

HOUSE BILL No. 4174

February 2, 2005, Introduced by Reps. Gonzales, Bieda, Farrah, Vagnozzi, Gleason, Condino, Clack, Murphy and Brown and referred to the Committee on Employment Relations, Training, and Safety.

A bill to amend 1936 (Ex Sess) PA 1, entitled "Michigan employment security act," by amending section 22 (MCL 421.22).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 22. (a) If an employer subject to this act transfers
2 ~~subsequent to June 30, 1954,~~ any of the **EMPLOYEES, PAYROLL, TRADE,**
3 **INVENTORY, SERVICES, OR OTHER** assets of ~~his~~ **THE EMPLOYER'S**
4 business by any means otherwise than in the ordinary course of
5 trade, ~~such~~ **THE** transfer ~~shall be deemed~~ **IS** a "transfer of
6 business" for ~~the~~ purposes of this section if the ~~commission~~
7 **AGENCY** determines **BOTH OF THE FOLLOWING:**

8 (1) That the transferee is an employer subject to this act on
9 the transfer date, has become ~~so~~ subject **TO THIS ACT** as of the

1 transfer date under section ~~41(2)(a)~~ **41(2)(A)**, or elects to
2 become subject **TO THIS ACT** as of the transfer date under section
3 25. ~~;~~ and

4 (2) That the transferee has acquired and used the transferor's
5 trade name or good will, or that the transferee has continued or
6 within 12 months after the transfer resumed all or part of the
7 business of the transferor either in the same establishment or
8 elsewhere.

9 (b) Notwithstanding ~~the provisions of~~ subsection (a), a
10 transfer ~~of assets~~ to a transferee ~~which~~ **THAT** involves less
11 than ~~75%~~ **10%** of the transferor's **EMPLOYEES, PAYROLL, TRADE,**
12 **INVENTORY, SERVICES, OR OTHER** assets, ~~shall not be deemed~~
13 **CALCULATED AS THE SUM OF THE PERCENTAGES OF EACH OF THOSE**
14 **CATEGORIES, IS NOT** a transfer of business unless all of the
15 following occur:

16 (1) The ~~commission~~ **AGENCY** is notified of the transfer ~~of~~
17 ~~assets~~ by the transferor or transferee within 30 days after the
18 end of the quarter in which the transfer occurred.

19 (2) The ~~commission~~ **AGENCY** receives, within 30 days after
20 ~~the~~ **ITS** request, ~~therefor,~~ a written approval by the transferor
21 and transferee of ~~a rating~~ **AN EXPERIENCE** account transfer
22 determined in accordance with ~~the provisions of~~ subsection (d).

23 (3) In the case of a transferee who elects under section 25 to
24 become subject as of the transfer date, the ~~commission~~ **AGENCY**
25 receives the election within 30 days after the mailing of a notice
26 of ~~his~~ **THE** right to elect.

27 (c) Notwithstanding any other provisions of this section, ~~if~~

1 ~~an~~ THERE IS A TRANSFER OF BUSINESS IF BOTH OF THE FOLLOWING
2 CONDITIONS ARE MET:

3 (1) AN employer subject to this act transfers ~~subsequent to~~
4 ~~December 31, 1973,~~ any of the EMPLOYEES, PAYROLL, TRADE,
5 INVENTORY, SERVICES, OR OTHER assets of ~~his~~ THE EMPLOYER'S
6 business, by any means otherwise than in the ordinary course of
7 trade. ~~, to any~~

8 (2) AT THE TIME OF TRANSFER THE transferee ~~or transferees~~
9 ~~substantially~~ IS owned, MANAGED, OPERATED, or controlled, in whole
10 or ~~major~~ part, either directly or indirectly by legally
11 enforceable means or otherwise, by the same interest or interests
12 ~~which owned or controlled~~ THAT OWN, MANAGE, OPERATE, OR CONTROL
13 the transferor ~~at the time of such transfer, such transfer shall~~
14 ~~be deemed a "transfer of business" for the purposes of this section~~
15 OR ANY OF THE EMPLOYEES, PAYROLL, TRADE, INVENTORY, SERVICES, OR
16 OTHER ASSETS OF THE TRANSFEROR. FOR PURPOSES OF THIS SUBDIVISION,
17 CONTROL BY THE SAME INTEREST OR INTERESTS EXISTS IF 1 OR MORE
18 PERSONS, ENTITIES, OR OTHER ORGANIZATIONS CONTROLLING THE
19 TRANSFEROR REMAINS IN CONTROL OF THE TRANSFEREE OR TRANSFEREES
20 AFTER A TRANSFER OF BUSINESS OR A CHANGE IN THE BUSINESS FORM.
21 EVIDENCE OF CONTROL BY THE SAME INTEREST OR INTERESTS MAY INCLUDE,
22 BUT IS NOT LIMITED TO, ANY OF THE FOLLOWING CHANGES:

23 (i) A CHANGE FROM AN INDIVIDUAL PROPRIETORSHIP TO A
24 CORPORATION, PARTNERSHIP, LIMITED LIABILITY COMPANY, ASSOCIATION,
25 OR ESTATE.

26 (ii) A CHANGE FROM A PARTNERSHIP TO AN INDIVIDUAL
27 PROPRIETORSHIP, CORPORATION, LIMITED LIABILITY COMPANY,

1 ASSOCIATION, OR ESTATE OR THE ADDITION OR DELETION OF PARTNERS.

2 (iii) A CHANGE FROM A LIMITED LIABILITY COMPANY TO AN INDIVIDUAL
3 PROPRIETORSHIP, PARTNERSHIP, CORPORATION, ASSOCIATION, OR ESTATE OR
4 TO ANOTHER LIMITED LIABILITY COMPANY.

5 (iv) A CHANGE FROM A CORPORATION TO AN INDIVIDUAL
6 PROPRIETORSHIP, PARTNERSHIP, LIMITED LIABILITY COMPANY,
7 ASSOCIATION, OR ESTATE OR TO ANOTHER CORPORATION.

8 (v) A CHANGE FROM ANY FORM TO ANOTHER FORM.

9 (D) EXCEPT AS PROVIDED IN SUBSECTION (F), IF THERE IS A
10 TRANSFER OF BUSINESS, THE UNEMPLOYMENT EXPERIENCE ATTRIBUTABLE TO
11 THE TRANSFERRED BUSINESS SHALL BE TRANSFERRED TO, AND COMBINED
12 WITH, THE UNEMPLOYMENT EXPERIENCE ATTRIBUTABLE TO THE EMPLOYER TO
13 WHICH THE BUSINESS IS TRANSFERRED, AS FOLLOWS:

14 (1) ~~(d)(1)~~ In the case of a transfer of business, ~~as~~
15 ~~defined in subsections (a), (b), and (c),~~ the ~~commission~~ AGENCY
16 shall assign the transferor's ~~rating~~ EXPERIENCE account, or a pro
17 rata part ~~thereof~~ OF THE ACCOUNT, to the transferee. The
18 ~~commission~~ AGENCY shall make ~~such~~ THE assignment as of the date
19 on which the business ~~was~~ IS transferred or as of June 30 of the
20 year in which the business ~~was~~ IS transferred, whichever date is
21 earlier. The pro rata part of the transferor's ~~rating~~ EXPERIENCE
22 account to be assigned to the transferee shall be determined on the
23 basis of the percentage relationship to the nearest 1/2 of 1% ~~of~~
24 THAT the insured payroll for the 4 completed calendar quarters
25 immediately ~~prior to~~ BEFORE the date of transfer properly
26 allocable to the transferred portion of the business — BEARS to
27 the insured payroll for the same period allocable to the entire

1 business of the transferor immediately ~~prior to~~ **BEFORE** the date
2 of the transfer.

3 (2) When the ~~commission~~ **AGENCY** transfers an employer's
4 ~~rating~~ **EXPERIENCE** account in whole or in part under this section,
5 it shall also transfer a proportionate share of the amount of the
6 total wages and wages subject to contributions under this act paid
7 by the transferor and properly allocable to the ~~transferred~~
8 **TRANSFER OF** business; and ~~such~~ **THE** transferred account shall be
9 ~~liable to be charged~~ **CHARGEABLE** for all benefit payments based on
10 employment in the business or portion thereof transferred.

11 (3) In determining whether the transferee ~~is a "qualified~~
12 ~~employer"~~ **QUALIFIES FOR A CONTRIBUTION RATE THAT INCLUDES A**
13 **CHARGEABLE BENEFITS COMPONENT** under section 19, the experience of
14 the transferred account shall be ~~deemed to be~~ **INCLUDED AS** part of
15 the experience of the transferee's ~~rating~~ **EXPERIENCE** account. If
16 on the date of the transfer the transferee ~~was a "qualified~~
17 ~~employer"~~ **QUALIFIED FOR A CONTRIBUTION RATE THAT INCLUDED A**
18 **CHARGEABLE BENEFITS COMPONENT** and the transferor ~~was~~ **DID** not ~~a~~
19 ~~"qualified employer"~~ because of the provisions of section
20 19(a)(1), the transferee shall not thereby lose ~~his~~ **THE QUALIFIED**
21 status. ~~as a "qualified employer"~~.

22 (e) In the case of a transfer of business as defined in
23 subsections (a), (b), and (c) of this section, **CONTRIBUTION RATES**
24 **ARE DETERMINED, AS FOLLOWS:**

25 (1) The rates of contributions applicable to the transferor
26 and transferee for **THE** calendar year ~~subsequent to~~ **AFTER** the
27 calendar year ~~containing~~ **OF THE** transfer ~~date~~ shall be

1 respectively determined in accordance with section 19. In case of a
 2 transfer of part of an employer's ~~rating~~ **EXPERIENCE** account under
 3 subsection (d), the rate of contributions applicable to the
 4 transferor and transferee shall not be changed for the portion of
 5 the current calendar year remaining on the transfer date. In case
 6 of a transfer of an employer's entire ~~rating~~ **EXPERIENCE** account
 7 under subsection (d) , **ALL OF THE FOLLOWING APPLY:**

8 (i) ~~(a) the~~ **THE** transferor shall have no further interest in
 9 the ~~rating~~ **EXPERIENCE** account. ~~, his~~

10 (ii) **THE TRANSFEROR'S** coverage shall be terminated as of the
 11 effective date of the transfer under section ~~24 (b), and if he~~
 12 **24(B).**

13 (iii) **IF THE TRANSFEROR** again becomes an employer as defined in
 14 section 41 in the same calendar year in which ~~his~~ coverage ~~has~~
 15 ~~been thus~~ **IS** terminated, ~~his~~ **THE TRANSFEROR'S** contribution rate
 16 for the remainder of the calendar year shall be 2.7% as provided in
 17 section 19. ~~; and (b) the~~

18 (iv) **THE** rate of contributions applicable to the transferee
 19 shall not be changed for the portion of the current calendar year
 20 remaining on the transfer date.

21 (2) A transferee ~~or transferees, having~~ **THAT HAS** no rate of
 22 contributions applicable immediately ~~prior to~~ **BEFORE** the transfer
 23 date ~~, shall,~~ beginning with the first day of the quarter in
 24 which the transfer occurs, be assigned the same rate of
 25 contributions ~~which was applicable~~ **THAT APPLIED** to the transferor
 26 on the date of the transfer and a contribution rate of 2.7% for any
 27 portion of the calendar year ~~prior to~~ **BEFORE** the first day of the

1 quarter in which the transfer occurs.

2 (3) ~~Where~~ **IF** transfers of businesses simultaneously involve
3 2 or more transferors and a single transferee who has no rate of
4 contributions applicable immediately ~~prior to~~ **BEFORE** the transfer
5 date, ~~such~~ **THE** transferee shall be assigned a contribution rate
6 beginning ~~with~~ the first day of the quarter in which the
7 transfers occur based upon the ~~rating~~ **EXPERIENCE** account
8 percentage determined by the transferred ~~rating~~ **EXPERIENCE**
9 account balances and the total and insured payrolls properly
10 allocable to the transferee as of the date on which the businesses
11 were transferred, or as of June 30 of the year in which the
12 businesses were transferred, whichever is earlier, and a
13 contribution rate of 2.7% for any portion of the calendar year
14 ~~prior to~~ **BEFORE** the first day of the quarter in which the
15 transfers occur. If none of the transferors was an employer
16 entitled to an adjusted contribution rate, then a contribution rate
17 of 2.7% shall apply to the transferee for the calendar year in
18 which the transfers occur.

19 (F) **AN EMPLOYER SHALL NOT TRANSFER EMPLOYEES OR PAYROLL TO A**
20 **NEWLY CREATED OR EXISTING EMPLOYER FOR THE SOLE OR PRIMARY PURPOSE**
21 **OF OBTAINING OR ATTEMPTING TO OBTAIN A MORE FAVORABLE CONTRIBUTION**
22 **RATE. FAILURE OF AN EMPLOYER TO COMPLETE A REGISTRATION REPORT TO**
23 **DETERMINE EMPLOYER LIABILITY UNDER THIS ACT OR FAILURE OF AN**
24 **EMPLOYER TO PROVIDE ACCURATE AND COMPLETE INFORMATION ON A**
25 **REGISTRATION REPORT TO DETERMINE EMPLOYER LIABILITY UNDER THIS ACT**
26 **IS PRIMA FACIE EVIDENCE OF INTENT TO OBTAIN A CONTRIBUTION RATE IN**
27 **VIOLATION OF THIS SUBSECTION. AN EMPLOYER THAT VIOLATES THIS**

1 SUBSECTION IS SUBJECT TO THE PENALTIES PROVIDED IN SECTION 54(B).
2 THE AMOUNT OF THE PENALTY OR DAMAGES FOR A VIOLATION OF THIS
3 SUBSECTION SHALL BE CALCULATED BASED ON THE GREATER OF THE AMOUNT
4 OF UNEMPLOYMENT TAX THE EMPLOYER ACTUALLY AVOIDS OR THE AMOUNT THAT
5 THE EMPLOYER ATTEMPTED TO AVOID FOR 1 TAX YEAR.

6 (G) AN INDIVIDUAL OR BUSINESS ORGANIZATION SHALL NOT ASSIST,
7 ADVISE, OR ENCOURAGE AN EMPLOYER TO TRANSFER EMPLOYEES OR PAYROLL
8 IN VIOLATION OF SUBSECTION (F). AN INDIVIDUAL OR BUSINESS
9 ORGANIZATION THAT VIOLATES THIS SUBSECTION IS SUBJECT TO THE
10 PENALTIES IN SECTION 54B.

11 (H) THE AGENCY SHALL PROMULGATE RULES TO DEFINE THE
12 CIRCUMSTANCES IN WHICH THERE IS A PRESUMPTION THAT A TRANSFER OF
13 EMPLOYEES TO ANOTHER EMPLOYER IS MADE OR ATTEMPTED WITH THE INTENT
14 TO OBTAIN A LOWER CONTRIBUTION RATE. THE RULES SHALL INCLUDE
15 CIRCUMSTANCES THAT ENCOMPASS THE PRACTICES COMMONLY KNOWN AS "SUTA
16 DUMPING", "COMMON PAYMASTER", "PAYROLLING", AND "CAPTIVE PROVIDER".
17 TO THE EXTENT CONSISTENT WITH STATE LAW, AGENCY RULES SHALL
18 COORDINATE WITH FEDERAL UNEMPLOYMENT TAX RULES TO PRESERVE THE FULL
19 TAX CREDIT AGAINST THE TAX IMPOSED BY 26 USC 3301 TO 3311.

20 (I) THIS SECTION DOES NOT REQUIRE THE TRANSFER OF AN
21 EXPERIENCE ACCOUNT FROM A CLIENT ENTITY TO EITHER A TEMPORARY HELP
22 FIRM OR AN EMPLOYEE LEASING COMPANY, AS THOSE TERMS ARE DEFINED IN
23 RULE R 421.190 OF THE MICHIGAN ADMINISTRATIVE CODE, WHEN PAYROLL IS
24 TRANSFERRED IN THE NORMAL COURSE OF BUSINESS FROM THE CLIENT ENTITY
25 TO THE TEMPORARY HELP FIRM OR TO THE EMPLOYEE LEASING COMPANY.

26 Enacting section 1. This amendatory act does not take effect
27 unless all of the following bills of the 93rd Legislature are

1 enacted into law:

2 (a) Senate Bill No.____ or House Bill No. 4175(request no.
3 01677'05).

4 (b) Senate Bill No.____ or House Bill No. 4176(request no.
5 01678'05).

6 (c) Senate Bill No.____ or House Bill No. 4177(request no.
7 01679'05).

8 (d) Senate Bill No.____ or House Bill No. 4178(request no.
9 01680'05).