

HOUSE BILL No. 6291

November 14, 1990, Introduced by Reps. Watkins and Jonker and referred to the Committee on Labor.

A bill to amend section 15 of Act No. 1 of the Public Acts of the Extra Session of 1936, entitled as amended "Michigan employment security act," as amended by Act No. 228 of the Public Acts of 1989, being section 421.15 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 15 of Act No. 1 of the Public Acts of
2 the Extra Session of 1936, as amended by Act No. 228 of the
3 Public Acts of 1989, being section 421.15 of the Michigan
4 Compiled Laws, is amended to read as follows:

5 Sec. 15. (a) Contributions unpaid on the date on which they
6 are due and payable, as prescribed by the commission, shall bear
7 interest at the rate of 1% per month, computed on a day to day
8 basis for each day the delinquency is unpaid, from and after that
9 date until payment plus accrued interest is received by the

1 commission. AMOUNTS ILLEGALLY OBTAINED OR PREVIOUSLY WITHHELD
2 FROM PAYMENT AND DAMAGES THAT ARE RECOVERED BY THE COMMISSION
3 UNDER SECTION 54(A) AND (B) AND SECTIONS 54A TO 54C OF THIS ACT
4 SHALL BEAR INTEREST AT THE RATE OF 1% PER MONTH, COMPUTED ON A
5 DAY-TO-DAY BASIS FOR EACH DAY THE AMOUNTS REMAIN UNPAID UNTIL
6 PAYMENT PLUS ACCRUED INTEREST IS RECEIVED BY THE COMMISSION. The
7 interest ON UNPAID CONTRIBUTIONS, exclusive of penalties, shall
8 not exceed 50% of the amount of contributions due at due date.
9 Interest and penalties collected pursuant to this section shall
10 be paid into the contingent fund. The commission may cancel any
11 interest and any penalty when it is shown that the failure to pay
12 on or before the last day on which the tax could have been paid
13 without interest and penalty was not the result of negligence,
14 intentional disregard of the rules of the commission, or fraud.

15 (b) The commission may make assessments against an employer,
16 CLAIMANT, OR THIRD PARTY who fails to pay contributions, reim-
17 bursement payments in lieu of contributions, penalties, forfei-
18 tures, or interest as required by this act. The commission shall
19 immediately notify the employer, CLAIMANT, OR THIRD PARTY of the
20 assessment in writing by certified or registered mail, return
21 receipt demanded. AN ASSESSMENT BY THE COMMISSION AGAINST A
22 CLAIMANT OR A THIRD PARTY UNDER THIS SUBSECTION SHALL BE MADE
23 ONLY FOR PENALTIES AND INTEREST ON THOSE PENALTIES FOR VIOLATIONS
24 OF SECTION 54(A) OR (B) OR SECTIONS 54A TO 54C. The assessment,
25 which shall constitute a determination, shall be final unless the
26 employer, CLAIMANT, OR THIRD PARTY files with the commission an
27 application for a redetermination of the assessment in accordance

1 with section 32a. A review by the commission or an appeal to a
2 referee or the appeal board on the assessment shall not reopen a
3 question concerning an employer's liability for contributions or
4 reimbursement payments in lieu of contributions, unless the
5 employer was not a party to the proceeding or decision where the
6 basis for the assessment was determined. An employer may pay an
7 assessment under protest and file an action to recover the amount
8 paid as provided under subsection (d). Unless an assessment is
9 paid within 15 days after it becomes final the commission may
10 issue a warrant under its official seal for the collection of an
11 amount required to be paid pursuant to the assessment. The com-
12 mission through its authorized employees, under a warrant issued,
13 may levy upon and sell the property of the employer which is used
14 in connection with the employer's business, or which is subject
15 to a notice to withhold, found within the state, for the payment
16 of the amount of the contributions including penalties, inter-
17 ests, and the cost of executing the warrant. Property of the
18 employer used in connection with the employer's business shall
19 not be exempt from levy under the warrant. Wages subject to a
20 notice to withhold shall be exempt to the extent the wages are
21 exempt from garnishment under the laws of this state. The war-
22 rant shall be returned to the commission together with the money
23 collected by virtue of the warrant within the time specified in
24 the warrant which shall not be less than 20 nor more than 90 days
25 after the date of the warrant. The commission shall proceed upon
26 the warrant in all respects and with like effect and in the same
27 manner as prescribed by law in respect to executions issued

1 against property upon judgments by a court of record. The state,
2 through the commission or some other officer or agent designated
3 by it, may bid for and purchase property sold under the provi-
4 sions of this subsection. If ~~a person or employing unit~~ AN
5 EMPLOYER, CLAIMANT, OR THIRD PARTY, AS APPLICABLE, is delinquent
6 in the payment of a contribution, reimbursement payment in lieu
7 of contribution, penalty, forfeiture, or interest provided for in
8 this act, the commission may give notice of the amount of the
9 delinquency served either personally or by registered mail, to a
10 person or legal entity, including the state and its subdivisions,
11 which has in possession or under control a credit or other intan-
12 gible property belonging to the ~~delinquent person or employing~~
13 ~~unit~~ EMPLOYER, CLAIMANT, OR THIRD PARTY, or who owes a debt to
14 the ~~delinquent person or employing unit~~ EMPLOYER, CLAIMANT, OR
15 THIRD PARTY at the time of the receipt of the notice. A person
16 or legal entity so notified shall not transfer or make a disposi-
17 tion of the credit, other intangible property or debt without
18 retaining an amount sufficient to pay the amount specified in the
19 notice unless the commission consents to a transfer or disposi-
20 tion or 45 days have elapsed from the receipt of the notice. A
21 person or legal entity so notified shall advise the commission
22 within 5 days after receipt of the notice of a credit, other
23 intangible property or debt, which is in its possession, under
24 its control or owed by it. A person or legal entity which is
25 notified and which transfers or disposes of credits or personal
26 property in violation of this section shall be liable to the
27 commission for the value of the property or the amount of the

1 debts thus transferred or paid, but not more than the amount
2 specified in the notice. An amount due a delinquent employer,
3 CLAIMANT, OR THIRD PARTY subject to a notice to withhold shall be
4 paid to the commission upon service upon the debtor of a warrant
5 issued under this section.

6 (c) In addition to the mode of collection provided in sub-
7 section (b), if, after due notice, an employer defaults in pay-
8 ment of contributions or interest on the contributions, OR A
9 CLAIMANT OR THIRD PARTY DEFAULTS IN THE PAYMENT OF A PENALTY OR
10 INTEREST ON A PENALTY the commission may bring an action at law
11 in a court of competent jurisdiction to collect and recover the
12 amount of a contribution, and any interest on the contribution,
13 OR THE PENALTY OR INTEREST ON THE PENALTY, and in addition 10% of
14 the amount of contributions OR PENALTIES found to be due, as
15 damages. An employer, CLAIMANT, OR THIRD PARTY adjudged in
16 default shall pay costs of the action. AN ACTION BY THE COMMIS-
17 SION AGAINST A CLAIMANT OR THIRD PARTY UNDER THIS SUBSECTION
18 SHALL BE BROUGHT ONLY TO RECOVER PENALTIES AND INTEREST ON THOSE
19 PENALTIES FOR VIOLATIONS OF SECTION 54(A) OR (B) OR SECTIONS 54A
20 TO 54C. Civil actions brought under this section shall be heard
21 by the court at the earliest possible date. When a judgment is
22 obtained against an employer for contributions and an execution
23 on that judgment is returned unsatisfied, the employer may be
24 enjoined from operating and doing business in this state until
25 the judgment is satisfied. The circuit court of the county in
26 which the judgment is docketed or the circuit court for the
27 county of Ingham may grant an injunction upon the petition of the

1 commission. A copy of the petition for injunction and a notice
2 of when and where the court shall act on the petition shall be
3 served on the employer at least 21 days before the court may
4 grant the injunction.

5 (d) An employer or employing unit improperly charged or
6 assessed contributions provided for under this act OR A CLAIMANT
7 OR THIRD PARTY IMPROPERLY ASSESSED A PENALTY UNDER THIS ACT and
8 who paid the contributions OR PENALTY under protest within 30
9 days after the mailing of the notice of determination of assess-
10 ment, may recover the amount improperly collected or paid,
11 together with interest, in any proper action against the
12 commission. The circuit court of the county in which the
13 employer or employing unit OR CLAIMANT OR THIRD PARTY resides,
14 or, IN THE CASE OF AN EMPLOYER OR EMPLOYING UNIT, in which is
15 located the principal office or place of business of the employer
16 or employing unit, shall have original jurisdiction of an action
17 to recover contributions improperly paid or collected OR A PEN-
18 ALTY IMPROPERLY ASSESSED whether or not the charge or assessment
19 has been reviewed by the commission or heard or reviewed by a
20 referee or the appeal board. The court shall not have jurisdic-
21 tion of the action unless written notice of claim is given to the
22 commission at least 30 days before the institution of the
23 action. In an action to recover contributions paid or collected
24 OR PENALTIES ASSESSED, the court shall allow costs to such an
25 extent and in a manner as it may consider proper. Either party
26 to the action shall have the right of appeal, as is now provided
27 by law, in other civil actions. AN ACTION BY A CLAIMANT OR THIRD

1 PARTY AGAINST THE COMMISSION UNDER THIS SUBSECTION SHALL BE
2 BROUGHT ONLY TO RECOVER PENALTIES AND INTEREST ON THOSE PENALTIES
3 IMPROPERLY ASSESSED BY THE COMMISSION UNDER SECTION 54(A) OR (B)
4 OR SECTIONS 54A TO 54C. If a final judgment is rendered in favor
5 of the plaintiff in an action to recover the amount of contribu-
6 tions illegally collected or charged, the treasurer of the com-
7 mission, upon receipt of a certified copy of the final judgment,
8 shall pay the amount of contributions illegally collected or
9 charged OR PENALTIES ASSESSED from the clearing account, and pay
10 interest as may be allowed by the court, in an amount not to
11 exceed the actual earnings of the contributions as may have been
12 found to have been illegally collected or charged, from the con-
13 tingent fund.

14 (e) Except for liens and encumbrances recorded before the
15 filing of the notice provided for in this section, all contribu-
16 tions, interest, and penalties payable under this act to the com-
17 mission from an ~~employing unit which~~ EMPLOYER, CLAIMANT, OR
18 THIRD PARTY THAT neglects to pay the same when due shall be a
19 first and prior lien upon all property and rights to property,
20 real and personal, belonging to the ~~employing unit~~ EMPLOYER,
21 CLAIMANT, OR THIRD PARTY. The lien shall continue until the
22 liability for ~~the~~ THAT amount ~~thereof~~ or a judgment arising
23 out of the liability is satisfied or becomes unenforceable by
24 reason of lapse of time. The lien shall attach to the ~~employing~~
25 ~~unit's~~ property and rights to property OF THE EMPLOYER, CLAIM-
26 ANT, OR THIRD PARTY, whether real or personal, from and after the
27 date that a report upon which the specific tax is computed is

1 required by this act to be filed. Notice of the lien shall be
2 recorded in the office of the register of deeds of the county in
3 which the property subject to the lien is situated, and the reg-
4 ister of deeds shall receive the notice for recording. THIS SUB-
5 SECTION SHALL APPLY ONLY TO PENALTIES AND INTEREST ON THOSE PEN-
6 ALTIES ASSESSED BY THE COMMISSION AGAINST A CLAIMANT OR THIRD
7 PARTY FOR VIOLATIONS OF SECTION 54(A) OR (B) OR SECTIONS 54A TO
8 54C.

9 If there is a distribution of an employer's assets pursuant
10 to an order of a court under the laws of this state, including a
11 receivership, assignment for benefit of creditors, adjudicated
12 insolvency, composition, or similar proceedings, contributions
13 then or thereafter due shall be paid in full before all other
14 claims except for wages and compensation under the worker's dis-
15 ability compensation act of 1969, Act No. 317 of the Public Acts
16 of 1969, being sections 418.101 to 418.941 of the Michigan
17 Compiled Laws. In the distribution of estates of decedents,
18 claims for funeral expenses and expenses of last sickness shall
19 also be entitled to priority.

20 (f) An injunction shall not issue to stay proceedings for
21 assessment or collection of contributions, or interest or penalty
22 on contributions, levied and required by this act.

23 (g) A person or employing unit, which acquires the organi-
24 zation, trade, business, or 75% or more of the assets from an
25 employing unit, as a successor defined in section 41(2), shall be
26 liable for contributions and interest due to the commission from
27 the transferor at the time of the acquisition in an amount not to

1 exceed the reasonable value of the organization, trade, business,
2 or assets acquired, less the amount of a secured interest in the
3 assets owned by the transferee which are entitled to priority.
4 The transferor or transferee who has, not less than 10 days
5 before the acquisition, requested from the commission in writing
6 a statement certifying the status of contribution liability of
7 the transferor shall be provided with that statement and the
8 transferee shall not be liable for any amount due from the trans-
9 feror in excess of the amount of liability computed as prescribed
10 in this subsection and certified by the commission. At least 2
11 calendar days not including a Saturday, Sunday, or legal holiday
12 before the acceptance of an offer, the transferor, or the
13 transferor's real estate broker or other agent representing the
14 transferor, shall disclose to the transferee on a form provided
15 by the commission, the amounts of the transferor's outstanding
16 unemployment tax liability, unreported unemployment tax liabili-
17 ty, and the tax payments, tax rates, and cumulative benefit
18 charges for the most recent 5 years, a listing of all individuals
19 currently employed by the transferor, and a listing of all
20 employees separated from employment with the transferor in the
21 most recent 12 months. This form shall specify such other infor-
22 mation, as determined by the commission, as would be required for
23 a transferee to estimate future unemployment compensation costs
24 based on the transferor's benefit charge and tax reporting and
25 payment experience with the commission. Failure of the transfer-
26 or, or the transferor's real estate broker or other agent
27 representing the transferor, to provide accurate information

1 required by this subsection shall be a misdemeanor punishable by
2 imprisonment for not more than 90 days, or a fine of not more
3 than \$2,500.00, or both. In addition, the transferor, or the
4 transferor's real estate broker or other agent representing the
5 transferor, shall be liable to the transferee for any consequen-
6 tial damages resulting from the failure to comply with this
7 subsection. However, the real estate broker or other agent shall
8 not be liable for consequential damages if he or she exercised
9 good faith in compliance with the disclosure of information. The
10 remedy provided the transferee is not exclusive, and shall not be
11 construed to reduce any other right or remedy against any party
12 provided for in this or any other act. Nothing in this subsec-
13 tion shall be construed to decrease the liability of the trans-
14 feree as a successor in interest, or to prevent the transfer of a
15 rating account balance as provided in this act. The foregoing
16 provisions are in addition to the remedies the commission has
17 against the transferor.

18 (h) If a part of a deficiency in payment of the employer's
19 contribution to the fund is due to negligence or intentional dis-
20 regard of the rules of the commission, but without intention to
21 defraud, 5% of the total amount of the deficiency, in addition to
22 the deficiency and in addition to all other interest charges and
23 penalties provided herein, shall be assessed, collected, and paid
24 in the same manner as if it were a deficiency. If a part of a
25 deficiency is determined in an action at law to be due to fraud
26 with intent to avoid payment of contributions to the fund, then
27 the judgment rendered shall include an amount equal to 50% of the

1 total amount of the deficiency, in addition to the deficiency and
2 in addition to all other interest charges and penalties provided
3 herein.

4 (i) If an employing unit fails to make a report as reason-
5 ably required by the rules of the commission pursuant to this
6 act, the commission may make an estimate of the liability of that
7 employing unit from information it may obtain and, according to
8 that estimate so made, assess the employing unit for the contri-
9 butions, penalties, and interest due. The commission shall have
10 the power only after a default continues for 30 days and after
11 the commission has determined that the default of the employing
12 unit is willful.

13 (j) An assessment or penalty with respect to contributions
14 unpaid shall not be effective for any period before the 3 calen-
15 dar years preceding the date of the assessment.

16 (k) The rights respecting the collection of contributions
17 and the levy of interest and penalties and damages made available
18 to the commission by this section shall be considered additional
19 to other powers and rights vested in the commission in pursuance
20 of the other provisions of this act. The commission shall not be
21 precluded from exercising any of the collection remedies provided
22 for by this act even though an application for a redetermination
23 or an appeal is pending final disposition.

24 (l) A person recording a lien provided for in this section
25 shall pay a fee of \$2.00 for recording a lien and a fee of \$2.00
26 for recording a discharge of a lien.

1 Section 2. This amendatory act shall not take effect unless
2 all of the following bills of the 85th Legislature are enacted
3 into law:

4 (a) Senate Bill No. 1159 or House Bill No. _____ (request
5 no. 06231'90)

6 (b) Senate Bill No. 1160 or House Bill No. _____ (request
7 no. 06232'90)

8 (c) Senate Bill No. _____ or House Bill No. 6289 (request
9 no. 06233'90)

10 (d) Senate Bill No. _____ or House Bill No. 6290 (request
11 no. 06234'90)

12 (e) Senate Bill No. 1161 or House Bill No. _____ (request
13 no. 06236'90)

14 (f) Senate Bill No. _____ or House Bill No. 6292 (request
15 no. 06237'90)