

HOUSE BILL No. 5227

October 24, 1989, Introduced by Reps. DeLange, Varga, Ciaramitaro, Perry Bullard, Martin, DeMars, Emerson, Sikkema, Ouwinga, Muxlow, Giese, Miller, DeBeaussaert, Hoekman, Watkins, London, Jonker, Berman, Hertel, Jaye and Bankes and referred to the Committee on Labor.

A bill to amend section 15 of Act No. 1 of the Public Acts of the Extra Session of 1936, entitled as amended "Michigan employment security act," as amended by Act No. 164 of the Public Acts of 1983, being section 421.15 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 15 of Act No. 1 of the Public Acts of
2 the Extra Session of 1936, as amended by Act No. 164 of the
3 Public Acts of 1983, being section 421.15 of the Michigan
4 Compiled Laws, is amended to read as follows:

5 Sec. 15. (a) Contributions unpaid on the date on which they
6 are due and payable, as prescribed by the commission, shall bear
7 interest at the rate of 1% per month, computed on a day to day
8 basis for each day the delinquency is unpaid, from and after that
9 date until payment plus accrued interest is received by the

1 commission. The interest, exclusive of penalties, shall not
2 exceed 50% of the amount of contributions due at due date.

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

9 (b) The commission may make assessments against an employer
10 who fails to pay contributions, reimbursement payments in lieu of
11 contributions, penalties, forfeitures, or interest as required by
12 this act. The commission shall immediately notify the employer
13 of the assessment in writing by certified or registered mail,
14 return receipt demanded. The assessment, which shall constitute
15 a determination, shall be final unless the employer files with
16 the commission an application for a redetermination of the
17 assessment in accordance with section 32a. A review by the com-
18 mission or an appeal to a referee or the appeal board on the
19 assessment shall not reopen a question concerning an employer's
20 liability for contributions or reimbursement payments in lieu of
21 contributions, unless the employer was not a party to the pro-
22 ceeding or decision where the basis for the assessment was
23 determined. An employer may pay an assessment under protest and
24 file an action to recover the amount paid as provided under sub-
25 section (d). Unless an assessment is paid within 15 days after
26 it becomes final the commission may issue a warrant under its
27 official seal for the collection of an amount required to be paid

1 pursuant to the assessment. The commission through its
2 authorized employees, under a warrant issued, may levy upon and
3 sell the property of the employer which is used in connection
4 with the employer's business, or which is subject to a notice to
5 withhold, found within the state, for the payment of the amount
6 of the contributions including penalties, interests, and the cost
7 of executing the warrant. Property of the employer used in con-
8 nection with the employer's business shall not be exempt from
9 levy under the warrant. Wages subject to a notice to withhold
10 shall be exempt to the extent the wages are exempt from garnish-
11 ment under the laws of this state. The warrant shall be returned
12 to the commission together with the money collected by virtue of
13 the warrant within the time specified in the warrant which shall
14 not be less than 20 nor more than 90 days after the date of the
15 warrant. The commission shall proceed upon the warrant in all
16 respects and with like effect and in the same manner as pre-
17 scribed by law in respect to executions issued against property
18 upon judgments by a court of record. The state, through the com-
19 mission or some other officer or agent designated by it, may bid
20 for and purchase property sold under the provisions of this
21 subsection. If a person or employing unit is delinquent in the
22 payment of a contribution, reimbursement payment in lieu of con-
23 tribution, penalty, forfeiture, or interest provided for in this
24 act, the commission may give notice of the amount of the delin-
25 quency served either personally or by registered mail, to a
26 person or legal entity, including the state and its subdivisions,
27 which has in possession or under control a credit or other

1 intangible property belonging to the delinquent person or
2 employing unit, or who owes a debt to the delinquent person or
3 employing unit at the time of the receipt of the notice. A
4 person or legal entity so notified shall not transfer or make a
5 disposition of the credit, other intangible property or debt
6 without retaining an amount sufficient to pay the amount speci-
7 fied in the notice unless the commission consents to a transfer
8 or disposition or 45 days have elapsed from the receipt of the
9 notice. A person or legal entity so notified shall advise the
10 commission within 5 days after receipt of the notice of a credit,
11 other intangible property or debt, which is in its possession,
12 under its control or owed by it. A person or legal entity which
13 is notified and which transfers or disposes of credits or per-
14 sonal property in violation of this section shall be liable to
15 the commission ~~—~~ for the value of the property or the amount of
16 the debts thus transferred or paid, but not more than the amount
17 specified in the notice. An amount due a delinquent employer
18 subject to a notice to withhold shall be paid to the commission
19 upon service upon the debtor of a warrant issued under this
20 section.

21 (c) In addition to the mode of collection provided in sub-
22 section (b), if, after due notice, an employer defaults in pay-
23 ment of contributions or interest ~~thereon~~ ON THE CONTRIBUTIONS,
24 the commission may bring an action at law in a court of competent
25 jurisdiction to collect and recover the amount of a contribution,
26 and any interest ~~thereon~~ ON THE CONTRIBUTION, and in addition
27 10% of the amount of contributions found to be due, as damages.

1 An employer adjudged in default shall pay costs of the action.
2 Civil actions brought under this section shall be heard by the
3 court at the earliest possible date. When a judgment is obtained
4 against an employer for contributions and an execution on that
5 judgment is returned unsatisfied, the employer may be enjoined
6 from operating and doing business in this state until the judg-
7 ment is satisfied. The circuit court of the county in which the
8 judgment is docketed or the circuit court for the county of
9 Ingham may grant an injunction upon the petition of the
10 commission. A copy of the petition for injunction and a notice
11 of when and where the court shall act on the petition shall be
12 served on the employer at least 21 days before the court may
13 grant the injunction.

14 (d) An employer or employing unit improperly charged or
15 assessed contributions provided for under this act and who paid
16 the ~~same~~ CONTRIBUTIONS under protest within 30 days after the
17 mailing of the notice of determination of assessment, may recover
18 the amount improperly collected or paid, together with interest,
19 in any proper action against the commission. The circuit court
20 of the county in which the employer or employing unit resides, or
21 in which is located the principal office or place of business of
22 the employer or employing unit, shall have original jurisdiction
23 of an action to recover contributions improperly paid or col-
24 lected whether or not the charge or assessment has been reviewed
25 by the commission or heard or reviewed by a referee or the appeal
26 board. The court shall not have jurisdiction of the action
27 unless written notice of claim is given to the commission at

1 least 30 days before the institution of the action. In an action
2 to recover contributions paid or collected, the court shall allow
3 costs to such an extent and in a manner as it may ~~deem~~ CONSIDER
4 proper. Either party to the action shall have the right of
5 appeal, as is now provided by law, in other civil actions. If a
6 final judgment is rendered in favor of the plaintiff in an action
7 to recover the amount of contributions illegally collected or
8 charged, the treasurer of the commission, upon receipt of a cer-
9 tified copy of the final judgment, shall pay the amount of con-
10 tributions illegally collected or charged from the clearing
11 account, and pay interest as may be allowed by the court, in an
12 amount not to exceed the actual earnings of the contributions as
13 may have been found to have been illegally collected or charged,
14 from the contingent fund.

15 (e) Except for liens and encumbrances recorded before the
16 filing of the notice ~~herein~~ provided for IN THIS SECTION, all
17 contributions, interest, and penalties payable under this act to
18 the commission from an employing unit which neglects to pay the
19 same when due shall be a first and prior lien upon all property
20 and rights to property, real and personal, belonging to the
21 employing unit. The lien shall continue until the liability for
22 the amount thereof or a judgment arising out of the liability is
23 satisfied or becomes unenforceable by reason of lapse of time.
24 The lien shall attach to the employing unit's property and rights
25 to property, whether real or personal, from and after the date
26 that a report upon which the specific tax is computed is required
27 by this act to be filed. Notice of the lien shall be recorded in

1 the office of the register of deeds of the county in which the
2 property subject to the lien is situated, and the register of
3 deeds shall receive the notice for recording.

4 If there is a distribution of an employer's assets pursuant
5 to an order of a court under the laws of this state, including a
6 receivership, assignment for benefit of creditors, adjudicated
7 insolvency, composition, or similar proceedings, contributions
8 then or thereafter due shall be paid in full before all other
9 claims except for wages and compensation under the worker's dis-
10 ability compensation act of 1969, Act No. 317 of the Public Acts
11 of 1969, being sections 418.101 to 418.941 of the Michigan
12 Compiled Laws. In the distribution of estates of decedents,
13 claims for funeral expenses and expenses of last sickness shall
14 also be entitled to priority.

15 (f) An injunction shall not issue to stay proceedings for
16 assessment or collection of contributions, or interest or penalty
17 ~~thereon~~ ON CONTRIBUTIONS, levied and required by this act.

18 (g) A person or employing unit, which acquires the organi-
19 zation, trade, business, or 75% or more of the assets from an
20 employing unit, as a successor defined in section 41(2), shall be
21 liable for contributions and interest due to the commission from
22 the transferor at the time of the acquisition in an amount not to
23 exceed the reasonable value of the organization, trade, business,
24 or assets acquired, less the amount of a secured interest in the
25 assets owned by the transferee which are entitled to priority.
26 The transferor or transferee who has, not less than 10 days
27 before the acquisition, requested from the commission in writing

1 a statement certifying the status of contribution liability of
2 the transferor shall be provided with that statement and the
3 transferee shall not be liable for any amount due from the trans-
4 feror in excess of the amount of liability computed as prescribed
5 ~~herein~~ IN THIS SUBSECTION and certified by the commission. AT
6 LEAST 2 CALENDAR DAYS NOT INCLUDING A SATURDAY, SUNDAY, OR LEGAL
7 HOLIDAY BEFORE THE ACCEPTANCE OF AN OFFER, THE TRANSFEROR, OR THE
8 TRANSFEROR'S REAL ESTATE BROKER OR OTHER AGENT REPRESENTING THE
9 TRANSFEROR, SHALL DISCLOSE TO THE TRANSFEE ON A FORM PROVIDED
10 BY THE COMMISSION, THE AMOUNTS OF THE TRANSFEROR'S OUTSTANDING
11 UNEMPLOYMENT TAX LIABILITY, UNREPORTED UNEMPLOYMENT TAX LIABILITY,
12 TY, AND THE TAX PAYMENTS, TAX RATES, AND CUMULATIVE BENEFIT
13 CHARGES FOR THE MOST RECENT 5 YEARS, A LISTING OF ALL INDIVIDUALS
14 CURRENTLY EMPLOYED BY THE TRANSFEROR, AND A LISTING OF ALL
15 EMPLOYEES SEPARATED FROM EMPLOYMENT WITH THE TRANSFEROR IN THE
16 MOST RECENT 12 MONTHS. THIS FORM SHALL SPECIFY SUCH OTHER INFOR-
17 MATION, AS DETERMINED BY THE COMMISSION, AS WOULD BE REQUIRED FOR
18 A TRANSFEE TO ESTIMATE FUTURE UNEMPLOYMENT COMPENSATION COSTS
19 BASED ON THE TRANSFEROR'S BENEFIT CHARGE AND TAX REPORTING AND
20 PAYMENT EXPERIENCE WITH THE COMMISSION. FAILURE OF THE TRANSFER-
21 OR, OR THE TRANSFEROR'S REAL ESTATE BROKER OR OTHER AGENT REPRESENTING THE
22 TRANSFEROR, TO PROVIDE ACCURATE INFORMATION REQUIRED
23 BY THIS SUBSECTION SHALL BE A MISDEMEANOR PUNISHABLE BY IMPRISON-
24 MENT FOR NOT MORE THAN 90 DAYS, OR A FINE OF NOT MORE THAN
25 \$2,500.00, OR BOTH. IN ADDITION, THE TRANSFEROR, OR THE
26 TRANSFEROR'S REAL ESTATE BROKER OR OTHER AGENT REPRESENTING THE
27 TRANSFEROR, SHALL BE LIABLE TO THE TRANSFEE FOR ANY

1 CONSEQUENTIAL DAMAGES RESULTING FROM THE FAILURE TO COMPLY WITH
2 THIS SUBSECTION. HOWEVER, THE REAL ESTATE BROKER OR OTHER AGENT
3 SHALL NOT BE LIABLE FOR CONSEQUENTIAL DAMAGES IF HE OR SHE EXER-
4 CISED GOOD FAITH IN COMPLIANCE WITH THE DISCLOSURE OF
5 INFORMATION. THE REMEDY PROVIDED THE TRANSFEREE IS NOT EXCLU-
6 SIVE, AND SHALL NOT BE CONSTRUED TO REDUCE ANY OTHER RIGHT OR
7 REMEDY AGAINST ANY PARTY PROVIDED FOR IN THIS OR ANY OTHER ACT.
8 NOTHING IN THIS SUBSECTION SHALL BE CONSTRUED TO DECREASE THE
9 LIABILITY OF THE TRANSFEREE AS A SUCCESSOR IN INTEREST, OR TO
10 PREVENT THE TRANSFER OF A RATING ACCOUNT BALANCE AS PROVIDED IN
11 THIS ACT: The foregoing provisions are in addition to the reme-
12 dies the commission has against the transferor.

13 (h) If a part of a deficiency in payment of the employer's
14 contribution to the fund is due to negligence or intentional dis-
15 regard of the rules of the commission, but without intention to
16 defraud, 5% of the total amount of the deficiency, in addition to
17 the deficiency and in addition to all other interest charges and
18 penalties provided herein, shall be assessed, collected, and paid
19 in the same manner as if it were a deficiency. If a part of a
20 deficiency is determined in an action at law to be due to fraud
21 with intent to avoid payment of contributions to the fund, then
22 the judgment rendered shall include an amount equal to 50% of the
23 total amount of the deficiency, in addition to the deficiency and
24 in addition to all other interest charges and penalties provided
25 herein.

26 (i) If an employing unit fails to make a report as
27 reasonably required by the rules of the commission pursuant to

1 this act, the commission may make an estimate of the liability of
2 that employing unit from information it may obtain and, according
3 to that estimate so made, assess the employing unit for the con-
4 tributions, penalties, and interest due. The commission shall
5 have the power only after a default continues for 30 days and
6 after the commission has determined that the default of the
7 employing unit is ~~wilful~~ WILLFUL.

8 (j) An assessment or penalty with respect to contributions
9 unpaid shall not be effective for any period before the 3 calen-
10 dar years preceding the date of the assessment.

11 (k) The rights respecting the collection of contributions
12 and the levy of interest and penalties and damages made available
13 to the commission by this section shall be ~~deemed as~~ CONSIDERED
14 additional to other powers and rights vested in the commission in
15 pursuance of the other provisions of this act. The commission
16 shall not be precluded from exercising any of the collection rem-
17 edies provided for by this act even though an application for a
18 redetermination or an appeal is pending final disposition.

19 (l) A person recording a lien provided for in this section
20 shall pay a fee of \$2.00 for recording a lien and a fee of \$2.00
21 for recording a discharge of a lien.

22 Section 2. This amendatory act shall not take effect unless
23 all of the following bills of the 85th Legislature are enacted
24 into law:

25 (a) House Bill No. 4815.

26 (b) House Bill No. 4817.

- 1 (c) Senate Bill No. 68.
- 2 (d) Senate Bill No. _____ or House Bill No. 5224 (request
3 no. 04204'89*).
- 4 (e) Senate Bill No. _____ or House Bill No. 5221 (request
5 no. 04205'89*).
- 6 (f) Senate Bill No. _____ or House Bill No. 5228 (request
7 no. 04206'89*).
- 8 (g) Senate Bill No. _____ or House Bill No. 5222 (request
9 no. 04207'89*).
- 10 (h) Senate Bill No. _____ or House Bill No. 5229 (request
11 no. 04208'89*).
- 12 (i) Senate Bill No. _____ or House Bill No. 5226 (request
13 no. 04209'89*)^{*}.
- 14 (j) Senate Bill No. _____ or House Bill No. 5230 (request
15 no. 04210'89*).
- 16 (k) Senate Bill No. _____ or House Bill No. 5225 (request
17 no. 04211'89*)^{*}.
- 18 (l) Senate Bill No. _____ or House Bill No. 5231 (request
19 no. 04212'89*)^{**}.
- 20 (m) Senate Bill No. _____ or House Bill No. 5223 (request
21 no. 04213'89*)^{*}.