

HOUSE BILL No. 4451

March 16, 2011, Introduced by Rep. Somerville and referred to the Committee on Commerce.

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

1 of 1% per month, computed on a day-to-day basis for each day the
2 amounts remain unpaid until payment plus accrued interest is
3 received. ~~by the commission.~~ The interest on unpaid contributions,
4 exclusive of penalties, shall not exceed 50% of the amount of
5 contributions due at due date. Interest and penalties collected
6 pursuant to this section shall be paid into the contingent fund,
7 **EXCEPT THAT INTEREST ALLOWED ON AMOUNTS COLLECTED UNDER SECTION 62**
8 **SHALL BE PAID INTO THE SPECIAL FRAUD CONTROL FUND.** The ~~commission~~
9 **UNEMPLOYMENT AGENCY** may cancel any interest and any penalty when it
10 is shown that the failure to pay on or before the last day on which
11 the tax could have been paid without interest and penalty was not
12 the result of negligence, intentional disregard of the rules of the
13 ~~commission~~ **UNEMPLOYMENT AGENCY**, or fraud.

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

1 ~~commission~~ **UNEMPLOYMENT AGENCY**, or third party files with the
2 ~~commission~~ an application for a redetermination of the assessment
3 in accordance with section 32a. A review by the ~~commission~~
4 **UNEMPLOYMENT AGENCY** or an appeal to a referee or the appeal board
5 on the assessment ~~shall~~ **DOES** not reopen a question concerning an
6 employer's liability for contributions or reimbursement payments in
7 lieu of contributions, unless the employer was not a party to the
8 proceeding or decision where the basis for the assessment was
9 determined. An employer may pay an assessment under protest and
10 file an action to recover the amount paid as provided under
11 subsection (d). Unless an assessment is paid within 15 days after
12 it becomes final, the ~~commission~~ **UNEMPLOYMENT AGENCY** may issue a
13 warrant under its official seal for the collection of ~~an~~ **THE**
14 **ASSESSED** amount. ~~required to be paid pursuant to the assessment.~~
15 The ~~commission~~ **UNEMPLOYMENT AGENCY** through its authorized
16 employees, under a warrant issued, may levy upon and sell the
17 property of the employer that is used in connection with the
18 employer's business, or that is subject to a notice to withhold,
19 found within the state, for the payment of the amount of the
20 contributions including penalties, interests, and the cost of
21 executing the warrant. Property of the employer used in connection
22 with the employer's business ~~shall not be~~ **IS NOT** exempt from levy
23 under the warrant. Wages subject to a notice to withhold ~~shall be~~
24 **ARE** exempt to the extent the wages are exempt from garnishment
25 under the laws of this state. The warrant shall be returned to the
26 ~~commission~~ **UNEMPLOYMENT AGENCY** together with the money collected ~~by~~
27 ~~virtue of~~ **UNDER** the warrant within the time specified in the

1 warrant which shall not be less than 20 or more than 90 days after
2 the date of the warrant. The ~~commission~~ **UNEMPLOYMENT AGENCY** shall
3 proceed upon the warrant ~~in all respects and with like effect and~~
4 ~~in the same manner~~ as prescribed by law in respect to executions
5 issued against property upon judgments by a court of record. The
6 state, through the ~~commission~~ **UNEMPLOYMENT AGENCY** or some other
7 officer or agent designated by it, may bid for and purchase
8 property sold under the provisions of this subsection. If an
9 employer, claimant, employee of the ~~commission~~ **UNEMPLOYMENT AGENCY**,
10 or third party, as applicable, is delinquent in the payment of a
11 contribution, reimbursement payment in lieu of contribution,
12 penalty, forfeiture, or interest provided for in this act, the
13 ~~commission~~ **UNEMPLOYMENT AGENCY** may give notice of the amount of the
14 delinquency served either personally or by mail, to a person or
15 legal entity, including the state and its subdivisions, ~~that~~ **TO**
16 **WHICH THE DELINQUENT PERSON OR ENTITY OWES A DEBT OR THAT** has in
17 **ITS** possession or under **ITS** control a credit or other intangible
18 property belonging to ~~the employer, claimant, employee of the~~
19 ~~commission, or third party, or who owes a debt to the employer,~~
20 ~~claimant, employee of the commission, or third party at the time of~~
21 ~~the receipt of the notice~~ **THE DELINQUENT PERSON OR ENTITY**. A person
22 or legal entity so notified shall not transfer or ~~make a~~
23 ~~disposition~~ **DISPOSE** of the credit, other intangible property, or
24 debt without retaining an amount sufficient to pay the amount
25 specified in the notice unless the ~~commission~~ **UNEMPLOYMENT AGENCY**
26 consents to a transfer or disposition or 45 days have elapsed from
27 the receipt of the notice. A person or legal entity so notified

1 shall advise the ~~commission~~-**UNEMPLOYMENT AGENCY** within 5 days after
2 receipt of the notice of a credit, other intangible property, or
3 debt, which is in its possession, under its control, or owed by it.

4 A person or legal entity that is notified and that transfers or
5 disposes of credits or personal property in violation of this
6 section is liable to the ~~commission~~-**UNEMPLOYMENT AGENCY** for the
7 value of the property or the amount of the debts thus transferred
8 or paid, but not more than the amount specified in the notice. An
9 amount due a delinquent employer, claimant, employee of the
10 ~~commission~~-**UNEMPLOYMENT AGENCY**, or third party subject to a notice
11 to withhold shall be paid to the ~~commission~~-**UNEMPLOYMENT AGENCY**
12 upon service upon the debtor of a warrant issued under this
13 section.

14 (c) In addition to the mode of collection provided in
15 subsection (b), if, after due notice, an employer defaults in
16 payment of contributions or interest on the contributions, or a
17 claimant, employee of the ~~commission~~-**UNEMPLOYMENT AGENCY**, or third
18 party defaults in the payment of a penalty or interest on a
19 penalty, the ~~commission~~-**UNEMPLOYMENT AGENCY** may bring an action at
20 law in a court of competent jurisdiction to collect and recover the
21 amount of a contribution, and any interest on the contribution, or
22 the penalty or interest on the penalty, and in addition 10% of the
23 amount of contributions or penalties found to be due, as damages.
24 An employer, claimant, employee of the ~~commission~~-**UNEMPLOYMENT**
25 **AGENCY**, or third party adjudged in default shall pay costs of the
26 action. An action by the ~~commission~~-**UNEMPLOYMENT AGENCY** against a
27 claimant, employee of the ~~commission~~-**UNEMPLOYMENT AGENCY**, or third

1 party under this subsection shall be brought only to recover
2 penalties and interest on those penalties for violations of section
3 54(a) or (b) or sections 54a to 54c. Civil actions brought under
4 this section shall be heard by the court at the earliest possible
5 date. If a judgment is obtained against an employer for
6 contributions and an execution on that judgment is returned
7 unsatisfied, the employer may be enjoined from operating and doing
8 business in this state until the judgment is satisfied. The circuit
9 court of the county in which the judgment is docketed or the
10 circuit court for the county of Ingham may grant an injunction upon
11 the petition of the ~~commission~~ **UNEMPLOYMENT AGENCY**. A copy of the
12 petition for injunction and a notice of when and where the court
13 shall act on the petition shall be served on the employer at least
14 21 days before the court may grant the injunction.

15 (d) An employer or employing unit improperly charged or
16 assessed contributions ~~provided for under~~ this act or a claimant,
17 employee of the ~~commission~~ **UNEMPLOYMENT AGENCY**, or third party
18 improperly assessed a penalty under this act and who paid the
19 contributions or penalty under protest within 30 days after the
20 mailing of the notice of determination of assessment, may recover
21 the amount improperly collected or paid, together with interest, in
22 any proper action against the ~~commission~~ **UNEMPLOYMENT AGENCY**. The
23 circuit court of the county in which the employer or employing unit
24 or claimant, employee of the ~~commission~~ **UNEMPLOYMENT AGENCY**, or
25 third party resides, or, in the case of an employer or employing
26 unit, in which is located the principal office or place of business
27 of the employer or employing unit, ~~shall have~~ **HAS** 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~~ **UNEMPLOYMENT AGENCY** or heard or reviewed by a referee or the appeal board. The court ~~shall not have~~ **HAS NO** jurisdiction of the action unless written notice of claim is given to the ~~commission~~ **UNEMPLOYMENT AGENCY** 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~~ **IT CONSIDERS** proper. Either party to the action ~~shall have the right of~~ **MAY** appeal, as is now provided by law, in other civil actions. An action by a claimant, employee of the ~~commission~~ **UNEMPLOYMENT AGENCY**, or third party against the ~~commission~~ **UNEMPLOYMENT AGENCY** under this subsection shall be brought only to recover penalties and interest on those penalties improperly assessed by the ~~commission~~ **UNEMPLOYMENT AGENCY** 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~~ **UNEMPLOYMENT AGENCY**, 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~~ **THOSE** 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

1 filing of the notice provided for in this section, all
2 contributions, interest, and penalties payable under this act to
3 the ~~commission~~ **UNEMPLOYMENT AGENCY** from an employer, claimant,
4 employee of the ~~commission~~ **UNEMPLOYMENT AGENCY**, or third party that
5 neglects to pay the same when due ~~shall be~~ **ARE** a first and prior
6 lien upon all property and rights to property, real and personal,
7 belonging to the employer, claimant, employee of the ~~commission~~
8 **UNEMPLOYMENT AGENCY**, or third party. The lien ~~shall continue~~
9 **CONTINUES** until the liability for that amount or a judgment arising
10 out of the liability is satisfied or becomes unenforceable by
11 reason of lapse of time. The lien ~~shall attach~~ **ATTACHES** to the
12 property and rights to property of the employer, claimant, employee
13 of the ~~commission~~ **UNEMPLOYMENT AGENCY**, or third party, whether real
14 or personal, from and after the **REQUIRED FILING** date ~~that a~~ **OF THE**
15 report upon which the specific tax is computed. ~~is required by this~~
16 ~~act to be filed.~~ Notice of the lien shall be recorded in the office
17 of the register of deeds of the county in which the property
18 subject to the lien is situated, and the register of deeds shall
19 receive the notice for recording. This subsection ~~shall apply~~
20 **APPLIES** only to penalties and interest on those penalties assessed
21 by the ~~commission~~ **UNEMPLOYMENT AGENCY** against a claimant, employee
22 of the ~~commission~~ **UNEMPLOYMENT AGENCY**, or third party for
23 violations of section 54(a) or (b) or sections 54a to 54c.

24 If there is a distribution of an employer's assets pursuant to
25 an order of a court under the laws of this state, including a
26 receivership, assignment for benefit of creditors, adjudicated
27 insolvency, composition, or similar proceedings, contributions then

1 or thereafter due shall be paid in full before all other claims
2 except for wages and compensation under the worker's disability
3 compensation act of 1969, ~~Act No. 317 of the Public Acts of 1969,~~
4 ~~being sections 418.101 to 418.941 of the Michigan Compiled Laws~~
5 **1969 PA 317, MCL 418.101 TO 418.941.** In the distribution of estates
6 of decedents, claims for funeral expenses and expenses of last
7 sickness shall also be entitled to priority.

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

11 (g) A person or employing unit, that acquires the
12 organization, trade, business, or 75% or more of the assets from an
13 employing unit, as a successor ~~defined~~ **DESCRIBED** in section 41(2),
14 is liable for contributions and interest due to the ~~commission~~
15 **UNEMPLOYMENT AGENCY** from the transferor at the time of the
16 acquisition in an amount not to exceed the reasonable value of the
17 organization, trade, business, or assets acquired, less the amount
18 of a secured interest in the assets owned by the transferee that
19 are entitled to priority. The transferor or transferee who has, not
20 less than 10 days before the acquisition, requested from the
21 ~~commission~~ **UNEMPLOYMENT AGENCY** in writing a statement certifying
22 the status of contribution liability of the transferor shall be
23 provided with that statement and the transferee is not liable for
24 any amount due from the transferor in excess of the amount of
25 liability computed as prescribed in this subsection and certified
26 by the ~~commission~~ **UNEMPLOYMENT AGENCY**. At least 2 calendar days not
27 including a Saturday, Sunday, or legal holiday before the

1 acceptance of an offer, the transferor, or the transferor's real
2 estate broker or other agent representing the transferor, shall
3 disclose to the transferee on a form provided by the ~~commission~~
4 **UNEMPLOYMENT AGENCY**, the amounts of the transferor's outstanding
5 unemployment tax liability, unreported unemployment tax liability,
6 and the tax payments, tax rates, and cumulative benefit charges for
7 the most recent 5 years, a listing of all individuals currently
8 employed by the transferor, and a listing of all employees
9 separated from employment with the transferor in the most recent 12
10 months. This form shall specify ~~such~~ **ANY** other information ~~, as~~
11 ~~determined by the commission, as would be~~ **THE UNEMPLOYMENT AGENCY**
12 **DETERMINES IS** required for a transferee to estimate future
13 unemployment compensation costs based on the transferor's benefit
14 charge and tax reporting and payment experience with the ~~commission~~
15 **UNEMPLOYMENT AGENCY**. Failure of the transferor, or the transferor's
16 real estate broker or other agent representing the transferor, to
17 provide accurate information required by this subsection is a
18 misdemeanor punishable by imprisonment for not more than 90 days,
19 or a fine of not more than \$2,500.00, or both. In addition, the
20 transferor, or the transferor's real estate broker or other agent
21 representing the transferor, is liable to the transferee for any
22 consequential damages resulting from the failure to comply with
23 this subsection. However, the real estate broker or other agent is
24 not liable for consequential damages if he or she exercised good
25 faith in compliance with the disclosure of information. The remedy
26 provided the transferee is not exclusive, and ~~is not to be~~
27 ~~construed to~~ **DOES NOT** reduce any other right or remedy against any

1 party provided for in this or any other act. Nothing in this
2 subsection ~~shall be construed to decrease~~ **DECREASES** the liability
3 of the transferee as a successor in interest, or ~~to prevent~~
4 **PREVENTS** the transfer of a rating account balance as provided in
5 this act. The ~~foregoing~~ provisions **OF THIS SUBSECTION** are in
6 addition to the remedies the ~~commission~~ **UNEMPLOYMENT AGENCY** has
7 against the transferor.

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

21 (i) If an employing unit fails to make a report as reasonably
22 required by the rules of the ~~commission~~ **UNEMPLOYMENT AGENCY**
23 pursuant to this act, the ~~commission~~ **UNEMPLOYMENT AGENCY** may ~~make~~
24 ~~an estimate of~~ the liability of that employing unit from
25 information it ~~may obtain~~ **OBTAINS** and, according to that estimate,
26 ~~so made,~~ assess the employing unit for the contributions,
27 penalties, and interest due. The ~~commission~~ **UNEMPLOYMENT AGENCY**

1 shall ~~have the power only after~~ **NOT MAKE AN ASSESSMENT UNDER THIS**
 2 **SUBSECTION UNTIL AFTER** a default continues for 30 days and ~~after~~
 3 the ~~commission~~ **UNEMPLOYMENT AGENCY** has determined that the default
 4 of the employing unit is willful.

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

8 (k) The rights respecting the collection of contributions and
 9 the levy of interest and penalties and damages made available to
 10 the ~~commission~~ **UNEMPLOYMENT AGENCY** by this section ~~is~~ **ARE**
 11 additional to other powers and rights vested in the ~~commission in~~
 12 ~~pursuance of the~~ **UNEMPLOYMENT AGENCY UNDER** other provisions of this
 13 act. The ~~commission is not precluded from exercising~~ **UNEMPLOYMENT**
 14 **AGENCY MAY EXERCISE** any of the collection remedies ~~provided for by~~
 15 **UNDER** this act even though an application for a redetermination or
 16 an appeal is pending final disposition.

17 (l) A person recording a lien ~~provided for in~~ **UNDER** this
 18 section shall pay a fee of \$2.00 for recording a lien and a fee of
 19 \$2.00 for recording a discharge of a lien.

20 Enacting section 1. This amendatory act does not take effect
 21 unless all of the following bills of the 96th Legislature are
 22 enacted into law:

23 (a) Senate Bill No. ____ or House Bill No. 4449 (request no.
 24 01742'11).

25 (b) Senate Bill No. ____ or House Bill No. 4450 (request no.
 26 01743'11).

27 (c) Senate Bill No. ____ or House Bill No. 4448 (request no.

1 01745'11) .