

HOUSE BILL No. 4408

March 9, 2011, Introduced by Rep. Stamas and referred to the Committee on Commerce.

A bill to amend 1936 (Ex Sess) PA 1, entitled
"Michigan employment security act,"
by amending sections 10, 15, 54, and 62 (MCL 421.10, 421.15,
421.54, and 421.62), section 10 as amended by 2003 PA 84, section
15 as amended by 1996 PA 498, section 54 as amended by 2002 PA 192,
and section 62 as amended by 1995 PA 125.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 10. (1) There is created in the department of treasury a
2 special fund to be known and designated as the administration fund
3 (Michigan employment security act). Any balances in the
4 administration fund at the end of any fiscal year of this state
5 shall be carried over as a part of the administration fund and

1 shall not revert to the general fund of this state. Except as
2 otherwise provided in subsection (3), all money deposited into the
3 administration fund under this act shall be appropriated by the
4 legislature to the unemployment agency to pay the expenses of the
5 administration of this act.

6 (2) The administration fund shall be credited with all money
7 appropriated to the fund by the legislature, all money received
8 from the United States or any agency of the United States for that
9 purpose, and all money received by this state for the fund. All
10 money in the administration fund that is received from the federal
11 government or any agency of the federal government or that is
12 appropriated by this state for the purposes of this act, except
13 money requisitioned from the account of this state in the
14 unemployment trust fund pursuant to a specific appropriation made
15 by the legislature in accordance with section 903(c)(2) of title IX
16 of the social security act, ~~42 U.S.C. 1103~~ **USC 1103(C)(2)**, and with
17 section 17(3)(f), shall be expended solely for the purposes and in
18 the amounts found necessary by the appropriate agency of the United
19 States and the legislature for the proper and efficient
20 administration of this act.

21 (3) All money requisitioned from the account of this state in
22 the unemployment trust fund pursuant to a specific appropriation
23 made by the legislature in accordance with section 903(c)(2) of
24 title IX of the social security act, ~~42 U.S.C. 1103~~ **USC 1103(C)(2)**,
25 and with section 17(3)(f), shall be deposited in the administration
26 fund. Any money that remains unexpended at the close of the 2-year
27 period beginning on the date of enactment of a specific

1 appropriation shall be immediately redeposited with the secretary
2 of the treasury of the United States to the credit of this state's
3 account in the unemployment trust fund; or any money that for any
4 reason cannot be expended or is not to be expended for the purpose
5 for which appropriated before the close of this 2-year period shall
6 be redeposited at the earliest practicable date.

7 (4) If any money received after June 30, 1941, from the
8 appropriate agency of the United States under title III of the
9 social security act, ~~chapter 531, 49 Stat. 620, 42 U.S.C. USC 501~~
10 to 504, or any unencumbered balances in the administration fund
11 (Michigan employment security act) as of that date, or any money
12 granted after that date to this state under the Wagner-Peyser act,
13 ~~chapter 49, 48 Stat. 113~~ **AS DEFINED IN SECTION 12**, or any money
14 made available by this state or its political subdivisions and
15 matched by money granted to this state under the Wagner-Peyser act,
16 ~~chapter 49, 48 Stat. 113~~, is found by the appropriate agency of the
17 United States, because of any action or contingency, to have been
18 lost or been expended for purposes other than, or in amounts in
19 excess of, those found necessary by that agency of the United
20 States for the proper administration of this act, the money shall
21 be replaced by money appropriated for that purpose from the general
22 funds of this state to the administration fund (Michigan employment
23 security act) for expenditure as provided in this act. Upon receipt
24 of notice of such a finding by the appropriate agency of the United
25 States, the commission shall promptly report the amount required
26 for replacement to the governor and the governor shall, at the
27 earliest opportunity, submit to the legislature a request for the

1 appropriation of that amount. This subsection shall not be
2 construed to relieve this state of its obligation with respect to
3 funds received prior to July 1, 1941, under the provisions of ~~title~~
4 ~~III of the social security act, chapter 531, 49 Stat. 620, 42~~
5 ~~U.S.C.—USC~~ 501 to 504.

6 (5) If any funds expended or disbursed by the commission are
7 found by the appropriate agency of the United States to have been
8 lost or expended for purposes other than, or in amounts in excess
9 of, those found necessary by that agency of the United States for
10 the proper administration of this act, and if these funds are
11 replaced as provided in subsection (4) by money appropriated for
12 that purpose from the general fund of this state, then the director
13 who approved the expenditure or disbursement of those funds for
14 those purposes or in those amounts, ~~shall be~~ **IS** liable to this
15 state in an amount equal to the sum of money appropriated to
16 replace those funds. The director shall be required by the governor
17 to post a proper bond in a sum not less than \$25,000.00 to cover
18 his or her liability as prescribed in this section, the cost of the
19 bond to be paid from the general fund of this state.

20 (6) There is created in the department of treasury a separate
21 fund to be known as the contingent fund (Michigan employment
22 security act) into which shall be deposited all solvency taxes
23 collected under section 19a and all interest on contributions,
24 penalties, and damages collected under this act. Except as
25 otherwise provided in subsections ~~(7),~~ (8) ~~,~~ and (9), all amounts
26 in the contingent fund (Michigan employment security act) and all
27 earnings on those amounts are continuously appropriated without

1 regard to fiscal year for the administration of the unemployment
2 agency and for the payment of interest on advances from the federal
3 government to the unemployment compensation fund under ~~section 1201~~
4 ~~of title XII of the social security act, 42 U.S.C. USC~~ 1321, to be
5 expended only if authorized by the unemployment agency. Money
6 deposited from the solvency taxes collected under section 19a shall
7 not be used for the administration of the unemployment agency,
8 except for the repayment of loans from the state treasury and
9 interest on loans made under section 19a(3). However, an
10 authorization or expenditure shall not be made as a substitution
11 for a grant of federal funds or for any portion of a grant that, in
12 the absence of an authorization, would be available to the
13 ~~commission~~ **UNEMPLOYMENT AGENCY**. Immediately upon receipt of
14 administrative grants from the appropriate agency of the United
15 States to cover administrative costs for which the ~~commission~~
16 **UNEMPLOYMENT AGENCY** has authorized and made expenditures from the
17 contingent fund, those grants shall be transferred to the
18 contingent fund to the extent necessary to reimburse the contingent
19 fund for the amount of those expenditures. Amounts needed to refund
20 interest, damages, and penalties erroneously collected shall be
21 withdrawn and expended for those purposes from the contingent fund
22 upon order of the unemployment agency. Any amount authorized to be
23 expended for administration under this section may be transferred
24 to the administration fund. An amount not needed for the purpose
25 for which authorized shall, upon order of the unemployment agency,
26 be returned to the contingent fund. Amounts needed to refund
27 erroneously collected solvency taxes shall be withdrawn and

1 expended for that purpose upon order of the unemployment agency.

2 (7) THERE IS CREATED IN THE DEPARTMENT OF TREASURY CONTINGENT
3 FUND A SEPARATE FUND TO BE KNOWN AS THE SPECIAL FRAUD CONTROL FUND
4 (MICHIGAN EMPLOYMENT SECURITY ACT). THE SPECIAL FRAUD CONTROL FUND
5 SHALL CONSIST OF MONEY COLLECTED OR RECEIVED BY THE UNEMPLOYMENT
6 AGENCY AS FOLLOWS:

7 (A) ALL INTEREST AND PENALTIES COLLECTED UNDER SECTION 62.

8 (B) ALL GIFTS TO, INTEREST ON, OR PROFITS EARNED BY THE
9 SPECIAL FRAUD CONTROL FUND.

10 (C) AMOUNTS CREDITED UNDER SECTION 54(K) (ii) .

11 (8) THE MONEY IN THE SPECIAL FRAUD CONTROL FUND IS
12 CONTINUOUSLY APPROPRIATED ONLY TO THE UNEMPLOYMENT AGENCY AND MAY
13 NOT BE TRANSFERRED OR OTHERWISE MADE AVAILABLE TO ANY OTHER STATE
14 AGENCY.

15 (9) ALL AMOUNTS IN THE SPECIAL FRAUD CONTROL FUND ARE TO BE
16 USED FIRST FOR THE ACQUISITION OF PACKAGED SOFTWARE THAT HAS A
17 PROVEN RECORD OF SUCCESS WITH THE DETECTION AND COLLECTION OF
18 UNEMPLOYMENT BENEFIT OVERPAYMENTS AND THEN FOR ADMINISTRATIVE COSTS
19 ASSOCIATED WITH THE PREVENTION, DISCOVERY, AND COLLECTION OF
20 UNEMPLOYMENT BENEFIT OVERPAYMENTS, AS INCLUDED IN THE BIENNIAL
21 BUDGET OF THE UNEMPLOYMENT AGENCY AND APPROVED BY THE LEGISLATURE.
22 THE UNEMPLOYMENT AGENCY SHALL SUBMIT A REPORT TO THE CLERK OF THE
23 HOUSE OF REPRESENTATIVES AND THE SECRETARY OF THE SENATE AT THE
24 CLOSE OF THE 2-YEAR PERIOD THAT BEGINS ON THE EFFECTIVE DATE OF THE
25 AMENDATORY ACT THAT ADDED THIS SUBSECTION, TO SHOW HOW THE MONEY
26 FROM THE SPECIAL FRAUD CONTROL FUND WAS USED AND THE RESULTS
27 OBTAINED FROM THE SPECIAL FRAUD CONTROL FUND.

1 ~~(7) On June 30, 2002, the unemployment agency shall authorize~~
2 ~~the withdrawal of \$79,500,000.00 from the contingent fund (Michigan~~
3 ~~employment security act) for deposit into the general fund.~~

4 (10) ~~(8)~~ At the close of the state fiscal year in 2002 and
5 each year after 2002, all funds in the contingent fund (Michigan
6 employment security act) in excess of \$15,000,000.00 shall lapse to
7 the unemployment trust fund.

8 ~~(9) The unemployment agency shall authorize the withdrawal of~~
9 ~~\$10,000,000.00 from the contingent fund (Michigan employment~~
10 ~~security act) for deposit into the general fund for the fiscal year~~
11 ~~ending September 30, 2004.~~

12 Sec. 15. (a) Contributions unpaid on the date on which they
13 are due and payable, as prescribed by the commission, shall bear
14 interest at the rate of 1% per month, computed on a ~~day to day~~ **DAY-**
15 **TO-DAY** basis for each day the delinquency is unpaid, from and after
16 that date until payment plus accrued interest is received by the
17 commission. Amounts illegally obtained or previously withheld from
18 payment and damages that are recovered by the commission under
19 section 54(a) and (b) and sections 54a to 54c ~~of this act~~ shall
20 bear interest at the rate of 1% per month, computed on a day-to-day
21 basis for each day the amounts remain unpaid until payment plus
22 accrued interest is received by the commission. The interest on
23 unpaid contributions, exclusive of penalties, shall not exceed 50%
24 of the amount of contributions due at due date. Interest and
25 penalties collected pursuant to this section shall be paid into the
26 contingent fund, **EXCEPT THAT INTEREST AND PENALTIES COLLECTED UNDER**
27 **SECTION 62 SHALL BE PAID INTO THE SPECIAL FRAUD CONTROL FUND.** The

1 commission may cancel any interest and any penalty when it is shown
2 that the failure to pay on or before the last day on which the tax
3 could have been paid without interest and penalty was not the
4 result of negligence, intentional disregard of the rules of the
5 commission, or fraud.

6 (b) The commission may make assessments against an employer,
7 claimant, employee of the commission, or third party who fails to
8 pay contributions, reimbursement payments in lieu of contributions,
9 penalties, forfeitures, or interest as required by this act. The
10 commission shall immediately notify the employer, claimant,
11 employee of the commission, or third party of the assessment in
12 writing by first-class mail. An assessment by the commission
13 against a claimant, an employee of the commission, or a third party
14 under this subsection shall be made only for penalties and interest
15 on those penalties for violations of section 54(a) or (b) or
16 sections 54a to 54c. The assessment ~~, which shall constitute a~~
17 ~~determination, shall be~~ **IS A final DETERMINATION** unless the
18 employer, claimant, employee of the commission, or third party
19 files with the commission an application for a redetermination of
20 the assessment in accordance with section 32a. A review by the
21 commission or an appeal to a referee or the appeal board on the
22 assessment ~~shall~~ **DOES** not reopen a question concerning an
23 employer's liability for contributions or reimbursement payments in
24 lieu of contributions, unless the employer was not a party to the
25 proceeding or decision where the basis for the assessment was
26 determined. An employer may pay an assessment under protest and
27 file an action to recover the amount paid as provided under

1 subsection (d). Unless an assessment is paid within 15 days after
2 it becomes final the commission may issue a warrant under its
3 official seal for the collection of ~~an~~ **THE ASSESSED** amount.
4 ~~required to be paid pursuant to the assessment.~~ The commission
5 through its authorized employees, under a warrant issued, may levy
6 upon and sell the property of the employer that is used in
7 connection with the employer's business, or that is subject to a
8 notice to withhold, found within the state, for the payment of the
9 amount of the contributions including penalties, interests, and the
10 cost of executing the warrant. Property of the employer used in
11 connection with the employer's business ~~shall~~ **IS** not ~~be~~ exempt from
12 levy under the warrant. Wages subject to a notice to withhold ~~shall~~
13 ~~be~~ **ARE** exempt to the extent the wages are exempt from garnishment
14 under the laws of this state. The warrant shall be returned to the
15 commission together with the money collected ~~by virtue of~~ **UNDER** the
16 warrant within the time specified in the warrant which shall not be
17 less than 20 or more than 90 days after the date of the warrant.
18 The commission shall proceed upon the warrant ~~in all respects and~~
19 ~~with like effect and in the same manner as~~ prescribed by law in
20 respect to executions issued against property upon judgments by a
21 court of record. The state, through the commission or some other
22 officer or agent designated by it, may bid for and purchase
23 property sold under the provisions of this subsection. If an
24 employer, claimant, employee of the commission, or third party, as
25 applicable, is delinquent in the payment of a contribution,
26 reimbursement payment in lieu of contribution, penalty, forfeiture,
27 or interest provided for in this act, the commission may give

1 notice of the amount of the delinquency served either personally or
2 by mail, to a person or legal entity, including the state and its
3 subdivisions, that has in **ITS** possession or under **ITS** control a
4 credit or other intangible property belonging to the employer,
5 claimant, employee of the commission, or third party, or who owes a
6 debt to the employer, claimant, employee of the commission, or
7 third party at the time of the receipt of the notice. A person or
8 legal entity so notified shall not transfer or ~~make a disposition~~
9 **DISPOSE** of the credit, other intangible property, or debt without
10 retaining an amount sufficient to pay the amount specified in the
11 notice unless the ~~commission~~**UNEMPLOYMENT AGENCY** consents to a
12 transfer or disposition or 45 days have elapsed from the receipt of
13 the notice. A person or legal entity so notified shall advise the
14 ~~commission~~**UNEMPLOYMENT AGENCY** within 5 days after receipt of the
15 notice of a credit, other intangible property, or debt, which is in
16 its possession, under its control, or owed by it. A person or legal
17 entity that is notified and that transfers or disposes of credits
18 or personal property in violation of this section is liable to the
19 ~~commission~~**UNEMPLOYMENT AGENCY** for the value of the property or the
20 amount of the debts thus transferred or paid, but not more than the
21 amount specified in the notice. An amount due a delinquent
22 employer, claimant, employee of the ~~commission~~**UNEMPLOYMENT AGENCY**,
23 or third party subject to a notice to withhold shall be paid to the
24 ~~commission~~**UNEMPLOYMENT AGENCY** upon service upon the debtor of a
25 warrant issued under this section.

26 (c) In addition to the mode of collection provided in
27 subsection (b), if, after due notice, an employer defaults in

1 payment of contributions or interest on the contributions, or a
2 claimant, employee of the ~~commission~~-**UNEMPLOYMENT AGENCY**, or third
3 party defaults in the payment of a penalty or interest on a
4 penalty, the ~~commission~~-**UNEMPLOYMENT AGENCY** may bring an action at
5 law in a court of competent jurisdiction to collect and recover the
6 amount of a contribution, and any interest on the contribution, or
7 the penalty or interest on the penalty, and in addition 10% of the
8 amount of contributions or penalties found to be due, as damages.

9 An employer, claimant, employee of the ~~commission~~-**UNEMPLOYMENT**
10 **AGENCY**, or third party adjudged in default shall pay costs of the
11 action. An action by the ~~commission~~-**UNEMPLOYMENT AGENCY** against a
12 claimant, employee of the ~~commission~~-**UNEMPLOYMENT AGENCY**, or third
13 party under this subsection shall be brought only to recover
14 penalties and interest on those penalties for violations of section
15 54(a) or (b) or sections 54a to 54c. Civil actions brought under
16 this section shall be heard by the court at the earliest possible
17 date. If a judgment is obtained against an employer for
18 contributions and an execution on that judgment is returned
19 unsatisfied, the employer may be enjoined from operating and doing
20 business in this state until the judgment is satisfied. The circuit
21 court of the county in which the judgment is docketed or the
22 circuit court for the county of Ingham may grant an injunction upon
23 the petition of the ~~commission~~-**UNEMPLOYMENT AGENCY**. A copy of the
24 petition for injunction and a notice of when and where the court
25 shall act on the petition shall be served on the employer at least
26 21 days before the court may grant the injunction.

27 (d) An employer or employing unit improperly charged or

1 assessed contributions provided for under this act, or a claimant,
2 employee of the ~~commission~~**UNEMPLOYMENT AGENCY**, or third party
3 improperly assessed a penalty under this act and who paid the
4 contributions or penalty under protest within 30 days after the
5 mailing of the notice of determination of assessment, may recover
6 the amount improperly collected or paid, together with interest, in
7 any proper action against the ~~commission~~**UNEMPLOYMENT AGENCY**. The
8 circuit court of the county in which the employer or employing unit
9 or claimant, employee of the ~~commission~~**UNEMPLOYMENT AGENCY**, or
10 third party resides, or, in the case of an employer or employing
11 unit, in which is located the principal office or place of business
12 of the employer or employing unit, ~~shall have~~**HAS** original
13 jurisdiction of an action to recover contributions improperly paid
14 or collected or a penalty improperly assessed whether or not the
15 charge or assessment has been reviewed by the ~~commission~~
16 **UNEMPLOYMENT AGENCY** or heard or reviewed by a referee or the appeal
17 board. The court ~~shall not have~~**HAS NO** jurisdiction of the action
18 unless written notice of claim is given to the ~~commission~~
19 **UNEMPLOYMENT AGENCY** at least 30 days before the institution of the
20 action. In an action to recover contributions paid or collected or
21 penalties assessed, the court shall allow costs ~~to such an extent~~
22 ~~and in a manner as it may consider~~**IT CONSIDERS** proper. Either
23 party to the action ~~shall have~~**HAS** the right of appeal ~~, as is now~~
24 provided by law ~~, in~~ other civil actions. An action by a claimant,
25 employee of the ~~commission~~**UNEMPLOYMENT AGENCY**, or third party
26 against the ~~commission~~**UNEMPLOYMENT AGENCY** under this subsection
27 shall be brought only to recover penalties and interest on those

1 penalties improperly assessed by the ~~commission~~ **UNEMPLOYMENT AGENCY**
2 under section 54(a) or (b) or sections 54a to 54c. If a final
3 judgment is rendered in favor of the plaintiff in an action to
4 recover the amount of contributions illegally collected or charged,
5 the treasurer of the ~~commission~~ **UNEMPLOYMENT AGENCY**, upon receipt
6 of a certified copy of the final judgment, shall pay the amount of
7 contributions illegally collected or charged or penalties assessed
8 from the clearing account, and pay interest as ~~may be~~ allowed by
9 the court, in an amount not to exceed the actual earnings of the
10 contributions as ~~may have been~~ found to have been illegally
11 collected or charged, from the contingent fund.

12 (e) Except for liens and encumbrances recorded before the
13 filing of the notice provided for in this section, all
14 contributions, interest, and penalties payable under this act to
15 the ~~commission~~ **UNEMPLOYMENT AGENCY** from an employer, claimant,
16 employee of the ~~commission~~ **UNEMPLOYMENT AGENCY**, or third party that
17 neglects to pay the same when due ~~shall be~~ **ARE** a first and prior
18 lien upon all property and rights to property, real and personal,
19 belonging to the employer, claimant, employee of the ~~commission~~
20 **UNEMPLOYMENT AGENCY**, or third party. The lien ~~shall continue~~
21 **CONTINUES** until the liability for that amount or a judgment arising
22 out of the liability is satisfied or becomes unenforceable by
23 reason of lapse of time. The lien ~~shall attach~~ **ATTACHES** to the
24 property and rights to property of the employer, claimant, employee
25 of the ~~commission~~ **UNEMPLOYMENT AGENCY**, or third party, whether real
26 or personal, from and after the **REQUIRED FILING** date ~~that a~~ **OF THE**
27 report upon which the specific tax is computed. ~~is required by this~~

1 ~~act to be filed.~~ Notice of the lien shall be recorded in the office
2 of the register of deeds of the county in which the property
3 subject to the lien is situated, and the register of deeds shall
4 receive the notice for recording. This subsection ~~shall apply~~
5 **APPLIES** only to penalties and interest on those penalties assessed
6 by the ~~commission~~ **UNEMPLOYMENT AGENCY** against a claimant, employee
7 of the ~~commission~~ **UNEMPLOYMENT AGENCY**, or third party for
8 violations of section 54(a) or (b) or sections 54a to 54c.

9 If there is a distribution of an employer's assets pursuant to
10 an order of a court under the laws of this state, including a
11 receivership, assignment for benefit of creditors, adjudicated
12 insolvency, composition, or similar proceedings, contributions then
13 or thereafter due shall be paid in full before all other claims
14 except for wages and compensation under the worker's disability
15 compensation act of 1969, ~~Act No. 317 of the Public Acts of 1969,~~
16 ~~being sections 418.101 to 418.941 of the Michigan Compiled Laws~~
17 **1969 PA 317, MCL 418.101 TO 418.941.** In the distribution of estates
18 of decedents, claims for funeral expenses and expenses of last
19 sickness shall also be entitled to priority.

20 (f) An injunction shall not issue to stay proceedings for
21 assessment or collection of contributions, or interest or penalty
22 on contributions, levied and required by this act.

23 (g) A person or employing unit, that acquires the
24 organization, trade, business, or 75% or more of the assets from an
25 employing unit, as a successor ~~defined~~ **DESCRIBED** in section 41(2),
26 is liable for contributions and interest due to the ~~commission~~
27 **UNEMPLOYMENT AGENCY** from the transferor at the time of the

1 acquisition in an amount not to exceed the reasonable value of the
2 organization, trade, business, or assets acquired, less the amount
3 of a secured interest in the assets owned by the transferee that
4 are entitled to priority. The transferor or transferee who has, not
5 less than 10 days before the acquisition, requested from the
6 ~~commission~~**UNEMPLOYMENT AGENCY** in writing a statement certifying
7 the status of contribution liability of the transferor shall be
8 provided with that statement and the transferee is not liable for
9 any amount due from the transferor in excess of the amount of
10 liability computed as prescribed in this subsection and certified
11 by the ~~commission~~**UNEMPLOYMENT AGENCY**. At least 2 calendar days not
12 including a Saturday, Sunday, or legal holiday before the
13 acceptance of an offer, the transferor, or the transferor's real
14 estate broker or other agent representing the transferor, shall
15 disclose to the transferee on a form provided by the ~~commission~~
16 **UNEMPLOYMENT AGENCY**, the amounts of the transferor's outstanding
17 unemployment tax liability, unreported unemployment tax liability,
18 and the tax payments, tax rates, and cumulative benefit charges for
19 the most recent 5 years, a listing of all individuals currently
20 employed by the transferor, and a listing of all employees
21 separated from employment with the transferor in the most recent 12
22 months. This form shall specify ~~such~~**ANY** other information ~~, as~~
23 ~~determined by the commission, as would be~~**THE UNEMPLOYMENT AGENCY**
24 **DETERMINES IS** required for a transferee to estimate future
25 unemployment compensation costs based on the transferor's benefit
26 charge and **UNEMPLOYMENT** tax reporting and payment experience. ~~with~~
27 ~~the commission~~. Failure of the transferor, or the transferor's real

1 estate broker or other agent representing the transferor, to
2 provide accurate information required by this subsection is a
3 misdemeanor punishable by imprisonment for not more than 90 days,
4 or a fine of not more than \$2,500.00, or both. In addition, the
5 transferor, or the transferor's real estate broker or other agent
6 representing the transferor, is liable to the transferee for any
7 consequential damages resulting from the failure to comply with
8 this subsection. However, the real estate broker or other agent is
9 not liable for consequential damages if he or she exercised good
10 faith in compliance with the disclosure of information. The remedy
11 provided the transferee is not exclusive, and ~~is not to be~~
12 ~~construed to~~ **DOES NOT** reduce any other right or remedy against any
13 party provided for in this or any other act. Nothing in this
14 subsection ~~shall be construed to decrease~~ **DECREASES** the liability
15 of the transferee as a successor in interest, or ~~to prevent~~
16 **PREVENTS** the transfer of a rating account balance as provided in
17 this act. The foregoing provisions are in addition to the remedies
18 the ~~commission~~ **UNEMPLOYMENT AGENCY** has against the transferor.

19 (h) If a part of a deficiency in payment of the employer's
20 contribution to the fund is due to negligence or intentional
21 disregard of ~~the rules of the commission~~ **UNEMPLOYMENT AGENCY RULES**,
22 but without intention to defraud, 5% of the total amount of the
23 deficiency, in addition to the deficiency and ~~in addition to all~~
24 other interest charges and penalties provided herein, shall be
25 assessed, collected, and paid in the same manner as ~~if it were a~~
26 deficiency. If a part of a deficiency is determined in an action at
27 law to be due to fraud with intent to avoid payment of

1 contributions to the fund, then the judgment rendered shall include
2 an amount equal to 50% of the total amount of the deficiency, in
3 addition to the deficiency and ~~in addition to all other interest~~
4 charges and penalties provided herein.

5 (i) If an employing unit fails to make a report as reasonably
6 required by the rules of the ~~commission~~ **UNEMPLOYMENT AGENCY**
7 pursuant to this act, the ~~commission~~ **UNEMPLOYMENT AGENCY** may make
8 ~~an estimate of~~ the liability of that employing unit from
9 information it ~~may obtain~~ **OBTAINS** and, according to that estimate,
10 ~~so made,~~ assess the employing unit for the contributions,
11 penalties, and interest due. The ~~commission shall have the power~~
12 **UNEMPLOYMENT AGENCY MAY ACT UNDER THIS SUBSECTION** only after a
13 default continues for 30 days and after the ~~commission~~ **UNEMPLOYMENT**
14 **AGENCY** has determined that the default of the employing unit is
15 willful.

16 (j) An assessment or penalty with respect to contributions
17 unpaid is not effective for any period before the 3 calendar years
18 preceding the date of the assessment.

19 (k) The rights respecting the collection of contributions and
20 the levy of interest and penalties and damages made available to
21 the ~~commission~~ **UNEMPLOYMENT AGENCY** by this section ~~is~~ **ARE**
22 additional to other powers and rights vested in the ~~commission in~~
23 ~~pursuance of the~~ **UNEMPLOYMENT AGENCY UNDER** other provisions of this
24 act. The ~~commission is not precluded from exercising~~ **UNEMPLOYMENT**
25 **AGENCY MAY EXERCISE** any of the collection remedies ~~provided for by~~
26 **UNDER** this act even though an application for a redetermination or
27 an appeal is pending final disposition.

(l) A person recording a lien ~~provided for in~~ **UNDER** this section shall pay a fee of \$2.00 for recording a lien and a fee of \$2.00 for recording a discharge of a lien.

Sec. 54. (a) A person who willfully violates or intentionally fails to comply with any of the provisions of this act, or a regulation of the ~~commission~~ **UNEMPLOYMENT AGENCY** promulgated under the authority of this act for which a penalty is not otherwise provided by this act is ~~punishable as provided in subdivision (i), (ii), (iii), or (iv)~~ **SUBJECT TO THE FOLLOWING SANCTIONS,**

notwithstanding any other statute of this state or of the United States:

(i) If the ~~commission~~ **UNEMPLOYMENT AGENCY** determines that an amount has been obtained or withheld as a result of the intentional failure to comply with this act, the ~~commission~~ **UNEMPLOYMENT AGENCY** may recover the amount obtained as a result of the intentional failure to comply plus damages equal to 3 times that amount.

(ii) The ~~commission~~ **UNEMPLOYMENT AGENCY** may refer the matter to the prosecuting attorney of the county in which the alleged violation occurred for prosecution. If the ~~commission~~ **UNEMPLOYMENT AGENCY** has not made its own determination under subdivision (i), the ~~penalty~~ **RECOVERY** sought by the prosecutor shall include the amount described in subdivision (i) and shall also include 1 or more of the following penalties:

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

(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 intentional failure to comply is \$25,000.00 or more
7 but less than \$100,000.00, then 1 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 (C) If the amount obtained or withheld from payment as a
14 result of the intentional failure to comply is more than
15 \$100,000.00, then 1 of the following:

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

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

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

21 (iii) If the ~~commission~~-**UNEMPLOYMENT AGENCY** determines that an
22 amount has been obtained or withheld as a result of a knowing
23 violation of this act, the ~~commission~~-**UNEMPLOYMENT AGENCY** may
24 recover the amount obtained as a result of the knowing violation
25 and may also recover damages equal to 3 times that amount.

26 (iv) The ~~commission~~-**UNEMPLOYMENT AGENCY** may refer a matter
27 under subdivision (iii) to the prosecuting attorney of the county in

1 which the alleged violation occurred for prosecution. If the
2 ~~commission~~-**UNEMPLOYMENT AGENCY** has not made its own determination
3 under subdivision (iii), the ~~penalty~~-**RECOVERY** sought by the
4 prosecutor shall include the amount described in subdivision (iii)
5 and shall also include 1 or more of the following penalties:

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

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

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

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

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

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

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

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

22 (b) Any employing unit or an officer or agent of an employing
23 unit, a claimant, an employee of the ~~commission~~-**UNEMPLOYMENT**
24 **AGENCY**, or any other person who makes a false statement or
25 representation knowing it to be false, or knowingly and willfully
26 with intent to defraud fails to disclose a material fact, to obtain
27 or increase a benefit or other payment under this act or under the

1 unemployment compensation law of any state or of the federal
2 government, either for himself or herself or any other person, to
3 prevent or reduce the payment of benefits to an individual entitled
4 thereto or to avoid becoming or remaining a subject employer, or to
5 avoid or reduce a contribution or other payment required from an
6 employing unit under this act or under the unemployment
7 compensation law of any state or of the federal government, as
8 applicable, is **SUBJECT TO ADMINISTRATIVE FINES AND IS** punishable as
9 follows, notwithstanding any other penalties imposed under any
10 other statute of this state or of the United States:

11 (i) If the amount obtained as a result of the knowing false
12 statement or representation or the knowing and willful failure to
13 disclose a material fact is less than \$500.00, the ~~commission~~
14 **UNEMPLOYMENT AGENCY** may recover the amount obtained as a result of
15 the knowing false statement or representation or the knowing and
16 willful failure to disclose a material fact and may also recover
17 damages equal to 2 times that amount. **FOR A SECOND OR SUBSEQUENT**
18 **VIOLATION DESCRIBED IN THIS SUBDIVISION, THE UNEMPLOYMENT AGENCY**
19 **MAY RECOVER DAMAGES EQUAL TO 4 TIMES THE AMOUNT OBTAINED.**

20 (ii) If the amount obtained as a result of the knowing false
21 statement or representation or the knowing and willful failure to
22 disclose a material fact is \$500.00 or more, the ~~commission~~
23 **UNEMPLOYMENT AGENCY** shall attempt to recover the amount obtained as
24 a result of the knowing false statement or representation or the
25 knowing and willful failure to disclose a material fact and may
26 also recover damages equal to 4 times that amount. The ~~commission~~
27 **UNEMPLOYMENT AGENCY** may refer the matter to the prosecuting

1 attorney of the county in which the alleged violation occurred for
2 prosecution. If the ~~commission~~-**UNEMPLOYMENT AGENCY** has not made its
3 own determination under this subdivision, the ~~penalty~~-**RECOVERY**
4 sought by the prosecutor shall include the amount described in this
5 subdivision and shall also include 1 or more of the following
6 penalties if the amount obtained is \$1,000.00 or more:

7 (A) 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 \$1,000.00 or more but less than \$25,000.00, then 1 of the
11 following:

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

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

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

17 (B) If the amount obtained or withheld from payment as a
18 result of the knowing false statement or representation or the
19 knowing and willful failure to disclose a material fact is
20 \$25,000.00 or more, then 1 of the following:

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

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

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

26 (C) If the knowing false statement or representation or the
27 knowing and willful failure to disclose a material fact made to

1 obtain or withhold an amount from payment does not result in a loss
2 to the commission, then a ~~penalty~~**RECOVERY** shall be sought equal to
3 3 times the amount that would have been obtained by the knowing
4 false statement or representation or the knowing and willful
5 failure to disclose a material fact, but not less than \$1,000.00,
6 and 1 of the following:

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

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

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

12 (c) (1) Any employing unit or an officer or agent of an
13 employing unit or any other person failing to submit, when due, any
14 contribution report, wage and employment report, or other reports
15 lawfully prescribed and required by the ~~commission~~**UNEMPLOYMENT**
16 **AGENCY** shall be subject to the assessment of a ~~penalty~~**AN**
17 **ADMINISTRATIVE FINE** for each report not submitted within the time
18 prescribed by the ~~commission~~**UNEMPLOYMENT AGENCY**, as follows: In
19 the case of contribution reports not received within 10 days after
20 the end of the reporting month the ~~penalty~~**FINE** shall be 10% of the
21 contributions due on the reports but not less than \$5.00 or more
22 than \$25.00 for a report. However, if the tenth day falls on a
23 Saturday, Sunday, legal holiday, or other ~~commission~~**UNEMPLOYMENT**
24 **AGENCY** nonwork day, the 10-day period shall run until the end of
25 the next day which is not a Saturday, Sunday, legal holiday, or
26 other ~~commission~~**UNEMPLOYMENT AGENCY** nonwork day. In the case of
27 all other reports referred to in this subsection, the ~~penalty~~**FINE**

1 shall be \$10.00 for a report.

2 (2) Notwithstanding subdivision (1), any employer or an
3 officer or agent of an employer or any other person failing to
4 submit, when due, any quarterly wage detail report required by
5 section 13(2) ~~shall be~~ **IS** subject to a ~~penalty~~ **AN ADMINISTRATIVE**
6 **FINE** of \$25.00 for each untimely report.

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

15 (d) If any ~~commissioner, employee, or agent of the commission~~
16 **UNEMPLOYMENT AGENCY** or member of the appeal board willfully ~~makes a~~
17 ~~disclosure of~~ **DISCLOSES** confidential information obtained from any
18 employing unit or individual in the administration of this act for
19 any purpose inconsistent with or contrary to the purposes of this
20 act, or a person who ~~having obtained~~ **OBTAINS** a list of applicants
21 for work ~~, or of claimants or recipients of benefits, under this~~
22 act ~~shall use or permit the~~ **USES OR PERMITS** use of that list for a
23 political purpose or for a purpose inconsistent with or contrary to
24 the purposes of this act, he or she is guilty of a misdemeanor ~~and~~
25 ~~upon conviction shall be punished~~ **PUNISHABLE** by imprisonment for
26 not more than 90 days ~~, or by~~ a fine of not more than \$1,000.00, or
27 both. Notwithstanding the preceding sentence, if any ~~commissioner,~~

1 ~~commission~~ **UNEMPLOYMENT AGENCY** employee, agent of the ~~commission~~
2 **UNEMPLOYMENT AGENCY**, or member of the board of review knowingly,
3 intentionally, and for financial gain, makes an illegal disclosure
4 of confidential information obtained under section 13(2), he or she
5 is guilty of a felony, punishable by imprisonment for not more than
6 1 year and 1 day.

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

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

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

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

5 (i) If a determination is made that an individual has violated
6 this section, the individual is subject to the ~~penalty provisions~~
7 **SANCTIONS** of this section and, ~~where~~ **IF** applicable, the
8 requirements of section 62.

9 (j) Amounts recovered by the commission under subsection (a)
10 ~~or (b)~~ shall be credited first to the unemployment compensation
11 fund and thereafter amounts recovered that are in excess of the
12 amounts obtained or withheld as a result of the violation of
13 subsection (a) ~~and (b)~~ shall be credited to the penalty and
14 interest account of the contingent fund. ~~Fines and penalties~~
15 **AMOUNTS** recovered by the commission under subsections (c), (d),
16 (e), and (f) shall be credited to the penalty and interest account
17 of the contingent fund in accordance with section 10(6) .

18 **(K) AMOUNTS RECOVERED BY THE UNEMPLOYMENT AGENCY UNDER**
19 **SUBSECTION (B) SHALL BE CREDITED AS FOLLOWS:**

20 **(i) DEDUCTIONS FROM UNEMPLOYMENT INSURANCE BENEFITS SHALL BE**
21 **APPLIED SOLELY TO THE AMOUNT OF THE BENEFITS LIABLE TO BE REPAID**
22 **UNDER THIS SECTION.**

23 **(ii) ALL OTHER RECOVERIES SHALL BE APPLIED FIRST TO**
24 **ADMINISTRATIVE SANCTIONS AND DAMAGES, THEN TO INTEREST, AND THEN TO**
25 **THE AMOUNT LIABLE TO BE REPAID. THE AMOUNTS APPLIED TO**
26 **ADMINISTRATIVE SANCTIONS, DAMAGES, AND INTEREST SHALL BE CREDITED**
27 **TO THE SPECIAL FRAUD CONTROL FUND CREATED IN SECTION 10.**

1 (1) ~~(k)~~ The revisions in the penalties in subsections (a) and
 2 (b) provided by the 1991 amendatory act that added this subsection
 3 shall apply to conduct that began before April 1, 1992, but that
 4 continued on or after April 1, 1992, and to conduct that began on
 5 or after April 1, 1992.

6 Sec. 62. (a) If the ~~commission~~ **UNEMPLOYMENT AGENCY** determines
 7 that a person has obtained benefits to which that person is not
 8 entitled, ~~the commission~~ **IT** may recover a sum equal to the amount
 9 received **PLUS INTEREST** by 1 or more of the following methods: ~~(1)~~
 10 deduction from benefits payable to the individual, ~~(2)~~ payment by
 11 the individual ~~to the commission~~ in cash, or ~~(3)~~ deduction from a
 12 tax refund payable to the individual as provided under section 30a
 13 of ~~Act No. 122 of the Public Acts of 1941, being section 205.30a of~~
 14 ~~the Michigan Compiled Laws 1941 PA 122, MCL 205.30A.~~ Deduction from
 15 benefits payable to the individual ~~shall be~~ **IS** limited to not more
 16 than 20% of each weekly benefit check due the claimant. The
 17 ~~commission~~ **UNEMPLOYMENT AGENCY** shall not recover improperly paid
 18 benefits from an individual more than 3 years, or more than 6 years
 19 in the case of a violation of section 54(a) or (b) or sections 54a
 20 to 54c, after the date of receipt of the improperly paid benefits
 21 unless ~~:(1)~~ **THE UNEMPLOYMENT AGENCY FILED** a civil action ~~is filed~~
 22 in a court ~~by the commission~~ within the 3-year or 6-year period; ~~;~~
 23 ~~(2)~~ the individual made an intentional false statement,
 24 misrepresentation, or concealment of material information to obtain
 25 the benefits; ~~;~~ ~~or (3)~~ **OR** the ~~commission~~ **UNEMPLOYMENT AGENCY** issued
 26 a determination requiring restitution within the 3-year or 6-year
 27 period. ~~Furthermore, except~~ **EXCEPT** in a case of an intentional

1 false statement, misrepresentation, or concealment of material
2 information, the ~~commission~~ **UNEMPLOYMENT AGENCY** may waive recovery
3 of an improperly paid benefit **OR INTEREST** if the payment was not
4 the fault of the individual and if repayment would be contrary to
5 equity and good conscience.

6 (b) For benefit years beginning before ~~the conversion date~~
7 ~~prescribed in section 75~~ **OCTOBER 1, 2000**, if the ~~commission~~
8 **UNEMPLOYMENT AGENCY** determines that a person has intentionally made
9 a false statement or misrepresentation or has concealed material
10 information to obtain benefits, whether or not the person obtains
11 benefits by or because of the intentional false statement,
12 misrepresentation, or concealment of material information, the
13 person shall, in addition to any other applicable **INTEREST AND**
14 penalties, have all of his or her uncharged credit weeks with
15 respect to the benefit year in which the act occurred canceled as
16 of the date the ~~commission~~ **UNEMPLOYMENT AGENCY** receives notice of,
17 or initiates investigation of, the possible false statement,
18 misrepresentation, or concealment of material information,
19 whichever date is earlier. Before receiving benefits in a benefit
20 year established within 2 years after cancellation of uncharged
21 credit weeks under this subsection, the individual, in addition to
22 making the restitution of benefits established under subsection
23 (a), may be liable ~~to the commission, by cash, deduction from~~
24 ~~benefits, or deduction from a tax refund,~~ for an additional amount
25 as determined by the ~~commission~~ **UNEMPLOYMENT AGENCY** under this act,
26 **WHICH MAY BE PAID BY CASH, DEDUCTION FROM BENEFITS, OR DEDUCTION**
27 **FROM A TAX REFUND.** Restitution resulting from the intentional false

1 statement, misrepresentation, or concealment of material
2 information is not subject to the 20% limitation provided in
3 subsection (a). For benefit years beginning ~~after the conversion~~
4 ~~date prescribed in section 75~~ **ON OR AFTER OCTOBER 1, 2000**, if the
5 ~~commission~~ **UNEMPLOYMENT AGENCY** determines that a person has
6 intentionally made a false statement or misrepresentation or has
7 concealed material information to obtain benefits, whether or not
8 the person obtains benefits by or because of the intentional false
9 statement, misrepresentation, or concealment of material
10 information, the person shall, in addition to any other applicable
11 **INTEREST AND** penalties, have his or her rights to benefits for the
12 benefit year in which the act occurred canceled as of the date the
13 ~~commission~~ **UNEMPLOYMENT AGENCY** receives notice of, or initiates
14 investigation of, a possible false statement, misrepresentation, or
15 concealment of material information, whichever date is earlier, and
16 wages used to establish that benefit year shall not be used to
17 establish another benefit year. Before receiving benefits in a
18 benefit year established within 2 years after cancellation of
19 rights to benefits under this subsection, the individual, in
20 addition to making the restitution of benefits established under
21 subsection (a), may be liable ~~to the commission, by cash, deduction~~
22 ~~from benefits, or deduction from a tax refund,~~ for an additional
23 amount as otherwise determined by the ~~commission~~ **UNEMPLOYMENT**
24 **AGENCY** under this act, **WHICH MAY BE PAID BY CASH, DEDUCTION FROM**
25 **BENEFITS, OR DEDUCTION FROM A TAX REFUND.** Restitution resulting
26 from the intentional false statement, misrepresentation, or
27 concealment of material information is not subject to the 20%

1 limitation provided in subsection (a).

2 (c) Any determination made by the ~~commission~~ **UNEMPLOYMENT**
3 **AGENCY** under this section is final unless an application for a
4 redetermination is filed ~~with the commission~~ in accordance with
5 section 32a.

6 (d) The ~~commission~~ **UNEMPLOYMENT AGENCY** shall take the action
7 necessary to recover all benefits improperly obtained or paid under
8 this act, and to enforce all **INTEREST AND** penalties under
9 subsection (b).

10 (E) **INTEREST RECOVERED UNDER THIS SECTION SHALL BE DEPOSITED**
11 **IN THE SPECIAL FRAUD CONTROL FUND CREATED IN SECTION 10.**