

**CS FOR HOUSE BILL NO. 242(L&C)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 2/3/06

Referred: Judiciary, Finance

Sponsor(s): REPRESENTATIVES CRAWFORD, Kerttula, Guttenberg

**A BILL**

**FOR AN ACT ENTITLED**

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

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

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

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

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

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

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

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

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

11 (3) to be contrary to the public interest, **or**

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

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

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

18 (1) if an employer transfers its trade or business, its workforce  
19 conducting the trade or business, or a portion of that trade, business, or workforce, to  
20 another employer and, at the time of the transfer, there is substantially common  
21 ownership, management, or control of the two employers, then the unemployment  
22 experience attributable to the transferred trade, business, or workforce is transferred to  
23 the employer to whom that trade, business, or workforce is transferred; the rates of  
24 both employers are recalculated and made effective immediately upon the date of the  
25 transfer;

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

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

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

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

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

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

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

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

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

29 (c) A person commits the crime of obtaining an unemployment contribution  
 30 rate by deception in the second degree if the value of the difference between the rate  
 31 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  
 10 that 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).