

HOUSE BILL No. 5718

March 25, 1992. Introduced by Reps. Jonker, Murphy and Martin 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. 10 of the Public Acts of 1991, 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. 10 of the Public
3 Acts of 1991, being section 421.54 of the Michigan Compiled Laws,
4 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 punishable as provided in subdivision (i), (ii), (iii), or

1 (iv), notwithstanding any other statute of this state or of the
2 United States:

3 (i) If the commission determines that an amount has been
4 obtained or withheld as a result of the intentional failure to
5 comply with this act, the commission may recover the amount
6 obtained as a result of the intentional failure to comply and may
7 also recover damages equal to 3 times that amount.

8 (ii) The commission may refer the matter to the prosecuting
9 attorney of the county in which the alleged violation occurred
10 for prosecution. If the commission has not made its own determi-
11 nation under subdivision (i), the penalty sought by the prosecu-
12 tor shall include the amount described in subdivision (i) and
13 shall also include 1 or more of the following penalties:

14 (A) If the amount obtained or withheld from payment as a
15 result of the intentional failure to comply is less than
16 \$25,000.00, then 1 of the following:

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

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

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

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

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

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

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

3 (C) If the amount obtained or withheld from payment as a
4 result of the intentional failure to comply is more than
5 \$100,000.00, then 1 of the following:

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

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

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

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

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

23 (A) If the amount obtained or withheld from payment as a
24 result of the knowing violation is \$100,000.00 or less, then 1 of
25 the following:

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

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

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

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

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

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

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

13 (b) Any employing unit or an officer or agent of an employ-
14 ing unit, a claimant, an employee of the commission, or any other
15 person who makes a false statement or representation knowing it
16 to be false, or knowingly and willfully with intent to defraud
17 fails to disclose a material fact, to obtain or increase a bene-
18 fit or other payment under this act or under the unemployment
19 compensation law of any state or of the federal government,
20 either for himself or herself or any other person, to prevent or
21 reduce the payment of benefits to an individual entitled thereto
22 or to avoid becoming or remaining a subject employer, or to avoid
23 or reduce a contribution or other payment required from an
24 employing unit under this act or under the unemployment compensa-
25 tion law of any state or of the federal government, as applica-
26 ble, is punishable as follows, notwithstanding any other

1 penalties imposed under any other statute of this state or of the
2 United States:

3 (i) If the amount obtained as a result of the knowing false
4 statement or representation or the knowing and willful failure to
5 disclose a material fact is less than \$1,000.00, the commission
6 may recover the amount obtained as a result of the knowing false
7 statement or representation or the knowing and willful failure to
8 disclose a material fact and may also recover damages equal to 2
9 times that amount.

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 \$1,000.00 or more, the commission may
13 recover the amount obtained as a result of the knowing false
14 statement or representation or the knowing and willful failure to
15 disclose a material fact and may also recover damages equal to 3
16 times that amount. The commission may refer the matter to the
17 prosecuting attorney of the county in which the alleged violation
18 occurred for prosecution. If the commission has not made its own
19 determination under this subdivision, the penalty sought by the
20 prosecutor shall include the amount described in this subdivision
21 and shall also include 1 or more of the following penalties:

22 (A) If the amount obtained or withheld from payment as a
23 result of the knowing false statement or representation or the
24 knowing and willful failure to disclose a material fact is
25 \$1,000.00 or more but less than \$25,000.00, then 1 of the
26 following:

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

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

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

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

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

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

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

15 (C) If the knowing false statement or representation or the
16 knowing and willful failure to disclose a material fact made to
17 obtain or withhold an amount from payment does not result in a
18 loss to the commission, then a penalty shall be sought equal to 3
19 times the amount that would have been obtained by the knowing
20 false statement or representation or the knowing and willful
21 failure to disclose a material fact, but not less than \$1,000.00,
22 and 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 (I) and (II) that does not exceed 2
27 years.

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

16 (2) Notwithstanding subdivision (1), if the commission con-
17 cludes after completion of the first 4 quarters of wage reporting
18 under section 13(2) that the average number of employers not
19 timely reporting the wage information as required is 5% or more,
20 an employer shall be liable for a penalty in the following amount
21 for each employee with respect to whom the employer is required
22 to file a report but who is not included in the report, or for
23 whom the required information is not accurately reported, or for
24 whom the report is not filed within 10 days after the time pre-
25 scribed by the commission: for the first failure for 1 quarter
26 in any 8 consecutive quarters, \$5.00 for each employee; for the
27 second failure for any quarter in 8 consecutive quarters, \$10.00

1 for each employee; and for the third failure for any quarter in 8
2 consecutive quarters, and for any subsequent quarters, \$25.00 for
3 each employee, but the total amount imposed on the delinquent
4 employer for all such failures during any calendar year shall not
5 exceed \$1,000.00. The assessment of the penalty shall begin with
6 the report for the first quarter of 1987, and the 4 quarters of
7 1986 shall be included in determining the 8 consecutive
8 quarters.

9 (3) When a report is filed after the prescribed time and it
10 is shown to the satisfaction of the commission that the failure
11 to submit the report was due to reasonable cause, a penalty shall
12 not be imposed. The assessment of a penalty as provided in this
13 subsection shall constitute a determination which shall be final
14 unless the employer files with the commission an application for
15 a redetermination of the assessment in accordance with
16 section 32a.

17 (d) If any commissioner, employee, or agent of the commis-
18 sion or member of the appeal board willfully makes a disclosure
19 of confidential information obtained from any employing unit or
20 individual in the administration of this act for any purpose
21 inconsistent with or contrary to the purposes of this act, or a
22 person who having obtained a list of applicants for work, or of
23 claimants or recipients of benefits, under this act shall use or
24 permit the use of that list for a political purpose or for a pur-
25 pose inconsistent with or contrary to the purposes of this act,
26 he or she is guilty of a misdemeanor and upon conviction shall be
27 punished by imprisonment for not more than 90 days, or by a fine

1 of not more than \$1,000.00, or both. Notwithstanding the
2 preceding sentence, if any commissioner, commission employee,
3 agent of the commission, or member of the board of review know-
4 ingly, intentionally, and for financial gain, makes an illegal
5 disclosure of confidential information obtained under section
6 13(2), he or she shall be guilty of a felony, punishable by
7 imprisonment for not more than 1 year and 1 day.

8 (e) A person who, without proper authority from the commis-
9 sion, represents himself or herself to be an employee of the com-
10 mission to an employing unit or person for the purpose of secur-
11 ing information regarding the unemployment or employment record
12 of an individual is guilty of a misdemeanor and upon conviction
13 shall be punished by imprisonment for not more than 90 days, or
14 by a fine of not more than \$1,000.00, or both.

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

25 (g) A person as used in this section includes an individual,
26 copartnership, joint venture, corporation, receiver, or trustee
27 in bankruptcy.

1 (h) This section shall apply even if the amount obtained or
2 withheld from payment has been reported or reported and paid by
3 an individual involved in a violation of subsection (a) or (b).

4 (i) If a determination is made that an individual has vio-
5 lated this section, the individual is subject to the penalty pro-
6 visions of this section and, where applicable, the requirements
7 of section 62.

8 (j) ~~Amounts~~ THE AMOUNT recovered by the commission pursu-
9 ant to this section shall be credited FIRST TO THE UNEMPLOYMENT
10 TRUST FUND AND THEREAFTER to the penalty and interest account of
11 the contingent fund ~~. Not less than annually the commission~~
12 ~~shall transfer to the unemployment trust fund amounts recovered~~
13 ~~under this section to the extent that the unemployment trust fund~~
14 ~~has not previously been credited for~~ TO THE EXTENT OF THE AMOUNT
15 RECOVERED IN EXCESS OF the amount obtained as a result of the
16 violation of LAW OR REGULATION FOR WHICH subsection (a) or (b)
17 PRESCRIBES PENALTIES AND DAMAGES.

18 (k) The revisions in the penalties in subsections (a) and
19 (b) provided by the 1991 amendatory act that added this subsec-
20 tion shall apply to conduct that began before ~~the effective date~~
21 ~~of this subsection~~ APRIL 1, 1992 but that continued on or after
22 ~~the effective date of this subsection~~ APRIL 1, 1992 and to con-
23 duct that began on or after ~~the effective date of this~~
24 ~~subsection~~ APRIL 1, 1992.

25 Section 2. This amendatory act shall take effect April 1,
26 1992.