
By: Delegates Gordon, Harrison, Kach, Krysiak, McClenahan, and V. Mitchell

Introduced and read first time: January 22, 1996

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Unemployment Insurance - Successor Businesses**

3 FOR the purpose of providing that certain new employers that acquire businesses may
4 choose either to assume the experience rating of the predecessor employer or to
5 obtain a new employer rate for the two years after the acquisition of the business;
6 providing the circumstances in which taxable wages may be transferred to an
7 employing unit acquiring or transferring a business into the State if the employing
8 unit also transfers the benefit charges of the predecessor employer;and generally
9 relating to unemployment insurance contributions.

10 BY repealing and reenacting, without amendments,

11 Article - Labor and Employment
12 Section 8-607(a), 8-609, 8-610(a) and (c), and 8-613(a)(1) and (3) and (d) through
13 (f)
14 Annotated Code of Maryland
15 (1991 Volume and 1995 Supplement)

16 BY repealing and reenacting, with amendments,

17 Article - Labor and Employment
18 Section 8-607(b) and 8-613(c)
19 Annotated Code of Maryland
20 (1991 Volume and 1995 Supplement)

21 BY adding to

22 Article - Labor and Employment
23 Section 8-610.5
24 Annotated Code of Maryland
25 (1991 Volume and 1995 Supplement)

26 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
27 MARYLAND, That the Laws of Maryland read as follows:

2

1 **Article - Labor and Employment**

2 8-607.

3 (a) Except as provided in Part III of this subtitle, an employing unit shall pay to
4 the Secretary contributions for the Unemployment Insurance Fund on taxable wages for
5 covered employment that is performed for the employing unit.

6 (b) (1) Subject to paragraph (2) of this subsection, the taxable wage base is the
7 first \$8,500 in wages that:

8 (i) an employing unit pays to each employee for covered employment
9 during a calendar year; [or]

10 (ii) an employing unit or predecessor employer, or combination of
11 both, pays to each employee [who was continuously employed immediately before and
12 after a transfer of a business for covered employment in this State or another state during
13 a calendar year] FOR COVERED EMPLOYMENT DURING A CALENDAR YEAR,
14 PROVIDED THAT PAYROLLS AND BENEFIT CHARGES OF THE PREDECESSOR
15 EMPLOYING UNIT ARE TRANSFERRED TO ITS SUCCESSOR EMPLOYING UNIT IN
16 ACCORDANCE WITH § 8-613(C)(2) OF THIS SUBTITLE; OR

17 (III) AN EMPLOYING UNIT PAYS TO EACH EMPLOYEE WHO WAS
18 CONTINUOUSLY EMPLOYED IMMEDIATELY BEFORE AND AFTER A TRANSFER OF A
19 BUSINESS FOR COVERED EMPLOYMENT IN THIS STATE OR ANOTHER STATE DURING
20 A CALENDAR YEAR PROVIDED THE PAYROLLS AND BENEFITS CHARGES OF THE
21 EMPLOYING UNIT ARE TRANSFERRED FROM ANOTHER STATE TO THIS STATE
22 UNDER § 8-610(B)(1) OF THIS SUBTITLE.

23 (2) If the Federal Unemployment Tax Act or any other federal tax law that
24 allows a credit for a contribution to a state unemployment insurance fund increases the
25 maximum amount of wages taxable under that law in a calendar year to more than \$8,500,
26 the taxable wage base under paragraph (1) of this subsection shall be the same as under
27 the federal law.

28 8-609.

29 (a) (1) In this section the following terms have the meanings indicated.

30 (2) "New employer" means an employing unit that does not qualify for an
31 earned rate under § 8-610 of this subtitle.

32 (3) "Employer industry category" means the 2-digit standard industry
33 classification code promulgated by the Federal Office of Management and Budget.

34 (b) A new employer shall pay contributions at a rate that does not exceed 2.3% of
35 the taxable wage base, and that is the highest of:

36 (1) 1% of the taxable wage base;

37 (2) the 5-year benefit cost rate of the State as computed undersubsection

38 (c) of this section; or

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1 (3) the contribution rate under § 8-611 of this subtitle that applies to an
2 employing unit with a benefit ratio of 0.000.

3 (c) Annually, the Secretary shall compute the 5-year benefit cost rate of the State
4 by dividing the sum of regular benefits, work sharing benefits, and 50% of extended
5 benefits that the State paid during the 5 consecutive calendar years immediately
6 preceding the computation date by the total amount of wages that employing units in the
7 State paid during the same period that were subject to contributions.

8 (d) (1) In this subsection, "foreign contractor" means a person:

9 (i) who, for a commission or fixed price bids on, accepts, or offers to
10 accept orders or contracts for performing or superintending construction, removal, repair,
11 or improvement of any building or structure that is permanently annexed to real property
12 that is owned, controlled, or leased by another person; and

13 (ii) all or a majority part of whose primary operations traditionally
14 have been and continue to be based or headquartered in another state and are not
15 controlled or directed from this State.

16 (2) the contribution rate for a new employer who is a foreign contractor
17 shall be the average of the rates for employers in the State in the same employer industry
18 category as the foreign contractor, except that the rate may not be lower than the new
19 employer rate in effect for that year.

20 8-610.

21 (a) (1) An employing unit that meets the qualifications of this subsection shall
22 be assigned an earned rate of contribution that is based on the experience of the
23 employing unit.

24 (2) An employing unit qualifies under this subsection if, during each of the
25 3 calendar years immediately preceding the computation date the employing unit:

26 (i) had an earned rating record that was chargeable with benefits; and

27 (ii) reported taxable wages on or before the computation date
28 immediately following each of the 3 calendar years.

29 (3) An employing unit that does not qualify under paragraph (2) of this
30 subsection qualifies if:

31 (i) throughout the calendar year immediately preceding the
32 computation date, the employing unit had an earned rating record that was chargeable
33 with benefits;

34 (ii) during each of the 2 calendar years immediately preceding the
35 computation date, the employing unit reported taxable wages on or before the
36 computation date immediately following each of the 2 calendar years.

37 (c) If an employing unit has met each of the requirements to qualify for an earned
38 rate but failed to file contribution reports on or before the appropriate computation date,
39 the Secretary shall assign the employing unit a contribution rate that is the earned rate of
40 the employing unit or the standard rate of contribution, whichever is greater.

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1 8-610.5.

2 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
3 INDICATED.

4 (2) "SUCCESSOR EMPLOYER" MEANS AN EMPLOYER THAT:

5 (I) ACQUIRES, BY SALE OR OTHERWISE, ALL OR PART OF THE
6 ASSETS, BUSINESS, ORGANIZATION, OR TRADE OF AN EXISTING EMPLOYER; AND

7 (II) WAS NOT AN EMPLOYING UNIT BEFORE ACQUIRING THE
8 ASSETS, BUSINESS, ORGANIZATION, OR TRADE OF THE PREDECESSOR EMPLOYER.

9 (3) "NEW EMPLOYER" MEANS AN EMPLOYING UNIT THAT DOES NOT
10 QUALIFY FOR AN EARNED RATE UNDER § 8-610 OF THIS SUBTITLE.

11 (B) A SUCCESSOR EMPLOYER SHALL BE ASSIGNED A CONTRIBUTION RATE
12 ACCORDING TO SUBSECTION (C) OF THIS SECTION.

13 (C) DURING THE FIRST FISCAL YEAR OF THE ACQUISITION OF THE ASSETS,
14 BUSINESS, ORGANIZATION, OR TRADE, THE SUCCESSOR EMPLOYER SHALL ELECT
15 TO:

16 (1) ASSUME THE EXPERIENCE AND CONTRIBUTION RATE OF THE
17 PREDECESSOR EMPLOYER; OR

18 (2) BE CONSIDERED A NEW EMPLOYER AND BE ASSIGNED A
19 CONTRIBUTION RATE IN ACCORDANCE WITH § 8-609 OF THIS SUBTITLE FOR THE
20 FIRST 2 YEARS AFTER THE ACQUISITION OF THE BUSINESS.

21 8-613.

22 (a) (1) In this section the following terms have the meanings indicated.

23 (3) "Successor employer" means an employer that acquires, by sale or
24 otherwise, all or part of the assets, business, organization, or trade of another employer.

25 (c) (1) If a successor employer was not an employing unit before acquiring the
26 assets, business, organization, or trade of a predecessor employer that is an employing
27 unit, the successor employer shall be considered a new employing unit and shall be
28 assigned a contribution rate in accordance with [§ 8-609] § 8-610.5 of this subtitle.

29 (2) If a successor employer was an employing unit before the transfer of the
30 assets, business, organization, or trade and had been assigned a contribution rate under
31 this subtitle:

32 (i) the successor employer shall continue to pay contributions at the
33 previously assigned rate from the date of the transfer through the next December 31; and

34 (ii) beginning on the January 1 after the transfer, the rate of
35 contribution of the successor employing unit for each calendar year shall be based on its
36 experience with payrolls and benefit charges in combination with the proportionate share
37 of payrolls and benefit charges of the predecessor employing unit.

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1 (d) If a predecessor employer does not remain in business after the transfer of all
2 or part of the assets, business, organization, or trade of the predecessor employer:

3 (1) the successor employer is liable for all contributions, interest, and
4 penalties owed by the predecessor employer at the time of the transfer;and

5 (2) if 2 or more successor employers receive the transfer, the successor
6 employers shall be liable in the same proportion as the payroll record of the unit being
7 transferred is to the total business of the predecessor employer.

8 (e) (1) A predecessor employer shall continue to pay contributions at the
9 previously assigned rate through the next December 31 if the predecessor employer:

10 (i) transfers only part of the assets, business, organization, or trade of
11 the predecessor employer;

12 (ii) remains in business; and

13 (iii) has been assigned a contribution rate under this subtitle.

14 (2) If a predecessor employer has met each of the requirements to continue
15 to pay contributions at the previously assigned rate through the December 31 after the
16 transfer, beginning on the January 1 after the transfer the rate of contributions of the
17 predecessor employer for each calendar year shall be based on:

18 (i) its experience with payrolls and benefit charges; and

19 (ii) its proportionate share of experience incurred beforethe transfer.

20 (f) (1) To qualify for an earned rate that is based on a transfer and that is lower
21 than the rate otherwise would be, within 120 days after the transfer, asuccessor employer
22 or new employer shall report the transfer and apply for the lower rate on a form and in
23 the manner that the Secretary provides.

24 (2) If the successor employer or new employer does not comply with
25 paragraph (1) of this subsection in the time required, the Secretary shall adjust the
26 earned rate as of the 1st calendar quarter after compliance.

27 (3) Notwithstanding paragraphs (1) and (2) of this subsection, where a
28 transfer results in a higher earned rate to the successor employer, theSecretary may
29 combine the earned rating record of the predecessor and successor employers and, for the
30 purpose of rate determination, transfer to the successor employer the taxable wages and
31 benefit charges of the predecessor employer at any time.

32 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
33 October 1, 1996.