



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL



ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bill 4152 (Substitute H-3 as reported without amendment)
 Sponsor: Representative Walter J. DeLange
 House Committee: Human Resources and Labor
 Senate Committee: Human Resources, Labor and Veterans Affairs

Date Completed: 10-20-95

RATIONALE

Public Act 390 of 1978 generally prohibits employers from making deductions from an employee's wages without the employee's written consent, except for deductions required or expressly permitted by law or by a collective bargaining agreement. Some people believe, however, that if an overpayment were made inadvertently or accidentally, an employer should be able to recover the overpayment without first getting the employee's written authorization.

CONTENT

The bill would amend Public Act 390 of 1978, which regulates the payment of wages and fringe benefits, to permit employers to deduct certain overpayments from an employee's wages without the employee's consent.

Public Act 390 of 1978 generally provides that a deduction for the benefit of an employer requires written consent from the employee for each wage payment subject to the deduction, and the cumulative amount of the deductions may not reduce the gross wages paid to a rate below the State minimum wage. The bill would make an exception to this for overpayments of wages or fringe benefits.

Under the bill, within six months after making an overpayment of wages or fringe benefits that were paid directly to an employee, an employer could deduct the overpayment from the employee's regularly scheduled wage payment without the employee's written consent if all of the following conditions were met:

- The overpayment resulted from a mathematical miscalculation, typographical error, clerical error, or misprint in the

processing of the employee's regularly scheduled wages or fringe benefits.

- The miscalculation, error, or misprint was made by the employer, the employee, or a representative of the employer or employee.
- The employer gave the employee a written explanation of the deduction at least one pay period before the wage payment affected by the deduction was made.
- The deduction did not exceed 15% of the gross wages earned in the pay period in which it was made.
- The deduction was made after the employer had made all deductions expressly permitted or required by law or a collective bargaining agreement, and after any employee-authorized deduction.
- The deduction did not reduce the regularly scheduled gross wages otherwise due to the employee to a rate that was less than the minimum rate as defined in the Minimum Wage Law, or the minimum rate as prescribed by the Federal Fair Labor Standards Act, whichever was greater.

An employee who believed that his or her employer had violated these provisions could file a complaint with the Department of Labor within 12 months after the date of the alleged violation.

MCL 408.477

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Under current law, an employer may not deduct

even accidental or erroneous overpayments to an employee without the employee's explicit written permission. This restriction can impose a considerable burden on employers, or even lead some employers to violate the law inadvertently.

In one instance, Michigan House of Representatives staff members apparently were mistakenly paid an increased amount for their full two-week pay period although they were supposed to get the increase only halfway through the period. Reportedly, the Department of Treasury simply notified the House employees that it would make a deduction from their next paycheck, rather than getting each employee's written authorization to do so. Such simple mistakes, unfortunately, are not uncommon, and employers should not be burdened by having to go through the time and expense of getting signatures from each and every employee involved in order to correct these honest mistakes.

The spokesperson for one large employer association reportedly listed 11 circumstances that could lead to inadvertent or accidental overpayments, including such occurrences as terminations and extended sick leave, incorrectly submitted clock and time sheets, and incorrectly entered wage and salary rates. By allowing employers to correct these types of errors quickly and efficiently, the bill would remove an unnecessary burden that is currently placed on employers.

Opposing Argument

The bill would make a major change to current employee paycheck deduction procedures, possibly setting a precedent for further changes in the future. Strong due process protection should be included, but the bill does not allow employees any kind of appeal before a proposed deduction was made. Without this protection, if an employee believed that a deduction was improper, he or she could file a complaint with the Department of Labor arguing that it was improper, *after* the deduction had been made. This process conceivably could take months or even a year or two before the employee received a response to his or her complaint. If an employee believed that a proposed deduction was improper, he or she should be allowed to file an objection with the Department of Labor *before* the proposed deduction was made, and the deduction should not be allowed until the Department had issued a determination approving it.

Response: That type of protection would impose a new and ongoing burden upon employers, employees, and the Department of Labor. The bill includes sufficient safeguards for employees.

Legislative Analyst: P. Affholter

FISCAL IMPACT

This bill would have an indeterminate fiscal impact on the State and local governmental units. The bill would make possible the return of salary and benefit overpayments. The funding source for these benefits could be credited by the amount of funds secured through the provisions outlined in Section 7(4) of this bill.

Fiscal Analyst: K. Lindquist

H9596\S4152A

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.