

CHAPTER 98**UNEMPLOYMENT COMPENSATION —
SALE OR TRANSFER OF ORGANIZATION, TRADE, OR BUSINESS —
EMPLOYER CONTRIBUTION RATES***H.F. 764*

AN ACT relating to the unemployment rate of contribution of a person who acquires an organization, trade, or business and providing penalties.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 96.7, subsection 2, paragraph b, Code 2005, is amended to read as follows:

b. (1) If an enterprise organization, trade, or business, or a clearly segregable and identifiable part of an enterprise organization, trade, 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 16, paragraph "b", continues to operate the enterprise organization, trade, or business, the successor employer shall assume the position of the predecessor employer or employers with respect to the predecessors' 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 organization, trade, or business. However, 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 organization, trade, or business transferred, unless the successor employer applies to the department within ninety days from the date of the partial transfer, and the succession is approved by the predecessor employer or employers and the department.

(2) Notwithstanding any other provision of this chapter, if an employer sells or transfers its organization, trade, or business, or a portion thereof, to another employer, and at the time of the sale or transfer, there is substantially common ownership, management, or control of the two employers, then the unemployment experience attributable to the sold or transferred organization, trade, or business shall be transferred to the successor employer. The transfer of part or all of an employer's workforce to another employer shall be considered a sale or transfer of the organization, trade, or business where the predecessor employer no longer operates the organization, trade, or business with respect to the transferred workforce and such organization, trade, or business is operated by the successor employer.

(3) Notwithstanding any other provision of this chapter, if a person is not an employer at the time such person acquires an organization, trade, or business of an employer, or a portion thereof, the unemployment experience of the acquired organization, trade, or business shall not be transferred to such person if the department finds such person acquired the organization, trade, or business solely or primarily for the purpose of obtaining a lower rate of contribution. Instead, such person shall be assigned the applicable new employer rate under paragraph "c".

In determining whether an organization, trade, or business or portion thereof was acquired solely or primarily for the purpose of obtaining a lower rate of contribution, the department shall use objective factors which may include the cost of acquiring the organization, trade, or business; whether the person continued the acquired organization, trade, or business; how long such organization, trade, or business was continued; and whether a substantial number of new employees was hired for performance of duties unrelated to the organization, trade, or business operated prior to the acquisition. The department shall establish methods and procedures to identify the transfer or acquisition of an organization, trade, or business under this subparagraph and subparagraph (2).

(4) The predecessor employer, prior to entering into a contract with a successor employer relating to the sale or transfer of the ~~enterprise organization, trade,~~ or business, or a clearly segregable and identifiable part of the ~~enterprise organization, trade,~~ 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 department shall include notice of the requirement of disclosure in the department's quarterly notification given to each employer pursuant to paragraph "a", subparagraph (6).

(5) The contribution rate to be assigned to the successor employer for the period beginning not earlier than the date of the succession and ending not later than the beginning of the next following rate year, shall be the contribution rate of the predecessor employer with respect to the period immediately preceding the date of the succession, provided the successor employer was not, prior to the succession, a subject employer, and only one predecessor employer, or only predecessor employers with identical rates, are involved. If the predecessor employers' rates are not identical and the successor employer is not a subject employer prior to the succession, the department shall assign the successor employer a rate for the remainder of the rate year by combining the experience of the predecessor employers. If the successor employer is a subject employer prior to the succession, the successor employer may elect to retain the employer's own rate for the remainder of the rate year, or the successor employer may apply to the department to have the employer's rate redetermined by combining the employer's experience with the experience of the predecessor employer or employers. However, if the successor employer is a subject employer prior to the succession and has had a partial transfer of the experience of the predecessor employer or employers approved, then the department shall recompute the successor employer's rate for the remainder of the rate year.

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

NEW SUBSECTION. 5. EXPERIENCE AND TAX RATE AVOIDANCE. If a person knowingly violates or attempts to violate section 96.7, subsection 2, paragraph "b", subparagraph (2) or (3), with respect to a transfer of unemployment experience, or if a person knowingly advises another person in a way that results in a violation of such subparagraph, the person shall be subject to the penalties established in this subsection. If the person is an employer, the employer shall be assigned a penalty rate of contribution of two percent of taxable wages in addition to the regular contribution rate assigned for the year during which such violation or attempted violation occurred and for the two rate years immediately following. If the person is not an employer, the person shall be subject to a civil penalty of not more than five thousand dollars for each violation which shall be deposited in the unemployment trust fund, and shall be used for payment of unemployment benefits. In addition to any other penalty imposed in this subsection, violations described in this subsection shall also constitute an aggravated misdemeanor.

For purposes of this subsection, "knowingly" means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the requirement or prohibition involved. For purposes of this subsection, "violates or attempts to violate" includes, but is not limited to, the intent to evade, misrepresentation, and willful nondisclosure.

Approved May 3, 2005