

HOUSE BILL No. 5166

October 24, 2017, Introduced by Rep. Hertel and referred to the Committee on Oversight.

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

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~~**MUST** include the amount described in
10 subdivision (i) and ~~shall also include~~ 1 or more of the following
11 penalties:

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

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

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

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

21 (B) If the amount obtained or withheld from payment as a
22 result of the intentional failure to comply is \$25,000.00 or more
23 but less than \$100,000.00, then 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) If the amount obtained or withheld from payment as a
3 result of the intentional failure to comply is more than
4 \$100,000.00, then 1 of the following:

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

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

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

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

15 (iv) The unemployment agency may refer a matter under
16 subdivision (iii) to the prosecuting attorney of the county in
17 which the alleged violation occurred for prosecution. If the
18 unemployment agency has not made its own determination under
19 subdivision (iii), the recovery sought by the prosecutor ~~shall~~ **MUST**
20 include the amount described in subdivision (iii) and ~~shall also~~
21 ~~include~~ 1 or more of the following penalties:

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

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

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

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

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

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

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

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

11 (b) ~~Any~~ **AN** employing unit or an owner, director, officer, or
12 agent of an employing unit, a claimant, an employee of the
13 unemployment agency, or any other person who makes a false
14 statement or representation knowing it to be false, or knowingly
15 and willfully with intent to defraud fails to disclose a material
16 fact, to obtain or increase a benefit or other payment under this
17 act or under the unemployment compensation law of any state or of
18 the federal government, either for himself or herself or any other
19 person, to prevent or reduce the payment of benefits to an
20 individual entitled thereto or to avoid becoming or remaining a
21 subject employer, or to avoid or reduce a contribution or other
22 payment required from an employing unit under this act or under the
23 unemployment compensation law of any state or of the federal
24 government ~~, as applicable,~~ is subject to administrative fines and
25 is punishable as provided in this subsection, notwithstanding any
26 other penalties imposed under any other statute of this state or of
27 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) 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, 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 ~~2 times~~ 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 ~~4~~**1.5** 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, 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:**

1 (A) "IDENTITY THEFT" MEANS THAT TERM AS DEFINED IN SECTION 24
2 OF CHAPTER VII OF THE CODE OF CRIMINAL PROCEDURE, 1927 PA 175, MCL
3 767.24.

4 (B) "IMPOSTOR" MEANS THAT TERM AS DEFINED IN SECTION 54F.

5 (iii) The unemployment agency may refer ~~the~~ **A** matter **UNDER**
6 **SUBDIVISION (i) OR (ii)** to the prosecuting attorney of the county
7 in which the alleged violation occurred for prosecution. If the
8 unemployment agency has not made its own determination under ~~this~~
9 subdivision **(i) OR (ii)**, the recovery sought by the prosecutor
10 ~~shall~~ **MUST** include the amount described in ~~this~~ subdivision **(i) OR**
11 **(ii)** and ~~shall also include~~ 1 or more of the following penalties if
12 the amount obtained is \$1,000.00 or more:

13 (A) Subject to redesignation under subsection (l), if the
14 amount obtained or withheld from payment as a result of the knowing
15 false statement or representation or the knowing and willful
16 failure to disclose a material fact is \$1,000.00 or more but less
17 than \$25,000.00, then 1 of the following:

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

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

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

23 (B) If the amount obtained or withheld from payment as a
24 result of the knowing false statement or representation or the
25 knowing and willful failure to disclose a material fact is
26 \$25,000.00 or more, then 1 of the following:

27 (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 ~~commission~~, **UNEMPLOYMENT AGENCY**, then a ~~recovery~~ **THE**

UNEMPLOYMENT AGENCY shall ~~be sought~~ **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 ~~shall be~~ **IS** subject to the assessment of an administrative fine for each report not submitted within the time prescribed by the unemployment agency. ~~, as follows:~~ In the case of contribution reports not received within 10 days after the end of the reporting month the fine ~~shall be~~ **IS** 10% of the contributions due on the

1 reports but not less than \$5.00 or more than \$25.00 for a report.
 2 However, if the tenth day falls on a Saturday, Sunday, legal
 3 holiday, or other unemployment agency nonwork day, the 10-day
 4 period ~~shall run~~ **RUNS** until the end of the next day that is not a
 5 Saturday, Sunday, legal holiday, or other unemployment agency
 6 nonwork day. In the case of all other reports referred to in this
 7 subsection, the fine ~~shall be~~ **IS** \$10.00 for a report.

8 (2) Notwithstanding subdivision (1), any employer or an owner,
 9 director, officer, or agent of an employer or any other person
 10 failing to submit, when due, any quarterly wage detail report
 11 required by section 13(2), or submitting an incomplete or erroneous
 12 report **AND FAILING TO FILE A CORRECTED REPORT WITHIN 14 DAYS AFTER**
 13 **NOTIFICATION OF AN ERROR BY THE AGENCY**, is subject to an
 14 administrative fine of \$50.00 for each ~~untimely report, incomplete~~
 15 ~~report, or erroneous report~~ if the report is filed not later than
 16 30 days after the date the report is due, \$250.00 if the report is
 17 filed more than 1 calendar quarter after the date the report is
 18 due, and an additional \$250.00 for each additional calendar quarter
 19 that the report is late. ~~, except that no penalty shall apply if~~
 20 ~~the employer files a corrected report within 14 days after~~
 21 ~~notification of an error by the agency.~~

22 (3) If a report is filed after the prescribed time and it is
 23 shown to the satisfaction of the ~~commission~~ **UNEMPLOYMENT AGENCY**
 24 that the failure to submit the report was due to reasonable cause,
 25 ~~a fine shall~~ **THE UNEMPLOYMENT AGENCY SHALL** not be imposed. **IMPOSE A**
 26 **FINE**. The assessment of a fine as provided in this subsection
 27 constitutes a final determination unless the employer files an

1 application with the unemployment agency for a redetermination of
2 the assessment ~~in accordance with~~ **PURSUANT TO** section 32a.

3 (d) If any employee or agent of the unemployment agency or
4 member of the Michigan compensation appellate commission willfully
5 discloses confidential information obtained from any employing unit
6 or individual in the administration of this act for any purpose
7 inconsistent with or contrary to the purposes of this act, or a
8 person who obtains a list of applicants for work or of claimants or
9 recipients of benefits under this act uses or permits use of that
10 list for a political purpose or for a purpose inconsistent with or
11 contrary to the purposes of this act, he or she is guilty of a
12 misdemeanor punishable by imprisonment for not more than 90 days or
13 a fine of not more than \$1,000.00, or both. Notwithstanding the
14 preceding sentence, if any unemployment agency employee, agent of
15 the unemployment agency, or member of the Michigan compensation
16 appellate commission knowingly, intentionally, and for financial
17 gain, makes an illegal disclosure of confidential information
18 obtained under section 13(2), he or she is guilty of a felony,
19 punishable by imprisonment for not more than 1 year and 1 day.

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

27 (f) A person associated with a college, university, or public

1 agency of this state who makes use of any information obtained from
2 the unemployment agency in connection with a research project of a
3 public service nature, in a manner as to reveal the identity of any
4 individual or employing unit from or concerning whom the
5 information was obtained by the unemployment agency, or for any
6 purpose other than use in connection with that research project, is
7 guilty of a misdemeanor punishable by imprisonment for not more
8 than 90 days or a fine of not more than \$1,000.00, or both.

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

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

15 (i) ~~If a determination is made that an~~ **AN** individual ~~has~~
16 ~~violated~~ **WHO VIOLATES** this section, ~~the individual is~~ subject to
17 the sanctions of this section and, if applicable, ~~the requirements~~
18 ~~of~~ section 62.

19 (j) Amounts recovered by the ~~commission~~ **UNEMPLOYMENT AGENCY**
20 under subsection (a) ~~shall~~ **MUST** be credited first to the
21 unemployment compensation fund and thereafter amounts recovered
22 that are in excess of the amounts obtained or withheld as a result
23 of the violation of subsection (a) ~~shall~~ **MUST** be credited to the
24 penalty and interest account of the contingent fund. Amounts
25 recovered by the ~~commission~~ **UNEMPLOYMENT AGENCY** under subsections
26 (c), (d), (e), and (f) ~~shall~~ **MUST** be credited to the penalty and
27 interest account of the contingent fund ~~in accordance with~~ **PURSUANT**

1 TO section 10(6).

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

4 (i) From the penalty assessment recovered, an amount equal to
5 15% of any benefit overpayments resulting from fraud ~~shall~~**MUST** be
6 credited to the unemployment compensation fund.

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

10 (iii) For all other recoveries, the balance ~~shall~~**MUST** first
11 be credited to the unemployment compensation fund for repayment of
12 any remaining amounts owed, and then to the contingent fund to be
13 applied first to administrative sanctions and damages and then to
14 interest.

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

22 (m) ~~An~~**THE** unemployment agency **SHALL NOT MAKE A** determination
23 under this section ~~shall not be~~**THAT IS** based solely on a computer-
24 identified discrepancy in information supplied by the claimant or
25 employer. An unemployment agency employee or agent must examine the
26 facts and independently determine that the claimant or the employer
27 is responsible for a willful or intentional violation before the

1 **UNEMPLOYMENT** agency makes a determination under this section.

2 Enacting section 1. This amendatory act applies to original
3 determinations made on or after July 1, 2018.

4 Enacting section 2. This amendatory act does not take effect
5 unless all of the following bills of the 99th Legislature are
6 enacted into law:

7 (a) Senate Bill No.____ or House Bill No. 5169 (request no.
8 03872'17).

9 (b) Senate Bill No.____ or House Bill No. 5167 (request no.
10 03873'17).

11 (c) Senate Bill No.____ or House Bill No. 5172 (request no.
12 03874'17).

13 (d) Senate Bill No.____ or House Bill No. 5170 (request no.
14 03876'17).

15 (e) Senate Bill No.____ or House Bill No. 5165 (request no.
16 03877'17).

17 (f) Senate Bill No.____ or House Bill No. 5168 (request no.
18 03878'17).

19 (g) Senate Bill No.____ or House Bill No. 5171 (request no.
20 03880'17).