Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 12 (as introduced 1-19-11) *(as passed by the Senate)*
Sponsor: Senator Mark C. Jansen
Committee: Economic Development

Date Completed: 3-7-11

CONTENT

The bill would amend the Michigan Employment Security Act to do all of the following:

- **Prohibit the Unemployment Insurance Agency (UIA) from consolidating or combining the experience and unemployment accounts of separate employers or assessing a consolidated contribution rate, unless there had been a violation of the Act.**
- **Allow the UIA to transfer the experience of one employer, or combine the experience of two or more, if there had been a transfer of trade or business for the sole or primary purpose of reducing reimbursement payments.**
- **Prohibit the UIA from consolidating or combining the accounts of employers while a request for redetermination or an appeal was pending.**
- **Require a consolidation or combination of accounts to be retroactive if the UIA's determination were upheld on appeal.**
- **Require court costs and reasonable attorney fees to be awarded if the UIA's consolidation or combination determination were overturned on appeal.**

Specifically, the bill would prohibit the UIA from consolidating or combining the experience and unemployment accounts of separate employer entities into a single account or assessing a consolidated or combined contribution rate covering two or more entities, unless there had been a transfer of trade or business in violation of Section 22b(1) of the Act or a disregard of the separate legal entities through the commingling of bank accounts and other assets and failure to abide by corporate formalities for an unlawful purpose.

(Section 22b(1) prohibits a person from transferring a trade or business to another employer for the sole or primary purpose of reducing the contribution rate or reimbursement payments in lieu of contributions required under the Act.)

The bill would not prohibit the UIA from transferring the experience of an employer entity, or combining the experience of two or more employer entities into a single account for coverage after July 1, 2005 (the effective date of Section 22b), if all or part of a trade or business had been transferred after that date for the sole or primary purpose of reducing reimbursement payments in lieu of contributions or the contribution rate as described in Section 22b or a disregard of the separate legal entities through the commingling of bank accounts and other assets and failure to abide by corporate formalities for an unlawful purpose. (Section 22b, enacted in 2005, implemented Michigan's so-called "SUTA-dumping" prohibition. Please see **BACKGROUND** for further information on SUTA dumping.)

The UIA could not consolidate or combine the experience or unemployment accounts of employer entities into a single account, or assess a consolidated or combined contribution rate, while a request for a redetermination, an appeal to the board of review, or an appeal to a circuit or appellate court, pursuant to the Act was pending. If the UIA's determination were upheld in a final proceeding or a proceeding from which the time for appeal had expired, the consolidation or combination of the experience account or contribution rate would have to be retroactive to the date established in the original determination. If the UIA's consolidation or combination determination were overturned by the board of review or a circuit or appellate court, the board or court would have to award the prevailing party its court costs and reasonable attorney fees.

Proposed MCL 421.22c

BACKGROUND

In August 2004, then-President George W. Bush signed the SUTA Dumping Prevention Act. ("SUTA" refers to state unemployment tax act.) That Act requires states, as a condition of eligibility for Federal unemployment insurance system administration grants, to adopt legislation to deter an employer's manipulation of its unemployment tax rate through practices that have come to be known as "SUTA dumping": a tax-evasion scheme under which an employer avoids its full unemployment tax liability, which is based on the employer's unemployment experience. Under one such scheme, an employer buys another company that has a more favorable experience rating with respect to unemployment, or creates a new company, solely or primarily for the purpose of transferring payroll to the lower-tax company in order to reduce unemployment taxes. While there is no substantive change in management or business activity, the employer is able to "dump" its old tax rate.

Public Acts 16 through 19 of 2005 enacted Michigan's SUTA-dumping prohibitions. Under Public Act 18, which enacted Section 22b of the Michigan Employment Security Act, a person may not do either of the following:

-- Transfer the person's trade or business, or a portion of it, to another employer for the sole or primary purpose of reducing the contribution rate or reimbursement payments in lieu of contributions required under the Act (which Section 22b defines as SUTA dumping).
-- Acquire a trade or business, or a part of a trade or business, for the sole or primary purpose of obtaining a lower contribution rate than otherwise would apply under the Act.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

Prohibiting the UIA from assessing a combined contribution rate or combining experience accounts unless a business transfer violated Section 22b of the Michigan Employment Security Act would have an indeterminate, and likely minor fiscal impact on the State. The UIA makes these types of combinations and consolidations only when it is believed that a violation has occurred, so allowing such consolidations/combinations only in situations in which a violation occurred would have little impact.

The bill also would prohibit consolidation/combination of experience accounts and contribution rates for employers involved with an appeal of a UIA determination. To the extent that the UIA currently raises contribution rates immediately upon making a determination even when the employer appeals, the bill would lead to an indeterminate short-term loss of revenue, which would be made up once cases were settled.

Finally, the bill would require that employers whose determinations were overturned be awarded court costs and reasonable attorney fees. To the extent that these costs are not already awarded by the Michigan Employment Security Board of Review or by circuit or appellate courts, some additional costs would be imposed on the UIA by this requirement.

Fiscal Analyst: Josh Sefton

S1112\s12sa