HOUSE BILL NO. 4901

September 03, 2019, Introduced by Reps. Clemente, Elder, Sowerby, Cherry, Sneller, Sabo, Lasinski, Brixie, Brenda Carter, Liberati, Tate, Rabhi, Stone, Manoogian, Pohutsky, Kennedy, Shannon, Garza, Hope, Gay-Dagnogo, Hood, Hertel, Witwer, Ellison, Garrett, Chirkun, Warren, Whitsett, Kuppa, Pagan, Guerra, Neeley, Bolden, Cambensy, Haadsma, Jones, Hoadley, Wittenberg, Hammoud, Cynthia Johnson, Greig, Coleman, Anthony and Yancey and referred to the Committee on Commerce and Tourism.

A bill to amend 1936 (Ex Sess) PA 1, entitled
"Michigan employment security act,"

by amending section 15 (MCL 421.15), as amended by 2017 PA 229.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 15. (a) Contributions unpaid on the date on which they are due and payable, as prescribed by the unemployment agency, and unpaid restitution of benefit overpayments, except as otherwise provided under this subsection, bear interest at the rate of 1% per month, computed on a day-to-day basis for each day the delinquency is unpaid, from and after that date until payment plus accrued interest is received by the unemployment agency. The interest on unpaid contributions and on unpaid restitution of benefit overpayments, exclusive of penalties, must not exceed 50% of the amount of contributions due at due date or 50% of the amount of restitution owing. Nothing in this act authorizes the assessment or collection of interest on a penalty imposed under this act. Interest collected under this section must be paid into the contingent fund. Penalties collected under this section must be credited pursuant to section 54(k). With regard to contribution payments, the unemployment agency may cancel any interest and any penalty when it is shown that the failure to pay on or before the last day on which the tax could have been paid without interest and penalty was not the result of negligence, intentional disregard of the rules of the unemployment agency, or fraud. All of the following apply to interest on unpaid restitution of benefit overpayments:

(1) Except as provided in subdivisions (2) and (3), interest begins accruing 1 year after the date the unemployment agency's determination or redetermination or an administrative law judge's, the Michigan compensation appellate commission's, or a court's order that a claimant owes restitution is final.

(2) The unemployment agency shall not assess interest for improperly paid benefits that were the result of an administrative or clerical error made by the unemployment agency. Interest assessed for improperly paid benefits that is later determined to have been the result of an administrative or clerical error made by the unemployment agency must be waived, and any payment made by a claimant for such interest must be refunded.

(3) If the unemployment agency determines or redetermines or

an administrative law judge, the Michigan compensation appellate commission, or a court orders that a claimant made an intentional false statement, misrepresentation, or concealed material information to obtain or increase benefits, interest begins accruing on the date the unemployment agency's determination or redetermination or the order is final.

(b) The unemployment agency may make assessments against an employer, claimant, employee of the unemployment agency, or third party who fails to pay contributions, restitution of benefit overpayments, reimbursement payments in lieu of contributions, penalties, forfeitures, or interest as required by this act. The unemployment agency shall immediately notify the employer, claimant, employee of the unemployment agency, or third party of the assessment in writing by first-class mail. The unemployment agency shall not make an assessment against a claimant, an employee of the unemployment agency, or a third party under this subsection unless the assessment is for a penalty for a violation of section 54(a) or (b) or sections 54a to 54c. An assessment made under this subsection is a final determination unless the employer, claimant, employee of the unemployment agency, or third party files with the unemployment agency an application for a redetermination of the assessment pursuant to section 32a. A review by the unemployment agency or an appeal to an administrative law judge or the Michigan compensation appellate commission on the assessment does not reopen a question concerning an employer's liability for contributions or reimbursement payments in lieu of contributions or a claimant's entitlement to benefits, unless the claimant or employer was not a party to the proceeding or decision where the basis for the assessment was determined. An employer may pay an assessment under protest and file an action to recover the amount paid as provided under subsection (d). If an assessment is not paid within 15 days after it becomes final, the unemployment agency may issue a warrant under its official seal for the collection of the assessed amount. The unemployment agency, through its authorized employees and under a warrant issued, may place a lien on any bank account of a claimant or employer and may levy upon and sell the property of an employer that is used in connection with the employer's business, or that is subject to a notice to withhold, found within this state, for the payment of the amount of the contributions including penalties, interests, and the cost of executing the warrant. Property of the employer used in connection with the employer's business is not exempt from levy under the warrant. Wages subject to a notice to withhold are exempt to the extent the wages are exempt from garnishment under the laws of this state. The warrant must be returned to the unemployment agency together with the money collected under the warrant within the time specified in the warrant which must not be less than 20 or more than 90 days after the date of the warrant. The unemployment agency shall proceed upon the warrant as prescribed by law in respect to executions issued against property upon judgments by a court of record. This state, through the unemployment agency or some other officer or agent designated by it, may bid for and purchase property sold under this subsection. If an employer, claimant, employee of the unemployment agency, or third party is delinquent in the payment of a contribution, reimbursement payment in lieu of contribution, penalty, forfeiture, or interest provided for in this act, the unemployment agency may give notice of the amount of the delinquency served either personally or by mail, to a person or legal entity, including this state and its subdivisions, that has in its possession or under its control a credit or other intangible property belonging to the employer, claimant, employee of the unemployment agency, or third party, or who owes a debt to the employer, claimant, employee of the unemployment agency, or third party at the time of the receipt of the notice. A person or legal entity that is notified shall not transfer or dispose of the credit, other intangible property, or debt without retaining an amount sufficient to pay the amount specified in the notice unless the unemployment agency consents to a transfer or disposition or 45 days have elapsed from the receipt of the notice. A person or legal entity that is notified shall advise the unemployment agency within 5 days after receipt of the notice of a credit, other intangible property, or debt, that is in its possession, under its control, or owed by it. A person or legal entity that is notified and that transfers or disposes of credits or personal property in violation of this section is liable to the unemployment agency for the value of the property or the amount of the debts thus transferred or paid, but not more than the amount specified in the notice. An amount due a delinquent employer, claimant, employee of the unemployment agency, or third party subject to a notice to withhold must be paid to the unemployment agency upon service upon the debtor of a warrant issued under this section.

(c) In addition to the mode of collection provided in subsection (b), if, after proper notice, an employer defaults in payment of contributions or interest on the contributions, or a claimant, employee of the unemployment agency, or third party defaults in the payment of a penalty, the unemployment agency may bring an action at law in a court of competent jurisdiction to collect and recover the amount of a contribution, and any interest on the contribution, or the penalty, and in addition 10% of the amount of contributions or penalties found to be due, as damages. An employer, claimant, employee of the unemployment agency, or third party adjudged in default shall pay costs of the action. The unemployment agency shall not bring an action against a claimant, employee of the unemployment agency, or third party under this subsection unless the action is brought only to recover penalties for violations of section 54(a) or (b) or sections 54a to 54c. A court shall hear civil actions brought under this section at the earliest possible date. If a judgment is obtained against an employer for contributions and an execution on that judgment is returned unsatisfied, a court may enjoin the employer from operating and doing business in this state until the judgment is satisfied. The circuit court of the county in which the judgment is docketed, or the Ingham County circuit court, may grant an injunction upon the petition of the unemployment agency. A copy of the petition for injunction and a notice of when and where the court shall act on the petition must be served on the employer at least 21 days before the court may grant the injunction.

(d) An employer or employing unit improperly charged or assessed contributions provided for under this act, or a claimant, employee of the unemployment agency, or third party improperly assessed a penalty under this act and who paid the contributions or penalty under protest within 30 days after the mailing of the notice of determination of assessment, may recover the amount improperly collected or paid, together with interest, in any proper action against the unemployment agency. The circuit court of the county in which the employer or employing unit or claimant, employee of the unemployment agency, or third party resides, or, in the case of an employer or employing unit, in which the principal office or place of business of the employer or employing unit is located, 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 unemployment agency or heard or reviewed by an administrative law judge or the Michigan compensation appellate commission. The court does not have jurisdiction of the action unless written notice of the claim is given to the 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 it considers proper. Either party to the action has the same right of appeal as provided by law in other civil actions. A claimant, employee of the unemployment agency, or third party shall not bring an action against the unemployment agency under this subsection unless it is brought only to recover penalties and interest on those penalties improperly assessed by the 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 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 allowed by the court, in an amount not to exceed the actual earnings of the contributions as found to have been illegally collected or charged, from the contingent fund.

(e) Except for liens and encumbrances recorded before the filing of the notice provided for in this section, all contributions, interest, and penalties payable under this act to the unemployment agency from an employer, claimant, employee of the unemployment agency, or third party that neglects to pay the same when due are a first and prior lien upon all property and rights to property, real and personal, belonging to the employer, claimant, employee of the unemployment agency, or third party. The lien continues until the liability for that amount or a judgment arising out of the liability is satisfied or becomes unenforceable by reason of lapse of time. The lien attaches to the property and rights to property of the employer, claimant, employee of the unemployment agency, or third party, whether real or personal, from and after the required filing date of the report upon which the specific tax is computed. Notice of the lien must be recorded in the office of the register of deeds of the county in which the property subject to the lien is situated, and the register of deeds shall accept the notice for recording. Notice of the lien may also be filed with the secretary of state pursuant to the state tax lien registration act, 1968 PA 203, MCL 211.681 to 211.687. This subsection applies only to penalties and interest on those penalties assessed by the unemployment agency against a claimant, employee of the unemployment agency, or third party for violations of section 54(a) or (b) or sections 54a to 54c.

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

(f) A court shall not issue an injunction to stay proceedings for the assessment or collection of a contribution, or interest or penalty on a contribution, levied and required by this act.

(g) A person or employing unit that acquires the organization, trade, business, or 75% or more of the assets from an employing unit, as a successor described in section 41(2), is liable for contributions and interest due to the unemployment agency from the transferor at the time of the acquisition in an amount not to exceed the reasonable value of the organization, trade, business, or assets acquired, less the amount of a secured interest in the assets owned by the transferee that are entitled to priority. If a transferor or transferee who has, not less than 10 days before the acquisition, requested from the unemployment agency in writing a statement certifying the status of contribution liability of the transferor, the unemployment agency shall provide the transferor or transferee with that statement and the transferee is not liable for any amount due from the transferor in excess of the amount of liability computed as prescribed in this subsection and certified by the unemployment agency. At least 2 calendar days not including a Saturday, Sunday, or legal holiday before the acceptance of an offer, the transferor, or the transferor's real estate broker or other agent representing the transferor, shall disclose to the transferee on a form provided by the unemployment agency the amounts of the transferor's outstanding unemployment tax liability, unreported unemployment tax liability, and the tax payments, tax rates, and cumulative benefit charges for the most recent 5 years; a listing of all individuals currently employed by the transferor; and a listing of all employees separated from employment with the transferor in the most recent 12 months. The form must specify any other information the unemployment agency determines is required for a transferee to estimate future unemployment compensation costs based on the transferor's benefit charge and unemployment tax reporting and payment experience. Failure of the transferor, or the transferor's real estate broker or other agent representing the transferor, to provide accurate information required by this subsection is a misdemeanor punishable by imprisonment for not more than 90 days, or a fine of not more than $2,500.00, or both. In addition, the transferor, or the transferor's real estate broker or other agent representing the transferor, is liable to the transferee for any consequential damages resulting from the failure to comply with this subsection. However, the real estate broker or other agent is not liable for consequential damages if he or she exercised good faith in compliance with the disclosure of information. The remedy provided the transferee is not exclusive, and does not reduce any other right or remedy against any party provided for in this or any other act. Nothing in this subsection decreases the liability of the transferee as a successor in interest, or prevents the transfer of a rating account balance as provided in this act. The remedies under this subsection are in addition to the remedies the unemployment agency has against the transferor.

(h) If a part of a deficiency in payment of the employer's contribution to the fund is due to negligence or intentional disregard of unemployment agency rules, but without intention to defraud, 5% of the total amount of the deficiency, in addition to the deficiency and all other interest charges and penalties provided herein, must be assessed, collected, and paid in the same manner as a deficiency. If a part of a deficiency is determined in an action at law to be the result of fraud with intent to avoid payment of contributions to the fund, then the judgment rendered must include an amount equal to ~~50%~~ **100%** of the total amount of the deficiency, in addition to the deficiency and all other interest charges and penalties provided herein.

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

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

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

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

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

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

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

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

(n) To obtain an administrative garnishment, the unemployment agency must notify the claimant of its intention to issue an administrative garnishment on the claimant's employer and the amount determined to be due from the claimant. The notice must include a demand for immediate payment of the amount due, a statement that it is not subject to appeal, and a statement that the claimant may, within 30 days of the issuance of the notice, object to the garnishment by providing information to the agency, with supporting documentation, that the claimant does not owe the stated amount of restitution. Not less than 30 days after issuing the notice to the claimant, the unemployment agency shall notify the claimant's employer to withhold from earnings due or to become due from the claimant the amount shown on the notice plus accrued interest. The employer shall comply with the notice to withhold and shall continue to withhold each pay period the amount shown on the notice plus accrued interest until the garnishment amount plus accrued interest has been satisfied and the notice is released by the unemployment agency. The unemployment agency's administrative garnishment has priority over any subsequent garnishment or wage assignment. The amount subject to garnishment for any pay period must be decreased by any other irrevocable and previously effective assignment of wages or other garnishment action served on the employer before service of the agency's garnishment notice. The amount of the unemployment agency's garnishment must not exceed 25% of the balance. In response to the administrative garnishment, the employer shall do all of the following:

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

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

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

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

(p) If the unemployment agency does not record the discharge of lien with the register of deeds and seek reimbursement for that recording fee, the unemployment agency shall provide the discharge of lien document and a notice of lien recording fee to the debtor, who is then responsible for recording the discharge and paying the applicable amounts required under section 2567 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2567. The notice of lien recording fee must state the amount of the recording fee the unemployment agency paid for recording the lien that is the subject of the discharge and may include any other relevant information.

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