

**ENROLLED BILL**  
-- Economic Matters/Finance --

Introduced by **Chairman, Economic Matters Committee (By Request -  
Departmental - Labor, Licensing and Regulation)**

Read and Examined by Proofreaders:

\_\_\_\_\_  
Proofreader.

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Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this  
\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_ M.

\_\_\_\_\_  
Speaker.

CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Unemployment Insurance - State Unemployment Tax Avoidance**

3 FOR the purpose of providing for the determination of certain unemployment  
4 insurance experience rates for certain successor employers; repealing certain  
5 provisions of law giving successor employers a certain option in connection with  
6 unemployment insurance experience rates; providing that if the Secretary of  
7 Labor, Licensing, and Regulation determines that a certain transfer occurred for  
8 the sole or primary purpose of obtaining lower contribution rates, certain  
9 experience rating accounts shall be combined and certain employing units shall  
10 be subject to certain penalties; establishing certain civil and criminal penalties;  
11 ~~repealing~~ altering a  
12 certain definition; defining certain terms; making technical corrections;  
13 providing for the application and construction of this Act; and generally relating  
14 to the unemployment insurance law.

15 BY repealing and reenacting, with amendments,

1 Article - Labor and Employment  
2 Section 8-607 and 8-613  
3 Annotated Code of Maryland  
4 (1999 Replacement Volume and 2004 Supplement)

5 BY repealing  
6 Article - Labor and Employment  
7 Section 8-610.5  
8 Annotated Code of Maryland  
9 (1999 Replacement Volume and 2004 Supplement)

10 BY adding to  
11 Article - Labor and Employment  
12 Section 8-614  
13 Annotated Code of Maryland  
14 (1999 Replacement Volume and 2004 Supplement)

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

17 **Article - Labor and Employment**

18 8-607.

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

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

24 (i) an employing unit pays to each employee for covered  
25 employment during a calendar year; OR

26 (ii) an employing unit or predecessor employer, or combination of  
27 both, pays to each employee [for covered employment during a calendar year,  
28 provided that payrolls and benefit charges of the predecessor employing unit are  
29 transferred to its successor employing unit in accordance with § 8-613(c) of this  
30 subtitle; or

31 (iii) an employing unit pays to each employee who was continuously  
32 employed immediately before and after a transfer of a business for covered  
33 employment in this State or another state during a calendar year provided the  
34 payrolls and benefits charges of the employing unit are transferred from another  
35 state to this State under § 8-610(b)(1) of this subtitle] WHO WAS CONTINUOUSLY  
36 EMPLOYED IMMEDIATELY BEFORE AND AFTER A TRANSFER OF A BUSINESS, FOR

1 COVERED EMPLOYMENT IN THIS STATE OR ANOTHER STATE DURING A CALENDAR  
2 YEAR.

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

8 (c) (1) The Secretary shall determine the rate of contribution for each  
9 employing unit as of the computation date for the next calendar year.

10 (2) The rate of contribution is effective for 1 calendar year.

11 (d) (1) By regulation, the Secretary shall set:

12 (i) the date when contributions are due; and

13 (ii) the manner in which contributions are to be paid.

14 (2) In accordance with regulations adopted by the Secretary, an  
15 employing unit shall:

16 (i) submit to the Secretary periodic reports for determination of the  
17 amount of contributions due; and

18 (ii) pay the contribution.

19 (3) For payment of contributions, a fractional part of a cent:

20 (i) that is less than one-half cent shall be disregarded; and

21 (ii) that is one-half cent or more shall be increased to 1 cent.

22 (e) Wages paid by a private, for-profit employing unit to an inmate of a  
23 custodial or penal institution before the inmate is permanently released from the  
24 custodial or penal institution, including released by parole, may not constitute  
25 taxable wages.

26 (f) An employing unit may not deduct contributions, wholly or partly, from the  
27 wages of an employee.

28 [8-610.5.

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

30 (2) "Successor employer" means an employer that:

31 (i) acquires, by sale or otherwise, all or part of the assets, business,  
32 organization, or trade of an existing employer; and

1 (ii) was not an employing unit before acquiring the assets,  
2 business, organization, or trade of the predecessor employer.

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

5 (b) A successor employer shall be assigned a contribution rate according to  
6 subsection (c) of this section.

7 (c) During the first fiscal year of the acquisition of the assets, business,  
8 organization, or trade, the successor employer shall elect to:

9 (1) assume the experience and contribution rate of the predecessor  
10 employer; or

11 (2) be considered a new employer and be assigned a contribution rate in  
12 accordance with § 8-609 of this subtitle for the first 2 years after the acquisition of  
13 the business.]

14 8-613.

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

16 (2) "BUSINESS" OR "TRADE" INCLUDES THE EMPLOYER'S WORKFORCE.

17 ~~(3) NOTWITHSTANDING § 1-101 OF THIS ARTICLE, "PERSON" MEANS, AS~~  
18 ~~DEFINED IN § 7701(A)(1) OF THE INTERNAL REVENUE CODE OF 1986, AN INDIVIDUAL,~~  
19 ~~TRUST, ESTATE, PARTNERSHIP, ASSOCIATION, COMPANY, OR CORPORATION.~~

20 ~~(2)~~ ~~(4)~~ (3) "Reorganized employer" means:

21 (i) an employer that alters its legal status, including changing  
22 from a sole proprietorship or a partnership to a corporation; or

23 (ii) an employer that otherwise changes its trade name or business  
24 identity while remaining under [substantially] ANY OF the same ownership.

25 ~~(3)~~ ~~(5)~~ (4) "Successor employer" means an employer that acquires, by  
26 sale or otherwise, all or part of the assets, business, organization, or trade of another  
27 employer ~~INCLUDING THE EMPLOYER'S WORKFORCE.~~

28 (b) (1) A reorganized employer shall be liable for all contributions, interest,  
29 and penalties owed by the employing unit before the reorganization.

30 (2) A reorganized employer shall continue to pay contributions at the  
31 contribution rate of the employing unit before the reorganization from the date of the  
32 reorganization through the next December 31.

33 (3) Beginning on the January 1 after the reorganization, the rate of  
34 contribution of the reorganized employer shall be based on its experience with

1 payrolls and benefit charges, in combination with the experience with payrolls and  
2 benefit charges of the employing unit before the reorganization.

3 (c) [(1)] If a successor employer was not an employing unit before acquiring  
4 the assets, business, organization, or trade of a predecessor employer that is an  
5 employing unit, AND HAS NO COMMON OWNERSHIP, MANAGEMENT, OR CONTROL  
6 WITH THE PREDECESSOR EMPLOYER, THEN the successor employer shall be  
7 considered a new employing unit and shall be assigned a contribution rate in  
8 accordance with [§ 8-610.5] § 8-609 of this subtitle.

9 [(2)] (D) If a successor employer was an employing unit before [the  
10 transfer of the assets, business, organization, or trade and had been assigned a  
11 contribution rate under this subtitle] ACQUIRING THE ASSETS, BUSINESS,  
12 ORGANIZATION, OR TRADE OF A PREDECESSOR EMPLOYER THAT IS AN EMPLOYING  
13 UNIT, AND HAS NO COMMON OWNERSHIP, MANAGEMENT, OR CONTROL WITH THE  
14 PREDECESSOR EMPLOYER:

15 [(i)] (1) the successor employer shall continue to pay contributions  
16 at the previously assigned rate from the date of the transfer through the next  
17 December 31; [and]

18 [(ii)] (2) beginning on the January 1 after the transfer, AND FOR  
19 EACH CALENDAR YEAR THEREAFTER, the rate of contribution of the successor  
20 [employing unit for each calendar year] EMPLOYER shall be based on its experience  
21 with payrolls and benefit charges in combination with the proportionate share of  
22 payrolls and benefit charges [of] ACQUIRED FROM the predecessor [employing]  
23 EMPLOYER ~~unit~~; AND

24 (3) IF TWO OR MORE SUCCESSOR EMPLOYERS RECEIVE THE TRANSFER,  
25 BEGINNING ON THE JANUARY 1 AFTER THE TRANSFER, AND FOR EACH CALENDAR  
26 YEAR THEREAFTER, THE RATE OF CONTRIBUTION OF EACH SUCCESSOR EMPLOYER  
27 SHALL BE BASED ON ITS EXPERIENCE WITH PAYROLLS AND BENEFIT CHARGES IN  
28 COMBINATION WITH THE PROPORTIONATE SHARE OF PAYROLLS AND BENEFIT  
29 CHARGES ACQUIRED FROM THE PREDECESSOR EMPLOYER.

30 (E) (1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE, IF A  
31 SUCCESSOR EMPLOYER HAS ANY COMMON OWNERSHIP, MANAGEMENT, OR  
32 CONTROL WITH THE PREDECESSOR EMPLOYER, THE CONTRIBUTION RATE OF THE  
33 SUCCESSOR EMPLOYER BEGINNING AS OF THE QUARTER IN WHICH THE DATE OF  
34 TRANSFER OCCURRED THROUGH THE NEXT DECEMBER 31 SHALL BE BASED ON THE  
35 SUCCESSOR EMPLOYER'S EXPERIENCE WITH PAYROLLS AND BENEFIT CHARGES IN  
36 COMBINATION WITH THE PAYROLLS AND BENEFIT CHARGES OF THE PREDECESSOR  
37 EMPLOYER.

38 (2) IF THE TRANSFER OF ASSETS, BUSINESS, ORGANIZATION, OR TRADE  
39 WAS A PARTIAL TRANSFER OF THE PREDECESSOR EMPLOYER'S BUSINESS AND THE  
40 PREDECESSOR EMPLOYER REMAINS IN BUSINESS, BEGINNING ON THE JANUARY 1  
41 AFTER THE TRANSFER, AND FOR EACH CALENDAR YEAR THEREAFTER, THE RATE OF  
42 CONTRIBUTION OF THE SUCCESSOR EMPLOYER SHALL BE BASED ON ITS

1 EXPERIENCE WITH PAYROLLS AND BENEFIT CHARGES IN COMBINATION WITH THE  
2 PROPORTIONATE SHARE OF PAYROLLS AND BENEFIT CHARGES ACQUIRED FROM  
3 THE PREDECESSOR EMPLOYER.

4 (3) IF THE PREDECESSOR EMPLOYER DOES NOT REMAIN IN BUSINESS  
5 AFTER THE TRANSFER OF ALL OR PART OF THE ASSETS, BUSINESS, ORGANIZATION,  
6 OR TRADE OF THE PREDECESSOR EMPLOYER, AND THERE IS ONE SUCCESSOR  
7 EMPLOYER, THEN THE RATE OF CONTRIBUTION OF THE SUCCESSOR EMPLOYER  
8 BEGINNING ON THE JANUARY 1 AFTER THE TRANSFER, AND FOR EACH CALENDAR  
9 YEAR THEREAFTER, SHALL BE BASED ON THE SUCCESSOR EMPLOYER'S EXPERIENCE  
10 WITH PAYROLLS AND BENEFIT CHARGES IN COMBINATION WITH THE PAYROLLS AND  
11 BENEFIT CHARGES OF THE PREDECESSOR EMPLOYER.

12 (4) (I) IF THE PREDECESSOR EMPLOYER DOES NOT REMAIN IN  
13 BUSINESS AFTER THE TRANSFER OF ALL OR PART OF THE ASSETS, BUSINESS,  
14 ORGANIZATION, OR TRADE OF THE PREDECESSOR EMPLOYER, AND THERE ARE TWO  
15 OR MORE SUCCESSOR EMPLOYERS RECEIVING THE TRANSFER, THEN THE RATE OF  
16 CONTRIBUTION FOR EACH OF THE SUCCESSOR EMPLOYERS BEGINNING ON THE  
17 JANUARY 1 AFTER THE TRANSFER, AND FOR EACH CALENDAR YEAR THEREAFTER,  
18 SHALL BE BASED ON THE SUCCESSOR EMPLOYER'S EXPERIENCE WITH PAYROLLS  
19 AND BENEFIT CHARGES IN COMBINATION WITH THE PROPORTIONATE SHARE OF  
20 PAYROLLS AND BENEFIT CHARGES ACQUIRED FROM THE PREDECESSOR EMPLOYER.

21 (II) ANY REMAINING PORTION OF THE PREDECESSOR EMPLOYER'S  
22 EXPERIENCE SHALL BE TRANSFERRED TO THE SUCCESSOR EMPLOYERS ACCORDING  
23 TO EACH SUCCESSOR EMPLOYER'S PROPORTIONATE SHARE OF THE PAYROLL.

24 [(d)] (F) If a predecessor employer does not remain in business after the  
25 transfer of all or part of the assets, business, organization, or trade of the predecessor  
26 employer:

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

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

32 [(e)] (G) (1) A predecessor employer shall continue to pay contributions at  
33 the previously assigned rate through the next December 31 if the predecessor  
34 employer:

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

37 (ii) remains in business; and

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

1 (2) If a predecessor employer has met each of the requirements to  
 2 continue to pay contributions at the previously assigned rate through the December  
 3 31 after the transfer, beginning on the January 1 after the transfer the rate of  
 4 contributions of the predecessor employer for each calendar year shall be based on:

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

6 (ii) its [proportionate share of experience incurred before the  
 7 transfer] EXPERIENCE INCURRED BEFORE THE TRANSFER LESS ANY EXPERIENCE  
 8 THAT WAS TRANSFERRED TO A SUCCESSOR EMPLOYER.

9 [(f)] (H) (1) To qualify for an earned rate that is based on a transfer and  
 10 that is lower than the rate otherwise would be, within 120 days after the transfer, a  
 11 successor employer or new employer shall report the transfer and apply for the lower  
 12 rate on a form and in the manner that the Secretary provides.

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

16 (3) Notwithstanding paragraphs (1) and (2) of this subsection, where a  
 17 transfer results in a higher earned rate to the successor employer, the Secretary may  
 18 combine the earned rating record of the predecessor and successor employers and, for  
 19 the purpose of rate determination, transfer to the successor employer the taxable  
 20 wages and benefit charges of the predecessor employer at any time.

21 8-614.

22 (A) IN THIS SECTION THE FOLLOWING TERMS HAVE THE MEANINGS  
 23 INDICATED.

24 (1) "KNOWINGLY" MEANS HAVING ACTUAL KNOWLEDGE OR ACTING  
 25 WITH DELIBERATE IGNORANCE OR RECKLESS DISREGARD FOR THE PROHIBITION  
 26 INVOLVED.

27 (2) "VIOLATES OR ATTEMPTS TO VIOLATE" INCLUDES INTENT TO EVADE,  
 28 MISREPRESENTATION, OR WILLFUL NONDISCLOSURE.

29 (3) "TRADE OR BUSINESS" INCLUDES THE EMPLOYER'S WORKFORCE.

30 (4) NOTWITHSTANDING § 1-101 OF THIS ARTICLE, "PERSON" MEANS, AS  
 31 DEFINED IN § 7701(A)(1) OF THE INTERNAL REVENUE CODE OF 1986, AN INDIVIDUAL,  
 32 TRUST, ESTATE, PARTNERSHIP, ASSOCIATION, COMPANY, OR CORPORATION.

33 ~~(3) "TRADE OR BUSINESS" INCLUDES THE EMPLOYER'S WORKFORCE.~~

34 (B) IF, FOLLOWING A TRANSFER OF EXPERIENCE, THE SECRETARY  
 35 DETERMINES THAT THE TRANSFER OF TRADE OR BUSINESS OCCURRED PRIMARILY  
 36 OR SOLELY TO OBTAIN A REDUCED LIABILITY FOR CONTRIBUTIONS:

1 (1) THE EXPERIENCE RATING ACCOUNTS OF THE EMPLOYING UNITS  
2 INVOLVED SHALL BE COMBINED INTO A SINGLE ACCOUNT AND A SINGLE RATE  
3 ASSIGNED TO THE ACCOUNT; AND

4 (2) THE EMPLOYING UNITS SHALL BE SUBJECT TO THE PENALTIES SET  
5 FORTH IN THIS SECTION.

6 (C) IF, AN EMPLOYING UNIT KNOWINGLY VIOLATES OR ATTEMPTS TO  
7 VIOLATE ANY PROVISION OF THIS SUBTITLE RELATED TO DETERMINING THE  
8 ASSIGNMENT OF A CONTRIBUTION RATE, THE EMPLOYING UNIT SHALL BE SUBJECT  
9 TO THE FOLLOWING PENALTIES:

10 (1) THE EMPLOYING UNIT SHALL BE ASSIGNED THE HIGHEST RATE  
11 ASSIGNABLE UNDER THIS SUBTITLE FOR THE RATE YEAR DURING WHICH THE  
12 VIOLATION OR ATTEMPTED VIOLATION OCCURRED AND THE 3 RATE YEARS  
13 IMMEDIATELY FOLLOWING THIS RATE YEAR; OR

14 (2) IF THE EMPLOYING UNIT IS ALREADY ASSIGNED THE HIGHEST RATE  
15 FOR ANY YEAR, OR IF THE AMOUNT OF INCREASE IN THE EMPLOYING UNIT'S RATE  
16 WOULD BE LESS THAN 2% FOR THAT YEAR, THEN A PENALTY RATE OF  
17 CONTRIBUTIONS OF 2% OF TAXABLE WAGES SHALL BE IMPOSED FOR THAT YEAR.

18 (D) IF A PERSON, WHO IS NOT AN EMPLOYING UNIT, VIOLATES, ATTEMPTS TO  
19 VIOLATE, OR KNOWINGLY ADVISES AN EMPLOYING UNIT IN A MANNER THAT  
20 RESULTS IN A VIOLATION OF THIS SUBTITLE SHALL BE SUBJECT TO A CIVIL MONEY  
21 PENALTY OF NOT MORE THAN \$5,000.

22 (E) THE SECRETARY SHALL ESTABLISH PROCEDURES TO IDENTIFY THE  
23 TRANSFER OR ACQUISITION OF A TRADE OR BUSINESS FOR PURPOSES OF THIS  
24 SECTION AND § 8-613 OF THIS SUBTITLE.

25 (F) AN EMPLOYING UNIT THAT KNOWINGLY VIOLATES OR ATTEMPTS TO  
26 VIOLATE ANY PROVISION OF THIS SUBTITLE IS GUILTY OF A MISDEMEANOR AND ON  
27 CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT  
28 EXCEEDING \$10,000 OR BOTH.

29 (G) A PERSON, WHO IS NOT AN EMPLOYING UNIT, WHO VIOLATES, OR  
30 ATTEMPTS TO VIOLATE, OR WHO KNOWINGLY ADVISES AN EMPLOYING UNIT OR A  
31 PROSPECTIVE EMPLOYING UNIT IN A MANNER THAT RESULTS IN A VIOLATION OF  
32 THIS SUBTITLE, IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO  
33 IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING \$10,000 OR  
34 BOTH.

35 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be  
36 interpreted and applied in such a manner as to meet the minimum requirements  
37 contained in any guidance or regulations issued by the United States Department of  
38 Labor.

39 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall apply to  
40 the assignment of contribution rates effective on or after January 1, 2006.



1 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take  
2 effect July 1, 2005.