

SENATE BILL No. 1003

May 31, 2016, Introduced by Senators WARREN, ANANICH, HOOD, BIEDA, HERTEL and KNEZEK 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 2011 PA 269.

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 unemployment agency, ~~and~~
3 ~~unpaid restitution of benefit overpayments~~ shall bear interest at
4 the rate of 1% per month, computed on a day-to-day basis for each
5 day the delinquency is unpaid, from and after that date until
6 payment plus accrued interest is received by the unemployment
7 agency. The interest on unpaid contributions, ~~and on unpaid benefit~~
8 ~~overpayments~~, exclusive of penalties, shall not exceed 50% of the
9 amount of contributions due at due date. ~~or 50% of the amount of~~
10 ~~restitution owing.~~ Nothing in this act authorizes the assessment or

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

9 (b) The unemployment agency may make assessments against an
10 employer, claimant, employee of the unemployment agency, or third
11 party who fails to pay contributions, restitution of benefit
12 overpayments, reimbursement payments in lieu of contributions,
13 penalties, forfeitures, or interest as required by this act. The
14 unemployment agency shall immediately notify the employer,
15 claimant, employee of the unemployment agency, or third party of
16 the assessment in writing by first-class mail. An assessment by the
17 unemployment agency against a claimant, an employee of the
18 unemployment agency, or a third party under this subsection shall
19 be made only for penalties for violations of section 54(a) or (b)
20 or sections 54a to 54c. The assessment is a final determination
21 unless the employer, claimant, employee of the unemployment agency,
22 or third party files with the unemployment agency an application
23 for a redetermination of the assessment in accordance with section
24 32a. A review by the unemployment agency or an appeal to an
25 administrative law judge or the Michigan compensation appellate
26 commission on the assessment does not reopen a question concerning
27 an employer's liability for contributions or reimbursement payments

1 in lieu of contributions or a claimant's entitlement to benefits,
2 unless the claimant or employer was not a party to the proceeding
3 or decision where the basis for the assessment was determined. An
4 employer may pay an assessment under protest and file an action to
5 recover the amount paid as provided under subsection (d). Unless an
6 assessment is paid within 15 days after it becomes final the
7 unemployment agency may issue a warrant under its official seal for
8 the collection of the assessed amount. The unemployment agency
9 through its authorized employees, under a warrant issued, may place
10 a lien on any bank account of the claimant or employer and may levy
11 upon and sell the property of the employer that is used in
12 connection with the employer's business, or that is subject to a
13 notice to withhold, found within the state, for the payment of the
14 amount of the contributions including penalties, interests, and the
15 cost of executing the warrant. Property of the employer used in
16 connection with the employer's business is not exempt from levy
17 under the warrant. Wages subject to a notice to withhold are exempt
18 to the extent the wages are exempt from garnishment under the laws
19 of this state. The warrant shall be returned to the unemployment
20 agency together with the money collected under the warrant within
21 the time specified in the warrant which shall not be less than 20
22 or more than 90 days after the date of the warrant. The
23 unemployment agency shall proceed upon the warrant as prescribed by
24 law in respect to executions issued against property upon judgments
25 by a court of record. The state, through the unemployment agency or
26 some other officer or agent designated by it, may bid for and
27 purchase property sold under ~~the provisions of this subsection~~. If

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

1 shall be paid to the unemployment agency upon service upon the
2 debtor of a warrant issued under this section.

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

1 court shall act on the petition shall be served on the employer at
2 least 21 days before the court may grant the injunction.

3 (d) An employer or employing unit improperly charged or
4 assessed contributions provided for under this act, or a claimant,
5 employee of the unemployment agency, or third party improperly
6 assessed a penalty under this act and who paid the contributions or
7 penalty under protest within 30 days after the mailing of the
8 notice of determination of assessment, may recover the amount
9 improperly collected or paid, together with interest, in any proper
10 action against the unemployment agency. The circuit court of the
11 county in which the employer or employing unit or claimant,
12 employee of the unemployment agency, or third party resides, or, in
13 the case of an employer or employing unit, in which is located the
14 principal office or place of business of the employer or employing
15 unit, has original jurisdiction of an action to recover
16 contributions improperly paid or collected or a penalty improperly
17 assessed whether or not the charge or assessment has been reviewed
18 by the unemployment agency or heard or reviewed by an
19 administrative law judge or the Michigan compensation appellate
20 commission. The court has no jurisdiction of the action unless
21 written notice of claim is given to the unemployment agency at
22 least 30 days before the institution of the action. In an action to
23 recover contributions paid or collected or penalties assessed, the
24 court shall allow costs it considers proper. Either party to the
25 action has the **SAME** right of appeal as ~~is now~~ provided by law in
26 other civil actions. An action by a claimant, employee of the
27 unemployment agency, or third party against the unemployment agency

1 under this subsection shall be brought only to recover penalties
2 and interest on those penalties improperly assessed by the
3 unemployment agency under section 54(a) or (b) or sections 54a to
4 54c. If a final judgment is rendered in favor of the plaintiff in
5 an action to recover the amount of contributions illegally
6 collected or charged, the treasurer of the unemployment agency,
7 upon receipt of a certified copy of the final judgment, shall pay
8 the amount of contributions illegally collected or charged or
9 penalties assessed from the clearing account, and pay interest as
10 allowed by the court, in an amount not to exceed the actual
11 earnings of the contributions as found to have been illegally
12 collected or charged, from the contingent fund.

13 (e) Except for liens and encumbrances recorded before the
14 filing of the notice provided for in this section, all
15 contributions, interest, and penalties payable under this act to
16 the unemployment agency from an employer, claimant, employee of the
17 unemployment agency, or third party that neglects to pay the same
18 when due are a first and prior lien upon all property and rights to
19 property, real and personal, belonging to the employer, claimant,
20 employee of the unemployment agency, or third party. The lien
21 continues until the liability for that amount or a judgment arising
22 out of the liability is satisfied or becomes unenforceable by
23 reason of lapse of time. The lien attaches to the property and
24 rights to property of the employer, claimant, employee of the
25 unemployment agency, or third party, whether real or personal, from
26 and after the required filing date of the report upon which the
27 specific tax is computed. 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 deeds
3 shall receive the notice for recording. Notice of the lien may also
4 be filed with the secretary of state in accordance with the state
5 tax lien registration act, 1968 PA 203, MCL 211.681 to 211.687.
6 This subsection applies only to penalties and interest on those
7 penalties assessed by the unemployment agency against a claimant,
8 employee of the unemployment agency, or third party for violations
9 of section 54(a) or (b) or sections 54a to 54c.

10 If there is a distribution of an employer's assets pursuant to
11 an order of a court under the laws of this state, including a
12 receivership, assignment for benefit of creditors, adjudicated
13 insolvency, composition, or similar proceedings, contributions then
14 or thereafter due shall be paid in full before all other claims
15 except for wages and compensation under the worker's disability
16 compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941. In
17 the distribution of estates of decedents, claims for funeral
18 expenses and expenses of last sickness ~~shall also be~~ **ARE ALSO**
19 entitled to priority.

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

23 (g) A person or employing unit that acquires the organization,
24 trade, business, or 75% or more of the assets from an employing
25 unit, as a successor described in section 41(2), is liable for
26 contributions and interest due to the unemployment agency from the
27 transferor at the time of the acquisition in an amount not to

1 exceed the reasonable value of the organization, trade, business,
2 or assets acquired, less the amount of a secured interest in the
3 assets owned by the transferee that are entitled to priority. The
4 transferor or transferee who has, not less than 10 days before the
5 acquisition, requested from the unemployment agency in writing a
6 statement certifying the status of contribution liability of the
7 transferor shall be provided with that statement and the transferee
8 is not liable for any amount due from the transferor in excess of
9 the amount of liability computed as prescribed in this subsection
10 and certified by the unemployment agency. At least 2 calendar days
11 not including a Saturday, Sunday, or legal holiday before the
12 acceptance of an offer, the transferor, or the transferor's real
13 estate broker or other agent representing the transferor, shall
14 disclose to the transferee on a form provided by the unemployment
15 agency, the amounts of the transferor's outstanding unemployment
16 tax liability, unreported unemployment tax liability, and the tax
17 payments, tax rates, and cumulative benefit charges for the most
18 recent 5 years, a listing of all individuals currently employed by
19 the transferor, and a listing of all employees separated from
20 employment with the transferor in the most recent 12 months. This
21 form shall specify any other information the unemployment agency
22 determines is required for a transferee to estimate future
23 unemployment compensation costs based on the transferor's benefit
24 charge and unemployment tax reporting and payment experience.
25 Failure of the transferor, or the transferor's real estate broker
26 or other agent representing the transferor, to provide accurate
27 information required by this subsection is a misdemeanor punishable

1 by imprisonment for not more than 90 days, or a fine of not more
2 than \$2,500.00, or both. In addition, the transferor, or the
3 transferor's real estate broker or other agent representing the
4 transferor, is liable to the transferee for any consequential
5 damages resulting from the failure to comply with this subsection.
6 However, the real estate broker or other agent is not liable for
7 consequential damages if he or she exercised good faith in
8 compliance with the disclosure of information. The remedy provided
9 the transferee is not exclusive, and does not reduce any other
10 right or remedy against any party provided for in this or any other
11 act. Nothing in this subsection decreases the liability of the
12 transferee as a successor in interest, or prevents the transfer of
13 a rating account balance as provided in this act. The ~~foregoing~~
14 ~~provisions~~ **REMEDIES UNDER THIS SUBSECTION** are in addition to the
15 remedies the unemployment agency has against the transferor.

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

1 (i) If an employing unit fails to make a report as reasonably
2 required by the rules of the unemployment agency pursuant to this
3 act, the unemployment agency may estimate the liability of that
4 employing unit from information it obtains and, according to that
5 estimate, assess the employing unit for the contributions,
6 penalties, and interest due. The unemployment agency may act under
7 this subsection only after a default continues for 30 days and
8 after the unemployment agency has determined that the default of
9 the employing unit is willful.

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

13 (k) The rights respecting the collection of contributions and
14 the levy of interest and penalties and damages made available to
15 the unemployment agency by this section are additional to other
16 powers and rights vested in the unemployment agency under other
17 provisions of this act. The unemployment agency may exercise any of
18 the collection remedies under this act even though an application
19 for a redetermination or an appeal is pending final disposition.

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

23 (m) In addition to the restitution recoupment methods in
24 section 62, the unemployment agency may obtain restitution due from
25 a claimant as a result of a benefit overpayment that has become
26 final by any of the following methods:

27 (1) Levy of a bank account belonging to the claimant.

1 (2) Entry into a wage assignment with the claimant.

2 (3) Issuing an administrative garnishment of the wages of the
3 claimant.

4 (n) To obtain an administrative garnishment, the unemployment
5 agency shall notify the claimant of both of the following: the
6 intention to issue an administrative garnishment on the claimant's
7 employer and the amount determined to be due from the claimant. The
8 notice shall include a demand for immediate payment of the amount
9 due, a statement that it is not subject to appeal, and a statement
10 that the claimant may, within 30 days of the issuance of the
11 notice, object to the garnishment by providing information to the
12 agency, with supporting documentation, that the claimant does not
13 owe the stated amount of restitution. Not less than 30 days after
14 issuing the notice to the claimant, the unemployment agency shall
15 notify the claimant's employer to withhold from earnings due or to
16 become due from the claimant the amount shown on the notice plus
17 accrued interest. The employer shall comply with the notice to
18 withhold and shall continue to withhold each pay period the amount
19 shown on the notice plus accrued interest until the garnishment
20 amount plus accrued interest has been satisfied and the notice is
21 released by the unemployment agency. The unemployment agency's
22 administrative garnishment has priority over any subsequent
23 garnishment or wage assignment. The amount subject to garnishment
24 for any pay period shall be decreased by any other irrevocable and
25 previously effective assignment of wages or other garnishment
26 action served on the employer before service of the agency's
27 garnishment notice. The amount of the agency's garnishment shall

1 not exceed 25% of the balance. In response to the administrative
2 garnishment, the employer shall do all of the following:

3 (1) Within 10 calendar days ~~of~~**AFTER** the date of the agency's
4 notice to withhold wages, notify the agency of the amount of any
5 irrevocable and previously effective assignment of wages or
6 garnishment actions.

7 (2) Within 10 days after the end of each pay period in which
8 wages are required to be withheld under the administrative
9 garnishment, remit to the agency the amount withheld pursuant to
10 the administrative garnishment.

11 (3) Within 10 days after the date on which the claimant ceases
12 to be employed by the employer, notify the agency.

13 (o) Before payment of a prize of \$1,000.00 or more under the
14 McCauley-Traxler-Law-Bowman-McNeeley lottery act, 1972 PA 239, MCL
15 432.1 to 432.47, the bureau of state lottery shall determine
16 whether a lottery prize winner has a current liability for
17 restitution of unemployment benefits, penalty, or interest,
18 assessed by the unemployment insurance agency and the amount of the
19 prize owing to the unemployment insurance agency and shall remit
20 that amount to the unemployment insurance agency.

21 Enacting section 1. This amendatory act takes effect 90 days
22 after the date it is enacted into law.

23 Enacting section 2. This amendatory act does not take effect
24 unless all of the following bills of the 98th Legislature are
25 enacted into law:

26 (a) Senate Bill No. 1002.

27

1 (b) Senate Bill No. 1000.

2

3 (c) Senate Bill No. 1001.

4