

SESSION OF 2005

**CONFERENCE COMMITTEE REPORT BRIEF  
SENATE BILL NO. 108**

As Agreed to March 30, 2005

**Brief \***

SB 108 would amend the Employment Security Law as follows:

**Conforming to the Federal Unemployment Tax Act**

- 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;

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- 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 em-

ployer in such a way that results in such a violation. These violations would be prosecuted as a crime.

### **Breath Alcohol Testing**

The bill would amend the Employment Security Law with regard to breath alcohol testing and chemical testing and conclusive evidence of misconduct and, hence, disqualification for unemployment benefits. The bill would amend the law to include the condition that an employee's refusal to submit to a breath alcohol test is conclusive evidence of misconduct if the test required:

- The use of the standards of The Drug Free Workplace Act;
- The test was administered as part of an employee assistance program; or other alcohol treatment program in which the employee was participating voluntarily or as a condition of further employment;
- The test was otherwise required by law and the test constituted a required condition of employment for the individual's job;
- The test was requested pursuant to a written policy of the employer which the employee had knowledge of and was a required condition of employment; or
- There was probable cause to believe that the individual used, possessed, or was impaired by an alcoholic beverage, a cereal malt beverage, or a controlled substance while working.

A positive breath alcohol test or a positive chemical test would be conclusive evidence to prove misconduct if the foundation evidence establishes that the results are reliable.

### **Conference Committee Action**

In Conference Committee, the Senate conferees agreed to the House amendments to the bill, with the following addition:

- Provisions of SB 55 as amended by the House was added to the bill.

### **Background**

With respect to the original SB 108, 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.

Proponents for SB 55 included representatives of the Kansas Chamber of Commerce, Employers Unity, and a private attorney from Wichita. A representative of the Department of Labor appeared as neutral on the bill. The Senate Committee amendments to the bill were a joint effort between the AFL-CIO and the Kansas Chamber of Commerce and included the rule and regulation authority for the Department of Labor and the addition of the wording "which the employee had knowledge of."

The fiscal note indicates that the Department of Labor has included appropriate training costs in its budget if this bill is enacted.

The House Committee amendments were primarily due to cooperative efforts of the Kansas Chamber and the Kansas AFL-CIO.

The House Committee made the following changes to SB 55:

- The term alcoholic beverage is changed to alcoholic liquor.
- The chemical testing of hair is deleted from the chemical tests that include testing of urine, blood, or saliva.
- A positive breath test means a test showing an alcohol concentration of .04 or greater. Breath tests must be administered by trained individuals using certified and reliable instruments according to the manufacturers directions
- Deleted the section regarding the rule and regulation authority for the Kansas Department of Labor.