

1 AN ACT relating to unemployment insurance.

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

3 ➔Section 1. KRS 341.243 is amended to read as follows:

- 4 (1) There is created within the State Treasury a special fund known as the service
5 capacity upgrade fund that shall be administered separate and apart from all public
6 money or funds of the state.
- 7 (2) The service capacity upgrade fund shall be used solely for acquisition and
8 upgrading of the technology base, program integrity functions, and service delivery
9 capacity in support of the programs administered by the Office of Employment and
10 Training. The secretary shall have full power, authority, and jurisdiction over the
11 fund, including all money, property, and securities belonging thereto, and shall
12 perform any act necessary or convenient in the administration of the fund consistent
13 with this section. The secretary shall provide an annual report to the Interim Joint
14 Committee on Labor and Industry detailing all receipts and expenditures of the
15 fund.
- 16 (3) Any money collected under the provisions of this section shall be invested at
17 interest in banks or other interest-bearing obligations of the United States.
18 Investments shall at all times be made so that all the assets of the service capacity
19 upgrade fund shall be convertible into cash when needed for the payment of
20 expenses incurred in upgrading the service capacity of the Office of Employment
21 and Training. All interest income received under this section shall be credited to the
22 fund. The State Treasurer shall dispose of securities or other property belonging to
23 the fund only under the direction of the secretary and the secretary of the Finance
24 and Administration Cabinet.
- 25 (4) ***Beginning October 1, 2018***~~[Effective January 1, 1999]~~, all rates otherwise
26 established under KRS 341.270 and 341.272 shall be ***adjusted***~~[reduced]~~ by
27 subtracting seventy-five thousandths percent (0.075%) from each rate, but only if

1 the unemployment insurance trust fund balance exceeds the balance of the trust
2 fund as of December 31, 2017 [~~of the preceding year is equal to or greater than one~~
3 ~~and eighteen hundredths percent (1.18%) of the total wages paid in the state during~~
4 ~~the state fiscal year ended as of June 30 of that year.~~

5 (a) [~~If the trust fund balance as of December 31, 1999, is less than the trust fund balance~~
6 ~~as of December 31, 1998, the amount of the rate reduction for calendar year 2000~~
7 ~~shall be reduced by forty percent (40%) to the level of forty five thousandths~~
8 ~~percent (0.045%).~~

9 (b) [~~If the trust fund balance as of December 31, 2000, is less than the trust fund balance~~
10 ~~as of December 31, 1999, the amount of the rate reduction for calendar year 2001~~
11 ~~shall be forty percent (40%) less than the amount of the rate reduction which was in~~
12 ~~effect in calendar year 2000].~~

13 (5) For any calendar year in which all rates have been reduced in accordance with
14 subsection (4) of this section, all contributory employers shall pay into the service
15 capacity upgrade fund an amount equal to the percentage by which rates were
16 reduced multiplied by their taxable wages paid during that calendar year. Payments
17 shall be made at the same time and in the same manner as prescribed for payment of
18 contributions under KRS 341.260 and all regulations prescribed by the secretary in
19 support of that section. The restrictions in KRS 341.470(1) apply equally to the
20 provisions of this section. Failure to make these payments shall be subject to
21 interest and all other collection actions provided for failure to make contributions
22 under KRS 341.300.

23 (6) All payments required under subsection (5) of this section, along with any interest
24 due to late payment of these assessments, shall be deposited in the service capacity
25 upgrade fund.

26 (7) Notwithstanding subsection (4) of this section, the secretary may exercise his or
27 her discretion to reduce the percentage rate prescribed in subsection (4) of this

1 section or suspend required payments to the service capacity upgrade fund at any
 2 time.

3 (8) The secretary shall suspend the reduction of the rate prescribed in subsection (4)
 4 of this section at any time when collections for the service capacity upgrade fund
 5 exceed a cumulative amount of sixty million dollars (\$60,000,000). At the time
 6 payments are suspended, any funds thus far collected under subsection (4) of this
 7 section in excess of those necessary to fund technology upgrades, shall be
 8 deposited into the unemployment insurance trust fund. Any future collection of
 9 past due payments to the service capacity upgrade fund, including any applicable
 10 penalty and interest funds, shall be deposited into the penalty and interest fund†

11 ~~The provisions of this section shall expire with regard to rates assigned for calendar~~
 12 ~~years beginning after December 31, 2001, and any balance of moneys or property in~~
 13 ~~the fund not expended or obligated for purposes consistent with this section by June~~
 14 ~~30, 2002, shall be deposited in the unemployment insurance trust fund~~†.

15 ➔Section 2. KRS 341.300 is amended to read as follows:

16 (1) Contributions unpaid on the date on which they are due and payable, as prescribed
 17 by the secretary, shall be subject to interest at the rate of one and five-tenths percent
 18 (1.5%) per month or fraction thereof, not to exceed ninety percent (90%) of the
 19 amount of such contributions, from and after such date until payment is received by
 20 the Office of Employment and Training, Department of Workforce Investment,
 21 irrespective of whether such delinquency has been reduced to a judgment or not as
 22 provided in subsection (2) of this section or is the subject of an administrative
 23 appeal or court action. The interest charged for a month, in which the unpaid
 24 contributions remain unpaid, shall be considered accrued and therefore due and
 25 owing on the first day after the last day of the month in which the balance is due.

26 Such interest shall be paid into the unemployment compensation administration
 27 fund.

1 (2) If, after due notice, any subject employer defaults in any payment of contributions,
2 interest or penalties thereon, the amount due shall be collected by a civil action
3 instituted in the Franklin Circuit Court or the Franklin District Court depending
4 upon the jurisdictional amount in controversy including interest and penalties in the
5 name of the state, and the subject employer adjudged in default shall pay the costs
6 of the action. Civil actions brought under this section shall be heard by the court,
7 without the intervention of a jury, at the earliest possible date, and shall be entitled
8 to preference upon the calendar of the court over all other civil actions except
9 petitions for judicial review under this chapter and cases arising under the workers'
10 compensation law.

11 (3) At or after the commencement of an action under subsection (2) of this section,
12 attachment may be had against the property of the liable subject employer for such
13 contributions, interest, and penalties, without the execution of a bond, or after
14 judgment has been entered an execution may be issued against the property of such
15 employer without the execution of a bond.

16 (4) An action for the recovery of contributions, interest, or penalties under this section
17 shall be barred and any lien therefor shall be canceled and extinguished unless
18 collected or suit for collection has been filed within ten (10) years from the due date
19 of such contributions, except, in the case of the filing of a false or fraudulent report,
20 the contributions due shall not be barred and may at any time be collected by the
21 methods set out in this chapter, including action in a court of competent jurisdiction.

22 ➔Section 3. KRS 341.350 is amended to read as follows:

23 An unemployed worker shall, except as provided in KRS 341.360 and 341.370, be
24 eligible for benefits with respect to any week of unemployment only if:

25 (1) He or she has made a claim for benefits;

26 (2) For an initial claim made on or after January 1, 2012, he or she has served a waiting
27 period of one (1) week, during which he or she has not received benefits. The

1 waiting week period shall be the first compensable week of an initial claim for
2 benefits for which he or she is eligible and qualified to receive benefits under this
3 chapter. A waiting week period shall be required for each benefit year, whether or
4 not consecutive. No more than one (1) waiting week period shall be required in any
5 benefit year. The waiting week shall become compensable once the remaining
6 balance on the claim is equal to or less than the compensable amount for the waiting
7 week;

8 (3) (a) He or she has registered for work with respect to such week in accordance
9 with administrative regulations promulgated~~prescribed~~ by the secretary;
10 and

11 (b) He or she participates in reemployment services, such as job search assistance
12 services, if pursuant to a profiling system established by the secretary, he or
13 she has been determined to be likely to exhaust regular benefits unless:

14 1. The claimant has completed the services to which he or she is referred;
15 or

16 2. There is justifiable cause for the claimant's failure to participate in the
17 services. For the purpose of this section, "justifiable cause" shall be
18 interpreted to mean what a reasonable person would do in like
19 circumstances;

20 (4) He or she is physically and mentally able to work;

21 (5) He or she is available for suitable work, and making such reasonable effort to
22 obtain work as might be expected of a prudent person under like circumstances;

23 (6) His or her base-period wages in that calendar quarter of his or her base period in
24 which such wages were highest are equal to at least two thousand dollars
25 (\$2,000)~~seven hundred fifty dollars (\$750)~~, and his or her total base-period wages
26 are not less than one and one-half (1-1/2) times the base-period wages paid to him
27 or her in such quarter and he or she was paid base-period wages in the last six (6)

1 months of his or her base period equal to at least eight (8) times his or her weekly
2 benefit rate with a minimum of two thousand dollars (\$2,000)~~[seven hundred fifty~~
3 ~~dollars (\$750)]~~ earned outside the high quarter. Beginning on January 1, 2020,
4 and continuing on January 1 in even-numbered years thereafter, the secretary
5 shall adjust the minimum base-period wages at a rate that is directly proportional
6 to the average percentage change in the Consumer Price Index for All Urban
7 Consumers (CPI-U) for the two (2) previous calendar years;

8 (7) An otherwise eligible worker shall not be denied benefits under subsection (5) of
9 this section or because of his or her failure to actively seek work, nor disqualified
10 under paragraph (a) of subsection (1) of KRS 341.370 with respect to any week he
11 or she is in training with the approval of the secretary.

12 (8) Notwithstanding any other provisions of this chapter, no otherwise eligible worker
13 shall be denied benefits for any week because he or she is in training approved
14 under 19 U.S.C. sec. 2296 (Section 236(a)(1) of the Trade Act of 1974), nor shall
15 such worker be denied benefits by reason of leaving work to enter such training
16 provided such work is not suitable employment, or because of the application to any
17 such week in training of provisions in this law (or any applicable federal
18 unemployment compensation law) relating to availability for work, active search for
19 work, or refusal to accept work. For purpose of this subsection, the term "suitable
20 employment" shall mean employment of a substantially equal or higher skill level
21 than the worker's past adversely affected employment as defined in 19 U.S.C. sec.
22 2319 (Trade Act of 1974), and wages for such work are not less than eighty percent
23 (80%) of the workers' average weekly wage as determined for purposes of the Trade
24 Act of 1974.

25 (9) The foregoing eligibility requirements and the conditions of benefit
26 disqualifications imposed by KRS 341.370 shall be strictly construed. Nothing in
27 this section, excepting subsection (6) of this section, nor in KRS 341.360 or

1 341.370 shall affect the establishment of a "benefit year."

2 ➔Section 4. KRS 341.360 is amended to read as follows:

3 (1) No worker may be paid benefits for any week of unemployment:

4 (a) With respect to which a strike or other bona fide labor dispute which caused
5 him to leave or lose his employment is in active progress in the establishment
6 in which he is or was employed, except that benefits may be paid unless the
7 employer notifies the Office of Employment and Training, Department of
8 Workforce Investment, in writing within seven (7) days after the beginning of
9 such alleged strike or labor dispute of the alleged existence of such strike or
10 labor dispute. For the purpose of this subsection, a lockout shall not be
11 deemed to be a strike or a bona fide labor dispute and no worker shall be
12 denied benefits by reason of a lockout;

13 (b) For which he has received or is seeking unemployment compensation under
14 an unemployment compensation law of another state or of the United States,
15 except as otherwise provided by an arrangement between this state and such
16 other state or the United States; but if the appropriate agency of such state or
17 of the United States finally determines that he is not entitled to such
18 unemployment compensation, this subsection shall not apply; ~~or~~

19 (c) 1. Which, when based on service in an instructional, research, or principal
20 administrative capacity in an institution of higher education as defined in
21 KRS 341.067(2) or in an educational institution as defined in KRS
22 341.067(4), begins during the period between two (2) successive
23 academic years, or during a similar period between two (2) regular
24 terms, whether or not successive, or during a period of paid sabbatical
25 leave provided for in the individual's contract, if the worker performs
26 such services in the first of such academic years or terms and if there is a
27 contract or a reasonable assurance that the worker will perform such

- 1 services in any such capacity for any institution or institutions of higher
2 education or an educational institution in the second of such academic
3 years or such terms; or
- 4 2. Which, when based on service other than as defined in subparagraph 1.
5 of this paragraph, in an institution of higher education or an educational
6 institution, as defined in KRS 341.067(2) or (4), begins during the
7 period between two (2) successive academic years or terms, if the
8 worker performs such services in the first of such academic years or
9 terms and there is a reasonable assurance that the worker will perform
10 such services in the second of such academic years or terms; except that
11 if benefits are denied to any worker under this paragraph and such
12 worker was not offered an opportunity to perform such services for such
13 institution of higher education or such educational institution for the
14 second of such academic years or terms, such worker shall be entitled to
15 a retroactive payment of benefits for each week for which the worker
16 filed a timely claim for benefits and for which benefits were denied
17 solely by reason of this paragraph; or
- 18 3. Which, when based on service in any capacity defined in subparagraphs
19 1. and 2. of this paragraph, begins during an established and customary
20 vacation period or holiday recess if the worker performs any such
21 services in the period immediately before such vacation period or
22 holiday recess, and there is a reasonable assurance that such worker will
23 perform any such services in the period immediately following such
24 vacation period or holiday recess; or
- 25 4. Based on service in any capacity defined in subparagraph 1. or 2. of this
26 paragraph when such service is performed by the worker in an institution
27 of higher education or an educational institution, as defined in KRS

1 341.067(2) or (4), while the worker is in the employ of an educational
 2 service agency, and such unemployment begins during the periods and
 3 pursuant to the conditions specified in subparagraphs 1., 2., and 3. of
 4 this paragraph. For purposes of this paragraph, the term "educational
 5 service agency" means a governmental agency or governmental entity
 6 which is established and operated exclusively for the purpose of
 7 providing such services to one (1) or more institutions of higher
 8 education or educational institutions;

9 **Notwithstanding any other provision of this paragraph,**~~[except that]~~ any benefits
 10 paid to a worker based on service other than as defined in **subparagraph**
 11 ~~[subsection (1)(e)]~~1. of this **paragraph**~~[section]~~ performed in an institution of
 12 higher education as defined in KRS 341.067(2) shall be deemed to have been paid
 13 as a result of Office of Employment and Training, Department of Workforce
 14 Investment, error and not recoverable by the cabinet or such institution if such
 15 payment is improper by virtue of the retroactive application to October 30, 1983, of
 16 **subparagraph** ~~[subsection (1)(e)]~~2. of this **paragraph**~~[section]~~; **or**

17 **(d) With respect to which the worker is suspended from work for misconduct,**
 18 **as defined in KRS 341.370(6), connected with the work.**

19 (2) Benefits shall not be paid to any individual on the basis of any services,
 20 substantially all of which consist of participating in sports or athletic events or
 21 training or preparing to so participate, for any week which commences during the
 22 period between two (2) successive sport seasons or similar periods and there is a
 23 reasonable assurance that such individual will perform such services in the later of
 24 such seasons or similar periods.

25 (3) (a) Benefits shall not be paid on the basis of services performed by an alien unless
 26 such alien is an individual who was lawfully admitted for permanent residence
 27 at the time such services were performed, was lawfully present for purposes of

1 performing such services, or was residing in the United States under color of
 2 law at the time such services were performed, including an alien who was
 3 lawfully present in the United States as a result of the application of the
 4 provisions of Section 203(a)(7) or Section 212(d)(5) of the Immigration and
 5 Nationality Act.

6 (b) Any data or information required of individuals applying for benefits to
 7 determine whether benefits are not payable to them because of their alien
 8 status shall be uniformly required from all applicants for benefits.

9 (c) In the case of an individual whose application for benefits would otherwise be
 10 approved, no determination that benefits to such individual are not payable
 11 because of his alien status shall be made except upon a preponderance of the
 12 evidence.

13 ~~[(4) With respect to which the worker is suspended from work for misconduct, as
 14 defined in KRS 341.370(6), connected with the work.]~~

15 ➔Section 5. KRS 341.380 is amended to read as follows:

16 (1) All benefits shall be paid through employment offices, or such other agencies as
 17 may be designated by regulations of the secretary. Claims for all payments of
 18 benefits shall be made in accordance with regulations of the secretary.

19 (2) ~~[The weekly benefit rate payable to an eligible worker for weeks of unemployment
 20 shall, except as provided in KRS 341.390, be an amount equal to one and three
 21 thousand seventy-eight ten-thousandths percent (1.3078%) of his total base-period
 22 wages, except that no worker's weekly benefit amount shall be less than thirty-nine
 23 dollars (\$39), nor more than the maximum rate as determined in accordance with
 24 subsection (3) of this section. For claims effective on or after January 1, 2012,]~~The
 25 weekly benefit rate shall, except as provided in KRS 341.390, be one and one
 26 thousand nine hundred twenty-three ten-thousandths percent (1.1923%) of his ***or***
 27 ***her*** total base-period wages, except that no worker's weekly benefit amount shall be

1 less than thirty-nine dollars (\$39) nor more than the maximum rate as determined in
2 accordance with subsection (3) of this section.

3 (3) Prior to the first day of July of each year the secretary shall determine the average
4 weekly wage for insured employment by dividing the average monthly employment,
5 as obtained by dividing the total monthly employment reported by subject
6 employers for the preceding calendar year by twelve (12), into the total wages
7 reported by such employers for such calendar year and dividing by fifty-two (52).
8 Fifty-five percent (55%) of the amount thus obtained, adjusted to the nearest
9 multiple of one dollar (\$1), shall constitute the maximum weekly benefit rate for
10 those workers whose benefit year commences on or after the first day of July of
11 such year and prior to the first day of July of the next following year; ~~if beginning~~
12 ~~in calendar year 1999, or any subsequent year in which~~ the increase in the weekly
13 benefit rate calculation set forth in subsection (2) of this section should take effect,
14 sixty-two percent (62%) of the average weekly wage, adjusted to the nearest
15 multiple of one dollar (\$1), shall constitute the maximum weekly benefit rate for
16 those workers whose benefit year commences on or after the first day of July of that
17 year and prior to the first day of July of the next following year; except that ~~for the~~
18 ~~benefit years beginning on or after July 1, 1982,~~ if the "trust fund balance" as of
19 September 30 immediately preceding the benefit year is less than one hundred
20 twenty million dollars (\$120,000,000), the maximum weekly benefit rate shall not
21 exceed the prior year's maximum weekly benefit rate. If such "trust fund balance" as
22 of September 30 immediately preceding the benefit year:

23 (a) Equals or exceeds one hundred twenty million dollars (\$120,000,000), but is
24 less than two hundred million dollars (\$200,000,000), the maximum weekly
25 benefit rate shall not exceed the prior year's maximum weekly benefit rate by
26 more than six percent (6%). The rate thus determined shall be adjusted to the
27 nearest multiple of one dollar (\$1);

- 1 (b) Equals or exceeds two hundred million dollars (\$200,000,000), but is less than
2 three hundred million dollars (\$300,000,000), the maximum weekly benefit
3 rate shall not exceed the prior year's maximum weekly benefit rate by more
4 than eight percent (8%). The rate thus determined shall be adjusted to the
5 nearest multiple of one dollar (\$1);
- 6 (c) Equals or exceeds three hundred million dollars (\$300,000,000), but is less
7 than four hundred million dollars (\$400,000,000), the maximum weekly
8 benefit rate shall not exceed the prior year's maximum weekly benefit rate by
9 more than ten percent (10%). The rate thus determined shall be adjusted to the
10 nearest multiple of one dollar (\$1);
- 11 (d) Equals or exceeds four hundred million dollars (\$400,000,000), but is less
12 than five hundred million dollars (\$500,000,000), the maximum weekly
13 benefit rate shall not exceed the prior year's maximum weekly benefit rate by
14 more than twelve percent (12%). The rate thus determined shall be adjusted to
15 the nearest multiple of one dollar (\$1);
- 16 (e) Equals or exceeds five hundred million dollars (\$500,000,000), the maximum
17 weekly benefit rate shall not exceed the prior year's maximum weekly benefit
18 rate by more than fifteen percent (15%). The rate thus determined shall be
19 adjusted to the nearest multiple of one dollar (\$1); and
- 20 (f) Is such that it resulted in the establishment of an employer contribution rate
21 schedule, as provided for in KRS 341.270, for the current calendar year which
22 has a higher minimum rate than the schedule in effect for the immediately
23 preceding calendar year, the maximum weekly benefit rate shall not exceed
24 the prior year's maximum weekly benefit rate.
- 25 (4) Prior to the first day of July of each year, the secretary shall determine the
26 average of the maximum weekly benefit amounts currently being paid by
27 Kentucky's seven (7) bordering states and the maximum weekly benefit rate set in

1 subsection (3) of this section shall not exceed the average of the maximum weekly
2 benefit amount for those states. This subsection notwithstanding, the maximum
3 weekly benefit shall not change until the average maximum weekly benefit
4 amount of Kentucky's seven (7) bordering states equals or exceeds Kentucky's
5 maximum weekly benefit amount.

6 (5) For claims filed after January 1, 2019, the maximum amount of benefits payable
7 to any worker within any benefit year shall be as follows:

8 (a) Fourteen (14) times the weekly benefit amount if Kentucky's unemployment
9 rate is five and four-tenths percent (5.4%) or below;

10 (b) Fifteen (15) times the weekly benefit amount if Kentucky's unemployment
11 rate is between five and five-tenths percent (5.5%) and five and nine-tenths
12 percent (5.9%);

13 (c) Sixteen (16) times the weekly benefit amount if Kentucky's unemployment
14 rate is between six percent (6%) and six and four-tenths percent (6.4%);

15 (d) Seventeen (17) times the weekly benefit amount if Kentucky's
16 unemployment rate is between six and five-tenths percent (6.5%) and six
17 and nine-tenths percent (6.9%);

18 (e) Eighteen (18) times the weekly benefit amount if Kentucky's unemployment
19 rate is between seven percent (7%) and seven and four-tenths percent
20 (7.4%);

21 (f) Nineteen (19) times the weekly benefit amount if Kentucky's unemployment
22 rate is between seven and five-tenths percent (7.5%) and seven and nine-
23 tenths percent (7.9%);

24 (g) Twenty (20) times the weekly benefit amount if Kentucky's unemployment
25 rate is between eight percent (8%) and eight and four-tenths percent (8.4%);

26 (h) Twenty-two (22) times the weekly benefit amount if Kentucky's
27 unemployment rate is between eight and five-tenths percent (8.5%) and

1 eight and nine-tenths-percent (8.9%);

2 (i) Twenty-four (24) times the weekly benefit amount if Kentucky's
3 unemployment rate is between nine percent (9%) and nine and four-tenths
4 percent (9.4%); or

5 (j) Twenty-six (26) times the weekly benefit amount if Kentucky's
6 unemployment rate is nine and five-tenths percent (9.5%) or higher.

7 The unemployment rate to be applied in this subsection shall be the average of
8 the adjusted statewide unemployment rate as of April 1 through April 30 and
9 October 1 through October 31. The average of the adjusted statewide
10 unemployment rate for the time period of April 1 through April 30 shall be
11 effective on July 1 through December 31 of each year. The average of the
12 adjusted statewide unemployment rate for the period of October 1 through
13 October 31 shall be effective on January 1 through June 30 of each year. This
14 subsection notwithstanding, if the unemployment rate increases by more than two
15 percent (2%) in one (1) month, the secretary may adjust the weekly benefit
16 amount to the corresponding amount prior to the set time period~~the amount~~
17 ~~equal to whichever is the lesser of:~~

18 ~~(a) Twenty-six (26) times his weekly benefit rate; or~~

19 ~~(b) One-third (1/3) of his base period wages, except that no worker's maximum~~
20 ~~amount shall be less than fifteen (15) times his weekly benefit rate. Such~~
21 ~~maximum amount, if not a multiple of one dollar (\$1), shall be adjusted to the~~
22 ~~nearest multiple of one dollar (\$1)}.~~

23 ➔Section 6. KRS 341.540 is amended to read as follows:

24 (1) As used in this section, unless the context clearly requires otherwise:

25 (a) "Substantially common" or "substantially the same" means that there is
26 identifiable or demonstrative commonality or similarity of ownership,
27 familial relationships, principals or corporate officers, day-to-day

1 ~~**operations, assets and liabilities, and stated business**~~~~[one (1) or more~~
 2 ~~individual or individuals own or exercise pervasive management or control~~
 3 ~~over both the predecessor and successor employing unit. Factors indicating~~
 4 ~~pervasive management or control include, but are not limited to, whether the~~
 5 ~~predecessor and successor share:~~

6 ~~1. One (1) or more individuals or family members as owners, on boards of~~
 7 ~~directors, as shareholders, or executive or other officers; and~~
 8 ~~2. Titles to property, parent companies, workforce, assets, legal and~~
 9 ~~professional representation, physical location, client pools, marketing~~
 10 ~~services, Web sites, telephone numbers, or e-mail addresses];~~

11 (b) "Trade" or "business" includes **but is not limited to a commercial enterprise**
 12 ~~**or establishment; any entity engaged in the supplying, production, or**~~
 13 ~~**manufacturing of goods, commodities, or services; any entity engaged in**~~
 14 ~~**commerce, sale for profit, or the providing of goods, personnel, or services**~~
 15 ~~[the employing unit's workforce];~~

16 (c) "Knowingly" means having actual knowledge of, or acting with deliberate
 17 ignorance or disregard for, the prohibition involved;~~[and]~~

18 (d) "Violates" or "attempts to violate" includes, but is not limited to, intended
 19 evasion, misrepresentation, or willful nondisclosure; **and**

20 ~~**(e) "Person" has the same meaning as in Section 7701(a)(1) of the Internal**~~
 21 ~~**Revenue Code.**~~

22 (2) (a) For the purpose of this chapter, if a subject employer transfers all or part of its
 23 trade or business, the acquiring employing unit shall be deemed a successor if
 24 the transfer is in accordance with administrative regulations promulgated by
 25 the secretary, or if **there is substantially common ownership, management,**
 26 ~~**or control of the subject employer and employing unit**~~~~[the transferring and~~
 27 ~~acquiring employing units have substantially the same pervasive management,~~

1 ~~ownership, or control~~. If an employing unit is deemed a successor, the
2 transferring employing unit shall be deemed a predecessor.

3 (b) For the purpose of this chapter, if a nonsubject employer acquires all or part of
4 the trade or business of a subject employer, the nonsubject employer shall file
5 an application with the Office of Employment and Training, Department of
6 Workforce Investment to establish an unemployment reserve account within
7 forty-five (45) days of employing personnel. The application will be
8 considered and processed in accordance with administrative regulations
9 promulgated by the secretary and shall require information necessary to
10 determine whether the nonsubject employer is a successor of the subject
11 employer and to establish an initial unemployment contribution rate for the
12 employer. Factors to be considered in the determination of successorship and
13 the fixing of the initial rate shall include but not be limited to the *nonsubject*
14 employer's prior unemployment claims history, benefit charges, historical rate
15 charges, and payment penalties assessed in the previous five (5) years, in
16 addition to the factors set forth in subsection (6)(b) of this section. After
17 consideration of these factors, and others that the applicant may submit in
18 justification of an initial rate determination, the secretary shall set an
19 appropriate contribution rate. Any determinations of initial unemployment
20 contribution rates made pursuant to this subsection shall not be effective prior
21 to January 1, 2018.

22 (3) (a) Notwithstanding subsection (2)(b) of this section, Any successor to the trade
23 or business of a subject employer shall assume the resources and liabilities of
24 the predecessor's reserve account, including interest, and shall continue the
25 payment of all contributions and interest due under this chapter, except that
26 the successor shall not be required to assume the liability of any delinquent
27 contributions and interest of a predecessor or predecessors unless the cabinet

1 notifies the successor of the delinquency within six (6) months after the
2 department has notice of the succession; and

3 (b) Any nonsubject employer that is deemed a successor in whole or part ~~upon~~
4 ~~submission of the application referred to in subsection (2)(b) of this section~~
5 shall be allowed to make a one (1) time voluntary payment to pay off or
6 reduce the negative reserve assumed from the predecessor. This payment shall
7 be made within sixty (60) days of receipt of the first notice of a negative
8 predecessor reserve account. This one (1) time voluntary payment cannot
9 exceed the amount of negative reserve assumed by the successor.

10 (4) The liability for delinquent contributions and interest imposed upon the successor
11 by subsection (3) of this section shall be secondary to the liability of the predecessor
12 or predecessors, and if the delinquency has been reduced to judgment, the order of
13 execution on the judgment shall be as follows:

14 (a) Against the assets, both real and personal, of the predecessor or predecessors;

15 (b) Against the assets, both real and personal, of the business acquired; and

16 (c) Against the assets, both real and personal, of the successor or acquirer.

17 (5) (a) Notwithstanding the provisions of subsection (3) of this section, any successor
18 to a portion of the trade or business of a subject employer, who is, or by
19 reason of the transfer becomes, a subject employer, shall assume the resources
20 and liabilities of the predecessor's reserve account in proportion to the
21 percentage of the payroll or employees assignable to the transferred portion. In
22 calculating the transferred portion, the secretary shall utilize the last four (4)
23 calendar quarters preceding the date of transfer for workers employed by the
24 successor subsequent to that date. The taxable payroll, benefit charges and the
25 potential benefit charges shall be assumed by the successors in a like
26 proportion.

27 (b) Notwithstanding the provisions of paragraph (a) of this subsection, if any

1 employing unit succeeds to a portion of the trade or business of another
2 employing unit; becomes, by reason of that succession, a subject employer
3 with substantially the same ownership, management, or control as the
4 predecessor employing unit; and lays off or terminates more than one-half
5 (1/2) of the original employees transferred within six (6) months of the date of
6 transfer; then the succession and creation of the new employing unit shall be
7 voided, and the benefits attributable to the lay-offs or terminations shall be
8 charged to the reserve account of the original employing unit.

9 (6) (a) The contribution rate of a successor in whole or in part, which was a subject
10 employer prior to succession, shall not be affected by the transfer of the
11 reserve account for the remainder of the rate year in which succession
12 occurred; except that the rate of the successor shall be recalculated and made
13 effective upon the first day of the calendar quarter immediately following the
14 date of the transfer if there is substantially common ownership, management,
15 or control of the predecessor and successor.

16 (b) The contribution rate of a successor in whole or in part, which was not a
17 subject employer prior to succession, shall be determined by a review of the
18 application required by subsection (2)(b) of this section, except if the secretary
19 finds, after a thorough investigation based on the use of objective factors,
20 including but not limited to:

- 21 1. The cost of acquiring the business;
 - 22 2. How long the original business enterprise was continued; and
 - 23 3. Whether a substantial number of new employees were hired for performance
24 of duties unrelated to the business activity prior to acquisition;
- 25 that the succession was solely for the purpose of obtaining a rate lower than
26 that prescribed in KRS 341.270(1) and 341.272 for a new employing unit,
27 then the unemployment experience of the predecessor shall not be transferred,

1 the rate for a new employing unit shall be assigned, and the employing unit
2 shall be otherwise deemed a successor for the purpose of KRS 341.070(7) and
3 subsection (3) of this section.

4 (c) The contribution rate for a successor which becomes a subject employer
5 through the simultaneous transfer, either in whole or in part, of two (2) or
6 more predecessor reserve accounts shall be the rate determined in accordance
7 with the provisions of KRS 341.270, by combining the reserve accounts
8 succeeded to as of the computation date for determining rates for the calendar
9 year in which succession occurred.

10 (d) The contribution rate of a successor which succeeds, either in whole or in part,
11 to a predecessor's reserve account after a computation date, but prior to the
12 beginning of the calendar year immediately following that computation date,
13 shall be the rate determined in accordance with KRS 341.270, by effecting the
14 transfer of the reserve account as of the computation date immediately
15 preceding the date of succession.

16 (7) Notwithstanding KRS 341.270, the contribution rate for an employing unit that
17 knowingly violates or attempts to violate the provisions of this section or any other
18 provision of the chapter related to determining the assignment of a contribution rate
19 shall be the highest rate assignable under this chapter for the calendar year during
20 which the violation or attempted violation occurred and the three (3) calendar years
21 immediately following that year. If that employer's rate is already at the highest
22 assignable rate, or if the amount of increase in the employer's rate would be less
23 than an additional two percent (2%) for that year, then a penalty rate of
24 contributions of an additional two percent (2%) of taxable wages shall be imposed
25 for each year.

26 (8) In addition to the penalties prescribed in subsection (7) of this section and KRS
27 341.990(9), any person who knowingly violates this section shall be subject to the

1 penalties stipulated under KRS 341.990.

2 (9) (a) The secretary shall establish procedures to identify the transfer of a business
3 for purposes of this section.

4 (b) The secretary shall have the authority and discretion to set an initial^[a]
5 contribution rate upon the providing of justification by a subject employer and
6 consideration of relevant factors, including but not limited to the factors set
7 forth in subsections (2) and (6)(a) of this section.