

HOUSE BILL No. 6290

November 14, 1990, Introduced by Reps. Jonker, Martin, Watkins and Perry Bullard and referred to the Committee on Labor.

A bill to amend section 54 of Act No. 1 of the Public Acts of the Extra Session of 1936, entitled as amended "Michigan employment security act," as amended by Act No. 225 of the Public Acts of 1989, being section 421.54 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 54 of Act No. 1 of the Public Acts of
2 the Extra Session of 1936, as amended by Act No. 225 of the
3 Public Acts of 1989, being section 421.54 of the Michigan
4 Compiled Laws, is amended to read as follows:

5 Sec. 54. (a) A person who shall willfully violate or inten-
6 tionally fail to comply with any of the provisions of this act,
7 or a regulation of the commission promulgated under the authority
8 of this act FOR WHICH A PENALTY IS NOT OTHERWISE PROVIDED BY THIS
9 ACT is ~~guilty of a misdemeanor~~ PUNISHABLE AS PROVIDED IN

1 SUBDIVISION (i), (ii), OR (iii), notwithstanding any other
2 ~~penalties imposed under this act or any other~~ statute of this
3 state or of the United States: —

4 (i) IF THE COMMISSION DETERMINES THAT AN AMOUNT HAS BEEN
5 OBTAINED OR WITHHELD AS A RESULT OF THE WILLFUL VIOLATION OR THE
6 INTENTIONAL FAILURE TO COMPLY WITH THIS ACT, THE COMMISSION MAY
7 RECOVER THE AMOUNT OBTAINED AS A RESULT OF THE WILLFUL VIOLATION
8 OR INTENTIONAL FAILURE TO COMPLY AND MAY ALSO RECOVER DAMAGES
9 EQUAL TO 3 TIMES THAT AMOUNT.

10 (ii) THE COMMISSION MAY REFER THE MATTER TO THE PROSECUTING
11 ATTORNEY OF THE COUNTY IN WHICH THE ALLEGED VIOLATION OCCURRED
12 FOR PROSECUTION. IF THE COMMISSION HAS NOT MADE ITS OWN DETERMI-
13 NATION UNDER THIS SUBDIVISION, THE PENALTY SOUGHT BY THE PROSECU-
14 TOR SHALL INCLUDE THE AMOUNT DESCRIBED IN THIS SUBDIVISION AND
15 SHALL ALSO INCLUDE 1 OR MORE OF THE FOLLOWING PENALTIES:

16 (A) IF THE AMOUNT OBTAINED OR WITHHELD FROM PAYMENT AS A
17 RESULT OF THE WILLFUL VIOLATION OR THE INTENTIONAL FAILURE TO
18 COMPLY IS LESS THAN \$25,000.00, THEN A PENALTY SHALL BE SOUGHT OF
19 IMPRISONMENT FOR NOT MORE THAN 1 YEAR, OR IN THE ALTERNATIVE THE
20 PERFORMANCE OF COMMUNITY SERVICE OF NOT MORE THAN 1 YEAR BUT NOT
21 TO EXCEED 2,080 HOURS.

22 (B) IF THE AMOUNT OBTAINED OR WITHHELD FROM PAYMENT AS A
23 RESULT OF THE WILLFUL VIOLATION OR THE INTENTIONAL FAILURE TO
24 COMPLY IS \$25,000.00 OR MORE BUT LESS THAN \$100,000.00, THEN A
25 PENALTY SHALL BE SOUGHT OF IMPRISONMENT FOR NOT MORE THAN 2
26 YEARS, OR IN THE ALTERNATIVE THE PERFORMANCE OF COMMUNITY SERVICE
27 OF NOT MORE THAN 2 YEARS BUT NOT TO EXCEED 4,160 HOURS.

1 (C) IF THE AMOUNT OBTAINED OR WITHHELD FROM PAYMENT IS MORE
2 THAN \$100,000.00, THEN A PENALTY SHALL BE SOUGHT OF IMPRISONMENT
3 FOR NOT MORE THAN 5 YEARS, OR IN THE ALTERNATIVE THE PERFORMANCE
4 OF COMMUNITY SERVICE FOR NOT MORE THAN 5 YEARS BUT NOT TO EXCEED
5 10,400 HOURS.

6 (b). Any employing unit or an officer or agent of an employ-
7 ing unit, A CLAIMANT, AN EMPLOYEE OF THE COMMISSION, or any other
8 person who makes a false statement or representation knowing it
9 to be false, or knowingly and willfully with intent to defraud
10 fails to disclose a material fact, to obtain or increase a bene-
11 fit or other payment under this act or under the unemployment
12 compensation law of any state or of the federal government,
13 either for himself or herself or any other person, to prevent or
14 reduce the payment of benefits to an individual entitled thereto
15 or to avoid becoming or remaining a subject employer, or to avoid
16 or reduce a contribution or other payment required from an
17 employing unit under this act or under the unemployment compensa-
18 tion law of any state or of the federal government, AS
19 APPLICABLE, is ~~guilty of a misdemeanor~~ PUNISHABLE AS FOLLOWS,
20 notwithstanding any other penalties imposed under ~~this act or~~
21 any other statute of this state or of the United States: ~~and~~
22 ~~upon conviction shall be punished by imprisonment for not more~~
23 ~~than 90 days, or by a fine of not more than \$1,000.00, or both.~~

24 ~~(c) Any employing unit or an officer or agent of an employ-~~
25 ~~ing unit that, as a condition of employment, requires an individ-~~
26 ~~ual to make a false statement or representation knowing it to be~~
27 ~~false to obtain or increase a benefit or other payment under this~~

~~1 act or to avoid or reduce a contribution or other payment~~
~~2 required from an employing unit under this act is guilty of a~~
~~3 felony, punishable by imprisonment for not more than 10 years, or~~
~~4 a fine of not more than \$5,000.00, or both.~~

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 \$1,000.00, THE COMMISSION
8 MAY RECOVER THE AMOUNT OBTAINED AS A RESULT OF THE KNOWING FALSE
9 STATEMENT OR REPRESENTATION OR THE KNOWING AND WILLFUL FAILURE TO
10 DISCLOSE A MATERIAL FACT AND MAY ALSO RECOVER DAMAGES EQUAL TO 2
11 TIMES THAT AMOUNT.

12 (ii) IF THE AMOUNT OBTAINED AS A RESULT OF THE KNOWING FALSE
13 STATEMENT OR REPRESENTATION OR THE FAILURE TO DISCLOSE A MATERIAL
14 FACT IS \$1,000.00 OR MORE, THE COMMISSION MAY RECOVER THE AMOUNT
15 OBTAINED AS A RESULT OF THE KNOWING FALSE STATEMENT OR REPRESENTATION
16 OR THE KNOWING AND WILLFUL FAILURE TO DISCLOSE A MATERIAL
17 FACT AND MAY ALSO RECOVER DAMAGES EQUAL TO 3 TIMES THAT AMOUNT.
18 THE COMMISSION MAY REFER THE MATTER TO THE PROSECUTING ATTORNEY
19 OF THE COUNTY IN WHICH THE ALLEGED VIOLATION OCCURRED FOR
20 PROSECUTION. IF THE COMMISSION HAS NOT MADE ITS OWN DETERMINATION
21 UNDER THIS SUBDIVISION, THE PENALTY SOUGHT BY THE PROSECUTOR
22 SHALL INCLUDE THE AMOUNT DESCRIBED IN THIS SUBDIVISION AND SHALL
23 ALSO INCLUDE 1 OR MORE OF THE FOLLOWING PENALTIES:

24 (A) IF THE AMOUNT OBTAINED OR WITHHELD FROM PAYMENT AS A
25 RESULT OF THE KNOWING FALSE STATEMENT OR REPRESENTATION OR THE
26 FAILURE TO DISCLOSE A MATERIAL FACT IS \$1,000.00 OR MORE BUT LESS
27 THAN \$25,000.00, THEN A PENALTY SHALL BE SOUGHT OF IMPRISONMENT

1 FOR NOT MORE THAN 1 YEAR, OR IN THE ALTERNATIVE THE PERFORMANCE
2 OF COMMUNITY SERVICE OF NOT MORE THAN 1 YEAR BUT NOT TO EXCEED
3 2,080 HOURS.

4 (B) IF THE AMOUNT OBTAINED OR WITHHELD FROM PAYMENT AS A
5 RESULT OF THE KNOWING FALSE STATEMENT OR REPRESENTATION OR THE
6 FAILURE TO DISCLOSE A MATERIAL FACT IS \$25,000.00 OR MORE, THEN A
7 PENALTY SHALL BE SOUGHT OF IMPRISONMENT FOR NOT MORE THAN 2
8 YEARS, OR IN THE ALTERNATIVE THE PERFORMANCE OF COMMUNITY SERVICE
9 OF NOT MORE THAN 2 YEARS BUT NOT TO EXCEED 4,160 HOURS.

10 (C) IF THE KNOWING FALSE STATEMENT OR REPRESENTATION OR THE
11 FAILURE TO DISCLOSE A MATERIAL FACT MADE TO OBTAIN OR WITHHOLD AN
12 AMOUNT FROM PAYMENT DOES NOT RESULT IN A LOSS TO THE COMMISSION,
13 THEN A PENALTY SHALL BE SOUGHT EQUAL TO 3 TIMES THE AMOUNT THAT
14 WOULD HAVE BEEN OBTAINED BY THE KNOWING FALSE STATEMENT OR REPRE-
15 SENTATION OR THE FAILURE TO DISCLOSE A MATERIAL FACT, BUT NOT
16 LESS THAN \$1,000.00, AND IMPRISONMENT FOR NOT MORE THAN 2 YEARS,
17 OR IN THE ALTERNATIVE THE PERFORMANCE OF COMMUNITY SERVICE OF NOT
18 MORE THAN 2 YEARS BUT NOT TO EXCEED 4,160 HOURS.

19 (C) ~~(d)~~ (1) Any employing unit or an officer or agent of
20 an employing unit or any other person failing to submit, when
21 due, any contribution report, wage and employment report, or
22 other reports lawfully prescribed and required by the commission
23 shall be subject to the assessment of a penalty for each report
24 not submitted within the time prescribed by the commission, as
25 follows: In the case of contribution reports not received within
26 10 days after the end of the reporting month the penalty shall be
27 10% of the contributions due on the reports but not less than

1 \$5.00 or more than \$25.00 for a report. However, if the tenth
2 day falls on a Saturday, Sunday, legal holiday, or other nonwork
3 day, such 10-day period shall run until the end of the next day
4 which is not a Saturday, Sunday, legal holiday, or other nonwork
5 day. In the case of all other reports referred to in this sub-
6 section the penalty shall be \$10.00 for a report.

7 (2) Notwithstanding subdivision (1), if the commission con-
8 cludes after completion of the first 4 quarters of wage reporting
9 under section 13(2) that the average number of employers not
10 timely reporting the wage information as required is 5% or more,
11 an employer shall be liable for a penalty in the following amount
12 for each employee with respect to whom the employer is required
13 to file a report but who is not included in the report, or for
14 whom the required information is not accurately reported, or for
15 whom the report is not filed within 10 days after the time pre-
16 scribed by the commission: for the first failure for 1 quarter
17 in any 8 consecutive quarters, \$5.00 for each employee; for the
18 second failure for any quarter in 8 consecutive quarters, \$10.00
19 for each employee; and for the third failure for any quarter in 8
20 consecutive quarters, and for any subsequent quarters, \$25.00 for
21 each employee, but the total amount imposed on the delinquent
22 employer for all such failures during any calendar year shall not
23 exceed \$1,000.00. The assessment of the penalty shall begin with
24 the report for the first quarter of 1987, and the 4 quarters of
25 1986 shall be included in determining the 8 consecutive
26 quarters.

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

9 (D) ~~-(e)-~~ If any commissioner, employee, or agent of the
10 commission or member of the appeal board willfully makes a dis-
11 closure of confidential information obtained from any employing
12 unit or individual in the administration of this act for any pur-
13 pose inconsistent with or contrary to the purposes of this act,
14 or a person who having obtained a list of applicants for work, or
15 of claimants or recipients of benefits, under this act shall use
16 or permit the use of that list for a political purpose or for a
17 purpose inconsistent with or contrary to the purposes of this
18 act, he or she is guilty of a misdemeanor and upon conviction
19 shall be punished by imprisonment for not more than 90 days, or
20 by a fine of not more than \$1,000.00, or both. Notwithstanding
21 the preceding sentence, if any commissioner, commission employee,
22 agent of the commission, or member of the board of review know-
23 ingly, intentionally, and for financial gain, makes an illegal
24 disclosure of confidential information obtained under section
25 13(2), he or she shall be guilty of a felony, punishable by
26 imprisonment for not more than 1 year and 1 day.

1 (E) ~~(f)~~ A person who, without proper authority from the
2 commission, represents himself or herself to be an employee of
3 the commission to an employing unit or person for the purpose of
4 securing information regarding the unemployment or employment
5 record of an individual is guilty of a misdemeanor and upon con-
6 viction shall be punished by imprisonment for not more than 90
7 days, or by a fine of not more than \$1,000.00, or both.

8 (F) ~~(g)~~ A person associated with a college, university, or
9 public agency of this state who makes use of any information
10 obtained from the commission in connection with a research
11 project of a public service nature, in such a manner as to reveal
12 the identity of any individual or employing unit from or concern-
13 ing whom the information was obtained by the commission, or for
14 any purpose other than use in connection with such a research
15 project, is guilty of a misdemeanor and upon conviction shall be
16 punished by imprisonment for not more than 90 days, or by a fine
17 of not more than \$1,000.00, or both.

18 (G) ~~(h)~~ A person as used in this section includes an indi-
19 vidual, copartnership, joint venture, corporation, receiver, or
20 trustee in bankruptcy.

21 (H) THIS SECTION SHALL APPLY EVEN IF THE AMOUNT OBTAINED OR
22 WITHHELD FROM PAYMENT HAS BEEN REPORTED OR REPORTED AND PAID BY
23 AN INDIVIDUAL INVOLVED IN A CONSPIRACY.

24 (I) IF A DETERMINATION IS MADE THAT AN INDIVIDUAL HAS VIO-
25 LATED THIS SECTION, THE INDIVIDUAL IS SUBJECT TO THE PENALTY PRO-
26 VISIONS OF THIS SECTION AND, WHERE APPLICABLE, THE REQUIREMENTS
27 OF SECTION 62.

1 (J) AMOUNTS RECOVERED BY THE COMMISSION PURSUANT TO THIS
 2 SECTION SHALL BE CREDITED TO THE PENALTY AND INTEREST ACCOUNT OF
 3 THE CONTINGENT FUND. NOT LESS THAN ANNUALLY THE COMMISSION SHALL
 4 TRANSFER TO THE UNEMPLOYMENT TRUST FUND AMOUNTS RECOVERED UNDER
 5 THIS SECTION TO THE EXTENT THAT THE UNEMPLOYMENT TRUST FUND HAS
 6 NOT PREVIOUSLY BEEN CREDITED FOR THE AMOUNT OBTAINED AS A RESULT
 7 OF THE CONSPIRACY.

8 (K) THE REVISIONS IN THE PENALTIES IN SUBSECTIONS (A) AND
 9 (B) PROVIDED BY THE 1990 AMENDATORY ACT THAT ADDED THIS SUBSEC-
 10 TION SHALL APPLY TO CONDUCT THAT BEGAN BEFORE THE EFFECTIVE DATE
 11 OF THIS SUBSECTION BUT THAT CONTINUED ON OR AFTER THE EFFECTIVE
 12 DATE OF THIS SUBSECTION AND TO CONDUCT THAT BEGAN ON OR AFTER THE
 13 EFFECTIVE DATE OF THIS SUBSECTION.

14 Section 2. This amendatory act shall take effect October 1,
 15 1991.

16 Section 3. This amendatory act shall not take effect unless
 17 all of the following bills of the 85th Legislature are enacted
 18 into law:

19 (a) Senate Bill No. 1159 or House Bill No. ____ (request
 20 no. 06231'90).

21 (b) Senate Bill No. 1160 or House Bill No. ____ (request
 22 no. 06232'90).

23 (c) Senate Bill No. ____ or House Bill No. 6289 (request
 24 no. 06233'90).

25 (d) Senate Bill No. ____ or House Bill No. 6291 (request
 26 no. 06235'90).

1 (e) Senate Bill No. 1161 or House Bill No. ____ (request
2 no. 06236'90).

3 (f) Senate Bill No. ____ or House Bill No. 6292 (request
4 no. 06237'90).