

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4546**

A bill to amend 1936 (Ex Sess) PA 1, entitled
"Michigan employment security act,"
by amending section 54 (MCL 421.54), as amended by 2017 PA 226.

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 this act for which a
6 penalty is not otherwise provided by this act is subject to the
7 following sanctions, notwithstanding any other statute of this
8 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 must include the amount described in subdivision (i)
10 and 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 must
19 include the amount described in subdivision (iii) and 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) An employing unit or an owner, director, officer, or agent
11 of an employing unit, a claimant, an employee of the unemployment
12 agency, or any other person who makes a false statement or
13 representation knowing it to be false, or knowingly and willfully
14 with intent to defraud fails to disclose a material fact, to obtain
15 or increase a benefit or other payment under this act or under the
16 unemployment compensation law of any state or of the federal
17 government, either for himself or herself or any other person, to
18 prevent or reduce the payment of benefits to an individual entitled
19 thereto or to avoid becoming or remaining a subject employer, or to
20 avoid or reduce a contribution or other payment required from an
21 employing unit under this act or under the unemployment
22 compensation law of any state or of the federal government is
23 subject to administrative fines and is punishable as provided in
24 this subsection, notwithstanding any other penalties imposed under
25 any other statute of this state or of the United States. For
26 benefit years beginning on or after May 1, 2017, to establish fraud
27 based on unreported earnings under this subsection, the

1 unemployment agency must have in its possession the weekly wage
2 information from the employer. A violation of this subsection is
3 punishable as follows:

4 (i) Subject to subdivisions (ii) and (iii), the unemployment
5 agency may recover the amount obtained as a result of the knowing
6 false statement or representation or the knowing and willful
7 failure to disclose a material fact and may also recover damages
8 equal to that amount. For a second or subsequent violation
9 described in this subdivision that occurs after the unemployment
10 agency has sent proper notice of the original violation to the
11 interested parties, the unemployment agency may recover damages
12 equal to 1.5 times the amount obtained.

13 (ii) Subject to subdivision (iii), if the unemployment agency
14 determines or redetermines or an administrative law judge, the
15 Michigan compensation appellate commission, or a court orders that
16 an impostor committed identity theft, the unemployment agency shall
17 attempt to recover from the impostor the amount obtained as a
18 result of the knowing false statement or representation or the
19 knowing and willful failure to disclose a material fact and may
20 also recover damages equal to 4 times that amount. As used in this
21 subdivision:

22 (A) "Identity theft" means that term as defined in section 24
23 of chapter VII of the code of criminal procedure, 1927 PA 175, MCL
24 767.24.

25 (B) "Impostor" means that term as defined in section 54f.

26 (iii) The unemployment agency may refer a matter under
27 subdivision (i) or (ii) to the prosecuting attorney of the county

1 in which the alleged violation occurred for prosecution. If the
2 unemployment agency has not made its own determination under
3 subdivision (i) or (ii), the recovery sought by the prosecutor must
4 include the amount described in subdivision (i) or (ii) and 1 or
5 more of the following penalties if the amount obtained is \$1,000.00
6 or more:

7 (A) Subject to redesignation under subsection (l), if the
8 amount obtained or withheld from payment as a result of the knowing
9 false statement or representation or the knowing and willful
10 failure to disclose a material fact is \$1,000.00 or more but less
11 than \$25,000.00, then 1 of the 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 unemployment agency, then the unemployment agency shall
3 attempt to recover an amount equal to 3 times the amount that would
4 have been obtained by the knowing false statement or representation
5 or the knowing and willful failure to disclose a material fact, but
6 not less than \$1,000.00, 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 owner, director, officer, or
13 agent of an employing unit or any other person failing to submit,
14 when due, any contribution report, wage and employment report, or
15 other reports lawfully prescribed and required by the unemployment
16 agency is subject to the assessment of an administrative fine for
17 each report not submitted within the time prescribed by the
18 unemployment agency. In the case of contribution reports not
19 received within 10 days after the end of the reporting month the
20 fine is 10% of the contributions due on the reports but not less
21 than \$5.00 or more than \$25.00 for a report. However, if the tenth
22 day falls on a Saturday, Sunday, legal holiday, or other
23 unemployment agency nonwork day, the 10-day period runs until the
24 end of the next day that is not a Saturday, Sunday, legal holiday,
25 or other unemployment agency nonwork day. In the case of all other
26 reports referred to in this subsection, the fine is \$10.00 for a
27 report.

1 (2) Notwithstanding subdivision (1), any employer or an owner,
2 director, officer, or agent of an employer or any other person
3 failing to submit, when due, any quarterly wage detail report
4 required by section 13(2), or submitting an incomplete or erroneous
5 report and failing to file a corrected report within 14 days after
6 notification of an error by the agency, is subject to an
7 administrative fine of \$50.00 for each report if the report is
8 filed not later than 30 days after the date the report is due,
9 \$250.00 if the report is filed more than 1 calendar quarter after
10 the date the report is due, and an additional \$250.00 for each
11 additional calendar quarter that the report is late.

12 (3) If a report is filed after the prescribed time and it is
13 shown to the satisfaction of the unemployment agency that the
14 failure to submit the report was due to reasonable cause, the
15 unemployment agency shall not impose a fine. The assessment of a
16 fine as provided in this subsection constitutes a final
17 determination unless the employer files an application with the
18 unemployment agency for a redetermination of the assessment
19 pursuant to section 32a.

20 (d) If any employee or agent of the unemployment agency or
21 member of the Michigan compensation appellate commission willfully
22 discloses confidential information obtained from any employing unit
23 or individual in the administration of this act for any purpose
24 inconsistent with or contrary to the purposes of this act, or a
25 person who obtains a list of applicants for work or of claimants or
26 recipients of benefits under this act uses or permits use of that
27 list for a political purpose or for a purpose inconsistent with or

1 contrary to the purposes of this act, he or she is guilty of a
2 misdemeanor punishable by imprisonment for not more than 90 days or
3 a fine of not more than \$1,000.00, or both. Notwithstanding the
4 preceding sentence, if any unemployment agency employee, agent of
5 the unemployment agency, or member of the Michigan compensation
6 appellate commission knowingly, intentionally, and for financial
7 gain, makes an illegal disclosure of confidential information
8 obtained under section 13(2), he or she is guilty of a felony,
9 punishable by imprisonment for not more than 1 year and 1 day.

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

17 (f) A person associated with a college, university, **ELIGIBLE**
18 **EDUCATIONAL INSTITUTION, MICHIGAN WORKS AGENCY**, or public agency of
19 this state who makes use of any information obtained from the
20 unemployment agency ~~in connection with a research project of a~~
21 ~~public service nature, UNDER SECTION 11(B) (1) (viii)~~ in a manner as
22 to reveal the identity of any individual or employing unit from or
23 concerning whom the information was obtained by the unemployment
24 agency, or for any purpose other than ~~use in connection with that~~
25 ~~research project, THE PURPOSES STATED IN SECTION 11(B) (1) (viii)~~, is
26 guilty of a misdemeanor punishable by imprisonment for not more
27 than 90 days or a fine of not more than \$1,000.00, or both. **AS USED**

1 IN THIS SUBSECTION:

2 (i) "ELIGIBLE EDUCATIONAL INSTITUTION" MEANS THAT TERM AS
3 DEFINED IN SECTION 11(B) (1) (viii) .

4 (ii) "MICHIGAN WORKS AGENCY" MEANS AN ENTITY DESCRIBED IN
5 SECTION 17(A) OR (D) OF THE MICHIGAN WORKS ONE-STOP SERVICE CENTER
6 SYSTEM ACT, 2006 PA 491, MCL 408.127.

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

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

13 (i) An individual who violates this section is subject to the
14 sanctions of this section and, if applicable, section 62.

15 (j) Amounts recovered by the unemployment agency under
16 subsection (a) must be credited first to the unemployment
17 compensation fund and thereafter amounts recovered that are in
18 excess of the amounts obtained or withheld as a result of the
19 violation of subsection (a) must be credited to the penalty and
20 interest account of the contingent fund. Amounts recovered by the
21 unemployment agency under subsections (c), (d), (e), and (f) must
22 be credited to the penalty and interest account of the contingent
23 fund pursuant to section 10(6) .

24 (k) Amounts recovered by the unemployment agency under
25 subsection (b) must be credited in the following order:

26 (i) From the penalty assessment recovered, an amount equal to
27 15% of any benefit overpayments resulting from fraud must be

1 credited to the unemployment compensation fund.

2 (ii) For the balance of deductions from unemployment insurance
3 benefits, to the liability for benefit repayment under this
4 section.

5 (iii) For all other recoveries, the balance must first be
6 credited to the unemployment compensation fund for repayment of any
7 remaining amounts owed, and then to the contingent fund to be
8 applied first to administrative sanctions and damages, then to
9 interest, and then to an amount equal to the representation fees
10 associated with advocacy assistance services provided under section
11 5a.

12 (l) A person who obtains or withholds an amount of
13 unemployment benefits or payments exceeding \$3,500.00 but less than
14 \$25,000.00 as a result of a knowing false statement or
15 representation or the knowing and willful failure to disclose a
16 material fact is guilty of a felony punishable as provided in
17 subsection (a) (ii) (A) or (iv) (A) or subsection (b) (iii) (A) .

18 (m) The unemployment agency shall not make a determination
19 under this section that is based solely on a computer-identified
20 discrepancy in information supplied by the claimant or employer. An
21 unemployment agency employee or agent must examine the facts and
22 independently determine that the claimant or the employer is
23 responsible for a willful or intentional violation before the
24 unemployment agency makes a determination under this section.

25 Enacting section 1. This amendatory act takes effect July 1,
26 2018.

27 Enacting section 2. This amendatory act does not take effect

1 unless House Bill No. 4545 of the 99th Legislature is enacted into
2 law.