

# HOUSE BILL No. 5562

May 8, 2014, Introduced by Reps. Franz, Kelly, Somerville and Pettalia 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 2013 PA 143.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

9       (i) If the unemployment agency determines that an amount has

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (III) A combination of (I) and (II) that does not exceed 1

1 year.

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

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

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

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

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

27 (i) If the amount obtained as a result of the knowing false

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

9 (ii) If the amount obtained as a result of the knowing false  
10 statement or representation or the knowing and willful failure to  
11 disclose a material fact is \$500.00 or more, the unemployment  
12 agency shall attempt to recover the amount obtained as a result of  
13 the knowing false statement or representation or the knowing and  
14 willful failure to disclose a material fact and may also recover  
15 damages equal to 4 times that amount. The unemployment agency may  
16 refer the matter 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 this subdivision,  
19 the recovery sought by the prosecutor shall include the amount  
20 described in this subdivision and shall also include 1 or more of  
21 the following penalties if the amount obtained is \$1,000.00 or  
22 more:

23 (A) Subject to redesignation under subsection (l), if the  
24 amount obtained or withheld from payment as a result of the knowing  
25 false statement or representation or the knowing and willful  
26 failure to disclose a material fact is \$1,000.00 or more but less  
27 than \$25,000.00, then 1 of the 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 loss  
18 to the commission, then a recovery shall be sought equal to 3 times  
19 the amount that would have been obtained by the knowing false  
20 statement or representation or the knowing and willful failure to  
21 disclose a material fact, but not less than \$1,000.00, and 1 of the  
22 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.

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

(2) Notwithstanding subdivision (1), any employer or an owner, director, officer, or agent of an employer or any other person failing to submit, when due, any quarterly wage ~~detail~~-report required by section 13(2), or submitting an incomplete or erroneous report, is subject to an administrative fine of \$50.00 for each untimely report, incomplete report, or erroneous report if the report is filed not later than 30 days after the date the report is due, \$250.00 if the report is filed more than 1 calendar quarter after the date the report is due, and an additional \$250.00 for each additional calendar quarter that the report is late, except that ~~no penalty shall apply~~ **AN ADMINISTRATION FINE SHALL NOT BE**

1 **IMPOSED** if the employer files a corrected report within 14 days  
2 after notification of an error by the agency. **THE DEPARTMENT SHALL**  
3 **WAIVE ANY FINE THAT WOULD OTHERWISE BE DUE UNDER THIS SUBDIVISION**  
4 **IF THE REPORT IS ERRONEOUS BECAUSE OF A REPORTED DOLLAR AMOUNT THAT**  
5 **IS WITHIN \$1.00 OF THE CORRECT VALUE OR IF THE REPORT IS INCOMPLETE**  
6 **ONLY BECAUSE OF AN OMITTED AMOUNT THAT IS LESS THAN \$1.00.**

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

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



1 gain, makes an illegal disclosure of confidential information  
2 obtained under section 13(2), he or she is guilty of a felony -  
3 punishable by imprisonment for not more than 1 year and 1 day.

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

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

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

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

26 (i) If a determination is made that an individual has violated  
27 this section, the individual is subject to the sanctions of this

1 section and, if applicable, the requirements of section 62.

2 (j) Amounts recovered by the commission under subsection (a)  
3 shall be credited first to the unemployment compensation fund and  
4 thereafter amounts recovered that are in excess of the amounts  
5 obtained or withheld as a result of the violation of subsection (a)  
6 shall be credited to the penalty and interest account of the  
7 contingent fund. Amounts recovered by the commission under  
8 subsections (c), (d), (e), and (f) shall be credited to the penalty  
9 and interest account of the contingent fund in accordance with  
10 section 10(6).

11 (k) Amounts recovered by the unemployment agency under  
12 subsection (b) shall be credited in the following order:

13 (i) From the penalty assessment recovered, an amount equal to  
14 15% of any benefit overpayments resulting from fraud shall be  
15 credited to the unemployment compensation fund.

16 (ii) For the balance of deductions from unemployment insurance  
17 benefits, to the liability for benefit repayment under this  
18 section.

19 (iii) For all other recoveries, the balance shall first be  
20 credited to the unemployment compensation fund for repayment of any  
21 remaining amounts owed, and then to the contingent fund to be  
22 applied first to administrative sanctions and damages and then to  
23 interest.

24 (l) A person who obtains or withholds an amount of unemployment  
25 benefits or payments exceeding \$3,500.00 but less than \$25,000.00  
26 as a result of a knowing false statement or representation or the  
27 knowing and willful failure to disclose a material fact is guilty

1 of a felony punishable as provided in subsection (a) (ii) (A) or  
2 (iv) (A) or subsection (b) (ii) (A) .