

BILL ANALYSIS

Senate Research Center

H.B. 3250
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Business & Commerce
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Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

States use an "experience rating" system to assign tax rates to a business based on its history of unemployment insurance claims. Generally, a business with a large number of unemployment claims will have a high experience rating and a correspondingly high tax rate. Employers engage in State Unemployment Tax Act (SUTA) dumping when they try to lower the amount of tax they pay by altering their experience ratings. Employers use a variety of methods to lower their experience rating.

In 2004, congress acted on President Bush's proposal to end the abusive practice known as SUTA dumping by which some employers pay less than their fair share of state unemployment taxes.

In August of 2004, the president signed federal legislation which requires states to have laws against SUTA dumping in place by 2006, and to impose penalties for violation of the state law provisions on both employers and on tax advisors. The purpose of H.B. 3250 is to amend the Texas Unemployment Compensation Act to incorporate federal provisions so that the state remains in conformity with federal law. The penalty for not conforming with federal law is a greatly increased federal unemployment tax rate for the state's employers.

H.B. 3250 calls for penalties for those who advise businesses to violate state laws since SUTA dumping is largely due to advice by tax advisors. The bill incorporates a two percent tax rate increase for violators for four years.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Workforce Commission in SECTION 7 (Section 204.088, Labor Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 201.022, Labor Code, to redefine "employer."

SECTION 2. Amends Section 204.081, Labor Code, as follows:

Sec. 204.081. New heading: DEFINITIONS. Defines "person," "substantially common management or control," "substantially common ownership," "transfer or trade or business," and "knowingly."

SECTION 3. Amends Section 204.083, Labor Code, as follows:

Sec. 204.083. New heading: ACQUISITION OF ALL OR PART OF EXPERIENCE-RATED ORGANIZATION, TRADE, OR BUSINESS; TRANSFER OF COMPENSATION EXPERIENCE. Provides that the transfer of the predecessor employer's compensation experience to the successor employer is required if the predecessor employing unit transfers, through any means, all or part of the organization, trade, or business, to the successor employer and there is substantially common management or control or substantially common ownership of the entities. Deletes existing text relating the acquisition of certain entities by an employing unit.

SECTION 4. Amends the heading to Section 204.084, Labor Code, to read as follows:

Sec. 204.084. ACQUISITION OF PART OF EXPERIENCE-RATED ORGANIZATION, TRADE, OR BUSINESS: APPROVAL OF TRANSFER OF COMPENSATION EXPERIENCE WITHOUT SUBSTANTIALLY COMMON MANAGEMENT OR CONTROL OR SUBSTANTIALLY COMMON OWNERSHIP; CONTRIBUTION RATE.

SECTION 5. Amends Section 204.084, Labor Code, by amending Subsections (a) and (d) and adding Subsections (e) and (f), as follows:

(a) Authorizes, if an employing unit acquires or otherwise receives, through any means, part of the organization, trade, or business of an employer, and transfer of compensation experience is not required by Section 204.083, the successor employing unit and the predecessor employer to jointly make a written application to the Texas Workforce Commission (TWC) to transfer the compensation experience of the predecessor employer that is attributable to the part of the organization, trade, or business acquired to the successor employing unit. Makes nonsubstantive changes.

(d) Requires, rather than authorizes, TWC to deny a transfer of compensation experience under this section if TWC determines that the transfer, rather than the acquisition, was done primarily to qualify for a reduced compensation experience rating, rather than a unemployment insurance tax rate, by taking certain actions relating to the experience rating system.

(e) Requires a successor employing unit that acquires compensation experience under this section and that is an experience-rated employer on the date of and during the period preceding the acquisition to pay contributions from the date of the acquisition until the end of the calendar year in which the acquisition occurred at the rate applicable to the successor employing unit on the date of acquisition.

(f) Requires a successor employing unit that acquires compensation experience under this section and that is not an experience-rated employer on the date of the acquisition to pay contributions from the date of the acquisition until the next contribution rate computation date at the highest rate applicable at the time of the acquisition to any predecessor employing unit that is a party to the acquisition. Requires the successor employing unit's contribution rate to be determined under Section 204.006 if TWC determines that the transfer was accomplished solely or primarily for the purpose of obtaining a lower contribution rate.

SECTION 6. Amends Section 204.085, Labor Code, as follows:

Sec. 204.085. New heading: CONTRIBUTION RATE FOR SUCCESSOR EMPLOYERS WHEN SUBSTANTIALLY COMMON MANAGEMENT OR CONTROL OR SUBSTANTIALLY COMMON OWNERSHIP EXISTS; CERTAIN PARTIAL ACQUISITIONS. (a) Requires the contribution rate of the successor to be computed in a certain manner except as provided by Subsection (d), in the case of a partial acquisition for which the transfer of compensation experience is required under Section 204.083, if TWC determines that the part of the organization, trade, or business transferred is definitely identifiable and segregable and that compensation experience can be specifically attributed to that part of the organization, trade, or business.

(b) Redesignated from existing Subsection (a). Requires a successor employing unit that acquires compensation experience under Section 204.083 and is an experience-rated employer on the date of the acquisition, to pay contributions from the date of the acquisition until the end of the calendar year in which the acquisition occurred at a rate computed by using the compensation experience transferred from the predecessor employer and that of the successor employing unit. Makes conforming changes.

(c) Redesignated from existing Subsection (b). Requires a successor employing unit that acquires compensation experience under Section 204.083 and is not an experience-rated employer on the date of the acquisition to pay contributions from the date of the acquisition until the end of the calendar year at the highest rate applicable at the time of the acquisition to any predecessor employer who is a party to the acquisition. Makes conforming changes.

(d) Requires the successor's contribution rate to be determined under Section 204.006 if TWC determines that the transfer was accomplished solely or primarily for the purpose of obtaining a lower contribution rate.

SECTION 7. Amends Subchapter E, Chapter 204, Labor Code, by adding Section 204.0851, 204.087, 204.088, and 204.089, as follows:

Sec. 204.0851. CONTRIBUTION RATE FOR SUCCESSOR EMPLOYERS WHEN SUBSTANTIALLY COMMON MANAGEMENT OR CONTROL OR SUBSTANTIALLY COMMON OWNERSHIP EXISTS; OTHER ACQUISITIONS. (a) Requires the contribution rate to be computed as provided by this section for a transfer of compensation experience required by Section 204.083 other than a transfer described by Section 204.085(a).

(b) Requires a successor employing unit that acquires compensation experience under Section 204.083 and is an experience-rated employer on the date of the acquisition to pay contributions from the date of the acquisition until the end of the calendar year in which the acquisition occurred at the rate computed by using the prior 36-month combined compensation experience of the predecessor employing unit and the successor employing unit on the date of the acquisition.

(c) Requires a successor employing unit that acquires compensation experience under Section 204.083 and is not an experience-rated employer on the date of the acquisition to pay contributions from the date of the acquisition until the end of the calendar year at the highest rate applicable at the time of the acquisition to any predecessor employing unit that is a party to the acquisition.

(d) Requires the contribution rate for experience-rated and nonexperience-rated successor employing units to be computed in a certain manner for the years following the year of acquisition.

Sec. 204.087. OFFENSE; CRIMINAL AND CIVIL PENALTIES. (a) Provides that a person commits an offense if the person recklessly, knowingly, or intentionally defeats, evades, or circumvents a provision of this subchapter or if the person recklessly, knowingly, or intentionally attempts, aids and abets an attempt, or advises another to defeat, evade, or circumvent a provision of this subchapter.

(b) Authorizes an employer who commits an offense under this section to be assessed a civil penalty in an amount equal to two percent of wages as defined in Subchapter F (Definition of Wages), Chapter 201, for the year during which the violation occurred and for the three years following that year.

(c) Authorizes a person, other than the employer, who commits an offense under this section to be assessed a civil penalty of not more than \$5,000 for a first offense and not more than \$5,000 for each subsequent offense.

(d) Requires a civil penalty assessed under Subsection (b) or (c) to be deposited in the special administration fund established under Section 203.201.

(e) Provides that an offense under this section is a Class A misdemeanor.

Sec. 204.088. PROCEDURES TO IDENTIFY EXPERIENCE-RATING TRANSFERS. Requires TWC by rule to establish procedures to identify the transfer or acquisition of a business for the purposes of this subchapter.

Sec. 204.089. CONFORMITY WITH FEDERAL REGULATIONS. Requires TWC to administer this subchapter in conformity with any regulations prescribed by the United States Secretary of Labor relating to experience-rating transfers.

SECTION 8. Makes application of this Act prospective.

SECTION 9. Effective date: September 1, 2005.