

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 1251
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Natural Resources & Economic Development
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Businesses pay an unemployment insurance tax rate made up of different components including a compensation experience-rated portion, which is based on the benefits that have been paid to former employees of the company and charged to the company's account. This part of the tax can increase drastically when a business lays off employees who claim unemployment compensation.

Typically when a franchisee acquires a new franchise location they must take on the entire compensation experience rate of the franchisor which is often higher than their own. State law allows a franchisee to receive a lower rating, known as a partial transfer of the franchisor's compensation experience, if certain requirements are met.

One requirement is that the franchisor cannot have a substantial ownership interest in the new franchise. Some franchise agreements allow the predecessor business to retain some reversionary interest in the new franchise such as the right to repossess the franchise if the franchisee fails to live up to the franchisee agreement. However, the law is unclear if this reversionary interest counts as having a substantial ownership interest.

Franchise agreements should not equate to having common ownership because these agreements are arms' length transactions between two businesses acting independently from one another. Furthermore, it does not make sense for the same compensation experience to be used for the tax rate computation of two entirely separate companies.

C.S.H.B. 1251 seeks to clarify that "common ownership" does not include those situations where the predecessor of a business retains a reversionary interest.

C.S.H.B. 1251 amends current law relating to the transfer of compensation experience for purposes of the Texas Unemployment Compensation Act.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 204.081, Labor Code, as follows:

Sec. 204.081. DEFINITIONS. (a) Creates this subsection from existing text and makes no further change.

(b) Provides that, for purposes of Subsection (a)(4) (defining "substantially common ownership"), following a partial acquisition of an organization, trade, or business of an employing unit, substantially common ownership does not exist solely because the predecessor employing unit has the right to repossess the part acquired by the successor employing unit in the event of the successor's failure to complete a condition of the acquisition.

SECTION 2. Amends Section 204.085, Labor Code, by adding Subsections (a-1) and (e), as follows:

(a-1) Authorizes the predecessor employer and successor employer, in the case of a partial acquisition for which the transfer of compensation experience is required under Section 204.083 (Acquisition of All or Part of Experience-Rated Organization, Trade, or Business; Transfer of Compensation Experience), to jointly submit, not later than the second anniversary of the date the partial acquisition was completed, information necessary for making the determination described by Subsection (a) (relating to partial acquisition for the transfer of compensation experience). Requires that the period for which the information is submitted be the lesser of:

(1) four years; or

(2) the length of time the predecessor employer was liable for the payment of a tax under this subtitle.

(e) Requires the Texas Workforce Commission (TWC) to include information about the availability of a partial transfer of compensation experience under this subchapter:

(1) with the information provided by TWC to each new employer; and

(2) on any form, including in electronic format, required to be submitted by an employer to report a change of status.

SECTION 3. Provides that Sections 204.081(b) and 204.085(a-1), Labor Code, as added by this Act, apply only to a partial acquisition of an organization, trade, or business of an employing unit that occurs on or after the effective date of this Act. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2015.