S T A T E O F N E W Y O R K

9047

I N A S S E M B L Y

January 17, 2012

Introduced by M. of A. KOLB -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to unemployment insurance experience rating transfer requirements when a business is acquired by another business

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision 4 and subparagraph 1 of paragraph (a) of subdivision 7 of section 581 of the labor law, subdivision 4 as added by chapter 645 of the laws of 1951, paragraph (d) of subdivision 4 as added by chapter 728 of the laws of 1952, and subparagraph 1 of paragraph (a) of subdivision 7 as added by chapter 391 of the laws of 2005, are amended to read as follows:

4. Transfers of accounts. (a) Where an employer subsequent to July first, nineteen hundred fifty-one, transfers his or its organization, trade or business in whole or in part, the transferee [shall] MAY ELECT TO take over and continue the employer's account, including its balance and all other aspects of its experience under this article, in proportion to the payroll or employees assignable to the transferred organization, trade or business determined for the purpose of this article by the commissioner. The account taken over by the transferee shall remain chargeable with respect to benefits based on employment in the transferred organization, trade or business, and all such employment shall be deemed employment performed for the transferee.

(b) [The] IN THE EVENT OF A TRANSFER THE rate of contribution applicable to the accounts of the transferee and the transferring employer with respect to the calendar year in which the transfer occurred shall be respectively determined or redetermined as of the computation date in the preceding calendar year, and such rates shall apply from the date of the transfer to the end of the calendar year in which the transfer occurred. The rate of contribution applicable to the accounts of the transferee and the transferring employer with respect to the calendar year following the calendar year in which the transfer occurred shall be respectively determined or redetermined as of the computation date in

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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the same calendar year. The commissioner shall allocate to the transferee's account for each period in question the proportion of the transferring employer's payroll, which the commissioner determines to be properly assignable to the organization, trade or business transferred.

(c) [No transfer shall be deemed to have occurred if the commissioner on his own motion or on application of any interested party finds that all of the following conditions exist:

(1) the transferee has not assumed any of the transferring employer's obligations, and

(2) the transferee has not acquired any of the transferring employer's good will, and

(3) the transferee has not continued or resumed the business of the transferring employer either in the same establishment or elsewhere, and

(4) the transferee has not employed substantially the same employees as those the transferring employer had employed in connection with the organization, trade, business, or part thereof transferred.

(d) No transfer shall be deemed to have occurred unless either the transferring employer or the transferee has given notice of the transfer to the commissioner prior to the termination of the calendar year following the calendar year in which the transfer occurred]

THE COMMISSIONER SHALL PRESCRIBE THE FORM BY WHICH AN ELECTION MAY BE MADE UNDER THIS SUBDIVISION AND SHALL PROMULGATE THE RULES AND REGULATIONS NECESSARY IN CARRYING OUT THE PROVISIONS OF THIS SUBDIVISION PROVIDED THAT:

(1) AN ELECTION MADE UNDER THIS SUBDIVISION MUST BE MADE WITHIN THIRTY DAYS OF THE TRANSFER OF AN ORGANIZATION, TRADE OR BUSINESS; AND

(2) IN THE ABSENCE OF AN ELECTION MADE UNDER THIS SUBDIVISION THE TRANSFEREE SHALL NOT TAKE OVER AND CONTINUE THE EMPLOYER'S ACCOUNT, INCLUDING ITS BALANCE AND ALL OTHER ASPECTS OF ITS EXPERIENCE UNDER THIS ARTICLE, UNLESS SUCH TRANSFER MEETS THE EXPERIENCE RATING TRANSFER REQUIREMENTS UNDER SUBDIVISION SEVEN OF THIS SECTION.

(1) If an employer transfers its organization, trade or business, or a portion thereof, to another employer and, at the time of the transfer, there is at least ten percent common ownership, management or control of the two employers, then the unemployment experience attributable to the transferred organization, trade or business shall be transferred to the employer to whom such organization, trade or business is so transferred. [In addition to the provisions of this subdivision, the transfer provisions of paragraphs (a), (b) and (d) of subdivision four of this section shall apply to such transfers.] For purposes of this subdivision "organization, trade or business" shall include the employer's workforce.

S 2. This act shall take effect on the sixtieth day after it shall have become a law and shall apply to transfers taking place on or after such date.