

Act No. 280
Public Acts of 1993
Approved by the Governor
December 22, 1993
Filed with the Secretary of State
December 28, 1993

**STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1993**

Introduced by Reps. Munsell and DeLange

ENROLLED HOUSE BILL No. 5135

AN ACT to amend section 54 of Act No. 1 of the Public Acts of the Extra Session of 1936, entitled as amended "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 provide for the collection of such contributions; 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 the provisions of this act; and to repeal all acts and parts of acts inconsistent with the provisions of this act," as amended by Act No. 10 of the Public Acts of 1991, being section 421.54 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Section 54 of Act No. 1 of the Public Acts of the Extra Session of 1936, as amended by Act No. 10 of the Public Acts of 1991, being section 421.54 of the Michigan Compiled Laws, is amended to read as follows:

Sec. 54. (a) A person who shall willfully violate or intentionally fail to comply with any of the provisions of this act, or a regulation of the commission promulgated under the authority of this act for which a penalty is not otherwise provided by this act is punishable as provided in subdivision (i), (ii), (iii), or (iv), notwithstanding any other statute of this state or of the United States:

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

(ii) The commission may refer the matter to the prosecuting attorney of the county in which the alleged violation occurred for prosecution. If the commission has not made its own determination under subdivision (i), the penalty sought by the prosecutor shall include the amount described in subdivision (i) and shall also include 1 or more of the following penalties:

(A) 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 commission determines that an amount has been obtained or withheld as a result of a knowing violation of this act, the commission 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 commission may refer a matter under subdivision (iii) to the prosecuting attorney of the county in which the alleged violation occurred for prosecution. If the commission has not made its own determination under subdivision (iii), the penalty sought by the prosecutor shall include the amount described in subdivision (iii) and shall also include 1 or more of the following penalties:

(A) 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) Any employing unit or an officer or agent of an employing unit, a claimant, an employee of the commission, 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, as applicable, is punishable as follows, notwithstanding any other penalties imposed under any other statute of this state or of the United States:

(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 \$1,000.00, the commission 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.

(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 \$1,000.00 or more, the commission 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 3 times that amount. The commission may refer the matter to the prosecuting attorney of the county in which the alleged violation occurred for prosecution. If the commission has not made its own determination under this subdivision, the penalty sought by the prosecutor shall include the amount described in this subdivision and shall also include 1 or more of the following penalties:

(A) 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 commission, then a penalty shall be sought 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 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 commission shall be subject to the assessment of a penalty for each report not submitted within the time prescribed by the commission, as follows: In the case of contribution reports not received within 10 days after the end of the reporting month the penalty shall be 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 commission nonwork day, such 10-day period shall run until the end of the next day which is not a Saturday, Sunday, legal holiday, or other commission nonwork day. In the case of all other reports referred to in this subsection the penalty shall be \$10.00 for a report.

(2) Notwithstanding subdivision (1), if the commission concludes after completion of the first 4 quarters of wage reporting under section 13(2) that the average number of employers not timely reporting the wage information as required is 5% or more, an employer shall be liable for a penalty in the following amount for each employee with respect to whom the employer is required to file a report but who is not included in the report, or for whom the required information is not accurately reported, or for whom the report is not filed within 10 days after the time prescribed by the commission: for the first failure for 1 quarter in any 8 consecutive quarters, \$5.00 for each employee; for the second failure for any quarter in 8 consecutive quarters, \$10.00 for each employee; and for the third failure for any quarter in 8 consecutive quarters, and for any subsequent quarters, \$25.00 for each employee, but the total amount imposed on the delinquent employer for all such failures during any calendar year shall not exceed \$1,000.00. The assessment of the penalty shall begin with the report for the first quarter of 1987, and the 4 quarters of 1986 shall be included in determining the 8 consecutive quarters.

(3) When a report is filed after the prescribed time and it is shown to the satisfaction of the commission that the failure to submit the report was due to reasonable cause, a penalty shall not be imposed. The assessment of a penalty as provided in this subsection shall constitute a determination which shall be final unless the employer files with the commission an application for a redetermination of the assessment in accordance with section 32a.

(d) If any commissioner, employee, or agent of the commission or member of the appeal board willfully makes a disclosure of 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 having obtained a list of applicants for work, or of claimants or recipients of benefits, under this act shall use or permit the 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 and upon conviction shall be punished by imprisonment for not more than 90 days, or by a fine of not more than \$1,000.00, or both. Notwithstanding the preceding sentence, if any commissioner, commission employee, agent of the commission, or member of the board of review 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 commission, represents himself or herself to be an employee of the commission to an employing unit or person for the purpose of securing information regarding the unemployment or employment record of an individual is guilty of a misdemeanor and upon conviction shall be punished by imprisonment for not more than 90 days, or by 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 commission in connection with a research project of a public service nature, in such a manner as to reveal the identity of any individual or employing unit from or concerning whom the information was obtained by the commission, or for any purpose other than use in connection with such a research project, is guilty of a misdemeanor

and upon conviction shall be punished by imprisonment for not more than 90 days, or by a fine of not more than \$1,000.00, or both.

(g) As used in this section, "person" includes an individual, copartnership, joint venture, corporation, receiver, or trustee in bankruptcy.

(h) This section shall apply 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) If a determination is made that an individual has violated this section, the individual is subject to the penalty provisions of this section and, where applicable, the requirements of section 62.

(j) Amounts recovered by the commission pursuant to subsection (a) or (b) shall 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 subsections (a) and (b) shall be credited to the penalty and interest account of the contingent fund. Fines and penalties recovered by the commission pursuant to subsections (c), (d), (e), and (f) shall be credited to the penalty and interest account of the contingent fund in accordance with section 10(6).

(k) The revisions in the penalties in subsections (a) and (b) provided by the 1991 amendatory act that added this subsection shall apply to conduct that began before April 1, 1992, but that continued on or after April 1, 1992, and to conduct that began on or after April 1, 1992.

This act is ordered to take immediate effect.

Co-Clerk of the House of Representatives.

Secretary of the Senate.

Approved -----

Governor.