

108TH CONGRESS
2D SESSION

S. 2662

To amend titles III and IV of the Social Security Act to improve the administration of unemployment taxes and benefits.

IN THE SENATE OF THE UNITED STATES

JULY 15, 2004

Mr. NICKLES (for himself, Mr. KENNEDY, Mr. GRASSLEY, Mr. BAUCUS, Mr. ENSIGN, Mr. LEVIN, Mrs. MURRAY, and Mr. GREGG) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend titles III and IV of the Social Security Act to improve the administration of unemployment taxes and benefits.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “SUTA Dumping Pre-
5 vention Act of 2004”.

1 **SEC. 2. TRANSFER OF UNEMPLOYMENT EXPERIENCE UPON**
 2 **TRANSFER OR ACQUISITION OF A BUSINESS.**

3 (a) IN GENERAL.—Section 303 of the Social Security
 4 Act (42 U.S.C. 503) is amended by adding at the end the
 5 following:

6 “(k)(1) For purposes of subsection (a), the unemploy-
 7 ment compensation law of a State must provide—

8 “(A) that if an employer transfers its business
 9 to another employer, and both employers are (at the
 10 time of transfer) under substantially common owner-
 11 ship, management, or control, then the unemploy-
 12 ment experience attributable to the transferred busi-
 13 ness shall also be transferred to (and combined with
 14 the unemployment experience attributable to) the
 15 employer to whom such business is so transferred,

16 “(B) that unemployment experience shall not,
 17 by virtue of the transfer of a business, be trans-
 18 ferred to the person acquiring such business if—

19 “(i) such person is not otherwise an em-
 20 ployer at the time of such acquisition, and

21 “(ii) the State agency finds that such per-
 22 son acquired the business solely or primarily for
 23 the purpose of obtaining a lower rate of con-
 24 tributions,

25 “(C) that unemployment experience shall (or
 26 shall not) be transferred in accordance with such

1 regulations as the Secretary of Labor may prescribe
 2 to ensure that higher rates of contributions are not
 3 avoided through the transfer or acquisition of a busi-
 4 ness,

5 “(D) that meaningful civil and criminal pen-
 6 alties are imposed with respect to—

7 “(i) persons that knowingly violate or at-
 8 tempt to violate those provisions of the State
 9 law which implement subparagraph (A) or (B)
 10 or regulations under subparagraph (C), and

11 “(ii) persons that knowingly advise another
 12 person to violate those provisions of the State
 13 law which implement subparagraph (A) or (B)
 14 or regulations under subparagraph (C), and

15 “(E) for the establishment of procedures to
 16 identify the transfer or acquisition of a business for
 17 purposes of this subsection.

18 “(2) For purposes of this subsection—

19 “(A) the term ‘unemployment experience’, with
 20 respect to any person, refers to such person’s experi-
 21 ence with respect to unemployment or other factors
 22 bearing a direct relation to such person’s unemploy-
 23 ment risk;

24 “(B) the term ‘employer’ means an employer as
 25 defined under the State law;

1 “(C) the term ‘business’ means a trade or busi-
 2 ness (or a part thereof);

3 “(D) the term ‘contributions’ has the meaning
 4 given such term by section 3306(g) of the Internal
 5 Revenue Code of 1986;

6 “(E) the term ‘knowingly’ means having actual
 7 knowledge of or acting with deliberate ignorance of
 8 or reckless disregard for the prohibition involved;
 9 and

10 “(F) the term ‘person’ has the meaning given
 11 such term by section 7701(a)(1) of the Internal Rev-
 12 enue Code of 1986.”.

13 (b) STUDY AND REPORTING REQUIREMENTS.—

14 (1) STUDY.—The Secretary of Labor shall con-
 15 duct a study of the implementation of the provisions
 16 of section 303(k) of the Social Security Act (as
 17 added by subsection (a)) to assess the status and ap-
 18 propriateness of State actions to meet the require-
 19 ments of such provisions.

20 (2) REPORT.—Not later than July 15, 2007,
 21 the Secretary of Labor shall submit to the Congress
 22 a report that contains the findings of the study re-
 23 quired by paragraph (1) and recommendations for
 24 any Congressional action that the Secretary con-

1 siders necessary to improve the effectiveness of sec-
 2 tion 303(k) of the Social Security Act.

3 (c) EFFECTIVE DATE.—The amendment made by
 4 subsection (a) shall, with respect to a State, apply to cer-
 5 tifications for payments (under section 302(a) of the So-
 6 cial Security Act) in rate years beginning after the end
 7 of the 26-week period beginning on the first day of the
 8 first regularly scheduled session of the State legislature
 9 beginning on or after the date of the enactment of this
 10 Act.

11 (d) DEFINITIONS.—For purposes of this section—

12 (1) the term “State” includes the District of
 13 Columbia, the Commonwealth of Puerto Rico, and
 14 the Virgin Islands;

15 (2) the term “rate year” means the rate year
 16 as defined in the applicable State law; and

17 (3) the term “State law” means the unemploy-
 18 ment compensation law of the State, approved by
 19 the Secretary of Labor under section 3304 of the In-
 20 ternal Revenue Code of 1986.

21 **SEC. 3. USE OF NEW HIRE INFORMATION TO ASSIST IN AD-**
 22 **MINISTRATION OF UNEMPLOYMENT COM-**
 23 **PENSATION PROGRAMS.**

24 Section 453(j) of the Social Security Act (42 U.S.C.
 25 653(j)) is amended by adding at the end the following:

1 “(8) INFORMATION COMPARISONS AND DISCLO-
2 SURE TO ASSIST IN ADMINISTRATION OF UNEMPLOY-
3 MENT COMPENSATION PROGRAMS.—

4 “(A) IN GENERAL.—If, for purposes of ad-
5 ministering an unemployment compensation
6 program under Federal or State law, a State
7 agency responsible for the administration of
8 such program transmits to the Secretary the
9 names and social security account numbers of
10 individuals, the Secretary shall disclose to such
11 State agency information on such individuals
12 and their employers maintained in the National
13 Directory of New Hires, subject to this para-
14 graph.

15 “(B) CONDITION ON DISCLOSURE BY THE
16 SECRETARY.—The Secretary shall make a dis-
17 closure under subparagraph (A) only to the ex-
18 tent that the Secretary determines that the dis-
19 closure would not interfere with the effective
20 operation of the program under this part.

21 “(C) USE AND DISCLOSURE OF INFORMA-
22 TION BY STATE AGENCIES.—

23 “(i) IN GENERAL.—A State agency
24 may not use or disclose information pro-
25 vided under this paragraph except for pur-

1 poses of administering a program referred
2 to in subparagraph (A).

3 “(ii) INFORMATION SECURITY.—The
4 State agency shall have in effect data secu-
5 rity and control policies that the Secretary
6 finds adequate to ensure the security of in-
7 formation obtained under this paragraph
8 and to ensure that access to such informa-
9 tion is restricted to authorized persons for
10 purposes of authorized uses and disclo-
11 sures.

12 “(iii) PENALTY FOR MISUSE OF IN-
13 FORMATION.—An officer or employee of
14 the State agency who fails to comply with
15 this subparagraph shall be subject to the
16 sanctions under subsection (l)(2) to the
17 same extent as if such officer or employee
18 was an officer or employee of the United
19 States.

20 “(D) PROCEDURAL REQUIREMENTS.—
21 State agencies requesting information under
22 this paragraph shall adhere to uniform proce-
23 dures established by the Secretary governing in-
24 formation requests and data matching under
25 this paragraph.

1 “(E) REIMBURSEMENT OF COSTS.—The
2 State agency shall reimburse the Secretary, in
3 accordance with subsection (k)(3), for the costs
4 incurred by the Secretary in furnishing the in-
5 formation requested under this paragraph.”.

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