

# Unofficial Document

## FREE CONFERENCE COMMITTEE REPORT

The Free Conference Committee on **HB 150** has met as provided in the Rules of the House and Senate and hereby reports the following to be adopted:

  X   GA      SCS      HCS

For the above-referenced bill, with these amendments (if applicable):

Committee (list by chamber and number):     ;

Floor (list by chamber and number):     ; and

The following Free Conference Committee action:

On page 2, line 6, after the ".", insert "**This subparagraph shall be in effect from the effective date of this Act through June 30, 2021.**"

On page 3, beginning with line 27, insert:

"➔Section 2. KRS 341.540 is amended to read as follows:

- (1) As used in this section, unless the context clearly requires otherwise:
  - (a) "Substantially common" or "substantially the same" means that one (1) or more individual or individuals own or exercise pervasive management or control over both the predecessor and successor employing unit. Factors indicating pervasive management or control include, but are not limited to, whether the predecessor and successor share:
    1. One (1) or more individuals or family members in positions of management or ownership, on boards of directors, or as shareholders or executive or other officers; and
    2. Titles to property, parent companies, workforce, assets, legal and professional representation, physical location, client pools, marketing services, Web sites, telephone numbers, or e-mail addresses;

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- (b) "Trade" or "business" includes the employing unit's workforce;
  - (c) "Knowingly" means having actual knowledge of, or acting with deliberate ignorance or disregard for, the prohibition involved; and
  - (d) "Violates" or "attempts to violate" includes, but is not limited to, intended evasion, misrepresentation, or willful nondisclosure.
- (2) For the purpose of this chapter, if a subject employer transfers all or part of its trade or business to another employing unit, the acquiring employing unit shall be deemed a successor if the transfer is in accordance with administrative regulations promulgated by the secretary, or if the transferring and acquiring employing units have substantially the same ownership, management, or control. If an employing unit is deemed a successor, the transferring employing unit shall be deemed a predecessor.
- (3) Any successor to the trade or business of a subject employer shall assume the resources and liabilities of the predecessor's reserve account, including interest, and shall continue the payment of all contributions and interest due under this chapter, except that the successor shall not be required to assume the liability of any delinquent contributions and interest of a predecessor or predecessors unless the cabinet notifies the successor of the delinquency within six (6) months after the department has notice of the succession.
- (4) The liability for delinquent contributions and interest imposed upon the successor by subsection (3) of this section shall be secondary to the liability of the predecessor or predecessors, and if the delinquency has been reduced to judgment, the order of execution on the judgment shall be as follows:
- (a) Against the assets, both real and personal, of the predecessor or predecessors;
  - (b) Against the assets, both real and personal, of the business acquired; and
  - (c) Against the assets, both real and personal, of the successor or acquirer.
- (5) (a) Notwithstanding the provisions of subsection (3) of this section, any successor to a portion of the trade or business of a subject employer, who is, or by reason of the transfer becomes, a subject employer, shall assume the resources and liabilities of the

predecessor's reserve account in proportion to the percentage of the payroll or employees assignable to the transferred portion. In calculating the transferred portion, the secretary shall utilize the last four (4) calendar quarters preceding the date of transfer for workers employed by the successor subsequent to that date. The taxable payroll, benefit charges and the potential benefit charges shall be assumed by the successors in a like proportion.

- (b) Notwithstanding the provisions of paragraph (a) of this subsection, if any employing unit succeeds to a portion of the trade or business of another employing unit; becomes, by reason of that succession, a subject employer with substantially the same ownership, management, or control as the predecessor employing unit; and lays off or terminates more than one-half (1/2) of the original employees transferred within six (6) months of the date of transfer; then the succession and creation of the new employing unit shall be voided, and the benefits attributable to the lay-offs or terminations shall be charged to the reserve account of the original employing unit.
- (6) (a) The contribution rate of a successor in whole or in part, which was a subject employer prior to succession, shall not be affected by the transfer of the reserve account for the remainder of the rate year in which succession occurred; except that the rate of the successor shall be recalculated and made effective upon the first day of the calendar quarter immediately following the date of the transfer if there is substantially common ownership, management, or control of the predecessor and successor.
- (b) The contribution rate of a successor in whole or in part, which was not a subject employer prior to succession, shall be, for the calendar year in which succession occurred, the same rate as that of its predecessor; except if the secretary finds, after a thorough investigation based on the use of objective factors, including but not limited to:
1. The cost of acquiring the business;
  2. How long the original business enterprise was continued; and

3. Whether a substantial number of new employees were hired for performance of duties unrelated to the business activity prior to acquisition;

that the succession was solely for the purpose of obtaining a rate lower than that prescribed in KRS 341.270(1) and 341.272 for a new employing unit, then the unemployment experience of the predecessor shall not be transferred, the rate for a new employing unit shall be assigned, and the employing unit shall be otherwise deemed a successor for the purpose of KRS 341.070(7) and subsection (3) of this section.

- (c) The contribution rate for a successor which becomes a subject employer through the simultaneous transfer, either in whole or in part, of two (2) or more predecessor reserve accounts shall be the rate determined in accordance with the provisions of KRS 341.270, by combining the reserve accounts succeeded to as of the computation date for determining rates for the calendar year in which succession occurred.
  - (d) The contribution rate of a successor which succeeds, either in whole or in part, to a predecessor's reserve account after a computation date, but prior to the beginning of the calendar year immediately following that computation date, shall be the rate determined in accordance with KRS 341.270, by effecting the transfer of the reserve account as of the computation date immediately preceding the date of succession.
- (7) Notwithstanding KRS 341.270, the contribution rate for an employing unit that knowingly violates or attempts to violate the provisions of this section or any other provision of the chapter related to determining the assignment of a contribution rate shall be the highest rate assignable under this chapter for the calendar year during which the violation or attempted violation occurred and the three (3) calendar years immediately following that year. If that employer's rate is already at the highest assignable rate, or if the amount of increase in the employer's rate would be less than an additional two percent (2%) for that year, then a penalty rate of contributions of an additional two percent (2%) of taxable wages shall be imposed for each year.

- (8) In addition to the penalties prescribed in subsection (7) of this section and KRS 341.990(9), any person who knowingly violates this section shall be subject to the penalties stipulated under KRS 341.990.
- (9) The secretary shall establish procedures to identify the transfer of a business for purposes of this section.

**(10) (a) When a successorship is deemed to have occurred between two (2) employing units, a petition to remove the finding of successorship may be filed with the secretary by the successor within six (6) months of the finding of successorship which may be granted if:**

- 1. The successor employing unit increases the number of employees in the predecessor employing unit during the first year of operation after the purchase of the business;**
- 2. At the time of the petition, less than fifty percent (50%) of the employees of the successor employing unit had been employed by the predecessor employing unit; and**
- 3. Common ownership, management, or control with the predecessor employing unit was not the original basis for the finding of succession.**

**(b) If the petition to remove the finding of successorship is approved, the subsequent owner shall not be subject to the rate of the predecessor owner but shall be considered a new employing unit and assigned a contribution rate as a new employing unit retroactively applied to the date of the purchase of the business.**

**(c) This subsection applies to all employers who become successor employers on or after January 1, 2014. If the finding of successorship was prior to the effective date of this Act, the successor employer shall have six (6) months from the finding of successorship, or until December 31, 2016, whichever is later, to make the appropriate application under this subsection.**

➔Section 3. Whereas it is necessary to encourage the purchase of struggling businesses in order

to keep the businesses open and to protect Kentucky jobs, 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."

By amending the title to read: "AN ACT relating to unemployment insurance and declaring an emergency."

# Unofficial Document

## Senate Members

## House Members

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Stephen West, Chairman

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Jeff Greer, Chairman

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Albert Robinson

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Cluster Howard

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Stan Humphries

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Dean Schamore

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Dennis Parrett

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David Floyd

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Max Wise

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The above-named members, in separate votes by house, all concur in the provisions of this report.

DATE  
April 15, 2016 \_\_\_\_\_

For Clerk's Use:

Adopted: \_\_\_\_\_

Repassage Vote: \_\_\_\_\_