

By: West

S.B. No. 1642

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the transfer of compensation experience for purposes of
3 the Texas Unemployment Compensation Act.

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

5 SECTION 1. Section 204.081, Labor Code, is amended to read
6 as follows:

7 Sec. 204.081. DEFINITIONS. (a) In this subchapter:

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

12 (2) "Person" means an individual, trust, estate,
13 partnership, association, company, or corporation.

14 (3) "Substantially common management or control"
15 exists if, after the acquisition of the organization, trade, or
16 business of an employing unit, the predecessor employing unit
17 continues to:

18 (A) own or manage the organization that conducts
19 the organization, trade, or business;

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

22 (C) control through security or lease
23 arrangements the assets necessary to conduct the organization,
24 trade, or business; or

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

3 (4) "Substantially common ownership" exists if, on the
4 date of an acquisition of the organization, trade, or business of an
5 employing unit, a shareholder, officer, or other owner of a legal or
6 equitable interest in the predecessor employing unit, or the spouse
7 or a person within the first degree of consanguinity or affinity, as
8 determined under Chapter 573, Government Code, of the shareholder,
9 officer, or other owner:

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

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

14 (5) "Transfer of trade or business" includes the
15 transfer of part or all of an employer's workforce to another
16 employer if, as the result of the transfer, the transferring
17 employer no longer performs trade or business with respect to the
18 transferred workforce and the employer to whom the workforce is
19 transferred performs trade or business with respect to the
20 workforce.

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

24 (b) For purposes of Subsection (a)(4), following a partial
25 acquisition of an organization, trade, or business of an employing
26 unit, substantially common ownership does not exist solely because
27 the predecessor employing unit has the right to repossess the part

1 acquired by the successor employing unit in the event of the
2 successor's failure to complete a condition of the acquisition.

3 SECTION 2. Section 204.085, Labor Code, is amended by
4 adding Subsections (a-1) and (e) to read as follows:

5 (a-1) In the case of a partial acquisition for which the
6 transfer of compensation experience is required under Section
7 204.083, the commission shall require the predecessor employer and
8 successor employer to jointly submit, not later than the second
9 anniversary of the date the partial acquisition was completed,
10 information necessary for making the determination described by
11 Subsection (a). The period for which the required information must
12 be submitted is the lesser of:

13 (1) four years; or

14 (2) the length of time the predecessor employer was
15 liable for the payment of a tax under this subtitle.

16 (e) The commission shall include information about the
17 availability of a partial transfer of compensation experience under
18 this subchapter:

19 (1) with the information provided by the commission to
20 each new employer; and

21 (2) on any form, including in electronic format,
22 required to be submitted by an employer to report a change of
23 status.

24 SECTION 3. Sections 204.081(b) and 204.085(a-1), Labor
25 Code, as added by this Act, apply only to a partial acquisition of
26 an organization, trade, or business of an employing unit that
27 occurs on or after the effective date of this Act. An acquisition

1 that occurs before the effective date of this Act is governed by the
2 law in effect on the date the acquisition occurred, and the former
3 law is continued in effect for that purpose.

4 SECTION 4. This Act takes effect September 1, 2015.