

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.

State of Arkansas
86th General Assembly
Regular Session, 2007

A Bill

SENATE BILL 773

By: Senator Horn
By: Representative S. Prater

For An Act To Be Entitled

AN ACT TO AMEND VARIOUS PROVISIONS OF THE
ARKANSAS EMPLOYMENT SECURITY LAW; TO AMEND § 19-
5-984 THAT ESTABLISHED THE EMPLOYMENT SECURITY
SPECIAL FUND; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND VARIOUS PROVISIONS OF THE
ARKANSAS EMPLOYMENT SECURITY LAW AND THE
PROVISION THAT ESTABLISHED THE
EMPLOYMENT SECURITY SPECIAL FUND.

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

SECTION 1. Arkansas Code § 11-10-101 is amended to read as follows:

This chapter shall be known and may be cited as the ~~"Arkansas
Employment Security Law"~~ "Department of Workforce Services Law".

SECTION 2. Arkansas Code § 11-10-302 is repealed.

~~11-10-302. Arkansas Employment Security Department Service to food
stamp applicants.~~

~~(a)(1) To ensure that job finding assistance is being adequately
provided to food stamp applicants and recipients, the Arkansas Employment
Security Department shall periodically station appropriate staff for some
portion of a workday in each county or district office of the appropriate
division of the Department of Human Services as determined by the Director of
the Arkansas Employment Security Department.~~



~~(2) The director and the deputy director of the appropriate division of the Department of Human Services shall enter into a written agreement regarding the provision of the services to food stamp applicants, provided the Arkansas Employment Security Department has federal funds available and specifically identified for use in providing such services.~~

~~(b)(1) The Arkansas Employment Security Department shall report quarterly to the Legislative Council the number of registrants or recipients of food stamps interviewed, the number of job referrals made, and the number of registrants or recipients of food stamps placed in jobs.~~

~~(2) This report shall be made for each county or district office, provided the Arkansas Employment Security Department has federal funds available and specifically identified for use in providing such services.~~

SECTION 3. Arkansas Code § 11-10-503(a), concerning weekly benefits for partial employment, is amended to read as follows:

(a) Any insured worker who is unemployed in any week as defined in § 11-10-214 and who meets the eligibility requirements of §§ 11-10-507 - 11-10-511 shall be paid, with respect to the week, an amount equal to his or her weekly benefit amount less that part of ~~the remuneration, if any, any~~ earnings payable to him or her with respect to the week which is in excess of forty percent (40%) of his or her weekly benefit amount.

SECTION 4. Arkansas Code § 11-10-509(a), (b), and (c), concerning the eligibility for benefits of employees of educational institutions, are amended to read as follows:

(a) With respect to service performed in an instructional, research, or principal administrative capacity for an educational institution, benefits shall not be paid based on services for any week of unemployment commencing during the period between two (2) successive academic years or terms, during a similar period between two (2) regular but not successive terms, or during a period of paid sabbatical leave provided for in the individual's contract to any individual if:

(1) the ~~The~~ individual performs the services in the first of the academic years or terms; and

(2) if there ~~There~~ is a contract or a reasonable assurance that

1 the individual will perform services in any such capacity for any educational
2 institution in the second of the academic years or terms.

3 (b)(1) With respect to services performed in any other capacity for an
4 educational institution, benefits shall not be paid on the basis of services
5 to any individual for any week of unemployment that ~~which~~ commences during a
6 period between two (2) successive academic years or terms if:

7 (A) ~~the~~ The individual performs the services in the first
8 of the academic years or terms; and if

9 (B) ~~there~~ There is a reasonable assurance that the
10 individual will perform the services in the second of the academic years or
11 terms.

12 (2) If compensation is denied to any individual under this
13 subdivision and the individual was not offered an opportunity to perform the
14 services for the educational institution for the second of the academic years
15 or terms, the individual, if otherwise eligible, shall be entitled to a
16 retroactive payment of compensation for each week for which the individual
17 filed a timely claim for compensation and for which compensation was denied
18 solely by reason of this clause provided that the individual makes an
19 application for retroactive payment within two (2) weeks after receipt of
20 notification from the educational institution that he or she will not have an
21 opportunity to perform the services at that institution in the second
22 academic year or term.

23 (c) With respect to any services described in subsection (a) or (b) of
24 this section, compensation payable on the basis of these services shall not
25 be payable to any individual for any week of unemployment that ~~which~~
26 commences during an established and customary vacation period or holiday
27 recess if:

28 (1) ~~the~~ The individual performs these services in the period
29 immediately before a vacation or holiday recess; and

30 (2) ~~there~~ There is a reasonable assurance that the individual
31 will perform the services in the period immediately following the vacation
32 period or holiday recess.

33
34 SECTION 5. Arkansas Code § 11-10-513(b), concerning disqualification
35 for leaving work, is amended to read as follows:

36 (b) No individual shall be disqualified under this section if, after

1 making reasonable efforts to preserve his or her job rights, he or she left
2 his or her last work;

3 (1) ~~due~~ Due to a personal emergency of such nature and compelling
4 urgency that it would be contrary to good conscience to impose a
5 disqualification; ~~or if, after making reasonable efforts to preserve job~~
6 ~~rights, he or she left his or her last work because~~

7 (2) Because of illness, injury, pregnancy, or ~~other~~ disability;
8 or

9 (3) To move with a military spouse to a new duty station.

11 SECTION 6. Arkansas Code § 11-10-517 is amended to read as follows:

12 11-10-517. Disqualification - Receipt of other remunerations.

13 If so found by the Director of the Department of Workforce Services, an
14 individual shall be disqualified for benefits for any week with respect to
15 which he or she receives or has received remuneration in the form of:

16 (1) Separation Payments.

17 (A)(i) ~~However,~~ Separation payments shall be treated as
18 earnings in accordance with § 11-10-503; and

19 (ii) ~~separation~~ Separation payments in excess of
20 those covering a period of eight (8) weeks of wages and an armed services
21 severance payment paid to a former member of the United States armed services
22 shall not be disqualifying under the terms of this section.

23 (B) Separation payments provided in the form of a lump sum
24 are disqualifying only for the week in which they are received.

25 (C) Remuneration paid as back pay in settlement of a claim
26 or grievance and supplemental unemployment benefits shall not be
27 disqualifying;

28 (2) Unemployment benefits under an unemployment compensation law
29 of another state or of the United States;

30 (3)(A) Any governmental or other pension, retirement or retired
31 pay, annuity, or any other similar periodic payment received with respect to
32 the week and which is based on the previous work of the claimant if payment
33 is received under a plan maintained or contributed to by a base-period
34 employer.

35 (B)(i) However, the amount of unemployment benefits
36 payable to the individual for the week shall be reduced, but not below zero,

1 by an amount equal to the amount of the pension, retirement or retired pay,
2 annuity, or other payment which is reasonably attributable to the week.

3 (ii) Any weekly benefit amount which is reduced
4 because of the receipt of remuneration as defined under this section and
5 which is not an even multiple of one dollar (\$1.00) shall be rounded to the
6 next lower multiple of one dollar (\$1.00).

7 (C) If payments referred to in this subdivision are being
8 received by any individual under the federal Social Security Act, the
9 director shall take into account the individual's contribution and make no
10 reduction in the weekly benefit amount;

11 (4)(A) Training and retraining allowance provided for by
12 appropriation of the Congress of the United States.

13 (B) However, this subdivision (4) of this section does not
14 apply if the claimant has met the benefit eligibility conditions set out in
15 §§ 11-10-507 - 11-10-511 and other sections of this chapter;

16 (5) Vacation Payments.

17 (A) ~~However, the employee shall be paid, Vacation payments~~
18 ~~shall be treated as earnings in accordance with § 11-10-503 with respect to~~
19 ~~the week or weeks in which the vacation period occurred, an amount equal to~~
20 ~~the weekly benefit amount less that part of the vacation pay, if any, payable~~
21 ~~to the employee or in which he or she has been paid or will be paid at a~~
22 ~~later date with respect to such week which is in excess of forty percent~~
23 ~~(40%) of his or her weekly benefit amount rounded to the nearest lower full-~~
24 ~~dollar amount.~~

25 (B) For the purpose of this subdivision (5), the employer
26 shall promptly report the week or weeks involved in the vacation period as
27 well as the corresponding amount of vacation pay with respect to such week or
28 weeks.

29 (C) ~~Provided further, any~~ Any vacation payments received
30 due to a permanent separation from employment shall not be disqualifying nor
31 deductible under this section; ~~and~~

32 (6) ~~Bonus Payments. However, the receipt of such payments which~~
33 ~~shall be deductible~~ treated as earnings in accordance with § 11-10-503 only
34 for the week in which the payment is received; ~~i~~

35 (7) Sick Pay Payments.

36 (A) ~~However, if otherwise eligible, he or she shall be~~

~~paid, Sick payments shall be treated as earnings in accordance with § 11-10-503 with respect to the week or weeks in which the sick-pay period occurred, an amount equal to the weekly benefit amount less that part of the sick pay, if any, payable to him or her that he or she has been paid or will be paid at a later date with respect to a week that is in excess of forty percent (40%) of his or her weekly benefit amount rounded to the nearest lower full dollar amount.~~

(B) For the purpose of this subdivision (7), the employer shall promptly report the week or weeks involved in the sick-pay period as well as the corresponding amount of sick ~~pay~~ payments with respect to the week or weeks.

(C) However, any sick ~~pay~~ payments received due to a permanent separation from employment shall not be disqualifying nor deductible under this section; and

(8) Holiday Payments.

(A) Holiday payments shall be treated as earnings in accordance with § 11-10-503 for the week or weeks in which the holiday occurred.

(B) For the purpose of this subdivision (8), the employer shall promptly report the week or weeks involved in the holiday pay period and the corresponding amount of holiday payments for that holiday pay period.

SECTION 7. Arkansas Code § 11-10-522 is amended to read as follows:
11-10-522. Claims - Determination.

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

(B)(i) For a claimant who meets the wage requirements of § 11-10-507(5), this notice shall include the beginning date of his or her benefit year, his or her basic weekly benefit amount, and the maximum amount of benefits that may be paid to him or her during the benefit year.

(ii) For a worker who does not meet the wage requirements of § 11-10-507(5), the notice of monetary determination shall include the reason for such determination.

1 (2) A nonmonetary determination of a claimant's right to waiting
2 period credit or benefits shall be made under §§ 11-10-507 - 11-10-519
3 promptly upon his or her timely claiming such credit or benefits.

4 (b) Combination of Claim. Whenever any claim involves the same issue
5 for more than one (1) claimant, the cases will be combined for the purpose of
6 a hearing if a request to do so is received. If the request is made by any
7 interested party, the director shall refer those cases to a hearing examiner
8 designated by the Board of Review.

9 (c) Finality. The decision shall include the reason for any denial and
10 shall be deemed to be final unless within twenty (20) days after the mailing
11 of notice to an interested party's last known address, or in the absence of
12 mailing, within twenty (20) days after the delivery of notice, an appeal is
13 filed with the board or notice is entered by that body.

14 (d) Notice of Determinations. (1)(A) Notice of any monetary
15 determination upon an initial claim shall be promptly given to the claimant,
16 by delivery or by mailing the notice to his or her last known address.

17 (B) A notice of the filing of an initial claim, together
18 with a request for pertinent information concerning claimant's status, shall
19 be promptly mailed to each employer in the base period other than the
20 employer known to the claimant as his or her last employer if the charges to
21 the base-period employer could be affected by benefits paid.

22 (2)(A) Notice of a nonmonetary determination made pursuant to
23 subdivision (a)(2) of this section shall be promptly given to the claimant by
24 delivery or by mailing the notice to his or her last known address.

25 (B) Effective January 1, 1998, a notice of this
26 nonmonetary determination shall be promptly mailed to the last employer.

27 (e)(1) Monetary Redeterminations. The director may reconsider a
28 monetary determination when he or she finds that an error in computation or
29 identity has occurred in connection therewith or that base-period wage
30 credits for the claimant had not been used in the original monetary
31 determination.

32 (2) No reconsideration may be made after one (1) year from the
33 date of the original monetary determination.

34 (3) If the amount of benefits is increased upon the
35 reconsideration, an appeal solely with respect to the matters involved in the
36 increase may be filed in the manner and subject to the limitations provided

1 in §§ 11-10-523 - 11-10-530.

2 (4) If the amount of benefits is decreased upon the
3 reconsideration, the matters involved in the decrease shall be subject to
4 review in connection with an appeal by claimant from any determination upon a
5 subsequent claim for benefits which may be affected in amount or duration by
6 the reconsideration.

7 (5) In the event that an appeal involving an original monetary
8 determination is pending as of the date ~~of reconsideration thereof~~ that a
9 redetermination is issued, the appeal, unless withdrawn, shall be treated as
10 an appeal from such ~~reconsideration~~ redetermination.

11 (6) ~~Upon receipt of new evidence, the director may reconsider a~~
12 ~~nonmonetary determination within three (3) years from the date of the~~
13 ~~original monetary determination except that if benefits have been allowed or~~
14 ~~denied or the amount of benefits fixed on the basis of misrepresentation of a~~
15 ~~fact, the director may reconsider the nonmonetary determination within one~~
16 ~~(1) year from the date of the fact of misrepresentation becoming known to him~~
17 ~~or her.~~ Written notice of a monetary redetermination shall be given in the
18 same manner and to the same parties as provided in subsection (d)(1) of this
19 section.

20 ~~(7) Written notice of a redetermination shall be given in the~~
21 ~~same manner and to the same parties as provided in subsection (d) of this~~
22 ~~section.~~

23 (f) Nonmonetary Redeterminations.

24 (1)(A) Upon receipt of new evidence, the director may reconsider
25 a nonmonetary determination within three (3) years from the date of the
26 original monetary determination.

27 (B) However, if benefits have been awarded or denied on
28 the basis of a misrepresentation of a material fact, the director may
29 reconsider the nonmonetary determination within one (1) year of the date that
30 the misrepresentation became known to him or her.

31 (2) In the event that an appeal involving an original
32 nonmonetary determination is pending as of the date that a redetermination is
33 issued, the appeal, unless withdrawn, shall be treated as an appeal from such
34 redetermination.

35 (3) Written notice of a nonmonetary determination shall be given
36 in the same manner and to the same parties as provided in subsection (d)(2)

1 of this section.

2
3 SECTION 8. Arkansas Code § 11-10-525(e), concerning the decision of
4 the Board of Review, is amended to read as follows:

5 (e) The decision shall be final unless within ~~twenty (20)~~ thirty (30)
6 calendar days after the mailing of notice thereof to the parties' last known
7 address or in the absence of the mailing, within ~~twenty (20)~~ thirty (30)
8 calendar days after the delivery of the notice, a proceeding for judicial
9 review is initiated pursuant to § 11-10-529.

10
11 SECTION 9. Arkansas Code § 11-10-532(d), concerning the recovery of an
12 overpayment, is amended to add an additional subdivision to read as follows:

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

17 (2) The circuit clerk shall enter the certificate of overpayment
18 in the docket of the circuit court for judgments and decrees and note the
19 time of the filing of the certificate.

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

23 (4) Any interest or penalty payment recovered from an
24 overpayment to a claimant shall be deposited into the Department of Workforce
25 Services Special Fund.

26
27 SECTION 10. Arkansas Code § 11-10-703 is amended to read as follows:

28 (a)(1)(A) The Director of the ~~Arkansas Employment Security Department~~
29 Department of Workforce Services shall maintain a separate account for each
30 employer and shall credit the employer's account with all the contributions
31 paid on the employer's own behalf except as otherwise provided in §§ 11-10-
32 701 - 11-10-715.

33 (B) However, nothing in this chapter shall be construed to
34 grant any employer or individuals in the employer's service prior claims or
35 rights to the amounts paid by the employer into the fund either on the
36 employer's behalf or on behalf of such individuals.

(2)(A)(i) Regular benefits paid to an eligible individual based on an initial claim shall be charged to the separate account of each employer in the base period in the proportion to which wages paid by each employer to the individual during the base period bears to total wages paid by all such employers to such individual within the base period.

(ii)(a) ~~Provided, however, and beginning on and after January 1, 1998, However,~~ regular benefits paid to an eligible individual after the individual has established a benefit year against a base-period employer under qualifying conditions and whose employment continued with the employer but who subsequently left the employment under conditions which would have been a noncharge under subdivisions (a)(3) and (4) of this section, shall ~~not~~ be charged through the date on which the subsequent separation occurred to the separate account of the base-period employer.

(b) Benefits paid from the established benefit year to an individual after the date on which the subsequent separation occurred shall not be charged to the separate account of the base-period employer.

(B) Nothing in §§ 11-10-701 - 11-10-715 shall be construed to limit regular benefits payable pursuant to §§ 11-10-501 - 11-10-506 and 11-10-609 - 11-10-613.

(3) However, regular benefit payments shall not be charged to the separate account of any employer if the employer provides the director with notices regarding separation from work as are required by regulations of the director if the director finds that:

(A) The claimant voluntarily left the employer without good cause connected with the work; or

(B) The claimant was discharged by the employer for misconduct connected with the work.

(4) Benefits paid to an individual who continues to remain in the employ of a base-period employer without a reduction in the number of hours worked or wages paid shall not be charged to the separate account of the employer, provided that the individual is not employed on an as-needed or on-call basis.

(5) Benefits paid during an extended benefit period in accordance with §§ 11-10-534 - 11-10-543 shall not be charged to the separate

account of each employer in the base period except as may otherwise be provided in §§ 11-10-701 - 11-10-715.

(b) Benefit payments made to any individual whose base-period wages include wages for previously uncovered services as defined in § 11-10-507(5)(C) shall not be charged to the separate account of any employer to the extent that the Unemployment Compensation Fund is reimbursed for the benefits pursuant to § 121 of Pub. L. No. 94-566.

SECTION 11. Arkansas Code § 11-10-705 is amended to read as follows:

§ 11-10-705. Future rates - Computation of ~~experience~~ contribution rates.

(a)(1) Each employer's contribution rate beginning January 1 for each twelve-month period shall be determined on the basis of the employer's record through June 30 of the previous calendar year.

(2) The record of an employer shall include, for the purpose of computing an employer's contribution rate, any payment, except a payment which represents a stabilization tax payment or a payment which represents an extended benefit tax payment, made by the employer on or before July 31 on wages paid by the employer on or before June 30 of the calendar year.

(b)(1)(A) The contribution rate of an employer who has had three (3) or more years of benefit risk as defined at § 11-10-707 shall be that shown on the corresponding line which reflects the employer's reserve ratio in the contribution rate schedule which follows.

(B) The reserve ratio in ~~this~~ the following schedule is determined by dividing the difference in contributions paid and regular benefits charged by the annual taxable payroll:

CONTRIBUTION RESERVE RATIO

RATE

0.1% 9.95% or more
0.3% 9.35% but less than 9.95%
0.5% 8.85% but less than 9.35%
0.8% 8.65% but less than 8.85%

1	1.2%	8.35% but less than 8.65%
2	1.6%	7.95% but less than 8.35%
3	2.0%	7.35% but less than 7.95%
4	2.4%	6.75% but less than 7.35%
5	2.8%	5.45% but less than 6.75%
6	3.2%	2.45% but less than 5.45%
7	4.0%	1.35% but less than 2.45%
8	5.0%	Less than 1.35% with two (2) years or
9		less negative <u>a positive reserve</u> balance
10	6.0%	More than two (2) years negative
11		balance <u>Less than 0.00%</u>
12		

(2)(A) Notwithstanding any other ~~inconsistent~~ provision of this chapter, for any calendar year beginning on and after ~~January 1, 2002~~ January 1, 2008, an employer who has been assigned a contribution rate of six percent (6%) pursuant to this chapter and who has had such a rate for the two (2) preceding calendar years will be assigned an additional contribution assessment of two percent (2%) ~~unless the employer has a positive experience, i.e., contributions paid exceed benefit charges, for one (1) of the two (2) preceding computation years, i.e., the twelve month periods ending June 30.~~

(B) Furthermore, after two (2) consecutive years of being assessed ~~this~~ an additional contribution of two percent (2%) under § 11-10-705(b)(2)(A), this additional contribution assessment ~~will be increased~~ shall increase to four percent (4%) ~~unless the employer has a positive experience in at least two (2) of the last three (3) preceding computation periods.~~

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

(B) The Director of the Department of Workforce Services shall provide to each eligible employer an annual notice of voluntary payment amounts that may be submitted to reduce the employer's contribution rate.

(2)(A) ~~Upon the payment of the voluntary payment to the fund within ninety (90) days from the beginning of the rate year, as provided in~~

~~regulations of the Director of the Department of Workforce Services, the director shall compute a new experience rate for the employer.~~

(i) Voluntary payments to the Unemployment Compensation Trust Fund authorized by § 11-10-705(c)(1) shall be made no later than March 31 of the calendar year for which the new contribution rate is effective.

(ii) Upon receipt of a timely voluntary payment, the Director of the Department of Workforce Services shall compute a new contribution rate for the employer and provide notice to the employer of the new contribution rate.

(B) Any adjustments made under §§ 11-10-703 - 11-10-708 shall be used only in the form of credit against accrued or future contributions.

(C) No refund shall ever be made to any employer of any voluntary payment so made.

SECTION 12. Arkansas Code § 11-10-707(b)(1), concerning the time to apply for a redetermination, is amended to read as follows:

(b) The director shall for each rate year:

(1)(A)(i) Periodically notify each employer of the regular benefits paid which are chargeable to the employer's account.

(ii) The notification shall become conclusive and binding upon the employer unless within thirty (30) days after mailing of the notice the employer files an application for review and redetermination as provided in subdivision (c)(1) of this section.

(B)(i) ~~Beginning on and after July 1, 2001, With the exception of charges that might be changed under § 11-10-703(a)(2)(A)(ii), an~~ application for review and redetermination ~~must~~ shall be made the first time that charges appear on the employer's account as reflected on the quarterly statement of paid benefits.

(ii) Subsequent charges on the same claimant in the same benefit year may not be challenged, ~~and.~~

(2) Notify each employer of the employer's rate of contribution as determined pursuant to §§ 11-10-701 - 11-10-715.

SECTION 13. Arkansas Code § 11-10-707(c)(2), concerning an employer's

1 appeal to circuit court, is amended to read as follows:

2 (2) An employer may appeal from the determination of the
3 director to the circuit court by filing a petition with the clerk of the
4 circuit court in the county of the employer's residence or in Pulaski County
5 within ~~twenty (20)~~ thirty (30) days of the mailing to the employer of notice
6 of the determination.

7
8 SECTION 14. Arkansas Code § 11-10-710 is amended to read as follows:

9 (a)(1) Unless otherwise provided in § 11-10-723, Any any employing
10 unit which acquires the organization, trade, and all of the places of
11 business and substantially all of the assets of any employer, excepting, in
12 any such case, any assets retained by the employer incident to the
13 liquidation of the employer's obligations, whether or not the acquiring
14 employing unit was an ~~employment~~ employing unit within the meaning of § 11-
15 10-208 prior to the acquisition, and which continues the organization, trade,
16 or business as indicated by retaining the ~~predecessor's predecessor~~
17 employer's three-digit, North American Industry Classification Code, shall
18 ~~assume, for the purpose of determining the contribution rate of the employing~~
19 ~~unit after the acquisition, the position of the employer with respect to the~~
20 ~~employer's separate account, the predecessor employer's actual contributions,~~
21 ~~and regular benefit experience, annual payrolls, liability for current or~~
22 ~~delinquent contributions, interest, and penalty, and otherwise as if no~~
23 ~~change with respect to the separate account, actual experience, and payrolls~~
24 ~~or the position of the predecessor employer otherwise had occurred and with~~
25 ~~the same effect for the purpose as if the operations of the predecessor~~
26 employer had at all times been carried on by the successor employing unit.

27 (2) The separate account of the predecessor employer shall be
28 transferred by the Director of the Department of Workforce Services to the
29 successor employing unit and, as of the date of the acquisition, shall become
30 the separate account or part of the separate account, as the case may be, of
31 the successor employing unit, and the regular benefits thereafter chargeable
32 to the predecessor employer on account of employment prior to the date of the
33 acquisition shall be charged to the separate account of the successor
34 employing unit.

35 (b)(1) However, ~~notwithstanding any other provision of this chapter,~~
36 unless otherwise provided in § 11-10-723, if any individual, legal entity, or

~~other~~ employing unit acquires a segregable and identifiable portion of the business of any employer, whether the acquiring employing unit was an employing unit within the meaning of § 11-10-208 prior to the acquisition, and whether the acquisition is the result of reorganization, purchase, inheritance, receivership, or for any other cause, and if the successor employing unit desires to obtain any benefit of the predecessor's predecessor employer's experience, the successor employing unit must file with the director a petition, signed by all interested parties, within thirty (30) days after the transfer acquisition setting out the percentage of the predecessor's predecessor employer's experience actual contributions, regular benefit experience, annual payrolls, payment of contributions, and otherwise that should be transferred to the successor's successor employing unit's separate account of the actual contributions, regular benefit experience, annual payrolls, payment of contributions, and otherwise as if no change with respect to the segregable and identifiable portion of the separate account had occurred with the same effect and the purposes as if the operation of the employer had at all times been carried on by the predecessor employing unit, and it is found by the director that all contributions due by the predecessor employing unit have been paid.

(2)(A) If the director finds the facts substantially as represented, ~~he or she shall transfer from the predecessor to the successor the proportionate share of the predecessor's experience in the petition and that all contributions due by the successor employing unit have been paid, he or she shall transfer the proportionate share of the predecessor employer's separate account to the successor employing unit.~~

(B) Effective the date of the acquisition, the account transferred under (b)(2)(A) of this section shall become the separate account or part of the separate account, as the case may be, of the successor employing unit as if no change with respect to the proportionate share of the separate account had occurred.

(c)(1) Following a transfer as described in subsection (a) or (b) of this section, the contribution rate of the successor ~~employer~~ employing unit shall be determined as follows:

(A) If the successor employing unit is an employer as defined in § 11-10-209 at the time of the transfer and has been assigned a contribution rate pursuant to the provisions of this section, the successor

1 employing unit shall continue to pay contributions at the previously assigned
2 contribution rate through the end of the rate year.

3 (B) If the successor employing unit is not an employer as
4 defined in § 11-10-209 at the time of the transfer and acquires the business
5 of one (1) employer or the businesses of two (2) or more employers with the
6 same contribution rate, the successor employing unit shall pay contributions
7 at the contribution rate assigned to the predecessor employer or employers
8 from the date the transfer occurred through the end of the rate year.

9 (C) If the successor employing unit is not an employer
10 as defined in § 11-10-209 at the time of the transfer and simultaneously
11 acquires the businesses of two (2) or more employers with different rates of
12 contributions, the ~~successor's~~ successor employing unit's contribution rate
13 from the date the transfer occurred through the end of the rate year shall be
14 computed on the combined experience of the ~~successor's~~ predecessors employers
15 as of the regular computation date for the rate year in which the transfer
16 occurred.

17 (2)(A) ~~In all cases from~~ From and after the end of the rate year
18 in which the transfer occurred, the ~~successor's~~ successor employing unit's
19 rate of contribution for each rate year following the transfer shall be based
20 on the ~~successor's~~ successor employing unit's experience combined with the
21 experience of the ~~successor's~~ predecessor employer or employers ~~or~~
22 ~~predecessors~~ as of the regular computation date for the rate year.

23 (B) However, if at the regular computation date the
24 successor employing unit and the predecessor employer or employers have less
25 than three (3) years of benefit risk as defined in § 11-10-707(d):

26 (i) The contribution rate shall be the new employer
27 contribution rate as set forth in § 11-10-704(b)(1); and

28 (ii) The three (3) years of benefit risk shall be
29 calculated using the established new employer calculation date of the
30 successor employing unit or the calculation date of the predecessor employer
31 or employers, whichever date is the earliest.

32 (d)(1)(A) The director shall give notice of the determination he or
33 she makes under subsection (a) or (b) of this section to the predecessor
34 employer, unless the predecessor employer has consented to the transfer of
35 experience, and to the ~~successor employer~~ successor employing unit.

36 (B) The notice shall become conclusive and binding upon

1 ~~the employers~~ each employing unit unless, within twenty (20) days after the
 2 mailing date of the notice ~~or notices thereof~~ to the ~~employers'~~ employing
 3 unit's last known mailing ~~addresses~~ address, ~~one of the employers files an~~
 4 application for review and redetermination is filed with the director setting
 5 forth the ~~employer's~~ employing unit's reasons ~~therefore~~ for seeking a review
 6 and redetermination.

7 (2)(A)(i)(a) The director may deny the application if he or she
 8 finds the reasons set forth by the ~~employer~~ employing unit making application
 9 for review and redetermination are insufficient to change his or her
 10 determination.

11 (b) Otherwise, ~~it~~ the application for review
 12 and redetermination shall be granted, and ~~he or she~~ the director shall make a
 13 redetermination.

14 (ii) The director may issue a redetermination within
 15 one (1) year of the original determination if, through his or her own
 16 investigation, he or she finds the original determination to be in error.

17 (B) The director shall promptly notify the parties to the
 18 review and redetermination of his or her decision ~~employers shall be promptly~~
 19 ~~notified,~~ by mailing the denial of redetermination to their last known
 20 addresses, ~~of the denial of the application or the redetermination, both of~~
 21 ~~which shall become final and conclusive at the date of mailing of~~
 22 ~~notification thereof.~~

23 (C) The denial of an application for review and
 24 redetermination is final and conclusive as of the mailing date of the
 25 director's notification.

26 (3) ~~An employer~~ A party to a review and redetermination under
 27 (d)(2) of this section may appeal from the determination or redetermination
 28 of the director ~~to the circuit court~~ by filing a petition with the clerk of
 29 the circuit court in the county of the ~~employer's~~ party's residence, if the
 30 residence is in Arkansas, or the clerk of the circuit court of in Pulaski
 31 County, Arkansas, within ~~twenty (20)~~ thirty (30) days of the mailing date of
 32 the director's notice of determination or redetermination.

33
 34 SECTION 15. Arkansas Code § 11-10-713(d)(2)(B), concerning an
 35 employer's time for appealing a redetermination, is amended to read as
 36 follows:

(B) Any redetermination shall be conclusive and binding unless, not later than ~~twenty (20)~~ thirty (30) days after the redetermination was mailed to the employer's last known address or was otherwise delivered, the employer appeals the redetermination of the director ~~to the circuit court~~ by filing a petition with the clerk of the circuit court in the county of the employer's residence, if the residence is in Arkansas, or the clerk of the circuit court of in Pulaski County, Arkansas.

SECTION 16. Arkansas Code § 11-10-717(e)(4) is amended to read as follows:

(4) The term "lessor employing unit" is defined as an independently established business entity which engages in the business of providing leased employees to any other employer, individual, organization, partnership, corporation, or other legal entity, referred to herein as a client lessee. Any legal entity determined to be engaged in the business of outsourcing shall be considered a "lessor employing unit" under this section. Additionally, the licensing requirements of the ~~Arkansas Employee Leasing Act, § 23-92-301 et seq. [repealed]~~ Arkansas Professional Employer Organization Recognition and Licensing Act, § 23-92-401 et seq., as administered by the State Insurance Department must be satisfied.

SECTION 17. Arkansas Code § 19-5-984 is amended to read as follows:

19-5-984. ~~Employment Security~~ Department of Workforce Services Special Fund.

(a) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the ~~"Employment Security Special Fund"~~ "Department of Workforce Services Special Fund".

(b)(1) This fund shall consist of unemployment compensation contribution interest and penalty payments collected pursuant to §§ 11-10-716 - 11-10-722, ~~and the proceeds of the one twentieth of one percent (.05%) stabilization tax, § 11-10-706(f), and interest and penalty payments on~~ overpayments collected under § 11-10-532(c) and § 11-10-532(d).

(2) The fund shall be used for refunds of interest and penalties erroneously paid and such other additional purposes necessary to the proper administration of § 11-10-101 et seq., as determined by the Director of the

1 ~~Arkansas Employment Security Department~~ Department of Workforce Services as
2 set out in and § 11-10-532(c), § 11-10-532 (d), and §§ 11-10-716 - 11-10-722.

3 (c) The director shall report to the Legislative Council on a
4 quarterly basis on all uses of the fund.

5
6 SECTION 18. EMERGENCY CLAUSE. It is found and determined by the
7 General Assembly of the State of Arkansas that the act should go into effect
8 as soon as possible in order to make needed technical changes; to enable the
9 state to capture and utilize penalty and interest owing from claimants; and
10 in order that the state might continue to be in compliance with the Federal
11 Unemployment Tax Act, as amended. Therefore, an emergency is declared to
12 exist and this act being immediately necessary for the preservation of the
13 public peace, health, and safety shall become effective on:

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

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

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