

SENATE BILL REPORT

SHB 2491

As Reported by Senate Committee On:
Labor, Commerce & Consumer Protection, February 16, 2012

Title: An act relating to specifying when predecessor-successor relationships do not exist for purposes of unemployment experience rating.

Brief Description: Addressing when predecessor-successor relationships do not exist for purposes of unemployment experience rating.

Sponsors: House Committee on Labor & Workforce Development (originally sponsored by Representatives Upthegrove and Orwall).

Brief History: Passed House: 2/09/12, 97-0.

Committee Activity: Labor, Commerce & Consumer Protection: 2/16/12 [DP].

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Majority Report: Do pass.

Signed by Senators Kohl-Welles, Chair; Conway, Vice Chair; Holmquist Newbry, Ranking Minority Member; King, Assistant Ranking Minority Member; Hewitt, Keiser and Kline.

Staff: Mac Nicholson (786-7445)

Background: Most employment in the state is covered for unemployment insurance (UI). Each covered employer is required to pay contributions on a percentage of the employer's taxable payroll, except for certain employers who reimburse the Employment Security Department (ESD) for benefits the agency pays to these employers' former workers. For most covered taxable employers, UI contribution rates are determined by the combined rate assigned to the employer based on layoff experience, social costs, and the solvency surcharge, if any.

UI benefits paid to employees generally must be charged back to the separating employer. If the separating employer has closed and is no longer in business, then benefits paid to former employees of that employer are socialized among all rate-paying employers. However, if the separating employer is considered a predecessor employer, any benefits paid to former employees of the predecessor employer may be charged to the successor employer.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

A predecessor-successor relationship exists when a transfer occurs and one business acquires all or part of another business. The UI tax rate of a successor employer depends on whether the successor was already an employer at the time of the transfer of the business or whether the employer became an employer upon the transfer. If the successor was an employer at the time of the transfer, the successor's existing UI rate will be used throughout the remainder of the rate year, after which the predecessor's experience will be combined with the successor's experience to determine a new tax rate. If the successor became an employer upon the transfer, the successor's tax rate will be the predecessor's tax rate for the remainder of the rate year, after which the successor's experience will be combined with the predecessor's experience to determine a new tax rate. If a new employer isn't considered a successor, the UI tax rate for the new employer will be based on the industry average.

Whether or not a predecessor-successor relationship exists is a fact-specific inquiry and depends on the totality of the circumstances. A predecessor-successor relationship may arise from the transfer of operating assets, including employees, or from an internal reorganization of affiliated companies. ESD must prove by a preponderance of the evidence that a predecessor-successor relationship exists, and will look at a number of factors, including whether the employers are in the same or a like business; whether the transferred assets are a substantial or key portion of similar assets for either employer; whether multiple types of assets were transferred; whether a significant number or group of employees was transferred; whether there was continuity of management between employers; and whether the employers shared common owners.

Summary of Bill: A predecessor-successor relationship does not exist when a significant purpose of the transfer of a business or its operating assets is for the employer to move or expand an existing business, or for an employer to establish a substantially similar business under common ownership, management, and control.

A predecessor-successor relationship does exist if an employer transfers its business to another employer, and both employers are at the time of transfer under substantially common ownership, management, or control. The unemployment experience attributable to the transferred business transfers and combines with the unemployment experience attributable to the transferee employer.

If a significant purpose of the transfer is to obtain a reduced experience rate, rates are computed and penalties and sanctions applied as specified in the State Unemployment Tax Avoidance statute.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This is a bill that deals with whether a business is a successor business. There was a situation where a business expanded into a new

location and was found to be a successor, however they don't fit as a successor under the spirit of the law. The UI rate of the business went way up as a result. This is a narrow bill and applies in very few situations. A new restaurant was opened up in an abandoned space, and the restaurant was deemed a successor, costing the business up to \$250,000 over the industry average over the next five years. This has damaged the restaurant's competitiveness and ability to create jobs. The new restaurant is being punished because there was a restaurant in the space before. The restaurant didn't fire people; it hired people.

OTHER: ESD is neutral on the bill as it exists. This bill is well intended, and is a policy effort to make a bright line a little less bright and give the agency a little more judgment.

Persons Testifying: PRO: Representative Upthegrove, prime sponsor; Roger Stilson, Mama Stortini's.

OTHER: Neil Gorrell, ESD.