

By: Ritter

H.B. No. 3250

A BILL TO BE ENTITLED

AN ACT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

relating to the acquisition of unemployment compensation experience after the transfer of an employing unit; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 201.022, Labor Code, is amended to read as follows:

Sec. 201.022. EFFECT OF BUSINESS ACQUISITION. In this subtitle, "employer" also means an individual or employing unit that acquires or otherwise receives, through any means, all or part of the organization, trade, [or] business, or workforce [of another, or substantially all of the assets thereof,] of another that was an employer subject to this subtitle at the time of the acquisition.

SECTION 2. Section 204.081, Labor Code, is amended to read as follows:

Sec. 204.081. DEFINITIONS [~~DEFINITION~~]. In this subchapter:

(1) "Compensation [~~"compensation]~~ experience" includes the period that benefit wage credits or benefits have been chargeable and any other factor under Subchapter A, B, C, or D necessary to the computation of experience rating under those subchapters.

(2) "Person" means an individual, trust, estate,

1 partnership, association, company, or corporation.

2 (3) "Substantially common management or control"
3 exists if, after the acquisition of the organization, trade, or
4 business of an employing unit, the predecessor employing unit
5 continues to:

6 (A) own or manage the organization that conducts
7 the organization, trade, or business;

8 (B) own or manage the assets necessary to conduct
9 the organization, trade, or business;

10 (C) control through security or lease
11 arrangements the assets necessary to conduct the organization,
12 trade, or business; or

13 (D) direct the internal affairs or conduct of the
14 organization, trade, or business.

15 (4) "Substantially common ownership" exists if, on the
16 date of an acquisition of the organization, trade, or business of an
17 employing unit, a shareholder, officer, or other owner of a legal or
18 equitable interest in the predecessor employing unit, or the spouse
19 or a person within the first degree of consanguinity or affinity, as
20 determined under Chapter 573, Government Code, of the shareholder,
21 officer, or other owner:

22 (A) is a shareholder, officer, or other owner of
23 a legal or equitable interest in the successor employing unit; or

24 (B) holds an option to purchase a legal or
25 equitable interest in the successor employing unit.

26 (5) "Transfer of trade or business" includes the
27 transfer of part or all of an employer's workforce to another

1 employer if, as the result of the transfer, the transferring
2 employer no longer performs trade or business with respect to the
3 transferred workforce and the employer to whom the workforce is
4 transferred performs trade or business with respect to the
5 workforce.

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

9 SECTION 3. Section 204.083, Labor Code, is amended to read
10 as follows:

11 Sec. 204.083. ACQUISITION OF ALL OR PART OF
12 EXPERIENCE-RATED ORGANIZATION, TRADE, OR BUSINESS; TRANSFER OF
13 COMPENSATION EXPERIENCE. The transfer of the predecessor
14 employer's compensation experience to the successor employer is
15 required if the predecessor employing unit transfers, through any
16 means, all or part of the organization, trade, or business, to the
17 successor employer and there is substantially common management or
18 control or substantially common ownership of the entities. [An
19 employing unit that acquires all of the organization, trade, or
20 business of an employer and that continues operation of the
21 organization, trade, or business acquires the compensation
22 experience of the predecessor employer if on the date of the
23 acquisition, a shareholder, officer, or other owner of a legal or
24 equitable interest in the predecessor employer, or the spouse or a
25 person within the first degree of consanguinity or affinity, as
26 determined under Chapter 573, Government Code, of the shareholder,
27 officer, or other owner.

1 ~~[(1) is a shareholder, officer, or other owner of a~~
2 ~~legal or equitable interest in the successor employing unit; or~~
3 ~~[(2) holds an option to purchase a legal or equitable~~
4 ~~interest in the successor employing unit.]~~

5 SECTION 4. The heading to Section 204.084, Labor Code, is
6 amended to read as follows:

7 Sec. 204.084. ACQUISITION OF PART OF EXPERIENCE-RATED
8 ORGANIZATION, TRADE, OR BUSINESS: APPROVAL OF TRANSFER OF
9 COMPENSATION EXPERIENCE WITHOUT SUBSTANTIALLY COMMON MANAGEMENT OR
10 CONTROL OR SUBSTANTIALLY COMMON OWNERSHIP; CONTRIBUTION RATE.

11 SECTION 5. Section 204.084, Labor Code, is amended by
12 amending Subsections (a) and (d) and adding Subsections (e) and (f)
13 to read as follows:

14 (a) If an employing unit acquires or otherwise receives,
15 through any means, [a] part of the organization, trade, or business
16 of an employer, and transfer of compensation experience is not
17 required by Section 204.083, the successor employing unit and the
18 predecessor employer may jointly make a written application to the
19 commission to transfer the compensation experience of the
20 predecessor employer that is attributable to the part of the
21 organization, trade, or business acquired to the successor
22 employing unit.

23 (d) The commission shall [may] deny a transfer of
24 compensation experience under this section if the commission
25 determines [~~based on credible evidence~~] that the transfer
26 [~~acquisition~~] was done primarily to qualify for a reduced
27 compensation experience rating [~~unemployment insurance tax rate~~]

1 by either:

2 (1) circumventing the experience rating system; or

3 (2) manipulating the experience rating system by
4 minimizing the impact of chargebacks to the predecessor's or
5 successor's [~~predecessor employer's~~] tax account.

6 (e) A successor employing unit that acquires compensation
7 experience under this section and that is an experience-rated
8 employer on the date of and during the period preceding the
9 acquisition shall pay contributions from the date of the
10 acquisition until the end of the calendar year in which the
11 acquisition occurred at the rate applicable to the successor
12 employing unit on the date of acquisition.

13 (f) A successor employing unit that acquires compensation
14 experience under this section and that is not an experience-rated
15 employer on the date of the acquisition shall pay contributions
16 from the date of the acquisition until the next contribution rate
17 computation date at the highest rate applicable at the time of the
18 acquisition to any predecessor employing unit that is a party to the
19 acquisition. If the commission determines that the transfer was
20 accomplished solely or primarily for the purpose of obtaining a
21 lower contribution rate, the successor employing unit's
22 contribution rate must be determined under Section 204.006.

23 SECTION 6. Section 204.085, Labor Code, is amended to read
24 as follows:

25 Sec. 204.085. CONTRIBUTION RATE FOR SUCCESSOR EMPLOYERS
26 WHEN SUBSTANTIALLY COMMON MANAGEMENT OR CONTROL OR SUBSTANTIALLY
27 COMMON OWNERSHIP EXISTS; CERTAIN PARTIAL ACQUISITIONS

1 ~~[EMPLOYER]~~. (a) Except as provided by Subsection (d), in the case
2 of a partial acquisition for which the transfer of compensation
3 experience is required under Section 204.083, if the commission
4 determines that the part of the organization, trade, or business
5 transferred is definitely identifiable and segregable and that
6 compensation experience can be specifically attributed to that part
7 of the organization, trade, or business, the contribution rate of
8 the successor must be computed:

9 (1) based on the successor employing unit's experience
10 for the part of the organization, trade, or business that was not
11 acquired by the transfer; and

12 (2) as provided by this section for the part of the
13 organization, trade, or business acquired through the transfer.

14 (b) A successor employing unit that acquires compensation
15 experience under ~~[is subject to]~~ Section 204.083 ~~[or 204.084]~~ and
16 is an experience-rated employer on the date of the acquisition
17 shall pay contributions from the date of the acquisition until the
18 end of the calendar year in which the acquisition occurred at a
19 ~~[the]~~ rate computed by using the compensation experience
20 transferred from the predecessor employer and that of the
21 ~~[applicable to the]~~ successor employing unit ~~[on the date of the~~
22 ~~acquisition]~~.

23 (c) ~~(b)~~ A successor employing unit that acquires
24 compensation experience under ~~[is subject to]~~ Section 204.083 ~~[or~~
25 ~~204.084]~~ and is not an experience-rated employer on the date of the
26 acquisition shall pay contributions from the date of the
27 acquisition until the end of the calendar year ~~[next tax rate~~

1 ~~computation date]~~ at the highest rate applicable at the time of the
2 acquisition to any predecessor employer who is a party to the
3 acquisition.

4 (d) If the commission determines that the transfer was
5 accomplished solely or primarily for the purpose of obtaining a
6 lower contribution rate, the successor's contribution rate must be
7 determined under Section 204.006.

8 SECTION 7. Subchapter E, Chapter 204, Labor Code, is
9 amended by adding Sections 204.0851, 204.087, 204.088, and 204.089
10 to read as follows:

11 Sec. 204.0851. CONTRIBUTION RATE FOR SUCCESSOR EMPLOYERS
12 WHEN SUBSTANTIALLY COMMON MANAGEMENT OR CONTROL OR SUBSTANTIALLY
13 COMMON OWNERSHIP EXISTS; OTHER ACQUISITIONS. (a) For a transfer of
14 compensation experience required by Section 204.083 other than a
15 transfer described by Section 204.085(a), the contribution rate
16 shall be computed as provided by this section.

17 (b) A successor employing unit that acquires compensation
18 experience under Section 204.083 and is an experience-rated
19 employer on the date of the acquisition shall pay contributions
20 from the date of the acquisition until the end of the calendar year
21 in which the acquisition occurred at the rate computed by using the
22 prior 36-month combined compensation experience of the predecessor
23 employing unit and the successor employing unit on the date of the
24 acquisition.

25 (c) A successor employing unit that acquires compensation
26 experience under Section 204.083 and is not an experience-rated
27 employer on the date of the acquisition shall pay contributions

1 from the date of the acquisition until the end of the calendar year
2 at the highest rate applicable at the time of the acquisition to any
3 predecessor employing unit that is a party to the acquisition.

4 (d) The contribution rate for experience-rated and
5 nonexperience-rated successor employing units shall, for the years
6 following the year of acquisition, be computed as follows:

7 (1) for the first year following acquisition, the
8 successor employing unit's compensation experience plus the
9 predecessor employing unit's 24-month compensation experience
10 ending on September 30 preceding the year of acquisition, combined
11 with the predecessor employing unit's compensation experience from
12 that date to the date of the acquisition;

13 (2) for the second year following acquisition, the
14 successor employing unit's compensation experience plus the
15 predecessor employing unit's 12-month compensation experience
16 ending on September 30 preceding the year of acquisition, combined
17 with the predecessor employing unit's compensation experience from
18 that date to the date of the acquisition;

19 (3) for the third year following acquisition,
20 compensation experience available to the successor employing unit
21 plus the predecessor employing unit's compensation experience from
22 September 30 preceding the year of acquisition to the date of the
23 acquisition; and

24 (4) for years subsequent to the acquisition and to the
25 transfer of compensation experience required under Section
26 204.083, the predecessor employing unit's contribution rate is
27 computed without regard to any transfer of compensation experience

1 required by that section.

2 Sec. 204.087. OFFENSE; CRIMINAL AND CIVIL PENALTIES. (a) A
3 person commits an offense if the person recklessly, knowingly, or
4 intentionally defeats, evades, or circumvents a provision of this
5 subchapter or if the person recklessly, knowingly, or intentionally
6 attempts, aids and abets an attempt, or advises another to defeat,
7 evade, or circumvent a provision of this subchapter.

8 (b) An employer who commits an offense under this section
9 may be assessed a civil penalty in an amount equal to two percent of
10 wages as defined in Subchapter F, Chapter 201, for the year during
11 which the violation occurred and for the three years following that
12 year.

13 (c) A person, other than the employer, who commits an
14 offense under this section may be assessed a civil penalty of not
15 more than \$5,000 for a first offense and not more than \$5,000 for
16 each subsequent offense.

17 (d) A civil penalty assessed under Subsection (b) or (c)
18 shall be deposited in the special administration fund established
19 under Section 203.201.

20 (e) An offense under this section is a Class A misdemeanor.

21 Sec. 204.088. PROCEDURES TO IDENTIFY EXPERIENCE-RATING
22 TRANSFERS. The commission by rule shall establish procedures to
23 identify the transfer or acquisition of a business for the purposes
24 of this subchapter.

25 Sec. 204.089. CONFORMITY WITH FEDERAL REGULATIONS. The
26 commission shall administer this subchapter in conformity with any
27 regulations prescribed by the United States Secretary of Labor

1 relating to experience-rating transfers.

2 SECTION 8. The changes in law made by this Act apply only to
3 an acquisition of an organization, trade, business, or workforce
4 that occurs on or after the effective date of this Act. An
5 acquisition of an organization, trade, business, or workforce that
6 occurs before the effective date of this Act is governed by the law
7 in effect on the date the acquisition occurred, and the former law
8 is continued in effect for that purpose.

9 SECTION 9. This Act takes effect September 1, 2005.