

# HOUSE BILL No. 6318

November 4, 2004, Introduced by Reps. Drolet and Bieda and referred to the Committee on Employment Relations, Training and Safety.

A bill to amend 1936 (Ex Sess) PA 1, entitled  
"Michigan employment security act,"  
by amending section 15 (MCL 421.15), as amended by 1996 PA 498.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 15. (a) Contributions unpaid on the date on which they  
2 are due and payable, as prescribed by the ~~commission~~ **agency**,  
3 shall bear interest at the rate of 1% per month, computed on a  
4 day-to-day basis for each day the delinquency is unpaid, from and  
5 after that date until payment plus accrued interest is received  
6 by the ~~commission~~ **agency**. Amounts illegally obtained or  
7 previously withheld from payment and damages that are recovered  
8 by the ~~commission~~ **agency** under section 54(a) and (b) and  
9 sections 54a to 54c ~~of this act~~ shall bear interest at the rate  
10 of 1% per month, computed on a day-to-day basis for each day the  
11 amounts remain unpaid until payment plus accrued interest is

1 received by the ~~commission~~ **agency**. The interest on unpaid  
2 contributions, exclusive of penalties, shall not exceed 50% of  
3 the amount of contributions due at due date. Interest and  
4 penalties collected pursuant to this section shall be paid into  
5 the contingent fund. The ~~commission~~ **agency** may cancel any  
6 interest and any penalty when it is shown that the failure to pay  
7 on or before the last day on which the tax could have been paid  
8 without interest and penalty was not the result of negligence,  
9 intentional disregard of the rules of the ~~commission~~ **agency**, or  
10 fraud.

11 (b) The ~~commission~~ **agency** may make assessments against an  
12 employer, claimant, employee of the ~~commission~~ **agency**, or third  
13 party who fails to pay contributions, reimbursement payments in  
14 lieu of contributions, penalties, forfeitures, or interest as  
15 required by this act. The ~~commission~~ **agency** shall immediately  
16 notify the employer, claimant, employee of the ~~commission~~  
17 **agency**, or third party of the assessment in writing by  
18 first-class mail. An assessment by the ~~commission~~ **agency**  
19 against a claimant, an employee of the ~~commission~~ **agency**, or a  
20 third party under this subsection shall be made only for  
21 penalties and interest on those penalties for violations of  
22 section 54(a) or (b) or sections 54a to 54c. The assessment,  
23 which shall constitute a determination, shall be final unless the  
24 employer, claimant, employee of the ~~commission~~ **agency**, or third  
25 party files with the ~~commission~~ **agency** an application for a  
26 redetermination of the assessment in accordance with section  
27 32a. A review by the ~~commission~~ **agency** or an appeal to a

1 referee or the ~~appeal~~ board of review on the assessment shall  
2 not reopen a question concerning an employer's liability for  
3 contributions or reimbursement payments in lieu of contributions,  
4 unless the employer was not a party to the proceeding or decision  
5 where the basis for the assessment was determined. An employer  
6 may pay an assessment under protest and file an action to recover  
7 the amount paid as provided under subsection (d). Unless an  
8 assessment is paid within 15 days after it becomes final, the  
9 ~~commission~~ agency may issue a warrant under its official seal  
10 for the collection of an amount required to be paid pursuant to  
11 the assessment. The ~~commission~~ agency, through its authorized  
12 employees, under a warrant issued, may levy upon and sell the  
13 property of the employer that is used in connection with the  
14 employer's business, or that is subject to a notice to withhold,  
15 found within the state, for the payment of the amount of the  
16 contributions including penalties, interests, and the cost of  
17 executing the warrant. Property of the employer used in  
18 connection with the employer's business shall not be exempt from  
19 levy under the warrant. Wages subject to a notice to withhold  
20 shall be exempt to the extent the wages are exempt from  
21 garnishment under the laws of this state. The warrant shall be  
22 returned to the ~~commission~~ agency 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 or more than 90 days  
25 after the date of the warrant. The ~~commission~~ agency shall  
26 proceed upon the warrant in all respects and with like effect and  
27 in the same manner as prescribed by law in respect to executions

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

1 the ~~commission~~ **agency** for the value of the property or the  
2 amount of the debts thus transferred or paid, but not more than  
3 the amount specified in the notice. An amount due a delinquent  
4 employer, claimant, employee of the ~~commission~~ **agency**, or third  
5 party subject to a notice to withhold shall be paid to the  
6 ~~commission~~ **agency** upon service upon the debtor of a warrant  
7 issued under this section.

8 (c) In addition to the mode of collection provided in  
9 subsection (b), if, after due notice, an employer defaults in  
10 payment of contributions or interest on the contributions, or a  
11 claimant, employee of the ~~commission~~ **agency**, or third party  
12 defaults in the payment of a penalty or interest on a penalty,  
13 the ~~commission~~ **agency** may bring an action at law in a court of  
14 competent jurisdiction to collect and recover the amount of a  
15 contribution, and any interest on the contribution, or the  
16 penalty or interest on the penalty, and in addition 10% of the  
17 amount of contributions or penalties found to be due, as  
18 damages. An employer, claimant, employee of the ~~commission~~  
19 **agency**, or third party adjudged in default shall pay costs of the  
20 action. An action by the ~~commission~~ **agency** against a claimant,  
21 employee of the ~~commission~~ **agency**, or third party under this  
22 subsection shall be brought only to recover penalties and  
23 interest on those penalties for violations of section 54(a) or  
24 (b) or sections 54a to 54c. Civil actions brought under this  
25 section shall be heard by the court at the earliest possible  
26 date. If a judgment is obtained against an employer for  
27 contributions and an execution on that judgment is returned

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

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

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

21 (e) Except for liens and encumbrances recorded before the  
22 filing of the notice provided for in this section, all  
23 contributions, interest, and penalties payable under this act to  
24 the ~~commission~~ **agency** from an employer, claimant, employee of  
25 the ~~commission~~ **agency**, or third party that neglects to pay the  
26 same when due shall be a first and prior lien upon all property  
27 and rights to property, real and personal, belonging to the

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

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



1 priority.

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

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

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

1 in this act. The foregoing provisions are in addition to the  
2 remedies the ~~commission~~ **agency** has 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  
5 disregard of ~~the rules of the commission~~ **agency rules**, but  
6 without intention to defraud, 5% of the total amount of the  
7 deficiency, in addition to the deficiency and in addition to all  
8 other interest charges and penalties ~~provided herein~~ **under this**  
9 **act**, shall be assessed, collected, and paid in the same manner as  
10 ~~if it were~~ a deficiency. If a part of a deficiency is  
11 determined in an action at law to be due to fraud with intent to  
12 avoid payment of contributions to the fund, then the judgment  
13 rendered shall include an amount equal to 50% of the total amount  
14 of the deficiency, in addition to the deficiency and in addition  
15 to all other interest charges and penalties ~~provided herein~~  
16 **under this act**.

17 (i) If an employing unit fails to make a report as reasonably  
18 required by ~~the rules of the commission pursuant to this act~~  
19 **agency rules**, the ~~commission~~ **agency** may ~~make an~~ estimate ~~of~~  
20 the liability of that employing unit from information it ~~may~~  
21 ~~obtain~~ **obtains** and ~~, according to that estimate so made,~~  
22 assess the employing unit for the **estimated** contributions,  
23 penalties, and interest due. The ~~commission~~ **agency** shall ~~have~~  
24 ~~the power only after~~ **not assess an employing unit until a**  
25 default continues for 30 days and ~~after~~ the ~~commission~~ **agency**  
26 has determined that the default of the employing unit is  
27 willful.

1 (j) An assessment or penalty with respect to contributions  
 2 unpaid ~~is~~ **shall** not ~~effective~~ **be made or collected** for any  
 3 period before the 3 calendar years preceding the date of the  
 4 assessment.

5 (k) The rights respecting the collection of contributions and  
 6 the levy of interest and penalties and damages ~~made~~ available  
 7 to the ~~commission by~~ **agency under** this section ~~is additional~~  
 8 **are in addition** to other powers and rights vested in the  
 9 ~~commission~~ **agency** in ~~pursuance of the~~ other provisions of  
 10 this act. The ~~commission is not precluded from exercising~~  
 11 **agency may exercise** any of the collection remedies ~~provided for~~  
 12 ~~by~~ **under** this act even though an application for a  
 13 redetermination or an appeal is pending final disposition.

14 (l) A person recording a lien ~~provided for in~~ **under** this  
 15 section shall pay a fee of \$2.00 ~~for recording~~ **to record** a lien  
 16 and a fee of \$2.00 ~~for recording~~ **to record** a discharge of a  
 17 lien.

18 Enacting section 1. This amendatory act does not take  
 19 effect unless all of the following bills of the 92nd Legislature  
 20 are enacted into law:

21 (a) Senate Bill No. \_\_\_\_\_ or House Bill No. 6316  
 22 (request no. 07154'04).

23 (b) Senate Bill No. \_\_\_\_\_ or House Bill No. 6317  
 24 (request no. 07155'04).

25 (c) Senate Bill No. \_\_\_\_\_ or House Bill No. 6319  
 26 (request no. 07157'04).

27 (d) Senate Bill No. \_\_\_\_\_ or House Bill No. 6320

1 (request no. 07158'04).