

Legislative Analysis



REVISE SUTA DUMPING LAW

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House Bill 6386

Sponsor: Rep. Bob Constan

Committee: Labor

Complete to 9-22-08

A SUMMARY OF HOUSE BILL 6386 AS INTRODUCED 8-20-08

The bill would amend the Michigan Employment Security Act to readdress laws governing unemployment programs to prohibit the practice known as "SUTA dumping." This, generally speaking, refers to the transfer of employees to a different employing company solely or primarily for the purpose of obtaining a lower experience rating and thus a lower state unemployment tax rate. (The term SUTA refers to "state unemployment tax act.") The bill strikes and rewrites existing language that prohibits SUTA dumping and imposes penalties for violations.

Under House Bill 6386, if an employer transfers its trade or business, or a portion of it, to another employer and there is substantially common ownership, management, or control of the two employers at the time of the transfer, the unemployment experience attributable to the transferred trade or business would be transferred to the transferee employer. The agency would recalculate the contribution rates of both employers and apply the new rates in the same manner as for a transfer of business under the act, and the employers' experience accounts would be combined into a single account and a single rate assigned to the account.

If the agency determined that a person who is not an employer under the act at the time of a transfer acquires a trade or business, or a portion of a trade or business, solely or primarily for the purpose of obtaining a lower contribution rate, the agency would not transfer the unemployment experience but would have to assign that employer the applicable new employer rate under the act.

If a person knowingly transfers or acquires, attempts to transfer or acquire, or advises a person to transfer or acquire a trade or business or a portion of a trade or business to obtain a reduced contribution rate or reimbursement payment in lieu of contributions required under the act, that person would be subject to the following sanctions. A person who is not a transferring or acquiring employer would be subject to a civil fine up to \$5,000. If the person is a transferring or acquiring employer, the employer would be assigned the higher of the following contribution rates:

- The highest contribution rate assignable under the act for the calendar year during which the violation or attempted violation occurred and for the three calendar years immediately following that rate year.
- If the employers' business already is at the highest rate assignable for a year in which the violation occurs, or if the highest rate assignable would result in an increase of less than two percent of taxable wages, then the employer would be assigned an

additional penalty rate of two percent of taxable wages for that calendar year and for the three calendar years immediately following that calendar year. (The underlined words are new language added by the bill.)

All money recovered under the bill as contributions, reimbursements in lieu of contributions, civil fines, civil penalties, or interest would have to be credited to the Unemployment Compensation Fund.

The bill would rewrite the definition of "SUTA dumping" to mean either (1) transferring all or part of a trade or business in a manner that results in a violation of the act; or (2) acquiring all or part of a trade or business, solely or primarily for the purpose of reducing the contribution rate or reimbursement payments in lieu of contributions required under the act.

FISCAL IMPACT:

The bill would amend the Michigan Employment Security Act's prohibitions against SUTA dumping. In general, these changes are intended to bring state law into conformity with federal law and Department of Labor directives regarding SUTA dumping. Prohibitions against SUTA dumping were added to the federal Social Security Act with the enactment of the SUTA Dumping Prevention Act of 2004, P.L. 108-295, 42 USC 503(k). In general, the act requires that states, as a condition of receiving federal funding for the administration of state unemployment insurance programs, enact laws prohibiting SUTA dumping and imposing meaningful penalties for knowingly violating (or attempting to violate) state SUTA dumping prohibitions. The U.S. Department of Labor has indicated to the Unemployment Insurance Agency that the state's SUTA law needs to be amended to be in conformity with federal law, notwithstanding the "conformity assurance clause" [MCL 421.22b(6)] contained in the MESA. As a result, the bill is necessary to ensure the continued receipt of federal funds for the administration of the state's unemployment insurance program. The FY 2008-09 appropriation totals approximately \$136.5 million, which includes funding for UIA administrative costs, bureau and departmental overhead costs, information technology, and the MES Board of Review. Additionally, a state law's conformity with federal requirements is also a necessary condition to enable Michigan employers to receive credit against federal unemployment taxes that effectively reduces the FUTA rate from 6.2% to 0.8% on taxable wages.

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