

Act No. 17  
Public Acts of 2005  
Approved by the Governor  
May 4, 2005  
Filed with the Secretary of State  
May 4, 2005  
EFFECTIVE DATE: July 1, 2005

**STATE OF MICHIGAN  
93RD LEGISLATURE  
REGULAR SESSION OF 2005**

Introduced by Reps. Gosselin, Taub and Robertson

# **ENROLLED HOUSE BILL No. 4414**

AN ACT to amend 1936 (Ex Sess) PA 1, entitled "An act to protect the welfare of the people of this state through the establishment of an unemployment compensation fund, and to provide for the disbursement thereof; to create certain other funds; to create the Michigan employment security commission, and to prescribe its powers and duties; to provide for the protection of the people of this state from the hazards of unemployment; to levy and provide for contributions from employers; to provide for the collection of such contributions; to enter into reciprocal agreements and to cooperate with agencies of the United States and of other states charged with the administration of any unemployment insurance law; to furnish certain information to certain governmental agencies for use in administering public benefit and child support programs and investigating and prosecuting fraud; to provide for the payment of benefits; to provide for appeals from redeterminations, decisions and notices of assessments; and for referees and a board of review to hear and decide the issues arising from redeterminations, decisions and notices of assessment; to provide for the cooperation of this state and compliance with the provisions of the social security act and the Wagner-Peyser act passed by the Congress of the United States of America; to provide for the establishment and maintenance of free public employment offices; to provide for the transfer of funds; to make appropriations for carrying out the provisions of this act; to prescribe remedies and penalties for the violation of the provisions of this act; and to repeal all acts and parts of acts inconsistent with the provisions of this act," by amending section 22 (MCL 421.22).

*The People of the State of Michigan enact:*

Sec. 22. (a) If an employer subject to this act transfers any of the assets of the business by any means otherwise than in the ordinary course of trade and there is not substantially common ownership, management, or control of the transferor and the transferee, the transfer shall be deemed a "transfer of business" for the purposes of this section if the commission determines both of the following:

(1) That the transferee is an employer subject to this act on the transfer date, has become subject to this act as of the transfer date under section 41(2)(a) or elects to become subject to this act as of the transfer date under section 25.

(2) That the transferee has acquired and used the transferor's trade name or good will, or that the transferee has continued or within 12 months after the transfer resumed all or part of the business of the transferor either in the same establishment or elsewhere.

(b) Notwithstanding subsection (a), a transfer of assets to a transferee that involves less than 75% of the transferor's assets shall not be deemed a transfer of business unless all of the following occur:

(1) The commission is notified of the transfer of assets by the transferor or transferee within 30 days after the end of the quarter in which the transfer occurred.

(2) The commission receives within 30 days after its request written approval by the transferor and transferee of an experience account transfer determined in accordance with the provisions of subsection (c).

(3) In the case of a transferee who elects under section 25 to become subject as of the transfer date, the commission receives the election within 30 days after the mailing of a notice of the right to elect.

(c) (1) In the case of a transfer of business as defined in subsection (a) or (b), the commission shall assign the transferor's experience account, or a pro rata part of the account, to the transferee. The commission shall make the assignment as of the date on which the business is transferred or as of June 30 of the year in which the business was transferred, whichever date is earlier. The pro rata part of the transferor's experience account to be assigned to the transferee shall be determined on the basis of the percentage relationship to the nearest 1/2 of 1% that the insured payroll for the 4 completed calendar quarters immediately before the date of transfer properly allocable to the transferred portion of the business bears to the insured payroll for the same period allocable to the entire business of the transferor immediately before the date of the transfer.

(2) When the commission transfers an employer's experience account in whole or in part under this section, it shall also transfer a proportionate share of the amount of the total wages and wages subject to contributions under this act paid by the transferor and properly allocable to the transfer of business; and the transferred account shall be chargeable for all benefit payments based on employment in the business or portion of the business transferred.

(3) In determining whether the transferee qualifies for a contribution rate that includes a chargeable benefits component under section 19, the experience of the transferred account shall be included as part of the experience of the transferee's experience account. If on the date of the transfer the transferee qualified for a contribution rate that includes a chargeable benefits component and the transferor did not qualify because of the provisions of section 19(a)(1), the transferee shall not thereby lose the qualified status.

(d) In the case of a transfer of business as defined in subsection (a) or (b) of this section, contribution rates are determined as follows:

(1) The rates of contributions applicable to the transferor and transferee for the calendar year after the calendar year of the transfer shall be respectively determined in accordance with section 19. In case of a transfer of part of an employer's experience account under subsection (c), the rate of contributions applicable to the transferor and transferee shall not be changed for the portion of the current calendar year remaining on the transfer date. In case of a transfer of an employer's entire experience account under subsection (c), all of the following apply:

(i) The transferor shall have no further interest in the experience account.

(ii) The transferor's coverage shall be terminated as of the effective date of the transfer under section 24(b).

(iii) If the transferor again becomes an employer as defined in section 41 in the same calendar year in which coverage is terminated, the transferor's contribution rate for the remainder of the calendar year shall be 2.7% as provided in section 19.

(iv) The rate of contributions applicable to the transferee shall not be changed for the portion of the current calendar year remaining on the transfer date.

(2) A transferee that has no rate of contributions applicable immediately before the transfer date shall, beginning with the first day of the quarter in which the transfer occurs, be assigned the same rate of contributions that applied to the transferor on the date of the transfer and a contribution rate of 2.7% for any portion of the calendar year before the first day of the quarter in which the transfer occurs.

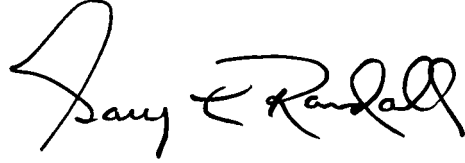
(3) If transfers of businesses simultaneously involve 2 or more transferors and a single transferee who has no rate of contributions applicable immediately before the transfer date, the transferee shall be assigned a contribution rate beginning with the first day of the quarter in which the transfers occur based upon the experience account percentage determined by the transferred experience account balances and the total and insured payrolls properly allocable to the transferee as of the date on which the businesses were transferred, or as of June 30 of the year in which the businesses were transferred, whichever is earlier, and a contribution rate of 2.7% for any portion of the calendar year before the first day of the quarter in which the transfers occur. If none of the transferors was an employer entitled to an adjusted contribution rate, then a contribution rate of 2.7% shall apply to the transferee for the calendar year in which the transfers occur.

Enacting section 1. This amendatory act takes effect July 1, 2005.

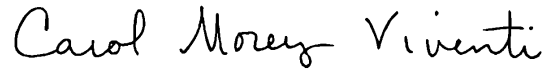
Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 93rd Legislature are enacted into law:

- (a) Senate Bill No. 171.
- (b) Senate Bill No. 174.
- (c) House Bill No. 4415.

This act is ordered to take immediate effect.



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Clerk of the House of Representatives



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Secretary of the Senate

Approved .....

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Governor