

# 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~~ **TO THIS ACT** as of the  
10 transfer date under section ~~41(2)(a)~~ **41(2)(A)** or elects to

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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~~ **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~~

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

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

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

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

27 (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.

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