



LAWS OF ALASKA

2006

Source
SB 306

Chapter No.

AN ACT

Requiring an employing unit with a change in ownership, management, or control or similar change to notify the Department of Labor and Workforce Development of the change; relating to the unemployment contribution rate of an employing unit; defining "business" for purposes of statutes setting unemployment contribution rates; establishing the crime of obtaining an unemployment rate by deception; and providing for an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

THE ACT FOLLOWS ON PAGE 1

AN ACT

1 Requiring an employing unit with a change in ownership, management, or control or similar
2 change to notify the Department of Labor and Workforce Development of the change; relating
3 to the unemployment contribution rate of an employing unit; defining "business" for purposes
4 of statutes setting unemployment contribution rates; establishing the crime of obtaining an
5 unemployment rate by deception; and providing for an effective date.

6

7 * **Section 1.** AS 23.20 is amended by adding a new section to read:

8 **Sec. 23.20.293. Requirement to notify the department of a business change**
9 **and acquisitions.** (a) An employing unit that has a change in ownership, management,
10 or control, or that succeeds to or acquires all or part of another employing unit's trade
11 or business, shall notify the department in writing in accordance with regulations
12 adopted by the department.

(b) For the purposes of this section, "a change in ownership, management, or control" means a change of person, entity, or responsible party required by law to pay unemployment insurance contributions.

* **Sec. 2.** AS 23.20.295(d) is amended to read:

(d) This section does not apply to an acquisition, **transfer of a trade or business, or transfer of an employers' workforce conducting the trade or business** if the acquisition **or transfer** is determined by the commissioner

(1) to have been primarily for the purpose of obtaining a more favorable rate of contributions under AS 23.20.280 - 23.20.310; [,]

(2) to be inequitable to the parties; [, OR]

(3) to be contrary to the public interest; or

(4) to be a violation of 42 U.S.C. 503(k) (SUTA Dumping Prevention Act of 2004).

* **Sec. 3.** AS 23.20 is amended by adding a new section to read:

Sec. 23.20.297. Special standards addressing transfers of experience and assignment of rates. (a) The following standards apply regarding assignment of rates and transfers of experience. For the purposes of AS 23.20.295(d)(1) and (4),

(1) if an employer transfers its trade or business, its workforce conducting the trade or business, or a portion of that trade, business, or workforce, 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 trade, business, or workforce is transferred to the employer to whom that trade, business, or workforce is transferred; the rates of both employers are recalculated and made effective immediately upon the date of the transfer:

(2) if a person is not an employer at the time the person acquires the trade, business, or workforce of an employer, the unemployment experience of the acquired trade, business, or workforce may not be transferred to that person if the commissioner finds that the person acquired the trade, business, or workforce in order to obtain a lower rate of contributions; instead, the person is assigned the applicable new employer rate under AS 23.20.170(b).

(b) An employer who knowingly or recklessly violates or attempts to violate, or who advises another employer to violate, (a) of this section or any other provision of this chapter related to determining the assignment of a contribution rate, or fails to notify the department of a trade, business, or workforce change or acquisition in order to obtain a more favorable rate of contributions, is not eligible for a rate determination under AS 23.20.280 - 23.20.310. The employer shall pay one of the following as assigned by the department:

(1) contributions at the highest rate provided for the rate year of the violation and for the three succeeding rate years; or

(2) if the employer's trade, business, or workforce is already at the highest rate for the rate year of the violation, contributions at the highest rate for the three succeeding rate years and a cash penalty of two percent of taxable wages for the rate year of the violation and three succeeding rate years.

(c) A person who knowingly or recklessly advises another person or employer to transfer or acquire a trade, business, or workforce under the provisions of this section in order to obtain a more favorable rate of contributions in violation of (a) of this section is subject to a civil penalty of not more than \$5,000.

(d) The department may interpret and apply this section in such a manner as to meet the minimum requirements by the United States Department of Labor.

* **Sec. 4.** AS 23.20 is amended by adding a new section to read:

Sec. 23.20.299. Obtaining an unemployment contribution rate by deception. (a) A person who violates AS 23.20.297(b) or (c) commits the crime of obtaining an unemployment contribution rate by deception.

(b) A person commits the crime of obtaining an unemployment contribution rate by deception in the first degree if the value of the difference between the rate that had been assigned to the trade, business, or workforce and the rate assigned as a result of the violation is \$25,000 or more. Obtaining an unemployment contribution rate by deception in the first degree is a class B felony.

(c) A person commits the crime of obtaining an unemployment contribution rate by deception in the second degree if the value of the difference between the rate that had been assigned to the trade, business, or workforce and the rate assigned as a

1 result of the violation is \$500 or more but less than \$25,000. Obtaining an
2 unemployment contribution rate by deception in the second degree is a class C felony.

3 (d) A person commits the crime of obtaining an unemployment contribution
4 rate by deception in the third degree if the value of the difference between the rate that
5 had been assigned to the trade, business, or workforce and the rate assigned as a result
6 of the violation is \$50 or more but less than \$500. Obtaining an unemployment
7 contribution rate by deception in the third degree is a class A misdemeanor.

8 (e) A person commits the crime of obtaining an unemployment contribution
9 rate by deception in the fourth degree if the value of the difference between the rate that
10 had been assigned to the trade, business, or workforce and the rate assigned as a
11 result of the violation is less than \$50. Obtaining an unemployment contribution rate
12 by deception in the fourth degree is a class B misdemeanor.

13 (f) A person who attempts to commit the crime of obtaining an unemployment
14 contribution rate by deception commits the crime of attempt under AS 11.31.100.

15 * **Sec. 5.** AS 23.20.310 is amended by adding new paragraphs to read:

16 (8) "business" means a trade or business or a part of the trade or
17 business;

18 (9) "knowingly" has the meaning given in AS 11.81.900;

19 (10) "recklessly" has the meaning given in AS 11.81.900.

20 * **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to
21 read:

22 TRANSITION: REGULATIONS. The Department of Labor and Workforce
23 Development may proceed to adopt regulations necessary to implement the changes made by
24 this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not
25 before the effective date of the statutory change.

26 * **Sec. 7.** Sections 1, 2, and 4 of this Act and AS 23.20.297(a) - (c), enacted by sec. 3 of this
27 Act, take effect July 1, 2006.

28 * **Sec. 8.** Sections 5 and 6 of this Act and AS 23.20.297(d), enacted by sec. 3 of this Act,
29 take effect immediately under AS 01.10.070(c).