

HOUSE BILL No. 6088

December 1, 2016, Introduced by Rep. Howrylak and referred to the Committee on
Commerce and Trade.

A bill to amend 1936 (Ex Sess) PA 1, entitled
"Michigan employment security act,"
by amending sections 32a and 54 (MCL 421.32a and 421.54), section
32a as amended by 2011 PA 269 and section 54 as amended by 2013 PA
143.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 32a. (1) Upon application by an interested party for
2 review of a determination, upon request for transfer to an
3 administrative law judge for a hearing filed with the unemployment
4 agency within ~~30~~**60** days after the mailing or personal service of a
5 notice of determination, or upon the unemployment agency's own
6 motion within that ~~30-day~~**60-DAY** period, the unemployment agency
7 shall review any determination. After review, the unemployment

1 agency shall issue a redetermination affirming, modifying, or
2 reversing the prior determination and stating the reasons for the
3 redetermination, or may in its discretion transfer the matter to an
4 administrative law judge for a hearing. If a redetermination is
5 issued, the unemployment agency shall promptly notify the
6 interested parties of the redetermination, the redetermination is
7 final unless within 30 days after the mailing or personal service
8 of a notice of the redetermination an appeal is filed with the
9 unemployment agency for a hearing on the redetermination before an
10 administrative law judge in accordance with section 33.

11 (2) The unemployment agency may, for good cause, including any
12 administrative clerical error, reconsider a prior determination or
13 redetermination after the ~~30-day~~ **60-DAY** period has expired and
14 after reconsideration issue a redetermination affirming, modifying,
15 or reversing the prior determination or redetermination, or
16 transfer the matter to an administrative law judge for a hearing. A
17 reconsideration shall not be made unless the request is filed with
18 the unemployment agency, or reconsideration is initiated by the
19 unemployment agency with notice to the interested parties, within 1
20 year from the date of mailing or personal service of the original
21 determination on the disputed issue.

22 (3) If an interested party fails to file a protest within the
23 ~~30-day~~ **60-DAY** period and the unemployment agency for good cause
24 reconsiders a prior determination or redetermination and issues a
25 redetermination, a disqualification, or an ineligibility imposed
26 thereunder, other than an ineligibility imposed due to receipt of
27 retroactive pay, the redetermination, disqualification, or

1 ineligibility does not apply to a compensable period for which
2 benefits were paid or are payable unless the benefits were obtained
3 as a result of an administrative clerical error, a false statement,
4 or a nondisclosure or misrepresentation of a material fact by the
5 claimant. However, the redetermination is final unless within ~~30~~60
6 days after the date of mailing or personal service of the notice of
7 redetermination an appeal is filed for a hearing on the
8 redetermination before an administrative law judge in accordance
9 with section 33.

10 (4) In addition to the transfer provisions in subsections (1)
11 and (2), both of the following apply:

12 (a) If both the claimant and the employer agree, the matter
13 may be transferred directly to an administrative law judge in a
14 case involving the payment of unemployment benefits.

15 (b) If both the unemployment agency and the employer agree,
16 the matter may be transferred directly to an administrative law
17 judge in a case involving unemployment contributions or
18 reimbursements in lieu of contributions.

19 Sec. 54. (a) A person, including a claimant for unemployment
20 benefits, an employing entity, or an owner, director, or officer of
21 an employing entity, who willfully violates or intentionally fails
22 to comply with any of the provisions of this act, or a regulation
23 of the unemployment agency promulgated under the authority of this
24 act for which a penalty is not otherwise provided by this act is
25 subject to the following sanctions, notwithstanding any other
26 statute of this state or of the United States:

27 (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
10 (i) 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
16 which the alleged violation occurred for prosecution. If the
17 unemployment agency has not made its own determination under
18 subdivision (iii), the recovery sought by the prosecutor shall
19 include the amount described in subdivision (iii) and shall also
20 include 1 or more of 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 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.

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

17 (2) Notwithstanding subdivision (1), any employer or an owner,
18 director, officer, or agent of an employer or any other person
19 failing to submit, when due, any quarterly wage detail report
20 required by section 13(2), or submitting an incomplete or erroneous
21 report, is subject to an administrative fine of ~~\$50.00~~ **\$25.00** for
22 each untimely report, incomplete report, or erroneous report if the
23 report is filed not later than 30 days after the date the report is
24 due, ~~\$250.00~~ **\$125.00** if the report is filed more than 1 calendar
25 quarter after the date the report is due, and an additional ~~\$250.00~~
26 **\$125.00** for each additional calendar quarter that the report is
27 late, except that no penalty shall apply if the employer files a

1 corrected report within 14 days after notification of an error by
2 the agency. **THE UNEMPLOYMENT AGENCY SHALL WAIVE AN ADMINISTRATIVE**
3 **FINE UNDER THIS SUBDIVISION IF THE REPORT WAS THE FIRST OF ITS TYPE**
4 **THAT WAS DUE FROM A FIRST-TIME FILER AND THE VIOLATION WAS NOT**
5 **DELIBERATE OR WILLFUL.**

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

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

1 obtained under section 13(2), he or she is guilty of a felony 7
2 punishable by imprisonment for not more than 1 year and 1 day.

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

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

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

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

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

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

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

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

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

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

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

1 subsection (a) (ii) (A) or (iv) (A) or subsection (b) (ii) (A) .

2 Enacting section 1. This amendatory act takes effect 90 days
3 after the date it is enacted into law.