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

Introduced and read first time: March 7, 2005

Assigned to: Rules and Executive Nominations

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A BILL ENTITLED

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 altering the determination of rates for successor employers; making technical  
12 corrections; providing for the application and construction of this Act; and  
13 generally relating to the unemployment insurance law.

14 BY repealing and reenacting, with amendments,  
15 Article - Labor and Employment  
16 Section 8-607 and 8-613  
17 Annotated Code of Maryland  
18 (1999 Replacement Volume and 2004 Supplement)

19 BY repealing  
20 Article - Labor and Employment  
21 Section 8-610.5  
22 Annotated Code of Maryland  
23 (1999 Replacement Volume and 2004 Supplement)

24 BY adding to  
25 Article - Labor and Employment  
26 Section 8-614  
27 Annotated Code of Maryland  
28 (1999 Replacement Volume and 2004 Supplement)

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

3 **Article - Labor and Employment**

4 8-607.

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

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

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

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

17 (iii) an employing unit pays to each employee who was continuously  
18 employed immediately before and after a transfer of a business for covered  
19 employment in this State or another state during a calendar year provided the  
20 payrolls and benefits charges of the employing unit are transferred from another  
21 state to this State under § 8-610(b)(1) of this subtitle] WHO WAS CONTINUOUSLY  
22 EMPLOYED IMMEDIATELY BEFORE AND AFTER A TRANSFER OF A BUSINESS, FOR  
23 COVERED EMPLOYMENT IN THIS STATE OR ANOTHER STATE DURING A CALENDAR  
24 YEAR.

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

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

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

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

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

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

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

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

5                   (ii)    pay the contribution.

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

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

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

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

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

15 [8-610.5.

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

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

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

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

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

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

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

28                   (1)     assume the experience and contribution rate of the predecessor  
29 employer; or

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

1 8-613.

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

3 (2) "Reorganized employer" means:

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

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

8 (3) "Successor employer" means an employer that acquires, by sale or  
9 otherwise, all or part of the assets, business, organization, or trade of another  
10 employer **INCLUDING THE EMPLOYER'S WORKFORCE**.

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

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

16 (3) Beginning on the January 1 after the reorganization, the rate of  
17 contribution of the reorganized employer shall be based on its experience with  
18 payrolls and benefit charges, in combination with the experience with payrolls and  
19 benefit charges of the employing unit before the reorganization.

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

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

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

35 [(ii)] (2) beginning on the January 1 after the transfer, **AND FOR**  
36 **EACH CALENDAR YEAR THEREAFTER**, the rate of contribution of the successor  
37 [employing unit for each calendar year] **EMPLOYER** shall be based on its experience  
38 with payrolls and benefit charges in combination with the proportionate share of

1 payrolls and benefit charges [of] ACQUIRED FROM the predecessor [employing]  
2 EMPLOYER unit; AND

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

9 (E) (1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE, IF A  
10 SUCCESSOR EMPLOYER HAS ANY COMMON OWNERSHIP, MANAGEMENT, OR  
11 CONTROL WITH THE PREDECESSOR EMPLOYER, THE CONTRIBUTION RATE OF THE  
12 SUCCESSOR EMPLOYER BEGINNING AS OF THE QUARTER IN WHICH THE DATE OF  
13 TRANSFER OCCURRED THROUGH THE NEXT DECEMBER 31 SHALL BE BASED ON THE  
14 SUCCESSOR EMPLOYER'S EXPERIENCE WITH PAYROLLS AND BENEFIT CHARGES IN  
15 COMBINATION WITH THE PAYROLLS AND BENEFIT CHARGES OF THE PREDECESSOR  
16 EMPLOYER.

17 (2) IF THE TRANSFER OF ASSETS, BUSINESS, ORGANIZATION, OR TRADE  
18 WAS A PARTIAL TRANSFER OF THE PREDECESSOR EMPLOYER'S BUSINESS AND THE  
19 PREDECESSOR EMPLOYER REMAINS IN BUSINESS, BEGINNING ON THE JANUARY 1  
20 AFTER THE TRANSFER, AND FOR EACH CALENDAR YEAR THEREAFTER, THE RATE OF  
21 CONTRIBUTION OF THE SUCCESSOR EMPLOYER SHALL BE BASED ON ITS  
22 EXPERIENCE WITH PAYROLLS AND BENEFIT CHARGES IN COMBINATION WITH THE  
23 PROPORTIONATE SHARE OF PAYROLLS AND BENEFIT CHARGES ACQUIRED FROM  
24 THE PREDECESSOR EMPLOYER.

25 (3) IF THE PREDECESSOR EMPLOYER DOES NOT REMAIN IN BUSINESS  
26 AFTER THE TRANSFER OF ALL OR PART OF THE ASSETS, BUSINESS, ORGANIZATION,  
27 OR TRADE OF THE PREDECESSOR EMPLOYER, AND THERE IS ONE SUCCESSOR  
28 EMPLOYER, THEN THE RATE OF CONTRIBUTION OF THE SUCCESSOR EMPLOYER  
29 BEGINNING ON THE JANUARY 1 AFTER THE TRANSFER, AND FOR EACH CALENDAR  
30 YEAR THEREAFTER, SHALL BE BASED ON THE SUCCESSOR EMPLOYER'S EXPERIENCE  
31 WITH PAYROLLS AND BENEFIT CHARGES IN COMBINATION WITH THE PAYROLLS AND  
32 BENEFIT CHARGES OF THE PREDECESSOR EMPLOYER.

33 (4) (I) IF THE PREDECESSOR EMPLOYER DOES NOT REMAIN IN  
34 BUSINESS AFTER THE TRANSFER OF ALL OR PART OF THE ASSETS, BUSINESS,  
35 ORGANIZATION, OR TRADE OF THE PREDECESSOR EMPLOYER, AND THERE ARE TWO  
36 OR MORE SUCCESSOR EMPLOYERS RECEIVING THE TRANSFER, THEN THE RATE OF  
37 CONTRIBUTION FOR EACH OF THE SUCCESSOR EMPLOYERS BEGINNING ON THE  
38 JANUARY 1 AFTER THE TRANSFER, AND FOR EACH CALENDAR YEAR THEREAFTER,  
39 SHALL BE BASED ON THE SUCCESSOR EMPLOYER'S EXPERIENCE WITH PAYROLLS  
40 AND BENEFIT CHARGES IN COMBINATION WITH THE PROPORTIONATE SHARE OF  
41 PAYROLLS AND BENEFIT CHARGES ACQUIRED FROM THE PREDECESSOR EMPLOYER.

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

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

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

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

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

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

17 (ii) remains in business; and

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

19 (2) If a predecessor employer has met each of the requirements to  
20 continue to pay contributions at the previously assigned rate through the December  
21 31 after the transfer, beginning on the January 1 after the transfer the rate of  
22 contributions of the predecessor employer for each calendar year shall be based on:

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

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

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

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

34 (3) Notwithstanding paragraphs (1) and (2) of this subsection, where a  
35 transfer results in a higher earned rate to the successor employer, the Secretary may  
36 combine the earned rating record of the predecessor and successor employers and, for

1 the purpose of rate determination, transfer to the successor employer the taxable  
2 wages and benefit charges of the predecessor employer at any time.

3 8-614.

4 (A) IN THIS SECTION THE FOLLOWING TERMS HAVE THE MEANINGS  
5 INDICATED.

6 (1) "KNOWINGLY" MEANS HAVING ACTUAL KNOWLEDGE OR ACTING  
7 WITH DELIBERATE IGNORANCE OR RECKLESS DISREGARD FOR THE PROHIBITION  
8 INVOLVED.

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

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

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

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

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

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

24 (1) THE EMPLOYING UNIT SHALL BE ASSIGNED THE HIGHEST RATE  
25 ASSIGNABLE UNDER THIS SUBTITLE FOR THE RATE YEAR DURING WHICH THE  
26 VIOLATION OR ATTEMPTED VIOLATION OCCURRED AND THE 3 RATE YEARS  
27 IMMEDIATELY FOLLOWING THIS RATE YEAR; OR

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

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

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

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

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

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

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

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