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**SENATE BILL 5176**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Senator Stanford

Prefiled 01/05/23.

1 AN ACT Relating to unemployment insurance benefits for officers  
2 of employee-owned cooperatives; amending RCW 50.24.160, 50.04.165,  
3 and 50.04.310; adding a new section to chapter 50.04 RCW; creating a  
4 new section; and providing an effective date.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 50.04  
7 RCW to read as follows:

8 "Employee-owned cooperative" means a cooperative organized under  
9 chapter 23.78, 23.86, or 23.100 RCW where the employees own the  
10 majority of the shares or stock or are the majority of the members in  
11 the cooperative.

12 **Sec. 2.** RCW 50.24.160 and 2013 c 75 s 1 are each amended to read  
13 as follows:

14 (1) Except as provided in RCW 50.04.165, any employing unit for  
15 which services that do not constitute employment as defined in this  
16 title are performed may file with the commissioner a written election  
17 that all such services performed by any distinct class or group of  
18 individuals or by all individuals in its employment in one or more  
19 distinct establishments or places of business shall be deemed to  
20 constitute employment for all the purposes of this title for at least

1 two calendar years. Upon the written approval of such election by the  
2 commissioner, such services shall be deemed to constitute employment  
3 subject to this title on and after the date stated in the approval.  
4 Services covered under this section shall cease to be deemed  
5 employment as of January 1st of any calendar year subsequent to the  
6 two((-))calendar year period, only if the employing unit files with  
7 the commissioner before January 15th of that year a written  
8 application for termination of coverage. Services for which an  
9 employing unit may elect coverage include, but are not limited to,  
10 maritime service as described in RCW 50.04.170.

11 (2) An employee-owned cooperative employing unit may file with  
12 the commissioner a written election that all such services performed  
13 by its corporate officers be deemed not to constitute employment for  
14 all the purposes of this title for at least two calendar years. Upon  
15 the written approval of such election by the commissioner, such  
16 services shall be deemed not to constitute employment subject to this  
17 title on and after the date stated in the approval. Services covered  
18 under this section will be deemed employment as of January 1st of any  
19 calendar year after the two calendar year period, only if the  
20 employing unit files with the commissioner before January 15th of  
21 that year a written application for election of coverage.

22 **Sec. 3.** RCW 50.04.165 and 2013 c 250 s 2 are each amended to  
23 read as follows:

24 ((Services)) (1)(a) Except as provided in subsection (2) of this  
25 section, services performed by a person appointed as an officer of a  
26 corporation under RCW 23B.08.400, other than those covered by  
27 chapters 50.44 and 50.50 RCW, shall not be considered services in  
28 employment.

29 (b) However, a corporation may elect to cover not less than all  
30 of its corporate officers under RCW 50.24.160. If an employer does  
31 not elect to cover its corporate officers under RCW 50.24.160, the  
32 employer must notify its corporate officers in writing that they are  
33 ineligible for unemployment benefits. However, if the employer fails  
34 to provide notice, the individual's status as a corporate officer is  
35 unchanged and the person remains ineligible for unemployment  
36 benefits.

37 (2)(a) Subsection (1)(a) of this section does not apply to  
38 persons appointed as officers of an employee-owned cooperative unless

1 the employee-owned cooperative elects not to cover all of its  
2 corporate officers under RCW 50.24.160.

3 (b) If an employee-owned cooperative elects not to cover its  
4 corporate officers under RCW 50.24.160, the employer must notify its  
5 corporate officers in writing that they are ineligible for  
6 unemployment benefits. However, if the employer fails to provide  
7 notice, the individual's status as a corporate officer is unchanged  
8 and the person remains ineligible for unemployment benefits.

9 **Sec. 4.** RCW 50.04.310 and 2013 c 66 s 1 are each amended to read  
10 as follows:

11 (1) An individual:

12 (a) Is "unemployed" in any week during which the individual  
13 performs no services and with respect to which no remuneration is  
14 payable to the individual, or in any week of less than full time  
15 work, if the remuneration payable to the individual with respect to  
16 such week is less than one and one-third times the individual's  
17 weekly benefit amount plus five dollars. The commissioner shall  
18 prescribe regulations applicable to unemployed individuals making  
19 such distinctions in the procedures as to such types of unemployment  
20 as the commissioner deems necessary.

21 (b) Is not "unemployed" in any week which falls totally within a  
22 period during which the individual, pursuant to a collective  
23 bargaining agreement or individual employment contract, is employed  
24 full time in accordance with a definition of full time contained in  
25 the agreement or contract, and for which compensation for full time  
26 work is payable. This subsection may not be applied retroactively to  
27 an individual who had no guarantee of work at the start of such  
28 period and subsequently is provided additional work by the employer.

29 (2) (a) An officer of a corporation who owns ten percent or more  
30 of the outstanding stock of the corporation, or a corporate officer  
31 who is a family member of an officer who owns ten percent or more of  
32 the outstanding stock of the corporation, whose claim for benefits is  
33 based on any wages with that corporation:

34 (i) Is not "unemployed" in any week during the individual's term  
35 of office or ownership in the corporation, even if wages are not  
36 being paid, unless the corporate officer's covered base year wages  
37 with that corporation are less than twenty-five percent of his or her  
38 total covered base year wages.

1 (ii) Is "unemployed" in any week upon dissolution of the  
2 corporation or if the officer permanently resigns or is permanently  
3 removed from their appointment and responsibilities with that  
4 corporation in accordance with its articles of incorporation or  
5 bylaws or if the corporate officer's covered base year wages with  
6 that corporation are less than twenty-five percent of his or her  
7 total covered base year wages.

8 (b) As used in this subsection (2), "family member" means persons  
9 who are members of a family by blood or marriage as parents,  
10 stepparents, grandparents, spouses, children, brothers, sisters,  
11 stepchildren, adopted children, or grandchildren.

12 (3) Subsection (2)(a) of this section does not apply to corporate  
13 officers of an employee-owned cooperative. For purposes of subsection  
14 (1)(a) of this section, a covered corporate officer of an employee-  
15 owned cooperative will not be considered to be performing services by  
16 acting only as a corporate officer of an employee-owned cooperative.

17 NEW SECTION. Sec. 5. If any part of this act is found to be in  
18 conflict with federal requirements that are a prescribed condition to  
19 the allocation of federal funds to the state or the eligibility of  
20 employers in this state for federal unemployment tax credits, the  
21 conflicting part of this act is inoperative solely to the extent of  
22 the conflict, and the finding or determination does not affect the  
23 operation of the remainder of this act. Rules adopted under this act  
24 must meet federal requirements that are a necessary condition to the  
25 receipt of federal funds by the state or the granting of federal  
26 unemployment tax credits to employers in this state.

27 NEW SECTION. Sec. 6. This act takes effect January 1, 2024.

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