- 1 HB426
- 2 146096-1
- 3 By Representative Long
- 4 RFD: Commerce and Small Business
- 5 First Read: 07-MAR-13

| 1 | 146096-1:n:12/03/2012:KMS/tj LRS2012-5511 | |
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| 8 | SYNOPSIS: | Under existing law, for the purposes of |
| 9 | u | nemployment compensation, an employing unit is |
| 10 | d | efined as an employer that acquires an |
| 11 | O | rganization, trade, or business, or substantially |
| 12 | а | ll of the assets thereof, of another employing |
| 13 | u | nit. |
| 14 | | This bill would further define an employing |
| 15 | u | nit as an employer that acquires at least 65 |
| 16 | p | ercent of an organization, trade, employees, or |
| 17 | b | usiness located in the State of Alabama, or |
| 18 | S | ubstantially all of the assets thereof, of another |
| 19 | е | mploying unit. |
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| 21 | | A BILL |
| 22 | | TO BE ENTITLED |
| 23 | | AN ACT |
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| 25 | То | amend Section 25-4-8, Code of Alabama 1975, |
| 26 | relating to | unemployment compensation; to further define |
| 27 | emploving unit. | |

| Τ | BE IT ENACTED BY THE LEGISLATURE OF ALABAMA: | |
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| 2 | Section 1. Section 25-4-8 of the Code of Alabama | |
| 3 | 1975, is amended to read as follows: | |
| 4 | "§25-4-8. | |
| 5 | "(a) "Employer," as used in this chapter, prior to | |
| 6 | January 1, 1978, shall mean any employing unit which was so | |
| 7 | defined in this chapter prior to such date. | |
| 8 | "After December 31, 1977, except as otherwise | |
| 9 | provided in this chapter, "employer," as used in this chapter | |
| 10 | shall mean: | |
| 11 | "(1) Any employing unit which, after December 31, | |
| 12 | 1977: | |
| 13 | "a. In any calendar quarter in either the current or | |
| 14 | preceding calendar year paid, for service in employment, wages | |
| 15 | of \$1,500.00 one thousand five hundred dollars (\$1,500) or | |
| 16 | more; or | |
| 17 | "b. For some portion of a day in each of 20 | |
| 18 | different calendar weeks, whether or not such weeks were | |
| 19 | consecutive, in either the current or the preceding calendar | |
| 20 | year, had in employment at least one individual (irrespective | |
| 21 | of whether the same individual was in employment in each such | |
| 22 | day). | |
| 23 | "(2) Any employing unit which, having become an | |
| 24 | employer under this chapter, has not under Sections 25-4-130 | |
| 25 | and 25-4-131 ceased to be an employer subject to this chapter. | |

"(3) For the effective period of its election

pursuant to Section 25-4-131, any other employing unit which

has elected to become fully subject to this chapter.

- "(4) Any employing unit (whether or not an employing unit at the time of acquisition) which:
 - "a. Acquired <u>at least 65 percent of</u> the organization, trade, <u>employees</u>, or business <u>located in the</u>

 <u>State of Alabama</u>, or substantially all the assets thereof, of another employing unit which at the time of such acquisition was an employer subject to this chapter; or
 - "b. Acquired a segregable part of the organization, trade, or business of another employing unit which at the time of such acquisition was an employer subject to this chapter; provided, that such segregable part would have been an employer subject to this chapter if such part had constituted its entire organization, trade, or business.
 - percent of the organization, trade, employees, or business located in the State of Alabama, or substantially all of the assets thereof of another employing unit (not an employer subject to this chapter) and which, if the employment record of such employing unit subsequent to such acquisition, together with the employment record of the acquired unit prior to such acquisition, both within the same calendar year, would be sufficient to constitute an employing unit an employer subject to this chapter.

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

- "a. For which, within either the current or preceding calendar year, service is or was performed with respect to which such employing unit is held liable by the federal government for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment fund; or
 - "b. Which, as a condition for approval of this chapter for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required, pursuant to such Federal Unemployment Tax Act, to be an "employer" under this chapter.
 - "(7) Any employing unit for which service in employment as defined in paragraph (a)(2)a. of Section 25-4-10 is performed after December 31, 1971, or for which service in employment as defined in paragraph (a)(2)b. of Section 25-4-10 is performed after December 31, 1977; provided, however, that such service is not excluded from the definition of "employment" by any of the provisions of subsection (b) of Section 25-4-10.
 - "(8) Any employing unit for which service in employment as defined in subdivision (a)(3) of Section 25-4-10 is performed after December 31, 1971.
- "(9) Any employing unit for which agricultural labor as defined in subdivision (b)(1) of Section 25-4-10 is

performed after December 31, 1977, but only if the provisions of paragraph (a)(4)a. of Section 25-4-10 are met.

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

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

"b. In determining whether or not an employing unit for which service other than agricultural labor is also performed is an employer under this section other than under subdivisions (7) and (8) of this subsection, the wages paid to, or the employment of, an employee performing service in agricultural labor after December 31, 1977, shall not be taken into account. If an employing unit is determined an employer of agricultural labor, such employing unit shall be determined an employer for the purposes of subdivision (1) of this subsection.

"c. The provisions of paragraphs a. and b. of this subdivision notwithstanding, for the purposes of Sections 25-4-51, 25-4-52, 25-4-53, and 25-4-54, any employing unit which is or becomes subject to the provisions of any subdivision of this subsection other than subdivisions (9) or (10) shall, upon becoming subject to subdivisions (9) or (10)

- or if, at the time of becoming subject to any other
 subdivision is already subject to subdivisions (9) or (10), be
 a single employing unit.
 - "(12) The term employer shall also include any Indian tribe, as herein defined, for which service in employment is performed.

- "(b) For the purposes of this section, if any week includes both December 31 and January 1, the days of that week up to January 1 shall be deemed one calendar week and the days beginning January 1 another such week.
- "(c) Notwithstanding any other provision of law, the following shall apply regarding assignment of rates and transfers of experience:
- "(1) If an employer transfers its trade or business, or a portion thereof, to another employer and, at the time of the transfer, there is substantially common ownership, management, or control of the two employers, then the unemployment experience attributable to the transferred trade or business shall be transferred to the employer to whom such trade or business is so transferred. The rates of both employers shall be recalculated and made effective in accordance with the date such transfer or transfers occurred.
- "(2) Whenever a person who is not an employer under this section at the time it acquires the trade or business of an employer, the unemployment experience of the acquired trade or business shall not be transferred to such person if the director finds that such person acquired the trade or business

solely or primarily for the purpose of obtaining a lower rate of contributions. Instead, such person shall be assigned the applicable new employer rate under Section 25-4-51(a)(2). In determining whether the trade or business was acquired solely or primarily for the purpose of obtaining a lower rate of contributions, the director shall use objective factors which may include the cost of acquiring the trade or business, whether the person continued the business enterprise of the acquired trade or business, how long such business enterprise was continued, or whether a substantial number of new employees were hired for the performance of duties unrelated to the business activity conducted prior to acquisition.

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

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

- 1 "2. If the person is not an employer, such person 2 shall be subject to a civil monetary penalty of not more than ten thousand dollars (\$10,000) or 10 percent of any under 3 reported amount, whichever is greater. All fines shall be deposited in the penalty and interest account established 5 under Section 25-4-142(b).
- 7 "b. For purposes of this section, the following terms shall have the following meanings: 8

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- "1. Knowingly means having actual knowledge of or acting with deliberate ignorance or reckless disregard for the prohibition involved.
- "2. Violates or attempts to violate includes, but is not limited to, intent to evade, misrepresentation, or willful nondisclosure.
- "3. Person has the meaning given the term by §7701 (a) (1) of the Internal Revenue Code of 1986.
- "4. Trade or business includes the employer's workforce.

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

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

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