

SENATE BILL No. 173

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

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 assets of ~~his~~ **THE**
3 business by any means otherwise than in the ordinary course of
4 trade **AND THERE IS NOT SUBSTANTIALLY COMMON OWNERSHIP, MANAGEMENT,**
5 **OR CONTROL OF THE TRANSFEROR AND THE TRANSFEREE,** ~~such~~ **THE**
6 transfer shall be deemed a "transfer of business" for the purposes
7 of this section if the commission 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
10 transfer date under section ~~41(2)(a)~~ **41(2)(A)** or elects to

1 become subject **TO THIS ACT** as of the transfer date under section
2 25. ~~—, and~~

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

8 (b) Notwithstanding ~~the provisions of~~ subsection (a), a
9 transfer of assets to a transferee ~~which~~ **THAT** involves less than
10 75% of the transferor's assets shall not be deemed a transfer of
11 business unless all of the following occur:

12 (1) The commission is notified of the transfer of assets by
13 the transferor or transferee within 30 days after the end of the
14 quarter in which the transfer occurred.

15 (2) The commission receives within 30 days after ~~the~~ **ITS**
16 request ~~therefor, a~~ written approval by the transferor and
17 transferee of ~~a rating~~ **AN EXPERIENCE** account transfer determined
18 in accordance with the provisions of subsection ~~(d)~~ **(C)**.

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

23 ~~—— (c) Notwithstanding any other provisions of this section, if~~
24 ~~an employer subject to this act transfers subsequent to December~~
25 ~~31, 1973, any of the assets of his business, by any means otherwise~~
26 ~~than in the ordinary course of trade, to any transferee or~~
27 ~~transferees substantially owned or controlled, in whole or major~~

1 ~~part, either directly or indirectly by legally enforceable means or~~
 2 ~~otherwise, by the same interest or interests which owned or~~
 3 ~~controlled the transferor at the time of such transfer, such~~
 4 ~~transfer shall be deemed a "transfer of business" for the purposes~~
 5 ~~of this section.~~

6 (C) ~~(d)~~ (1) In the case of a transfer of business as defined
 7 in ~~subsections~~ **SUBSECTION** (a) ~~—~~ **OR** (b), ~~and (c),~~ the
 8 commission shall assign the transferor's ~~rating~~ **EXPERIENCE**
 9 account, or a pro rata part ~~thereof~~ **OF THE ACCOUNT**, to the
 10 transferee. The commission shall make ~~such~~ **THE** assignment as of
 11 the date on which the business ~~was~~ **IS** transferred or as of June
 12 30 of the year in which the business was transferred, whichever
 13 date is earlier. The pro rata part of the transferor's ~~rating~~
 14 **EXPERIENCE** account to be assigned to the transferee shall be
 15 determined on the basis of the percentage relationship to the
 16 nearest 1/2 of 1% ~~of~~ **THAT** the insured payroll for the 4 completed
 17 calendar quarters immediately ~~prior to~~ **BEFORE** the date of
 18 transfer properly allocable to the transferred portion of the
 19 business ~~—~~ **BEARS** to the insured payroll for the same period
 20 allocable to the entire business of the transferor immediately
 21 ~~prior to~~ **BEFORE** the date of the transfer.

22 (2) When the commission transfers an employer's ~~rating~~
 23 **EXPERIENCE** account in whole or in part under this section, it shall
 24 also transfer a proportionate share of the amount of the total
 25 wages and wages subject to contributions under this act paid by the
 26 transferor and properly allocable to the ~~transferred~~ **TRANSFER OF**
 27 business; and ~~such~~ **THE** transferred account shall be ~~liable to be~~

~~charged~~ **CHARGEABLE** for all benefit payments based on employment in the business or portion ~~thereof~~ **OF THE BUSINESS** transferred.

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

(D) ~~(e)~~ In the case of a transfer of business as defined in ~~subsections~~ **SUBSECTION** (a) ~~,~~ **OR** (b) ~~,~~ ~~and (e)~~ of this section, **CONTRIBUTION RATES ARE DETERMINED AS FOLLOWS:**

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

(i) ~~(a) the~~ **THE** transferor shall have no further interest in

1 the ~~rating~~ **EXPERIENCE** account. ~~—, his~~

2 (ii) **THE TRANSFEROR'S** coverage shall be terminated as of the
3 effective date of the transfer under section ~~24 (b), and if he~~
4 **24 (B) .**

5 (iii) **IF THE TRANSFEROR** again becomes an employer as defined in
6 section 41 in the same calendar year in which ~~his~~ coverage ~~has~~
7 ~~been thus~~ **IS** terminated, ~~his~~ **THE TRANSFEROR'S** contribution rate
8 for the remainder of the calendar year shall be 2.7% as provided in
9 section 19. ~~—, and (b) the~~

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

13 (2) A transferee ~~or transferees, having~~ **THAT HAS** no rate of
14 contributions applicable immediately ~~prior to~~ **BEFORE** the transfer
15 date ~~—, shall,~~ beginning with the first day of the quarter in
16 which the transfer occurs, be assigned the same rate of
17 contributions ~~which was applicable~~ **THAT APPLIED** to the transferor
18 on the date of the transfer and a contribution rate of 2.7% for any
19 portion of the calendar year ~~prior to~~ **BEFORE** the first day of the
20 quarter in which the transfer occurs.

21 (3) ~~Where~~ **IF** transfers of businesses simultaneously involve
22 2 or more transferors and a single transferee who has no rate of
23 contributions applicable immediately ~~prior to~~ **BEFORE** the transfer
24 date, ~~such~~ **THE** transferee shall be assigned a contribution rate
25 beginning with the first day of the quarter in which the transfers
26 occur based upon the ~~rating~~ **EXPERIENCE** account percentage
27 determined by the transferred ~~rating~~ **EXPERIENCE** account balances

1 and the total and insured payrolls properly allocable to the
2 transferee as of the date on which the businesses were transferred,
3 or as of June 30 of the year in which the businesses were
4 transferred, whichever is earlier, and a contribution rate of 2.7%
5 for any portion of the calendar year ~~prior to~~ **BEFORE** the first
6 day of the quarter in which the transfers occur. If none of the
7 transferors was an employer entitled to an adjusted contribution
8 rate, then a contribution rate of 2.7% shall apply to the
9 transferee for the calendar year in which the transfers occur.

10 Enacting section 1. This amendatory act takes effect July 1,
11 2005.

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

15 (a) Senate Bill No. 171.

16
17 (b) Senate Bill No. 174.

18
19 (c) Senate Bill No. 172.