



SPONSOR: Sen. Marshall & Rep. Oberle
Sen. Venables & Rep. Viola

DELAWARE STATE SENATE
143rd GENERAL ASSEMBLY
SENATE BILL NO. 130

AN ACT TO AMEND CHAPTER 33, TITLE 19 OF THE DELAWARE CODE RELATING TO UNEMPLOYMENT
COMPENSATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to
each house thereof concurring therein):

Section 1. Amend §3353, Chapter 33, Title 19 of the Delaware Code by deleting this section in its entirety and substituting
in lieu thereof a new §3353 to read as follows:

“§3353. Transfers of Experience and Assignment of Rates.

Notwithstanding any other provision of law, the following shall apply regarding transfers of experience and assignment of rates:

(a) If an employer transfers its trade or business, or a portion thereof, to another employer and, at the time of the transfer,
there is any common ownership, management or control of the two employers, then the unemployment experience attributable to
the transferred trade or business shall be transferred to the employer to whom such business is so transferred. The rates of both
employers shall be recalculated and made effective immediately upon the date of the transfer of trade or business.

(b) Whenever a person who is not an employer under this Chapter at the time it acquires the trade or business of an
employer, the unemployment experience of the acquired business shall not be transferred to such person if the Department finds that
such person acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions. Instead, such
person shall be assigned the applicable new employer rate under §3348 of this Chapter. In determining whether the business was
acquired solely or primarily for the purpose of obtaining a lower rate of contributions, the Department shall use objective factors
which may include the cost of acquiring the business, whether the person continued the business enterprise of the acquired business,
how long such business enterprise was continued, or whether new employees were hired for performance of duties unrelated to the
business activity conducted prior to acquisition.

(c)(1) If a person knowingly violates or attempts to violate subsections (a) or (b) or any other provision of this Chapter
related to determining the assignment of a contribution rate, or if a person knowingly advises another person in a way that results in
a violation of such provision, the person shall be subject to the following penalties:

(A) If the person is an employer, then such employer shall be assigned the highest rate assignable under this

Chapter for the rate year during which such violation or attempted violation occurred and the three rate years immediately

22 following this rate year. However, if the person's business is already at such highest rate for any year, or if the amount of
23 increase in the person's rate would be less than 2 percent for such year, then a penalty rate of contributions of 2 percent of
24 taxable wages shall be imposed for such year.

25 (B) If the person is not an employer, such person shall be subject to a civil monetary penalty of not more than
26 \$5,000. Any such penalty shall be deposited in the penalty and interest account established under §3166, Chapter 31 of
27 this Title.

28 (2) For purposes of this section, the term "knowingly" means having actual knowledge of, or acting with
29 deliberate ignorance or reckless disregard for, the prohibition involved.

30 (3) For purposes of this section, the term "violates or attempts to violate" includes, but is not limited to,
31 intent to evade, misrepresentation or willful nondisclosure.

32 (4) In addition to the penalty imposed by subsection (c) (1), any violation of this section may be
33 prosecuted as a Class B misdemeanor under Title 11, Chapter 42, §4202 (a) (2) of the Delaware Code.

34 (d) The Department shall establish procedures to identify the transfer or acquisition of a
35 business for purposes of this section.

36 (e) For purposes of this section:

37 (1) 'Person' has the meaning given such term by section 7701(a)(1) of the Internal Revenue Code of
38 1986, and

39 (2) 'Trade or business' shall include the employer's workforce.

40 (f) This section shall be interpreted and applied in such a manner as to meet the minimum
41 requirements contained in any guidance or regulations issued by the United States Department of Labor."

42 Section 2: This legislation shall be effective January 1, 2006.

SYNOPSIS

This legislation is required to bring Delaware's Unemployment Insurance Code into compliance and conformity with the provisions of federal law---Public Law No. 108-295, the "SUTA Prevention Act of 2004". The provisions of Public Law No. 108-295 and this legislation are intended to prohibit the following two methods of SUTA dumping (deliberate avoidance of the payment of the proper unemployment insurance tax):

An employer escapes the proper unemployment insurance tax rate based on actual employer experience by setting up a shell company and then transferring some or all of its workforce (and the accompanying payroll) to the shell company after the shell company has earned a low unemployment insurance tax rate. The transferred payroll is then taxed at the shell company's lower tax rate.

An entity commencing a business purchases an existing small business with a low unemployment insurance tax rate. Instead of being assigned the new employer tax rate, the entity receives the small business's lower tax rate. Typically, the new business ceases the business activity of the purchased business and commences a different type of business activity.

The effective date of this legislation is January 1, 2006.

Author: Senator Marshall