

SENATE BILL No. 613

May 27, 2009, Introduced by Senators RICHARDVILLE, PATTERSON, BIRKHOLZ, PAPPAGEORGE, BROWN, JANSEN, CROUSEY, VAN WOERKOM, SANBORN and KAHN and referred to the Committee on Commerce and Tourism.

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~~**SUBJECT TO SANCTIONS** as provided
 6 in subdivision (i), (ii), (iii), or (iv), notwithstanding any other
 7 statute of this state or of the United States:

8 (i) If the commission determines that an amount has been
 9 obtained or withheld as a result of the intentional failure to
 10 comply with this act, the ~~commission~~**UNEMPLOYMENT AGENCY** may

1 recover the amount obtained as a result of the intentional failure
2 to comply plus damages equal to 3 times that amount.

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

10 (A) If the amount obtained or withheld from payment as a
11 result of the intentional failure to comply is less than
12 \$25,000.00, then 1 of the following:

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

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

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

18 (B) If the amount obtained or withheld from payment as a
19 result of the intentional failure to comply is \$25,000.00 or more
20 but less than \$100,000.00, then 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) If the amount obtained or withheld from payment as a
27 result of the intentional failure to comply is more than

1 \$100,000.00, then 1 of the following:

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

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

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

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

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

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

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

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

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

27 (B) If the amount obtained or withheld from payment as a

1 result of the knowing violation is more than \$100,000.00, then 1 of
2 the following:

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

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

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

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

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

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

6 (ii) If 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 is \$500.00 or more, the ~~commission~~
9 **UNEMPLOYMENT AGENCY** shall attempt to recover the amount obtained as
10 a result of the knowing false statement or representation or the
11 knowing and willful failure to disclose a material fact and may
12 also recover damages equal to 4 times that amount. The ~~commission~~
13 **UNEMPLOYMENT AGENCY** may refer the matter to the prosecuting
14 attorney of the county in which the alleged violation occurred for
15 prosecution. If the ~~commission~~-**UNEMPLOYMENT AGENCY** has not made its
16 own determination under this subdivision, the ~~penalty~~-**RECOVERY**
17 sought by the prosecutor shall include the amount described in this
18 subdivision and shall also include 1 or more of the following
19 penalties if the amount obtained is \$1,000.00 or more:

20 (A) If the amount obtained or withheld from payment as a
21 result of the knowing false statement or representation or the
22 knowing and willful failure to disclose a material fact is
23 \$1,000.00 or more but less than \$25,000.00, then 1 of the
24 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 false statement or representation or the
5 knowing and willful failure to disclose a material fact is
6 \$25,000.00 or more, then 1 of the following:

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

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

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

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

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

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

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

25 (c) (1) Any employing unit or an officer or agent of an
26 employing unit or any other person failing to submit, when due, any
27 contribution report, wage and employment report, or other reports

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

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

20 (3) ~~When~~**IF** a report is filed after the prescribed time and it
21 is shown to the satisfaction of the commission that the failure to
22 submit the report was due to reasonable cause, a ~~penalty~~**FINE** shall
23 not be imposed. The assessment of a ~~penalty~~**FINE** as provided in
24 this subsection ~~shall constitute~~**CONSTITUTES** a **FINAL** determination
25 ~~which shall be final~~ unless the employer files ~~with the commission~~
26 an application **WITH THE UNEMPLOYMENT AGENCY** for a redetermination
27 of the assessment in accordance with section 32a.

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

20 (e) A person who, without proper authority from the ~~commission~~
21 **UNEMPLOYMENT AGENCY**, represents himself or herself to be an
22 employee of the commission to an employing unit or person for the
23 purpose of securing information regarding the unemployment or
24 employment record of an individual is guilty of a misdemeanor ~~and~~
25 ~~upon conviction shall be punished~~ **PUNISHABLE** by imprisonment for
26 not more than 90 days ~~or by~~ a fine of not more than \$1,000.00, or
27 both.

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

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

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

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

22 (j) Amounts recovered by the commission under subsection (a)
23 ~~or (b)~~ shall be credited first to the unemployment compensation
24 fund and thereafter amounts recovered that are in excess of the
25 amounts obtained or withheld as a result of the violation of
26 subsection (a) ~~and (b)~~ shall be credited to the penalty and
27 interest account of the contingent fund. ~~Fines and penalties~~

1 AMOUNTS recovered by the commission under subsections (c), (d),
2 (e), and (f) shall be credited to the penalty and interest account
3 of the contingent fund in accordance with section 10(6).

4 (K) AMOUNTS RECOVERED BY THE UNEMPLOYMENT AGENCY UNDER
5 SUBSECTION (B) SHALL BE CREDITED AS FOLLOWS:

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

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

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

19 Enacting section 1. This amendatory act does not take effect
20 unless all of the following bills of the 95th Legislature are
21 enacted into law:

22 (a) Senate Bill No. 615.

23

24 (b) Senate Bill No. _____ or House Bill No. _____ (request no.
25 01821'09).

26 (c) Senate Bill No. 614.

27

1 (d) Senate Bill No. 612.

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