

HOUSE BILL No. 4951

September 4, 2013, Introduced by Rep. Foster and referred to the Committee on Commerce.

A bill to amend 1936 (Ex Sess) PA 1, entitled
"Michigan employment security act,"
by amending section 54 (MCL 421.54), as amended by 2011 PA 269.

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:

1 (i) If the unemployment agency determines that an amount has
2 been obtained or withheld as a result of the intentional failure to
3 comply with this act, the unemployment agency may recover the
4 amount obtained as a result of the intentional failure to comply
5 plus damages equal to 3 times that amount.

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

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

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

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

19 (III) A combination of (I) and (II) that does not exceed 1
20 year.

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

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

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

27 (III) A combination of (I) and (II) that does not exceed 2

1 years.

2 (C) If the amount obtained or withheld from payment as a
3 result of the intentional failure to comply is more than
4 \$100,000.00, then 1 of the following:

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

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

8 (III) A combination of (I) and (II) that does not exceed 5
9 years.

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

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

22 (A) Subject to redesignation under subsection ~~(m)~~ (I), 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 (I) and (II) that does not exceed 1
2 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 (I) and (II) that does not exceed 2
10 years.

11 (b) Any 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 follows, notwithstanding any other penalties
26 imposed under any other statute of this state or of the United
27 States:

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

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

24 (A) Subject to redesignation under subsection ~~(m)~~, (I), if the
25 amount obtained or withheld from payment as a result of the knowing
26 false statement or representation or the knowing and willful
27 failure to disclose a material fact is \$1,000.00 or more but less

1 than \$25,000.00, then 1 of the following:

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

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

5 (III) A combination of (I) and (II) that does not exceed 1
6 year.

7 (B) If the amount obtained or withheld from payment as a
8 result of the knowing false statement or representation or the
9 knowing and willful failure to disclose a material fact is
10 \$25,000.00 or more, then 1 of the following:

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

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

14 (III) A combination of (I) and (II) that does not exceed 2
15 years.

16 (C) If the knowing false statement or representation or the
17 knowing and willful failure to disclose a material fact made to
18 obtain or withhold an amount from payment does not result in a loss
19 to the commission, then a recovery shall be sought equal to 3 times
20 the amount that would have been obtained by the knowing false
21 statement or representation or the knowing and willful failure to
22 disclose a material fact, but not less than \$1,000.00, and 1 of the
23 following:

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

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

27 (III) A combination of (I) and (II) that does not exceed 2

1 years.

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

18 (2) Notwithstanding subdivision (1), any employer or an owner,
19 director, officer, or agent of an employer or any other person
20 failing to submit, when due, any quarterly wage detail report
21 required by section 13(2), or submitting an incomplete or erroneous
22 report, is subject to an administrative fine of \$50.00 for each
23 untimely report, incomplete report, or erroneous report if the
24 report is filed not later than 30 days after the date the report is
25 due, \$250.00 if the report is filed more than 1 calendar quarter
26 after the date the report is due, and an additional \$250.00 for
27 each additional calendar quarter that the report is late, except

1 that no penalty shall apply if the employer files a corrected
2 report within 14 days after notification of an error by the agency.

3 (3) If a report is filed after the prescribed time and it is
4 shown to the satisfaction of the commission that the failure to
5 submit the report was due to reasonable cause, a fine shall not be
6 imposed. The assessment of a fine as provided in this subsection
7 constitutes a final determination unless the employer files an
8 application with the unemployment agency for a redetermination of
9 the assessment in accordance with section 32a.

10 (d) If any employee or agent of the unemployment agency or
11 member of the Michigan compensation appellate commission willfully
12 discloses confidential information obtained from any employing unit
13 or individual in the administration of this act for any purpose
14 inconsistent with or contrary to the purposes of this act, or a
15 person who obtains a list of applicants for work or of claimants or
16 recipients of benefits under this act uses or permits use of that
17 list for a political purpose or for a purpose inconsistent with or
18 contrary to the purposes of this act, he or she is guilty of a
19 misdemeanor punishable by imprisonment for not more than 90 days or
20 a fine of not more than \$1,000.00, or both. Notwithstanding the
21 preceding sentence, if any unemployment agency employee, agent of
22 the unemployment agency, or member of the Michigan compensation
23 appellate commission knowingly, intentionally, and for financial
24 gain, makes an illegal disclosure of confidential information
25 obtained under section 13(2), he or she is guilty of a felony,
26 punishable by imprisonment for not more than 1 year and 1 day.

27 (e) A person who, without proper authority from the

1 unemployment agency, represents himself or herself to be an
2 employee of the unemployment agency for the purpose of securing
3 information regarding the unemployment or employment record of an
4 individual is guilty of a misdemeanor punishable by imprisonment
5 for not more than 90 days or a fine of not more than \$1,000.00, or
6 both.

7 (f) A person associated with a college, university, or public
8 agency of this state who makes use of any information obtained from
9 the unemployment agency in connection with a research project of a
10 public service nature, in a manner as to reveal the identity of any
11 individual or employing unit from or concerning whom the
12 information was obtained by the unemployment agency, or for any
13 purpose other than use in connection with that research project, is
14 guilty of a misdemeanor punishable by imprisonment for not more
15 than 90 days or a fine of not more than \$1,000.00, or both.

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

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

22 (i) If a determination is made that an individual has violated
23 this section, the individual is subject to the sanctions of this
24 section and, if applicable, the requirements of section 62.

25 (j) Amounts recovered by the commission under subsection (a)
26 shall be credited first to the unemployment compensation fund and
27 thereafter amounts recovered that are in excess of the amounts

1 obtained or withheld as a result of the violation of subsection (a)
2 shall be credited to the penalty and interest account of the
3 contingent fund. Amounts recovered by the commission under
4 subsections (c), (d), (e), and (f) shall be credited to the penalty
5 and interest account of the contingent fund in accordance with
6 section 10(6).

7 (k) Amounts recovered by the unemployment agency under
8 subsection (b) shall be credited ~~as follows~~ **IN THE FOLLOWING ORDER:**

9 ~~(i) Deductions from unemployment insurance benefits shall be
10 applied solely to the amount of the benefits liable to be repaid
11 under this section.~~

12 ~~(ii) All other recoveries shall be applied first to repayment
13 amounts owed, which shall be deposited in the unemployment
14 compensation fund; then to administrative sanctions and damages,
15 and then to interest. The amounts applied to administrative
16 sanctions, damages, and interest shall be credited to the
17 contingent fund.~~

18 ~~(l) The revisions in the penalties in subsections (a) and (b)
19 provided by the 1991 amendatory act that added this subsection
20 apply to conduct that began before April 1, 1992, but that
21 continued on or after April 1, 1992, and to conduct that began on
22 or after April 1, 1992.~~

23 (i) FROM THE PENALTIES ASSESSED, AN AMOUNT EQUAL TO 15% OF ANY
24 BENEFIT OVERPAYMENTS RESULTING FROM FRAUD SHALL BE CREDITED TO THE
25 UNEMPLOYMENT COMPENSATION FUND.

26 (ii) FOR THE BALANCE OF DEDUCTIONS FROM UNEMPLOYMENT INSURANCE
27 BENEFITS, TO THE LIABILITY FOR BENEFIT REPAYMENT UNDER THIS

1 SECTION.

2 (iii) FOR ALL OTHER RECOVERIES, THE BALANCE SHALL FIRST BE
3 CREDITED TO THE UNEMPLOYMENT COMPENSATION FUND FOR REPAYMENT OF ANY
4 REMAINING AMOUNTS OWED, AND THEN TO THE CONTINGENT FUND TO BE
5 APPLIED FIRST TO ADMINISTRATIVE SANCTIONS AND DAMAGES AND THEN TO
6 INTEREST.

7 (l) ~~(m)~~—A person who obtains or withholds an amount of
8 unemployment benefits or payments exceeding \$3,500.00 but less than
9 \$25,000.00 as a result of a knowing false statement or
10 representation or the knowing and willful failure to disclose a
11 material fact is guilty of a felony punishable as provided in
12 ~~section—SUBSECTION~~ (a) (ii) (A) or (iv) (A) or ~~section—SUBSECTION~~
13 (b) (ii) (A) .

14 Enacting section 1. This amendatory act applies to a deduction
15 or recovery made pursuant to a determination or redetermination
16 issued after October 21, 2013.

17 Enacting section 2. This amendatory act does not take effect
18 unless all of the following bills of the 97th Legislature are
19 enacted into law:

20 (a) Senate Bill No.____ or House Bill No. 4950(request no.
21 02824'13) .

22 (b) Senate Bill No.____ or House Bill No. 4952(request no.
23 02826'13) .

24 (c) Senate Bill No.____ or House Bill No. 4949(request no.
25 02987'13) .

26 (d) Senate Bill No.____ or House Bill No. 4954(request no.
27 03302'13) .

1 (e) Senate Bill No. ____ or House Bill No. ____ (request no.
2 03440'13).