

FIRST REGULAR SESSION

# HOUSE BILL NO. 533

## 93RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES FAITH (Sponsor) AND SMITH (14) (Co-sponsor).

Read 1<sup>st</sup> time February 14, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

1401L.011

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### 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:*

Section A. Section 288.110, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 288.110, to read as follows:

288.110. **1.** Any individual, type of organization or employing unit which has acquired substantially all of the business of an employer, excepting in any such case any assets retained by such employer incident to the liquidation of [his] **the employer's** obligations, and in respect to which the division finds that immediately after such change such business of the predecessor employer is continued without interruption solely by the successor, shall stand in the position of such predecessor employer in all respects, including the predecessor's separate account, actual contribution and benefit experience, annual payrolls, and liability for current or delinquent contributions, interest and penalties. If two or more individuals, organizations, or employing units acquired at approximately the same time substantially all of the business of an employer (excepting in any such case any assets retained by such employer incident to the liquidation of his obligations) and in respect to which the division finds that immediately after such change all portions of such business of the predecessor are continued without interruption solely by such successors, each such individual, organization, or employing unit shall stand in the position of such predecessor with respect to the proportionate share of the predecessor's separate account,

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 actual contribution and benefit experience and annual payroll as determined by the portion of the  
16 predecessor's taxable payroll applicable to the portion of the business acquired, and each such  
17 individual, organization or employing unit shall be liable for current or delinquent contributions,  
18 interest and penalties of the predecessor in the same relative proportion. Further, any successor  
19 under this section which was not an employer at the time the acquisition occurred shall pay  
20 contributions for the balance of the current rate year at the same contribution rate as the  
21 contribution rate of the predecessor whether such rate is more or less than two and seven-tenths  
22 percent, provided there was only one predecessor or there were only predecessors with identical  
23 rates. If the predecessors' rates were not identical, the division shall calculate a rate as of the date  
24 of acquisition applicable to the successor for the remainder of the rate year, which rate shall be  
25 based on the combined experience of all predecessor employers. In the event that any successor  
26 was, prior to an acquisition, an employer, and there is a difference in the contribution rate  
27 established for such calendar year applicable to any acquired or acquiring employer, the division  
28 shall make a recalculation of the contribution rate applicable to any successor employer based  
29 upon the combined experience of all predecessor and successor employers as of the date of the  
30 acquisition, unless the date of the acquisition is other than the first day of the calendar quarter.  
31 If the date of any such acquisition is other than the first day of the calendar quarter, the division  
32 shall make the recalculation of the rate on the first day of the next calendar quarter after the  
33 acquisition. When the date of the acquisition is other than the first day of a calendar quarter, the  
34 successor employer shall use its rate for the calendar quarter in which the acquisition was made.  
35 The revised contribution rate shall apply to employment after the rate recalculation. For this  
36 purpose a calculation date different from July first may be established. When the division has  
37 determined that a successor or successors stand in the position of a predecessor employer, the  
38 predecessor's liability shall be terminated as of the date of the acquisition.

39 **2. If an employer transfers its trade or business, or a portion thereof, to another**  
40 **employer and at the time of the transfer there is substantially common ownership,**  
41 **management, or control of the two employers, the unemployment experience attributable**  
42 **to the transferred trade or business shall be transferred to the employer to whom such**  
43 **business is so transferred. The rates and liabilities of both employers shall be recalculated**  
44 **and made effective under this section.**

45 **3. Whenever any individual, type of organization, or employing unit is not an**  
46 **employer under this chapter at the time it acquires the trade or business of an employer,**  
47 **the unemployment experience of the acquired business shall not be transferred to such**  
48 **individual, organization, or employing unit if the division finds that such individual,**  
49 **organization, or employing unit acquired the business solely or primarily for the purpose**  
50 **of obtaining a lower rate of contributions. Instead, such individual, organization, or**

51 employing unit shall be assigned the applicable new employer rate under section 288.090.  
52 In determining whether the business was acquired solely or primarily for the purpose of  
53 obtaining a lower rate of contributions, the division shall use objective factors which may  
54 include the cost of acquiring the business, whether the individual, organization, or  
55 employing unit continued the business enterprise of the acquired business, how long such  
56 business enterprise was continued, or whether a substantial number of new employees  
57 were hired for performance of duties unrelated to the business activity conducted prior to  
58 acquisition.

59 4. (1) If an individual, organization, or employing unit knowingly violates or  
60 attempts to violate this section or any other provision of this chapter related to determining  
61 the assignment of a contribution rate, or if an individual, organization or employing unit  
62 knowingly advises another individual, organization, or employing unit in a manner that  
63 results in a violation of such provision, the individual, organization, or employing unit shall  
64 be subject to the following penalties:

65 (a) If the individual, organization, or employing unit is an employer under this  
66 chapter, for the current year and the three rate years immediately following this rate year,  
67 such employer's base rate shall be the maximum base rate applicable to such type of  
68 employer, or the employer's current base rate plus two percent, whichever is greater. In  
69 addition, a civil monetary penalty of not more than five thousand dollars may be imposed;

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

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

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

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

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

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

84 6. The division shall establish procedures to identify the transfer or acquisition of  
85 a business for purposes of this section.

86           **7. This section shall be interpreted and applied in such a manner as to meet the**  
87 **minimum requirements contained in any guidance or regulations issued by the United**  
88 **States Department of Labor.**

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