

**SB**

**306**

# SENATE COMMITTEE REPORT

DATE: 3/9/06

FURTHER:

DATE TURNED  
IN TO OFFICE: \_\_\_\_\_

Judiciary Committee considered

SENATE BILL NO. 306

## SB 306 UNEMPLOYMENT INSURANCE FUND & TAXES

"An Act requiring an employing unit with a change in ownership, management, or control or similar change to notify the Department of Labor and Workforce Development of the change; relating to the unemployment contribution rate of an employing unit; defining 'business' for purposes of statutes setting unemployment contribution rates; establishing the crime of obtaining an unemployment rate by deception; and providing for an effective date."

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

<b>CS Senate Bill:</b>	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
<b>SCS House Bill:</b>	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

**NEW FISCAL NOTE(S):**

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>			X	
<i>[Signature]</i>	X			
<i>[Signature]</i>	X			
<i>[Signature]</i>				
<i>[Signature]</i>				
CHAIR: <i>[Signature]</i>	✓			



Alaska State Legislature

Senator Con Bunde  
Senate District P

Vice Chair: Senate Finance Committee  
Chair: Senate Labor & Commerce Committee

## Sponsor Statement

### Senate Bill 306 Unemployment Insurance Fund & Taxes

Senate Bill 306 addresses the issue of unemployment tax avoidance schemes by unscrupulous employers. This type of activity typically occurs when one business buys out another with a lower unemployment insurance tax rate, or when one business is transferred or taken over by another, solely to obtain a lower tax rate.

SB 306 is a crucial piece of legislation that is mandated by a federal law, the SUTA Dumping Prevention Act, which was passed in 2004. This Act amended the Social Security Act and established a nationwide minimum standard for curbing certain unemployment insurance tax avoidance activities by employers. Failure to pass this bill would result in the de-certification of the Alaska UI program and employers in this state would lose their federal offset credit of 5.4%, resulting in \$103.9 million in additional taxes to the employer. The state would lose \$30.8 million for administrative and operational funding for UI programs.

Tax avoidance schemes are damaging to Alaskans, inflate tax rates and unjustly shift the burden of unemployment insurance to other, law-abiding businesses. Passage of SB 306 would impose meaningful penalties on fraudulent businesses, and would maintain unemployment insurance taxes equally among Alaska businesses and would align our state with current, federally mandated law.

## Sectional Analysis

**Section 1.** Adds a new section, AS 23.20.293 and requires an employer to notify the department in writing of any changes in ownership, management and control or when an employer acquires all or a part of another employer's trade or business. This provision will help the department detect tax avoidance and will help ensure employers are assigned the correct tax rate.

**Section 2.** Amends AS 23.20.295(d) to conform to federal law, which requires State laws to contain language which prevents unemployment insurance tax avoidance.

**Section 3.** Adds a new section, AS 23.20.297 to address transfers of payroll history and assignment of tax rates to conform to the tax avoidance prevention provisions, and establishes required civil and criminal penalties against persons who knowingly violate those provisions.

**Section 4.** Adds a new section that establishes criminal penalties against an employer or person(s) who knowingly or recklessly obtains or advises another person or employer to obtain an unemployment rate under false pretenses.

**Section 5.** Amends AS 23.20.310 to add new definitions to clarify the tax avoidance provisions.

**Section 6.** Adds new language to allow the department to adopt regulations necessary to implement the changes made by the above sections.

**Section 7.** Provides for an effective date of July 1, 2006 for Sections 1, 2, and 4 and for AS 23.20.297(a)-(c) enacted by Section 3.

**Section 8.** Provides for an immediate effective date for Sections 5 and 6 and for AS 23.20.297(d), enacted by Section 3.

# FISCAL NOTE

**STATE OF ALASKA**  
**2006 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: **SB306-DOLWD-UI-02-23-06**  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Department: **Labor and Workforce Development**  
 Title: **Unemployment Insurance Fund & Taxes** RDU: **Employment Security**  
 Sponsor: **Senate L&C** Component: **Unemployment Insurance**  
 Requester: **Senate L&C** Component Number: **2276**

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2006) cost: None  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This legislation adds language to comply with federal legislation. Public Law 108-295 (42 U.S.C. 503) requires that a state's law contain language that will prevent state unemployment tax avoidance schemes and also requires that states apply meaningful civil and criminal penalties against persons who knowingly violate those provisions.

The anticipated fiscal impact as a result of this legislation is approximately \$60.0 to \$90.0 in data processing costs which will be absorbed by existing federal grant funds.

Prepared by: Thomas W. Nelson, Director Phone: 465-5933  
 Division: Employment Security Division Date/Time: 2/23/06 2:21 PM  
 Approved by: Greg O'Claray, Commissioner Date: 2/23/2006  
 Agency: Department of Labor and Workforce Development



# Alaska State Legislature

**Senate Majority** Web: [www.akrepublicans.org](http://www.akrepublicans.org)

**Sponsor:** Labor & Commerce  
**Current Version:** SB 306  
**Contact:** Jane Alberts, 465-3844

## Fact Sheet for: Senate Bill 306

**Short Title:** UNEMPLOYMENT INSURANCE FUND & TAXES

### Summary:

- Enacts measures to prevent the practice of State Unemployment Tax avoidance schemes, including:
  - Requires employers to notify the Department of Labor and Workforce Development of a business change or acquisition;
  - Implements standards addressing transfers of experience and assignment of rates;
  - Establishes the crime of obtaining an unemployment contribution rate by deception, and sets penalties.

### Benefits:

- Maintains the integrity and equity of Alaska's tax rating system and trust fund.
- Helps keep employer unemployment insurance tax rates from increases due to under funding.
- Prevents tax rate avoidance schemes by imposing meaningful penalties in cases where a violation is detected.

### Background:

- In August 2004, President Bush signed P.L. 108-295, amending the Social Security Act of 1935 and requiring states to enact legislation that will prevent the practice of State Unemployment Tax Avoidance schemes. This activity occurs when employers find ways to manipulate state unemployment insurance (UI) tax rating systems such that the employer pays UI taxes at an artificially low rate. If Alaska fails to enact required legislation, Alaska's UI program will be de-certified and all employers in the state would lose their federal offset credit of 5.4 percent, which would amount to \$103.9 million in additional taxes. Also, Alaska loses \$30.8 million in administrative and operational funding for supporting unemployment insurance programs.

U.S. Department of Labor

Assistant Secretary for  
Employment and Training  
Washington, D.C. 20210



The Honorable Frank Murkowski  
Governor of Alaska  
Box 110001  
Juneau, Alaska 99811

Dear Governor Murkowski:

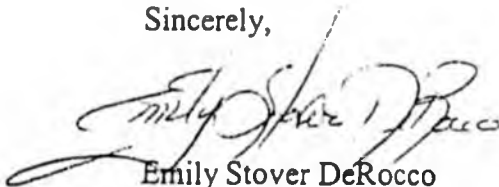
In my letter to you dated June 10, 2005, I called your attention to amendments to Alaska's unemployment compensation law that are needed for the state to remain eligible for Federal grants to administer its unemployment compensation (UC) program. Unfortunately, since that time there has been no action on this legislation, which must be in effect in Alaska on January 1, 2006, to conform with requirements of Federal UC law.

On August 9, 2004, the President signed P.L. 108-295, the SUTA Dumping Prevention Act of 2004. This legislation amended the Social Security Act to add a new Section 303(k), establishing a nationwide minimum standard for curbing certain practices that some employers have used to manipulate state unemployment insurance tax rates and avoid their fair share of unemployment taxes. All states are required to amend their UC laws to conform with the requirements of Section 303(k), SSA, as a condition for receiving grants for the administration of the state's UC law.

Labor and Workforce Development Commissioner O'Claray informed me by letter dated June 23, 2005, that Alaska is poised to secure enactment in the second session of the legislature. In order to hold in abeyance initiation of proceedings to withhold certification for the administrative grant, I must have your assurance that you will make every effort to secure enactment of legislation meeting the Federal requirements and making any transfers of experience that occur after January 1, 2006, until the effective date of the enactment, retroactive to January 1, 2006, to ensure conformity with Federal law.

Please provide this assurance before January 1, 2006, that Alaska will enact the required legislation expeditiously in the next legislative session.

Sincerely,

  
Emily Stover DeRocco

OFFICE OF THE GOVERNOR  
MAILROOM  
DEC 13 2005

**Background**

# STATE OF ALASKA

Department Of Labor and Workforce Development

FRANK H. MURKOWSKI, GOVERNOR

P. O. Box 21149  
Juneau, AK 99802-1149  
Phone: (907)465-2700  
Fax: (907)465-2784

## OFFICE OF THE COMMISSIONER

December 22, 2005

Emily Stover DeRocco, Assistant Secretary  
Employment and Training Administration  
U.S. Department of Labor  
200 Constitution Avenue, N.W., Room S-2307  
Washington, D.C. 20210

Dear Assistant Secretary DeRocco,

Your letter of December 7, 2005, to Governor Frank Murkowski has been forwarded to me for response. As stated in earlier correspondence, I share your concern and continue to aggressively pursue the earliest possible enactment of the required legislation that your staff and mine have prepared for the Alaska legislature.

Alaska's Employment Security Act was amended in the mid-1960s to provide for a decline quotient employer rating system; therefore, current state law already requires the transfer of experience for rating purposes. Specifically, Alaska Statutes 23.20.280 through 23.20.295 and supporting regulations specify the administration of rate assignment and experience transfers. Moreover, our employer registration activities are designed to detect changes in ownership and changes in workforce that might be attempted for the sole purpose of rate reduction.

We recognize that our current statutes do not conform completely to P.L. 108-295. We are making every effort to secure speedy enactment of legislation which meets the federal requirements during the second half of Alaska's 24<sup>th</sup> Legislature.

Sincerely,

  
Greg O'Claray  
Commissioner

cc: Tom Nelson, Director, Employment Security Division

## **Unemployment Insurance Federal Compliance**

### **Recent federal law requires state law change:**

In August 2004, President Bush signed P.L. 108-295, amending the Social Security Act of 1935 and requiring states to enact legislation that will prevent the practice of State Unemployment Tax Avoidance schemes. This activity occurs when employers find ways to manipulate state unemployment insurance (UI) tax rating systems such that the employer pays UI taxes at an artificially low rate.

### **State laws must include:**

- Mandatory transfers of unemployment experience when a trade or business is acquired by or transferred to another employee.
- Prohibition of transfers when a transfer or an acquisition is solely or primarily for the purpose of obtaining a lower UI tax rate.
- Penalties when tax avoidance schemes are detected.
- Procedures for identifying tax avoidance schemes.

### **Penalty for Noncompliance:**

- If Alaska fails to enact required legislation, Alaska's UI program will be de-certified and all employers in the state would lose their federal offset credit of 5.4 percent which would amount to \$103.9 million in additional taxes. Also, Alaska loses \$30.8 million in administrative and operational funding for supporting unemployment insurance programs.

### **UI Tax Avoidance Mainly Occurs in Two Ways:**

- An employer sets up a new company and then transfers some or all of its workforce (and accompanying payroll) to the new company after it has earned a lower UI rate. The transferred payroll is then taxed at the lower rate.
- A new business entity purchases an existing business with a lower UI tax rate. Instead of being assigned the higher industry rate for a new business, the entity receives the existing lower rate. Typically, the new business ceases the activity of the purchased business and commences a different type of activity.

### **Harmful Effects of UI Tax Avoidance Schemes:**

- Lost revenue will result in higher tax rates overall and unfairly shifts the cost of UI benefits to other employers.
- UI tax avoidance eliminates the incentive for employers to stabilize their workforce and keep employees working.

### **Benefits of State Unemployment Tax Avoidance Legislation:**

- Maintains the integrity and equity of our tax rating system and trust fund.
- Helps keep employer UI tax rates from increases due to under funding.
- Prevents tax rate avoidance schemes by imposing meaningful penalties in cases where a violation is detected.



ALASKA

**National Federation of Independent Business**

**Statement of Support for SB 306**

**Unemployment Insurance Federal Compliance Legislation**

**February 23, 2006**

The Alaska Chapter of the National Federation of Independent Business has 2,500 members, making it the largest small-business advocacy group in the state.

Senate Bill 306 makes a number of changes in state law to conform with a federal law passed in 2004 to stop deceptive practices in obtaining a lower UI rate. If Alaska fails to enact required legislation, Alaska's UI program will be de-certified and all employers in the state would lose their federal offset credit of 5.4 percent.

Passing legislation this year is essential for Alaska businesses to continue to receive the 5.4 percent credit on their federal income tax. It is our understanding that all 49 other states have already passed similar legislation.

**Vote YES on Senate Bill 306**

Submitted by Thyas Shaub on behalf of NFIB/Alaska.