

# HB3474



## 100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB3474

by Rep. Peter Breen

### SYNOPSIS AS INTRODUCED:

820 ILCS 405/1507.1

Amends the Unemployment Insurance Act. Provides that if a business is transferred to another individual or entity that, at the time of transfer, has any substantial common ownership, management, or control of the transferor and transferee, then the experience rating records of the transferred business shall be transferred to the transferee. Effective January 1, 2018.

LRB100 09368 JLS 19530 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Unemployment Insurance Act is amended by  
5 changing Section 1507.1 as follows:

6 (820 ILCS 405/1507.1)

7 Sec. 1507.1. Transfer of trade or business; contribution  
8 rate. Notwithstanding any other provision of this Act:

9 A.(1) If an individual or entity transfers its trade or  
10 business, or a portion thereof, to another individual or entity  
11 and, at the time of the transfer, there is any substantial  
12 common ownership, management, or control of the transferor and  
13 transferee, then the experience rating records attributable to  
14 ~~of the transferred trade or business transferor and transferee~~  
15 shall be transferred to the transferee ~~combined for the purpose~~  
16 ~~of determining their rates of contribution~~. For purposes of  
17 this subsection, a transfer of trade or business includes but  
18 is not limited to the transfer of some or all of the  
19 transferor's workforce.

20 (1.5) if, following a transfer of experience rating records  
21 under paragraph (1), the Director determines that a substantial  
22 purpose of the transfer of the trade or business was to obtain  
23 a reduced liability for contributions, the experience rating

1 accounts of the employers involved shall be combined into a  
2 single account and a single rate shall be assigned to the  
3 account.

4 (2) For the calendar year in which there occurs a transfer  
5 to which paragraph (1) or (1.5) applies:

6 (a) If the transferor or transferee had a contribution  
7 rate applicable to it for the calendar year, it shall  
8 continue with that contribution rate for the remainder of  
9 the calendar year.

10 (b) If the transferee had no contribution rate  
11 applicable to it for the calendar year, then the  
12 contribution rate of the transferee shall be computed for  
13 the calendar year based on the experience rating record of  
14 the transferor or, where there is more than one transferor,  
15 the combined experience rating records of the transferors,  
16 subject to the 5.4% rate ceiling established pursuant to  
17 subsection G of Section 1506.1 and subsection A of Section  
18 1506.3.

19 B. If any individual or entity that is not an employer  
20 under this Act at the time of the acquisition acquires the  
21 trade or business of an employing unit, the experience rating  
22 record of the acquired business shall not be transferred to the  
23 individual or entity if the Director finds that the individual  
24 or entity acquired the business solely or primarily for the  
25 purpose of obtaining a lower rate of contributions. Evidence  
26 that a business was acquired solely or primarily for the

1 purpose of obtaining a lower rate of contributions includes but  
2 is not necessarily limited to the following: the cost of  
3 acquiring the business is low in relation to the individual's  
4 or entity's overall operating costs subsequent to the  
5 acquisition; the individual or entity discontinued the  
6 business enterprise of the acquired business immediately or  
7 shortly after the acquisition; or the individual or entity  
8 hired a significant number of individuals for performance of  
9 duties unrelated to the business activity conducted prior to  
10 acquisition.

11 C. An individual or entity to which subsection A applies  
12 shall pay contributions with respect to each calendar year at a  
13 rate consistent with that subsection, and an individual or  
14 entity to which subsection B applies shall pay contributions  
15 with respect to each calendar year at a rate consistent with  
16 that subsection. If an individual or entity knowingly violates  
17 or attempts to violate this subsection, the individual or  
18 entity shall be subject to the following penalties:

19 (1) If the individual or entity is an employer, then,  
20 in addition to the contribution rate that would otherwise  
21 be calculated (including any fund building rate provided  
22 for pursuant to Section 1506.3), the employer shall be  
23 assigned a penalty contribution rate equivalent to 50% of  
24 the contribution rate (including any fund building rate  
25 provided for pursuant to Section 1506.3), as calculated  
26 without regard to this subsection for the calendar year

1 with respect to which the violation or attempted violation  
2 occurred and the immediately following calendar year. In  
3 the case of an employer whose contribution rate, as  
4 calculated without regard to this subsection or Section  
5 1506.3, equals or exceeds the maximum rate established  
6 pursuant to paragraph 2 of subsection E of Section 1506.1,  
7 the penalty rate shall equal 50% of the sum of that maximum  
8 rate and the fund building rate provided for pursuant to  
9 Section 1506.3. In the case of an employer whose  
10 contribution rate is subject to the 5.4% rate ceiling  
11 established pursuant to subsection G of Section 1506.1 and  
12 subsection A of Section 1506.3, the penalty rate shall  
13 equal 2.7%. If any product obtained pursuant to this  
14 subsection is not an exact multiple of one-tenth of 1%, it  
15 shall be increased or reduced, as the case may be, to the  
16 nearer multiple of one-tenth of 1%. If such product is  
17 equally near to 2 multiples of one-tenth of 1%, it shall be  
18 increased to the higher multiple of one-tenth of 1%. Any  
19 payment attributable to the penalty contribution rate  
20 shall be deposited into the clearing account.

21 (2) If the individual or entity is not an employer, the  
22 individual or entity shall be subject to a penalty of  
23 \$10,000 for each violation. Any penalty attributable to  
24 this paragraph (2) shall be deposited into the Special  
25 Administrative Account.

26 D. An individual or entity shall not knowingly advise

1 another in a way that results in a violation of subsection C.  
2 An individual or entity that violates this subsection shall be  
3 subject to a penalty of \$10,000 for each violation. Any such  
4 penalty shall be deposited into the Special Administrative  
5 Account.

6 E. Any individual or entity that knowingly violates  
7 subsection C or D shall be guilty of a Class B misdemeanor. In  
8 the case of a corporation, the president, the secretary, and  
9 the treasurer, and any other officer exercising corresponding  
10 functions, shall each be subject to the aforesaid penalty for  
11 knowingly violating subsection C or D.

12 F. The Director shall establish procedures to identify the  
13 transfer or acquisition of a trade or business for purposes of  
14 this Section.

15 G. For purposes of this Section:

16 "Experience rating record" shall consist of years  
17 during which liability for the payment of contributions was  
18 incurred, all benefit charges incurred, and all wages paid  
19 for insured work, including but not limited to years,  
20 benefit charges, and wages attributed to an individual or  
21 entity pursuant to Section 1507 or subsection A.

22 "Knowingly" means having actual knowledge of or acting  
23 with deliberate ignorance of or reckless disregard for the  
24 statutory provision involved.

25 "Transferee" means any individual or entity to which  
26 the transferor transfers its trade or business or any

1 portion thereof.

2 "Transferor" means the individual or entity that  
3 transfers its trade or business or any portion thereof.

4 H. This Section shall be interpreted and applied in such a  
5 manner as to meet the minimum requirements contained in any  
6 guidance or regulations issued by the United States Department  
7 of Labor. Insofar as it applies to the interpretation and  
8 application of the term "substantial", as used in subsection A,  
9 this subsection H is not intended to alter the meaning of  
10 "substantially", as used in Section 1507 and construed by  
11 precedential judicial opinion, or any comparable term as  
12 elsewhere used in this Act.

13 (Source: P.A. 94-301, eff. 1-1-06.)

14 Section 99. Effective date. This Act takes effect January  
15 1, 2018.