

Act No. 296
Public Acts of 1993
Approved by the Governor
December 23, 1993
Filed with the Secretary of State
December 28, 1993

**STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1993**

Introduced by Reps. Whyman, Goschka, Hill, Vorva, DeLange, Galloway, Kukuk, Gnodtke, Shugars, Horton, Bodem and Cropsey
Reps. Alley, Bandstra, Bullard, Byrum, Clack, Curtis, Dobb, Gagliardi, Gernaat, Hammerstrom, Harder, Jacobetti, Jersevic, Llewellyn, Lowe, Martin, McBryde, McManus, McNutt, Middaugh, Middleton, Olshove, Profit, Scott, Sikkema, Voorhees and Wetters named co-sponsors

ENROLLED HOUSE BILL No. 4804

AN ACT to amend section 18 of Act No. 1 of the Public Acts of the Extra Session of 1936, entitled as amended "An act to protect the welfare of the people of this state through the establishment of an unemployment compensation fund, and to provide for the disbursement thereof; to create certain other funds; to create the Michigan employment security commission, and to prescribe its powers and duties; to provide for the protection of the people of this state from the hazards of unemployment; to levy and provide for contributions from employers; to provide for the collection of such contributions; to enter into reciprocal agreements and to cooperate with agencies of the United States and of other states charged with the administration of any unemployment insurance law; to furnish certain information to certain governmental agencies for use in administering public benefit and child support programs and investigating and prosecuting fraud; to provide for the payment of benefits; to provide for appeals from redeterminations, decisions and notices of assessments; and for referees and a board of review to hear and decide the issues arising from redeterminations, decisions and notices of assessment; to provide for the cooperation of this state and compliance with the provisions of the social security act and the Wagner-Peyser act passed by the Congress of the United States of America; to provide for the establishment and maintenance of free public employment offices; to provide for the transfer of funds; to make appropriations for carrying out the provisions of this act; to prescribe remedies and penalties for the violation of the provisions of this act; and to repeal all acts and parts of acts inconsistent with the provisions of this act," as amended by Act No. 164 of the Public Acts of 1983, being section 421.18 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Section 18 of Act No. 1 of the Public Acts of the Extra Session of 1936, as amended by Act No. 164 of the Public Acts of 1983, being section 421.18 of the Michigan Compiled Laws, is amended to read follows:

Sec. 18. As used in this act:

(a) "Computation date" means June 30 of each year.

(b) "Balance" means:

(1) As applied to an employer's experience account or to the nonchargeable benefits account, the initial balance of that account plus the credits and minus the charges that are made in accordance with this act. A "negative balance" in an experience account exists when its balance is a minus quantity.

(2) As applied to the fund, the sum obtained by adding the total money received by the fund through the date in question plus interest earnings credited to the fund by the United States treasury as of or before that date, and subtracting:

(i) Amounts received by the fund from the federal government as advances to pay benefits under a federal act but not used as yet for that purpose.

(ii) Advances made to the fund by the federal government under section 1201 of the social security act, 42 U.S.C. 1321, that have not been repaid to, canceled, or recovered by the federal government.

(iii) Amounts that may have been appropriated by the legislature in accordance with section 903(c)(2) of the social security act, 42 U.S.C. 1103(c)(2).

(iv) All disbursements from the fund.

(c) "Adjusted balance", as applied to the nonchargeable benefits account, means the balance of that account minus its contingent liabilities, namely, the amount of advances made to the fund by the federal government under section 1201 of the social security act, 42 U.S.C. 1321, that have not been repaid to, canceled, or recovered by the federal government, and the total amount of negative balances in employer experience accounts.

(d) (1) The "experience component" of an employer's contribution rate means the sum of the employer's chargeable benefits and account building components.

(2) If at least 1 but fewer than all of the applicable quarterly reports of wages and contributions due with respect to the 12-month period ending on the computation date have been filed by an employer, the employer's experience component shall be set so that his or her contribution rate for the calendar year affected shall be the rate set in accordance with section 19(a), and in addition a penalty of 3% of wages paid to an individual with respect to employment, subject to the taxable wage limit, shall be imposed on the employer. The commission shall calculate the rate using the information filed by the employer for the quarter or quarters reported. If none of the applicable quarterly reports of wages and contributions due with respect to the 12-month period ending on the computation date have been filed by an employer, the employer's experience component shall be set so that the employer's contribution rate for the calendar year affected shall be not less than the highest rate applicable to the number of years of the employer's contribution liability in accordance with section 19(a), and in addition a penalty of 3% of wages paid to an individual with respect to employment, subject to the taxable wage limit, shall be imposed on the employer. An employer whose contribution rate and penalty have been determined under this section may have his or her contribution rate redetermined in accordance with section 19(a) and may have his or her penalty redetermined and removed if the employer files all of the missing reports not later than 30 days after the date of mailing of the notice of determination of contribution rate. An employer who files all of the missing reports after the 30 days but not later than 1 year after the date of mailing of the determination of contribution rate and penalty shall have his or her contribution rate redetermined in accordance with section 19(a) and shall have his or her penalty redetermined to 2%. However, if the commission finds that the employer had good cause for filing the missing reports after the 30-day period but within 1 year, the commission shall redetermine the employer's contribution rate in accordance with section 19(a) and shall redetermine and remove the penalty. The commission may by rule prescribe good cause reasons for removing the penalty. Notwithstanding section 32a, if the employer files all of the missing reports after 1 year, good cause shall not be considered, but the employer's contribution rate shall be redetermined in accordance with section 19(a) and the employer's penalty shall remain at 3%. A penalty paid by an employer pursuant to this section shall not be credited to the employer's experience account nor to the unemployment compensation fund. The penalty shall be credited to the interest and penalty account of the contingent fund. A contribution rate for a tax year may not be redetermined under this subsection if the missing reports for that year are received more than 3 years after the rate determination for the year is issued with respect to taxable years beginning on or after January 1, 1991.

(e) (1) "Cost criterion" means the number arrived at as of each computation date through the following calculations:

(i) With respect to each period of 12 consecutive months starting after 1956, calculate the percentage ratio of the benefits paid during the 12 months to the aggregate amount of the payrolls paid by employers within the most recent calendar year completed before the start of the 12-month period.

(ii) Select the largest percentage ratio, which is referred to as the "cost criterion", to be used as of that computation date.

(2) For purposes of this subsection, "benefits" do not include benefits paid under a federal law or that are reimbursable or have been reimbursed by the federal government, and "payroll" does not include remuneration paid by this state and other employers who make reimbursement payments instead of contributions.

(f) "Payroll" means remuneration paid by a contributing employer for employment.

(g) Notwithstanding the definition of "balance" as applied to the fund and of "adjusted balance" as applied to the nonchargeable benefits account by subsections (b) and (c), if the federal unemployment tax act, 26 U.S.C. 3301 to 3311 or the social security act, 42 U.S.C. 301 to 1397e, is amended to cancel the liability of employers in this state to pay additional federal unemployment taxes under the reduced credit provisions of section 3302(c) of the federal unemployment tax act, 26 U.S.C. 3302(c), otherwise applicable to the then unpaid balance of money advanced to the

Michigan unemployment fund since 1974, the amount of that part of the unpaid balance shall be included in the balance of the unemployment fund and in the adjusted balance of the nonchargeable benefits account.

Section 2. This amendatory act shall take effect December 31, 1993.

This act is ordered to take immediate effect.

Co-Clerk of the House of Representatives.

Secretary of the Senate.

Approved -----

Governor.