

MAR 15 2005
Place On Calendar

HOUSE FILE 764
BY COMMITTEE ON COMMERCE,
REGULATION AND LABOR

(SUCCESSOR TO HSB 261)

Passed House, Date 3-22-05 Passed Senate, Date 4-12-05
Vote: Ayes 96 Nays 0 Vote: Ayes 49 Nays 0
Approved 5/3/05

A BILL FOR

1 An Act relating to the unemployment rate of contribution of a
2 person who acquires an organization, trade, or business and
3 providing penalties.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

HF 764

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

3 b. (1) If an enterprise organization, trade, or business,
4 or a clearly segregable and identifiable part of an enterprise
5 organization, trade, or business, for which contributions have
6 been paid is sold or transferred to a subsequent employing
7 unit, or if one or more employing units have been reorganized
8 or merged into a single employing unit, and the successor
9 employer, having qualified as an employer as defined in
10 section 96.19, subsection 16, paragraph "b", continues to
11 operate the enterprise organization, trade, or business, the
12 successor employer shall assume the position of the
13 predecessor employer or employers with respect to the
14 predecessors' payrolls, contributions, accounts, and
15 contribution rates to the same extent as if no change had
16 taken place in the ownership or control of the enterprise
17 organization, trade, or business. However, the successor
18 employer shall not assume the position of the predecessor
19 employer or employers with respect to the predecessor
20 employer's or employers' payrolls, contributions, accounts,
21 and contribution rates which are attributable to that part of
22 the enterprise organization, trade, or business transferred,
23 unless the successor employer applies to the department within
24 ninety days from the date of the partial transfer, and the
25 succession is approved by the predecessor employer or
26 employers and the department.

27 (2) Notwithstanding any other provision of this chapter,
28 if an employer sells or transfers its organization, trade, or
29 business, or a portion thereof, to another employer, and at
30 the time of the sale or transfer, there is substantially
31 common ownership, management, or control of the two employers,
32 then the unemployment experience attributable to the sold or
33 transferred organization, trade, or business shall be
34 transferred to the successor employer. The transfer of part
35 or all of an employer's workforce to another employer shall be

1 considered a sale or transfer of the organization, trade, or
2 business where the predecessor employer no longer operates the
3 organization, trade, or business with respect to the
4 transferred workforce and such organization, trade, or
5 business is operated by the successor employer.

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

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

30 (4) The predecessor employer, prior to entering into a
31 contract with a successor employer relating to the sale or
32 transfer of the enterprise organization, trade, or business,
33 or a clearly segregable and identifiable part of the
34 enterprise organization, trade, or business, shall disclose to
35 the successor employer the predecessor employer's record of

1 charges of benefits payments and any layoffs or incidences
2 since the last record that would affect the experience record.
3 A predecessor employer who fails to disclose or willfully
4 discloses incorrect information to a successor employer
5 regarding the predecessor employer's record of charges of
6 benefits payments is liable to the successor employer for any
7 actual damages and attorney fees incurred by the successor
8 employer as a result of the predecessor employer's failure to
9 disclose or disclosure of incorrect information. The
10 department shall include notice of the requirement of
11 disclosure in the department's quarterly notification given to
12 each employer pursuant to paragraph "a", subparagraph (6).
13 (5) The contribution rate to be assigned to the successor
14 employer for the period beginning not earlier than the date of
15 the succession and ending not later than the beginning of the
16 next following rate year, shall be the contribution rate of
17 the predecessor employer with respect to the period
18 immediately preceding the date of the succession, provided the
19 successor employer was not, prior to the succession, a subject
20 employer, and only one predecessor employer, or only
21 predecessor employers with identical rates, are involved. If
22 the predecessor employers' rates are not identical and the
23 successor employer is not a subject employer prior to the
24 succession, the department shall assign the successor employer
25 a rate for the remainder of the rate year by combining the
26 experience of the predecessor employers. If the successor
27 employer is a subject employer prior to the succession, the
28 successor employer may elect to retain the employer's own rate
29 for the remainder of the rate year, or the successor employer
30 may apply to the department to have the employer's rate
31 redetermined by combining the employer's experience with the
32 experience of the predecessor employer or employers. However,
33 if the successor employer is a subject employer prior to the
34 succession and has had a partial transfer of the experience of
35 the predecessor employer or employers approved, then the

1 department shall recompute the successor employer's rate for
2 the remainder of the rate year.

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

5 NEW SUBSECTION. 5. EXPERIENCE AND TAX RATE AVOIDANCE. If
6 a person knowingly violates or attempts to violate section
7 96.7, subsection 2, paragraph "b", subparagraph (2) or (3),
8 with respect to a transfer of unemployment experience, or if a
9 person knowingly advises another person in a way that results
10 in a violation of such subparagraph, the person shall be
11 subject to the penalties established in this subsection. If
12 the person is an employer, the employer shall be assigned a
13 penalty rate of contribution of two percent of taxable wages
14 in addition to the regular contribution rate assigned for the
15 year during which such violation or attempted violation
16 occurred and for the two rate years immediately following. If
17 the person is not an employer, the person shall be subject to
18 a civil penalty of not more than five thousand dollars for
19 each violation which shall be deposited in the unemployment
20 trust fund, and shall be used for payment of unemployment
21 benefits. In addition to any other penalty imposed in this
22 subsection, violations described in this subsection shall also
23 constitute an aggravated misdemeanor.

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

30 EXPLANATION

31 This bill relates to an employer's rate of contribution for
32 unemployment tax where the employer acquires an organization,
33 trade, or business of another employer.

34 The bill provides that where an employer sells or transfers
35 all or a portion of its organization, trade, or business, to

1 another employer which has common ownership, management, or
2 control with the selling employer, and the selling employer no
3 longer performs the same trade or business, then the
4 unemployment experience of the selling employer shall be
5 transferred to the acquiring employer for calculation of the
6 unemployment rate. If the person that acquires the business
7 is not an employer at the time of sale or transfer, then the
8 business shall be assigned the contribution rate as a new
9 employer if the department of workforce development determines
10 that the business was acquired for the primary purpose of
11 obtaining a lower rate of contribution. The department shall
12 make the determination based on objective factors which may
13 include an evaluation of the sales price, the continuation of
14 the business activity, and whether the employees of the
15 original business were hired to perform different work.

16 The bill prescribes multiple administrative and criminal
17 penalties for violations. An employer who knowingly sells or
18 transfers, attempts to sell or transfer, or advises another
19 person to transfer or sell its organization, trade, or
20 business to another employer with substantially common
21 ownership management or control in violation of Code section
22 96.7, subsection 2, paragraph "b", subparagraph (2), shall be
23 assigned an additional penalty contribution rate of 2 percent
24 of taxable wages for at least two years. Persons who
25 knowingly acquire an organization, trade, or business for the
26 purpose of obtaining a lower rate of contribution in violation
27 of Code section 96.7, subsection 2, paragraph "b",
28 subparagraph (3), shall be subject to a civil penalty of not
29 more than \$5,000 for each violation to be deposited in the
30 unemployment trust fund for the payment of unemployment
31 benefits. Violations described in the bill are also
32 classified as aggravated misdemeanors. An aggravated
33 misdemeanor is punishable by confinement for no more than two
34 years and a fine of at least \$500 but not more than \$5,000.

35 The bill provides definitions of "knowingly" and "violates"

1 or attempts to violate".

- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31
- 32
- 33
- 34
- 35

Fiscal Services Division
Legislative Services Agency
Fiscal Note

HF 764 - Unemployment, Employer Transfer of Experience (LSB 3165 HV)
Analyst: Russell Trimble (Phone: (515) 281-4613) (russ.trimble@legis.state.ia.us)
Fiscal Note Version - New

Description

House File 764 allows the unemployment experience of the employer selling an organization, trade, or business to be transferred to the acquiring employer for calculation of the unemployment tax rate under certain conditions. If an employer sells or transfers all or a portion of its organization, trade, or business to another employer which has common ownership, management, or control with the selling employer, and the selling employer no longer performs the same trade or business the unemployment experience may be transferred to the new employer. If the person that acquires the business is not an employer at the time of sale or transfer, House File 764 specifies the business will be assigned a contribution rate as a new employer if the Department of Workforce Development determines that the business was acquired for the primary purpose of obtaining a lower rate of contribution. The Bill requires the Department to make the determination based on objective factors which may include an evaluation of the sales price, the continuation of the business activity, and whether the employees of the original business were hired to perform different work. House File 764 provides various administrative and criminal penalties for knowingly selling/buying or advising someone to sell/buy an organization, trade, or business for purposes of tax avoidance. The criminal penalty is an aggravated misdemeanor.

Background

This legislation is necessary to conform to federal law and to maintain a state-certified unemployment compensation program. If this legislation is not passed, it will result in Iowa losing its state certification and will result in the loss of the current 5.4% federal tax credit for Iowa businesses. The loss of the tax credit would result in Iowa businesses paying an additional \$500.0 million annually in unemployment taxes.

Assumptions

1. The Department of Workforce Development will incur an annual administrative expense of \$71,000 and 1.5 FTE positions for field auditors starting in FY 2006 and will incur a one-time cost of \$25,000 for information technology programming. The total cost to the Department for FY 2006 will be \$96,000.
2. Revenue generated from penalties assessed will be deposited into the Unemployment Compensation Trust Fund, but is not expected to be significant.
3. Although it is unknown how many companies or individuals may attempt to avoid or alter an unemployment insurance rate, business violations are rare, and thus the incidence will be low.

Correctional Impact

The Bill creates a criminal penalty of an aggravated misdemeanor for tax rate avoidance. The average State cost for an aggravated misdemeanor conviction ranges from \$1,100 to \$5,700. It is unknown how many companies or individuals may attempt to avoid or alter an unemployment insurance rate, but House File 764 is not expected to result in a significant correctional impact.

Fiscal Impact

The Unemployment Compensation Program is a federally funded program. No State General Fund dollars are appropriated to operate the Program. As a result, there is no impact to the General Fund despite the costs that will be incurred by the Department of Workforce Development. House File 764 provides conformity to federal law, allowing Iowa to maintain a state-certified unemployment compensation program, resulting in a continued 5.4% federal tax credit for Iowa businesses. Enactment of House File 764 results in an unfunded federal mandate to the Department of Workforce Development but saves Iowa businesses from paying an additional \$500.0 million in federal taxes.

Sources

Department of Workforce Development
Department of Human Rights, Criminal and Juvenile Justice Planning Division

/s/ Holly M. Lyons

March 22, 2005

The fiscal note and correctional impact statement for this bill was prepared pursuant to Joint Rule 17 and pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Fiscal Services Division, Legislative Services Agency to members of the Legislature upon request.

QUIRK, CH.
JENKINS
HOR-BACH

SJL
SF 764

HSB 261

COMMERCE, REGULATION & LABOR

HOUSE FILE _____

BY (PROPOSED COMMITTEE ON COMMERCE,
REGULATION AND LABOR BILL
BY CHAIRPERSON JENKINS)

Passed House, Date _____ Passed Senate, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to the unemployment rate of contribution of a
2 person who acquires an organization, trade, or business and
3 providing penalties.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22

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

3 b. (1) If an enterprise organization, trade, or business,
4 or a clearly segregable and identifiable part of an enterprise
5 organization, trade, or business, for which contributions have
6 been paid is sold or transferred to a subsequent employing
7 unit, or if one or more employing units have been reorganized
8 or merged into a single employing unit, and the successor
9 employer, having qualified as an employer as defined in
10 section 96.19, subsection 16, paragraph "b", continues to
11 operate the enterprise organization, trade, or business, the
12 successor employer shall assume the position of the
13 predecessor employer or employers with respect to the
14 predecessors' payrolls, contributions, accounts, and
15 contribution rates to the same extent as if no change had
16 taken place in the ownership or control of the enterprise
17 organization, trade, or business. However, the successor
18 employer shall not assume the position of the predecessor
19 employer or employers with respect to the predecessor
20 employer's or employers' payrolls, contributions, accounts,
21 and contribution rates which are attributable to that part of
22 the enterprise organization, trade, or business transferred,
23 unless the successor employer applies to the department within
24 ninety days from the date of the partial transfer, and the
25 succession is approved by the predecessor employer or
26 employers and the department.

27 (2) Notwithstanding any other provision of this chapter,
28 if an employer sells or transfers its organization, trade, or
29 business, or a portion thereof, to another employer, and at
30 the time of the sale or transfer, there is substantially
31 common ownership, management, or control of the two employers,
32 then the unemployment experience attributable to the sold or
33 transferred organization, trade, or business shall be
34 transferred to the successor employer. The transfer of part
35 or all of an employer's workforce to another employer shall be

1 considered a sale or transfer of the organization, trade, or
2 business where the predecessor employer no longer operates the
3 organization, trade, or business with respect to the
4 transferred workforce and such organization, trade, or
5 business is operated by the successor employer.

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

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

30 (4) The predecessor employer, prior to entering into a
31 contract with a successor employer relating to the sale or
32 transfer of the enterprise organization, trade, or business,
33 or a clearly segregable and identifiable part of the
34 enterprise organization, trade, or business, shall disclose to
35 the successor employer the predecessor employer's record of

1 charges of benefits payments and any layoffs or incidences
2 since the last record that would affect the experience record.
3 A predecessor employer who fails to disclose or willfully
4 discloses incorrect information to a successor employer
5 regarding the predecessor employer's record of charges of
6 benefits payments is liable to the successor employer for any
7 actual damages and attorney fees incurred by the successor
8 employer as a result of the predecessor employer's failure to
9 disclose or disclosure of incorrect information. The

10 department shall include notice of the requirement of
11 disclosure in the department's quarterly notification given to
12 each employer pursuant to paragraph "a", subparagraph (6).

13 (5) The contribution rate to be assigned to the successor
14 employer for the period beginning not earlier than the date of
15 the succession and ending not later than the beginning of the
16 next following rate year, shall be the contribution rate of
17 the predecessor employer with respect to the period
18 immediately preceding the date of the succession, provided the
19 successor employer was not, prior to the succession, a subject
20 employer, and only one predecessor employer, or only
21 predecessor employers with identical rates, are involved. If
22 the predecessor employers' rates are not identical and the
23 successor employer is not a subject employer prior to the
24 succession, the department shall assign the successor employer
25 a rate for the remainder of the rate year by combining the
26 experience of the predecessor employers. If the successor
27 employer is a subject employer prior to the succession, the
28 successor employer may elect to retain the employer's own rate
29 for the remainder of the rate year, or the successor employer
30 may apply to the department to have the employer's rate
31 redetermined by combining the employer's experience with the
32 experience of the predecessor employer or employers. However,
33 if the successor employer is a subject employer prior to the
34 succession and has had a partial transfer of the experience of
35 the predecessor employer or employers approved, then the

1 department shall recompute the successor employer's rate for
2 the remainder of the rate year.

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

5 NEW SUBSECTION. 5. EXPERIENCE AND TAX RATE AVOIDANCE. If
6 a person knowingly violates or attempts to violate section
7 96.7, subsection 2, paragraph "b", subparagraph (2) or (3),
8 with respect to a transfer of unemployment experience, or if a
9 person knowingly advises another person in a way that results
10 in a violation of such subparagraph, the person shall be
11 subject to the penalties established in this subsection. If
12 the person is an employer, the employer shall be assigned a
13 penalty rate of contribution of two percent of taxable wages
14 in addition to the regular contribution rate assigned for the
15 year during which such violation or attempted violation
16 occurred and for the two rate years immediately following. If
17 the person is not an employer, the person shall be subject to
18 a civil penalty of not more than five thousand dollars for
19 each violation which shall be deposited in the unemployment
20 compensation reserve fund created in section 96.9, subsection
21 8, and shall be treated as interest earned on moneys in the
22 reserve fund. In addition to any other penalty imposed in
23 this subsection, violations described in this subsection shall
24 also constitute an aggravated misdemeanor.

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

31 EXPLANATION

32 This bill relates to an employer's rate of contribution for
33 unemployment tax where the employer acquires an organization,
34 trade, or business of another employer.

35 The bill provides that where an employer sells or transfers

1 all or a portion of its organization, trade, or business, to
2 another employer which has common ownership, management, or
3 control with the selling employer, and the selling employer no
4 longer performs the same trade or business, then the
5 unemployment experience of the selling employer shall be
6 transferred to the acquiring employer for calculation of the
7 unemployment rate. If the person that acquires the business
8 is not an employer at the time of sale or transfer, then the
9 business shall be assigned the contribution rate as a new
10 employer if the department of workforce development determines
11 that the business was acquired for the primary purpose of
12 obtaining a lower rate of contribution. The department shall
13 make the determination based on objective factors which may
14 include an evaluation of the sales price, the continuation of
15 the business activity, and whether the employees of the
16 original business were hired to perform different work.

17 The bill prescribes multiple administrative and criminal
18 penalties for violations. An employer who knowingly sells or
19 transfers, attempts to sell or transfer, or advises another
20 person to transfer or sell its organization, trade, or
21 business to another employer with substantially common
22 ownership management or control in violation of Code section
23 96.7, subsection 2, paragraph "b", subparagraph (2), shall be
24 assigned an additional penalty contribution rate of 2 percent
25 of taxable wages for at least two years. Persons who
26 knowingly acquire an organization, trade, or business for the
27 purpose of obtaining a lower rate of contribution in violation
28 of Code section 96.7, subsection 2, paragraph "b",
29 subparagraph (3), shall be subject to a civil penalty of not
30 more than \$5,000 for each violation to be deposited in the
31 unemployment compensation reserve fund as interest.
32 Violations described in the bill are also classified as
33 aggravated misdemeanors. An aggravated misdemeanor is
34 punishable by confinement for no more than two years and a
35 fine of at least \$500 but not more than \$5,000.

1 The bill provides definitions of "knowingly" and "violates
2 or attempts to violate".

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

HOUSE FILE 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.

CHRISTOPHER C. RANTS
Speaker of the House

JOHN P. KIBBIE
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 764, Eighty-first General Assembly.

MARGARET THOMSON
Chief Clerk of the House

Approved 5/3, 2005

THOMAS J. VILSACK
Governor