

SENATE FILE NO. SF0080

Unemployment compensation 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 amending child support withholding as specified; clarifying
5 redetermination authority and notices as specified;
6 clarifying that a temporary service contractor is the
7 employing unit of a temporary worker; prescribing the
8 contribution rate upon transfer of a business as specified;
9 conforming provisions concerning duties transferred to the
10 department of workforce services; amending information
11 sharing authority and procedures; eliminating the one-week
12 waiting period for benefits; providing definitions; and
13 providing for an effective date.

14

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

16

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

2

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

4

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

14

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

1

2 (ii) A person who is not an employer shall be
3 subject to a civil penalty of not more than fifty thousand
4 dollars (\$50,000.00). Funds received by the division under
5 this paragraph shall be deposited in the employment
6 security revenue account established under W.S. 27-3-207;

7

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

16

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

1

2 **27-3-305. Disclosure of child support obligations**
3 **required; notification; amount withheld; payment;**
4 **applicability of provisions.**

5

6 (b) The department shall withhold from benefits
7 payable to an individual owing child support obligations
8 enforced pursuant to a plan approved under 42 U.S.C. §
9 651, et seq.:

10

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

15

16 **27-3-402. Determination; generally; referral to**
17 **special examiner; redetermination; notice; appeal.**

18

19 (a) Determination of a claim filed pursuant to W.S.
20 27-3-401(a) shall be made promptly by a deputy designated
21 by the department. If a claim is denied, the determination
22 shall state the reasons for denial. ~~A monetary~~
23 ~~determination at the beginning of a benefit year shall~~
24 ~~specify if the claimant earned wages in amounts required by~~

1 ~~W.S. 27-3-306(d) and if so, the first day of the benefit~~
2 ~~year, his weekly benefit amount and the maximum total~~
3 ~~amount of benefits payable for the benefit year.~~ Except as
4 provided by subsection (c) of this section, a determination
5 is final unless a party entitled to notice applies for
6 redetermination or appeals the determination within fifteen
7 (15) days after notice is mailed to his last known address
8 of record.

9
10 (c) A monetary determination at the beginning of a
11 benefit year shall specify if the claimant earned wages in
12 amounts required by W.S. 27-3-306(d) and, if so, the first
13 day of the benefit year, his weekly benefit amount and the
14 maximum total amount of benefits payable for the benefit
15 year. The deputy may reconsider a monetary determination

16 if he finds an error in computation or identity, or
17 discovers wages of the claimant relevant to but not
18 considered in the determination. ~~A deputy may reconsider a~~
19 ~~nonmonetary or chargeability determination if a party~~
20 ~~entitled to notice or the department files a protest in~~
21 ~~writing within fifteen (15) days of the date the~~
22 ~~determination was mailed, except for determinations of~~
23 ~~which the last employer was given notice as specified under~~
24 ~~subsection (d) of this section. A monetary redetermination~~

1 ~~is final unless a party entitled to notice files an appeal~~
2 ~~within thirty (30) days after notice is mailed, provided~~
3 ~~however, that in its own discretion, the department may~~
4 ~~make a monetary redetermination within one (1) year after~~
5 ~~the date of an original determination regardless of whether~~
6 ~~a party has filed a timely appeal.~~ A monetary determination
7 is final unless a party entitled to notice files a timely
8 protest provided, however, that the department in its
9 discretion may make a monetary redetermination at any time
10 prior to the end of the benefit year whether or not a party
11 has filed a timely protest.

12
13 (d) Notice of a determination ~~or a redetermination~~
14 shall be mailed promptly to the claimant at his last known
15 address of record. Notice of a determination involving
16 application of W.S. 27-3-308, 27-3-311(a)(i) and (f) and
17 27-3-313(a)(i), together with reasons, shall be given to
18 the last employing unit of the claimant. ~~The department~~
19 ~~may dispense with notice to any base period employing unit~~
20 ~~of the claimant if the employing unit failed to indicate~~
21 ~~prior to determination that he is the base period employer~~
22 ~~and the claimant may be ineligible or disqualified under~~
23 ~~this act~~ at the last known address of record of the
24 employing unit or, if the address is unavailable, the best

1 available address. Notices shall be mailed to all base
2 period employers at the address of record.

3
4 **27-3-501. Definitions.**

5
6 (a) As used in this article:

7
8 (ix) "Temporary service contractor" means any
9 individual, firm, association, partnership, limited
10 liability company, corporation or other type of
11 organization conducting a business that employs individuals
12 directly for the purpose of furnishing services of the
13 employed individuals on a temporary basis to others.
14 "Temporary service contract" does not include a service
15 supplier as defined in paragraph (viii) of this subsection;

16
17 (x) "Temporary worker" means a worker whose
18 services are furnished to another employer on a temporary
19 basis to substitute for a permanent employee on leave or to
20 meet an emergency or short-term workload need. "Temporary
21 worker" does not include a person working for a service
22 supplier as defined in paragraph (viii) of this subsection;

23

1 (xi) For purposes of W.S. 27-3-507 and 27-3-706,
2 "person" means a person as defined in W.S. 8-1-102.

3

4 **27-3-502. Determination of employer and employment;**
5 **election of coverage; records and reports; injunction;**
6 **service suppliers.**

7

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

9

10 (i) A client of a service supplier is the
11 employing unit ~~of the worker provided to the client~~ and
12 shall be liable to pay the contributions on wages paid ~~by~~
13 ~~it~~ to the worker performing services for the client;

14

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

20

21 **27-3-507. Person acquiring trade of employing unit;**
22 **transfer of experience and assignment of rates.**

23

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

1

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

9

10 (c) If an employer transfers all or a portion of its
11 trade or business to another employer and, at the time of
12 the transfer, there is substantially common ownership,
13 management or control of the two (2) employers, then the
14 unemployment insurance experience attributable to the
15 transferred trade or business shall be transferred to the
16 employer to whom the business is transferred. The rates of
17 both employers shall be recalculated and made effective the
18 first day of the calendar quarter immediately following the
19 date of the transfer of trade or business. Both employers
20 may be given a delinquency rate as provided in W.S.
21 27-3-503(b) if applicable.

22

23 (d) If, following a transfer of experience under this
24 section, the department determines that a substantial

1 purpose of the transfer of the trade or business was to
2 obtain a reduced liability for contributions, then the
3 accounts of the employers involved shall be combined into a
4 single account and a single rate assigned to the account.

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

24

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

4
5 **27-3-605. Responsibilities of department of**
6 **employment; agreements with other agencies authorized.**

7
8 (a) The department of employment ~~is the successor~~
9 ~~agency to the Wyoming state employment service division and~~
10 ~~the unemployment compensation division which previously~~
11 ~~existed under the commission. The department shall perform~~
12 ~~all functions previously performed by those divisions~~ shall
13 administer the unemployment compensation program in this
14 state.

15
16 **27-3-607. Cooperation by department with federal and**
17 **state agencies; disclosure and submission of specified**
18 **information; limitations.**

19
20 (a) The department shall:

21
22 (iii) Upon request, as defined by contract and
23 on a reimbursable basis, of any state or political
24 subdivision, furnish wage information obtained pursuant to

1 this act determined necessary by regulation of the United
2 States health and human services department for determining
3 eligibility or assistance under 42 U.S.C. § 601 et seq.;

4

5 (iv) Upon request, as defined by contract and on
6 a reimbursable basis, disclose to officers or employees of
7 any state or local child support enforcement agency
8 operating pursuant to a plan described under 42 U.S.C. §
9 654 or to the federal parent locator service, any wage or
10 unemployment compensation claim information obtained under
11 this act for an identified individual;

12

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

22

23 (vi) Upon request, as defined by contract and on
24 a reimbursable basis, provide unemployment insurance

1 benefit and wage information to the department of housing
2 and urban development and to other public housing agencies.
3 Such information shall be provided as required by the
4 McKinney Homeless Act of 1988, section 904(c) and in a
5 manner as prescribed by the secretary of labor;

6
7 (viii) Upon request, as defined by contract and
8 on a reimbursable basis, disclose and furnish copies of
9 records relating to the administration of this act to the
10 railroad retirement board;

11
12 ~~(viii)(ix)~~ Require any recipient of information
13 disclosed under ~~paragraph (iii) or (vii) of~~ this subsection
14 to comply with any safeguards necessary and specified in
15 federal law to ensure that the information furnished ~~under~~
16 ~~paragraph (iii) or (vii) of this subsection~~ shall be used
17 only for the purposes authorized. ~~under those paragraphs.~~

18
19 (c) The department may, on a reimbursable basis
20 unless otherwise provided:

21
22 (ii) Notwithstanding W.S. 27-3-603 and subject
23 to regulations of the commission as defined in contract,
24 disclose necessary information obtained from any employing

1 unit or individual under this act and any determination of
2 benefit rights to any state or federal agency administering
3 ~~public employment~~ Wagner-Peyser Act or Workforce Investment
4 Act training services; ~~unemployment compensation laws or~~
5 ~~federal tax laws and to the office of the United States~~
6 ~~bankruptcy trustee;~~

7
8 (vii) Upon request, disclose information not
9 otherwise restricted by law or contract to ~~officers and~~
10 ~~employees of the industrial siting administration, the~~
11 ~~Wyoming business council for economic development~~
12 ~~forecasting and economic development analysis and the~~
13 bureau of labor statistics; ~~Requirements for~~
14 ~~confidentiality of information under this act and the~~
15 ~~penalties for improper disclosure apply to the use of this~~
16 ~~information by officers and employees of the industrial~~
17 ~~siting administration, the Wyoming business council and the~~
18 ~~bureau of labor statistics;~~

19
20 (viii) Upon written request, disclose any
21 information obtained under this act to director or agency
22 head, or his designee or agent, in the executive branch of
23 federal or state government to be used by the public
24 official only for official business in connection with the

1 administration of a law or in the enforcement of a law by
2 that public official. The requesting agency shall
3 reimburse the department for the cost of furnishing this
4 information unless the cost is insignificant;

5
6 (x) As defined in contract, disclose wage
7 information on a nonreimbursable basis to the social
8 security administration utilizing the unemployment
9 insurance interstate inquiry system;

10
11 (xi) Require any recipient of information
12 disclosed under this subsection to comply with any
13 safeguards necessary as specified in federal regulation to
14 ensure that the information furnished shall be used only
15 for the purposes authorized;

16
17 (xii) Notwithstanding W.S. 27-3-603 and subject
18 to regulations of the commission, disclose necessary
19 information obtained from any employing unit or individual
20 under this act and any determination of benefit rights to
21 any state or federal agency administering unemployment
22 compensation laws or federal tax laws and to the office of
23 the United States bankruptcy trustee.

24

1 **Section 3.** W.S. 27-3-305(b)(i) and (iii),
2 27-3-306(a)(iv) and (c), 27-3-502(g)(ii) through (vi),
3 27-3-606(c)(i) through (iv) and 27-3-607(c)(i) and (iii)
4 are repealed.

5

6 **Section 4.** This act is effective immediately upon
7 completion of all acts necessary for a bill to become law
8 as provided by Article 4, Section 8 of the Wyoming
9 Constitution.

10

11

(END)