



HOUSE BILL No. 5135

October 14, 1993, Introduced by Reps. Munsell and DeLange and referred to the Committee on Labor.

A bill to amend section 54 of Act No. 1 of the Public Acts of the Extra Session of 1936, entitled as amended "Michigan employment security 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:

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

5 Sec. 54. (a) A person who shall willfully violate or inten-
6 tionally fail to comply with any of the provisions of this act,
7 or a regulation of the commission promulgated under the authority
8 of this act for which a penalty is not otherwise provided by this
9 act is punishable as provided in subdivision (i), (ii), (iii), or

1 (iv), notwithstanding any other statute of this state or of the
2 United States:

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

8 (ii) The commission may refer the matter to the prosecuting
9 attorney of the county in which the alleged violation occurred
10 for prosecution. If the commission has not made its own determi-
11 nation under subdivision (i), the penalty sought by the prosecu-
12 tor shall include the amount described in subdivision (i) and
13 shall also include 1 or more of the following penalties:

14 (A) If the amount obtained or withheld from payment as a
15 result of the intentional failure to comply is less than
16 \$25,000.00, then 1 of the following:

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

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

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

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

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

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

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

3 (C) If the amount obtained or withheld from payment as a
4 result of the intentional failure to comply is more than
5 \$100,000.00, then 1 of the following:

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

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

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

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

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

23 (A) If the amount obtained or withheld from payment as a
24 result of the knowing violation is \$100,000.00 or less, then 1 of
25 the following:

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

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

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

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

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

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

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

13 (b) Any employing unit or an officer or agent of an employ-
14 ing unit, a claimant, an employee of the commission, or any other
15 person who makes a false statement or representation knowing it
16 to be false, or knowingly and willfully with intent to defraud
17 fails to disclose a material fact, to obtain or increase a bene-
18 fit or other payment under this act or under the unemployment
19 compensation law of any state or of the federal government,
20 either for himself or herself or any other person, to prevent or
21 reduce the payment of benefits to an individual entitled thereto
22 or to avoid becoming or remaining a subject employer, or to avoid
23 or reduce a contribution or other payment required from an
24 employing unit under this act or under the unemployment compensa-
25 tion law of any state or of the federal government, as applica-
26 ble, is punishable as follows, notwithstanding any other

1 penalties imposed under any other statute of this state or of the
2 United States:

3 (i) If the amount obtained as a result of the knowing false
4 statement or representation or the knowing and willful failure to
5 disclose a material fact is less than \$1,000.00, the commission
6 may recover the amount obtained as a result of the knowing false
7 statement or representation or the knowing and willful failure to
8 disclose a material fact and may also recover damages equal to 2
9 times that amount.

10 (ii) If the amount obtained as a result of the knowing false
11 statement or representation or the knowing and willful failure to
12 disclose a material fact is \$1,000.00 or more, the commission may
13 recover the amount obtained as a result of the knowing false
14 statement or representation or the knowing and willful failure to
15 disclose a material fact and may also recover damages equal to 3
16 times that amount. The commission may refer the matter to the
17 prosecuting attorney of the county in which the alleged violation
18 occurred for prosecution. If the commission has not made its own
19 determination under this subdivision, the penalty sought by the
20 prosecutor shall include the amount described in this subdivision
21 and shall also include 1 or more of the following penalties:

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

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

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

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

6 (B) If the amount obtained or withheld from payment as a
7 result of the knowing false statement or representation or the
8 knowing and willful failure to disclose a material fact is
9 \$25,000.00 or more, then 1 of the following:

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

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

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

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

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

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

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

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

17 (2) Notwithstanding subdivision (1), if the commission con-
18 cludes after completion of the first 4 quarters of wage reporting
19 under section 13(2) that the average number of employers not
20 timely reporting the wage information as required is 5% or more,
21 an employer shall be liable for a penalty in the following amount
22 for each employee with respect to whom the employer is required
23 to file a report but who is not included in the report, or for
24 whom the required information is not accurately reported, or for
25 whom the report is not filed within 10 days after the time pre-
26 scribed by the commission: for the first failure for 1 quarter
27 in any 8 consecutive quarters, \$5.00 for each employee; for the

1 second failure for any quarter in 8 consecutive quarters, \$10.00
2 for each employee; and for the third failure for any quarter in 8
3 consecutive quarters, and for any subsequent quarters, \$25.00 for
4 each employee, but the total amount imposed on the delinquent
5 employer for all such failures during any calendar year shall not
6 exceed \$1,000.00. The assessment of the penalty shall begin with
7 the report for the first quarter of 1987, and the 4 quarters of
8 1986 shall be included in determining the 8 consecutive
9 quarters.

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

18 (d) If any commissioner, employee, or agent of the commis-
19 sion or member of the appeal board willfully makes a disclosure
20 of confidential information obtained from any employing unit or
21 individual in the administration of this act for any purpose
22 inconsistent with or contrary to the purposes of this act, or a
23 person who having obtained a list of applicants for work, or of
24 claimants or recipients of benefits, under this act shall use or
25 permit the use of that list for a political purpose or for a pur-
26 pose inconsistent with or contrary to the purposes of this act,
27 he or she is guilty of a misdemeanor and upon conviction shall be

1 punished by imprisonment for not more than 90 days, or by a fine
2 of not more than \$1,000.00, or both. Notwithstanding the preced-
3 ing sentence, if any commissioner, commission employee, agent of
4 the commission, or member of the board of review knowingly,
5 intentionally, and for financial gain, makes an illegal disclo-
6 sure of confidential information obtained under section 13(2), he
7 or she ~~shall be~~ IS guilty of a felony, punishable by imprison-
8 ment for not more than 1 year and 1 day.

9 (e) A person who, without proper authority from the commis-
10 sion, represents himself or herself to be an employee of the com-
11 mission to an employing unit or person for the purpose of secur-
12 ing information regarding the unemployment or employment record
13 of an individual is guilty of a misdemeanor and upon conviction
14 shall be punished by imprisonment for not more than 90 days, or
15 by a fine of not more than \$1,000.00, or both.

16 (f) A person associated with a college, university, or
17 public agency of this state who makes use of any information
18 obtained from the commission in connection with a research
19 project of a public service nature, in such a manner as to reveal
20 the identity of any individual or employing unit from or concern-
21 ing whom the information was obtained by the commission, or for
22 any purpose other than use in connection with such a research
23 project, is guilty of a misdemeanor and upon conviction shall be
24 punished by imprisonment for not more than 90 days, or by a fine
25 of not more than \$1,000.00, or both.

1 (g) ~~A person as~~ AS used in this section, "PERSON" includ^{es}
 2 an individual, copartnership, joint venture, corporation,
 3 receiver, or trustee in bankruptcy.

4 (h) This section shall apply even if the amount obtained o^f
 5 withheld from payment has been reported or reported and paid by
 6 an individual involved in a violation of subsection (a) or (b).

7 (i) If a determination is made that an individual has vio-
 8 lated this section, the individual is subject to the penalty pr^o-
 9 visions of this section and, where applicable, the requirements
 10 of section 62.

11 (j) ~~Amounts recovered by the commission pursuant to this~~
 12 ~~section shall be credited to the penalty and interest account of~~
 13 ~~the contingent fund. Not less than annually the commission shall~~
 14 ~~transfer to the unemployment trust fund amounts recovered under~~
 15 ~~this section to the extent that the unemployment trust fund has~~
 16 ~~not previously been credited for the amount obtained as a result~~
 17 ~~of the violation of subsection (a) or (b).~~ AMOUNTS RECOVERED BY
 18 THE COMMISSION PURSUANT TO SUBSECTION (A) OR (B) SHALL BE CRED-
 19 ITED FIRST TO THE UNEMPLOYMENT COMPENSATION FUND AND THEREAFTER
 20 AMOUNTS RECOVERED THAT ARE IN EXCESS OF THE AMOUNTS OBTAINED OR
 21 WITHHELD AS A RESULT OF THE VIOLATION OF SUBSECTION (A) AND (B)
 22 SHALL BE CREDITED TO THE PENALTY AND INTEREST ACCOUNT OF THE CON-
 23 TINGENT FUND. FINES AND PENALTIES RECOVERED BY THE COMMISSION
 24 PURSUANT TO SUBSECTIONS (C), (D), (E), AND (F) SHALL BE CREDITED
 25 TO THE PENALTY AND INTEREST ACCOUNT OF THE CONTINGENT FUND IN
 26 ACCORDANCE WITH SECTION 10(6).

1 (k) The revisions in the penalties in subsections (a) and
2 (b) provided by the 1991 amendatory act that added this
3 subsection shall apply to conduct that began before ~~the effec-~~
4 ~~tive date of this subsection~~ APRIL 1, 1992, but that continued
5 on or after ~~the effective date of this subsection~~ APRIL 1,
6 1992, and to conduct that began on or after ~~the effective date~~
7 ~~of this subsection~~ APRIL 1, 1992.