

Act No. 498
Public Acts of 1996
Approved by the Governor
January 7, 1997
Filed with the Secretary of State
January 9, 1997

**STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1996**

Introduced by Reps. Byl, Jellema, Perricone and Ryan

ENROLLED HOUSE BILL No. 6160

AN ACT to amend sections 4, 15, and 24 of Act No. 1 of the Public Acts of the Extra Session of 1936, entitled as amended "An act to protect the welfare of the people of this state through the establishment of an unemployment compensation fund, and to provide for the disbursement thereof; to create certain other funds; to create the Michigan employment security commission, and to prescribe its powers and duties; to provide for the protection of the people of this state from the hazards of unemployment; to levy and provide for contributions from employers; to provide for the collection of such contributions; to enter into reciprocal agreements and to cooperate with agencies of the United States and of other states charged with the administration of any unemployment insurance law; to furnish certain information to certain governmental agencies for use in administering public benefit and child support programs and investigating and prosecuting fraud; to provide for the payment of benefits; to provide for appeals from redeterminations, decisions and notices of assessments; and for referees and a board of review to hear and decide the issues arising from redeterminations, decisions and notices of assessment; to provide for the cooperation of this state and compliance with the provisions of the social security act and the Wagner-Peyser act passed by the Congress of the United States of America; to provide for the establishment and maintenance of free public employment offices; to provide for the transfer of funds; to make appropriations for carrying out the provisions of this act; to prescribe remedies and penalties for the violation of the provisions of this act; and to repeal all acts and parts of acts inconsistent with the provisions of this act," section 15 as amended by Act No. 7 of the Public Acts of 1991 and section 24 as amended by Act No. 164 of the Public Acts of 1983, being sections 421.4, 421.15, and 421.24 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Sections 4, 15, and 24 of Act No. 1 of the Public Acts of the Extra Session of 1936, section 15 as amended by Act No. 7 of the Public Acts of 1991 and section 24 as amended by Act No. 164 of the Public Acts of 1983, being sections 421.4, 421.15, and 421.24 of the Michigan Compiled Laws, are amended to read as follows:

Sec. 4. (1) The commission is authorized and empowered to promulgate rules and regulations that it determines necessary, and which are not inconsistent with this act, to carry out this act.

(2) The commission shall cause to be printed for distribution to the public the text of this act, and all rules and regulations of the commission, and shall make available to the public upon request statements of any and all informal rules or criteria of decision, administrative policies or interpretations, and the like, which may be utilized by the commission or any of its agents or employees in any manner.

(3) No rule or regulation shall be made or changed until after public hearing, notice of which shall first be given not less than 20 days before the hearing, by publication in at least 3 newspapers of general circulation in different parts of the state, 1 of which shall be in the upper peninsula. Copies of proposed rules or regulations shall be furnished by the commission upon application by any interested parties. Rules and regulations shall become effective in accordance with

the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. Notice of the hearing accompanied by copies of the proposed rule or regulation shall be given to members of the commission not less than 30 days before the hearing.

Sec. 15. (a) Contributions unpaid on the date on which they are due and payable, as prescribed by the commission, shall bear interest at the rate of 1% per month, computed on a day to day basis for each day the delinquency is unpaid, from and after that date until payment plus accrued interest is received by the commission. Amounts illegally obtained or previously withheld from payment and damages that are recovered by the commission under section 54(a) and (b) and sections 54a to 54c of this act shall bear interest at the rate of 1% per month, computed on a day-to-day basis for each day the amounts remain unpaid until payment plus accrued interest is received by the commission. The interest on unpaid contributions, exclusive of penalties, shall not exceed 50% of the amount of contributions due at due date. Interest and penalties collected pursuant to this section shall be paid into the contingent fund. The commission may cancel any interest and any penalty when it is shown that the failure to pay on or before the last day on which the tax could have been paid without interest and penalty was not the result of negligence, intentional disregard of the rules of the commission, or fraud.

(b) The commission may make assessments against an employer, claimant, employee of the commission, or third party who fails to pay contributions, reimbursement payments in lieu of contributions, penalties, forfeitures, or interest as required by this act. The commission shall immediately notify the employer, claimant, employee of the commission, or third party of the assessment in writing by first-class mail. An assessment by the commission against a claimant, an employee of the commission, or a third party under this subsection shall be made only for penalties and interest on those penalties for violations of section 54(a) or (b) or sections 54a to 54c. The assessment, which shall constitute a determination, shall be final unless the employer, claimant, employee of the commission, or third party files with the commission an application for a redetermination of the assessment in accordance with section 32a. A review by the commission or an appeal to a referee or the appeal board on the assessment shall not reopen a question concerning an employer's liability for contributions or reimbursement payments in lieu of contributions, unless the employer was not a party to the proceeding or decision where the basis for the assessment was determined. An employer may pay an assessment under protest and file an action to recover the amount paid as provided under subsection (d). Unless an assessment is paid within 15 days after it becomes final the commission may issue a warrant under its official seal for the collection of an amount required to be paid pursuant to the assessment. The commission through its authorized employees, under a warrant issued, may levy upon and sell the property of the employer that is used in connection with the employer's business, or that is subject to a notice to withhold, found within the state, for the payment of the amount of the contributions including penalties, interests, and the cost of executing the warrant. Property of the employer used in connection with the employer's business shall not be exempt from levy under the warrant. Wages subject to a notice to withhold shall be exempt to the extent the wages are exempt from garnishment under the laws of this state. The warrant shall be returned to the commission together with the money collected by virtue of the warrant within the time specified in the warrant which shall not be less than 20 or more than 90 days after the date of the warrant. The commission shall proceed upon the warrant in all respects and with like effect and in the same manner as prescribed by law in respect to executions issued against property upon judgments by a court of record. The state, through the commission or some other officer or agent designated by it, may bid for and purchase property sold under the provisions of this subsection. If an employer, claimant, employee of the commission, or third party, as applicable, is delinquent in the payment of a contribution, reimbursement payment in lieu of contribution, penalty, forfeiture, or interest provided for in this act, the commission may give notice of the amount of the delinquency served either personally or by mail, to a person or legal entity, including the state and its subdivisions, that has in possession or under control a credit or other intangible property belonging to the employer, claimant, employee of the commission, or third party, or who owes a debt to the employer, claimant, employee of the commission, or third party at the time of the receipt of the notice. A person or legal entity so notified shall not transfer or make a disposition of the credit, other intangible property, or debt without retaining an amount sufficient to pay the amount specified in the notice unless the commission consents to a transfer or disposition or 45 days have elapsed from the receipt of the notice. A person or legal entity so notified shall advise the commission within 5 days after receipt of the notice of a credit, other intangible property, or debt, which is in its possession, under its control, or owed by it. A person or legal entity that is notified and that transfers or disposes of credits or personal property in violation of this section is liable to the commission for the value of the property or the amount of the debts thus transferred or paid, but not more than the amount specified in the notice. An amount due a delinquent employer, claimant, employee of the commission, or third party subject to a notice to withhold shall be paid to the commission upon service upon the debtor of a warrant issued under this section.

(c) In addition to the mode of collection provided in subsection (b), if, after due notice, an employer defaults in payment of contributions or interest on the contributions, or a claimant, employee of the commission, or third party defaults in the payment of a penalty or interest on a penalty, the commission may bring an action at law in a court of competent jurisdiction to collect and recover the amount of a contribution, and any interest on the contribution, or the penalty or interest on the penalty, and in addition 10% of the amount of contributions or penalties found to be due, as damages. An employer, claimant, employee of the commission, or third party adjudged in default shall pay costs of the action. An action by the commission against a claimant, employee of the commission, or third party under this

subsection shall be brought only to recover penalties and interest on those penalties for violations of section 54(a) or (b) or sections 54a to 54c. Civil actions brought under this section shall be heard by the court at the earliest possible date. If a judgment is obtained against an employer for contributions and an execution on that judgment is returned unsatisfied, the employer may be enjoined from operating and doing business in this state until the judgment is satisfied. The circuit court of the county in which the judgment is docketed or the circuit court for the county of Ingham may grant an injunction upon the petition of the commission. A copy of the petition for injunction and a notice of when and where the court shall act on the petition shall be served on the employer at least 21 days before the court may grant the injunction.

(d) An employer or employing unit improperly charged or assessed contributions provided for under this act or a claimant, employee of the commission, or third party improperly assessed a penalty under this act and who paid the contributions or penalty under protest within 30 days after the mailing of the notice of determination of assessment, may recover the amount improperly collected or paid, together with interest, in any proper action against the commission. The circuit court of the county in which the employer or employing unit or claimant, employee of the commission, or third party resides, or, in the case of an employer or employing unit, in which is located the principal office or place of business of the employer or employing unit, shall have original jurisdiction of an action to recover contributions improperly paid or collected or a penalty improperly assessed whether or not the charge or assessment has been reviewed by the commission or heard or reviewed by a referee or the appeal board. The court shall not have jurisdiction of the action unless written notice of claim is given to the commission at least 30 days before the institution of the action. In an action to recover contributions paid or collected or penalties assessed, the court shall allow costs to such an extent and in a manner as it may consider proper. Either party to the action shall have the right of appeal, as is now provided by law, in other civil actions. An action by a claimant, employee of the commission, or third party against the commission under this subsection shall be brought only to recover penalties and interest on those penalties improperly assessed by the commission under section 54(a) or (b) or sections 54a to 54c. If a final judgment is rendered in favor of the plaintiff in an action to recover the amount of contributions illegally collected or charged, the treasurer of the commission, upon receipt of a certified copy of the final judgment, shall pay the amount of contributions illegally collected or charged or penalties assessed from the clearing account, and pay interest as may be allowed by the court, in an amount not to exceed the actual earnings of the contributions as may have been found to have been illegally collected or charged, from the contingent fund.

(e) Except for liens and encumbrances recorded before the filing of the notice provided for in this section, all contributions, interest, and penalties payable under this act to the commission from an employer, claimant, employee of the commission, or third party that neglects to pay the same when due shall be a first and prior lien upon all property and rights to property, real and personal, belonging to the employer, claimant, employee of the commission, or third party. The lien shall continue until the liability for that amount or a judgment arising out of the liability is satisfied or becomes unenforceable by reason of lapse of time. The lien shall attach to the property and rights to property of the employer, claimant, employee of the commission, or third party, whether real or personal, from and after the date that a report upon which the specific tax is computed is required by this act to be filed. Notice of the lien shall be recorded in the office of the register of deeds of the county in which the property subject to the lien is situated, and the register of deeds shall receive the notice for recording. This subsection shall apply only to penalties and interest on those penalties assessed by the commission against a claimant, employee of the commission, or third party for violations of section 54(a) or (b) or sections 54a to 54c.

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

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

(g) A person or employing unit, that acquires the organization, trade, business, or 75% or more of the assets from an employing unit, as a successor defined in section 41(2), is liable for contributions and interest due to the commission from the transferor at the time of the acquisition in an amount not to exceed the reasonable value of the organization, trade, business, or assets acquired, less the amount of a secured interest in the assets owned by the transferee that are entitled to priority. The transferor or transferee who has, not less than 10 days before the acquisition, requested from the commission in writing a statement certifying the status of contribution liability of the transferor shall be provided with that statement and the transferee is not liable for any amount due from the transferor in excess of the amount of liability computed as prescribed in this subsection and certified by the commission. At least 2 calendar days not including a Saturday, Sunday, or legal holiday before the acceptance of an offer, the transferor, or the transferor's real estate broker or other agent representing the transferor, shall disclose to the transferee on a form provided by the commission, the amounts of the transferor's outstanding unemployment tax liability, unreported unemployment tax liability, and the tax payments, tax rates, and cumulative benefit charges for the most recent 5 years, a listing of all

individuals currently employed by the transferor, and a listing of all employees separated from employment with the transferor in the most recent 12 months. This form shall specify such other information, as determined by the commission, as would be required for a transferee to estimate future unemployment compensation costs based on the transferor's benefit charge and tax reporting and payment experience with the commission. Failure of the transferor, or the transferor's real estate broker or other agent representing the transferor, to provide accurate information required by this subsection is a misdemeanor punishable by imprisonment for not more than 90 days, or a fine of not more than \$2,500.00, or both. In addition, the transferor, or the transferor's real estate broker or other agent representing the transferor, is liable to the transferee for any consequential damages resulting from the failure to comply with this subsection. However, the real estate broker or other agent is not liable for consequential damages if he or she exercised good faith in compliance with the disclosure of information. The remedy provided the transferee is not exclusive, and is not to be construed to reduce any other right or remedy against any party provided for in this or any other act. Nothing in this subsection shall be construed to decrease the liability of the transferee as a successor in interest, or to prevent the transfer of a rating account balance as provided in this act. The foregoing provisions are in addition to the remedies the commission has against the transferor.

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

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

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

(k) The rights respecting the collection of contributions and the levy of interest and penalties and damages made available to the commission by this section is additional to other powers and rights vested in the commission in pursuance of the other provisions of this act. The commission is not precluded from exercising any of the collection remedies provided for by this act even though an application for a redetermination or an appeal is pending final disposition.

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

Sec. 24. Except as otherwise provided in section 25, an employing unit shall cease to be an employer subject to this act as provided in this section:

(a) If an employing unit that became liable under section 41 makes written application for termination of its coverage under this act, the commission shall issue a determination granting or denying the application. The commission shall grant the application terminating coverage effective as of the last day of the calendar quarter in which the application was received by the commission if it finds that the employing unit did not meet the applicable requirements of an employer specified in section 41 during the preceding calendar year and during the current calendar year, up to the last day of the calendar quarter in which the application was received. If the employing unit requesting termination became an employer under section 41(2) in the preceding calendar year, then the individuals in the employ of any predecessor or predecessors in a chain of successorship shall be considered as if they were employees of the requesting employing unit for the purpose of determining the number of weeks during which 1 or more individuals performed services in employment and in determining total remuneration for employment during the preceding calendar year. If an employing unit liable solely under section 41(7) makes written application for termination of its coverage under this act, the commission shall grant the application terminating coverage effective as of the last day of the calendar quarter in which the application was received by the commission if it finds that the employing unit ceased to have employment in Michigan during the calendar year preceding the receipt of the application for termination and had no employment in Michigan during the current calendar year, up to the last day of the calendar quarter in which the application was received. An employer whose application for termination of coverage is denied may request a redetermination in accordance with section 32a.

(b) The commission shall terminate the coverage of an employing unit as of the effective date on which the employing unit's entire rating account is transferred to another employer under section 22.

(c) (1) The commission may issue a determination terminating the coverage of an employing unit as of January 1 of a calendar year if it finds that the employing unit ceased to exist during the preceding calendar year or met the

requirements for termination as specified in subdivision (a). The determination shall be mailed by first-class mail to the last known address of the employing unit involved.

(2) The commission may terminate the coverage of an employing unit as of January 1 of a previous calendar year with respect to which it makes the foregoing findings, if the employing unit has not been previously determined to have been an employer with respect to that specific year.

(3) The commission shall rescind its determination terminating the coverage of an employing unit under this subsection if it has received written objection to the determination from the employing unit within 30 days after the date of mailing by the commission.

This act is ordered to take immediate effect.

Clerk of the House of Representatives.

Secretary of the Senate.

Approved -----

Governor.