

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

FIRST REGULAR SESSION-2005

Legislative Document

No. 995

S.P. 335

In Senate, February 24, 2005

An Act To Conform Maine Employment Security Law with the Federal SUTA Dumping Prevention Act of 2004

Submitted by the Department of Labor pursuant to Joint Rule 204.
Reference to the Committee on Labor suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator STRIMLING of Cumberland.
Cosponsored by Representative HALL of Holden and
Senator: HOBBS of York, Representatives: CLARK of Millinocket, CRESSEY of Cornish,
DUPLESSIE of Westbrook, HOTHAM of Dixfield, HUTTON of Bowdoinham, PERRY of
Calais.

2 **Be it enacted by the People of the State of Maine as follows:**

4 **Sec. 1. 26 MRSA §1221, sub-§5-A** is enacted to read:

6 5-A. Transfers of experience and assignment of rates.
7 Notwithstanding subsection 5, the following applies to the
8 assignment of rates and transfers of experience.

10 A. If an employer transfers its trade or business, or a
11 portion of its trade or business, to another employer and,
12 at the time of the transfer, there is substantially common
13 ownership, management or control of the 2 employers, then
14 the unemployment experience attributable to the transferred
15 trade or business is transferred to the employer to whom the
16 business is transferred. The rates of both employers must be
17 recalculated and made effective immediately upon the date of
18 the transfer of the trade or business.

20 B. Whenever a person who is not an employer under this
21 chapter acquires the trade or business of an employer, the
22 unemployment experience of the acquired trade or business is
23 not transferred to that person if the commissioner finds
24 that the person acquired the trade or business solely or
25 primarily for the purpose of obtaining a lower rate of
26 contributions. In such circumstances, the person acquiring
27 the trade or business is assigned the applicable new
28 employer rate under subsection 4-A. In determining whether
29 the trade or business was acquired solely or primarily for
30 the purpose of obtaining a lower rate of contributions, the
31 commissioner shall consider objective factors that may
32 include the cost of acquiring the trade or business, whether
33 the person continued the business enterprise of the acquired
34 trade or business, how long the business enterprise was
35 continued or whether a substantial number of new employees
36 were hired for performance of duties unrelated to the
37 business activity conducted prior to acquisition.

38 C. If a person knowingly violates or attempts to violate
39 paragraph A or B or any other provision of this chapter
40 related to determining the assignment of a contribution rate
41 or if a person knowingly advises another person in a way
42 that results in a violation of such a provision, the person
43 commits a Class D crime. In addition, the person is subject
44 to the following:

46 (1) If the person is an employer, then that employer
47 is assigned the highest rate assignable under this
48 chapter for the rate year during which the violation or
49 attempted violation occurred and for the 3 rate years
50 immediately following that rate year, except that, if
51 the person's business is already at the highest rate

2 for any year or if the amount of increase in the
3 person's rate would be less than 2% for such year, then
4 a penalty rate of contributions of 2% of taxable wages
5 is imposed for that year; and

6 (2) If the person is not an employer, that person is
7 subject to a fine of not more than \$5,000, which must
8 be deposited in the Special Administrative Expense Fund
9 established under section 1164.

10 D. As used in this subsection, unless the context otherwise
11 indicates, the following terms have the following meanings.

12 (1) "Knowingly" means having actual knowledge of or
13 acting with deliberate ignorance or reckless disregard
14 for the prohibition involved.

15 (2) "Person" has the meaning given that term by Section
16 7701(a)(1) of the Internal Revenue Code of 1986.

17 (3) "Trade or business" includes the employer's
18 workforce.

19 (4) "Violates or attempts to violate" includes, but is
20 not limited to, intent to evade, misrepresentation or
21 willful nondisclosure.

22 E. The commissioner shall adopt rules to identify the
23 transfer or acquisition of a business for purposes of this
24 subsection. Rules adopted pursuant to this paragraph are
25 routine technical rules as defined in Title 5, chapter 375,
26 subchapter 2-A.

27 F. This subsection must be interpreted and applied in such
28 a manner as to meet the minimum requirements contained in
29 any guidance or regulations issued by the United States
30 Department of Labor.

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40 **SUMMARY**

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42 The purpose of this bill is to help detect businesses with
43 high unemployment insurance tax rates resulting from a high
44 volume of layoff activity setting up shell companies and
45 transferring their employees to the shell companies to get lower,
46 new-employer unemployment insurance tax rates and deters those
47 businesses from doing so. Federal legislation to address this
48 type of unemployment tax rate manipulation was recently enacted,
49 and this bill is designed to keep Maine law in compliance with
50 federal law.