

108TH CONGRESS
2^D SESSION

H. R. 3463

IN THE SENATE OF THE UNITED STATES

JULY 15, 2004

Received

AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

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

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

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

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

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

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

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

24 “(ii) the State agency finds that such per-
25 son acquired the business solely or primarily for

1 the purpose of obtaining a lower rate of con-
2 tributions,

3 “(C) that unemployment experience shall (or
4 shall not) be transferred in accordance with such
5 regulations as the Secretary of Labor may prescribe
6 to ensure that higher rates of contributions are not
7 avoided through the transfer or acquisition of a busi-
8 ness,

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

11 “(i) persons that knowingly violate or at-
12 tempt to violate those provisions of the State
13 law which implement subparagraph (A) or (B)
14 or regulations under subparagraph (C), and

15 “(ii) persons that knowingly advise another
16 person to violate those provisions of the State
17 law which implement subparagraph (A) or (B)
18 or regulations under subparagraph (C), and

19 “(E) for the establishment of procedures to
20 identify the transfer or acquisition of a business for
21 purposes of this subsection.

22 “(2) For purposes of this subsection—

23 “(A) the term ‘unemployment experience’, with
24 respect to any person, refers to such person’s experi-
25 ence with respect to unemployment or other factors

1 bearing a direct relation to such person's unemploy-
2 ment risk;

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

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

7 “(D) the term ‘contributions’ has the meaning
8 given such term by section 3306(g) of the Internal
9 Revenue Code of 1986;

10 “(E) the term ‘knowingly’ means having actual
11 knowledge of or acting with deliberate ignorance of
12 or reckless disregard for the prohibition involved;
13 and

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

17 (b) STUDY AND REPORTING REQUIREMENTS.—

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

24 (2) REPORT.—Not later than July 15, 2007,
25 the Secretary of Labor shall submit to the Congress

1 a report that contains the findings of the study re-
2 quired by paragraph (1) and recommendations for
3 any Congressional action that the Secretary con-
4 siders necessary to improve the effectiveness of sec-
5 tion 303(k) of the Social Security Act.

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

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

15 (1) the term “State” includes the District of
16 Columbia, the Commonwealth of Puerto Rico, and
17 the Virgin Islands;

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

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

1 **SEC. 3. USE OF NEW HIRE INFORMATION TO ASSIST IN AD-**
2 **MINISTRATION OF UNEMPLOYMENT COM-**
3 **PENSATION PROGRAMS.**

4 Section 453(j) of the Social Security Act (42 U.S.C.
5 653(j)) is amended by adding at the end the following:

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

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

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

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

3 “(i) IN GENERAL.—A State agency
4 may not use or disclose information pro-
5 vided under this paragraph except for pur-
6 poses of administering a program referred
7 to in subparagraph (A).

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

17 “(iii) PENALTY FOR MISUSE OF IN-
18 FORMATION.—An officer or employee of
19 the State agency who fails to comply with
20 this subparagraph shall be subject to the
21 sanctions under subsection (1)(2) to the
22 same extent as if such officer or employee
23 was an officer or employee of the United
24 States.

