

U.S. DEPARTMENT OF LABOR
Employment and Training Administration
Washington, D.C. 20210

REPORT ON STATE LEGISLATION

REPORT NO. 5
December 2011

ARIZONA HB 2619
(CH 218)

ENACTED and EFFECTIVE April 25, 2011

Financing

Requires each employer to pay a special assessment in 2011 and 2012 at a rate determined by the Director, Arizona Department of Economic Security (Department). Provides that for calendar year 2011 the determined rate shall not exceed 0.4 percent of the taxable wages paid for the tax year and, for calendar year 2012, shall not exceed 0.6 percent of the taxable wages paid for the tax year. Waives the assessment for the quarter if the amount of an employer's assessment in any one quarter is less than \$10.

Provides that the special assessment will be reported and collected in accordance with the unemployment insurance law and payable on or before the date the quarterly contribution and wage reports are due, except that the assessment for taxable wages paid for the first 3 calendar quarters of tax year 2011 is payable with the employer's quarterly state unemployment insurance contributions on or before October 31, 2011. The assessment for all other calendar quarters in tax years 2011 and 2012 is payable with the employer's quarterly state unemployment insurance contributions.

Establishes an unemployment special assessment fund which consists of the monies collected from the special assessment. Provides that notwithstanding any other law, if the state has an outstanding loan to pay unemployment insurance benefits, fund monies will be used to pay the costs of the loan as follows:

- Fund monies shall first be used to pay interest charges incurred on the loan. If the state is granted a waiver of interest charges in either 2011 or 2012, the amount of the assessment will be reduced by 0.1 percent in each calendar year in which the interest charge is waived.
- Fund monies shall then be used to retire the loan principal on or before November 10, 2012.

Provides that if the Department determines that the fund monies will not be sufficient to pay the interest charges and retire the principal on or before November 10, 2012, the Department may increase the assessment for 2012 at a rate determined by the Director which shall not exceed 0.2 percent of the taxable wages paid for the tax year.

Requires any monies remaining in the fund after payment of all principal and interest on the loan to be transferred to the unemployment compensation fund.

Repeals the special assessment provisions on December 31, 2012.

ARKANSAS SB 305
(Act No. 1125)

ENACTED April 4, 2011
EFFECTIVE April 4, 2011,
or as noted

Financing

Creates the Unemployment Trust Fund Financing Act of 2011 (the Bond Act).

Authorizes the Arkansas Development Finance Authority, subject to the approval of the voters in a statewide election, to issue Arkansas Unemployment Trust Fund Bonds in the amount of \$500,000,000, repaid/payable from revenues raised by an unemployment obligation assessment imposed on employers.

Provides that the unemployment obligation assessment shall be based on the aggregate principal amount of bonds issued for nonrefunding purposes and shall be determined by multiplying the employer's contribution rate in effect on the date that the Governor issues a proclamation calling an election on the issuance of the bonds for employers with accounts as of such date and the employer's contribution rate as of the employer's liability date for employers establishing accounts after the date of the proclamation by:

- 25% if the aggregate principal amount of bonds issued is \$350,000,000 or less;
- 30% if the aggregate principal amount of bonds issued is \$350,000,001 to \$400,000,000;
- 33.5% if the aggregate principal amount of bonds issued is \$400,000,001 to \$450,000,000; and
- 37.5% if the aggregate principal amount of bonds issued is \$450,000,001 to \$500,000,000.

Provides that, among other things, the purpose of the bond issuance shall be to: (1) repay the principal and interest on Title XII advances from the federal trust fund; (2) pay the costs of issuance of the bonds; and (3) pay unemployment benefits by depositing bond proceeds into the Unemployment Compensation Fund.

Provides that the unemployment obligation assessment shall not be collected until the qualified voters of the state approve the issuance of bonds and shall be collected until the end of the quarter immediately following the repayment of all bonds authorized under the Bond Act.

Provides that the Arkansas Development Finance Authority may issue the Arkansas Unemployment Trust Fund Bonds for the purpose of refunding bonds previously issued if the total amount of bonds outstanding after the refunding is completed does not exceed the total amount authorized.

Provides that to the extent that refunding bonds are issued and the principal amount of the refunding bonds is not in a greater principal amount than the outstanding principal amount of the

bonds being refunded, the principal amount of the refunding bonds shall not be subject to the \$500,000,000 limit.

Provides that, if the refunding bonds are issued in a greater principal amount than the bonds being refunded, the principal amount of the refunding bonds shall not count against the \$500,000,000 limit so long as the aggregate debt service on the refunding bonds is less than the aggregate debt service on the bonds being refunded.

Requires each contributing employer to pay a separate and additional assessment, to be known as the unemployment obligation assessment, on wages paid by that employer with respect to employment in addition to the contributions, stabilization and extended benefits taxes, and advance interest taxes levied.

Provides that the effective date of the unemployment obligation assessment shall be the first day of the calendar quarter immediately following the month in which the Secretary of State certifies the vote of the voters approving the unemployment obligation assessment and the issuance of the bonds, and the assessment is effective until the end of the quarter immediately following the repayment of all bonds.

Provides that this unemployment obligation assessment shall not be credited to the separate account of any employer.

Provides that the unemployment obligation assessment shall be levied and collected in the same manner as contributions and shall be subject to the same penalty and interest, collection, impoundment, priority, lien, certificate of assessment, and assessment provisions and procedures under the Arkansas Employment Security Law.

Provides that receipts from the unemployment obligation assessment and any penalty and interest on the unemployment obligation assessment shall be deposited into the Unemployment Compensation Fund Clearing Account.

Provides that at least once each month, deposits of the unemployment obligation assessment payment and any interest and penalty payments applicable to the unemployment obligation assessment shall be deposited into the Department of Workforce Services Bond Financing Trust Fund.

Provides that debt service on the bonds shall be paid in a timely manner and shall not be paid directly or indirectly by an equivalent reduction in unemployment contributions or taxes imposed.

Provides that upon retirement of all bonds, the following shall be transferred to the Unemployment Compensation Fund:

- Surplus unemployment obligation assessment collections; and
- Delinquent taxes, penalties, or interest due under the unemployment obligation assessment.

Establishes a special restricted fund to be known as the "Bond Financing Trust Fund", to be maintained and administered by the Department of Workforce Services into which shall be deposited collections of the unemployment obligation assessment and any penalties and interest with respect to the unemployment obligation assessment.

Provides that moneys in the Bond Financing Trust Fund may be used, among other things, to make refunds of the unemployment obligation assessment, and interest and penalty payments that were erroneously paid, and to return moneys to the Unemployment Compensation Fund Clearing Account which may have been incorrectly identified and erroneously transferred to the Bond Financing Trust Fund.

ARKANSAS SB 593
(Act No. 861)

ENACTED March 31, 2011
EFFECTIVE March 31, 2011,
or as noted

Extensions and Special Programs

Decreases the maximum number of weeks payable under the shared work plan from 26 to 25.

Monetary Entitlement

Decreases the minimum weekly benefit amount from \$82 to \$81 and the maximum weekly benefit amount from \$457 to \$451, effective July 1, 2012.

Changes the formula for calculating the number of benefit weeks from the lesser of 26 times the weekly benefit amount or 1/3 times the base period wages to the lesser of 25 times the weekly benefit amount or 1/3 times the base period wages.

Changes the qualifying wages needed in the base period to monetarily qualify from 37 times the weekly benefit amount to 35 times the weekly benefit amount.

Provides that to requalify for a succeeding benefit year, individuals must have been paid wages in insured work equal to at least 35 (previously 37) times their weekly benefit amount in at least 2 base period calendar quarters and subsequent to filing the claim which established the previous benefit year, they had insured work and were paid wages for work equal to 8 (previously 3) times their weekly benefit amount.

Nonmonetary Eligibility

Provides that in all cases of discharge for absenteeism, the individual will be disqualified if the discharge was pursuant to the terms of a bona fide written attendance policy with progressive warnings, regardless of whether the policy is a fault or no-fault policy. (Previously, the law provided that the individual's attendance record for the 12-month period immediately preceding the discharge and the reasons for the absenteeism shall be taken into consideration for purposes of determining whether the absenteeism constitutes misconduct.) The disqualification shall continue until, subsequent to filing a claim, the individual has had at least 30 days of

employment covered by an unemployment compensation law of Arkansas, another state, or the United States. (Previously, the law provided that the individual's disqualification for misconduct shall be for 8 weeks of unemployment.)

Provides that misconduct includes violation of any behavioral policies of the employer as distinguished from deficiencies in meeting production standards or accomplishing job duties.

Provides that if an individual is discharged from his or her last work for misconduct in connection with the work on account of dishonesty, drinking on the job, reporting for work while under the influence of intoxicants, including a controlled substance, or willful violation of bona fide rules or customs of the employer pertaining to his or her safety or the safety of fellow employees, persons, or company property, he or she shall be disqualified until, subsequent to the date of the disqualification, the claimant has been paid wages in 2 quarters for insured work totaling not less than 35 times his or her weekly benefit amount. (Previously, the law provided for disqualification from the date of filing the claim until 10 weeks of employment in each of which earned wages were equal to at least the individual's weekly benefit amount.)

Provides, among other things, that if an individual is discharged for testing positive for an illegal drug pursuant to a United States Department of Transportation-qualified drug screen conducted in accordance with the employer's bona fide written drug policy, the individual is disqualified until, subsequent to the date of the disqualification, the claimant has been paid wages in 2 quarters for insured work totaling not less than 35 times his or her weekly benefit amount. (Previously, the law provided for disqualification from the date of filing the claim until 10 weeks of employment in each of which earned wages were equal to at least the individual's weekly benefit amount.)

Provides that an individual shall not be deemed guilty of misconduct for poor performance in his or her job duties unless the employer can prove that the poor performance was intentional.

Provides that an individual's repeated act of commission or omission or negligence despite progressive discipline shall constitute sufficient proof of intentional poor performance.

Provides that an individual who refuses an "alternate suitable job" rather than being terminated for poor performance shall be disqualified until, subsequent to filing a claim, he or she has had at least 30 days of employment covered by an unemployment compensation law of Arkansas, another state, or the United States.

Provides that a disqualification for failing without good cause to apply for available suitable work when so directed by a Department of Workforce Services office or to accept available suitable work when offered shall continue until, subsequent to filing a claim, he or she has had at least 30 days of employment covered by an unemployment compensation law of Arkansas, another state, or the United States, and shall begin with the week in which the failure to apply for or accept available suitable work occurred. (Previously, the law provided that the individual's disqualification shall be for 8 weeks of unemployment.)

Provides that a disqualification for being rejected for offered employment as the direct result of a failure to: appear for a United States Department of Transportation-qualified drug screen after having received a bona fide job offer of suitable work subject to passage of the drug screen; or pass a United States Department of Transportation-qualified drug screen by testing positive for an illegal drug after having received a bona fide job offer of suitable work shall continue until, among other things, subsequent to the date of the disqualification, the claimant has been paid wages in 2 quarters for insured work totaling not less than 35 times his or her weekly benefit amount.

FLORIDA HB 7005
(CH 235)

ENACTED June 27, 2011
EFFECTIVE June 27, 2011,
or as noted

Administration

Requires, notwithstanding any other provision of law, the Agency for Workforce Innovation to contract with one or more consumer-reporting agencies to provide users with secured electronic access to employer-provided information relating to the quarterly wages report submitted in accordance with the state's unemployment compensation law. The access is limited to the wage reports for the appropriate amount of time for the purpose the information is requested.

Establishes procedures for contracts with consumer-reporting agencies and users and for the release, access, security, costs, confidentiality, and disclosure of information. Provides language concerning the termination of contracts due to violations.

Appeals

Establishes procedures relating to the receipt, admission, exclusion, and use of evidence for a hearing.

Provides that orders of the Unemployment Appeals Commission appealed to the courts for judicial review are subject to review only by notice of appeal in the District Court of Appeal in the appellate district in which a claimant resides or the job separation arose, or in the appellate district where the order was issued. However, if the notice of appeal is filed solely with the Unemployment Appeals Commission, the appeal shall be filed in the District Court of Appeal in the appellate district in which the order was issued.

Extensions and Special Programs

Temporarily modifies the extended benefits program provisions concerning the EB "on" and "off" indicators by using a 3-year look-back for the optional indicators based on the seasonally adjusted total unemployment rate (TUR) for weeks of unemployment ending on or before December 10, 2011.

Changes the expiration date of an "on" indicator week and "high unemployment period" based on the seasonally adjusted total unemployment rate (TUR) for the federal-state Extended

Benefits (EB) program from ending on or before May 8, 2010, to ending on or before December 10, 2011.

Makes the EB provisions applicable to claims for weeks of unemployment in which the exhaustee establishes entitlement to EB for the period between June 2, 2010, and January 4, 2012 (previously, between February 22, 2009, and June 2, 2010).

Financing

Establishes provisions for the collection of past due contributions and reimbursements and delinquent, erroneous, incomplete, or insufficient reports below:

- Payments for 2012, 2013, and 2014 Contributions.--For an annual administrative fee not to exceed \$5, a contributing employer may pay its quarterly contributions due for wages paid in the first three quarters of 2012, 2013, and 2014 in equal installments if those contributions are paid as follows:
 1. For contributions due for wages paid in the first quarter of each year, one-fourth of the contributions due must be paid on or before April 30, one-fourth must be paid on or before July 31, one-fourth must be paid on or before October 31, and one-fourth must be paid on or before December 31.
 2. In addition to the payments specified in subparagraph 1, for contributions due for wages paid in the second quarter of each year, one-third of the contributions due must be paid on or before July 31, one-third must be paid on or before October 31, and one-third must be paid on or before December 31.
 3. In addition to the payments specified in subparagraphs 1 and 2, for contributions due for wages paid in the third quarter of each year, one-half of the contributions due must be paid on or before October 31, and one-half must be paid on or before December 31.
 4. The annual administrative fee assessed for electing to pay under the installment method shall be collected at the time the employer makes the first installment payment each year. The fee shall be segregated from the payment and deposited into the Operating Trust Fund of the Department of Revenue.
 5. Interest does not accrue on any contribution that becomes due for wages paid in the first three quarters of each year if the employer pays the contribution in accordance with subparagraphs 1 - 4. Interest and fees continue to accrue on prior delinquent contributions and commence accruing on all contributions due for wages paid in the first 3 quarters of each year which are not paid in accordance with subparagraphs 1 - 3. Penalties may be assessed in accordance with the state law. The contributions due for wages paid in the fourth quarter of 2012, 2013, and 2014 are not affected by this paragraph and are due and payable in accordance with the state law.

Monetary Entitlement

Provides that, effective January 1, 2012, each otherwise eligible individual is entitled during any benefit year to a total amount of benefits equal to 25 percent of the total wages in his or her base period, not to exceed \$6,325 or the product arrived at by multiplying the weekly benefit amount

by the number of weeks determined in the next paragraph, whichever is less. (Under prior law, entitlement was limited to \$7,150.)

Provides that for claims submitted during a calendar year, the duration of benefits is limited to:

- Twelve weeks if this state's average unemployment rate is at or below 5 percent.
- An additional week in addition to the 12 weeks for each 0.5 percent increment in this state's average unemployment rate above 5 percent.
- Up to a maximum of 23 weeks if this state's average unemployment rate equals or exceeds 10.5 percent.

Defines the term "Florida average unemployment rate" to mean the average of the 3 months for the most recent third calendar year quarter of the seasonally adjusted statewide unemployment rates as published by the Agency for Workforce Innovation.

Nonmonetary Eligibility

Adds to the definition of "misconduct" that misconduct occurs irrespective of whether the misconduct occurs at the workplace or during working hours. The amended misconduct provisions include but are not limited to:

- Conduct demonstrating conscious (previously, willful or wanton) disregard of an employer's interests and found to be a deliberate violation or disregard of the reasonable standards of behavior which the employer expects (previously, has a right to expect) of his or her employee.
- Carelessness or negligence to a degree or recurrence that manifests culpability, or wrongful intent (previously, or evil design), or shows an intentional and substantial disregard of the employer's interests or of employee's duties and obligations to his or her employer.
- Chronic absenteeism or tardiness in deliberate violation of a known policy of the employer or one or more unapproved absences following a written reprimand or warning relating to more than one unapproved absence.
- A willful and deliberate violation of a standard or regulation of this state by an employee of an employer licensed or certified by this state, which violation would cause the employer to be sanctioned or have its license or certification suspended by this state.
- A violation of an employer's rule, unless the claimant can demonstrate that:
 1. He or she did not know, and could not reasonably know, of the rule's requirements;
 2. The rule is not lawful or not reasonably related to the job environment and performance;
or
 3. The rule is not fairly or consistently enforced.

Defines the term "initial skills review" to mean an online education or training program, such as that established under Florida state law, that is approved by the Agency for Workforce Innovation and designed to measure an individual's mastery level of workplace skills.

Provides that a claimant must be actively seeking work to be considered available for work, which means engaging in systematic and sustained efforts to find work, including contacting at least 5 prospective employers for each week of unemployment claimed. The claimant may be required to provide proof of such efforts to the one-stop career center as part of reemployment services. Requires random reviews by the Agency for Workforce Innovation of work search information provided by claimants. As an alternative to contacting at least 5 prospective employers for any week of unemployment claimed, a claimant may, for that same week, report in person to a one-stop career center to meet with a representative of the center and access reemployment services of the center. Requires the center to keep a record of the services or information provided to the claimant and provide the records to the Agency for Workforce Innovation upon request by the Agency for Workforce Innovation. (Effective August 1, 2011.)

Disqualifies an individual for benefits for any week in which the individual is receiving or has received severance pay. However, the number of weeks that an individual's severance pay disqualifies the individual is equal to the amount of the severance pay divided by that individual's average weekly wage received from the employer that paid the severance pay, rounded down to the nearest whole number, beginning with the week the individual is separated from employment. (Effective August 1, 2011.)

Disqualifies an individual for benefits for any week in which the individual is unavailable for work due to incarceration or imprisonment. (Effective August 1, 2011.)

INDIANA HB 1450
(P. L. 2)

ENACTED February 24, 2011
EFFECTIVE February 24, 2011,
or as noted

Financing

Beginning January 1, 2011, except as otherwise provided, each employer shall pay contributions equal to the amount determined or estimated by the Indiana Department of Workforce Development (previously, 12 percent of wages.)

Provides that for a calendar year beginning January 1, 2011, an experience rated employer who paid wages during the calendar year, and whose contribution rate for the calendar year was determined, and has had a payroll in each of the 3 preceding 12-month periods must pay an unemployment insurance surcharge equal to 13 percent of the employer's contribution for calendar year 2011 if, during the calendar year, the state is required to pay interest on the Title XII advances made to the state from the federal unemployment account in the federal unemployment trust fund.

Provides that for a calendar year beginning January 1, 2012, in which employers are required to pay the unemployment insurance surcharge, the Indiana Department of Workforce Development shall determine, not later than January 31, the surcharge percentage for that year based on (1) the interest rate charged the state for the year determined under Federal law; and (2) the state's outstanding loan balance to the federal unemployment account on January 1 of the year.

Requires that the unemployment insurance surcharge be paid quarterly at the same time as employer contributions are paid, and failure to make such payments is a delinquency.

Allows the Indiana Department of Workforce Development to use amounts from the surcharge to pay interest on the Title XII advances and requires the deposit of any amounts received and not used to pay interest on Title XII advances into the unemployment insurance benefit fund.

Provides that amounts paid and used to pay interest on Title XII advances do not affect and may not be charged to the experience account of any employer. Amounts paid and used for purposes other than to pay interest on Title XII advances must be credited to each employer's experience account in proportion to the amount the employer paid during the preceding 4 calendar quarters.

Establishes the unemployment insurance solvency fund for the purpose of paying interest on Title XII advances, to be administered by the department.

Requires that money received from the unemployment insurance surcharge that the Indiana Department of Workforce Development elects to use to pay interest on Title XII advances shall be deposited in the fund for the purposes of the fund.

Requires the Treasurer of State to invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited at least quarterly in the fund.

Provides that money in the fund at the end of a state fiscal year does not revert to the state general fund.

Decreases the contribution rate for new employers from 2.7 percent to 2.5 percent beginning January 1, 2011.

Adds to the requirements to become experience rated that an employer has properly filed all required contribution and wage reports, and all contributions, penalties, and interest due and owing by the employer or the employer's predecessors have been paid.

Provides that an employer's contribution rate is equal to the sum of the employer's contribution rate determined or estimated by the department (previously, at least 12 percent) plus 2 percent if required contribution and wage reports are not filed timely, and all contributions, penalties, and interest due and owing by the employer or the employer's predecessors have not been paid timely. An employer's rate under this provision may not exceed 12 percent.

Provides that for calendar years 2011 through 2020, Schedule E applies in determining and assigning each employer's contribution rate.

Monetary Entitlement

Changes the computation of the weekly benefit amount beginning July 1, 2012, from 5 percent of the first \$2,000 of the individual's wage credits in the highest quarter of the base period; and 4

percent of the individual's remaining wage credits in the highest quarter; to 47 percent of the individual's prior average weekly wage, rounded, if not already a multiple of \$1, to the next lower dollar. The maximum weekly benefit amount may not exceed \$390.

Defines and calculates "prior average weekly wage" as the individuals' total wage credits during the base period divided by 52.

Provides that "wage credits" may not exceed \$9,250 for calendar quarters beginning on and after July 1, 2005, and before July 1, 2012.

Removes, for calendar quarters beginning on and after July 1, 2012, the \$9,250 "wage credit" cap.

Nonmonetary Eligibility

Effective July 1, 2011, provides that an individual is not totally unemployed, part-totally unemployed, or partially unemployed for any week in which the:

- Individual is regularly and customarily employed on an on-call or as-needed basis and has remuneration for personal services payable to the individual or work available from the individual's on-call or as needed employer.
- Indiana Department of Workforce Development finds that the individual is on a vacation week and receiving, or has received, remuneration from the employer for that week. (This provision does not apply to an individual whose employer fails to comply with a department rule or policy regarding the filing of a notice, report, information, or claim in connection with an individual, group, or mass separation arising from the vacation period.)
- Indiana Department of Workforce Development finds the individual is on a vacation week and has not received remuneration from the employer for that week because of a written contract between the employer and the employees or the employer's regular vacation policy and practice. (This provision applies only if the department finds that the individual has a reasonable assurance that the individual will have employment available with the employer after the vacation period ends.) (This provision does not apply to an individual whose employer fails to comply with a department rule or policy regarding the filing of a notice, report, information, or claim in connection with an individual, group, or mass separation arising from the vacation period.)

Defines, effective July 1, 2011, "deductible income" to mean:

- For a week in which a payment is actually received by an individual, payments made by an employer to an individual who accepts an offer from the employer in connection with a layoff or a plant closure.
- Except for compensation made under a valid negotiated contract or agreement in connection with a layoff or plant closure, without regard to how the compensation is characterized by the contract or agreement, the part of a payment made by an employer to an individual who

accepts an offer from the employer in connection with a layoff or a plant closure if that part is attributable to a week and the week:

- . occurs after an individual receives the payment; and
- . is used under the terms of a written agreement to compute the payment.

(The above dot points apply to initial claims for unemployment filed for a week that begins after March 14, 2008, and before October 1, 2011, and, therefore, will be removed from the meaning of deductible income after September 31, 2011.)

For the purpose of deductible income only, remuneration for services from employing units does not include, for initial claims for unemployment filed for a week that begins after March 14, 2008, and before October 1, 2011, compensation made under a valid negotiated contract or agreement in connection with a layoff or plant closure, without regard to how the compensation is characterized by the contract or agreement. (After September 31, 2011, remuneration for services will include such compensation.)

Provides that for initial claims for unemployment filed for a week beginning March 15, 2008, and ending September 30, 2011, a person who elects to retire in connection with a layoff or plant closure and receive pension, retirement, or annuity payments is ineligible to receive benefits. Except a person who accepts an offer of payment or other compensation offered by an employer to avert or lessen the effect of a layoff or plant closure and otherwise meets the eligibility requirements is entitled to receive benefits in the same amounts, under the same terms, and subject to the same conditions as any other unemployed person. (Effective July 1, 2011.)

Provides that notwithstanding other provisions of law, an individual shall not be disqualified for benefits for any week with respect to which the individual receives a distribution from a pension, retirement, or annuity plan of an employer when an individual uses the distribution to satisfy a severe financial hardship resulting from an unforeseeable emergency that is the result of events beyond the individual's control. (Effective July 1, 2011.)

Modifies the between and within terms denial provisions to provide that for services to which 26 U.S.C. 3309(a)(1) applies, if the services are provided to or on behalf of an educational institution, compensation payable based on the services may be denied as applicable. (Effective July 1 2011.)

Provides, that beginning January 1, 2012, individuals may elect to have state and local taxes deducted and withheld from their payment of unemployment compensation. If an election is made, the Indiana Department of Workforce Development shall withhold state and local taxes at the applicable rate prescribed in withholding instructions issued by the Department of State Revenue. The money withheld shall remain in the unemployment fund until transferred to the state for payment of income taxes. The Commissioner, Indiana Department of Workforce Development, shall follow all procedures of the Department of State Revenue concerning the withholding of income taxes. (Effective July 1, 2011.)

KENTUCKY

HB 339
(CH 30)

ENACTED and EFFECTIVE July 15, 2011

Monetary Entitlement

Provides that to qualify for a second benefit year workers must have, subsequent to the beginning of the worker's immediately preceding benefit year, worked and earned wages in insured work equal to at least 5 times their weekly benefit rate established for the previous benefit year. (Previously, workers must have been paid wages in the last 2 quarters of the base period of at least 8 times their weekly benefit rate.)

MICHIGAN

HB 4394
(Act No. 281)

ENACTED and EFFECTIVE December 20, 2011

Financing

Provides that for benefit years from October 1, 2000, through December 31, 2013, if a contributing base period employer notifies the agency it paid gross wages in a week at least equal to its benefit charges for a week, the agency shall issue a monetary redetermination noncharging the employer's account for that week and the remaining weeks of the benefit year for benefits paid that would otherwise be charged to the employer's account.

Provides that for benefit years beginning on or after January 1, 2014, benefits paid will be charged to the nonchargeable benefits account and not charged to the employer's account if:

- The individual reports gross earnings in the week with a contributing base period employer at least equal to the employer's benefit charges for the week; or
- A contributing base period employer timely protests a determination charging benefits to its account for a week if gross wages were paid by the employer to the individual at least equal to the benefit charges for the week.

MICHIGAN

SB 484
(P.A. 268)

ENACTED and EFFECTIVE December 19, 2011

Financing

Creates the "Obligation Trust Fund" (Fund) as a separate fund in the State Treasury not to be considered part of the General Fund; money in the Fund would remain at the close of the fiscal year, and would not lapse into the General Fund. The State Treasurer may receive and deposit money or other assets from any source into the Fund and shall direct the investment of money within the Fund, crediting to the Fund earnings from investments of money for the Fund.

Requires the deposit of all "obligation" assessments (assessments) collected into the Fund. All interest, penalties, and damages derived from the assessments along with portions of the proceeds from any obligations specified by the Michigan Finance Authority (MFA) shall be deposited into the Fund.

Requires the Michigan Department of Licensing and Regulatory Affairs (LARA) to administer the Fund for auditing purposes and expend money from the Fund only:

- To pay obligations, including administrative and associated expenses;
- To refund erroneously collected assessments; and
- For any other purpose for which the MFA could issue obligations.

Permits the Director of LARA to request the MFA to issue obligations in order to repay Federal Title XII advances with interest on those advances, fund unemployment benefits, and fund capitalized interest, debt service reserve funds, and payment of costs of, and administrative expenses connected with, issuing “obligations.”

Defines “obligation” as a note, bond, financial instrument, or other evidences of indebtedness issued.

Stipulates that in 2011 and in each year thereafter in which any obligation is outstanding, employers are subject to, and shall be assessed, and shall pay an obligation assessment. The assessment shall be collected quarterly in addition to required contributions, is not subject to the limiting provisions for required contributions, is in addition to and separate from the solvency tax imposed, is due at the same time, collected in the same manner, and subject to the same penalties and interest as contributions assessed, and shall be deposited into the Fund.

The rate of the assessment shall be determined by the State Treasurer in consultation with the Director of LARA. The assessment rate shall be applied to all contributing employers on the taxable wage base limit, and may take into account the employer’s experience rating from the previous year. The assessment shall be sufficient to ensure timely payment of:

- The principal, interest, and redemption premiums on obligations;
- Administrative expenses, credit enhancement and termination fees, and any other fees derived from issuing obligations;
- All other amounts required to be maintained and paid under the terms of a MFA resolution, indenture, or authorizing statute under which obligations are issued;
- Amounts necessary to maintain ratings assigned by nationally recognized rating services on obligations at a level determined by the State Treasurer.

The yearly revenue generated by the assessment is irrevocably pledged to the payment of obligations and administrative expenses, and is subject to the pledge and lien described in the MFA resolution, indenture, and authorizing statute under which the obligation is issued.

MINNESOTA

SB 1130
(CH 84)

ENACTED May 24, 2011
EFFECTIVE August 1, 2012,
or as noted

Coverage

Excludes from coverage employment for a school, college, or university by a student who is enrolled and whose primary relation to the school, college or university is as a student. This does not include an individual whose primary relation to the school, college or university is an employee who also takes courses. (Previously, employment for a school, college, or university by a student who is enrolled and is regularly attending classes at the school, college, or university was excluded from coverage.)

Excludes from coverage employment of a corporate officer, if the officer directly or indirectly, including through a subsidiary or holding company, owns 25 percent or more of the employer corporation, and employment of a member of a limited liability company, if the member directly or indirectly, including through a subsidiary or holding company, owns 25 percent or more of the employer limited liability company. (Previously, employment of a corporate officer, if the officer owns 25 percent or more of the employer corporation, and employment of a member of a limited liability company, if the member owns 25 percent or more of the employer limited liability company was excluded from coverage.)

Extensions and Special Programs

Includes an individual determined eligible for Trade Adjustment Assistance in the definition of a dislocated worker. (Effective May 29, 2011.)

Financing

Allows the Commissioner of the Minnesota Department of Employment and Economic Development to assess up to 8 percent of the quarterly unemployment tax due to pay interest on a federal loan (eliminates the minimum assessment of 2 percent).

Monetary Entitlement

Changes, effective October 28, 2012, the requirements for establishing a benefit account to \$2,400 in a 4-quarter base period or 5.3 percent of the state's average annual wage rounded down to the next lower \$100, whichever is higher. (Was \$1,000 in the high quarter and \$250 outside the high quarter.)

Provides that effective May 25, 2011, wages used to establish a new benefit account following the expiration of a prior benefit account must meet the new benefit account requirement (was 8 times the weekly benefit amount).

Changes the earnings requirement following a period of disqualification for a voluntary quit or discharge to one-half of the amount required to establish a benefit account (was 8 times the weekly benefit amount) applicable to all requalifications after October 28, 2011.

Nonmonetary Eligibility

Expands the definition of "immediate family member" to include a grandparent. (Effective July 1, 2011.)

Provides that employment is not considered suitable if the employment is with a staffing service and less than 25 percent (previously, 45 percent) of the applicant's wage credits are from a job assignment with the client of a staffing service.

Provides that a job assignment with a staffing agency is considered suitable only if the individual received 25 (previously, 45 percent) percent or more of wage credits from job assignments with a staffing agency.

Provides that an individual is not eligible for benefits for any week payment received for sick pay or "personal time off" pay is equal to or in excess of the weekly benefit amount. (Effective for determinations issued on or after August 7, 2011.)

Waives temporarily the requirements for availability of suitable work and the 32 hours of work limitation for participants in a pilot program for dislocated workers. (Effective May 29, 2011, and expires June 30, 2012.)

MONTANA

**HB 80
(CH 123)**

ENACTED and EFFECTIVE April 7, 2011

Appeals

Provides that the Department of Labor and Industry and the Board of Labor Appeals may individually or jointly issue subpoenas and compel testimony and the production of evidence, including books, records, papers, documents, and other objects that may be necessary and proper in regard to any investigation or proceeding.

Provides that if a subpoena issued and served is disobeyed or if a witness refuses to testify to any matter for which the witness may be interrogated in a proceeding before the department, the department may apply to a district court for an order to compel compliance with the subpoena or testimony. Disobedience of the court's order constitutes contempt of court.

Requires that the Department of Labor and Industry, through the state lottery commission if overpayment is to be collected, provide the claimant with notice of the right to request a hearing on the offset action.

Coverage

Excludes from the definition of "employment" service performed by a volunteer participant in a program funded under the National and Community Service Act of 1990 or the Domestic Volunteer Service Act of 1973.

Financing

Includes in the meaning of "wages" (unless specifically exempted) the amount paid as a salary, draw, or profit distribution to a sole proprietor, a working member of a partnership, or a member

of a limited liability company that is treated as a partnership or sole proprietorship or to a partner in a limited partnership that has filed with the secretary of state, when the salary, draw, or profit distribution is paid directly by the enterprise in which the payee has an ownership interest.

Provides that benefits may not be charged against the account of an employer if the worker separates from employment as a result of domestic violence, a sexual assault, or stalking.

Monetary Entitlement

Provides that an individual is considered to be totally unemployed in any week during which the individual, due to lack of work, worked fewer than the hours typically worked in employment and earned wages payable that are less than 2 times the individual's weekly benefit amount. (Previously, the law provided that an individual is considered to be totally unemployed in any week during which the individual worked less than the customary hours that are normal for the individual's particular occupation due to lack of work and provided that the wages payable are less than 2 times the individual's weekly benefit amount.)

Provides that an individual is not considered to be unemployed in any week in which the individual works at least 40 hours in employment.

Overpayment

Allows the offset of an unemployment benefit overpayment and any penalty by the interception of lottery winnings.

Provides that 100 percent of the specified amount of overpayment, unpaid taxes, penalties, and interest will be deducted from the lottery winnings.

NEW HAMPSHIRE

HB 26
(CH 254)

ENACTED July 13, 2011
EFFECTIVE September 11, 2011

Nonmonetary Eligibility

Modifies the definition of gross misconduct to mean an unemployed individual who has been discharged for arson, sabotage, felony, assault which causes bodily injury, criminal threatening, or a single theft or multiple thefts in the aggregate of an amount equal to or greater than \$250, where such conduct is connected with his or her work, shall suffer loss of all wage credits earned prior to the date of such dismissal. (Prior definition meant an unemployed individual who was discharged for arson, sabotage, felony, assault which causes bodily injury, criminal threatening, or theft of an amount greater than \$500 where such conduct is connected with his or her work, shall suffer loss of all wage credits earned prior to the date of such dismissal.)

Disqualifies an individual for benefits who has been discharged for a single theft or multiple thefts in the aggregate of an amount greater than \$100 but less than \$250, where such conduct is connected with his or her work for a period of not less than 4 weeks nor more than 26 weeks from the date of discharge, and until wages in employment have been earned in each of 5 weeks

of at least 20 percent more than the individual's weekly benefit amount after the date of such discharge.

PENNSYLVANIA

Rule 4685 2010
(34 PA Code CH 63)

ADOPTED June 17, 2011
EFFECTIVE June 18, 2011,
or as noted

Financing

Revises rules related to employer transfer of experience records and reserve account balances for an organization, trade, or business; employer responsibilities; to remove obsolete sections; and to consolidate and/or update other sections to come into conformity with state law changes.

- Modifies the Pennsylvania Department of Labor and Industry's interpretation that an employer's experience record will not transfer to a successor if common ownership, control or management commenced immediately before the transfer or a series of transactions culminating in the transfer.
- Specifies that the Pennsylvania Department of Labor and Industry will combine the experience of the predecessor and the experience of the successor for determining the contribution rate of the successor. Provides the conditions for determining the earliest calendar year the combination of the experience will apply. No rates shall apply prior to the transfer of experience.
- Provides that the Pennsylvania Department of Labor and Industry may not consider facts or legal reasons not asserted by the employer in its application for review and redetermination.
- Provides that the Pennsylvania Department of Labor and Industry will not consider a redetermination of a contribution rate when an inaccuracy of the reserve account balance on the notice was due to error that occurred more than 4 years prior to the computation date for the contribution rate in question, or when an employer defaults on a deferred payment plan.
- Specifies the acceptable filing methods for employers to use when filing documents and appeals with the Unemployment Compensation Tax Service.
- Provides that an employer may be relieved of benefit charges when a claimant is ineligible because he/she separated under specified disqualifying conditions due to willful misconduct, for voluntarily leaving, for failing to submit to or pass a drug test, due to a natural disaster, for continuing to work part-time without material change, and due to cessation of business of 18 months or less caused by a disaster. An employer may also be granted relief of benefit charges under conditions that would not be disqualifying such as

voluntarily leaving because of a disability, or due to application of the labor standard provisions.

- Specifies the time limits for employers to request relief from benefit charges as well as under what circumstances relief will be granted.
- Specifies reporting requirements for employers. Requires electronic reporting by employers. (Effective after Department notice is issued.)
- Specifies records required to be kept by employers which must contain information on workers considered to be independent contractors, workers considered “not employees,” and workers covered by a professional employer organization (PEO) arrangement.
- Specifies requirements for non-profit organizations and contributing employers electing to make payments in lieu of contributions and reimbursable employers converting to contributing employers.

TEXAS

HB 14
(CH 212)

ENACTED June 17, 2011
EFFECTIVE September 1, 2011

Nonmonetary Eligibility

Disqualifies an individual for benefits for a benefit period for which severance pay is received. (Applicable to claims filed on or after September 1, 2011.)