

1-1 By: Ritter (Senate Sponsor - Fraser) H.B. No. 3250
1-2 (In the Senate - Received from the House April 19, 2005;
1-3 April 21, 2005, read first time and referred to Committee on
1-4 Business and Commerce; May 18, 2005, reported favorably by the
1-5 following vote: Yeas 6, Nays 0; May 18, 2005, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the acquisition of unemployment compensation
1-9 experience after the transfer of an employing unit; providing
1-10 penalties.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Section 201.022, Labor Code, is amended to read
1-13 as follows:

1-14 Sec. 201.022. EFFECT OF BUSINESS ACQUISITION. In this
1-15 subtitle, "employer" also means an individual or employing unit
1-16 that acquires or otherwise receives, through any means, all or part
1-17 of the organization, trade, ~~or~~ business, or workforce ~~of~~
1-18 another, or substantially all of the assets thereof, of another
1-19 that was an employer subject to this subtitle at the time of the
1-20 acquisition.

1-21 SECTION 2. Section 204.081, Labor Code, is amended to read
1-22 as follows:

1-23 Sec. 204.081. DEFINITIONS ~~[DEFINITION]~~. In this
1-24 subchapter:

1-25 (1) "Compensation [~~,~~ "compensation] experience"
1-26 includes the period that benefit wage credits or benefits have been
1-27 chargeable and any other factor under Subchapter A, B, C, or D
1-28 necessary to the computation of experience rating under those
1-29 subchapters.

1-30 (2) "Person" means an individual, trust, estate,
1-31 partnership, association, company, or corporation.

1-32 (3) "Substantially common management or control"
1-33 exists if, after the acquisition of the organization, trade, or
1-34 business of an employing unit, the predecessor employing unit
1-35 continues to:

1-36 (A) own or manage the organization that conducts
1-37 the organization, trade, or business;

1-38 (B) own or manage the assets necessary to conduct
1-39 the organization, trade, or business;

1-40 (C) control through security or lease
1-41 arrangements the assets necessary to conduct the organization,
1-42 trade, or business; or

1-43 (D) direct the internal affairs or conduct of the
1-44 organization, trade, or business.

1-45 (4) "Substantially common ownership" exists if, on the
1-46 date of an acquisition of the organization, trade, or business of an
1-47 employing unit, a shareholder, officer, or other owner of a legal or
1-48 equitable interest in the predecessor employing unit, or the spouse
1-49 or a person within the first degree of consanguinity or affinity, as
1-50 determined under Chapter 573, Government Code, of the shareholder,
1-51 officer, or other owner:

1-52 (A) is a shareholder, officer, or other owner of
1-53 a legal or equitable interest in the successor employing unit; or

1-54 (B) holds an option to purchase a legal or
1-55 equitable interest in the successor employing unit.

1-56 (5) "Transfer of trade or business" includes the
1-57 transfer of part or all of an employer's workforce to another
1-58 employer if, as the result of the transfer, the transferring
1-59 employer no longer performs trade or business with respect to the
1-60 transferred workforce and the employer to whom the workforce is
1-61 transferred performs trade or business with respect to the
1-62 workforce.

1-63 (6) "Knowingly" means having actual knowledge of or
1-64 acting with deliberate ignorance of or reckless disregard for the

2-1 prohibition involved.

2-2 SECTION 3. Section 204.083, Labor Code, is amended to read
2-3 as follows:

2-4 Sec. 204.083. ACQUISITION OF ALL OR PART OF
2-5 EXPERIENCE-RATED ORGANIZATION, TRADE, OR BUSINESS; TRANSFER OF
2-6 COMPENSATION EXPERIENCE. The transfer of the predecessor
2-7 employer's compensation experience to the successor employer is
2-8 required if the predecessor employing unit transfers, through any
2-9 means, all or part of the organization, trade, or business, to the
2-10 successor employer and there is substantially common management or
2-11 control or substantially common ownership of the entities. [An
2-12 employing unit that acquires all of the organization, trade, or
2-13 business of an employer and that continues operation of the
2-14 organization, trade, or business acquires the compensation
2-15 experience of the predecessor employer if on the date of the
2-16 acquisition, a shareholder, officer, or other owner of a legal or
2-17 equitable interest in the predecessor employer, or the spouse or a
2-18 person within the first degree of consanguinity or affinity, as
2-19 determined under Chapter 573, Government Code, of the shareholder,
2-20 officer, or other owner.

2-21 ~~[(1) is a shareholder, officer, or other owner of a~~
2-22 ~~legal or equitable interest in the successor employing unit; or~~

2-23 ~~[(2) holds an option to purchase a legal or equitable~~
2-24 ~~interest in the successor employing unit.]~~

2-25 SECTION 4. The heading to Section 204.084, Labor Code, is
2-26 amended to read as follows:

2-27 Sec. 204.084. ACQUISITION OF PART OF EXPERIENCE-RATED
2-28 ORGANIZATION, TRADE, OR BUSINESS: APPROVAL OF TRANSFER OF
2-29 COMPENSATION EXPERIENCE WITHOUT SUBSTANTIALLY COMMON MANAGEMENT OR
2-30 CONTROL OR SUBSTANTIALLY COMMON OWNERSHIP; CONTRIBUTION RATE.

2-31 SECTION 5. Section 204.084, Labor Code, is amended by
2-32 amending Subsections (a) and (d) and adding Subsections (e) and (f)
2-33 to read as follows:

2-34 (a) If an employing unit acquires or otherwise receives,
2-35 through any means, [a] part of the organization, trade, or business
2-36 of an employer, and transfer of compensation experience is not
2-37 required by Section 204.083, the successor employing unit and the
2-38 predecessor employer may jointly make a written application to the
2-39 commission to transfer the compensation experience of the
2-40 predecessor employer that is attributable to the part of the
2-41 organization, trade, or business acquired to the successor
2-42 employing unit.

2-43 (d) The commission shall [may] deny a transfer of
2-44 compensation experience under this section if the commission
2-45 determines [based on credible evidence] that the transfer
2-46 [acquisition] was done primarily to qualify for a reduced
2-47 compensation experience rating [unemployment insurance tax rate]
2-48 by either:

2-49 (1) circumventing the experience rating system; or
2-50 (2) manipulating the experience rating system by
2-51 minimizing the impact of chargebacks to the predecessor's or
2-52 successor's [predecessor employer's] tax account.

2-53 (e) A successor employing unit that acquires compensation
2-54 experience under this section and that is an experience-rated
2-55 employer on the date of and during the period preceding the
2-56 acquisition shall pay contributions from the date of the
2-57 acquisition until the end of the calendar year in which the
2-58 acquisition occurred at the rate applicable to the successor
2-59 employing unit on the date of acquisition.

2-60 (f) A successor employing unit that acquires compensation
2-61 experience under this section and that is not an experience-rated
2-62 employer on the date of the acquisition shall pay contributions
2-63 from the date of the acquisition until the next contribution rate
2-64 computation date at the highest rate applicable at the time of the
2-65 acquisition to any predecessor employing unit that is a party to the
2-66 acquisition. If the commission determines that the transfer was
2-67 accomplished solely or primarily for the purpose of obtaining a
2-68 lower contribution rate, the successor employing unit's
2-69 contribution rate must be determined under Section 204.006.

3-1 SECTION 6. Section 204.085, Labor Code, is amended to read
3-2 as follows:

3-3 Sec. 204.085. CONTRIBUTION RATE FOR SUCCESSOR EMPLOYERS
3-4 WHEN SUBSTANTIALLY COMMON MANAGEMENT OR CONTROL OR SUBSTANTIALLY
3-5 COMMON OWNERSHIP EXISTS; CERTAIN PARTIAL ACQUISITIONS
3-6 ~~[EMPLOYER]~~. (a) Except as provided by Subsection (d), in the case
3-7 of a partial acquisition for which the transfer of compensation
3-8 experience is required under Section 204.083, if the commission
3-9 determines that the part of the organization, trade, or business
3-10 transferred is definitely identifiable and segregable and that
3-11 compensation experience can be specifically attributed to that part
3-12 of the organization, trade, or business, the contribution rate of
3-13 the successor must be computed:

3-14 (1) based on the successor employing unit's experience
3-15 for the part of the organization, trade, or business that was not
3-16 acquired by the transfer; and

3-17 (2) as provided by this section for the part of the
3-18 organization, trade, or business acquired through the transfer.

3-19 (b) A successor employing unit that acquires compensation
3-20 experience under ~~[is subject to]~~ Section 204.083 ~~[or 204.084]~~ and
3-21 is an experience-rated employer on the date of the acquisition
3-22 shall pay contributions from the date of the acquisition until the
3-23 end of the calendar year in which the acquisition occurred at a
3-24 ~~[the]~~ rate computed by using the compensation experience
3-25 transferred from the predecessor employer and that of the
3-26 ~~[applicable to the]~~ successor employing unit ~~[on the date of the]~~
3-27 ~~acquisition]~~.

3-28 (c) ~~[(b)]~~ A successor employing unit that acquires
3-29 compensation experience under ~~[is subject to]~~ Section 204.083 ~~[or~~
3-30 ~~204.084]~~ and is not an experience-rated employer on the date of the
3-31 acquisition shall pay contributions from the date of the
3-32 acquisition until the end of the calendar year ~~[next tax rate~~
3-33 ~~computation date]~~ at the highest rate applicable at the time of the
3-34 acquisition to any predecessor employer who is a party to the
3-35 acquisition.

3-36 (d) If the commission determines that the transfer was
3-37 accomplished solely or primarily for the purpose of obtaining a
3-38 lower contribution rate, the successor's contribution rate must be
3-39 determined under Section 204.006.

3-40 SECTION 7. Subchapter E, Chapter 204, Labor Code, is
3-41 amended by adding Sections 204.0851, 204.087, 204.088, and 204.089
3-42 to read as follows:

3-43 Sec. 204.0851. CONTRIBUTION RATE FOR SUCCESSOR EMPLOYERS
3-44 WHEN SUBSTANTIALLY COMMON MANAGEMENT OR CONTROL OR SUBSTANTIALLY
3-45 COMMON OWNERSHIP EXISTS; OTHER ACQUISITIONS. (a) For a transfer of
3-46 compensation experience required by Section 204.083 other than a
3-47 transfer described by Section 204.085(a), the contribution rate
3-48 shall be computed as provided by this section.

3-49 (b) A successor employing unit that acquires compensation
3-50 experience under Section 204.083 and is an experience-rated
3-51 employer on the date of the acquisition shall pay contributions
3-52 from the date of the acquisition until the end of the calendar year
3-53 in which the acquisition occurred at the rate computed by using the
3-54 prior 36-month combined compensation experience of the predecessor
3-55 employing unit and the successor employing unit on the date of the
3-56 acquisition.

3-57 (c) A successor employing unit that acquires compensation
3-58 experience under Section 204.083 and is not an experience-rated
3-59 employer on the date of the acquisition shall pay contributions
3-60 from the date of the acquisition until the end of the calendar year
3-61 at the highest rate applicable at the time of the acquisition to any
3-62 predecessor employing unit that is a party to the acquisition.

3-63 (d) The contribution rate for experience-rated and
3-64 nonexperience-rated successor employing units shall, for the years
3-65 following the year of acquisition, be computed as follows:

3-66 (1) for the first year following acquisition, the
3-67 successor employing unit's compensation experience plus the
3-68 predecessor employing unit's 24-month compensation experience
3-69 ending on September 30 preceding the year of acquisition, combined

4-1 with the predecessor employing unit's compensation experience from
4-2 that date to the date of the acquisition;

4-3 (2) for the second year following acquisition, the
4-4 successor employing unit's compensation experience plus the
4-5 predecessor employing unit's 12-month compensation experience
4-6 ending on September 30 preceding the year of acquisition, combined
4-7 with the predecessor employing unit's compensation experience from
4-8 that date to the date of the acquisition;

4-9 (3) for the third year following acquisition,
4-10 compensation experience available to the successor employing unit
4-11 plus the predecessor employing unit's compensation experience from
4-12 September 30 preceding the year of acquisition to the date of the
4-13 acquisition; and

4-14 (4) for years subsequent to the acquisition and to the
4-15 transfer of compensation experience required under Section
4-16 204.083, the predecessor employing unit's contribution rate is
4-17 computed without regard to any transfer of compensation experience
4-18 required by that section.

4-19 Sec. 204.087. OFFENSE; CRIMINAL AND CIVIL PENALTIES. (a) A
4-20 person commits an offense if the person recklessly, knowingly, or
4-21 intentionally defeats, evades, or circumvents a provision of this
4-22 subchapter or if the person recklessly, knowingly, or intentionally
4-23 attempts, aids and abets an attempt, or advises another to defeat,
4-24 evade, or circumvent a provision of this subchapter.

4-25 (b) An employer who commits an offense under this section
4-26 may be assessed a civil penalty in an amount equal to two percent of
4-27 wages as defined in Subchapter F, Chapter 201, for the year during
4-28 which the violation occurred and for the three years following that
4-29 year.

4-30 (c) A person, other than the employer, who commits an
4-31 offense under this section may be assessed a civil penalty of not
4-32 more than \$5,000 for a first offense and not more than \$5,000 for
4-33 each subsequent offense.

4-34 (d) A civil penalty assessed under Subsection (b) or (c)
4-35 shall be deposited in the special administration fund established
4-36 under Section 203.201.

4-37 (e) An offense under this section is a Class A misdemeanor.

4-38 Sec. 204.088. PROCEDURES TO IDENTIFY EXPERIENCE-RATING
4-39 TRANSFERS. The commission by rule shall establish procedures to
4-40 identify the transfer or acquisition of a business for the purposes
4-41 of this subchapter.

4-42 Sec. 204.089. CONFORMITY WITH FEDERAL REGULATIONS. The
4-43 commission shall administer this subchapter in conformity with any
4-44 regulations prescribed by the United States Secretary of Labor
4-45 relating to experience-rating transfers.

4-46 SECTION 8. The changes in law made by this Act apply only to
4-47 an acquisition of an organization, trade, business, or workforce
4-48 that occurs on or after the effective date of this Act. An
4-49 acquisition of an organization, trade, business, or workforce that
4-50 occurs before the effective date of this Act is governed by the law
4-51 in effect on the date the acquisition occurred, and the former law
4-52 is continued in effect for that purpose.

4-53 SECTION 9. This Act takes effect September 1, 2005.

4-54 * * * * *