

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.
Act 902 of the Regular Session

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005

A Bill

SENATE BILL 512

4
5 By: Senator Malone
6 By: Representative Matayo

For An Act To Be Entitled

10 AN ACT TO AMEND VARIOUS SECTIONS OF THE ARKANSAS
11 EMPLOYMENT SECURITY LAW; AND FOR OTHER PURPOSES.

Subtitle

14 AN ACT TO AMEND VARIOUS SECTIONS OF THE
15 ARKANSAS EMPLOYMENT SECURITY LAW.

17
18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

19
20 SECTION 1. Arkansas Code § 11-10-308(d), concerning the director's
21 administrative determinations of coverage, is amended to read as follows:

22 (d) A review of the determination made by the director or the board
23 may be had by filing a petition for review in the Court of Appeals within
24 ~~twenty (20)~~ thirty (30) calendar days after the mailing of notice ~~thereof of~~
25 the determination to the employing unit's last known address, or, in the
26 absence of mailing, within ~~twenty (20)~~ thirty (30) calendar days after the
27 delivery of the notice.

28
29 SECTION 2. Arkansas Code § 11-10-513(a), concerning disqualification
30 for voluntarily leaving work, is amended to read as follows:

31 (a)(1) If so found by the Director of the Arkansas Employment Security
32 Department, an individual shall be disqualified for benefits if he or she
33 voluntarily and without good cause connected with the work left his or her
34 last work.

35 (2)(A) An individual working as a temporary employee will be



1 deemed to have voluntarily quit employment and will be disqualified for
 2 benefits under this subsection if, upon conclusion of his or her latest
 3 assignment, the temporary employee without good cause failed to contact the
 4 temporary help firm for reassignment, provided that the employer advised the
 5 temporary employee at the time of hire that he or she must report for
 6 reassignment upon conclusion of each assignment and that unemployment
 7 benefits may be denied for failure to do so.

8 (B)(i) As used in this subsection, "temporary help firm"
 9 means a firm that hires its own employees and assigns them to clients to
 10 support or supplement the client's work force in work situations such as
 11 employees' absences, temporary skill shortages, seasonal workloads, and
 12 special assignments and projects.

13 (ii) The term does not include employee leasing
 14 companies regulated under § 11-10-717(e).

15 (C) "Temporary employee" means an employee assigned to
 16 work for the clients of a temporary help firm.

17 (3) Any person who leaves his or her last work to comply with
 18 the order of a correctional institution or to satisfy the terms of his or her
 19 parole or probation shall be deemed to have left work "voluntarily and
 20 without good cause connected with the work".

21 (4) The disqualification shall continue until, subsequent to
 22 filing a claim, he or she has had at least thirty (30) days of employment
 23 covered by an unemployment compensation law of this state, another state, or
 24 the United States.

25
 26 SECTION 3. Arkansas Code § 11-10-516(a)(1), concerning
 27 disqualification for refusal to report after layoff, is amended to read as
 28 follows:

29 (a)(1) If so found by the Director of the Arkansas Employment Security
 30 Department, an individual shall be disqualified for benefits, if, while on a
 31 layoff of ten (10) weeks or less, he or she refuses to report for work within
 32 one (1) week after notice of recall to the same job or to a suitable job
 33 similar to the one from which he or she was laid off, or, if while
 34 unemployed, he or she voluntarily removes his or her name from a recall list
 35 set forth in a written contract of a base-period employer, provided the
 36 employer files a written notice of the refusal of recall or removal from a

1 recall list with the department within seven (7) days of the occurrence.

2
3 SECTION 4. Arkansas Code § 11-10-517(3)(A), concerning
4 disqualification for receipt of other remunerations, is amended to read as
5 follows:

6 (3)(A) Any governmental or other pension, retirement or retired
7 pay, annuity, or any other similar periodic payment received with respect to
8 the week and which is based on the previous work of ~~any individual~~ the
9 claimant if payment is received under a plan maintained or contributed to by
10 a base-period employer.

11
12 SECTION 5. Arkansas Code § 11-10-518(a), concerning the training
13 program exception, is amended to read as follows:

14 (a) Notwithstanding any other provision of this chapter, an adversely
15 affected worker covered by a certification under Subchapter A, Chapter 2,
16 Title II of the Trade Act of 1974, may not be determined to be ineligible or
17 disqualified for unemployment insurance or Trade Act benefits payable under
18 Part I, Subchapter B, Chapter 2, Title II of the Trade Act of 1974, because
19 the individual is in training approved under Part II, Subchapter B, Chapter
20 2, Title II of the Trade Act of 1974:

21 (1) Because of leaving work which is not suitable employment ~~to~~
22 ~~enter the~~ to begin or continue training; or

23 (2) Because of the application to any such week in training, of
24 provisions of this chapter or any state or federal unemployment insurance law
25 relating to availability for work, active search for work, or refusal to
26 accept work.

27
28 SECTION 6. Arkansas Code § 11-10-522(a)(1)(A), concerning
29 determination of unemployment claims, is amended to read as follows:

30 (a) In General. (1)(A) A monetary determination upon a claim filed
31 pursuant to § 11-10-521(a) shall be made promptly by the Director of the
32 Arkansas Employment Security Department and shall include total wage credits
33 as reported paid by each employer during the ~~employer's~~ claimant's base
34 period and the identity of each base-period employer.

35
36 SECTION 7. Arkansas Code § 11-10-532, concerning the recovery of

1 overpayments, is amended to add an additional subsection to read as follows:

2 (d)(1) When an overpayment becomes final under § 11-10-527, the
 3 director shall present a certificate of overpayment describing the amount
 4 owed by the claimant to the circuit clerk of the county where the claimant is
 5 domiciled.

6 (2) The circuit clerk shall enter the certificate of
 7 overpayment in the docket of the circuit court for judgments and decrees and
 8 note the time of the filing of the certificate.

9 (3) After entry by the circuit clerk, the certificate of
 10 overpayment shall have the force and effect of a judgment of the circuit
 11 court and shall bear interest at the rate of ten percent (10%) annually.

12
 13 SECTION 8. Arkansas Code § 11-10-704(b)(1)(B), concerning experience
 14 rates, is amended to read as follows:

15 (b)(1)(B) However, any employer having no covered employment under
 16 this chapter for any calendar year shall ~~be ineligible for an experience rate~~
 17 have a rate equal to his or her most recently-determined contribution rate
 18 until, immediately preceding the computation date, the employer has one (1)
 19 full year of benefit risk experience.

20
 21 SECTION 9. Arkansas Code § 11-10-705(c)(1), concerning the computation
 22 of experience rates, is amended to read as follows:

23 (c)(1) Notwithstanding any other inconsistent provisions of this
 24 chapter and unless prohibited by § 11-10-723(c)(1), an employer who has been
 25 assigned a contribution rate pursuant to this chapter may make a voluntary
 26 payment to the Unemployment Compensation Fund, in any amount, additional to
 27 the contributions required pursuant to this chapter, to be credited to the
 28 employer's account ~~accordingly effective January 1, 2001.~~

29
 30 SECTION 10. Arkansas Code § 11-10-710(a)(1), concerning the transfer
 31 of experience, is amended to read as follows:

32 (a)(1) Any employing unit which acquires the organization, trade, and
 33 all of the places of business and substantially all of the assets of any
 34 employer, excepting, in any such case, any assets retained by the employer
 35 incident to the liquidation of the employer's obligations, whether or not the
 36 acquiring employing unit was an employment unit within the meaning of § 11-

1 10-208 prior to the acquisition, and who continues the organization, trade,
 2 or business as indicated by retaining the predecessor's ~~two-digit standard~~
 3 ~~industrial classification code~~ three-digit, North American Industry
 4 Classification code, shall assume, for the purpose of determining the
 5 contribution rate of the employing unit after the acquisition, the position
 6 of the employer with respect to the employer's separate account, actual
 7 contributions and regular benefit experience, annual payrolls, liability for
 8 current or delinquent contributions, interest, and penalty, and otherwise as
 9 if no change with respect to the separate account, actual experience, and
 10 payrolls or the position of the employer otherwise had occurred and with the
 11 same effect for the purpose as if the operations of the employer had at all
 12 times been carried on by the employing unit.

13
 14 SECTION 11. Arkansas Code § 11-10-716(b)(1)(A), concerning interest on
 15 past-due contributions, is amended to read as follows:

16 (b)(1)(A) At the end of each month, deposits in the Unemployment
 17 Compensation Fund Clearing Account which have been established as interest
 18 and penalty payments collected pursuant to §§ 11-10-716 - ~~11-10-722~~ 11-10-723
 19 shall be paid over to the Treasurer of State and credited by him or her to
 20 the Employment Security Special Fund, § 19-5-984, created and established in
 21 the State Treasury.

22
 23 SECTION 12. Arkansas Code § 11-10-717(a)(2), concerning collection, is
 24 amended to read as follows:

25 (a)(2) Civil actions brought under §§ 11-10-716 - ~~11-10-722~~ 11-10-723
 26 to collect contributions or interest from an employer shall be heard by the
 27 court at the earliest possible date and shall be entitled to preference upon
 28 the calendar of the court over all other civil actions except petitions for
 29 judicial review under this chapter and cases arising under the Workers'
 30 Compensation Law, § 11-9-101 et seq.

31
 32 SECTION 13. Arkansas Code § 11-10-717(e), concerning wage reports, is
 33 amended to read as follows:

34 (e)(1)(A) Notwithstanding any other provisions of this chapter, any
 35 employer or any individual, organization, partnership, corporation, or other
 36 legal entity that meets the definition of "lessor employing unit" as set

1 forth in subdivision (e)(4) of this section shall be liable for contributions
 2 on wages paid by the lessor employing unit to individuals performing services
 3 for client lessees of the lessor employing unit.

4 (B) Unless the lessor employing unit has timely complied with
 5 the provisions of subdivision (e)(2) of this section, any employer,
 6 individual, organization, partnership, corporation, or other legal entity
 7 leasing employees from any lessor employing unit shall be jointly and
 8 severally liable for any unpaid contributions, interest, and penalties due
 9 under this chapter from any lessor employing unit attributable to wages for
 10 services performed for the client lessee entity by employees leased to the
 11 client lessee entity.

12 (C) Beginning on or after January 1, 1998, the lessor employer
 13 shall keep separate records and submit separate quarterly contribution and
 14 wage reports for each of its client lessee entities using the client lessee's
 15 account number and unemployment contribution rate.

16 (2)(A)(i)(a) In order to relieve client lessees from joint and
 17 several liability and the separate reporting requirements imposed under
 18 subdivision (e)(1) of this section, any lessor employing unit as defined in
 19 subdivision (e)(4) of this section may post and maintain a surety bond issued
 20 by a corporate surety authorized to do business in Arkansas in the amount of
 21 one hundred thousand dollars (\$100,000) to ensure prompt payment of
 22 contributions, interest, and penalties for which the lessor employing unit
 23 may be or becomes liable under this chapter.

24 (b) ~~Beginning For the period beginning on or~~
 25 ~~after January 1, 1998, through June 30, 2005, the lessor employer a bonded-~~
 26 ~~lessor employing unit shall report all clients' wages on the lessor~~
 27 ~~employer's employing unit's~~ quarterly contribution and wage report using its
 28 contribution rate, account number, and federal identification number.

29 (c)(1) Quarterly contribution and wage reports
 30 for all clients obtained by bonded-lessor employing units on or after July 1,
 31 2005, shall be reported in accordance with subdivision (e)(1)(C) of this
 32 section for three (3) consecutive years.

33 (2) After reporting client wages for
 34 three (3) consecutive years as required by subdivision (e)(2)(A)(i)(c)(1) of
 35 this section, a bonded-lessor employing unit shall report client wages on the
 36 lessor employing unit's quarterly contribution and wage report using the

1 lessor employing unit's contribution rate, account number, and federal
2 identification number.

3 (ii) If after three (3) years, throughout which the
4 lessor employing unit as defined in subdivision (e)(4) of this section has
5 paid all contributions due in a timely manner, the bond shall be reduced to
6 thirty-five thousand dollars (\$35,000) and shall remain at thirty-five
7 thousand dollars (\$35,000) so long as the lessor employing unit continues to
8 report and pay all contributions due in a timely manner.

9 (iii) The employee leasing company is prohibited
10 from moving the wages of a client from one leasing company account to another
11 leasing company account with a lower rate.

12 (B) In lieu of a surety bond, the lessor employing unit
13 may deposit in a depository designated by the director securities with
14 marketable value equivalent to the amount required for a surety bond. The
15 securities so deposited shall include authorization to the director to sell
16 any such securities in an amount sufficient to pay any contributions which
17 the lessor employing unit fails to promptly pay when due.

18 (3) Lessor employing units not currently engaged in the business
19 of leasing employees to client lessees shall comply with subdivision (e)(2)
20 of this section before entering into lease agreements with client lessees.

21 (4) The term "lessor employing unit" is defined as an
22 independently established business entity which engages in the business of
23 providing leased employees to any other employer, individual, organization,
24 partnership, corporation, or other legal entity, referred to herein as a
25 client lessee. Any legal entity determined to be engaged in the business of
26 "outsourcing" shall be considered a "lessor employing unit" under this
27 section. Additionally, the licensing requirements of the Arkansas Employee
28 Leasing Act, § 23-92-301 et seq., as administered by the State Insurance
29 Department must be satisfied.

30 (5) The provisions of this subsection shall not be applicable to
31 private employment agencies who provide their employees to employers on a
32 temporary help basis, provided that the private employment agencies are
33 liable as employers for the payment of contributions on wages paid to
34 temporary workers so employed.

35
36 SECTION 14. Arkansas Code Title 11, Chapter 10, Subchapter 7 is

1 amended to add an additional section to read as follows:

2 11-10-723. Special Rules Regarding Transfers of Experience and
3 Assignment of Rates. Notwithstanding any other provision of law, the
4 following shall apply regarding assignment of rates and transfers of
5 experience:

6 (a)(1) If an employer transfers its trade or business, or a portion
7 thereof, to another employer and, at the time of the transfer, there is any
8 common ownership, management or control of the two employers, then the
9 unemployment experience attributable to the transferred trade or business, or
10 portion thereof, shall be combined with the employer to whom such business is
11 so transferred. The combining of experience and recalculation of applicable
12 employer tax rates shall be made effective the first day of the calendar
13 quarter following the date of transfer of the trade or business or portion
14 thereof. The transfer of some or all of an employer's workforce to another
15 employer shall be considered a transfer of trade or business, or portion
16 thereof; and

17 (2) If, following a transfer of experience under paragraph (1)
18 or transfer of experience otherwise provided for in this chapter, involving
19 only a portion of a trade or business, the Director determines that a
20 substantial purpose of the transfer was to obtain a reduced liability for
21 contributions, then the experience rating accounts of the employers involved
22 shall be combined into a single account and a single rate assigned to such
23 account effective the first day of the calendar quarter following the date of
24 transfer.

25 (b) Whenever a person is not an employer under this chapter at the
26 time it acquires the trade or business of an employer, the unemployment
27 experience of the acquired business shall not be transferred to such person
28 if the Director of the Arkansas Employment Security Department finds that
29 such person acquired the business solely or primarily for the purpose of
30 obtaining a lower rate of contributions. Instead, such person shall be
31 assigned the new employer rate under this chapter. In determining whether
32 the business was acquired solely or primarily for the purpose of obtaining a
33 lower rate of contributions, the Director of the Arkansas Employment Security
34 Department shall use objective factors which may include the cost of
35 acquiring the business, whether the person continued the business enterprise
36 of the acquired business, how long such business enterprise was continued, or

1 whether a substantial number of new employees were hired for performance of
2 duties unrelated to the business activity conducted prior to acquisition;

3 (c)(1) Knowing violations or attempted violations of subsections (a)
4 or (b) or any other provision of this subchapter related to determining the
5 assignment of a contribution rate shall result in an additional 2% rate
6 increase for the rate year during which such violation or attempted violation
7 occurred and a 2% additional rate increase in each of the following three
8 rate years. In addition to the rate increases a penalty of 10% of total
9 taxes due shall also be assessed in each of these rate years. All penalty
10 amounts shall be deposited and credited to the Employment Security Special
11 fund as set out in §11-10-716. The additional tax and penalty required by
12 this subsection shall not be credited to the separate account of any employer
13 nor shall any employer whose contribution rate has been affected by this
14 subsection be eligible to make a voluntary payment pursuant to ACA §11-10-
15 705(c);

16 (2) If a person knowingly advises another person in a way that
17 results in a violation of subsections (a) or (b), the person shall be subject
18 to a penalty of \$5,000 plus 10% of the total taxes due from the person
19 violating subsection (a) or (b) for any rate year in which a violation
20 occurred. All penalty amounts shall be deposited and credited to the
21 Employment Security Special fund as set out in §11-10-716;

22 (3) The rate increases and penalties set forth in this
23 subchapter along with any interest that may accrue as a result of these rate
24 increases and penalties shall be in addition to any other rate increases,
25 penalties, and/or interest provided for in this chapter and shall be subject
26 to collection as provided for in §11-10-716 through §11-10-722;

27 (4) For purposes of this section, the terms “knowing” and
28 “knowingly” means having actual knowledge of or acting with deliberate
29 ignorance or reckless disregard for the prohibition involved;

30 (5) For purposes of this section, the terms “violations or attempted
31 violations” and “violates or attempts to violate” includes, but is not
32 limited to, intent to evade, misrepresentation or willful nondisclosure; and

33 (6)(A) In addition to the rate increases and penalties imposed
34 by paragraph (c)(1), any person in violation of this section who knowingly
35 evades or defeats or attempts to evade or defeat the payment of any
36 unemployment insurance tax, penalty, or interest due under this subchapter

1 shall be guilty of a Class C felony; and

2 (B) In addition to the penalties imposed by paragraph
 3 (c)(2) any person who knowingly assists a person in evading or defeating or
 4 attempting to evade or defeat the payment of any unemployment insurance tax,
 5 penalty, or interest due under this subchapter shall be guilty of a Class C
 6 felony.

7 (d) The Director of the Arkansas Employment Security Department shall
 8 establish procedures to identify the transfer or acquisition of a business
 9 for purposes of this section;

10 (e) For purposes of this section:

11 (1) "Person" has the meaning given such term by section 7701(a)(1)
 12 of the Internal Revenue Code of 1986, and

13 (2) "Trade or business" shall include the employer's workforce.

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

17 (g) In the event that this section and §11-10-710 could both be
 18 applied to a transfer or attempted transfer of experience, this section shall
 19 take precedence and be applied to the transfer or attempted transfer.

20
 21 SECTION 15. EMERGENCY CLAUSE. It is found and determined by the
 22 General Assembly of the State of Arkansas that this act should go into effect
 23 as soon as possible to bring the Arkansas Employment Security Department into
 24 conformity with the Federal Unemployment Tax Act, as amended, so that
 25 Arkansas employers may continue to receive tax credits under the Federal
 26 Unemployment Tax Act and Arkansas workers may receive unemployment benefits
 27 whenever they are unemployed. Therefore, an emergency is declared to exist
 28 and this act being immediately necessary for the preservation of the public
 29 peace, health, and safety shall become effective on:

30 (1) The date of its approval by the Governor;

31 (2) If the bill is neither approved nor vetoed by the Governor,
 32 the expiration of the period of time during which the Governor may veto the
 33 bill; or

34 (3) If the bill is vetoed by the Governor and the veto is
 35 overridden, the date the last house overrides the veto.

36

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APPROVED: 3/16/2005