

SENATE BILL No. 171

February 3, 2005, Introduced by Senator ALLEN and referred to the Committee on
Commerce and Labor.

A bill to amend 1936 (Ex Sess) PA 1, entitled
"Michigan employment security act,"
(MCL 421.1 to 421.75) by adding section 22b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 22B. (1) A PERSON SHALL NOT DO EITHER OF THE FOLLOWING:

2 (A) TRANSFER THE PERSON'S TRADE OR BUSINESS OR A PORTION OF
3 THE TRADE OR BUSINESS TO ANOTHER EMPLOYER FOR THE SOLE OR PRIMARY
4 PURPOSE OF REDUCING THE CONTRIBUTION RATE OR REIMBURSEMENT PAYMENTS
5 IN LIEU OF CONTRIBUTIONS REQUIRED UNDER THIS ACT.

6 (B) ACQUIRE A TRADE OR BUSINESS OR A PART OF A TRADE OR
7 BUSINESS FOR THE SOLE OR PRIMARY PURPOSE OF OBTAINING A LOWER
8 CONTRIBUTION RATE THAN WOULD OTHERWISE APPLY UNDER THIS ACT.

9 (2) THE FOLLOWING PROVISIONS APPLY TO ASSIGNMENT OF RATES AND

1 TRANSFER OF THE UNEMPLOYMENT EXPERIENCE OF A TRADE OR BUSINESS TO
2 PREVENT OR REMEDY TRANSFERS OF TRADE OR BUSINESS IN VIOLATION OF
3 SUBSECTION (1):

4 (A) IF AN EMPLOYER TRANSFERS ITS TRADE OR BUSINESS OR A
5 PORTION OF ITS TRADE OR BUSINESS TO ANOTHER EMPLOYER AND THERE IS
6 SUBSTANTIALLY COMMON OWNERSHIP, MANAGEMENT, OR CONTROL OF THE 2
7 EMPLOYERS AT THE TIME OF THE TRANSFER, THE UNEMPLOYMENT EXPERIENCE
8 ATTRIBUTABLE TO THE TRANSFERRED TRADE OR BUSINESS SHALL BE
9 TRANSFERRED TO THE TRANSFEREE EMPLOYER. THE AGENCY SHALL
10 RECALCULATE THE CONTRIBUTION RATES OF BOTH EMPLOYERS UNDER SECTION
11 19 AND APPLY THE NEW RATES IN THE SAME MANNER AS FOR A TRANSFER OF
12 BUSINESS UNDER SECTION 22(C)(1) AND (D)(1). HOWEVER, IF, AFTER A
13 TRANSFER OF EXPERIENCE UNDER THIS SUBDIVISION THE AGENCY DETERMINES
14 THAT A SUBSTANTIAL PURPOSE OF THE TRANSFER OF TRADE OR BUSINESS WAS
15 TO OBTAIN REDUCED LIABILITY FOR CONTRIBUTIONS, THEN THE EXPERIENCE
16 RATING ACCOUNTS OF THE EMPLOYERS INVOLVED SHALL BE COMBINED INTO A
17 SINGLE ACCOUNT AND A SINGLE RATE ASSIGNED TO THE ACCOUNT.

18 (B) IF THE UNEMPLOYMENT INSURANCE AGENCY DETERMINES THAT A
19 PERSON WHO IS NOT AN EMPLOYER UNDER THIS ACT AT THE TIME OF A
20 TRANSFER ACQUIRES A TRADE OR BUSINESS, OR A PORTION OF A TRADE OR
21 BUSINESS, SOLELY OR PRIMARILY FOR THE PURPOSE OF OBTAINING A LOWER
22 CONTRIBUTION RATE, THE UNEMPLOYMENT INSURANCE AGENCY SHALL ASSIGN
23 THAT EMPLOYER THE APPLICABLE NEW EMPLOYER RATE UNDER SECTION 19.

24 (C) IF A PERSON KNOWINGLY VIOLATES OR ATTEMPTS TO VIOLATE
25 SUBSECTION (1), OR IF A PERSON KNOWINGLY ADVISES ANOTHER PERSON SO
26 AS TO CAUSE A VIOLATION OF SUBSECTION (1), THE PERSON IS SUBJECT TO
27 THE FOLLOWING:

1 (i) IF THE PERSON IS A TRANSFERRING OR ACQUIRING EMPLOYER, THE
2 EMPLOYER SHALL BE ASSIGNED THE HIGHER OF THE FOLLOWING CONTRIBUTION
3 RATES:

4 (A) THE HIGHEST CONTRIBUTION RATE ASSIGNABLE UNDER THIS ACT
5 FOR THE RATE YEAR DURING WHICH THE VIOLATION OR ATTEMPTED VIOLATION
6 OCCURS AND FOR THE 3 RATE YEARS IMMEDIATELY FOLLOWING THAT RATE
7 YEAR.

8 (B) IF THE EMPLOYER'S BUSINESS IS ALREADY AT THE HIGHEST RATE
9 ASSIGNABLE FOR A YEAR IN WHICH THE VIOLATION OCCURS, AN ADDITIONAL
10 PENALTY RATE OF 2% OF TAXABLE WAGES FOR THAT YEAR.

11 (ii) IF THE PERSON IS NOT AN EMPLOYER, THE PERSON IS SUBJECT TO
12 A CIVIL FINE OF NOT MORE THAN \$5,000.00.

13 (iii) IN ADDITION TO THE REMEDIES UNDER SUBPARAGRAPH (i) OR (ii),
14 A PERSON WHO KNOWINGLY VIOLATES OR ATTEMPTS TO VIOLATE SUBSECTION
15 (1), OR WHO KNOWINGLY ADVISES ANOTHER PERSON SO AS TO CAUSE A
16 VIOLATION OF SUBSECTION (1), IS SUBJECT TO PROSECUTION BY THE
17 PROSECUTING ATTORNEY IN THE COUNTY IN WHICH THE ALLEGED VIOLATION
18 OCCURS UNDER SECTION 54(B).

19 (D) NOTWITHSTANDING THE RESTRICTIONS IN SECTION 26(A), THE
20 MONEY RECOVERED UNDER THIS SECTION AS CONTRIBUTIONS, REIMBURSEMENTS
21 IN LIEU OF CONTRIBUTIONS, CIVIL FINES, CIVIL PENALTIES, OR INTEREST
22 SHALL BE CREDITED TO THE UNEMPLOYMENT COMPENSATION FUND.

23 (E) THE UNEMPLOYMENT INSURANCE AGENCY SHALL ESTABLISH
24 PROCEDURES TO IDENTIFY THE TRANSFER OR ACQUISITION OF A TRADE OR
25 BUSINESS, OR PART OF A TRADE OR BUSINESS, FOR PURPOSES OF THIS
26 SECTION. THIS SUBDIVISION DOES NOT GRANT AUTHORITY TO PROMULGATE
27 RULES TO DEFINE SUTA DUMPING.

1 (F) BEGINNING JANUARY 1, 2006, THE UNEMPLOYMENT INSURANCE
2 AGENCY SHALL PROVIDE AN ANNUAL WRITTEN REPORT TO THE CHAIRPERSONS
3 OF THE APPROPRIATIONS SUBCOMMITTEES OF THE HOUSE AND SENATE HAVING
4 JURISDICTION OVER LEGISLATION PERTAINING TO UNEMPLOYMENT
5 COMPENSATION. THE REPORT SHALL INCLUDE ALL OF THE FOLLOWING
6 INFORMATION IN A FORM THAT DOES NOT IDENTIFY INDIVIDUAL EMPLOYERS:

7 (i) THE PROCEDURES THE AGENCY HAS ADOPTED TO PREVENT SUTA
8 DUMPING.

9 (ii) THE NUMBER OF SUTA DUMPING INVESTIGATIONS OPENED DURING
10 THE YEAR.

11 (iii) THE AVERAGE LENGTH OF TIME TO RESOLVE A SUTA DUMPING
12 INVESTIGATION AND THE NUMBER OF INVESTIGATIONS PENDING FOR MORE
13 THAN 6 MONTHS AND FOR MORE THAN 1 YEAR.

14 (iv) THE NUMBER OF CASES BROUGHT BEFORE AN ADMINISTRATIVE LAW
15 JUDGE OR THE BOARD OF REVIEW AND THE AGENCY'S SUCCESS RATE IN THOSE
16 CASES.

17 (v) THE AMOUNT OF MONEY RECOVERED AS A RESULT OF IMPLEMENTING
18 THE PROVISIONS OF THIS SECTION.

19 (vi) THE AMOUNT OF THE BALANCE OR DEFICIT IN THE UNEMPLOYMENT
20 COMPENSATION FUND.

21 (vii) THE ESTIMATED FISCAL IMPACT OF SUTA DUMPING ON THE
22 UNEMPLOYMENT COMPENSATION FUND BALANCE AND THE FACTUAL BASIS FOR
23 THE ESTIMATE.

24 (viii) THE NUMBER OF FULL-TIME EMPLOYEES ASSIGNED TO, AND THE
25 NUMBER OF EMPLOYEE HOURS DEVOTED TO, SUTA DUMPING PREVENTION,
26 INVESTIGATION, AND REMEDIATION.

27 (3) FOR PURPOSES OF THIS SECTION, THE UNEMPLOYMENT INSURANCE

1 AGENCY SHALL DETERMINE WHETHER A TRANSFER IS MADE FOR THE SOLE OR
2 PRIMARY PURPOSE OF OBTAINING A LOWER CONTRIBUTION RATE USING
3 OBJECTIVE FACTORS, SUCH AS THE COST OF ACQUIRING THE BUSINESS,
4 CONTINUITY IN OPERATING THE BUSINESS ENTERPRISE OF THE ACQUIRED
5 BUSINESS, THE LENGTH OF TIME THE BUSINESS ENTERPRISE CONTINUES TO
6 OPERATE, AND THE NUMBER OF NEW EMPLOYEES HIRED TO PERFORM DUTIES
7 UNRELATED TO THE BUSINESS ACTIVITY OR TRADE CONDUCTED BEFORE THE
8 ACQUISITION.

9 (4) AS USED IN THIS SECTION:

10 (A) "KNOWINGLY" MEANS HAVING ACTUAL KNOWLEDGE OF, OR ACTING
11 WITH DELIBERATE IGNORANCE OR RECKLESS DISREGARD FOR, THE
12 PROHIBITION INVOLVED.

13 (B) "PERSON" MEANS THAT TERM AS DEFINED IN SECTION 7701 OF THE
14 INTERNAL REVENUE CODE OF 1986, 26 USC 7701.

15 (C) "SUTA" MEANS STATE UNEMPLOYMENT TAX ACT.

16 (D) "SUTA DUMPING" MEANS TRANSFERRING A TRADE OR BUSINESS, OR
17 A PART OF A TRADE OR BUSINESS, SOLELY OR PRIMARILY FOR THE PURPOSE
18 OF REDUCING THE CONTRIBUTION RATE OR REIMBURSEMENT PAYMENTS IN LIEU
19 OF CONTRIBUTIONS REQUIRED UNDER THIS ACT.

20 (E) "TRADE OR BUSINESS" INCLUDES THE EMPLOYER'S EMPLOYEES, BUT
21 THE TRANSFER OF SOME OR ALL OF AN EMPLOYER'S EMPLOYEES TO ANOTHER
22 EMPLOYER SHALL BE CONSIDERED A TRANSFER OF TRADE OR BUSINESS FOR
23 PURPOSES OF THIS SECTION IF, AS A RESULT OF THE TRANSFER, THE
24 TRANSFERRING EMPLOYER NO LONGER PERFORMS TRADE OR BUSINESS WITH
25 RESPECT TO THE TRANSFERRED EMPLOYEES AND THAT TRADE OR BUSINESS IS
26 PERFORMED BY THE TRANSFEREE EMPLOYER.

27 (5) THIS SECTION IS INTENDED TO BE INTERPRETED AND APPLIED IN

1 A MANNER SO AS TO MEET THE MINIMUM REQUIREMENTS OF THE SUTA DUMPING
2 PREVENTION ACT OF 2004, PUBLIC LAW 108-295, AND IMPLEMENTING
3 FEDERAL REGULATIONS.

4 Enacting section 1. This amendatory act takes effect July 1,
5 2005.

6 Enacting section 2. This amendatory act does not take effect
7 unless all of the following bills of the 93rd Legislature are
8 enacted into law:

9 (a) Senate Bill No. 173.

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11 (b) Senate Bill No. 174.

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13 (c) Senate Bill No. 172.

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