

ENROLLED ACT NO. 83, SENATE

FIFTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING  
2005 GENERAL SESSION

AN ACT relating to unemployment compensation; prohibiting contribution rate manipulation; prescribing civil and criminal penalties for contribution rate manipulation; amending child support withholding as specified; clarifying redetermination authority and notices as specified; prescribing the contribution rate upon transfer of a business as specified; conforming provisions concerning duties transferred to the department of workforce services; amending information sharing authority and procedures; eliminating the one-week waiting period for benefits; providing a conforming amendment; providing definitions; and providing for an effective date.

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

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

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

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

(i) A person who is an employer shall be assigned, for the rate year during which the noncompliance or misrepresentation occurred and for the following three (3) rate years, the highest rate assignable under W.S. 27-3-503. If the person's business is already at the highest rate for any year, or if the amount of increase in

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the person's rate would be less than two percent (2%) for that year, then a penalty rate of two percent (2%) of taxable wages shall be imposed for that year. This penalty may exceed the maximum assignable rate;

(ii) A person who is not an employer shall be subject to a civil penalty of not more than fifty thousand dollars (\$50,000.00). Funds received by the division under this paragraph shall be paid over to the state treasurer to be credited to the public school fund of the county in which the violation for which the penalty imposed occurred;

(iii) In addition to the penalty imposed pursuant to paragraphs (i) and (ii) of this subsection, any violation or attempted violation of W.S. 27-3-507 or any other provision of this act related to determining the assignment of a contribution rate may be prosecuted as a felony punishable by a fine of not more than fifty thousand dollars (\$50,000.00), imprisonment for not more than five (5) years, or both. The fine under this paragraph shall be paid over to the state treasurer to be credited to the public school fund of the county in which the violation for which the penalty imposed occurred.

**Section 2.** W.S. 27-3-305(b)(ii), 27-3-307(d)(intro), 27-3-402(a), (c) and (d), 27-3-501(a) by creating new paragraphs (ix) through (xi), 27-3-502(g) and by creating a new paragraph (vii), 27-3-507, 27-3-605(a) and 27-3-607(a)(iii) through (vi), by creating a new paragraph (viii), by amending and renumbering (viii) as (ix), (c)(intro), (ii), (vii), (viii) and by creating new paragraphs (x) through (xii) are amended to read:

**27-3-305. Disclosure of child support obligations required; notification; amount withheld; payment; applicability of provisions.**

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(b) The department shall withhold from benefits payable to an individual owing child support obligations enforced pursuant to a plan approved under 42 U.S.C. § 651, et seq.:

(ii) The amount determined pursuant to an agreement under 42 U.S.C. § 654(19)(B)(i) and submitted to the department by the state or local child support enforcement agency. ~~;~~ ~~or~~

**27-3-307. Eligibility when enrolled in approved training program; standards for training program approval.**

(d) Notwithstanding W.S. 27-3-306(a)(i) ~~;~~ and (iii) ~~and (iv)~~ or 27-3-311(a)(i) through (iii) or any federal law relating to availability for, active search for, failure to apply for or refusal to accept suitable work, an otherwise eligible individual is eligible for benefits for any week if he is not receiving wages or compensation while participating in training in an apprenticeship program approved by the department if he:

**27-3-402. Determination; generally; referral to special examiner; redetermination; notice; appeal.**

(a) Determination of a claim filed pursuant to W.S. 27-3-401(a) shall be made promptly by a deputy designated by the department. If a claim is denied, the determination shall state the reasons for denial. ~~A monetary determination at the beginning of a benefit year shall specify if the claimant earned wages in amounts required by W.S. 27-3-306(d) and if so, the first day of the benefit year, his weekly benefit amount and the maximum total amount of benefits payable for the benefit year.~~ Except as provided by subsection (c) of this section, a determination

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is final unless a party entitled to notice applies for redetermination or appeals the determination within fifteen (15) days after notice is mailed to his last known address of record.

(c) A monetary determination at the beginning of a benefit year shall specify if the claimant earned wages in amounts required by W.S. 27-3-306(d) and, if so, the first day of the benefit year, his weekly benefit amount and the maximum total amount of benefits payable for the benefit year. The deputy may reconsider a monetary determination if he finds an error in computation or identity, or discovers wages of the claimant relevant to but not considered in the determination. ~~A deputy may reconsider a nonmonetary or chargeability determination if a party entitled to notice or the department files a protest in writing within fifteen (15) days of the date the determination was mailed, except for determinations of which the last employer was given notice as specified under subsection (d) of this section. A monetary redetermination is final unless a party entitled to notice files an appeal within thirty (30) days after notice is mailed, provided however, that in its own discretion, the department may make a monetary redetermination within one (1) year after the date of an original determination regardless of whether a party has filed a timely appeal.~~ A monetary determination is final unless a party entitled to notice files a timely protest provided, however, that the department in its discretion may make a monetary redetermination at any time prior to the end of the benefit year whether or not a party has filed a timely protest.

(d) Notice of a determination ~~or a redetermination~~ shall be mailed promptly to the claimant at his last known address of record. Notice of a determination involving application of W.S. 27-3-308, 27-3-311(a)(i) and (f) and

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27-3-313(a)(i), together with reasons, shall be given to the last employing unit of the claimant. ~~The department may dispense with notice to any base period employing unit of the claimant if the employing unit failed to indicate prior to determination that he is the base period employer and the claimant may be ineligible or disqualified under this act~~ at the last known address of record of the employing unit or, if the address is unavailable, the best available address. Notices shall be mailed to all base period employers at the address of record.

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

(a) As used in this article:

(ix) "Temporary service contractor" means any individual, firm, association, partnership, limited liability company, corporation or other type of organization conducting a business that employs individuals directly for the purpose of furnishing services of the employed individuals on a temporary basis to others. "Temporary service contract" does not include a service supplier as defined in paragraph (viii) of this subsection;

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

(xi) For purposes of W.S. 27-3-507 and 27-3-706, "person" means an individual or entity, including any partnership, association, trust, estate, corporation, limited liability company, domestic or foreign insurance company or corporation, a receiver, trustee in bankruptcy,

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trustee, successor or the legal representative of a deceased person.

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

(g) Notwithstanding any other provisions of this act:

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

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

~~(a) An employing unit~~ A person acquiring the trade, organization, business or substantially all the assets of an employer subject to this act shall assume the employer's account, benefit experience and contribution rate. ~~If the acquiring employing unit is an employer subject to this act, the employer shall contribute at the rate in effect prior to acquisition on all wages payable for employment after acquisition until the end of the current calendar year. The department shall consolidate the separate accounts and benefit experiences and shall determine the contribution rate of the acquiring employer in accordance with this article for the calendar year following the year in which the employer notifies the department of the acquisition provided however, the acquiring employer may be given a delinquency rate~~ A delinquency rate shall be assumed by the acquiring person as provided in W.S. 27-3-503(b) ~~only on a delinquency on the acquiring employer's account or when the acquiring employer is~~ when

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the acquiring person owned or controlled, ~~in whole or in part, by any person or entity who owns~~ an interest in the ~~selling~~ transferring employer or ~~by a member of the immediate family of the selling employer~~ if the acquiring person is a member of the immediate family of the transferring employer.

(b) The transfer of some or all of an employer's workforce to another person shall be considered a transfer of trade or business when, as a result of the transfer, the transferring employer no longer performs trade or business with respect to the transferred workforce, and the trade or business is performed by the person to whom the workforce is transferred.

(c) If an employer transfers all or a portion of its trade or business 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 insurance experience attributable to the transferred trade or business shall be transferred to the employer to whom the business is transferred. The rates of both employers shall be recalculated and made effective the first day of the calendar quarter immediately following the date of the transfer of trade or business. Both employers may be given a delinquency rate as provided in W.S. 27-3-503(b) if applicable.

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

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(e) If a person is not an employer under this section at the time the person acquires the trade or business of an employer, the unemployment insurance experience of the acquired employer shall not be transferred to the person if the department finds that the person acquired the trade or business of the employer solely or primarily for the purpose of obtaining a lower rate of contributions. Instead, the person shall be assigned the applicable new employer rate under W.S. 27-3-503(b). In determining whether the trade or 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 the 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.

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

**27-3-605. Responsibilities of department of employment; agreements with other agencies authorized.**

(a) The department of employment ~~is the successor agency to the Wyoming state employment service division and the unemployment compensation division which previously existed under the commission. The department shall perform all functions previously performed by those divisions~~ shall administer the unemployment compensation program in this state.



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**27-3-607. Cooperation by department with federal and state agencies; disclosure and submission of specified information; limitations.**

(a) The department shall:

(iii) Upon request, pursuant to contract and on a reimbursable basis, of any state or political subdivision, furnish wage information obtained pursuant to this act determined necessary by regulation of the United States health and human services department for determining eligibility or assistance under 42 U.S.C. § 601 et seq.;

(iv) Upon request, pursuant to contract and on a reimbursable basis, disclose to officers or employees of any state or local child support enforcement agency operating pursuant to a plan described under 42 U.S.C. § 654 or to the federal parent locator service, any wage or unemployment compensation claim information obtained under this act for an identified individual;

(v) Upon request, pursuant to contract and on a reimbursable basis, disclose to officers and employees of the United States department of agriculture and any state food stamp agency defined under 7 U.S.C. § 2012(n)(1), any wage information obtained under this act for an identified individual, any record of application for or receipt of benefits and the amount received, his most recent home address and any refusal of an offer of employment and a description of this employment;

(vi) Upon request, pursuant to contract and on a reimbursable basis, provide unemployment insurance benefit and wage information to the department of housing and urban development and to other public housing agencies. Such information shall be provided as required by the McKinney

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Homeless Act of 1988, section 904(c) and in a manner as prescribed by the secretary of labor;

(viii) Upon request, pursuant to contract and on a reimbursable basis, disclose and furnish copies of records relating to the administration of this act to the railroad retirement board;

~~(viii)(ix) Require any recipient of information disclosed under paragraph (iii) or (vii) of this subsection to comply with any safeguards necessary and specified in federal law to ensure that the information furnished under paragraph (iii) or (vii) of this subsection shall be used only for the purposes authorized. under those paragraphs.~~

(c) The department may, on a reimbursable basis unless otherwise provided:

(ii) Notwithstanding W.S. 27-3-603 and subject to regulations of the commission and pursuant to contract, disclose necessary information obtained from any employing unit or individual under this act and any determination of benefit rights to any state or federal agency administering public employment Wagner-Peyser Act or Workforce Investment Act training services; ~~unemployment compensation laws or federal tax laws and to the office of the United States bankruptcy trustee;~~

(vii) Upon request, disclose information not otherwise restricted by law or contract to ~~officers and employees of the industrial siting administration, the Wyoming business council for economic development forecasting and economic development analysis and the bureau of labor statistics; Requirements for confidentiality of information under this act and the penalties for improper disclosure apply to the use of this~~

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~~information by officers and employees of the industrial  
siting administration, the Wyoming business council and the  
bureau of labor statistics;~~

(viii) Upon written request, disclose any information obtained under this act to director or agency head, or his designee or agent, in the executive branch of federal or state government to be used by the public official only for official business in connection with the administration of a law or in the enforcement of a law by that public official. The requesting agency shall reimburse the department for the cost of furnishing this information unless the cost is insignificant;

(x) Pursuant to contract, disclose wage information on a nonreimbursable basis to the social security administration utilizing the unemployment insurance interstate inquiry system;

(xi) Require any recipient of information disclosed under this subsection to comply with any safeguards necessary as specified in federal regulation to ensure that the information furnished shall be used only for the purposes authorized;

(xii) Notwithstanding W.S. 27-3-603 and subject to regulations of the commission, disclose necessary information obtained from any employing unit or individual under this act and any determination of benefit rights to any state or federal agency administering unemployment compensation laws or federal tax laws and to the office of the United States bankruptcy trustee.

**Section 3.** W.S. 27-3-305(b)(i) and (iii), 27-3-306(a)(iv) and (c), 27-3-606(c)(i) through (iv) and 27-3-607(c)(i) and (iii) are repealed.

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**Section 4.** This act is effective July 1, 2005.

(END)

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Governor

TIME APPROVED: \_\_\_\_\_

DATE APPROVED: \_\_\_\_\_

I hereby certify that this act originated in the Senate.

\_\_\_\_\_  
Chief Clerk