

ACT 51

H.B. NO. 2793

A Bill for an Act Relating to Unemployment.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 383-66, Hawaii Revised Statutes, is amended to read as follows:

“§383-66 Contribution rates, how determined. The department, for the nine-month period April 1, 1941, to December 31, 1941, and for each calendar year thereafter, except as otherwise provided in this part, shall classify employers in accordance with their actual experience in the payment of contributions and with respect to benefits charged against their accounts with a view to fixing [such] the contribution rates [as will] to reflect [such] this experience. The department shall determine the contribution rate of each employer in accordance with the following requirements:

- (1) The standard rate of contributions payable by each employer for any calendar year through 1984 shall be three per cent. For the calendar year 1985 and thereafter the standard rate of contributions payable by each employer shall be five and four-tenths per cent.

- (2) No employer's rate for the calendar year 1942 and for any calendar year thereafter shall be other than the maximum rate unless and until the employer's account has been chargeable with benefits throughout the thirty-six consecutive calendar month period ending on December 31 of the preceding calendar year, except that, for the calendar year 1956 and for each calendar year thereafter, an employer who has not been subject to the law for a sufficient period to meet this requirement may qualify for a rate other than the maximum rate if the employer's account has been chargeable throughout a lesser period but in no event less than the twelve consecutive calendar month period ending on December 31 of the preceding calendar year. For the calendar year 1985 and for each calendar year thereafter, the contribution rate for a new or newly covered employer shall be the sum of the employer's basic contribution rate of three and six-tenths per cent and the fund solvency contribution rate determined for [such] that year pursuant to section 383-68(c)(2), until the employer's account has been chargeable with benefits throughout the twelve consecutive calendar month period ending on December 31 of the preceding calendar year; except that no employer's contribution rate shall be greater than five and four-tenths per cent and no employer with a negative reserve ratio shall have a contribution rate less than [such] the employer's basic contribution rate.
- (3) No employer's rate for the calendar year 1965 and for any calendar year thereafter, or remaining calendar quarter thereof, as the case may be, through December 31, 1976, shall be less than the standard rate unless the total assets of the fund as of the end of the previous calendar year, or calendar quarter, were at least \$15,000,000; provided that each employer's rate for any calendar year or any portion thereof, as determined by other applicable provisions of this part, shall be increased by one-half per cent, if the total assets of the fund as of the end of the previous calendar year or calendar quarter were at least \$15,000,000 but less than \$20,000,000, but in no event shall an employer's rate exceed the standard rate. Any amount credited to this State under section 903 of the Social Security Act, as amended, which has been appropriated for expenses of administration, whether or not withdrawn from the trust fund, shall be excluded from the fund for the purposes of this paragraph. Any advance that may be made to this State under section 1201 of the Social Security Act, whether or not withdrawn from this trust fund, shall be excluded from the fund for the purposes of this paragraph. No employer's rate shall be reduced in any amount which is not allowable as an additional credit, against the tax levied by the federal Unemployment Tax Act pursuant to section 3302(b) of the federal Internal Revenue Code or pursuant to any other federal statute, successor to section 3302(b), which provides for the additional credit now provided for in section 3302(b).
- (4) If, when any [such] classification of employers is to be made (which may be after the commencement of the period for which the classification is to be made), the department finds that any employer has failed to file any report required in connection therewith or has filed a report which the department finds incorrect or insufficient, the department shall notify the employer thereof by mail addressed to the employer's last known address. Unless the employer files the

report or a corrected or sufficient report, as the case may be, within fifteen days after the mailing of the notice, the maximum rate of contributions shall be payable by [such] the employer for the period for which the contribution rate is to be fixed. Effective January 1, 1987, the director, for excusable failure, may redetermine the assignment of the maximum contribution rate in accordance with this section, provided the employer files all reports as required by the department and submits a written request for redetermination before December 31 of the year for which the contribution rate is to be fixed.

- (5) For the purpose of sections 383-63 to 383-69, if [on or after January 1, 1940,] after December 31, 1939, any employing unit in any manner succeeds to or acquires the organization, trade, or business, or substantially all the assets thereof (whether or not the successor or acquiring unit was an "employing unit", as that term is defined in section 383-1 prior to the acquisition), or after December 31, 1988 and prior to December 31, 1992 acquires a clearly identifiable and segregable portion of the organization, trade, or business of another which at the time of [such] the acquisition was an employer subject to this chapter, and [such] the successor continues or resumes the organization, trade, or business and continues to employ all or nearly all of the predecessor's employees, or the successor continues or resumes the clearly identifiable and segregable portion of the organization, trade, or business and continues to employ all or nearly all of the employees of the clearly identifiable and segregable portion, an application may be made for transfer of the predecessor's experience record. If the predecessor employer has submitted all information and reports required by the department including amended quarterly wage reports identifying the employees transferred or retained and executed and filed with the department before December 31 of the calendar year following the calendar year in which the acquisition occurred on a form approved by the department a waiver relinquishing [all] the rights to [the predecessor employer's prior experience record] all or the clearly identifiable and segregable portion of the predecessor's prior experience record with respect to [the predecessor employer's] its separate account, actual contribution payment, and benefit chargeability experience, annual payrolls and other data for the purpose of obtaining a reduced rate, and requesting the department to permit [such] the experience record to inure to the benefit of the successor employing unit upon request of the successor employing unit, the experience record for rate computation purposes of the predecessor shall thereupon be deemed the experience record of the successor and the experience record shall be transferred by the department to the successor employing unit and shall become the separate account of the employing unit as of the date of the acquisition [and benefits thereafter]. Benefits chargeable to the predecessor employer or successor employer in case of an acquisition of a clearly identifiable and segregable portion of the organization, trade, or business, after the date of acquisition on account of employment prior to the date of the acquisition shall be charged to [such] the separate account[.] of the successor employing unit. In case of an acquisition of a clearly identifiable and segregable portion of the organization, trade, or

business, the experience record that inures to the benefit of the successor employer shall be determined as follows:

- (A) Wages, as used in section 383-61, attributable to the clearly identifiable and segregable portion shall be for the period beginning with the most recent three consecutive calendar years immediately preceding the determination of rates under section 383-63 to 383-69 and through the date of acquisition; and
- (B) Reserve balance attributable to the clearly identifiable and segregable portion shall be the amount determined by dividing the wages, as used in section 383-61, of the clearly identifiable and segregable portion in the three calendar years (or that lesser period as the clearly identifiable and segregable portion may have been in operation) immediately preceding the computation date of the rating period prior to which the acquisition occurred by the total taxable payrolls of the predecessor for the three-year period (or that lesser period as the clearly identifiable and segregable portion may have been in operation) and multiplying the quotient by the reserve balance of the predecessor employer calculated as of the acquisition date.

[The] Provided the waiver or waivers required herein are filed with the department within sixty days after the date of acquisition, the successor employing unit, unless already an employer subject to this chapter, shall be subject from the date of acquisition to the rate of contribution of the predecessor or of two or more predecessors if they have the same contribution rate[, provided the waiver or waivers required herein are filed with the department before sixty days after the date of acquisition]. [In case] If there are two or more predecessors having different contribution rates, the successor shall be subject to the rate prescribed for new or newly covered employers under paragraph (2) until the next determination of rates under sections 383-63 to 383-69, at which time the experience records of the predecessors and successor shall be combined and shall be deemed to be the experience record of a single employing unit and the successor's rate shall thereupon be determined upon the basis of [such] the combined experience. If the successor at the time of the transfer is an employer subject to this chapter, the rate of contribution to which the successor is then subject shall remain the same until the next determination of rates under sections 383-63 to 383-69, at which time the experience records of the predecessor and successor shall be combined and shall be deemed to be the experience record of a single employing unit and the successor's rate shall thereupon be determined upon the basis of [such] the combined experience. For the purpose of determination of rates under sections 383-63 to 383-69 of all successor employing units, waivers as required herein, if not previously filed as hereinabove provided, shall be filed with the department not later than March 1 of the year for which the rate is determined; provided that no [such] waiver shall be accepted by the department for filing unless the employing unit executing the waiver has filed all reports and paid all contributions required [of it] by this chapter.

- (6) The department may prescribe rules for the establishment, maintenance, and dissolution of joint accounts by two or more employers,

and, in accordance with [such] the rules and upon application by two or more employers to establish such an account, or to merge their several individual accounts in a joint account, shall maintain [such] the joint account as if it constituted a single employer's account. The rules shall be consistent with the federal requirements for additional credit allowance in section 3303 of the federal Internal Revenue Code and consistent with this chapter.

- (7) Whenever there is an amendment to this chapter which, if immediately effective, would change an employer's rate of contributions, the rate of the employer shall be changed in accordance with the amendment and the new rate shall apply for the remainder of the calendar year beginning with the calendar quarter immediately following the effective date of the amendment providing for [such] the change,¹ unless otherwise provided by the amendment.
- (8) For the purposes of this section "contribution rate" shall mean the basic contribution rate as defined in section 383-68 when applied to calendar year 1978 or any calendar year thereafter.
- (9) For the purposes of this section, the terms "employing unit," "employer," "predecessor," and "successor" shall include both the singular and the plural of each term. Nothing in this section shall prevent two or more successor employing units, which each succeed to or acquire a clearly identifiable and segregable portion of a predecessor employing unit, from gaining the benefit of the clearly identifiable and segregable portion of the predecessor's experience record.

Provided that the terms of this section are complied with, nothing herein shall bar a predecessor employer from waiving the rights to all or the clearly identifiable and segregable portion of the predecessor's prior experience record in favor of a successor employer where the successor acquired a clearly identifiable and segregable portion of the predecessor's organization, trade, or business after December 31, 1988 and prior to December 31, 1992."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 2, 1990.)

Note

1. So in original.