

HOUSE BILL No. 5677

March 1, 2018, Introduced by Reps. Howrylak, Johnson and Barrett and referred to the Committee on Oversight.

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 2017 PA 232 and section 54 as amended by 2017 PA 226.

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

11 (2) The unemployment agency shall, for good cause, including
12 an administrative clerical error or evidence produced by an
13 interested party showing that a prior determination or
14 redetermination was not sent to the interested party's correct
15 address or an address ascertained under subsection (5), reconsider
16 a prior determination or redetermination after the ~~30-day~~ **60-DAY**
17 period has expired and after reconsideration issue a
18 redetermination affirming, modifying, or reversing the prior
19 determination or redetermination, or transfer the matter to an
20 administrative law judge for a hearing. A reconsideration shall not
21 be made unless the request is filed with the unemployment agency,
22 or reconsideration is initiated by the unemployment agency with
23 notice to the interested parties, within 1 year after the date of
24 mailing or personal service of the original determination on the
25 disputed issue or, if the original determination involved a finding
26 of fraud, within 3 years after the date of mailing or personal
27 service of the original determination.

1 (3) If an interested party fails to file a protest within the
2 ~~30-day~~ **60-DAY** period and the unemployment agency for good cause
3 reconsiders a prior determination or redetermination and issues a
4 redetermination, a disqualification, or an ineligibility imposed
5 thereunder, other than an ineligibility imposed due to receipt of
6 retroactive pay, the redetermination, disqualification, or
7 ineligibility does not apply to a compensable period for which
8 benefits were paid or are payable unless the benefits were obtained
9 as a result of an administrative clerical error, a false statement,
10 or a nondisclosure or misrepresentation of a material fact by the
11 claimant. However, the redetermination is final unless within ~~30~~ **60**
12 days after the date of mailing or personal service of the notice of
13 redetermination an appeal is filed for a hearing on the
14 redetermination before an administrative law judge pursuant to
15 section 33.

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

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

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

25 (5) If a determination or redetermination includes a finding
26 that an interested party committed fraud, the unemployment agency
27 shall, in addition to sending the determination or redetermination

1 to the interested party's address of record, ascertain from the
2 department of state, the department of treasury, and the United
3 States Postal Service other known mailing addresses of the
4 interested party and send the determination or redetermination to
5 the most recent address.

6 (6) A claimant, employer, or interested party shall, during a
7 benefit year, notify the unemployment agency of a change in its
8 mailing address.

9 Sec. 54. (a) A person, including a claimant for unemployment
10 benefits, an employing entity, or an owner, director, or officer of
11 an employing entity, who willfully violates or intentionally fails
12 to comply with any of the provisions of this act, or a regulation
13 of the unemployment agency promulgated under this act for which a
14 penalty is not otherwise provided by this act is subject to the
15 following sanctions, notwithstanding any other statute of this
16 state or of the United States:

17 (i) If the unemployment agency determines that an amount has
18 been obtained or withheld as a result of the intentional failure to
19 comply with this act, the unemployment agency may recover the
20 amount obtained as a result of the intentional failure to comply
21 plus damages equal to 3 times that amount.

22 (ii) The unemployment agency may refer the matter to the
23 prosecuting attorney of the county in which the alleged violation
24 occurred for prosecution. If the unemployment agency has not made
25 its own determination under subdivision (i), the recovery sought by
26 the prosecutor must include the amount described in subdivision (i)
27 and 1 or more of the following penalties:

1 (A) Subject to redesignation under subsection (l), if the
2 amount obtained or withheld from payment as a result of the
3 intentional failure to comply is less than \$25,000.00, then 1 of
4 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 (I) and (II) that does not exceed 1
9 year.

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

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

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

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

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

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

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

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

26 (iii) If the unemployment agency determines that an amount has
27 been obtained or withheld as a result of a knowing violation of

1 this act, the unemployment agency may recover the amount obtained
2 as a result of the knowing violation and may also recover damages
3 equal to 3 times that amount.

4 (iv) The unemployment agency may refer a matter under
5 subdivision (iii) to the prosecuting attorney of the county in
6 which the alleged violation occurred for prosecution. If the
7 unemployment agency has not made its own determination under
8 subdivision (iii), the recovery sought by the prosecutor must
9 include the amount described in subdivision (iii) and 1 or more of
10 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 knowing
13 violation is \$100,000.00 or less, then 1 of 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 (I) and (II) that does not exceed 1
18 year.

19 (B) If the amount obtained or withheld from payment as a
20 result of the knowing violation is more than \$100,000.00, then 1 of
21 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 (I) and (II) that does not exceed 2
26 years.

27 (b) An employing unit or an owner, director, officer, or agent

1 of an employing unit, a claimant, an employee of the unemployment
2 agency, or any other person who makes a false statement or
3 representation knowing it to be false, or knowingly and willfully
4 with intent to defraud fails to disclose a material fact, to obtain
5 or increase a benefit or other payment under this act or under the
6 unemployment compensation law of any state or of the federal
7 government, either for himself or herself or any other person, to
8 prevent or reduce the payment of benefits to an individual entitled
9 thereto or to avoid becoming or remaining a subject employer, or to
10 avoid or reduce a contribution or other payment required from an
11 employing unit under this act or under the unemployment
12 compensation law of any state or of the federal government is
13 subject to administrative fines and is punishable as provided in
14 this subsection, notwithstanding any other penalties imposed under
15 any other statute of this state or of the United States. For
16 benefit years beginning on or after May 1, 2017, to establish fraud
17 based on unreported earnings under this subsection, the
18 unemployment agency must have in its possession the weekly wage
19 information from the employer. A violation of this subsection is
20 punishable as follows:

21 (i) Subject to subdivisions (ii) and (iii), the unemployment
22 agency may recover the amount obtained as a result of the knowing
23 false statement or representation or the knowing and willful
24 failure to disclose a material fact and may also recover damages
25 equal to that amount. For a second or subsequent violation
26 described in this subdivision that occurs after the unemployment
27 agency has sent proper notice of the original violation to the

1 interested parties, the unemployment agency may recover damages
2 equal to 1.5 times the amount obtained.

3 (ii) Subject to subdivision (iii), if the unemployment agency
4 determines or redetermines or an administrative law judge, the
5 Michigan compensation appellate commission, or a court orders that
6 an impostor committed identity theft, the unemployment agency shall
7 attempt to recover from the impostor the amount obtained as a
8 result of the knowing false statement or representation or the
9 knowing and willful failure to disclose a material fact and may
10 also recover damages equal to 4 times that amount. As used in this
11 subdivision:

12 (A) "Identity theft" means that term as defined in section 24
13 of chapter VII of the code of criminal procedure, 1927 PA 175, MCL
14 767.24.

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

16 (iii) The unemployment agency may refer a matter under
17 subdivision (i) or (ii) to the prosecuting attorney of the county
18 in which the alleged violation occurred for prosecution. If the
19 unemployment agency has not made its own determination under
20 subdivision (i) or (ii), the recovery sought by the prosecutor must
21 include the amount described in subdivision (i) or (ii) and 1 or
22 more of the following penalties if the amount obtained is \$1,000.00
23 or more:

24 (A) Subject to redesignation under subsection (l), if the
25 amount obtained or withheld from payment as a result of the knowing
26 false statement or representation or the knowing and willful
27 failure to disclose a material fact is \$1,000.00 or more but less

1 than \$25,000.00, then 1 of the following:

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

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

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

7 (B) 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 \$25,000.00 or more, then 1 of the following:

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

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

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

16 (C) If the knowing false statement or representation or the
17 knowing and willful failure to disclose a material fact made to
18 obtain or withhold an amount from payment does not result in a loss
19 to the unemployment agency, then the unemployment agency shall
20 attempt to recover an amount equal to 3 times the amount that would
21 have been obtained by the knowing false statement or representation
22 or the knowing and willful failure to disclose a material fact, but
23 not less than \$1,000.00, and 1 of the following:

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

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

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

1 years.

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

18 (2) Notwithstanding subdivision (1), any employer or an owner,
19 director, officer, or agent of an employer or any other person
20 failing to submit, when due, any quarterly wage detail report
21 required by section 13(2), or submitting an incomplete or erroneous
22 report and failing to file a corrected report within 14 days after
23 notification of an error by the agency, is subject to an
24 administrative fine of ~~\$50.00~~**\$25.00** for each report if the report
25 is filed not later than 30 days after the date the report is due,
26 ~~\$250.00~~**\$125.00** if the report is filed more than 1 calendar quarter
27 after the date the report is due, and an additional ~~\$250.00~~**\$125.00**

1 for each additional calendar quarter that the report is late. **THE**
2 **UNEMPLOYMENT AGENCY SHALL WAIVE AN ADMINISTRATIVE FINE UNDER THIS**
3 **SUBDIVISION IF THE REPORT WAS THE FIRST OF ITS TYPE THAT WAS DUE**
4 **FROM A FIRST-TIME FILER AND THE VIOLATION WAS NOT DELIBERATE OR**
5 **WILLFUL.**

6 (3) If a report is filed after the prescribed time and it is
7 shown to the satisfaction of the unemployment agency that the
8 failure to submit the report was due to reasonable cause, the
9 unemployment agency shall not impose a fine. The assessment of a
10 fine as provided in this subsection constitutes a final
11 determination unless the employer files an application with the
12 unemployment agency for a redetermination of the assessment
13 pursuant to 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 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) An individual who violates this section is subject to the
27 sanctions of this section and, if applicable, section 62.

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

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

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

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

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

(l) A person who obtains or withholds an amount of unemployment benefits or payments exceeding \$3,500.00 but less than \$25,000.00 as a result of a knowing false statement or

1 representation or the knowing and willful failure to disclose a
2 material fact is guilty of a felony punishable as provided in
3 subsection (a) (ii) (A) or (iv) (A) or subsection (b) (iii) (A) .

4 (m) The unemployment agency shall not make a determination
5 under this section that is based solely on a computer-identified
6 discrepancy in information supplied by the claimant or employer. An
7 unemployment agency employee or agent must examine the facts and
8 independently determine that the claimant or the employer is
9 responsible for a willful or intentional violation before the
10 unemployment agency makes a determination under this section.

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