

**SUBSTITUTE FOR
HOUSE BILL NO. 4546**

A bill to amend 1936 (Ex Sess) PA 1, entitled
"Michigan employment security act,"
by amending section 54 (MCL 421.54), as amended by 2016 PA 522.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 54. (a) A person, including a claimant for unemployment
2 benefits, an employing entity, or an owner, director, or officer of
3 an employing entity, who willfully violates or intentionally fails
4 to comply with any of the provisions of this act, or a regulation
5 of the unemployment agency promulgated under ~~the authority of this~~
6 act for which a penalty is not otherwise provided by this act is
7 subject to the following sanctions, notwithstanding any other
8 statute of this state or of the United States:

9 (i) If the unemployment agency determines that an amount has
10 been obtained or withheld as a result of the intentional failure to

1 comply with this act, the unemployment agency may recover the
2 amount obtained as a result of the intentional failure to comply
3 plus damages equal to 3 times that amount.

4 (ii) The unemployment agency may refer the matter to the
5 prosecuting attorney of the county in which the alleged violation
6 occurred for prosecution. If the unemployment agency has not made
7 its own determination under subdivision (i), **THEN** the recovery
8 sought by the prosecutor ~~shall~~**MUST** include the amount described in
9 subdivision (i). ~~and shall also include~~**THE VIOLATION IS PUNISHABLE**
10 **BY** 1 or more of the following: ~~penalties:~~

11 (A) Subject to redesignation under subsection (l), if the
12 amount obtained or withheld from payment as a result of the
13 intentional failure to comply is less than \$25,000.00, then 1 of
14 the following:

15 (I) Imprisonment for not more than 1 year.

16 (II) The performance of community service of not more than 1
17 year but not to exceed 2,080 hours.

18 (III) A combination of **PENALTIES UNDER** (I) and (II) that does
19 not exceed 1 year.

20 (B) If the amount obtained or withheld from payment as a
21 result of the intentional failure to comply is \$25,000.00 or more
22 but less than \$100,000.00, then 1 of the following:

23 (I) Imprisonment for not more than 2 years.

24 (II) The performance of community service of not more than 2
25 years but not to exceed 4,160 hours.

26 (III) A combination of **PENALTIES UNDER** (I) and (II) that does
27 not exceed 2 years.

1 (C) If the amount obtained or withheld from payment as a
2 result of the intentional failure to comply is more than
3 \$100,000.00, then 1 of the following:

4 (I) Imprisonment for not more than 5 years.

5 (II) The performance of community service of not more than 5
6 years but not to exceed 10,400 hours.

7 (III) A combination of **PENALTIES UNDER** (I) and (II) that does
8 not exceed 5 years.

9 (iii) If the unemployment agency determines that an amount has
10 been obtained or withheld as a result of a knowing violation of
11 this act, the unemployment agency may recover the amount obtained
12 as a result of the knowing violation and may also recover damages
13 equal to 3 times that amount.

14 (iv) The unemployment agency may refer a matter under
15 subdivision (iii) to the prosecuting attorney of the county in
16 which the alleged violation occurred for prosecution. If the
17 unemployment agency has not made its own determination under
18 subdivision (iii), **THEN** the recovery sought by the prosecutor ~~shall~~
19 **MUST** include the amount described in subdivision (iii). ~~and shall~~
20 ~~also include~~ **THE VIOLATION IS PUNISHABLE BY** 1 or more of the
21 following: ~~penalties:~~

22 (A) Subject to redesignation under subsection (l), if the
23 amount obtained or withheld from payment as a result of the knowing
24 violation is \$100,000.00 or less, then 1 of the following:

25 (I) Imprisonment for not more than 1 year.

26 (II) The performance of community service of not more than 1
27 year but not to exceed 2,080 hours.

1 (III) A combination of **PENALTIES UNDER** (I) and (II) that does
2 not exceed 1 year.

3 (B) If the amount obtained or withheld from payment as a
4 result of the knowing violation is more than \$100,000.00, then 1 of
5 the following:

6 (I) Imprisonment for not more than 2 years.

7 (II) The performance of community service of not more than 2
8 years but not to exceed 4,160 hours.

9 (III) A combination of **PENALTIES UNDER** (I) and (II) that does
10 not exceed 2 years.

11 (b) ~~Any~~**AN** employing unit or an owner, director, officer, or
12 agent of an employing unit, a claimant, an employee of the
13 unemployment agency, or any other person who makes a false
14 statement or representation knowing it to be false, or knowingly
15 and willfully with intent to defraud fails to disclose a material
16 fact, to obtain or increase a benefit or other payment under this
17 act or under the unemployment compensation law of any state or of
18 the federal government, either for himself or herself or any other
19 person, to prevent or reduce the payment of benefits to an
20 individual entitled thereto or to avoid becoming or remaining a
21 subject employer, or to avoid or reduce a contribution or other
22 payment required from an employing unit under this act or under the
23 unemployment compensation law of any state or of the federal
24 government, ~~as applicable,~~ is subject to administrative fines and
25 is punishable as provided in this subsection, notwithstanding any
26 other penalties imposed under any other statute of this state or of
27 the United States. For benefit years beginning on or after May 1,

1 2017, to establish fraud based on unreported earnings under this
2 subsection, the unemployment agency must have in its possession the
3 weekly wage information from the employer. A violation of this
4 subsection is punishable as follows:

5 (i) If the amount obtained as a result of the knowing false
6 statement or representation or the knowing and willful failure to
7 disclose a material fact is less than \$500.00, the unemployment
8 agency may recover the amount obtained as a result of the knowing
9 false statement or representation or the knowing and willful
10 failure to disclose a material fact and may also recover damages
11 equal to 2 times that amount. For a second or subsequent violation
12 described in this subdivision, the unemployment agency may recover
13 damages equal to 4 times the amount obtained.

14 (ii) If the amount obtained as a result of the knowing false
15 statement or representation or the knowing and willful failure to
16 disclose a material fact is \$500.00 or more, the unemployment
17 agency shall attempt to recover the amount obtained as a result of
18 the knowing false statement or representation or the knowing and
19 willful failure to disclose a material fact and may also recover
20 damages equal to 4 times that amount. The unemployment agency may
21 refer the matter to the prosecuting attorney of the county in which
22 the alleged violation occurred for prosecution. If the unemployment
23 agency has not made its own determination under this subdivision,
24 **THEN** the recovery sought by the prosecutor ~~shall~~**MUST** include the
25 amount described in this subdivision. ~~and shall also include~~**THE**
26 **VIOLATION IS PUNISHABLE BY** 1 or more of the following ~~penalties~~
27 the amount obtained is \$1,000.00 or more:

1 (A) Subject to redesignation under subsection (l), if the
2 amount obtained or withheld from payment as a result of the knowing
3 false statement or representation or the knowing and willful
4 failure to disclose a material fact is \$1,000.00 or more but less
5 than \$25,000.00, then 1 of the following:

6 (I) Imprisonment for not more than 1 year.

7 (II) The performance of community service of not more than 1
8 year but not to exceed 2,080 hours.

9 (III) A combination of **PENALTIES UNDER** (I) and (II) that does
10 not exceed 1 year.

11 (B) If the amount obtained or withheld from payment as a
12 result of the knowing false statement or representation or the
13 knowing and willful failure to disclose a material fact is
14 \$25,000.00 or more, then 1 of the following:

15 (I) Imprisonment for not more than 2 years.

16 (II) The performance of community service of not more than 2
17 years but not to exceed 4,160 hours.

18 (III) A combination of **PENALTIES UNDER** (I) and (II) that does
19 not exceed 2 years.

20 (C) If the knowing false statement or representation or the
21 knowing and willful failure to disclose a material fact made to
22 obtain or withhold an amount from payment does not result in a loss
23 to the ~~commission, UNEMPLOYMENT AGENCY~~, then a ~~recovery~~ **THE**
24 **UNEMPLOYMENT AGENCY** shall ~~be sought~~ **ATTEMPT TO RECOVER AN AMOUNT**
25 equal to 3 times the amount that would have been obtained by the
26 knowing false statement or representation or the knowing and
27 willful failure to disclose a material fact, but not less than

1 \$1,000.00, and 1 of the following:

2 (I) Imprisonment for not more than 2 years.

3 (II) The performance of community service of not more than 2
4 years but not to exceed 4,160 hours.

5 (III) A combination of **PENALTIES UNDER** (I) and (II) that does
6 not exceed 2 years.

7 (c) (1) Any employing unit or an owner, director, officer, or
8 agent of an employing unit or any other person failing to submit,
9 when due, any contribution report, wage and employment report, or
10 other reports lawfully prescribed and required by the unemployment
11 agency ~~shall be~~ **IS** subject to the assessment of an administrative
12 fine for each report not submitted within the time prescribed by
13 the unemployment agency. ~~, as follows:~~ In the case of contribution
14 reports not received within 10 days after the end of the reporting
15 month, the fine ~~shall be~~ **IS** 10% of the contributions due on the
16 reports but not less than \$5.00 or more than \$25.00 for a report.
17 However, if the tenth day falls on a Saturday, Sunday, legal
18 holiday, or other unemployment agency nonwork day, the 10-day
19 period ~~shall run~~ **RUNS** until the end of the next day that is not a
20 Saturday, Sunday, legal holiday, or other unemployment agency
21 nonwork day. In the case of all other reports referred to in this
22 subsection, the fine ~~shall be~~ **IS** \$10.00 for a report.

23 (2) Notwithstanding subdivision (1), any employer or an owner,
24 director, officer, or agent of an employer or any other person
25 failing to submit, when due, any quarterly wage detail report
26 required by section 13(2), or submitting an incomplete or erroneous
27 report, is subject to an administrative fine of \$50.00 for each

1 untimely report, incomplete report, or erroneous report if the
2 report is filed not later than 30 days after the date the report is
3 due, \$250.00 if the report is filed more than 1 calendar quarter
4 after the date the report is due, and an additional \$250.00 for
5 each additional calendar quarter that the report is late, except
6 that no penalty shall apply if the employer files a corrected
7 report within 14 days after notification of an error by the agency.

8 (3) If a report is filed after the prescribed time and it is
9 shown to the satisfaction of the ~~commission~~**UNEMPLOYMENT AGENCY**
10 that the failure to submit the report was due to reasonable cause,
11 ~~a fine~~**THE UNEMPLOYMENT AGENCY** shall not be imposed.**IMPOSE A FINE.**
12 The assessment of a fine as provided in this subsection constitutes
13 a final determination unless the employer files an application with
14 the unemployment agency for a redetermination of the assessment ~~in~~
15 ~~accordance with~~**UNDER** section 32a.

16 (d) If any employee or agent of the unemployment agency or
17 member of the Michigan compensation appellate commission willfully
18 discloses confidential information obtained from any employing unit
19 or individual in the administration of this act for any purpose
20 inconsistent with or contrary to the purposes of this act, or a
21 person who obtains a list of applicants for work or of claimants or
22 recipients of benefits under this act uses or permits use of that
23 list for a political purpose or for a purpose inconsistent with or
24 contrary to the purposes of this act, he or she is guilty of a
25 misdemeanor punishable by imprisonment for not more than 90 days or
26 a fine of not more than \$1,000.00, or both. Notwithstanding the
27 preceding sentence, if any unemployment agency employee, agent of

1 the unemployment agency, or member of the Michigan compensation
2 appellate commission knowingly, intentionally, and for financial
3 gain, makes an illegal disclosure of confidential information
4 obtained under section 13(2), he or she is guilty of a felony,
5 punishable by imprisonment for not more than 1 year and 1 day.

6 (e) ~~A person~~ **AN INDIVIDUAL** who, without proper authority from
7 the unemployment agency, represents himself or herself to be an
8 employee of the unemployment agency for the purpose of securing
9 information regarding the unemployment or employment record of an
10 individual is guilty of a misdemeanor punishable by imprisonment
11 for not more than 90 days or a fine of not more than \$1,000.00, or
12 both.

13 (f) A person associated with ~~a college, university,~~ **AN**
14 **INSTITUTION OF HIGHER EDUCATION, INTERMEDIATE SCHOOL DISTRICT,**
15 **MICHIGAN WORKS AGENCY,** or public agency of this state who makes use
16 of any information obtained from the unemployment agency ~~in~~
17 ~~connection with a research project of a public service nature,~~
18 **UNDER SECTION 11(B) (1) (viii)** in a manner as to reveal the identity
19 of any individual or employing unit from or concerning whom the
20 information was obtained by the unemployment agency, or for any
21 purpose other than ~~use in connection with that research project,~~
22 **THE PURPOSES STATED IN SECTION 11(B) (1) (viii)** is guilty of a
23 misdemeanor punishable by imprisonment for not more than 90 days or
24 a fine of not more than \$1,000.00, or both. **AS USED IN THIS**
25 **SUBSECTION:**

26 (i) **"INSTITUTION OF HIGHER EDUCATION" MEANS THAT TERM AS**
27 **DEFINED IN SECTION 53.**

1 (ii) "INTERMEDIATE SCHOOL DISTRICT" MEANS THAT TERM AS DEFINED
2 IN SECTION 4 OF THE REVISED SCHOOL CODE, 1976 PA 451, MCL 380.4.

3 (iii) "MICHIGAN WORKS AGENCY" MEANS THAT TERM AS DEFINED IN
4 SECTION 3 OF THE MICHIGAN WORKS ONE-STOP SERVICE CENTER SYSTEM ACT,
5 2006 PA 491, MCL 408.113.

6 (g) As used in this section, "person" includes an individual;
7 owner, director, or officer of an employing entity; copartnership;
8 joint venture; corporation; receiver; or trustee in bankruptcy.

9 (h) This section applies even if the amount obtained or
10 withheld from payment has been reported or reported and paid by an
11 individual involved in a violation of subsection (a) or (b).

12 (i) ~~If a determination is made that an~~ **AN** individual **WHO** has
13 violated this section ~~, the individual is~~ subject to the sanctions
14 of this section and, if applicable, ~~the requirements of~~ section 62.

15 (j) Amounts recovered by the ~~commission~~ **UNEMPLOYMENT AGENCY**
16 under subsection (a) ~~shall~~ **MUST** be credited first to the
17 unemployment compensation fund and thereafter amounts recovered
18 that are in excess of the amounts obtained or withheld as a result
19 of the violation of subsection (a) ~~shall~~ **MUST** be credited to the
20 penalty and interest account of the contingent fund. Amounts
21 recovered by the ~~commission~~ **UNEMPLOYMENT AGENCY** under subsections
22 (c), (d), (e), and (f) ~~shall~~ **MUST** be credited to the penalty and
23 interest account of the contingent fund ~~in accordance with~~ **AS**
24 **PROVIDED IN** section 10(6).

25 (k) Amounts recovered by the unemployment agency under
26 subsection (b) ~~shall~~ **MUST** be credited in the following order:

27 (i) From the penalty assessment recovered, an amount equal to

1 15% of any benefit overpayments resulting from fraud ~~shall~~**MUST** be
2 credited to the unemployment compensation fund.

3 (ii) For the balance of deductions from unemployment insurance
4 benefits, to the liability for benefit repayment under this
5 section.

6 (iii) For all other recoveries, the balance ~~shall~~**MUST** first
7 be credited to the unemployment compensation fund for repayment of
8 any remaining amounts owed, and then to the contingent fund to be
9 applied first to administrative sanctions and damages and then to
10 interest.

11 (l) A person who obtains or withholds an amount of
12 unemployment benefits or payments exceeding \$3,500.00 but less than
13 \$25,000.00 as a result of a knowing false statement or
14 representation or the knowing and willful failure to disclose a
15 material fact is guilty of a felony punishable as provided in
16 subsection (a) (ii) (A) or (iv) (A) or subsection (b) (ii) (A).

17 (m) ~~An~~**THE** unemployment agency **SHALL NOT MAKE A** determination
18 under this section ~~shall not be~~**THAT IS** based solely on a computer-
19 identified discrepancy in information supplied by the claimant or
20 employer. An unemployment agency employee or agent must examine the
21 facts and independently determine that the claimant or the employer
22 is responsible for a willful or intentional violation before the
23 **UNEMPLOYMENT** agency makes a determination under this section.

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

26 Enacting section 2. This amendatory act does not take effect
27 unless House Bill No. 4545 of the 99th Legislature is enacted into

1 law.