

CHAPTER 8.

[H. B. 18.]

EMPLOYMENT SECURITY ACT.

AN ACT providing for relief from unemployment; defining terms; establishing the employment security department; providing for officers and their powers and duties; providing for contributions, funds, claims, disqualifications and other penalties, the receipt of moneys, reciprocal arrangements, and cooperation with states and governments; accepting provisions of certain federal enactments; defining crimes and prescribing penalties; amending sections 50.04.200, 50.04.320, 50.12.200, 50.16.010, 50.16.020, 50.20.160, 50.20.190, 50.24.030, 50.24.040, 50.24.120, 50.24.150, 50.28.020, 50.28.040, 50.28.050, 50.36.010 and 50.36.020, RCW, and reenacting sections 50.08-.010, 50.20.010, 50.20.050, 50.20.060, 50.20.070, 50.20.080 and 50.20.090, RCW, to be known as the Employment Security Act.

Be it enacted by the Legislature of the State of Washington:

Amendment.

SECTION 1. Section 50.04.200, RCW, as derived from section 21, chapter 35, Laws of 1945, as amended by section 7, chapter 265, Laws of 1951, is amended to read as follows:

“Employment”; exemption; service in employ of state or political subdivisions. Exceptions.

The term “employment” shall not include service performed in the employ of this state, or of any political subdivision thereof, or of any instrumentality of this state or its political subdivisions: *Provided*, That this exemption shall not be deemed to apply to public utility districts and public power authorities, nor shall this exemption be deemed to apply if the state or any political subdivision thereof or any instrumentality of this state or its political subdivisions voluntarily elects coverage for all or any distinct class or group of individuals in its employ: *And provided further*, That the state or any political subdivision thereof or any instrumentality of this state or its political subdivisions is hereby authorized to pay to the unemployment compensation division for the unemployment compensation fund contributions required of employers by the provisions of this title.

State and political subdivisions authorized to contribute.

Note: This section also amended by section 1, chapter 276, *supra*.

SEC. 2. Section 50.04.320, RCW, derived from section 33, chapter 35, Laws of 1945, as amended by section 3, chapter 265, Laws of 1951, is amended to read as follows: Amendment.

For the purpose of payment of contributions, "wages" means the first three thousand dollars of remuneration paid by one employer during any calendar year to an individual in its employment under this title or the unemployment compensation law of any other state. After December 31, 1950, if an employer (hereinafter referred to as a successor employer) during any calendar year acquires substantially all the operating assets of another employer (hereinafter referred to as a predecessor employer) or assets used in a separate unit of a trade or business of a predecessor employer, and immediately after the acquisition employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessor employer, then, for the purposes of determining whether the successor employer has paid remuneration equal to three thousand dollars to such individual during such calendar year, any remuneration paid to such individual by such predecessor during such calendar year and prior to such acquisition shall be considered as having been paid by such successor employer. "Wages";
for the
purpose of
payment of
contribu-
tions.

For the purpose of payment of benefits, "wages" means the remuneration payable by one or more employers to an individual for employment under this title during one calendar year. For the
purpose of
payment of
benefits.

"Remuneration" means all compensation paid for personal services, including commissions and bonuses and the cash value of all compensation paid in any medium other than cash. The reasonable cash value of compensation paid in any medium other than cash and the reasonable value of gratuities shall be esti- "Remunera-
tion."

mated and determined in accordance with rules prescribed by the commissioner.

Re-enactment.

SEC. 3. Section 50.08.010, RCW, derived from section 38, chapter 35, Laws of 1945, as amended by section 8, chapter 215, Laws of 1947, is re-enacted and reads as follows:

Department established.

There is established the employment security department for the state, to be administered by a commissioner. The commissioner shall be appointed by the governor with the consent of the senate, and shall hold office at the pleasure of, and receive such compensation for his services as may be fixed by, the governor.

Commissioner.

Amendment.

SEC. 4. Section 50.12.200, RCW, as derived from section 59, chapter 35, Laws of 1945, as amended by section 12, chapter 215, Laws of 1947, is amended to read as follows:

State advisory council; appointment.

The commissioner shall appoint a state advisory council composed of not more than nine members, of which three shall be representatives of employers, three shall be representatives of employees, and three shall be representatives of the general public who are not entitled to benefits under this title. Such council shall aid the commissioner in formulating policies and discussing problems related to the administration of this title and of assuring impartiality and freedom from political influence in the solution of such problems. The council shall serve without compensation. The commissioner may also appoint committees, and industrial or other special councils, to perform appropriate services. Members shall be reimbursed for any travel expense incurred in accordance with the travel regulations applicable to employees of the employment security department.

Duties.

Compensation.

Other committees and councils.

Travel expenses.

Amendment.

SEC. 5. Section 50.16.010, RCW, as derived from section 60, chapter 35, Laws of 1945, is amended to read as follows:

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

Special funds.

Unemployment compensation fund.

(1) all contributions collected pursuant to the provisions of this title,

(2) all fines and penalties collected pursuant to the provisions of this title,

(3) interest earned upon any moneys in the fund,

(4) any property or securities acquired through the use of moneys belonging to the fund,

(5) all earnings of such property or securities,

(6) any moneys received from the federal unemployment account in the unemployment trust fund in accordance with Title XII of the social security act, as amended, and

(7) all moneys received for the fund from any other source.

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

The administrative contingency fund shall consist of all interest on delinquent contributions collected pursuant to this title after the effective date of this act. The amount in this fund in excess of one hundred thousand dollars on the close of business of the last day of each calendar quarter shall be immediately transferred to this state's account in the unemployment trust fund. Moneys available in the administrative contingency fund shall be expended upon the direction of the commissioner, with the approval of the governor, whenever it appears to him that such expenditure is necessary for:

Administrative contingency fund.

(1) The proper administration of this title and no federal funds are available for the specific purpose

to which such expenditure is to be made, provided, the moneys are not substituted for appropriations from federal funds which, in the absence of such moneys, would be made available.

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

Amendment.

SEC. 6. Section 50.16.020, RCW, as derived from section 61, chapter 35, Laws of 1945, is amended to read as follows:

Administra-
tion of funds;
treasurer and
custodian.

The commissioner shall designate a treasurer and custodian of the unemployment compensation fund and of the administrative contingency fund, who shall administer such funds in accordance with the directions of the commissioner and shall issue his warrants upon them in accordance with such regulations as the commissioner shall prescribe. He shall maintain within the unemployment compensation fund three separate accounts as follows:

Accounts
of un-
employment
compensation
fund.

- (1) a clearing account,
- (2) an unemployment trust fund account, and
- (3) a benefit account.

Moneys
payable
to un-
employment
compensation
fund.

All moneys payable to the unemployment compensation fund, upon receipt thereof by the commissioner, shall be forwarded to the treasurer, who shall immediately deposit them in the clearing account.

Refunds
from un-
employment
compensation
fund.

Refunds payable pursuant to the provisions of this title from the unemployment compensation fund may be paid from the clearing account upon warrants issued by the treasurer under the direction of the commissioner: *Provided, however,* That refunds of interest on delinquent contributions shall be paid from the administrative contingency fund upon warrants issued by the treasurer under the direction of the commissioner.

Refunds of
interest on
delinquent
contribu-
tions.

After clearance thereof, all other moneys in the clearing account shall be immediately deposited with the Secretary of the Treasury of the United States to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to section 904 of the social security act, as amended, any provisions of law in this state relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding.

Unemployment trust fund.

The benefit account shall consist of all moneys requisitioned from this state's account in the unemployment trust fund. Moneys in the clearing and benefit accounts and in the administrative contingency fund shall not be commingled with other state funds, but shall be deposited by the treasurer, under the direction of the commissioner, in any bank or public depository in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund.

Benefit account composition.

Moneys in clearing and benefit accounts and in administrative contingency fund.

Such moneys shall be secured by said bank or public depository to the same extent and in the same manner as required by the general depository law of the state and collateral pledged shall be maintained in a separate custody account.

Security for deposits.

The treasurer shall give a bond conditioned upon the faithful performance of his duties as a custodian of the funds in an amount fixed by the state administrative board and in a form prescribed by law or approved by the attorney general. Premiums for said bond shall be paid from the administration fund. All sums recovered on official bonds for losses sustained by the unemployment compensation fund shall be deposited in such fund. All sums recovered on official bonds for losses sustained by the administrative contingency fund shall be deposited in such fund.

Bonding of treasurer.

Re-enactment.

SEC. 7. Section 50.20.010, RCW, derived from section 68, chapter 35, Laws of 1945, as amended by section 9, chapter 265, Laws of 1951, is re-enacted and reads as follows:

Waiting period credit or benefits; eligibility.

An unemployed individual shall be eligible to receive waiting period credit or benefits with respect to any week only if the commissioner finds that

Registration for work and reporting at employment office.

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

Application and claim.

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

Able and available for work.

(3) he is able to work, and is available for work in any trade, occupation, profession, or business for which he is reasonably fitted. To be available for work an individual must be ready, able, and willing, immediately to accept any suitable work which may be offered to him and must be actively seeking work pursuant to customary trade practices and through other methods when so directed by the commissioner or his agents;

Unemployed for waiting period.

(4) he has been unemployed for a waiting period of one week; and

Base year minimum wages.

(5) he has within the base year been paid wages of not less than the minimum amount now or hereafter fixed by law as the minimum amount to be earned in order to allow the individual to receive unemployment benefits.

SEC. 8. Section 50.20.050, RCW, derived from section 73, chapter 35, Laws of 1945, as amended by section 12, chapter 215, Laws of 1951, is re-enacted and reads as follows:

Re-enactment.

An individual shall be disqualified for benefits for the calendar week in which he has left work voluntarily without good cause and for the five calendar weeks which immediately follow such week.

Disqualification for leaving work.

SEC. 9. Section 50.20.060, RCW, derived from section 74, chapter 35, Laws of 1945, as amended by section 13, chapter 215, Laws of 1951, is re-enacted and reads as follows:

Re-enactment.

An individual shall be disqualified for benefits for the calendar week in which he has been discharged or suspended for misconduct connected with his work and for the five calendar weeks which immediately follow such week.

Disqualification for discharge for misconduct.

SEC. 10. Section 50.20.070, RCW, derived from section 75, chapter 35, Laws of 1945, as amended by section 10, chapter 265, Laws of 1951, is re-enacted and reads as follows:

Re-enactment.

Irrespective of any other provisions of this title an individual shall be disqualified for benefits for any week with respect to which he has knowingly made a false statement or representation involving a material fact or knowingly failed to report a material fact and has thereby obtained or attempted to obtain any benefits under the provisions of this title, and for an additional twenty-six weeks commencing with the first week for which he completes a claim for waiting period or benefits following the date of the delivery or mailing of the determination of disqualification under this section: *Provided*, That such disqualification shall not be applied after two years have elapsed from the date of the delivery or mailing of the determination of disqualification under this section, but all overpayments established by such deter-

Disqualification for false representation.

mination of disqualification shall be collected as otherwise provided by this title.

Re-enactment.

SEC. 11. Section 50.20.080, RCW, derived from section 76, chapter 35, Laws of 1945, as amended by section 14, chapter 215, Laws of 1951, is re-enacted and reads as follows:

Disqualification for failure to apply for work, etc.

An individual is disqualified for benefits, if the commissioner finds that he has failed without good cause, either to apply for available, suitable work when so directed by the employment office or the commissioner, or to accept suitable work when offered him, or to return to his customary self-employment (if any) when so directed by the commissioner. Such disqualification shall continue for the calendar week in which such failure occurred and for the five calendar weeks which immediately follow such week.

Re-enactment.

SEC. 12. Section 50.20.090, RCW, derived from section 77, chapter 35, Laws of 1945, is re-enacted and reads as follows:

Disqualification for labor disputes.

An individual shall be disqualified for benefits for any week with respect to which the commissioner finds that his unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed: *Provided*, That this section shall not apply if it is shown to the satisfaction of the commissioner that

(1) he is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

(2) he does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute: *Provided*, That if in any case separate branches of work which are

commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purpose of this subdivision, be deemed to be a separate factory, establishment, or other premises.

SEC. 13. Section 50.20.160, RCW, as derived from section 84, chapter 35, Laws of 1945, as amended by section 6, chapter 215, Laws of 1951, is amended to read as follows: Amendment.

Within one year from the date of delivery or mailing of an initial determination or a determination of denial of benefits and within sixty days from the date of the allowance of benefits, the commissioner may reconsider and redetermine such determination whenever he finds that there has been an error in identity, computation, or statement of amount of wages earned, or an error or omission of fact or misapplication of the law with respect to the facts: *Provided*, That a redetermination may be made at any time to conform to a final court decision applicable to either an initial determination or a determination of denial or allowance of benefits. Written notice of any such redetermination shall be promptly given by mail or delivered to such interested parties as were notified of the initial determination or determination of denial or allowance of benefits and any new interested party or parties who, pursuant to such regulation as the commissioner may prescribe, would be an interested party. Redetermination.

SEC. 14. Section 50.20.190, RCW, as derived from section 87, chapter 35, Laws of 1945, as amended by section 8, chapter 215, Laws of 1951, is amended to read as follows: Amendments.

Any person who is paid any amount as benefits under this title to which he is not entitled shall become liable for such amount: *Provided*, That in the absence of fraud, misrepresentation or wilful nondisclosure, such person shall not be liable for an Benefits improperly received; liability.

amount of overpayment received without fault on his part where the recovery thereof would be against equity and good conscience. The amount of the overpayment and the basis thereof shall be assessed to the liable person and following the overpayment assessment such amount, if not collected, shall be deducted from any future benefits payable to the individual: *Provided*, That in the absence of fraud, misrepresentation, or wilful nondisclosure, every determination of liability shall be mailed or personally served not later than two years after the close of the benefit year in which the purported overpayment was made.

Appeals.

Any assessment herein provided shall constitute a determination of liability from which an appeal may be had in the same manner and to the same extent as provided for appeals relating to determinations in respect to claims for benefits: *Provided*, That an appeal from any determination covering overpayment only, shall be deemed to be an appeal from the determination which was the basis for establishing the overpayment unless the merits involved in the issue set forth in such determination have already been heard and passed upon by the appeal tribunal. If no such appeal is taken to the appeal tribunal by the individual within ten days of the delivery of the notice of determination of liability, or within ten days of the mailing of the notice of determination, whichever is the earlier, said determination of liability shall be deemed conclusive and final, and the court shall, upon application of the commissioner, enter a judgment in the amount provided by the notice of determination, which judgment shall have and be given the same effect as if entered pursuant to civil action.

**Mutual aid
between
governments.**

On request of any agency which administers an employment security law of another state, the United States or a foreign government and which has found

in accordance with the provisions of such law that a claimant is liable to repay benefits received under such law by reason of having knowingly made a false statement or misrepresentation of a material fact with respect to a claim taken in this state as an agent for such agency, the commissioner may collect the amount of such benefits from such claimant to be refunded to such agency. In any case in which under this section a claimant is liable to repay any amount to the agency of another state, the United States or a foreign government, such amounts may be collected without interest by civil action in the name of the commissioner acting as agent for such agency if the other state, the United States or the foreign government extends such collection rights to the employment security department of the state of Washington, and provided that the court costs be paid by the governmental agency benefiting from such collection.

SEC. 15. Section 50.24.030, RCW, as derived from section 91, chapter 35, Laws of 1945, as amended by section 19, chapter 214, Laws of 1949, is amended to read as follows: Amendment.

Payments of contributions erroneously paid to an unemployment compensation fund of another state or to the United States government which should have been paid to this state and which thereafter shall be refunded by such other state or the United States government and paid by the employer to this state, shall be deemed to have been paid to this state and to have filed contribution reports thereon at the date of payment to the United States government or such other state. Erroneous payments to United States or another state.

Sec. 16. Section 50.24.040, RCW, as derived from section 92, chapter 35, Laws of 1945, is amended to read as follows: Amendment.

If contributions are not paid on the date on which they are due and payable as prescribed by the com- Interest on delinquent contributions.

missioner, the whole or part thereof remaining unpaid shall bear interest at the rate of one percent per month from and after such date until payment plus accrued interest is received by him. In computing interest from any period less than a full month, the rate shall be one-thirtieth of one percent for each day or fraction thereof. Interest shall not accrue in excess of twenty-four percent for delinquent contributions for any one contributions period. The date as of which payment of contributions, if mailed, is deemed to have been received may be determined by such regulations as the commissioner may prescribe. Interest collected pursuant to this section shall be paid into the administrative contingency fund. Interest shall not accrue on contributions from any estate in the hands of a receiver, executor, administrator, trustee in bankruptcy, common law assignee or other liquidating officer subsequent to the date when such receiver, executor, administrator, trustee in bankruptcy, common law assignee or other liquidating officer qualifies as such, but contributions accruing with respect to employment of persons by any receiver, executor, administrator, trustee in bankruptcy, common law assignee or other liquidating officer shall become due and shall draw interest in the same manner as contributions due from other employers. Where adequate information has been furnished the department and the department has failed to act or has advised the employer of no liability or inability to decide the issue, interest may be waived.

Amendment.

SEC. 17. Section 50.24.120, RCW, as derived from section 100, chapter 35, Laws of 1945, is amended to read as follows:

Collections from employer by civil action.

(1) If after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due may be collected by civil action in the name of the state, and the employer adjudged in

default shall pay the cost of such action. Any lien created by this title may be foreclosed by decree of the court in any such action. Civil actions brought under this section to collect contributions or interest thereon from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this title and cases arising under the industrial insurance laws of this state.

(2) Any employing unit which is not a resident of this state and which exercises the privilege of having one or more individuals perform service for it within this state, and any resident employing unit which exercises that privilege and thereafter removes from this state, shall be deemed thereby to appoint the secretary of state as its agent and attorney for the acceptance of process in any civil action under this section. In instituting such an action against any such employing unit the commissioner shall cause such process or notice to be filed with the secretary of state and such service shall be sufficient service upon such employing unit, and shall be of the same force and validity as if served upon it personally within this state: *Provided*, That the commissioner shall forthwith send notice of the service of such process or notice, together with a copy thereof, by registered mail, return receipt requested, to such employing unit at its last known address and such return receipt, the commissioner's affidavit of compliance with the provisions of this section, and a copy of the notice of service shall be appended to the original of the process filed in the court in which such civil action is pending.

Nonresident
employing
unit.

(3) The courts of this state shall in the manner provided in subsections (1) and (2) of this section entertain actions to collect contributions or interest thereon for which liability has accrued under the

Duty of
courts.

employment security law of any other state or of the federal government.

Amendment.

SEC. 18. Section 50.28.020, RCW, as derived from section 2, chapter 235, Laws of 1949, is amended to read as follows:

Experience rating credits; "qualified employer."

"Qualified employer" means any employer of record on the effective date who had employment in each of the four consecutive calendar years immediately preceding the computation date and who filed contribution reports thereon on or before the cut-off date: *Provided*, That no employer shall be deemed a qualified employer if he has reported no employment for four or more consecutive calendar quarters in such four calendar years: *And provided further*,

(1) When an employer or prospective employer has acquired all or substantially all the operating assets of an employer, the experience of both during such four calendar years shall be jointly considered for the purpose of determining and establishing the acquiring party's qualification for and amount of credit, and the transferring employer shall be divested of his experience; or

(2) When an employer or prospective employer has acquired an operating department, section, division or any substantial portion of the business or assets of any employer, which is clearly segregable and identifiable, the entire payroll experience of the transferring employer shall be divided between the transferring and acquiring employers in proportion to the payroll for the four preceding completed calendar quarters attributable to the operating assets conveyed and retained.

Amendment.

SEC. 19. Section 50.24.150, RCW, as derived from section 103, chapter 35, Laws of 1945, is amended to read as follows:

No later than three years after the date on which any contributions or interest have been paid, an em-

ployer who has paid such contributions or interest may file with the commissioner a petition in writing for an adjustment thereof in connection with subsequent contribution payments or for a refund thereof when such adjustment cannot be made. If the commissioner upon an ex parte consideration shall determine that such contributions or interest, or portion thereof, were erroneously collected, he shall allow such employer to make an adjustment thereof without interest in connection with subsequent contribution payments by him, or if such adjustment cannot be made, the commissioner shall refund said amount without interest from the unemployment compensation fund: *Provided, however,* That after the effective date of this act that refunds of interest on delinquent contributions shall be paid from the administrative contingency fund upon warrants issued by the treasurer under the direction of the commissioner. For like cause and within the same period, adjustment or refund may be made on the commissioner's own initiative. If the commissioner finds that upon ex parte consideration he cannot readily determine that such adjustment or refund should be allowed, he shall deny such application and notify the employer in writing.

Adjustments and refunds of employer contributions and interest.

SEC. 20. Section 50.28.040, RCW, as derived from section 3, chapter 235, Laws of 1949, is amended to read as follows:

Amendment.

The amount of credit for each qualified employer shall be established in the following manner:

Experience rating credits.

(1) Qualified employers shall be grouped into six credit classes, to be designated as classes 6, 5, 4, 3, 2, and 1, in accordance with the sum of the quotients of annual decreases of payroll in regard to the three consecutive calendar years immediately preceding the computation date, each such quotient to be obtained by dividing any decrease of the payroll of a qualified employer in any calendar year from

Six credit classes of qualified employers.

the preceding calendar year by the amount of the payroll in such preceding calendar year, each division being carried out to the fourth decimal place and the remaining fraction, if any, disregarded. Each qualified employer's credit class shall be determined from the sum of such employer's quotients of annual decrease of payroll in accordance with the following schedule:

Schedule of annual decrease quotients.

<i>Sum of Annual Decrease Quotients</i>	<i>Credit Class</i>
0.0000 to 0.0999.....	6
0.1000 to 0.2999.....	5
0.3000 to 0.4999.....	4
0.5000 to 0.6999.....	3
0.7000 to 0.7999.....	2
0.8000 or more.....	1

"Class weight."

(2) A "class weight" shall be assigned to each credit class as follows:

<i>Credit Class</i>	<i>Class Weight</i>
6.....	6
5.....	5
4.....	4
3.....	3
2.....	2
1.....	0

"Class product."

(3) The "class product" shall be obtained by dividing the total of the payrolls for the calendar year immediately preceding the computation date for all qualified employers in the same class by the total of the payrolls of all qualified employers for such year, such division being carried out to the fourth decimal place, and multiplying the quotient by the class weight.

Surplus to be credited.

(4) The surplus to be credited to each class shall be the product obtained by dividing the class product for each class by the sum of the class products for all classes and multiplying the quotient by the surplus to be credited to all employers. No portion of the surplus shall be credited to credit class 1.

"Class credit factor."

(5) The "Class credit factor" shall be the quotient obtained by dividing the portion of the surplus

assigned to any class of qualified employer by the sum of the payrolls of all employers in that class for the calendar year immediately preceding the computation date, such division being carried out to the fourth decimal place and the remaining fraction, if any, disregarded.

(6) The portion of the surplus which is to be credited to any qualified employer is the product obtained by multiplying his payroll in the calendar year immediately preceding the computation date by the class credit factor of his class.

Surplus to be credited to qualified employer.

(7) As soon as practicable after the effective date, each qualified employer shall be furnished a notice showing the amount of credit to which he is entitled, if any. The amount shown on the notice may be applied only against contributions which are payable by him on wages paid in the credit year and reported not later than the date prescribed by the commissioner for payment of contributions on wages paid in the last quarter of such credit year: *Provided, however,*

Notice of entitled credits.

Application of credits.

(a) When an employer or prospective employer has acquired all or substantially all the operating assets of a qualified employer, any unused portion of the experience rating credit of the transferring employing unit shall be transferred to the acquiring employer who may apply such acquired credit only upon contributions which accrue and become due from such employer by reason of employment occurring subsequent to the date of acquisition and prior to the end of the current credit year, or

(b) When an employer or prospective employer has acquired an operating department, section, division or any substantial portion of the business or assets of any employer, which is clearly segregable and identifiable, any unused portion of the experience rating credit of the transferring employing unit shall be divided between the transferring and acquir-

ing employers in proportion to the payroll for the four preceding completed calendar quarters attributable to the operating assets conveyed and retained and the acquiring employers may apply such acquired credit only upon contributions which accrue and become due from such employers by reason of employment occurring subsequent to the date of acquisition and prior to the end of the current credit year: *Provided further,*

(c) That the transferring employing unit has submitted all reports and has paid all contributions and interest due to the date of such acquisition.

Amendment.

SEC. 21. Section 50.28.050, RCW, as derived from section 4, chapter 235, Laws of 1949, as amended by section 17, chapter 215, Laws of 1951, is amended to read as follows:

Redetermination of credit allowed employer.

Within three years from the effective date the commissioner may reconsider the credit allowed any employer whenever he finds that there has been an error in the computation evident from the payroll data or other facts submitted by the employer prior to the cut-off date. When an increase is due, he shall issue to such employer a supplementary credit notice reflecting the increase in the employer's credit; however, when a credit notice has been issued to an employer whose credit is reduced, such notice shall be deemed canceled and a revised notice issued. If the credit shown by the incorrect notice has already been applied in payment of contributions in excess of the correct credit, the employer shall thereupon become liable for payment into the fund in an amount equal to the excess of the credit taken by him over the credit to which he is entitled and such amount shall be deemed and collected as contributions payable under this title.

Notice.

Corrections or modifications of employers payroll; effect.

Corrections or modifications of an employer's payroll shall not be taken into account for the purpose of an increase of his credit unless such corrections

or modifications were established on or before the cut-off date.

Corrections or modifications of an employer's payroll may be taken into account within three years after the cut-off date, for the purpose of his credit.

Increases or reductions of an employer's credit shall not affect the credits established or to be established for any other employer, and shall further not affect any other computation made under this title.

Other employers and other computations not affected.

SEC. 22. Section 50.36.010, RCW, as derived from section 180, chapter 35, Laws of 1945, is amended to read as follows:

Amendment.

It shall be unlawful for any person to knowingly give any false information or withhold any material information required under the provisions of this title. Any person who violates any of the provisions of this title which violation is declared to be unlawful, and for which no contrary provision is made, shall be guilty of a misdemeanor and shall be punished by a fine of not less than twenty dollars nor more than two hundred and fifty dollars or by imprisonment in the county jail for not more than ninety days: *Provided*, That any person who violates the provisions of RCW 50.40.010 shall be guilty of a gross misdemeanor.

Violations generally.

Any person who in connection with any compromise or offer of compromise wilfully conceals from any officer or employee of the state any property belonging to an employing unit which is liable for contributions, interest, or penalties, or receives, destroys, mutilates, or falsifies any book, document, or record, or makes under oath any false statement relating to the financial condition of the employing unit which is liable for contributions, shall upon conviction thereof be fined not more than five thousand dollars or be imprisoned for not more than one year, or both.

The penalty prescribed in this section shall not be deemed exclusive, but any act which shall constitute a crime under any law of this state may be the basis of prosecution under such law notwithstanding that it may also be the basis for prosecution under this section.

Amendment. SEC. 23. Section 50.36.020, RCW, as derived from section 181, chapter 35, Laws of 1945, is amended to read as follows:

Violations by employers.

Any person required under this title to collect, account for and pay over any contributions imposed by this title, who wilfully fails to collect or truthfully account for and pay over such contributions, and any person who wilfully attempts in any manner to evade or defeat any contributions imposed by this title or the payment thereof, shall, in addition to other penalties provided by law, upon conviction thereof, be fined not more than five thousand dollars, or imprisoned for not more than one year, or both, together with the costs of prosecution.

The term "person" as used in this section includes an officer or individual in the employment of a corporation, or a member or individual in the employment of a partnership, who as such officer, individual or member is under a duty to perform the act in respect of which the violation occurs. A corporation may likewise be prosecuted under this section and may be subjected to fine and payment of costs of prosecution as prescribed herein for a person.

Citation of act.

SEC. 24. Section 1, chapter 35, Laws of 1945 (uncodified), is amended to read as follows:

This act shall be known and may be cited as the "Employment Security Act."

Passed the House March 18, 1953.

Passed the Senate March 20, 1953.

Approved by the Governor March 27, 1953.