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SUPREME COURT NO. _____

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Court of Appeals No. 57513-9-1

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SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, EMPLOYMENT SECURITY
DEPARTMENT,

Petitioner,

v.

KUSUM L. BATEY,

Respondent.

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PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER

The Petitioner is the State of Washington, Employment Security Department, Respondent at the Court of Appeals.

II. COURT OF APPEALS' DECISION

The Department seeks review of the decision of the Court of Appeals, Division One, in *Kusum L. Batey v. State of Washington, Employment Security Department*, Cause No. 57513-9-1. The decision was filed March 12, 2007; it was modified after the Department's motion for reconsideration on May 16, 2007.¹ (The Slip Opinion and the Order Granting Motion for Reconsideration are in the Appendix at 1-11.)

III. ISSUES PRESENTED

Engrossed House Bill 3278, Chapter 12 Laws of 2006 (EHB 3278), reenacted RCW 50.20.050, which is a section of the Employment Security Code dealing with the qualifications for unemployment benefits when a person voluntarily quits a job. The 2006 law reenacted that statute because when it was amended by the 2003 Legislature, the title was allegedly defective and did not describe the subject. The title to the 2006 Act, EHB 3278, is at issue in this petition. The title to EHB 3278 reads: "AN ACT Relating to making adjustments in the unemployment system to

¹ The date of the order granting the Department's motion for reconsideration is erroneously given as "May 16, 2003."

enhance benefit and tax equity; reenacting RCW 50.20.050; and creating a new section.”

The issue presented is whether the title of EHB 3278 violated the subject-in-title requirement of article II, section 19 of the Washington Constitution when it reenacted RCW 50.20.050.

IV. STATEMENT OF THE CASE

A. Statement Of The Facts

In 2003, the Legislature enacted Second Engrossed Senate Bill 6097 (2ESB 6097), Chapter 4, Laws of 2003, Second Special Session making various changes to the unemployment compensation system. App. at 12-62. Among the changes in 2ESB 6097, the Legislature amended RCW 50.20.050.

RCW 50.20.050 generally disqualifies those who have “left work voluntarily without good cause” from receiving unemployment benefits for a specified period of time. RCW 50.20.050(2)(a). However, it also defines circumstances when voluntarily leaving work does not disqualify the employee from receiving unemployment benefits. RCW 50.20.050(2)(b).

EHB 3278 is the subject of this Petition for Review. App. at 63-68. EHB 3278 was originally introduced as a bill that extended the deadline by which a joint legislative task force on unemployment

insurance benefit equity must report to the Legislature. On March 3, 2006, a striking amendment on the floor of the Senate deleted the earlier version and substituted two sections: Section 1 reenacted RCW 50.20.050 as it had appeared in the 2003 legislation; and Section 2 that it applied, as had the 2003 legislation, to claims that have an effective date on or after January 4, 2004.

The title of EHB 3278 is “AN ACT Relating to making adjustments in the unemployment system to enhance benefit and tax equity; reenacting RCW 50.20.050; and creating a new section.” The Senate and the House passed EHB 3278 unanimously.

The Final Bill Report for EHB 3278 explained the legislative intent: the “good cause quit” section of RCW 50.20.050 was being reenacted because a lawsuit had been filed in 2005 challenging the constitutionality of the 2003 legislative changes to the “good cause for a voluntary quit” section, RCW 50.20.050. App. at 69. The 2006 bill, EHB 3278, was adopted before briefing was complete on Ms. Batey’s appeal.

B. Procedural Background

The Department denied unemployment benefits to Kusum Batey after finding she left her job voluntarily for reasons that did not amount to “good cause” to receive benefits under RCW 50.20.050, as amended by the 2003 legislation. An Administrative Law Judge held an adjudicative

proceeding and affirmed the Department's denial of benefits. In turn, the Commissioner reviewed and adopted the ALJ decision as a final administrative order.

At the administrative hearings, Ms. Batey argued that *the 2003 amendments*, 2ESB 6097, violated the subject-in-title requirements of article II, section 19 of the Washington State Constitution. She argued that this constitutional defect invalidated the changes the Legislature made in 2003 to the voluntary quit statute, and asked for a remand to review her benefit claim under the former version of RCW 50.20.050. Under well-established law, the Department was unable to rule on the constitutionality of the statute it administers. Therefore, the Commissioner declined to address Ms. Batey's constitutional argument and applied the version of RCW 50.20.050(2)(a) adopted by the 2003 legislation and denied benefits.

Ms. Batey petitioned for judicial review to the Snohomish County Superior Court from the Commissioner's final order. Ms. Batey asked the Superior Court for an order certifying her appeal to the Court of Appeals. The Superior Court granted that request and certified direct review to the Court of Appeals. Pursuant to RAP 6.3 and RAP 6.2, Ms. Batey filed a motion for discretionary review with the Court of Appeals. The Court of Appeals granted discretionary review, limiting the issue to the article II,

section 19 challenge to the 2003 amendments to RCW 50.20.050. App. At 3-4.

Ms. Batey subsequently conceded that her “reasons for leaving employment did not correspond with any of the ten non-disqualifying circumstances [currently] set forth in RCW 50.20.050 [as amended by the 2003 legislation].” Br. of Appellant at 7. Accordingly, the only claim for relief that was raised at the Court of Appeals was the validity of the 2003 amendments and 2006 reenactment. Ms. Batey asked the Court of Appeals to remand her case to be considered under the voluntary quit eligibility statute that existed prior to the 2003 amendment, and 2006 readoption. Br. of Appellant at 26.²

The Court of Appeals ruled for Ms. Batey and held that both the 2003 legislation and 2006 legislation violated the subject-in-title requirements of article II, section 19. The Court of Appeals reasoned that the 2006 title was restrictive rather than general, and that the title violated the constitution because it did not put employees in particular on notice

² Ms. Batey asked for application of the former statute because it included a discretionary provision that she hoped might be applied to her claim of “good cause.” The difference between the former statute and amended statute is discussed in *Starr v. Employment Sec. Dep’t*, 130 Wn. App. 541, 123 P.3d 513 (2005), review denied 157 Wn.2d 1019, 142 P.3d 607 (2006).

that the legislature “had decided *to change* the good cause criteria for voluntary quits.” Slip Op. at 8 (emphasis added).³

Relying on *Patrice v. Murphy*, 136 Wn.2d 845, 966 P.2d 1271 (1998) and its own analysis of the textual and legislative history of EHB 3278 (Slip Op. at 4-5), the court explained that the title to EHB 3278 disguised a hidden effect not contained in the title:

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

Slip Op. at 8.

Once the Court of Appeals struck down EHB 3278 for violating the subject-in-title requirement of article II, section 19, the remedy was a remand rather than application of the 2003 amendments. That was because the Department’s briefing had not contested the subject-in-title defect in the original 2003 amendment, 2ESB 6097. The court thus ordered a remand for the Commissioner to reconsider Ms. Batey’s benefit claim under the version of RCW 50.20.050 that existed prior to the 2003 legislation and 2006 legislation.⁴

³ In actuality, the Legislature was not “changing” the good cause criteria. From the Legislature’s perspective, it was simply reenacting previously adopted, and therefore *existing* good cause criteria for voluntary quits.

⁴ The Department’s briefing focused solely on the constitutionality of the 2006 title because it would have cured any defects in the 2003 act’s title.

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

This case is appropriate for review under RAP 13.4(b)(1) because the Court of Appeals' analysis conflicts with decisions of the Supreme Court in its use of the textual and legislative history of EHB 3278 in finding a violation of article II, section 19. This case is also appropriate for review under RAP 13.5(b)(3) because it involves the interpretation of article II, section 19, and presents a significant issue of law under the Constitution of the State of Washington. RAP 13.5(b)(4) also applies to this case because the issue directly impacts the exercise of legislative power through the application of article II, section 19's subject-in-title requirement. As such, it presents an issue of substantial public interest that should be determined by the Supreme Court.

A. The Court Of Appeals Decision Conflicts With Decisions Of The Supreme Court

Article II, section 19 imposes two requirements on legislation: (1) that legislation address a "single subject" and (2) that the subject addressed be reflected in the title: "No bill shall embrace more than one subject, and that shall be expressed in the title." This case concerns only the subject-in-title requirement; there is no claim of multiple subjects.

The Opinion below conflicts with prior rulings when it finds fault because the title has rhetorical words concerning benefit and tax equity,

and by concluding that the title hides the fact that subjects addressed in the original version of the bill were absent from the adopted version of the bill. These concerns do not amount to a violation of the subject-in-title requirement. A deferential application of this Court's precedent would uphold the Legislature's adoption of EHB 3278.

1. The Court of Appeals Analysis

The Court of Appeals cited the correct standard for review of the subject in title requirement. Article II, section 19:

“require[es] a bill's title to give concise information about the contents of the bill. . . . the reader, whether a member of the legislature or otherwise, may, by a mere glance at a few catch words in the title, be apprised of what the act treats, without further research.”

Slip Op. at 6 (internal citation omitted). The title here is “An Act relating to making adjustments in the unemployment system to enhance benefit and tax equity.” The title includes the unique statement that it is “reenacting RCW 50.20.050.” At a mere glance, a legislator or reader is apprised that the act addresses statutes affecting unemployment benefits, satisfying the constitutional subject-in-title requirements. The reference to benefit and tax equity is reasonable, as RCW 50.20.050 directly concerns benefits and thus affects taxes. While promising “to enhance benefit and tax equity” might be considered rhetorical, article II, section 19 has never barred the use of persuasive rhetoric in the political arena of legislation, so

long as the title met the standard of apprising the legislator or reader of the subject.

The Court of Appeals, however, relied on the legislative and textual history of EHB 3278, rather than limiting its examination to the title and the body of the bill. On pages 4-5 of the Slip Opinion, the Court of Appeals reviewed the legislative history of the bill and the content of the bill as introduced. At page 8, the Slip Opinion explains that:

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

Slip Op. at 8. The Court of Appeals used that legislative history, and the above conclusion, to conclude that this title was analogous to the title reviewed in *Patrice v. Murphy*, 136 Wn. 2d 845, 854, 966 P.2d 1271 (1998).

Patrice is an altogether different case. The fault in *Patrice* was not that a title hid the absence of former provisions. The fault was simply that "An Act relating to court costs" imposed on local government a substantive duty to hire sign language interpreters in the context of police

investigations. *Patrice*, 136 Wn.2d at 855. As such, *Patrice* held that the reader was not apprised that the bill dealt with such substantive duties.⁵

In contrast, the entire contents of EHB 3278 relate to “making adjustments in the unemployment insurance system.” It does so by reenacting RCW 50.20.050 and thereby correcting the concern created by the title of 2ESB 6097. Furthermore, fixing an alleged defect in previously adopted legislation is undoubtedly an appropriate legislative purpose, as it implements the intent of prior legislation and confirms such intent in EHB 3278.

The Court of Appeals ruling thus involves a unique and intrusive review of EHB 3278. The Court of Appeals goes beyond comparing the title to the subject and finds fault in the Legislature’s decision to strike language extending a committee study project that had been in a prior version of the bill and to substitute for it language reenacting RCW 50.20.050. The reviewing court, however, knew of this change only by reviewing the legislative history of EHB 3278. Nothing in the text of article II, section 19, and nothing in prior cases, suggests that there is a constitutional concern with whether a title apprises the reader of what has been *removed* from a bill.

⁵ The Court also referred to the bill as involving “last minute ‘logrolling’”. *Patrice*, *supra*. at 854.

Moreover, by focusing on this irrelevant point, the opinion below fails to confront the real question in article II, section 19: Was the reenactment of the voluntary quit statute reflected in the title of EHB 3278? Or, as this Court has asked, would a reasonably inquiring mind be put on notice that he or she should examine the body of EHB 3278 to determine what adjustments were being made in the unemployment system? See *State ex rel Washington Toll Bridge Auth. v. Yelle*, 32 Wn.13, 26, 200 P.2d 467 (1947).

2. The Ruling Below Conflicts With Prior Decisions Applying Article II, Section 19

This Court has consistently held that in determining whether a bill's title complies with article II, section 19, the "title must be construed with reference to the language used in the title only and *not in light of the context of the act.*" (Emphasis supplied.) *Great N. Ry. Co. v. Cohn*, 3 Wn.2d 672, 680, 101 P.2d 985 (1940); *Washington State Grange v. Locke*, 153 Wn.2d 475, 493, 105 P.3d 9 (2005). For example, in *Amalgamated Transit v. State*, 142 Wn.2d 183, 212, 11 P.3d 762 (2000), the Court rejected the use of the *Voters Pamphlet* and "legislative history" to determine whether the various elements of Initiative 695 possessed "rational unity" for purposes of deciding a single subject challenge.

Likewise, in *Citizens for Responsible Wildlife Mgmt. v. State*, 149 Wn.2d 622, 639, 71 P.3d 644 (2003), the Court noted succinctly: “Section 19 analysis is limited to the title and body of the act.” While many of these comments were made in the analysis of the double subject (or “log-rolling”) challenge, the same principle applies with even more force concerning subject-in-title.

As shown above, the Court of Appeals analysis did not limit itself to the title and body of the act; it found fault by concluding that the title hid the removal of the committee study task that was in the bill as originally introduced and, based on this, concluded that “adjustments in the unemployment benefit system” did not reflect the reenactment of RCW 50.20.050.⁶ The Court of Appeals inquiry into what was missing from the Act involves a review that is contrary to this Court’s precedent that article II, section 19 challenges depend on examination of the title and the body of the Act as adopted. Also, the Court of Appeals concern with the absence of the committee study goes beyond article II, section 19 analysis in that the Court of Appeals does not show how the title fails to

⁶ As the Court of Appeals noted, citing *Patrice* and *Fray*, a “mere reference to a section in the title of an act does not state a subject.” However, unless a reader ignored the entire title, the reference to “reenacting RCW 50.20.050” should not be utterly ignored in asking whether an inquiring mind would review the body of the bill to see if the adjustments in the system affected the qualification for benefits.

apprise the reader that the bill reenacts a statute concerning qualification for unemployment benefits.

The Court of Appeals decision wrongly relies on this Court's decision in *Patrice*. That case noted the prior history of a bill, but read in context, that background history simply explained a unique case of how a subject had been adopted that was not in the title. It did not suggest that future courts should judge title more strictly based on looking at how a bill had changed. Thus, the background for EHB 3278 is relevant to explaining the breadth and rhetoric in the title. That background, however, does not show why a reader of the title (who presumably has no obligation to research the legislative history) is not being apprised that the bill made adjustments in the unemployment system, which fairly triggers an inquiry into the body of the bill explaining the exact adjustments. *See Amalgamated Transit v. State*, 142 Wn.2d 183, 217, 11 P.3d 762 (2000) (discussed below at 15).

The holding and analysis of the Court of Appeals thus conflicts with decisions of this Court warranting review under RAP 13.4(b)(1).

B. The Court Of Appeals Decision Presents Significant Questions Of Law Under The State Constitution And An Issue Of Substantial Public Interest That This Court Should Address

The application of article II, section 19 presents a significant issue of constitutional law, and an issue that affects the general public through

restricting the action of the Legislature. Such questions should be resolved by this Court.

1. The Court Of Appeals Decision Implies Limits On When The Legislature Can Amend A Bill

The Court of Appeals reference to the “last minute” nature of the insertion of language reenacting RCW 50.20.050 raises the concern that the opinion will be used to challenge future legislation based on when changes are made in the text of bills. This goes beyond the Constitutional text, which asks whether a title apprises the reader of the subject. The suggestion that the timing of the bill amendments causes a violation of article II, section 19 is a serious constitutional question because it involves the judiciary imposing limits on the legislative process.

2. The Court Of Appeals Use of General Versus Restrictive Title Analysis Should Have No Bearing On The Subject-in-Title Issue For EHB 3278

The Court of Appeals’ reliance on the general versus restrictive labels for the title reflects a significant issue for how courts review an act for compliance with the subject-in-title requirements of article II, section 19. Recent decisions of this Court apply different standards in analyzing the two requirements of article II, section 19. Read properly, the distinction between general and restrictive titles applies to the analysis of whether a bill addresses a single subject, because it relates to whether

allegedly separate subjects were properly encompassed by a general or restrictive title.⁷

In contrast, the subject-in-title requirement triggers a different inquiry:

The title of an act complies with article II, section 19 if it gives notice which would lead to an inquiry into the body of the act or indicates the scope and purpose of the law to an inquiring mind.

However, the title need not be an index to the contents, nor must it provide details of the measure.

Amalgamated Transit v. State, 142 Wn.2d at 217 (2000).

The Court of Appeals ruling, however, relied on the general versus restrictive title distinction in analyzing EHB 3278's title. The Court of Appeals' reliance on the general and restrictive title distinction to justify a more intensive review of EHB 3278, including the review of its legislative history, is at odds with the "well settled" rule "that the constitutional provision relating to titles is to be liberally construed in order to sustain the validity of the statute." *Water District No. 105 v. State*, 79 Wn.2d 337, 485 P.2d 66 (1971). See also, *Washington Federation of State Employees v. State*, 127 Wn.2d 544, 555, 901 P.2d 1028 (1995). It was

⁷ For example, in *Citizens for Responsible Wildlife Mgmt. v. State*, 149 Wn.2d 622, 71 P.3d 644 (2003), the Court analyzed a single-subject challenge using the distinction between a general and restrictive title and analyzed the subject-in-title challenge without relying on the distinction between a general and restrictive title. 149 Wn.2d at 632-639 (single-subject analysis), 639-640 (subject-in-title analysis). See also, *Amalgamated Transit*, 142 Wn.2d at 217.

previously well settled that this Court does not favor a narrow construction of the term “subject” as used in Washington Constitution article II, section 19. *State v. Waggoner*, 80 Wn.2d 7, 9, 490 P.2d 1308 (1971).

3. The Legislature Can Use Phrases Like “To Enhance Benefit And Tax Equity” Without Limiting The Subject Matter Of An Act

Court of Appeals also concluded that the phrase “to enhance benefit and tax equity” makes the title of EHB 3278 restrictive. In determining whether the title of EHB 3278 is general or restrictive, *the entire title is examined*, not just a part of the title. As noted above, the title of EHB 3278 is:

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

This is a broad title encompassing adjustments, or changes, to the unemployment system, which enhance or affect benefits and taxes. Even if this is labeled restrictive, the title puts a person on notice that the body of the bill adjusting the unemployment system in connection with benefits could include the reenactment of RCW 50.20.050.⁸

⁸ *Merriam-Webster On Line*, available at <http://www.merriam-websteronline.com> (visited June 8, 2007) confirms that “adjustment” includes: “1: the act or process of adjusting . . . [and] 5: a correction or modification to reflect actual conditions”. The term “adjust” means: “1: to bring to a more satisfactory state: (1): settle, resolve (2): rectify b: to make correspondent or conformable.”

Thus, the plain language meanings of “making adjustments” can easily encompass the decision to reenact a statute to address challenges to a prior enactment.

The Court of Appeals also concludes that by using the phrase “enhance benefit and tax equity,” the title fails to inform a hypothetical class of interested employees that the Legislature had decided to address the good cause criteria. Slip Op. at 8. This reasoning is significantly different than this Court’s precedent concerning subject-in-title analysis, because it asks whether a particular type of reader would perceive specific details in the body of the bill. Specifically, this reasoning conflicts with the ruling that “the title need not be an index to the contents, nor must it provide details of the measure.” *Amalgamated Transit*, 142 Wn.2d at 217.

The Court of Appeals lost sight of the more deferential review of legislative action, where an act need only “give[] notice which would lead to an inquiry *into the body of the act* or indicates the scope and purpose of the law *to an inquiring mind*.” *Id.* (Emphasis supplied.) In doing so, the Court of Appeals adopted a test that is more intrusive than the Court’s well established tests. As a result, it invalidated legislation but did so contrary to the requisite constitutional standards and thus invaded the discretion reserved to the legislative branch in article II, section 19.

The Court of Appeals also appeared to rely on Ms. Batey’s arguments that the changes in the benefits could not be labeled as equitable, because they restrict eligibility. Br. of Appellant at 23. The Legislature, however, is undoubtedly entitled to have a different opinion

than Ms. Batey. A Legislature can fairly conclude that equity requires the reenactment of RCW 50.20.050 because otherwise employers and employees would return to the eligibility requirements for unemployment benefits that existed before 2003. Such a phrase cannot be a constitutional fault in the title because it is fairly within the legislative power to express its action as achieving equity in benefits by reenacting RCW 50.20.050. Such phrases, moreover, are common in bill titles. For example, Laws of 2003, ch. 298, contained the following title: “AN ACT Relating to revising environmental review provision to *improve* the development approval process and *enhance* economic development.” (Emphasis supplied.)

No court has previously inserted a subjective determination or value judgment on whether a class of readers agrees with the values that the Legislature gives to its actions. To do so, invites the judiciary to substitute its view of the policies contained in legislation for that of the Legislature. Instead, there must be deference to a title that describes its actions as “enhancing equity” to preserve the article II powers of the legislative branch.

The petition for review should be granted so that this Court can apply the long standing rule that a title will be upheld if it “gives such notice as should reasonably lead to an inquiry into the body of the act

itself.” *State ex rel. Wash. Toll Bridge Auth.*, 32 Wn.2d at 26. The title to EHB 3278 accomplished this purpose. Nothing more is constitutionally required by the subject-in-title requirement of article II, section 19. In concluding to the contrary, the Court of Appeals erred.

VI. CONCLUSION

The Employment Security Department respectfully requests that this Petition be granted.

RESPECTFULLY SUBMITTED this 15th day of June, 2007.

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Petition For Review

SUPREME COURT NO. _____

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

KUSUM L. BATEY,)	No. 57513-9-I
)	
Appellant,)	
)	
v.)	
)	PUBLISHED OPINION
STATE OF WASHINGTON,)	
EMPLOYMENT SECURITY)	
DEPARTMENT,)	
)	
Respondent.)	FILED: MARCH 12, 2007

BECKER, J. – Under our state constitution, portions of a bill not fairly expressed by its title are stricken as unconstitutional. At issue in this appeal is a bill changing the criteria for determining when an employee has good cause for a voluntary quit. The title of the bill is: "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."¹ Because the title does not express the subject, the statute is unconstitutional.

¹ EHB 3278, 59th Leg. (Wash. 2006).

It has long been a feature of the unemployment compensation system that workers who have "left work voluntarily without good cause" are disqualified from receiving unemployment benefits for a specified period of time. RCW 50.20.050(2)(a). The voluntary quit statute as it existed in 2002 set out four specific situations that constituted good cause for leaving work. In addition, the Employment Security Department had discretion to find good cause for reasons not specified in the statute. In a particular case, the commissioner might determine that changes in other work-related circumstances had caused hardship or deterioration in working conditions sufficient to justify the claimant's decision to quit:

Good cause shall not be established . . . 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.

Former RCW 50.20.050(3) (2002), in part (emphasis added).

During a special session in 2003, the Legislature decided to tighten up the voluntary quit criteria. The vehicle for the change was Second Engrossed Senate Bill 6097, a bill with 39 sections that amended RCW Title 50 in various ways. 2ESB 6097, 58th Leg., 2d Spec. Sess. (Wash. 2003). The fourth section of the bill amended the voluntary quit statute, RCW 50.20.050. With respect to

claims with an effective date on or after January 4, 2004, the bill set out six more situations that would constitute good cause for leaving work. But the bill also removed the commissioner's discretion. Under the new scheme, a good cause for quitting had to be within the 10 scenarios listed in the statute.

The appellant in this case, Kusum Batey, worked as an advocate for the Snohomish County Center for Battered Women. She quit voluntarily in January 2005 and applied for unemployment benefits. Her reasons for quitting did not fit within the 10 "good cause" categories in RCW 50.20.050, and the Employment Security Department denied her application. Batey petitioned for review in superior court. She argued that 2ESB 6097, the bill that removed the discretionary language, was unconstitutional because it was passed in contravention of the subject-in-title requirement of Const. art. II, § 19. The title of the bill referred to "creating forty rate classes for determining employer contribution rates."² 2ESB 6097, 58th Leg., 2d Spec. Sess. (Wash. 2003). Batey took the position that this title clearly does not encompass the subject

² The full title of 2ESB 6097 was: 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.

matter of voluntary quits. Batey sought to have her case remanded to the Employment Security Department for consideration under the discretionary language of the statute as it existed before the enactment of 2ESB 6097. This court accepted the superior court's certification for direct review in February of 2006. See RCW 34.05.518; RAP 6.3.

On review, the Department does not defend the title of 2ESB 6097 against Batey's subject-in-title challenge. Instead, the Department says that the Legislature remedied any subject-in-title problem that may have existed with 2ESB 6097 by reenacting its provisions retroactively in 2006 in a bill with a proper title.³

Batey does not dispute that the Legislature could have cured the defect in the title of 2ESB 6097 by reenacting it retroactively in a bill with a proper title. She contends, however, that the Legislature's attempt to cure the defect likewise fails the subject-in-title test.

The 2006 bill is Engrossed House Bill 3278 with the title "AN ACT Relating to making adjustments in the unemployment insurance system to

³ The 2003 bill amends an earlier act, while the 2006 bill reenacts an earlier act. Because the Department does not defend Batey's subject-in-title challenge to the 2003 bill, we need not enter what the Department at oral argument referred to as the "dark and bloody ground" of City of Fircrest v. Jensen, 158 Wn.2d 384, 143 P.3d 776 (2006) (three separate opinions about whether the relevant title in a challenge to an amendatory act is the one belonging to the original act or the one belonging to the amendatory act).

enhance benefit and tax equity; reenacting RCW 50.20.050; and creating a new section." EHB 3278, 59th Leg. (Wash. 2006). As passed by the House on February 14, 2006, the bill's objective was modest: to extend by two months the deadline for a previously created "joint legislative task force on unemployment insurance benefit equity" to report its findings and recommendations to the Legislature. H. Amendment 939, 59th Leg. (Wash. 2006).

The subject matter of House Bill 3278 changed dramatically on March 3, 2006 when the Senate adopted a striking amendment. After stripping out all of the language pertaining to the task force and its deadline, the Senate amendment inserted language reenacting the substance of the voluntary quit amendments contained in 2ESB 6097 (the bill passed in 2003). The Senate amendment provided that the bill would apply retroactively "to claims that have an effective date on or after January 4, 2004." Laws of 2006, ch. 12, § 2. As shown by a note to the Senate amendment, it was designed to deflect Batey's pending lawsuit: "EFFECT: Reenacts, retroactively, the 'good cause quit' section of Second Engrossed Senate Bill No. 6097 (a section that was potentially under challenge in *Batey v. Employment Security Department*)." S. Amendment 365, 59th Leg. (Wash. 2006). The House and Senate both passed Engrossed House Bill 3278 on March 3, 2006, with the House concurring in the Senate amendment.

Our constitution states: "No bill shall embrace more than one subject, and

that shall be expressed in the title." Const. art. II, §19. In this case we are concerned only with the subject-in-title requirement of this provision, not the single-subject rule. The Supreme Court has long interpreted article II, §19 as requiring a bill's title to give concise information about the contents of the bill. "The wisdom of the rule suggests itself, in that the reader, whether a member of the legislature or otherwise, may, by a mere glance at a few catch words in the title, be apprised of what the act treats, without further search." State ex rel. Seattle Elec. Co. v. Superior Court, 28 Wash. 317, 321, 68 P. 957 (1902). The title should "most especially" be sufficient to give notice to parties whose rights and liabilities are affected by the bill. Patrice v. Murphy, 136 Wn.2d 845, 854, 966 P.2d 1271 (1998). The title need not be an index to the contents of the bill. It is sufficient if the title "gives such notice as should reasonably lead to an inquiry into the body of the act itself, or indicates, to an inquiring mind, the scope and purpose of the law." State ex rel. Wash. Toll Bridge Auth. v. Yelle, 32 Wn.2d 13, 26, 200 P.2d 467 (1948).

To decide whether a title gives adequate notice, a court must first determine whether the title is broad or narrow. Where a bill's title is general, "any subject reasonably germane to such title may be embraced within the body of the bill." Citizens for Responsible Wildlife Management v. State, 149 Wn.2d 622, 633, 71 P.3d 644 (2003) (quoting DeCano v. State, 7 Wn.2d 613, 627, 110 P.2d 627 (1941)). A restrictive title will be more carefully scrutinized:

If the title is general and comprehensive, it will be given a liberal construction; in such case, no elaborate statement of the subject of the act is necessary, and a few well-chosen words suggestive of the general subject treated is all that is required. If, however, the title is a restricted one, it will not be regarded so liberally, and provisions which are not fairly within such restricted title will not be given force.

State ex rel. Wash. Toll Bridge Auth., 32 Wn.2d at 26. Examples of bill titles judged to be restrictive are: "Shall criminals who are convicted of 'most serious offenses' on three occasions be sentenced to life in prison without parole?" State v. Thorne, 129 Wn.2d 736, 757, 921 P.2d 514 (1996); "An Act Relating to the acquisition of property by public agencies" Daviscourt v. Peistrup, 40 Wn. App. 433, 437, 698 P.2d 1093 (1985); "AN ACT Relating to increasing penalties for armed crimes" State v. Broadaway, 133 Wn.2d 118, 123, 942 P.2d 363 (1997).

The Department argues that EHB 3278's title is broad and general, but in doing so the Department focuses only on that part of the title referring to "making adjustments in the unemployment insurance system." The full title is: "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." In specifying that the adjustments are intended "to enhance benefit and tax equity", the title becomes restrictive; it does not suggest a bill that might embrace any and all manner of changes to the unemployment insurance system.

The Department contends that even if the title is judged to be restrictive, it

still should be construed as giving fair notice that the bill changes eligibility requirements for unemployment benefits. Any change in eligibility, according to the Department, is likely to have some effect upon benefits paid to employees and tax premiums paid by employers. This argument is not persuasive. The title says the adjustments in the bill will enhance "benefit and tax equity". Employees—a group particularly affected by EHB 3278—would not reasonably be expected to recognize this phrase as a signal that legislators had decided to change the good cause criteria for voluntary quits.

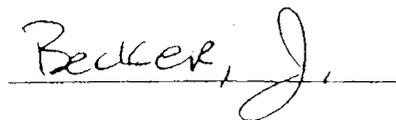
The Supreme Court has held that the title "AN ACT Relating to court costs" violated the subject-in-title rule because the title, while appearing to refer to procedural matters, disguised a "hidden effect" – the bill imposed upon local government a new substantive duty to hire sign language interpreters to assist with police investigations. Patrice, 136 Wn.2d at 855. This came about because the Legislature picked up the substance of a bill requiring interpreters, which could not pass on its own due to time constraints, and rolled it into a bill on court costs that was still within time limits and eligible for consideration. Similarly here, changing the voluntary quit criteria is a hidden effect of EHB 3278. The title's reference to "benefit and tax equity" disguised the fact that the bill no longer had anything to do with the special committee study on benefit equity, and had become instead a last minute vehicle to change the good cause criteria for voluntary quits.

The title's reference to RCW 50.20.50 as the statute being reenacted is also insufficient to give proper notice. A "mere reference" to a section in the title of an act does not state a subject. Fray v. Spokane County, 134 Wn.2d 637, 654-655, 952 P.2d 601 (1998) (quoting State ex rel. Seattle Elec. Co., 28 Wash. at 325).

We conclude Chapter 12, Laws of 2006 must be struck down because the enacting bill, EHB 3278, does not meet the constitutional subject-in-title requirement. Because EHB 3278 is unconstitutional, it cannot cure the undisputed subject-in-title defect in 2ESB 6097 as it relates to Section 4 of that bill. Therefore, we also hold unconstitutional Section 4 of Chapter 4, Laws of 2003, Second Special Session.⁴

Batey requests attorney's fees as provided by RCW 50.32.160 when a court reverses or modifies a decision by the commissioner. We reject this request because it was made for the first time in her reply brief. RAP 18.1(b).

Reversed and remanded to determine whether Batey's reasons for quitting constitute good cause under RCW 50.20.050 as it existed in 2002.



WE CONCUR:

⁴ We make no determination as to other provisions of Chapter 4, Laws of 2003, Second Special Session. See Patrice v. Murphy, 136 Wn.2d 845, 855, 966 P.2d 1271 (1998).

Schindler, ACF Grosse, J

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

KUSUM L. BATEY,) NO. 57513-9-1
)
Appellant,) ORDER GRANTING MOTION
)
v.) FOR RECONSIDERATION
)
STATE OF WASHINGTON,) AND ORDER AMENDING OPINION
EMPLOYMENT SECURITY)
DEPARTMENT,)
)
Respondent.)
_____)

The respondent, State of Washington Employment Security Department, having filed a motion for reconsideration, and the appellant Kusum L. Batey, having answered, the court will grant the motion by adding the following paragraph to footnote 4 on page 9 of the above entitled opinion:

The Appellant did not challenge Chapter 13, Laws of 2006, §2. She stated in her brief that it "does not affect this case" and that, with respect to the subject-in-title requirement of art. II, §19, it properly amended RCW 50.20.050 prospectively in a manner similar to the 2003 amendments. Therefore, we make no determination as to the constitutionality or legality of the amendments to RCW 50.20.050 contained in Chapter 13, Laws of 2006, §2.

DATED this 16th day of May, 2003.

FOR THE COURT:

Becker, J.
Judge

CERTIFICATION OF ENROLLMENT
SECOND ENGROSSED SENATE BILL 6097

Chapter 4, Laws of 2003
(partial veto)

58th Legislature
2003 2nd Special Session

UNEMPLOYMENT COMPENSATION--SYSTEM REVISED

EFFECTIVE DATE: 6/20/03

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

BRAD OWEN

President of the Senate

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

FRANK CHOPP

Speaker of the House of Representatives

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

GARY LOCKE

Governor of the State of Washington

CERTIFICATE

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

MILTON H. DOUMIT JR.

Secretary

FILED

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

Secretary of State
State of Washington

SECOND ENGROSSED SENATE BILL 6097

Passed Legislature - 2003 2nd Special Session

State of Washington 58th Legislature 2003 1st Special Session

By Senators Honeyford and Mulliken

Read first time . Referred to .

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (i) The duration of the work;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (3) "Misconduct" does not include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 **PART II - FINANCING UNEMPLOYMENT COMPENSATION**

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

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

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

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

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

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

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

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

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

Percent of		Schedules of Contributions Rates								
Cumulative		for Effective Tax Schedule								
Taxable Payrolls										
Rate										
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	

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (A) Rate class 1 - 78 percent;

10 (B) Rate class 2 - 82 percent;

11 (C) Rate class 3 - 86 percent;

12 (D) Rate class 4 - 90 percent;

13 (E) Rate class 5 - 94 percent;

14 (F) Rate class 6 - 98 percent;

15 (G) Rate class 7 - 102 percent;

16 (H) Rate class 8 - 106 percent;

17 (I) Rate class 9 - 110 percent;

18 (J) Rate class 10 - 114 percent;

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

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

21 (iii) For the purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 **PART III - ADMINISTRATION**

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

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

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

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

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

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

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

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

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

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

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

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

10

PART IV - MISCELLANEOUS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

 Passed by the Senate June 11, 2003.

 Passed by the House June 11, 2003.

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

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

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

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

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

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

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

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

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

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

CERTIFICATION OF ENROLLMENT

ENGROSSED HOUSE BILL 3278

Chapter 12, Laws of 2006

59th Legislature
2006 Regular Session

UNEMPLOYMENT INSURANCE--DISQUALIFICATION

EFFECTIVE DATE: 6/07/06

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

FRANK CHOPP

Speaker of the House of Representatives

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

BRAD OWEN

President of the Senate

Approved March 8, 2006.

CHRISTINE GREGOIRE

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.

RICHARD NAFZIGER

Chief Clerk

FILED

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

Secretary of State
State of Washington

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;

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (i) The duration of the work;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Passed by the House March 3, 2006.

Passed by the Senate March 3, 2006.

Approved by the Governor March 8, 2006.

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

FINAL BILL REPORT

EHB 3278

C 12 L 06

Synopsis as Enacted

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

Sponsors: By Representatives Conway and Dickerson.

House Committee on Commerce & Labor

Senate Committee on Labor, Commerce, Research & Development

Background:

An individual is eligible to receive regular unemployment benefits if he or she: (1) worked at least 680 hours in his or her base year; (2) was separated from employment through no fault of his or her own or quit work for good cause; and (3) is able to work and is actively seeking employment. An individual is disqualified from receiving benefits if he or she leaves work voluntarily without good cause.

The "good cause quit" section enumerates reasons for leaving work that are considered to be good cause and not disqualifying. In 2003 the Legislature enacted a number of changes to the unemployment insurance system, including changes to the "good cause quit" section. These changes limited the reasons considered to be good cause and not disqualifying. The new limits apply to unemployment claims that are effective on or after January 4, 2004. In a lawsuit filed in 2005, the new limits were challenged as unconstitutionally enacted.

Summary:

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

Votes on Final Passage:

House	94	3	
Senate	49	0	(Senate amended)
House	98	0	(House concurred)

Effective: June 7, 2006