

Act No. 226
Public Acts of 2017
Approved by the Governor
December 20, 2017
Filed with the Secretary of State
December 21, 2017
EFFECTIVE DATE: July 1, 2018

**STATE OF MICHIGAN
99TH LEGISLATURE
REGULAR SESSION OF 2017**

Introduced by Rep. Hertel

ENROLLED HOUSE BILL No. 5166

AN ACT to amend 1936 (Ex Sess) PA 1, entitled "An act to protect the welfare of the people of this state through the establishment of an unemployment compensation fund, and to provide for the disbursement thereof; to create certain other funds; to create the Michigan employment security commission, and to prescribe its powers and duties; to provide for the protection of the people of this state from the hazards of unemployment; to levy and provide for contributions from employers; to levy and provide for obligation assessments; to provide for the collection of those contributions and assessments; to enter into reciprocal agreements and to cooperate with agencies of the United States and of other states charged with the administration of any unemployment insurance law; to furnish certain information to certain governmental agencies for use in administering public benefit and child support programs and investigating and prosecuting fraud; to provide for the payment of benefits; to provide for appeals from redeterminations, decisions and notices of assessments; and for referees and a board of review to hear and decide the issues arising from redeterminations, decisions and notices of assessment; to provide for the cooperation of this state and compliance with the provisions of the social security act and the Wagner-Peyser act passed by the Congress of the United States of America; to provide for the establishment and maintenance of free public employment offices; to provide for the transfer of funds; to make appropriations for carrying out the provisions of this act; to prescribe remedies and penalties for the violation of this act; and to repeal all acts and parts of acts inconsistent with this act," by amending section 54 (MCL 421.54), as amended by 2016 PA 522.

The People of the State of Michigan enact:

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

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

(ii) 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 subdivision (i), the recovery sought by the prosecutor must include the amount described in subdivision (i) and 1 or more of the following penalties:

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

(I) Imprisonment for not more than 1 year.

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

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

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

(I) Imprisonment for not more than 2 years.

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

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

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

(I) Imprisonment for not more than 5 years.

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

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

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

(iv) The unemployment agency may refer a matter under subdivision (iii) 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 subdivision (iii), the recovery sought by the prosecutor must include the amount described in subdivision (iii) and 1 or more of the following penalties:

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

(I) Imprisonment for not more than 1 year.

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

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

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

(I) Imprisonment for not more than 2 years.

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

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

(b) An employing unit or an owner, director, officer, or agent of an employing unit, a claimant, an employee of the unemployment agency, or any other person who makes a false statement or representation knowing it to be false, or knowingly and willfully with intent to defraud fails to disclose a material fact, to obtain or increase a benefit or other payment under this act or under the unemployment compensation law of any state or of the federal government, either for himself or herself or any other person, to prevent or reduce the payment of benefits to an individual entitled thereto or to avoid becoming or remaining a subject employer, or to avoid or reduce a contribution or other payment required from an employing unit under this act or under the unemployment compensation law of any state or of the federal government is subject to administrative fines and is punishable as provided in this subsection, notwithstanding any other penalties imposed under any other statute of this state or of the United States. For benefit years beginning on or after May 1, 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) Subject to subdivisions (ii) and (iii), 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 that amount. For a second or subsequent violation described in this subdivision that occurs after the unemployment agency has sent proper notice of the original violation to the interested parties, the unemployment agency may recover damages equal to 1.5 times the amount obtained.

(ii) Subject to subdivision (iii), if the unemployment agency determines or redetermines or an administrative law judge, the Michigan compensation appellate commission, or a court orders that an impostor committed identity theft,

the unemployment agency shall attempt to recover from the impostor 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. As used in this subdivision:

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

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

(iii) The unemployment agency may refer a matter under subdivision (i) or (ii) 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 subdivision (i) or (ii), the recovery sought by the prosecutor must include the amount described in subdivision (i) or (ii) and 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 amount obtained or withheld from payment as a result of the knowing false statement or representation or the knowing and willful failure to disclose a material fact is \$1,000.00 or more but less than \$25,000.00, then 1 of the following:

(I) Imprisonment for not more than 1 year.

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

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

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

(I) Imprisonment for not more than 2 years.

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

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

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

(I) Imprisonment for not more than 2 years.

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

(III) A combination of (I) and (II) that does not exceed 2 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 is subject to the assessment of an administrative fine for each report not submitted within the time prescribed by the unemployment agency. In the case of contribution reports not received within 10 days after the end of the reporting month the fine is 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 runs 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 is \$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 and failing to file a corrected report within 14 days after notification of an error by the agency, is subject to an administrative fine of \$50.00 for each 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.

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

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

or member of the Michigan compensation appellate commission knowingly, intentionally, and for financial gain, makes an illegal disclosure of confidential information obtained under section 13(2), he or she is guilty of a felony, punishable by imprisonment for not more than 1 year and 1 day.

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

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

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

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

(i) An individual who violates this section is subject to the 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 representation or the knowing and willful failure to disclose a material fact is guilty of a felony punishable as provided in subsection (a)(ii)(A) or (iv)(A) or subsection (b)(iii)(A).

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

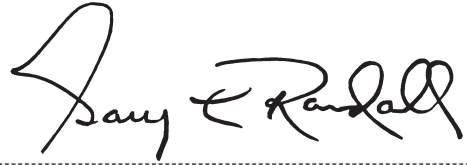
Enacting section 1. This amendatory act takes effect July 1, 2018.

Enacting section 2. This amendatory act applies to original determinations and redeterminations made on or after July 1, 2018. Original determinations and redeterminations made before July 1, 2018 must be processed pursuant to this section as it existed before July 1, 2018.

Enacting section 3. This amendatory act does not take effect unless all of the following bills of the 99th Legislature are enacted into law:

- (a) House Bill No. 5165.
- (b) House Bill No. 5167.
- (c) House Bill No. 5168.
- (d) House Bill No. 5169.
- (e) House Bill No. 5170.
- (f) House Bill No. 5171.
- (g) House Bill No. 5172.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor