

Chapter No. 302

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SENATE BILL NO. 2027

Originated in Senate *Hermio Bugner* Secretary

SENATE BILL NO. 2027

AN ACT TO AMEND SECTIONS 71-5-353 AND 71-5-355, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE MISSISSIPPI DEPARTMENT OF EMPLOYMENT SECURITY TO MODIFY UNEMPLOYMENT INSURANCE RATES FOR CONTINUATION OF THE WORKFORCE ENHANCEMENT TRAINING FUND PROGRAM FOLLOWING DECEMBER 31, 2009; TO PROVIDE FOR INDICES APPLICABLE TO UNEMPLOYMENT INSURANCE TRUST FUND TAXATION AND PROVIDE FOR THE RATE OF CONTRIBUTIONS FOR WORKFORCE ENHANCEMENT TRAINING FUND CONTRIBUTIONS; TO PROVIDE CONDITIONS FOR THE SUSPENSION OF THE WORKFORCE ENHANCEMENT TRAINING FUND CONTRIBUTIONS IN YEARS SUBSEQUENT TO 2009, AND TO PROVIDE CERTAIN DEFINITIONS; TO REVISE THE DEFINITION OF THE TERMS "COST RATE CRITERION" AND "SIZE OF FUND INDEX" FOR PURPOSES OF THE MISSISSIPPI EMPLOYMENT SECURITY LAW; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 71-5-353, Mississippi Code of 1972, is amended as follows:

71-5-353. (1) Each employer shall pay contributions equal to five and four-tenths percent (5.4%) of taxable wages paid by him each calendar year, except as may be otherwise provided in Section 71-5-361 and except that each newly subject employer shall pay contributions at the rate of two and seven-tenths percent (2.7%) of taxable wages until his experience-rating record has been chargeable throughout not less than the twelve (12) consecutive calendar months ending on the computation date; thereafter his contribution rate shall be determined in accordance with the provisions of Section 71-5-355. However, during years that the Workforce Enhancement Training contribution is in effect, each newly subject employer shall have a tax rate assigned at two and four-tenths percent (2.4%), to which will be added the three-tenths of one percent (.3%) as prescribed in subsection (5) of this section.

(2) Unless eligible for a modified rate as described in Section 71-5-355 of this chapter, each employer, as defined by Section 71-5-11(H) of this chapter, engaged in an employee leasing arrangement, with an employee leasing firm, on June 30, 1998, will be assigned a contributions rate of one and five-tenths percent (1.5%) for the calendar year 1999, and subsequent calendar years, until the employer is eligible for a modified rate, as described in Section 71-5-355 of this chapter, based on experience accumulated subsequent to December 31, 1998.

The department shall notify all employers, active in the department files and currently reporting, of the provisions of this paragraph, at their last known mailing address on or before August 15, 1998. All employee leasing firms shall report to the department the name, the federal identification number, mailing address, physical location address and telephone number of all their clients on or before October 15, 1998. Any employee leasing firm failing to comply with the provisions of this paragraph may be assessed an amount equal to one-half of one percent (1/2 of 1%) of total wages, or Five Hundred Dollars (\$500.00), whichever is greater, for each client that the employee leasing firm fails to report. Collection of the above mentioned penalty shall be in conformity with department regulations.

(3) From and after January 1, 2005, through December 31, 2009, contribution rates assigned to employers by the department, as determined pursuant to Sections 71-5-351, 71-5-353 and 71-5-355, shall be reduced by three-tenths of one percent (.3%). Such reduction shall only apply to employers whose contribution rate, determined in accordance with Sections 71-5-353 and 71-5-355, is equal to or less than five and four-tenths percent (5.4%), and shall include a three-tenths of one percent (.3%) reduction to the rate as a result of violation of provisions of this chapter. The reduction in rates provided for herein shall not apply to state boards, instrumentalities and political

subdivisions of the State of Mississippi referred to in Sections 71-5-357 and 71-5-359, or to nonprofit employers providing reimbursement to the department for the unemployment fund pursuant to Section 71-5-357(a). * * *

* * *

(4) (a) From and after January 1, 2005, through December 31, 2009, the workforce enhancement contributions shall be applied at a rate of three-tenths of one percent (.3%) upon the taxable wages as defined by Section 71-5-351, however, the workforce enhancement contribution shall not be applied to state boards, instrumentalities and political subdivisions of the State of Mississippi referred to in Sections 71-5-357 and 71-5-359, or to nonprofit employers providing reimbursement to the department for the unemployment fund pursuant to Section 71-5-357(a).

(b) There is hereby created in the Treasury of the State of Mississippi a special fund to be known as the "Mississippi Workforce * * * Enhancement Training Fund," which consists of funds collected pursuant to this subsection (4) and subsection (5) of this section. Funds collected shall initially be deposited into the Mississippi Department of Employment Security tax bank account for clearing contribution collections and subsequently transferred to the Mississippi Workforce * * * Enhancement Training Fund holding account described in Section 71-5-453. In the event any employer pays an amount insufficient to cover the total contributions due, the amounts due shall be satisfied in the following order:

- (i) Unemployment contributions; then
- (ii) Workforce * * * enhancement training contributions; then
- (iii) Interest and damages.

Cost of collection and administration of the workforce enhancement training contribution shall be allocated based on a plan approved by the United States Department of Labor (USDOL) and

shall be paid to the Mississippi Department of Employment Security semiannually by the State Board for Community and Junior Colleges for periods ending in December and June of each year. Payment shall be made to the department no later than sixty (60) days after the billing date.

(c) Except as otherwise provided in subsection (5) of this section, all monies collected will be initially deposited into the Mississippi Department of Employment Security bank account for clearing contribution collections and subsequently transferred to the Mississippi Workforce * * * Enhancement Training Fund holding account and will be held by the Mississippi Department of Employment Security in such account for a period of not less than sixty (60) days. After such period, funds shall be transferred within thirty (30) days to the Mississippi Workforce Enhancement Training Fund in a manner determined by the department. Interest earnings or interest credits on deposit amounts shall be retained in the holding account to pay the banking costs of the account. If after the period of twelve (12) months interest earnings less banking costs exceeds Ten Thousand Dollars (\$10,000.00), such excess amounts shall be transferred to the Mississippi Workforce Enhancement Training Fund treasury account within thirty (30) days. Such transfers shall occur once annually, during the month of January.

(d) All enforcement procedures for the collection of delinquent contributions contained in Sections 71-5-363 through 71-5-383 shall be applicable in all respects for collections of delinquent contributions designated for the Unemployment Compensation Fund and the Mississippi Workforce * * * Enhancement Training Fund.

(e) All monies deposited into the Mississippi Workforce Enhancement Training Fund shall be utilized exclusively by the State Board for Community and Junior Colleges in accordance with the Workforce Training Act of 1994 (Section 37-153-1 et seq.) and

the annual plan developed by the State Workforce Investment Board for the following purposes: to provide training at no charge to employers and employees in order to enhance employee productivity. Such training may be subject to a minimal administrative fee to be paid from the Mississippi Workforce Enhancement Training Fund as established by the State Workforce Investment Board subject to the advice of the State Board for Community and Junior Colleges. The initial priority of these funds shall be for the benefit of existing businesses located within the state. Employers may request training for existing employees and/or newly hired employees from the State Board for Community and Junior Colleges. The State Board for Community and Junior Colleges will be responsible for approving the training.

* * *

(5) The following procedure shall apply for tax years subsequent to December 31, 2009:

(a) Workforce Enhancement Training contributions shall be collected at a rate of three-tenths of one percent (.3%) based upon taxable wages as defined in Section 71-5-351, Mississippi Code of 1972, unless such contribution rate added to the employers unemployment general experience rate plus his individual experience rate will cause the total contribution rate to exceed five and four-tenths percent (5.4%). In that event, the Workforce Enhancement Training contribution rate will be reduced as necessary to prevent the total contribution rate (the general experience rate plus the individual experience rate plus the Workforce Enhancement Training rate) of any employer from exceeding five and four-tenths percent (5.4%). In no event will the Workforce Enhancement Training contribution rate be a negative number.

(b) All Workforce Enhancement Training contributions collected shall be deposited initially into the Mississippi Department of Employment Security bank account for clearing

contribution collections and shall within two (2) business days be transferred to the Workforce Enhancement Training Fund holding account. Any Workforce Enhancement Training contribution transactions from the Mississippi Department of Employment Security account for clearing contribution collections that are deposited into the Workforce Enhancement Training Fund holding account and are not honored by a financial institution will be transferred back to the Mississippi Department of Employment Security account for clearing contribution collections out of funds in the Workforce Enhancement Training Fund holding account.

(c) For rate years subsequent to December 31, 2009, suspension of the Workforce Enhancement Training contributions required pursuant to this subsection (5) shall occur if the insured unemployment rate exceeds an average of five and five-tenths percent (5.5%) for the three (3) consecutive months immediately preceding the effective date of the new rate year and shall remain suspended throughout the duration of that rate year. Such suspension shall continue until such time as the three (3) consecutive months immediately preceding the effective date of any subsequent rate year has an insured unemployment rate of less than an average of four and five-tenths percent (4.5%).

(6) All collections due or accrued prior to any suspension of the Workforce Enhancement Training Fund will be collected based upon the law at the time the contributions accrued, regardless of when they are actually due or collected.

SECTION 2. Section 71-5-355, Mississippi Code of 1972, is amended as follows:

71-5-355. (1) As used in this section, the following words and phrases shall have the following meanings, unless the context clearly requires otherwise:

(a) "Tax year" means any period beginning on January 1 and ending on December 31 of a year.

(b) "Computation date" means June 30 of any calendar year immediately preceding the tax year during which the particular contribution rates are effective.

(c) "Effective date" means January 1 of the tax year.

(d) Except as hereinafter provided, "payroll" means the total of all wages paid for employment by an employer as defined in Section 71-5-11, subsection H, plus the total of all remuneration paid by such employer excluded from the definition of wages by Section 71-5-351. For the computation of modified rates, "payroll" means the total of all wages paid for employment by an employer as defined in Section 71-5-11, subsection H.

(e) For the computation of modified rates, "eligible employer" means an employer whose experience-rating record has been chargeable with benefits throughout the thirty-six (36) consecutive calendar-month period ending on the computation date, except that any employer who has not been subject to the Mississippi Employment Security Law for a period of time sufficient to meet the thirty-six (36) consecutive calendar-month requirement shall be an eligible employer if his experience-rating record has been chargeable throughout not less than the twelve (12) consecutive calendar-month period ending on the computation date. No employer shall be considered eligible for a contribution rate less than five and four-tenths percent (5.4%) with respect to any tax year, who has failed to file any two (2) quarterly reports within the qualifying period by September 30 following the computation date. No employer or employing unit shall be eligible for a contribution rate of less than five and four-tenths percent (5.4%) for the tax year in which the employing unit is found by the department to be in violation of Section 71-5-19(2) or (3) and for the next two (2) succeeding tax years. No representative of such employing unit who was a party to a violation as described in Section 71-5-19(2) or (3), if such representative was or is an employing unit in this state, shall be eligible for a contribution

rate of less than five and four-tenths percent (5.4%) for the tax year in which such violation was detected by the department and for the next two (2) succeeding tax years.

(f) With respect to any tax year, "reserve ratio" means the ratio which the total amount available for the payment of benefits in the Unemployment Compensation Fund, excluding any amount which has been credited to the account of this state under Section 903 of the Social Security Act, as amended, and which has been appropriated for the expenses of administration pursuant to Section 71-5-457 whether or not withdrawn from such account, on September 1 of each calendar year bears to the aggregate of the taxable payrolls of all employers for the twelve (12) calendar months ending on June 30 next preceding.

(g) "Modified rates" means the rates of employer contributions determined under the provisions of this chapter and the rates of newly subject employers, as provided in Section 71-5-353.

(h) For the computation of modified rates, "qualifying period" means a period of not less than the thirty-six (36) consecutive calendar months ending on the computation date throughout which an employer's experience-rating record has been chargeable with benefits; except that with respect to any eligible employer who has not been subject to this article for a period of time sufficient to meet the thirty-six (36) consecutive calendar-month requirement, "qualifying period" means the period ending on the computation date throughout which his experience-rating record has been chargeable with benefits, but in no event less than the twelve (12) consecutive calendar-month period ending on the computation date throughout which his experience-rating record has been so chargeable.

(i) The "exposure criterion" (EC) is defined as the cash balance of the Unemployment Compensation Fund which is available for the payment of benefits as of September 1 of each

calendar year, divided by the total wages, exclusive of wages paid by all state agencies, all political subdivisions, reimbursable nonprofit corporations, and tax-exempt public service employment, for the twelve-month period ending June 30 immediately preceding such date. The EC shall be computed to four (4) decimal places and rounded up if any fraction remains.

(j) The "cost rate criterion" (CRC) is defined as follows: Beginning with January 1974, the benefits paid for the twelve-month period ending December 1974 are summed and divided by the total wages for the twelve-month period ending on June 30, 1975. Similar ratios are computed by subtracting the earliest month's benefit payments and adding the benefits of the next month in the sequence and dividing each sum of twelve (12) months' benefits by the total wages for the twelve-month period ending on the June 30 which is nearest to the final month of the period used to compute the numerator. If December is the final month of the period used to compute the numerator, then the twelve-month period ending the following June 30 will be used for the denominator. * * * Benefits and total wages used in the computation of the cost rate criterion shall exclude all benefits and total wages applicable to state agencies, political subdivisions, reimbursable nonprofit corporations, and tax-exempt PSE employment.

The CRC shall be computed as the average for the highest monthly value of the cost rate criterion computations during each of the economic cycles since the calendar year 1974 as defined by the National Bureau of Economic Research. The CRC shall be computed to four (4) decimal places and any remainder shall be rounded up.

The CRC shall be adjusted only through annual computations and additions of future economic cycles. * * *

(k) "Size of fund index" (SOFI) is defined as the ratio of the exposure criterion (EC) to the cost rate criterion (CRC).

For years following December 31, 2009, the target size of fund will be fixed at 1.0. * * *

(1) No employer's contribution rate shall exceed five and four-tenths percent (5.4%), nor be less than four-tenths of one percent (.4%). However, from and after January 1, 2005, * * * through December 31, 2009, no employer's unemployment contribution rate shall be less than one-tenth of one percent (.1%).

(2) Modified rates:

(a) For any tax year, when the reserve ratio on the preceding November 1, in the case of any tax year, equals or exceeds four percent (4%), the modified rates, as hereinafter prescribed, shall be in effect. In computation of this reserve ratio, any remainder shall be rounded down.

(b) Modified rates shall be determined for the tax year for each eligible employer on the basis of his experience-rating record in the following manner:

(i) The department shall maintain an experience-rating record for each employer. Nothing in this chapter shall be construed to grant any employer or individuals performing services for him any prior claim or rights to the amounts paid by the employer into the fund.

(ii) Benefits paid to an eligible individual shall be charged against the experience-rating record of his base period employers in the proportion to which the wages paid by each base period employer bears to the total wages paid to the individual by all the base period employers, provided that benefits shall not be charged to an employer's experience-rating record if the department finds that the individual:

1. Voluntarily left the employ of such employer without good cause attributable to the employer;
2. Was discharged by such employer for misconduct connected with his work;

3. Refused an offer of suitable work by such employer without good cause, and the department further finds that such benefits are based on wages for employment for such employer prior to such voluntary leaving, discharge or refusal of suitable work, as the case may be;

4. Had base period wages which included wages for previously uncovered services as defined in Section 71-5-511(e) to the extent that the Unemployment Compensation Fund is reimbursed for such benefits pursuant to Section 121 of Public Law 94-566;

5. Extended benefits paid under the provisions of Section 71-5-541 which are not reimbursable from federal funds shall be charged to the experience-rating record of base period employers;

6. Is still working for such employer on a regular part-time basis under the same employment conditions as hired. Provided, however, that benefits shall be charged against an employer if an eligible individual is paid benefits who is still working for such employer on a part-time "as-needed" basis;

7. Was hired to replace a United States serviceman or servicewoman called into active duty and was laid off upon the return to work by that serviceman or servicewoman, unless such employer is a state agency or other political subdivision or instrumentality of the state;

8. Was paid benefits during any week while in training with the approval of the department, under the provisions of Section 71-5-513B, or for any week while in training approved under Section 236(a)(1) of the Trade Act of 1974, under the provisions of Section 71-5-513C; or

9. Is not required to serve the one-week waiting period as described in Section 71-5-505(2). In that event, only the benefits paid in lieu of the waiting period week may be noncharged.

(iii) The department shall compute a benefit ratio for each eligible employer, which shall be the quotient obtained by dividing the total benefits charged to his experience-rating record during the period his experience-rating record has been chargeable, but not less than the twelve (12) consecutive calendar-month period nor more than the thirty-six (36) consecutive calendar-month period ending on the computation date, by his total taxable payroll for the same period on which all contributions due have been paid on or before the September 30 immediately following the computation date. Such benefit ratio shall be computed to the tenth of a percent (.1%), rounding any remainder to the next higher tenth.

The following table shall be applied to reduce contribution rates * * * from and after January 1, 2005, through December 31, 2009, and is not intended for use for any rate years subsequent to December 31, 2009:

| Benefit Ratio | Individual Experience Rate: |
|---------------|-----------------------------|
| 0.0% | - 0.3% |
| 0.1 | - 0.2 |
| 0.2 | - 0.10 |
| 0.3 | 0.0 |
| 0.4 | 0.1 |
| 0.5 | 0.2 |
| 0.6 | 0.3 |
| 0.7 | 0.4 |
| 0.8 | 0.5 |
| 0.9 | 0.6 |
| 1.0 | 0.7 |
| 1.1 | 0.8 |
| 1.2 | 0.9 |
| 1.3 | 1.0 |
| 1.4 | 1.1 |
| 1.5 | 1.2 |

| | |
|-----|-----|
| 1.6 | 1.3 |
| 1.7 | 1.4 |
| 1.8 | 1.5 |
| 1.9 | 1.6 |
| 2.0 | 1.7 |
| 2.1 | 1.8 |
| 2.2 | 1.9 |
| 2.3 | 2.0 |
| 2.4 | 2.1 |
| 2.5 | 2.2 |
| 2.6 | 2.3 |
| 2.7 | 2.4 |
| 2.8 | 2.5 |
| 2.9 | 2.6 |
| 3.0 | 2.7 |
| 3.1 | 2.8 |
| 3.2 | 2.9 |
| 3.3 | 3.0 |
| 3.4 | 3.1 |
| 3.5 | 3.2 |
| 3.6 | 3.3 |
| 3.7 | 3.4 |
| 3.8 | 3.5 |
| 3.9 | 3.6 |
| 4.0 | 3.7 |
| 4.1 | 3.8 |
| 4.2 | 3.9 |
| 4.3 | 4.0 |
| 4.4 | 4.1 |
| 4.5 | 4.2 |
| 4.6 | 4.3 |
| 4.7 | 4.4 |
| 4.8 | 4.5 |

| | |
|---------------|-----|
| 4.9 | 4.6 |
| 5.0 | 4.7 |
| 5.1 | 4.8 |
| 5.2 | 4.9 |
| 5.3 | 5.0 |
| 5.4 | 5.1 |
| 5.5 | 5.2 |
| 5.6 | 5.3 |
| 5.7 and above | 5.4 |

(iv) 1. The unemployment insurance contribution rate for each eligible employer shall be the sum of two (2) rates: his individual experience rate in the range from zero percent (0%) to five and four-tenths percent (5.4%), plus a general experience rate. In no event shall the resulting rate be in excess of five and four-tenths percent (5.4%), however it is the intent of this section to provide the ability for employers to have a tax rate, the general experience rate plus the individual experience rate, of up to five and four-tenths percent (5.4%).

2. The employer's individual experience rate shall be equal to his benefit ratio as computed under subsection (2)(b)(iii) above.

3. The general experience rate shall be determined in the following manner: The department shall determine annually, for the thirty-six (36) consecutive calendar-month period ending on the computation date, the amount of benefits which were not charged to the record of any employer and of benefits which were ineffectively charged to the employer's experience-rating record. For the purposes of subsection (2)(b)(iv)3, the term "ineffectively charged benefits" shall include:

a. The total of the amounts of benefits charged to the experience-rating records of all eligible employers

which caused their benefit ratios to exceed five and four-tenths percent (5.4%);

b. The total of the amounts of benefits charged to the experience-rating records of all ineligible employers which would cause their benefit ratios to exceed five and four-tenths percent (5.4%) if they were eligible employers; and

c. The total of the amounts of benefits charged or chargeable to the experience-rating record of any employer who has discontinued his business or whose coverage has been terminated within such period; provided, that solely for the purposes of determining the amounts of ineffectively charged benefits as herein defined, a "benefit ratio" shall be computed for each ineligible employer, which shall be the quotient obtained by dividing the total benefits charged to his experience-rating record throughout the period ending on the computation date, during which his experience-rating record has been chargeable with benefits, by his total taxable payroll for the same period on which all contributions due have been paid on or before the September 30 immediately following the computation date; and provided further, that such benefit ratio shall be computed to the tenth of one percent (.1%) and any remainder shall be rounded to the next higher tenth.

The ratio of the sum of these amounts (subsection (2) (b) (iv) 3a, b and c) to the taxable wages paid during the same period by all eligible employers whose benefit ratio did not exceed five and four-tenths percent (5.4%), computed to the next higher tenth of one percent (.1%), shall be the general experience rate.

4. The general experience rate shall be adjusted by use of the size of fund index factor. This factor may be positive or negative, and shall be determined as follows: From the target SOFI, as defined in subsection (1) (k) of this section,

subtract the simple average of the current and preceding years' exposure criterions divided by the cost rate criterion, as defined in subsection (1)(j) of this section. The result is then multiplied by the product of the CRC, as defined in subsection (1)(j) of this section, and total wages for the twelve-month period ending June 30 divided by the taxable wages for the twelve-month period ending June 30. This is the percentage positive or negative added to the general experience rate. This percentage is computed to one (1) decimal place, and rounded to the next higher tenth.

5. Notwithstanding any other provisions of subsection (2)(b)(iv), if the general experience rate for any tax year as computed and adjusted on the basis of the size of fund index is a negative percentage, it shall be disregarded.

6. The department shall include in its annual rate notice to employers a brief explanation of the elements of the general experience rate, and shall include in its regular publications an annual analysis of benefits not charged to the record of any employer, and of the benefit experience of employers by industry group whose benefit ratio exceeds four percent (4%), and of any other factors which may affect the size of the general experience rate.

(v) When any employing unit in any manner succeeds to or acquires the organization, trade, business or substantially all the assets thereof of an employer, excepting any assets retained by such employer incident to the liquidation of his obligations, whether or not such acquiring employing unit was an employer within the meaning of Section 71-5-11, subsection H, prior to such acquisition, and continues such organization, trade or business, the experience-rating and payroll records of the predecessor employer shall be transferred as of the date of acquisition to the successor employer for the purpose of rate determination.

(vi) When any employing unit succeeds to or acquires a distinct and severable portion of an organization, trade or business, the experience-rating and payroll records of such portion, if separately identifiable, shall be transferred to the successor upon:

1. The mutual consent of the predecessor and the successor;

2. Approval of the department;

3. Continued operation of the transferred portion by the successor after transfer; and

4. The execution and the filing with the department by the predecessor employer of a waiver relinquishing all rights to have the experience-rating and payroll records of the transferred portion used for the purpose of determining modified rates of contribution for such predecessor.

(vii) If the successor was an employer subject to this chapter prior to the date of acquisition, it shall continue to pay contributions at the rate applicable to it from the date the acquisition occurred until the end of the then current tax year. If the successor was not an employer prior to the date of acquisition, it shall pay contributions at the rate applicable to the predecessor or, if more than one (1) predecessor and the same rate is applicable to both, the rate applicable to the predecessor or predecessors, from the date the acquisition occurred until the end of the then current tax year. If the successor was not an employer prior to the date the acquisition occurred and simultaneously acquires the businesses of two (2) or more employers to whom different rates of contributions are applicable, it shall pay contributions from the date of the acquisition until the end of the current tax year at a rate computed on the basis of the combined experience-rating and payroll records of the predecessors as of the computation date for such tax year. In all cases the rate of contributions applicable to such successor for

each succeeding tax year shall be computed on the basis of the combined experience-rating and payroll records of the successor and the predecessor or predecessors.

(viii) The department shall notify each employer quarterly of the benefits paid and charged to his experience-rating record; and such notification, in the absence of an application for redetermination filed within thirty (30) days after the date of such notice, shall be final, conclusive and binding upon the employer for all purposes. A redetermination, made after notice and opportunity for a fair hearing, by a hearing officer designated by the department who shall consider and decide these and related applications and protests; and the finding of fact in connection therewith may be introduced into any subsequent administrative or judicial proceedings involving the determination of the rate of contributions of any employer for any tax year, and shall be entitled to the same finality as is provided in this subsection with respect to the findings of fact in proceedings to redetermine the contribution rate of an employer.

(ix) The department shall notify each employer of his rate of contribution as determined for any tax year as soon as reasonably possible after September 1 of the preceding year. Such determination shall be final, conclusive and binding upon such employer unless, within thirty (30) days after the date of such notice to his last known address, the employer files with the department an application for review and redetermination of his contribution rate, setting forth his reasons therefor. If the department grants such review, the employer shall be promptly notified thereof and shall be afforded an opportunity for a fair hearing by a hearing officer designated by the department who shall consider and decide these and related applications and protests; but no employer shall be allowed, in any proceeding involving his rate of contributions or contribution liability, to contest the chargeability to his account of any benefits paid in

accordance with a determination, redetermination or decision pursuant to Sections 71-5-515 through 71-5-533 except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute services performed in employment for him, and then only in the event that he was not a party to such determination, redetermination, decision or to any other proceedings provided in this chapter in which the character of such services was determined. The employer shall be promptly notified of the denial of this application or of the redetermination, both of which shall become final unless, within ten (10) days after the date of notice thereof, there shall be an appeal to the department itself. Any such appeal shall be on the record before said designated hearing officer, and the decision of said department shall become final unless, within thirty (30) days after the date of notice thereof to the employer's last known address, there shall be an appeal to the Circuit Court of the First Judicial District of Hinds County, Mississippi, in accordance with the provisions of law with respect to review of civil causes by certiorari.

(3) Notwithstanding any other provision of law, the following shall apply regarding assignment of rates and transfers of experience:

(a) (i) If an employer transfers its trade or business, or a portion thereof, to another employer and, at the time of the transfer, there is substantially common ownership, management or control of the two (2) employers, then the unemployment experience attributable to the transferred trade or business shall be transferred to the employer to whom such business is so transferred. The rates of both employers shall be recalculated and made effective on January 1 of the year following the year the transfer occurred.

(ii) If, following a transfer of experience under subparagraph (i) of this paragraph (a), the department determines

that a substantial purpose of the transfer of trade or business was to obtain a reduced liability of contributions, then the experience-rating accounts of the employers involved shall be combined into a single account and a single rate assigned to such account.

(b) Whenever a person who is not an employer or an employing unit under this chapter at the time it acquires the trade or business of an employer, the unemployment experience of the acquired business shall not be transferred to such person if the department finds that such person acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions. Instead, such person shall be assigned the new employer rate under Section 71-5-353. In determining whether the business was acquired solely or primarily for the purpose of obtaining a lower rate of contributions, the department shall use objective factors which may include the cost of acquiring the business, whether the person continued the business enterprise of the acquired business, how long such business enterprise was continued, or whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to acquisition.

(c) (i) If a person knowingly violates or attempts to violate paragraph (a) or (b) of this subsection or any other provision of this chapter related to determining the assignment of a contribution rate, or if a person knowingly advises another person in a way that results in a violation of such provision, the person shall be subject to the following penalties:

1. If the person is an employer, then such employer shall be assigned the highest rate assignable under this chapter for the rate year during which such violation or attempted violation occurred and the three (3) rate years immediately following this rate year. However, if the person's business is already at such highest rate for any year, or if the amount of

increase in the person's rate would be less than two percent (2%) for such year, then a penalty rate of contributions of two percent (2%) of taxable wages shall be imposed for such year. The penalty rate will apply to the successor business as well as the related entity from which the employees were transferred in an effort to obtain a lower rate of contributions.

2. If the person is not an employer, such person shall be subject to a civil money penalty of not more than Five Thousand Dollars (\$5,000.00). Each such transaction for which advice was given and each occurrence or reoccurrence after notification being given by the department shall be a separate offense and punishable by a separate penalty. Any such fine shall be deposited in the penalty and interest account established under Section 71-5-114.

(ii) For purposes of this paragraph (c), the term "knowingly" means having actual knowledge of or acting with deliberate ignorance or reckless disregard for the prohibition involved.

(iii) For purposes of this paragraph (c), the term "violates or attempts to violate" includes, but is not limited to, intent to evade, misrepresentation or willful nondisclosure.

(iv) In addition to the penalty imposed by subparagraph (i) of this paragraph (c), any violation of this subsection may be punishable by a fine of not more than Ten Thousand Dollars (\$10,000.00) or by imprisonment for not more than five (5) years, or by both such fine and imprisonment. This subsection shall prohibit prosecution under any other criminal statute of this state.

(d) The department shall establish procedures to identify the transfer or acquisition of a business for purposes of this subsection.

(e) For purposes of this subsection:

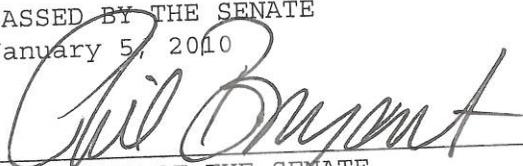
(i) "Person" has the meaning given such term by Section 7701(a)(1) of the Internal Revenue Code of 1986; and

(ii) "Employing unit" has the meaning as set forth in Section 71-5-11.

(f) This subsection shall be interpreted and applied in such a manner as to meet the minimum requirements contained in any guidance or regulations issued by the United States Department of Labor.

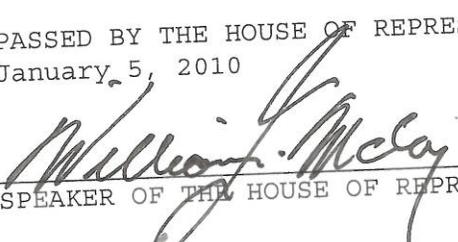
SECTION 3. This act shall take effect and be in force from and after January 1, 2010.

PASSED BY THE SENATE
January 5, 2010



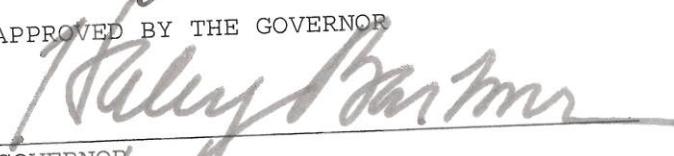
PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES
January 5, 2010



SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR



GOVERNOR

1/12/10 6:58 AM.