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

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Assigned to: Rules and Executive Nominations

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 25, 2005

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 altering the determination of rates for successor employers; repealing a certain
12 definition; defining certain terms; making technical corrections; providing for
13 the application and construction of this Act; and generally relating to the
14 unemployment insurance law.

15 BY repealing and reenacting, with amendments,
16 Article - Labor and Employment
17 Section 8-607 and 8-613
18 Annotated Code of Maryland
19 (1999 Replacement Volume and 2004 Supplement)

20 BY repealing
21 Article - Labor and Employment
22 Section 8-610.5
23 Annotated Code of Maryland

1 (1999 Replacement Volume and 2004 Supplement)

2 BY adding to

3 Article - Labor and Employment

4 Section 8-614

5 Annotated Code of Maryland

6 (1999 Replacement Volume and 2004 Supplement)

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

9 **Article - Labor and Employment**

10 8-607.

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

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

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

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

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

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

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

- 1 (2) The rate of contribution is effective for 1 calendar year.
- 2 (d) (1) By regulation, the Secretary shall set:
- 3 (i) the date when contributions are due; and
- 4 (ii) the manner in which contributions are to be paid.
- 5 (2) In accordance with regulations adopted by the Secretary, an
6 employing unit shall:
- 7 (i) submit to the Secretary periodic reports for determination of the
8 amount of contributions due; and
- 9 (ii) pay the contribution.
- 10 (3) For payment of contributions, a fractional part of a cent:
- 11 (i) that is less than one-half cent shall be disregarded; and
- 12 (ii) that is one-half cent or more shall be increased to 1 cent.
- 13 (e) Wages paid by a private, for-profit employing unit to an inmate of a
14 custodial or penal institution before the inmate is permanently released from the
15 custodial or penal institution, including released by parole, may not constitute
16 taxable wages.
- 17 (f) An employing unit may not deduct contributions, wholly or partly, from the
18 wages of an employee.
- 19 [8-610.5.
- 20 (a) (1) In this section the following words have the meanings indicated.
- 21 (2) "Successor employer" means an employer that:
- 22 (i) acquires, by sale or otherwise, all or part of the assets, business,
23 organization, or trade of an existing employer; and
- 24 (ii) was not an employing unit before acquiring the assets,
25 business, organization, or trade of the predecessor employer.
- 26 (3) "New employer" means an employing unit that does not qualify for an
27 earned rate under § 8-610 of this subtitle.
- 28 (b) A successor employer shall be assigned a contribution rate according to
29 subsection (c) of this section.
- 30 (c) During the first fiscal year of the acquisition of the assets, business,
31 organization, or trade, the successor employer shall elect to:

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

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

6 8-613.

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

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

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

12 ~~(2)~~ (4) "Reorganized employer" means:

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

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

17 ~~(3)~~ (5) "Successor employer" means an employer that acquires, by sale
18 or otherwise, all or part of the assets, business, organization, or trade of another
19 employer ~~INCLUDING THE EMPLOYER'S WORKFORCE.~~

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

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

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

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

35 [(2)] (D) If a successor employer was an employing unit before [the
36 transfer of the assets, business, organization, or trade and had been assigned a

1 contribution rate under this subtitle] ACQUIRING THE ASSETS, BUSINESS,
2 ORGANIZATION, OR TRADE OF A PREDECESSOR EMPLOYER THAT IS AN EMPLOYING
3 UNIT, AND HAS NO COMMON OWNERSHIP, MANAGEMENT, OR CONTROL WITH THE
4 PREDECESSOR EMPLOYER:

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

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

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

20 (E) (1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE, IF A
21 SUCCESSOR EMPLOYER HAS ANY COMMON OWNERSHIP, MANAGEMENT, OR
22 CONTROL WITH THE PREDECESSOR EMPLOYER, THE CONTRIBUTION RATE OF THE
23 SUCCESSOR EMPLOYER BEGINNING AS OF THE QUARTER IN WHICH THE DATE OF
24 TRANSFER OCCURRED THROUGH THE NEXT DECEMBER 31 SHALL BE BASED ON THE
25 SUCCESSOR EMPLOYER'S EXPERIENCE WITH PAYROLLS AND BENEFIT CHARGES IN
26 COMBINATION WITH THE PAYROLLS AND BENEFIT CHARGES OF THE PREDECESSOR
27 EMPLOYER.

28 (2) IF THE TRANSFER OF ASSETS, BUSINESS, ORGANIZATION, OR TRADE
29 WAS A PARTIAL TRANSFER OF THE PREDECESSOR EMPLOYER'S BUSINESS AND THE
30 PREDECESSOR EMPLOYER REMAINS IN BUSINESS, BEGINNING ON THE JANUARY 1
31 AFTER THE TRANSFER, AND FOR EACH CALENDAR YEAR THEREAFTER, THE RATE OF
32 CONTRIBUTION OF THE SUCCESSOR EMPLOYER SHALL BE BASED ON ITS
33 EXPERIENCE WITH PAYROLLS AND BENEFIT CHARGES IN COMBINATION WITH THE
34 PROPORTIONATE SHARE OF PAYROLLS AND BENEFIT CHARGES ACQUIRED FROM
35 THE PREDECESSOR EMPLOYER.

36 (3) IF THE PREDECESSOR EMPLOYER DOES NOT REMAIN IN BUSINESS
37 AFTER THE TRANSFER OF ALL OR PART OF THE ASSETS, BUSINESS, ORGANIZATION,
38 OR TRADE OF THE PREDECESSOR EMPLOYER, AND THERE IS ONE SUCCESSOR
39 EMPLOYER, THEN THE RATE OF CONTRIBUTION OF THE SUCCESSOR EMPLOYER
40 BEGINNING ON THE JANUARY 1 AFTER THE TRANSFER, AND FOR EACH CALENDAR
41 YEAR THEREAFTER, SHALL BE BASED ON THE SUCCESSOR EMPLOYER'S EXPERIENCE
42 WITH PAYROLLS AND BENEFIT CHARGES IN COMBINATION WITH THE PAYROLLS AND
43 BENEFIT CHARGES OF THE PREDECESSOR EMPLOYER.

1 (4) (I) IF THE PREDECESSOR EMPLOYER DOES NOT REMAIN IN
2 BUSINESS AFTER THE TRANSFER OF ALL OR PART OF THE ASSETS, BUSINESS,
3 ORGANIZATION, OR TRADE OF THE PREDECESSOR EMPLOYER, AND THERE ARE TWO
4 OR MORE SUCCESSOR EMPLOYERS RECEIVING THE TRANSFER, THEN THE RATE OF
5 CONTRIBUTION FOR EACH OF THE SUCCESSOR EMPLOYERS BEGINNING ON THE
6 JANUARY 1 AFTER THE TRANSFER, AND FOR EACH CALENDAR YEAR THEREAFTER,
7 SHALL BE BASED ON THE SUCCESSOR EMPLOYER'S EXPERIENCE WITH PAYROLLS
8 AND BENEFIT CHARGES IN COMBINATION WITH THE PROPORTIONATE SHARE OF
9 PAYROLLS AND BENEFIT CHARGES ACQUIRED FROM THE PREDECESSOR EMPLOYER.

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

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

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

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

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

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

26 (ii) remains in business; and

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

28 (2) If a predecessor employer has met each of the requirements to
29 continue to pay contributions at the previously assigned rate through the December
30 31 after the transfer, beginning on the January 1 after the transfer the rate of
31 contributions of the predecessor employer for each calendar year shall be based on:

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

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

36 [(f)] (H) (1) To qualify for an earned rate that is based on a transfer and
37 that is lower than the rate otherwise would be, within 120 days after the transfer, a

1 successor employer or new employer shall report the transfer and apply for the lower
2 rate on a form and in the manner that the Secretary provides.

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

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

11 8-614.

12 (A) IN THIS SECTION THE FOLLOWING TERMS HAVE THE MEANINGS
13 INDICATED.

14 (1) "KNOWINGLY" MEANS HAVING ACTUAL KNOWLEDGE OR ACTING
15 WITH DELIBERATE IGNORANCE OR RECKLESS DISREGARD FOR THE PROHIBITION
16 INVOLVED.

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

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

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

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

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

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

32 (1) THE EMPLOYING UNIT SHALL BE ASSIGNED THE HIGHEST RATE
33 ASSIGNABLE UNDER THIS SUBTITLE FOR THE RATE YEAR DURING WHICH THE
34 VIOLATION OR ATTEMPTED VIOLATION OCCURRED AND THE 3 RATE YEARS
35 IMMEDIATELY FOLLOWING THIS RATE YEAR; OR

36 (2) IF THE EMPLOYING UNIT IS ALREADY ASSIGNED THE HIGHEST RATE
37 FOR ANY YEAR, OR IF THE AMOUNT OF INCREASE IN THE EMPLOYING UNIT'S RATE

1 WOULD BE LESS THAN 2% FOR THAT YEAR, THEN A PENALTY RATE OF
2 CONTRIBUTIONS OF 2% OF TAXABLE WAGES SHALL BE IMPOSED FOR THAT YEAR.

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

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

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

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

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

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

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