

SENATE BILL No. 614

May 27, 2009, Introduced by Senators GILBERT, PATTERSON, BIRKHOLZ, ALLEN, PAPPAGEORGE, BROWN, JANSEN, CROPSEY, VAN WOERKOM, SANBORN and KAHN and referred to the Committee on Commerce and Tourism.

A bill to amend 1936 (Ex Sess) PA 1, entitled "Michigan employment security act," by amending section 15 (MCL 421.15), as amended by 1996 PA 498.

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 commission, shall bear
3 interest at the rate of 1% per month, computed on a ~~day-to-day~~ **DAY-**
4 **TO-DAY** basis for each day the delinquency is unpaid, from and after
5 that date until payment plus accrued interest is received by the
6 commission. Amounts illegally obtained or previously withheld from
7 payment and damages that are recovered by the commission under
8 section 54(a) and (b) and sections 54a to 54c of this act shall
9 bear interest at the rate of 1% per month, computed on a day-to-day

1 basis for each day the amounts remain unpaid until payment plus
2 accrued interest is received by the commission. The interest on
3 unpaid contributions, exclusive of penalties, shall not exceed 50%
4 of the amount of contributions due at due date. Interest and
5 penalties collected pursuant to this section shall be paid into the
6 contingent fund, **EXCEPT THAT INTEREST AND PENALTIES COLLECTED UNDER**
7 **SECTION 62 SHALL BE PAID INTO THE SPECIAL FRAUD CONTROL FUND.** The
8 commission 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 commission, or fraud.

13 (b) The commission may make assessments against an employer,
14 claimant, employee of the commission, or third party who fails to
15 pay contributions, reimbursement payments in lieu of contributions,
16 penalties, forfeitures, or interest as required by this act. The
17 commission shall immediately notify the employer, claimant,
18 employee of the commission, or third party of the assessment in
19 writing by first-class mail. An assessment by the commission
20 against a claimant, an employee of the commission, or a third party
21 under this subsection shall be made only for penalties and interest
22 on those penalties for violations of section 54(a) or (b) or
23 sections 54a to 54c. The assessment, which shall constitute a
24 determination, shall be final unless the employer, claimant,
25 employee of the commission, or third party files with the
26 commission an application for a redetermination of the assessment
27 in accordance with section 32a. A review by the commission or an

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

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

1 employer, claimant, employee of the ~~commission~~ **UNEMPLOYMENT AGENCY**,
2 or third party subject to a notice to withhold shall be paid to the
3 ~~commission~~ **UNEMPLOYMENT AGENCY** upon service upon the debtor of a
4 warrant issued under this section.

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

1 circuit court for the county of Ingham may grant an injunction upon
2 the petition of the ~~commission~~**UNEMPLOYMENT AGENCY**. A copy of the
3 petition for injunction and a notice of when and where the court
4 shall act on the petition shall be served on the employer at least
5 21 days before the court may grant the injunction.

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

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

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

1 of time. The lien shall attach to the property and rights to
2 property of the employer, claimant, employee of the ~~commission~~
3 **UNEMPLOYMENT AGENCY**, or third party, whether real or personal, from
4 and after the date that a report upon which the specific tax is
5 computed is required by this act to be filed. Notice of the lien
6 shall be recorded in the office of the register of deeds of the
7 county in which the property subject to the lien is situated, and
8 the register of deeds shall receive the notice for recording. This
9 subsection ~~shall apply~~ **APPLIES** only to penalties and interest on
10 those penalties assessed by the commission against a claimant,
11 employee of the commission, or third party for violations of
12 section 54(a) or (b) or sections 54a to 54c.

13 If there is a distribution of an employer's assets pursuant to
14 an order of a court under the laws of this state, including a
15 receivership, assignment for benefit of creditors, adjudicated
16 insolvency, composition, or similar proceedings, contributions then
17 or thereafter due shall be paid in full before all other claims
18 except for wages and compensation under the worker's disability
19 compensation act of 1969, ~~Act No. 317 of the Public Acts of 1969,~~
20 ~~being sections 418.101 to 418.941 of the Michigan Compiled Laws~~
21 **1969 PA 317, MCL 418.101 TO 418.941**. In the distribution of estates
22 of decedents, claims for funeral expenses and expenses of last
23 sickness shall also be entitled to priority.

24 (f) An injunction shall not issue to stay proceedings for
25 assessment or collection of contributions, or interest or penalty
26 on contributions, levied and required by this act.

27 (g) A person or employing unit, that acquires the

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

1 compensation costs based on the transferor's benefit charge and tax
2 reporting and payment experience with the ~~commission~~**UNEMPLOYMENT**
3 **AGENCY**. Failure of the transferor, or the transferor's real estate
4 broker or other agent representing the transferor, to provide
5 accurate information required by this subsection is a misdemeanor
6 punishable by imprisonment for not more than 90 days, or a fine of
7 not more than \$2,500.00, or both. In addition, the transferor, or
8 the transferor's real estate broker or other agent representing the
9 transferor, is liable to the transferee for any consequential
10 damages resulting from the failure to comply with this subsection.
11 However, the real estate broker or other agent is not liable for
12 consequential damages if he or she exercised good faith in
13 compliance with the disclosure of information. The remedy provided
14 the transferee is not exclusive, and is not to be construed to
15 reduce any other right or remedy against any party provided for in
16 this or any other act. Nothing in this subsection shall be
17 construed to decrease the liability of the transferee as a
18 successor in interest, or to prevent the transfer of a rating
19 account balance as provided in this act. The foregoing provisions
20 are in addition to the remedies the ~~commission~~**UNEMPLOYMENT AGENCY**
21 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 the rules of the ~~commission~~**UNEMPLOYMENT AGENCY**, but
25 without intention to defraud, 5% of the total amount of the
26 deficiency, in addition to the deficiency and in addition to all
27 other interest charges and penalties provided herein, shall be

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

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

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

21 (k) The rights respecting the collection of contributions and
22 the levy of interest and penalties and damages made available to
23 the ~~commission~~**UNEMPLOYMENT AGENCY** by this section ~~is~~**ARE**
24 additional to other powers and rights vested in the ~~commission~~**in**
25 ~~pursuance of the~~**UNEMPLOYMENT AGENCY UNDER** other provisions of this
26 act. The ~~commission~~**UNEMPLOYMENT AGENCY** is not precluded from
27 exercising any of the collection remedies provided for by this act

Senate Bill No. 614 as amended June 25, 2009

1 even though an application for a redetermination or an appeal is
2 pending final disposition.

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

6 Enacting section 1. This amendatory act does not take effect
7 unless all of the following bills of the 95th Legislature are
8 enacted into law:

9 (a) Senate Bill No. 615.

10

11 <<

12

13 (b)>> Senate Bill No. 613.

14

15 <<(c)>> Senate Bill No. 612.

16