

Enrolled Senate Bill 37

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CHAPTER

AN ACT

Relating to transfer of unemployment insurance tax liabilities to successor employers; creating new provisions; and amending ORS 657.683 and 657.875.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2005 Act is added to and made a part of ORS chapter 657.

SECTION 2. (1) As used in this section, “reorganized business entity” means a business entity that, while operating substantially the same business as the employer, has been converted to a different form of business entity from that of the employer or has changed ownership from that of the employer, except that a business entity is not a “reorganized business entity” solely because of a transfer of assets or because of a transfer of an interest of an investor who has no right to manage the business entity, including, but not limited to, the interest of:

- (a) A person that is solely a minority shareholder in a corporation;**
- (b) A member of a manager-managed limited liability company; and**
- (c) A limited partner of a limited partnership that does not participate in the control of the business of the limited partnership.**

(2) For any amounts owed by an employer for contributions or interest assessed under ORS 657.681 or for taxes, interest or penalties that may be collected under ORS 657.642, the Director of the Employment Department may transfer those amounts to and assess those amounts against a reorganized business entity.

(3) For the purposes of this section, factors the director may consider when determining if a business entity is operating substantially the same business as the employer include, but are not limited to, whether the business entity:

- (a) Operates from the same physical location as did the employer owing the debt.**
- (b) Provides the same services or manufactures the same products as did the employer owing the debt.**

(c) Has one or more of the same:

- (A) Corporate directors or officers as did the employer owing the debt.**
- (B) Owners or holders of a direct or indirect interest in the employer as did the employer owing the debt.**

(4) A reorganized business entity against which an amount is assessed under this section may appeal the assessment by filing with the director an application for hearing under ORS

657.683 within 20 days after the mailing of a written notice of the assessment to the last-known address of the reorganized business entity of record with the director.

SECTION 3. ORS 657.683 is amended to read:

657.683. (1) An application for hearing under ORS 657.679 and 657.681 **and section 2 of this 2005 Act** shall be in writing and shall state that such determination or assessment of the Director of the Employment Department or authorized representative is unjust or incorrect and that the employing unit requests a hearing [*thereon*]. The application shall set forth the objections of the employing unit to the determination or assessment and the amount of contributions, if any, which the applicant admits to be due to the Employment Department. An application for a hearing to review an assessment made under ORS 657.681 (4) [*which*] **that** was accompanied by a demand for a bond or deposit shall not be valid unless [*such*] **the** bond or deposit is filed with the application in a form acceptable to the director or authorized representative.

(2) If a valid application for hearing is filed within the time provided by ORS 657.679 and 657.681 **and section 2 of this 2005 Act**, an administrative law judge shall review the determination or assessment and if requested by the employing unit shall grant a hearing unless a hearing has previously been afforded the employing unit on the same grounds as set forth in the application. The administrative law judge shall give notice of the time and place of the hearing to the director or authorized representative and shall also give notice to the employing unit by mail directed to the last-known address of the employing unit of record with the director.

(3) Hearings under ORS 657.679 and 657.681 **and section 2 of this 2005 Act** shall be conducted in accordance with this chapter. The filing of an application for hearing with respect to a disputed assessment shall not affect the right of the director or authorized representative to perfect any liens provided by this chapter.

(4) All testimony at any hearing held under ORS 657.679 and 657.681 **and section 2 of this 2005 Act** shall be recorded but need not be transcribed unless a petition for judicial review from the decision of the administrative law judge is filed in the manner and within the time prescribed. At any hearing held as provided in ORS 657.679 and 657.681 **and section 2 of this 2005 Act**, the determination or assessment of the director or authorized representative shall be prima facie correct and the burden shall be upon the protesting employing unit to prove that it is incorrect. Thereafter the administrative law judge shall enter the findings of fact and decision, either affirming, modifying, or setting aside the determination or assessment of the director or authorized representative and in the case of an assessment, the administrative law judge may increase or decrease the amount of the assessment. The employing unit and the director shall be promptly notified of the decision of the administrative law judge.

(5) A decision of the administrative law judge shall become final on the date of notification or the mailing thereof to the director and to the employing unit at the last-known address of record with the director unless within the time specified in ORS 183.480 (2) the administrative law judge on the administrative law judge's own motion reviews the same and issues an amended decision in which case the amended decision becomes the final decision.

SECTION 4. ORS 657.875 is amended to read:

657.875. The period within which an interested party may request a hearing or file with the Employment Appeals Board an application for review as provided in ORS 657.266 to 657.269, 657.270, 657.471, 657.485, 657.679[,] and 657.681 **and section 2 of this 2005 Act** may be extended, upon a showing of good cause therefor, a reasonable time under the circumstances of each particular case.

Passed by Senate May 5, 2005

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Secretary of Senate

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President of Senate

Passed by House May 31, 2005

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Speaker of House

Received by Governor:

.....M,....., 2005

Approved:

.....M,....., 2005

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Governor

Filed in Office of Secretary of State:

.....M,....., 2005

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Secretary of State