

HOUSE BILL No. 5169

October 24, 2017, Introduced by Rep. LaFave and referred to the Committee on Oversight.

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~~ **EXCEPT AS**
4 **OTHERWISE PROVIDED UNDER THIS SUBSECTION**, bear interest at the rate
5 of 1% per month, computed on a day-to-day basis for each day the
6 delinquency is unpaid, from and after that date until payment plus
7 accrued interest is received by the unemployment agency. The
8 interest on unpaid contributions and on unpaid **RESTITUTION OF**
9 benefit overpayments, exclusive of penalties, ~~shall~~ **MUST** not exceed

1 50% of the amount of contributions due at due date or 50% of the
2 amount of restitution owing. Nothing in this act authorizes the
3 assessment or collection of interest on a penalty imposed under
4 this act. Interest ~~and penalties collected pursuant to~~ **UNDER** this
5 section ~~shall~~ **MUST** be paid into the contingent fund. ~~The~~ **PENALTIES**
6 **COLLECTED UNDER THIS SECTION MUST BE CREDITED PURSUANT TO SECTION**
7 **54(K) . WITH REGARD TO CONTRIBUTION PAYMENTS, THE** unemployment
8 agency may cancel any interest and any penalty when it is shown
9 that the failure to pay on or before the last day on which the tax
10 could have been paid without interest and penalty was not the
11 result of negligence, intentional disregard of the rules of the
12 unemployment agency, or fraud. **ALL OF THE FOLLOWING APPLY TO**
13 **INTEREST ON UNPAID RESTITUTION OF BENEFIT OVERPAYMENTS:**

14 (1) **EXCEPT AS PROVIDED IN SUBDIVISIONS (2) AND (3), INTEREST**
15 **BEGINS ACCRUING 1 YEAR AFTER THE DATE THE UNEMPLOYMENT AGENCY'S**
16 **DETERMINATION OR REDETERMINATION OR AN ADMINISTRATIVE LAW JUDGE'S,**
17 **THE MICHIGAN COMPENSATION APPELLATE COMMISSION'S, OR A COURT'S**
18 **ORDER THAT A CLAIMANT OWES RESTITUTION IS FINAL.**

19 (2) **THE UNEMPLOYMENT AGENCY SHALL NOT ASSESS INTEREST FOR**
20 **IMPROPERLY PAID BENEFITS THAT WERE THE RESULT OF AN ADMINISTRATIVE**
21 **OR CLERICAL ERROR MADE BY THE UNEMPLOYMENT AGENCY. INTEREST**
22 **ASSESSED FOR IMPROPERLY PAID BENEFITS THAT IS LATER DETERMINED TO**
23 **HAVE BEEN THE RESULT OF AN ADMINISTRATIVE OR CLERICAL ERROR MADE BY**
24 **THE UNEMPLOYMENT AGENCY MUST BE WAIVED, AND ANY PAYMENT MADE BY A**
25 **CLAIMANT FOR SUCH INTEREST MUST BE REFUNDED.**

26 (3) **IF THE UNEMPLOYMENT AGENCY DETERMINES OR REDETERMINES OR**
27 **AN ADMINISTRATIVE LAW JUDGE, THE MICHIGAN COMPENSATION APPELLATE**

1 COMMISSION, OR A COURT ORDERS THAT A CLAIMANT MADE AN INTENTIONAL
 2 FALSE STATEMENT, MISREPRESENTATION, OR CONCEALED MATERIAL
 3 INFORMATION TO OBTAIN OR INCREASE BENEFITS, INTEREST BEGINS
 4 ACCRUING ON THE DATE THE UNEMPLOYMENT AGENCY'S DETERMINATION OR
 5 REDETERMINATION OR THE ORDER IS FINAL.

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

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

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

1 upon the debtor of a warrant issued under this section.

2 (c) In addition to the mode of collection provided in
3 subsection (b), if, after ~~due~~**PROPER** notice, an employer defaults
4 in payment of contributions or interest on the contributions, or a
5 claimant, employee of the unemployment agency, or third party
6 defaults in the payment of a penalty, ~~or interest on a penalty,~~ the
7 unemployment agency may bring an action at law in a court of
8 competent jurisdiction to collect and recover the amount of a
9 contribution, and any interest on the contribution, or the penalty,
10 ~~or interest on the penalty,~~ and in addition 10% of the amount of
11 contributions or penalties found to be due, as damages. An
12 employer, claimant, employee of the unemployment agency, or third
13 party adjudged in default shall pay costs of the action. ~~An~~**THE**
14 **UNEMPLOYMENT AGENCY SHALL NOT BRING AN** action ~~by the unemployment~~
15 ~~agency~~ against a claimant, employee of the unemployment agency, or
16 third party under this subsection ~~shall be brought only~~**UNLESS THE**
17 **ACTION IS 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~~**A COURT SHALL HEAR CIVIL** actions brought under this
20 section ~~shall be heard by the court~~ at the earliest possible date.
21 If a judgment is obtained against an employer for contributions and
22 an execution on that judgment is returned unsatisfied, **A COURT MAY**
23 **ENJOIN** the employer ~~may be enjoined~~ from operating and doing
24 business in this state until the judgment is satisfied. The circuit
25 court of the county in which the judgment is docketed, or the
26 **INGHAM COUNTY** circuit court, ~~for the county of Ingham~~ may grant an
27 injunction upon the petition of the unemployment agency. A copy of

1 the petition for injunction and a notice of when and where the
2 court shall act on the petition ~~shall~~**MUST** be served on the
3 employer at least 21 days before the court may grant the
4 injunction.

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

1 provided by law in other civil actions. ~~An action by a~~ **A** claimant,
2 employee of the unemployment agency, or third party **SHALL NOT BRING**
3 **AN ACTION** against the unemployment agency under this subsection
4 ~~shall be~~ **UNLESS IT IS** brought only to recover penalties and
5 interest on those penalties improperly assessed by the unemployment
6 agency under section 54(a) or (b) or sections 54a to 54c. If a
7 final judgment is rendered in favor of the plaintiff in an action
8 to recover the amount of contributions illegally collected or
9 charged, the treasurer of the unemployment agency, upon receipt of
10 a certified copy of the final judgment, shall pay the amount of
11 contributions illegally collected or charged or penalties assessed
12 from the clearing account, and pay interest as allowed by the
13 court, in an amount not to exceed the actual earnings of the
14 contributions as found to have been illegally collected or charged,
15 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 unemployment agency from an employer, claimant, employee of the
20 unemployment agency, or third party that neglects to pay the same
21 when due are a first and prior lien upon all property and rights to
22 property, real and personal, belonging to the employer, claimant,
23 employee of the unemployment agency, or third party. The lien
24 continues until the liability for that amount or a judgment arising
25 out of the liability is satisfied or becomes unenforceable by
26 reason of lapse of time. The lien attaches to the property and
27 rights to property of the employer, claimant, employee of the

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

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

24 (f) ~~An~~**A COURT SHALL NOT ISSUE AN** injunction ~~shall not issue~~
 25 to stay proceedings for **THE** assessment or collection of
 26 ~~contributions,~~**A CONTRIBUTION**, or interest or penalty on
 27 ~~contributions,~~**A CONTRIBUTION**, levied and required by this act.

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

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

22 (h) If a part of a deficiency in payment of the employer's
23 contribution to the fund is due to negligence or intentional
24 disregard of unemployment agency rules, but without intention to
25 defraud, 5% of the total amount of the deficiency, in addition to
26 the deficiency and all other interest charges and penalties
27 provided herein, ~~shall~~**MUST** be assessed, collected, and paid in the

1 same manner as a deficiency. If a part of a deficiency is
2 determined in an action at law to be ~~due to~~ **THE RESULT OF** fraud
3 with intent to avoid payment of contributions to the fund, then the
4 judgment rendered ~~shall~~ **MUST** include an amount equal to 50% of the
5 total amount of the deficiency, in addition to the deficiency and
6 all other interest charges and penalties provided herein.

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

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

19 (k) The rights respecting the collection of contributions and
20 the levy of interest and penalties and damages made available to
21 the unemployment agency by this section are additional to other
22 powers and rights vested in the unemployment agency under other
23 provisions of this act. The unemployment agency may exercise any of
24 the collection remedies under this act even though an application
25 for a redetermination or an appeal is pending final disposition.

26 (l) A person recording a lien or a discharge of a lien under
27 this section shall pay to the register of deeds a recording fee

1 that is equivalent to the fee for entering and recording a mortgage
2 as authorized under section 2567 of the revised judicature act of
3 1961, 1961 PA 236, MCL 600.2567.

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

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

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

10 (3) Issuing an administrative garnishment of the wages of the
11 claimant.

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

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

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

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

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

22 (o) Before payment of a prize of \$1,000.00 or more under the
23 McCauley-Traxler-Law-Bowman-McNeeley lottery act, 1972 PA 239, MCL
24 432.1 to 432.47, the bureau of state lottery shall determine
25 whether a lottery prize winner has a current liability for
26 restitution of unemployment benefits, penalty, or interest,
27 assessed by the unemployment agency and the amount of the prize

1 owing to the unemployment agency and shall remit that amount to the
2 unemployment agency.

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

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

20 Enacting section 1. This amendatory act applies to
21 determinations, redeterminations, and orders made on or after July
22 1, 2018.

23 Enacting section 2. This amendatory act does not take effect
24 unless all of the following bills of the 99th Legislature are
25 enacted into law:

26 (a) Senate Bill No. ____ or House Bill No. 5167 (request no.
27 03873'17).

1 (b) Senate Bill No.____ or House Bill No. 5172 (request no.
2 03874'17).

3 (c) Senate Bill No.____ or House Bill No. 5170 (request no.
4 03876'17).

5 (d) Senate Bill No.____ or House Bill No. 5165 (request no.
6 03877'17).

7 (e) Senate Bill No.____ or House Bill No. 5168 (request no.
8 03878'17).

9 (f) Senate Bill No.____ or House Bill No. 5166 (request no.
10 03879'17).

11 (g) Senate Bill No.____ or House Bill No. 5171 (request no.
12 03880'17).