployed for a waiting period of
29 one week;

30 ~~((5))~~ (e) He or she participates in reemployment services if the
31 individual has been referred to reemployment services pursuant to the
32 profiling system established by the commissioner under RCW 50.20.011,
33 unless the commissioner determines that:

34 ~~((a))~~ (i) The individual has completed such services; or

35 ~~((b))~~ (ii) There is justifiable cause for the claimant's failure
36 to participate in such services; and

37 ~~((6))~~ (f) As to weeks beginning after March 31, 1981, which fall
38 within an extended benefit period as defined in RCW 50.22.010, the

1 individual meets the terms and conditions of RCW 50.22.020 with respect
2 to benefits claimed in excess of twenty-six times the individual's
3 weekly benefit amount.

4 (2) An individual's eligibility period for regular benefits shall
5 be coincident to his or her established benefit year. An individual's
6 eligibility period for additional or extended benefits shall be the
7 periods prescribed elsewhere in this title for such benefits.

8 **Sec. 4.** RCW 50.20.050 and 2002 c 8 s 1 are each amended to read as
9 follows:

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

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

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

- 22 ~~((a))~~ (i) The duration of the work;
23 ~~((b))~~ (ii) The extent of direction and control by the employer
24 over the work; and
25 ~~((c))~~ (iii) The level of skill required for the work in light of
26 the individual's training and experience.

27 ~~((2))~~ (b) An individual shall not be considered to have left work
28 voluntarily without good cause when:

29 ~~((a))~~ (i) He or she has left work to accept a bona fide offer of
30 bona fide work as described in ~~((subsection (1)))~~ (a) of this
31 ~~((section))~~ subsection;

32 ~~((b))~~ (ii) The separation was because of the illness or
33 disability of the claimant or the death, illness, or disability of a
34 member of the claimant's immediate family if the claimant took all
35 reasonable precautions, in accordance with any regulations that the
36 commissioner may prescribe, to protect his or her employment status by
37 having promptly notified the employer of the reason for the absence and

1 by having promptly requested reemployment when again able to assume
2 employment: PROVIDED, That these precautions need not have been taken
3 when they would have been a futile act, including those instances when
4 the futility of the act was a result of a recognized labor/management
5 dispatch system;

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

10 ~~((d))~~ (iv) The separation was necessary to protect the claimant
11 or the claimant's immediate family members from domestic violence, as
12 defined in RCW 26.50.010, or stalking, as defined in RCW 9A.46.110.

13 ~~((3))~~ (c) In determining under this ~~((section))~~ subsection
14 whether an individual has left work voluntarily without good cause, the
15 commissioner shall only consider work-connected factors such as the
16 degree of risk involved to the individual's health, safety, and morals,
17 the individual's physical fitness for the work, the individual's
18 ability to perform the work, and such other work connected factors as
19 the commissioner may deem pertinent, including state and national
20 emergencies. Good cause shall not be established for voluntarily
21 leaving work because of its distance from an individual's residence
22 where the distance was known to the individual at the time he or she
23 accepted the employment and where, in the judgment of the department,
24 the distance is customarily traveled by workers in the individual's job
25 classification and labor market, nor because of any other significant
26 work factor which was generally known and present at the time he or she
27 accepted employment, unless the related circumstances have so changed
28 as to amount to a substantial involuntary deterioration of the work
29 factor or unless the commissioner determines that other related
30 circumstances would work an unreasonable hardship on the individual
31 were he or she required to continue in the employment.

32 ~~((4))~~ (d) Subsection~~((s))~~ (1)(a) and ~~((3))~~ (c) of this section
33 shall not apply to an individual whose marital status or domestic
34 responsibilities cause him or her to leave employment. Such an
35 individual shall not be eligible for unemployment insurance benefits
36 beginning with the first day of the calendar week in which he or she
37 left work and thereafter for seven calendar weeks and until he or she
38 has requalified, either by obtaining bona fide work in employment

1 covered by this title and earning wages in that employment equal to
2 seven times his or her weekly benefit amount or by reporting in person
3 to the department during ten different calendar weeks and certifying on
4 each occasion that he or she is ready, able, and willing to immediately
5 accept any suitable work which may be offered, is actively seeking work
6 pursuant to customary trade practices, and is utilizing such employment
7 counseling and placement services as are available through the
8 department. This subsection does not apply to individuals covered by
9 ~~((subsection (2)(b) or (c) of this section))~~ (b)(ii) or (iii) of this
10 subsection.

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

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

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

23 (i) The duration of the work;

24 (ii) The extent of direction and control by the employer over the
25 work; and

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

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

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

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

35 (A) The claimant pursued all reasonable alternatives to preserve
36 his or her employment status by requesting a leave of absence, by
37 having promptly notified the employer of the reason for the absence,
38 and by having promptly requested reemployment when again able to assume

1 employment. These alternatives need not be pursued, however, when they
2 would have been a futile act, including those instances when the
3 futility of the act was a result of a recognized labor/management
4 dispatch system; and

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

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

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

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

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

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

25 (viii) The individual's worksite safety deteriorated, the
26 individual reported such safety deterioration to the employer, and the
27 employer failed to correct the hazards within a reasonable period of
28 time;

29 (ix) The individual left work because of illegal activities in the
30 individual's worksite, the individual reported such activities to the
31 employer, and the employer failed to end such activities within a
32 reasonable period of time; or

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

35 **Sec. 5.** RCW 50.04.293 and 1993 c 483 s 1 are each amended to read
36 as follows:

37 With respect to claims that have an effective date before January

1 4, 2004, "misconduct" means an employee's act or failure to act in
2 willful disregard of his or her employer's interest where the effect of
3 the employee's act or failure to act is to harm the employer's
4 business.

5 NEW SECTION. **Sec. 6.** A new section is added to chapter 50.04 RCW
6 to read as follows:

7 With respect to claims that have an effective date on or after
8 January 4, 2004:

9 (1) "Misconduct" includes, but is not limited to, the following
10 conduct by a claimant:

11 (a) Willful or wanton disregard of the rights, title, and interests
12 of the employer or a fellow employee;

13 (b) Deliberate violations or disregard of standards of behavior
14 which the employer has the right to expect of an employee;

15 (c) Carelessness or negligence that causes or would likely cause
16 serious bodily harm to the employer or a fellow employee; or

17 (d) Carelessness or negligence of such degree or recurrence to show
18 an intentional or substantial disregard of the employer's interest.

19 (2) The following acts are considered misconduct because the acts
20 signify a willful or wanton disregard of the rights, title, and
21 interests of the employer or a fellow employee. These acts include,
22 but are not limited to:

23 (a) Insubordination showing a deliberate, willful, or purposeful
24 refusal to follow the reasonable directions or instructions of the
25 employer;

26 (b) Repeated inexcusable tardiness following warnings by the
27 employer;

28 (c) Dishonesty related to employment, including but not limited to
29 deliberate falsification of company records, theft, deliberate
30 deception, or lying;

31 (d) Repeated and inexcusable absences, including absences for which
32 the employee was able to give advance notice and failed to do so;

33 (e) Deliberate acts that are illegal, provoke violence or violation
34 of laws, or violate the collective bargaining agreement. However, an
35 employee who engages in lawful union activity may not be disqualified
36 due to misconduct;

1 (f) Violation of a company rule if the rule is reasonable and if
2 the claimant knew or should have known of the existence of the rule; or

3 (g) Violations of law by the claimant while acting within the scope
4 of employment that substantially affect the claimant's job performance
5 or that substantially harm the employer's ability to do business.

6 (3) "Misconduct" does not include:

7 (a) Inefficiency, unsatisfactory conduct, or failure to perform
8 well as the result of inability or incapacity;

9 (b) Inadvertence or ordinary negligence in isolated instances; or

10 (c) Good faith errors in judgment or discretion.

11 (4) "Gross misconduct" means a criminal act in connection with an
12 individual's work for which the individual has been convicted in a
13 criminal court, or has admitted committing, or conduct connected with
14 the individual's work that demonstrates a flagrant and wanton disregard
15 of and for the rights, title, or interest of the employer or a fellow
16 employee.

17 **Sec. 7.** RCW 50.20.060 and 2000 c 2 s 13 are each amended to read
18 as follows:

19 With respect to claims that have an effective date before January
20 4, 2004, an individual shall be disqualified from benefits beginning
21 with the first day of the calendar week in which he or she has been
22 discharged or suspended for misconduct connected with his or her work
23 and thereafter for seven calendar weeks and until he or she has
24 obtained bona fide work in employment covered by this title and earned
25 wages in that employment equal to seven times his or her weekly benefit
26 amount. Alcoholism shall not constitute a defense to disqualification
27 from benefits due to misconduct.

28 **Sec. 8.** RCW 50.20.065 and 1993 c 483 s 11 are each amended to read
29 as follows:

30 With respect to claims that have an effective date before January
31 4, 2004:

32 (1) An individual who has been discharged from his or her work
33 because of a felony or gross misdemeanor of which he or she has been
34 convicted, or has admitted committing to a competent authority, and
35 that is connected with his or her work shall have all hourly wage
36 credits based on that employment canceled.

1 (2) The employer shall notify the department of such an admission
2 or conviction, not later than six months following the admission or
3 conviction.

4 (3) The claimant shall disclose any conviction of the claimant of
5 a work-connected felony or gross misdemeanor occurring in the previous
6 two years to the department at the time of application for benefits.

7 (4) All benefits that are paid in error based on wage/hour credits
8 that should have been removed from the claimant's base year are
9 recoverable, notwithstanding RCW 50.20.190 or 50.24.020 or any other
10 provisions of this title.

11 NEW SECTION. **Sec. 9.** A new section is added to chapter 50.20 RCW
12 to read as follows:

13 With respect to claims that have an effective date on or after
14 January 4, 2004:

15 (1) An individual shall be disqualified from benefits beginning
16 with the first day of the calendar week in which he or she has been
17 discharged or suspended for misconduct connected with his or her work
18 and thereafter for ten calendar weeks and until he or she has obtained
19 bona fide work in employment covered by this title and earned wages in
20 that employment equal to ten times his or her weekly benefit amount.
21 Alcoholism shall not constitute a defense to disqualification from
22 benefits due to misconduct.

23 (2) An individual who has been discharged from his or her work
24 because of gross misconduct shall have all hourly wage credits based on
25 that employment or six hundred eighty hours of wage credits, whichever
26 is greater, canceled.

27 (3) The employer shall notify the department of a felony or gross
28 misdemeanor of which an individual has been convicted, or has admitted
29 committing to a competent authority, not later than six months
30 following the admission or conviction.

31 (4) The claimant shall disclose any conviction of the claimant of
32 a work-connected felony or gross misdemeanor occurring in the previous
33 two years to the department at the time of application for benefits.

34 (5) All benefits that are paid in error based on this section are
35 recoverable, notwithstanding RCW 50.20.190 or 50.24.020 or any other
36 provisions of this title.

1 **Sec. 10.** RCW 50.20.240 and 2002 c 8 s 3 are each amended to read
2 as follows:

3 (1)(a) To ensure that following the initial application for
4 benefits, an individual is actively engaged in searching for work,
5 ~~((effective July 1, 1999,))~~ the employment security department shall
6 implement a job search monitoring program. Effective January 4, 2004,
7 the department shall contract with employment security agencies in
8 other states to ensure that individuals residing in those states and
9 receiving benefits under this title are actively engaged in searching
10 for work in accordance with the requirements of this section. The
11 department may use interactive voice technology and other electronic
12 means to ensure that individuals are subject to comparable job search
13 monitoring, regardless of whether they reside in Washington or
14 elsewhere.

15 (b) Except for those individuals with employer attachment or union
16 referral, individuals who qualify for unemployment compensation under
17 RCW 50.20.050 ~~((+2)(d))~~ (1)(b)(iii) or (2)(b)(v), as applicable, and
18 individuals in commissioner-approved training, an individual who has
19 received five or more weeks of benefits under this title, regardless of
20 whether the individual resides in Washington or elsewhere, must provide
21 evidence of seeking work, as directed by the commissioner or the
22 commissioner's agents, for each week beyond five in which a claim is
23 filed. With regard to claims with an effective date before January 4,
24 2004, the evidence must demonstrate contacts with at least three
25 employers per week or documented in-person job search activity at the
26 local reemployment center. With regard to claims with an effective
27 date on or after January 4, 2004, the evidence must demonstrate
28 contacts with at least three employers per week or documented in-person
29 job search activities at the local reemployment center at least three
30 times per week.

31 (c) In developing the requirements for the job search monitoring
32 program, the commissioner or the commissioner's agents shall utilize an
33 existing advisory committee having equal representation of employers
34 and workers.

35 (2) Effective January 4, 2004, an individual who fails to comply
36 fully with the requirements for actively seeking work under RCW
37 50.20.010 shall lose all benefits for all weeks during which the

1 individual was not in compliance, and the individual shall be liable
2 for repayment of all such benefits under RCW 50.20.190.

3 **Sec. 11.** RCW 50.20.120 and 2002 c 149 s 4 are each amended to read
4 as follows:

5 (1)(a) Subject to the other provisions of this title, benefits
6 shall be payable to any eligible individual during the individual's
7 benefit year in a maximum amount equal to the lesser of thirty times
8 the weekly benefit amount (~~((determined hereinafter))~~), as determined
9 in subsection (2) of this section, or one-third of the individual's
10 base year wages under this title: PROVIDED, That as to any week
11 ((beginning on and after March 31, 1981,)) which falls in an extended
12 benefit period as defined in RCW 50.22.010(1), ((as now or hereafter
13 amended,)) an individual's eligibility for maximum benefits in excess
14 of twenty-six times his or her weekly benefit amount will be subject to
15 the terms and conditions set forth in RCW 50.22.020((, as now or
16 hereafter amended)).

17 (b) With respect to claims that have an effective date on or after
18 the first Sunday of the calendar month immediately following the month
19 in which the commissioner finds that the state unemployment rate is six
20 and eight-tenths percent or less, benefits shall be payable to any
21 eligible individual during the individual's benefit year in a maximum
22 amount equal to the lesser of twenty-six times the weekly benefit
23 amount, as determined in subsection (2) of this section, or one-third
24 of the individual's base year wages under this title.

25 (2)(a) For claims with an effective date before January 4, 2004, an
26 individual's weekly benefit amount shall be an amount equal to one
27 twenty-fifth of the average quarterly wages of the individual's total
28 wages during the two quarters of the individual's base year in which
29 such total wages were highest.

30 (b) With respect to claims with an effective date on or after
31 January 4, 2004, and before January 2, 2005, an individual's weekly
32 benefit amount shall be an amount equal to one twenty-fifth of the
33 average quarterly wages of the individual's total wages during the
34 three quarters of the individual's base year in which such total wages
35 were highest.

36 (c) With respect to claims with an effective date on or after

1 January 2, 2005, an individual's weekly benefit amount shall be an
2 amount equal to one percent of the total wages paid in the individual's
3 base year.

4 (3) The maximum and minimum amounts payable weekly shall be
5 determined as of each June 30th to apply to benefit years beginning in
6 the twelve-month period immediately following such June 30th. ((~~Except~~
7 ~~as provided in RCW 50.20.125,~~))

8 (a) (i) With respect to claims that have an effective date before
9 January 4, 2004, the maximum amount payable weekly shall be seventy
10 percent of the "average weekly wage" for the calendar year preceding
11 such June 30th.

12 (ii) With respect to claims that have an effective date on or after
13 January 4, 2004, the maximum amount payable weekly shall be either four
14 hundred ninety-six dollars or sixty-three percent of the "average
15 weekly wage" for the calendar year preceding such June 30th, whichever
16 is greater.

17 (b) The minimum amount payable weekly shall be fifteen percent of
18 the "average weekly wage" for the calendar year preceding such June
19 30th.

20 (4) If any weekly benefit, maximum benefit, or minimum benefit
21 amount computed herein is not a multiple of one dollar, it shall be
22 reduced to the next lower multiple of one dollar.

23 NEW SECTION. Sec. 12. A new section is added to chapter 50.20 RCW
24 to read as follows:

25 (1) With respect to claims that have an effective date on or after
26 January 2, 2005, an otherwise eligible individual may not be denied
27 benefits for any week because the individual is a part-time worker and
28 is available for, seeks, applies for, or accepts only work of seventeen
29 or fewer hours per week by reason of the application of RCW
30 50.20.010(1)(c), 50.20.080, or 50.22.020(1) relating to availability
31 for work and active search for work, or failure to apply for or refusal
32 to accept suitable work.

33 (2) For purposes of this section, "part-time worker" means an
34 individual who: (a) Earned wages in "employment" in at least forty
35 weeks in the individual's base year; and (b) did not earn wages in
36 "employment" in more than seventeen hours per week in any weeks in the
37 individual's base year.

1 **Sec. 13.** RCW 50.20.100 and 2002 c 8 s 2 are each amended to read
2 as follows:

3 (1) Suitable work for an individual is employment in an occupation
4 in keeping with the individual's prior work experience, education, or
5 training and if the individual has no prior work experience, special
6 education, or training for employment available in the general area,
7 then employment which the individual would have the physical and mental
8 ability to perform. In determining whether work is suitable for an
9 individual, the commissioner shall also consider the degree of risk
10 involved to the individual's health, safety, and morals, the
11 individual's physical fitness, the individual's length of unemployment
12 and prospects for securing local work in the individual's customary
13 occupation, the distance of the available work from the individual's
14 residence, and such other factors as the commissioner may deem
15 pertinent, including state and national emergencies.

16 (2) For individuals with base year work experience in agricultural
17 labor, any agricultural labor available from any employer shall be
18 deemed suitable unless it meets conditions in RCW 50.20.110 or the
19 commissioner finds elements of specific work opportunity unsuitable for
20 a particular individual.

21 (3) For part-time workers as defined in section 12 of this act,
22 suitable work includes suitable work under subsection (1) of this
23 section that is for seventeen or fewer hours per week.

24 (4) For individuals who have qualified for unemployment
25 compensation benefits under RCW 50.20.050(~~(+2)(d)~~) (1)(b)(iii) or
26 (2)(b)(v), as applicable, an evaluation of the suitability of the work
27 must consider the individual's need to address the physical,
28 psychological, legal, and other effects of domestic violence or
29 stalking.

30 **PART II - FINANCING UNEMPLOYMENT COMPENSATION**

31 **Sec. 14.** RCW 50.29.025 and 2003 c 4 (SHB 1832) s 1 are each
32 amended to read as follows:

33 (1) Except as provided in subsection (2) of this section, the
34 contribution rate for each employer subject to contributions under RCW
35 50.24.010 shall be determined under this (~~section~~) subsection.

1 ~~((1+))~~ (a) A fund balance ratio shall be determined by dividing
2 the balance in the unemployment compensation fund as of the September
3 30th immediately preceding the rate year by the total remuneration paid
4 by all employers subject to contributions during the second calendar
5 year preceding the rate year and reported to the department by the
6 following March 31st. The division shall be carried to the fourth
7 decimal place with the remaining fraction, if any, disregarded. The
8 fund balance ratio shall be expressed as a percentage.

9 ~~((2+))~~ (b) The interval of the fund balance ratio, expressed as a
10 percentage, shall determine which tax schedule in (e) of this
11 subsection ~~((5) of this section)~~ shall be in effect for assigning tax
12 rates for the rate year. The intervals for determining the effective
13 tax schedule shall be:

14	Interval of the	
15	Fund Balance Ratio	Effective
16	Expressed as a Percentage	Tax Schedule
17	2.90 and above	AA
18	2.10 to 2.89	A
19	1.70 to 2.09	B
20	1.40 to 1.69	C
21	1.00 to 1.39	D
22	0.70 to 0.99	E
23	Less than 0.70	F

24 ~~((3+))~~ (c) An array shall be prepared, listing all qualified
25 employers in ascending order of their benefit ratios. The array shall
26 show for each qualified employer: ~~((a+))~~ (i) Identification number;
27 ~~((b+))~~ (ii) benefit ratio; ~~((c+))~~ (iii) taxable payrolls for the four
28 calendar quarters immediately preceding the computation date and
29 reported to the department by the cut-off date; ~~((d+))~~ (iv) a
30 cumulative total of taxable payrolls consisting of the employer's
31 taxable payroll plus the taxable payrolls of all other employers
32 preceding him or her in the array; and ~~((e+))~~ (v) the percentage
33 equivalent of the cumulative total of taxable payrolls.

34 ~~((4+))~~ (d) Each employer in the array shall be assigned to one of
35 twenty rate classes according to the percentage intervals of cumulative
36 taxable payrolls set forth in (e) of this subsection ~~((5) of this~~

1 ~~section~~): PROVIDED, That if an employer's taxable payroll falls
 2 within two or more rate classes, the employer and any other employer
 3 with the same benefit ratio shall be assigned to the lowest rate class
 4 which includes any portion of the employer's taxable payroll.

5 ~~((5))~~ (e) Except as provided in RCW 50.29.026, the contribution
 6 rate for each employer in the array shall be the rate specified in the
 7 following tables for the rate class to which he or she has been
 8 assigned, as determined under (d) of this subsection ~~((4) of this~~
 9 ~~section))~~, within the tax schedule which is to be in effect during the
 10 rate year:

		Percent of									
		Cumulative		Schedules of Contributions Rates							
		Taxable Payrolls		for Effective Tax Schedule							
		Rate									
	From	To Class	AA	A	B	C	D	E	F		
17	0.00	5.00	1	0.47	0.47	0.57	0.97	1.47	1.87	2.47	
18	5.01	10.00	2	0.47	0.47	0.77	1.17	1.67	2.07	2.67	
19	10.01	15.00	3	0.57	0.57	0.97	1.37	1.77	2.27	2.87	
20	15.01	20.00	4	0.57	0.73	1.11	1.51	1.90	2.40	2.98	
21	20.01	25.00	5	0.72	0.92	1.30	1.70	2.09	2.59	3.08	
22	25.01	30.00	6	0.91	1.11	1.49	1.89	2.29	2.69	3.18	
23	30.01	35.00	7	1.00	1.29	1.69	2.08	2.48	2.88	3.27	
24	35.01	40.00	8	1.19	1.48	1.88	2.27	2.67	3.07	3.47	
25	40.01	45.00	9	1.37	1.67	2.07	2.47	2.87	3.27	3.66	
26	45.01	50.00	10	1.56	1.86	2.26	2.66	3.06	3.46	3.86	
27	50.01	55.00	11	1.84	2.14	2.45	2.85	3.25	3.66	3.95	
28	55.01	60.00	12	2.03	2.33	2.64	3.04	3.44	3.85	4.15	
29	60.01	65.00	13	2.22	2.52	2.83	3.23	3.64	4.04	4.34	
30	65.01	70.00	14	2.40	2.71	3.02	3.43	3.83	4.24	4.54	
31	70.01	75.00	15	2.68	2.90	3.21	3.62	4.02	4.43	4.63	
32	75.01	80.00	16	2.87	3.09	3.42	3.81	4.22	4.53	4.73	
33	80.01	85.00	17	3.27	3.47	3.77	4.17	4.57	4.87	4.97	
34	85.01	90.00	18	3.67	3.87	4.17	4.57	4.87	4.97	5.17	
35	90.01	95.00	19	4.07	4.27	4.57	4.97	5.07	5.17	5.37	
36	95.01	100.00	20	5.40	5.40	5.40	5.40	5.40	5.40	5.40	

37 ~~((6))~~ (f) The contribution rate for each employer not qualified
 38 to be in the array shall be as follows:

39 ~~((a))~~ (i) Employers who do not meet the definition of "qualified
 40 employer" by reason of failure to pay contributions when due shall be

1 assigned a contribution rate two-tenths higher than that in rate class
2 20 for the applicable rate year, except employers who have an approved
3 agency-deferred payment contract by September 30 of the previous rate
4 year. If any employer with an approved agency-deferred payment
5 contract fails to make any one of the succeeding deferred payments or
6 fails to submit any succeeding tax report and payment in a timely
7 manner, the employer's tax rate shall immediately revert to a
8 contribution rate two-tenths higher than that in rate class 20 for the
9 applicable rate year; and

10 ~~((b))~~ (ii) For all other employers not qualified to be in the
11 array, the contribution rate shall be a rate equal to the average
12 industry rate as determined by the commissioner; however, the rate may
13 not be less than one percent. ~~((Assignment of employers by the
14 commissioner to industrial classification, for purposes of this
15 section, shall be in accordance with established classification
16 practices found in the "Standard Industrial Classification Manual"
17 issued by the federal office of management and budget to the third
18 digit provided in the standard industrial classification code, or in
19 the North American industry classification system code.))~~

20 (2) Beginning with contributions assessed for rate year 2005, the
21 contribution rate for each employer subject to contributions under RCW
22 50.24.010 shall be the sum of the array calculation factor rate and the
23 graduated social cost factor rate determined under this subsection, and
24 the solvency surcharge determined under section 16 of this act, if any.

25 (a) The array calculation factor rate shall be determined as
26 follows:

27 (i) An array shall be prepared, listing all qualified employers in
28 ascending order of their benefit ratios. The array shall show for each
29 qualified employer: (A) Identification number; (B) benefit ratio; and
30 (C) taxable payrolls for the four consecutive calendar quarters
31 immediately preceding the computation date and reported to the
32 employment security department by the cut-off date.

33 (ii) Each employer in the array shall be assigned to one of forty
34 rate classes according to his or her benefit ratio as follows, and,
35 except as provided in RCW 50.29.026, the array calculation factor rate
36 for each employer in the array shall be the rate specified in the rate
37 class to which the employer has been assigned:

38
39

	<u>Benefit Ratio</u>		<u>Rate</u>	<u>Rate</u>
	<u>At least</u>	<u>Less than</u>	<u>Class</u>	<u>(percent)</u>
1		<u>0.000001</u>	<u>1</u>	<u>0.00</u>
2	<u>0.000001</u>	<u>0.001250</u>	<u>2</u>	<u>0.13</u>
3	<u>0.001250</u>	<u>0.002500</u>	<u>3</u>	<u>0.25</u>
4	<u>0.002500</u>	<u>0.003750</u>	<u>4</u>	<u>0.38</u>
5	<u>0.003750</u>	<u>0.005000</u>	<u>5</u>	<u>0.50</u>
6	<u>0.005000</u>	<u>0.006250</u>	<u>6</u>	<u>0.63</u>
7	<u>0.006250</u>	<u>0.007500</u>	<u>7</u>	<u>0.75</u>
8	<u>0.007500</u>	<u>0.008750</u>	<u>8</u>	<u>0.88</u>
9	<u>0.008750</u>	<u>0.010000</u>	<u>9</u>	<u>1.00</u>
10	<u>0.010000</u>	<u>0.011250</u>	<u>10</u>	<u>1.15</u>
11	<u>0.011250</u>	<u>0.012500</u>	<u>11</u>	<u>1.30</u>
12	<u>0.012500</u>	<u>0.013750</u>	<u>12</u>	<u>1.45</u>
13	<u>0.013750</u>	<u>0.015000</u>	<u>13</u>	<u>1.60</u>
14	<u>0.015000</u>	<u>0.016250</u>	<u>14</u>	<u>1.75</u>
15	<u>0.016250</u>	<u>0.017500</u>	<u>15</u>	<u>1.90</u>
16	<u>0.017500</u>	<u>0.018750</u>	<u>16</u>	<u>2.05</u>
17	<u>0.018750</u>	<u>0.020000</u>	<u>17</u>	<u>2.20</u>
18	<u>0.020000</u>	<u>0.021250</u>	<u>18</u>	<u>2.35</u>
19	<u>0.021250</u>	<u>0.022500</u>	<u>19</u>	<u>2.50</u>
20	<u>0.022500</u>	<u>0.023750</u>	<u>20</u>	<u>2.65</u>
21	<u>0.023750</u>	<u>0.025000</u>	<u>21</u>	<u>2.80</u>
22	<u>0.025000</u>	<u>0.026250</u>	<u>22</u>	<u>2.95</u>
23	<u>0.026250</u>	<u>0.027500</u>	<u>23</u>	<u>3.10</u>
24	<u>0.027500</u>	<u>0.028750</u>	<u>24</u>	<u>3.25</u>
25	<u>0.028750</u>	<u>0.030000</u>	<u>25</u>	<u>3.40</u>
26	<u>0.030000</u>	<u>0.031250</u>	<u>26</u>	<u>3.55</u>
27	<u>0.031250</u>	<u>0.032500</u>	<u>27</u>	<u>3.70</u>
28	<u>0.032500</u>	<u>0.033750</u>	<u>28</u>	<u>3.85</u>
29	<u>0.033750</u>	<u>0.035000</u>	<u>29</u>	<u>4.00</u>
30	<u>0.035000</u>	<u>0.036250</u>	<u>30</u>	<u>4.15</u>
31	<u>0.036250</u>	<u>0.037500</u>	<u>31</u>	<u>4.30</u>
32	<u>0.037500</u>	<u>0.040000</u>	<u>32</u>	<u>4.45</u>
33	<u>0.040000</u>	<u>0.042500</u>	<u>33</u>	<u>4.60</u>
34	<u>0.042500</u>	<u>0.045000</u>	<u>34</u>	<u>4.75</u>
35	<u>0.045000</u>	<u>0.047500</u>	<u>35</u>	<u>4.90</u>

1	<u>0.047500</u>	<u>0.050000</u>	<u>36</u>	<u>5.05</u>
2	<u>0.050000</u>	<u>0.052500</u>	<u>37</u>	<u>5.20</u>
3	<u>0.052500</u>	<u>0.055000</u>	<u>38</u>	<u>5.30</u>
4	<u>0.055000</u>	<u>0.057500</u>	<u>39</u>	<u>5.35</u>
5	<u>0.057500</u>		<u>40</u>	<u>5.40</u>

6
7 (b) The graduated social cost factor rate shall be determined as
8 follows:

9 (i) (A) Except as provided in (b)(i)(B) and (C) of this subsection,
10 the commissioner shall calculate the flat social cost factor for a rate
11 year by dividing the total social cost by the total taxable payroll.
12 The division shall be carried to the second decimal place with the
13 remaining fraction disregarded unless it amounts to five hundredths or
14 more, in which case the second decimal place shall be rounded to the
15 next higher digit. The flat social cost factor shall be expressed as
16 a percentage.

17 (B) If, on the cut-off date, the balance in the unemployment
18 compensation fund is determined by the commissioner to be an amount
19 that will provide more than ten months of unemployment benefits, the
20 commissioner shall calculate the flat social cost factor for the rate
21 year immediately following the cut-off date by reducing the total
22 social cost by the dollar amount that represents the number of months
23 for which the balance in the unemployment compensation fund on the cut-
24 off date will provide benefits above ten months and dividing the result
25 by the total taxable payroll. However, the calculation under this
26 subsection (2)(b)(i)(B) for a rate year may not result in a flat social
27 cost factor that is more than two-tenths lower than the calculation
28 under (b)(i)(A) of this subsection for that rate year. For the
29 purposes of this subsection, the commissioner shall determine the
30 number of months of unemployment benefits in the unemployment
31 compensation fund using the benefit cost rate for the average of the
32 three highest calendar benefit cost rates in the twenty consecutive
33 completed calendar years immediately preceding the cut-off date or a
34 period of consecutive calendar years immediately preceding the cut-off
35 date that includes three recessions, if longer.

36 (C) The minimum flat social cost factor calculated under this
37 subsection (2)(b) shall be six-tenths of one percent.

38 (ii) The graduated social cost factor rate for each employer in the
39 array is the flat social cost factor multiplied by the percentage

1 specified as follows for the rate class to which the employer has been
2 assigned in (a)(ii) of this subsection, except that the sum of an
3 employer's array calculation factor rate and the graduated social cost
4 factor rate may not exceed six and five-tenths percent or, for
5 employers whose standard industrial classification code is within major
6 group "01," "02," "07," "091," "203," "209," or "5148," or the
7 equivalent code in the North American industry classification system
8 code, may not exceed six percent:

9 (A) Rate class 1 - 78 percent;

10 (B) Rate class 2 - 82 percent;

11 (C) Rate class 3 - 86 percent;

12 (D) Rate class 4 - 90 percent;

13 (E) Rate class 5 - 94 percent;

14 (F) Rate class 6 - 98 percent;

15 (G) Rate class 7 - 102 percent;

16 (H) Rate class 8 - 106 percent;

17 (I) Rate class 9 - 110 percent;

18 (J) Rate class 10 - 114 percent;

19 (K) Rate class 11 - 118 percent; and

20 (L) Rate classes 12 through 40 - 120 percent.

21 (iii) For the purposes of this section:

22 (A) "Total social cost" means the amount calculated by subtracting
23 the array calculation factor contributions paid by all employers with
24 respect to the four consecutive calendar quarters immediately preceding
25 the computation date and paid to the employment security department by
26 the cut-off date from the total unemployment benefits paid to claimants
27 in the same four consecutive calendar quarters. To calculate the flat
28 social cost factor for rate year 2005, the commissioner shall calculate
29 the total social cost using the array calculation factor contributions
30 that would have been required to be paid by all employers in the
31 calculation period if (a) of this subsection had been in effect for the
32 relevant period.

33 (B) "Total taxable payroll" means the total amount of wages subject
34 to tax, as determined under RCW 50.24.010, for all employers in the
35 four consecutive calendar quarters immediately preceding the
36 computation date and reported to the employment security department by
37 the cut-off date.

1 (c) The array calculation factor rate for each employer not
2 qualified to be in the array shall be as follows:

3 (i) Employers who do not meet the definition of "qualified
4 employer" by reason of failure to pay contributions when due shall be
5 assigned an array calculation factor rate two-tenths higher than that
6 in rate class 40, except employers who have an approved agency-deferred
7 payment contract by September 30th of the previous rate year. If any
8 employer with an approved agency-deferred payment contract fails to
9 make any one of the succeeding deferred payments or fails to submit any
10 succeeding tax report and payment in a timely manner, the employer's
11 tax rate shall immediately revert to an array calculation factor rate
12 two-tenths higher than that in rate class 40; and

13 (ii) For all other employers not qualified to be in the array, the
14 array calculation factor rate shall be a rate equal to the average
15 industry array calculation factor rate as determined by the
16 commissioner, plus fifteen percent of that amount; however, the rate
17 may not be less than one percent or more than the array calculation
18 factor rate in rate class 40.

19 (d) The graduated social cost factor rate for each employer not
20 qualified to be in the array shall be as follows:

21 (i) For employers whose array calculation factor rate is determined
22 under (c)(i) of this subsection, the social cost factor rate shall be
23 the social cost factor rate assigned to rate class 40 under (b)(ii) of
24 this subsection.

25 (ii) For employers whose array calculation factor rate is
26 determined under (c)(ii) of this subsection, the social cost factor
27 rate shall be a rate equal to the average industry social cost factor
28 rate as determined by the commissioner, plus fifteen percent of that
29 amount, but not more than the social cost factor rate assigned to rate
30 class 40 under (b)(ii) of this subsection.

31 (3) Assignment of employers by the commissioner to industrial
32 classification, for purposes of this section, shall be in accordance
33 with established classification practices found in the "Standard
34 Industrial Classification Manual" issued by the federal office of
35 management and budget to the third digit provided in the standard
36 industrial classification code, or in the North American industry
37 classification system code.

1 **Sec. 15.** RCW 50.04.355 and 2000 c 2 s 1 are each amended to read
2 as follows:

3 (1) For computations made before January 1, 2007, the employment
4 security department shall compute, on or before the fifteenth day of
5 June of each year, an "average annual wage", an "average weekly wage",
6 and an "average annual wage for contributions purposes" (~~shall be~~
7 computed)) from information for the specified preceding calendar years
8 including corrections thereof reported within three months after the
9 close of the final year of the specified years by all employers as
10 defined in RCW 50.04.080.

11 ~~((1))~~ (a) The "average annual wage" is the quotient derived by
12 dividing the total remuneration reported by all employers for the
13 preceding calendar year by the average number of workers reported for
14 all months of the preceding calendar year and if the result is not a
15 multiple of one dollar, rounding the result to the next lower multiple
16 of one dollar.

17 ~~((2))~~ (b) The "average weekly wage" is the quotient derived by
18 dividing the "average annual wage" obtained under ~~((1))~~ (a) of this
19 subsection by fifty-two and if the result is not a multiple of one
20 dollar, rounding the result to the next lower multiple of one dollar.

21 ~~((3))~~ (c) The "average annual wage for ~~(contribution[s])~~
22 contributions purposes" is the quotient derived by dividing by three
23 the total remuneration reported by all employers subject to
24 contributions for the preceding three consecutive calendar years and
25 dividing this amount by the average number of workers reported for all
26 months of these three years by these same employers and if the result
27 is not a multiple of one dollar, rounding the result to the next lower
28 multiple of one dollar.

29 (2) For computations made on or after January 1, 2007, the
30 employment security department shall compute, on or before the
31 fifteenth day of June of each year, an "average annual wage," an
32 "average weekly wage," and an "average annual wage for contributions
33 purposes" from information for the preceding calendar year including
34 corrections thereof reported within three months after the close of
35 that year by all employers as defined in RCW 50.04.080.

36 (a) The "average annual wage" is the quotient derived by dividing
37 the total remuneration reported by all employers by the average number

1 of workers reported for all months and if the result is not a multiple
2 of one dollar, rounding the result to the next lower multiple of one
3 dollar.

4 (b) The "average weekly wage" is the quotient derived by dividing
5 the "average annual wage" obtained under (a) of this subsection by
6 fifty-two and if the result is not a multiple of one dollar, rounding
7 the result to the next lower multiple of one dollar.

8 (c) The "average annual wage for contributions purposes" is the
9 quotient derived by dividing the total remuneration reported by all
10 employers subject to contributions by the average number of workers
11 reported for all months by these same employers and if the result is
12 not a multiple of one dollar, rounding the result to the next lower
13 multiple of one dollar.

14 NEW SECTION. Sec. 16. A new section is added to chapter 50.29 RCW
15 to read as follows:

16 Beginning with contributions assessed for rate year 2005, the
17 contribution rate of each employer subject to contributions under RCW
18 50.24.010 shall include a solvency surcharge determined as follows:

19 (1) This section shall apply to employers' contributions for a rate
20 year immediately following a cut-off date only if, on the cut-off date,
21 the balance in the unemployment compensation fund is determined by the
22 commissioner to be an amount that will provide fewer than six months of
23 unemployment benefits.

24 (2) The solvency surcharge shall be the lowest rate necessary, as
25 determined by the commissioner, but not more than two-tenths of one
26 percent, to provide revenue during the applicable rate year that will
27 fund unemployment benefits for the number of months that is the
28 difference between eight months and the number of months for which the
29 balance in the unemployment compensation fund on the cut-off date will
30 provide benefits.

31 (3) The basis for determining the number of months of unemployment
32 benefits shall be the same basis used in RCW 50.29.025(2)(b)(i)(B).

33 Sec. 17. RCW 50.29.026 and 2000 c 2 s 5 are each amended to read
34 as follows:

35 (1) Beginning with contributions assessed for rate year 1996, a
36 qualified employer's contribution rate applicable for rate years

1 beginning before January 1, 2005, or array calculation factor rate
2 applicable for rate years beginning on or after January 1, 2005,
3 determined under RCW 50.29.025 may be modified as follows:

4 (a) Subject to the limitations of this subsection, an employer may
5 make a voluntary contribution of an amount equal to part or all of the
6 benefits charged to the employer's account during the two years most
7 recently ended on June 30th that were used for the purpose of computing
8 the employer's contribution rate applicable for rate years beginning
9 before January 1, 2005, or array calculation factor rate applicable for
10 rate years beginning on or after January 1, 2005. On receiving timely
11 payment of a voluntary contribution, plus a surcharge of ten percent of
12 the amount of the voluntary contribution, the commissioner shall cancel
13 the benefits equal to the amount of the voluntary contribution,
14 excluding the surcharge, and compute a new benefit ratio for the
15 employer. The employer shall then be assigned the contribution rate
16 applicable for rate years beginning before January 1, 2005, or array
17 calculation factor rate applicable for rate years beginning on or after
18 January 1, 2005, applicable to the rate class within which the
19 recomputed benefit ratio is included. The minimum amount of a
20 voluntary contribution, excluding the surcharge, must be an amount that
21 will result in a recomputed benefit ratio that is in a rate class at
22 least (~~two~~) four rate classes lower than the rate class that included
23 the employer's original benefit ratio.

24 (b) Payment of a voluntary contribution is considered timely if
25 received by the department during the period beginning on the date of
26 mailing to the employer the notice of contribution rate applicable for
27 rate years beginning before January 1, 2005, or notice of array
28 calculation factor rate applicable for rate years beginning on or after
29 January 1, 2005, required under this title for the rate year for which
30 the employer is seeking a modification of his or her (~~contribution~~)
31 rate and ending on February 15th of that rate year or, for voluntary
32 contributions for rate year 2000, ending on March 31, 2000.

33 (c) A benefit ratio may not be recomputed nor a (~~contribution~~)
34 rate be reduced under this section as a result of a voluntary
35 contribution received after the payment period prescribed in (b) of
36 this subsection.

37 (2) This section does not apply to any employer who has not had an

1 increase of at least ((~~six~~) twelve) rate classes from the previous tax
2 rate year.

3 **Sec. 18.** RCW 50.29.062 and 1996 c 238 s 1 are each amended to read
4 as follows:

5 Predecessor and successor employer contribution rates shall be
6 computed in the following manner:

7 (1) If the successor is an employer, as defined in RCW 50.04.080,
8 at the time of the transfer, its contribution rate shall remain
9 unchanged for the remainder of the rate year in which the transfer
10 occurs. From and after January 1 following the transfer, the
11 successor's contribution rate for each rate year shall be based on its
12 experience with payrolls and benefits including the experience of the
13 acquired business or portion of a business from the date of transfer,
14 as of the regular computation date for that rate year.

15 (2) For transfers before January 1, 2005, the following applies if
16 the successor is not an employer at the time of the transfer((, ~~it~~)).
17 The successor shall pay contributions at the lowest rate determined
18 under either of the following:

19 (a) (i) For transfers before January 1, 1997, the contribution rate
20 of the rate class assigned to the predecessor employer at the time of
21 the transfer for the remainder of that rate year and continuing until
22 the successor qualifies for a different rate in its own right;

23 (ii) For transfers on or after January 1, 1997, the contribution
24 rate of the rate class assigned to the predecessor employer at the time
25 of the transfer for the remainder of that rate year. Any experience
26 relating to the assignment of that rate class attributable to the
27 predecessor is transferred to the successor. Beginning with the
28 January 1 following the transfer, the successor's contribution rate
29 shall be based on the transferred experience of the acquired business
30 and the successor's experience after the transfer; or

31 (b) The contribution rate equal to the average industry rate as
32 determined by the commissioner, but not less than one percent, and
33 continuing until the successor qualifies for a different rate in its
34 own right. Assignment of employers by the commissioner to industrial
35 classification, for purposes of this subsection, must be in accordance
36 with established classification practices found in the "Standard
37 Industrial Classification Manual" issued by the federal office of

1 management and budget to the third digit provided in the standard
2 industrial classification code, or in the North American industry
3 classification code system.

4 (3) For transfers before January 1, 2005, if the successor is not
5 an employer at the time of the transfer and simultaneously acquires the
6 business or a portion of the business of two or more employers in
7 different rate classes, its rate from the date the transfer occurred
8 until the end of that rate year and until it qualifies in its own right
9 for a new rate, shall be the highest rate class applicable at the time
10 of the acquisition to any predecessor employer who is a party to the
11 acquisition, but not less than one percent.

12 (4) For transfers on or after January 1, 2005, the following
13 applies if the successor is not an employer at the time of the
14 transfer:

15 (a) Except as provided in (b) of this subsection, the successor
16 shall pay contributions:

17 (i) At the contribution rate determined for the predecessor
18 employer at the time of the transfer for the remainder of the rate
19 year. Any experience attributable to the predecessor relating to the
20 assignment of the predecessor's rate class is transferred to the
21 successor. On and after January 1st following the transfer, the
22 successor's array calculation factor rate shall be based on the
23 transferred experience of the acquired business and the successor's
24 experience after the transfer; or

25 (ii) At the contribution rate equal to the sum of the rates
26 determined by the commissioner under RCW 50.29.025(2) (c)(ii) and
27 (d)(ii), and section 16 of this act, if applicable, and continuing
28 until the successor qualifies for a different rate in its own right.

29 (b) If there is a substantial continuity of ownership or management
30 by the successor of the business of the predecessor, the successor
31 shall pay contributions at the contribution rate determined for the
32 predecessor employer at the time of the transfer for the remainder of
33 that rate year. Any experience attributable to the predecessor
34 relating to the assignment of the predecessor's rate class is
35 transferred to the successor. On and after January 1st following the
36 transfer, the successor's array calculation factor rate shall be based
37 on the transferred experience of the acquired business and the
38 successor's experience after the transfer.

1 (c) If the successor simultaneously acquires the business or a
2 portion of the business of two or more employers with different
3 contribution rates, the successor's rate from the date the transfer
4 occurred until the end of that rate year and until it qualifies in its
5 own right for a new rate, shall be the sum of the rates determined by
6 the commissioner under RCW 50.29.025(2) (a) and (b), and section 16 of
7 this act, applicable at the time of the acquisition to the predecessor
8 employer who, among the parties to the acquisition, had the largest
9 taxable payroll in the completed calendar quarter immediately preceding
10 the date of transfer, but not less than the sum of the rates determined
11 by the commissioner under RCW 50.29.025(2) (c)(ii) and (d)(ii), and
12 section 16 of this act, if applicable.

13 (5) The contribution rate on any payroll retained by a predecessor
14 employer shall remain unchanged for the remainder of the rate year in
15 which the transfer occurs.

16 ~~((5))~~ (6) In all cases, from and after January 1 following the
17 transfer, the predecessor's contribution rate or, beginning January 1,
18 2005, the predecessor's array calculation factor for each rate year
19 shall be based on its experience with payrolls and benefits as of the
20 regular computation date for that rate year including the experience of
21 the acquired business or portion of business up to the date of
22 transfer: PROVIDED, That if all of the predecessor's business is
23 transferred to a successor or successors, the predecessor shall not be
24 a qualified employer until it satisfies the requirements of a
25 "qualified employer" as set forth in RCW 50.29.010.

26 **Sec. 19.** RCW 50.29.070 and 1990 c 245 s 8 are each amended to read
27 as follows:

28 (1) Within a reasonable time after the computation date each
29 employer shall be notified of the employer's rate of contribution as
30 determined for the succeeding rate year and factors used in the
31 calculation. Beginning with rate year 2005, the notice must include
32 the amount of the contribution rate that is attributable to each
33 component of the rate under RCW 50.29.025(2).

34 (2) Any employer dissatisfied with the benefit charges made to the
35 employer's account for the twelve-month period immediately preceding
36 the computation date or with his or her determined rate may file a
37 request for review and redetermination with the commissioner within

1 thirty days of the mailing of the notice to the employer, showing the
2 reason for such request. Should such request for review and
3 redetermination be denied, the employer may, within thirty days of the
4 mailing of such notice of denial, file with the appeal tribunal a
5 petition for hearing which shall be heard in the same manner as a
6 petition for denial of refund. The appellate procedure prescribed by
7 this title for further appeal shall apply to all denials of review and
8 redetermination under this section.

9 **Sec. 20.** RCW 50.29.020 and 2002 c 149 s 6 and 2002 c 8 s 4 are
10 each reenacted and amended to read as follows:

11 (1) This section applies to benefits charged to the experience
12 rating accounts of employers for claims that have an effective date
13 before January 4, 2004.

14 (2) An experience rating account shall be established and
15 maintained for each employer, except employers as described in RCW
16 50.44.010 and 50.44.030 who have properly elected to make payments in
17 lieu of contributions, taxable local government employers as described
18 in RCW 50.44.035, and those employers who are required to make payments
19 in lieu of contributions, based on existing records of the employment
20 security department. Benefits paid to any eligible individuals shall
21 be charged to the experience rating accounts of each of such
22 individual's employers during the individual's base year in the same
23 ratio that the wages paid by each employer to the individual during the
24 base year bear to the wages paid by all employers to that individual
25 during that base year, except as otherwise provided in this section.

26 ~~((+2))~~ (3) The legislature finds that certain benefit payments, in
27 whole or in part, should not be charged to the experience rating
28 accounts of employers except those employers described in RCW 50.44.010
29 and 50.44.030 who have properly elected to make payments in lieu of
30 contributions, taxable local government employers described in RCW
31 50.44.035, and those employers who are required to make payments in
32 lieu of contributions, as follows:

33 (a) Benefits paid to any individuals later determined to be
34 ineligible shall not be charged to the experience rating account of any
35 contribution paying employer.

36 (b) Benefits paid to an individual filing under the provisions of

1 chapter 50.06 RCW shall not be charged to the experience rating account
2 of any contribution paying employer only if:

3 (i) The individual files under RCW 50.06.020(1) after receiving
4 crime victims' compensation for a disability resulting from a nonwork-
5 related occurrence; or

6 (ii) The individual files under RCW 50.06.020(2).

7 (c) Benefits paid which represent the state's share of benefits
8 payable as extended benefits defined under RCW 50.22.010(6) shall not
9 be charged to the experience rating account of any contribution paying
10 employer.

11 (d) In the case of individuals who requalify for benefits under RCW
12 50.20.050 or 50.20.060, benefits based on wage credits earned prior to
13 the disqualifying separation shall not be charged to the experience
14 rating account of the contribution paying employer from whom that
15 separation took place.

16 (e) Individuals who qualify for benefits under RCW
17 50.20.050(~~(+2)(d)~~) (1)(b)(iii) shall not have their benefits charged
18 to the experience rating account of any contribution paying employer.

19 (f) In the case of individuals identified under RCW 50.20.015,
20 benefits paid with respect to a calendar quarter, which exceed the
21 total amount of wages earned in the state of Washington in the higher
22 of two corresponding calendar quarters included within the individual's
23 determination period, as defined in RCW 50.20.015, shall not be charged
24 to the experience rating account of any contribution paying employer.

25 (~~(+3)(a)~~) (4)(a) A contribution-paying base year employer, not
26 otherwise eligible for relief of charges for benefits under this
27 section, may receive such relief if the benefit charges result from
28 payment to an individual who:

29 (i) Last left the employ of such employer voluntarily for reasons
30 not attributable to the employer;

31 (ii) Was discharged for misconduct connected with his or her work
32 not a result of inability to meet the minimum job requirements;

33 (iii) Is unemployed as a result of closure or severe curtailment of
34 operation at the employer's plant, building, worksite, or other
35 facility. This closure must be for reasons directly attributable to a
36 catastrophic occurrence such as fire, flood, or other natural disaster;
37 or

1 (iv) Continues to be employed on a regularly scheduled permanent
2 part-time basis by a base year employer and who at some time during the
3 base year was concurrently employed and subsequently separated from at
4 least one other base year employer. Benefit charge relief ceases when
5 the employment relationship between the employer requesting relief and
6 the claimant is terminated. This subsection does not apply to shared
7 work employers under chapter 50.60 RCW.

8 (b) The employer requesting relief of charges under this subsection
9 must request relief in writing within thirty days following mailing to
10 the last known address of the notification of the valid initial
11 determination of such claim, stating the date and reason for the
12 separation or the circumstances of continued employment. The
13 commissioner, upon investigation of the request, shall determine
14 whether relief should be granted.

15 NEW SECTION. **Sec. 21.** A new section is added to chapter 50.29 RCW
16 to read as follows:

17 (1) This section applies to benefits charged to the experience
18 rating accounts of employers for claims that have an effective date on
19 or after January 4, 2004.

20 (2)(a) An experience rating account shall be established and
21 maintained for each employer, except employers as described in RCW
22 50.44.010 and 50.44.030 who have properly elected to make payments in
23 lieu of contributions, taxable local government employers as described
24 in RCW 50.44.035, and those employers who are required to make payments
25 in lieu of contributions, based on existing records of the employment
26 security department.

27 (b) Benefits paid to an eligible individual shall be charged to the
28 experience rating accounts of each of such individual's employers
29 during the individual's base year in the same ratio that the wages paid
30 by each employer to the individual during the base year bear to the
31 wages paid by all employers to that individual during that base year,
32 except as otherwise provided in this section.

33 (c) When the eligible individual's separating employer is a covered
34 contribution paying base year employer, benefits paid to the eligible
35 individual shall be charged to the experience rating account of only
36 the individual's separating employer if the individual qualifies for
37 benefits under:

1 (i) RCW 50.20.050(2)(b)(i), as applicable, and became unemployed
2 after having worked and earned wages in the bona fide work; or

3 (ii) RCW 50.20.050(2)(b)(v) through (x).

4 (3) The legislature finds that certain benefit payments, in whole
5 or in part, should not be charged to the experience rating accounts of
6 employers except those employers described in RCW 50.44.010 and
7 50.44.030 who have properly elected to make payments in lieu of
8 contributions, taxable local government employers described in RCW
9 50.44.035, and those employers who are required to make payments in
10 lieu of contributions, as follows:

11 (a) Benefits paid to any individual later determined to be
12 ineligible shall not be charged to the experience rating account of any
13 contribution paying employer.

14 (b) Benefits paid to an individual filing under the provisions of
15 chapter 50.06 RCW shall not be charged to the experience rating account
16 of any contribution paying employer only if:

17 (i) The individual files under RCW 50.06.020(1) after receiving
18 crime victims' compensation for a disability resulting from a nonwork-
19 related occurrence; or

20 (ii) The individual files under RCW 50.06.020(2).

21 (c) Benefits paid which represent the state's share of benefits
22 payable as extended benefits defined under RCW 50.22.010(6) shall not
23 be charged to the experience rating account of any contribution paying
24 employer.

25 (d) In the case of individuals who requalify for benefits under RCW
26 50.20.050 or 50.20.060, benefits based on wage credits earned prior to
27 the disqualifying separation shall not be charged to the experience
28 rating account of the contribution paying employer from whom that
29 separation took place.

30 (e) Individuals who qualify for benefits under RCW
31 50.20.050(2)(b)(iv), as applicable, shall not have their benefits
32 charged to the experience rating account of any contribution paying
33 employer.

34 (4)(a) A contribution paying base year employer, not otherwise
35 eligible for relief of charges for benefits under this section, may
36 receive such relief if the benefit charges result from payment to an
37 individual who:

1 (i) Last left the employ of such employer voluntarily for reasons
2 not attributable to the employer;

3 (ii) Was discharged for misconduct or gross misconduct connected
4 with his or her work not a result of inability to meet the minimum job
5 requirements;

6 (iii) Is unemployed as a result of closure or severe curtailment of
7 operation at the employer's plant, building, worksite, or other
8 facility. This closure must be for reasons directly attributable to a
9 catastrophic occurrence such as fire, flood, or other natural disaster;
10 or

11 (iv) Continues to be employed on a regularly scheduled permanent
12 part-time basis by a base year employer and who at some time during the
13 base year was concurrently employed and subsequently separated from at
14 least one other base year employer. Benefit charge relief ceases when
15 the employment relationship between the employer requesting relief and
16 the claimant is terminated. This subsection does not apply to shared
17 work employers under chapter 50.60 RCW.

18 (b) The employer requesting relief of charges under this subsection
19 must request relief in writing within thirty days following mailing to
20 the last known address of the notification of the valid initial
21 determination of such claim, stating the date and reason for the
22 separation or the circumstances of continued employment. The
23 commissioner, upon investigation of the request, shall determine
24 whether relief should be granted.

25 **Sec. 22.** RCW 50.12.220 and 1987 c 111 s 2 are each amended to read
26 as follows:

27 (1)(a) If an employer fails to file in a timely and complete manner
28 a report required by RCW 50.12.070 (~~(as now or hereafter amended)~~), or
29 the rules adopted pursuant thereto, the employer shall be subject to a
30 ((minimum)) penalty ((of ten dollars per violation)) to be determined
31 by the commissioner, but not to exceed two hundred fifty dollars or ten
32 percent of the quarterly contributions for each such offense, whichever
33 is less.

34 (b) If an employer knowingly misrepresents to the employment
35 security department the amount of his or her payroll upon which
36 contributions under this title are based, the employer shall be liable
37 to the state for up to ten times the amount of the difference in

1 contributions paid, if any, and the amount the employer should have
2 paid and for the reasonable expenses of auditing his or her books and
3 collecting such sums. Such liability may be enforced in the name of
4 the department.

5 (c) If any part of a delinquency for which an assessment is made
6 under this title is due to an intent to evade the successorship
7 provisions of RCW 50.29.062, the commissioner shall assign to the
8 employer, and to any business found to be promoting the evasion of such
9 provisions, the tax rate determined under RCW 50.29.025 for rate class
10 20 or rate class 40, as applicable, for five consecutive calendar
11 quarters, beginning with the calendar quarter in which the intent to
12 evade such provision is found.

13 (2) If contributions are not paid on the date on which they are due
14 and payable as prescribed by the commissioner, there shall be assessed
15 a penalty of five percent of the amount of the contributions for the
16 first month or part thereof of delinquency; there shall be assessed a
17 total penalty of ten percent of the amount of the contributions for the
18 second month or part thereof of delinquency; and there shall be
19 assessed a total penalty of twenty percent of the amount of the
20 contributions for the third month or part thereof of delinquency. No
21 penalty so added shall be less than ten dollars. These penalties are
22 in addition to the interest charges assessed under RCW 50.24.040.

23 (3) Penalties shall not accrue on contributions from an estate in
24 the hands of a receiver, executor, administrator, trustee in
25 bankruptcy, common law assignee, or other liquidating officer
26 subsequent to the date when such receiver, executor, administrator,
27 trustee in bankruptcy, common law assignee, or other liquidating
28 officer qualifies as such, but contributions accruing with respect to
29 employment of persons by a receiver, executor, administrator, trustee
30 in bankruptcy, common law assignee, or other liquidating officer shall
31 become due and shall be subject to penalties in the same manner as
32 contributions due from other employers.

33 (4) Where adequate information has been furnished to the department
34 and the department has failed to act or has advised the employer of no
35 liability or inability to decide the issue, penalties shall be waived
36 by the commissioner. Penalties may also be waived for good cause if
37 the commissioner determines that the failure to timely file reports or
38 pay contributions was not due to the employer's fault.

1 (5) Any decision to assess a penalty as provided by this section
2 shall be made by the chief administrative officer of the tax branch or
3 his or her designee.

4 (6) Nothing in this section shall be construed to deny an employer
5 the right to appeal the assessment of any penalty. Such appeal shall
6 be made in the manner provided in RCW 50.32.030.

7 **Sec. 23.** RCW 50.16.010 and 2002 c 371 s 914 are each amended to
8 read as follows:

9 (1) There shall be maintained as special funds, separate and apart
10 from all public moneys or funds of this state an unemployment
11 compensation fund, an administrative contingency fund, and a federal
12 interest payment fund, which shall be administered by the commissioner
13 exclusively for the purposes of this title, and to which RCW 43.01.050
14 shall not be applicable.

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

16 ~~((1))~~ (i) All contributions collected under RCW 50.24.010 and
17 payments in lieu of contributions collected pursuant to the provisions
18 of this title~~((7))~~;

19 ~~((2))~~ (ii) Any property or securities acquired through the use of
20 moneys belonging to the fund~~((7))~~;

21 ~~((3))~~ (iii) All earnings of such property or securities~~((7))~~;

22 ~~((4))~~ (iv) Any moneys received from the federal unemployment
23 account in the unemployment trust fund in accordance with Title XII of
24 the social security act, as amended~~((7))~~;

25 ~~((5))~~ (v) All money recovered on official bonds for losses
26 sustained by the fund~~((7))~~;

27 ~~((6))~~ (vi) All money credited to this state's account in the
28 unemployment trust fund pursuant to section 903 of the social security
29 act, as amended~~((7))~~;

30 ~~((7))~~ (vii) All money received from the federal government as
31 reimbursement pursuant to section 204 of the federal-state extended
32 compensation act of 1970 (84 Stat. 708-712; 26 U.S.C. Sec. 3304) ~~((7))~~;
33 and

34 ~~((8))~~ (viii) All moneys received for the fund from any other
35 source.

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

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

3 (i) All interest on delinquent contributions collected pursuant to
4 this title((~~7~~));

5 (ii) All fines and penalties collected pursuant to the provisions
6 of this title((~~7~~));

7 (iii) All sums recovered on official bonds for losses sustained by
8 the fund((~~7~~)); and

9 (iv) Revenue received under RCW 50.24.014(~~(+ PROVIDED, That)~~).

10 (b) All fees, fines, forfeitures, and penalties collected or
11 assessed by a district court because of the violation of ((~~a state~~
12 law)) this title or rules adopted under this title shall be remitted as
13 provided in chapter 3.62 RCW ((~~as now exists or is later amended~~)).

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

19 ((~~a~~)) (i) The proper administration of this title and no federal
20 funds are available for the specific purpose to which such expenditure
21 is to be made, provided, the moneys are not substituted for
22 appropriations from federal funds which, in the absence of such moneys,
23 would be made available.

24 ((~~b~~)) (ii) The proper administration of this title for which
25 purpose appropriations from federal funds have been requested but not
26 yet received, provided, the administrative contingency fund will be
27 reimbursed upon receipt of the requested federal appropriation.

28 ((~~c~~)) (iii) The proper administration of this title for which
29 compliance and audit issues have been identified that establish federal
30 claims requiring the expenditure of state resources in resolution.
31 Claims must be resolved in the following priority: First priority is
32 to provide services to eligible participants within the state; second
33 priority is to provide substitute services or program support; and last
34 priority is the direct payment of funds to the federal government.

35 (d) ((~~During the 2001-2003 fiscal biennium, the cost of worker~~
36 retraining programs at community and technical colleges as appropriated
37 by the legislature.))

1 Money in the special account created under RCW 50.24.014(1)(a) may
2 only be expended, after appropriation, for the purposes specified in
3 this section and RCW 50.62.010, 50.62.020, 50.62.030, (~~50.04.070,~~
4 ~~50.04.072, 50.16.010, 50.29.025,~~) 50.24.014, 50.44.053, and 50.22.010.

5 **Sec. 24.** RCW 50.16.015 and 1983 1st ex.s. c 13 s 6 are each
6 amended to read as follows:

7 A separate and identifiable fund to provide for the payment of
8 interest on advances received from this state's account in the federal
9 unemployment trust fund shall be established and administered under the
10 direction of the commissioner. This fund shall be known as the federal
11 interest payment fund and shall consist of contributions paid under RCW
12 50.16.070. All money in this fund shall be expended solely for the
13 payment of interest on advances received from this state's account in
14 the federal unemployment trust fund and for no other purposes
15 whatsoever.

16 **Sec. 25.** RCW 50.24.014 and 2000 c 2 s 15 are each amended to read
17 as follows:

18 (1)(a) A separate and identifiable account to provide for the
19 financing of special programs to assist the unemployed is established
20 in the administrative contingency fund. All money in this account
21 shall be expended solely for the purposes of this title and for no
22 other purposes whatsoever. Contributions to this account shall accrue
23 and become payable by each employer, except employers as described in
24 RCW 50.44.010 and 50.44.030 who have properly elected to make payments
25 in lieu of contributions, taxable local government employers as
26 described in RCW 50.44.035, and those employers who are required to
27 make payments in lieu of contributions, at a basic rate of two one-
28 hundredths of one percent. The amount of wages subject to tax shall be
29 determined under RCW 50.24.010.

30 (b) A separate and identifiable account is established in the
31 administrative contingency fund for financing the employment security
32 department's administrative cost under RCW 50.22.150 and the costs
33 under RCW 50.22.150(9). All money in this account shall be expended
34 solely for the purposes of this title and for no other purposes
35 whatsoever. Contributions to this account shall accrue and become
36 payable by each employer, except employers as described in RCW

1 50.44.010 and 50.44.030 who have properly elected to make payments in
2 lieu of contributions, taxable local government employers as described
3 in RCW 50.44.035, those employers who are required to make payments in
4 lieu of contributions, those employers described under RCW
5 50.29.025(~~(1)(b)~~) (1)(f)(ii), and those qualified employers assigned
6 rate class 20 or rate class 40, as applicable, under RCW 50.29.025, at
7 a basic rate of one one-hundredth of one percent. The amount of wages
8 subject to tax shall be determined under RCW 50.24.010. Any amount of
9 contributions payable under this subsection (1)(b) that exceeds the
10 amount that would have been collected at a rate of four one-thousandths
11 of one percent must be deposited in the unemployment compensation trust
12 fund.

13 (c) For the first calendar quarter of 1994 only, the basic two one-
14 hundredths of one percent contribution payable under (a) of this
15 subsection shall be increased by one-hundredth of one percent to a
16 total rate of three one-hundredths of one percent. The proceeds of
17 this incremental one-hundredth of one percent shall be used solely for
18 the purposes described in section 22, chapter 483, Laws of 1993, and
19 for the purposes of conducting an evaluation of the call center
20 approach to unemployment insurance under section 5, chapter 161, Laws
21 of 1998. During the 1997-1999 fiscal biennium, any surplus from
22 contributions payable under this subsection (c) may be deposited in the
23 unemployment compensation trust fund, used to support tax and wage
24 automated systems projects that simplify and streamline employer
25 reporting, or both.

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

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

34 (3) If the commissioner determines that federal funding has been
35 increased to provide financing for the services specified in chapter
36 50.62 RCW, the commissioner shall direct that collection of
37 contributions under this section be terminated on the following January
38 1st.

1 **Sec. 26.** RCW 50.20.190 and 2002 c 371 s 915 are each amended to
2 read as follows:

3 (1) An individual who is paid any amount as benefits under this
4 title to which he or she is not entitled shall, unless otherwise
5 relieved pursuant to this section, be liable for repayment of the
6 amount overpaid. The department shall issue an overpayment assessment
7 setting forth the reasons for and the amount of the overpayment. The
8 amount assessed, to the extent not collected, may be deducted from any
9 future benefits payable to the individual: PROVIDED, That in the
10 absence of a back pay award, a settlement affecting the allowance of
11 benefits, fraud, misrepresentation, or willful nondisclosure, every
12 determination of liability shall be mailed or personally served not
13 later than two years after the close of or final payment made on the
14 individual's applicable benefit year for which the purported
15 overpayment was made, whichever is later, unless the merits of the
16 claim are subjected to administrative or judicial review in which event
17 the period for serving the determination of liability shall be extended
18 to allow service of the determination of liability during the six-month
19 period following the final decision affecting the claim.

20 (2) The commissioner may waive an overpayment if the commissioner
21 finds that the overpayment was not the result of fraud,
22 misrepresentation, willful nondisclosure, or fault attributable to the
23 individual and that the recovery thereof would be against equity and
24 good conscience: PROVIDED, HOWEVER, That the overpayment so waived
25 shall be charged against the individual's applicable entitlement for
26 the eligibility period containing the weeks to which the overpayment
27 was attributed as though such benefits had been properly paid.

28 (3) Any assessment herein provided shall constitute a determination
29 of liability from which an appeal may be had in the same manner and to
30 the same extent as provided for appeals relating to determinations in
31 respect to claims for benefits: PROVIDED, That an appeal from any
32 determination covering overpayment only shall be deemed to be an appeal
33 from the determination which was the basis for establishing the
34 overpayment unless the merits involved in the issue set forth in such
35 determination have already been heard and passed upon by the appeal
36 tribunal. If no such appeal is taken to the appeal tribunal by the
37 individual within thirty days of the delivery of the notice of
38 determination of liability, or within thirty days of the mailing of the

1 notice of determination, whichever is the earlier, the determination of
2 liability shall be deemed conclusive and final. Whenever any such
3 notice of determination of liability becomes conclusive and final, the
4 commissioner, upon giving at least twenty days notice by certified mail
5 return receipt requested to the individual's last known address of the
6 intended action, may file with the superior court clerk of any county
7 within the state a warrant in the amount of the notice of determination
8 of liability plus a filing fee under RCW 36.18.012(10). The clerk of
9 the county where the warrant is filed shall immediately designate a
10 superior court cause number for the warrant, and the clerk shall cause
11 to be entered in the judgment docket under the superior court cause
12 number assigned to the warrant, the name of the person(s) mentioned in
13 the warrant, the amount of the notice of determination of liability,
14 and the date when the warrant was filed. The amount of the warrant as
15 docketed shall become a lien upon the title to, and any interest in,
16 all real and personal property of the person(s) against whom the
17 warrant is issued, the same as a judgment in a civil case duly docketed
18 in the office of such clerk. A warrant so docketed shall be sufficient
19 to support the issuance of writs of execution and writs of garnishment
20 in favor of the state in the manner provided by law for a civil
21 judgment. A copy of the warrant shall be mailed to the person(s)
22 mentioned in the warrant by certified mail to the person's last known
23 address within five days of its filing with the clerk.

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

1 (5) Any employer who is a party to a back pay award or settlement
2 due to loss of wages shall, within thirty days of the award or
3 settlement, report to the department the amount of the award or
4 settlement, the name and social security number of the recipient of the
5 award or settlement, and the period for which it is awarded. When an
6 individual has been awarded or receives back pay, for benefit purposes
7 the amount of the back pay shall constitute wages paid in the period
8 for which it was awarded. For contribution purposes, the back pay
9 award or settlement shall constitute wages paid in the period in which
10 it was actually paid. The following requirements shall also apply:

11 (a) The employer shall reduce the amount of the back pay award or
12 settlement by an amount determined by the department based upon the
13 amount of unemployment benefits received by the recipient of the award
14 or settlement during the period for which the back pay award or
15 settlement was awarded;

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

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

23 (d) If the employer fails to reduce the amount of the back pay
24 award or settlement as required in (a) of this subsection, the
25 department shall issue an overpayment assessment against the recipient
26 of the award or settlement in the amount that the back pay award or
27 settlement should have been reduced; and

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

33 (6) When an individual fails to repay an overpayment assessment
34 that is due and fails to arrange for satisfactory repayment terms, the
35 commissioner shall impose an interest penalty of one percent per month
36 of the outstanding balance. Interest shall accrue immediately on
37 overpayments assessed pursuant to RCW 50.20.070 and shall be imposed
38 when the assessment becomes final. For any other overpayment, interest

1 shall accrue when the individual has missed two or more of (~~their~~)
2 the individual's monthly payments either partially or in full. The
3 interest penalty shall be used, first, to fully fund either social
4 security number cross-match audits or other more effective activities
5 that ensure that individuals are entitled to all amounts of benefits
6 that they are paid and, second, to fund other detection and recovery of
7 overpayment and collection activities (~~and, during the 2001-2003~~
8 ~~fiscal biennium, the cost of worker retraining programs at community~~
9 ~~and technical colleges as appropriated by the legislature)).~~

10 **Sec. 27.** RCW 50.04.206 and 1990 c 245 s 3 are each amended to read
11 as follows:

12 The term "employment" shall not include service that is performed
13 by a nonresident alien for the period he or she is temporarily present
14 in the United States as a nonimmigrant under subparagraph (F), ~~(H) (ii),~~
15 (H)(iii), or (J) of section 101(a)(15) of the federal immigration and
16 naturalization act, as amended, and that is performed to carry out the
17 purpose specified in the applicable subparagraph of the federal
18 immigration and naturalization act.

19 **PART III - ADMINISTRATION**

20 ***Sec. 28.** RCW 50.20.140 and 1998 c 161 s 2 are each amended to read
21 as follows:

22 *(1) An application for initial determination, a claim for waiting*
23 *period, or a claim for benefits shall be filed in accordance with such*
24 *rules as the commissioner may prescribe. An application for an initial*
25 *determination may be made by any individual whether unemployed or not.*
26 *Each employer shall post and maintain printed statements of such rules*
27 *in places readily accessible to individuals in his or her employment*
28 *and shall make available to each such individual at the time he or she*
29 *becomes unemployed, a printed statement of such rules and such notices,*
30 *instructions, and other material as the commissioner may by rule*
31 *prescribe. Such printed material shall be supplied by the commissioner*
32 *to each employer without cost to the employer.*

33 *(2) The term "application for initial determination" shall mean a*
34 *request in writing, or by other means as determined by the*
35 *commissioner, for an initial determination. The term "claim for*

1 waiting period" shall mean a certification, after the close of a given
2 week, that the requirements stated herein for eligibility for waiting
3 period have been met. The term "claim for benefits" shall mean a
4 certification, after the close of a given week, that the requirements
5 stated herein for eligibility for receipt of benefits have been met.

6 (3) A representative designated by the commissioner shall take the
7 application for initial determination and for the claim for waiting
8 period credits or for benefits. When an application for initial
9 determination has been made, the employment security department shall
10 promptly make an initial determination which shall be a statement of
11 the applicant's base year wages, his or her weekly benefit amount, his
12 or her maximum amount of benefits potentially payable, and his or her
13 benefit year. Such determination shall fix the general conditions
14 under which waiting period credit shall be granted and under which
15 benefits shall be paid during any period of unemployment occurring
16 within the benefit year fixed by such determination.

17 (4) The legislature finds that the shift by the employment security
18 department from in-person written applications for unemployment
19 insurance benefits to call centers and internet applications has
20 increased the potential for fraud. Therefore, the employment security
21 department must require claimants filing initial and weekly claims
22 telephonically or electronically to provide additional proof of
23 identity, such as a valid driver's license, a valid identification
24 card, or other similar proof specified in rule by the department.

*Sec. 28 was vetoed. See message at end of chapter.

25 NEW SECTION. Sec. 29. The employment security department shall:

26 (1) In consultation with an advisory committee equally representing
27 business and labor, identify the programs funded by special
28 administrative contributions under Title 50 RCW and report to the
29 advisory committee the expenditures for these programs annually and
30 cumulatively since enactment. Following its report to the advisory
31 committee, the department shall report its findings and any
32 recommendations to the appropriate committees of the legislature by
33 December 1, 2003.

34 (2) Conduct a review of the type, rate, and causes of employer
35 turnover in the unemployment compensation system, using unified
36 business identifier information or other relevant data bases and

1 methods. The department shall report its findings and any
2 recommendations to the appropriate committees of the legislature by
3 December 1, 2003.

4 (3) Conduct a study of the potential for year to year volatility,
5 if any, in the rate classes to which employers in the array are
6 assigned under RCW 50.29.025(2)(a)(ii). The department shall report
7 its findings and any recommendations for minimizing the potential for
8 year to year volatility to the appropriate committees of the
9 legislature by December 1, 2003.

10

PART IV - MISCELLANEOUS

11 **Sec. 30.** RCW 50.20.043 and 1985 c 40 s 1 are each amended to read
12 as follows:

13 No otherwise eligible individual shall be denied benefits for any
14 week because the individual is in training with the approval of the
15 commissioner, nor shall such individual be denied benefits with respect
16 to any week in which the individual is satisfactorily progressing in a
17 training program with the approval of the commissioner by reason of the
18 application of RCW 50.20.010(~~(+3)~~) (1)(c), (~~(50.20.015)~~) 50.20.080,
19 or 50.22.020(1) relating to availability for work and active search for
20 work, or failure to apply for or refusal to accept suitable work.

21 An individual who the commissioner determines to be a dislocated
22 worker as defined by RCW 50.04.075 and who is satisfactorily
23 progressing in a training program approved by the commissioner shall be
24 considered to be in training with the approval of the commissioner.

25 **Sec. 31.** RCW 50.20.160 and 1990 c 245 s 4 are each amended to read
26 as follows:

27 (1) A determination of amount of benefits potentially payable
28 issued pursuant to the provisions of RCW 50.20.120 and 50.20.140 shall
29 not serve as a basis for appeal but shall be subject to request by the
30 claimant for reconsideration and/or for redetermination by the
31 commissioner at any time within one year from the date of delivery or
32 mailing of such determination, or any redetermination thereof:
33 PROVIDED, That in the absence of fraud or misrepresentation on the part
34 of the claimant, any benefits paid prior to the date of any
35 redetermination which reduces the amount of benefits payable shall not

1 be subject to recovery under the provisions of RCW 50.20.190. A denial
2 of a request to reconsider or a redetermination shall be furnished the
3 claimant in writing and provide the basis for appeal under the
4 provisions of RCW 50.32.020.

5 (2) A determination of denial of benefits issued under the
6 provisions of RCW 50.20.180 shall become final, in absence of timely
7 appeal therefrom: PROVIDED, That the commissioner may reconsider and
8 redetermine such determinations at any time within one year from
9 delivery or mailing to correct an error in identity, omission of fact,
10 or misapplication of law with respect to the facts.

11 (3) A determination of allowance of benefits shall become final, in
12 absence of a timely appeal therefrom: PROVIDED, That the commissioner
13 may redetermine such allowance at any time within two years following
14 the benefit year in which such allowance was made in order to recover
15 any benefits improperly paid and for which recovery is provided under
16 the provisions of RCW 50.20.190: AND PROVIDED FURTHER, That in the
17 absence of fraud, misrepresentation, or nondisclosure, this provision
18 or the provisions of RCW 50.20.190 shall not be construed so as to
19 permit redetermination or recovery of an allowance of benefits which
20 having been made after consideration of the provisions of RCW
21 50.20.010(~~(+3)~~) (1)(c), or the provisions of RCW 50.20.050, 50.20.060,
22 50.20.080, or 50.20.090 has become final.

23 (4) A redetermination may be made at any time: (a) To conform to
24 a final court decision applicable to either an initial determination or
25 a determination of denial or allowance of benefits; (b) in the event of
26 a back pay award or settlement affecting the allowance of benefits; or
27 (c) in the case of fraud, misrepresentation, or willful nondisclosure.
28 Written notice of any such redetermination shall be promptly given by
29 mail or delivered to such interested parties as were notified of the
30 initial determination or determination of denial or allowance of
31 benefits and any new interested party or parties who, pursuant to such
32 regulation as the commissioner may prescribe, would be an interested
33 party.

34 **Sec. 32.** RCW 50.32.040 and 1989 c 175 s 117 are each amended to
35 read as follows:

36 In any proceeding before an appeal tribunal involving a dispute of

1 an individual's initial determination, all matters covered by such
2 initial determination shall be deemed to be in issue irrespective of
3 the particular ground or grounds set forth in the notice of appeal.

4 In any proceeding before an appeal tribunal involving a dispute of
5 an individual's claim for waiting period credit or claim for benefits,
6 all matters and provisions of this title relating to the individual's
7 right to receive such credit or benefits for the period in question,
8 including but not limited to the question and nature of the claimant's
9 availability for work within the meaning of RCW 50.20.010(~~(+3)~~) (1)(c)
10 and 50.20.080, shall be deemed to be in issue irrespective of the
11 particular ground or grounds set forth in the notice of appeal in
12 single claimant cases. The claimant's availability for work shall be
13 determined apart from all other matters.

14 In any proceeding before an appeal tribunal involving an
15 individual's right to benefits, all parties shall be afforded an
16 opportunity for hearing after not less than seven days' notice in
17 accordance with RCW 34.05.434.

18 In any proceeding involving an appeal relating to benefit
19 determinations or benefit claims, the appeal tribunal, after affording
20 the parties reasonable opportunity for fair hearing, shall render its
21 decision affirming, modifying, or setting aside the determination or
22 decisions of the unemployment compensation division. The parties shall
23 be duly notified of such appeal tribunal's decision together with its
24 reasons therefor, which shall be deemed to be the final decision on the
25 initial determination or the claim for waiting period credit or the
26 claim for benefits unless, within thirty days after the date of
27 notification or mailing, whichever is the earlier, of such decision,
28 further appeal is perfected pursuant to the provisions of this title
29 relating to review by the commissioner.

30 **Sec. 33.** RCW 28B.50.030 and 1997 c 367 s 13 are each amended to
31 read as follows:

32 As used in this chapter, unless the context requires otherwise, the
33 term:

34 (1) "System" shall mean the state system of community and technical
35 colleges, which shall be a system of higher education.

36 (2) "Board" shall mean the work force training and education
37 coordinating board.

1 (3) "College board" shall mean the state board for community and
2 technical colleges created by this chapter.

3 (4) "Director" shall mean the administrative director for the state
4 system of community and technical colleges.

5 (5) "District" shall mean any one of the community and technical
6 college districts created by this chapter.

7 (6) "Board of trustees" shall mean the local community and
8 technical college board of trustees established for each college
9 district within the state.

10 (7) "Occupational education" shall mean that education or training
11 that will prepare a student for employment that does not require a
12 baccalaureate degree.

13 (8) "K-12 system" shall mean the public school program including
14 kindergarten through the twelfth grade.

15 (9) "Common school board" shall mean a public school district board
16 of directors.

17 (10) "Community college" shall include those higher education
18 institutions that conduct education programs under RCW 28B.50.020.

19 (11) "Technical college" shall include those higher education
20 institutions with the sole mission of conducting occupational
21 education, basic skills, literacy programs, and offering on short
22 notice, when appropriate, programs that meet specific industry needs.
23 The programs of technical colleges shall include, but not be limited
24 to, continuous enrollment, competency-based instruction, industry-
25 experienced faculty, curriculum integrating vocational and basic skills
26 education, and curriculum approved by representatives of employers and
27 labor. For purposes of this chapter, technical colleges shall include
28 Lake Washington Vocational-Technical Institute, Renton Vocational-
29 Technical Institute, Bates Vocational-Technical Institute, Clover Park
30 Vocational Institute, and Bellingham Vocational-Technical Institute.

31 (12) "Adult education" shall mean all education or instruction,
32 including academic, vocational education or training, basic skills and
33 literacy training, and "occupational education" provided by public
34 educational institutions, including common school districts for persons
35 who are eighteen years of age and over or who hold a high school
36 diploma or certificate. However, "adult education" shall not include
37 academic education or instruction for persons under twenty-one years of
38 age who do not hold a high school degree or diploma and who are

1 attending a public high school for the sole purpose of obtaining a high
2 school diploma or certificate, nor shall "adult education" include
3 education or instruction provided by any four year public institution
4 of higher education.

5 (13) "Dislocated forest product worker" shall mean a forest
6 products worker who: (a)(i) Has been terminated or received notice of
7 termination from employment and is unlikely to return to employment in
8 the individual's principal occupation or previous industry because of
9 a diminishing demand for his or her skills in that occupation or
10 industry; or (ii) is self-employed and has been displaced from his or
11 her business because of the diminishing demand for the (~~business's~~)
12 business' services or goods; and (b) at the time of last separation
13 from employment, resided in or was employed in a rural natural
14 resources impact area.

15 (14) "Forest products worker" shall mean a worker in the forest
16 products industries affected by the reduction of forest fiber
17 enhancement, transportation, or production. The workers included
18 within this definition shall be determined by the employment security
19 department, but shall include workers employed in the industries
20 assigned the major group standard industrial classification codes "24"
21 and "26" and the industries involved in the harvesting and management
22 of logs, transportation of logs and wood products, processing of wood
23 products, and the manufacturing and distribution of wood processing and
24 logging equipment. The commissioner may adopt rules further
25 interpreting these definitions. For the purposes of this subsection,
26 "standard industrial classification code" means the code identified in
27 RCW 50.29.025(~~(+6)(e)~~) (3).

28 (15) "Dislocated salmon fishing worker" means a finfish products
29 worker who: (a)(i) Has been terminated or received notice of
30 termination from employment and is unlikely to return to employment in
31 the individual's principal occupation or previous industry because of
32 a diminishing demand for his or her skills in that occupation or
33 industry; or (ii) is self-employed and has been displaced from his or
34 her business because of the diminishing demand for the business's
35 services or goods; and (b) at the time of last separation from
36 employment, resided in or was employed in a rural natural resources
37 impact area.

1 (16) "Salmon fishing worker" means a worker in the finfish industry
2 affected by 1994 or future salmon disasters. The workers included
3 within this definition shall be determined by the employment security
4 department, but shall include workers employed in the industries
5 involved in the commercial and recreational harvesting of finfish
6 including buying and processing finfish. The commissioner may adopt
7 rules further interpreting these definitions.

8 (17) "Rural natural resources impact area" means:

9 (a) A nonmetropolitan county, as defined by the 1990 decennial
10 census, that meets three of the five criteria set forth in subsection
11 (18) of this section;

12 (b) A nonmetropolitan county with a population of less than forty
13 thousand in the 1990 decennial census, that meets two of the five
14 criteria as set forth in subsection (18) of this section; or

15 (c) A nonurbanized area, as defined by the 1990 decennial census,
16 that is located in a metropolitan county that meets three of the five
17 criteria set forth in subsection (18) of this section.

18 (18) For the purposes of designating rural natural resources impact
19 areas, the following criteria shall be considered:

20 (a) A lumber and wood products employment location quotient at or
21 above the state average;

22 (b) A commercial salmon fishing employment location quotient at or
23 above the state average;

24 (c) Projected or actual direct lumber and wood products job losses
25 of one hundred positions or more;

26 (d) Projected or actual direct commercial salmon fishing job losses
27 of one hundred positions or more; and

28 (e) An unemployment rate twenty percent or more above the state
29 average. The counties that meet these criteria shall be determined by
30 the employment security department for the most recent year for which
31 data is available. For the purposes of administration of programs
32 under this chapter, the United States post office five-digit zip code
33 delivery areas will be used to determine residence status for
34 eligibility purposes. For the purpose of this definition, a zip code
35 delivery area of which any part is ten miles or more from an urbanized
36 area is considered nonurbanized. A zip code totally surrounded by zip
37 codes qualifying as nonurbanized under this definition is also

1 considered nonurbanized. The office of financial management shall make
2 available a zip code listing of the areas to all agencies and
3 organizations providing services under this chapter.

4 NEW SECTION. **Sec. 34.** The commissioner of the employment security
5 department may adopt such rules as are necessary to implement this act.

6 NEW SECTION. **Sec. 35.** The following acts or parts of acts are
7 each repealed:

8 (1) RCW 50.20.015 (Person with marginal labor force attachment) and
9 1986 c 106 s 1, 1985 c 285 s 3, & 1984 c 205 s 9;

10 (2) RCW 50.20.045 (Employee separated from employment due to wage
11 garnishment not disqualified) and 1969 ex.s. c 264 s 35;

12 (3) RCW 50.20.125 (Maximum amount payable weekly) and 2002 c 149 s
13 3; and

14 (4) RCW 50.29.045 (Contribution rate--Insolvency surcharge) and
15 2002 c 149 s 9.

16 NEW SECTION. **Sec. 36.** If any part of this act is found to be in
17 conflict with federal requirements that are a prescribed condition to
18 the allocation of federal funds to the state or the eligibility of
19 employers in this state for federal unemployment tax credits, the
20 conflicting part of this act is inoperative solely to the extent of the
21 conflict, and the finding or determination does not affect the
22 operation of the remainder of this act. Rules adopted under this act
23 must meet federal requirements that are a necessary condition to the
24 receipt of federal funds by the state or the granting of federal
25 unemployment tax credits to employers in this state.

26 NEW SECTION. **Sec. 37.** If any provision of this act or its
27 application to any person or circumstance is held invalid, the
28 remainder of the act or the application of the provision to other
29 persons or circumstances is not affected.

30 NEW SECTION. **Sec. 38.** Section 29 of this act expires January 1,
31 2004.

1 NEW SECTION. **Sec. 39.** This act is necessary for the immediate
2 preservation of the public peace, health, or safety, or support of the
3 state government and its existing public institutions, and takes effect
4 immediately.

 Passed by the Senate June 11, 2003.

 Passed by the House June 11, 2003.

 Approved by the Governor June 20, 2003, with the exception of
 certain items that were vetoed.

 Filed in Office of Secretary of State June 20, 2003.

 Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 28 Second
Engrossed Senate Bill No. 6097 entitled:

"AN ACT Relating to revising the unemployment compensation system
through creating forty rate classes for determining employer
contribution rates;"

This bill makes substantive and historic changes to our unemployment
insurance (UI) system.

Section 28 would have required claimants who file initial and weekly
claims electronically or telephonically to provide additional proof
of identity, such as a driver's license. I have vetoed this section
because it nullifies all the advancements and efficiencies gained
with TeleCenters and Internet filing. This requirement would also
place a burden on individuals who live in rural areas not located
near one of the Work Source offices. The Department of Employment
Security uses an extensive process to minimize the possibility of
fraudulent claims. If there is any doubt regarding identity, the
department may issue an affidavit of identity to the claimant that
must be notarized before any benefits are paid. The department may
also require an individual to appear in person, if necessary.

I am not vetoing section 4, which establishes a list of personal and
work-related reasons that an individual may quit for "good cause" and
receive UI benefits while searching for other work. However, without
the benefit of experience, I appreciate concerns expressed about the
unforeseeable nature of some of the practical effects of these
amendments. Accordingly, I hereby instruct the Commissioner of the
Department of Employment Security to track all impacts associated
with the amendments in section 4, and to report her findings to me by
June 2005.

For these reasons, I have vetoed section 28 of Second Engrossed
Senate Bill No. 6097.

With the exception of section 28, Second Engrossed Senate Bill No.
6097 is approved."

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SUPERIOR COURT OF THE STATE OF WASHINGTON
SNOHOMISH COUNTY

KUSUM L. BATEY,

Petitioner

NO. 05-2-11683-6

MEMORANDUM OF
AUTHORITY

STATE OF WASHINGTON,
EMPLOYMENT SECURITY
DEPARTMENT,

Respondent.

I. This Court May Certify the Final Decision of an Administrative Agency for Direct Review by the Appellate Court

A superior court may certify the final decision of an administrative agency for direct review by the court of appeals pursuant to RCW 34.05.518. Under this statute, certification for direct review is allowed at the discretion of the superior court upon a finding that four enumerated conditions are met. As explained below, all four conditions have been met in this case and certification for direct review should be granted.

COPY

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1 efficient. If Plaintiff's argument is correct, not only is the "voluntary quit" statute
2 constitutionally invalid, but several of the provisions amended in 2003 are violative of the
3 Washington State Constitution.

4 This court can take judicial notice under Evidence Rule 201 that thousands of
5 Washingtonians file unemployment claims each year. See <http://fortress.wa.gov/esd/portal/>. The
6 impact of a determination that all but one of the provisions amended in 2003 fail to pass
7 constitutional muster will be significant, not only for the unemployment compensation system
8 itself but also for all of the claimants who have applied for benefits under the invalid
9 framework. Given the large number of people who have been or will be affected, it is urgent that
10 a final determination on this issue of law be swiftly resolved.

11 **B. Plaintiff and the Public Interest Would Be Adversely Affected by a Delay**
12 **in Obtaining a Final and Prompt Decision**

13 The second criterion, provided in RCW 34.05.518(2)(b), states that a court must find
14 that: "Delay in obtaining a final and prompt determination of such issues would be detrimental
15 to any party or the public interest." RCW 34.05.518(2)(b). This criterion is satisfied because the
16 Plaintiff, the State of Washington, and the public interest would all be adversely affected by any
17 unnecessary delay in the obtainment of a final decision on the issue presented.

18 Though Plaintiff chose to voluntarily terminate employment with her former employer
19 for reasons that do not amount to "good cause" under the current voluntary quit statute,
20 Plaintiff's reasons may have been sufficient to establish "good cause" under the voluntary quit
21 provision existing prior to the 2003 amendments. If Plaintiff has been improperly denied

1 unemployment benefits on the basis of an unconstitutional statute, she has a significant interest
2 in receiving the benefits for which she may qualify under the former statute. The unemployment
3 compensation system is designed to protect workers from a total loss of income after the
4 termination of employment, and receiving benefits for which one is eligible is often critical for a
5 claimant's financial well-being. A delay in receipt of benefits has an adverse affect on any
6 claimant improperly denied eligibility. In this case, a prompt and final decision on the issue
7 presented will help alleviate any financial hardships that the Plaintiff may be experiencing.

8 The State of Washington will also be adversely affected by any delay in obtaining a final
9 and prompt decision. A delay in reaching such a decision will leave the State vulnerable to
10 costly litigation on this issue. Furthermore, a finding that the 2003 unemployment compensation
11 system amendments are unconstitutional will likely result in an administrative nightmare,
12 including the payment of thousands of back benefits. A delay in the resolution of this issue,
13 while the State continues to operate its unemployment compensation system under the
14 challenged amendments, will only exacerbate this problem.

15 Finally, the public interest would be adversely affected by delay in obtaining a final and
16 prompt decision regarding the constitutionality of the current voluntary quit statute. Washington
17 workers have an expectation that their eligibility for unemployment compensation benefits will
18 be determined under a system that meets the standards of the Washington State Constitution. If
19 the amended statutes are deemed constitutionally invalid, significant numbers of workers have
20 been wrongly denied unemployment benefits to which they are entitled. Given the importance of
21 the income support provided by unemployment benefits on the lives of Washington workers, a

1 prompt and final decision on this issue is necessary.

2 **C. There is a High Likelihood of Appeal From Any Decision of the Superior**
3 **Court On This Issue**

4 The third criterion, provided in RCW 34.05.518(2)(c), states that a court must find that:
5 "An appeal to the court of appeals would be likely regardless of the determination in superior
6 court." This requirement is met in this case.

7 A ruling by the superior court in this case would not obviate the need for review by the
8 court of appeals as the issue presented involves the constitutional validity of the statutory
9 amendments on their face. Given the purely legal nature of the issue presented and the
10 consequences of an adverse decision for either party, an appeal is virtually certain. Certification
11 for direct review at this point in the proceeding would serve the interest of judicial economy by
12 avoiding unnecessary delay and wasted use of judicial resources in securing a final decision on
13 the constitutional issue presented in this case.

14 **D. The Appellate Court's Determination Would Have Significant Precedential Value**

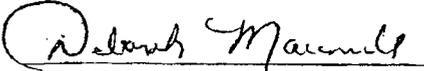
15 The fourth and final criterion, provided in RCW 34.05.518(2)(d), states that a court must
16 find that: The appellate court's determination in the proceeding would have significant
17 precedential value. RCW 34.05.518(2)(d). This final requirement is satisfied in this case.

18 There is currently no case law on the issue presented before the court. The final decision
19 of the court of appeals would therefore be the only authoritative precedent on this matter.

1 **III. Conclusion**

2 For the foregoing reasons, this case is appropriate for direct review by the appellate
3 court. All four of the statutorily required conditions provided in RCW 34.05.518 have been
4 satisfied, and an order certifying this case for direct review by the court of appeals should be
5 granted.

6 Date: October 20, 2005

7
8 
9 Deborah Maranville
10 WSBA #6228