



Senate Fiscal Agency  
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## BILL ANALYSIS

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Senate Bills 171 through 174 (as introduced 2-3-05)

Sponsor: Senator Jason E. Allen (S.B. 171)

Senator Laura M. Toy (S.B. 172)

Michelle A. McManus (S.B. 173)

Dennis Olshove (S.B. 174)

Committee: Commerce and Labor

Date Completed: 2-8-05

**CONTENT**

**Senate Bills 171 through 174 would amend the Michigan Employment Security Act to do all of the following:**

- **Prohibit a person from transferring all or part of a trade or business solely or primarily for the purpose of reducing the contribution rate or reimbursement payments in lieu of contributions required under the Act (i.e., "SUTA dumping").**
- **Prohibit a person from acquiring all or part of a trade or business solely or primarily to obtain a lower contribution rate than otherwise would apply under the Act.**
- **Prescribe sanctions against a person who knowingly violated or attempted to violate these provisions.**
- **Require the Unemployment Insurance (UI) Agency to recalculate the contribution rates of both employers if an employer transferred its trade or business to another employer and there were substantially common ownership, management, or control of the two employers.**
- **Require the UI Agency to assign a new employer contribution rate to a person who was not an employer under the Act at the time of a transfer and who acquired a trade or business solely or primarily to obtain a lower contribution rate.**
- **Require that money recovered under these provisions be credited to the Unemployment Compensation Fund.**

-- **Require the UI Agency to report annually to the Legislature regarding SUTA dumping, beginning January 1, 2006.**

-- **Specify that a transfer of an employer's assets would be a "transfer of business" under criteria described in the Act if there were not substantially common ownership, management, or control of the transferor and transferee.**

The bills are tie-barred and would take effect on July 1, 2005.

**Senate Bill 171****Prohibitions; Rate Recalculation**

The bill would prohibit a person from doing either of the following:

- Transferring the person's trade or business, or a portion of it, to another employer for the sole or primary purpose of reducing the contribution rate or reimbursement payments in lieu of contributions required under the Act (which the bill would define as SUTA dumping).
- Acquiring a trade or business, or a part of a trade or business, for the sole or primary purpose of obtaining a lower contribution rate than otherwise would apply under the Act.

(The bill would define "SUTA" as the state unemployment tax act.)

If an employer transferred its trade or business, or a portion of it, to another employer and there were substantially common ownership, management, or control of the two employers at the time of the transfer, the unemployment experience attributable to the transferred trade or business would have to be transferred to the transferee employer. The UI Agency would have to recalculate the contribution rates of both employers and apply the new rates in the same manner as for a transfer of business under the Act. If, after a transfer of experience, however, the UI Agency determined that a substantial purpose of the transfer of trade or business was to obtain reduced liability for contributions, then the employers' experience rating accounts would have to be combined into a single account and a single rate assigned to the account.

If the UI Agency determined that a person who was not an employer under the Act at the time of a transfer acquired a trade or business, or a portion of a trade or business, solely or primarily for the purpose of obtaining a lower contribution rate, the Agency would have to assign that employer the applicable new employer rate under the Act.

#### Transfer of Trade or Business

The bill would require the UI Agency to establish procedures to identify the transfer or acquisition of a trade or business, or part of a trade or business, for the bill's purposes. The bill specifies that this would not grant the Agency the authority to promulgate rules to define SUTA dumping.

The bill also would require the UI Agency to determine whether a transfer was made for the sole or primary purpose of obtaining a lower contribution rate using objective factors, such as the cost of acquiring the business, continuity in operating the business enterprise of the acquired business, the length of time the business enterprise continued to operate, and the number of new employees hired to perform duties unrelated to the business activity or trade conducted before the acquisition.

The bill specifies that "trade or business" would include the employer's employees, but the transfer of some or all of an employer's employees to another employer would have to be considered a transfer of

trade or business for the purposes of the bill if, as a result of the transfer, the transferring employer no longer performed trade or business with respect to the transferred employees and that trade or business were performed by the transferee employer.

#### Sanctions

If a person knowingly violated or attempted to violate the bill's prohibitions, or if a person knowingly advised another person in a manner that caused a violation, the sanctions would depend in part on whether the person was an employer. A person who was not an employer would be subject to a civil fine of up to \$5,000. If the person were a transferring or acquiring employer, the employer would have to be assigned the higher of the following contribution rates:

- The highest contribution rate assignable under the Act for the rate year during which the violation or attempted violation occurred and for the three rate years immediately following that rate year.
- If the employers' business already were at the highest rate assignable for a year in which the violation occurred, an additional penalty rate of 2% of taxable wages for that year.

In addition to the remedies listed above, a person who knowingly violated or attempted to violate the bill, or who knowingly advised another person in a manner that would cause a violation, would be subject to prosecution in the county in which the alleged violation occurred under Section 54(b) of the Act. (That section prescribes civil and criminal penalties for certain violations involving false statements made knowingly or within the intent to defraud.)

Money recovered under the bill as contributions, reimbursements in lieu of contributions, civil fines, civil penalties, or interest would have to be credited to the Unemployment Compensation Fund.

#### Annual Report

Beginning January 1, 2006, the UI Agency would have to provide an annual written report to the chairpersons of the Senate and House Appropriations subcommittee having jurisdiction over legislation pertaining to

unemployment compensation. The report would have to include all of the following:

- The procedures the Agency had adopted to prevent SUTA dumping.
- The number of SUTA dumping investigations opened during the year.
- The average length of time to resolve a SUTA dumping investigation and the number of investigations pending for more than six months and for more than one year.
- The number of cases brought before an administrative law judge or the Board of Review and the Agency's success rate in those cases.
- The amount of money recovered as a result of implementing the bill.
- The amount of the balance or deficit in the Unemployment Compensation Fund.
- The estimated fiscal impact of SUTA dumping on the Fund balance and the factual basis for the estimate.
- The number of full-time employees assigned to, and the number of employee hours devoted to, SUTA dumping prevention, investigation, and remediation.

#### Intent

The bill states that it "is intended to be interpreted and applied in a manner" that would meet the minimum requirements of the Federal SUTA Dumping Prevention Act of 2004 and implementing Federal regulations.

#### **Senate Bill 172**

Under the Michigan Employment Security Act, the Unemployment Compensation Fund is separate from all public money or State funds, and is administered exclusively for the purposes of the Act. The Fund consists of all of the following:

- All contributions and payments in lieu of contributions collected under the Act as well as reimbursement payments by the Federal government for its portion of sharable extended benefits.
- Interest earned on any money in the Fund.
- Any property or securities acquired through the use of money belonging to the Fund, and all earnings of that property or securities.
- Amounts transferred from the Contingent Fund (into which all solvency taxes and

all interest on contributions, penalties, and damages collected under the Act are deposited.)

The bill would include in the Unemployment Compensation Fund all money collected under Senate Bill 171, including fines, civil penalties, and interest.

Presently, the Fund also contains any other money received by the UI Agency for unemployment compensation, except interest, penalties, and damages collected under the Act. The bill would refer to the "other" provisions of the Act.

#### **Senate Bill 173**

Under the Act, if an employer transfers any of the business's assets by any means other than in the ordinary course of trade, the transfer is deemed a "transfer of business" if both of the following apply:

- The transferee is an employer subject to the Act on the transfer date, has become subject to the Act as of the transfer date, or elects to become subject to the Act as of the transfer date.
- The transferee has acquired and used the transferor's trade name or good will, or has continued or, within 12 months after the transfer, resumed all or part of the business of the transferor either in the same establishment or elsewhere.

Under the bill, such a transfer would be a "transfer of business" only if there were not substantially common ownership, management, or control of the transferor and the transferee.

The Act also provides that a transfer is a "transfer of business" if an employer subject to the Act transfers any of the business's assets, by any means other than in the ordinary course of trade, to any transferee or transferees substantially owned or controlled by the same interest or interests that owned or controlled the transferor at the time of the transfer. The bill would retain that provision.

Under the Act, in the case of a transfer of business, the UI Agency must assign the transferor's rating account, or a pro rata part of it, to the transferee. (The bill would refer to experience account, rather than rating account.) The Agency also must

transfer a proportionate share of the amount of the total wages subject to contributions under the Act paid by the transferor and properly allocable to the transfer of business. The transferred account is chargeable for all benefit payments based on employment in the business or portion of the business transferred.

### **Senate Bill 174**

The Act includes in its definition of "employer" any individual, legal entity, or employing unit described as a transferee in the provision that Senate Bill 173 would delete. The bill instead would refer to any individual, legal entity, or employing unit that became a transferee of business assets by any means other than in the ordinary course of trade from an employer, if there were substantially common ownership, management, or control of the transferor and transferee at the time of the transfer.

Proposed MCL 421.22b (S.B. 171)  
MCL 421.26 (S.B. 172)  
421.22 (S.B. 173)  
421.41 (S.B. 174)

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

Federal law requires that Michigan amend the law governing its unemployment program to prohibit the practice known as "SUTA dumping", which generally refers to the transfer of employees to a different employing company for the primary purpose of obtaining a lower experience rating and thus a lower state unemployment tax rate. In order to avoid the loss of Federal administrative funds for the unemployment compensation program, Michigan must comply with the Federal requirements by July 1, 2005. Federal administrative funds for the unemployment insurance program are approximately \$79.1 million in FY 2004-05.

Department of Labor and Economic Growth staff estimate that by prohibiting SUTA dumping, the bills would increase revenue to the Unemployment Insurance Trust Fund from \$62 million to \$95 million annually. An additional but unknown amount of revenue would be paid to the Fund under the penalty and interest provisions. The Department would incur undetermined additional

administrative costs to comply with the investigative and reporting requirements of the bills.

For calendar year 2003, the Unemployment Insurance Trust Fund reported employer contributions of \$1,093,178,466, regular benefits charged to the Fund of \$1,895,239,323, and total funds available for benefits of \$1,106,458,508.

The bills would have no fiscal impact on local government.

Fiscal Analyst: Elizabeth Pratt

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.