



125th MAINE LEGISLATURE

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Legislative Document

No. 534

H.P. 417

House of Representatives, February 15, 2011

An Act To Clarify Successor Liability under the Employment Security Law

Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

Presented by Representative PRESCOTT of Topsham.
Cosponsored by Senator SHERMAN of Aroostook and
Representatives: DOW of Waldoboro, HAMPER of Oxford, MALABY of Hancock,
NEWENDYKE of Litchfield, TUTTLE of Sanford, VOLK of Scarborough, WINSOR of
Norway, WINTLE of Garland.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 26 MRSA §1221, sub-§5-A**, as corrected by RR 2005, c. 1, §12, is
3 amended to read:

4 **5-A. Transfers of experience and assignment of rates.** Notwithstanding
5 subsection 5, the following applies to the assignment of rates and transfers of experience,
6 except that this section does not apply to businesses under Title 22, section 2492,
7 subsection 1, paragraph A.

8 A. If:

9 (1) An employer transfers its trade or business, or a portion of its trade or
10 business, to another employer and, at the time of the transfer, there is
11 substantially common ownership, management or control of the 2 employers,
12 then the unemployment experience attributable to the transferred trade or
13 business is transferred to the employer to whom the business is transferred. The
14 rates of both employers must be recalculated and made effective immediately
15 upon the date of the transfer of the trade or business. The transfer of some or all
16 of an employer's workforce to another employer ~~shall~~ must be considered a
17 transfer of trade or business when, as the result of such transfer, the transferring
18 employer no longer performs trade or business with respect to the transferred
19 workforce, and such trade or business is performed by the employer to whom the
20 workforce is transferred; and

21 (2) Following a transfer of experience under subparagraph (1), the commissioner
22 determines that the purpose of the transfer of trade or business was to obtain a
23 reduced liability for contributions, then the experience rating accounts of the
24 employers involved must be combined into a single account and a single rate
25 assigned to such account.

26 B. Whenever a person who is not an employer under this chapter acquires the trade
27 or business of an employer, the unemployment experience of the acquired trade or
28 business is not transferred to that person if the commissioner finds that the person
29 acquired the trade or business solely or primarily for the purpose of obtaining a lower
30 rate of contributions. In such circumstances, the person acquiring the trade or
31 business is assigned the applicable new employer rate under subsection 4-A. In
32 determining whether the trade or business was acquired solely or primarily for the
33 purpose of obtaining a lower rate of contributions, the commissioner shall consider
34 objective factors that may include the cost of acquiring the trade or business, whether
35 the person continued the business enterprise of the acquired trade or business, how
36 long the business enterprise was continued or whether a substantial number of new
37 employees were hired for performance of duties unrelated to the business activity
38 conducted prior to acquisition.

39 C. If a person knowingly violates or attempts to violate paragraph A or B or any
40 other provision of this chapter related to determining the assignment of a contribution
41 rate or if a person knowingly advises another person in a way that results in a
42 violation of such a provision, the person commits a Class D crime. In addition, the
43 person is subject to the following:

1 (1) If the person is an employer, then that employer is assigned the highest rate
2 assignable under this chapter for the rate year during which the violation or
3 attempted violation occurred and for the 3 rate years immediately following that
4 rate year, except that, if the person's business is already at the highest rate for any
5 year or if the amount of increase in the person's rate would be less than 2% for
6 such year, then a penalty rate of contributions of 2% of taxable wages is imposed
7 for that year; and

8 (2) If the person is not an employer, that person is subject to a fine of not more
9 than \$5,000, which must be deposited in the Special Administrative Expense
10 Fund established under section 1164.

11 D. As used in this subsection, unless the context otherwise indicates, the following
12 terms have the following meanings.

13 (1) "Knowingly" means having actual knowledge of or acting with deliberate
14 ignorance or reckless disregard for the prohibition involved.

15 (2) "Person" has the meaning given that term by Section 7701(a)(1) of the
16 Internal Revenue Code of 1986.

17 (3) "Trade or business" includes the employer's workforce.

18 (4) "Violates or attempts to violate" includes, but is not limited to, intent to
19 evade, misrepresentation or willful nondisclosure.

20 E. The commissioner shall adopt rules to identify the transfer or acquisition of a
21 business for purposes of this subsection. Rules adopted pursuant to this paragraph
22 are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

23 F. This subsection must be interpreted and applied in such a manner as to meet the
24 minimum requirements contained in any guidance or regulations issued by the United
25 States Department of Labor.

26 **SUMMARY**

27 This bill exempts licensed eating establishments from having experience and
28 assignment rates under the Employment Security Law transferred to them from previous
29 similar employers that may have operated within an existing property when the prior
30 employer has no connection to the new restaurant.