

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 397

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

1 RELATING TO THE EMPLOYMENT SECURITY LAW; AMENDING SECTION 72-1349A, IDAHO
2 CODE, TO CLARIFY THE NOTICE AND APPEAL PROVISIONS FOR COST REIM-
3 BURSEMENT DETERMINATIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING
4 SECTION 72-1350, IDAHO CODE, TO CLARIFY THE NOTICE PROVISIONS FOR
5 TAXABLE WAGE RATE DETERMINATIONS AND TO MAKE TECHNICAL CORRECTIONS;
6 AMENDING SECTION 72-1351, IDAHO CODE, TO CLARIFY THE APPEAL PROCEDURES
7 FOR CHARGEABILITY DETERMINATIONS AND TO MAKE TECHNICAL CORRECTIONS;
8 AMENDING SECTION 72-1351A, IDAHO CODE, TO CLARIFY THE NOTICE AND APPEAL
9 PROCEDURES FOR RATE TRANSFER DETERMINATIONS AND TO MAKE TECHNICAL COR-
10 RECTIONS; AMENDING SECTION 72-1353, IDAHO CODE, TO CLARIFY THE NOTICE
11 PROVISIONS FOR COVERAGE DETERMINATIONS AND TO MAKE A TECHNICAL COR-
12 RECTION; AMENDING SECTION 72-1357, IDAHO CODE, TO CLARIFY THE NOTICE
13 PROVISIONS FOR ADJUSTMENT AND REFUND DETERMINATIONS; AMENDING SECTION
14 72-1358, IDAHO CODE, TO CLARIFY THE NOTICE PROVISION FOR DETERMINATIONS
15 OF AMOUNTS DUE UPON FAILURE TO REPORT; AMENDING SECTION 72-1359, IDAHO
16 CODE, TO CLARIFY THE NOTICE PROVISIONS FOR JEOPARDY ASSESSMENT DETER-
17 MINATIONS; AMENDING SECTION 72-1361, IDAHO CODE, TO FURTHER DEFINE
18 THE TYPES OF DETERMINATIONS THAT MAY BE APPEALED; AND AMENDING SECTION
19 72-1362, IDAHO CODE, TO CLARIFY THE NOTICE PROVISIONS AND APPEAL PROCE-
20 DURES FOR DETERMINATIONS OF SUCCESSOR LIABILITY.
21

22 Be It Enacted by the Legislature of the State of Idaho:

23 SECTION 1. That Section 72-1349A, Idaho Code, be, and the same is hereby
24 amended to read as follows:

25 72-1349A. FINANCING OF BENEFIT PAYMENTS BY NONPROFIT ORGANIZATIONS
26 AND GOVERNMENTAL ENTITIES. (1) Benefits paid to employees of governmental
27 entities and nonprofit organizations shall be financed in accordance with
28 the provisions of this section.

29 A group of such organizations or entities may elect, with the approval
30 of the director, to act as a group in fulfilling the requirements of this
31 chapter.

32 (2) Liability for contributions and election of reimbursements. A
33 nonprofit organization or governmental entity shall pay contributions under
34 the provisions of section 72-1349, Idaho Code, unless it elects, in accor-
35 dance with this section, to pay to the director an amount equal to the full
36 amount of regular benefits paid and the amount paid for extended benefits
37 for which the department is not reimbursed by the federal government, for
38 any reason including, but not limited to, payments made as a result of a
39 determination or payments erroneously paid, or paid as a result of a deter-
40 mination of eligibility, which is subsequently reversed if said payment or
41 any portion thereof was made as a result of wages earned in the employ of such
42 organization or entity. Any sums recovered by the department from a claimant

1 as a result of said payments shall be credited to the account of the nonprofit
2 organization or governmental entity ~~which~~ that reimbursed the fund for the
3 payment of said benefits. Where such benefits are paid utilizing wages paid
4 by two (2) or more employers, the portion of benefits to be repaid by the
5 organization or entity shall be its proportionate share. This shall be com-
6 puted on the basis of the relationship between wages utilized ~~which~~ that were
7 earned for services performed for such organization or entity and the total
8 wages utilized in paying such benefits.

9 (3) Any nonprofit organization or governmental entity may elect to be-
10 come liable for payments in lieu of contributions, provided it files with the
11 director a written notice of election not later than thirty (30) days prior
12 to the beginning of any taxable year or within thirty (30) days after the date
13 of the final determination that such organization or entity is subject to
14 this chapter. Such election shall be effective for not less than two (2) full
15 taxable years after the election is made, and will continue to be in effect
16 until terminated. The organization or entity must file with the director
17 a written notice of termination of such election not later than thirty (30)
18 days prior to the beginning of the taxable year for which such termination
19 shall first be effective. The director may, in his discretion, terminate an
20 election as provided in this section or extend the period within which a no-
21 tice of election or a notice of termination must be filed. The director shall
22 notify each nonprofit organization and governmental entity of any determi-
23 nation he makes of its status as an employer and of the effective date of any
24 election ~~which~~ that it makes and of any termination of such election.

25 (4) Reimbursement payments. Payments in lieu of contributions shall be
26 made in accordance with the provisions of this subsection, including either
27 paragraph (a) or paragraph (b).

28 (a) At the end of each calendar quarter, or at the end of any other pe-
29 riod as determined by the director, the director shall bill each organi-
30 zation or entity (or group of organizations or entities) ~~which~~ that has
31 elected to make payments in lieu of contributions for an amount equal
32 to the full amount of regular benefits paid, and the amount paid for ex-
33 tended benefits for which the department is not reimbursed by the fed-
34 eral government, if paid as a result of wages earned in the employ of
35 such organization or entity.

36 (b) Payment in advance. Nonprofit organizations or governmental en-
37 tities may elect to make payments in lieu of contributions in advance
38 of actual billing for payment costs. Advance payments shall be made
39 as follows: At the end of each calendar quarter, the nonprofit organ-
40 ization or governmental entity shall pay one percent (1%) of its total
41 quarterly payroll unless the director determines that a lesser percent-
42 age will cover the cost of payment of benefits to the employees of said
43 employer. For purposes of this section, the total quarterly payroll
44 for school districts shall be computed based upon only those school
45 districts ~~which~~ that have elected cost reimbursement status. Such pay-
46 ments shall become due and payable within thirty (30) days following the
47 quarter ending.

48 At the end of such taxable year, the director shall compute the ben-
49 efit costs attributable to the employer as provided in subsection (2) of
50 this section. The director will then debit the employer's account with

1 these costs. When payments exceed benefit costs, either the employer
2 will be credited on subsequent benefit costs with the overpayment or, at
3 the director's discretion, the overpayment will be refunded to the em-
4 ployer. When payments are not sufficient to pay benefit costs, either
5 the employer will be billed the additional amount necessary to pay such
6 costs or, at the director's discretion, the employer's advance payment
7 rate for the next taxable year will be set at a rate that will cover such
8 costs.

9 (5) Bond requirements. Any nonprofit organization that elects to be-
10 come liable for payments in lieu of contributions may be required to obtain
11 and deposit with the director a surety bond approved by the director. The
12 amount of the bond shall be determined by the director on the basis of poten-
13 tial liability for benefit costs of each employing nonprofit organization.
14 Such bond shall be in force for a period of not less than two (2) years, and
15 shall be renewed not less frequently than two (2) year intervals for as long
16 as the organization continues to be liable for payments in lieu of contribu-
17 tions. The director shall require adjustments to be made in the bond filed
18 as deemed appropriate. When upward adjustments are required, the adjusted
19 bond shall be filed within thirty (30) days of the date notice of the required
20 adjustment was mailed. Failure by an organization covered by such bond to
21 pay the full amount of payments due, together with interest and penalties, as
22 provided in section 72-1354, Idaho Code, shall render the surety liable on
23 said bond to the extent of the bond, as though the surety was a liable organi-
24 zation.

25 (6) Failure to pay timely. If any nonprofit organization or governmen-
26 tal entity is delinquent in making payments in lieu of contributions, the
27 director may terminate such employer's election to make payments in lieu of
28 contributions as of the beginning of the next taxable year, and such termi-
29 nation shall be effective for that and the next taxable year. Any nonprofit
30 organization or governmental entity becoming delinquent in making payments
31 in lieu of contributions shall be subject to the same penalty provisions as
32 any other covered employer as provided in this chapter.

33 (7) Appeals procedure. ~~Nonprofit organizations and governmental en-~~
34 ~~tities making payments in lieu of contributions may appeal a determination~~
35 ~~made pursuant to this section as provided in Administrative determinations~~
36 ~~issued pursuant to this section shall become final unless, within fourteen~~
37 ~~(14) days after notice as provided in section 72-1368(5), Idaho Code, an ap-~~
38 ~~peal is filed with the department in accordance with the department's rules.~~
39 ~~Appeal proceedings shall be in accordance with the provisions of section~~
40 ~~72-1361, Idaho Code.~~

41 (8) In the payment of any payments in lieu of contributions, a frac-
42 tional part of a dollar shall be disregarded unless it amounts to fifty cents
43 (50¢) or more, in which case it shall be increased to one dollar (\$1.00).

44 SECTION 2. That Section 72-1350, Idaho Code, be, and the same is hereby
45 amended to read as follows:

46 72-1350. TAXABLE WAGE BASE AND TAXABLE WAGE RATES. (1) All remunera-
47 tion for personal services as defined in section 72-1328, Idaho Code, equal
48 to the average annual wage in covered employment for the penultimate calen-
49 dar year, rounded to the nearest multiple of one hundred dollars (\$100), or

1 the amount of taxable wage base specified in the federal unemployment tax
2 act, whichever is higher, shall be the taxable wage base for purposes of this
3 chapter.

4 (2) Prior to December 31 of each year, the director shall determine the
5 taxable wage rates for the following calendar year for all covered employ-
6 ers, except cost reimbursement employers, in accordance with this section,
7 provided however, and notwithstanding any other provision of the employment
8 security law to the contrary, for calendar years 2005 and 2006, the taxable
9 wage rates for all covered employers except cost reimbursement employers
10 shall be determined as follows:

11 (a) For calendar year 2005, the taxable wage rate shall be determined
12 using a base tax rate of one and fifty hundredths percent (1.50%);

13 (b) For calendar year 2006, the taxable wage rate shall be determined
14 using a base tax rate of one and sixty-seven hundredths percent (1.67%)
15 unless, at any time prior to September 30, 2005, the actual balance in
16 the employment security fund, section 72-1346, Idaho Code, is fifty
17 percent (50%) or less than the actual balance in the reserve fund, sec-
18 tion 72-1347A, Idaho Code, in which case the taxable wage rate shall be
19 determined using a base tax rate calculated in accordance with subsec-
20 tion (5) of this section.

21 (3) An average high cost ratio shall be determined by calculating the
22 average of the three (3) highest benefit cost rates in the twenty (20) year
23 period ending with the preceding year. For the purposes of this section, the
24 "benefit cost rate" is the total annual benefits paid, including the state's
25 share of extended benefits but excluding the federal share of extended ben-
26 efits and cost reimbursable benefits, divided by the total annual covered
27 wages excluding cost reimbursable wages. The resulting average high cost
28 ratio is multiplied by the desired fund size multiplier and the result, for
29 the purposes of this section, is referred to as the "average high cost multi-
30 ple" (AHCM). The desired fund size multiplier shall be eight tenths (0.8) and
31 shall increase to nine tenths (0.9) on and after January 1, 2012; to one (1)
32 on and after January 1, 2013; to one and one-tenth (1.1) on and after January
33 1, 2014; to one and two-tenths (1.2) on and after January 1, 2015; to one and
34 three-tenths (1.3) on and after January 1, 2016; to one and four-tenths (1.4)
35 on and after January 1, 2017; and to one and five-tenths (1.5) on and after
36 January 1, 2018.

37 (4) The fund balance ratio shall be determined by dividing the actual
38 balance of the employment security fund, section 72-1346, Idaho Code, and
39 the reserve fund, section 72-1347A, Idaho Code, on September 30 of the cur-
40 rent calendar year by the wages paid by all covered employers in Idaho, ex-
41 cept cost reimbursement employers, in the preceding calendar year.

42 (5) The base tax rate shall be determined as follows:

43 (a) Divide the fund balance ratio by the AHCM;

44 (b) Subtract the quotient obtained from the calculation in paragraph
45 ~~(5)~~(a) of this subsection from the number two (2);

46 (c) Multiply the remainder obtained from the calculation in para-
47 graph ~~(5)~~(b) of this subsection by two and one-tenth percent (2.1%).
48 The product obtained from this calculation shall equal the base tax
49 rate, provided however, that the base tax rate shall not be less than

1 sixty-three hundredths percent (0.63%) and shall not exceed three and
2 thirty-six hundredths percent (3.36%).

3 (6) The base tax rate calculated in accordance with subsection (5) of
4 this section shall be used to determine the taxable wage rate effective the
5 following calendar year for all covered employers except cost reimbursement
6 employers as provided in subsections (7) and (8) of this section.

7 (7) Table of Rate Classes, Tax Factors and Minimum and Maximum Taxable
8 Wage Rates:

9 10 11 12 13	Cumulative Taxable Payroll Limits			Eligible Employers		
	Rate Class	More Than (% of Taxable Payroll)	Equal to or Less Than (% of Taxable Payroll)	Tax Factor	Minimum Taxable Wage Rate	Maximum Taxable Wage Rate
14	1	--	12	0.2857	0.180%	0.960%
15	2	12	24	0.4762	0.300%	1.600%
16	3	24	36	0.5714	0.360%	1.920%
17	4	36	48	0.6667	0.420%	2.240%
18	5	48	60	0.7619	0.480%	2.560%
19	6	60	72	0.8571	0.540%	2.880%
20	7	72	--	0.9524	0.600%	3.200%
21	Standard-Rated Employers					
22					Minimum	Maximum
23					Taxable	Taxable
24				Tax	Wage	Wage
25				Factor	Rate	Rate
26				1.000	1.000%	3.360%
27	Cumulative Taxable Payroll Limits			Deficit Employers		
28		More Than	Equal to		Minimum	Maximum
29		(% of	or Less Than		Taxable	Taxable
30	Rate	Taxable	(% of Taxable	Tax	Wage	Wage
31	Class	Payroll)	Payroll)	Factor	Rate	Rate
32	-1	--	30	1.7143	1.080%	4.800%
33	-2	30	50	1.9048	1.200%	5.200%
34	-3	50	65	2.0952	1.320%	5.600%
35	-4	65	80	2.2857	1.440%	6.000%
36	-5	80	95	2.6667	1.680%	6.400%
37	-6	95	--	2.6667	5.400%	6.800%

38 (8) Each covered employer, except cost reimbursement employers, will
39 be assigned a taxable wage rate and a contribution rate as follows:

1 (a) Each employer, except standard-rated employers, will be assigned
2 to one (1) of the rate classes for eligible and deficit employers pro-
3 vided in subsection (7) of this section based upon the employer's
4 experience as determined under the provisions of sections 72-1319,
5 72-1319A, 72-1351 and 72-1351A, Idaho Code.

6 (b) For each rate class provided in subsection (7) of this section, the
7 department will multiply the base tax rate determined in accordance
8 with subsection (5) of this section by the tax factor listed for that
9 rate class in the table provided in subsection (7) of this section. The
10 product obtained from this calculation shall be the taxable wage rate
11 for employers assigned to that rate class, provided however, that the
12 taxable wage rate shall not be less than the minimum taxable wage rate
13 assigned to that rate class and shall not exceed the maximum taxable
14 wage rate assigned to that rate class in the table provided in subsec-
15 tion (7) of this section.

16 (c) For standard-rated employers, the department will multiply the
17 base tax rate determined in accordance with subsection (5) of this sec-
18 tion by the tax factor listed for standard-rated employers in the table
19 provided in subsection (7) of this section. The product obtained from
20 this calculation shall be the taxable wage rate for standard-rated em-
21 ployers, provided however, that the taxable wage rate shall not be less
22 than the minimum taxable wage rate assigned to standard-rated employers
23 and shall not exceed the maximum taxable wage rate assigned to stan-
24 dard-rated employers in the table provided in subsection (7) of this
25 section.

26 (d) Deficit employers who have been assigned a taxable wage rate from
27 deficit rate class six will be assigned contribution rates equal to
28 their taxable wage rate.

29 (e) All other eligible, standard-rated and deficit employers will be
30 assigned contribution rates equal to ninety-seven percent (97%) of
31 their taxable wage rate. Provided however, that for each calendar year
32 a reserve tax is imposed pursuant to section 72-1347A, Idaho Code, the
33 contribution rates for employers assigned contribution rates pursuant
34 to this paragraph shall be eighty percent (80%) of their taxable wage
35 rate.

36 (9) Each employer shall be notified of his taxable wage rate as deter-
37 mined for any calendar year pursuant to this section and section 72-1351,
38 Idaho Code. Such determination shall become conclusive and binding upon the
39 employer, unless within fourteen (14) days after ~~delivery or mailing of the~~
40 ~~notice thereof to his last known address as provided in section 72-1368(5),~~
41 Idaho Code, the employer files an application for redetermination, setting
42 forth his reasons therefor. Reconsideration shall be limited to transac-
43 tions occurring subsequent to any previous determination which has become
44 final. The employer shall be promptly notified of the redetermination,
45 which shall become final unless an appeal is filed within fourteen (14) days
46 after ~~delivery or mailing of notice to his last known address as provided in~~
47 section 72-1368(5), Idaho Code. Proceedings on the appeal shall be in accor-
48 dance with the provisions of section 72-1361, Idaho Code.

49 SECTION 3. That Section 72-1351, Idaho Code, be, and the same is hereby
50 amended to read as follows:

1 72-1351. EXPERIENCE RATING AND VOLUNTARY TRANSFERS OF EXPERIENCE RAT-
2 ING ACCOUNTS. (1) Subject to the other provisions of this chapter, each eli-
3 gible and deficit employer's, except cost reimbursement employers, taxable
4 wage rate shall be determined in the manner set forth below for each calendar
5 year:

6 (a) (i) Each eligible employer shall be given an "experience factor"
7 which shall be the ratio of excess of contributions over benefits
8 paid on the employer's account since December 31, 1939, to his
9 average annual taxable payroll rounded to the next lower dollar
10 amount for the four (4) fiscal years immediately preceding the
11 computation date, except that when an employer first becomes eli-
12 gible, his "experience factor" will be computed on his average
13 annual taxable payroll for the two (2) fiscal years or more, but
14 not to exceed four (4) fiscal years, immediately preceding the
15 computation date. The computation of such "experience factor"
16 shall be to six (6) decimal places.

17 (ii) Each deficit employer shall be given a "deficit experience
18 factor" which shall be the ratio of excess of benefits paid on the
19 employer's account over contributions since December 31, 1939, to
20 his average annual taxable payroll rounded to the next lower dol-
21 lar amount for one (1) or more fiscal years, but not to exceed four
22 (4) fiscal years, for which he had covered employment ending on the
23 computation date; provided, however, that any employer who on any
24 computation date has a "deficit experience factor" for the period
25 immediately preceding such computation date but who has filed all
26 reports, paid all contributions and penalties due on or before the
27 cut-off date, and has during the last four (4) fiscal years paid
28 contributions at a rate of not less than the standard rate applica-
29 ble for each such year and in excess of benefits charged to his ex-
30 perience rating account during such years, shall have any balance
31 of benefits charged to his account which on the computation date
32 immediately preceding such four (4) fiscal years was in excess of
33 contributions paid, deleted from his account, and the excess ben-
34 efits so deleted shall not be considered in the computation of his
35 taxable wage rate for the rate years following such four (4) fiscal
36 years. For the rate year following such computation date, he shall
37 be given the standard rate for that year.

38 (iii) In the event an employer's coverage has been terminated be-
39 cause he has ceased to do business or because he has not had covered
40 employment for a period of four (4) years, and if said employer
41 thereafter becomes a covered employer, he will be considered as
42 though he were a new employer, and he shall not be credited with his
43 previous experience under this chapter for the purpose of comput-
44 ing any future "experience factor."

45 (iv) Benefits paid to a claimant whose employment terminated be-
46 cause the claimant's employer was called to active military duty
47 shall not be used as a factor in determining the taxable wage rate
48 of that employer.

49 (b) Schedules shall be prepared listing all eligible employers in in-
50 verse numerical order of their experience factors, and all deficit em-

1 ployers in numerical order of their deficit experience factors. There
2 shall be listed on such schedules for each such employer in addition to
3 the experience factor: (i) the amount of his taxable payroll for the
4 fiscal year ending on the computation date, and (ii) a cumulative total
5 consisting of the sum of such employer's taxable payroll for the fiscal
6 year ending on the computation date and the corresponding taxable pay-
7 rolls for all other employers preceding him on such schedules.

8 (c) The cumulative taxable payroll amounts listed on the schedules pro-
9 vided for in paragraph (b) of this subsection shall be segregated into
10 groups whose limits shall be those set out in the table provided in sec-
11 tion 72-1350(7), Idaho Code. Each of such groups shall be identified
12 by the rate class number listed in the table which represents the per-
13 centage limits of each group. Each employer on the schedules shall be
14 assigned a taxable wage rate in accordance with section 72-1350, Idaho
15 Code.

16 (d) (i) If the grouping of rate classes requires the inclusion of
17 exactly one-half (1/2) of an employer's taxable payroll, the em-
18 ployer shall be assigned the lower of the two (2) rates designated
19 for the two (2) classes in which the halves of his taxable payroll
20 are so required.

21 (ii) If the group of rate classes requires the inclusion of a por-
22 tion other than exactly one-half (1/2) of an employer's taxable
23 payroll, the employer shall be assigned the rate designated for
24 the class in which the greater part of his taxable payroll is so re-
25 quired.

26 (iii) If one (1) or more employers on the schedules have experi-
27 ence factors identical to that of the last employer included in a
28 particular rate class, all such employers shall be included in and
29 assigned the taxable wage rate specified for such class, notwith-
30 standing the provisions of paragraph (c) of this subsection.

31 (e) If the taxable payroll amount or the experience factor or both
32 such taxable payroll amount and experience factor of any eligible or
33 deficit employer listed on the schedules is changed, the employer shall
34 be placed in that position on the schedules which he would have occu-
35 pied had his taxable payroll amount and/or experience factor as changed
36 been used in determining his position in the first instance, but such
37 change shall not affect the position or rate classification of any other
38 employer listed on the schedules and shall not affect the rate determi-
39 nation for previous years.

40 (2) For experience rating purposes, all previously accumulated benefit
41 charges to covered employers' accounts, except cost reimbursement employ-
42 ers, shall not be changed except as provided in this chapter. Benefits paid
43 prior to June 30 shall, as of June 30 of each year preceding the calendar year
44 for which a covered employer's taxable wage rate is effective, be charged to
45 the account of the covered employer, except cost reimbursement employers,
46 who paid the largest individual amount of base period wages as shown on the
47 determination used as the basis for the payment of such benefits, except that
48 no charge shall be made to the account of such covered employer with respect
49 to benefits paid under the following situations:

1 (a) If paid to a worker who terminated his services voluntarily without
2 good cause attributable to such covered employer, or who had been dis-
3 charged for misconduct in connection with such services;

4 (b) If paid in accordance with the provisions of section 72-1368(10),
5 Idaho Code, and the decision to pay benefits is subsequently reversed;

6 (c) For that portion of benefits paid to multistate claimants pursuant
7 to section 72-1344, Idaho Code, which exceeds the amount of benefits
8 that would have been charged had only Idaho wages been used in paying the
9 claim;

10 (d) If paid in accordance with the extended benefit program triggered
11 by either national or state indicators;

12 (e) If paid to a worker who continues to perform services for such cov-
13 ered employer without a reduction in his customary work schedule, and
14 who is eligible to receive benefits due to layoff or a reduction in earn-
15 ings from another employer;

16 (f) If paid to a worker who turns down an offer of suitable work because
17 of participation in a job training program pursuant to the requirements
18 of section 72-1366(8), Idaho Code.

19 (3) A covered employer whose experience rating account is chargeable,
20 as prescribed by this section, is an interested party as defined in sec-
21 tion 72-1323, Idaho Code. A determination of chargeability shall become
22 final unless, within fourteen (14) days after notice as provided in section
23 72-1368(5), Idaho Code, an appeal is filed by an interested party with the
24 department in accordance with the department's rules. Appeal proceedings
25 shall be in accordance with the provisions of section 72-1361, Idaho Code.

26 (4) An experience rating record shall be maintained for each covered
27 employer. The record shall be credited with all contributions which the cov-
28 ered employer has paid for covered employment prior to the cut-off date, pur-
29 suant to the provisions of this and preceding acts, and which covered em-
30 ployment occurred prior to the computation date. The record shall also be
31 charged with the amount of benefits paid which are chargeable to the cov-
32 ered employer's account as provided by the appropriate provisions of the em-
33 ployment security law and regulations thereunder in effect at the time such
34 benefits were paid. Nothing in this section shall be construed to grant any
35 covered employer or individual in his service a priority with respect to any
36 claim or right because of amounts paid by such covered employer into the em-
37 ployment security fund.

38 (5) (a) Whenever any individual or type of organization, whether or not
39 a covered employer within the meaning of section 72-1315, Idaho Code,
40 in any manner succeeds to, or acquires all or substantially all, of the
41 business of an employer who at the time of acquisition was a covered
42 employer, and in respect to whom the director finds that the business
43 of the predecessor is continued solely by the successor, the separate
44 experience rating account of the predecessor shall, upon the joint ap-
45 plication of the predecessor and the successor within the one hundred
46 eighty (180) days after such acquisition and approval by the director,
47 be transferred to the successor employer for the purpose of determin-
48 ing such successor's liability and taxable wage rate and any successor
49 who was not an employer on the date of acquisition shall as of such date
50 become a covered employer as defined in this chapter. Such one hundred

1 eighty (180) day period may be extended at the discretion of the direc-
2 tor.

3 (b) Whenever any individual or type of organization, whether or not a
4 covered employer within the meaning of section 72-1315, Idaho Code, in
5 any manner succeeds to, or acquires, part of the business of an employer
6 who at the time of acquisition was a covered employer, and such portion
7 of the business is continued by the successor, so much of the separate
8 experience rating account of the predecessor as is attributable to the
9 portion of the business transferred, as determined on a pro rata basis
10 in the same ratio that the wages of covered employees properly allocable
11 to the transferred portion of the business bears to the payroll of the
12 predecessor in the last four (4) completed calendar quarters immedi-
13 ately preceding the date of transfer, shall, upon the joint application
14 of the predecessor and the successor within one hundred eighty (180)
15 days after such acquisition and approval by the director, be trans-
16 ferred to the successor employer for the purpose of determining such
17 successor's liability and taxable wage rate, and any successor who was
18 not an employer on the date of acquisition shall, as of such date, become
19 a covered employer as defined in this chapter. Such one hundred eighty
20 (180) day period may be extended at the discretion of the director.

21 (c) (i) If the successor was a covered employer prior to the date of
22 the acquisition of all or a part of the predecessor's business, his
23 taxable wage rate, effective the first day of the calendar quarter
24 immediately following the date of acquisition, shall be a newly
25 computed rate based on the combined experience of the predecessor
26 and successor, the resulting rate remaining in effect the balance
27 of the rate year.

28 (ii) If the successor was not a covered employer prior to the date
29 of the acquisition of all or a part of the predecessor's business,
30 his rate shall be the rate applicable to the predecessor with re-
31 spect to the period immediately preceding the date of acquisition,
32 but if there were more than one (1) predecessor the successor's
33 rate shall be a newly computed rate based on the combined experi-
34 ence of the predecessors, becoming effective immediately after
35 the date of acquisition, and shall remain in effect the balance of
36 the rate year.

37 (d) For purposes of this section, an employer's experience rating ac-
38 count shall consist of the actual contribution, benefit and taxable
39 payroll experience of the employer and any amounts due from the employer
40 under this chapter. When a transferred experience rating account
41 includes amounts due from the employer under this chapter, both the
42 predecessor employer and the successor employer shall be jointly and
43 severally liable for those amounts.

44 SECTION 4. That Section 72-1351A, Idaho Code, be, and the same is hereby
45 amended to read as follows:

46 72-1351A. MANDATORY TRANSFERS OF EXPERIENCE RATING ACCOUNTS AND FED-
47 ERAL CONFORMITY PROVISIONS REGARDING TRANSFERS OF EXPERIENCE AND ASSIGNMENT
48 OF RATES. Notwithstanding any other provision of this chapter, the following
49 shall apply regarding transfers of experience and assignment of rates:

1 (1) (a) If a covered employer transfers its trade or business, or a
2 portion thereof, to another employer, whether or not a covered employer
3 within the meaning of section 72-1315, Idaho Code, and, at the time of
4 the transfer, there is substantially common ownership, management or
5 control of the two (2) employers, then the experience rating account
6 attributable to the transferred trade or business shall be transferred
7 to the employer to whom such business is so transferred. The rates of
8 both employers shall be recalculated using the methods provided in sec-
9 tion 72-1351(5)(b) and either (c)(i) or (c)(ii), Idaho Code. Whenever
10 such mandatory transfer involves only a portion of the experience rat-
11 ing record, and the predecessor or successor employers fail within ten
12 (10) days after notice to supply the required payroll information, the
13 transfer may be based on estimates of the allocable payrolls.

14 (b) If, following a transfer of experience under paragraph (a) of this
15 subsection ~~(1)~~, the director determines that a substantial purpose of
16 the transfer of the trade or business was to obtain a reduced liability
17 for contributions, then the experience rating accounts of the employers
18 involved shall be combined into a single account and a single rate shall
19 be assigned to such account.

20 (2) Whenever a person who is not a covered employer under this chapter
21 at the time such person acquires the trade or business of a covered employer,
22 the experience rating account of the acquired business shall not be trans-
23 ferred to such person if the director finds that such person acquired the
24 business primarily for the purpose of obtaining a lower rate of contribu-
25 tions. Instead, such person shall be assigned the standard rate for new
26 employers under section 72-1350, Idaho Code. In determining whether the
27 trade or business was acquired primarily for the purpose of obtaining a lower
28 rate of contributions, the director shall use objective factors which may
29 include, but are not limited to, the cost of acquiring the business, whether
30 the person continued the business enterprise of the acquired business, how
31 long such business enterprise was continued, or whether a substantial number
32 of new employees were hired for performance of duties unrelated to the busi-
33 ness activity conducted prior to acquisition.

34 (3) (a) It shall be a violation of this section if a person:

35 (i) Makes any false statement to the department when the maker
36 knows the statement to be false or acts with deliberate ignorance
37 of or reckless disregard for the truth of the matter or willfully
38 fails to disclose a material fact to the department in connection
39 with the transfer of a trade or business;

40 (ii) Prepares any false or antedated report, form, book, paper,
41 record, written instrument, or other matter or thing in connection
42 with the transfer of a trade or business with the intent to submit
43 it or allow it to be submitted to the department as genuine or true;

44 (iii) Knowingly violates or attempts to violate subsection (1) or
45 (2) of this section or any other provision of this chapter related
46 to determining the assignment of a contribution rate or an experi-
47 ence rate; or

48 (iv) Knowingly advises another person in a way that results in a
49 violation or an attempted violation of subsection (1) or (2) of
50 this section or any other provision of this chapter related to de-

1 termining the assignment of a contribution rate or an experience
2 rate.

3 (b) If a person commits any of the acts described in paragraph (a) of
4 this subsection ~~(3)~~, the person shall be subject to the following penal-
5 ties:

6 (i) If the person is a covered employer, a civil money penalty of
7 ten percent (10%) of such person's taxable wages for the four (4)
8 completed consecutive quarters preceding the violation shall be
9 imposed for such year and said penalty shall be deposited in the
10 state employment security administrative and reimbursement fund
11 as established by section 72-1348, Idaho Code.

12 (ii) If the person is not a covered employer, such person shall
13 be subject to a civil money penalty of not more than five thousand
14 dollars (\$5,000) for each violation. Any such penalty shall be de-
15 posited in the state employment security administrative and reim-
16 bursement fund as established by section 72-1348, Idaho Code.

17 (4) Every person who knowingly makes any false statement to the depart-
18 ment or knowingly fails to disclose a material fact to the department in con-
19 nection with the transfer of a trade or business, or knowingly prepares any
20 false or antedated report, form, book, paper, record, written instrument,
21 or other matter or thing in connection with the transfer of a trade or busi-
22 ness with the intent to submit it or allow it to be submitted to the depart-
23 ment as genuine or true, or knowingly violates or attempts to violate subsec-
24 tion (1) or (2) of this section or any other provision of this chapter related
25 to determining the assignment of a contribution rate or an experience rate,
26 or knowingly advises another person to act in a way that results in a viola-
27 tion or an attempted violation of subsection (1) or (2) of this section or any
28 other provision of this chapter related to determining the assignment of a
29 contribution rate or an experience rate, shall be guilty of a felony punish-
30 able as provided in section 18-112, Idaho Code.

31 (5) For purposes of this section:

32 (a) An employer's experience rating account shall consist of the actual
33 contribution, benefit and taxable payroll experience of the employer
34 and any amounts due from the employer under this chapter. When a trans-
35 ferred experience rating account includes amounts due from the employer
36 under this chapter, both the predecessor employer and the successor em-
37 ployer shall be jointly and severally liable for those amounts.

38 (b) "Knowingly" means having actual knowledge of or acting with delib-
39 erate ignorance of or reckless disregard for the prohibition involved.

40 (c) "Person" has the meaning given such term by section 7701(a) (1) of
41 the Internal Revenue Code of 1986 (26 U.S.C. 7701(a) (1)).

42 (d) A "transfer of a trade or business" occurs whenever a person in any
43 manner acquires or succeeds to all or a portion of a trade or business.
44 Factors the department may consider when determining whether a transfer
45 of a trade or business has occurred include, but are not limited to, the
46 following:

47 (i) Whether the successor continued the business enterprise of
48 the acquired business;

49 (ii) Whether the successor purchased, leased or assumed ma-
50 chinery and manufacturing equipment, office equipment, business

1 premises, the business or corporate name, inventories, a covenant
2 not to compete or a list of customers;

3 (iii) Continuity of business relationships with third parties
4 such as vendors, suppliers and subcontractors;

5 (iv) A transfer of good will;

6 (v) A transfer of accounts receivable;

7 (vi) Possession and use of the predecessor's sales correspon-
8 dence; and

9 (vii) Whether the employees remained the same.

10 (e) "Trade or business" includes, but is not limited to, the employer's
11 workforce. The transfer of some or all of an employer's workforce to
12 another employer shall be considered a transfer of a trade or business
13 when, as the result of such transfer, the transferring employer no
14 longer performs trade or business with respect to the transferred work-
15 force, and such trade or business is performed by the employer to whom
16 the workforce is transferred.

17 (f) "Violates or attempts to violate" includes, but is not limited to,
18 intent to evade, misrepresentation or willful nondisclosure.

19 (6) The director shall establish procedures to identify the transfer or
20 acquisition of a business for purposes of this section.

21 (7) This section shall be interpreted and applied in such a manner as to
22 meet the minimum requirements contained in any guidance or regulations is-
23 sued by the United States department of labor.

24 (8) Administrative determinations issued pursuant to this section
25 shall become final unless, within fourteen (14) days after notice as pro-
26 vided in section 72-1368(5), Idaho Code, an appeal is filed with the depart-
27 ment in accordance with the department's rules. Appeal proceedings shall be
28 in accordance with the provisions of section 72-1361, Idaho Code.

29 SECTION 5. That Section 72-1353, Idaho Code, be, and the same is hereby
30 amended to read as follows:

31 72-1353. ADMINISTRATIVE DETERMINATIONS OF COVERAGE. (1) The director
32 may, upon his own motion or upon application of any employer, make findings
33 of fact and on the basis thereof determine whether such employer is a cov-
34 ered employer and whether services performed for or in connection with the
35 business of such employer constitutes covered employment. The determina-
36 tion shall become final unless, within fourteen (14) days after notice as
37 provided in section 72-1368(5), Idaho Code, an appeal is filed with the de-
38 partment setting forth the grounds for such appeal. A notice shall be deemed
39 served if delivered to the person being served or if mailed to his last known
40 address; service by mail shall be deemed complete on the date of mailing.
41 Proceedings on appeal shall be had in accordance with the provisions of sec-
42 tion 72-1361, Idaho Code.

43 (2) In making any determination with respect to whether the services
44 performed by a worker are performed in covered employment, the director may,
45 on the basis of the available evidence, determine that other workers per-
46 forming similar services for the employer are similarly situated with re-
47 spect to the coverage of said services under the provision of this chapter,
48 and that such services constitute covered employment.

1 (3) In any proceeding to determine whether an employer is a covered
2 employer or whether services are performed in covered employment, it shall
3 be the burden of the employer to prove that the employer is not a covered
4 employer, that services were not performed in covered employment, or that
5 workers are not similarly situated with respect to the coverage of their
6 services.

7 SECTION 6. That Section 72-1357, Idaho Code, be, and the same is hereby
8 amended to read as follows:

9 72-1357. ADJUSTMENTS AND REFUNDS. (1) If any person shall make appli-
10 cation for a refund or credit of any amounts paid under this chapter, the
11 director shall, upon determining that such amounts or any portion thereof
12 was erroneously collected, either allow credit therefor, without interest,
13 in connection with subsequent payments, or shall refund from the fund in
14 which the erroneous payment was deposited, without interest, the amount
15 erroneously paid.

16 (2) No refund or credit shall be allowed unless an application therefor
17 is made on or before whichever of the following dates is later:

18 (a) One (1) year from the date on which such payment was made; or

19 (b) Three (3) years from the last day of the calendar quarter with re-
20 spect to which such payment was made. For a like cause and within the
21 same period a refund may be so made, or credit allowed, on the initia-
22 tive of the director. Nothing in this chapter shall be construed to au-
23 thorize any refund or credit of moneys due and payable under the law and
24 regulations in effect at the time such moneys were paid.

25 (3) In the event that any application for refund or credit is rejected
26 in whole or in part, a written notice of rejection shall be forwarded to
27 the applicant. Within fourteen (14) days after ~~the mailing of such notice~~
28 ~~to the applicant's last known address, or in the absence of such mailing,~~
29 within fourteen (14) days after delivery thereof notice as provided in sec-
30 tion 72-1368(5), Idaho Code, the applicant may appeal to the director for
31 a hearing with regard to the rejection, setting forth the grounds for such
32 appeal. Proceedings on the appeal shall be in accordance with the provisions
33 of section 72-1361, Idaho Code.

34 SECTION 7. That Section 72-1358, Idaho Code, be, and the same is hereby
35 amended to read as follows:

36 72-1358. DETERMINATION OF AMOUNTS DUE UPON FAILURE TO REPORT. If any
37 covered employer fails to file a report when due under this chapter, or if
38 such report when filed is incorrect or insufficient, the director may, on the
39 basis of available information, determine the amount of wages paid in cov-
40 ered employment during the periods with respect to which the reports were
41 or should have been made and the amount due under this chapter from the em-
42 ployer. ~~The director shall give written notice of the determination to the~~
43 ~~employer.~~ The determination shall become final unless the employer, within
44 fourteen (14) days after ~~the mailing of the notice to the employer's last~~
45 ~~known address, or, in the absence of such mailing, within fourteen (14) days~~
46 ~~after delivery thereof~~ notice as provided in section 72-1368(5), Idaho Code,

1 files an appeal with the department. Proceedings on the appeal shall be in
2 accordance with the provisions of section 72-1361, Idaho Code.

3 SECTION 8. That Section 72-1359, Idaho Code, be, and the same is hereby
4 amended to read as follows:

5 72-1359. JEOPARDY ASSESSMENTS. If the director determines that the
6 collection of any amounts due from any covered employer under the provi-
7 sions of this chapter will be jeopardized by delay, he may, whether or not
8 the time prescribed by this chapter or any rules issued pursuant thereto for
9 making reports and payments has expired, determine, on the basis of avail-
10 able information, the wages paid by such employer for covered employment and
11 declare the amount due thereon immediately payable, and shall give written
12 notice of such declaration to such employer. Any amounts, including penalty
13 and interest, that are contained in such written declaration shall be sub-
14 ject to immediate seizure pursuant to section 72-1360A, Idaho Code, as well
15 as through any other collection procedures allowed under law. Such jeopardy
16 assessment shall become conclusive and binding upon the employer unless,
17 within fourteen (14) days after ~~the mailing of such declaration to the last~~
18 ~~known address of such employer or in the absence of such mailing, within~~
19 fourteen (14) days after personal delivery upon the employer notice as pro-
20 vided in section 72-1368(5), Idaho Code, the employer files an appeal to the
21 department setting forth grounds for such appeal. In such cases, the right
22 of appeal shall be conditioned upon the payment of the amount declared to be
23 due, less any amount already collected, or upon giving appropriate security
24 to the director for the payment thereof. Proceedings on such appeals shall
25 be in accordance with the provisions of section 72-1361, Idaho Code.

26 SECTION 9. That Section 72-1361, Idaho Code, be, and the same is hereby
27 amended to read as follows:

28 72-1361. APPEALS TO THE DEPARTMENT AND TO THE COMMISSION. Upon ap-
29 peal from a denial of a claim for refund or credit, determination of amounts
30 due upon failure to report, determination of rate of contribution, deter-
31 mination of coverage, determination of chargeability, ~~or~~ jeopardy deter-
32 mination, cost reimbursement determination, determination of mandatory
33 transfer of experience rating, or determination of successor liability, the
34 director may transfer the appeal directly to an appeals examiner pursuant to
35 section 72-1368(6), Idaho Code, or he may issue a redetermination affirming,
36 reversing or modifying the initial determination. A redetermination shall
37 become final unless, within fourteen (14) days after notice as provided in
38 section 72-1368(5), Idaho Code, an appeal is filed by an interested party
39 with the department in accordance with the department's rules. Appeal pro-
40 cedures shall be governed by the provisions of section 72-1368(4), (6), (7),
41 (8), (9) and (11), Idaho Code. The party appealing shall have the burden
42 of proving each issue appealed by clear and convincing evidence. The pro-
43 visions of the Idaho administrative procedure act, chapter 52, title 67,
44 Idaho Code, regarding contested cases and judicial review of contested cases
45 are inapplicable to proceedings involving interested employers under this
46 chapter.

1 SECTION 10. That Section 72-1362, Idaho Code, be, and the same is hereby
2 amended to read as follows:

3 72-1362. LIABILITY OF SUCCESSOR. Any person, whether or not a covered
4 employer, who acquires the organization, trade, or business or a substantial
5 part of the assets thereof, from a covered employer, shall be liable, in an
6 amount not to exceed the reasonable value of the organization, trade, busi-
7 ness, or assets acquired, for any contributions or penalties due or accrued
8 and unpaid by such covered employer, and the amount of such liability shall,
9 in addition, be a lien against the property or assets so acquired which
10 shall be prior to all other liens; provided, that the lien shall not be valid
11 against one who acquires from the said predecessor any interest in the said
12 property or assets in good faith, for value and without notice of the lien.
13 The director shall, upon written request therefor, and with permission of
14 the owner, furnish such prospective purchaser with a written statement of
15 the amount of contributions and penalties due or accrued and unpaid by the
16 said covered employer as of the date of such acquisition, and the amount of
17 the liability of the successor or the amount of the said lien shall in no
18 event exceed the liability disclosed by such statement. The foregoing reme-
19 dies shall be in addition to all other existing remedies against the covered
20 employer or his successor. Administrative determinations issued pursuant
21 to this section shall become final unless, within fourteen (14) days after
22 notice as provided in section 72-1368(5), Idaho Code, an appeal is filed with
23 the department in accordance with the department's rules. Appeal proceed-
24 ings shall be in accordance with the provisions of section 72-1361, Idaho
25 Code.