

# HOUSE BILL No. 4909

September 7, 2017, Introduced by Reps. Love, Faris, Gay-Dagnogo, Lasinski, Cochran, Sabo, Green, Elder, Geiss, Sneller, Clemente, Sowerby, Chang, Camilleri, Brinks, Moss, Hammoud, Wittenberg, Peterson, Zemke, Santana and Jones and referred to the Committee on Commerce and Trade.

A bill to amend 1936 (Ex Sess) PA 1, entitled  
"Michigan employment security act,"  
by amending section 15 (MCL 421.15), as amended by 2016 PA 228.

## 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 unemployment agency, and  
3       unpaid restitution of benefit overpayments shall bear interest at  
4       the rate of 1% per month, computed on a day-to-day basis for each  
5       day the delinquency is unpaid, from and after that date until  
6       payment plus accrued interest is received by the unemployment  
7       agency. The interest on unpaid contributions and on unpaid benefit  
8       overpayments, exclusive of penalties, ~~shall~~**MUST** not exceed 50% of  
9       the amount of contributions due at due date or 50% of the amount of  
10      restitution owing. Nothing in this act authorizes the assessment or

1 collection of interest on a penalty imposed under this act.  
 2 Interest and penalties collected ~~pursuant to~~ **UNDER** this section  
 3 ~~shall~~ **MUST** be paid into the contingent fund. The unemployment  
 4 agency may cancel any interest and any penalty when it is shown  
 5 that the failure to pay on or before the last day on which the tax  
 6 could have been paid without interest and penalty was not the  
 7 result of negligence, intentional disregard of the rules of the  
 8 unemployment agency, or fraud.

9 (b) The unemployment agency may make assessments against an  
 10 employer, claimant, employee of the unemployment agency, or third  
 11 party who fails to pay contributions, restitution of benefit  
 12 overpayments, reimbursement payments in lieu of contributions,  
 13 penalties, forfeitures, or interest as required by this act. The  
 14 unemployment agency shall immediately notify the employer,  
 15 claimant, employee of the unemployment agency, or third party of  
 16 the assessment in writing by first-class mail. ~~An~~ **THE UNEMPLOYMENT**  
 17 **AGENCY SHALL NOT MAKE AN** assessment ~~by the unemployment agency~~  
 18 against a claimant, an employee of the unemployment agency, or a  
 19 third party under this subsection ~~shall be made only~~ **UNLESS THE**  
 20 **ASSESSMENT IS** for penalties ~~A PENALTY~~ for violations ~~A VIOLATION~~ of  
 21 section 54(a) or (b) or sections 54a to 54c. ~~The~~ **AN** assessment is a  
 22 final determination unless the employer, claimant, employee of the  
 23 unemployment agency, or third party files with the unemployment  
 24 agency an application for a redetermination of the assessment ~~in~~  
 25 ~~accordance with~~ **PURSUANT TO** section 32a. A review by the  
 26 unemployment agency or an appeal to an administrative law judge or  
 27 the Michigan compensation appellate commission on the assessment

1 does not reopen a question concerning an employer's liability for  
2 contributions or reimbursement payments in lieu of contributions or  
3 a claimant's entitlement to benefits, unless the claimant or  
4 employer was not a party to the proceeding or decision where the  
5 basis for the assessment was determined. An employer may pay an  
6 assessment under protest and file an action to recover the amount  
7 paid as provided under subsection (d). ~~Unless~~**IF** an assessment is  
8 **NOT** paid within 15 days after it becomes final, the unemployment  
9 agency may issue a warrant under its official seal for the  
10 collection of the assessed amount. The unemployment agency, through  
11 its authorized employees ~~,~~**AND** under a warrant issued, may place a  
12 lien on any bank account of ~~the~~**A** claimant or employer and may levy  
13 upon and sell the property of ~~the~~**AN** employer that is used in  
14 connection with the employer's business, or that is subject to a  
15 notice to withhold, found within ~~the~~**THIS** state, for the payment of  
16 the amount of the contributions including penalties, interests, and  
17 the cost of executing the warrant. Property of the employer used in  
18 connection with the employer's business is not exempt from levy  
19 under the warrant. Wages subject to a notice to withhold are exempt  
20 to the extent the wages are exempt from garnishment under the laws  
21 of this state. The warrant ~~shall~~**MUST** be returned to the  
22 unemployment agency together with the money collected under the  
23 warrant within the time specified in the warrant, which ~~shall~~**MUST**  
24 not be less than 20 or more than 90 days after the date of the  
25 warrant. The unemployment agency shall proceed upon the warrant as  
26 prescribed by law in respect to executions issued against property  
27 upon judgments by a court of record. ~~The~~**THIS** state, through the

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

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

5 (c) In addition to the mode of collection provided in  
6 subsection (b), if, after ~~due~~**PROPER** notice, an employer defaults  
7 in payment of contributions or interest on the contributions, or a  
8 claimant, employee of the unemployment agency, or third party  
9 defaults in the payment of a penalty or interest on a penalty, the  
10 unemployment agency may bring an action at law in a court of  
11 competent jurisdiction to collect and recover the amount of a  
12 contribution, and any interest on the contribution, or the penalty  
13 or interest on the penalty, and in addition 10% of the amount of  
14 contributions or penalties found to be due, as damages. An  
15 employer, claimant, employee of the unemployment agency, or third  
16 party adjudged in default shall pay costs of the action. ~~An action~~  
17 ~~by the~~**THE** unemployment agency **SHALL NOT BRING AN ACTION** against a  
18 claimant, employee of the unemployment agency, or third party under  
19 this subsection ~~shall be brought only~~**UNLESS IT IS BROUGHT** to  
20 recover penalties and interest on those penalties for violations of  
21 section 54(a) or (b) or sections 54a to 54c. ~~Civil~~**A COURT SHALL**  
22 **HEAR 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, **A COURT MAY ENJOIN** the employer  
26 ~~may be enjoined~~ from operating and doing business in this state  
27 until the judgment is satisfied. The circuit court of the county in

1 which the judgment is docketed or the circuit court for ~~the county~~  
2 ~~of~~ Ingham **COUNTY** may grant an injunction upon the petition of the  
3 unemployment agency. A copy of the petition for injunction and a  
4 notice of when and where the court ~~shall~~ **WILL** act on the petition  
5 ~~shall~~ **MUST** be served on the employer at least 21 days before the  
6 court may grant the injunction.

7 (d) An employer or employing unit improperly charged or  
8 assessed contributions provided for under this act, or a claimant,  
9 employee of the unemployment agency, or third party improperly  
10 assessed a penalty under this act and who paid the contributions or  
11 penalty under protest within 30 days after the mailing of the  
12 notice of determination of assessment, may recover the amount  
13 improperly collected or paid, together with interest, in any proper  
14 action against the unemployment agency. The circuit court of the  
15 county in which the ~~employer or employing unit or claimant,~~  
16 employee of the unemployment agency, or third party resides, or, in  
17 the case of an employer or employing unit, in which ~~is located~~ the  
18 principal office or place of business of the employer or employing  
19 unit **IS LOCATED**, has original jurisdiction of an action to recover  
20 contributions improperly paid or collected or a penalty improperly  
21 assessed whether or not the charge or assessment has been reviewed  
22 by the unemployment agency or heard or reviewed by an  
23 administrative law judge or the Michigan compensation appellate  
24 commission. The court ~~has no~~ **DOES NOT HAVE** jurisdiction of the  
25 action unless written notice of **THE** claim is given to the  
26 unemployment agency at least 30 days before the institution of the  
27 action. In an action to recover contributions paid or collected or

1 penalties assessed, the court shall allow costs it considers  
2 proper. Either party to the action has the same right of appeal as  
3 provided by law in other civil actions. ~~An action by a~~ **A** claimant,  
4 employee of the unemployment agency, or third party **SHALL NOT BRING**  
5 **AN ACTION** against the unemployment agency under this subsection  
6 ~~shall be~~ **UNLESS IT IS** brought ~~only~~ to recover penalties and  
7 interest on those penalties improperly assessed by the unemployment  
8 agency under section 54(a) or (b) or sections 54a to 54c. If a  
9 final judgment is rendered in favor of the plaintiff in an action  
10 to recover the amount of contributions illegally collected or  
11 charged, the treasurer of the unemployment agency, upon receipt of  
12 a certified copy of the final judgment, shall pay the amount of  
13 contributions illegally collected or charged or penalties assessed  
14 from the clearing account, and pay interest as allowed by the  
15 court, in an amount not to exceed the actual earnings of the  
16 contributions ~~as~~ found to have been illegally collected or charged,  
17 from the contingent fund.

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

1 reason of lapse of time. The lien attaches to the property and  
2 rights to property of the employer, claimant, employee of the  
3 unemployment agency, or third party, whether real or personal, from  
4 and after the required filing date of the report upon which the  
5 specific tax is computed. Notice of the lien ~~shall~~ **MUST** be recorded  
6 in the office of the register of deeds of the county in which the  
7 property subject to the lien is situated, and the register of deeds  
8 shall ~~receive~~ **ACCEPT** the notice for recording. Notice of the lien  
9 may also be filed with the secretary of state ~~in accordance with~~  
10 **PURSUANT TO** the state tax lien registration act, 1968 PA 203, MCL  
11 211.681 to 211.687. This subsection applies only to penalties and  
12 interest on those penalties assessed by the unemployment agency  
13 against a claimant, employee of the unemployment agency, or third  
14 party for violations of section 54(a) or (b) or sections 54a to  
15 54c.

16 If there is a distribution of an employer's assets pursuant to  
17 an order of a court under the laws of this state, including a  
18 receivership, assignment for benefit of creditors, adjudicated  
19 insolvency, composition, or similar proceedings, contributions then  
20 or thereafter due ~~shall~~ **MUST** be paid in full before all other  
21 claims except for wages and compensation under the worker's  
22 disability compensation act of 1969, 1969 PA 317, MCL 418.101 to  
23 418.941. In the distribution of estates of decedents, claims for  
24 funeral expenses and expenses of last sickness are also entitled to  
25 priority.

26 (f) ~~An injunction~~ **A COURT** shall not issue **AN INJUNCTION** to  
27 stay proceedings for assessment or collection of contributions, or



1 interest or **A** penalty on contributions, levied and required by this  
2 act.

3 (g) A person or employing unit that acquires the organization,  
4 trade, business, or 75% or more of the assets from an employing  
5 unit, as a successor described in section 41(2), is liable for  
6 contributions and interest due to the unemployment agency from the  
7 transferor at the time of the acquisition in an amount not to  
8 exceed the reasonable value of the organization, trade, business,  
9 or assets acquired, less the amount of a secured interest in the  
10 assets owned by the transferee that are entitled to priority. ~~The~~  
11 **IF A** transferor or transferee ~~who has, not less than 10~~ **OR MORE**  
12 days before the acquisition, requested from the unemployment agency  
13 in writing a statement certifying the status of contribution  
14 liability of the transferor, ~~shall be provided~~ **THE UNEMPLOYMENT**  
15 **AGENCY SHALL PROVIDE THE TRANSFEROR OR TRANSFEREE** with that  
16 statement, and the transferee is not liable for any amount due from  
17 the transferor in excess of the amount of liability computed as  
18 prescribed in this subsection and certified by the unemployment  
19 agency. At least 2 calendar days, not including a Saturday, Sunday,  
20 or legal holiday, before the acceptance of an offer, the  
21 transferor, or the transferor's real estate broker or other agent  
22 representing the transferor, shall disclose to the transferee on a  
23 form provided by the unemployment agency, the amounts of the  
24 transferor's outstanding unemployment tax liability; ~~unreported~~  
25 unemployment tax liability; ~~and the tax payments, tax rates, and~~  
26 cumulative benefit charges for the most recent 5 years; ~~a listing~~  
27 of all individuals currently employed by the transferor; ~~and a~~

1 listing of all employees separated from employment with the  
2 transferor in the most recent 12 months. ~~This~~**THE** form shall  
3 **PROVIDED BY THE UNEMPLOYMENT AGENCY MUST** specify any other  
4 information the unemployment agency determines is required for a  
5 transferee to estimate future unemployment compensation costs based  
6 on the transferor's benefit charge and unemployment tax reporting  
7 and payment experience. Failure of the transferor, or the  
8 transferor's real estate broker or other agent representing the  
9 transferor, to provide accurate information required by this  
10 subsection is a misdemeanor punishable by imprisonment for not more  
11 than 90 days, or a fine of not more than \$2,500.00, or both. In  
12 addition, the transferor, or the transferor's real estate broker or  
13 other agent representing the transferor, is liable to the  
14 transferee for any consequential damages resulting from the failure  
15 to comply with this subsection. However, the real estate broker or  
16 other agent is not liable for consequential damages if ~~he or she~~  
17 **THE REAL ESTATE BROKER OR OTHER AGENT** exercised good faith in  
18 compliance with the disclosure of information. ~~The~~**THIS** remedy  
19 ~~provided the transferee is not exclusive,~~ and does not reduce any  
20 other right or remedy against any party provided for in this or any  
21 other act. Nothing in this subsection decreases the liability of  
22 the transferee as a successor in interest, or prevents the transfer  
23 of a rating account balance as provided in this act. The remedies  
24 under this subsection are in addition to the remedies the  
25 unemployment agency has against the transferor.

26 (h) If a part of a deficiency in payment of the employer's  
27 contribution to the fund is due to negligence or intentional

1 disregard of unemployment agency rules, but without intention to  
2 defraud, 5% of the total amount of the deficiency, in addition to  
3 the deficiency and all other interest charges and penalties  
4 provided herein, ~~shall~~**MUST** be assessed, collected, and paid in the  
5 same manner as a deficiency. If a part of a deficiency is  
6 determined in an action at law to be ~~due to~~**THE RESULT OF** fraud  
7 with intent to avoid payment of contributions to the fund, then the  
8 judgment rendered ~~shall~~**MUST** include an amount equal to 50% of the  
9 total amount of the deficiency, in addition to the deficiency and  
10 all other interest charges and penalties provided herein.

11 (i) If an employing unit fails to make a report as reasonably  
12 required by the rules of the unemployment agency pursuant to this  
13 act, the unemployment agency may estimate the liability of that  
14 employing unit from information it obtains and, according to that  
15 estimate, assess the employing unit for the contributions,  
16 penalties, and interest due. The unemployment agency may act under  
17 this subsection only after a default continues for 30 days and  
18 after the unemployment agency has determined that the default of  
19 the employing unit is willful.

20 (j) An assessment or penalty with respect to contributions  
21 unpaid is not effective for any period before the 3 calendar years  
22 preceding the date of the assessment.

23 (k) The rights respecting the collection of contributions and  
24 the levy of interest and penalties and damages made available to  
25 the unemployment agency by this section are additional to other  
26 powers and rights vested in the unemployment agency under other  
27 provisions of this act. The unemployment agency may exercise any of

1 the collection remedies under this act even though an application  
2 for a redetermination or an appeal is pending final disposition.

3 (l) A person recording a lien or a discharge of a lien under  
4 this section shall pay to the register of deeds a recording fee  
5 that is equivalent to the fee for entering and recording a mortgage  
6 as authorized under section 2567 of the revised judicature act of  
7 1961, 1961 PA 236, MCL 600.2567.

8 (m) In addition to the restitution recoupment methods in  
9 section 62, the unemployment agency may obtain restitution due from  
10 a claimant as a result of a benefit overpayment that has become  
11 final by any of the following methods:

12 (1) Levy of a bank account belonging to the claimant.

13 (2) Entry into a wage assignment with the claimant.

14 (3) Issuing an administrative garnishment of the wages of the  
15 claimant.

16 (n) To obtain an administrative garnishment, the unemployment  
17 agency ~~shall~~ **MUST** notify the claimant of ~~both of the following: the~~  
18 **ITS** intention to issue an administrative garnishment on the  
19 claimant's employer and the amount determined to be due from the  
20 claimant. The notice ~~shall~~ **MUST** include a demand for immediate  
21 payment of the amount due, a statement that it is not subject to  
22 appeal, and a statement that the claimant may, within 30 days of  
23 the issuance of the notice, object to the garnishment by providing  
24 information to the agency, with supporting documentation, that the  
25 claimant does not owe the stated amount of restitution. Not less  
26 than 30 days after issuing the notice to the claimant, the  
27 unemployment agency shall notify the claimant's employer to

1 withhold from earnings due or to become due from the claimant the  
2 amount shown on the notice plus accrued interest. The employer  
3 shall comply with the notice to withhold and shall continue to  
4 withhold each pay period the amount shown on the notice plus  
5 accrued interest until the garnishment amount plus accrued interest  
6 has been satisfied and the notice is released by the unemployment  
7 agency. The unemployment agency's administrative garnishment has  
8 priority over any subsequent garnishment or wage assignment. The  
9 amount subject to garnishment for any pay period ~~shall~~**MUST** be  
10 decreased by any other irrevocable and previously effective  
11 assignment of wages or other garnishment action served on the  
12 employer ~~before~~**PRIOR TO** service of the agency's garnishment  
13 notice. The amount of the **UNEMPLOYMENT** agency's garnishment ~~shall~~  
14 **MUST** not exceed 25% of the balance. In response to the  
15 administrative garnishment, the employer shall do all of the  
16 following:

17 (1) Within 10 calendar days after the date of the **UNEMPLOYMENT**  
18 agency's notice to withhold wages, notify the **UNEMPLOYMENT** agency  
19 of the amount of any irrevocable and previously effective  
20 assignment of wages or garnishment actions.

21 (2) Within 10 days after the end of each pay period in which  
22 wages are required to be withheld under the administrative  
23 garnishment, remit to the **UNEMPLOYMENT** agency the amount withheld  
24 pursuant to the administrative garnishment.

25 (3) Within 10 days after the date on which the claimant ceases  
26 to be employed by the employer, notify the **UNEMPLOYMENT** agency.

27 (o) Before payment of a prize of \$1,000.00 or more under the

1 McCauley-Traxler-Law-Bowman-McNeeley lottery act, 1972 PA 239, MCL  
2 432.1 to 432.47, the bureau of state lottery shall determine  
3 whether a lottery prize winner has a current liability for  
4 restitution of unemployment benefits, penalty, or interest,  
5 assessed by the unemployment agency and the amount of the prize  
6 owing to the unemployment agency and shall remit that amount to the  
7 unemployment agency.

8 (p) If the unemployment agency does not record the discharge  
9 of lien with the register of deeds and seek reimbursement for that  
10 recording fee, the unemployment agency shall provide the discharge  
11 of lien document and a notice of lien recording fee to the debtor,  
12 who ~~will~~**IS** then ~~be~~ responsible for recording the discharge and  
13 paying the applicable amounts required under section 2567 of the  
14 revised judicature act of 1961, 1961 PA 236, MCL 600.2567. The  
15 notice of lien recording fee ~~shall~~**MUST** state the amount of the  
16 recording fee the unemployment agency paid for recording the lien  
17 that is the subject of the discharge and may include any other  
18 relevant information.

19 (q) In addition to any other remedy provided under this act,  
20 the unemployment agency may seek to recover unemployment  
21 compensation debt as provided by 26 USC 6402(f), 42 USC 503(m), or  
22 other applicable federal law. The debtor is liable for any fee the  
23 federal government imposes with respect to implementing the  
24 deduction from a federal tax refund.

25 **(R) BEGINNING JANUARY 1, 2018, THE UNEMPLOYMENT AGENCY SHALL**  
26 **PROVIDE AN ANNUAL WRITTEN REPORT TO THE CHAIRPERSONS OF THE**  
27 **STANDING COMMITTEES AND THE APPROPRIATIONS SUBCOMMITTEES OF THE**

1 HOUSE AND SENATE HAVING JURISDICTION OVER LEGISLATION PERTAINING TO  
2 UNEMPLOYMENT COMPENSATION. THE REPORT MUST INCLUDE ALL OF THE  
3 FOLLOWING INFORMATION IN A FORM THAT DOES NOT IDENTIFY ANY  
4 EMPLOYERS:

5 (1) THE PROCEDURES THE UNEMPLOYMENT AGENCY HAS ADOPTED TO  
6 LIMIT THE AMOUNT OF UNPAID AND DELINQUENT CONTRIBUTIONS.

7 (2) THE NUMBER OF INSTANCES A CONTRIBUTION REMAINED UNPAID FOR  
8 MORE THAN 30 DAYS.

9 (3) THE AVERAGE LENGTH OF TIME A CONTRIBUTION REMAINED UNPAID.

10 (4) THE NUMBER OF DELINQUENT CONTRIBUTION CASES BROUGHT BEFORE  
11 AN ADMINISTRATIVE LAW JUDGE, AND THE UNEMPLOYMENT AGENCY'S SUCCESS  
12 RATE IN THOSE CASES.

13 (5) THE AMOUNT OF MONEY RECOVERED AS A RESULT OF IMPLEMENTING  
14 THE PROVISIONS OF THIS SECTION.

15 (6) THE ESTIMATED FISCAL IMPACT OF UNPAID AND DELINQUENT  
16 CONTRIBUTIONS ON THE UNEMPLOYMENT COMPENSATION FUND BALANCE AND THE  
17 FACTUAL BASIS FOR THE ESTIMATE.

18 (7) THE NUMBER OF FULL-TIME EMPLOYEES ASSIGNED TO, AND THE  
19 NUMBER OF EMPLOYEE HOURS DEVOTED TO, RECOVERING UNPAID AND  
20 DELINQUENT CONTRIBUTIONS.

21 Enacting section 1. This amendatory act takes effect 90 days  
22 after the date it is enacted into law.