

# House Study Bill 261

HOUSE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE ON COMMERCE,  
REGULATION AND LABOR BILL  
BY CHAIRPERSON JENKINS)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act relating to the unemployment rate of contribution of a  
2 person who acquires an organization, trade, or business and  
3 providing penalties.  
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
5 TLSB 3165HC 81  
6 kk/pj/5

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1 1 Section 1. Section 96.7, subsection 2, paragraph b, Code  
1 2 2005, is amended to read as follows:  
1 3 b. (1) If an ~~enterprise organization, trade, or business,~~  
1 4 or a clearly segregable and identifiable part of an ~~enterprise~~  
1 5 ~~organization, trade, or business,~~ for which contributions have  
1 6 been paid is sold or transferred to a subsequent employing  
1 7 unit, or if one or more employing units have been reorganized  
1 8 or merged into a single employing unit, and the successor  
1 9 employer, having qualified as an employer as defined in  
1 10 section 96.19, subsection 16, paragraph "b", continues to  
1 11 operate the ~~enterprise organization, trade, or business,~~ the  
1 12 successor employer shall assume the position of the  
1 13 predecessor employer or employers with respect to the  
1 14 predecessors' payrolls, contributions, accounts, and  
1 15 contribution rates to the same extent as if no change had  
1 16 taken place in the ownership or control of the ~~enterprise~~  
1 17 ~~organization, trade, or business.~~ However, the successor  
1 18 employer shall not assume the position of the predecessor  
1 19 employer or employers with respect to the predecessor  
1 20 employer's or employers' payrolls, contributions, accounts,  
1 21 and contribution rates which are attributable to that part of  
1 22 the ~~enterprise organization, trade, or business~~ transferred,  
1 23 unless the successor employer applies to the department within  
1 24 ninety days from the date of the partial transfer, and the  
1 25 succession is approved by the predecessor employer or  
1 26 employers and the department.  
1 27 (2) Notwithstanding any other provision of this chapter,  
1 28 if an employer sells or transfers its organization, trade, or  
1 29 business, or a portion thereof, to another employer, and at  
1 30 the time of the sale or transfer, there is substantially  
1 31 common ownership, management, or control of the two employers,  
1 32 then the unemployment experience attributable to the sold or  
1 33 transferred organization, trade, or business shall be  
1 34 transferred to the successor employer. The transfer of part  
1 35 or all of an employer's workforce to another employer shall be  
2 1 considered a sale or transfer of the organization, trade, or  
2 2 business where the predecessor employer no longer operates the  
2 3 organization, trade, or business with respect to the  
2 4 transferred workforce and such organization, trade, or  
2 5 business is operated by the successor employer.  
2 6 (3) Notwithstanding any other provision of this chapter,  
2 7 if a person is not an employer at the time such person  
2 8 acquires an organization, trade, or business of an employer,  
2 9 or a portion thereof, the unemployment experience of the  
2 10 acquired organization, trade, or business shall not be  
2 11 transferred to such person if the department finds such person  
2 12 acquired the organization, trade, or business solely or  
2 13 primarily for the purpose of obtaining a lower rate of  
2 14 contribution. Instead, such person shall be assigned the  
2 15 applicable new employer rate under paragraph "c".  
2 16 In determining whether an organization, trade, or business  
2 17 or portion thereof was acquired solely or primarily for the

2 18 purpose of obtaining a lower rate of contribution, the  
2 19 department shall use objective factors which may include the  
2 20 cost of acquiring the organization, trade, or business;  
2 21 whether the person continued the acquired organization, trade,  
2 22 or business; how long such organization, trade, or business  
2 23 was continued; and whether a substantial number of new  
2 24 employees was hired for performance of duties unrelated to the  
2 25 organization, trade, or business operated prior to the  
2 26 acquisition. The department shall establish methods and  
2 27 procedures to identify the transfer or acquisition of an  
2 28 organization, trade, or business under this subparagraph and  
2 29 subparagraph (2).

2 30 (4) The predecessor employer, prior to entering into a  
2 31 contract with a successor employer relating to the sale or  
2 32 transfer of the ~~enterprise organization, trade, or business,~~  
2 33 or a clearly segregable and identifiable part of the  
2 34 ~~enterprise organization, trade, or business,~~ shall disclose to  
2 35 the successor employer the predecessor employer's record of  
3 1 charges of benefits payments and any layoffs or incidences  
3 2 since the last record that would affect the experience record.  
3 3 A predecessor employer who fails to disclose or willfully  
3 4 discloses incorrect information to a successor employer  
3 5 regarding the predecessor employer's record of charges of  
3 6 benefits payments is liable to the successor employer for any  
3 7 actual damages and attorney fees incurred by the successor  
3 8 employer as a result of the predecessor employer's failure to  
3 9 disclose or disclosure of incorrect information. The  
3 10 department shall include notice of the requirement of  
3 11 disclosure in the department's quarterly notification given to  
3 12 each employer pursuant to paragraph "a", subparagraph (6).

3 13 (5) The contribution rate to be assigned to the successor  
3 14 employer for the period beginning not earlier than the date of  
3 15 the succession and ending not later than the beginning of the  
3 16 next following rate year, shall be the contribution rate of  
3 17 the predecessor employer with respect to the period  
3 18 immediately preceding the date of the succession, provided the  
3 19 successor employer was not, prior to the succession, a subject  
3 20 employer, and only one predecessor employer, or only  
3 21 predecessor employers with identical rates, are involved. If  
3 22 the predecessor employers' rates are not identical and the  
3 23 successor employer is not a subject employer prior to the  
3 24 succession, the department shall assign the successor employer  
3 25 a rate for the remainder of the rate year by combining the  
3 26 experience of the predecessor employers. If the successor  
3 27 employer is a subject employer prior to the succession, the  
3 28 successor employer may elect to retain the employer's own rate  
3 29 for the remainder of the rate year, or the successor employer  
3 30 may apply to the department to have the employer's rate  
3 31 redetermined by combining the employer's experience with the  
3 32 experience of the predecessor employer or employers. However,  
3 33 if the successor employer is a subject employer prior to the  
3 34 succession and has had a partial transfer of the experience of  
3 35 the predecessor employer or employers approved, then the  
4 1 department shall recompute the successor employer's rate for  
4 2 the remainder of the rate year.

4 3 Sec. 2. Section 96.16, Code 2005, is amended by adding the  
4 4 following new subsection:

4 5 NEW SUBSECTION. 5. EXPERIENCE AND TAX RATE AVOIDANCE. If  
4 6 a person knowingly violates or attempts to violate section  
4 7 96.7, subsection 2, paragraph "b", subparagraph (2) or (3),  
4 8 with respect to a transfer of unemployment experience, or if a  
4 9 person knowingly advises another person in a way that results  
4 10 in a violation of such subparagraph, the person shall be  
4 11 subject to the penalties established in this subsection. If  
4 12 the person is an employer, the employer shall be assigned a  
4 13 penalty rate of contribution of two percent of taxable wages  
4 14 in addition to the regular contribution rate assigned for the  
4 15 year during which such violation or attempted violation  
4 16 occurred and for the two rate years immediately following. If  
4 17 the person is not an employer, the person shall be subject to  
4 18 a civil penalty of not more than five thousand dollars for  
4 19 each violation which shall be deposited in the unemployment  
4 20 compensation reserve fund created in section 96.9, subsection  
4 21 8, and shall be treated as interest earned on moneys in the  
4 22 reserve fund. In addition to any other penalty imposed in  
4 23 this subsection, violations described in this subsection shall  
4 24 also constitute an aggravated misdemeanor.

4 25 For purposes of this subsection, "knowingly" means having  
4 26 actual knowledge of or acting with deliberate ignorance of or  
4 27 reckless disregard for the requirement or prohibition  
4 28 involved. For purposes of this subsection, "violates or

4 29 attempts to violate" includes, but is not limited to, the  
4 30 intent to evade, misrepresentation, and willful nondisclosure.

4 31 EXPLANATION

4 32 This bill relates to an employer's rate of contribution for  
4 33 unemployment tax where the employer acquires an organization,  
4 34 trade, or business of another employer.

4 35 The bill provides that where an employer sells or transfers  
5 1 all or a portion of its organization, trade, or business, to  
5 2 another employer which has common ownership, management, or  
5 3 control with the selling employer, and the selling employer no  
5 4 longer performs the same trade or business, then the  
5 5 unemployment experience of the selling employer shall be  
5 6 transferred to the acquiring employer for calculation of the  
5 7 unemployment rate. If the person that acquires the business  
5 8 is not an employer at the time of sale or transfer, then the  
5 9 business shall be assigned the contribution rate as a new  
5 10 employer if the department of workforce development determines  
5 11 that the business was acquired for the primary purpose of  
5 12 obtaining a lower rate of contribution. The department shall  
5 13 make the determination based on objective factors which may  
5 14 include an evaluation of the sales price, the continuation of  
5 15 the business activity, and whether the employees of the  
5 16 original business were hired to perform different work.

5 17 The bill prescribes multiple administrative and criminal  
5 18 penalties for violations. An employer who knowingly sells or  
5 19 transfers, attempts to sell or transfer, or advises another  
5 20 person to transfer or sell its organization, trade, or  
5 21 business to another employer with substantially common  
5 22 ownership management or control in violation of Code section  
5 23 96.7, subsection 2, paragraph "b", subparagraph (2), shall be  
5 24 assigned an additional penalty contribution rate of 2 percent  
5 25 of taxable wages for at least two years. Persons who  
5 26 knowingly acquire an organization, trade, or business for the  
5 27 purpose of obtaining a lower rate of contribution in violation  
5 28 of Code section 96.7, subsection 2, paragraph "b",  
5 29 subparagraph (3), shall be subject to a civil penalty of not  
5 30 more than \$5,000 for each violation to be deposited in the  
5 31 unemployment compensation reserve fund as interest.  
5 32 Violations described in the bill are also classified as  
5 33 aggravated misdemeanors. An aggravated misdemeanor is  
5 34 punishable by confinement for no more than two years and a  
5 35 fine of at least \$500 but not more than \$5,000.

6 1 The bill provides definitions of "knowingly" and "violates  
6 2 or attempts to violate".

6 3 LSB 3165HC 81

6 4 kk:rj/pj/5