

# HOUSE BILL No. 4238

February 10, 2009, Introduced by Rep. Constan and referred to the Committee on Labor.

A bill to amend 1936 (Ex Sess) PA 1, entitled  
"Michigan employment security act,"  
by amending section 22b (MCL 421.22b), as added by 2005 PA 18.

## 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~~  
10      ~~transfer of the unemployment experience of a trade or business to~~

~~prevent or remedy transfers of trade or business in violation of subsection (1):~~

~~—— (a) If an employer transfers its trade or business or a portion of its trade or business to another employer and there is substantially common ownership, management, or control of the 2 employers at the time of the transfer, the unemployment experience attributable to the transferred trade or business shall be transferred to the transferee employer. The agency shall recalculate the contribution rates of both employers under section 19 and apply the new rates in the same manner as for a transfer of business under section 22(c)(1) and (d)(1) . However, if, after a transfer of experience under this subdivision the agency determines that the sole or primary purpose of the transfer of trade or business was to obtain reduced liability for contributions, then~~  
**AND** the experience ~~rating~~ accounts of the employers involved shall be combined into a single account and a single rate assigned to the account.

**(2)** ~~(b)~~ If the unemployment insurance agency determines that a person who is not an employer under this act at the time of a transfer acquires 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 unemployment insurance agency **SHALL NOT TRANSFER THE UNEMPLOYMENT EXPERIENCE BUT** shall assign that employer the applicable new employer rate under section 19.

**(3)** ~~(c)~~ In addition to any sanction available under section 54(b) or 54b, if a person knowingly ~~violates or attempts to violate~~ subsection (1), or if a person knowingly advises another person so

~~as to cause a violation of subsection (1)~~ **TRANSFERS OR ACQUIRES,**  
**ATTEMPTS TO TRANSFER OR ACQUIRE, OR ADVISES A PERSON TO TRANSFER OR**  
**ACQUIRE A TRADE OR BUSINESS OR A PORTION OF A TRADE OR BUSINESS TO**  
**KNOWINGLY OBTAIN A REDUCED CONTRIBUTION RATE OR REIMBURSEMENT**  
**PAYMENT IN LIEU OF CONTRIBUTIONS REQUIRED UNDER THIS ACT BY SUTA**  
**DUMPING,** the person is subject to the following:

(A) ~~(i)~~ If the person is a transferring or acquiring employer,  
the employer shall be assigned the higher of the following  
contribution rates:

(i) ~~(A)~~ The highest contribution rate assignable under this act  
for the rate year during which the violation or attempted violation  
occurs and for the 3 rate years immediately following that rate  
year.

(ii) ~~(B)~~ If the employer's business is already at the highest  
rate assignable for a year in which the violation occurs or if the  
highest rate assignable would result in an increase of less than 2%  
of taxable wages, an additional ~~penalty~~ rate of 2% of taxable wages  
for that **RATE** year **AND FOR THE 3 RATE YEARS IMMEDIATELY FOLLOWING**  
**THAT YEAR.**

(B) ~~(ii)~~ If the person is not ~~an~~ **A TRANSFERRING OR ACQUIRING**  
employer, the person is subject to a civil fine of not more than  
\$5,000.00.

(4) ~~(d) Notwithstanding the restrictions in section 26(a), the~~  
**ALL** money recovered under this section as contributions,  
reimbursements in lieu of contributions, civil fines, civil  
penalties, or interest shall be credited to the unemployment  
compensation fund.

1           (5) ~~(e)~~—The unemployment insurance agency shall establish  
2 procedures to identify the transfer or acquisition of a trade or  
3 business, or part of a trade or business, for purposes of this  
4 section. This ~~subdivision~~ **SUBSECTION** does not grant authority to  
5 promulgate rules to define SUTA dumping.

6           (6) ~~(f)~~—Beginning January 1, 2006, the unemployment insurance  
7 agency shall provide an annual written report to the chairpersons  
8 of the standing committees and the appropriations subcommittees of  
9 the house and senate having jurisdiction over legislation  
10 pertaining to unemployment compensation. The report shall include  
11 all of the following information in a form that does not identify  
12 individual employers:

13           (A) ~~(i)~~—The procedures the agency has adopted to prevent SUTA  
14 dumping.

15           (B) ~~(ii)~~—The number of SUTA dumping investigations opened  
16 during the year.

17           (C) ~~(iii)~~—The average length of time to resolve a SUTA dumping  
18 investigation and the number of investigations pending for more  
19 than 6 months and for more than 1 year.

20           (D) ~~(iv)~~—The number of cases brought before an administrative  
21 law judge or the board of review and the agency's success rate in  
22 those cases.

23           (E) ~~(v)~~—The amount of money recovered as a result of  
24 implementing ~~the provisions of this section~~.

25           (F) ~~(vi)~~—The amount of the balance or deficit in the  
26 unemployment compensation fund.

27           (G) ~~(vii)~~—The estimated fiscal impact of SUTA dumping on the

1 unemployment compensation fund balance and the factual basis for  
2 the estimate.

3 (H) ~~(viii)~~—The number of full-time employees assigned to, and  
4 the number of employee hours devoted to, SUTA dumping prevention,  
5 investigation, and remediation.

6 (I) ~~(ix)~~—The number of SUTA dumping investigations that  
7 involved the transfer of employees to or from an employee leasing  
8 company.

9 (J) ~~(x)~~—The number of investigations in which an employee  
10 leasing company was found to have participated in SUTA dumping.

11 (K) ~~(xi)~~—The number of employee leasing companies operating in  
12 Michigan.

13 (7) ~~(3)~~—For purposes of this section, the unemployment  
14 insurance agency shall determine whether a ~~transfer is made~~  
15 **BUSINESS IS ACQUIRED** for the sole or primary purpose of obtaining a  
16 lower contribution rate using objective factors, such as the cost  
17 of acquiring the business, continuity in operating the business  
18 enterprise of the acquired business, the length of time the  
19 business enterprise continues to operate, and the number of new  
20 employees hired to perform duties unrelated to the business  
21 activity or trade conducted before the acquisition.

22 (8) ~~(4)~~—Notwithstanding any other provision of this act, the  
23 following provisions apply to changes in status between reimbursing  
24 employer and contributing employer:

25 (a) If a contributing employer, including an employer  
26 described in section 13/ that elected to be a contributing employer,  
27 elects to become a reimbursing employer, any negative balance the

1 employer incurred while a contributing employer ~~must~~**SHALL** be paid  
2 to the agency before the employer may become a reimbursing  
3 employer.

4 (b) Any benefit charges incurred as a result of services  
5 performed for a contributing employer that are charged to the  
6 employer's account after it has become a reimbursing employer shall  
7 be transferred to the employer's reimbursing account and paid by  
8 means of reimbursement to the agency.

9 (c) If a reimbursing employer or an employer described in  
10 section 13/ ~~of this act~~ applies to become a contributing employer  
11 and the agency permits the reimbursing employer to become a  
12 contributing employer, or if the agency converts a reimbursing  
13 employer to a contributing employer, then the employer shall  
14 continue to pay the agency as reimbursement payments those benefit  
15 charges that were incurred based on wages paid while the employer  
16 was a reimbursing employer, and benefit charges incurred based on  
17 wages paid after the reimbursing employer became a contributing  
18 employer shall be used to calculate the employer's contribution  
19 rate.

20 (9) ~~(5)~~ As used in this section:

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

24 (b) "Person" means that term as defined in section 7701 of the  
25 internal revenue code of 1986, 26 USC 7701.

26 (c) "SUTA" means state unemployment tax act.

27 (d) "SUTA dumping" means ~~transferring~~**EITHER OF THE FOLLOWING:**

1           (i) TRANSFERRING ALL OR A PART OF a trade or business ~~IN A~~  
2 MANNER THAT RESULTS IN A VIOLATION OF THIS SECTION.

3           (ii) ACQUIRING ALL or a part of a trade or business, solely or  
4 primarily for the purpose of reducing the contribution rate or  
5 reimbursement payments in lieu of contributions required under this  
6 act.

7           (e) "Trade or business" includes the employer's employees. ~~7~~  
8 ~~but the~~ **THE** transfer of some or all of an employer's employees to  
9 another employer shall be considered a transfer of trade or  
10 business for purposes of this section if, as a result of the  
11 transfer, the transferring employer no longer performs trade or  
12 business with respect to the transferred employees and that trade  
13 or business is performed by the transferee employer.

14           (10) ~~(6)~~ This section is intended to be interpreted and  
15 applied in a manner so as to meet the minimum requirements of the  
16 SUTA dumping prevention act of 2004, Public Law 108-295, and  
17 implementing federal regulations.