

1 SB270
2 146096-1
3 By Senators Scofield and Waggoner
4 RFD: Business and Labor
5 First Read: 28-FEB-13

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8 SYNOPSIS: Under existing law, for the purposes of
9 unemployment compensation, an employing unit is
10 defined as an employer that acquires an
11 organization, trade, or business, or substantially
12 all of the assets thereof, of another employing
13 unit.

14 This bill would further define an employing
15 unit as an employer that acquires at least 65
16 percent of an organization, trade, employees, or
17 business located in the State of Alabama, or
18 substantially all of the assets thereof, of another
19 employing unit.

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21 A BILL
22 TO BE ENTITLED
23 AN ACT

24
25 To amend Section 25-4-8, Code of Alabama 1975,
26 relating to unemployment compensation; to further define
27 employing unit.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. Section 25-4-8 of the Code of Alabama
3 1975, is amended to read as follows:

4 "§25-4-8.

5 "(a) "Employer," as used in this chapter, prior to
6 January 1, 1978, shall mean any employing unit which was so
7 defined in this chapter prior to such date.

8 "After December 31, 1977, except as otherwise
9 provided in this chapter, "employer," as used in this chapter
10 shall mean:

11 "(1) Any employing unit which, after December 31,
12 1977:

13 "a. In any calendar quarter in either the current or
14 preceding calendar year paid, for service in employment, wages
15 of ~~\$1,500.00~~ one thousand five hundred dollars (\$1,500) or
16 more; or

17 "b. For some portion of a day in each of 20
18 different calendar weeks, whether or not such weeks were
19 consecutive, in either the current or the preceding calendar
20 year, had in employment at least one individual (irrespective
21 of whether the same individual was in employment in each such
22 day).

23 "(2) Any employing unit which, having become an
24 employer under this chapter, has not under Sections 25-4-130
25 and 25-4-131 ceased to be an employer subject to this chapter.

1 "(3) For the effective period of its election
2 pursuant to Section 25-4-131, any other employing unit which
3 has elected to become fully subject to this chapter.

4 "(4) Any employing unit (whether or not an employing
5 unit at the time of acquisition) which:

6 "a. Acquired at least 65 percent of the
7 organization, trade, employees, or business located in the
8 State of Alabama, or substantially all the assets thereof, of
9 another employing unit which at the time of such acquisition
10 was an employer subject to this chapter; or

11 "b. Acquired a segregable part of the organization,
12 trade, or business of another employing unit which at the time
13 of such acquisition was an employer subject to this chapter;
14 provided, that such segregable part would have been an
15 employer subject to this chapter if such part had constituted
16 its entire organization, trade, or business.

17 "(5) Any employing unit which acquires at least 65
18 percent of the organization, trade, employees, or business
19 located in the State of Alabama, or substantially all of the
20 assets thereof of another employing unit (not an employer
21 subject to this chapter) and which, if the employment record
22 of such employing unit subsequent to such acquisition,
23 together with the employment record of the acquired unit prior
24 to such acquisition, both within the same calendar year, would
25 be sufficient to constitute an employing unit an employer
26 subject to this chapter.

1 "(6) Any employing unit not an employer by reason of
2 any other paragraph of this section:

3 "a. For which, within either the current or
4 preceding calendar year, service is or was performed with
5 respect to which such employing unit is held liable by the
6 federal government for any federal tax against which credit
7 may be taken for contributions required to be paid into a
8 state unemployment fund; or

9 "b. Which, as a condition for approval of this
10 chapter for full tax credit against the tax imposed by the
11 Federal Unemployment Tax Act, is required, pursuant to such
12 Federal Unemployment Tax Act, to be an "employer" under this
13 chapter.

14 "(7) Any employing unit for which service in
15 employment as defined in paragraph (a)(2)a. of Section 25-4-10
16 is performed after December 31, 1971, or for which service in
17 employment as defined in paragraph (a)(2)b. of Section 25-4-10
18 is performed after December 31, 1977; provided, however, that
19 such service is not excluded from the definition of
20 "employment" by ~~any of the provisions of~~ subsection (b) of
21 Section 25-4-10.

22 "(8) Any employing unit for which service in
23 employment as defined in subdivision (a)(3) of Section 25-4-10
24 is performed after December 31, 1971.

25 "(9) Any employing unit for which agricultural labor
26 as defined in subdivision (b)(1) of Section 25-4-10 is

1 performed after December 31, 1977, but only if the provisions
2 of paragraph (a)(4)a. of Section 25-4-10 are met.

3 "(10) Any employing unit for which domestic service
4 in employment as defined in paragraph (a)(4)b. of Section
5 25-4-10 is performed after December 31, 1977.

6 "(11)a. In determining whether or not an employing
7 unit for which service other than domestic service is also
8 performed is an employer under this section other than under
9 subdivision (10) of this subsection, the wages paid to, or the
10 employment of, an employee performing domestic service after
11 December 31, 1977, shall not be taken into account.

12 "b. In determining whether or not an employing unit
13 for which service other than agricultural labor is also
14 performed is an employer under this section other than under
15 subdivisions (7) and (8) of this subsection, the wages paid
16 to, or the employment of, an employee performing service in
17 agricultural labor after December 31, 1977, shall not be taken
18 into account. If an employing unit is determined an employer
19 of agricultural labor, such employing unit shall be determined
20 an employer for the purposes of subdivision (1) of this
21 subsection.

22 "c. The provisions of paragraphs a. and b. of this
23 subdivision notwithstanding, for the purposes of Sections
24 25-4-51, 25-4-52, 25-4-53, and 25-4-54, any employing unit
25 which is or becomes subject to ~~the provisions of any~~
26 subdivision of this subsection other than subdivisions (9) or
27 (10) shall, upon becoming subject to subdivisions (9) or (10)

1 or if, at the time of becoming subject to any other
2 subdivision is already subject to subdivisions (9) or (10), be
3 a single employing unit.

4 "(12) The term employer shall also include any
5 Indian tribe, as herein defined, for which service in
6 employment is performed.

7 "(b) For the purposes of this section, if any week
8 includes both December 31 and January 1, the days of that week
9 up to January 1 shall be deemed one calendar week and the days
10 beginning January 1 another such week.

11 "(c) Notwithstanding any other provision of law, the
12 following shall apply regarding assignment of rates and
13 transfers of experience:

14 "(1) If an employer transfers its trade or business,
15 or a portion thereof, to another employer and, at the time of
16 the transfer, there is substantially common ownership,
17 management, or control of the two employers, then the
18 unemployment experience attributable to the transferred trade
19 or business shall be transferred to the employer to whom such
20 trade or business is so transferred. The rates of both
21 employers shall be recalculated and made effective in
22 accordance with the date such transfer or transfers occurred.

23 "(2) Whenever a person who is not an employer under
24 this section at the time it acquires the trade or business of
25 an employer, the unemployment experience of the acquired trade
26 or business shall not be transferred to such person if the
27 director finds that such person acquired the trade or business

1 solely or primarily for the purpose of obtaining a lower rate
2 of contributions. Instead, such person shall be assigned the
3 applicable new employer rate under Section 25-4-51(a)(2). In
4 determining whether the trade or business was acquired solely
5 or primarily for the purpose of obtaining a lower rate of
6 contributions, the director shall use objective factors which
7 may include the cost of acquiring the trade or business,
8 whether the person continued the business enterprise of the
9 acquired trade or business, how long such business enterprise
10 was continued, or whether a substantial number of new
11 employees were hired for the performance of duties unrelated
12 to the business activity conducted prior to acquisition.

13 "(3) a. If a person knowingly violates or attempts
14 to violate subdivisions (1) and (2) or any other provision of
15 this section related to determining the assignment of a
16 contribution rate, or if a person knowingly advises another
17 person in a way that results in a violation of such provision,
18 the person shall be subject to the following penalties:

19 "1. If the person is an employer, then such employer
20 shall be assigned the highest rate assignable under this
21 section for the tax rate year during which such violation or
22 attempted violation occurred and the three tax rate years
23 immediately following the rate year. Notwithstanding the
24 foregoing, if the person's business is already at such highest
25 tax rate for any year, then a penalty rate of contributions of
26 two percent above the maximum tax rate shall be imposed for
27 such year and the immediately following three tax rate years.

1 "2. If the person is not an employer, such person
2 shall be subject to a civil monetary penalty of not more than
3 ten thousand dollars (\$10,000) or 10 percent of any under
4 reported amount, whichever is greater. All fines shall be
5 deposited in the penalty and interest account established
6 under Section 25-4-142(b).

7 "b. For purposes of this section, the following
8 terms shall have the following meanings:

9 "1. Knowingly means having actual knowledge of or
10 acting with deliberate ignorance or reckless disregard for the
11 prohibition involved.

12 "2. Violates or attempts to violate includes, but is
13 not limited to, intent to evade, misrepresentation, or willful
14 nondisclosure.

15 "3. Person has the meaning given the term by §7701
16 (a)(1) of the Internal Revenue Code of 1986.

17 "4. Trade or business includes the employer's
18 workforce.

19 "In addition to the penalty imposed herein, any
20 violation of this section may be prosecuted as a Class C
21 felony. The director shall establish procedures to identify
22 the transfer or acquisition of a trade or business for
23 purposes of this section.

24 "This section shall be interpreted and applied in
25 such a manner as to meet the minimum requirements contained in
26 any guidelines or regulations issued by the United States
27 Department of Labor."

1 Section 2. This act shall become effective on the
2 first day of the third month following its passage and
3 approval by the Governor, or its otherwise becoming law.