

SENATE SUBSTITUTE  
FOR  
SENATE COMMITTEE SUBSTITUTE  
FOR  
HOUSE COMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NOS. 500 & 533

AN ACT

To repeal section 288.110, RSMo, and to enact in lieu thereof one new section relating to the transfer of employer accounts, with an effective date.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,  
AS FOLLOWS:

1           Section A. Section 288.110, RSMo, is repealed and one new  
2 section enacted in lieu thereof, to be known as section 288.110,  
3 to read as follows:

4           288.110. 1. Any individual, type of organization or  
5 employing unit which has acquired substantially all of the  
6 business of an employer, excepting in any such case any assets  
7 retained by such employer incident to the liquidation of [his]  
8 the employer's obligations, and in respect to which the division  
9 finds that immediately after such change such business of the  
10 predecessor employer is continued without interruption solely by  
11 the successor, shall stand in the position of such predecessor  
12 employer in all respects, including the predecessor's separate  
13 account, actual contribution and benefit experience, annual  
14 payrolls, and liability for current or delinquent contributions,

1 interest and penalties. If two or more individuals,  
2 organizations, or employing units acquired at approximately the  
3 same time substantially all of the business of an employer  
4 (excepting in any such case any assets retained by such employer  
5 incident to the liquidation of his obligations) and in respect to  
6 which the division finds that immediately after such change all  
7 portions of such business of the predecessor are continued  
8 without interruption solely by such successors, each such  
9 individual, organization, or employing unit shall stand in the  
10 position of such predecessor with respect to the proportionate  
11 share of the predecessor's separate account, actual contribution  
12 and benefit experience and annual payroll as determined by the  
13 portion of the predecessor's taxable payroll applicable to the  
14 portion of the business acquired, and each such individual,  
15 organization or employing unit shall be liable for current or  
16 delinquent contributions, interest and penalties of the  
17 predecessor in the same relative proportion. Further, any  
18 successor under this section which was not an employer at the  
19 time the acquisition occurred shall pay contributions for the  
20 balance of the current rate year at the same contribution rate as  
21 the contribution rate of the predecessor whether such rate is  
22 more or less than two and seven-tenths percent, provided there  
23 was only one predecessor or there were only predecessors with  
24 identical rates. If the predecessors' rates were not identical,  
25 the division shall calculate a rate as of the date of acquisition  
26 applicable to the successor for the remainder of the rate year,  
27 which rate shall be based on the combined experience of all  
28 predecessor employers. In the event that any successor was,

1 prior to an acquisition, an employer, and there is a difference  
2 in the contribution rate established for such calendar year  
3 applicable to any acquired or acquiring employer, the division  
4 shall make a recalculation of the contribution rate applicable to  
5 any successor employer based upon the combined experience of all  
6 predecessor and successor employers as of the date of the  
7 acquisition, unless the date of the acquisition is other than the  
8 first day of the calendar quarter. If the date of any such  
9 acquisition is other than the first day of the calendar quarter,  
10 the division shall make the recalculation of the rate on the  
11 first day of the next calendar quarter after the acquisition.  
12 When the date of the acquisition is other than the first day of a  
13 calendar quarter, the successor employer shall use its rate for  
14 the calendar quarter in which the acquisition was made. The  
15 revised contribution rate shall apply to employment after the  
16 rate recalculation. For this purpose a calculation date  
17 different from July first may be established. When the division  
18 has determined that a successor or successors stand in the  
19 position of a predecessor employer, the predecessor's liability  
20 shall be terminated as of the date of the acquisition.

21 2. If an employer transfers its trade or business, or a  
22 portion thereof, to another employer and at the time of the  
23 transfer there is substantially common ownership, management, or  
24 control of the two employers, then the unemployment experience  
25 attributable to the transferred trade or business shall be  
26 transferred to the employer to whom such business is so  
27 transferred. The rates and liabilities of both employers shall  
28 be recalculated and made effective under this section.

1 3. Whenever any individual, type of organization, or  
2 employing unit is not an employer under this chapter at the time  
3 it acquires the trade or business of an employer, the  
4 unemployment experience of the acquired business shall not be  
5 transferred to such individual, organization, or employing unit  
6 if the division finds that such individual, organization, or  
7 employing unit acquired the business solely or primarily for the  
8 purpose of obtaining a lower rate of contributions. Instead,  
9 such individual, organization, or employing unit shall be  
10 assigned the applicable new employer rate under section 288.090.  
11 In determining whether the business was acquired solely or  
12 primarily for the purpose of obtaining a lower rate of  
13 contributions, the division shall use objective factors which may  
14 include the cost of acquiring the business, whether the  
15 individual, organization, or employing unit continued the  
16 business enterprise of the acquired business, how long such  
17 business enterprise was continued, or whether a substantial  
18 number of new employees were hired for performance of duties  
19 unrelated to the business activity conducted prior to  
20 acquisition.

21 4. (1) If an individual, organization, or employing unit  
22 knowingly violates or attempts to violate this section or any  
23 other provision of this chapter related to determining the  
24 assignment of a contribution rate, or if an individual,  
25 organization or employing unit knowingly advises another  
26 individual, organization, or employing unit in a manner that  
27 results in a violation of such provision, the individual,  
28 organization, or employing unit shall be subject to the following

1 penalties:

2 (a) If the individual, organization, or employing unit is  
3 an employer under this chapter, then for the current year and the  
4 three rate years immediately following this rate year, such  
5 employer's base rate shall be the maximum base rate applicable to  
6 such type of employer, or the employer's current base rate plus  
7 two percent, whichever is greater;

8 (b) If the individual, organization, or employing unit is  
9 not an employer under this chapter, such individual,  
10 organization, or employing unit shall be subject to a civil  
11 monetary penalty of not more than five thousand dollars. Any  
12 such fine shall be deposited in the special employment security  
13 fund established under section 288.310.

14 (2) In addition to the penalty imposed by this subsection,  
15 any violation of this section may be prosecuted under section  
16 288.395.

17 5. For purposes of this section, the following terms mean:

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19 (1) "Base rate", the employer's contribution rate as  
20 determined by section 288.090, subsection 1, 2, or 3 of section  
21 288.120, or section 288.126, or a federal base rate assignment;

22 (2) "Knowingly", having actual knowledge of or acting with  
23 deliberate ignorance or reckless disregard for the prohibition  
24 involved;

25 (3) "Violates or attempts to violate", includes, but is not  
26 limited to, intent to invade, misrepresentation, or willful  
27 nondisclosure.

28 6. The division shall establish procedures to identify the

1 transfer or acquisition of a business for purposes of this  
2 section.

3 7. This section shall be interpreted and applied in such a  
4 manner as to meet the minimum requirements contained in any  
5 guidance or regulations issued by the United States Department of  
6 Labor.

7 Section B. Section A of this act shall become effective on  
8 January 1, 2006.

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