



**House
Legislative
Analysis
Section**

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PENALTIES FOR MESC VIOLATIONS

House Bill 6289 as introduced
Sponsor: Rep. Bill Martin

House Bill 6290 (Substitute H-2)
Sponsor: Rep. Nate Jonker

House Bill 6291 (Substitute H-1)
Sponsor: Rep. Juanita Watkins

Committee: Labor

House Bill 6292 (Substitute H-1)
Sponsor: Rep. Perry Bullard

Committee: Judiciary

First Analysis (11-29-90)

THE APPARENT PROBLEM:

In the process of analyzing Michigan's unemployment insurance system and the administration of the Michigan Employment Security Commission (MESC) and addressing various issues and complaints concerning the system and the MESC, the Ad Hoc Group on Unemployment Insurance Administration and the directors of the Departments of Labor and Commerce, in a report to the governor, dated November 10, 1988 identified several problems, including that of fraud control. According to the report, fraud in the unemployment insurance program can occur in both the collection of taxes and the payment of benefits. Employers may seek to avoid paying unemployment taxes or to reduce the amount they pay by agreeing to lay off workers, who then draw benefits while continuing to work without wages; by under-reporting wages; or through neglecting to inform a buyer of the business' outstanding unemployment tax liabilities. Claimants may seek to establish or continue claims for which they are not eligible, or they may attempt to increase the amount of benefits they receive by failing to report earnings they receive while collecting benefits; by falsifying reports of efforts to find work; by not reporting refusal of work; or by reporting nonexistent dependents.

As a result of that report, the Michigan Employment Security Act was overhauled in 1989 to implement its recommendations. Public Acts 239 and 225 of 1989 provided funds for greater fraud control efforts and established a felony penalty for coercion, respectively. Since then, members of the Ad Hoc Group on Unemployment Insurance Administration have been at work

reviewing criminal penalties for violations of the act. Legislation is needed to implement their recommendations.

THE CONTENT OF THE BILLS:

The bills would amend the Michigan Employment Security Act to provide penalties for certain violations and to establish interest rates for unpaid penalties. The bills are tie-barred to each other and to:

- Senate Bills 1159 and 1160, which would amend the act to establish penalties for coercion and conspiracy, respectively.
- Senate Bill 1161, which would amend the act to conform to the requirements of House Bills 6289 and 6290, and which would extend, from three to six years, the statute of limitations for recovery of improperly paid benefits, and, from two to six years, the suspension period for benefits obtained by misrepresentation.

House Bills 6289 and 6290 (MCL 421.54c and 421.54) would establish penalties for embezzlement and fraud, and would revise current penalties for misrepresentation by either an employing unit or one of its officers or agents, a claimant, a Michigan Employment Security Commission (MESC) employee, or a third party. The penalties would be imposed in addition to any other penalty provided in the act. The penalties would also apply even if the amount embezzled were reported or paid by the embezzler, and whether or not the violation occurred before the effective date of the bill. Amounts recovered would be deposited in the Penalty and Interest Account of the Contingent Fund, and credited annually to the Unemployment Trust Fund.

The penalties would be as follows:

<u>Violation</u>	<u>Penalty</u>	<u>Additional Prosecuting Attorney Action</u>
Embezzlement of less than \$1,000	Commission could recover up to amount embezzled, plus damages equal to 2 times amount embezzled	
Embezzlement of \$1,000 or more	Commission could recover up to amount embezzled, plus damages equal to 3 times amount embezzled.	\$1,000 to \$25,000 — up to 1 year in prison or up to 1 year/2,080 hours community service. \$25,000 to \$100,000 — up to 2 years in prison or up to 2 years/4,160 hours community service. \$100,000 or more — up to 5 years in prison or up to 5 years/10,400 hours community service.
Fraud: Intent (e.g., failure to file tax statement)	Commission could recover amount obtained, plus damages equal to 3 times amount obtained.	Less than \$25,000 — up to 1 year in prison or up to 1 year/2,080 hours community service. \$25,000 to \$100,000 — up to 2 years in prison or up to 2 years/4,160 hours community service. \$100,000 or more — up to 5 years in prison or up to 5 years/10,400 hours community service.
Fraud: Knowing (e.g., filing tax statement but knowingly underestimating income)	Commission could recover amount obtained, plus damages equal to 3 times amount obtained.	Less than \$100,000 — up to 1 year in prison or up to 1 year/2,080 hours community service. \$100,000 or more — up to 2 years in prison or up to 2 years/4,160 hours community service.
Obtaining \$1,000 or less by False Pretenses	Commission could recover amount obtained, plus damages equal to 2 times amount obtained.	
Obtaining \$1,000 or more by False Pretenses	Commission could recover amount obtained, plus damages equal to 3 times amount obtained.	\$1,000 to \$25,000 — up to 1 year in prison or up to 1 year/2,080 hours community service. \$25,000 or more — up to 2 years in prison or up to 2 years/4,160 hours community service.

If a violation involving embezzlement or misrepresentation did not result in a loss to the MESC, then the penalty would be equal to 3 times the amount that would have been obtained by embezzlement, but not less than \$1,000, and, in addition, imprisonment for not more than two years, or the performance of two years or up to 4,160 hours community service.

Currently, under the act, interest on unpaid MESC contributions is calculated at one percent per month, computed on a day-to-day basis for each day of delinquency until payment is received. House Bill 6291 (MCL 421.15) would extend this requirement to amounts illegally obtained or previously withheld from payment, and to damages recovered by the commission for the above violations.

House Bill 6292 (MCL 650.411f) would require violations of the act to be prosecuted according to penalties prescribed under the act, and not under the Michigan Penal Code.

The bills would take effect October 1, 1990.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

The bill would implement the recommendations of the Ad Hoc Group on Unemployment Insurance Administration. Consistent penalties would be applied to the various categories of criminal violations, whether committed by a claimant, employer, MESC employee, or any other person. The penalties for lesser offenses would be reduced, and the option of requiring community service instead of jail for offenders would be available. In addition, the bill would provide an additional deterrent by requiring stiffer monetary penalties.

POSITIONS:

SEIU/Michigan Council 35 supports the bills. (11-28-90)

General Motors Corporation supports the bills. (11-28-90)

The Michigan Employment Security Commission supports the bills. (11-28-90)

The Employers' Unemployment Compensation Council supports the bills. (11-28-90)

The Department of Labor supports the bills. (11-28-90)