

HOUSE BILL No. 4546

April 27, 2017, Introduced by Reps. Howell, Frederick, Love, Barrett, Cole, Dianda, Chirkun, Sabo, Sneller, Marino, Schor, Elder, LaGrand, Kahle, Wittenberg, Liberati, Geiss, Leutheuser, Gay-Dagnogo, Moss, Sowerby, Camilleri, Ellison, Crawford, Yanez, Brinks, Guerra, Yaroch and Pagan and referred to the Committee on Workforce and Talent Development.

A bill to amend 1936 (Ex Sess) PA 1, entitled
"Michigan employment security act,"
by amending section 54 (MCL 421.54), as amended by 2016 PA 522.

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
10 been obtained or withheld as a result of the intentional failure to
11 comply with this act, the unemployment agency may recover the

1 amount obtained as a result of the intentional failure to comply
2 plus damages equal to 3 times that amount.

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

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

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

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

17 (III) A combination of **PENALTIES UNDER** (I) and (II) that does
18 not exceed 1 year.

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

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

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

25 (III) A combination of **PENALTIES UNDER** (I) and (II) that does
26 not exceed 2 years.

27 (C) If the amount obtained or withheld from payment as a

1 result of the intentional failure to comply is more than
2 \$100,000.00, then 1 of the following:

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

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

6 (III) A combination of **PENALTIES UNDER** (I) and (II) that does
7 not exceed 5 years.

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

13 (iv) The unemployment agency may refer a matter under
14 subdivision (iii) to the prosecuting attorney of the county in
15 which the alleged violation occurred for prosecution. If the
16 unemployment agency has not made its own determination under
17 subdivision (iii), **THEN** the recovery sought by the prosecutor ~~shall~~
18 **MUST** include the amount described in subdivision (iii). ~~and shall~~
19 ~~also include~~ **THE VIOLATION IS PUNISHABLE BY** 1 or more of the
20 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 **PENALTIES UNDER** (I) and (II) that does

1 not exceed 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 **PENALTIES UNDER** (I) and (II) that does
9 not exceed 2 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 provided in this subsection, notwithstanding any
25 other penalties imposed under any other statute of this state or of
26 the United States. For benefit years beginning on or after May 1,
27 2017, to establish fraud based on unreported earnings under this

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

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

(ii) If the amount obtained as a result of the knowing false statement or representation or the knowing and willful failure to disclose a material fact is \$500.00 or more, the unemployment agency shall attempt to recover the amount obtained as a result of the knowing false statement or representation or the knowing and willful failure to disclose a material fact and may also recover damages equal to 4 times that amount. The unemployment agency may refer the matter to the prosecuting attorney of the county in which the alleged violation occurred for prosecution. If the unemployment agency has not made its own determination under this subdivision, **THEN** the recovery sought by the prosecutor ~~shall~~ **MUST** include the amount described in this subdivision. ~~and shall also include~~ **THE VIOLATION IS PUNISHABLE BY** 1 or more of the following ~~penalties if~~ the amount obtained is \$1,000.00 or more:

(A) Subject to redesignation under subsection (l), if the

1 amount obtained or withheld from payment as a result of the knowing
2 false statement or representation or the knowing and willful
3 failure to disclose a material fact is \$1,000.00 or more but less
4 than \$25,000.00, then 1 of the following:

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

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

8 (III) A combination of **PENALTIES UNDER** (I) and (II) that does
9 not exceed 1 year.

10 (B) If the amount obtained or withheld from payment as a
11 result of the knowing false statement or representation or the
12 knowing and willful failure to disclose a material fact is
13 \$25,000.00 or more, then 1 of the following:

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

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

17 (III) A combination of **PENALTIES UNDER** (I) and (II) that does
18 not exceed 2 years.

19 (C) If the knowing false statement or representation or the
20 knowing and willful failure to disclose a material fact made to
21 obtain or withhold an amount from payment does not result in a loss
22 to the ~~commission, UNEMPLOYMENT AGENCY~~, then a ~~recovery~~ **THE**
23 **UNEMPLOYMENT AGENCY** shall ~~be sought~~ **ATTEMPT TO RECOVER AN AMOUNT**
24 equal to 3 times the amount that would have been obtained by the
25 knowing false statement or representation or the knowing and
26 willful failure to disclose a material fact, but not less than
27 \$1,000.00, and 1 of the following:

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

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

4 (III) A combination of **PENALTIES UNDER** (I) and (II) that does
5 not exceed 2 years.

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

22 (2) Notwithstanding subdivision (1), any employer or an owner,
23 director, officer, or agent of an employer or any other person
24 failing to submit, when due, any quarterly wage detail report
25 required by section 13(2), or submitting an incomplete or erroneous
26 report **AND FAILING TO FILE A CORRECTED REPORT WITHIN 14 DAYS AFTER**
27 **NOTIFICATION OF AN ERROR BY THE AGENCY**, is subject to an

1 administrative fine of \$50.00 for each ~~untimely report, incomplete~~
2 ~~report, or erroneous report~~ if the report is filed not later than
3 30 days after the date the report is due, \$250.00 if the report is
4 filed more than 1 calendar quarter after the date the report is
5 due, and an additional \$250.00 for each additional calendar quarter
6 that the report is late. ~~, except that no penalty shall apply if~~
7 ~~the employer files a corrected report within 14 days after~~
8 ~~notification of an error by the agency.~~

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

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

1 preceding sentence, if any unemployment agency employee, agent of
2 the unemployment agency, or member of the Michigan compensation
3 appellate commission knowingly, intentionally, and for financial
4 gain, makes an illegal disclosure of confidential information
5 obtained under section 13(2), he or she is guilty of a felony,
6 punishable by imprisonment for not more than 1 year and 1 day.

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

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

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

27 (h) This section applies even if the amount obtained or

1 withheld from payment has been reported or reported and paid by an
2 individual involved in a violation of subsection (a) or (b).

3 (i) ~~If a determination is made that an~~ **AN** individual **WHO** has
4 violated this section ~~, the individual is~~ subject to the sanctions
5 of this section and, if applicable, ~~the requirements of~~ section 62.

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

16 (k) Amounts recovered by the unemployment agency under
17 subsection (b) ~~shall~~ **MUST** be credited in the following order:

18 (i) From the penalty assessment recovered, an amount equal to
19 15% of any benefit overpayments resulting from fraud ~~shall~~ **MUST** be
20 credited to the unemployment compensation fund.

21 (ii) For the balance of deductions from unemployment insurance
22 benefits, to the liability for benefit repayment under this
23 section.

24 (iii) For all other recoveries, the balance ~~shall~~ **MUST** first
25 be credited to the unemployment compensation fund for repayment of
26 any remaining amounts owed, and then to the contingent fund to be
27 applied first to administrative sanctions and damages and then to

1 interest.

2 (l) A person who obtains or withholds an amount of
3 unemployment benefits or payments exceeding \$3,500.00 but less than
4 \$25,000.00 as a result of a knowing false statement or
5 representation or the knowing and willful failure to disclose a
6 material fact is guilty of a felony punishable as provided in
7 subsection (a) (ii) (A) or (iv) (A) or subsection (b) (ii) (A) .

8 (m) ~~An~~ **THE** unemployment agency **SHALL NOT MAKE A** determination
9 under this section ~~shall not be~~ **THAT IS** based solely on a computer-
10 identified discrepancy in information supplied by the claimant or
11 employer. An unemployment agency employee or agent must examine the
12 facts and independently determine that the claimant or the employer
13 is responsible for a willful or intentional violation before the
14 **UNEMPLOYMENT** agency makes a determination under this section.

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

17 Enacting section 2. This amendatory act does not take effect
18 unless Senate Bill No. _____ or House Bill No. 4545 (request no.
19 00972'17) of the 99th Legislature is enacted into law.