

By: Ritter

H.B. No. 3250

A BILL TO BE ENTITLED

AN ACT

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

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

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

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

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

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

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

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

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

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

(c) ~~[(b)]~~ A successor employing unit that acquires  
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



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

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

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

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

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

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

Sec. 204.088. PROCEDURES TO IDENTIFY EXPERIENCE-RATING TRANSFERS. The commission by rule shall establish procedures to 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.