

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005**

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**SENATE BILL 2012**

Short Title: SUTA Modifications.

(Public)

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Sponsors: Senator Bingham.

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Referred to: Finance.

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May 26, 2006

A BILL TO BE ENTITLED

1  
2 AN ACT TO RELIEVE A SUCCESSOR EMPLOYER OF THE HIGHER  
3 UNEMPLOYMENT CONTRIBUTION RATE OF ITS PREDECESSOR WHEN  
4 THERE IS NO COMMON OWNERSHIP OF THE TWO EMPLOYERS.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 96-9(c)(4) reads as rewritten:

7 "(4) Transfer of account. –

- 8 a. Whenever any individual, group of individuals, or employing  
9 unit, who or which, in any manner succeeds to or acquires  
10 substantially all or a distinct and severable portion of the  
11 organization, trade, or business of another employing unit as  
12 provided in G.S. 96-8, subdivision (5), paragraph b, the account  
13 or that part of the account of the predecessor which relates to  
14 the acquired portion of the business shall, upon the mutual  
15 consent of the parties concerned and approval of the  
16 Commission in conformity with the regulations as prescribed  
17 therefor, be transferred as of the date of acquisition of the  
18 business to the successor employer for use in the determination  
19 of his rate of contributions, provided application for transfer is  
20 made within 60 days after the Commission notifies the  
21 successor of his right to request such transfer, otherwise the  
22 effective date of the transfer shall be the first day of the  
23 calendar quarter in which such application is filed, and that after  
24 the transfer the successor employing unit continues to operate  
25 the transferred portion of such organization, trade or business.  
26 Provided, however, that the transfer of an account for the  
27 purpose of computation of rates shall be deemed to have been  
28 made prior to the computation date falling within the calendar  
29 year within which the effective date of such transfer occurs and

1 the account shall thereafter be used in the computation of the  
2 rate of the successor employer for succeeding years, subject,  
3 however, to the provisions of paragraph b of this subdivision.  
4 Provided there shall be no transfer of account when (i) a person  
5 or entity is not an employer at the time of the acquisition and  
6 (ii) the person or entity acquired the business or account  
7 primarily for the purpose of obtaining a reduced rate of  
8 contribution.

9 On or after August 1, 1988, whenever any individual, group  
10 of individuals, or employing unit, who or which, in any manner  
11 other than provided in this sub-subdivision succeeds to or  
12 acquires all of the organization, trade, or business of another  
13 employing unit as provided in G.S. 96-8, subdivision (5),  
14 paragraph b, the account of the predecessor shall be transferred  
15 as of the date of the acquisition of the business to the successor  
16 employer for use in the determination of his rate of  
17 contributions. Whenever any individual, group of individuals,  
18 or employing unit, who or which, acquires all of the  
19 organization, trade, or business of another employing unit  
20 through a sale in bankruptcy and there is no common ownership  
21 or control of the employing units, the account of the  
22 predecessor shall, upon the mutual consent of the parties  
23 concerned and approval of the Commission in conformity with  
24 the regulations as prescribed therefor, be transferred as of the  
25 date of acquisition of the business to the successor employer for  
26 use in the determination of his rate of contributions provided  
27 application for transfer is made within 60 days after the  
28 Commission notifies the successor of his right to request such  
29 transfer, otherwise the effective date of the transfer shall be the  
30 first day of the calendar quarter in which such application is  
31 filed, and that after the transfer the successor employing unit  
32 continues to operate the transferred portion of such  
33 organization, trade, or business. Whenever any individual,  
34 group of individuals, or employing unit, who or which, in any  
35 manner succeeds to or acquires a distinct and severable portion  
36 of the organization, trade, or business of another employing unit  
37 as provided in G.S. 96-8, subdivision (5), paragraph b, that part  
38 of the account of the predecessor which relates to the acquired  
39 portion of the business shall, upon the mutual consent of the  
40 parties concerned and approval of the Commission in  
41 conformity with the regulations as prescribed therefor, be  
42 transferred as of the date of acquisition of the business to the  
43 successor employer for use in the determination of his rate of  
44 contributions, provided application for transfer is made within

1 60 days after the Commission notifies the successor of his right  
2 to request such transfer, otherwise the effective date of the  
3 transfer shall be the first day of the calendar quarter in which  
4 such application is filed, and that after the transfer the successor  
5 employing unit continues to operate the transferred portion of  
6 such organization, trade or business. On or after January 1,  
7 2006, whenever part of an organization, trade, or business is  
8 transferred between entities subject to substantially common  
9 ownership, management, or control, the tax account shall be  
10 transferred in accordance with regulations. However,  
11 employing units transferring entities with any common  
12 ownership, management, or control are not entitled to separate  
13 and distinct employer status under this Chapter. Provided,  
14 however, that the transfer of an account for the purpose of  
15 computation of rates shall be deemed to have been made prior  
16 to the computation date falling within the calendar year within  
17 which the effective date of such transfer occurs and the account  
18 shall thereafter be used in the computation of the rate of the  
19 successor employer for succeeding years, subject, however, to  
20 the provisions of paragraph b of this subdivision. No request for  
21 a transfer of the account will be accepted and no transfer of the  
22 account will be made if the request for the transfer of the  
23 account is not received within ~~two~~ three years of the date of  
24 acquisition or notification by the Commission of the right to  
25 request such transfer, whichever occurs later. However, in no  
26 event will a request for a transfer be allowed if an account has  
27 been terminated because an employer ceases to be an employer  
28 pursuant to G.S. 96-9(c)(5) and G.S. 96-11(d) regardless of the  
29 date of notification.

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

38 1. "Control of the business enterprise" may occur by means  
39 of ownership of the organization conducting the business  
40 enterprise, ownership of assets necessary to conduct the  
41 business enterprise, security arrangements or lease  
42 arrangements covering assets necessary to conduct the  
43 business enterprise, or a contract when the ownership,  
44 stated arrangements, or contract provide for or allow

1 direction of the internal affairs or conduct of the business  
2 enterprise.

- 3 2. A "continuity of control" will exist if one or more  
4 persons, entities, or other organizations controlling the  
5 business enterprise remain in control of the business  
6 enterprise after an acquisition or change in form.  
7 Evidence of continuity of control shall include, but not  
8 be limited to, changes of an individual proprietorship to  
9 a corporation, partnership, limited liability company,  
10 association, or estate; a partnership to an individual  
11 proprietorship, corporation, limited liability company,  
12 association, estate, or the addition, deletion, or change of  
13 partners; a limited liability company to an individual  
14 proprietorship, partnership, corporation, association,  
15 estate, or to another limited liability company; a  
16 corporation to an individual proprietorship partnership,  
17 limited liability company, association, estate, or to  
18 another corporation or from any form to another form.

19 This sub-subdivision shall not modify the provisions of  
20 G.S. 96-10(d) – Collections of Contributions Upon Transfer or  
21 Cessation of Business.

- 22 b. Notwithstanding any other provisions of this section, if the  
23 successor employer was an employer subject to this Chapter  
24 prior to the date of acquisition of the business, the successor's  
25 rate of contribution for the period from that date to the end of  
26 the then current contribution year shall be the same as the  
27 successor's rate in effect on the date of the acquisition. If the  
28 successor was not an employer prior to the date of the  
29 acquisition of the business, the successor shall be assigned a  
30 standard beginning rate of contribution set forth in  
31 G.S. 96-9(b)(1) for the remainder of the year in which the  
32 successor acquired the business of the predecessor; however, if  
33 the successor makes application for the transfer of the account  
34 within 60 days after notification by the Commission of the right  
35 to do so and the account is transferred, or meets the  
36 requirements for mandatory transfer, the successor shall be  
37 assigned for the remainder of the year the rate applicable to the  
38 predecessor employer or employers on the date of acquisition of  
39 the business, as long as there was only one predecessor or, if  
40 more than one, the predecessors had identical rates. In the event  
41 the rates of the predecessor were not identical, the rate of the  
42 successor shall be the highest rate applicable to any of the  
43 predecessor employers on the date of acquisition of the  
44 business.

1                   Irrespective of any other provisions of this Chapter, when an  
2                   account is transferred in its entirety by an employer to a  
3                   successor, the transferring employer shall thereafter pay the  
4                   standard beginning rate of contributions set forth in  
5                   G.S. 96-9(b)(1) and shall continue to pay at that rate until the  
6                   transferring employer qualifies for a reduction, reacquires the  
7                   account transferred or acquires the experience rating account of  
8                   another employer, or is subject to an increase in rate under the  
9                   conditions prescribed in G.S. 96-9(b)(2) and (3).

10                   c.       In those cases where the organization, trade, or business of a  
11                   deceased person, or insolvent debtor is taken over and operated  
12                   by an administrator, administratrix, executor, executrix,  
13                   receiver, or trustee in bankruptcy, such employing units shall  
14                   automatically succeed to the account and rate of contribution of  
15                   such deceased person, or insolvent debtor without the necessity  
16                   of the filing of a formal application for the transfer of such  
17                   account."

18                   **SECTION 2.** This act is effective when it becomes law.