

SESSION OF 2005

SUPPLEMENTAL NOTE ON SENATE BILL NO. 108

As Amended by House Committee on
Commerce and Labor

Brief*

SB 108 would amend the following four conditions in the Employment Security Law:

- ! Effective January 1, 2006, payments to health savings accounts would not be treated as wages for unemployment insurance tax purposes.
- ! Effective January 1, 2006, the bill would prevent manipulation of State Unemployment Tax Acts to avoid payment of unemployment taxes. Generally, the more claims a company has historically, the higher its experience rating and therefore its tax rate. Under present law, companies can form a new corporation and use the new company's lower rate or buy a different firm and use the purchased business' rate, at significant savings to the company. The bill provides for:
 - " transferring the experience rating when work and employees are transferred and the transferring company no longer performs trade or business with respect to the transferred workforce and the receiving company performs that business or function;
 - " combining experience rating accounts into a single account with a single rate assigned to the account following a transfer of experience, if the Secretary of Labor determines that a substantial purpose of the transfer or business was to obtain a reduced liability for contributions;

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- " striking the automatic provision for percentage acquisitions, the application provision and criteria remain;
- " establishing the effective date of rate changes as the first day of the next calendar quarter following the date of transfer of trade or business; and
- " assigning the experience rating of the transferring company or if the business was acquired solely or primarily for the purpose of obtaining a lower rate of contributions, the applicable industry rate for a new employer shall be applied. The Secretary could consider certain factors to determine whether the business was acquired primarily for the purpose of obtaining a lower rate of contribution.

- ! Effective July 1, 2005, the bill would grant authority to the Department of Labor to use funds in the penalty and interest account to cover the processing fee for employers filing their unemployment insurance taxes electronically.
- ! Effective January 1, 2006, the bill would provide penalties for violation of dumping prevention provisions. The bill provides penalties for a knowing violation, transfer, or acquisition primarily for the purpose of obtaining a lower rate of contribution. If the person is an employer, the penalty is the highest rate assignable for the year the violation occurred and the three rate years immediately following. If the employer is already paying at the highest rate, the increase would be less than 2 percent per year plus a penalty rate of 2 percent of taxable wages each year. If the person is not an employer, then such person is subject to a civil fine of up to \$5,000. Violations constituting crimes may be prosecuted by the local prosecutor or the attorney general. The criminal penalty would be a severity level 9 nonperson felony.
- ! Effective January 1, 2006, the bill would make it unlawful for an employing unit to knowingly obtain or attempt to obtain a reduced liability for unemployment taxes through manipulation of the employer's workforce or for an employing unit, that is not an employing unit at the time it acquires the trade or business, when the sole or primary purpose of the business acquisition was for the purpose of obtaining a lower rate of contribution. It shall likewise

be unlawful for a person to knowingly advise an employer in such a way that results in such a violation. These violations would be prosecuted as a crime.

Background

The Kansas Secretary of Labor testified that this bill is needed to conform to the Federal Unemployment Tax Act and if the amendments are not adopted, the State would cease to receive Federal Unemployment Tax Act funding. The Secretary was the only conferee for the bill.

The fiscal note states that the Department of Labor estimates that it will receive \$20.0 million in FY 2005 and FY 2006 in Federal Unemployment Tax Act funds to administer the State's unemployment benefit program. In addition, failure to enact these amendments would mean that Kansas employers would not be entitled to claim state unemployment tax credit against Federal Unemployment Tax Act taxes. If the federal amendments are adopted, the agency would not see a change in federal receipts.

The Kansas Secretary of Labor also appeared before the House Committee on Commerce and Labor to support the bill.

The House Committee on Commerce and Labor inserted the provisions that would make it unlawful for an employing unit to knowingly obtain or attempt to obtain a reduced liability for unemployment taxes through manipulation of the employer's workforce or for an employing unit, that is not an employing unit at the time it acquires the trade or business, when the sole or primary purpose of the business acquisition was for the purpose of obtaining a lower rate of contribution. It shall likewise be unlawful for a person to knowingly advise an employer in such a way that results in such a violation. These violations would be prosecuted as a crime.

Other House amendments are clarifying and technical in nature.