

Reprinted

FEB 5 1990

LABOR & INDUSTRIAL RELATIONS
Amend per 5/16/90 Do Pass 2/16 (p. 42)

HOUSE FILE 2287
BY OLLIE

Passed House, Date 3/5/90 (p. 862) Passed Senate, Date _____
Vote: Ayes 96 Nays 0 Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to a subsequent employer's unemployment benefit
2 contribution rate upon the purchase or transference of a small
3 business.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 2287

5507 amends all

1 Section 1. Section 96.8, subsection 4, paragraph a, Code
2 Supplement 1989, is amended by adding the following new
3 unnumbered paragraph:

4 NEW UNNUMBERED PARAGRAPH. However, if an enterprise or
5 business of a subject employer, sold or otherwise transferred
6 as described in this lettered paragraph, is a small business
7 as defined in section 15.102, and the subsequent employing
8 unit has not been charged with benefits payments in the
9 previous five calendar years, the successor employer shall
10 have an option of either accepting the previous employer's
11 contribution rate, or being assigned a new contribution rate
12 pursuant to section 96.7. A previous employer shall disclose
13 to a successor employer the previous employer's record of
14 charges with benefits payments.

15 Sec. 2. Section 96.11, subsection 7, paragraph c, Code
16 Supplement 1989, is amended by adding the following new
17 subparagraph:

18 NEW SUBPARAGRAPH. (10) The subsequent employing unit of a
19 small business pursuant to section 96.8, subsection 4.

20 EXPLANATION

21 The bill provides that when a small business is sold or
22 transferred to a subsequent employer who has not been charged
23 with unemployment benefits in the previous five calendar
24 years, the successor employer will have an option of either
25 accepting the predecessor employer's contribution rate, or
26 being assigned a new contribution rate. The bill also
27 mandates that the predecessor employer disclose its record of
28 charges with benefit payments to a successor employer.

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**HOUSE FILE 2287
FISCAL NOTE**

A fiscal note for House File 2287 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

House File 2287 provides that when a small business is sold or transferred to a subsequent employer who has never had an employer's account maintained by the division the successor employer will have the option of acquiring the predecessor's unemployment rate or being assigned the new employer rate.

BACKGROUND: Current law requires a successor employer who does not have an employer account to assume the rate of the predecessor employer, if there is only one predecessor. If there is more than one predecessor employer, the successor employer receives a rate based on the combined experience of the predecessor employers. The new employer rate assigned varies according to the tax table in effect. The highest new employer rate for 1989 was 3.1% and the lowest rate was 1%. The rate assigned to a new employer is effective for a 3 year period, and then a new rate is assigned based on the employer's own actual experience.

ASSUMPTIONS:

1. The successor employer will choose the lowest rate.
2. The number of small businesses purchased by employers with no previous unemployment rate will remain constant at 1,481 per year.

FISCAL IMPACT: There will be no direct impact on the General Fund since no additional staff or funds will be necessary to implement this bill. However, as stated above, this bill will affect amounts paid into the Unemployment Trust Fund.

Using Tax Table 5, in which the lowest new employer rate of 1% applies, the Unemployment Trust Fund would experience a decrease in revenues of \$1,120,499 in the first calendar year, \$2,240,998 in the second calendar year, and \$3,361,497 in the third calendar year.

Using Tax Table 1, in which the highest new employer rate of 3.1% applies, the Unemployment Trust Fund would experience a decrease in revenues of \$1,126,165 in the first calendar year, \$2,252,330 in the second calendar year, and \$3,378,495 in the third calendar year.

Source: (Department of Employment Services
Job Service Division)

(LSB 7972h, MAS)

FILED MARCH 5, 1990

BY DENNIS PROUTY, FISCAL DIRECTOR

HOUSE FILE 2287
AMENDMENT H-5169 TO HOUSE FILE 2287
FISCAL NOTE

A fiscal note for Amendment H-5169 to House File 2287 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

House Amendment H-5169 provides that when a small business is sold or transferred to a subsequent employer who has never had an employer's account maintained by the division the successor employer will be assigned the new employer rate.

BACKGROUND: Current law requires a successor employer who does not have an employer account to assume the rate of the predecessor employer, if there is only one predecessor. If there is more than one predecessor employer, the successor employer receives a rate based on the combined experience of the predecessor employers. The new employer rate assigned varies according to the tax table in effect. The highest new employer rate for 1989 was 3.1% and the lowest rate was 1%. The rate assigned to a new employer is effective for a 3 year period, and then a new rate is assigned based on the employer's own actual experience.

ASSUMPTIONS: The number of small businesses purchased by employers with no previous unemployment rate will remain constant at 1,481 per year.

FISCAL IMPACT: There will be no direct impact on the General Fund since no additional staff or funds will be necessary to implement this bill. However, as stated above, this bill will affect amounts paid into the Unemployment Trust Fund.

Using Tax Table 5, in which the lowest new employer rate of 1% applies, the Unemployment Trust Fund would experience a decrease in revenues of \$893,000 in the first calendar year, \$1,786,000 in the second calendar year, and \$2,679,000 in the third calendar year.

Using Tax Table 1, in which the highest new employer rate of 3.1% applies, the Unemployment Trust Fund would experience a decrease in revenues of \$469,000 in the first calendar year, \$938,000 in the second calendar year, and \$1,407,000 in the third calendar year.

Source: (Department of Employment Services
Job Service Division)

(LSB 7972h.2, MAS)

FILED MARCH 5, 1990

BY DENNIS PROUTY, FISCAL DIRECTOR

HOUSE FILE 2287

5507

Amend House File 2287 as follows:

1. By striking everything after the enacting clause and inserting the following:

"Section 1. Section 96.7, subsection 2, paragraph b, unnumbered paragraph 1, Code Supplement 1989, is amended to read as follows:

If an enterprise or business, or a clearly segregable and identifiable part of an enterprise or business, for which contributions have been paid is sold or transferred to a subsequent employing unit, or if one or more employing units have been reorganized or merged into a single employing unit, and the successor employer, having qualified as an employer as defined in section 96.19, subsection 5, paragraph "b", continues to operate the enterprise or business, the successor employer shall assume the position of the predecessor employer or employers with respect to the predecessors' predecessor employee's or employees' payrolls, contributions, accounts, and contribution rates to the same extent as if no change had taken place in the ownership or control of the enterprise or business.

For acquisitions of the whole nonconstruction small enterprise or business as defined in section 15.102, the successor employer which is not a subject employer prior to the succession shall not assume the position of the predecessor employer's or employers' payrolls, contributions, accounts, and contribution rates which are attributable to the whole enterprise or business acquired, if the successor employer applies for a waiver of the transfer within thirty days of the date of the determination of employer liability, demonstrates that the ownership or control of the successor employer's enterprise or business is not the same as the ownership or control of the predecessor employer's or employers' enterprise or business, and the waiver is approved by the division.

PARAGRAPH DIVIDED. However, For partial acquisitions the successor employer shall not assume the position of the predecessor employer or employers with respect to the predecessor employer's or employers' payrolls, contributions, accounts, and contribution rates which are attributable to that part of the enterprise or business transferred acquired, unless the successor employer applies to the division within sixty days from the date of the partial transfer acquisition, and the succession is approved by the predecessor employer or employers and the division."

By OLLIE of Clinton

5507 FILED MARCH 2, 1990

Adopted as amended by 5527, 5529 3/5 (7861)

HOUSE FILE 2287

H-5169

1 Amend House File 2287 as follows:

2 1. Page 1, by striking lines 4 through 19, and
3 inserting the following:

x 4 NEW UNNUMBERED PARAGRAPH. However, if an
5 enterprise or business of a subject employer other
6 than a construction employer, sold or otherwise
7 transferred as described in this lettered paragraph,
8 is a small business as defined in section 15.102, and
9 the subsequent employing unit has never had an
10 employer's account maintained by the division, the
11 successor employer shall be assigned a new
x12 contribution rate pursuant to section 96.7."

By COMMITTEE ON LABOR AND
INDUSTRIAL RELATIONS
SHERZAN of Polk, Chairperson

H-5169 FILED FEBRUARY 16, 1990

w/15 3/5 (p. 859)

HOUSE FILE 2287

H-5256

1 Amend the amendment, H-5169, to House File 2287 as
2 follows:

3 1. Page 1, line 12, by inserting after the word
4 and figure "section 96.7." the following: "However,
5 if the subject employer had a lower contribution rate
6 than the new contribution rate to be assigned to the
7 successor employer, the lower contribution rate shall
8 be assigned to the successor employer."

By TYRRELL of Iowa
HERMANN of Scott
RENKEN of Grundy

H-5256 FILED FEBRUARY 21, 1990

Placed o/o 3/5 (p. 859)

HOUSE FILE 2287

H-5398

1 Amend the amendment, H-5169, to House File 2287, as
2 follows:

3 1. Page 1, by striking lines 4 through 12 and
4 inserting the following:

5 "NEW UNNUMBERED PARAGRAPH. The subject employer
6 shall disclose to a subsequent employer the subject
7 employer's record of charges with benefits payments.
8 A subject employer who fails to disclose or willfully
9 discloses incorrect information to a subsequent
10 employer regarding the subject employer's record of
11 charges with benefits payments is liable to the
12 subsequent employer for any actual damages and
13 attorney fees incurred by the subsequent employer as a
14 result of the subject employer's failure to disclose
15 or disclosure of incorrect information. The division
16 shall include notice of the requirement of disclosure
17 in the division's quarterly notification given to each
18 employer pursuant to section 96.7, subsection 2,
19 paragraph "a", subparagraph (6)."

By PLASIER of Sioux

H-5398 FILED FEBRUARY 28, 1990

Placed o/o 3/5 (p. 159)

HOUSE FILE 2287

H-5528

1 Amend amendment, H-5507, to House File 2287, as
2 follows:

3 1. Page 1, line 37, by inserting after the word
4 "division." the following: "However, if the
5 predecessor employer or employers had a lower
6 contribution rate than the new contribution rate to be
7 assigned to the successor employer, the lower
8 contribution rate shall be assigned to the successor
9 employer."

By TYRRELL of Iowa
OLLIE of Clinton

H-5528 FILED MARCH 5, 1990

ADOPTED (p. 80)

HOUSE FILE 2287

H-5529

1 Amend the amendment H-5507, to House File 2287 as
2 follows:

3 1. Page 1, line 37, by inserting after the word
4 "division." the following: "The predecessor employer
5 or employers shall disclose to the successor employer
6 the predecessor employer's or employers' record of
7 charges of benefits payments. A predecessor employer
8 who fails to disclose or willfully discloses incorrect
9 information to a successor employer regarding the
10 predecessor employer's record of charges of benefits
11 payments is liable to the successor employer for any
12 actual damages and attorney fees incurred by the
13 successor employer as a result of the predecessor
14 employer's failure to disclose or disclosure of
15 incorrect information. The division shall include
16 notice of the requirement of disclosure in the
17 division's quarterly notification given to each
18 employer pursuant to section 96.7, subsection 2,
19 paragraph "a", subparagraph (6)."

By PLASIER of Sioux

H-5529 FILED MARCH 5, 1990

ADOPTED (p. 81)

Am. Bureau 3/6 Amend per 5433 Co Pas. 3/12 (p. 482)

HOUSE FILE 2287
BY OLLIE

(As Amended and Passed by the House March 5, 1990)

Passed House, Date See Below Passed Senate, Date 3/16/90 (p. 1132)
Vote: Ayes _____ Nays _____ Vote: Ayes 46 Nays 0
Approved May 1, 1990
Motion to reconsider (p. 1149) w/d 3/22

A BILL FOR

1 An Act relating to a subsequent employer's unemployment benefit
2 contribution rate upon the purchase or transference of a small
3 business.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

House Amendments

Conference Committee appointed 4/2

8 *Representatives Ollie (Chair), Harper, Sprall, Plaiser, & Lybom (p. 1688)*
9 *Senators Palmer (Chair), Mann, Peterson, Fuchman, & Vande Hoop (p. 1440)*

Passed per Conference Committee Report

11 House 4/6/90 (p. 2181)
12 85-0

Senate 4/8/90 (p. 1746)
41-0

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1 Section 1. Section 96.7, subsection 2, paragraph b,
2 unnumbered paragraph 1, Code Supplement 1989, is amended to
3 read as follows:

4 If an enterprise or business, or a clearly segregable and
5 identifiable part of an enterprise or business, for which
6 contributions have been paid is sold or transferred to a
7 subsequent employing unit, or if one or more employing units
8 have been reorganized or merged into a single employing unit,
9 and the successor employer, having qualified as an employer as
10 defined in section 96.19, subsection 5, paragraph "b",
11 continues to operate the enterprise or business, the successor
12 employer shall assume the position of the predecessor employer
13 or employers with respect to the predecessors' predecessor
14 employer's or employers' payrolls, contributions, accounts,
15 and contribution rates to the same extent as if no change had
16 taken place in the ownership or control of the enterprise or
17 business.

18 For acquisitions of the whole nonconstruction small
19 enterprise or business as defined in section 15.102, the
20 successor employer which is not a subject employer prior to
21 the succession shall not assume the position of the
22 predecessor employer's or employers' payrolls, contributions,
23 accounts, and contribution rates which are attributable to the
24 whole enterprise or business acquired, if the successor
25 employer applies for a waiver of the transfer within thirty
26 days of the date of the determination of employer liability,
27 demonstrates that the ownership or control of the successor
28 employer's enterprise or business is not the same as the
29 ownership or control of the predecessor employer's or
30 employers' enterprise or business, and the waiver is approved
31 by the division. However, if the predecessor employer or
32 employers had a lower contribution rate than the new
33 contribution rate to be assigned to the successor employer,
34 the lower contribution rate shall be assigned to the successor
35 employer. The predecessor employer or employers shall

1 disclose to the successor employer the predecessor employer's
2 or employers' record of charges of benefits payments. A
3 predecessor employer who fails to disclose or willfully
4 discloses incorrect information to a successor employer
5 regarding the predecessor employer's record of charges of
6 benefits payments is liable to the successor employer for any
7 actual damages and attorney fees incurred by the successor
8 employer as a result of the predecessor employer's failure to
9 disclose or disclosure of incorrect information. The division
10 shall include notice of the requirement of disclosure in the
11 division's quarterly notification given to each employer
12 pursuant to section 96.7, subsection 2, paragraph "a",
13 subparagraph (6).

14 PARAGRAPH DIVIDED. However, For partial acquisitions the
15 successor employer shall not assume the position of the
16 predecessor employer or employers with respect to the
17 predecessor employer's or employers' payrolls, contributions,
18 accounts, and contribution rates which are attributable to
19 that part of the enterprise or business transferred acquired,
20 unless the successor employer applies to the division within
21 sixty days from the date of the partial transfer acquisition,
22 and the succession is approved by the predecessor employer or
23 employers and the division.

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HOUSE FILE 2287

S-5433

1 Amend House File 2287, as amended, passed, and
reprinted by the House, as follows:

2 1. By striking everything after the enacting
4 clause and inserting the following:

5 "Section 1. Section 96.7, subsection 2, paragraph
6 b, Code Supplement 1989, is amended by adding the
7 following new unnumbered paragraph after unnumbered
8 paragraph 1:

9 NEW UNNUMBERED PARAGRAPH. The predecessor employer
10 shall disclose to the successor employer the
11 predecessor employer's record of charges of benefits
12 payments or any layoffs or incidences since the last
13 record that would affect the experience record. A
14 predecessor employer who fails to disclose or
15 willfully discloses incorrect information to a
16 successor employer regarding the predecessor
17 employer's record of charges of benefits payments is
18 liable to the successor employer for any actual
19 damages and attorney fees incurred by the successor
20 employer as a result of the predecessor employer's
21 failure to disclose or disclosure of incorrect
22 information. The division shall include notice of the
23 requirement of disclosure in the division's quarterly
24 notification given to each employer pursuant to
25 section 96.7, subsection 2, paragraph "a",
26 subparagraph (6)."

27 2. Title page, line 2, by striking the word
"small".

By COMMITTEE ON BUSINESS
AND LABOR RELATIONS
JOHN A. PETERSON, Chairperson

S-5433 FILED MARCH 12, 1990

Adopted as amended by 5452 3/16 (p 1131)

HOUSE FILE 2287

S-5452

1 Amend amendment, S-5433, to House File 2287, as
2 amended, passed, and reprinted by the House, as
3 follows:

4 1. Page 1, line 9, by inserting after the word
5 "employer" the following: ", prior to entering into a
6 contract with a successor employer relating to the
7 sale or transfer of the enterprise or business, or a
8 clearly segregable and identifiable part of the
9 enterprise or business,".

By LINN FUHRMAN

S-5452 FILED MARCH 12, 1990

Adopted 3/16 (p 1131)

REPORT OF THE CONFERENCE COMMITTEE
ON HOUSE FILE 2287

To the Speaker of the House of Representatives and the President of the Senate:

We, the undersigned members of the conference committee appointed to resolve the differences between the House of Representatives and the Senate on House File 2287, a bill for An Act relating to a subsequent employer's unemployment benefit contribution rate upon the purchase or transference of a small business, respectfully make the following report:

1. That the Senate recedes from its amendment, H-5812.

2. That House File 2287, as amended, passed, and reprinted by the House, is amended as follows:

1. By striking everything after the enacting clause and inserting the following:

"Section 1. Section 96.7, subsection 2, paragraph b, Code Supplement 1989, is amended by adding the following new unnumbered paragraph after unnumbered paragraph 1:

NEW UNNUMBERED PARAGRAPH. The predecessor employer, prior to entering into a contract with a successor employer relating to the sale or transfer of the enterprise or business, or a clearly segregable and identifiable part of the enterprise or business, shall disclose to the successor employer the predecessor employer's record of charges of benefits payments and any layoffs or incidences since the last record that would affect the experience record. A predecessor employer who fails to disclose or willfully discloses incorrect information to a successor employer regarding the predecessor employer's record of charges of benefits payments is liable to the successor employer for any actual damages and attorney fees incurred by the successor employer as a result of the predecessor employer's failure to disclose or disclosure of incorrect information. The division shall include notice of the requirement of disclosure in the division's quarterly notification given to each employer pursuant to section 96.7, subsection 2, paragraph "a", subparagraph (6)."

CCR-2287

Page 2

2. Title page, line 2, by striking the word "small".

ON THE PART OF THE HOUSE:

C. ARTHUR OLLIE, Chairperson
PATRICIA HARPER
JIM LYKAM
LEE J. PLASIER
PHIL TYRRELL

ON THE PART OF THE SENATE:

WILLIAM D. PALMER, Chairperson
LINN FUHRMAN
THOMAS MANN, Jr.
JOHN A. PETERSON
RICHARD VANDE HOEF

CCR-2287 FILED APRIL 6, 1990
REPORT ADOPTED. (p. 2181)

SENATE AMENDMENT TO HOUSE FILE 2287

H-5812

1 Amend House File 2287, as amended, passed, and
2 reprinted by the House, as follows:

3 1. By striking everything after the enacting
4 clause and inserting the following:

5 "Section 1. Section 96.7, subsection 2, paragraph
6 b, Code Supplement 1989, is amended by adding the
7 following new unnumbered paragraph after unnumbered
8 paragraph 1:

9 NEW UNNUMBERED PARAGRAPH. The predecessor
10 employer, prior to entering into a contract with a
11 successor employer relating to the sale or transfer of
12 the enterprise or business, or a clearly segregable
13 and identifiable part of the enterprise or business,
14 shall disclose to the successor employer the
15 predecessor employer's record of charges of benefits
16 payments or any layoffs or incidences since the last
17 record that would affect the experience record. A
18 predecessor employer who fails to disclose or
19 willfully discloses incorrect information to a
20 successor employer regarding the predecessor
21 employer's record of charges of benefits payments is
22 liable to the successor employer for any actual
23 damages and attorney fees incurred by the successor
24 employer as a result of the predecessor employer's
25 failure to disclose or disclosure of incorrect
26 information. The division shall include notice of the
27 requirement of disclosure in the division's quarterly
28 notification given to each employer pursuant to
29 section 96.7, subsection 2, paragraph "a",
30 subparagraph (6)."

31 2. Title page, line 2, by striking the word
32 "small".

RECEIVED FROM THE SENATE

H-5812 FILED MARCH 22, 1990

House refused to concur 3/26 (p. 1410)
Senate enacted 4/2 (p. 1439)

notification given to each employer pursuant to section 96.7, subsection 2, paragraph "a", subparagraph (6).

HOUSE FILE 2287

AN ACT

RELATING TO A SUBSEQUENT EMPLOYER'S UNEMPLOYMENT BENEFIT CONTRIBUTION RATE UPON THE PURCHASE OR TRANSFERENCE OF A BUSINESS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 96.7, subsection 2, paragraph b, Code Supplement 1989, is amended by adding the following new unnumbered paragraph after unnumbered paragraph 1:

NEW UNNUMBERED PARAGRAPH. The predecessor employer, prior to entering into a contract with a successor employer relating to the sale or transfer of the enterprise or business, or a clearly segregable and identifiable part of the enterprise or business, shall disclose to the successor employer the predecessor employer's record of charges of benefits payments and any layoffs or incidences since the last record that would affect the experience record. A predecessor employer who fails to disclose or willfully discloses incorrect information to a successor employer regarding the predecessor employer's record of charges of benefits payments is liable to the successor employer for any actual damages and attorney fees incurred by the successor employer as a result of the predecessor employer's failure to disclose or disclosure of incorrect information. The division shall include notice of the requirement of disclosure in the division's quarterly

DONALD D. AVENSON
Speaker of the House

JO ANN ZIMMERMAN
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2287, Seventy-third General Assembly.

JOSEPH O'HERN
Chief Clerk of the House

Approved May 1, 1990

TERRY E. BRANSTAD
Governor