

Act No. 72
Public Acts of 2018
Approved by the Governor
March 19, 2018
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**STATE OF MICHIGAN
99TH LEGISLATURE
REGULAR SESSION OF 2018**

Introduced by Reps. Ellison, Frederick, Love, Cole, Barrett, Dianda, Chirkun, Sabo, Sneller, Marino, Schor, Elder, LaGrand, Kahle, Wittenberg, Liberati, Geiss, Leutheuser, Gay-Dagnogo, Moss, Sowerby, Camilleri, Crawford, Yanez, Brinks, Guerra, Yaroach and Pagan

ENROLLED HOUSE BILL No. 4545

AN ACT to amend 1936 (Ex Sess) PA 1, entitled "An act to protect the welfare of the people of this state through the establishment of an unemployment compensation fund, and to provide for the disbursement thereof; to create certain other funds; to create the Michigan employment security commission, and to prescribe its powers and duties; to provide for the protection of the people of this state from the hazards of unemployment; to levy and provide for contributions from employers; to levy and provide for obligation assessments; to provide for the collection of those contributions and assessments; to enter into reciprocal agreements and to cooperate with agencies of the United States and of other states charged with the administration of any unemployment insurance law; to furnish certain information to certain governmental agencies for use in administering public benefit and child support programs and investigating and prosecuting fraud; to provide for the payment of benefits; to provide for appeals from redeterminations, decisions and notices of assessments; and for referees and a board of review to hear and decide the issues arising from redeterminations, decisions and notices of assessment; to provide for the cooperation of this state and compliance with the provisions of the social security act and the Wagner-Peyser act passed by the Congress of the United States of America; to provide for the establishment and maintenance of free public employment offices; to provide for the transfer of funds; to make appropriations for carrying out the provisions of this act; to prescribe remedies and penalties for the violation of this act; and to repeal all acts and parts of acts inconsistent with this act," by amending section 11 (MCL 421.11), as amended by 2011 PA 269.

The People of the State of Michigan enact:

Sec. 11. (a) In the administration of this act, the unemployment agency shall cooperate with the appropriate agency of the United States under the social security act. The unemployment agency shall make reports, in a form and containing information as the appropriate agency of the United States may require, and shall comply with the provisions that the appropriate agency of the United States prescribes to assure the correctness and verification of the reports. The unemployment agency, subject to this act, shall comply with the regulations prescribed by the appropriate agency of the United States relating to the receipt or expenditure of the sums that are allotted and paid to this state for the purpose of assisting in the administration of this act. As used in this section, "social security act" means the social security act, 42 USC 301 to 1397mm.

(b)(1) Information obtained from an employing unit or individual pursuant to the administration of this act and determinations as to the benefit rights of any individual are confidential and must not be disclosed or open to public inspection other than to public employees and public officials in the performance of their official duties under this act and to agents or contractors of those public officials, including those described in subparagraph (viii), in a manner that reveals the individual's or the employing unit's identity or any identifying particular about an individual or a past or

present employing unit or that could foreseeably be combined with other publicly available information to reveal identifying particulars. However, all of the following apply:

(i) Information in the unemployment agency's possession that might affect a claim for worker's disability compensation under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, must be available to interested parties as defined in R 421.201 of the Michigan Administrative Code, regardless of whether the unemployment agency is a party to an action or proceeding arising under that act.

(ii) Any information in the unemployment agency's possession that might affect a claim for benefits or a charge to an employer's experience account must be available to interested parties as defined in R 421.201 of the Michigan Administrative Code, and to their agents, if their agents provide the unemployment insurance agency with a written authorization of representation from the party represented. A written authorization of representation is not required in any of the following circumstances:

(A) If the request is made by an attorney who is retained by an interested party and files an appearance for purposes related to a claim for unemployment benefits.

(B) If the request is made by an elected official performing constituent services and the elected official presents reasonable evidence that the identified individual authorized the disclosure.

(C) If the request is made by a third party who is not acting as an agent for an interested party and the third party presents a release from an interested party for the information. The release must be signed by an interested party; specify the information to be released and all individuals who may receive the information; and state the specific purpose for which the information is sought, that files of the state may be accessed to obtain the information, and that the information sought will only be used for the purpose indicated. The purpose specified in the release must be limited to that of providing a service or benefit to the individual signing the release or carrying out administration or evaluation of a public program to which the release pertains.

(iii) Except as provided in this act, the information and determinations must not be used in any action or proceeding before any court or administrative tribunal unless the unemployment agency is a party to or a complainant in the action or proceeding, or unless used for the prosecution of fraud, civil proceeding, or other legal proceeding in the programs indicated in subdivision (2).

(iv) Any report or statement, written or verbal, made by any person to the unemployment agency, any member of the unemployment agency, or any person engaged in administering this act is a privileged communication; and a person, firm, or corporation is not liable for slander or libel on account of a report or statement. The records and reports in the custody of the unemployment agency must be available for examination by the employer or employee affected.

(v) Subject to restrictions that the unemployment agency prescribes by rule, information in its possession may be made available to any agency of this state, any other state, or any federal agency charged with the administration of an unemployment compensation law or the maintenance of a system of public employment offices; the Bureau of Internal Revenue of the United States Department of the Treasury; the Bureau of the Census of the Economics and Statistics Administration of the United States Department of Commerce; or the United States Social Security Administration.

(vi) Information obtained in connection with the administration of this act may be made available to persons or agencies for purposes appropriate to the operation of a public employment service or unemployment compensation program. Subject to restrictions that it prescribes by rule, the unemployment agency may also make that information available to agencies of other states that are responsible for the administration of public assistance to unemployed workers; to the departments of this state; and to federal, state, and local law enforcement agencies in connection with a criminal investigation involving the health, safety, or welfare of the public. The information released must be used only for purposes not inconsistent with the purposes of this act. The information must only be released upon assurance by the entity receiving the information that it will reimburse the cost of providing the information and will not disclose the information except to the individual or employer that is the subject of the information, an attorney or agent of the individual or employer, or a prosecuting authority for or on behalf of the entity receiving the information.

(vii) Upon request, the unemployment agency shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, and may furnish to any state agency similarly charged, the name, address, ordinary occupation, and employment status of each recipient of benefits and the recipient's rights to further benefits under this act.

(viii) Subject to restrictions it prescribes, by rule or otherwise, the unemployment agency may also make information that it obtains available for use in connection with research projects of a public service nature; for course, program, or training program planning, improvement, or evaluation; for grant application or evaluation; for institutional or program accreditation; for economic development or workforce research; for award eligibility; or for federal or state mandated reporting, to a public official, eligible educational institution, or Michigan works agency or to an agency of this state that is acting as a contractor or agent of a public official and conducting research that assists the public official in carrying out the duties of the office. The unemployment agency shall identify online the information that it collects that may be made available to public officials, eligible educational institutions, and Michigan works agencies and shall assist them in the application process required to gain access to that information. A person associated with those institutions or agencies or an agency of this state shall not disclose the information in a manner that would reveal the identity of an

individual or employing unit from or concerning whom the information was obtained by the unemployment agency. The unemployment agency shall enter into a written, enforceable agreement with the public official for a period of not more than 10 years that holds the public official, eligible educational institution, or Michigan works agency responsible for ensuring that the confidentiality of the information is maintained. If the agreement is violated, the agreement must be terminated and the public official, eligible educational institution, or Michigan works agency may be subject to penalties equivalent to those that apply under section 54(f). The unemployment agency, at the request of an independent educational institution, shall perform data analysis of information that the unemployment agency has obtained and provide the results of the analysis to the independent educational institution. The unemployment agency may perform analysis for course, program, or training program planning, improvement, or evaluation; grant application or evaluation; institutional or program accreditation; economic development or workforce research; award eligibility; or federal or state mandated reporting. The unemployment agency shall not disclose information to an independent educational institution in a manner that would reveal the identity of an individual or employing unit from or concerning whom the information was obtained by the unemployment agency. The unemployment agency shall comply with 20 CFR 603.8. As used in this subparagraph:

(a) "Eligible educational institution" means a public community or junior college established under section 7 of article VIII of the state constitution of 1963 or part 25 of the revised school code, 1976 PA 451, MCL 380.1601 to 380.1607, or a state university described in section 4, 5, or 6 of article VIII of the state constitution of 1963.

(b) "Independent educational institution" means an independent nonprofit college or university located in this state.

(c) "Michigan works agency" means an entity described in section 17(a) or (d) of the Michigan works one-stop service center system act, 2006 PA 491, MCL 408.127.

(d) "Public official" means that term as defined in 20 CFR 603.2 and includes an eligible educational institution and a Michigan works agency.

(ix) The unemployment agency may request the Comptroller of the Currency of the United States to cause an examination of the correctness of any return or report of any national banking association rendered under this act, and may, in connection with the request, transmit the report or return to the Comptroller of the Currency of the United States as provided in section 3305(c) of the internal revenue code of 1986, 26 USC 3305(c).

(2) The unemployment agency shall disclose to qualified requesting agencies, upon request, with respect to an identified individual, information in its records pertaining to the individual's name; social security number; gross wages paid during each quarter; the name, address, and federal and state employer identification number of the individual's employer; any other wage information; whether an individual is receiving, has received, or has applied for unemployment benefits; the amount of unemployment benefits the individual is receiving or is entitled to receive; the individual's current or most recent home address; whether the individual has refused an offer of work and if so a description of the job offered including the terms, conditions, and rate of pay; and any other information that the qualified requesting agency considers useful in verifying eligibility for, and the amount of, benefits. For purposes of this subdivision, "qualified requesting agency" means any state or local child support enforcement agency responsible for enforcing child support obligations under a plan approved under part d of title IV of the social security act, 42 USC 651 to 669b; the United States Social Security Administration for purposes of establishing or verifying eligibility or benefit amounts under titles II and XVI of the social security act, 42 USC 401 to 434 and 42 USC 1381 to 1383f; the United States Department of Agriculture for the purposes of determining eligibility for, and amount of, benefits under the food stamp program established under the food stamp act of 1977, 7 USC 2011 to 2036c; and any other state or local agency of this or any other state responsible for administering the following programs:

(i) The aid to families with dependent children program under part a of title IV of the social security act, 42 USC 601 to 619.

(ii) The Medicaid program under title XIX of the social security act, 42 USC 1396 to 1396w-5.

(iii) The unemployment compensation program under section 3304 of the internal revenue code of 1986, 26 USC 3304.

(iv) The food stamp program under the food stamp act of 1977, 7 USC 2011 to 2036c.

(v) Any state program under a plan approved under title I, X, XIV, or XVI of the social security act, 42 USC 301 to 306, 42 USC 1201 to 1206, 42 USC 1351 to 1355, and 42 USC 1381 to 1383f.

(vi) Any program administered under the social welfare act, 1939 PA 280, MCL 400.1 to 400.119b.

The information must be disclosed only if the qualified requesting agency has executed an agreement with the unemployment agency to obtain the information and the information is requested for the purpose of determining the eligibility of applicants for benefits, or the type and amount of benefits for which applicants are eligible, under any of the programs listed above or under title II and XVI of the social security act, 42 USC 401 to 434 and 42 USC 1381 to 1383f; for establishing and collecting child support obligations from, and locating individuals owing such obligations that are being enforced under a plan described in section 454 of the social security act, 42 USC 654; or for investigating or prosecuting alleged fraud under any of these programs.

The unemployment agency shall cooperate with this state's department of health and human services in establishing the computer data matching system authorized in section 83 of the social welfare act, 1939 PA 280, MCL 400.83, to transmit the information requested on at least a quarterly basis. The information must not be released unless the

qualified requesting agency agrees to reimburse the unemployment agency for the costs incurred in furnishing the information.

In addition to the requirements of this section, except as later provided in this subdivision, all other requirements with respect to confidentiality of information obtained in the administration of this act apply to the use of the information by the officers and employees of the qualified requesting agencies, and the sanctions imposed under this act for improper disclosure of the information apply to those officers and employees. A qualified requesting agency may redisclose information only to the individual who is the subject of the information, an attorney or other duly authorized agent representing the individual if the information is needed in connection with a claim for benefits against the requesting agency, or any criminal or civil prosecuting authority acting for or on behalf of the requesting agency.

The unemployment agency may enter into an agreement with any qualified requesting agency for the purposes described in this subdivision. The agreement or agreements must comply with all federal laws and regulations applicable to those agreements.

(3) The unemployment agency shall enable the United States Department of Health and Human Services to obtain prompt access to any wage and unemployment benefit claims information, including any information that may be useful in locating an absent parent or an absent parent's employer for purposes of section 453 of the social security act, 42 USC 653, or in carrying out the child support enforcement program under title IV of the social security act, 42 USC 601 to 679c. The unemployment agency shall not provide the requesting agency access to the information unless the requesting agency agrees to reimburse the unemployment agency for the costs incurred in furnishing the information.

(4) Upon request accompanied by presentation of a consent to the release of information signed by an individual, the unemployment agency shall disclose to the United States Department of Housing and Urban Development, any state or local public housing agency, or an entity contracting with a state or local public housing agency to provide public housing, or any other agency responsible for verifying an applicant's or participant's eligibility for, or level of benefits in, any housing assistance program administered by the United States Department of Housing and Urban Development, the name; address; wage information; whether an individual is receiving, has received, or has applied for unemployment benefits; and the amount of unemployment benefits the individual is receiving or is entitled to receive under this act. This information must be used only to determine an individual's eligibility for benefits or the amount of benefits to which an individual is entitled under a housing assistance program of the United States Department of Housing and Urban Development. The unemployment agency shall not release the information unless the requesting agency agrees to reimburse the unemployment agency for the costs incurred in furnishing the information. For purposes of this subdivision, "public housing agency" means an agency described in section 3(b)(6) of the United States housing act of 1937, 42 USC 1437a(b)(6).

(5) The unemployment agency may make available to the department of treasury information collected for the income and eligibility verification system begun on October 1, 1988 for the purpose of detecting potential tax fraud in other areas.

(6) A recipient of confidential information under this act shall use the disclosed information only for purposes authorized by law and consistent with an agreement entered into with the unemployment agency. The recipient shall not redisclose the information to any other individual or entity without the written permission of the unemployment agency.

(c) The unemployment agency may enter into agreements with the appropriate agencies of other states or the federal government under which potential rights to benefits accumulated under the unemployment compensation laws of other states or of the federal government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under plans that the unemployment agency finds will be fair and reasonable to all affected interests and will not result in substantial loss to the unemployment compensation fund.

(d)(1) The unemployment agency may enter into reciprocal agreements with the appropriate agencies of other states or of the federal government that adjust the collection and payment of contributions by employers with respect to employment not localized within this state.

(2) The unemployment agency may enter into reciprocal agreements with agencies of other states administering unemployment compensation under which contributions paid by an employer to any other state may be received by the other state as an agent acting for and on behalf of this state to the same extent as if the contributions had been paid directly to this state if the payment is remitted to this state. Contributions so received by another state are considered contributions, required and paid under this act as of the date the contributions were received by the other state. The unemployment agency may collect contributions in a like manner for agencies of other states administering unemployment compensation and remit the contributions to the agencies under the terms of the reciprocal agreements.

(e) The unemployment agency may make this state's records relating to the administration of this act available and may furnish to the Railroad Retirement Board or any other state or federal agency administering an unemployment compensation law, at the expense of that board or agency, copies of the records as the Railroad Retirement Board considers necessary for its purpose.

(f) The unemployment agency may cooperate with or enter into agreements with any agency of another state or of the United States charged with the administration of any unemployment insurance or public employment service law.

The unemployment agency may investigate, secure, and transmit information, make available services and facilities, and exercise other powers provided in this act with respect to the administration of this act as it considers necessary or appropriate to facilitate the administration of any unemployment compensation or public employment service law, and may accept and utilize information, services, and facilities made available to this state by the agency charged with the administration of any other unemployment compensation or public employment service law.

On request of an agency that administers an employment security law of another state or a foreign government and that has found, in accordance with that law, that a claimant is liable to repay benefits received under that law, the unemployment agency may collect the amount of the benefits from the claimant to be refunded to that agency.

In a case in which under this subsection a claimant is liable to repay an amount to the agency of another state or a foreign government, the amount may be collected by civil action in the name of the unemployment agency acting as agent for that agency. Court costs must be paid or guaranteed by the agency of that state.

To the extent permissible under the laws and constitution of the United States, the unemployment agency may enter into or cooperate in arrangements under which facilities and services provided under this act and facilities and services provided under the unemployment compensation law of Canada may be utilized for the taking of claims and the payment of benefits under the unemployment compensation law of this state or under a similar law of Canada.

Any employer who is not a resident of this state and who exercises the privilege of having 1 or more individuals perform service for him or her within this state, and any resident employer who exercises that privilege and thereafter leaves this state, is considered to have appointed the secretary of state as his or her agent and attorney for the acceptance of process in any civil action under this act. In instituting an action, the unemployment agency shall cause process or notice to be filed with the secretary of state, and the service is sufficient and of the same force and validity as if served upon the nonresident or absent employer personally within this state. The unemployment agency shall immediately send a notice and copy of the service of process or notice by certified mail, return receipt requested, to the employer at his or her last known address. The return receipt, the unemployment agency's affidavit of compliance with this section, and a copy of the notice of service must be attached to the original of the process filed in the court in which the civil action is pending.

The courts of this state shall recognize and enforce liabilities, as provided in this act, for unemployment compensation contributions, penalties, and interest imposed by other states that extend a like comity to this state.

The attorney general may commence action in the appropriate court of any other state or any other jurisdiction of the United States by and in the name of the unemployment agency to collect unemployment compensation contributions, penalties, and interest finally determined, redetermined, or decided under this act to be legally due to this state. The officials of other states that extend a like comity to this state may sue in the courts of this state for the collection of unemployment compensation contributions, penalties, and interest, the liability for which has been similarly established under the laws of the other state or jurisdiction. A certificate by the secretary of another state under the great seal of that state attesting the authority of the official or officials to collect unemployment compensation contributions, penalties, and interest is conclusive evidence of that authority.

The attorney general may commence action in this state as agent for or on behalf of any other state to enforce judgments and established liabilities for unemployment compensation taxes or contributions, penalties, and interest due the other state if the other state extends a like comity to this state.

(g) The unemployment agency may enter into reciprocal agreements with the appropriate and authorized agencies of other states or of the federal government under which remuneration and services that determine entitlement to benefits under the unemployment compensation law of another state or of the federal government are considered wages and employment for the purposes of sections 27 and 46, if the other state or federal agency has agreed to reimburse the fund for that portion of benefits paid under this act upon the basis of the remuneration and services as the unemployment agency finds will be fair and reasonable as to all affected interests. A reciprocal agreement may provide that wages and employment that determine entitlement to benefits under this act are considered wages or services on the basis of which unemployment compensation under the law of another state or of the federal government is payable; that services performed by an individual for a single employing unit for which services are customarily performed by the individual in more than 1 state are considered services performed entirely within any 1 of the states in which any part of the individual's service is performed, in which the individual has his or her residence, or in which the employing unit maintains a place of business, if there is in effect, as to those services, an election approved by the agency charged with the administration of the state's unemployment compensation law, under which all the services performed by the individual for the employing unit are considered to be performed entirely within this state; and that the unemployment agency will reimburse other state or federal agencies charged with the administration of unemployment compensation laws with the reasonable portion of benefits, paid under the law of any other state or of the federal government upon the basis of employment and wages, as the unemployment agency finds will be fair and reasonable as to all affected interests. Reimbursements payable under this subsection are considered benefits for the purpose of limiting duration of benefits and for the purposes of sections 20(a) and 26, and the payments are chargeable to the contributing employer's experience account for the purposes of sections 17, 18, 19, and 20, or the reimbursing employer's account under section 13c, 13g, 13i, or 13l, as applicable. Benefits paid under a combined wage plan must be allocated and charged to each employer involved in the quarter in which the paying state requires reimbursement. Benefits charged to this state

must be allocated to each employer of this state who has employed the claimant during the base period of the paying state in the same ratio that the wages earned by the claimant during the base period of the paying state in the employ of the employer bears to the total amount of wages earned by the claimant in the base period of the paying state in the employ of all employers of the state. The unemployment agency may make to and receive from other state or federal agencies reimbursements from or to the fund, pursuant to arrangements made under this section.

(h) The unemployment agency may enter into any agreement necessary to cooperate with any agency of the United States charged with the administration of any program for the payment of primary or supplemental benefits to individuals recently discharged from the military services of the United States and to assist in the establishing of eligibility and in the payments of benefits under those programs. The unemployment agency may, for those purposes, accept and administer funds made available by the federal government and may accept and exercise any delegated function under those programs. The unemployment agency shall not enter into an agreement providing for, or exercise any function connected with, the disbursement of this state's unemployment trust fund for purposes not authorized by this act.

(i) The unemployment agency may enter into agreements with the appropriate agency of the United States under which, in accordance with the laws of the United States, the unemployment agency, as agent of the United States or from funds provided by the United States, provides for the payment of unemployment compensation or unemployment allowances of any kind, including the payment of any benefits and allowances that are made available for manpower development, training, retraining, readjustment, and relocation. The unemployment agency may receive and disburse funds from the United States or any appropriate agency of the United States pursuant to those agreements.

If the federal enactment providing for unemployment compensation, training allowance, or relocation payments requires joint federal-state financing of those payments, the unemployment agency may participate in the programs by using funds appropriated by the legislature to the extent provided by the legislature for those programs.

(j) The unemployment agency shall participate in any arrangement that provides for the payment of compensation on the basis of combining an individual's wages and employment covered under this act with his or her wages and employment covered under the unemployment compensation laws of other states, if the arrangement is approved by the United States Secretary of Labor in consultation with the state unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of compensation. An arrangement must include provisions for both of the following:

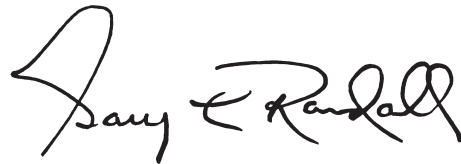
(i) Applying the base period of a single state law to a claim involving the combining of an individual's wages and employment covered under 2 or more state unemployment compensation laws.

(ii) Avoiding the duplicate use of wages and employment as a result of the combining.

(k) The attorney general of this state or attorneys designated by the attorney general shall represent the unemployment agency and this state in a proceeding before any court. Only the attorney general or other attorneys designated by the attorney general shall act as legal counsel for the unemployment agency.

Enacting section 1. This amendatory act takes effect July 1, 2018.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor