

SENATE BILL No. 539

September 7, 2017, Introduced by Senators CONYERS, KNEZEK, HOPGOOD, ANANICH, GREGORY, BIEDA, JOHNSON, HERTEL, WARREN and YOUNG and referred to the Committee on Government Operations.

A bill to amend 1936 (Ex Sess) PA 1, entitled
"Michigan employment security act,"
by amending section 15 (MCL 421.15), as amended by 2016 PA 228.

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~~**MUST** not exceed 50% of
9 the 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~~ **UNDER** this section
 3 ~~shall~~ **MUST** be paid into the contingent fund. The unemployment
 4 agency may cancel any interest and any penalty when it is shown
 5 that the failure to pay on or before the last day on which the tax
 6 could have been paid without interest and penalty was not the
 7 result of negligence, intentional disregard of the rules of the
 8 unemployment agency, or 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~~ **THE UNEMPLOYMENT**
 17 **AGENCY SHALL NOT MAKE AN** assessment ~~by the unemployment agency~~
 18 against a claimant, an employee of the unemployment agency, or a
 19 third party under this subsection ~~shall be made only~~ **UNLESS THE**
 20 **ASSESSMENT IS** for ~~penalties~~ **A PENALTY** for ~~violations~~ **A VIOLATION** of
 21 section 54(a) or (b) or sections 54a to 54c. ~~The~~ **AN** assessment is a
 22 final determination unless the employer, claimant, employee of the
 23 unemployment agency, or third party files with the unemployment
 24 agency an application for a redetermination of the assessment ~~in~~
 25 ~~accordance with~~ **PURSUANT TO** section 32a. A review by the
 26 unemployment agency or an appeal to an administrative law judge or
 27 the Michigan compensation appellate commission on the assessment

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

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

1 notice. An amount due a delinquent employer, claimant, employee of
2 the unemployment agency, or third party subject to a notice to
3 withhold ~~shall~~**MUST** be paid to the unemployment agency upon service
4 upon the debtor of a warrant issued under this section.

5 (c) In addition to the mode of collection provided in
6 subsection (b), if, after ~~due~~**PROPER** notice, an employer defaults
7 in payment of contributions or interest on the contributions, or a
8 claimant, employee of the unemployment agency, or third party
9 defaults in the payment of a penalty or interest on a penalty, the
10 unemployment agency may bring an action at law in a court of
11 competent jurisdiction to collect and recover the amount of a
12 contribution, and any interest on the contribution, or the penalty
13 or interest on the penalty, and in addition 10% of the amount of
14 contributions or penalties found to be due, as damages. An
15 employer, claimant, employee of the unemployment agency, or third
16 party adjudged in default shall pay costs of the action. ~~An action~~
17 ~~by the~~**THE** unemployment agency **SHALL NOT BRING AN ACTION** against a
18 claimant, employee of the unemployment agency, or third party under
19 this subsection ~~shall be brought only~~**UNLESS IT IS BROUGHT** to
20 recover penalties and interest on those penalties for violations of
21 section 54(a) or (b) or sections 54a to 54c. ~~Civil~~**A COURT SHALL**
22 **HEAR CIVIL** actions brought under this section ~~shall be heard by the~~
23 ~~court~~ at the earliest possible date. If a judgment is obtained
24 against an employer for contributions and an execution on that
25 judgment is returned unsatisfied, **A COURT MAY ENJOIN** the employer
26 ~~may be enjoined~~ from operating and doing business in this state
27 until the judgment is satisfied. The circuit court of the county in

1 which the judgment is docketed or the circuit court for ~~the county~~
2 ~~of~~ Ingham **COUNTY** may grant an injunction upon the petition of the
3 unemployment agency. A copy of the petition for injunction and a
4 notice of when and where the court ~~shall~~ **WILL** act on the petition
5 ~~shall~~ **MUST** be served on the employer at least 21 days before the
6 court may grant the injunction.

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

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

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

1 reason of lapse of time. The lien attaches to the property and
2 rights to property of the employer, claimant, employee of the
3 unemployment agency, or third party, whether real or personal, from
4 and after the required filing date of the report upon which the
5 specific tax is computed. Notice of the lien ~~shall~~ **MUST** be recorded
6 in the office of the register of deeds of the county in which the
7 property subject to the lien is situated, and the register of deeds
8 shall ~~receive~~ **ACCEPT** the notice for recording. Notice of the lien
9 may also be filed with the secretary of state ~~in accordance with~~
10 **PURSUANT TO** the state tax lien registration act, 1968 PA 203, MCL
11 211.681 to 211.687. This subsection applies only to penalties and
12 interest on those penalties assessed by the unemployment agency
13 against a claimant, employee of the unemployment agency, or third
14 party for violations of section 54(a) or (b) or sections 54a to
15 54c.

16 If there is a distribution of an employer's assets pursuant to
17 an order of a court under the laws of this state, including a
18 receivership, assignment for benefit of creditors, adjudicated
19 insolvency, composition, or similar proceedings, contributions then
20 or thereafter due ~~shall~~ **MUST** be paid in full before all other
21 claims except for wages and compensation under the worker's
22 disability compensation act of 1969, 1969 PA 317, MCL 418.101 to
23 418.941. In the distribution of estates of decedents, claims for
24 funeral expenses and expenses of last sickness are also entitled to
25 priority.

26 (f) ~~An injunction~~ **A COURT** shall not issue **AN INJUNCTION** to
27 stay proceedings for assessment or collection of contributions, or

1 interest or ~~A~~ penalty on contributions, levied and required by this
2 act.

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

1 listing of all employees separated from employment with the
2 transferor in the most recent 12 months. ~~This~~**THE** form shall
3 **PROVIDED BY THE UNEMPLOYMENT AGENCY MUST** specify any other
4 information the unemployment agency determines is required for a
5 transferee to estimate future unemployment compensation costs based
6 on the transferor's benefit charge and unemployment tax reporting
7 and payment experience. Failure of the transferor, or the
8 transferor's real estate broker or other agent representing the
9 transferor, to provide accurate information required by this
10 subsection is a misdemeanor punishable by imprisonment for not more
11 than 90 days, or a fine of not more than \$2,500.00, or both. In
12 addition, the transferor, or the transferor's real estate broker or
13 other agent representing the transferor, is liable to the
14 transferee for any consequential damages resulting from the failure
15 to comply with this subsection. However, the real estate broker or
16 other agent is not liable for consequential damages if ~~he or she~~
17 **THE REAL ESTATE BROKER OR OTHER AGENT** exercised good faith in
18 compliance with the disclosure of information. ~~The~~**THIS** remedy
19 ~~provided the transferee~~ is not exclusive, and does not reduce any
20 other right or remedy against any party provided for in this or any
21 other act. Nothing in this subsection decreases the liability of
22 the transferee as a successor in interest, or prevents the transfer
23 of a rating account balance as provided in this act. The remedies
24 under this subsection are in addition to the remedies the
25 unemployment agency has against the transferor.

26 (h) If a part of a deficiency in payment of the employer's
27 contribution to the fund is due to negligence or intentional

1 disregard of unemployment agency rules, but without intention to
2 defraud, 5% of the total amount of the deficiency, in addition to
3 the deficiency and all other interest charges and penalties
4 provided herein, ~~shall~~**MUST** be assessed, collected, and paid in the
5 same manner as a deficiency. If a part of a deficiency is
6 determined in an action at law to be ~~due to~~**THE RESULT OF** fraud
7 with intent to avoid payment of contributions to the fund, then the
8 judgment rendered ~~shall~~**MUST** include an amount equal to 50% of the
9 total amount of the deficiency, in addition to the deficiency and
10 all other interest charges and penalties provided herein.

11 (i) If an employing unit fails to make a report as reasonably
12 required by the rules of the unemployment agency pursuant to this
13 act, the unemployment agency may estimate the liability of that
14 employing unit from information it obtains and, according to that
15 estimate, assess the employing unit for the contributions,
16 penalties, and interest due. The unemployment agency may act under
17 this subsection only after a default continues for 30 days and
18 after the unemployment agency has determined that the default of
19 the employing unit is willful.

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

23 (k) The rights respecting the collection of contributions and
24 the levy of interest and penalties and damages made available to
25 the unemployment agency by this section are additional to other
26 powers and rights vested in the unemployment agency under other
27 provisions of this act. The unemployment agency may exercise any of

1 the collection remedies under this act even though an application
2 for a redetermination or an appeal is pending final disposition.

3 (l) A person recording a lien or a discharge of a lien under
4 this section shall pay to the register of deeds a recording fee
5 that is equivalent to the fee for entering and recording a mortgage
6 as authorized under section 2567 of the revised judicature act of
7 1961, 1961 PA 236, MCL 600.2567.

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

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

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

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

16 (n) To obtain an administrative garnishment, the unemployment
17 agency ~~shall~~ **MUST** notify the claimant of ~~both of the following: the~~
18 **ITS** intention to issue an administrative garnishment on the
19 claimant's employer and the amount determined to be due from the
20 claimant. The notice ~~shall~~ **MUST** include a demand for immediate
21 payment of the amount due, a statement that it is not subject to
22 appeal, and a statement that the claimant may, within 30 days of
23 the issuance of the notice, object to the garnishment by providing
24 information to the agency, with supporting documentation, that the
25 claimant does not owe the stated amount of restitution. Not less
26 than 30 days after issuing the notice to the claimant, the
27 unemployment agency shall notify the claimant's employer to

1 withhold from earnings due or to become due from the claimant the
2 amount shown on the notice plus accrued interest. The employer
3 shall comply with the notice to withhold and shall continue to
4 withhold each pay period the amount shown on the notice plus
5 accrued interest until the garnishment amount plus accrued interest
6 has been satisfied and the notice is released by the unemployment
7 agency. The unemployment agency's administrative garnishment has
8 priority over any subsequent garnishment or wage assignment. The
9 amount subject to garnishment for any pay period ~~shall~~**MUST** be
10 decreased by any other irrevocable and previously effective
11 assignment of wages or other garnishment action served on the
12 employer ~~before~~**PRIOR TO** service of the agency's garnishment
13 notice. The amount of the **UNEMPLOYMENT** agency's garnishment ~~shall~~
14 **MUST** not exceed 25% of the balance. In response to the
15 administrative garnishment, the employer shall do all of the
16 following:

17 (1) Within 10 calendar days after the date of the **UNEMPLOYMENT**
18 agency's notice to withhold wages, notify the **UNEMPLOYMENT** agency
19 of the amount of any irrevocable and previously effective
20 assignment of wages or garnishment actions.

21 (2) Within 10 days after the end of each pay period in which
22 wages are required to be withheld under the administrative
23 garnishment, remit to the **UNEMPLOYMENT** agency the amount withheld
24 pursuant to the administrative garnishment.

25 (3) Within 10 days after the date on which the claimant ceases
26 to be employed by the employer, notify the **UNEMPLOYMENT** agency.

27 (o) Before payment of a prize of \$1,000.00 or more under the

1 McCauley-Traxler-Law-Bowman-McNeeley lottery act, 1972 PA 239, MCL
2 432.1 to 432.47, the bureau of state lottery shall determine
3 whether a lottery prize winner has a current liability for
4 restitution of unemployment benefits, penalty, or interest,
5 assessed by the unemployment agency and the amount of the prize
6 owing to the unemployment agency and shall remit that amount to the
7 unemployment agency.

8 (p) If the unemployment agency does not record the discharge
9 of lien with the register of deeds and seek reimbursement for that
10 recording fee, the unemployment agency shall provide the discharge
11 of lien document and a notice of lien recording fee to the debtor,
12 who ~~will~~**IS** then ~~be~~ responsible for recording the discharge and
13 paying the applicable amounts required under section 2567 of the
14 revised judicature act of 1961, 1961 PA 236, MCL 600.2567. The
15 notice of lien recording fee ~~shall~~**MUST** state the amount of the
16 recording fee the unemployment agency paid for recording the lien
17 that is the subject of the discharge and may include any other
18 relevant information.

19 (q) In addition to any other remedy provided under this act,
20 the unemployment agency may seek to recover unemployment
21 compensation debt as provided by 26 USC 6402(f), 42 USC 503(m), or
22 other applicable federal law. The debtor is liable for any fee the
23 federal government imposes with respect to implementing the
24 deduction from a federal tax refund.

25 **(R) BEGINNING JANUARY 1, 2018, THE UNEMPLOYMENT AGENCY SHALL**
26 **PROVIDE AN ANNUAL WRITTEN REPORT TO THE CHAIRPERSONS OF THE**
27 **STANDING COMMITTEES AND THE APPROPRIATIONS SUBCOMMITTEES OF THE**

1 HOUSE AND SENATE HAVING JURISDICTION OVER LEGISLATION PERTAINING TO
2 UNEMPLOYMENT COMPENSATION. THE REPORT MUST INCLUDE ALL OF THE
3 FOLLOWING INFORMATION IN A FORM THAT DOES NOT IDENTIFY ANY
4 EMPLOYERS:

5 (1) THE PROCEDURES THE UNEMPLOYMENT AGENCY HAS ADOPTED TO
6 LIMIT THE AMOUNT OF UNPAID AND DELINQUENT CONTRIBUTIONS.

7 (2) THE NUMBER OF INSTANCES A CONTRIBUTION REMAINED UNPAID FOR
8 MORE THAN 30 DAYS.

9 (3) THE AVERAGE LENGTH OF TIME A CONTRIBUTION REMAINED UNPAID.

10 (4) THE NUMBER OF DELINQUENT CONTRIBUTION CASES BROUGHT BEFORE
11 AN ADMINISTRATIVE LAW JUDGE, AND THE UNEMPLOYMENT AGENCY'S SUCCESS
12 RATE IN THOSE CASES.

13 (5) THE AMOUNT OF MONEY RECOVERED AS A RESULT OF IMPLEMENTING
14 THE PROVISIONS OF THIS SECTION.

15 (6) THE ESTIMATED FISCAL IMPACT OF UNPAID AND DELINQUENT
16 CONTRIBUTIONS ON THE UNEMPLOYMENT COMPENSATION FUND BALANCE AND THE
17 FACTUAL BASIS FOR THE ESTIMATE.

18 (7) THE NUMBER OF FULL-TIME EMPLOYEES ASSIGNED TO, AND THE
19 NUMBER OF EMPLOYEE HOURS DEVOTED TO, RECOVERING UNPAID AND
20 DELINQUENT CONTRIBUTIONS.

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