

AN ACT

ENTITLED, An Act to create certain provisions regarding transfers of experience rating accounts and assignment of unemployment insurance tax rates.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 61-5-33 be amended to read as follows:

61-5-33. Any individual, group of individuals, or employing unit that acquires its organization, trade or business from an employer for whom an experience-rating account has been maintained by the Department of Labor, shall immediately notify the department and upon the mutual consent of the parties concerned and approval of the department, may assume the position of the employer with respect to the experience-rating account. If the experience-rating account is not assumed by the successor employer or employing unit, the initial contribution rate for employers pursuant to § 61-5-20.2 shall be assigned to the successor employer or employing unit. The department shall promulgate rules pursuant to chapter 1-26 to carry out the provisions of this section consistent with federal standards of additional credit allowance as provided in section 3303 of the Internal Revenue Code.

Section 2. That chapter 61-5 be amended by adding thereto a NEW SECTION to read as follows:

Notwithstanding any other provision of law, the following provisions apply with regard to assignment of rates and transfers of experience:

- (1) If an employer transfers its organization, trade, or business, or a portion thereof, to another employer and, at the time of the transfer, there is substantially common ownership, management, or control of the two employers, then the unemployment experience attributable to the transferred organization, trade, or business shall be transferred to the employer to whom the business is so transferred. The rates of both employers shall be recalculated and made effective immediately upon the date of the transfer of the organization, trade, or business; and

- (2) If a person who is not an employer under this Title at the time the person acquires the organization, trade, or business of an employer, the unemployment experience of the acquired business may not be transferred to the person if the secretary finds that the person acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions. Instead, the person shall be assigned the applicable new employer rate under the provisions of § 61-5-20.2. In determining whether the business was acquired solely or primarily for the purpose of obtaining a lower rate of contributions, the secretary shall use objective factors which may include the cost of acquiring the business, whether the person continued the business enterprise of the acquired business, how long the business enterprise was continued, or whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to acquisition.

Section 3. That chapter 61-5 be amended by adding thereto a NEW SECTION to read as follows:

If a person knowingly violates or attempts to violate provisions of section 2 of this Act related to determining the assignment of a contribution rate, or if a person knowingly advises another person in a way that results in a violation of such provision, the person is guilty of a Class 1 misdemeanor. In addition, the person is subject to the following penalties:

- (1) If the person is an employer, the employer shall be assigned the highest rate assignable under this chapter for the rate year during which the violation or attempted violation occurred and the three rate years immediately following this rate year. However, if the person's business is already at the highest rate for any year, or if the amount of increase in the person's rate would be less than two percent for the year, then a penalty rate of contributions of two percent of taxable wages shall be imposed for such year; or
- (2) If the person is not an employer, the person is subject to a civil penalty of not more than

five thousand dollars. Any such fine shall be deposited in the penalty and interest account established under § 61-3-28.

For purposes of this section, the term, knowingly, means having actual knowledge of or acting with deliberate ignorance or reckless disregard for the prohibition involved.

Section 4. That chapter 61-5 be amended by adding thereto a NEW SECTION to read as follows:

The secretary may promulgate rules pursuant to chapter 1-26 to implement the application of section 2 of this Act to the assignment of rates and transfers of experience.

Section 5. That chapter 61-5 be amended by adding thereto a NEW SECTION to read as follows:

Terms used in sections 2 to 4, inclusive, mean:

- (1) "Person," person as defined by section 7701(a)(1) of the Internal Revenue Code of 1986;  
and
- (2) "Trade or business," includes the employer's workforce.

Section 6. That chapter 61-5 be amended by adding thereto a NEW SECTION to read as follows:

The provisions of sections 2 to 6, inclusive, of this Act shall be interpreted and applied in such a manner as to meet the minimum requirements contained in any guidance or regulations issued by the United States Department of Labor.

Section 7. That § 61-5-33.1 be amended to read as follows:

61-5-33.1. The Department of Labor may waive the mandatory transfer of the experience-rating account required by section 2 of this Act if the inherent nature of the employing unit has substantially and permanently changed since July 1, 1988. The provisions of this section apply to account transfers occurring on or after July 1, 1992.

Section 8. That chapter 61-5 be amended by adding thereto a NEW SECTION to read as follows:

The secretary shall establish procedures to identify the transfer or acquisition of a business for

purposes of this Act.

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I certify that the attached Act  
originated in the  
  
SENATE as Bill No. 13

\_\_\_\_\_  
Secretary of the Senate  
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\_\_\_\_\_  
President of the Senate

Attest:

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_  
Speaker of the House

Attest:

\_\_\_\_\_  
Chief Clerk

Senate Bill No. 13  
File No. \_\_\_\_\_  
Chapter No. \_\_\_\_\_

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Received at this Executive Office  
this \_\_\_\_\_ day of \_\_\_\_\_ ,  
  
20\_\_\_\_ at \_\_\_\_\_ M.

By \_\_\_\_\_  
for the Governor  
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The attached Act is hereby  
approved this \_\_\_\_\_ day of  
\_\_\_\_\_, A.D., 20\_\_\_\_

\_\_\_\_\_  
Governor

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STATE OF SOUTH DAKOTA,  
ss.  
Office of the Secretary of State

Filed \_\_\_\_\_, 20\_\_\_\_  
at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_  
Secretary of State

By \_\_\_\_\_  
Asst. Secretary of State