57513-9

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No. 57513-9-I

80309-9

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION ONE

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Kusum L. Batey, Appellant

v.

STATE OF WASHINGTON, EMPLOYMENT SECURITY DEPARTMENT,
Respondent.

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# BRIEF OF APPELLANT

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## ASSIGNMENT OF ERROR

The Employment Security Department ("The Department") improperly denied Petitioner Kusum Batey's claim for unemployment insurance benefits, because the department applied eligibility criteria enacted in a 2003 bill amending RCW 50.20.050. That bill failed to meet the subject-in-title requirement of Art. II, § 19, of the Washington State Constitution.

## ISSUES

1) Under RCW 34.05.570(3)(a) an agency may not base an order on a statute that violates the constitution. In this case, the Department based its decision on LAWS OF 2003, 2nd Spec. Sess., ch. 4, § 4 [hereinafter *2003 Amendments*] (Appendix 1) containing amendments to RCW 50.20.050. That bill was titled "creating forty rate classes for determining employer contribution rates." Yet one of the effects new law was to change substantially the unemployment insurance eligibility rules for workers who voluntarily leave work. Should the Department's order be reversed, because it is based on a bill that violates the Washington State Constitution's subject-in-title requirement, Art. II, § 19?

2) Since the entry of the Department's decision, the legislature has enacted a bill, LAWS OF 2006, ch. 12, § 2 [hereinafter *2006 Amendments*] (Appendix 2), that purports to reenact the voluntary quit provisions of the *2003 Amendments* and apply that reenactment retroactively. Yet the title of that bill is *An ACT Relating to making adjustments in the unemployment insurance system to enhance benefit and tax equity*. Does the *2006 Amendment* fail to cure the *2003 Amendment's* subject-in-title defect, because it also violates the subject-in-title requirement?

## STATEMENT OF THE CASE

Petitioner Kusum Batey was formerly employed at the Snohomish County Center for Battered Women, a provider of services to battered women. Temporarily Shortened Commissioner's Record (hereafter CR), pp. 5 and 22, Initial Order, Finding of Fact 7 (hereafter Init. Order and FoF), adopted in Decision of Commissioner, p. 1 para. 1 (hereafter Comm's Dec.). After Ms. Batey voluntarily left her employment, CR 4, Init. Order, FoF 5, for a combination of reasons, she applied for unemployment compensation benefits with the Employment Security Department. CR 3, Init. Order, Statement of the Case. The Department found Ms. Batey ineligible for benefits based on RCW

50.20.050, CR 8,9, Init. Order, Conclusions of Law (CoL) 3 and 5, a recently amended statute that sets out ten circumstances in which "an individual is not disqualified" from receiving benefits. The Department has treated this list as defining "good cause," CR 7, Init. Order, CoL 5. Because Ms. Batey's reasons for leaving her employment did not correspond with any of the ten non-disqualifying circumstances set forth in RCW 50.20.050, Ms. Batey was denied eligibility for unemployment compensation benefits at each stage of the administrative process. CR 11, Init. Order, and CR 23, Comm'n Dec.

After receiving the Department's final decision, Ms. Batey filed a petition for review with the Superior Court of Snohomish County. Clerk's Papers (hereafter CP) No. 2. Ms. Batey subsequently moved the superior court to certify the case for direct review, arguing that the statute relied upon by the Department was passed in contravention of the subject-in-title requirement of Art. II, § 19, of the Washington State Constitution, CP No. 8. The motion was granted, CP No. 9, and this court accepted direct review of the final administrative decision from which Ms. Batey appealed. Commissioner's Ruling, February 23, 2006.

This is a review under the Administrative Procedure Act, involving a single question of constitutional law. No resort to the record

beyond the decisions below contained in the Temporarily Shortened Administrative Record is necessary.

## ARGUMENT

Under RCW 34.05.570(3) a court shall "grant relief from an order in an adjudicative proceeding" only if one of nine criteria is met. In this case the court should grant relief under subsection (3)(a), because "[t]he . . . statute . . . on which the order is based, is in violation of constitutional provisions on its face . . .". As set out below, Ms. Batey was denied benefits on the basis of 2003 amendments to a statute that are unconstitutional, because they were enacted in violation of the subject-in-title provision of Art. II, § 19 of the Washington Constitution. In the 2006 legislative session, the legislature enacted a bill that purports to reenact the earlier amendments and apply them retrospectively. That bill also violates Art II, § 19.

### I. The *2003 Amendments* Violate Art. II, §19, the Subject-in-Title Provision of the Washington Constitution, Because They Were Contained in a Bill With a Restrictive Title That Provided No Notice that it Purported to Change the Unemployment Insurance Eligibility Criteria for Individuals Who Voluntarily Leave Work

In 2003 the Washington Legislature enacted the *2003 Amendments* . See Appendix 1. Among numerous other provisions, the

*2003 Amendments* significantly amended RCW 50.20.050, a statute that governs when an individual is eligible for unemployment compensation benefits after voluntarily quitting work. That bill violates Art. II, §19, of the Washington Constitution, a provision that requires the title of a bill to correspond to its contents. The title of the *2003 Amendments* is invalid because it states only that it "revis[ed] the unemployment compensation system through creating forty rate classes for determining employer contribution rates" and provides no notice that the bill also made significant changes to the eligibility requirements for unemployment insurance.

### A. Article II, Section 19, of the Washington Constitution Requires the Legislative Title of Bills to State the Bill's Subject

Article II, Section 19, of the Washington State Constitution provides: "No bill shall embrace more than one subject, and that shall be expressed in the title." From this provision, two separate rules emerge: the "single subject" rule and the "subject-in-title" rule. These constitutional mandates, particularly the subject-in-title rule, serve two important functions. First, the subject-in-title rule provides notice to the legislature of the contents of a bill, protecting lawmakers from enacting legislation containing provisions the title does not disclose.

*Amalgamated Transit Union Local 587 v. State,* 142 Wn.2d 183, 207, 11 P.3d 762 (2000). Second, the subject-in-title rule serves to "apprise the people, through such publication of legislative proceedings as is usually made, concerning the subjects of legislation that are being considered." *State ex rel. Toll Bridge Auth. v. Yelle,* 32 Wn.2d 13, 24, 200 P.2d 467 (1948).

Courts agree that the compelling interests served by Art. II, § 19 do not justify a narrow or restrictively technical interpretation of the subject-in-title provision. Rather, this provision is to be given a liberal construction. *Retired Public Employees Council of Washington v. Charles*, 148 Wn.2d 602, 628, 62 P.3d 470 (2003). Any reasonable doubt regarding a law's compliance with the letter and spirit of the subject-in-title requirement is to be resolved in favor of constitutionality. *Washington Federation of State Employees v. State*, 127 Wn.2d 544, 556, 901 P.2d 1028 (1995). When no such doubt exists, however, courts shall not hesitate to invalidate the challenged legislation. If a bill's title does not adequately reflect its subject, the relevant bill provisions are unconstitutional. *Fray v. Spokane County*, 134 Wn.2d 637, 652-53, 952 P.2d 601 (1998).

### 1. To Determine Compliance With the Subject-in-Title Requirement, the Relevant Title is the Narrative Portion of the Title Preceding the First Semicolon

To determine if a bill is in compliance with the subject-in-title requirement, it is first necessary to discern the relevant title. Art. II, §19, jurisprudence has identified the narrative portion of the title preceding the first semicolon as the relevant title for subject-in-title analysis of legislative bills. *State v. Thomas,* 103 Wash. App. 800, 808, 14 P.3d 854 (2000). Bare numerical references to statutes following the first semicolon do not adequately state a bill's subject. *Fray v. Spokane County*, 134 Wn.2d 637, 654-55, 952 P.2d 601 (1998). In fact, the inclusion of a list of amended statutes within a bill title may be treated simply as surplusage. *Sorenson v. Kittitas Reclamation Dist.*, 70 Wash. 528, 531, 127 P. 102 (1912).

### 2. A Bill Complies With the Subject-in-Title Requirement Only if it Provides Sufficient Notice of its Contents

An act[1] complies with the subject-in-title requirement of Art. II, §19, when it provides notice that would lead to an inquiry into the body

[1] Several of the recent cases interpreting the subject-in-title provision arise in the context of citizen initiatives. Those cases refer to "act" rather than "bill" and the following discussion uses the term appropriate to the case. The Art. II, §19

of the act, or indicates the scope and purpose of the law to an inquiring mind. *Amalgamated Transit,* 142 Wn.2d at 217. In determining compliance under this standard, the court examines the body of an act to determine whether the title of that act reflects its subject matter. *Washington Federation,* 127 Wn.2d 566. The title need not contain a detailed index of the bill's contents. *Retired Public Employees Council of Washington*, 148 Wn.2d at 628. However, the subject expressed in the legislative title must fairly notify the legislature and the public, especially those members of the public whose rights are affected by the bill or the bill's objectives. *Patrice v. Murphy*, 136 Wn.2d 845, 854, 966 P.2d 1271 (1998). *See also Gruen v. State Tax Commission*, 35 Wn.2d 1, 9, 211 P.2d 651 (1949). Failure to provide such notice violates Art. II, § 19, and renders the enacted bill unconstitutional.

**3. The Subject-in-Title Analysis to be Applied to a Legislative Title Depends on Whether the Relevant Title is General or Restrictive**

For purposes of subject-in-title analysis legislative titles may fall into one of two categories: general or restrictive. *Charron v. Miyahara,* 90 Wash. App. 324, 329, 950 P.2d 532 (1998). *See also Thomas,* 103 Wash. App. at 807. A general title is one that is "broad rather than

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constitutional requirements do not differ between those two categories for purposes of this case.

narrow; it may be comprehensive and generic rather than specific." *Amalgamated Transit,* 142 Wn.2d at 207-08. Such a title need not contain a comprehensive, general statement of a bill's subject. Instead, "a few well-chosen words, suggestive of the general subject stated, is all that is necessary." *State v. Lanphar*, 124 Wash. App. 669, 673-74, 102 P.3d 864 (2004). When a title is deemed general, "the court liberally construes its subject to determine whether it embraces the subject of all the provisions expressed within the act." *Thomas,* 103 Wash. App. at 807-08.

A restrictive title, on the other hand, receives no such liberal construction. Such a title is narrow and specific, expressly limiting the scope of an act to that expressed in the title. *Amalgamated Transit,* 142 Wn.2d at 210. Where "a particular part of branch of a subject is carved out and selected as the subject of legislation," provisions that are not "fairly within" the expressed subject will not be given force. *Citizens for Responsible Wildlife Management v. State,* 149 Wn.2d 622, 633, 71 P.3d 644 (2003).

While a legislature may exercise discretion when determining the breadth of a title, when it adopts a restrictive title it must confine the body of the bill to the subject expressed therein. *Gruen*, 35 Wn.2d at 23. Further, when a legislature adopts a restrictive title for a piece of

legislation, the courts may not enlarge the scope of the limited title in an effort to preserve an otherwise unconstitutional bill. *Id.* at 23. Given this stricter construction, a violation of the subject-in-title requirement is more frequently found where a restrictive title is used. *Citizens for Responsible Wildlife Management,* 149 Wn.2d at 633.

### B. The 2003 Amendments Violate the Subject-in-Title Requirement of Art. II, §19 of the Washington State Constitution

In 2003, the Washington State legislature changed the unemployment compensation system by passing the *2003 Amendments*. Among other things, these amendments significantly changed the eligibility criteria for benefits following a voluntary quit from employment. Terminating employment voluntarily is ordinarily a bar to receiving unemployment compensation, but an exception is made upon a showing of good cause. RCW 50.20.050. The *2003 Amendments* deleted two subsections of the prior voluntary quit statute (compare RCW 50.20.050(1)(c) and (d) with RCW 50.20.050(2), containing no comparable provisions), and expanded another subsection from four to ten factors (compare RCW 50.20.050(1)(b) with RCW 50.20.050(2)(b)). Although the meaning of these provisions is currently being litigated in

*Starr v. Washington State Department of Employment Security*, 130 Wash. App. 541, 123 P.3d 513 (2005), *pet. for rev. pending*, whatever the new statute means, the changes are undoubtedly significant.

**1. The Relevant Title of the *2003 Amendments* is "AN ACT Relating to Revising the Unemployment Compensation System Through Creating Forty Rate Classes for Determining Employer Contribution"**

The *2003 Amendments* amended numerous provisions of the unemployment compensation system. The title of the act reads as follows:

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

*2003 Amendments*, Appendix 1.

The relevant title for purposes of subject-in-title analysis -- the part that precedes the first semi-colon -- is thus "AN ACT Relating to revising the unemployment compensation system *through creating forty*

*rate classes for determining employer contribution rates*." (Emphasis added.)

### 2. The Relevant Title of the *2003 Amendments* is Restrictive

The relevant title of the *2003 Amendments* is restrictive as it carves out a specific and narrow branch of the unemployment compensation system as the subject of legislation – namely, a revision of the taxation system used to determine employer contribution rates. The title refers to the statute governing eligibility for benefits following a voluntary quit only numerically and only after the first semicolon. The legislative title, therefore, does not adequately address the subject of eligibility following a voluntary quit.

### 3. The Body of the *2003 Amendments* Includes Topics Not Disclosed in the Legislative Title and Thus the Title Does Not Provide Sufficient Notice of the Act's Contents

Nothing in the relevant title of the *2003 Amendments* puts the reader on notice that eligibility for unemployment benefits following a voluntary quit from employment would be affected by the enactment of the *2003 Amendments*. Indeed, the legislative title gives no indication that *any* substantive changes affecting *employees* are included in the law. Far from apprising the public of the law's general subject matter as is

required under Art. II, § 19, the chosen title for the *2003 Amendments* misleads the public into thinking that the bill does no more than restructure the unemployment compensation system's taxation method – a matter of concern to employers, not employees.

Even to the most perceptive of inquiring minds, the title's reference to the creation of forty rate classes for determining employer contribution rates offers no indication that substantive changes significantly affecting eligibility standards for benefits would result from the bill's enactment. Rather, the changes in eligibility standards comprise the type of "hidden effect" found to be constitutionally intolerable in the Supreme Court cases of *Patrice*, 136 Wn.2d 966; *Potter v. Whatcom Co.,* 138 Wash. 571, 245 P. 11 (1926) and *Fray*, 134 Wn.2d 637.

In *Patrice*, the Washington Supreme Court addressed RCW 2.42.120, which was enacted under a title reading "An Act Relating to court costs…". The Court held, en banc, that this title was insufficient to provide notice to the law enforcement community "that the scope of their liabilities and duties was expanding." *Patrice,* 136 Wn.2d at 853. Similarly, in *Potter*, the Court held that a 1923 act assigning responsibility for bridge replacement to the county, which was enacted under a title reading "An Act relating to townships…" was

constitutionally invalid for failure to adequately notify counties of their duties and liabilities imposed under the act. 138 Wash. at 576. And, finally, in *Fray*, a unanimous Court found that the title "AN ACT Relating to making technical corrections" failed the test for constitutionality because it did not sufficiently apprise the public of the substantive changes, such as the loss of the right to sue, included within the body of the act. 134 Wn.2d at 654-6.

The *2003 Amendments'* title contains no express reference to the subject of benefits eligibility and, indeed, does not even imply that the bill concerns that subject. Unlike the law upheld in *Wildlife*, no logical connection exists between the unemployment compensation system's taxation method and the criteria for determining whether an employee is eligible for benefits following a voluntary quit. *See Citizens for Responsible Wildlife Management,* 149 Wn.2d at 640. Further, the legislature's purpose in creating a revised taxation system does not in any way depend on, nor is it even aided by, the restructuring of eligibility following a voluntary quit. *Contrast Boot v. Cornejo*, 130 Wn.2d 553, 566, 925 P.2d 964 (1996) (legislature properly combined diverse provisions under act entitled "An ACT Relating to violence prevention" because each provision furthered legislature's goal of comprehensively addressing problem of violence).

### C. The Court Should Invalidate the *2003 Amendments* to RCW 50.20.050(2) Because Eligibility for Benefits Was Not Expressed in the Legislative Title of the *2003 Amendments*

The court may strike any provision of the *2003 Amendments* that is not expressed in its legislative title "without affecting those matters covered by the title unless they are so inextricably intertwined." *Charron v. Miyahara,* 90 Wash. App. 324, 335, 950 P.2d 532, 538 (1998), quoting *Power, Inc. v. Huntley,* 39 Wn.2d 191, 198, 235 P.2d 173 (1951)).

Because the title of the *2003 Amendments* does not address the subject of eligibility for unemployment compensation benefits and, further, eligibility for benefits is not fundamental to the subject of taxation that is covered in the title, the amendments to RCW 50.20.050 contained in the *2003 Amendments* should be invalidated.

## II. The 2006 Legislature Has Properly Amended RCW 50.20.050 Prospectively in a Manner Similar to the 2003 Amendments, But Its Separate Attempt to Reenact the 2003Amendments and apply them Retroactively Violates the Subject-in-Title Requirement in Art. II, § 19

During the last week of the 2006 legislative session, the Washington legislature enacted two bills that require discussion before the court can dispose of this proceeding: the *2006 Amendments* (Appendix 2) and LAWS OF 2006, ch. 13 (Appendix 4). Both bills

purport to reenact most of the 2003 amendments to RCW 50.20.050, the voluntary quit provision at issue in this case. Under RCW 1.12.025, which governs the construction of multiple amendments to statutes, this court is required to give effect to both provisions "to the extent that the amendments do not conflict in purpose." RCW 1.12.025(1). For the purpose of this appeal, Ms. Batey concedes that the amendments do not conflict in purpose, and thus can both be applied, if they are otherwise valid. However, the first of the two bills, *2006 Amendments*, is unconstitutional because it violates the subject-in-title requirements of Art. II, § 19, of the Washington Constitution. The second bill, LAWS OF 2006, Ch. 13, does not affect this case.

### A. The *2006 Amendments* Violate Art. II, § 19, the Subject-in-Title Provision of the Washington Constitution, Because Their Restrictive Title Does Not Provide Notice That They Would Reenact RCW 50.20.050, or that They Would Apply that Reenactment Retroactively

As set out above, pp. 6-8, to determine whether the *2006 Amendments* satisfy the subject-in-title requirement, the court must look at the portion of the title that precedes the first semicolon and must determine whether that portion is general or restrictive. The *2006 Amendments* are titled "*An ACT Relating to making adjustments in the*

*unemployment insurance system to enhance benefit and tax equity*; reenacting RCW 50.20.050; and creating a new section." (Italics added). Full text attached as Appendix 2. The italicized, relevant portion of the title, the portion preceding the first semicolon, is restrictive because it includes the infinitive phrase "to enhance benefit and tax equity." As noted previously, bills with restrictive titles, such as the *2006 Amendments*, are more readily overturned than those with general titles. Restrictive titles often contain extra clauses and phrases that mislead readers about the content of the act. *See Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 211, 11 P.3d 762 (2000). The phrase, "to enhance benefit and tax equity," suggests only that the "benefit" provisions affecting workers and the "tax" provisions affecting employers are inequitable under the previous statutory regime. The title matched up with the original contents of the *2006 Amendment* but does not reflect the contents of the bill that ultimately passed.

The original version of the *2006 Amendments* (full text attached as Appendix 3) enacted by the house contained two provisions. The first section recognized that "a joint legislative task force on unemployment insurance benefit equity has undertaken a comprehensive review of the unemployment insurance system, but has not yet reached agreement," and "extended the deadline by which the task force must report to the

legislature." *2006 Amendments*, § 1. The second section implemented that extension by amending prior legislation. *2006 Amendments*, § 2 . The relevant portion of the title of the bill -- "*An ACT Relating to making adjustments in the unemployment insurance system to enhance benefit and tax equity*" -- provided notice of the original contents of the *2006 Amendments*, because the joint legislative task force's charge was to review "whether the benefit structure provides for equitable benefits, whether the structure fairly accounts for changes in the work force and industry work patterns, including seasonality, and for claimants' annual work patterns, [and] whether the tax structure provides for an equitable distribution of taxes." Appendix 3, *2006 Amendments*, § 2(2), as considered by the House.

However, when the Senate considered the House version, it deleted the two sections described above concerning the legislative task force, and substituted two other sections. These substituted sections constituted the entire enacted bill. Appendix 2, *2006 Amendments*, § 1. Section 1 of the version of the enacted bill reenacted the 2003 amendments to RCW 50.20.050, the voluntary quit statute. Section 2 provides that "Section 1 of this act applies retroactively to claims that have an effective date on or after January 4, 2004."

Because the content of the 2006 Amendments changed at the time of enactment, a major disconnect exists between the title and content of the *2006 Amendments* as enacted. For example, there is no reference in the bill to the joint task force that was the subject prompting the original title. It contains no provisions concerning taxation, and thus no provisions concerning tax equity. Similarly, nothing in the title suggests that eligibility for benefits following a voluntary quit from employment would be affected by the enactment of the *2006 Amendments*. The bill contains no provisions relevant to benefit equity, except to the extent that *any* changes to eligibility might be said to affect benefit equity. Yet many readers would dispute that changes to the voluntary quit statute that have been interpreted as restricting eligibility standards for unemployment insurance benefits would enhance benefit equity (see *Starr v. ESD*, 130 Wash. App. at 546).

Most importantly for this case, the *2006 Amendments'* title contains no hint that the bill contains a retroactivity provision for the amendments to RCW 50.20.050. The retroactivity provision is precisely the type of "hidden effect" found to be constitutionally impermissible by the Washington Supreme Court. *Patrice v. Murphy,* 1335 Wn. 2d 845, 853, 966 P. 2d 1271; *Fray v. Spokane County*, 134 Wn.2d 637, 654-6,

952 P.2d 601 (1998); *Potter v. Whatcom County*, 138 Wash. 571, 576, 245 P. 11 (1926).

### B. LAWS OF 2006, ch. 13, Reenacts RCW 50.20.050, But Does So Only Prospectively

The 2006 Washington legislature also enacted LAWS OF 2006, ch. 13, titled "An Act Relating to unemployment insurance;" attached as Appendix 4. The thirty-seven page bill contains three separate parts; only Part I and the retroactivity provisions are directly relevant to this case.[2] Part I includes Section 2, which reenacts RCW 50.20.050, the voluntary quit statute at issue in this case. For claims effective after July 2, 2006, Section 2 also amends subsection (2)(b)(iii), the portion of the statute governing relocation for the spouse's employment. LAWS OF 2006, ch. 13, § 2. This section also contains two effective date provisions for other portions of the bill. Section 23, contains three subsections and makes sections 8 through 22 of the bill retroactive though it specifies different effective dates for different sections. Section 26 specifies prospective effective date for Sections 4 and 5. The legislation contains no retroactivity provision applicable to Section 2, apart from the specific provision governing (2)(b)(iii).

[2] Part II makes substantial modifications to the unemployment insurance tax provisions adopted in 2003. Part III reenacts many of the changes contained in the *2003 Amendments*.

Because this legislation contains a general title that complies with Art. II, § 19, its passage has the effect of curing prospectively the subject-in-title problem at issue in this lawsuit. However, this bill has no effect on Ms. Batey's own claim because the bill does not make retroactive Section 2, the provision reenacting the voluntary quit provision.

## CONCLUSION

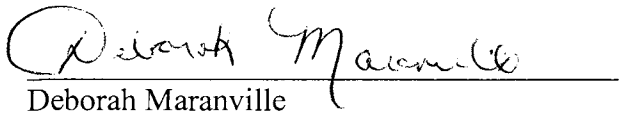
The *2003 Amendments* purportedly "creat[e] forty rate classes for employer contributions." But the legislature included in that bill numerous changes to the benefit provisions of the statute, including the amendments to RCW 50.20.050 at issue in this case. Those amendments are unconstitutional under Art. II, § 19 of the Washington Constitution because the bill's restrictive title did not adequately reflect the subject of the bill. As a result, the title fails to give fair notice of the bill's contents as required by the Washington Constitution.

In 2006, the legislature enacted a bill, the *2006 Amendments*, "adjustments in the employment insurance system to enhance benefit and tax equity." But that bill included only a reenactment of the 2003 amendments to RCW 50.20.050 and a retroactivity provision. Those amendments, purportedly retroactive to claims such as Ms. Batey's, also

violate Art. II, § 19 of the Washington Constitution, because the bill's restrictive title did not give proper notice of the bill's contents.

For the foregoing reasons, Kusum Batey respectfully requests that this case be remanded for a discretionary determination of good cause under the voluntary quit eligibility statute existing prior to the enactment of the *2003 Amendments*.

Dated: May 12, 2006



Deborah Maranville
WSBA # 6228
Attorney for Appellant

# APPENDIX

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**

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**

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

FILED

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

GARY LOCKE

**Governor of the State of Washington**

**Secretary of State**
**State of Washington**

**APPENDIX 1**
**Petitioner's Brief No. 57513-9-I**

**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

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

**PART I - UNEMPLOYMENT ELIGIBILITY AND COMPENSATION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

((~~(a)~~)) (i) The duration of the work;

((~~(b)~~)) (ii) The extent of direction and control by the employer over the work; and

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) The duration of the work;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

With respect to claims that have an effective date before January

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) "Misconduct" does not include:

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

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

(c) Good faith errors in judgment or discretion.

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

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

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

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

<u>With respect to claims that have an effective date before January 4, 2004:</u>

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## PART II - FINANCING UNEMPLOYMENT COMPENSATION

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

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

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

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

| Interval of the Fund Balance Ratio Expressed as a Percentage | Effective Tax Schedule |
|---|---|
| 2.90 and above | AA |
| 2.10 to 2.89 | A |
| 1.70 to 2.09 | B |
| 1.40 to 1.69 | C |
| 1.00 to 1.39 | D |
| 0.70 to 0.99 | E |
| Less than 0.70 | F |

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

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

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

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

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

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

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

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

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

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

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

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

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

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

| | | | |
|---|---|---|---|
| 0.047500 | 0.050000 | 36 | 5.05 |
| 0.050000 | 0.052500 | 37 | 5.20 |
| 0.052500 | 0.055000 | 38 | 5.30 |
| 0.055000 | 0.057500 | 39 | 5.35 |
| 0.057500 | | 40 | 5.40 |

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

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

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

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

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

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

(A) Rate class 1 - 78 percent;

(B) Rate class 2 - 82 percent;

(C) Rate class 3 - 86 percent;

(D) Rate class 4 - 90 percent;

(E) Rate class 5 - 94 percent;

(F) Rate class 6 - 98 percent;

(G) Rate class 7 - 102 percent;

(H) Rate class 8 - 106 percent;

(I) Rate class 9 - 110 percent;

(J) Rate class 10 - 114 percent;

(K) Rate class 11 - 118 percent; and

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

(iii) For the purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) All interest on delinquent contributions collected pursuant to this title((~~,~~));

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## PART III - ADMINISTRATION

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

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

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

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

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

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

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

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

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

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

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

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

## PART IV - MISCELLANEOUS

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

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

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

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

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

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

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

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

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

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

In any proceeding before an appeal tribunal involving a dispute of

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CERTIFICATION OF ENROLLMENT

**ENGROSSED HOUSE BILL 3278**

59th Legislature
2006 Regular Session

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

**Speaker of the House of Representatives**

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

**President of the Senate**

Approved

**Governor of the State of Washington**

CERTIFICATE

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

**Chief Clerk**

FILED

**Secretary of State**
**State of Washington**

**APPENDIX 2**
**Petitioner's Brief No. 57513-9-I**

# ENGROSSED HOUSE BILL 3278

AS AMENDED BY THE SENATE

Passed Legislature - 2006 Regular Session

**State of Washington** **59th Legislature** **2006 Regular Session**

**By** Representatives Conway and Dickerson

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

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

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

5 **Sec. 1.** RCW 50.20.050 and 2003 2nd sp.s. c 4 s 4 are each
6 reenacted to read as follows:
7 (1) With respect to claims that have an effective date before
8 January 4, 2004:
9 (a) An individual shall be disqualified from benefits beginning
10 with the first day of the calendar week in which he or she has left
11 work voluntarily without good cause and thereafter for seven calendar
12 weeks and until he or she has obtained bona fide work in employment
13 covered by this title and earned wages in that employment equal to
14 seven times his or her weekly benefit amount.
15 The disqualification shall continue if the work obtained is a mere
16 sham to qualify for benefits and is not bona fide work. In determining
17 whether work is of a bona fide nature, the commissioner shall consider
18 factors including but not limited to the following:
19 (i) The duration of the work;

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) The duration of the work;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**--- END ---**

ENGROSSED HOUSE BILL 3278

**State of Washington** **59th Legislature** **2006 Regular Session**

**By** Representatives Conway and Dickerson

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

1 AN ACT Relating to making adjustments in the unemployment insurance
2 system to enhance benefit and tax equity; amending 2005 c 133 s 9
3 (uncodified); and creating a new section.

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

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

11 **Sec. 2.** 2005 c 133 s 9 (uncodified) is amended to read as follows:
12 (1)(a) The joint legislative task force on unemployment insurance
13 benefit equity is established. The joint legislative task force shall
14 consist of the following members:
15 (i) The chair and ranking minority member of the senate labor,
16 commerce, research and development committee;
17 (ii) The chair and ranking minority member of the house commerce
18 and labor committee;

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

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

(b) In addition, the employment security department shall cooperate with the task force and maintain a liaison representative, who shall be a nonvoting member. The department shall cooperate with the task force and provide information as the task force may reasonably request.

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

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

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

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

((~~(5)~~)) (4) The task force shall report its findings and recommendations to the legislature by ((~~January~~)) March 1, 2006.

((~~(6)~~)) (5) This section expires July 1, 2006.

--- END ---

CERTIFICATION OF ENROLLMENT

**ENGROSSED SUBSTITUTE SENATE BILL 6885**

59th Legislature
2006 Regular Session

Passed by the Senate March 3, 2006
YEAS 44 NAYS 2

**President of the Senate**

Passed by the House March 2, 2006
YEAS 97 NAYS 1

**Speaker of the House of Representatives**

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 6885** as passed by the Senate and the House of Representatives on the dates hereon set forth.

**Secretary**

Approved

**Governor of the State of Washington**

FILED

**Secretary of State**
**State of Washington**

**APPENDIX 4**
**Petitioner's Brief No. 57513-9-I**

**ENGROSSED SUBSTITUTE SENATE BILL 6885**

AS AMENDED BY THE HOUSE

Passed Legislature - 2006 Regular Session

**State of Washington 59th Legislature 2006 Regular Session**

**By** Senate Committee on Labor, Commerce, Research & Development (originally sponsored by Senators Kohl-Welles, McAuliffe, Thibaudeau, Keiser and Fairley)

READ FIRST TIME 02/06/06.

1 AN ACT Relating to unemployment insurance; amending RCW 50.20.120,
2 50.20.050, 50.29.025, 50.29.041, 50.29.021, and 50.16.030; reenacting
3 RCW 50.04.293, 50.04.294, 50.20.010, 50.20.060, 50.20.065, 50.20.066,
4 50.20.100, 50.20.119, 50.20.240, 50.04.335, 50.16.010, 50.16.015,
5 50.24.014, 50.20.190, and 50.04.206; creating new sections; and
6 repealing 2005 c 133 s 10 (uncodified).

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

8 **PART I - BENEFIT PROVISIONS**

9 **Sec. 1.** RCW 50.20.120 and 2005 c 133 s 3 are each amended to read
10 as follows:
11 (1)(a) Subject to the other provisions of this title, benefits
12 shall be payable to any eligible individual during the individual's
13 benefit year in a maximum amount equal to the lesser of thirty times
14 the weekly benefit amount, as determined in subsection (2) of this
15 section, or one-third of the individual's base year wages under this
16 title: PROVIDED, That as to any week which falls in an extended
17 benefit period as defined in RCW 50.22.010(1), an individual's

eligibility for maximum benefits in excess of twenty-six times his or her weekly benefit amount will be subject to the terms and conditions set forth in RCW 50.22.020.

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

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

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

(c)(i) With respect to claims with an effective date on or after January 2, 2005, except as provided in (c)(ii) of this subsection, an individual's weekly benefit amount shall be an amount equal to one percent of the total wages paid in the individual's base year.

(ii) With respect to claims with an effective date on or after the first Sunday following April 22, 2005, ((~~and before July 1, 2007,~~)) an individual's weekly benefit amount shall be an amount equal to three and eighty-five one-hundredths percent of the average quarterly wages of the individual's total wages during the two quarters of the individual's base year in which such total wages were highest.

(3) The maximum and minimum amounts payable weekly shall be determined as of each June 30th to apply to benefit years beginning in the twelve-month period immediately following such June 30th.

(a)(i) With respect to claims that have an effective date before January 4, 2004, the maximum amount payable weekly shall be seventy

percent of the "average weekly wage" for the calendar year preceding such June 30th.

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

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

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

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

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

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

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

(i) The duration of the work;

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

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

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

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

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

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

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

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

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

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

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

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

(i) The duration of the work;

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

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

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

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

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

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

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

(iii) (A) With respect to claims that have an effective date before July 2, 2006, he or she: ((~~(A)~~)) (I) Left work to relocate for the spouse's employment that, due to a mandatory military transfer: ((~~(I)~~)) (1) Is outside the existing labor market area; and ((~~(II)~~)) (2) is in Washington or another state that, pursuant to statute, does not consider such an individual to have left work voluntarily without good cause; and ((~~(B)~~)) (II) remained employed as long as was reasonable prior to the move;

(B) With respect to claims that have an effective date on or after July 2, 2006, he or she: (I) Left work to relocate for the spouse's employment that, due to a mandatory military transfer, is outside the existing labor market area; and (II) remained employed as long as was reasonable prior to the move;

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

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

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

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

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

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

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

NEW SECTION. **Sec. 3.** 2005 c 133 s 10 (uncodified) is repealed.

## PART II - TAX PROVISIONS

**Sec. 4.** RCW 50.29.025 and 2005 c 133 s 5 are each amended to read as follows:

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

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

(b) The interval of the fund balance ratio, expressed as a percentage, shall determine which tax schedule in (e) of this subsection shall be in effect for assigning tax rates for the rate year. The intervals for determining the effective tax schedule shall be:

| Interval of the Fund Balance Ratio Expressed as a Percentage | Effective Tax Schedule |
|---|---|

| | |
|---|---|
| 2.90 and above | AA |
| 2.10 to 2.89 | A |
| 1.70 to 2.09 | B |
| 1.40 to 1.69 | C |
| 1.00 to 1.39 | D |
| 0.70 to 0.99 | E |
| Less than 0.70 | F |

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

(d) Each employer in the array shall be assigned to one of twenty rate classes according to the percentage intervals of cumulative taxable payrolls set forth in (e) of this subsection: PROVIDED, That if an employer's taxable payroll falls within two or more rate classes, the employer and any other employer with the same benefit ratio shall be assigned to the lowest rate class which includes any portion of the employer's taxable payroll.

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

| Percent of Cumulative Taxable Payrolls | | | Schedules of Contributions Rates for Effective Tax Schedule | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| From | To | Rate Class | AA | A | B | C | D | E | F |
| 0.00 | 5.00 | 1 | 0.47 | 0.47 | 0.57 | 0.97 | 1.47 | 1.87 | 2.47 |
| 5.01 | 10.00 | 2 | 0.47 | 0.47 | 0.77 | 1.17 | 1.67 | 2.07 | 2.67 |

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| 10.01 | 15.00 | 3 | 0.57 | 0.57 | 0.97 | 1.37 | 1.77 | 2.27 | 2.87 |
| 15.01 | 20.00 | 4 | 0.57 | 0.73 | 1.11 | 1.51 | 1.90 | 2.40 | 2.98 |
| 20.01 | 25.00 | 5 | 0.72 | 0.92 | 1.30 | 1.70 | 2.09 | 2.59 | 3.08 |
| 25.01 | 30.00 | 6 | 0.91 | 1.11 | 1.49 | 1.89 | 2.29 | 2.69 | 3.18 |
| 30.01 | 35.00 | 7 | 1.00 | 1.29 | 1.69 | 2.08 | 2.48 | 2.88 | 3.27 |
| 35.01 | 40.00 | 8 | 1.19 | 1.48 | 1.88 | 2.27 | 2.67 | 3.07 | 3.47 |
| 40.01 | 45.00 | 9 | 1.37 | 1.67 | 2.07 | 2.47 | 2.87 | 3.27 | 3.66 |
| 45.01 | 50.00 | 10 | 1.56 | 1.86 | 2.26 | 2.66 | 3.06 | 3.46 | 3.86 |
| 50.01 | 55.00 | 11 | 1.84 | 2.14 | 2.45 | 2.85 | 3.25 | 3.66 | 3.95 |
| 55.01 | 60.00 | 12 | 2.03 | 2.33 | 2.64 | 3.04 | 3.44 | 3.85 | 4.15 |
| 60.01 | 65.00 | 13 | 2.22 | 2.52 | 2.83 | 3.23 | 3.64 | 4.04 | 4.34 |
| 65.01 | 70.00 | 14 | 2.40 | 2.71 | 3.02 | 3.43 | 3.83 | 4.24 | 4.54 |
| 70.01 | 75.00 | 15 | 2.68 | 2.90 | 3.21 | 3.62 | 4.02 | 4.43 | 4.63 |
| 75.01 | 80.00 | 16 | 2.87 | 3.09 | 3.42 | 3.81 | 4.22 | 4.53 | 4.73 |
| 80.01 | 85.00 | 17 | 3.27 | 3.47 | 3.77 | 4.17 | 4.57 | 4.87 | 4.97 |
| 85.01 | 90.00 | 18 | 3.67 | 3.87 | 4.17 | 4.57 | 4.87 | 4.97 | 5.17 |
| 90.01 | 95.00 | 19 | 4.07 | 4.27 | 4.57 | 4.97 | 5.07 | 5.17 | 5.37 |
| 95.01 | 100.00 | 20 | 5.40 | 5.40 | 5.40 | 5.40 | 5.40 | 5.40 | 5.40 |

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

(i) Employers who do not meet the definition of "qualified employer" by reason of failure to pay contributions when due shall be assigned a contribution rate two-tenths higher than that in rate class 20 for the applicable rate year, except employers who have an approved agency-deferred payment contract by September 30 of the previous rate year. If any employer with an approved agency-deferred payment contract fails to make any one of the succeeding deferred payments or fails to submit any succeeding tax report and payment in a timely manner, the employer's tax rate shall immediately revert to a contribution rate two-tenths higher than that in rate class 20 for the applicable rate year; and

(ii) For all other employers not qualified to be in the array, the contribution rate shall be a rate equal to the average industry rate as determined by the commissioner; however, the rate may not be less than one percent.

(2) Beginning with contributions assessed for rate year 2005, the contribution rate for each employer subject to contributions under RCW 50.24.010 shall be the sum of the array calculation factor rate and the graduated social cost factor rate determined under this subsection, and the solvency surcharge determined under RCW 50.29.041, if any.

(I) Rate class 1 - 78 percent;

(II) Rate class 2 - 82 percent;

(III) Rate class 3 - 86 percent;

(IV) Rate class 4 - 90 percent;

(V) Rate class 5 - 94 percent;

(VI) Rate class 6 - 98 percent;

(VII) Rate class 7 - 102 percent;

(VIII) Rate class 8 - 106 percent;

(IX) Rate class 9 - 110 percent;

(X) Rate class 10 - 114 percent;

(XI) Rate class 11 - 118 percent; and

(XII) Rate classes 12 through 40 - 120 percent.

(B) For contributions assessed beginning July 1, 2005, through ((~~June 30,~~)) December 31, 2007, for employers whose North American industry classification system code is "111," "112," "1141," "115," "3114," "3117," "42448," or "49312," the graduated social cost factor rate is zero.

(iii) For the purposes of this section:

(A) "Total social cost" means((~~:~~

~~(I) Except as provided in (b)(iii)(A)(II) of this subsection,~~)) the amount calculated by subtracting the array calculation factor contributions paid by all employers with respect to the four consecutive calendar quarters immediately preceding the computation date and paid to the employment security department by the cut-off date from the total unemployment benefits paid to claimants in the same four consecutive calendar quarters. To calculate the flat social cost factor for rate year 2005, the commissioner shall calculate the total social cost using the array calculation factor contributions that would have been required to be paid by all employers in the calculation period if (a) of this subsection had been in effect for the relevant period.

((~~(II) For rate year 2007, the amount calculated under (b)(iii)(A)(I) of this subsection reduced by the amount of benefits charged that exceed the contributions paid in the four consecutive calendar quarters immediately preceding the applicable computation date because, as applicable, specified employers are subject to the social cost contributions under (b)(ii)(B) of this subsection, and/or because~~

~~the social cost factor contributions are paid under (b)(i)(D)(II) of this subsection.~~))

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

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

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

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

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

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

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

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

**Sec. 5.** RCW 50.29.041 and 2003 2nd sp.s. c 4 s 16 are each amended to read as follows:

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

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

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

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

**Sec. 6.** RCW 50.29.021 and 2005 c 133 s 4 are each amended to read as follows:

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

(2)(a) An experience rating account shall be established and maintained for each employer, except employers as described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described

in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, based on existing records of the employment security department.

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

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

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

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

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

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

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

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

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

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

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

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

(f) With respect to claims with an effective date on or after the first Sunday following April 22, 2005, ((~~and before July 1, 2007,~~)) benefits paid that exceed the benefits that would have been paid if the weekly benefit amount for the claim had been determined as one percent of the total wages paid in the individual's base year shall not be charged to the experience rating account of any contribution paying employer.

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

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

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

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

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

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

**Sec. 7.** RCW 50.16.030 and 2005 c 133 s 6 are each amended to read as follows:

(1)(a) Except as provided in (b) ((~~and (c)~~)) of this subsection, moneys shall be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and repayment of loans from the federal government to guarantee solvency of the unemployment compensation fund in accordance with regulations prescribed by the commissioner, except that money credited to this state's account pursuant to section 903 of the social security act, as amended, shall be used exclusively as provided in RCW 50.16.030(5). The commissioner shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to its account therein, as he or she deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the treasurer shall deposit such moneys in the benefit account and shall issue his or her warrants for the payment of benefits solely from such benefits account.

(b) Moneys for the payment of regular benefits as defined in RCW 50.22.010 shall be requisitioned during fiscal year((~~s~~)) 2006 ((~~and 2007~~)) in the following order:

(i) First, from the moneys credited to this state's account in the unemployment trust fund pursuant to section 903 of the social security act, as amended in section 209 of the temporary extended unemployment compensation act of 2002 (42 U.S.C. Sec. 1103(d)), the amount equal to the amount of benefits charged that exceed the contributions paid in the four consecutive calendar quarters ending on June 30, 2006, ((~~for the fiscal year 2006 calculation, and ending on June 30, 2007, for the fiscal year 2007 calculation,~~)) because the social cost factor contributions that employers are subject to under RCW

50.29.025(2)(b)(ii)(B) are less than the social cost factor contributions that these employers would have been subject to if RCW 50.29.025(2)(b)(ii)(A) had applied to these employers; and

(ii) Second, after the requisitioning required under (b)(i) of this subsection ((~~in the respective fiscal year~~)), from all other moneys credited to this state's account in the unemployment trust fund.

((~~(c) After the requisitioning required under (b) of this subsection, if applicable, moneys for the payment of regular benefits as defined in RCW 50.22.010 shall be requisitioned during calendar year 2007 in the following order:~~

~~(i) First, from the moneys credited to this state's account in the unemployment trust fund pursuant to section 903 of the social security act, as amended in section 209 of the temporary extended unemployment compensation act of 2002 (42 U.S.C. Sec. 1103(d)), the amount equal to the amount of benefits paid under RCW 50.20.120(2)(c)(ii) beginning on the first Sunday following April 22, 2005, and ending on June 30, 2007, that exceed the amount of benefits that would have been paid if the weekly benefit amount had been determined as one percent of the total wages paid in the individual's base year; and~~

~~(ii) Second, after the requisitioning required under (c)(i) of this subsection in the respective calendar year, from all other moneys credited to this state's account in the unemployment trust fund.~~))

(2) Expenditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody, and RCW 43.01.050, as amended, shall not apply. All warrants issued by the treasurer for the payment of benefits and refunds shall bear the signature of the treasurer and the countersignature of the commissioner, or his or her duly authorized agent for that purpose.

(3) Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or in the discretion of the commissioner, shall be redeposited with the secretary of the treasury of the United States of America to the credit of this state's account in the unemployment trust fund.

(4) Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States of America pursuant to section 903 of the social security act, as amended, may be requisitioned and used for the payment of expenses incurred for the administration of this title pursuant to a specific appropriation by the legislature, provided that the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which:

(a) Specifies the purposes for which such money is appropriated and the amounts appropriated therefor;

(b) Limits the period within which such money may be obligated to a period ending not more than two years after the date of the enactment of the appropriation law; and

(c) Limits the amount which may be obligated during a twelve-month period beginning on July 1st and ending on the next June 30th to an amount which does not exceed the amount by which (i) the aggregate of the amounts credited to the account of this state pursuant to section 903 of the social security act, as amended, during the same twelve-month period and the thirty-four preceding twelve-month periods, exceeds (ii) the aggregate of the amounts obligated pursuant to RCW 50.16.030 (4), (5) and (6) and charged against the amounts credited to the account of this state during any of such thirty-five twelve-month periods. For the purposes of RCW 50.16.030 (4), (5) and (6), amounts obligated during any such twelve-month period shall be charged against equivalent amounts which were first credited and which are not already so charged; except that no amount obligated for administration during any such twelve-month period may be charged against any amount credited during such a twelve-month period earlier than the thirty-fourth twelve-month period preceding such period: PROVIDED, That any amount credited to this state's account under section 903 of the social security act, as amended, which has been appropriated for expenses of administration, whether or not withdrawn from the trust fund shall be excluded from the unemployment compensation fund balance for the purpose of experience rating credit determination.

(5) Money credited to the account of this state pursuant to section 903 of the social security act, as amended, may not be withdrawn or used except for the payment of benefits and for the payment of expenses of administration and of public employment offices pursuant to RCW

50.16.030 (4), (5) and (6). However, moneys credited because of excess amounts in federal accounts in federal fiscal years 1999, 2000, and 2001 shall be used solely for the administration of the unemployment compensation program and are not subject to appropriation by the legislature for any other purpose.

(6) Money requisitioned as provided in RCW 50.16.030 (4), (5) and (6) for the payment of expenses of administration shall be deposited in the unemployment compensation fund, but until expended, shall remain a part of the unemployment compensation fund. The commissioner shall maintain a separate record of the deposit, obligation, expenditure and return of funds so deposited. Any money so deposited which either will not be obligated within the period specified by the appropriation law or remains unobligated at the end of the period, and any money which has been obligated within the period but will not be expended, shall be returned promptly to the account of this state in the unemployment trust fund.

## PART III - REENACTED PROVISIONS

**Sec. 8.** RCW 50.04.293 and 2003 2nd sp.s. c 4 s 5 are each reenacted to read as follows:

With respect to claims that have an effective date before January 4, 2004, "misconduct" means an employee's act or failure to act in willful disregard of his or her employer's interest where the effect of the employee's act or failure to act is to harm the employer's business.

**Sec. 9.** RCW 50.04.294 and 2003 2nd sp.s. c 4 s 6 are each reenacted to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) "Misconduct" does not include:

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

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

(c) Good faith errors in judgment or discretion.

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

**Sec. 10.** RCW 50.20.010 and 2003 2nd sp.s. c 4 s 3 are each reenacted to read as follows:

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

(a) He or she has registered for work at, and thereafter has continued to report at, an employment office in accordance with such regulation as the commissioner may prescribe, except that the commissioner may by regulation waive or alter either or both of the requirements of this subdivision as to individuals attached to regular jobs and as to such other types of cases or situations with respect to which the commissioner finds that the compliance with such requirements would be oppressive, or would be inconsistent with the purposes of this title;

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

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

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

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

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

(e) He or she participates in reemployment services if the individual has been referred to reemployment services pursuant to the

profiling system established by the commissioner under RCW 50.20.011, unless the commissioner determines that:

(i) The individual has completed such services; or

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

(f) As to weeks beginning after March 31, 1981, which fall within an extended benefit period as defined in RCW 50.22.010, the individual meets the terms and conditions of RCW 50.22.020 with respect to benefits claimed in excess of twenty-six times the individual's weekly benefit amount.

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

**Sec. 11.** RCW 50.20.060 and 2003 2nd sp.s. c 4 s 7 are each reenacted to read as follows:

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

**Sec. 12.** RCW 50.20.065 and 2003 2nd sp.s. c 4 s 8 are each reenacted to read as follows:

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

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

(2) The employer shall notify the department of such an admission

or conviction, not later than six months following the admission or conviction.

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

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

**Sec. 13.** RCW 50.20.066 and 2003 2nd sp.s. c 4 s 9 are each reenacted to read as follows:

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

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

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

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

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

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

**Sec. 14.** RCW 50.20.100 and 2004 c 110 s 2 are each reenacted to read as follows:

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

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

(3) For part-time workers as defined in RCW 50.20.119, suitable work includes suitable work under subsection (1) of this section that is for seventeen or fewer hours per week.

(4) For individuals who have qualified for unemployment compensation benefits under RCW 50.20.050 (1)(b)(iv) or (2)(b)(iv), as applicable, an evaluation of the suitability of the work must consider the individual's need to address the physical, psychological, legal, and other effects of domestic violence or stalking.

**Sec. 15.** RCW 50.20.119 and 2003 2nd sp.s. c 4 s 12 are each reenacted to read as follows:

(1) With respect to claims that have an effective date on or after January 2, 2005, an otherwise eligible individual may not be denied benefits for any week because the individual is a part-time worker and is available for, seeks, applies for, or accepts only work of seventeen or fewer hours per week by reason of the application of RCW 50.20.010(1)(c), 50.20.080, or 50.22.020(1) relating to availability

for work and active search for work, or failure to apply for or refusal to accept suitable work.

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

**Sec. 16.** RCW 50.20.240 and 2004 c 110 s 1 are each reenacted to read as follows:

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

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

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

(2) Effective January 4, 2004, an individual who fails to comply fully with the requirements for actively seeking work under RCW 50.20.010 shall lose all benefits for all weeks during which the individual was not in compliance, and the individual shall be liable for repayment of all such benefits under RCW 50.20.190.

**Sec. 17.** RCW 50.04.335 and 2003 2nd sp.s. c 4 s 2 are each reenacted to read as follows:

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

**Sec. 18.** RCW 50.16.010 and 2005 c 518 s 933 are each reenacted to read as follows:

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

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

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

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

(iii) All earnings of such property or securities;

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

(v) All money recovered on official bonds for losses sustained by the fund;

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

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

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

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

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

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

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

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

(iv) Revenue received under RCW 50.24.014.

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

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

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

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

(iii) The proper administration of this title for which compliance and audit issues have been identified that establish federal claims

requiring the expenditure of state resources in resolution. Claims must be resolved in the following priority: First priority is to provide services to eligible participants within the state; second priority is to provide substitute services or program support; and last priority is the direct payment of funds to the federal government.

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

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

**Sec. 19.** RCW 50.16.015 and 2003 2nd sp.s. c 4 s 24 are each reenacted to read as follows:

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

**Sec. 20.** RCW 50.24.014 and 2003 2nd sp.s. c 4 s 25 are each reenacted to read as follows:

(1)(a) A separate and identifiable account to provide for the financing of special programs to assist the unemployed is established in the administrative contingency fund. All money in this account shall be expended solely for the purposes of this title and for no other purposes whatsoever. Contributions to this account shall accrue and become payable by each employer, except employers as described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, at a basic rate of two one-

hundredths of one percent. The amount of wages subject to tax shall be determined under RCW 50.24.010.

(b) A separate and identifiable account is established in the administrative contingency fund for financing the employment security department's administrative cost under RCW 50.22.150 and the costs under RCW 50.22.150(9). All money in this account shall be expended solely for the purposes of this title and for no other purposes whatsoever. Contributions to this account shall accrue and become payable by each employer, except employers as described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, those employers who are required to make payments in lieu of contributions, those employers described under RCW 50.29.025(1)(f)(ii), and those qualified employers assigned rate class 20 or rate class 40, as applicable, under RCW 50.29.025, at a basic rate of one one-hundredth of one percent. The amount of wages subject to tax shall be determined under RCW 50.24.010. Any amount of contributions payable under this subsection (1)(b) that exceeds the amount that would have been collected at a rate of four one-thousandths of one percent must be deposited in the unemployment compensation trust fund.

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

(2)(a) Contributions under this section shall become due and be paid by each employer under rules as the commissioner may prescribe, and shall not be deducted, in whole or in part, from the remuneration

of individuals in the employ of the employer. Any deduction in violation of this section is unlawful.

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

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

**Sec. 21.** RCW 50.20.190 and 2005 c 518 s 934 are each reenacted to read as follows:

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

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

(3) Any assessment herein provided shall constitute a determination of liability from which an appeal may be had in the same manner and to the same extent as provided for appeals relating to determinations in respect to claims for benefits: PROVIDED, That an appeal from any determination covering overpayment only shall be deemed to be an appeal from the determination which was the basis for establishing the overpayment unless the merits involved in the issue set forth in such determination have already been heard and passed upon by the appeal tribunal. If no such appeal is taken to the appeal tribunal by the individual within thirty days of the delivery of the notice of determination of liability, or within thirty days of the mailing of the notice of determination, whichever is the earlier, the determination of liability shall be deemed conclusive and final. Whenever any such notice of determination of liability becomes conclusive and final, the commissioner, upon giving at least twenty days notice by certified mail return receipt requested to the individual's last known address of the intended action, may file with the superior court clerk of any county within the state a warrant in the amount of the notice of determination of liability plus a filing fee under RCW 36.18.012(10). The clerk of the county where the warrant is filed shall immediately designate a superior court cause number for the warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the person(s) mentioned in the warrant, the amount of the notice of determination of liability, and the date when the warrant was filed. The amount of the warrant as docketed shall become a lien upon the title to, and any interest in, all real and personal property of the person(s) against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of such clerk. A warrant so docketed shall be sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state in the manner provided by law for a civil judgment. A copy of the warrant shall be mailed to the person(s) mentioned in the warrant by certified mail to the person's last known address within five days of its filing with the clerk.

(4) On request of any agency which administers an employment security law of another state, the United States, or a foreign government and which has found in accordance with the provisions of such law that a claimant is liable to repay benefits received under

such law, the commissioner may collect the amount of such benefits from the claimant to be refunded to the agency. In any case in which under this section a claimant is liable to repay any amount to the agency of another state, the United States, or a foreign government, such amounts may be collected without interest by civil action in the name of the commissioner acting as agent for such agency if the other state, the United States, or the foreign government extends such collection rights to the employment security department of the state of Washington, and provided that the court costs be paid by the governmental agency benefiting from such collection.

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

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

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

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

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

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

(6) When an individual fails to repay an overpayment assessment that is due and fails to arrange for satisfactory repayment terms, the commissioner shall impose an interest penalty of one percent per month of the outstanding balance. Interest shall accrue immediately on overpayments assessed pursuant to RCW 50.20.070 and shall be imposed when the assessment becomes final. For any other overpayment, interest shall accrue when the individual has missed two or more of the individual's monthly payments either partially or in full. The interest penalty shall be used, first, to fully fund either social security number cross-match audits or other more effective activities that ensure that individuals are entitled to all amounts of benefits that they are paid, second, to fund other detection and recovery of overpayment and collection activities, and third, during the 2005-07 fiscal biennium, the cost of the job skills program at community and technical colleges as appropriated by the legislature.

**Sec. 22.** RCW 50.04.206 and 2003 2nd sp.s. c 4 s 27 are each reenacted to read as follows:

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

NEW SECTION. **Sec. 23.** (1) Sections 8 through 13 and 16 of this act apply retroactively to claims that have an effective date on or after January 4, 2004.

(2) Sections 14 and 15 of this act apply retroactively to claims that have an effective date on or after January 2, 2005.

(3) Sections 17 through 22 of this act apply retroactively to June 20, 2003.

## PART IV - MISCELLANEOUS

NEW SECTION. **Sec. 24.** The employment security department shall study the following and report its findings and recommendations, if any, to the unemployment insurance advisory committee and to the house of representatives commerce and labor committee and the senate labor, commerce, research, and development committee, or their successor committees, by December 1, 2006:

(1) Employment patterns involving repeat episodes of unemployment to achieve improved employer retention rates, improved claimant placement rates, and increased employment opportunities;

(2) Employers in rate class 40, including types of industries, sizes of employers, contributions paid, and benefit charges attributable to such employers;

(3) Reasons for the unusually high rate of employer turnover among Washington employers, which leads to a high volume of charges against inactive accounts and increases socialized costs; and

(4) Fraud prevention methods such as corporate officer eligibility for unemployment insurance, and personal liability of corporate officers for failure to accurately report employee information or pay taxes owed.

NEW SECTION. **Sec. 25.** Part headings used in this act are not any part of the law.

NEW SECTION. **Sec. 26.** Sections 4 and 5 of this act apply to rate years beginning on or after January 1, 2007.

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

NEW SECTION. **Sec. 28.** If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the

1 operation of the remainder of this act. Rules adopted under this act
2 must meet federal requirements that are a necessary condition to the
3 receipt of federal funds by the state or the granting of federal
4 unemployment tax credits to employers in this state.

--- **END** ---

COURT OF APPEALS,
STATE OF WASHINGTON
DIVISION ONE

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| Kusum L. Batey,<br><br>Appellant,<br><br>v.<br><br>EMPLOYMENT SECURITY DEPARTMENT OF THE STATE OF WASHINGTON,<br><br>Respondent. | Case No.: 57513-9-I<br><br>DECLARATION OF SERVICE AND MAILING |

I declare that I caused to be served a copy of the Brief of Appellant with Appendix and Declaration of Service and Mailing on the following at the address listed below, by mailing a copy on May 12, 2006, postage prepaid and via first-class mail to:

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RESPECTFULLY SUBMITTED this 12th day of May 2006.

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