

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE BILL 326
Judiciary I Committee Substitute Adopted 4/16/03

Short Title: Deterring SUTA Dumping.

(Public)

Sponsors:

Referred to:

March 6, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LAW ON CHANGING THE FORMS OF BUSINESSES FOR UNEMPLOYMENT INSURANCE TAX PURPOSES AND TO INCREASE PENALTIES, SO AS TO DETER THE PRACTICE OF STATE UNEMPLOYMENT TAX AVOIDANCE (SUTA DUMPING).

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 96-9(c)(4) is amended by adding a new sub-subdivision to read:

"a1. A new employing unit shall not be assigned a discrete employer number when there is an acquisition or change in the form or organization of an existing business enterprise, or severable portion thereof, and there is a continuity of control of the business enterprise. That new employing unit shall continue to be the same employer for the purposes of this Chapter as before the acquisition or change in form. As used in this sub-subdivision:

1. 'Control of the business enterprise' may occur by means of ownership of the organization conducting the business enterprise, ownership of assets necessary to conduct the business enterprise, security arrangements or lease arrangements covering assets necessary to conduct the business enterprise, or a contract when the ownership, stated arrangements, or contract provide for or allow direction of the internal affairs or conduct of the business enterprise.

2. A 'continuity of control' will exist if one or more persons, entities, or other organizations controlling the business enterprise remain in control of the business enterprise after an acquisition or change in form.

1 Evidence of continuity of control shall include, but not
2 be limited to, changes of an individual proprietorship to
3 a corporation, partnership, limited liability company,
4 association, or estate; a partnership to an individual
5 proprietorship, corporation, limited liability company,
6 association, estate, or the addition, deletion, or change of
7 partners; a limited liability company to an individual
8 proprietorship, partnership, corporation, association,
9 estate, or to another limited liability company; a
10 corporation to an individual proprietorship partnership,
11 limited liability company, association, estate, or to
12 another corporation or from any form to another form.

13 This sub-subdivision shall not modify the provisions of
14 G.S. 96-10(d) – Collections of Contributions Upon Transfer or
15 Cessation of Business."

16 **SECTION 2.** G.S. 96-18 is amended by adding a new subsection to read:

17 "(b1) Except as provided in this subsection, the penalties and other provisions in
18 subdivisions (6), (7), (9a), and (11) of G.S. 105-236 apply to unemployment insurance
19 contributions under this Chapter to the same extent that they apply to taxes as defined in
20 G.S. 105-228.90(b)(7). The Commission has the same powers under those subdivisions
21 with respect to unemployment insurance contributions as does the Secretary of Revenue
22 with respect to taxes as defined in G.S. 105-228.90(b)(7).

23 G.S. 105-236(9a) applies to a 'contribution tax return preparer' to the same extent as
24 it applies to an income tax preparer. As used in this subsection, a 'contribution tax return
25 preparer' is a person who prepares for compensation, or who employs one or more
26 persons to prepare for compensation, any return of tax imposed by this Chapter or any
27 claim for refund of tax imposed by this Chapter. For purposes of this definition, the
28 completion of a substantial portion of a return or claim for refund is treated as the
29 preparation of the return or claim for refund. The term does not include a person merely
30 because the person (i) furnishes typing, reproducing, or other mechanical assistance, (ii)
31 prepares a return or claim for refund of the employer, or an officer or employee of the
32 employer, by whom the person is regularly and continuously employed, (iii) prepares as
33 a fiduciary a return or claim for refund for any person, or (iv) represents a taxpayer in a
34 hearing regarding a proposed assessment.

35 The penalty in G.S. 105-236(7) applies with respect to unemployment insurance
36 contributions under this Chapter only when one of the following circumstances exist in
37 connection with the violation:

- 38 (1) Any employing units employing more than 10 employees.
39 (2) A contribution of more than two thousand dollars (\$2,000) has not
40 been paid.
41 (3) An experience rating account balance is more than five thousand
42 dollars (\$5,000) overdrawn."

43 **SECTION 3.** Section 2 of this act becomes effective December 1, 2003. The
44 remainder of this act is effective when this act becomes law.