

# HOUSE BILL No. 4269

February 15, 1991, Introduced by Reps. Murphy, DeLange, Martin, Niederstadt, Perry Bullard 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, EMPLOYEE OF THE COMMISSION, OR THIRD PARTY who fails to  
17 pay contributions, reimbursement payments in lieu of contribu-  
18 tions, penalties, forfeitures, or interest as required by this  
19 act. The commission shall immediately notify the employer,  
20 CLAIMANT, EMPLOYEE OF THE COMMISSION, OR THIRD PARTY of the  
21 assessment in writing by certified or registered mail, return  
22 receipt demanded. AN ASSESSMENT BY THE COMMISSION AGAINST A  
23 CLAIMANT, AN EMPLOYEE OF THE COMMISSION, OR A THIRD PARTY UNDER  
24 THIS SUBSECTION SHALL BE MADE ONLY FOR PENALTIES AND INTEREST ON  
25 THOSE PENALTIES FOR VIOLATIONS OF SECTION 54(A) OR (B) OR  
26 SECTIONS 54A TO 54C. The assessment, which shall constitute a  
27 determination, shall be final unless the employer, CLAIMANT,

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

1 commission shall proceed upon the warrant in all respects and  
2 with like effect and in the same manner as prescribed by law in  
3 respect to executions issued against property upon judgments by a  
4 court of record. The state, through the commission or some other  
5 officer or agent designated by it, may bid for and purchase prop-  
6 erty sold under the provisions of this subsection. If ~~a person~~  
7 ~~or employing unit~~ AN EMPLOYER, CLAIMANT, EMPLOYEE OF THE COMMIS-  
8 SION, OR THIRD PARTY, AS APPLICABLE, is delinquent in the payment  
9 of a contribution, reimbursement payment in lieu of contribution,  
10 penalty, forfeiture, or interest provided for in this act, the  
11 commission may give notice of the amount of the delinquency  
12 served either personally or by registered mail, to a person or  
13 legal entity, including the state and its subdivisions, which has  
14 in possession or under control a credit or other intangible prop-  
15 erty belonging to the ~~delinquent person or employing unit~~  
16 EMPLOYER, CLAIMANT, EMPLOYEE OF THE COMMISSION, OR THIRD PARTY,  
17 or who owes a debt to the ~~delinquent person or employing unit~~  
18 EMPLOYER, CLAIMANT, EMPLOYEE OF THE COMMISSION, OR THIRD PARTY at  
19 the time of the receipt of the notice. A person or legal entity  
20 so notified shall not transfer or make a disposition of the  
21 credit, other intangible property or debt without retaining an  
22 amount sufficient to pay the amount specified in the notice  
23 unless the commission consents to a transfer or disposition or 45  
24 days have elapsed from the receipt of the notice. A person or  
25 legal entity so notified shall advise the commission within 5  
26 days after receipt of the notice of a credit, other intangible  
27 property or debt, which is in its possession, under its control

1 or owed by it. A person or legal entity which is notified and  
2 which transfers or disposes of credits or personal property in  
3 violation of this section shall be liable to the commission for  
4 the value of the property or the amount of the debts thus trans-  
5 ferred or paid, but not more than the amount specified in the  
6 notice. An amount due a delinquent employer, CLAIMANT, EMPLOYEE  
7 OF THE COMMISSION, OR THIRD PARTY subject to a notice to withhold  
8 shall be paid to the commission upon service upon the debtor of a  
9 warrant issued under this section.

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

1 contributions and an execution on that judgment is returned  
2 unsatisfied, the employer may be enjoined from operating and  
3 doing business in this state until the judgment is satisfied.  
4 The circuit court of the county in which the judgment is docketed  
5 or the circuit court for the county of Ingham may grant an  
6 injunction upon the petition of the commission. A copy of the  
7 petition for injunction and a notice of when and where the court  
8 shall act on the petition shall be served on the employer at  
9 least 21 days before the court may grant the injunction.

10 (d) An employer or employing unit improperly charged or  
11 assessed contributions provided for under this act OR A CLAIMANT,  
12 EMPLOYEE OF THE COMMISSION, OR THIRD PARTY IMPROPERLY ASSESSED A  
13 PENALTY UNDER THIS ACT and who paid the contributions OR PENALTY  
14 under protest within 30 days after the mailing of the notice of  
15 determination of assessment, may recover the amount improperly  
16 collected or paid, together with interest, in any proper action  
17 against the commission. The circuit court of the county in which  
18 the employer or employing unit OR CLAIMANT, EMPLOYEE OF THE COM-  
19 MISSION, OR THIRD PARTY resides, or, IN THE CASE OF AN EMPLOYER  
20 OR EMPLOYING UNIT, in which is located the principal office or  
21 place of business of the employer or employing unit, shall have  
22 original jurisdiction of an action to recover contributions  
23 improperly paid or collected OR A PENALTY IMPROPERLY ASSESSED  
24 whether or not the charge or assessment has been reviewed by the  
25 commission or heard or reviewed by a referee or the appeal  
26 board. The court shall not have jurisdiction of the action  
27 unless written notice of claim is given to the commission at

1 least 30 days before the institution of the action. In an action  
2 to recover contributions paid or collected OR PENALTIES ASSESSED,  
3 the court shall allow costs to such an extent and in a manner as  
4 it may consider proper. Either party to the action shall have  
5 the right of appeal, as is now provided by law, in other civil  
6 actions. AN ACTION BY A CLAIMANT, EMPLOYEE OF THE COMMISSION, OR  
7 THIRD PARTY AGAINST THE COMMISSION UNDER THIS SUBSECTION SHALL BE  
8 BROUGHT ONLY TO RECOVER PENALTIES AND INTEREST ON THOSE PENALTIES  
9 IMPROPERLY ASSESSED BY THE COMMISSION UNDER SECTION 54(A) OR (B)  
10 OR SECTIONS 54A TO 54C. If a final judgment is rendered in favor  
11 of the plaintiff in an action to recover the amount of contribu-  
12 tions illegally collected or charged, the treasurer of the com-  
13 mission, upon receipt of a certified copy of the final judgment,  
14 shall pay the amount of contributions illegally collected or  
15 charged OR PENALTIES ASSESSED from the clearing account, and pay  
16 interest as may be allowed by the court, in an amount not to  
17 exceed the actual earnings of the contributions as may have been  
18 found to have been illegally collected or charged, from the con-  
19 tingent fund.

20 (e) Except for liens and encumbrances recorded before the  
21 filing of the notice provided for in this section, all contribu-  
22 tions, interest, and penalties payable under this act to the com-  
23 mission from an ~~employing unit which~~ EMPLOYER, CLAIMANT,  
24 EMPLOYEE OF THE COMMISSION, OR THIRD PARTY THAT neglects to pay  
25 the same when due shall be a first and prior lien upon all prop-  
26 erty and rights to property, real and personal, belonging to the  
27 ~~employing unit~~ EMPLOYER, CLAIMANT, EMPLOYEE OF THE COMMISSION,

1 OR THIRD PARTY. The lien shall continue until the liability for  
2 ~~the~~ THAT amount ~~thereof~~ or a judgment arising out of the  
3 liability is satisfied or becomes unenforceable by reason of  
4 lapse of time. The lien shall attach to the ~~employing unit's~~  
5 property and rights to property OF THE EMPLOYER, CLAIMANT,  
6 EMPLOYEE OF THE COMMISSION, OR THIRD PARTY, whether real or per-  
7 sonal, from and after the date that a report upon which the spe-  
8 cific tax is computed is required by this act to be filed.  
9 Notice of the lien shall be recorded in the office of the regis-  
10 ter of deeds of the county in which the property subject to the  
11 lien is situated, and the register of deeds shall receive the  
12 notice for recording. THIS SUBSECTION SHALL APPLY ONLY TO PENAL-  
13 TIES AND INTEREST ON THOSE PENALTIES ASSESSED BY THE COMMISSION  
14 AGAINST A CLAIMANT, EMPLOYEE OF THE COMMISSION, OR THIRD PARTY  
15 FOR VIOLATIONS OF SECTION 54(A) OR (B) OR SECTIONS 54A TO 54C.  
16 If there is a distribution of an employer's assets pursuant  
17 to an order of a court under the laws of this state, including a  
18 receivership, assignment for benefit of creditors, adjudicated  
19 insolvency, composition, or similar proceedings, contributions  
20 then or thereafter due shall be paid in full before all other  
21 claims except for wages and compensation under the worker's dis-  
22 ability compensation act of 1969, Act No. 317 of the Public Acts  
23 of 1969, being sections 418.101 to 418.941 of the Michigan  
24 Compiled Laws. In the distribution of estates of decedents,  
25 claims for funeral expenses and expenses of last sickness shall  
26 also be entitled to priority.



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

4 (g) A person or employing unit, which acquires the organi-  
5 zation, trade, business, or 75% or more of the assets from an  
6 employing unit, as a successor defined in section 41(2), shall be  
7 liable for contributions and interest due to the commission from  
8 the transferor at the time of the acquisition in an amount not to  
9 exceed the reasonable value of the organization, trade, business,  
10 or assets acquired, less the amount of a secured interest in the  
11 assets owned by the transferee which are entitled to priority.  
12 The transferor or transferee who has, not less than 10 days  
13 before the acquisition, requested from the commission in writing  
14 a statement certifying the status of contribution liability of  
15 the transferor shall be provided with that statement and the  
16 transferee shall not be liable for any amount due from the trans-  
17 feror in excess of the amount of liability computed as prescribed  
18 in this subsection and certified by the commission. At least 2  
19 calendar days not including a Saturday, Sunday, or legal holiday  
20 before the acceptance of an offer, the transferor, or the  
21 transferor's real estate broker or other agent representing the  
22 transferor, shall disclose to the transferee on a form provided  
23 by the commission, the amounts of the transferor's outstanding  
24 unemployment tax liability, unreported unemployment tax liabili-  
25 ty, and the tax payments, tax rates, and cumulative benefit  
26 charges for the most recent 5 years, a listing of all individuals  
27 currently employed by the transferor, and a listing of all

1 employees separated from employment with the transferor in the  
2 most recent 12 months. This form shall specify such other infor-  
3 mation, as determined by the commission, as would be required for  
4 a transferee to estimate future unemployment compensation costs  
5 based on the transferor's benefit charge and tax reporting and  
6 payment experience with the commission. Failure of the transfer-  
7 or, or the transferor's real estate broker or other agent repre-  
8 senting the transferor, to provide accurate information required  
9 by this subsection shall be a misdemeanor punishable by imprison-  
10 ment for not more than 90 days, or a fine of not more than  
11 \$2,500.00, or both. In addition, the transferor, or the  
12 transferor's real estate broker or other agent representing the  
13 transferor, shall be liable to the transferee for any consequen-  
14 tial damages resulting from the failure to comply with this  
15 subsection. However, the real estate broker or other agent shall  
16 not be liable for consequential damages if he or she exercised  
17 good faith in compliance with the disclosure of information. The  
18 remedy provided the transferee is not exclusive, and shall not be  
19 construed to reduce any other right or remedy against any party  
20 provided for in this or any other act. Nothing in this subsec-  
21 tion shall be construed to decrease the liability of the trans-  
22 feree as a successor in interest, or to prevent the transfer of a  
23 rating account balance as provided in this act. The foregoing  
24 provisions are in addition to the remedies the commission has  
25 against the transferor.

26 (h) If a part of a deficiency in payment of the employer's  
27 contribution to the fund is due to negligence or intentional

1 disregard of the rules of the commission, but without intention  
2 to defraud, 5% of the total amount of the deficiency, in addition  
3 to the deficiency and in addition to all other interest charges  
4 and penalties provided herein, shall be assessed, collected, and  
5 paid in the same manner as if it were a deficiency. If a part of  
6 a deficiency is determined in an action at law to be due to fraud  
7 with intent to avoid payment of contributions to the fund, then  
8 the judgment rendered shall include an amount equal to 50% of the  
9 total amount of the deficiency, in addition to the deficiency and  
10 in addition to all other interest charges and penalties provided  
11 herein.

12 (i) If an employing unit fails to make a report as reason-  
13 ably required by the rules of the commission pursuant to this  
14 act, the commission may make an estimate of the liability of that  
15 employing unit from information it may obtain and, according to  
16 that estimate so made, assess the employing unit for the contri-  
17 butions, penalties, and interest due. The commission shall have  
18 the power only after a default continues for 30 days and after  
19 the commission has determined that the default of the employing  
20 unit is willful.

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

24 (k) The rights respecting the collection of contributions  
25 and the levy of interest and penalties and damages made available  
26 to the commission by this section shall be considered additional  
27 to other powers and rights vested in the commission in pursuance

1 of the other provisions of this act. The commission shall not be  
2 precluded from exercising any of the collection remedies provided  
3 for by this act even though an application for a redetermination  
4 or an appeal is pending final disposition.

5 (4) A person recording a lien provided for in this section  
6 shall pay a fee of \$2.00 for recording a lien and a fee of \$2.00  
7 for recording a discharge of a lien.

8 Section 2. This amendatory act shall take effect April 1,  
9 1992.

10 Section 3. This amendatory act shall not take effect unless  
11 all of the following bills of the 86th Legislature are enacted  
12 into law:

13 (a) Senate Bill No. \_\_\_\_\_ or House Bill No. 4271 (request  
14 no. 00940'91).

15 (b) Senate Bill No. \_\_\_\_\_ or House Bill No. \_\_\_\_\_ (request  
16 no. 00941'91).

17 (c) Senate Bill No. \_\_\_\_\_ or House Bill No. \_\_\_\_\_ (request  
18 no. 00943'91).

19 (d) Senate Bill No. \_\_\_\_\_ or House Bill No. \_\_\_\_\_ (request  
20 no. 00944'91).

21 (e) Senate Bill No. \_\_\_\_\_ or House Bill No. \_\_\_\_\_ (request  
22 no. 00945'91).

23 (f) Senate Bill No. \_\_\_\_\_ or House Bill No. 4270 (request  
24 no. 00951'91).