

HOUSE BILL No. 4914

September 7, 2017, Introduced by Reps. Clemente, Love, Gay-Dagnogo, Chirkun, Lasinski, Cochran, Sabo, Faris, Green, Elder, Geiss, Sneller, Sowerby, Chang, Camilleri, Brinks, Moss, Hammoud, Wittenberg, Peterson, Zemke, Santana, Dianda and Jones and referred to the Committee on Commerce and Trade.

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
11 collection of interest on a penalty imposed under this act.

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

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

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

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

1 or third party subject to a notice to withhold ~~shall~~**MUST** be paid
2 to the unemployment agency upon service upon the debtor of a
3 warrant issued under this section.

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

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

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

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

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

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

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

24 (f) ~~An injunction~~ **A COURT** shall not issue **AN INJUNCTION** to
25 stay proceedings for assessment or collection of contributions, or
26 interest or **A** penalty on contributions, levied and required by this
27 act.

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

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

24 (h) If a part of a deficiency in payment of the employer's
25 contribution to the fund is due to negligence or intentional
26 disregard of unemployment agency rules, but without intention to
27 defraud, 5% of the total amount of the deficiency, in addition to

1 the deficiency and all other interest charges and penalties
2 provided herein, ~~shall~~**MUST** be assessed, collected, and paid in the
3 same manner as a deficiency. If a part of a deficiency is
4 determined in an action at law to be ~~due to~~**THE RESULT OF** fraud
5 with intent to avoid payment of contributions to the fund, then the
6 judgment rendered ~~shall~~**MUST** include an amount equal to ~~50%~~**100%** of
7 the total amount of the deficiency, in addition to the deficiency
8 and all other interest charges and penalties provided herein.

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

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

21 (k) The rights respecting the collection of contributions and
22 the levy of interest, ~~and~~ penalties, and damages made available to
23 the unemployment agency by this section are additional to other
24 powers and rights vested in the unemployment agency under other
25 provisions of this act. The unemployment agency may exercise any of
26 the collection remedies under this act even though an application
27 for a redetermination or an appeal is pending final disposition.

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

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

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

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

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

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

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

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

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

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

24 (o) Before payment of a prize of \$1,000.00 or more under the
25 McCauley-Traxler-Law-Bowman-McNeeley lottery act, 1972 PA 239, MCL
26 432.1 to 432.47, the bureau of state lottery shall determine
27 whether a lottery prize winner has a current liability for

1 restitution of unemployment benefits, penalty, or interest,
2 assessed by the unemployment agency and the amount of the prize
3 owing to the unemployment agency and shall remit that amount to the
4 unemployment agency.

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

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

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