

WORKING DRAFT

SENATE FILE NO. _____

Unemployment tax amendments.

Sponsored by: Joint Labor, Health and Social Services
Interim Committee

A BILL

for

1 AN ACT relating to unemployment compensation; prohibiting
2 contribution rate manipulation; prescribing civil and
3 criminal penalties for contribution rate manipulation;
4 providing that a temporary service contractor is the
5 employing unit of a temporary worker; prescribing the
6 contribution rate upon transfer of a business as specified;
7 providing definitions; and providing for an effective date.

8

9 *Be It Enacted by the Legislature of the State of Wyoming:*

10

11 **Section 1.** W.S. 27-3-706 is created to read:

12

13 **27-3-706. Experience rating manipulation; penalties.**

14

1 (a) A person who knowingly, or with deliberate
2 ignorance or reckless disregard of the true facts or the
3 requirements of this act, violates or attempts to violate
4 W.S. 27-3-507 or any other provision of this act related to
5 determining the assignment of a contribution rate, or who
6 knowingly advises another to violate the requirements of
7 W.S. 27-3-507 or any other provision of this act related to
8 determining the assignment of a contribution rate, shall be
9 subject to the following penalties:

10
11 (i) A person who is an employer shall be
12 assigned, for the rate year during which the non-compliance
13 or misrepresentation occurred and for the following three
14 (3) rate years, the highest rate assignable under W.S. 27-
15 3-503. If the person's business is already at the highest
16 rate for any year, or if the amount of increase in the
17 person's rate would be less than two percent (2%) for that
18 year, then a penalty rate of two percent (2%) of taxable
19 wages shall be imposed for that year. This penalty may
20 exceed the maximum assignable rate;

21
22 (ii) A person who is not an employer shall be
23 subject to a civil penalty of not more than fifty thousand
24 dollars (\$50,000.00). Funds received by the division under

1 this paragraph shall be deposited in the employment
2 security revenue account established under W.S. 27-3-207;

3

4 (iii) In addition to the penalty imposed
5 pursuant to paragraphs (i) and (ii) of this subsection, any
6 violation or attempted violation of W.S. 27-3-507 or any
7 other provision of this act related to determining the
8 assignment of a contribution rate may be prosecuted as a
9 felony punishable by a fine of not more than fifty thousand
10 dollars (\$50,000.00), imprisonment for not more than five
11 (5) years, or both.

12

13 **Section 2.** W.S. 27-3-501(a) by creating new
14 paragraphs (ix) through (xi), 27-3-502(g)(i) and by
15 creating a new paragraph (vii) and 27-3-507 are amended to
16 read:

17

18 **27-3-501. Definitions.**

19

20 (a) As used in this article:

21

22 (ix) "Temporary service contractor" means any
23 individual, firm, association, partnership, limited
24 liability company, corporation or other type of

1 organization conducting a business that employs individuals
2 directly for the purpose of furnishing services of the
3 employed individuals on a temporary basis to others.

4 "Temporary service contract" does not include a service
5 supplier as defined in paragraph (viii) of this subsection;

6
7 (x) "Temporary worker" means a worker whose
8 services are furnished to another employer on a temporary
9 basis to substitute for a permanent employee on leave or to
10 meet an emergency or short-term workload need. "Temporary
11 worker" does not include a person working for a service
12 supplier as defined in paragraph (viii) of this subsection;

13
14 (xi) For purposes of W.S. 27-3-507 and 27-3-706,
15 "person" means an individual or entity, including any
16 partnership, association, trust, estate, corporation,
17 limited liability company, domestic or foreign insurance
18 company or corporation, a receiver, trustee in bankruptcy,
19 trustee, successor or the legal representative of a
20 deceased person.

21
22 **27-3-502. Determination of employer and employment;**
23 **election of coverage; records and reports; injunction;**
24 **service suppliers.**

1

2 (g) Notwithstanding any other provisions of this act:

3

4 (i) A ~~service supplier~~client is the employing
5 unit of the worker provided by a service supplier to the
6 client and shall be liable to pay the contributions on
7 wages paid by ~~it~~the service supplier to the worker
8 performing services for the client;

9

10 (vii) A temporary service contractor is the
11 employing unit of the temporary worker provided to an
12 employer and shall be liable to pay the contributions on
13 wages paid by the temporary service contractor to the
14 temporary worker performing services for the employer.

15

16 **27-3-507. Person acquiring trade of employing unit;**
17 **transfer of experience and assignment of rates.**

18

19 (a) An employing unitA person acquiring the trade,
20 organization, business or substantially all the assets of
21 an employer subject to this act shall assume the employer's
22 account, benefit experience and contribution rate. ~~If the~~
23 ~~acquiring employing unit is an employer subject to this~~
24 ~~act, the employer shall contribute at the rate in effect~~

1 ~~prior to acquisition on all wages payable for employment~~
2 ~~after acquisition until the end of the current calendar~~
3 ~~year. The department shall consolidate the separate~~
4 ~~accounts and benefit experiences and shall determine the~~
5 ~~contribution rate of the acquiring employer in accordance~~
6 ~~with this article for the calendar year following the year~~
7 ~~in which the employer notifies the department of the~~
8 ~~acquisition provided however, the acquiring employer may be~~
9 ~~given a delinquency rate~~ A delinquency rate shall be
10 assumed by the acquiring person as provided in W.S.
11 27-3-503(b) ~~only on a delinquency on the acquiring~~
12 ~~employer's account or when the acquiring employer is~~ when
13 the acquiring person owned or controlled, ~~in whole or in~~
14 ~~part, by any person or entity who owns an interest in the~~
15 ~~selling~~transferring employer or ~~by a member of the~~
16 ~~immediate family of the selling employer~~if the acquiring
17 person is a member of the immediate family of the
18 transferring employer.

19

20 (b) The transfer of some or all of an employer's
21 workforce to another person shall be considered a transfer
22 of trade or business when, as a result of the transfer, the
23 transferring employer no longer performs trade or business
24 with respect to the transferred workforce, and the trade or

1 business is performed by the person to whom the workforce
2 is transferred.

3

4 (c) If an employer transfers all or a portion of its
5 trade or business to another employer and, at the time of
6 the transfer, there is substantially common ownership,
7 management or control of the two employers, then the
8 unemployment insurance experience attributable to the
9 transferred trade or business shall be transferred to the
10 employer to whom the business is transferred. The rates of
11 both employers shall be recalculated and made effective the
12 first day of the calendar quarter immediately following the
13 date of the transfer of trade or business. Both employers
14 may be given a delinquency rate as provided in W.S. 27-3-
15 503(b) if applicable.

16

17 (d) If, following a transfer of experience under this
18 section, the department determines that a substantial
19 purpose of the transfer of the trade or business was to
20 obtain a reduced liability for contributions, then the
21 accounts of the employers involved shall be combined into a
22 single account and a single rate assigned to the account.

23

1 (e) If a person is not an employer under this section
2 at the time the person acquires the trade or business of an
3 employer, the unemployment experience of the acquired
4 employer shall not be transferred to the person if the
5 department finds that the person acquired the trade or
6 business of the employer solely or primarily for the
7 purpose of obtaining a lower rate of contributions.
8 Instead, the person shall be assigned the applicable new
9 employer rate under W.S. 27-3-503(b). In determining
10 whether the trade or business was acquired solely or
11 primarily for the purpose of obtaining a lower rate of
12 contributions, the department shall use objective factors
13 which may include the cost of acquiring the business,
14 whether the person continued the business enterprise of the
15 acquired business, how long the business enterprise was
16 continued, or whether a substantial number of new employees
17 were hired for performance of duties unrelated to the
18 business activity conducted prior to acquisition.

19
20 (f) The department shall establish procedures to
21 identify the transfer or acquisition of a business for
22 purposes of this section and W.S. 27-3-706.

23

1 **Section 2.** W.S. 27-3-502(g) (ii) through (vi) are
2 repealed.

3 ***** STAFF COMMENTS *****

4 **Repealed language is show in this working draft**
5 **for convenience only. The formal draft will not**
6 **show repealed language.**
7

8 **27-3-502. Determination of employer and employment;**
9 **election of coverage; records and reports; injunction;**
10 **service suppliers.**

11
12 (g) Notwithstanding any other provisions of this act:

13
14 ~~(ii) If an entity is not a service supplier as~~
15 ~~defined by W.S. 27-3-501(a) (viii) or if the client pays~~
16 ~~wages to the worker directly, then the client is the~~
17 ~~employing unit of the worker and shall be liable to pay the~~
18 ~~contributions on wages paid by it to the worker performing~~
19 ~~services for the client;~~

20
21 ~~(iii) Notwithstanding the foregoing, if an~~
22 ~~entity pays the worker and that entity is not the employing~~
23 ~~unit of the worker as determined herein, that entity is~~
24 ~~deemed the agent of the employing unit so determined;~~

25
26 ~~(iv) If the service supplier fails to pay all~~
27 ~~contributions or submit required reports which are due,~~
28 ~~then the client shall be jointly and severally liable for~~
29 ~~those which are attributable to wages for services~~
30 ~~performed for the client by the worker provided by the~~
31 ~~service supplier;~~

32
33 ~~(v) The service supplier shall keep separate~~
34 ~~records, submit a list of all clients to the department on~~
35 ~~a quarterly basis and submit separate quarterly reports for~~
36 ~~each client;~~

37
38 ~~(vi) Service suppliers currently engaged in the~~
39 ~~business of providing workers to clients shall comply with~~
40 ~~the provisions of this subsection by July 1, 1989.~~
41

42 **Section 3.** This act is effective July 1, 2005.

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(END)