



HOUSE BILL No. 6160

September 25, 1996, Introduced by Reps. Byl, Jellema, Perricone and Ryan and referred to the Committee on Human Resources and Labor.

A bill to amend sections 15 and 24 of Act No. 1 of the Public Acts of the Extra Session of 1936, entitled as amended "Michigan employment security act," section 15 as amended by Act No. 7 of the Public Acts of 1991 and section 24 as amended by Act No. 164 of the Public Acts of 1983, being sections 421.15 and 421.24 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 15 and 24 of Act No. 1 of the Public
2 Acts of the Extra Session of 1936, section 15 as amended by Act
3 No. 7 of the Public Acts of 1991 and section 24 as amended by Act
4 No. 164 of the Public Acts of 1983, being sections 421.15 and
5 421.24 of the Michigan Compiled Laws, are amended to read as
6 follows:

7 Sec. 15. (a) Contributions unpaid on the date on which they
8 are due and payable, as prescribed by the commission, shall bear

1 interest at the rate of 1% per month, computed on a day to day
2 basis for each day the delinquency is unpaid, from and after that
3 date until payment plus accrued interest is received by the
4 commission. Amounts illegally obtained or previously withheld
5 from payment and damages that are recovered by the commission
6 under section 54(a) and (b) and sections 54a to 54c of this act
7 shall bear interest at the rate of 1% per month, computed on a
8 day-to-day basis for each day the amounts remain unpaid until
9 payment plus accrued interest is received by the commission. The
10 interest on unpaid contributions, exclusive of penalties, shall
11 not exceed 50% of the amount of contributions due at due date.
12 Interest and penalties collected pursuant to this section shall
13 be paid into the contingent fund. The commission may cancel any
14 interest and any penalty when it is shown that the failure to pay
15 on or before the last day on which the tax could have been paid
16 without interest and penalty was not the result of negligence,
17 intentional disregard of the rules of the commission, or fraud.

18 (b) The commission may make assessments against an employer,
19 claimant, employee of the commission, or third party who fails to
20 pay contributions, reimbursement payments in lieu of contribu-
21 tions, penalties, forfeitures, or interest as required by this
22 act. The commission shall immediately notify the employer,
23 claimant, employee of the commission, or third party of the
24 assessment in writing. ~~by certified or registered mail, return~~
25 ~~receipt demanded.~~ An assessment by the commission against a
26 claimant, an employee of the commission, or a third party under
27 this subsection shall be made only for penalties and interest on

1 those penalties for violations of section 54(a) or (b) or
2 sections 54a to 54c. The assessment, which shall constitute a
3 determination, shall be final unless the employer, claimant,
4 employee of the commission, or third party files with the commis-
5 sion an application for a redetermination of the assessment in
6 accordance with section 32a. A review by the commission or an
7 appeal to a referee or the appeal board on the assessment shall
8 not reopen a question concerning an employer's liability for con-
9 tributions or reimbursement payments in lieu of contributions,
10 unless the employer was not a party to the proceeding or decision
11 where the basis for the assessment was determined. An employer
12 may pay an assessment under protest and file an action to recover
13 the amount paid as provided under subsection (d). Unless an
14 assessment is paid within 15 days after it becomes final the com-
15 mission may issue a warrant under its official seal for the col-
16 lection of an amount required to be paid pursuant to the
17 assessment. The commission through its authorized employees,
18 under a warrant issued, may levy upon and sell the property of
19 the employer ~~which~~ THAT is used in connection with the
20 employer's business, or ~~which~~ THAT is subject to a notice to
21 withhold, found within the state, for the payment of the amount
22 of the contributions including penalties, interests, and the cost
23 of executing the warrant. Property of the employer used in con-
24 nection with the employer's business shall not be exempt from
25 levy under the warrant. Wages subject to a notice to withhold
26 shall be exempt to the extent the wages are exempt from
27 garnishment under the laws of this state. The warrant shall be

1 returned to the commission together with the money collected by
2 virtue of the warrant within the time specified in the warrant
3 which shall not be less than 20 ~~nor~~ OR more than 90 days after
4 the date of the warrant. The commission shall proceed upon the
5 warrant in all respects and with like effect and in the same
6 manner as prescribed by law in respect to executions issued
7 against property upon judgments by a court of record. The state,
8 through the commission or some other officer or agent designated
9 by it, may bid for and purchase property sold under the provi-
10 sions of this subsection. If an employer, claimant, employee of
11 the commission, or third party, as applicable, is delinquent in
12 the payment of a contribution, reimbursement payment in lieu of
13 contribution, penalty, forfeiture, or interest provided for in
14 this act, the commission may give notice of the amount of the
15 delinquency served either personally or by ~~registered~~ mail, to
16 a person or legal entity, including the state and its subdivi-
17 sions, ~~which~~ THAT has in possession or under control a credit
18 or other intangible property belonging to the employer, claimant,
19 employee of the commission, or third party, or who owes a debt to
20 the employer, claimant, employee of the commission, or third
21 party at the time of the receipt of the notice. A person or
22 legal entity so notified shall not transfer or make a disposition
23 of the credit, other intangible property, or debt without retain-
24 ing an amount sufficient to pay the amount specified in the
25 notice unless the commission consents to a transfer or disposi-
26 tion or 45 days have elapsed from the receipt of the notice. A
27 person or legal entity so notified shall advise the commission

1 within 5 days after receipt of the notice of a credit, other
2 intangible property, or debt, which is in its possession, under
3 its control, or owed by it. A person or legal entity ~~which~~
4 THAT is notified and ~~which~~ THAT transfers or disposes of cred-
5 its or personal property in violation of this section ~~shall be~~
6 IS liable to the commission for the value of the property or the
7 amount of the debts thus transferred or paid, but not more than
8 the amount specified in the notice. An amount due a delinquent
9 employer, claimant, employee of the commission, or third party
10 subject to a notice to withhold shall be paid to the commission
11 upon service upon the debtor of a warrant issued under this
12 section.

13 (c) In addition to the mode of collection provided in sub-
14 section (b), if, after due notice, an employer defaults in pay-
15 ment of contributions or interest on the contributions, or a
16 claimant, employee of the commission, or third party defaults in
17 the payment of a penalty or interest on a penalty, the commission
18 may bring an action at law in a court of competent jurisdiction
19 to collect and recover the amount of a contribution, and any
20 interest on the contribution, or the penalty or interest on the
21 penalty, and in addition 10% of the amount of contributions or
22 penalties found to be due, as damages. An employer, claimant,
23 employee of the commission, or third party adjudged in default
24 shall pay costs of the action. An action by the commission
25 against a claimant, employee of the commission, or third party
26 under this subsection shall be brought only to recover penalties
27 and interest on those penalties for violations of section 54(a)

1 or (b) or sections 54a to 54c. Civil actions brought under this
2 section shall be heard by the court at the earliest possible
3 date. ~~When~~ IF a judgment is obtained against an employer for
4 contributions and an execution on that judgment is returned
5 unsatisfied, the employer may be enjoined from operating and
6 doing business in this state until the judgment is satisfied.
7 The circuit court of the county in which the judgment is docketed
8 or the circuit court for the county of Ingham may grant an
9 injunction upon the petition of the commission. A copy of the
10 petition for injunction and a notice of when and where the court
11 shall act on the petition shall be served on the employer at
12 least 21 days before the court may grant the injunction.

13 (d) An employer or employing unit improperly charged or
14 assessed contributions provided for under this act or a claimant,
15 employee of the commission, or third party improperly assessed a
16 penalty under this act and who paid the contributions or penalty
17 under protest within 30 days after the mailing of the notice of
18 determination of assessment, may recover the amount improperly
19 collected or paid, together with interest, in any proper action
20 against the commission. The circuit court of the county in which
21 the employer or employing unit or claimant, employee of the com-
22 mission, or third party resides, or, in the case of an employer
23 or employing unit, in which is located the principal office or
24 place of business of the employer or employing unit, shall have
25 original jurisdiction of an action to recover contributions
26 improperly paid or collected or a penalty improperly assessed
27 whether or not the charge or assessment has been reviewed by the

1 commission or heard or reviewed by a referee or the appeal
2 board. The court shall not have jurisdiction of the action
3 unless written notice of claim is given to the commission at
4 least 30 days before the institution of the action. In an action
5 to recover contributions paid or collected or penalties assessed,
6 the court shall allow costs to such an extent and in a manner as
7 it may consider proper. Either party to the action shall have
8 the right of appeal, as is now provided by law, in other civil
9 actions. An action by a claimant, employee of the commission, or
10 third party against the commission under this subsection shall be
11 brought only to recover penalties and interest on those penalties
12 improperly assessed by the commission under section 54(a) or (b)
13 or sections 54a to 54c. If a final judgment is rendered in favor
14 of the plaintiff in an action to recover the amount of contribu-
15 tions illegally collected or charged, the treasurer of the com-
16 mission, upon receipt of a certified copy of the final judgment,
17 shall pay the amount of contributions illegally collected or
18 charged or penalties assessed from the clearing account, and pay
19 interest as may be allowed by the court, in an amount not to
20 exceed the actual earnings of the contributions as may have been
21 found to have been illegally collected or charged, from the con-
22 tingent fund.

23 (e) Except for liens and encumbrances recorded before the
24 filing of the notice provided for in this section, all contribu-
25 tions, interest, and penalties payable under this act to the com-
26 mission from an employer, claimant, employee of the commission,
27 or third party that neglects to pay the same when due shall be a

1 first and prior lien upon all property and rights to property,
2 real and personal, belonging to the employer, claimant, employee
3 of the commission, or third party. The lien shall continue until
4 the liability for that amount or a judgment arising out of the
5 liability is satisfied or becomes unenforceable by reason of
6 lapse of time. The lien shall attach to the property and rights
7 to property of the employer, claimant, employee of the commis-
8 sion, or third party, whether real or personal, from and after
9 the date that a report upon which the specific tax is computed is
10 required by this act to be filed. Notice of the lien shall be
11 recorded in the office of the register of deeds of the county in
12 which the property subject to the lien is situated, and the reg-
13 ister of deeds shall receive the notice for recording. This sub-
14 section shall apply only to penalties and interest on those pen-
15 alties assessed by the commission against a claimant, employee of
16 the commission, or third party for violations of section 54(a) or
17 (b) or sections 54a to 54c.

18 If there is a distribution of an employer's assets pursuant
19 to an order of a court under the laws of this state, including a
20 receivership, assignment for benefit of creditors, adjudicated
21 insolvency, composition, or similar proceedings, contributions
22 then or thereafter due shall be paid in full before all other
23 claims except for wages and compensation under the worker's dis-
24 ability compensation act of 1969, Act No. 317 of the Public Acts
25 of 1969, being sections 418.101 to 418.941 of the Michigan
26 Compiled Laws. In the distribution of estates of decedents,

1 claims for funeral expenses and expenses of last sickness shall
2 also be entitled to priority.

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

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

1 rates, and cumulative benefit charges for the most recent
2 5 years, a listing of all individuals currently employed by the
3 transferor, and a listing of all employees separated from employ-
4 ment with the transferor in the most recent 12 months. This form
5 shall specify such other information, as determined by the com-
6 mission, as would be required for a transferee to estimate future
7 unemployment compensation costs based on the transferor's benefit
8 charge and tax reporting and payment experience with the
9 commission. Failure of the transferor, or the transferor's real
10 estate broker or other agent representing the transferor, to pro-
11 vide accurate information required by this subsection ~~shall be~~
12 IS a misdemeanor punishable by imprisonment for not more than
13 90 days, or a fine of not more than \$2,500.00, or both. In addi-
14 tion, the transferor, or the transferor's real estate broker or
15 other agent representing the transferor, ~~shall be~~ IS liable to
16 the transferee for any consequential damages resulting from the
17 failure to comply with this subsection. However, the real estate
18 broker or other agent ~~shall~~ IS not ~~be~~ liable for consequen-
19 tial damages if he or she exercised good faith in compliance with
20 the disclosure of information. The remedy provided the trans-
21 feree is not exclusive, and ~~shall~~ IS not TO be construed to
22 reduce any other right or remedy against any party provided for
23 in this or any other act. Nothing in this subsection shall be
24 construed to decrease the liability of the transferee as a suc-
25 cessor in interest, or to prevent the transfer of a rating
26 account balance as provided in this act. The foregoing

1 provisions are in addition to the remedies the commission has
2 against the transferor.

3 (h) If a part of a deficiency in payment of the employer's
4 contribution to the fund is due to negligence or intentional dis-
5 regard of the rules of the commission, but without intention to
6 defraud, 5% of the total amount of the deficiency, in addition to
7 the deficiency and in addition to all other interest charges and
8 penalties provided herein, shall be assessed, collected, and paid
9 in the same manner as if it were a deficiency. If a part of a
10 deficiency is determined in an action at law to be due to fraud
11 with intent to avoid payment of contributions to the fund, then
12 the judgment rendered shall include an amount equal to 50% of the
13 total amount of the deficiency, in addition to the deficiency and
14 in addition to all other interest charges and penalties provided
15 herein.

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

25 (j) An assessment or penalty with respect to contributions
26 unpaid ~~shall~~ IS not ~~be~~ effective for any period before the 3
27 calendar years preceding the date of the assessment.

1 (k) The rights respecting the collection of contributions
2 and the levy of interest and penalties and damages made available
3 to the commission by this section ~~shall be considered~~ IS addi-
4 tional to other powers and rights vested in the commission in
5 pursuance of the other provisions of this act. The commission
6 ~~shall~~ IS not ~~be~~ precluded from exercising any of the collec-
7 tion remedies provided for by this act even though an application
8 for a redetermination or an appeal is pending final disposition.

9 (l) A person recording a lien provided for in this section
10 shall pay a fee of \$2.00 for recording a lien and a fee of \$2.00
11 for recording a discharge of a lien.

12 Sec. 24. Except as otherwise provided in section 25, an
13 employing unit shall cease to be an employer subject to this act
14 as provided in this section:

15 (a) If an employing unit ~~which~~ THAT became liable under
16 section 41 makes written application for termination of its cov-
17 erage under this act, the commission shall issue a determination
18 granting or denying the application. The commission shall grant
19 the application terminating coverage effective as of the last day
20 of the calendar quarter in which the application was received by
21 the commission if it finds that the employing unit did not meet
22 the applicable requirements of an employer specified in section
23 41 during the preceding calendar year and during the current cal-
24 endar year, up to the last day of the calendar quarter in which
25 the application was received. If the employing unit requesting
26 termination became an employer under section 41(2) in the
27 preceding calendar year, then the individuals in the employ of

1 any predecessor or predecessors in a chain of successorship shall
2 be considered as if they were employees of the requesting employ-
3 ing unit for the purpose of determining the number of weeks
4 during which 1 or more individuals performed services in employ-
5 ment and in determining total remuneration for employment during
6 the preceding calendar year. If an employing unit liable solely
7 under section 41(7) makes written application for termination of
8 its coverage under this act, the commission shall grant the
9 application terminating coverage effective as of the last day of
10 the calendar quarter in which the application was received by the
11 commission if it finds that the employing unit ceased to have
12 employment in Michigan during the calendar year preceding the
13 receipt of the application for termination and had no employment
14 in Michigan during the current calendar year, up to the last day
15 of the calendar quarter in which the application was received.
16 An employer whose application for termination of coverage is
17 denied may request a redetermination in accordance with section
18 32a.

19 (b) The commission shall terminate the coverage of an
20 employing unit as of the effective date on which the employing
21 unit's entire rating account is transferred to another employer
22 under section 22.

23 (c) (1) The commission may issue a determination terminating
24 the coverage of an employing unit as of January 1 of a calendar
25 year if it finds that the employing unit ceased to exist during
26 the preceding calendar year or met the requirements for
27 termination as specified in subdivision (a). The determination

1 shall be mailed ~~by certified or registered mail~~ to the last
2 known address of the employing unit involved.

3 (2) The commission may terminate the coverage of an employ-
4 ing unit as of January 1 of a previous calendar year with respect
5 to which it makes the foregoing findings, if the employing unit
6 has not been previously determined to have been an employer with
7 respect to that specific year.

8 (3) The commission shall rescind its determination terminat-
9 ing the coverage of an employing unit under this subsection if it
10 has received written objection to the determination from the
11 employing unit within 30 days after the date of mailing by the
12 commission.