

SENATE SUBSTITUTE TO HB 520

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 certain contribution rates and credits; to extend suspension of adjustments based
6 upon the State-wide Reserve Ratio for the calendar year 2006 and to provide for a reduced
7 adjustment in contribution rates through December 31, 2006; to continue provisions relating
8 to administrative assessments; to provide for a change in the weekly benefit amount over a
9 two-year period; to provide for the Department of Labor a supplemental appropriation,
10 pursuant to and in accordance with the provisions of Code Section 34-8-81, relating to the
11 creation and purposes of the Employment Security Administration Fund, and Code Section
12 34-8-85, relating to certain withdrawals from the Unemployment Trust Fund, of additional
13 funds which are otherwise available to the Department of Labor out of funds credited to and
14 held in this state's account in the Unemployment Trust Fund by the Secretary of the Treasury
15 of the United States pursuant to Section 903 of the Social Security Act, as amended, for the
16 purpose of providing for the payment of expenses of administration of Chapter 8 of Title 34
17 of the Official Code of Georgia Annotated, the "Employment Security Law," as amended,
18 including personal services and operating and other expenses incurred in the administration
19 of said law, as well as for the procurement, through purchase or rental, either or both, of
20 offices, lands, buildings or parts of buildings, fixtures, furnishings, equipment, technology,
21 data, reports and studies, supplies, and the construction of buildings or parts of buildings
22 suitable for use in this state by the Department of Labor, and for the payment of expenses
23 incurred for the construction, maintenance, improvements, or repair of or alterations to such
24 real or personal property; to authorize the Commissioner of Labor to direct the obligation and
25 expenditure of said funds and to employ workers, contract with persons, public and private
26 agencies, corporations, and other entities, and to do all other things necessary to accomplish
27 such purposes; to provide for related matters; to provide an effective date; to repeal
28 conflicting laws; and for other 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.

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

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

SECTION 3.

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

"34-8-153.

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

(b) Subject to the provisions of subsections (g) and (h) of this Code section, if If the successor is already an employer at the time of the acquisition, the rate of contributions applicable to the successor shall continue until the end of the quarter in which the acquisition occurred. The rate of contributions applicable to the successor beginning on the first day of the quarter following the acquisition will be determined by the combined 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 would 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.

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

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

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

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

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

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

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

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

SECTION 4.

Said chapter is further amended by striking the introductory language to subsections (c) and (e) of Code Section 34-8-155, relating to benefit experience, and inserting in lieu thereof new introductory language to read as follows:

“(c) For the periods prior to April 1, 1987, or after December 31, 2005 2011, variations from the standard rate of contributions shall be determined in accordance with the following requirements:”

“(e) For the periods on or after January 1, 2000, but on or before December 31, 2005 2011, variations from the standard rate of contributions shall be determined in accordance with the following requirements:”.

SECTION 5.

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

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

computed under a rate table in Code Section 34-8-155 in accordance with the following table:

If the State-wide Reserve Ratio:

Equals or <u>Exceeds</u>	But Is <u>Less Than</u>	Overall
1.5 percent	1.7 percent	25 percent
1.25 percent	1.5 percent	50 percent
0.75 percent	1.25 percent	75 percent
Under 0.75 percent		100 percent

provided, however, that for the period of January 1 through December 31, 2005 2006, the overall increase in the rate required under this subparagraph shall be suspended and the provisions of this subparagraph shall be null and void, except in the event the State-wide Reserve Ratio, as calculated above, is less than 1.00 percent, then the Commissioner of Labor shall have the option of imposing an increase in the overall rate of up to 35 percent, as of the computation date, for each employer whose rate is computed under a rate table in Code Section 34-8-155."

SECTION 6.

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

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

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

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

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

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

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

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

SECTION 7.

Said chapter is further amended by striking in its entirety Code Section 34-8-181, relating to an additional administrative assessment for new or newly covered employers, and inserting in lieu thereof the following:

"34-8-181.

(a) For the periods on or after April 1, 1987, but on or before December 31, 1999, in addition to the rate paid under Code Section 34-8-151, each new or newly covered employer shall pay an administrative assessment of .06 percent of wages payable by it with respect to employment during each calendar year until it is eligible for a rate calculation based on experience as defined in this chapter, except as provided in Code Section 34-8-158.

(b) For the periods on or after January 1, 2000, but on or before December 31, 2005 2011, in addition to the rate paid under Code Section 34-8-151, each new or newly covered employer shall pay an administrative assessment of 0.08 percent of wages payable by it with respect to employment during each calendar year until it is eligible for a rate calculation based on experience as defined in this chapter, except as provided in Code Section 34-8-158."

SECTION 8.

Said chapter is further amended by striking in its entirety Code Section 34-8-185, relating to the automatic repeal of Article 6, and inserting in lieu thereof the following:

"34-8-185.

This article shall stand repealed in its entirety on December 31, 2005 2011.

SECTION 9.

Said chapter is further amended by striking in their entirety subsections (a), (b), and (c) of Code Section 34-8-193, relating to determination of the weekly benefit amount, and inserting in lieu thereof the following:

"(a) The weekly benefit amount of an individual's claim shall be that amount computed by dividing the two highest quarters of wages paid in the base period by ~~46~~ 44. Any fraction of a dollar shall then be disregarded. Wages must have been paid in at least two quarters of the base period and total wages in the base period must equal or exceed 150 percent of the highest quarter base period wages. For claims that fail to establish entitlement due to failure to meet the 150 percent requirement, an alternative computation shall be made. In such event, the weekly benefit amount shall be computed by dividing the highest single quarter of base period wages paid by ~~23~~ 22. Any fraction of a dollar shall then be disregarded. Under this alternative computation, wages must have been paid in at least two quarters of the base period and total base period wages must equal or exceed 40 times the weekly benefit amount. Regardless of the method of computation used, wages must have been paid for insured work, as defined in Code Section 34-8-41.

(b) Weekly benefit amount entitlement as computed in this Code section shall be no less than \$27.00 per week for benefit years beginning on or after July 1, 1983; provided, however, that for benefit years beginning on or after July 1, 1987, when the weekly benefit amount, as computed, would be more than \$26.00 but less than \$37.00, the individual's weekly benefit amount will be \$37.00, and no weekly benefit amount shall be established for less than \$37.00; provided, further, that for benefit years beginning on or after July 1, 1997, when the weekly benefit amount, as computed, would be more than \$26.00 but less than \$39.00, the individual's weekly benefit amount will be \$39.00, and no weekly benefit amount shall be established for less than \$39.00; provided, further, that for benefit years beginning on or after July 1, 2002, when the weekly benefit amount, as computed, would be more than \$26.00 but less than \$40.00, the individual's weekly benefit amount will be \$40.00, and no weekly benefit amount shall be established for less than \$40.00; provided, further, that for benefit years beginning on or after July 1, 2005, when the weekly benefit amount, as computed, would be more than \$26.00 but less than \$42.00, the individual's weekly benefit amount will be \$42.00, and no weekly benefit amount shall be established for less than \$42.00.

(c) Weekly benefit amount entitlement as computed in this Code section shall not exceed these amounts for the applicable time period:

(1) For claims filed on or after July 1, 1990, but before July 1, 1994, the maximum weekly benefit amount shall not exceed \$185.00;

- (2) For claims filed on or after July 1, 1994, but before July 1, 1995, the maximum weekly benefit amount shall not exceed \$195.00;
 - (3) For claims filed on or after July 1, 1995, but before July 1, 1996, the maximum weekly benefit amount shall not exceed \$205.00;
 - (4) For claims filed on or after July 1, 1996, but before July 1, 1997, the maximum weekly benefit amount shall not exceed \$215.00;
 - (5) For claims filed on or after July 1, 1997, but before July 1, 1998, the maximum weekly benefit amount shall not exceed \$224.00;
 - (6) For claims filed on or after July 1, 1998, but before July 1, 1999, the maximum weekly benefit amount shall not exceed \$244.00;
 - (7) For claims filed on or after July 1, 1999, but before July 1, 2000, the maximum weekly benefit amount shall not exceed \$264.00;
 - (8) For claims filed on or after July 1, 2000, but before July 1, 2001, the maximum weekly benefit amount shall not exceed \$274.00;
 - (9) For claims filed on or after July 1, 2001, but before July 1, 2002, the maximum weekly benefit amount shall not exceed \$284.00;
 - (10) For claims filed on or after July 1, 2002, but before July 1, 2003, the maximum weekly benefit amount shall not exceed \$295.00; and
 - (11) For claims filed on or after July 1, 2003, but before July 1, 2005, the maximum weekly benefit amount shall not exceed \$300.00:—
 - (12) For claims filed on or after July 1, 2005, but before July 1, 2006, the maximum weekly benefit amount shall not exceed \$310.00; and
 - (13) For claims filed on or after July 1, 2006, the maximum weekly benefit amount shall not exceed \$320.00."

SECTION 9A.

Said chapter is further amended by striking in its entirety division (iii) of subparagraph (B) of paragraph (2) of Code Section 34-8-194, relating to the grounds for disqualification of benefits, and inserting in lieu thereof the following:

"(iii) The discharge occurred because of absenteeism and the absences were caused by illness of the claimant or a family member, unless the claimant has without justification failed to notify the employer or the absence for such illness which led to discharge followed a series of absences, the majority of which were attributable to fault on the part of the claimant in direct violation of the employer's attendance policy and regarding which the claimant has been advised in writing, prior to any of the absences, that unemployment benefits may be denied due to such violations of the employer's policy on attendance; provided, however, that no waiver of an employee's

rights under the federal Family and Medical Leave Act of 1993, as amended, or any other applicable state or federal law shall be construed under this division;".

SECTION 10.

There is appropriated to the Department of Labor out of funds credited to and held in this state's account in the Unemployment Trust Fund by the Secretary of the Treasury of the United States pursuant to and in accordance with Section 903 of the Social Security Act, as amended, an additional amount of \$1,642,647.11. Of said additional amount, the sum of \$1,642,647.11 is authorized to be allocated for expenses incurred in the administration of Chapter 8 of Title 34 of the Official Code of Georgia Annotated, the "Employment Security Law" as amended, including personal services and operating and other expenses incurred in the administration of said law, as well as for the purchase or rental, either or both, of improvements, repairs, or alterations to and of offices, lands, buildings or parts of buildings, fixtures, furnishings, equipment, technology, data, reports and studies, supplies, and the construction of buildings or parts of buildings suitable for use in this state by the Department of Labor, and for the payment of expenses incurred for the acquisition, purchase, rental, construction, maintenance, improvements, repairs, or alterations of and to such real or personal property. Notwithstanding any other provision of this section, the amount appropriated in this Act shall not exceed the amount in the Unemployment Trust Fund, which may be obligated for expenditure for such purposes as provided in Code Section 34-8-85 of the Official Code of Georgia Annotated, relating to certain withdrawals from the Unemployment Trust Fund, and the amount which may be obligated shall not exceed the limitations provided in Code Section 34-8-85 of the Official Code of Georgia Annotated, relating to certain withdrawals from the Unemployment Trust Fund; provided, however, that said additional funds shall not be obligated for expenditure, as provided in this Act, after the close of the two-year period which begins on the date of enactment of this Act.

SECTION 10A.

The Commissioner of Labor is authorized, pursuant to and in accordance with Section 903 of the Social Security Act, as amended, to requisition, and to direct the obligation and expenditure for use in such locations in this state as the Commissioner finds to be economical and desirable, such money as authorized in this Act and in Code Section 34-8-81 of the Official Code of Georgia Annotated, relating to the creation and purposes of the Employment Security Administration Fund, and Code Section 34-8-85 of the Official Code of Georgia Annotated, relating to certain withdrawals from the Unemployment Trust Fund, and, in the manner and for the purposes authorized in this Act, including personal services and operating and other expenses incurred in the administration of said laws, as well as for the

1 procurement, through purchase or rental, either or both, of offices, lands, buildings or parts
2 of buildings, fixtures, furnishings, equipment, technology, data, reports and studies, supplies,
3 and the construction of buildings or parts of buildings suitable for use by the Department of
4 Labor, for the payment of expenses incurred for the construction, maintenance,
5 improvements, or repair of or alterations to such real or personal property, to employ
6 workers, contract with persons, public and private agencies, corporations, and other entities,
7 to allocate any unexpended amounts appropriated by this Act, and to do all other things
8 necessary to accomplish the purposes of this Act. The acquisition of any real or personal
9 property and the expenditure of any funds appropriated by this Act shall be in accordance
10 with this state's applicable laws existing on the effective date of this Act.

11 **SECTION 11.**

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

14 **SECTION 12.**

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