

# HOUSE BILL No. 5715

May 31, 2012, Introduced by Reps. Price and Horn and referred to the Committee on Commerce.

A bill to amend 1936 (Ex Sess) PA 1, entitled "Michigan employment security act," by amending section 22 (MCL 421.22), as amended by 2005 PA 17.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 22. (a) If an employer subject to this act transfers any  
2 of the assets of the business by any means otherwise than in the  
3 ordinary course of trade and there is not substantially common  
4 ownership, management, or control of the transferor and the  
5 transferee, the transfer shall be deemed a "transfer of business"  
6 for the purposes of this section if the commission determines both  
7 of the following:

8           (1) That the transferee is an employer subject to this act on  
9 the transfer date, has become subject to this act as of the  
10 transfer date under section 41(2) (a) or elects to become subject to  
11 this act as of the transfer date under section 25.

1           (2) That the transferee has acquired and used the transferor's  
2 trade name or good will, or that the transferee has continued or  
3 within 12 months after the transfer resumed all or part of the  
4 business of the transferor either in the same establishment or  
5 elsewhere. **AN EMPLOYER SHALL NOT BE CONSIDERED TO BE A TRANSFEREE**  
6 **FOR PURPOSES OF THIS SUBDIVISION IF THE EMPLOYER CONTINUES OR**  
7 **RESUMES OPERATION OF THE BUSINESS UPON REACQUIRING THE BUSINESS**  
8 **ASSETS DUE TO THE PURCHASER'S DEFAULT ON A PURCHASE AGREEMENT**  
9 **BETWEEN THE EMPLOYER AND THE PURCHASER.**

10           (b) Notwithstanding subsection (a), a transfer of assets to a  
11 transferee that involves less than 75% of the transferor's assets  
12 shall not be deemed a transfer of business unless all of the  
13 following occur:

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

17           (2) The commission receives within 30 days after its request  
18 written approval by the transferor and transferee of an experience  
19 account transfer determined in accordance with the provisions of  
20 subsection (c).

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

25           (c) (1) In the case of a transfer of business as defined in  
26 subsection (a) or (b), the commission shall assign the transferor's  
27 experience account, or a pro rata part of the account, to the

1 transferee. The commission shall make the assignment as of the date  
2 on which the business is transferred or as of June 30 of the year  
3 in which the business was transferred, whichever date is earlier.  
4 The pro rata part of the transferor's experience account to be  
5 assigned to the transferee shall be determined on the basis of the  
6 percentage relationship to the nearest 1/2 of 1% that the insured  
7 payroll for the 4 completed calendar quarters immediately before  
8 the date of transfer properly allocable to the transferred portion  
9 of the business bears to the insured payroll for the same period  
10 allocable to the entire business of the transferor immediately  
11 before the date of the transfer.

12 (2) When the commission transfers an employer's experience  
13 account in whole or in part under this section, it shall also  
14 transfer a proportionate share of the amount of the total wages and  
15 wages subject to contributions under this act paid by the  
16 transferor and properly allocable to the transfer of business; and  
17 the transferred account shall be chargeable for all benefit  
18 payments based on employment in the business or portion of the  
19 business transferred.

20 (3) In determining whether the transferee qualifies for a  
21 contribution rate that includes a chargeable benefits component  
22 under section 19, the experience of the transferred account shall  
23 be included as part of the experience of the transferee's  
24 experience account. If on the date of the transfer the transferee  
25 qualified for a contribution rate that includes a chargeable  
26 benefits component and the transferor did not qualify because of  
27 the provisions of section 19(a)(1), the transferee shall not

1 thereby lose the qualified status.

2 (d) In the case of a transfer of business as defined in  
3 subsection (a) or (b), ~~of this section,~~ contribution rates are  
4 determined as follows:

5 (1) The rates of contributions applicable to the transferor  
6 and transferee for the calendar year after the calendar year of the  
7 transfer shall be respectively determined in accordance with  
8 section 19. In case of a transfer of part of an employer's  
9 experience account under subsection (c), the rate of contributions  
10 applicable to the transferor and transferee shall not be changed  
11 for the portion of the current calendar year remaining on the  
12 transfer date. In case of a transfer of an employer's entire  
13 experience account under subsection (c), all of the following  
14 apply:

15 (i) The transferor shall have no further interest in the  
16 experience account.

17 (ii) The transferor's coverage shall be terminated as of the  
18 effective date of the transfer under section 24(b).

19 (iii) If the transferor again becomes an employer as defined in  
20 section 41 in the same calendar year in which coverage is  
21 terminated, the transferor's contribution rate for the remainder of  
22 the calendar year shall be 2.7% as provided in section 19.

23 (iv) The rate of contributions applicable to the transferee  
24 shall not be changed for the portion of the current calendar year  
25 remaining on the transfer date.

26 (2) A transferee that has no rate of contributions applicable  
27 immediately before the transfer date shall, beginning with the

1 first day of the quarter in which the transfer occurs, be assigned  
2 the same rate of contributions that applied to the transferor on  
3 the date of the transfer and a contribution rate of 2.7% for any  
4 portion of the calendar year before the first day of the quarter in  
5 which the transfer occurs.

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