

By: Ritter

H.B. No. 3250

A BILL TO BE ENTITLED

AN ACT

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

8 Sec. 204.083. ACQUISITION OF ALL OR PART OF
9 EXPERIENCE-RATED ORGANIZATION, TRADE, OR BUSINESS; TRANSFER OF
10 COMPENSATION EXPERIENCE. (a) Except as provided by Subsection
11 (b), the transfer of the predecessor employer's compensation
12 experience to the successor employer is required if the predecessor
13 employing unit transfers, through any means, all or part of the
14 organization, trade, or business, to the successor employer and
15 there is substantially common management or control or
16 substantially common ownership of the entities.

17 (b) Notwithstanding Subsection (a) or any other provision
18 of this subchapter, the commission shall deny a transfer of
19 compensation experience to a successor employing unit if the
20 commission determines that the acquisition of the predecessor
21 employing unit was accomplished solely or primarily for the purpose
22 of obtaining a lower contribution rate. [~~An employing unit that~~
23 ~~acquires all of the organization, trade, or business of an employer~~
24 ~~and that continues operation of the organization, trade, or~~
25 ~~business acquires the compensation experience of the predecessor~~
26 ~~employer if on the date of the acquisition, a shareholder, officer,~~
27 ~~or other owner of a legal or equitable interest in the predecessor~~

1 ~~employer, or the spouse or a person within the first degree of~~
2 ~~consanguinity or affinity, as determined under Chapter 573,~~
3 ~~Government Code, of the shareholder, officer, or other owner:~~

4 ~~[(1) is a shareholder, officer, or other owner of a~~
5 ~~legal or equitable interest in the successor employing unit; or~~

6 ~~[(2) holds an option to purchase a legal or equitable~~
7 ~~interest in the successor employing unit.]~~

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

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

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

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

26 (d) The commission shall [may] deny a transfer of
27 compensation experience under this section if the commission

1 determines [~~based on credible evidence~~] that the transfer
2 [~~acquisition~~] was done primarily to qualify for a reduced
3 compensation experience rating [~~unemployment insurance tax rate~~]
4 by either:

- 5 (1) circumventing the experience rating system; or
6 (2) manipulating the experience rating system by
7 minimizing the impact of chargebacks to the predecessor's or
8 successor's [~~predecessor employer's~~] tax account.

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

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

26 SECTION 6. Section 204.085, Labor Code, is amended to read
27 as follows:

1 Sec. 204.085. CONTRIBUTION RATE FOR SUCCESSOR EMPLOYERS
2 WHEN SUBSTANTIALLY COMMON MANAGEMENT OR CONTROL OR SUBSTANTIALLY
3 COMMON OWNERSHIP EXISTS; CERTAIN PARTIAL ACQUISITIONS
4 [EMPLOYER]. (a) Except as provided by Subsection (d), in the case
5 of a partial acquisition for which the transfer of compensation
6 experience is required under Section 204.083(a), if the commission
7 determines that the part of the organization, trade, or business
8 transferred is definitely identifiable and segregable and that
9 compensation experience can be specifically attributed to that part
10 of the organization, trade, or business, the contribution rate of
11 the successor must be computed:

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

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

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

26 (c) [(b)] A successor employing unit that acquires
27 compensation experience under [is subject to] Section 204.083 [or

1 ~~204.084~~] and is not an experience-rated employer on the date of the
2 acquisition shall pay contributions from the date of the
3 acquisition until the end of the calendar year [~~next tax rate~~
4 ~~computation date~~] at the highest rate applicable at the time of the
5 acquisition to any predecessor employer who is a party to the
6 acquisition.

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

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

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

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

1 (c) A successor employing unit that acquires compensation
2 experience under Section 204.083 and is not an experience-rated
3 employer on the date of the acquisition shall pay contributions
4 from the date of the acquisition until the end of the calendar year
5 at the highest rate applicable at the time of the acquisition to any
6 predecessor employing unit that is a party to the acquisition.

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

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

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

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

27 (4) for years subsequent to the acquisition and to the

1 transfer of compensation experience required under Section
2 204.083, the predecessor employing unit's contribution rate is
3 computed without regard to any transfer of compensation experience
4 required by that section.

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

11 (b) An employer who commits an offense under this section
12 may be assessed a civil penalty in an amount equal to a surcharge of
13 two percent of the prescribed contribution rate that would
14 otherwise be assigned to the employer under Section 204.042 or
15 204.006 for the rate year during which the violation occurred and
16 for the three rate years following that year.

17 (c) A person, other than an employer, who commits an offense
18 under this section may be assessed a civil penalty of not more than
19 \$5,000 for a first offense and not more than \$5,000 for each
20 subsequent offense.

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

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

25 Sec. 204.088. PROCEDURES TO IDENTIFY EXPERIENCE-RATING
26 TRANSFERS. The commission by rule shall establish procedures to
27 identify the transfer or acquisition of a business for the purposes

1 of this subchapter.

2 Sec. 204.089. CONFORMITY WITH FEDERAL REGULATIONS. The
3 commission shall administer this subchapter in conformity with any
4 regulations prescribed by the United States Secretary of Labor
5 relating to experience-rating transfers.

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

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

COMMITTEE AMENDMENT NO. 1

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Amend HB 3250 as follows:

On page 3, line 6, add the following definition.

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

On page 3, lines 10 and 11, strike the words "(a) Except as provided by Subsection (b)," and begin the sentence by striking "t" and replacing it with "T".

On page 3, strike lines 17 through 22.

On page 9, strike lines 11-16 and replace with the following:

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

On page 9, line 17, strike "an" and replace with "the".

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