

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2184

2001 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2184

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2184

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date January 24, 2001

Tape Number	Side A	Side B	Meter #
1	x		0 to 21.8
2		x	18.3 to 33.2
Committee Clerk Signature <i>Doris E. Perez</i>			

Minutes:

The meeting was called to order. All committee members present. Hearing was opened on SB2184 relating to the transfer of unemployment compensation experience record, reserve balance, and benefit experience.

SENATOR RANDY SCHOBINGER In favor of this bill. The only intention is the reserve balance transfer. Reserve account should move with the previous owner and be taken into a new business. Written testimony attached.

RAY GUDAJTES, Job Service ND, opposing this bill. Written testimony attached. Reserve transfer allowance is already in the law. This bill would open window for artificial transfers to reduce rates. We would collect less, then have to raise rates and the cost would be shared by all employers.

M. DAY, JSND, Executive Director, Oppose this bill. Most business transfers can be accommodated with proper planning under current law.

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Senate Industry, Business and Labor Committee

Bill/Resolution Number SB 2184

Hearing Date January 24, 2001.

Concluded hearing.

Committee reconvened (tape 2 side b meter: 18.3 to 33.2) Discussion held.

SENATOR D. MATHERN: This bill would be detrimental to Job Service.

SENATOR KLEIN: Motion : Do Pass SENATOR TOLLEFSON: Seconded.

Roll call vote: yes 2; no 5. Motion failed.

SENATOR D. MATHERN: Motion: Do not pass. SENATOR EVERY: Seconded.

Roll call vote: 7 yes; 0 no; 0 absent. Carrier: SENATOR D. MATHERN.

FISCAL NOTE
 Requested by Legislative Council
 01/15/2001

Bill/Resolution No.: SB 2184

Amendment to:

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

This bill will eliminate mandatory succession of unemployment insurance tax accounts. Negative balance accounts will be able to reorganize into another entity to eliminate their negative balance reserve, negative balance unemployment insurance tax rates, and also to avoid additional costs of benefit charges to that account. Data does not exist to provide specific amounts.

The bill also opens avenues for new businesses to buy unemployment insurance tax rate histories of unrelated businesses to avoid new employer tax rates. New businesses have a greater risk to the Unemployment Insurance Trust Fund. This too can increase the cost to the Trust Fund and to other employers. Data does not exist to provide specific amounts.

The bill also proposes the transfer of only the accounts reserve, rather than the history of the account. This has potential for additional costs to the Trust Fund for benefits charges to the predecessor, which will be applied to other employers.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Wayne Kindem	Agency:	Job Service North Dakota
Phone Number:	328-3033	Date Prepared:	01/19/2001

Date: 1/24/01
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 982184

Senate Industry, Business and Labor

Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass failed

Motion Made By S. Klein Seconded By S. Tollefson

[illegible]

Total (Yes) 2 No 5

Absent

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Date: 1/24/01

Roll Call Vote #: 2

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2184

Senate Senate Industry, Business and Labor

Committee

Subcommittee on

or

☐ Conference Committee

Legislative Council Amendment Number

Action Taken *Do Not Pass*

Motion Made By

SD Mathern

Seconded

13y

S. Every

[illegible]

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen. D. Matherne

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
January 25, 2001 9:01 a.m.

Module No: SR-13-1577
Carrier: D. Mathern
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2184: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends
DO NOT PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2184 was
placed on the Eleventh order on the calendar.

2001 TESTIMONY

SB 2184

SENATE BILL 2184
Testimony Before the Senate Committee On
Industry, Business and Labor
Senator Duane Mutch, Chairperson
January 24, 2001

Mr. Chairman and members of the committee, I am Ray Gudajtes of Job Service North Dakota. Senate Bill 2184 eliminates a number of protections for the Unemployment Insurance Trust Fund and opens opportunities for manipulation of the tax rating process by employers. Job Service is in opposition to this legislation.

This bill removes the protection of mandatory succession to the history of an unemployment insurance employer tax account when the acquisition of all or part of the organization, business, trade or assets of an employer is made by another entity that is controlled by the same interests. Currently, the transfer of all or the appropriate part of the predecessor's experience record must be made to the new entity. This serves as a protection to the Unemployment Insurance Trust Fund in that it prevents manipulation by an employer to get out of paying a higher tax rate when the predecessor account has a negative balance simply by reorganizing the business structure.

Currently, employers with a negative experience rating account are stopped from reorganizing for the purpose of escaping the resulting higher UI tax rate. The enactment of this bill would prevent Job Service from making this transfer except "at the request of the successor employer" and/or if the predecessor and successor agree to transfer the history. It is doubtful anyone would request the negative experience.

This bill also would allow anyone to buy the account of any other unrelated business simply by manipulation of ownership of the transferring business. This too will allow manipulation of the tax rating system.

An example: A person owns a jewelry store, is ready to retire, can't or doesn't want to attempt to sell the business which has a \$20,000 unemployment insurance experience record "reserve" built up as the result of 30 years of being in business. He/she could go to a company with a negative experience or a person initiating a new business and offer "for XXX dollars you make me a 0.01% owner in your business or I will make you one in mine and I will transfer my experience to you." This would result in the other company getting a lower tax rate than they should. This would be harmful to the Unemployment Insurance Trust Fund as well as

resulting in an unfair advantage to this employer over his competitors. This same employer (jeweler) could actually advertise the experience history for sale.

The other area of concern is in regard to the allowance of a successor to choose to only succeed to the reserve of the account. The entire history of the account reflects the employer's risk to the unemployment insurance trust fund. This data is used in the determination of an employer's tax rate. The reserve is only a calculation of the contribution and benefit charge history of an employer which is used to determine which tax schedule will apply and where within the tax schedule the employer will be assigned a tax rate. This is not an item reflecting any available funds, since contributions lose their identity as soon as they are collected for the Unemployment Insurance Trust Fund and are paid for the benefit of the insurance coverage. Not transferring the history will create artificial histories, artificial data used in calculation of tax rates of all employers, and manipulation of the tax rating process.

In addition, benefits can be charged to an employer for up to 30 months following separation from employment. An employer that had anticipated benefit charges could then take the reserve of the account prior to the charges, leave the predecessor account responsible for the charges and avoid responsibility for those costs.

It is our conclusion that the effect of SB 2184 will be:

- Allowance for manipulation of tax rates
- Many artificial transfers of experience accounts
- Creation of artificial unemployment insurance histories
- Creation of artificial data for determination of rates of all employers
- Allowance for the avoidance of higher tax rates
- Allowance for avoidance of charges for benefits paid to an employer's former employees
- Creation of potential competitive advantage for employers
- Transferring one employer's costs to the Unemployment Insurance Trust Fund to the other employers in the state.

These are the issues of concern we wanted to point out to the committee for consideration when you make your decision.

Mr. Chairman, this concludes my testimony. Thank you.

Response to Job Service Testimony on SB #2184

Distributed By: Sen. Randy Schobinger

Note: Responses are in **Bold**

One question that needs to be asked of the Department is this: "If there are businesses that have large **ACCOUNT BALANCES** and they go out of business, why should their earned balance then go to the UI trust fund. It is **unearned..** In fact there is a large balance because the Department has failed to properly adjust that businesses **PREMIUMS** over the years. To not enact this bill will **REWARD THE DEPARTMENT FOR ITS FAILURE TO PROPERLY RATE EMPLOYERS IN THE STATE.** This is simply hostile to job creation. Maybe it has something to do with the fact that North Dakota is having such a difficult time attracting businesses and jobs.

Subsection 2 - Mandatory succession -

The phrase, "At the request of the successor employer", if enacted, will eliminate protection for the UI trust fund. Currently, when the acquisition of all or part of the organization, business, trade or assets of an employer is made by another entity that is controlled by the same interests then Job Service must transfer all or the appropriate part of the predecessor's experience record to the new entity. **[THIS IS CONFUSING, WHAT IS JOB SERVICE ACTUALLY SAYING HERE?]** This serves as a protection of the UI trust fund in that it prevents manipulation **[WHAT "MANIPULATION" ARE THEY TALKING ABOUT? WHO IS "MANIPULATING" WHAT?]** by an employer to get out of paying a higher tax rate when the predecessor account has a negative balance simply by re-organizing his business structure. **[THIS IS BACKWARDS, HERE JOB SERVICE IS TALKING ABOUT A "NEGATIVE" BALANCE HELD BY THE PREDECESSOR.... WE ARE TALKING ABOUT A POSITIVE ACCOUNT BALANCE HELD BY THE PREDECESSOR WHICH IS BEING TRANSFERRED TO THE SUCCESSOR. AND THIS IS NOT BEING DONE BY A BUSINESS "SIMPLY RE-ORGANIZING HIS BUSINESS STRUCTURE". THIS EXAMPLE, IS SIMPLY NOT ON POINT AND AT BEST INAPPLICABLE TO WHAT THE BILL WILL ACCOMPLISH.]**

If an employer with a negative experience rating account attempts to re-organize for the purpose of escaping his resulting higher UI tax rate, he is stopped by the application of this provision. The enactment of this language would prevent Job Service from making this transfer except "at the request of the successor employer" who most certainly would not request the negative experience. **SO THEN THERE WOULD BE NO PROBLEM FOR UI OR THE TRUST FUND.**

This will result in one employer's costs to the Unemployment insurance Trust Fund having to be absorbed by other employers.

FACT & REALITY: First, the succession is NOT made simply "at the request of the successor employer". It is made at the request of both the "successor" and the "predecessor" employers. Second, the individuals are the same individuals. Third, this will not, "result in one employer's costs to the Unemployment Insurance Trust Fund having to be absorbed by other employers". That is already happening. That is the whole point of the "Trust Fund". This will simply do what the Department is currently failing to do properly in those rare occasions this provision would be applicable. If the successor has a large POSITIVE account balance then it is clear that the Department has failed to properly rate that business. In fact, what is happening is that this business is UNFAIRLY being used to SUBSIDIZE those businesses, which the Department is not properly rating, based on their ACTUAL REAL WORLD experience. This bill will help do what the Department should be doing ... that is insure that businesses are being properly and fairly rated. If this were done there would be no large account balances to be transferred in the first place.

Subsection 3 -

- 1) a) Page 2 line 14 and 15 - the phrase, "subsection 1 or 2 is determined by agreement of the predecessor and successor..." "This phrase also eliminates protection for the UI trust fund from manipulation by an employer to get out of paying a higher tax rate simply by re-organizing his business structure. Even if the language in subsection 2 was corrected to eliminate that manipulation described above, this phrase will cause the same.

An employer that has a negative balance account could reorganize, succeed to his/her account, but not transfer any of the history (0%), thus avoiding the negative balance and higher tax rate.

FACT & REALITY: We should question the motives of the Department. It is clear that the department sees those it has been created to serve as "manipulators". This is the first problem with the argument that is presented here.

What is it that UI is claiming in current law PROTECTS it? And what is it exactly that is being claimed that protection is from? Crooks? Bad businesses? Bad businessmen? Bad businesswomen?

The assumption that an employer with a NEGATIVE account balance will "reorganize" is a hypothetical in the extreme. Businesses don't do that. Unless, of course, the burdens placed on a business by UI are so high that the business can not remain in business unless that is done. If that is the case we should ask if this program is one of the reasons that North Dakota has such a difficult time attracting businesses to our state.

To the point, however, this bill DOES NOT IMPACT TRANSFER OF HISTORY. It impacts transfer of a POSITIVE account balance to an employer. Transfer of history or rating is not impacted.

- b) Page 1, line 18 in combination with page 2 line 12, 13 and 14 will allow anyone initiating a new business to buy the account of any other unrelated business. This too will allow manipulation of the tax rating system.

FACT & REALITY: It is difficult to believe that the Department would actually make such a statement. They state that if allowed it would permit "any other unrelated

business..." . This is simply FALSE. The acquiring business has to be related. That is the whole point of the bill. If the business ownership IS RELATED. Then the account balance can be transferred. What is not transferred is the "RATING". This does not change the rating at all. However, it could impact the rating when the amount of money in the transferred account is sufficient to cover the "risk potential" and then and only then would the "rating" of the business be impacted — AS IT SHOULD BE — and the business would have its rating changed and its CHARGES REDUCED.

It appears that the Department is intent on insuring that the HIGHEST POSSIBLE RATE IS ALWAYS IMPOSED ON EVERY BUSINESS.....

NOTE: Here the department talks about a "TAX RATING SYSTEM"... this is not supposed to be a tax it is supposed to be a PREMIUM. Unfortunately the mindset of the Department is that of a taxing authority and not of an insurance provider. This confusion is hostile to businesses and those who take the REAL risks of business and provide the JOBS that allow people to remain in North Dakota.

This will result in one employer's costs to the Unemployment Insurance Trust Fund having to be absorbed by other employers.

Example: A person owns a jewelry store, is ready to retire, can't or doesn't want to attempt to sell his business and has a \$20,000 unemployment insurance experience "reserve" built up as the result of 30 years of being in business. He/she could go to a local construction company with a negative experience or a person initiating a new business and offer "for XXX dollars you make me a 0.01% owner in your business and I will make you one in mine and I will transfer my experience to you." This would result in the construction company getting a lower tax rate than they should. This would be a detriment to the UI trust fund as well as resulting in an unfair advantage to this employer over his competitors. This same employer could actually advertise his experience for sale in mediums such as Ebay on the Internet or newspapers or trade magazines.

FACT & REALITY: FIRST: If the jewelry store owner has a \$20,000 account balance it is clear that the Department has failed to properly rate that businesses risk and properly adjust his PREMIUM charges. This bill would remedy such failures by the department. **SECOND:** The issue in this BILL is to transfer the ACCOUNT BALANCE, NOT THE EXPERIENCE RATING..... **THIRD,** it would not result in anyone getting a lower "tax rate". Again, are we talking about taxes or premiums? We are talking about premiums not taxes. What is the "unfair" advantage? Remember that owners in the two companies are the same people or at least some of the same people.

The hypothetical of 0.01% is in the extreme and to do as the Department is attempting to do, that is manipulation the committee's understanding of this bill, with such a hypothetical should not be tolerated.

- 1) Page 2 line 12, 12, and 14 – the phrase, "The portion of the predecessor employer's reserve account and if applicable, the predecessor employer's experience record to be transferred..." This appears to suggest that the successor could choose to only succeed to the reserve of the

account. **THIS IS ABSOLUTELY CORRECT, IN FACT THAT IS THE ENTIRE POINT OF THE BILL... WE ARE INSURING THAT IT IS THE ACCOUNT BALANCE NOT THE "RATING" THAT IS TRANSFERRED.** The reserve is the result of the contribution and benefit charge history of an employer. The entire history of the account reflects the employer's risk to the unemployment insurance trust fund. Not transferring the history will create artificial histories, **HOW? IT DOES NOT CREATE ARTIFICIAL HISTORIES... BY NOT TRANSFERING THE HISTORY YOU DO NOT CREATE ARTIFICIAL HISTORIES....** artificial data used in calculation of tax rates of all employers, and manipulation of the tax rating process. **REMEMBER THIS SHOULD BE A PREMIUM AND NOT A TAX AND THE PREMIUM SHOULD BE BASED ON THE DOLLAR EXPOSURE OF THE INSURANCE SYSTEM... THIS BILL WILL NOT IMPACT THAT IN ANY WAY. PERIOD.**

Also, benefits can be charged to an employer for up to 30 months following separation from employment. An employer that has anticipated benefit charges could then take the reserve of the account prior to the charges, **THIS IS SIMPLY A MISSTATEMENT OF THE TRUTH... IT IS NOT TRUE AND THE DEPARTMENT KNOWS IT... CURRENTLY THE DEPARTMENT REQUIRES THAT THE ACCOUNT BE LEFT UNTOUCHED FOR THE FULL 30 MONTHS BEFORE ANY TRANSFERS... THIS IS A FALSE.** leave the predecessor account responsible for the charges and avoid responsibility for those costs.

This will result in one employer's costs to the Unemployment Insurance Trust Fund having to be absorbed by other employers. **THIS IS SIMPLY NOT TRUE AND THE DEPARTMENT KNOWS IT.....**

The affect of SB 2184 will be:

- Allowance for manipulation of tax rates.

TRUTH: there are no "tax rates", they are premiums. This bill does not allow for any manipulation. The words and allegations are hostile the entire concept of legitimate business and create a hostile working relationship between the real job creating world and the artificial world of bureaucracy. This not permit any manipulation. The "examples given by the Department are ridiculous in the extreme and should be an insult to the intelligence of all the members of the committee.

- Many artificial transfers of experience accounts.

TRUTH: This is a meaningless statement. What does it mean? What is the point? Are they saying there will be transfers of "experience accounts"? This is not the point of the bill - it impacts transfers of ACCOUNT BALANCES, not "experience".

- Creation of artificial unemployment insurance histories.

TRUTH: This will not create any "artificial histories". It will not do so because it deals with transfers of ACCOUNT BALANCES and not transfer of RATINGS, in fact it specifically says that ratings will transfer only where "appropriate" and it is left to the discretion of the Department when that may be done.

- Creation of artificial data for determination of rates of all employers.

TRUTH: This is simply a straw man. This bill will not result in the creation of any artificial data for determination of rates for any employer let alone ALL employers. First, these transfers would be few and rare. Second, it would be very easy for the department to track the transfers and make any adjustments in its rate setting that would be appropriate.

- Allowance for the avoidance of higher tax rates.

TRUTH: We are not talking about "TAX RATES". What is the problem with the Department. It is running an insurance program and charges PREMIUMS not taxes. Actually, it appears that one of the problems is that the Department is unable to understand it is supposed to be running an insurance system. It does not allow anyone to "AVOID" anything.

- Allowance for avoidance of charges for benefits paid to an employer's former employees.

TRUTH: This is an INTENTIONAL MISSTATEMENT OF THE TRUTH and the department knows it. The TRUTH is that the department does not permit any transfers until the 30-month period currently in place and which will not be impacted in any way by this bill. The 30-month period must first pass. Therefore, it is not even an issue that there will or would be any "avoidance of charges for benefits paid to an employer's former employees".

- Creation of potential competitive advantage for employers.

TRUTH: Give us all a break. This is grasping for straws. It creates no "competitive advantages" for employers. What it may actually do is ERASE some artificial and unfair charges that businesses are forced to absorb because the department has failed to properly adjust premiums businesses are charged.

- Transferring one employer's costs to the Unemployment Insurance Trust fund to the other employers in the state.

TRUTH: This is simply a fiction and would not happen... It currently doesn't and would not if this bill is passed. If anything it corrects the departments failure to properly assign costs to those businesses which should be paying more and retaining excessive charges on those businesses that should be paying less.

Clarification:

- Page 2 line 8 – need clarification if this implies "all" or "majority" of the owning or controlling interests?