

HOUSE BILL No. 5491

November 28, 2007, Introduced by Reps. Constan, Mayes and Valentine and referred to the Committee on Tax Policy.

A bill to amend 1936 (Ex Sess) PA 1, entitled
"Michigan employment security act,"
by amending section 19 (MCL 421.19), as amended by 2002 PA 192.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 19. (a) The commission shall determine the contribution
2 rate of each contributing employer for each calendar year after
3 1977 as follows:

4 (1) (i) Except as provided in paragraph (ii), an employer's
5 rate shall be calculated as described in table A with respect to
6 wages paid by the employer in each calendar year for employment.
7 If an employer's coverage is terminated under section 24, or at
8 the conclusion of 8 or more consecutive calendar quarters during

1 which the employer has not had workers in covered employment, and
2 if the employer becomes liable for contributions, the employer
3 shall be considered as newly liable for contributions for the
4 purposes of table A or table B of this subsection.

5 (ii) To provide against the high risk of net loss to the fund
6 in such cases, an employing unit that becomes newly liable for
7 contributions under this act in a calendar year beginning on or
8 after January 1, 1983 in which it employs in "employment", not
9 necessarily simultaneously but in any 1 week 2 or more
10 individuals in the performance of 1 or more contracts or
11 subcontracts for construction in the state of roads, bridges,
12 highways, sewers, water mains, utilities, public buildings,
13 factories, housing developments, or similar construction
14 projects, shall be liable for contributions to that employer's
15 account under this act for the first 4 years of operations in
16 this state at a rate equal to the average rate paid by employers
17 engaged in the construction business as determined by contractor
18 type in the manner provided in table B.

19 ~~—— (iii) For the calendar years 1983 and 1984, the contribution~~
20 ~~rate of a construction employer shall not exceed its 1982~~
21 ~~contribution rate with respect to wages, paid by that employer,~~
22 ~~related to the execution of a fixed price construction contract~~
23 ~~that was entered into prior to January 1, 1983. Furthermore, that~~
24 ~~contribution rate shall be reduced, by the solvency tax rate~~
25 ~~assessed against the employer under section 19a, for the year in~~
26 ~~which the solvency tax rate is applicable. Furthermore,~~
27 ~~notwithstanding section 44, the taxable wage limit, for calendar~~

~~years 1983 and 1984, with respect to wages paid under a fixed price contract, shall be the maximum amount of remuneration paid within a calendar year by an employer subject to the federal unemployment tax act, chapter 23 of subtitle C of the internal revenue code of 1986, 26 U.S.C. 3301 to 3311, to an individual with respect to employment as defined in that act which is subject to tax under that act during that year.~~

Table A

Year of Contribution Liability	Contribution Rate
1	2.7%
2	2.7%
3	1/3 (chargeable benefits component) + 1.8%
4	2/3 (chargeable benefits component) + 1.0%
5 and over	(chargeable benefits component) + (account building component) + (nonchargeable benefits component)

Table B

Year of Contribution Liability	Contribution Rate
1	average construction contractor rate as determined by the commission
2	average construction contractor

1		rate as determined by the
2		commission
3	3	1/3 (chargeable benefits component)
4		+ 2/3 average construction con-
5		tractor rate as determined by the
6		commission
7	4	2/3 (chargeable benefits component)
8		+ 1/3 average construction con-
9		tractor rate as determined by the
10		commission
11	5 and over	(chargeable benefits component) +
12		(account building component) +
13		(nonchargeable benefits component)

14 (2) With the exception of employers who are in the first 4
15 consecutive years of liability, each employer's contribution rate
16 ~~for each calendar year after 1977~~ shall be the sum of the
17 following components, all of which are determined as of the
18 computation date: a chargeable benefits component determined
19 under subdivision (3), an account building component determined
20 under subdivision (4), and a nonchargeable benefits component
21 determined under subdivision (5). ~~Each employer's contribution~~
22 ~~rate for calendar years before 1978 shall be determined by the~~
23 ~~provisions of this act in effect during the years in question.~~

24 (3) (i) The chargeable benefits component of an employer's
25 contribution rate is the percentage determined by dividing: the
26 total amount of benefits charged to the employer's experience
27 account within the lesser of 60 consecutive months ending on the
28 computation date or the number of consecutive months ending on

1 the computation date with respect to which the employer has been
2 continuously liable for contributions; by the amount of wages,
3 subject to contributions, paid by the employer within the same
4 period. If the resulting quotient is not an exact multiple of
5 $1/10$ of 1%, it shall be increased to the next higher multiple of
6 $1/10$ of 1%.

7 (ii) For benefit years established before ~~the conversion date~~
8 ~~prescribed in section 75~~ **OCTOBER 1, 2000**, the chargeable benefits
9 component shall not exceed 6.0%, unless there is a statutory
10 change in the maximum duration of regular benefit payments or the
11 statutory ratio of regular benefit payments to credit weeks. In
12 the event of a change in the maximum duration of regular benefit
13 payments, the maximum chargeable benefits component shall
14 increase by the same percentage as the statutory percentage
15 change in the duration of regular benefit payments between
16 computation dates. In the event of an increase in the statutory
17 ratio of regular benefit payments to credit weeks, as described
18 in section 27(d), the maximum chargeable benefits component
19 determined as of the computation dates occurring after the
20 effective date of the increased ratio shall increase by $1/2$ the
21 same percentage as the increase in the ratio of regular benefit
22 payments to credit weeks. If the resulting increase is not
23 already an exact multiple of $1/10$ of 1%, it shall be adjusted to
24 the next higher multiple of $1/10$ of 1%. For benefit years
25 established after ~~the conversion date prescribed in section 75~~
26 **OCTOBER 1, 2000**, the chargeable benefits component shall not
27 exceed 6.0%, unless there is a statutory change in the maximum

1 duration of regular benefit payments or the percentage factor of
2 base period wages, which defines maximum duration, as provided in
3 section 27(d). If there is a statutory change in the maximum
4 duration of regular benefit payments, the maximum chargeable
5 benefits component shall increase by the same percentage as the
6 statutory percentage change in the duration of regular benefit
7 payments between computation dates. If there is an increase in
8 the statutory percentage factor of base period wages, as
9 described in section 27(d), the maximum chargeable benefits
10 component determined as of the computation dates occurring after
11 the effective date of the increased ratio shall increase by 1/2
12 the same percentage as the increase in the percentage factor of
13 base period wages. If the resulting increase is not already an
14 exact multiple of 1/10 of 1%, it shall be adjusted to the next
15 higher multiple of 1/10 of 1%.

16 (4) The account building component of an employer's
17 contribution rate is the percentage arrived at by the following
18 calculations: (i) Multiply the amount of the employer's total
19 payroll for the 12 months ending on the computation date, by the
20 cost criterion; (ii) Subtract the amount of the balance in the
21 employer's experience account as of the computation date from the
22 product determined under (i); and (iii) if the remainder is zero or
23 a negative quantity, the account building component of the
24 employer's contribution rate shall be zero; but (iv) if the
25 remainder is a positive quantity, the account building component
26 of the employer's contribution rate shall be determined by
27 dividing that remainder by the employer's total payroll paid

1 within the 12 months ending on the computation date. The account
2 building component shall not exceed the lesser of $1/4$ of the
3 percentage calculated or 2%. However, except as otherwise
4 provided in this subdivision, the account building component
5 shall not exceed the lesser of $1/2$ of the percentage calculated
6 or 3%, if on the June 30 of the preceding calendar year the
7 balance in the unemployment compensation fund was less than 50%
8 of an amount equal to the aggregate of all contributing
9 employers' annual payrolls, for the 12 months ending March 31,
10 times the cost criterion. For calendar years after 1993 and
11 before 1996, the account building component shall not exceed the
12 lesser of .69 of the percentage calculated, or 3%, if on the June
13 30 of the preceding calendar year the balance in the unemployment
14 compensation fund was less than 50% of an amount equal to the
15 aggregate of all contributing employers' annual payrolls, for the
16 12 months ending March 31, as defined in section 18(f), times the
17 cost criterion; selected for the computation date under section
18 18(e). If the account building component determined under this
19 subdivision is not an exact multiple of $1/10$ of 1%, it shall be
20 adjusted to the next higher multiple of $1/10$ of 1%.

21 (5) The nonchargeable benefits component of employers'
22 contribution rates is the percentage arrived at by the following
23 calculations: (i) multiply the aggregate amount of all
24 contributing employers' annual payrolls, for the 12 months ending
25 March 31, as defined in section 18(f), by the cost criterion
26 selected for the computation date under section 18(e); (ii)
27 subtract the balance of the unemployment fund on the computation

1 date, net of federal advances, from the product determined under
2 (i); and (iii) if the remainder is zero or a negative quantity, the
3 nonchargeable benefits component of employers' contribution rates
4 shall be zero; but (iv) if the remainder is a positive quantity,
5 the nonchargeable benefits component of employers' contribution
6 rates shall be determined by dividing that remainder by the total
7 of wages subject to contributions under this act paid by all
8 contributing employers within the 12 months ending on March 31
9 and adjusting the quotient, if not an exact multiple of 1/10 of
10 1%, to the next higher multiple of 1/10 of 1%. The maximum
11 nonchargeable benefits component shall be 1%. However, for
12 calendar years after 1993, if there are no benefit charges
13 against an employer's account for the 60 months ending as of the
14 computation date, or for calendar years after 1995, if the
15 employer's chargeable benefits component is less than 2/10 of 1%,
16 the maximum nonchargeable benefit component shall not exceed 1/2
17 of 1%. For calendar years after 1995, if there are no benefit
18 charges against an employer's account for the 72 months ending as
19 of the computation date, the maximum nonchargeable benefits
20 component shall not exceed 4/10 of 1%. For calendar years after
21 1996, if there are no benefit charges against an employer's
22 account for the 84 months ending as of the computation date, the
23 maximum nonchargeable benefits component shall not exceed 3/10 of
24 1%. For calendar years after 1997, if there are no benefit
25 charges against an employer's account for the 96 months ending as
26 of the computation date, the maximum nonchargeable benefits
27 component shall not exceed 2/10 of 1%. For calendar years after

1 1998, if there are no benefit charges against an employer's
2 account for the 108 months ending as of the computation date, the
3 maximum nonchargeable benefits component shall not exceed 1/10 of
4 1%. For calendar years after 2002, the maximum nonchargeable
5 benefits component shall not exceed 1/10 of 1% if there are no
6 benefit charges against an employer's account for the 60 months
7 ending as of the computation date; 9/100 of 1% if there are no
8 benefit charges against an employer's account for the 72 months
9 ending as of the computation date; 8/100 of 1% if there are no
10 benefit charges against an employer's account for the 84 months
11 ending as of the computation date; 7/100 of 1% if there are no
12 benefit charges against an employer's account for the 96 months
13 ending as of the computation date; or 6/100 of 1% if there are no
14 benefit charges against an employer's account for the 108 months
15 ending as of the computation date. For purposes of determining a
16 nonchargeable benefits component under this subsection, an
17 employer account shall not be considered to have had a charge if
18 claim for benefits is denied or determined to be fraudulent
19 pursuant to section 54 or 54c. An employer with a positive
20 balance in its experience account on the June 30 computation date
21 preceding the calendar year shall receive for that calendar year
22 a credit in an amount equal to 1/2 of the extra federal
23 unemployment tax paid in the preceding calendar year under
24 section 3302(c)(2) of the federal unemployment tax act, ~~26 U.S.C.~~
25 **USC** 3302, because of an outstanding balance of unrepaid advances
26 from the federal government to the unemployment compensation fund
27 under section 1201 of title XII of the social security act, 42

1 ~~U.S.C.~~ **USC** 1321. However, the credit for any calendar year shall
2 not exceed an amount determined by multiplying the employer's
3 nonchargeable benefit component for that calendar year times the
4 employer's taxable payroll for that year. Contributions paid by
5 an employer shall be credited to the employer's experience
6 account, in accordance with the provisions of section 17(5),
7 without regard to any credit given under this subsection. The
8 amount credited to an employer's experience account shall be the
9 amount of the employer's tax before deduction of the credit
10 provided in this subsection.

11 (6) The total of the chargeable benefits and account
12 building components of an employer's contribution rate shall not
13 exceed by more than 1% in the 1983 calendar year, 1.5% in the
14 calendar year 1984, or 2% in the 1985 calendar year the higher of
15 4% or the total of the chargeable benefits and the account
16 building components that applied to the employer during the
17 preceding calendar year. For calendar years after 1985, the total
18 of the chargeable benefits and account building components of the
19 employer's contribution rate shall be computed without regard to
20 the foregoing limitation provided in this subdivision. During a
21 year in which this subdivision limits an employer's contribution
22 rate, the resulting reduction shall be considered to be entirely
23 in the experience component of the employer's contribution rate,
24 as defined in section 18(d).

25 (7) Unless an employer's contribution rate is 1/10 of 1% for
26 calendar years beginning after December 31, 1995, the employer's
27 contribution rate shall be reduced by any of the following

1 calculation methods that results in the lowest rate:

2 (i) The chargeable benefits component, the account building
3 component, and the nonchargeable benefits component of the
4 contribution rate calculated under this section shall each be
5 reduced by 10% and if the resulting quotient is not an exact
6 multiple of 1/10 of 1%, that quotient shall be increased to the
7 next higher multiple of 1/10 of 1%. The 3 components as increased
8 shall then be added together.

9 (ii) One-tenth of 1% shall be deducted from the contribution
10 rate.

11 (iii) The contribution rate shall be reduced by 10% and if the
12 resulting quotient is not an exact multiple of 1/10 of 1%, that
13 quotient shall be increased to the next higher multiple of 1/10
14 of 1%.

15 The contribution rate reduction described in this section
16 applies to employers who have been liable for the payment of
17 contributions in accordance with this act for more than 4
18 consecutive years, if the balance of money in the unemployment
19 compensation fund established under section 26, excluding money
20 borrowed from the federal unemployment trust fund, is equal to or
21 greater than 1.2% of the aggregate amount of all contributing
22 employers' payrolls for the 12-month period ending on the
23 computation date. If the employer's contribution rate is reduced
24 by a 1/10 of 1% deduction in accordance with this subdivision,
25 the employer's contributions shall be credited to each of the
26 components of the contribution rate on a pro rata basis. As used
27 in this subdivision:

1 (i) "Federal unemployment trust fund" means the fund created
2 under section 904 of title IX of the social security act, 42
3 ~~U.S.C.—USC~~ 1104.

4 (ii) "Payroll" means that term as defined in section 18(f).

5 (b) An employer previously liable for contributions under
6 this act which on or after January 1, 1978 filed a petition for
7 arrangement under the bankruptcy act of July 1, 1898, chapter
8 541, 30 Stat. 544, or on or after October 1, 1979 filed a
9 petition for reorganization under title 11 of the United States
10 Code, 11 ~~U.S.C.—USC~~ 101 to 1330, pursuant to which a plan of
11 arrangement or reorganization for rehabilitation purposes has
12 been confirmed by order of the United States bankruptcy court,
13 shall be considered as a reorganized employer and shall have a
14 reserve fund balance of zero as of the first calendar year
15 immediately following court confirmation of the plan of
16 arrangement or reorganization, but not earlier than the calendar
17 year beginning January 1, 1983, if the employer meets each of the
18 following requirements:

19 (1) An employer whose plan of arrangement or reorganization
20 has been confirmed as of January 1, 1983 shall, within 60 days
21 after January 1, 1983, notify the commission of its intention to
22 elect the status of a reorganized employer. An employer that has
23 not had a plan of arrangement or reorganization confirmed as of
24 January 1, 1983 shall, within 60 days after the entry by the
25 bankruptcy court of the order of confirmation of the plan of
26 arrangement or reorganization, notify the commission of its
27 intention to elect the status of a reorganized employer. An

1 employer shall not make an election under this subdivision after
2 December 31, 1985.

3 (2) The employer has paid to the commission all
4 contributions previously owed by the employer pursuant to this
5 act for all calendar years prior to the calendar year as to which
6 the employer elects to begin its status as a reorganized
7 employer.

8 (3) More than 50% of the employer's total payroll is paid
9 for services rendered in this state during the employer's fiscal
10 year immediately preceding the date the employer notifies the
11 fund administrator of its intention to elect the status of a
12 reorganized employer.

13 (4) The employer, within 180 days after notifying the
14 commission of its intention to elect the status of a reorganized
15 employer, makes a cash payment to the commission, for the
16 unemployment compensation fund, equal to: .20 times the first
17 \$2,000,000.00 of the employer's negative balance, .35 times the
18 amount of the employer's negative balance above \$2,000,000.00 and
19 up to \$5,000,000.00, and .50 times the amount of the negative
20 balance above \$5,000,000.00. The total amount determined by the
21 commission shall be based on the employer's negative balance
22 existing as of the end of the calendar month immediately
23 preceding the calendar year in which the employer will begin its
24 status as a reorganized employer. If the employer fails to pay
25 the amount determined, within 180 days of electing status as a
26 reorganized employer, the commission shall reinstate the
27 employer's negative balance previously reduced and redetermine

the employer's rate on the basis of the reinstated negative balance. The redetermined rate shall then be used to redetermine the employer's quarterly contributions for that calendar year. The redetermined contributions shall be subject to the interest provisions of section 15 as of the date the redetermined quarterly contributions were originally due.

(5) Except as provided in subdivision (6), the employer contribution rates for a reorganized employer beginning with the first calendar year of the employer's status as a reorganized employer shall be as follows:

Year of Contribution Liability	Contribution Rate
1	2.7% of total taxable wages paid
2	2.7%
3	2.7%
4 and over	(chargeable benefits component based upon 3-year experience) plus (account building component based upon 3-year experience) plus (nonchargeable benefits component)

(6) To provide against the high risk of net loss to the fund in such cases, any reorganized employer that employs in "employment", not necessarily simultaneously but in any 1 week 25 or more individuals in the performance of 1 or more contracts or subcontracts for construction in the state of roads, bridges, highways, sewers, water mains, utilities, public buildings,

factories, housing developments, or similar major construction projects, shall be liable beginning the first calendar year of the employer's status as a reorganized employer for contribution rates as follows:

Year of Contribution Liability	Contribution Rate
1	average construction contractor rate as determined by the commission
2	average construction contractor rate as determined by the commission
3	1/3 (chargeable benefits component) + 2/3 average construction contractor rate as determined by the commission
4	2/3 (chargeable benefits component) + 1/3 average construction contractor rate as determined by the commission
5 and over	(chargeable benefits component) + (account building component) + (nonchargeable benefits component)

(c) Upon application by an employer to the commission for designation as a distressed employer, the commission, within 60 days after receipt of the application, shall make a determination whether the employer meets the conditions set forth in this

1 subsection. Upon finding that the conditions are met, the
2 commission shall notify the legislature of the determination and
3 request legislative acquiescence in the determination. If the
4 legislature approves the determination by concurrent resolution,
5 the employer shall be considered to be a "distressed employer" as
6 of January 1 of the year in which the determination is made. The
7 commission shall notify the employer of that determination and
8 notify the employer of its contribution rate as a distressed
9 employer and the contribution rate that would apply if the
10 employer was not a distressed employer. The distressed employer
11 shall determine its tax contribution using the 2 rates furnished
12 by the commission and shall pay its tax contribution based on the
13 lower of the 2 rates. If the determination of distressed employer
14 status is made during the calendar year, the employer shall be
15 entitled to a credit on future quarterly installments for any
16 excess contributions paid during that initial calendar year. The
17 employer shall notify the commission of the difference between
18 the amount paid and the amount that would have been paid if the
19 employer were not determined to be a distressed employer and the
20 difference will be owed to the unemployment compensation fund,
21 payable in accordance with this subsection. Cumulative totals of
22 the difference must be reported to the commission with each
23 return required to be filed. The commission may periodically
24 determine continued eligibility of an employer under this
25 subsection. When the commission makes a determination that an
26 employer no longer qualifies as a distressed employer, the
27 commission shall notify the employer of that determination. After

1 notice by the commission that the employer no longer qualifies as
2 a distressed employer, the employer will be liable for
3 contributions, beginning with the first quarter occurring after
4 receipt of notification of disqualification, on the basis of the
5 rate that would apply if the employer was not a distressed
6 employer. The contribution rate for a distressed employer shall
7 be calculated under the law in effect for the 1982 calendar year
8 except that the rate determined shall be reduced by the
9 applicable solvency tax rate assessed against the employer under
10 section 19a. ~~The taxable wage limit of a distressed employer for~~
11 ~~the 1983, 1984, and 1985 calendar years shall be the maximum~~
12 ~~amount of remuneration paid within a calendar year by a~~
13 ~~distressed employer subject to the federal unemployment tax act,~~
14 ~~26 U.S.C. 3301 to 3311, to an individual with respect to~~
15 ~~employment as defined in that act which is subject to tax under~~
16 ~~that act during that year. Commencing with the fourth quarter of~~
17 ~~1986, the~~ **THE** distressed employer will pay in 10 equal annual
18 installments the amount of the unpaid contributions owed to the
19 unemployment compensation fund due to the application of this
20 subsection, without interest. Each installment shall be made with
21 the fourth quarterly return for the respective year. As used in
22 this subsection, "distressed employer" means an employer whose
23 continued presence in this state is considered essential to the
24 state's economic well-being and who meets the following criteria:

25 (1) The employer's average annual Michigan payroll in the 5
26 previous years exceeded \$500,000,000.00.

27 (2) The employer's average quarterly number of employees in

1 Michigan in the 5 previous years exceeded 25,000.

2 (3) The employer's business income as defined in section 3
3 of the single business tax act, 1975 PA 228, MCL 208.3, OR
4 **SECTION 105 OF THE MICHIGAN BUSINESS TAX ACT, 2007 PA 36, MCL**
5 **208.1105, AS APPLICABLE**, has resulted in an aggregate loss of
6 \$1,000,000,000.00 or more during the 5-year period ending in the
7 second year prior to the year for which the application is being
8 made.

9 (4) The employer has received from this state loans totaling
10 \$50,000,000.00 or more or loan guarantees from the federal
11 government in excess of \$500,000,000.00, either of which are
12 still outstanding.

13 (5) Failure to give an employer designation as a distressed
14 employer would adversely impair the employer's ability to repay
15 the outstanding loans owed to this state or that are guaranteed
16 by the federal government.

17 (d) An employer may at any time make payments to that
18 employer's experience account in the fund in excess of the
19 requirements of this section, but these payments, when accepted
20 by the commission, shall be irrevocable. A payment made by an
21 employer within 30 days after mailing to the employer by the
22 commission of a notice of the adjusted contribution rate of the
23 employer shall be credited to the employer's account as of the
24 computation date for which the adjusted contribution rate was
25 computed, and the employer's contribution rate shall be further
26 adjusted accordingly. However, a payment made more than 120 days
27 after the beginning of a calendar year shall not affect the

1 employer's contribution rate for that year.