

House Bill 520

By: Representatives Coan of the 101st, Williams of the 4th, Horne of the 71st, Carter of the 159th, Butler of the 18th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 8 of Title 34 of the Official Code of Georgia Annotated, relating to
2 employment security, so as to provide a change to the definition of the term "employment";
3 to identify certain business acquisitions with respect to which the succession of experience
4 tax rates shall not be permitted and to impose civil and criminal penalties with regard thereto;
5 to extend suspension of adjustments based upon the State-wide Reserve Ratio for the
6 calendar year 2006 and to provide for a reduced adjustment in contribution rates through
7 December 31, 2006; to continue provisions relating to administrative assessments; to provide
8 for a change in the weekly benefit amount over a two-year period; to provide for the
9 Department of Labor a supplemental appropriation, pursuant to and in accordance with the
10 provisions of Code Section 34-8-81, relating to the creation and purposes of the Employment
11 Security Administration Fund, and Code Section 34-8-85, relating to certain withdrawals
12 from the Unemployment Trust Fund, of additional funds which are otherwise available to the
13 Department of Labor out of funds credited to and held in this state's account in the
14 Unemployment Trust Fund by the Secretary of the Treasury of the United States pursuant to
15 Section 903 of the Social Security Act, as amended, for the purpose of providing for the
16 payment of expenses of administration of Chapter 8 of Title 34 of the Official Code of
17 Georgia Annotated, the "Employment Security Law," as amended, including personal
18 services and operating and other expenses incurred in the administration of said law, as well
19 as for the procurement, through purchase or rental, either or both, of offices, lands, buildings
20 or parts of buildings, fixtures, furnishings, equipment, technology, data, reports and studies,
21 supplies, and the construction of buildings or parts of buildings suitable for use in this state
22 by the Department of Labor, and for the payment of expenses incurred for the construction,
23 maintenance, improvements, or repair of or alterations to such real or personal property; to
24 authorize the Commissioner of Labor to direct the obligation and expenditure of said funds
25 and to employ workers, contract with persons, public and private agencies, corporations, and
26 other entities, and to do all other things necessary to accomplish such purposes; to provide
27 for related matters; to provide an effective date; to repeal conflicting laws; and for other
28 purposes.

1 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

2 **SECTION 1.**

3 Chapter 8 of Title 34 of the Official Code of Georgia Annotated, relating to employment
4 security, is amended by striking the word "or" at the end of paragraph (15) and by striking
5 the period and inserting "; or" at the end of paragraph (16) of subsection (n) of Code Section
6 34-8-35, relating to employment, and inserting at the end of said subsection a new paragraph
7 (17) to read as follows:

8 "(17) Services performed for a common carrier of property by an individual consisting
9 of the pickup, transportation, and delivery of property; provided that:

10 (A) The individual is free to accept or reject assignments from the common carrier;

11 (B) Remuneration for the individual is on the basis of commissions or deliveries
12 accomplished;

13 (C) Such individual personally provides the vehicle used in the pickup, transportation,
14 and delivery of the property;

15 (D) Such individual has a written contract with the common carrier;

16 (E) The written contract states expressly and prominently that the individual knows:

17 (i) Of the responsibility to pay estimated social security taxes and state and federal
18 income taxes;

19 (ii) That the social security tax the individual must pay is higher than the social
20 security tax the individual would pay if he or she were an employee; and

21 (iii) That the work is not covered by the unemployment compensation laws of
22 Georgia; and

23 (F) The written contract does not prohibit such individual from the pickup,
24 transportation, or delivery of property for more than one common carrier or any other
25 person or entity."

26 **SECTION 2.**

27 Said chapter is further amended by striking in its entirety Code Section 34-8-151, relating
28 to the rate of employer contributions, and inserting in lieu thereof the following:

29 "34-8-151.

30 (a) For periods prior to April 1, 1987, or after December 31, ~~2005~~ 2011, each new or
31 newly covered employer shall pay contributions at a rate of 2.7 percent of wages paid by
32 such employer with respect to employment during each calendar year until the employer
33 is eligible for a rate calculation based on experience as defined in this chapter, except as
34 provided in Code Sections 34-8-158 through 34-8-162.

1 (b) For periods on or after April 1, 1987, but on or before December 31, 1999, each new
 2 or newly covered employer shall pay contributions at a rate of 2.64 percent of wages paid
 3 by such employer with respect to employment during each calendar year until the employer
 4 is eligible for a rate calculation based on experience as defined in this chapter, except as
 5 provided in Code Sections 34-8-158 through 34-8-162.

6 (c) For periods on or after January 1, 2000, but on or before December 31, ~~2005~~, 2011
 7 each new or newly covered employer shall pay contributions at a rate of 2.62 percent of
 8 wages paid by such employer with respect to employment during each calendar year until
 9 the employer is eligible for a rate calculation based on experience as defined in this
 10 chapter, except as provided in Code Sections 34-8-158, 34-8-159, 34-8-160, 34-8-161, and
 11 34-8-162."

12 SECTION 3.

13 Said chapter is further amended by striking in its entirety Code Section 34-8-153, relating
 14 to the liability of succeeding employers and computation of rate of contributions, and
 15 inserting in lieu thereof the following:

16 "34-8-153.

17 (a) Subject to the provisions of subsections (g) and (h) of this Code section, any ~~Any~~
 18 corporation, partnership, individual, or other legal entity who acquires by purchase, merger,
 19 consolidation, or other means substantially all of the trade, business, or assets of any
 20 employer and who thereafter continues the acquired trade or business shall be deemed to
 21 be a successor to the employer from whom the trade or business was acquired. The
 22 successor shall acquire the experience rating record of the predecessor except as otherwise
 23 provided in this Code section or in the rules and regulations of the Department of Labor.
 24 If the successor is not already an employer at the time of the acquisition, the rate of
 25 contributions applicable to the predecessor shall continue to be applicable to the successor;
 26 provided, however, if the existing rate of contributions of the predecessor exceeds the new
 27 employer rate as specified in Code Section 34-8-151, the successor shall be assigned a new
 28 employer rate of contributions; in such event, the experience of the predecessor shall not
 29 be considered for purposes of rate calculations and the successor shall be otherwise treated
 30 as a new employer.

31 (b) Subject to the provisions of subsections (g) and (h) of this Code section, if ~~If~~ the
 32 successor is already an employer at the time of the acquisition, the rate of contributions
 33 applicable to the successor shall continue until the end of the quarter in which the
 34 acquisition occurred. The rate of contributions applicable to the successor beginning on the
 35 first day of the quarter following the acquisition will be determined by the combined
 36 experience of the predecessor and successor as of the applicable computation date;

1 provided, however, the experience of the predecessor shall not be combined with that of
 2 the successor for purposes of rate calculation if the predecessor's rate of contributions
 3 immediately preceding the acquisition exceeded the rate already in effect for the successor;
 4 in such event, the experience of the predecessor shall not be considered for purposes of rate
 5 calculations unless this combination of experience results in a reduction of rates.

6 (c) Subject to the provisions of subsections (g) and (h) of this Code section, any Any
 7 employing unit which acquires by any means any clearly identifiable or separable portion
 8 of the trade or business of an employer and is an employer at the time of the acquisition or
 9 becomes an employer within six months from the end of the quarter in which the
 10 acquisition is made may be deemed to be a partial successor to the employer from whom
 11 the portion of the trade or business was acquired. A portion of the predecessor's experience
 12 rating records which are attributable to the portion of trade or the business which was
 13 acquired may be transferred to the successor. Mutual consent of both parties must be given
 14 to effectuate the partial transfer. The Commissioner shall prescribe by regulation the time
 15 frame for notification to the department of partial acquisitions and the method by which the
 16 portion of the experience rating record to be transferred will be determined.

17 (d) Subject to the provisions of subsections (g) and (h) of this Code section, if If the
 18 conditions of subsection (c) of this Code section are met and the partial successor is not
 19 already an employer at the time of the acquisition, the rate of contributions applicable to
 20 the predecessor shall be applicable to the successor. Future rates will be determined by
 21 combining the transferred portion of the predecessor's experience rating record with the
 22 successor's own experience rating record as of the applicable computation date.

23 (e) Subject to the provisions of subsections (g) and (h) of this Code section, if If the
 24 conditions of subsection (c) of this Code section are met and the partial successor is already
 25 an employer at the time of the acquisition, the rate of contributions applicable to the
 26 successor shall continue until the end of the quarter in which the acquisition occurred. The
 27 rate of contributions applicable to the successor beginning on the first day of the quarter
 28 following the acquisition will be determined by combining the transferred portion of the
 29 predecessor's experience rating record with the successor's own experience rating record
 30 as of the applicable computation date.

31 (f) Nothing in this Code section shall be construed to affect liens which are created
 32 pursuant to Code Section 34-8-167.

33 (g) Notwithstanding any other provision in this chapter to the contrary, effective July 1,
 34 2006:

35 (1) If an employer transfers its trade or business, or any portion thereof, to another
 36 employer and, at the time of the transfer, there is substantially common ownership,
 37 management, or control of the two employers then the rate of contributions attributable

1 to the predecessor shall be transferred to the successor employer to whom such business
 2 is so transferred. The rates of contributions of both employers shall be recalculated and
 3 made effective immediately upon the date of the transfer of the trade or business.

4 (2) Whenever the successor is not already an employer at the time of the acquisition, the
 5 unemployment experience of the acquired business shall not be transferred to the
 6 successor if the Commissioner determines that the successor acquired the business solely
 7 or primarily for the purpose of obtaining a lower rate of contribution. Instead, the
 8 successor shall be assigned the new employer rate under Code Section 34-8-151. In
 9 determining whether the trade or business was acquired solely or primarily for the
 10 purpose of obtaining a lower rate of contributions, the Commissioner shall use objective
 11 factors which may include the following:

12 (A) The cost of acquiring the trade or business;

13 (B) Whether the successor actually continued the business enterprise of the acquired
 14 trade or business;

15 (C) How long the acquired trade or business was continued; and

16 (D) Whether or not a substantial number of new employees were hired for the
 17 performance of duties unrelated to the business activity conducted by the predecessor
 18 prior to acquisition.

19 (h)(1) Any person who knowingly violates or attempts to violate subsection (g) or any
 20 other provision of this chapter related to determining the assignment of a rate of
 21 contributions or any person who knowingly advises another person in a manner that results
 22 in a violation of such provision shall be subject to the following penalties.

23 (A) If the person is an employer, then such employer shall be assigned the highest rate
 24 assignable under this chapter for the rate year during which such violation or attempted
 25 violation occurred and the three rate years immediately following that rate year;
 26 provided, however, that if:

27 (i) The person's business is already at the highest rate; or

28 (ii) If the amount of increase in the rate of contributions for such person would be
 29 less than 2 percent for such year,

30 then a penalty rate of contributions of 2 percent of taxable wages shall be imposed for
 31 such year;

32 (B) If the person is not an employer, such person shall be subject to a civil money
 33 penalty of not more than \$5,000.00 per violation. Any such fine collected shall be
 34 deposited in the penalty and interest account established under Code Section 34-8-92.

35 (2) For the purposes of this Code section, the term 'knowingly' means having actual
 36 knowledge of or acting with deliberate ignorance or reckless disregard for the prohibited
 37 act or omission.

1 (3) For the purposes of this Code section, the term 'violates or attempts to violate'
 2 includes, but is not limited to, intent to evade, misrepresentation, and willful
 3 nondisclosure.

4 (4) For the purposes of this Code section, the term 'person' shall have the meaning given
 5 such term by Section 7701(a)(1) of the Internal Revenue Code of 1986, as amended.

6 (5) For the purposes of this Code section and administration of the Employment Security
 7 Law, the terms 'trade, business, or assets' and 'trade or business' shall include:

8 (A) The employer's work force or any part of the employer's work force; and

9 (B) Any part of the employer's trade, business, or assets, whether or not clearly
 10 identifiable or separable within the meaning of subsection (c) of this Code section.

11 Tax liability under Chapter 7 of Title 48 shall not be affected by the definitions of 'trade,
 12 business, or assets' and 'trade or business' in this Code section.

13 (6) In addition to the penalty imposed by paragraph (1) of this subsection, any violation
 14 of this Code section may be prosecuted as a felony under Code Section 16-10-20.

15 (7) The Commissioner shall establish procedures to identify the occurrence of any
 16 transfer or acquisition of a business that violates any provision of this Code section."

17 SECTION 4.

18 Said chapter is further amended by striking in its entirety subparagraph (B) of paragraph (4)
 19 of subsection (d) of Code Section 34-8-156, relating to State-wide Reserve Ratio, and
 20 inserting in lieu thereof the following:

21 "(B) Except for any year or portion of a year during which the provisions of
 22 paragraph (1) of subsection (f) of Code Section 34-8-155 apply, when the State-wide
 23 Reserve Ratio, as calculated above, is less than 1.7 percent, there shall be an overall
 24 increase in the rate, as of the computation date, for each employer whose rate is
 25 computed under a rate table in Code Section 34-8-155 in accordance with the
 26 following table:

27 If the State-wide Reserve Ratio:

28 Equals or	29 But Is	Overall
30 Exceeds	31 Less Than	32 Increase
33 1.5 percent	34 1.7 percent	35 25 percent
1.25 percent	1.5 percent	50 percent
0.75 percent	1.25 percent	75 percent
Under 0.75 percent		100 percent

34 provided, however, that for the period of January 1 through December 31, ~~2005~~ 2006,
 35 the overall increase in the rate required under this subparagraph shall be suspended and

1 the provisions of this subparagraph shall be null and void, except in the event the
 2 State-wide Reserve Ratio, as calculated above, is less than 1.00 percent, then the
 3 Commissioner of Labor shall have the option of imposing an increase in the overall rate
 4 of up to 35 percent, as of the computation date, for each employer whose rate is
 5 computed under a rate table in Code Section 34-8-155."

6 SECTION 5.

7 Said chapter is further amended by striking in its entirety Code Section 34-8-180, relating
 8 to an administrative assessment on all wages, and inserting in lieu thereof the following:

9 "34-8-180.

10 (a) For the periods on or after April 1, 1987, but on or before January 1, 2000, there is
 11 created an administrative assessment of .06 percent to be assessed upon all wages, as
 12 defined in Code Section 34-8-49, except wages of the following employers:

13 (1) Those employers who have elected to make payments in lieu of contributions as
 14 provided by Code Section 34-8-158 or who are liable for the payment of contributions
 15 as provided in said Code section; or

16 (2) Those employers who, by application of the State-wide Reserve Ratio as provided
 17 in Code Section 34-8-156, have been assigned the minimum positive reserve rate or the
 18 maximum deficit reserve rate.

19 (b) For the periods on or after January 1, 2000, but on or before December 31, ~~2005~~ 2011,
 20 there is created an administrative assessment of 0.08 percent to be assessed upon all wages
 21 as defined in Code Section 34-8-49, except the wages of:

22 (1) Those employers who have elected to make payments in lieu of contributions as
 23 provided by Code Section 34-8-158 or who are liable for the payment of contributions
 24 as provided in said Code section; or

25 (2) Those employers who, by application of the State-wide Reserve Ratio as provided
 26 in Code Section 34-8-156, have been assigned the minimum positive reserve rate or the
 27 maximum deficit reserve rate.

28 (c) Assessments pursuant to this Code section shall become due and shall be paid by each
 29 employer and must be reported on the employer's quarterly tax and wage report according
 30 to such rules and regulations as the Commissioner may prescribe. The assessments
 31 provided in this Code section shall not be deducted, in whole or in part, from the
 32 remuneration of individuals in the employ of the employer. Any deduction in violation of
 33 this subsection is unlawful."

1 (4) For claims filed on or after July 1, 1996, but before July 1, 1997, the maximum
2 weekly benefit amount shall not exceed \$215.00;

3 (5) For claims filed on or after July 1, 1997, but before July 1, 1998, the maximum
4 weekly benefit amount shall not exceed \$224.00;

5 (6) For claims filed on or after July 1, 1998, but before July 1, 1999, the maximum
6 weekly benefit amount shall not exceed \$244.00;

7 (7) For claims filed on or after July 1, 1999, but before July 1, 2000, the maximum
8 weekly benefit amount shall not exceed \$264.00;

9 (8) For claims filed on or after July 1, 2000, but before July 1, 2001, the maximum
10 weekly benefit amount shall not exceed \$274.00;

11 (9) For claims filed on or after July 1, 2001, but before July 1, 2002, the maximum
12 weekly benefit amount shall not exceed \$284.00;

13 (10) For claims filed on or after July 1, 2002, but before July 1, 2003, the maximum
14 weekly benefit amount shall not exceed \$295.00; and

15 (11) For claims filed on or after July 1, 2003, but before July 1, 2005, the maximum
16 weekly benefit amount shall not exceed \$300.00;

17 (12) For claims filed on or after July 1, 2005, but before July 1, 2006, the maximum
18 weekly benefit amount shall not exceed \$310.00; and

19 (13) For claims filed on or after July 1, 2006, the maximum weekly benefit amount shall
20 not exceed \$320.00."

21 SECTION 9.

22 There is appropriated to the Department of Labor out of funds credited to and held in this
23 state's account in the Unemployment Trust Fund by the Secretary of the Treasury of the
24 United States pursuant to and in accordance with Section 903 of the Social Security Act, as
25 amended, an additional amount of \$1,642,647.11. Of said additional amount, the sum of
26 \$1,642,647.11 is authorized to be allocated for expenses incurred in the administration of
27 Chapter 8 of Title 34 of the Official Code of Georgia Annotated, the "Employment Security
28 Law" as amended, including personal services and operating and other expenses incurred in
29 the administration of said law, as well as for the purchase or rental, either or both, of
30 improvements, repairs, or alterations to and of offices, lands, buildings or parts of buildings,
31 fixtures, furnishings, equipment, technology, data, reports and studies, supplies, and the
32 construction of buildings or parts of buildings suitable for use in this state by the Department
33 of Labor, and for the payment of expenses incurred for the acquisition, purchase, rental,
34 construction, maintenance, improvements, repairs, or alterations of and to such real or
35 personal property. Notwithstanding any other provision of this section, the amount
36 appropriated in this Act shall not exceed the amount in the Unemployment Trust Fund, which

1 may be obligated for expenditure for such purposes as provided in Code Section 34-8-85 of
2 the Official Code of Georgia Annotated, relating to certain withdrawals from the
3 Unemployment Trust Fund, and the amount which may be obligated shall not exceed the
4 limitations provided in Code Section 34-8-85 of the Official Code of Georgia Annotated,
5 relating to certain withdrawals from the Unemployment Trust Fund; provided, however, that
6 said additional funds shall not be obligated for expenditure, as provided in this Act, after the
7 close of the two-year period which begins on the date of enactment of this Act.

8 **SECTION 9A.**

9 The Commissioner of Labor is authorized, pursuant to and in accordance with Section 903
10 of the Social Security Act, as amended, to requisition, and to direct the obligation and
11 expenditure for use in such locations in this state as the Commissioner finds to be economical
12 and desirable, such money as authorized in this Act and in Code Section 34-8-81 of the
13 Official Code of Georgia Annotated, relating to the creation and purposes of the Employment
14 Security Administration Fund, and Code Section 34-8-85 of the Official Code of Georgia
15 Annotated, relating to certain withdrawals from the Unemployment Trust Fund, and, in the
16 manner and for the purposes authorized in this Act, including personal services and operating
17 and other expenses incurred in the administration of said laws, as well as for the
18 procurement, through purchase or rental, either or both, of offices, lands, buildings or parts
19 of buildings, fixtures, furnishings, equipment, technology, data, reports and studies, supplies,
20 and the construction of buildings or parts of buildings suitable for use by the Department of
21 Labor, for the payment of expenses incurred for the construction, maintenance,
22 improvements, or repair of or alterations to such real or personal property, to employ
23 workers, contract with persons, public and private agencies, corporations, and other entities,
24 to allocate any unexpended amounts appropriated by this Act, and to do all other things
25 necessary to accomplish the purposes of this Act. The acquisition of any real or personal
26 property and the expenditure of any funds appropriated by this Act shall be in accordance
27 with this state's applicable laws existing on the effective date of this Act.

28 **SECTION 10.**

29 This Act shall become effective upon its approval by the Governor or upon its becoming law
30 without such approval.

31 **SECTION 11.**

32 All laws and parts of laws in conflict with this Act are repealed.