

# 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

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 (b) Senate Bill No. \_\_\_\_ or House Bill No. \_\_\_\_ (request no.  
12 01821'09).

13 (c) Senate Bill No. 613.

14

15 (d) Senate Bill No. 612.

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