

longer required for the purposes of the ferry system, the ~~((authority))~~ department shall offer it for sale in the manner and with the authority authorized to the ~~((state highway commission))~~ department by RCW ~~((47.12.280))~~ 47.12.063 or section 1 of this 1979 act. The ~~((authority))~~ secretary of transportation may adopt rules further implementing this section ~~((as granted to the highway commission by RCW 47.12.280))~~. The proceeds of all such sales shall be paid into the separate trust fund of the state treasury established pursuant to RCW 47.60.150.

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 The following acts or parts of acts are each repealed:

- (1) Section 1, chapter 177, Laws of 1973 1st ex. sess., section 1, chapter 37, Laws of 1977 ex. sess. and RCW 47.12.280;
- (2) Section 6, chapter 177, Laws of 1973 1st ex. sess. and RCW 47.12-.310; and
- (3) Section 1, chapter 257, Laws of 1961 and RCW 47.56.252.

NEW SECTION. Sec. 8. This 1979 act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1979.

Passed the Senate April 2, 1979.

Passed the House May 9, 1979.

Approved by the Governor May 17, 1979.

Filed in Office of Secretary of State May 17, 1979.

## CHAPTER 190

[House Bill No. 650]

### UNEMPLOYMENT COMPENSATION PENALTIES

AN ACT Relating to unemployment compensation penalties; amending section 93, chapter 35, Laws of 1945 as last amended by section 9, chapter 158, Laws of 1973 1st ex. sess. and RCW 50.24.050; amending section 95, chapter 35, Laws of 1945 and RCW 50.24.070; amending section 96, chapter 35, Laws of 1945 and RCW 50.24.080; amending section 97, chapter 35, Laws of 1945 and RCW 50.24.090; amending section 98, chapter 35, Laws of 1945 as amended by section 20, chapter 214, Laws of 1949 and RCW 50.24.100; amending section 99, chapter 35, Laws of 1945 as amended by section 20, chapter 215, Laws of 1947 and RCW 50.24.110; amending section 15, chapter 228, Laws of 1975 1st ex. sess. and RCW 50.24.115; amending section 100, chapter 35, Laws of 1945 as last amended by section 5, chapter 266, Laws of 1959 and RCW 50.24.120; amending section 15, chapter 3, Laws of 1971 and RCW 50.24.125; amending section 101, chapter 35, Laws of 1945 as last amended by section 10, chapter 158, Laws of 1973 1st ex. sess. and RCW 50.24.130; amending section 102, chapter 35, Laws of 1945 and RCW 50.24.140; amending section 103, chapter 35, Laws of 1945 as amended by section 19, chapter 8, Laws of 1953 ex. sess. and RCW 50.24.150; amending section 106, chapter 35, Laws of 1945 and RCW 50.24.180; amending section 7, chapter 286, Laws of 1955 and RCW 50.24.190; amending section 8, chapter 286, Laws of 1955 and RCW 50.24.200; adding a new section to chapter 50.12 RCW; and prescribing penalties.

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

NEW SECTION. Section 1. There is added to chapter 50.12 RCW a new section to read as follows:

(1) If an employer fails to file in a timely and complete manner a report required by RCW 50.12.070 as now or hereafter amended or the rules adopted pursuant thereto, the employer shall be subject to a penalty of ten dollars per violation in addition to any other administrative, civil, or criminal sanctions which may apply.

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

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

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

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

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

(7) This section is applicable to contributions due and payable on wages paid after December 31, 1979, and tax reports which are due for the quarter ending March 31, 1980, and subsequent quarters.

Sec. 2. Section 93, chapter 35, Laws of 1945 as last amended by section 9, chapter 158, Laws of 1973 1st ex. sess. and RCW 50.24.050 are each amended to read as follows:

The claim of the (~~(unemployment compensation division)~~) employment security department for any contributions, (~~(including)~~) interest (~~(thereon)~~), or penalties not paid when due, shall be a lien prior to all other liens or claims and on a parity with prior tax liens against all property and rights to property, whether real or personal, belonging to the employer. In order to avail itself of the lien hereby created, the (~~(unemployment compensation division)~~) department shall file with any county auditor a statement and claim of lien specifying the amount of delinquent contributions (~~(and)~~), interest, and penalties claimed by the (~~(division)~~) department. From the time of filing for record, the amount required to be paid shall constitute a lien upon all property and rights to property, whether real or personal, in the county, owned by the employer or acquired by him. The lien shall not be valid against any purchaser, holder of a security interest, mechanic's lien, or judgment lien creditor until notice thereof has been filed with the county auditor. This lien shall be separate and apart from, and in addition to, any other lien or claim created by, or provided for in, this title. When any such notice of lien has been so filed, the commissioner may release the same by filing a certificate of release when it shall appear that the amount of delinquent contributions (~~(together with all)~~), interest (~~(thereon)~~), and penalties have been paid, or when such assurance of payment shall be made as the commissioner may deem to be adequate. Any lien filed as provided in this section may also be filed in the office of the secretary of state. Filing in the office of the secretary of state shall be of no effect, however, until the lien or copy thereof shall have been filed with the county auditor in the county where the property is located. When a lien is filed in compliance herewith and with the secretary of state, such filing shall have the same effect as if the lien had been duly filed for record in the office of the auditor in each county of this state. Fees for filing and releasing the lien provided herein may be charged to the employer and may be collected from the employer utilizing the remedies provided in this title for the collection of contributions.

Sec. 3. Section 95, chapter 35, Laws of 1945 and RCW 50.24.070 are each amended to read as follows:

At any time after the commissioner shall find that any contributions, (~~(or the)~~) interest (~~(thereon has)~~), or penalties have become delinquent, the commissioner may issue an order and notice of assessment specifying the amount due, which order and notice of assessment shall be served upon the delinquent employer in the manner prescribed for the service of a summons in a civil action, except that if the employer cannot be found within the state, said order and notice will be deemed to be served when mailed to the delinquent employer at his last known address by registered mail.

Sec. 4. Section 96, chapter 35, Laws of 1945 and RCW 50.24.080 are each amended to read as follows:

If the commissioner shall have reason to believe that an employer is insolvent or if any reason exists why the collection of any contributions accrued will be jeopardized by delaying collection, he may make an immediate assessment thereof and may proceed to enforce collection immediately, but interest and penalties shall not begin to accrue upon any contributions until the date when such contributions would normally have become delinquent.

Sec. 5. Section 97, chapter 35, Laws of 1945 and RCW 50.24.090 are each amended to read as follows:

If the amount of contributions ((~~or~~))<sub>2</sub> interest, or penalties assessed by the commissioner by order and notice of assessment provided in this title is not paid within ten days after the service or mailing of the order and notice of assessment, the commissioner or his duly authorized representative may collect the amount stated in said assessment by the distraint, seizure, and sale of the property, goods, chattels, and effects of said delinquent employer. There shall be exempt from distraint and sale under this section such goods and property as are exempt from execution under the laws of this state.

Sec. 6. Section 98, chapter 35, Laws of 1945 as amended by section 20, chapter 214, Laws of 1949 and RCW 50.24.100 are each amended to read as follows:

The commissioner, upon making a distraint, shall seize the property and shall make an inventory of the property distrained, a copy of which shall be mailed to the owner of such property or personally delivered to him, and shall specify the time and place when said property shall be sold. A notice specifying the property to be sold and the time and place of sale shall be posted in at least two public places in the county wherein the seizure has been made. The time of sale shall be not less than ten nor more than twenty days from the date of posting of such notices. Said sale may be adjourned from time to time at the discretion of the commissioner, but not for a time to exceed in all sixty days. Said sale shall be conducted by the commissioner or his authorized representative who shall proceed to sell such property by parcel or by lot at a public auction, and who may set a minimum price to include the expenses of making a levy and of advertising the sale, and if the amount bid for such property at the sale is not equal to the minimum price so fixed, the commissioner or his representative may declare such property to be purchased by the employment security department for such minimum price. In such event the delinquent account shall be credited with the amount for which the property has been sold. Property acquired by the employment security department as herein prescribed may be sold by the commissioner or his representative at public or private sale, and the amount realized shall be placed in the unemployment compensation trust fund.

In all cases of sale, as aforesaid, the commissioner shall issue a bill of sale or a deed to the purchaser and said bill of sale or deed shall be prima

facie evidence of the right of the commissioner to make such sale and conclusive evidence of the regularity of his proceeding in making the sale, and shall transfer to the purchaser all right, title, and interest of the delinquent employer in said property. The proceeds of any such sale, except in those cases wherein the property has been acquired by the employment security department, shall be first applied by the commissioner in satisfaction of the delinquent account, and out of any sum received in excess of the amount of delinquent contributions (~~(and)~~), interest, and penalties the administration fund shall be reimbursed for the costs of distraint and sale. Any excess which shall thereafter remain in the hands of the commissioner shall be refunded to the delinquent employer. Sums so refundable to a delinquent employer may be subject to seizure or distraint in the hands of the commissioner by any other taxing authority of the state or its political subdivisions.

Sec. 7. Section 99, chapter 35, Laws of 1945 as amended by section 20, chapter 215, Laws of 1947 and RCW 50.24.110 are each amended to read as follows:

The commissioner is hereby authorized to issue to any person, firm, corporation, political subdivision or department of the state, a notice and order to withhold and deliver property of any kind whatsoever when he has reason to believe that there is in the possession of such person, firm, corporation, political subdivision or department, property which is due, owing, or belonging to any person, firm, or corporation upon whom a notice and order of assessment has been served by the employment security department of the state for unemployment compensation contributions (~~(or)~~), interest, or penalties.

The notice and order to withhold and deliver shall be served by the sheriff of the county wherein the service is made, or by his deputy, or by any duly authorized representative of the commissioner. Any person, firm, corporation, political subdivision or department upon whom service has been made is hereby required to answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the notice.

In the event there is in the possession of any such person, firm, corporation, political subdivision or department, any property which may be subject to the claim of the employment security department of the state, such property shall be delivered forthwith to the commissioner or his duly authorized representative upon demand to be held in trust by the commissioner for application on the indebtedness involved or for return, without interest, in accordance with final determination of liability or nonliability, or in the alternative, there shall be furnished a good and sufficient bond satisfactory to the commissioner conditioned upon final determination of liability.

Should any person, firm or corporation fail to make answer to an order to withhold and deliver within the time prescribed herein, it shall be lawful

for the court, after the time to answer such order has expired, to render judgment by default against such person, firm or corporation for the full amount claimed by the commissioner in the notice to withhold and deliver, together with costs.

Sec. 8. Section 15, chapter 228, Laws of 1975 1st ex. sess. and RCW 50.24.115 are each amended to read as follows:

Whenever any order and notice of assessment or jeopardy assessment shall have become final in accordance with the provisions of this title the commissioner may file with the clerk of any county within the state a warrant in the amount of the notice of assessment plus interest and a filing fee of five dollars. The clerk of the county wherein the warrant is filed shall immediately designate a superior court cause number for such warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the employer mentioned in the warrant, the amount of the tax, interest, penalties, and filing fee and the date when such warrant was filed. The aggregate amount of such warrant as docketed shall become a lien upon the title to, and interest in all real and personal property of the employer against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of such clerk. Such warrant so docketed shall be sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state in the manner provided by law in the case of civil judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee of five dollars, which shall be added to the amount of the warrant, and charged by the commissioner to the employer or employing unit. A copy of the warrant shall be mailed to the employer or employing unit by certified mail to his last known address within five days of filing with the clerk.

Sec. 9. Section 100, chapter 35, Laws of 1945 as last amended by section 5, chapter 266, Laws of 1959 and RCW 50.24.120 are each amended to read as follows:

(1) If after due notice, any employer defaults in any payment of contributions ~~((or))~~, interest ~~((thereon))~~, or penalties, 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 title to collect contributions ~~((or))~~, interest ~~((thereon))~~, or penalties 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 action under this title. 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 action is pending.

(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))~~, or penalties for which liability has accrued under the employment security law of any other state or of the federal government.

Sec. 10. Section 15, chapter 3, Laws of 1971 and RCW 50.24.125 are each amended to read as follows:

Delinquent payments in lieu of contributions due the unemployment compensation fund and ~~((the))~~ interest ~~((thereon))~~ and penalties may be recovered from any of the political subdivisions of this state or any instrumentality of a political subdivision of this state by civil action. The governor is authorized to deduct the amount of delinquent payments in lieu of contributions and interest ~~((thereon))~~ and penalties from any moneys payable by the state to said political subdivisions or instrumentalities and pay such moneys to the commissioner for deposit in the appropriate account.

Sec. 11. Section 101, chapter 35, Laws of 1945 as last amended by section 10, chapter 158, Laws of 1973 1st ex. sess. and RCW 50.24.130 are each amended to read as follows:

No employing unit which contracts with or has under it any contractor or subcontractor who is an employer under the provisions of this title shall make any payment or advance to, or secure any credit for, such contractor or subcontractor or on account of any contract or contracts to which said employing unit is a party unless such contractor or subcontractor has paid contributions, due or to become due for wages paid or to be paid by such contractor or subcontractor for personal services performed pursuant to such contract or subcontract, or has furnished a good and sufficient bond acceptable to the commissioner for payment of contributions, ~~((including))~~ interest, and penalties. Failure to comply with the provisions of this section shall render said employing unit directly liable for such contributions ~~((and))~~, interest, and penalties and the commissioner shall have all of the remedies of collection against said employing unit under the provisions of

this title as though the services in question were performed directly for said employing unit.

Sec. 12. Section 102, chapter 35, Laws of 1945 and RCW 50.24.140 are each amended to read as follows:

Remedies given to the state under this title for the collection of contributions ~~((and))~~, interest, or penalties shall be cumulative and no action taken by the commissioner or his duly authorized representative, the attorney general, or any other officer shall be construed to be an election on the part of the state or any of its officers to pursue any remedy to the exclusion of any other.

Sec. 13. Section 103, chapter 35, Laws of 1945 as amended by section 19, chapter 8, Laws of 1953 ex. sess. and RCW 50.24.150 are each amended to read as follows:

No later than three years after the date on which any contributions ~~((or))~~, interest, or penalties have been paid, an employer who has paid such contributions ~~((or))~~, interest, or penalties 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, penalties, 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 June 20, 1953, that refunds of interest on delinquent contributions or penalties 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.

Sec. 14. Section 106, chapter 35, Laws of 1945 and RCW 50.24.180 are each amended to read as follows:

Any employer who shall be delinquent in the payment of contributions ~~((or))~~, interest, or penalties may be enjoined upon the suit of the state of Washington from continuing in business in this state or employing persons herein until the delinquent contributions ~~((and))~~, interest, and penalties shall have been paid, or until the employer shall have furnished a good and sufficient bond in a sum equal to double the amount of contributions ~~((and))~~, interest, and penalties already delinquent, plus such further sum as the court shall deem adequate to protect the ~~((unemployment compensation division))~~ department in the collection of contributions ~~((and))~~, interest,



and penalties which will become due from such employer during the next ensuing calendar year, said bond to be conditioned upon payment of all contributions ((and)), interest, and penalties due and owing within thirty days after the expiration of the next ensuing calendar year or at such earlier date as the court may fix.

Action pursuant to the provisions of this section may be instituted in the superior court of any county of the state wherein the employer resides, has its principal place of business, or where it has anyone performing services for it, whether or not such services constitute employment.

Sec. 15. Section 7, chapter 286, Laws of 1955 and RCW 50.24.190 are each amended to read as follows:

The commissioner shall commence action for the collection of contributions, interest, penalties, and benefit overpayments imposed by this title by assessment or suit within three years after a return is filed or notice of benefit overpayment is served. No proceedings for the collection of such amounts shall be begun after the expiration of such period.

In case of a false or fraudulent return with intent to evade contributions ((or)), interest, or penalties, or in the event of a failure to file a return, the contributions ((and)), interest, and penalties may be assessed or a proceeding in court for the collection thereof may be begun at any time.

Sec. 16. Section 8, chapter 286, Laws of 1955 and RCW 50.24.200 are each amended to read as follows:

The commissioner may charge off as uncollectible and no longer an asset of the unemployment compensation fund or the administrative contingency fund, as the case may be, any delinquent contributions, interests, penalties, credits, or benefit overpayments at any time after three years from the date of delinquency or service of notice of benefit overpayment, if the commissioner and the attorney general are satisfied that there are no available and lawful means by which such contributions, interest, penalties, credits, or benefit overpayments may thereafter be collected.

Passed the House May 7, 1979.

Passed the Senate May 4, 1979.

Approved by the Governor May 17, 1979.

Filed in Office of Secretary of State May 17, 1979.

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## CHAPTER 191

[Substitute House Bill No. 1013]

### COGENERATION—TAX CREDIT, EXEMPTION—NONPOLLUTING POWER GENERATION—REGULATION EXEMPTION

AN ACT Relating to energy and utilities regulation; amending section 80.04.010, chapter 14, Laws of 1961 as last amended by section 1, chapter 47, Laws of 1977 ex. sess. and RCW 80.04.010; adding a new chapter to Title 82 RCW; adding a new section to chapter 84.36 RCW; and creating new sections.