

CHAPTER 141

LABOR AND INDUSTRY

SENATE BILL 23-232

BY SENATOR(S) Zenzinger and Kirkmeyer, Bridges, Buckner, Coleman, Cutter, Exum, Ginal, Gonzales, Hansen, Jaquez Lewis, Kolker, Moreno, Priola, Sullivan;
also REPRESENTATIVE(S) Bird and Sirota, Bockenfeld, Jodeh, Kipp, Lindsay, Michaelson Jenet, Snyder, Woodrow, McCluskie.

AN ACT

CONCERNING UNEMPLOYMENT COMPENSATION, AND, IN CONNECTION THEREWITH, REDUCING EMPLOYER PREMIUM RATES; CREATING SUPPORT SURCHARGE RATES; AND ADJUSTING THE ALLOCATIONS OF EMPLOYER PREMIUMS AND SUPPORT SURCHARGE PAYMENTS TO THE UNEMPLOYMENT COMPENSATION FUND, THE EMPLOYMENT SUPPORT FUND, THE EMPLOYMENT AND TRAINING TECHNOLOGY FUND, AND THE BENEFIT RECOVERY FUND TO COMPLY WITH FEDERAL LAW.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 8-70-103, **amend** (13) and (23.5); and **add** (2.7), (11.5), (12.3), and (24.5) as follows:

8-70-103. Definitions. As used in articles 70 to 82 of this title 8, unless the context otherwise requires:

(2.7) "BENEFIT RECOVERY FUND" MEANS THE BENEFIT RECOVERY FUND CREATED IN SECTION 8-73-116 (2).

(11.5) "EMPLOYMENT AND TRAINING TECHNOLOGY FUND" MEANS THE EMPLOYMENT AND TRAINING TECHNOLOGY FUND CREATED IN SECTION 8-77-109 (2)(a.9)(II)(A).

(12.3) "EMPLOYMENT SUPPORT FUND" MEANS THE EMPLOYMENT SUPPORT FUND CREATED IN SECTION 8-77-109 (1)(b).

(13) "Fund" OR "UNEMPLOYMENT COMPENSATION FUND" means the unemployment compensation fund, established in section 8-77-101 (1), to which all premiums required and from which all benefits under articles 70 to 82 of this ~~title~~

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

TITLE 8 and bonds issued under section 8-71-103 (2)(d) are paid, and from which payments may be made to the Colorado housing and finance authority under section 29-4-710.7. ~~C.R.S.~~

(23.5) "Premiums" means the money payments to the unemployment compensation fund, AND THE PAYMENT AMOUNT INCLUDED IN THE CALCULATION OF AN EMPLOYER'S EXPERIENCE RATING, required by articles 70 to 82 of this ~~title~~ TITLE 8.

(24.5) "SUPPORT SURCHARGE RATE" MEANS AN EMPLOYER'S RATE THAT IS USED TO CALCULATE THE MONEY PAYMENTS OWED TO THE EMPLOYMENT SUPPORT FUND, THE BENEFIT RECOVERY FUND, AND THE EMPLOYMENT AND TRAINING TECHNOLOGY FUND, CALCULATED IN ACCORDANCE WITH SECTION 8-76-102.5 (3)(a)(IV) USING THE SAME METHODOLOGY AS IS USED TO CALCULATE AN EMPLOYER'S PERCENT OF EXCESS IN ACCORDANCE WITH SECTION 8-76-102.5 (3)(a)(II)(A).

SECTION 2. In Colorado Revised Statutes, 8-76-102.5, **amend** (3)(h) introductory portion and (3)(h)(I); and **repeal and reenact, with amendments,** (3)(a) as follows:

8-76-102.5. Rates effective upon fund solvency - repeal of prior rates - solvency surcharge - definitions - repeal. (3) (a) (I) EACH EMPLOYER'S RATE FOR THE TWELVE MONTHS COMMENCING JANUARY 1 OF ANY CALENDAR YEAR IS DETERMINED ON THE BASIS OF THE EMPLOYER'S RECORD PRIOR TO THE COMPUTATION DATE FOR THE YEAR. THE COMPUTATION DATE FOR ANY CALENDAR YEAR IS JULY 1 OF THE YEAR PRECEDING THE CALENDAR YEAR FOR WHICH THE RATE IS COMPUTED.

(II) AS USED IN THE STANDARD PREMIUM RATE SCHEDULE IN SUBSECTION (3)(a)(III)(B) OF THIS SECTION AND THE SUPPORT SURCHARGE RATE SCHEDULE IN SUBSECTION (3)(a)(IV) OF THIS SECTION:

(A) "PERCENT OF EXCESS" MEANS THE PERCENTAGE RESULTING FROM DIVIDING THE EXCESS OF PREMIUMS PAID OVER BENEFITS CHARGED BY THE AVERAGE CHARGEABLE PAYROLL, COMPUTED TO THE NEAREST ONE PERCENT.

(B) "RESERVE RATIO" MEANS THE FUND BALANCE ON ANY JUNE 30 AS A PROPORTION OF TOTAL WAGES REPORTED BY EXPERIENCE-RATED EMPLOYERS.

(C) "To" IN THE COLUMN HEADINGS, WHICH MAKE REFERENCE TO FUND BALANCES (RESOURCES AVAILABLE FOR BENEFITS), MEANS "NOT INCLUDING".

(III) (A) THE TOTAL OF AN EMPLOYER'S PREMIUMS PAID, DESIGNATED, AND DEPOSITED INTO THE UNEMPLOYMENT COMPENSATION FUND ON THE EMPLOYER'S OWN BEHALF ON OR BEFORE THIRTY-ONE DAYS IMMEDIATELY AFTER THE COMPUTATION DATE AND THE TOTAL BENEFITS THAT WERE CHARGEABLE TO THE EMPLOYER'S ACCOUNT AND WERE PAID BEFORE THE COMPUTATION DATE, WITH RESPECT TO WEEKS, OR ANY ESTABLISHED PAYROLL PERIOD OF UNEMPLOYMENT, BEGINNING BEFORE THE COMPUTATION DATE, IS USED TO COMPUTE THE EMPLOYER'S PREMIUM FOR THE FOLLOWING CALENDAR YEAR.

(B) THE FOLLOWING STANDARD PREMIUM RATE SCHEDULE REFLECTS THE RATES APPLICABLE IN COMPUTING AN EMPLOYER'S PREMIUM:

Standard Premium Rate Schedule

	Reserve Ratio 0.014 or Greater	Reserve Ratio 0.011 to 0.014	Reserve Ratio 0.008 to 0.011	Reserve Ratio 0.006 to 0.008	Reserve Ratio 0.004 to 0.006	Reserve Ratio 0.000 to 0.004	Reserve Ratio 0.000 to Deficit
Eligible Employers Percent of Excess							
+20 or more	0.0046	0.0050	0.0052	0.0056	0.0059	0.0064	0.0068
+18 to +19	0.0051	0.0056	0.0058	0.0062	0.0066	0.0070	0.0074
+16 to +17	0.0052	0.0057	0.0059	0.0063	0.0067	0.0071	0.0076
+14 to +15	0.0055	0.0060	0.0062	0.0068	0.0072	0.0077	0.0082
+12 to +13	0.0059	0.0065	0.0068	0.0074	0.0079	0.0086	0.0091
+10 to +11	0.0068	0.0075	0.0078	0.0085	0.0092	0.0099	0.0106
+8 to +9	0.0086	0.0095	0.0099	0.0108	0.0117	0.0126	0.0135
+6 to +7	0.0104	0.0116	0.0122	0.0133	0.0144	0.0156	0.0167
+4 to +5	0.0124	0.0139	0.0145	0.0159	0.0173	0.0186	0.0201
+2 to +3	0.0174	0.0193	0.0203	0.0222	0.0242	0.0262	0.0282
+0 to +1	0.0244	0.0272	0.0285	0.0313	0.0341	0.0369	0.0397
Unrated	0.0153	0.0153	0.0153	0.0153	0.0153	0.0153	0.0153
-0 to -1	0.0311	0.0347	0.0365	0.0402	0.0438	0.0474	0.0511
-2 to -3	0.0331	0.0371	0.0390	0.0428	0.0467	0.0506	0.0545
-4 to -5	0.0352	0.0393	0.0414	0.0455	0.0497	0.0538	0.0580
-6 to -7	0.0373	0.0416	0.0438	0.0482	0.0526	0.0570	0.0614

-8 to -9	0.0392	0.0439	0.0463	0.0509	0.0555	0.0601	0.0648
-10 to -11	0.0413	0.0462	0.0486	0.0536	0.0584	0.0633	0.0682
-12 to -13	0.0433	0.0485	0.0510	0.0562	0.0613	0.0664	0.0716
-14 to -15	0.0454	0.0508	0.0535	0.0589	0.0643	0.0697	0.0751
-16 to -17	0.0474	0.0530	0.0559	0.0615	0.0671	0.0728	0.0785
-18 to -19	0.0494	0.0554	0.0583	0.0642	0.0701	0.0760	0.0819
-20 to -21	0.0515	0.0576	0.0607	0.0669	0.0730	0.0791	0.0853
-22 to -23	0.0535	0.0599	0.0631	0.0695	0.0759	0.0823	0.0887
-24 to -25	0.0555	0.0621	0.0654	0.0721	0.0788	0.0854	0.0921
More than -25	0.0565	0.0633	0.0666	0.0734	0.0801	0.0868	0.0935

(IV) THE SUPPORT SURCHARGE RATE, WHICH IS THE RATE DEDICATED TO EMPLOYER SUPPORT SURCHARGE PAYMENTS DEPOSITED INTO THE EMPLOYMENT SUPPORT FUND, THE BENEFIT RECOVERY FUND, AND THE EMPLOYMENT AND TRAINING TECHNOLOGY FUND, IS CALCULATED USING THE FOLLOWING SUPPORT SURCHARGE RATE SCHEDULE:

Support Surcharge Rate Schedule

	Reserve Ratio						
	0.014 or Greater	0.011 to 0.014	0.008 to 0.011	0.006 to 0.008	0.004 to 0.006	0.000 to 0.004	0.000 to Deficit
Eligible Employers Percent of Excess							
+20 or more	0.0005	0.0006	0.0006	0.0006	0.0007	0.0007	0.0007
+18 to +19	0.0006	0.0006	0.0006	0.0007	0.0007	0.0008	0.0008
+16 to +17	0.0006	0.0006	0.0006	0.0007	0.0007	0.0008	0.0008
+14 to +15	0.0006	0.0007	0.0007	0.0007	0.0008	0.0009	0.0009
+12 to +13	0.0007	0.0007	0.0007	0.0008	0.0009	0.0009	0.0010
+10 to +11	0.0007	0.0008	0.0009	0.0009	0.0010	0.0011	0.0012
+8 to +9	0.0009	0.0010	0.0011	0.0012	0.0013	0.0014	0.0015
+6 to +7	0.0012	0.0013	0.0013	0.0015	0.0016	0.0017	0.0019
+4 to +5	0.0014	0.0015	0.0016	0.0018	0.0019	0.0021	0.0022
+2 to +3	0.0019	0.0021	0.0022	0.0025	0.0027	0.0029	0.0031
+0 to +1	0.0027	0.0030	0.0032	0.0035	0.0038	0.0041	0.0044
Unrated	0.0017	0.0017	0.0017	0.0017	0.0017	0.0017	0.0017
-0 to -1	0.0035	0.0039	0.0041	0.0045	0.0049	0.0053	0.0057
-2 to -3	0.0037	0.0041	0.0043	0.0048	0.0052	0.0056	0.0061
-4 to -5	0.0039	0.0044	0.0046	0.0051	0.0055	0.0060	0.0064

-6 to -7	0.0041	0.0046	0.0049	0.0053	0.0058	0.0063	0.0068
-8 to -9	0.0044	0.0049	0.0051	0.0056	0.0062	0.0067	0.0072
-10 to -11	0.0046	0.0051	0.0054	0.0059	0.0065	0.0070	0.0076
-12 to -13	0.0048	0.0054	0.0057	0.0062	0.0068	0.0074	0.0080
-14 to -15	0.0050	0.0056	0.0059	0.0065	0.0071	0.0077	0.0083
-16 to -17	0.0053	0.0059	0.0062	0.0068	0.0075	0.0081	0.0087
-18 to -19	0.0055	0.0061	0.0065	0.0071	0.0078	0.0084	0.0091
-20 to -21	0.0057	0.0064	0.0067	0.0074	0.0081	0.0088	0.0095
-22 to -23	0.0059	0.0067	0.0070	0.0077	0.0084	0.0091	0.0099
-24 to -25	0.0062	0.0069	0.0073	0.0080	0.0087	0.0095	0.0102
More than -25	0.0063	0.0070	0.0074	0.0081	0.0089	0.0096	0.0104

(h) ~~No later than January 1, 2013~~; The division shall develop AND MAINTAIN an online computer application that allows employers to review and manage account information. The online computer application shall include at least the following:

(I) A method for employers to file ~~premium~~ WAGE reports and make premium payments;

SECTION 3. In Colorado Revised Statutes, 8-77-103, **amend** (3)(c) as follows:

8-77-103. Advances from federal unemployment trust fund - Title XII repayment fund. (3) (c) Money in the fund is continuously appropriated to the division to repay federal advances received pursuant to this section, ANY COSTS ASSOCIATED WITH BONDS OR NOTES ISSUED PURSUANT TO SECTION 8-71-103 OR 8-77-103.5, and any interest owing on ~~such~~ FEDERAL advances, BONDS, OR NOTES, AS PERMITTED BY THE FEDERAL "AMERICAN RESCUE PLAN ACT OF 2021", PUB.L. 117-2, AS THE ACT MAY BE SUBSEQUENTLY AMENDED, AND BY ANY OTHER APPLICABLE FEDERAL LAW.

SECTION 4. In Colorado Revised Statutes, 8-77-109, **amend** (1)(b), (2)(a), and (2)(a.9)(II)(A); **repeal** (5); and **add** (6) as follows:

8-77-109. Employment support fund - employment and training technology fund - created - uses - repeal. (1) (b) There is hereby established the employment support fund. This fund consists of ~~the first 0.00145~~ 59.46 PERCENT OF THE SUPPORT SURCHARGE RATE ASSESSED ANNUALLY as part of each employer's ~~premium under section 8-76-102.5 (3)(a)~~ SUPPORT SURCHARGE RATE PAYMENTS PAID AND DEDICATED TO THE EMPLOYMENT SUPPORT FUND IN ACCORDANCE WITH SECTION 8-76-102.5 (3)(a)(IV).

(2) (a) (I) (A) EXCEPT AS SET FORTH IN SUBSECTION (2)(a)(II) OF THIS SECTION AND EXCEPT AS PROVIDED IN SUBSECTION (2)(a)(I)(B) OF THIS SECTION, the state treasurer shall credit the money collected pursuant to this section to the employment support fund created in subsection (1) of this section. ~~except that,~~

(B) To the extent allowed by the United States department of labor employment training administration, the state treasurer shall credit ~~.00035~~ 18.92 PERCENT of each employer's ~~premium under section 8-76-102.5 (3)(a)~~ ANNUAL SUPPORT SURCHARGE RATE DETERMINED PURSUANT TO SECTION 8-76-102.5 (3)(a)(IV) to the benefit recovery fund, ~~created in section 8-73-116~~; up to a maximum of fifteen million dollars each year.

(II) (A) At the end of the ~~state fiscal year 2023-24~~ STATE FISCAL YEAR, THE STATE TREASURER SHALL CREDIT any money in the ~~employment support fund~~ COLLECTED PURSUANT TO THIS SECTION that ~~exceeds the total of a .0011 assessed as part of each employer's premium plus seventeen million~~ WOULD CAUSE THE BALANCE IN THE EMPLOYMENT SUPPORT FUND TO EXCEED THIRTY-TWO MILLION FIVE HUNDRED THOUSAND dollars ~~shall be transferred by the state treasurer to the unemployment compensation fund. created in section 8-77-101 (1).~~

(B) AT THE END OF THE 2024-25 STATE FISCAL YEAR AND EACH STATE FISCAL YEAR THEREAFTER, THE LIMIT ON THE AMOUNT OF MONEY IN THE EMPLOYMENT

SUPPORT FUND SPECIFIED IN SUBSECTION (2)(a)(II)(A) OF THIS SECTION SHALL BE ADJUSTED BASED ON THE CHANGE IN AVERAGE WEEKLY EARNINGS, AS DETERMINED IN ACCORDANCE WITH SECTION 8-73-102 (1), IN THE IMMEDIATELY PRECEDING STATE FISCAL YEAR, AND THE STATE TREASURER SHALL CREDIT ANY AMOUNT THAT EXCEEDS THE AMOUNT SPECIFIED IN SUBSECTION (2)(a)(II)(A) OF THIS SECTION, AS ADJUSTED PURSUANT TO THIS SUBSECTION (2)(a)(II)(B), TO THE UNEMPLOYMENT COMPENSATION FUND.

(C) ANY AMOUNT CREDITED TO THE UNEMPLOYMENT COMPENSATION FUND PURSUANT TO THIS SUBSECTION (2)(a)(II) IS NOT INCLUDED IN THE CALCULATION OF AN EMPLOYER'S ANNUAL EXPERIENCE RATE.

(III) The general assembly shall appropriate the money in the employment support fund annually to the department of labor and employment:

~~(H)~~ (A) To be used to offset funding deficits for program administration, including information technology initiatives, under the provisions of articles 70 to 83 of this title TITLE 8 and to further support programs to strengthen unemployment fund solvency; and

~~(H)~~ (A) (B) To fund labor standards, labor relations, and the Colorado works grievance procedure under the provisions of articles 1 to 6, 9, 10, 12, and 13 of this title TITLE 8 and section 26-2-716 (3)(b). ~~C.R.S.~~

~~(B) (Deleted by amendment, L. 2003, p. 2181, § 1, effective June 3, 2003.)~~

~~(C) Repealed.~~

(a.9) (II) (A) The employment and training technology fund, referred to in this subsection (2)(a.9) as the "fund", is created in the state treasury. Notwithstanding any provision of this subsection (2) to the contrary, on and after April 27, 2021, ~~0.0004 assessed against~~ THE STATE TREASURER SHALL CREDIT 21.62 PERCENT OF each employer's premium under section 8-76-102.5 (3)(a) shall be credited ANNUAL SUPPORT SURCHARGE RATE UNDER SECTION 8-76-102.5 (3)(a)(IV) to the employment and training technology fund. On and after April 27, 2021, and on or before June 30, 2023, if cumulative revenue to the employment and training technology fund equals thirty-one million dollars, less any money transferred to the unemployment compensation fund, no additional money shall be credited to the employment and training technology fund but instead shall be allocated to the unemployment compensation fund. On and after July 1, 2023, any amount collected in a fiscal year in excess of seven million dollars under this subsection (2)(a.9)(II) shall be credited TO THE FUND AND THEN TRANSFERRED to the unemployment compensation fund. Money in the fund shall be used for employment and training automation initiatives established by the director of the division. Money in the fund is subject to annual appropriation by the general assembly for the purposes of this subsection (2)(a.9) and shall not revert to the general fund or any other fund at the end of any fiscal year. The money in the fund is exempt from section 24-75-402. At any time, the money in the employment and training technology fund may be appropriated by the general assembly to the unemployment compensation fund or allocated to the unemployment compensation fund at the discretion of the executive director of the department of labor and employment.

(5) ~~The department shall conduct a study with the United States department of labor and any relevant stakeholders to evaluate the employment support fund and determine what steps may be necessary to ensure the fund conforms with federal law. The department shall report the findings of the study to the house committee on business affairs and labor and the senate committee on business, labor, and technology by December 15, 2022.~~

(6) (a) THE PORTION OF EACH EMPLOYER'S SUPPORT SURCHARGE RATE THAT THE EMPLOYER PAID AND THAT IS DEDICATED TO THE EMPLOYMENT SUPPORT FUND PURSUANT TO SECTION 8-76-102.5 (3)(a)(IV), TO THE BENEFIT RECOVERY FUND PURSUANT TO SECTION 8-73-116, AND TO THE EMPLOYMENT AND TRAINING TECHNOLOGY FUND PURSUANT TO SUBSECTION (2)(a.9)(II)(A) OF THIS SECTION:

(I) IS NOT INCLUDED IN THE CALCULATION OF THE EMPLOYER'S ANNUAL EXPERIENCE RATE AND CREDIT UNDER THE "FEDERAL UNEMPLOYMENT TAX ACT", 26 U.S.C. SEC. 3301 ET SEQ.; AND

(II) MUST BE IMMEDIATELY DEPOSITED, UPON PAYMENT, INTO A SEPARATE ACCOUNT, UNRELATED TO THE UNEMPLOYMENT COMPENSATION FUND.

(b) ANY MONEY TRANSFERRED FROM THE EMPLOYMENT SUPPORT FUND, THE BENEFIT RECOVERY FUND, OR THE EMPLOYMENT AND TRAINING TECHNOLOGY FUND TO THE UNEMPLOYMENT COMPENSATION FUND PURSUANT TO THIS SECTION IS NOT USED IN CALCULATING THE EMPLOYER'S EXPERIENCE RATE OR PERCENT OF EXCESS FOR THE STANDARD PREMIUM RATE SCHEDULE.

SECTION 5. In Colorado Revised Statutes, 8-79-104, **amend** (1)(a)(II)(A) and (1)(d) as follows:

8-79-104. Failure to file true report - penalty. (1) (a) (II) (A) It is the responsibility of each employer subject to articles 70 to 82 of this ~~title~~ TITLE 8 to file true and accurate reports, whether or not premiums or surcharges are due, and to pay all premiums and surcharges when due. Whenever an employer fails to furnish ~~premium~~ WAGE reports required by the division by the due date, the division shall assess against the employer a penalty of fifty dollars for each occurrence; except that an "employer newly subject" as defined by section 8-76-102.5 (4) shall be assessed a penalty of ten dollars for each occurrence during the first four quarters of coverage. Each subsequent quarter in which the employer continues the failure to file the WAGE reports shall be considered a separate occurrence. Penalties collected by the division pursuant to this ~~sub-subparagraph (A)~~ SUBSECTION (1)(a)(II)(A) shall be paid into the unemployment revenue fund.

(d) Any penalty imposed pursuant to this subsection (1) shall be waived if good cause is shown for failing to pay the premiums or surcharges or to make ~~premium~~ WAGE reports, as prescribed by rule of the division. Penalties under this subsection (1) that are unpaid on the date on which they are due shall bear interest at the same rate and in the same manner as unpaid premiums and surcharges under articles 70 to 82 of this ~~title~~ TITLE 8. The provisions of section 13-80-108 (9) C.R.S., shall be used for determining when an offense is committed for the purposes of this subsection (1).

SECTION 6. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: May 1, 2023