

HOUSE BILL No. 4450

March 16, 2011, Introduced by Rep. Somerville and referred to the Committee on Commerce.

A bill to amend 1936 (Ex Sess) PA 1, entitled
"Michigan employment security act,"
by amending section 54 (MCL 421.54), as amended by 2002 PA 192.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 54. (a) A person who willfully violates or intentionally
2 fails to comply with any of the provisions of this act, or a
3 regulation of the ~~commission~~ **UNEMPLOYMENT AGENCY** promulgated under
4 the authority of this act for which a penalty is not otherwise
5 provided by this act is ~~punishable as provided in subdivision (i),~~
6 ~~(ii), (iii), or (iv),~~ **SUBJECT TO THE FOLLOWING SANCTIONS,**
7 notwithstanding any other statute of this state or of the United
8 States:

9 (i) If the ~~commission~~ **UNEMPLOYMENT AGENCY** determines that an
10 amount has been obtained or withheld as a result of the intentional

1 failure to comply with this act, the ~~commission~~ **UNEMPLOYMENT AGENCY**
2 may recover the amount obtained as a result of the intentional
3 failure to comply plus damages equal to 3 times that amount.

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

11 (A) If the amount obtained or withheld from payment as a
12 result of the intentional failure to comply is less than
13 \$25,000.00, 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 intentional failure to comply is \$25,000.00 or more
21 but less than \$100,000.00, then 1 of 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 (C) If the amount obtained or withheld from payment as a

1 result of the intentional failure to comply is more than
2 \$100,000.00, then 1 of the following:

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

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

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

8 (iii) If the ~~commission~~-**UNEMPLOYMENT AGENCY** determines that an
9 amount has been obtained or withheld as a result of a knowing
10 violation of this act, the ~~commission~~-**UNEMPLOYMENT AGENCY** may
11 recover the amount obtained as a result of the knowing violation
12 and may also recover damages equal to 3 times that amount.

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

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

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

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

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

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

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

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

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

9 (b) Any employing unit or an officer or agent of an employing
10 unit, a claimant, an employee of the ~~commission~~ **UNEMPLOYMENT**
11 **AGENCY**, or any other person who makes a false statement or
12 representation knowing it to be false, or knowingly and willfully
13 with intent to defraud fails to disclose a material fact, to obtain
14 or increase a benefit or other payment under this act or under the
15 unemployment compensation law of any state or of the federal
16 government, either for himself or herself or any other person, to
17 prevent or reduce the payment of benefits to an individual entitled
18 thereto or to avoid becoming or remaining a subject employer, or to
19 avoid or reduce a contribution or other payment required from an
20 employing unit under this act or under the unemployment
21 compensation law of any state or of the federal government, as
22 applicable, is **SUBJECT TO ADMINISTRATIVE FINES AND IS** punishable as
23 follows, notwithstanding any other penalties imposed under any
24 other statute of this state or of the United States:

25 (i) If the amount obtained as a result of the knowing false
26 statement or representation or the knowing and willful failure to
27 disclose a material fact is less than \$500.00, the ~~commission~~

1 **UNEMPLOYMENT AGENCY** may recover the amount obtained as a result of
2 the knowing false statement or representation or the knowing and
3 willful failure to disclose a material fact and may also recover
4 damages equal to 2 times that amount. **FOR A SECOND OR SUBSEQUENT**
5 **VIOLATION DESCRIBED IN THIS SUBDIVISION, THE UNEMPLOYMENT AGENCY**
6 **MAY RECOVER DAMAGES EQUAL TO 4 TIMES THE AMOUNT OBTAINED.**

7 (ii) If the amount obtained as a result of the knowing false
8 statement or representation or the knowing and willful failure to
9 disclose a material fact is \$500.00 or more, the ~~commission~~

10 **UNEMPLOYMENT AGENCY** shall attempt to recover the amount obtained as
11 a result of the knowing false statement or representation or the
12 knowing and willful failure to disclose a material fact and may
13 also recover damages equal to 4 times that amount. The ~~commission~~
14 **UNEMPLOYMENT AGENCY** may refer the matter to the prosecuting
15 attorney of the county in which the alleged violation occurred for
16 prosecution. If the ~~commission~~-**UNEMPLOYMENT AGENCY** has not made its
17 own determination under this subdivision, the ~~penalty~~-**RECOVERY**
18 sought by the prosecutor shall include the amount described in this
19 subdivision and shall also include 1 or more of the following
20 penalties if the amount obtained is \$1,000.00 or more:

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

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

27 (II) The performance of community service of not more than 1

1 year but not to exceed 2,080 hours.

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

4 (B) If the amount obtained or withheld from payment as a
5 result of the knowing false statement or representation or the
6 knowing and willful failure to disclose a material fact is
7 \$25,000.00 or more, then 1 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 (C) If the knowing false statement or representation or the
14 knowing and willful failure to disclose a material fact made to
15 obtain or withhold an amount from payment does not result in a loss
16 to the ~~commission~~ **UNEMPLOYMENT AGENCY**, then a ~~penalty~~ **RECOVERY**
17 shall be sought equal to 3 times the amount that would have been
18 obtained by the knowing false statement or representation or the
19 knowing and willful failure to disclose a material fact, but not
20 less than \$1,000.00, and 1 of the following:

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

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

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

26 (c) (1) Any employing unit or an officer or agent of an
27 employing unit or any other person failing to submit, when due, any

1 contribution report, wage and employment report, or other reports
 2 lawfully prescribed and required by the ~~commission~~ **UNEMPLOYMENT**
 3 **AGENCY** shall be subject to the assessment of a ~~penalty~~ **AN**
 4 **ADMINISTRATIVE FINE** for each report not submitted within the time
 5 prescribed by the ~~commission~~ **UNEMPLOYMENT AGENCY**, as follows: In
 6 the case of contribution reports not received within 10 days after
 7 the end of the reporting month the ~~penalty~~ **FINE** shall be 10% of the
 8 contributions due on the reports but not less than \$5.00 or more
 9 than \$25.00 for a report. However, if the tenth day falls on a
 10 Saturday, Sunday, legal holiday, or other ~~commission~~ **UNEMPLOYMENT**
 11 **AGENCY** nonwork day, the 10-day period shall run until the end of
 12 the next day which is not a Saturday, Sunday, legal holiday, or
 13 other ~~commission~~ **UNEMPLOYMENT AGENCY** nonwork day. In the case of
 14 all other reports referred to in this subsection, the ~~penalty~~ **FINE**
 15 shall be \$10.00 for a report.

16 (2) Notwithstanding subdivision (1), any employer or an
 17 officer or agent of an employer or any other person failing to
 18 submit, when due, any quarterly wage detail report required by
 19 section 13(2) ~~shall be~~ **IS** subject to a ~~penalty~~ **AN ADMINISTRATIVE**
 20 **FINE** of \$25.00 for each untimely report.

21 (3) ~~When~~ **IF** a report is filed after the prescribed time and it
 22 is shown to the **UNEMPLOYMENT AGENCY'S** satisfaction ~~of the~~
 23 ~~commission~~ that the failure to submit the report was due to
 24 reasonable cause, a ~~penalty~~ **FINE** shall not be imposed. The
 25 assessment of a ~~penalty~~ **FINE** as provided in this subsection ~~shall~~
 26 ~~constitute~~ **CONSTITUTES** a **FINAL** determination ~~which shall be final~~
 27 unless the employer files ~~with the commission~~ an application for a

1 redetermination of the assessment in accordance with section 32a.

2 (d) If any ~~commissioner,~~ employee ~~,~~ or agent of the ~~commission~~
3 **UNEMPLOYMENT AGENCY** or member of the appeal board willfully ~~makes a~~
4 ~~disclosure of~~ **DISCLOSES** confidential information obtained from any
5 employing unit or individual in the administration of this act for
6 any purpose inconsistent with or contrary to the purposes of this
7 act, or a person who ~~having obtained~~ **OBTAINS** a list of applicants
8 for work ~~,~~ or of claimants or recipients of benefits ~~,~~ under this
9 act ~~shall use or permit the~~ **USES OR PERMITS** use of that list for a
10 political purpose or for a purpose inconsistent with or contrary to
11 the purposes of this act, he or she is guilty of a misdemeanor ~~and~~
12 ~~upon conviction shall be punished~~ **PUNISHABLE** by imprisonment for
13 not more than 90 days ~~,~~ or ~~by~~ a fine of not more than \$1,000.00, or
14 both. Notwithstanding the preceding sentence, if any ~~commissioner,~~
15 ~~commission~~ **UNEMPLOYMENT AGENCY** employee, agent of the ~~commission~~
16 **UNEMPLOYMENT AGENCY**, or member of the board of review knowingly,
17 intentionally, and for financial gain, makes an illegal disclosure
18 of confidential information obtained under section 13(2), he or she
19 is guilty of a felony, punishable by imprisonment for not more than
20 1 year and 1 day.

21 (e) A person who, without proper authority from the ~~commission~~
22 **UNEMPLOYMENT AGENCY**, represents himself or herself to be an
23 employee of the ~~commission to an employing unit or person~~
24 **UNEMPLOYMENT AGENCY** for the purpose of securing information
25 regarding the unemployment or employment record of an individual is
26 guilty of a misdemeanor ~~and upon conviction shall be punished~~
27 **PUNISHABLE** by imprisonment for not more than 90 days ~~,~~ or ~~by~~ a fine

1 of not more than \$1,000.00, or both.

2 (f) A person associated with a college, university, or public
3 agency of this state who ~~makes use of~~ **USES** any information obtained
4 from the ~~commission~~ **UNEMPLOYMENT AGENCY** in connection with a
5 research project of a public service nature, in a manner as to
6 reveal the identity of any individual or employing unit from or
7 concerning whom the information was obtained by the ~~commission~~
8 **UNEMPLOYMENT AGENCY**, or for any purpose other than use in
9 connection with that research project, is guilty of a misdemeanor
10 ~~and upon conviction shall be punished~~ **PUNISHABLE** by imprisonment
11 for not more than 90 days ~~, or by a~~ fine of not more than
12 \$1,000.00, or both.

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

16 (h) This section ~~shall apply~~ **APPLIES** even if the amount
17 obtained or withheld from payment has been reported or reported and
18 paid by an individual involved in a violation of subsection (a) or
19 (b).

20 (i) If a determination is made that an individual has violated
21 this section, the individual is subject to the ~~penalty~~ provisions
22 of this section and, ~~where~~ **IF** applicable, the requirements of
23 section 62.

24 (j) Amounts recovered by the ~~commission~~ **UNEMPLOYMENT AGENCY**
25 under subsection (a) ~~or (b)~~ shall be credited first to the
26 unemployment compensation fund and thereafter amounts recovered
27 that are in excess of the amounts obtained or withheld as a result

of the violation of subsection (a) ~~and (b)~~ shall be credited to the penalty and interest account of the contingent fund. ~~Fines and penalties~~ **AMOUNTS** recovered by the ~~commission~~ **UNEMPLOYMENT AGENCY** under 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) AMOUNTS RECOVERED BY THE UNEMPLOYMENT AGENCY UNDER SUBSECTION (B) SHALL BE CREDITED AS FOLLOWS:

(i) DEDUCTIONS FROM UNEMPLOYMENT INSURANCE BENEFITS SHALL BE APPLIED SOLELY TO THE AMOUNT OF THE BENEFITS LIABLE TO BE REPAID UNDER THIS SECTION.

(ii) ALL OTHER RECOVERIES SHALL BE APPLIED FIRST TO ADMINISTRATIVE SANCTIONS AND DAMAGES, THEN TO INTEREST, AND THEN TO THE AMOUNT LIABLE TO BE REPAID. THE AMOUNTS APPLIED TO ADMINISTRATIVE SANCTIONS, DAMAGES, AND INTEREST SHALL BE CREDITED TO THE SPECIAL FRAUD CONTROL FUND CREATED IN SECTION 10.

(l) ~~(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.

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 96th Legislature are enacted into law:

(a) Senate Bill No. _____ or House Bill No. 4449(request no. 01742'11).

(b) Senate Bill No. _____ or House Bill No. 4451(request no.

1 01744'11).

2 (c) Senate Bill No.____ or House Bill No. 4448(request no.

3 01745'11).