

HOUSE BILL No. 4177

February 3, 2005, Introduced by Reps. Gonzales, Bieda, Farrah, Vagnozzi, Gleason, Condino, Murphy and Brown 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 day-
4 to- day basis for each day the delinquency is unpaid, from and
5 after that date until payment plus accrued interest is received by
6 the ~~commission~~ **AGENCY**. Amounts illegally obtained or previously
7 withheld from payment and damages that are recovered by the
8 ~~commission~~ **AGENCY** under section 54(a) and (b) and sections 54a to
9 54c ~~of this act~~ shall bear interest at the rate of 1% per month,

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

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

1 to a referee or the ~~appeal~~ board **OF REVIEW** on the assessment
2 shall 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 may
6 pay an assessment under protest and file an action to recover the
7 amount paid as provided under subsection (d). Unless an assessment
8 is paid within 15 days after it becomes final, the ~~commission~~
9 **AGENCY** may issue a warrant under its official seal for the
10 collection of an amount required to be paid pursuant to the
11 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 connection
18 with the employer's business shall not be exempt from levy under
19 the warrant. Wages subject to a notice to withhold shall be exempt
20 to the extent the wages are exempt from garnishment under the laws
21 of this state. The warrant shall be returned to the ~~commission~~
22 **AGENCY** together with the money collected by virtue of the warrant
23 within the time specified in the warrant which shall not be less
24 than 20 or more than 90 days after the date of the warrant. The
25 ~~commission~~ **AGENCY** shall proceed upon the warrant in all respects
26 and with like effect and in the same manner as prescribed by law in
27 respect to executions issued against property upon judgments by a

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

1 amount specified in the notice. An amount due a delinquent
2 employer, claimant, employee of the ~~commission~~ **AGENCY**, or third
3 party subject to a notice to withhold shall be paid to the
4 ~~commission~~ **AGENCY** upon service upon the debtor of a warrant issued
5 under this section.

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

1 docketed or the circuit court for the county of Ingham may grant an
2 injunction upon the petition of the ~~commission~~ **AGENCY**. A copy of
3 the petition for injunction and a notice of when and where the
4 court shall act on the petition shall be served on the employer at
5 least 21 days before the court may grant the injunction.

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

1 party to the action ~~shall have~~ **HAS** the right of appeal, as is now
2 provided by law, in other civil actions. An action by a claimant,
3 employee of the ~~commission~~ **AGENCY**, or third party against the
4 ~~commission~~ **AGENCY** under this subsection shall be brought only to
5 recover penalties and interest on those penalties improperly
6 assessed by the ~~commission~~ **AGENCY** under section 54(a) or (b) or
7 sections 54a to 54c. If a final judgment is rendered in favor of
8 the plaintiff in an action to recover the amount of contributions
9 illegally collected or charged, the ~~treasurer of the commission~~
10 **AGENCY**, upon receipt of a certified copy of the final judgment,
11 shall pay the amount of contributions illegally collected or
12 charged or penalties assessed from the clearing account, and pay
13 interest as may be allowed by the court, in an amount not to exceed
14 the actual earnings of the contributions as may have been found to
15 have been illegally collected or charged, from the contingent fund.

16 (e) Except for liens and encumbrances recorded before the
17 filing of the notice provided for in this section, all
18 contributions, interest, and penalties payable under this act to
19 the ~~commission~~ **AGENCY** from an employer, claimant, employee of the
20 ~~commission~~ **AGENCY**, or third party that neglects to pay the same
21 when due shall be a first and prior lien upon all property and
22 rights to property, real and personal, belonging to the employer,
23 claimant, employee of the ~~commission~~ **AGENCY**, or third party. The
24 lien shall continue until the liability for that amount or a
25 judgment arising out of the liability is satisfied or becomes
26 unenforceable by reason of lapse of time. The lien shall attach to
27 the property and rights to property of the employer, claimant,

1 employee of the ~~commission~~ **AGENCY**, or third party, whether real
2 or personal, from and after the date that a report upon which the
3 specific tax is computed is required by this act to be filed.
4 Notice of the lien shall be recorded in the office of the register
5 of deeds of the county in which the property subject to the lien is
6 situated, and the register of deeds shall receive the notice for
7 recording. This subsection shall apply only to penalties and
8 interest on those penalties assessed by the ~~commission~~ **AGENCY**
9 against a claimant, employee of the ~~commission~~ **AGENCY**, or third
10 party for violations of section 54(a) or (b) or sections 54a to
11 54c.

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

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

26 (g) A person or employing unit ~~—~~ that acquires ~~the~~
27 ~~organization, trade, business, or 75%~~ **10%** or more of the

1 **EMPLOYEES, PAYROLL, TRADE, INVENTORY, SERVICES, OR OTHER** assets
2 from an employing unit, as ~~a successor defined~~ **DESCRIBED** in
3 section 41(2), is liable for contributions and interest due to the
4 ~~commission~~ **AGENCY** from the transferor at the time of the
5 acquisition in an amount not to exceed the reasonable value of the
6 ~~organization, trade, business, or~~ **EMPLOYEES, PAYROLL, TRADE,**
7 **INVENTORY, SERVICES, OR OTHER** assets acquired, less the amount of a
8 secured interest in the assets owned by the transferee that are
9 entitled to priority. The transferor or transferee who has, not
10 less than 10 days before the acquisition, requested from the
11 ~~commission~~ **AGENCY** in writing a statement certifying the status of
12 contribution liability of the transferor shall be provided with
13 that statement and the transferee is not liable for any amount due
14 from the transferor in excess of the amount of liability computed
15 as prescribed in this subsection and certified by the ~~commission~~
16 **AGENCY**. At least 2 calendar days, not including a Saturday, Sunday,
17 or legal holiday, before the acceptance of an offer, the
18 transferor, or the transferor's real estate broker or other agent
19 representing the transferor, shall disclose to the transferee on a
20 form provided by the ~~commission~~ **AGENCY**, the amounts of the
21 transferor's outstanding unemployment tax liability, unreported
22 unemployment tax liability, and the tax payments, tax rates, and
23 cumulative benefit charges for the most recent 5 years, a listing
24 of all individuals currently employed by the transferor, and a
25 listing of all employees separated from employment with the
26 transferor in the most recent 12 months. This form shall specify
27 such other information, as determined by the ~~commission~~ **AGENCY**,

1 as would be required for a transferee to estimate future
2 unemployment compensation costs based on the transferor's benefit
3 charge and tax reporting and payment experience with the
4 ~~commission~~ **AGENCY**. Failure of the transferor, or the transferor's
5 real estate broker or other agent representing the transferor, to
6 provide accurate information required by this subsection is a
7 misdemeanor punishable by imprisonment for not more than 90 days —
8 or a fine of not more than \$2,500.00, or both. In addition, the
9 transferor, or the transferor's real estate broker or other agent
10 representing the transferor, is liable to the transferee for any
11 consequential damages resulting from the failure to comply with
12 this subsection. However, the real estate broker or other agent is
13 not liable for consequential damages if he or she exercised good
14 faith in compliance with the disclosure of information. The remedy
15 provided the transferee is not exclusive, and is not to be
16 construed to reduce any other right or remedy against any party
17 provided for in this or any other act. Nothing in this subsection
18 shall be construed to decrease the liability of the transferee as a
19 successor in interest — or to prevent the transfer of ~~a rating~~
20 **AN EXPERIENCE** account balance as provided in this act. The
21 foregoing provisions are in addition to the remedies the
22 ~~commission~~ **AGENCY** has against the transferor.

23 (h) If a part of a deficiency in payment of the employer's
24 contribution to the fund is due to negligence or intentional
25 disregard of ~~the rules of the commission~~ **AGENCY RULES**, but
26 without intention to defraud, 5% of the total amount of the
27 deficiency, in addition to the deficiency and in addition to all

1 other interest charges and penalties ~~provided herein~~ **UNDER THIS**
2 **ACT**, shall be assessed, collected, and paid in the same manner as
3 ~~if it were~~ a deficiency. If a part of a deficiency is determined
4 in an action at law to be due to fraud with intent to avoid payment
5 of contributions to the fund, then the judgment rendered shall
6 include an amount equal to 50% 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**.

10 (i) If an employing unit fails to make a report as reasonably
11 required by ~~the rules of the commission pursuant to this act~~
12 **AGENCY RULES**, the ~~commission~~ **AGENCY** may ~~make an~~ estimate ~~of~~
13 the liability of that employing unit from information it ~~may~~
14 ~~obtain~~ **OBTAINS** and ~~, according to that estimate so made,~~ assess
15 the employing unit for the **ESTIMATED** contributions, penalties, and
16 interest due. The ~~commission~~ **AGENCY** shall ~~have the power only~~
17 ~~after~~ **NOT ASSESS AN EMPLOYING UNIT UNTIL** a default continues for
18 30 days and ~~after~~ the ~~commission~~ **AGENCY** has determined that the
19 default of the employing unit is willful.

20 (j) An assessment or penalty with respect to contributions
21 unpaid ~~is~~ **SHALL** not ~~effective~~ **BE MADE OR COLLECTED** for any
22 period before the 3 calendar years preceding the date of the
23 assessment.

24 (k) The rights respecting the collection of contributions and
25 the levy of interest and penalties and damages ~~made~~ available to
26 the ~~commission by~~ **AGENCY UNDER** this section ~~is additional~~ **ARE**
27 **IN ADDITION** to other powers and rights vested in the ~~commission~~

1 **AGENCY** in ~~pursuance of the~~ other provisions of this act. The
2 ~~commission is not precluded from exercising~~ **AGENCY MAY EXERCISE**
3 any of the collection remedies ~~provided for by~~ **UNDER** this act
4 even though an application for a redetermination or an appeal is
5 pending final disposition.

6 (l) A person recording a lien ~~provided for in~~ **UNDER** this
7 section shall pay a fee of \$2.00 ~~for recording~~ **TO RECORD** a lien
8 and a fee of \$2.00 ~~for recording~~ **TO RECORD** a discharge of a lien.

9 Enacting section 1. This amendatory act does not take effect
10 unless all of the following bills of the 93rd Legislature are
11 enacted into law:

12 (a) Senate Bill No.____ or House Bill No. 4174(request no.
13 01676'05).

14 (b) Senate Bill No.____ or House Bill No. 4175(request no.
15 01677'05).

16 (c) Senate Bill No.____ or House Bill No. 4176(request no.
17 01678'05).

18 (d) Senate Bill No.____ or House Bill No. 4178(request no.
19 01680'05).