

HOUSE BILL No. 6409

September 1, 2010, Introduced by Reps. Stamas, Daley, Haveman, Kurtz, Proos, McMillin, Wayne Schmidt, Bolger, Horn, Rogers, Moss, Hansen, Lori, Calley, DeShazor, Paul Scott, Opsommer, Tyler, Denby, Meltzer, Genetski, Rick Jones, Green, Meekhof, Caul, Geiss, Pearce, Schuitmaker, Haines, Kowall, Ball, Booher, Crawford, Terry Brown, Polidori, Neumann, Mayes, Lemmons, Roy Schmidt, Hammel, Huckleberry, Durhal, Kandrevas, Scripps, Robert Jones, Smith, Liss, Constan, Barnett, LeBlanc, Lund, Rocca, Johnson, Walsh, Sheltroun and Slezak and referred to the Committee on Labor.

A bill to amend 1936 (Ex Sess) PA 1, entitled
"Michigan employment security act,"
by amending sections 13 and 15 (MCL 421.13 and 421.15), section 13
as amended by 1985 PA 197 and section 15 as amended by 1996 PA 498,
and by adding section 15a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 13. (1) Each employer subject to this act shall pay to
2 the commission ~~a tax in the form of payments in lieu of~~
3 ~~contributions where the employer is liable for those payments, or~~
4 ~~tax contributions equal to a standard rate of 2.7% for calendar~~
5 ~~years before 1985 and~~ **EITHER PAYMENTS FOR WHICH THE EMPLOYER IS**
6 **LIABLE AS AN ELIGIBLE REIMBURSING EMPLOYER OR CONTRIBUTIONS AT THE**
7 **RATE REQUIRED OF A CONTRIBUTING EMPLOYER. A CONTRIBUTING EMPLOYER**

1 **SHALL PAY AT THE RATE OF** 5.4% for calendar year 1985 and
2 thereafter, ~~subject to an adjustment in rate of contributions~~
3 **ADJUSTED** as provided in section 19. ~~The~~ **EXCEPT AS OTHERWISE**
4 **PROVIDED IN SUBSECTION (3), THE** contributions ~~shall become due and~~
5 ~~be paid to the commission,~~ for the unemployment compensation fund ~~7~~
6 **ARE DUE AND PAYABLE** by each employer semiannually, or for shorter
7 periods of not less than 28 days, as the commission ~~may~~ **PRESCRIBES**
8 by rule. ~~prescribe.~~ An employer's contribution shall not be
9 deducted directly or indirectly, in whole or in part, from wages of
10 individuals in his or her employ. In the payment of contributions,
11 a fractional part of a cent shall be ~~disregarded unless it amounts~~
12 ~~to 1/2 cent or more, in which case it shall be increased to 1~~
13 **ROUNDED TO THE NEAREST** cent. The commission may prescribe by rule
14 the details of the computation and payment of contributions. Every
15 employing unit shall file with the commission periodic reports on
16 forms and at a time ~~as the commission shall prescribe~~ **PRESCRIBES** to
17 disclose liability for contributions under this act. Each employing
18 unit shall keep records, including wage and employment records, and
19 shall, within prescribed time limits, submit or provide reports,
20 including wage and employment reports, to the commission or to the
21 employing unit's employees or former employees ~~as the commission~~
22 ~~may by rule prescribe as necessary to carry out this act~~ **AS**
23 **PRESCRIBED BY RULE.**

24 (2) Beginning with the first quarter of 1986, each employer
25 shall file a quarterly wage report with the commission, on forms
26 and at a time ~~as~~ **THAT** the commission ~~shall prescribe~~ **PRESCRIBES**,
27 which ~~shall include for each of the employer's employees the~~

employee's name, social security number, **AND** gross wages paid during ~~each~~**THE** quarter, and the name, address, and federal and state employer identification number of the ~~individual's~~ employer.

(3) **THE UNEMPLOYMENT AGENCY SHALL ALLOW A CONTRIBUTING EMPLOYER THAT INCURRED 50% OR MORE OF THE EMPLOYER'S TOTAL PREVIOUS YEAR'S CONTRIBUTION OBLIGATION IN THE FIRST QUARTER OF THAT YEAR TO DISCHARGE THE LIABILITY FOR CONTRIBUTIONS DUE IN THE NEXT SUCCEEDING YEAR THROUGH QUARTERLY PAYMENTS THAT DISTRIBUTE THE PAYMENT OF THE FIRST QUARTER'S OBLIGATION EQUALLY OVER THE 4 QUARTERS IN THAT YEAR. TO AVOID INTEREST AND PENALTIES OTHERWISE APPLICABLE TO THOSE PAYMENTS, AN EMPLOYER MEETING THE REQUIREMENTS OF THIS SUBSECTION SHALL NOTIFY THE AGENCY OF THE ELECTION TO MAKE APPORTIONED PAYMENTS WITH THE FIRST QUARTER'S PAYMENT AND TIMELY FILE EACH SUCCEEDING QUARTERLY PAYMENT IN THE AMOUNTS PRESCRIBED IN SECTION 15A.**

Sec. 15. (a) ~~Contributions~~**EXCEPT AS PROVIDED IN SECTION 15A,** **CONTRIBUTIONS** unpaid on the date on which they are due and payable, as prescribed by the commission, shall bear interest at the rate of ~~EQUIVALENT TO 1% per month , computed on a day to day basis for each day the delinquency is unpaid, from and after that date until THE COMMISSION RECEIVES THE payment plus accrued interest. is received by the commission.~~ Amounts illegally obtained or previously withheld from payment and damages that are recovered by the commission under section 54(a) and (b) and sections 54a to 54c ~~of this act shall bear interest at the~~**A rate of EQUIVALENT TO 1% per month , computed on a day to day basis for each day the amounts PLUS ACCRUED INTEREST** remain unpaid. ~~until payment plus accrued~~

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

10 (b) The commission may make assessments against an employer,
11 claimant, employee of the commission, or third party who fails to
12 pay contributions, reimbursement payments in lieu of contributions,
13 penalties, forfeitures, or interest as required by this act. The
14 commission shall immediately notify the employer, claimant,
15 employee of the commission, or third party of the assessment in
16 writing by first-class mail. An assessment by the commission
17 against a claimant, an employee of the commission, or a third party
18 under this subsection shall be made only for penalties and interest
19 on those penalties for violations of section 54(a) or (b) or
20 sections 54a to 54c. The assessment, which shall constitute a
21 determination, shall be final unless ~~the employer, claimant,~~
22 ~~employee of the commission, or third party files with the~~
23 ~~commission~~ an application for a redetermination of the assessment
24 **IS FILED** in accordance with section 32a. A review by the commission
25 or an appeal to a referee or the appeal board on the assessment
26 ~~shall DOES~~ not reopen a question concerning an employer's liability
27 for contributions or reimbursement payments in lieu of

1 contributions, unless the employer was not a party to the
2 proceeding or decision ~~where~~ **AT WHICH** the basis for the assessment
3 was determined. An employer may pay an assessment under protest and
4 file an action to recover the amount paid as provided under
5 subsection (d). Unless an assessment is paid within 15 days after
6 it becomes final, the commission may issue a warrant under its
7 official seal for the collection of ~~an~~ **THE** amount ~~required to be~~
8 ~~paid pursuant to~~ **OF** the assessment. ~~The~~ **AFTER A WARRANT IS ISSUED,**
9 **THE** commission through its authorized employees, ~~under a warrant~~
10 ~~issued,~~ may levy upon and sell the property of the employer that is
11 **WITHIN THIS STATE AND** used in connection with the employer's
12 business, ~~or that is subject to a notice to withhold, found within~~
13 ~~the state,~~ for the payment of the amount of the contributions
14 including penalties, interests, and the cost of executing the
15 warrant. Property of the employer used in connection with the
16 employer's business ~~shall~~ **IS** not ~~be~~ exempt from levy under the
17 warrant. Wages subject to a notice to withhold ~~shall be~~ **ARE** exempt
18 to the extent the wages are exempt from garnishment. ~~under the laws~~
19 ~~of this state.~~ The warrant shall be returned to the commission
20 together with the money collected ~~by virtue of~~ **UNDER** the warrant
21 within the time specified in the warrant, which shall not be less
22 than 20 or more than 90 days after the date of ~~the warrant~~ **ISSUE.**
23 The commission shall proceed upon the warrant ~~in all respects and~~
24 ~~with like effect and in the same manner as prescribed by law in~~
25 ~~respect to~~ **FOR** executions issued against property upon judgments by
26 a court of record. The state, through the commission or ~~some other~~
27 **ITS DESIGNATED** officer or agent, ~~designated by it,~~ may bid for and

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

1 commission, or third party ~~subject to~~ **INDICATED IN** a notice to
2 ~~withhold~~ **OF DELINQUENCY** shall be paid to the commission upon
3 service upon the debtor of a warrant issued under this section.

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

1 court shall act on the petition shall be served on the employer at
2 least 21 days before the court may grant the injunction.

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

1 brought only to recover penalties and interest on those penalties
 2 improperly assessed ~~by the commission~~ under section 54(a) or (b) or
 3 sections 54a to 54c. ~~If a final judgment is rendered in favor of~~
 4 ~~the plaintiff in an action to recover the amount of contributions~~
 5 ~~illegally collected or charged, the~~ **THE** treasurer of the
 6 commission, upon receipt of a certified copy of the final judgment,
 7 shall pay the amount of ~~contributions illegally collected or~~
 8 ~~charged or penalties assessed~~ **THE JUDGMENT** from the clearing
 9 account, and pay interest ~~as may be allowed by the court , in an~~
 10 ~~amount not to~~ **THAT DOES NOT** exceed the actual earnings ~~of the~~ **ON**
 11 **THOSE** contributions ~~as may have been found to have been illegally~~
 12 ~~collected or charged, from the contingent fund.~~

13 (e) Except for liens and encumbrances recorded before the
 14 filing of the notice provided for in this section, all **DELINQUENT**
 15 contributions, interest, and penalties payable under this act ~~to~~
 16 ~~the commission from an employer, claimant, employee of the~~
 17 ~~commission, or third party that neglects to pay the same when due~~
 18 ~~shall be a~~ **BECOME** first and prior lien **LIENS** upon all property and
 19 rights to property, real and personal, ~~belonging to~~ **OF** the
 20 employer, claimant, employee of the commission, or third party. The
 21 lien ~~shall continue~~ **CONTINUES** until the liability for that amount
 22 or a judgment arising out of the liability is satisfied or becomes
 23 unenforceable by reason of lapse of time. The lien ~~shall attach~~
 24 **ATTACHES** to the property and rights to property, ~~of the employer,~~
 25 ~~claimant, employee of the commission, or third party, whether real~~
 26 ~~or personal, from and after~~ **AS OF** the **REQUIRED FILING** date ~~that a~~
 27 **FOR THE** report upon which the specific tax is computed. ~~is required~~

1 ~~by this act to be filed.~~ Notice of the lien shall be recorded in
2 the office of the register of deeds of the county in which the
3 property subject to the lien is situated. ~~, and the register of~~
4 ~~deeds shall receive the notice for recording. This subsection shall~~
5 ~~apply only to penalties and interest on those penalties assessed by~~
6 ~~the commission against a claimant, employee of the commission, or~~
7 ~~third party for violations of section 54(a) or (b) or sections 54a~~
8 ~~to 54c.~~ **AS TO A CLAIMANT, EMPLOYEE OF THE COMMISSION, OR THIRD**
9 **PARTY, THIS SECTION APPLIES ONLY TO LIENS ARISING FROM PENALTIES**
10 **AND INTEREST ON THOSE PENALTIES ASSESSED BY THE COMMISSION FOR**
11 **VIOLATION OF SECTION 54(A) OR (B) OR SECTIONS 54A TO 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% or more of the assets from an

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

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

20 (h) If a part of a deficiency in payment of the employer's
21 contribution to the **UNEMPLOYMENT COMPENSATION** fund is due to
22 negligence or intentional disregard of the rules of the commission,
23 but without intention to defraud, 5% of the total amount of the
24 deficiency, in addition to the deficiency and in addition to all
25 other interest charges and penalties provided herein, shall be
26 assessed, collected, and paid in the same manner as if it were a
27 deficiency. If a part of a deficiency is determined in an action at

1 law to be due to fraud with intent to avoid payment of
2 contributions to the fund, then the judgment rendered shall include
3 an amount equal to 50% of the total amount of the deficiency, in
4 addition to the deficiency and in addition to all other interest
5 charges and penalties provided herein.

6 (i) If an employing unit fails to make a report as reasonably
7 required by the rules of the commission pursuant to this act, the
8 commission may make an estimate of the liability of that employing
9 unit from information it ~~may obtain~~ **OBTAINS** and, according to that
10 estimate, ~~so made~~, assess the employing unit for the contributions,
11 penalties, and interest due. The commission ~~shall have the power~~
12 **MAY MAKE AN ESTIMATE UNDER THIS SUBSECTION** only after a default
13 continues for 30 days and after the commission has determined that
14 the default of the employing unit is willful.

15 (j) An assessment or penalty ~~with respect to contributions~~
16 ~~unpaid~~ is not effective **AS TO UNPAID CONTRIBUTIONS** for any period
17 ~~before the~~ **MORE THAN** 3 calendar years ~~preceding~~ **BEFORE** the date of
18 the assessment.

19 (k) The ~~rights respecting the collection of~~ **PROCEDURES FOR**
20 **COLLECTING** contributions and the ~~levy of~~ **LEVYING** interest, and
21 penalties, and damages ~~made available to the commission by~~ **UNDER**
22 this section ~~is additional to~~ **SUPPLEMENT** other powers and rights
23 vested in the commission ~~in pursuance of the~~ **BY** other provisions of
24 this act. The commission ~~is not precluded from exercising~~ **MAY**
25 **EXERCISE** any of the collection remedies ~~provided for by~~ **UNDER** this
26 act even though an application for a redetermination or an appeal
27 is pending final disposition.

1 (l) A person recording a lien ~~provided for in~~ UNDER this
2 section shall pay a fee of \$2.00 for recording a lien and a fee of
3 \$2.00 for recording a discharge of a lien.

4 SEC. 15A. (1) THE UNEMPLOYMENT AGENCY SHALL NOT COLLECT
5 INTEREST ON A CONTRIBUTION OBLIGATION THAT AN EMPLOYER PAYS THROUGH
6 APPORTIONED QUARTERLY PAYMENTS, IF THE EMPLOYER MEETS THE
7 REQUIREMENTS OF SECTION 13(3) AND HAS REMITTED THE FOLLOWING
8 AMOUNTS OR MORE EACH QUARTER BY THE DATE ESTABLISHED FOR EACH
9 QUARTERLY FILING:

10 (A) FIRST QUARTER - 25% OF THE TOTAL OBLIGATION INCURRED IN
11 THE FIRST QUARTER.

12 (B) SECOND QUARTER - THE OBLIGATION INCURRED IN THE SECOND
13 QUARTER PLUS 25% OF THE TOTAL OBLIGATION FOR THE FIRST QUARTER.

14 (C) THIRD QUARTER - THE OBLIGATION INCURRED IN THE THIRD
15 QUARTER PLUS 25% OF THE TOTAL OBLIGATION FOR THE FIRST QUARTER.

16 (D) FOURTH QUARTER - THE OBLIGATION INCURRED IN THE FOURTH
17 QUARTER PLUS 25% OF THE TOTAL OBLIGATION FOR THE FIRST QUARTER.

18 (2) THE AGENCY MAY COLLECT INTEREST AT THE RATE SPECIFIED IN
19 SECTION 15 ON THE AMOUNT UNPAID IF THE APPORTIONED PAYMENTS DO NOT
20 MEET OR EXCEED THE PERCENTAGES PRESCRIBED IN SUBSECTION (1).