

Regular Session, 2011

SENATE BILL NO. 121

BY SENATOR RISER

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

UNEMPLOYMENT COMP. Provides an additional exception regarding unemployment benefit payments that are not charged to an employer's experience rating. (8/15/11)

1 AN ACT

2 To amend and reenact R.S. 23:1533 and 1552(E), relative to unemployment compensation  
3 experience rating records; to provide for an exception for unemployment caused by  
4 acts or omissions of third parties; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 23:1533 and 1552(E) are hereby amended and reenacted to read as  
7 follows:

8 §1533. Experience rating records; administrator's duty to prepare

9 ~~(†)~~ A. The administrator shall prepare and maintain an experience rating  
10 record for each employer, and shall credit such record with all the contributions paid  
11 by him with respect to wages paid for the calendar quarter beginning October 1,  
12 1941, and for each calendar quarter thereafter. Nothing in this Chapter shall be  
13 construed to grant any employer or any individual performing services for him prior  
14 claims or rights to amounts paid by the employer into the fund. The administrator  
15 shall terminate the experience rating record of an employer who has ceased to be  
16 subject to this Chapter, or may do so provided the employer has had no employment  
17 in this state for a period of three consecutive calendar years. Benefits accruing and

1 paid on and after October 1, 1941, to an individual in accordance with the provisions  
2 of this Chapter shall be charged against the experience rating records of his  
3 base-period employers ~~except~~ **subject to the following limitations:**

4 (1) ~~that~~ **Only** those benefits paid to an individual in accordance with the  
5 provisions of R.S. 23:1611 through R.S. 23:1616 which are not reimbursed from  
6 federal funds shall be charged against the experience rating records of his  
7 base-period employers.

8 (2) ~~That~~ **Benefits** paid to an individual pursuant to R.S. 23:1635 shall not  
9 be charged against the experience rating records of a claimant's base-period  
10 employers if it is finally determined that such claimant was not entitled to such  
11 benefits. ~~and~~

12 (3) ~~That~~ **Benefits** paid to an individual who continues to remain in the  
13 employ of a base-period employer without a reduction in the number of hours  
14 worked or wages paid shall not be charged against the experience rating records of  
15 such employer.

16 **(4)(a) Benefits shall not be charged against the experience rating records**  
17 **of a claimant's base period employer if both of the following conditions are**  
18 **met:(i) Benefits are paid in a situation in which the unemployment is caused**  
19 **solely by an act or omission of any third party or parties, or solely by such act**  
20 **or omission in combination with an act of God or an act of war. The**  
21 **determination of the responsibility of any third party or parties shall be as**  
22 **determined by the Oil Pollution Act, 33 U.S.C. 2701, et seq.**

23 **(ii) Reimbursement for such benefits shall have been paid by the**  
24 **responsible third party or parties into the Unemployment Trust Fund.**

25 **(b) The amount owed by any responsible third party or parties shall**  
26 **equal the amount of regular and extended benefits paid to individuals as a result**  
27 **of the act or omission attributed to the responsible party or parties.**

28 **(c) At the end of each calendar quarter, or at the end of any other period**  
29 **as the administrator may prescribe by regulation, the administrator shall**

1 charge the responsible party or parties accordingly.

2 (d) Paragraph (4) of Subsection A of this Section is remedial and shall  
3 be retroactive to January 1, 2010.

4 B. The amount so chargeable against each base-period employer's experience  
5 rating record shall bear the same ratio to the total benefits paid to an individual as the  
6 base-period wages paid to the individual by such employer bear to the total amount  
7 of base-period wages paid to the individual by all his base-period employers;  
8 provided, however, that all such charges may be computed to the nearest multiple of  
9 one dollar.

10 ~~(2)~~ C. If the total of the benefits which were chargeable to an employer's  
11 experience-rating record, and were paid on or before July 31, immediately  
12 succeeding the 1975 computation date as defined in R.S. 23:1542(1), with respect  
13 to weeks of unemployment beginning prior to said computation date exceeds the  
14 total of his contributions paid on or before July 31, immediately succeeding the ~~said~~  
15 1975 computation date with respect to wages paid by him on or prior to ~~said~~ the  
16 computation date, such excess benefit charges shall be cancelled from his  
17 experience-rating record for all of the purposes of R.S. 23:1536 with respect to the  
18 1975 computation date and all subsequent computation dates.

19 \* \* \*

20 §1552. Financing benefits paid to employees of nonprofit organizations and of the  
21 state, its instrumentalities and political subdivisions and Indian tribes  
22 or tribal units

23 \* \* \*

24 E.(1) Each employer who is liable for payments in lieu of contributions shall  
25 pay to the administrator for the fund the amount of regular benefits plus the amount  
26 of extended benefits paid (not reimbursed by the federal government) that are  
27 attributable to services in the employ of such employer, except in the following  
28 circumstances:

29 ~~(1)(a) that those benefits~~ Benefits paid to an individual pursuant to R.S.

1 23:1635 or through any administrative error shall not be charged to the employer's  
2 account if it is finally determined that such claimant was not entitled to such benefits  
3 or the employer is held not to be liable for such payments, ~~and~~.

4 ~~(2)(b) that benefits~~ **Benefits** paid to an individual who continues to remain  
5 in the employ of a base-period employer without a reduction in the number of hours  
6 worked or wages paid shall not be charged to the employer's accounts. In addition,  
7 any payment previously tendered the administrator on behalf of claims subject to  
8 these exceptions, which occur subsequent to July 23, 1981, shall be immediately  
9 credited to the employer's account

10 **(2)** If benefits paid to an individual are based on wages paid by more than  
11 one employer and one or more of such employers are liable for payments in lieu of  
12 contributions, the amount attributable to each employer who is liable for such  
13 payments shall be an amount which bears the same ratio to the total benefits paid to  
14 the individual as the total base-period wages paid to the individual by such employer  
15 bear to the total base-period wages paid to the individual by all of his base-period  
16 employers.

17 **(3)(a) Benefits shall not be charged to the base period employer's**  
18 **account if both of the following conditions are met:**

19 **(i) Benefits are paid in a situation in which the unemployment is caused**  
20 **solely by an act or omission of any third party or parties, or solely by such act**  
21 **or omission in combination with an act of God or an act of war. The**  
22 **determination of the responsibility of any third party or parties shall be as**  
23 **determined by the Oil Pollution Act, 33 U.S.C. 2701, et seq.**

24 **(ii) Reimbursement for such benefits shall have been paid by the**  
25 **responsible third party or parties into the Unemployment Trust Fund.**

26 **(b) The amount owed by any responsible third party or parties shall**  
27 **equal the amount of regular and extended benefits paid to individuals as a result**  
28 **of the act or omission attributed to the responsible party or parties.**

29 **(c) At the end of each calendar quarter, or at the end of any other period**

1 as the administrator may prescribe by regulation, the administrator shall  
 2 charge the responsible party or parties accordingly.

3 (d) Paragraph (3) of Subsection E of this Section is remedial and shall  
 4 be retroactive to January 1, 2010.

The original instrument was prepared by Mary Dozier O'Brien. The following digest, which does not constitute a part of the legislative instrument, was prepared by Ann S. Brown.

#### DIGEST

Riser (SB 121)

Present law provides for three exceptions to the requirement that unemployment benefits paid are included in the experience rating records of employers.

Proposed law provides for a fourth exception stating that when the payment of benefits is caused by an act or omission of a third party, such benefits shall not be included in the experience rating of such employer.

Proposed law provides that such a determination of fault of a third party shall be determined in accordance with the Oil Pollution Act, 33 U.S.C. 2701, et seq.

Proposed law requires that the amount of both regular and extended benefits paid out due to the fault of a third party or parties shall be reimbursed by the responsible third party or parties.

Proposed law provides relative to employers who directly reimburse the Unemployment Trust Fund for benefits paid to their employees, and proposed law states that these employers shall also be repaid by the responsible third party or parties.

Proposed law is remedial in nature and shall be retroactively applied back to January 1, 2010.

Effective August 15, 2011.

(Amends R.S. 23:1533 and 1553(E))

#### Summary of Amendments Adopted by Senate

##### Committee Amendments Proposed by Senate Committee on Labor and Industrial Relations to the original bill.

1. Amendments require that the amount of both regular and extended benefits paid out due to the fault of a third party or parties shall be reimbursed by the responsible third party or parties.
2. Amendments delete the reference to the U.S. Coast Guard.
3. Amendments insert the same exception language in the part of Title 23 that deals with employers who directly reimburse the Unemployment Trust Fund for benefits paid to their employees.

4. Amendments provide that all sections of the bill are remedial in effect and shall apply retroactively to January 1, 2010.
5. Amends R.S. 23:1552(E).

Senate Floor Amendments to engrossed bill.

1. Technical amendments.