

NEW SECTION. Sec. 3. Section 29.51.210, chapter 9, Laws of 1965 and RCW 29.51.210 are each repealed.

Passed the House March 24, 1981.

Passed the Senate April 9, 1981.

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CHAPTER 35

[Substitute House Bill No. 307]

UNEMPLOYMENT COMPENSATION—ELIGIBILITY— DISQUALIFICATION—GOVERNMENTAL PAYMENT FINANCING— CORPORATE OFFICER EXEMPTION

AN ACT Relating to unemployment compensation; amending section 19, chapter 2, Laws of 1970 ex. sess. as last amended by section 1, chapter 74, Laws of 1980 and RCW 50.04.323; amending section 2, chapter 153, Laws of 1977 ex. sess. and RCW 50.13.020; amending section 68, chapter 35, Laws of 1945 as last amended by section 6, chapter 73, Laws of 1973 and RCW 50.20.010; amending section 73, chapter 35, Laws of 1945 as last amended by section 5, chapter 74, Laws of 1980 and RCW 50.20.050; amending section 80, chapter 35, Laws of 1945 as last amended by section 3, chapter 74, Laws of 1980 and RCW 50.20.120; amending section 87, chapter 35, Laws of 1945 as last amended by section 3, chapter 228, Laws of 1975 1st ex. sess. and RCW 50.20.190; amending section 2, chapter 1, Laws of 1971 as last amended by section 11, chapter 292, Laws of 1977 ex. sess. and RCW 50.22.010; amending section 3, chapter 1, Laws of 1971 and RCW 50.22.020; amending section 4, chapter 1, Laws of 1971 and RCW 50.22.030; amending section 120, chapter 35, Laws of 1945 as amended by section 8, chapter 73, Laws of 1973 and RCW 50.32.040; amending section 20, chapter 3, Laws of 1971 as last amended by section 14, chapter 292, Laws of 1977 ex. sess. and RCW 50.44.030; amending section 22, chapter 3, Laws of 1971 as last amended by section 2, chapter 74, Laws of 1980 and RCW 50.44.050; adding a new section to chapter 50.04 RCW; creating new sections; repealing section 10, chapter 33, Laws of 1977 ex. sess. and RCW 50.24.012; repealing section 22, chapter 292, Laws of 1977 ex. sess. and RCW 50.24.013; providing effective dates; and declaring an emergency.

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

Section 1. Section 19, chapter 2, Laws of 1970 ex. sess. as last amended by section 1, chapter 74, Laws of 1980 and RCW 50.04.323 are each amended to read as follows:

~~(((1) Any payments which an individual has claimed, is receiving or has received under a government or private retirement pension plan to which a base year employer has contributed on behalf of such individual shall reduce the unemployment compensation payable to him on the following basis:~~

~~(a) If such payment, prorated weekly, equals or exceeds the weekly benefit amount to which he would normally be entitled on the basis of his base year earnings then he shall be totally ineligible;~~

~~(b) If such payment, prorated weekly, is less than the weekly benefit amount to which he would normally be entitled on the basis of this title and regulations enacted pursuant thereto, his weekly benefit amount shall be reduced by the amount which his prorated weekly pension amount exceeds~~

twelve dollars. The reduced benefit amount so computed, if not a multiple of one dollar, shall be raised to the next higher multiple of one dollar.

(2) Any amounts deducted by reason of this section shall not be available for the payment of future benefits, that is, the individual's total benefit entitlement shall be reduced by the amount of benefits paid plus any amounts deducted pursuant to this section.

(3) Payments received under the old age and survivors insurance program contained in Title II of the federal social security act, as amended, payments received on account of disability rather than on account of age or length of service and, commencing with benefit years beginning on and after July 1, 1973, payments attributable to retirement pensions which are based in full on wages earned prior to the individual's base year shall not operate to reduce an individual's weekly benefit amount.

(4) Payments claimed or received under a government or a private pension plan shall not be considered wages subject to contributions under this title nor shall such payments be considered in determining base year wages.

(5) In the event that a retroactive pension or retirement plan covers a period in which an individual received benefits under the provisions of this title, the amount in excess of the amount to which such individual would have been entitled had such retirement or pension plan been considered as provided in this section shall be recoverable under RCW 50.20.190.

(6) A lump sum payment of funds, accumulated in an employer-participating government or private retirement pension plan paid to one eligible for retirement pension, shall be prorated over the life expectancy of the retiree as determined in such a manner as the commissioner may by regulation prescribe.

(7) Subsections (1), (2), and (3) of this section shall become inoperative and the weekly benefit amount payable to an individual shall be reduced by the entire prorated weekly amount of any governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on any previous work of such individual if such reduction is required under section 3302 of the United States Internal Revenue Code as a condition for employer credits against the tax imposed by section 3301 of the United States Internal Revenue Code:))

(1) The amount of benefits payable to an individual for any week which begins after October 3, 1980, and which begins in a period with respect to which such individual is receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on the previous work of such individual shall be reduced (but not below zero) by an amount equal to the amount of such pension, retirement or retired pay, annuity, or other payment, which is reasonably attributable to such week: PROVIDED, That

(a) The requirements of this subsection shall apply to any pension, retirement or retired pay, annuity, or other similar periodic payment only if—

(i) Such pension, retirement or retired pay, annuity, or similar payment is under a plan maintained (or contributed to) by a base period employer; and

(ii) In the case of such a payment not made under the Social Security Act or the Railroad Retirement Act of 1974 (or corresponding provisions of prior law), services performed for such employer by the individual after the beginning of the base period (or remuneration for such services) affect eligibility for, or increase the amount of, such pension, retirement or retired pay, annuity, or similar payment; and

(b) The amount of any such a reduction shall take into account contributions made by the individual for the pension, retirement or retired pay, annuity, or other similar periodic payment, in accordance with regulations prescribed by the commissioner.

(2) In the event that a retroactive pension or retirement payment covers a period in which an individual received benefits under the provisions of this title, the amount in excess of the amount to which such individual would have been entitled had such retirement or pension payment been considered as provided in this section shall be recoverable under RCW 50.20.190.

(3) A lump sum payment accumulated in a plan described in this section paid to an individual eligible for such payment shall be prorated over the life expectancy of the individual computed in accordance with the commissioner's regulation.

(4) Any ambiguity in subsection (1) of this section should be construed in a manner consistent with 26 U.S.C. Sec. 3304 (a)(15) as last amended by P.L. 96-364.

Sec. 2. Section 2, chapter 153, Laws of 1977 ex. sess. and RCW 50.13-.020 are each amended to read as follows:

Any information or records concerning an individual or employing unit obtained by the department of employment security pursuant to the administration of this title or other programs for which the department has responsibility shall be private and confidential, except as otherwise provided in this chapter. This chapter does not create a rule of evidence. ~~((The))~~ Information or records may be released by the department of employment security when the release is required by the federal government in connection with, or as a condition of funding for, a program being administered by the department ~~((for the federal government))~~. The provisions of RCW 50.13-.060 (1)(a), (b) and (c) will not apply to such release.

Sec. 3. Section 68, chapter 35, Laws of 1945 as last amended by section 6, chapter 73, Laws of 1973 and RCW 50.20.010 are each amended to read as follows:

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

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

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

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

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

(5) As to weeks beginning after March 31, 1981, which fall within an extended benefit period as defined in RCW 50.22.010(1), as now or hereafter amended, the individual meets the terms and conditions of RCW 50.22-.020, as now or hereafter amended, with respect to benefits claimed in excess of twenty-six times the individual's weekly benefit amount.

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

Sec. 4. Section 73, chapter 35, Laws of 1945 as last amended by section 5, chapter 74, Laws of 1980 and RCW 50.20.050 are each amended to read as follows:

(1) An individual shall be disqualified from benefits beginning with the first day of the calendar week in which he or she has left work voluntarily without good cause and thereafter until he or she has obtained bona fide work and earned wages of not less than his or her suspended weekly benefit amount in each of five calendar weeks.

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

(a) The duration of the work;

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

and

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

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

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

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

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

(4) Subsections (1) and (3) of this section shall not apply to an individual whose marital status or domestic responsibilities cause him or her to leave employment. Such an individual shall not be eligible for unemployment insurance benefits until he or she has requalified, either by obtaining bona fide work and earning wages of not less than the suspended weekly benefit amount in each of five calendar weeks or by reporting in person to the department during ten different calendar weeks and certifying on each occasion that he or she is ready, able, and willing to immediately accept any suitable work which may be offered, is actively seeking work pursuant to customary trade practices, and is utilizing such employment counseling and placement services as are available through the department.

Sec. 5. Section 80, chapter 35, Laws of 1945 as last amended by section 3, chapter 74, Laws of 1980 and RCW 50.20.120 are each amended to read as follows:

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

(2) An individual's weekly benefit amount shall be an amount equal to one twenty-fifth of the average quarterly wages of the individual's total wages during the two quarters of the individual's base year in which such total wages were highest. The maximum and minimum amounts payable weekly shall be determined as of each June 30th to apply to benefit years beginning in the twelve-month period immediately following such June 30th. The maximum amount payable weekly shall be fifty-five percent of the "average weekly wage" for the calendar year preceding such June 30th: PROVIDED, That if as of any June 30th the unemployment compensation trust fund balance has improved so that the employer contribution as determined pursuant to RCW 50.24.010 is less than three percent, the maximum amount payable weekly for benefit years beginning with the first full calendar week in July next following shall be sixty percent of the "average weekly wage" for the calendar year preceding such June 30. The minimum amount payable weekly shall be fifteen percent of the "average weekly wage" for the calendar year preceding June 30th. If any weekly benefit, maximum benefit, or minimum benefit amount computed herein is not a multiple of one dollar, it shall be adjusted to the nearest multiple of one dollar, except that if the computed amount ends in fifty cents, it shall be adjusted to the next higher multiple of one dollar.

Sec. 6. Section 87, chapter 35, Laws of 1945 as last amended by section 3, chapter 228, Laws of 1975 1st ex. sess. and RCW 50.20.190 are each amended to read as follows:

An individual who is paid any amount as benefits under this title to which he or she is not entitled shall, unless otherwise relieved pursuant to this section, be liable for repayment of the amount overpaid. The department shall issue an overpayment assessment setting forth the reasons for and the amount of the overpayment. The amount assessed, to the extent not collected, may be deducted from any future benefits payable to the individual: PROVIDED, That in the absence of 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 individual's benefit year in which the purported overpayment was made unless the merits of the claim are subjected to administrative or judicial review in which event the period for serving the determination of liability shall be extended to allow service of the determination of liability during the six-month period following the final decision affecting the claim.

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

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

writs of execution and writs of garnishment in favor of the state in the manner provided by law for a civil judgment. A copy of the warrant shall be mailed to the person(s) mentioned in the warrant by certified mail to the person's last known address within five days of its filing with the clerk.

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. 7. Section 2, chapter 1, Laws of 1971 as last amended by section 11, chapter 292, Laws of 1977 ex. sess. and RCW 50.22.010 are each amended to read as follows:

As used in this chapter, unless the context clearly indicates otherwise:

(1) "Extended benefit period" means a period which:

(a) Begins with the third week after whichever of the following weeks occurs first:

(i) A week for which there is a national "on" indicator; or

(ii) A week for which there is a state "on" indicator; and

(b) Ends with the third week after the first week for which there is both a national "off" indicator and a state "off" indicator: PROVIDED, That no extended benefit period shall last for a period of less than thirteen consecutive weeks, and further that no extended benefit period may begin by reason of a state "on" indicator before the fourteenth week after the close of a prior extended benefit period which was in effect with respect to this state.

(2) There is a "national 'on' indicator" for a week if the United States secretary of labor determines that for the period consisting of such week and the twelve weeks immediately preceding it, the rate of insured unemployment (seasonally adjusted) for all states equaled or exceeded four and five-tenths percent (determined by reference to the average monthly covered employment for the first four of the most recent six calendar quarters ending before the close of the period).

(3) There is a "national 'off' indicator" for a week if the United States secretary of labor determines that for the period consisting of such week

and the immediately preceding twelve weeks, the rate of insured unemployment (seasonally adjusted) for all states was less than four and five-tenths percent (determined by reference to the average monthly covered employment for the first four of the most recent six calendar quarters ending before the close of the period).

(4) There is a "state 'on' indicator" for this state for a week if the commissioner determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment (not seasonally adjusted) either:

(a) Equaled or exceeded one hundred twenty percent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years and equaled or exceeded four percent; or

(b) Equaled or exceeded five percent.

(5) There is a "state 'off' indicator" for this state for a week if the commissioner determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment (not seasonally adjusted) was either:

(a) Less than four percent; or

(b) Four percent or more but less than five percent and the rate of insured unemployment was less than one hundred twenty percent of the average of the rates for the corresponding thirteen week period ending in each of the two preceding calendar years.

(6) "Regular benefits" means benefits payable to an individual under this title or under any state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) other than extended benefits or additional benefits.

(7) "Extended benefits" means benefits payable for weeks of unemployment beginning in an extended benefit period to an individual under this title or under any state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) other than regular or additional benefits.

(8) "Additional benefits" are benefits totally financed by the state and payable under this title to exhaustees by reason of conditions of high unemployment or by reason of other special factors.

(9) "Eligibility period" of an individual means the period consisting of the weeks in his or her benefit year which begin in an extended benefit period that is in effect in this state and, if his or her benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(10) "Exhaustee" means an individual who, with respect to any week of unemployment in his or her eligibility period:

(a) Has received, prior to such week, all of the regular benefits that were payable to him or her under this title or any other state law (including dependents' allowances and regular benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85) in his or her current benefit year that includes such week; or

(b) Has received, prior to such week, all of the regular benefits that were available to him or her under this title or any other state law (including dependents' allowances and regular benefits available to federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85) in his or her current benefit year that includes such week, after the cancellation of some or all of his or her wage credits or the total or partial reduction of his or her rights to regular benefits: PROVIDED, That, for the purposes of (a) and (b), an individual shall be deemed to have received in his or her current benefit year all of the regular benefits that were payable to him or her, or available to him or her, as the case may be, even though:

(i) As a result of a pending appeal with respect to wages or employment, or both, that were not included in the original monetary determination with respect to his or her current benefit year, he or she may subsequently be determined to be entitled to more regular benefits; or

(ii) By reason of the seasonal provisions of another state law, he or she is not entitled to regular benefits with respect to such week of unemployment (although he or she may be entitled to regular benefits with respect to future weeks of unemployment in the next season, as the case may be, in his or her current benefit year), and he or she is otherwise an exhaustee within the meaning of this section with respect to his or her right to regular benefits under such state law seasonal provisions during the season or off season in which that week of unemployment occurs; or

(iii) Having established a benefit year, no regular benefits are payable to him or her during such year because his or her wage credits were canceled or his or her right to regular benefits was totally reduced as the result of the application of a disqualification; or

(c) His or her benefit year having ended prior to such week, he or she has insufficient wages or employment, or both, on the basis of which he or she could establish in any state a new benefit year that would include such week, or having established a new benefit year that includes such week, he or she is precluded from receiving regular benefits by reason of the provision in RCW 50.04.030 which meets the requirement of section 3304(a)(7) of the Federal Unemployment Tax Act, or the similar provision in any other state law; and

(d) (i) Has no right for such week to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, and such other federal laws as are specified in regulations issued by the United States secretary of labor; and

(ii) Has not received and is not seeking for such week unemployment benefits under the unemployment compensation law of (~~the Virgin Islands or~~) Canada, unless the appropriate agency finally determines that he or she is not entitled to unemployment benefits under such law for such week.

(11) "State law" means the unemployment insurance law of any state, approved by the United States secretary of labor under section 3304 of the internal revenue code of 1954.

Sec. 8. Section 3, chapter 1, Laws of 1971 and RCW 50.22.020 are each amended to read as follows:

~~(Except)~~ When the result would not be inconsistent with the other provisions of this chapter, the provisions of this title and commissioner's regulations enacted pursuant thereto, which apply to claims for, or the payment of, regular benefits, shall apply to claims for, and the payment of, extended benefits: PROVIDED, That

(1) Payment of extended compensation under this chapter shall not be made to any individual for any week of unemployment in his or her eligibility period—

(a) During which he or she fails to accept any offer of suitable work (as defined in subsection (3) of this section) or fails to apply for any suitable work to which he or she was referred by the employment security department; or

(b) During which he or she fails to actively engage in seeking work.

(2) If any individual is ineligible for extended compensation for any week by reason of a failure described in subsections (1)(a) or (1)(b) of this section, the individual shall be ineligible to receive extended compensation for any week which begins during a period which—

(a) Begins with the week following the week in which such failure occurs; and

(b) Does not end until such individual has been employed during at least four weeks which begin after such failure and the total of the remuneration earned by the individual for being so employed is not less than the product of four multiplied by the individual's weekly benefit amount (as determined under RCW 50.20.120) for his or her benefit year.

(3) For purposes of this section, the term "suitable work" means, with respect to any individual, any work which is within such individual's capabilities and which does not involve conditions described in RCW 50.20.110: PROVIDED, That if the individual furnishes evidence satisfactory to the employment security department that such individual's prospects for obtaining work in his or her customary occupation within a reasonably short period are good, the determination of whether any work is suitable work with respect to such individual shall be made in accordance with RCW 50.20.100.

(4) Extended compensation shall not be denied under subsection (1)(a) of this section to any individual for any week by reason of a failure to accept an offer of, or apply for, suitable work if:

(a) The gross average weekly remuneration payable to such individual for the position does not exceed the sum of—

(i) The individual's weekly benefit amount (as determined under RCW 50.20.120) for his or her benefit year; plus

(ii) The amount (if any) of supplemental unemployment compensation benefits (as defined in section 501(c)(17)(D) of the Internal Revenue Code of 1954, 26 U.S.C. Sec. 501(c)(17)(D)), payable to such individual for such week;

(b) The position was not offered to such individual in writing and was not listed with the employment security department;

(c) Such failure would not result in a denial of compensation under the provisions of RCW 50.20.080 and 50.20.100 to the extent such provisions are not inconsistent with the provisions of subsections (3) and (5) of this section; or

(d) The position pays wages less than the higher of—

(i) The minimum wage provided by section (6)(a)(1) of the Fair Labor Standards Act of 1938, without regard to any exemption; or

(ii) any applicable state or local minimum wage.

(5) For purposes of this section, an individual shall be treated as actively engaged in seeking work during any week if:

(a) The individual has engaged in a systematic and sustained effort to obtain work during such week; and

(b) The individual provides tangible evidence to the employment security department that he or she has engaged in such an effort during such week.

(6) The employment security department shall refer applicants for benefits under this chapter to any suitable work to which subsections (4)(a) through (4)(d) of this section would not apply.

(7) No provisions of this title which terminates a disqualification for voluntarily leaving employment, being discharged for misconduct, or refusing suitable employment shall apply for purposes of determining eligibility for extended compensation unless such termination is based upon employment subsequent to the date of such disqualification.

(8) The provisions of subsections (1) through (7) of this section shall apply with respect to weeks of unemployment beginning after March 31, 1981.

Sec. 9. Section 4, chapter 1, Laws of 1971 and RCW 50.22.030 are each amended to read as follows:

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

~~((1) He))~~ (a) The individual is an "exhaustee" as defined in RCW 50.22.010(13); and

~~((2))~~ (b) He or she has satisfied the requirements of this title for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits.

(2) An individual filing an interstate claim in any state under the interstate benefit payment plan shall not be eligible to receive extended benefits for any week beyond the first two weeks claimed for which extended benefits are payable unless an extended benefit period embracing such week is also in effect in the agent state.

Sec. 10. Section 120, chapter 35, Laws of 1945 as amended by section 8, chapter 73, Laws of 1973 and RCW 50.32.040 are each amended to read as follows:

In any proceeding before an appeal tribunal involving a dispute of an individual's initial determination, all matters covered by such initial determination shall be deemed to be in issue irrespective of the particular ground or grounds set forth in the notice of appeal.

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

In any proceeding before an appeal tribunal involving an individual's right to benefits, all parties shall be afforded an opportunity for hearing after not less than seven days' notice. This provision supersedes the twenty-day notice provision of RCW 34.04.090 as to such cases.

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

Sec. 11. Section 20, chapter 3, Laws of 1971 as last amended by section 14, chapter 292, Laws of 1977 ex. sess. and RCW 50.44.030 are each amended to read as follows:

(1) All services performed for any political subdivision or instrumentality of one or more political subdivisions of this state or one or more political subdivisions of this state and any other state after December 31, 1977, will be deemed to be services in employment to the extent coverage is not exempted under RCW 50.44.040.

(2) All such units of government shall file, before December 15, 1977, a written registration with the commissioner of the employment security department. Such registration shall specify the manner in which the unit of government will finance the payment of benefits. The elections available to counties, cities and towns are the local government tax, provided for in RCW 50.44.035, or payment in lieu of contributions, as described in RCW 50.44.060. The elections available to other units of government are the contributions plan in chapters 50.24 and 50.29 RCW, or payments in lieu of contributions, described in RCW 50.44.060. Under any election the governmental unit will be charged the full amount of regular ~~((and))~~, additional, and extended benefits attributable to its account ~~((plus one-half the amount of extended benefits so attributable. PROVIDED, HOWEVER, That beginning with weeks of unemployment commencing after January 1, 1979, the unit of government which is financing the payment of benefits under the payment in lieu of contributions option shall, in addition to paying the full amount of regular and additional benefits attributable to its account, pay the full amount of extended benefits so attributable))~~.

(3) A unit of government may switch from its current method of financing the payment of benefits by electing any other method which it would be authorized to select pursuant to the terms of subsection (2) of this section. Notification of such election must be filed with the commissioner no less than thirty days prior to the taxable year for which the new method of financing the payment of benefits is to be effective. An election under this section shall remain in effect for no less than two taxable years.

(4) Any political subdivision or instrumentality of more than one political subdivision of this state is hereby authorized to enter into agreements with other political subdivisions or instrumentalities of more than one political subdivision of this state to form pool accounts for the purpose of making payments in lieu of contributions. These accounts shall be formed and administered in accordance with applicable regulations. The formation of such accounts shall not relieve the governmental unit of the responsibility for making required payments in the event that the pool account does not make the payments.

Sec. 12. Section 22, chapter 3, Laws of 1971 as last amended by section 2, chapter 74, Laws of 1980 and RCW 50.44.050 are each amended to read as follows:

(1) Except as otherwise provided in subsections (1), (2) and (3) of this section, benefits based on services in employment covered by or pursuant to this chapter shall be payable on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this title. Benefits based on service in an instructional, research or principal administrative capacity in an educational institution shall not be paid to an individual for any week of unemployment which commences during the period between two successive academic years or terms (or, when an agreement provides instead for a similar period between two regular but not successive terms, during such period) to an individual if such individual performs such services in the first of such academic years or terms and if there is a contract or reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms. Any employee of a common school district who is presumed to be reemployed pursuant to RCW 28A.67.070 shall be deemed to have a contract for the ensuing term.

(2) Benefits shall not be paid based on services in any other capacity for an educational institution (other than an institution of higher education as defined in RCW 50.44.037) for any week of unemployment which commences during the period between two successive academic years or during a period between two successive academic years or terms, if such individual performs such services in the first of such academic years or terms and there is an individual contract or an individual written notice to the employee that the individual will perform such services in the second of such academic years or terms.

(3) Benefits shall not be paid based on any services described in subsections (1) and (2) of this section for any week of unemployment which commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess.

(4) Benefits shall not be paid (as specified in subsections (1), (2), or (3) of this section) based on any services described in subsections (1) or (2) of this section to any individual who performed such services in an educational institution while in the employ of an educational service district which is established pursuant to chapter 28A.21 RCW and exists to provide services to local school districts.

NEW SECTION. Sec. 13. There is added to chapter 50.04 RCW a new section to be codified as RCW 50.04.165 to read as follows:

At the discretion of the employer, services performed after September 30, 1981, in the capacity of corporate officers may not be considered services in employment. This exemption shall not apply to services performed by corporate officers that are covered by chapter 50.44 RCW.

NEW SECTION. Sec. 14. The following acts or parts of acts are each hereby repealed:

(1) Section 10, chapter 33, Laws of 1977 ex. sess. and RCW 50.24.012; and

(2) Section 22, chapter 292, Laws of 1977 ex. sess. and RCW 50.24.013.

NEW SECTION. Sec. 15. Sections 3, 5, and 8 of this 1981 amendatory act are being enacted to comply with the provisions of Pub. L. 96-499. Ambiguities in those sections should be interpreted in accordance with provisions of that federal law. Section 9 of this 1981 amendatory act is enacted pursuant to Pub. L. 96-364. Any ambiguities in that section should be construed in accordance with that federal law.

NEW SECTION. Sec. 16. Sections 1, 2, 3, 5, 8, and 12 of this amendatory act are 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 immediately; section 9 of this amendatory 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 with weeks beginning on and after June 1, 1981.

NEW SECTION. Sec. 17. If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the House April 16, 1981.

Passed the Senate April 13, 1981.

Approved by the Governor April 20, 1981.

Filed in Office of Secretary of State April 20, 1981.

CHAPTER 36

[House Bill No. 52]

SCHOOLS—VALID ORDERS TO LEAVE

AN ACT Relating to school districts; and amending section 1, chapter 100, Laws of 1975-'76 2nd ex. sess. and RCW 28A.87.055.

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

Section 1. Section 1, chapter 100, Laws of 1975-'76 2nd ex. sess. and RCW 28A.87.055 are each amended to read as follows:

(1) It shall be unlawful for any person to wilfully disobey the order of the chief administrative officer of a public school district, or of an authorized designee of any such administrator, to leave any motor vehicle, building, grounds or other property which is owned, operated or controlled by the school district if the person so ordered is under the influence of alcohol or