

CHAPTER 29**(HB 144)**

AN ACT relating to unemployment insurance, making an appropriation therefor, and declaring an emergency.

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

➔Section 1. 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, 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 paragraph (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.
- (i) Notwithstanding any other provisions of this chapter, for the calendar ~~years~~^{year} 2021 **and 2022**, the taxable wage base increase shall be suspended and the taxable wage base in effect for the calendar year 2020 shall be utilized.

➔Section 2. KRS 341.270 is amended to read as follows:

- (1) Except as otherwise provided in this section, each employer's contribution rate shall be three percent (3%). Effective for employers who become subject to this chapter on or after January 1, 1999, except as otherwise provided in this section, each employer's contribution rate shall be two and seven-tenths percent (2.7%).
- (2) Except as otherwise provided in this section, no subject employer's contribution rate shall be less than two and seven-tenths percent (2.7%), unless he has been an employer subject to the provisions of this chapter for twelve (12) consecutive calendar quarters ended as of the computation date. In any calendar year in which the rate schedule prescribed in paragraph (3)(a) of this section is in effect, no subject employer who was assigned

an entry rate of three percent (3.0%) under the provisions of subsection (1) of this section prior to January 1, 1999, shall have a contribution rate less than two and eight hundred fifty-seven thousandths percent (2.857%), unless subject to this chapter for the minimum time period specified above.

- (3) For the calendar year 2001 and each calendar year thereafter, employer contribution rates shall be determined in accordance with "Table A" set out in subsection (4) of this section. For each calendar year, the secretary shall determine the rate schedule to be in effect based upon the "trust fund balance" as of September 30 of the preceding year. If the "trust fund balance":
 - (a) Equals or exceeds one and eighteen hundredths percent (1.18%) of the total wages paid in covered employment in the state during the state fiscal year ended as of June 30 of that year, the rates listed in the "Trust Fund Adequacy Rates" schedule of "Table A" shall be in effect;
 - (b) Equals or exceeds five hundred million dollars (\$500,000,000) but is less than the amount required to effectuate the "Trust Fund Adequacy Rates" schedule as provided in paragraph (a) of this subsection, the rates listed in "Schedule A" of "Table A" shall be in effect;
 - (c) Equals or exceeds three hundred fifty million dollars (\$350,000,000) but is less than five hundred million dollars (\$500,000,000), the rates listed in "Schedule B" of "Table A" shall be in effect;
 - (d) Equals or exceeds two hundred fifty million dollars (\$250,000,000) but is less than three hundred fifty million dollars (\$350,000,000), the rates listed in "Schedule C" of "Table A" shall be in effect;
 - (e) Equals or exceeds one hundred fifty million dollars (\$150,000,000) but is less than two hundred fifty million dollars (\$250,000,000), the rates listed in "Schedule D" of "Table A" shall be in effect; and
 - (f) Is less than one hundred fifty million dollars (\$150,000,000), the rates listed in "Schedule E" of "Table A" shall be in effect.
- (4) For the calendar year 1982 and each calendar year thereafter, contribution rates shall be determined upon the basis of an individual employer's reserve ratio as of the computation date and the schedule of rates established under subsection (3) of this section. Except as otherwise provided in this section, the contribution rate for each subject employer for the calendar year immediately following the computation date shall be the rate in that "Schedule" of "Table A," as set out below, effective with respect to the calendar year, which appears on the same line as his reserve ratio as shown in the "Employer Reserve Ratio" column of the same table.

TABLE A
Rate Schedule

Employer Reserve Ratio	Trust Fund Adequacy Rates	A	B	C	D	E
8.0% and over	0.000%	0.30%	0.40%	0.50%	0.60%	1.00%
7.0% but under 8.0%	0.000%	0.40%	0.50%	0.60%	0.80%	1.05%
6.0% but under 7.0%	0.008%	0.50%	0.60%	0.70%	0.90%	1.10%
5.0% but under 6.0%	0.208%	0.70%	0.80%	1.00%	1.20%	1.40%
4.6% but under 5.0%	0.508%	1.00%	1.20%	1.40%	1.60%	1.80%
4.2% but						

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under 4.6%	0.808%	1.30%	1.50%	1.80%	2.10%	2.30%
3.9% but						
under 4.2%	1.008%	1.50%	1.70%	2.20%	2.40%	2.70%
3.6% but						
under 3.9%	1.308%	1.80%	1.80%	2.40%	2.60%	3.00%
3.2% but						
under 3.6%	1.508%	2.00%	2.10%	2.50%	2.70%	3.10%
2.7% but						
under 3.2%	1.608%	2.10%	2.30%	2.60%	2.80%	3.20%
2.0% but						
under 2.7%	1.708%	2.20%	2.50%	2.70%	2.90%	3.30%
1.3% but						
under 2.0%	1.808%	2.30%	2.60%	2.80%	3.00%	3.40%
0.0% but						
under 1.3%	1.908%	2.40%	2.70%	2.90%	3.10%	3.50%
-0.5% but						
under -0.0%	6.500%	6.50%	6.75%	7.00%	7.25%	7.50%
-1.0% but						
under -0.5%	6.750%	6.75%	7.00%	7.25%	7.50%	7.75%
-1.5% but						
under -1.0%	7.000%	7.00%	7.25%	7.50%	7.75%	8.00%
-2.0% but						
under -1.5%	7.250%	7.25%	7.50%	7.75%	8.00%	8.25%
-3.0% but						
under -2.0%	7.500%	7.50%	7.75%	8.00%	8.25%	8.50%
-4.0% but						
under -3.0%	7.750%	7.75%	8.00%	8.25%	8.50%	8.75%
-6.0% but						
under -4.0%	8.250%	8.25%	8.50%	8.75%	9.00%	9.25%
-8.0% but						
under -6.0%	8.500%	8.50%	8.75%	9.00%	9.25%	9.50%
Less						
than -8.0%.	9.000%	9.00%	9.25%	9.50%	9.75%	10.00%

(5) As used in this section and elsewhere in this chapter, unless the context clearly requires otherwise:

- (a) "Trust fund balance" means the amount of money in the unemployment insurance fund, less any unpaid advances made to the state under Section 1201 of the Social Security Act. In determining the amount in the fund as of a given date all money received by the Office of Unemployment Insurance, Department of Workforce Investment, on that date shall be considered as being in the fund on that date;
- (b) "Total wages" means all remuneration for services, as defined in KRS 341.030(1) to (7), paid by subject employers;

- (c) An employer's "reserve ratio" means the percentage ratio of his reserve account balance as of the computation date to his taxable payrolls for the twelve (12) consecutive calendar quarters ended as of June 30 immediately preceding the computation date;
 - (d) For the purposes of this section, an employer's "reserve account balance" means the amount of contributions credited to his reserve account as of the computation date, less the benefit charges through June 30 immediately preceding the computation date. If benefits charged to an account exceed contributions credited to the account, the account shall be considered as having a debit balance and a reserve ratio of "less than zero"; and
 - (e) "Computation date" is July 31 of each calendar year prior to the effective date of new rates of contributions.
- (6) Notwithstanding any other provisions of this chapter, for the calendar ~~years~~^[year] 2021 **and 2022**, the employer contribution rates shall be determined using the rates listed in Schedule A of Table A.

➔Section 3. KRS 341.614 is amended 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.
- (10) Any delinquent surcharge or interest collected after July 31, 2017, shall not be subject to the credit provisions contained in KRS 341.612 and shall be deposited into the penalty and interest account.
- (11) Notwithstanding any other provisions of this chapter, for the calendar ~~years~~^{year} 2021 *and 2022*, there shall be no surcharge assessment.

➔Section 4. There is hereby appropriated Federal Fund moneys from the State Fiscal Recovery Fund of the American Rescue Plan Act in the amount of \$242,628,900 in fiscal year 2021-2022 to the unemployment trust fund to restore the fund balance to pre-pandemic levels.

➔Section 5. Sections 1 to 3 of this Act are retroactive to January 1, 2022.

➔Section 6. Whereas the economic impact of COVID-19 on Kentucky's citizens and businesses is of the utmost importance, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Signed by Governor March 24, 2022.