

**HOUSE BILL NO. 242**

IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

**BY REPRESENTATIVE CRAWFORD**

**Introduced: 4/1/05**

**Referred: Labor and Commerce, Judiciary, Finance**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to the deposit of certain penalties collected under the unemployment**  
2 **insurance program; requiring an employing unit with a change in ownership,**  
3 **management, or control to notify the Department of Labor and Workforce Development**  
4 **of the ownership change; regarding the unemployment contribution rate of an**  
5 **employing unit; and defining 'business' for purposes of statutes setting unemployment**  
6 **contribution rates; establishing the crime of obtaining an unemployment rate by**  
7 **deception; and providing for an effective date."**

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

9 **\* Section 1.** AS 23.20.130(d) is amended to read:

10 (d) The training and building fund consists of all interest and penalties  
11 collected under AS 23.20.185, 23.20.190, [AND] 23.20.195, and 23.20.297 and all  
12 sums recovered on official bond for losses sustained by the fund. Training and  
13 building fund money shall be deposited in the clearing account of the unemployment

1 compensation fund for clearance only, and does not become a part of the fund. The  
 2 unobligated amount in the training and building fund in excess of \$100,000 on the  
 3 close of business of the 30th day following the last day of each fiscal year shall be  
 4 transferred within 20 days to this state's account in the unemployment trust fund. The  
 5 fund shall be included in the budget submitted to the legislature under AS 37.07  
 6 (Executive Budget Act). Funds available in the training and building fund shall be  
 7 expended upon the direction of the department, with the approval of the governor,  
 8 when it appears to the governor that the expenditure is necessary for but not limited to

9 (1) the proper administration of this chapter if no federal funds are  
 10 available for the specific purpose for which the expenditure is to be made, and if the  
 11 funds are not substituted for appropriations from federal funds that would be made  
 12 available in the absence of those funds;

13 (2) the proper administration of this chapter, if appropriations from  
 14 federal funds have been requested but not yet received, and the training and building  
 15 fund will be reimbursed upon receipt of the requested federal appropriation;

16 (3) [REPEALED

17 (4)] the purposes specified in AS 23.20.075;

18 **(4) the purposes of administering AS 23.20.297.**

19 \* **Sec. 2.** AS 23.20 is amended by adding a new section to read:

20 **Sec. 23.20.293. Requirement to notify the department of a business**  
 21 **change and acquisitions.** An employing unit that has a change in ownership,  
 22 management, or control, or that succeeds to or acquires all or part of another  
 23 employing unit's trade or business, shall notify the department in writing in  
 24 accordance with regulations adopted by the department.

25 \* **Sec. 3.** AS 23.20.295(d) is amended to read:

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

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

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

1 (3) to be contrary to the public interest, or

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

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

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

8 (1) if an employer transfers its trade or business, its workforce  
 9 conducting the trade or business, or a portion of that trade, business, or workforce, to  
 10 another employer and, at the time of the transfer, there is substantially common  
 11 ownership, management, or control of the two employers, then the unemployment  
 12 experience attributable to the transferred trade, business, or workforce is transferred to  
 13 the employer to whom that trade, business, or workforce is transferred; the rates of  
 14 both employers are recalculated and made effective immediately upon the date of the  
 15 transfer;

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

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

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

30 (2) if the employer's trade, business, or workforce is already at the  
 31 highest rate for the rate year of the violation, contributions at the highest rate for the

1 three succeeding rate years and a cash penalty of two percent of taxable wages for the  
 2 rate year of the violation and three succeeding rate years; subject to appropriation, any  
 3 cash penalty collected under this paragraph shall be deposited into the training and  
 4 building fund established under AS 23.20.130.

5 (c) A person who is not an employer and who knowingly or recklessly advises  
 6 another person or employer to transfer or acquire a trade, business, or workforce under  
 7 the provisions of this section in order to obtain a more favorable rate of contributions  
 8 in violation of (a) of this section is subject to a civil penalty of not more than \$5,000.  
 9 Subject to appropriation, a penalty collected under this subsection shall be deposited  
 10 into the training and building fund established under AS 23.20.130.

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

13 \* **Sec. 5.** AS 23.20 is amended by adding a new section to read:

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

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

22 (c) A person commits the crime of obtaining an unemployment contribution  
 23 rate by deception in the second degree if the value of the difference between the rate  
 24 that had been assigned to the trade, business, or workforce and the rate assigned as a  
 25 result of the violation is \$500 or more but less than \$25,000. Obtaining an  
 26 unemployment contribution rate by deception in the second degree is a class C felony.

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

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

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

8 \* **Sec. 6.** AS 23.20.310 is amended by adding new paragraphs to read:

9 (8) "business" means a trade or business or a part of the trade or  
 10 business;

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

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

13 \* **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to  
 14 read:

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

19 \* **Sec. 8.** Section 7 of this Act takes effect immediately under AS 01.10.070(c).

20 \* **Sec. 9.** Except as provided in sec. 8 of this Act, this Act takes effect January 1, 2006.