

1 SB48  
2 155510-2  
3 By Senator Scofield  
4 RFD: Business and Labor  
5 First Read: 14-JAN-14  
6 PFD: 12/10/2013

1 SB48

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4 ENROLLED, An Act,

5 To amend Section 25-4-8, Code of Alabama 1975,  
6 relating to unemployment compensation; to further define  
7 employing unit.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9 Section 1. Section 25-4-8 of the Code of Alabama  
10 1975, is amended to read as follows:

11 "§25-4-8.

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

15 "After December 31, 1977, except as otherwise  
16 provided in this chapter, "employer," as used in this chapter  
17 shall mean:

18 "(1) Any employing unit which, after December 31,  
19 1977:

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

24 "b. For some portion of a day in each of 20  
25 different calendar weeks, whether or not such weeks were

1 consecutive, in either the current or the preceding calendar  
2 year, had in employment at least one individual (irrespective  
3 of whether the same individual was in employment in each such  
4 day).

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

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

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

13 "a. Acquired at least 65 percent of the  
14 organization, trade, employees, or business located in the  
15 State of Alabama, or substantially all the assets thereof, of  
16 another employing unit which at the time of such acquisition  
17 was an employer subject to this chapter; or

18 "b. Acquired a segregable part of the organization,  
19 trade, or business of another employing unit which at the time  
20 of such acquisition was an employer subject to this chapter;  
21 provided, that such segregable part would have been an  
22 employer subject to this chapter if such part had constituted  
23 its entire organization, trade, or business.

24 "(5) Any employing unit which acquires at least 65  
25 percent of the organization, trade, employees, or business

1 located in the State of Alabama, or substantially all of the  
2 assets thereof of another employing unit (not an employer  
3 subject to this chapter) and which, if the employment record  
4 of such employing unit subsequent to such acquisition,  
5 together with the employment record of the acquired unit prior  
6 to such acquisition, both within the same calendar year, would  
7 be sufficient to constitute an employing unit an employer  
8 subject to this chapter.

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

11 "a. For which, within either the current or  
12 preceding calendar year, service is or was performed with  
13 respect to which such employing unit is held liable by the  
14 federal government for any federal tax against which credit  
15 may be taken for contributions required to be paid into a  
16 state unemployment fund; or

17 "b. Which, as a condition for approval of this  
18 chapter for full tax credit against the tax imposed by the  
19 Federal Unemployment Tax Act, is required, pursuant to such  
20 Federal Unemployment Tax Act, to be an "employer" under this  
21 chapter.

22 "(7) Any employing unit for which service in  
23 employment as defined in paragraph (a)(2)a. of Section 25-4-10  
24 is performed after December 31, 1971, or for which service in  
25 employment as defined in paragraph (a)(2)b. of Section 25-4-10

1 is performed after December 31, 1977; provided, however, that  
2 such service is not excluded from the definition of  
3 "employment" by ~~any of the provisions of~~ subsection (b) of  
4 Section 25-4-10.

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

8 "(9) Any employing unit for which agricultural labor  
9 as defined in subdivision (b)(1) of Section 25-4-10 is  
10 performed after December 31, 1977, but only if the provisions  
11 of paragraph (a)(4)a. of Section 25-4-10 are met.

12 "(10) Any employing unit for which domestic service  
13 in employment as defined in paragraph (a)(4)b. of Section  
14 25-4-10 is performed after December 31, 1977.

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

21 "b. In determining whether or not an employing unit  
22 for which service other than agricultural labor is also  
23 performed is an employer under this section other than under  
24 subdivisions (7) and (8) of this subsection, the wages paid  
25 to, or the employment of, an employee performing service in

1 agricultural labor after December 31, 1977, shall not be taken  
2 into account. If an employing unit is determined an employer  
3 of agricultural labor, such employing unit shall be determined  
4 an employer for the purposes of subdivision (1) of this  
5 subsection.

6 "c. The provisions of paragraphs a. and b. of this  
7 subdivision notwithstanding, for the purposes of Sections  
8 25-4-51, 25-4-52, 25-4-53, and 25-4-54, any employing unit  
9 which is or becomes subject to ~~the provisions of any~~  
10 subdivision of this subsection other than subdivisions (9) or  
11 (10) shall, upon becoming subject to subdivisions (9) or (10)  
12 or if, at the time of becoming subject to any other  
13 subdivision is already subject to subdivisions (9) or (10), be  
14 a single employing unit.

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

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

22 "(c) Notwithstanding any other provision of law, the  
23 following shall apply regarding assignment of rates and  
24 transfers of experience:

1           "(1) If an employer transfers its trade or business,  
2 or a portion thereof, to another employer and, at the time of  
3 the transfer, there is substantially common ownership,  
4 management, or control of the two employers, then the  
5 unemployment experience attributable to the transferred trade  
6 or business shall be transferred to the employer to whom such  
7 trade or business is so transferred. The rates of both  
8 employers shall be recalculated and made effective in  
9 accordance with the date such transfer or transfers occurred.

10           "(2) Whenever a person who is not an employer under  
11 this section at the time it acquires the trade or business of  
12 an employer, the unemployment experience of the acquired trade  
13 or business shall not be transferred to such person if the  
14 director finds that such person acquired the trade or business  
15 solely or primarily for the purpose of obtaining a lower rate  
16 of contributions. Instead, such person shall be assigned the  
17 applicable new employer rate under Section 25-4-51(a)(2). In  
18 determining whether the trade or business was acquired solely  
19 or primarily for the purpose of obtaining a lower rate of  
20 contributions, the director shall use objective factors which  
21 may include the cost of acquiring the trade or business,  
22 whether the person continued the business enterprise of the  
23 acquired trade or business, how long such business enterprise  
24 was continued, or whether a substantial number of new

1 employees were hired for the performance of duties unrelated  
2 to the business activity conducted prior to acquisition.

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

9 "1. If the person is an employer, then such employer  
10 shall be assigned the highest rate assignable under this  
11 section for the tax rate year during which such violation or  
12 attempted violation occurred and the three tax rate years  
13 immediately following the rate year. Notwithstanding the  
14 foregoing, if the person's business is already at such highest  
15 tax rate for any year, then a penalty rate of contributions of  
16 two percent above the maximum tax rate shall be imposed for  
17 such year and the immediately following three tax rate years.

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

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



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

4           "2. Violates or attempts to violate includes, but is  
5 not limited to, intent to evade, misrepresentation, or willful  
6 nondisclosure.

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

9           "4. Trade or business includes the employer's  
10 workforce.

11           "In addition to the penalty imposed herein, any  
12 violation of this section may be prosecuted as a Class C  
13 felony. The director shall establish procedures to identify  
14 the transfer or acquisition of a trade or business for  
15 purposes of this section.

16           "This section shall be interpreted and applied in  
17 such a manner as to meet the minimum requirements contained in  
18 any guidelines or regulations issued by the United States  
19 Department of Labor."

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

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President and Presiding Officer of the Senate

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Speaker of the House of Representatives

SB48  
Senate 12-FEB-14  
I hereby certify that the within Act originated in and passed  
the Senate.

Patrick Harris  
Secretary

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House of Representatives  
Passed: 02-APR-14

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By: Senator Scofield