

ACT 229

H.B. NO. 1746-84

A Bill for an Act Relating to Employment Security.

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

SECTION 1. Section 383-68, Hawaii Revised Statutes, is amended to read as follows:

“§383-68 Contribution rate schedules; fund solvency rate schedule; rates based on experience. (a) Before December 31 of each year through calendar year 1975 the contribution rate schedule applicable for the following calendar year shall be determined on the basis of the relationship between the most recent current reserve fund and the most recent adequate reserve fund, in accordance with the provisions of this subsection and subsection (b) [of this section]. If the current reserve fund is less than the adequate reserve fund, contribution rate schedule I in subsection (b) [of this section] shall apply; if the current reserve fund equals or exceeds the adequate reserve fund but is less than 1.5 times the adequate reserve fund, contribution rate schedule II in subsection (b) [of this section] shall apply; and if the current reserve fund equals or exceeds 1.5 times the adequate reserve fund, contribution rate schedule III in subsection (b) [of this section] shall apply. If, however, the total assets of the fund available for the payment of benefits at the end of a calendar year, or calendar quarter, are \$15,000,000 or more but less than \$20,000,000, the applicable contribution rate schedule for the following calendar year, or remaining calendar quarters in the calendar year, as the case may be, shall be contribution rate schedule I, and if the assets are less than \$15,000,000 at the end of a calendar year, or calendar quarter, this subsection and subsection (b) [of this section] shall not apply during the following calendar year, or remaining calendar quarters in the calendar year, as the case may be.

(b) Subject to the requirements of sections 383-63 to 383-67 and 383-69, an employer's contribution rate for any calendar year through December 31, 1976 shall be that rate which appears on the same line as his reserve ratio for the year in the contribution rate schedule applicable for the year as specified in subsection (a) [of this section].

CONTRIBUTION RATE SCHEDULE

| Employer Reserve Ratio | Contribution Rate | | |
|------------------------|-------------------|--------------|--------------|
| | Schedule I | Schedule II | Schedule III |
| .1000 or more | .8 per cent | .4 per cent | .2 per cent |
| .0950 - .0999 | 1.0 per cent | .6 per cent | .4 per cent |
| .0900 - .0949 | 1.2 per cent | .8 per cent | .6 per cent |
| .0850 - .0899 | 1.4 per cent | 1.0 per cent | .8 per cent |
| .0800 - .0849 | 1.6 per cent | 1.2 per cent | 1.0 per cent |
| .0750 - .0799 | 1.8 per cent | 1.4 per cent | 1.2 per cent |
| .0700 - .0749 | 2.0 per cent | 1.6 per cent | 1.4 per cent |
| .0650 - .0699 | 2.2 per cent | 1.8 per cent | 1.6 per cent |
| .0600 - .0649 | 2.4 per cent | 2.0 per cent | 1.8 per cent |
| .0550 - .0599 | 2.6 per cent | 2.2 per cent | 2.0 per cent |
| .0500 - .0549 | 2.8 per cent | 2.4 per cent | 2.2 per cent |
| .0450 - .0499 | 2.8 per cent | 2.6 per cent | 2.4 per cent |
| .0400 - .0449 | 2.8 per cent | 2.8 per cent | 2.6 per cent |
| .0350 - .0399 | 2.8 per cent | 2.8 per cent | 2.8 per cent |
| Less than .0350 | 3.0 per cent | 3.0 per cent | 3.0 per cent |

(c) For calendar [year] years 1979 [and for each calendar year thereafter] through 1984 the contribution rate of any employer eligible for a reduced rate in accordance with [the provisions of] section 383-66(2) shall be the sum of his basic contribution rate for such year determined pursuant to paragraph (1) of this subsection and the fund solvency contribution rate determined for such year pursuant to paragraph (2) of this subsection; except that no employer's contribution rate shall be less than zero, no employer's contribution rate shall be greater than four and one-half [(4.5)] (4-1/2) per cent for calendar years 1979 through 1984, and no employer with a negative reserve ratio shall have a contribution rate less than such employer's basic contribution rate.

(1) Subject to the requirements of sections 383-63 through 383-67 and section 383-69, an employer's basic contribution rate for a calendar year shall be that rate which appears on the same line as his reserve ratio for the year in the basic contribution rate schedule set forth in this paragraph.

BASIC CONTRIBUTION RATE SCHEDULE

| Reserve Ratio | Contribution Rate |
|----------------|-------------------|
| .1500 and over | .2 per cent |

ACT 229

| | |
|---------------|--------------|
| .1400 - .1499 | .4 per cent |
| .1300 - .1399 | .6 per cent |
| .1200 - .1299 | .8 per cent |
| .1100 - .1199 | 1.0 per cent |
| .1000 - .1099 | 1.2 per cent |
| .0900 - .0999 | 1.4 per cent |
| .0800 - .0899 | 1.6 per cent |
| .0700 - .0799 | 1.8 per cent |
| .0600 - .0699 | 2.2 per cent |
| .0500 - .0599 | 2.6 per cent |
| 0 - .0499 | 3.0 per cent |
| Less than 0 | 4.5 per cent |

- (2) Before December 31 of each year the fund solvency contribution rate applicable for the following calendar year shall be determined on the basis of the relationship between the most recent current reserve fund and the most recent adequate reserve fund. The fund solvency contribution rate for a calendar year shall be that rate which appears on the same line as the ratio (rounded to the nearest hundredth) of the current reserve fund to the adequate reserve fund in the fund solvency contribution rate schedule set forth in this paragraph.

FUND SOLVENCY CONTRIBUTION RATE SCHEDULE

| Ratio of Current Reserve Fund to Adequate Reserve Fund | Fund Solvency Contribution Rate |
|---|------------------------------------|
| 2.00 or more | - .5 per cent |
| 1.50 to 1.99 | - .2 per cent |
| 1.00 to 1.49 | 0 |
| .90 to .99 | + .4 per cent |
| .80 to .89 | + .8 per cent |
| .60 to .79 | +1.2 per cent |
| .40 to .59 | +1.6 per cent |
| .20 to .39 | +2.0 per cent |
| Less than .20 | +2.4 per cent |

(d) For calendar year 1985 and for each calendar year thereafter the contribution rate of any employer eligible for a reduced rate in accordance with section 383-66(2) shall be the sum of the employer's basic contribution rate for such year determined pursuant to this subsection and the fund solvency contribution rate determined for such year pursuant to subsection (c)(2); except that no employer's contribution rate shall be less than zero, no employer's

contribution rate shall be greater than five and four-tenths (5-4/10) per cent, and no employer with a negative reserve ratio shall have a contribution rate less than such employer's basic contribution rate.

Subject to the requirements of sections 383-63 to 383-67 and 383-69, an employer's basic contribution rate for a calendar year shall be that rate which appears on the same line as the employer's reserve ratio for the year in the basic contribution rate schedule set forth in this subsection.

BASIC CONTRIBUTION RATE SCHEDULE

| <u>Reserve Ratio</u> | <u>Contribution Rate</u> |
|-------------------------|--------------------------|
| <u>.1500 and over</u> | <u>.2 per cent</u> |
| <u>.1400 to .1499</u> | <u>.4 per cent</u> |
| <u>.1300 to .1399</u> | <u>.6 per cent</u> |
| <u>.1200 to .1299</u> | <u>.8 per cent</u> |
| <u>.1100 to .1199</u> | <u>1.0 per cent</u> |
| <u>.1000 to .1099</u> | <u>1.2 per cent</u> |
| <u>.0900 to .0999</u> | <u>1.4 per cent</u> |
| <u>.0800 to .0899</u> | <u>1.6 per cent</u> |
| <u>.0700 to .0799</u> | <u>1.8 per cent</u> |
| <u>.0600 to .0699</u> | <u>2.2 per cent</u> |
| <u>.0500 to .0599</u> | <u>2.6 per cent</u> |
| <u>.0300 to .0499</u> | <u>3.0 per cent</u> |
| <u>.0000 to .0299</u> | <u>3.6 per cent</u> |
| <u>-.0000 to -.0499</u> | <u>4.2 per cent</u> |
| <u>-.0500 to -.0999</u> | <u>4.8 per cent</u> |
| <u>-.1000 and less</u> | <u>5.4 per cent"</u> |

SECTION 2. Section 383-66, Hawaii Revised Statutes, is amended to read:

“§383-66 Contribution rates, how determined. The department of labor and industrial relations shall 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, 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 contribution rates as will reflect such 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 (5-4/10) 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 his 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 his 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 (3-6/10) per cent and the fund solvency contribution rate determined for such 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 (5-4/10) per cent and no employer with a negative reserve ratio shall have a contribution rate less than such 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 registered mail addressed to his 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 employer for the period 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, 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(8) prior to the acquisition), of another which at the time of such acquisition was an employer subject to this chapter, and such predecessor employer has executed and filed with the department on a form approved by the department a waiver relinquishing all rights to his prior experience record with respect to his 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 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 predecessor 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 chargeable to the employer on account of employment prior to the date of the acquisition shall be charged to such separate account. 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 there are two or more predecessors having different contribution rates, the successor shall be subject to the [maximum] rate prescribed for new or newly covered employers under section 383-66(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 combined experience. If the successor at the time of the transfer is an employer subject to this chapter, the rate of contribution to which he 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 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 [regulations] rules for the establishment, maintenance, and dissolution of joint accounts by two or more employers, and [shall], in accordance with such [regulations] 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 joint account as if it constituted a single employer's account. The [regulations] 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 change 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."

SECTION 3. Section 383-65, Hawaii Revised Statutes, is amended to read:

"§383-65 Charges and noncharges for benefits. (a) Except as otherwise provided in this section, benefits paid to an individual shall be charged against the accounts of his base period employers and the amount of benefits so chargeable against each base period employer's account shall bear the same ratio to the total benefits paid to the individual as the base period wages paid to the individual by the employer bear to the total amount of base period wages paid to the individual by all of his base period employers. Benefits paid in benefit years beginning after June 30, 1963 shall be charged to employers' accounts in the calendar year in which the benefits are paid.

(b) Benefits paid to an individual, who, during his base period, earned wages for part-time employment with an employer, shall not be charged to the account of the employer if he continues to give the individual employment to the same extent while he is receiving benefits as during the base period and the employer establishes such fact to the satisfaction of the director of labor and industrial relations.

(c) Benefits paid to an individual for the period he is enrolled in and is in regular attendance at a vocational training or retraining course approved by the director pursuant to section 383-29 shall not be charged to any of his base period employers.

(d) For the purposes of the arrangements in which the department will participate pursuant to section 383-106(b) only, "base period" as used in this section shall mean the base period of this or any other state applied to a claim involving the combining of an individual's wages and employment covered under two or more state unemployment compensation laws.

[(e) Benefits paid to an individual under the provisions of the extended benefits program, sections 383-168 to 383-174, of this chapter, shall not be charged to the account of any of his base period employers on a contributory plan except that one-half of the amount of such benefits which are based on services performed for a governmental employer on a contributory plan and which are paid for weeks of unemployment beginning after December 31, 1978 shall be charged to the account of such employer. Provisions of section 383-62(b) and 383-62(d)(A) will apply in the reimbursement of benefits which are paid to an individual who, during his base period, was employed by a

ACT 229

governmental employer making payments in lieu of contributions or a nonprofit organization electing payment in lieu of contributions.

~~(f)~~ ~~(e)~~ Benefits paid to an individual who qualifies to receive benefits by meeting the minimum earnings and employment requirements only by combining his employment and wages earned in two or more states shall not be charged to the reserve account of any base period employer on a contributory plan within this State.

~~(g)~~ ~~(f)~~ Any benefit overpaid to a claimant as a result of ineligibility or disqualification under sections 383-29 and 383-30 shall not be charged to the reserve account of a base period employer on a contributory plan unless such overpayment resulted from the employer's failure to furnish information as required by this chapter or the rules [and regulations] of the department.

~~(h)~~ ~~(g)~~ Benefits paid to an individual with respect to wages paid for previously uncovered services as defined in section 383-22(b) or for services for which an exclusion was granted pursuant to section 383-78 shall not be charged to the account of any of such individual's base period employers, but only to the extent that the fund is reimbursed for such benefits by the federal government pursuant to section 121 of Public Law 94-566."

SECTION 4. Statutory material to be repealed is bracketed. New material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 31, 1984.)