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1 AMENDMENT TO HOUSE BILL 2699

2 AMENDMENT NO. _____. Amend House Bill 2699 on page 1, by
3 replacing line 5 with the following:

4 "changing Sections 1502.1, 1507.1, 1900, 2201, and 2201.1 as
5 follows:

6 (820 ILCS 405/1502.1) (from Ch. 48, par. 572.1)

7 Sec. 1502.1. Employer's benefit charges.

8 A. Benefit charges which result from payments to any
9 claimant made on or after July 1, 1989 shall be charged:

10 1. For benefit years beginning prior to July 1, 1989,
11 to each employer who paid wages to the claimant during his
12 base period;

13 2. For benefit years beginning on or after July 1, 1989
14 but before January 1, 1993, to the later of:

15 a. the last employer prior to the beginning of the
16 claimant's benefit year:

1 i. from whom the claimant was separated or who,
2 by reduction of work offered, caused the claimant
3 to become unemployed as defined in Section 239,
4 and,

5 ii. for whom the claimant performed services
6 in employment, on each of 30 days whether or not
7 such days are consecutive, provided that the wages
8 for such services were earned during the period
9 from the beginning of the claimant's base period to
10 the beginning of the claimant's benefit year; but
11 that employer shall not be charged if:

12 (1) the claimant's last separation from
13 that employer was a voluntary leaving without
14 good cause, as the term is used in Section 601A
15 or under the circumstances described in
16 paragraphs 1 and 2 of Section 601B; or

17 (2) the claimant's last separation from
18 that employer was a discharge for misconduct or
19 a felony or theft connected with his work from
20 that employer, as these terms are used in
21 Section 602; or

22 (3) after his last separation from that
23 employer, prior to the beginning of his benefit
24 year, the claimant refused to accept an offer
25 of or to apply for suitable work from that
26 employer without good cause, as these terms are

1 used in Section 603; or

2 (4) the claimant, following his last
3 separation from that employer, prior to the
4 beginning of his benefit year, is ineligible or
5 would have been ineligible under Section 612 if
6 he has or had had base period wages from the
7 employers to which that Section applies; or

8 (5) the claimant subsequently performed
9 services for at least 30 days for an individual
10 or organization which is not an employer
11 subject to this Act; or

12 b. the single employer who pays wages to the
13 claimant that allow him to requalify for benefits after
14 disqualification under Section 601, 602 or 603, if:

15 i. the disqualifying event occurred prior to
16 the beginning of the claimant's benefit year, and

17 ii. the requalification occurred after the
18 beginning of the claimant's benefit year, and

19 iii. even if the 30 day requirement given in
20 this paragraph is not satisfied; but

21 iv. the requalifying employer shall not be
22 charged if the claimant is held ineligible with
23 respect to that requalifying employer under
24 Section 601, 602 or 603.

25 3. For benefit years beginning on or after January 1,
26 1993, with respect to each week for which benefits are

1 (4) the claimant subsequently performed
2 services for at least 30 days for an individual
3 or organization which is not an employer
4 subject to this Act; or

5 (5) the claimant, following his separation
6 from that employer, is ineligible or would have
7 been ineligible under Section 612 if he has or
8 had had base period wages from the employers to
9 which that Section applies (but only for the
10 period of ineligibility or potential
11 ineligibility); or

12 b. the single employer who pays wages to the
13 claimant that allow him to requalify for benefits after
14 disqualification under Section 601, 602, or 603, even
15 if the 30 day requirement given in this paragraph is
16 not satisfied; but the requalifying employer shall not
17 be charged if the claimant is held ineligible with
18 respect to that requalifying employer under Section
19 601, 602, or 603.

20 B. Whenever a claimant is ineligible pursuant to Section
21 614 on the basis of wages paid during his base period, any days
22 on which such wages were earned shall not be counted in
23 determining whether that claimant performed services during at
24 least 30 days for the employer that paid such wages as required
25 by paragraphs 2 and 3 of subsection A.

26 C. If no employer meets the requirements of paragraph 2 or

1 3 of subsection A, then no employer will be chargeable for any
2 benefit charges which result from the payment of benefits to
3 the claimant for that benefit year.

4 D. Notwithstanding the preceding provisions of this
5 Section, no employer shall be chargeable for any benefit
6 charges which result from the payment of benefits to any
7 claimant after the effective date of this amendatory Act of
8 1992 where the claimant's separation from that employer
9 occurred as a result of his detention, incarceration, or
10 imprisonment under State, local, or federal law.

11 D-1. Notwithstanding any other provision of this Act,
12 including those affecting finality of benefit charges or rates,
13 an employer shall not be chargeable for any benefit charges
14 which result from the payment of benefits to an individual for
15 any week of unemployment after January 1, 2003, during the
16 period that the employer's business is closed solely because of
17 the entrance of the employer, one or more of the partners or
18 officers of the employer, or the majority stockholder of the
19 employer into active duty in the Illinois National Guard or the
20 Armed Forces of the United States.

21 D-2. Notwithstanding any other provision of this Act, an
22 employer shall not be chargeable for any benefit charges that
23 result from the payment of benefits to an individual for any
24 week of unemployment after the effective date of this
25 amendatory Act of the 100th General Assembly if the payment was
26 the result of the individual voluntarily leaving work under the

1 conditions described in item 6 of subsection C of Section 500.

2 E. For the purposes of Sections 302, 409, 701, 1403, 1404,
3 1405 and 1508.1, last employer means the employer that:

4 1. is charged for benefit payments which become benefit
5 charges under this Section, or

6 2. would have been liable for such benefit charges if
7 it had not elected to make payments in lieu of
8 contributions.

9 (Source: P.A. 93-634, eff. 1-1-04; 93-1012, eff. 8-24-04;
10 94-152, eff. 7-8-05.)

11 (820 ILCS 405/1507.1)

12 Sec. 1507.1. Transfer of trade or business; contribution
13 rate. Notwithstanding any other provision of this Act:

14 A.(1) If an individual or entity transfers its trade or
15 business, or a portion thereof, to another individual or entity
16 and, at the time of the transfer, there is any substantial
17 common ownership, management, or control of the transferor and
18 transferee, then the experience rating record attributable to
19 ~~records of the~~ transferred trade or business ~~transferor and~~
20 ~~transferee~~ shall be transferred to the transferee ~~combined for~~
21 ~~the purpose of determining their rates of contribution.~~ For
22 purposes of this subsection, a transfer of trade or business
23 includes but is not limited to the transfer of some or all of
24 the transferor's workforce. For purposes of calculating the
25 contribution rates of the transferor and transferee pursuant to

1 this paragraph, within 30 days of the date of a transfer to
2 which this paragraph applies, the transferor and transferee
3 shall provide to the Department such information, as the
4 Director by rule prescribes, which will show the portion of the
5 transferor's experience rating record that is attributable to
6 the transferred trade or business.

7 (1.5) If, following a transfer of experience rating records
8 under paragraph (1), the Director determines that a substantial
9 purpose of the transfer of trade or business was to obtain a
10 reduced liability for contributions, the experience rating
11 accounts of the employers involved shall be combined into a
12 single account and a single rate shall be assigned to the
13 account.

14 (2) For the calendar year in which there occurs a transfer
15 to which paragraph (1) or (1.5) applies:

16 (a) If the transferor or transferee had a contribution
17 rate applicable to it for the calendar year, it shall
18 continue with that contribution rate for the remainder of
19 the calendar year.

20 (b) If the transferee had no contribution rate
21 applicable to it for the calendar year, then the
22 contribution rate of the transferee shall be computed for
23 the calendar year based on the experience rating record of
24 the transferor or, where there is more than one transferor,
25 the combined experience rating records of the transferors,
26 subject to the 5.4% rate ceiling established pursuant to

1 subsection G of Section 1506.1 and subsection A of Section
2 1506.3.

3 B. If any individual or entity that is not an employer
4 under this Act at the time of the acquisition acquires the
5 trade or business of an employing unit, the experience rating
6 record of the acquired business shall not be transferred to the
7 individual or entity if the Director finds that the individual
8 or entity acquired the business solely or primarily for the
9 purpose of obtaining a lower rate of contributions. Evidence
10 that a business was acquired solely or primarily for the
11 purpose of obtaining a lower rate of contributions includes but
12 is not necessarily limited to the following: the cost of
13 acquiring the business is low in relation to the individual's
14 or entity's overall operating costs subsequent to the
15 acquisition; the individual or entity discontinued the
16 business enterprise of the acquired business immediately or
17 shortly after the acquisition; or the individual or entity
18 hired a significant number of individuals for performance of
19 duties unrelated to the business activity conducted prior to
20 acquisition.

21 C. An individual or entity to which subsection A applies
22 shall pay contributions with respect to each calendar year at a
23 rate consistent with that subsection, and an individual or
24 entity to which subsection B applies shall pay contributions
25 with respect to each calendar year at a rate consistent with
26 that subsection. If an individual or entity knowingly violates

1 or attempts to violate this subsection, the individual or
2 entity shall be subject to the following penalties:

3 (1) If the individual or entity is an employer, then,
4 in addition to the contribution rate that would otherwise
5 be calculated (including any fund building rate provided
6 for pursuant to Section 1506.3), the employer shall be
7 assigned a penalty contribution rate equivalent to 50% of
8 the contribution rate (including any fund building rate
9 provided for pursuant to Section 1506.3), as calculated
10 without regard to this subsection for the calendar year
11 with respect to which the violation or attempted violation
12 occurred and the immediately following calendar year. In
13 the case of an employer whose contribution rate, as
14 calculated without regard to this subsection or Section
15 1506.3, equals or exceeds the maximum rate established
16 pursuant to paragraph 2 of subsection E of Section 1506.1,
17 the penalty rate shall equal 50% of the sum of that maximum
18 rate and the fund building rate provided for pursuant to
19 Section 1506.3. In the case of an employer whose
20 contribution rate is subject to the 5.4% rate ceiling
21 established pursuant to subsection G of Section 1506.1 and
22 subsection A of Section 1506.3, the penalty rate shall
23 equal 2.7%. If any product obtained pursuant to this
24 subsection is not an exact multiple of one-tenth of 1%, it
25 shall be increased or reduced, as the case may be, to the
26 nearer multiple of one-tenth of 1%. If such product is

1 equally near to 2 multiples of one-tenth of 1%, it shall be
2 increased to the higher multiple of one-tenth of 1%. Any
3 payment attributable to the penalty contribution rate
4 shall be deposited into the clearing account.

5 (2) If the individual or entity is not an employer, the
6 individual or entity shall be subject to a penalty of
7 \$10,000 for each violation. Any penalty attributable to
8 this paragraph (2) shall be deposited into the Special
9 Administrative Account.

10 D. An individual or entity shall not knowingly advise
11 another in a way that results in a violation of subsection C.
12 An individual or entity that violates this subsection shall be
13 subject to a penalty of \$10,000 for each violation. Any such
14 penalty shall be deposited into the Special Administrative
15 Account.

16 E. Any individual or entity that knowingly violates
17 subsection C or D shall be guilty of a Class B misdemeanor. In
18 the case of a corporation, the president, the secretary, and
19 the treasurer, and any other officer exercising corresponding
20 functions, shall each be subject to the aforesaid penalty for
21 knowingly violating subsection C or D.

22 F. The Director shall establish procedures to identify the
23 transfer or acquisition of a trade or business for purposes of
24 this Section.

25 G. For purposes of this Section:

26 "Experience rating record" shall consist of years

1 during which liability for the payment of contributions was
2 incurred, all benefit charges incurred, and all wages paid
3 for insured work, including but not limited to years,
4 benefit charges, and wages attributed to an individual or
5 entity pursuant to Section 1507 or subsection A.

6 "Knowingly" means having actual knowledge of or acting
7 with deliberate ignorance of or reckless disregard for the
8 statutory provision involved.

9 "Transferee" means any individual or entity to which
10 the transferor transfers its trade or business or any
11 portion thereof.

12 "Transferor" means the individual or entity that
13 transfers its trade or business or any portion thereof.

14 H. This Section shall be interpreted and applied in such a
15 manner as to meet the minimum requirements contained in any
16 guidance or regulations issued by the United States Department
17 of Labor. Insofar as it applies to the interpretation and
18 application of the term "substantial", as used in subsection A,
19 this subsection H is not intended to alter the meaning of
20 "substantially", as used in Section 1507 and construed by
21 precedential judicial opinion, or any comparable term as
22 elsewhere used in this Act.

23 (Source: P.A. 94-301, eff. 1-1-06.); and

24 on page 9, by inserting immediately below line 21 the
25 following:

1 "(820 ILCS 405/2201) (from Ch. 48, par. 681)

2 Sec. 2201. Refund or adjustment of contributions. Except as
3 otherwise provided in this Section, not ~~Not~~ later than 3 years
4 after the date upon which ~~the Director first notifies~~ an
5 employing unit ~~that it~~ has paid contributions, interest, or
6 penalties ~~thereon~~ erroneously, the employing unit may file a
7 claim with the Director for an adjustment thereof in connection
8 with subsequent contribution payments, or for a refund thereof
9 where such adjustment cannot be made; provided, however, that
10 no refund or adjustment shall be made of any contribution, the
11 amount of which has been determined and assessed by the
12 Director, if such contribution was paid after the determination
13 and assessment of the Director became final, and provided,
14 further, that any such adjustment or refund, involving
15 contributions with respect to wages on the basis of which
16 benefits have been paid, shall be reduced by the amount of
17 benefits so paid. In the case of an erroneous payment that
18 occurred on or after January 1, 2015 and prior to the effective
19 date of this amendatory Act of the 100th General Assembly, the
20 employing unit may file the claim for adjustment or refund not
21 later than June 30, 2018 or 3 years after the date of the
22 erroneous payment, whichever is later, subject to all of the
23 conditions otherwise applicable pursuant to this Section
24 regarding a claim for adjustment or refund. Upon receipt of a
25 claim the Director shall make his determination, either

1 allowing such claim in whole or in part, or ordering that it be
2 denied, and serve notice upon the claimant of such
3 determination. Such determination of the Director shall be
4 final at the expiration of 20 days from the date of service of
5 such notice unless the claimant shall have filed with the
6 Director a written protest and a petition for hearing,
7 specifying his objections thereto. Upon receipt of such
8 petition within the 20 days allowed, the Director shall fix the
9 time and place for a hearing and shall notify the claimant
10 thereof. At any hearing held as herein provided, the
11 determination of the Director shall be prima facie correct and
12 the burden shall be upon the protesting employing unit to prove
13 that it is incorrect. All of the provisions of this Act
14 applicable to hearings conducted pursuant to Section 2200 shall
15 be applicable to hearings conducted pursuant to this Section.
16 Upon the conclusion of such hearing, a decision shall be made
17 by the Director and notice thereof given to the claimant. If
18 the Director shall decide that the claim be allowed in whole or
19 in part, or if such allowance be ordered by the Court pursuant
20 to Section 2205 and the judgment of said Court has become
21 final, the Director shall, if practicable, make adjustment
22 without interest in connection with subsequent contribution
23 payments by the claimant, and if adjustments thereof cannot
24 practicably be made in connection with such subsequent
25 contribution payments, then the Director shall refund to the
26 claimant the amount so allowed, without interest except as

1 otherwise provided in Section 2201.1 from moneys in the benefit
2 account established by this Act. Nothing herein contained shall
3 prohibit the Director from making adjustment or refund upon his
4 own initiative, within the time allowed for filing claim
5 therefor, provided that the Director shall make no refund or
6 adjustment of any contribution, the amount of which he has
7 previously determined and assessed, if such contribution was
8 paid after the determination and assessment became final.

9 If this State should not be certified for any year by the
10 Secretary of Labor of the United States of America, or other
11 appropriate Federal agency, under Section 3304 of the Federal
12 Internal Revenue Code of 1954, the Director shall refund
13 without interest to any instrumentality of the United States
14 subject to this Act by virtue of permission granted in an Act
15 of Congress, the amount of contributions paid by such
16 instrumentality with respect to such year.

17 The Director may by regulation provide that, if there is a
18 total credit balance of less than \$2 in an employer's account
19 with respect to contributions, interest, and penalties, the
20 amount may be disregarded by the Director; once disregarded,
21 the amount shall not be considered a credit balance in the
22 account and shall not be subject to either an adjustment or a
23 refund.

24 (Source: P.A. 98-1133, eff. 1-1-15.)

1 Sec. 2201.1. Interest on Overpaid Contributions, Penalties
2 and Interest. The Director shall quarterly ~~semi-annually~~
3 furnish each employer with a statement of credit balances in
4 the employer's account where the balances with respect to all
5 contributions, interest and penalties combined equal or exceed
6 \$2. Under regulations prescribed by the Director and subject to
7 the limitations of Section 2201, the employer may file a
8 request for an adjustment or refund of the amount erroneously
9 paid. Interest shall be paid on refunds of erroneously paid
10 contributions, penalties and interest imposed by this Act,
11 except that if any refund is mailed by the Director within 90
12 days after the date of the refund claim, no interest shall be
13 due or paid. The interest shall begin to accrue as of the date
14 of the refund claim and shall be paid at the rate of 1.5% per
15 month computed at the rate of 12/365 of 1.5% for each day or
16 fraction thereof. Interest paid pursuant to this Section shall
17 be paid from monies in the special administrative account
18 established by Sections 2100 and 2101. This Section shall apply
19 only to refunds of contributions, penalties and interest which
20 were paid as the result of wages paid after January 1, 1988.
21 (Source: P.A. 98-1133, eff. 1-1-15.)".