

CHAPTER 52

(HB 495)

AN ACT relating to unemployment insurance and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 341.240 is amended to read as follows:

- (1) There is hereby created in the State Treasury a special fund to be known as the unemployment compensation administration fund. All money deposited or paid into this fund is hereby appropriated and shall be continuously available to the secretary for expenditure consistent with this chapter, and shall not lapse at any time. A general statement that all continuing appropriations are repealed shall not be construed as repealing this section.
- (2) All money in *the unemployment compensation administration* ~~[this]~~ fund shall be expended solely to defray the cost of the administration of this chapter.
- (3)
 - (a) The *unemployment compensation administration* fund shall consist of all money appropriated by this state and all money received from the United States, or any agency thereof or from any other source, for the administration of this chapter.
 - (b) *The secretary is authorized to obtain funding through any commercially reasonable means for the benefit of the unemployment compensation administration fund, including reasonable expenses, so long as the debt, note, security, or obligations are payable solely from the surcharge proceeds, revenues, or funds and accounts specifically authorized for such purpose under this chapter. The State Treasurer shall maintain a separate record of all money received for the unemployment compensation administration fund under this paragraph. The secretary is authorized to pledge the surcharge proceeds under this chapter as security for financing obtained pursuant to this section.*
 - (c) *Any obligation incurred under this subsection shall not constitute a debt, liability, obligation, or pledge of the credit or taxing power of this Commonwealth. Any debt or obligation incurred as a result of this subsection shall be payable solely from the surcharge proceeds, revenues, or funds and accounts pledged or available for such purpose under this chapter.*
 - (d) *On or before July 1, 2012 and quarterly thereafter, the secretary shall report to the Legislative Research Commission, for referral to the Appropriations and Revenue committee and the Labor and Industry committee, on the financing authorized in this section for the payment of interest on advances under Title XII of the Social Security Act, the status of the trust fund, and efforts to obtain a cap on the federal unemployment tax credit reduction.*
- (4) In order to establish and maintain free employment offices, the secretary may enter into agreements with the Railroad Retirement Board or any other agency charged with the administration of an unemployment insurance law, with any cities or other political subdivisions of this state or with any private nonprofit organization. As a party to any such agreement, the secretary may accept money, service or quarters as a contribution to the unemployment compensation administration fund.

➔Section 2. KRS 341.295 is amended to read as follows:

- (1) All fines, penalties and interest on delinquent contributions collected under KRS 341.300 shall be credited to the unemployment compensation administration fund to be used for the payment of interest on advances under Title XII of the Social Security Act, *for the repayment of money, including any interest thereon, received from any source related to the payment of interest on such advances*, and for the administration of this chapter. The State Treasurer shall maintain a separate record of all money received for the unemployment compensation administration fund under this section. This money shall not be expended or available for expenditure in any manner that would permit its substitution for, or a corresponding reduction in, federal funds that would be available in its absence to finance expenditures for the administration of this chapter.
- (2) But nothing in this chapter shall prevent this money from being used as a revolving fund to cover necessary and proper expenditures for which federal funds have been requested but not received, subject to the charging of such expenditures against such funds when received, or to supplement federal funds which are, in the opinion of the secretary, insufficient to properly administer this chapter; provided, no more than twenty-five percent (25%) of the balance of this account may be used in any year for the purposes authorized under this

subsection if interest on advances under Title XII of the Social Security Act is due and owing *or if the repayment of money, including any interest thereon, received from any source related to the payment of interest on such advances is due and owing.*

- (3) If interest on advances under Title XII of the Social Security Act *and the repayment of money, including any interest thereon, received from any source related to the payment of interest on such advances are*~~is~~ not due and owing the secretary may also authorize to be charged against such money any expenditures he deems proper and desirable for the administration of this chapter and replace any money necessary under the provisions of KRS 341.610, if no other funds are available or can properly be used to finance such expenditures. The money heretofore collected and credited to the unemployment compensation contingent fund shall be transferred to the unemployment compensation administration fund and shall be available for expenditure under the provisions of this section.

➔Section 3. KRS 341.490 is amended to read as follows:

- (1) There shall be a special fund known as the unemployment insurance fund which shall be administered separate and apart from all public money or funds of this state. This fund shall consist of:
- (a) All contributions, payments in lieu of contributions, and money collected under this chapter, except *any surcharge; interest collected on a delinquent surcharge; money received from any source related to payment of interest on advances under Title XII of the Social Security Act;* fines, penalties, and interest on delinquent contributions collected under KRS 341.300; and service capacity upgrade payments collected under KRS 341.243;
 - (b) Interest earned upon any money in the fund;
 - (c) Any property or securities acquired through use of money belonging to the fund;
 - (d) All earnings of such property or securities;
 - (e) All money received from the federal unemployment account in the unemployment trust fund in accordance with Title XII of the Social Security Act as amended;
 - (f) All money credited to the account of this state in the unemployment trust fund in accordance with Section 903 of the Social Security Act as amended; and
 - (g) All money received from the federal government as reimbursement, pursuant to Section 204 of the Federal-State Extended Unemployment Compensation Act of 1970.
- (2) All moneys in the fund shall be commingled and undivided.
- (3) Subject to the provisions of this chapter, the secretary may have full power, authority, and jurisdiction over the fund, including all money and property or securities belonging thereto, and may perform any act necessary or convenient in the administration thereof consistent with this chapter.

➔Section 4. KRS 341.595 is amended to read as follows:

- (1) The Governor is hereby authorized to apply for advances to the credit of this state's account in the unemployment trust fund from the federal unemployment account in such fund as provided for in Title XII of the Social Security Act when the balance of this state's account requires such action.
- (2) *If eligible under federal law, the Governor shall make application in 2013 and in subsequent calendar years to the secretary of the United States Department of Labor to request a cap on any Federal Unemployment Tax Act, 26 U.S.C. secs. 3301 to 3311, credit reduction.*

➔Section 5. KRS 341.611 is amended to read as follows:

- (1) Any interest required to be paid on advances under Title XII of the Social Security Act shall be paid in a timely manner and shall not be paid directly or indirectly (by an equivalent reduction in unemployment contributions or otherwise) by the state unemployment insurance fund.
- (2) Such interest *and the repayment of money, including any interest thereon, received from any source related to the payment of interest on advances under Title XII of the Social Security Act* shall be paid by the penalty and interest account as required by KRS 341.295.
- (3) *In the event there are insufficient funds in the unemployment compensation administration fund to pay the interest on such advances under Title XII of the Social Security Act or the repayment of money, including*

any interest thereon, received from any source related to the payment of interest on such advances, all subject contributing employers shall be assessed a surcharge as provided in Section 7 of this Act.

➔Section 6. KRS 341.612 is amended to read as follows:

- (1) There is created within the State Treasury a special fund for unemployment insurance known as the interest payment fund which shall be administered separate and apart from all public money or funds of the state.
- (2) The unemployment insurance interest payment fund shall be used *exclusively*~~[solely]~~ for the *purposes*~~[purpose]~~ of payment of interest on advances under Title XII of the Social Security Act received from the United States Department of Labor in support of the unemployment insurance programs of the Commonwealth *and repayment of money, including any interest thereon, received from any source related to the payment of interest on such advances*. The secretary shall have full power, authority, and jurisdiction over the fund, including all money, property, and securities belonging thereto, except where specified otherwise in ~~[subsection (4) of this section and]~~ KRS 341.295, and he shall perform any act necessary or convenient in the administration of the fund consistent with this section.
- (3) Any money collected for the purpose of paying interest on advances under Title XII of the Social Security Act *or repayment of money, including any interest thereon, received from any source related to the payment of interest on such advances* shall be invested at interest in banks or other interest-bearing obligations of the United States of America. Investments shall at all times be made so that all the assets of the unemployment insurance interest payment fund shall always be convertible into cash when needed for the payment of interest on advances under Title XII of the Social Security Act *or repayment of money, including any interest thereon, received from any source related to the payment of interest on advances*. All interest income received under this section shall be credited to the interest payment fund. The State Treasurer shall dispose of securities or other property belonging to the unemployment insurance interest payment fund only under the direction of the secretary and the secretary of the Finance and Administration Cabinet.
- (4) Any balance of money remaining in the unemployment insurance interest payment fund after all interest due and owing on advances under Title XII of the Social Security Act *and repayment of money, including any interest thereon, received from any source related to the payment of interest on advances have*~~[has]~~ been paid shall be *credited on a proportional basis to the reserve account of each active subject contributing employer*~~[deposited with the secretary of the Federal Treasury to the credit of this state's unemployment trust fund for the payment of benefits]~~.

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 341 IS CREATED TO READ AS FOLLOWS:

- (1) *Effective January 1, 2014, there shall be a surcharge upon all subject contributing employers for any year there are insufficient funds in the unemployment compensation administration fund for the payment of interest on advances under Title XII of the Social Security Act or for the repayment of money, including any interest thereon, received from any source related to the payment of interest on such advances.*
- (2)
 - (a) *The surcharge shall be twenty-two hundredths of one percent (0.22%) of the first nine thousand six hundred dollars (\$9,600) in wages paid to each worker by a subject contributing employer or his predecessor with respect to covered employment during any calendar year.*
 - (b) *Effective January 1, 2015, and each calendar year thereafter, the secretary shall adjust the surcharge percentage rate based on any increase to the taxable wage base for that calendar year as provided in KRS 341.030(7). The purpose of the adjustment shall be to maintain costs per worker comparable to the original surcharge. Any reduction in the surcharge percentage rate shall correspond to the increase to the taxable wage base for that calendar year and shall be rounded up to the nearest one-hundredth of one percent (0.01%)*
 - (c) *Notwithstanding paragraph (b) of this subsection, the secretary may reduce the surcharge percentage rate or suspend the surcharge for any calendar year based on the balance of the unemployment insurance interest payment fund and the projected amount due for interest on advances under Title XII of the Social Security Act and for repayment of money, including any interest thereon, received from any source related to the payment of interest on such advances.*
- (3) *The surcharge established in this section shall be due and payable at the same time and in the same manner as employer contributions. Any surcharge collected shall be deposited in the unemployment insurance interest payment fund.*
- (4) *Any surcharge unpaid on the date on which it is due and payable, pursuant to subsection (3) of this section, shall be subject to interest at the rate of one and one-half percent (1.5%) per month or fraction thereof, not*

to exceed ninety percent (90%) of the amount of such surcharge, from and after such date until payment is received by the cabinet, regardless of whether such delinquency has been reduced to a judgment or not as provided in subsection (6) of this section or is the subject of an administrative appeal or court action. The interest collected shall be deposited in the unemployment insurance interest payment fund.

- (5) *A lien of the same nature and having the same force, effect, and priority as provided in KRS 341.310 shall commence on all property of a subject contributing employer delinquent in the payment of any surcharge or interest thereon.*
- (6) *If, after due notice, any subject contributing employer defaults in payment of any surcharge or interest thereon, the amount due may be collected by a civil action instituted in the Franklin Circuit Court or the Franklin District Court depending on the jurisdictional amount in controversy including interest and penalties in the name of the state, and the subject contributing employer adjudged in default shall pay the costs of the action. Civil actions brought under this section shall be heard by the court, without the intervention of a jury, at the earliest possible date, and shall be entitled to preference on the calendar of the court over all other civil actions except petitions for judicial review under this chapter and cases arising under the Kentucky workers' compensation law.*
- (7) *At or after the commencement of an action under subsection (6) of this section, attachment may be had against the property of the liable subject contributing employer for such surcharge and interest without execution of a bond, or, after judgment has been entered, an execution may be issued against the property of such employer without the execution of a bond.*
- (8) *An action for the recovery of a surcharge or interest thereon under this section shall be barred and any lien therefor shall be canceled and extinguished unless collected or suit for collection has been filed within ten (10) years from the due date of such surcharge.*
- (9) *Notwithstanding subsection (6) of this section, any delinquent surcharge or interest thereon may be collected in accordance with the levy and distraint provisions of this chapter.*

➔Section 8. KRS 341.030 is amended to read as follows:

- (1) As used in this chapter, unless the context clearly requires otherwise, and except as provided in subsections (2) to (7) of this section, "wages" means all remuneration for services, including commissions, bonuses, and, except for services performed in agriculture and domestic employment, the cash value of all remuneration in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the commission.
- (2) Amounts paid to traveling salesmen or other workers as allowance or reimbursement for traveling or other expenses, incurred on the business of the employing unit, constitute wages only to the extent of the excess of the amounts over the expenses actually incurred and accounted for by the worker to his employer; provided, however, that the cash value of meals and lodging when furnished to the worker for the convenience of the employer shall not constitute wages.
- (3) For purposes of this chapter, the term "wages" includes tips which are:
 - (a) Received while performing services which constitute employment;
 - (b) Included in a written statement furnished to the employer pursuant to Section 6053(a) of the Internal Revenue Code; and
 - (c) Shall be treated as having been paid by the employing unit.
- (4) "Wages" does not include the amount of any payment made to, or on behalf of, a worker under a plan or system established by an employing unit that makes provision for its workers generally or for a class of its workers, including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment, on account of:
 - (a) Retirement;
 - (b) Sickness or accident disability but, in the case of payments made to an employee or any of his dependents, this subsection shall exclude from the term "wages" only payments which are received under a workers' compensation law;
 - (c) Medical and hospitalization expenses in connection with accident or sickness disability; or
 - (d) Death, if the worker has not:

1. The option to receive, instead of provision for the death benefit, any part of the payment, or if the death benefit is insured, any part of the premiums or contributions to premiums paid by his employing unit; and
 2. The right, under the provisions of the plan or system or policy of insurance providing for the death benefit, to assign the benefit, or to receive a cash consideration in lieu of it either upon his withdrawal from the plan or system providing for the benefit or upon termination of the plan or system or policy of insurance or of his employment with his employing unit.
- (5) "Wages" does not include any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of six (6) calendar months following the last calendar month in which the employee worked for the employer.
- (6) "Wages" does not include the amount of any payment made by an employing unit without deduction from the remuneration of the worker of the tax imposed under Section 3101 of the Internal Revenue Code or any payment required from an employer under a state unemployment compensation law with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor.
- (7) (a) "Wages" does not, for the purposes of KRS 341.260 to 341.310, include that part of remuneration which, after wages equal to eight thousand dollars (\$8,000) have been paid in a calendar year to a worker by a subject employer or his predecessor with respect to covered employment during any calendar year, is paid to the worker by the subject employer during the calendar year unless that part of the wages is subject to a tax under a federal law, imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund. On January 1, 2012, the amount of eight thousand dollars (\$8,000) in this subsection shall increase to nine thousand dollars (\$9,000), which shall increase by an additional three hundred dollars (\$300) on January 1 of each subsequent year, ***unless limited by paragraph (b) or (c) of this subsection*** ~~to 2022~~, not to exceed twelve thousand dollars (\$12,000). For the purpose of this subsection, the term "covered employment" shall include service constituting covered employment under any unemployment compensation law of another state.
- (b) ***If the trust fund balance on September 30 of a calendar year equals or exceeds two hundred million dollars (\$200,000,000), the taxable wage base amount in effect at that time shall not increase on January 1 of the next calendar year or on January 1 of subsequent calendar years, except as provided in paragraphs (c) and (e) of this subsection.***
- (c) ***If the trust fund balance on September 30 of a calendar year equals or exceeds two hundred million dollars (\$200,000,000), but is twenty million dollars (\$20,000,000) or less lower than the trust fund balance amount that would trigger in a lower schedule of contribution rates under KRS 341.270, the taxable wage base shall increase by three hundred dollars (\$300) on January 1 of the next calendar year and that taxable wage base amount shall be the taxable wage base amount in effect for subsequent calendar years, subject to the limitations in paragraph (d) of this subsection.***
- (d) ***The total number of years that the increase in the taxable wage base shall be prohibited or limited under paragraphs (b) or (c) of this subsection shall not exceed the total number of years that contributing employers paid additional federal unemployment taxes because of a reduction in the credit against the federal unemployment tax established in 26 U.S.C. sec. 3302 beginning in 2011.***
- (e) ***If the taxable wage base on January 1 of the calendar year immediately following the last year the increase in the taxable wage base was prohibited or limited under this subsection is less than twelve thousand dollars (\$12,000), the taxable wage base amount shall be increased by three hundred dollars (\$300), and by an additional three hundred dollars (\$300) on January 1 of each subsequent calendar year until the taxable wage base amount reaches twelve thousand dollars (\$12,000).***
- (f) ***Notwithstanding paragraphs (b) and (c) of this subsection, if the trust fund balance is less than two hundred million dollars (\$200,000,000) on September 30 of a calendar year, the suspension of the taxable wage base increase shall not occur.***
- (g) ***Notwithstanding any other provision of this subsection, any increase in the maximum weekly benefit rate which otherwise would have occurred except for the suspension of the taxable wage base increase shall be implemented in accordance with the provisions of this chapter.***

- (h) *The provisions of this subsection shall apply unless the United States Department of Labor notifies the secretary that implementation of this subsection would result in decertification of Kentucky's unemployment insurance program, impact any cap application, affect the receipt of emergency unemployment compensation funds, create an ineligibility for receipt of federal funds, or result in other penalties or sanctions under the Social Security Act or Federal Unemployment Tax Act, 26 U.S.C. secs. 3301 et seq.*

➔Section 9 Whereas in order to secure financing to comply with federal law requiring timely payment of interest on advances under Title XII of the Social Security Act, an emergency is declared to exist, and Sections 1 to 7 of this Act take effect upon its passage and approval by the Governor or upon its otherwise becoming law.

Signed by Governor April 11, 2012.