

Introduced by

Representative Keiser

1 A BILL for an Act to create and enact a new section to chapter 52-04 and sections 52-04-08.1
2 and 52-04-08.2 of the North Dakota Century Code, relating to definitions, employer
3 restructuring activities, and transfers of unemployment insurance tax account reserve history; to
4 amend and reenact section 52-04-08 of the North Dakota Century Code, relating to transfer of
5 unemployment insurance employer experience history to successor entities and the transfer of
6 workforce to other entities; to provide for a legislative council study; and to provide a penalty.

7 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

8 **SECTION 1.** A new section to chapter 52-04 of the North Dakota Century Code is
9 created and enacted as follows:

10 **Definitions. As used in this chapter:**

- 11 1. "Agency" means job service North Dakota.
12 2. "Knowingly" means having actual knowledge of or acting with deliberate ignorance
13 or reckless disregard for the prohibition involved.
14 3. "Legal entity" means a corporation, limited liability company, partnership,
15 unincorporated association, or other organization legally recognized as able to own
16 property and employ an individual.
17 4. "Unemployment insurance tax rate" means the rate calculated or assigned under
18 sections 52-04-05 and 52-04-06.
19 5. "Violates or attempts to violate" includes intent to evade, misrepresentation, and
20 willful nondisclosure.
21 6. "Workforce" means some or all of the employees of a transferring entity.

22 **SECTION 2. AMENDMENT.** Section 52-04-08 of the North Dakota Century Code is
23 amended and reenacted as follows:

1 **52-04-08. Succession to predecessor's experience record - Service supplier**
2 **defined - Client's tax experience not transferred - Reporting of workers' wages.**

- 3 1. ~~An~~ Upon request, an employing unit that in any manner acquires all or part of the
4 organization, business, trade, workforce, or assets of another employer and
5 continues essentially the same business activity of the whole or part transferred;
6 ~~must upon request~~ may be transferred in accordance with ~~such regulations as the~~
7 ~~bureau may prescribe~~ law and any relevant rules adopted by the agency, the
8 whole or appropriate part of the experience record, reserve balance, and benefit
9 experience of the ~~preceeding~~ predecessor employer, unless the agency finds that
10 the employing unit acquired the business solely or primarily for the purpose of
11 obtaining a lower unemployment insurance tax rate. ~~Provided that if~~ If the
12 predecessor files a written protest against such transfer within fifteen days of being
13 notified of the successor's application, the transfer will not be made.
- 14 2. When an employing unit in any manner acquires all or part of the organization,
15 business, trade, workforce, or assets of another employer, the ~~bureau~~ agency shall
16 transfer all or the appropriate part of the experience record, reserve balance,
17 whether positive or negative, and benefit experience of such predecessor to the
18 successor if it finds that ~~(a) the predecessor was owned or controlled by or owned~~
19 ~~or controlled the successor directly or indirectly, by legally enforceable means or~~
20 ~~otherwise or (b) both the predecessor and successor were owned or controlled~~
21 ~~either directly or indirectly, by legally enforceable means or otherwise, by the same~~
22 ~~interests~~ there was, at the time of acquisition, substantially common ownership,
23 management, or control of the predecessor and the successor.
- 24 3. When a part of an employer's experience record reserve account and benefit
25 experience is ~~to be~~ transferred under this section, the portion of the experience
26 record and reserve account transferred must be in the same ratio to the total
27 experience record and reserve account as the average annual payroll of the
28 transferred organization, trade, business, or assets is to the total average annual
29 payroll of the predecessor.

1 4. An employing unit's experience record may not be transferred in an amount that
2 results in the successor and predecessor portions totaling more than one hundred
3 percent of the predecessor's history.

4 **SECTION 3.** Section 52-04-08.1 of the North Dakota Century Code is created and
5 enacted as follows:

6 **52-04-08.1. Implementation of federal anti-SUTA dumping legislation.** The agency
7 shall implement section 52-04-08.2 to ensure necessary compliance with section 303(k) of the
8 Social Security Act [Pub. L. 108-195; 42 U.S.C. 503]. The agency shall adopt rules and
9 procedures necessary to ensure compliance with that section. The agency may issue
10 necessary subpoenas, in accordance with sections 52-06-23 and 52-06-25, to carry out its
11 responsibilities under this chapter.

12 **SECTION 4.** Section 52-04-08.2 of the North Dakota Century Code is created and
13 enacted as follows:

14 **52-04-08.2. Transfers of unemployment insurance experience - Recalculation of**
15 **rates - Definitions - Civil and criminal penalties.** Notwithstanding any other provision of
16 law, the following apply regarding assignment of penalty tax rates and transfers and
17 acquisitions of businesses:

18 1. a. If an employer transfers its trade or business, or a portion of the trade or
19 business, to another employer and, at the time of the transfer, there is
20 substantially common ownership, management, or control of the two
21 employers, the unemployment experience attributable to the transferred trade
22 or business is transferred to the employer to which the business is
23 transferred. The rates of both employers must be recalculated and made
24 effective on the first day of the quarter in which the transfer took effect. The
25 transfer of any of the employer's workforce to another employer is considered
26 a transfer of trade or business under this subsection when, as a result of the
27 transfer, the transferring employer no longer performs the trade or business in
28 which the transferred workforce was engaged, and the trade or business is
29 performed by the employer to which the workforce was transferred.

30 b. If, following a transfer of experience under subdivision a, the agency
31 determines that a substantial purpose of the transfer of trade or business was

1 to obtain a reduced unemployment insurance tax rate, the experience ratings
2 of the employers involved must be combined into a single account and a
3 single unemployment insurance tax rate must be assigned to that account.

4 2. If a person, who at the time of acquisition is not an employer under this title,
5 acquires the trade or business of an employer, the unemployment experience of
6 the acquired business may not be transferred to that person if the agency finds
7 that the person acquired the business solely or primarily for the purpose of
8 obtaining a lower unemployment insurance tax rate. Instead, the person must be
9 assigned the applicable new employer rate calculated under section 52-04-05. In
10 determining whether the business was acquired solely or primarily for the purpose
11 of obtaining a lower unemployment insurance tax rate, the agency shall use
12 objective factors which may include the cost of acquiring the business, whether the
13 person continued the business enterprise of the acquired business, how long the
14 business enterprise was continued, and whether a substantial number of new
15 employees were hired for performance of duties unrelated to the business activity
16 conducted before acquisition.

17 3. If a person knowingly acts or attempts to transfer or acquire a trade or business
18 solely or primarily for the purpose of obtaining a lower unemployment insurance
19 tax rate, or knowingly violates any other provision of this chapter related to
20 determining the assignment of an unemployment insurance tax rate, or if a person
21 knowingly advises another person in a way that results in a violation of those
22 provisions, the person is subject to the civil penalties provided in this subsection.

23 a. If the person is an employer, the employer must be assigned, in lieu of that
24 employer's experience rate, the highest rate assignable under this chapter for
25 the rate year during which the violation or attempted violation occurred and
26 the three rate years immediately following that rate year. However, if the
27 employer's experience rate is already at the highest rate for any year of that
28 four-year period or if the amount of increase in the person's experience rate
29 imposed under this subdivision would be less than two percent for any year of
30 the four-year period, the penalty unemployment insurance tax rate for the

1 year must be determined by adding a rate increment of two percent of taxable
2 wages to the calculated experience rate.

3 b. If the person is not an employer, the person is subject to a civil penalty of not
4 more than twenty-five thousand dollars. Any civil penalty collected must be
5 deposited in the penalty and interest account established under section
6 52-04-22.

7 4. In addition to the civil penalty imposed by subsection 3, any person that knowingly
8 violates this section or knowingly attempts to violate this section is guilty of a
9 class C felony.

10 **SECTION 5. LEGISLATIVE COUNCIL STUDY - PROFESSIONAL EMPLOYER**

11 **ORGANIZATIONS.** The legislative council shall consider studying, during the 2005-06 interim,
12 the feasibility and desirability of requiring professional employer organizations operating in
13 North Dakota to register with the state. The study must include consideration of how other
14 states address the issue of registration of professional employer organizations. The legislative
15 council shall report its findings and recommendations, together with any legislation required to
16 implement the recommendations, to the sixtieth legislative assembly.