

HOUSE BILL No. 4982

October 13, 2015, Introduced by Reps. Victory, Pagel, Kivela, Garcia, Glardon, Somerville, Hughes, Hooker, Price, Canfield, Iden, McCready, Clemente, Faris, Hovey-Wright, Brinks, Poleski, Schor, Jacobsen, Darany, Hoadley, Yonker, Franz, Webber, Leutheuser, Rendon, Santana, Johnson, McBroom, Aaron Miller, Runestad, Brett Roberts, Inman, Barrett, Theis, Lucido, Forlini, Sheppard, LaFontaine, Glenn, Kosowski, Howrylak, Bizon, Chatfield, Crawford, Pscholka, Rutledge, Brunner, Smiley, Durhal, Maturen, Heise, Jenkins, Vaupel, Garrett, Bumstead, LaVoy, Cole, Potvin, Townsend, Zemke, Love, Dianda, Robinson, Byrd, Outman, Goike, Graves, Derek Miller, Tedder, Guerra, Singh, Kelly, Yanez, Cochran, Gay-Dagnogo, Banks, Wittenberg, Talabi, Sarah Roberts, Pagan, Lauwers, Irwin and Kesto and referred to the Committee on Oversight and Ethics.

A bill to amend 1936 (Ex Sess) PA 1, entitled "Michigan employment security act," by amending sections 32a, 54, and 62 (MCL 421.32a, 421.54, and 421.62), section 32a as amended by 2011 PA 269, section 54 as amended by 2013 PA 143, and section 62 as amended by 2013 PA 147.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 32a. (1) Upon application by an interested party for
2 review of a determination, upon request for transfer to an
3 administrative law judge for a hearing filed with the unemployment
4 agency within 30 days after the mailing or personal service of a
5 notice of determination, or upon the unemployment agency's own
6 motion within that 30-day period, the unemployment agency shall

1 review any determination. After review, the unemployment agency
2 shall issue a redetermination affirming, modifying, or reversing
3 the prior determination and stating the reasons for the
4 redetermination, or may in its discretion transfer the matter to an
5 administrative law judge for a hearing. If a redetermination is
6 issued, the unemployment agency shall promptly notify the
7 interested parties of the redetermination, the redetermination is
8 final unless within 30 days after the mailing or personal service
9 of a notice of the redetermination an appeal is filed with the
10 unemployment agency for a hearing on the redetermination before an
11 administrative law judge in accordance with section 33.

12 (2) The unemployment agency may, for good cause, including any
13 administrative clerical error, reconsider a prior determination or
14 redetermination after the 30-day period has expired and after
15 reconsideration issue a redetermination affirming, modifying, or
16 reversing the prior determination or redetermination, or transfer
17 the matter to an administrative law judge for a hearing. A
18 reconsideration shall not be made unless the request is filed with
19 the unemployment agency, or reconsideration is initiated by the
20 unemployment agency with notice to the interested parties, within 1
21 year from the date of mailing or personal service of the original
22 determination on the disputed issue.

23 (3) If an interested party fails to file a protest within the
24 30-day period and the unemployment agency for good cause
25 reconsiders a prior determination or redetermination and issues a
26 redetermination, a disqualification, or an ineligibility imposed
27 thereunder, other than an ineligibility imposed due to receipt of

1 retroactive pay, the redetermination, disqualification, or
2 ineligibility does not apply to a compensable period for which
3 benefits were paid or are payable unless the benefits were obtained
4 as a result of an administrative clerical error, a false statement,
5 or a nondisclosure or misrepresentation of a material fact by the
6 claimant. However, the redetermination is final unless within 30
7 days after the date of mailing or personal service of the notice of
8 redetermination an appeal is filed for a hearing on the
9 redetermination before an administrative law judge in accordance
10 with section 33.

11 (4) In addition to the transfer provisions in subsections (1)
12 and (2), both of the following apply:

13 (a) If both the claimant and the employer agree, the matter
14 may be transferred directly to an administrative law judge in a
15 case involving the payment of unemployment benefits.

16 (b) If both the unemployment agency and the employer agree,
17 the matter may be transferred directly to an administrative law
18 judge in a case involving unemployment contributions or
19 reimbursements in lieu of contributions.

20 **(5) NOTWITHSTANDING THE APPEAL PERIODS IN SUBSECTIONS (1) AND**
21 **(3), IF A DETERMINATION OR REDETERMINATION INCLUDES A FINDING OF**
22 **FRAUD WITH THE ASSESSMENT OF A FINE AND THE CLAIMANT OR EMPLOYER**
23 **DOES NOT RESPOND TO THE FIRST NOTIFICATION, THE UNEMPLOYMENT AGENCY**
24 **SHALL SEND A SECOND NOTIFICATION BY CERTIFIED MAIL INDICATING THAT**
25 **THE PERSON HAS 30 DAYS TO APPEAL THE DETERMINATION OR**
26 **REDETERMINATION BEFORE THE FINE BEGINS TO ACCRUE.**

27 Sec. 54. (a) A person, including a claimant for unemployment

1 benefits, an employing entity, or an owner, director, or officer of
2 an employing entity, who willfully violates or intentionally fails
3 to comply with any of the provisions of this act, or a regulation
4 of the unemployment agency promulgated under the authority of this
5 act for which a penalty is not otherwise provided by this act is
6 subject to the following sanctions, notwithstanding any other
7 statute of this state or of the United States:

8 (i) If the unemployment agency determines that an amount has
9 been obtained or withheld as a result of the intentional failure to
10 comply with this act, the unemployment agency may recover the
11 amount obtained as a result of the intentional failure to comply
12 plus damages equal to 3 times that amount.

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

19 (A) Subject to redesignation under subsection (l), if the
20 amount obtained or withheld from payment as a result of the
21 intentional failure to comply is less than \$25,000.00, 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 intentional failure to comply is \$25,000.00 or more
3 but less than \$100,000.00, then 1 of 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 (C) If the amount obtained or withheld from payment as a
10 result of the intentional failure to comply is more than
11 \$100,000.00, then 1 of the following:

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

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

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

17 (iii) If the unemployment agency determines that an amount has
18 been obtained or withheld as a result of a knowing violation of
19 this act, the unemployment agency may recover the amount obtained
20 as a result of the knowing violation and may also recover damages
21 equal to 3 times that amount.

22 (iv) The unemployment agency may refer a matter under
23 subdivision (iii) to the prosecuting attorney of the county in
24 which the alleged violation occurred for prosecution. If the
25 unemployment agency has not made its own determination under
26 subdivision (iii), the recovery sought by the prosecutor shall
27 include the amount described in subdivision (iii) and shall also

1 include 1 or more of the following penalties:

2 (A) Subject to redesignation under subsection (l), if the
3 amount obtained or withheld from payment as a result of the knowing
4 violation is \$100,000.00 or less, then 1 of the following:

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

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

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

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

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

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

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

18 (b) Any employing unit or an owner, director, officer, or
19 agent of an employing unit, a claimant, an employee of the
20 unemployment agency, or any other person who makes a false
21 statement or representation knowing it to be false, or knowingly
22 and willfully with intent to defraud fails to disclose a material
23 fact, to obtain or increase a benefit or other payment under this
24 act or under the unemployment compensation law of any state or of
25 the federal government, either for himself or herself or any other
26 person, to prevent or reduce the payment of benefits to an
27 individual entitled thereto or to avoid becoming or remaining a

1 subject employer, or to avoid or reduce a contribution or other
2 payment required from an employing unit under this act or under the
3 unemployment compensation law of any state or of the federal
4 government, as applicable, is subject to administrative fines and
5 is punishable as follows, notwithstanding any other penalties
6 imposed under any other statute of this state or of the United
7 States:

8 (i) If the amount obtained as a result of the knowing false
9 statement or representation or the knowing and willful failure to
10 disclose a material fact is less than \$500.00, the unemployment
11 agency may recover the amount obtained as a result of the knowing
12 false statement or representation or the knowing and willful
13 failure to disclose a material fact and may also recover damages
14 equal to 2 times that amount. For a second or subsequent violation
15 described in this subdivision, the unemployment agency may recover
16 damages equal to 4 times the amount obtained.

17 (ii) If the amount obtained as a result of the knowing false
18 statement or representation or the knowing and willful failure to
19 disclose a material fact is \$500.00 or more, the unemployment
20 agency shall attempt to recover the amount obtained as a result of
21 the knowing false statement or representation or the knowing and
22 willful failure to disclose a material fact and may also recover
23 damages equal to 4 times that amount. The unemployment agency may
24 refer the matter to the prosecuting attorney of the county in which
25 the alleged violation occurred for prosecution. If the unemployment
26 agency has not made its own determination under this subdivision,
27 the recovery sought by the prosecutor shall include the amount

1 described in this subdivision and shall also include 1 or more of
2 the following penalties if the amount obtained is \$1,000.00 or
3 more:

4 (A) Subject to redesignation under subsection (l), if the
5 amount obtained or withheld from payment as a result of the knowing
6 false statement or representation or the knowing and willful
7 failure to disclose a material fact is \$1,000.00 or more but less
8 than \$25,000.00, then 1 of the following:

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

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

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

14 (B) If the amount obtained or withheld from payment as a
15 result of the knowing false statement or representation or the
16 knowing and willful failure to disclose a material fact is
17 \$25,000.00 or more, then 1 of the following:

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

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

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

23 (C) If the knowing false statement or representation or the
24 knowing and willful failure to disclose a material fact made to
25 obtain or withhold an amount from payment does not result in a loss
26 to the commission, then a recovery shall be sought equal to 3 times
27 the amount that would have been obtained by the knowing false

1 statement or representation or the knowing and willful failure to
2 disclose a material fact, but not less than \$1,000.00, and 1 of the
3 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 (c) (1) Any employing unit or an owner, director, officer, or
10 agent of an employing unit or any other person failing to submit,
11 when due, any contribution report, wage and employment report, or
12 other reports lawfully prescribed and required by the unemployment
13 agency shall be subject to the assessment of an administrative fine
14 for each report not submitted within the time prescribed by the
15 unemployment agency, as follows: In the case of contribution
16 reports not received within 10 days after the end of the reporting
17 month the fine shall be 10% of the contributions due on the reports
18 but not less than \$5.00 or more than \$25.00 for a report. However,
19 if the tenth day falls on a Saturday, Sunday, legal holiday, or
20 other unemployment agency nonwork day, the 10-day period shall run
21 until the end of the next day that is not a Saturday, Sunday, legal
22 holiday, or other unemployment agency nonwork day. In the case of
23 all other reports referred to in this subsection, the fine shall be
24 \$10.00 for a report.

25 (2) Notwithstanding subdivision (1), any employer or an owner,
26 director, officer, or agent of an employer or any other person
27 failing to submit, when due, any quarterly wage detail report

1 required by section 13(2), or submitting an incomplete or erroneous
2 report, is subject to an administrative fine of \$50.00 for each
3 untimely report, incomplete report, or erroneous report if the
4 report is filed not later than 30 days after the date the report is
5 due, \$250.00 if the report is filed more than 1 calendar quarter
6 after the date the report is due, and an additional \$250.00 for
7 each additional calendar quarter that the report is late, except
8 that no penalty shall apply if the employer files a corrected
9 report within 14 days after notification of an error by the agency.

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

17 (d) If any employee or agent of the unemployment agency or
18 member of the Michigan compensation appellate commission willfully
19 discloses confidential information obtained from any employing unit
20 or individual in the administration of this act for any purpose
21 inconsistent with or contrary to the purposes of this act, or a
22 person who obtains a list of applicants for work or of claimants or
23 recipients of benefits under this act uses or permits use of that
24 list for a political purpose or for a purpose inconsistent with or
25 contrary to the purposes of this act, he or she is guilty of a
26 misdemeanor punishable by imprisonment for not more than 90 days or
27 a fine of not more than \$1,000.00, or both. Notwithstanding the

1 preceding sentence, if any unemployment agency employee, agent of
2 the unemployment agency, or member of the Michigan compensation
3 appellate commission knowingly, intentionally, and for financial
4 gain, makes an illegal disclosure of confidential information
5 obtained under section 13(2), he or she is guilty of a felony,
6 punishable by imprisonment for not more than 1 year and 1 day.

7 (e) A person who, without proper authority from the
8 unemployment agency, represents himself or herself to be an
9 employee of the unemployment agency for the purpose of securing
10 information regarding the unemployment or employment record of an
11 individual is guilty of a misdemeanor punishable by imprisonment
12 for not more than 90 days or a fine of not more than \$1,000.00, or
13 both.

14 (f) A person associated with a college, university, or public
15 agency of this state who makes use of any information obtained from
16 the unemployment agency in connection with a research project of a
17 public service nature, in a manner as to reveal the identity of any
18 individual or employing unit from or concerning whom the
19 information was obtained by the unemployment agency, or for any
20 purpose other than use in connection with that research project, is
21 guilty of a misdemeanor punishable by imprisonment for not more
22 than 90 days or a fine of not more than \$1,000.00, or both.

23 (g) As used in this section, "person" includes an individual;
24 owner, director, or officer of an employing entity; copartnership;
25 joint venture; corporation; receiver; or trustee in bankruptcy.

26 (h) This section applies even if the amount obtained or
27 withheld from payment has been reported or reported and paid by an

1 individual involved in a violation of subsection (a) or (b).

2 (i) If a determination is made that an individual has violated
3 this section, the individual is subject to the sanctions of this
4 section and, if applicable, the requirements of section 62.

5 (j) Amounts recovered by the commission under subsection (a)
6 shall be credited first to the unemployment compensation fund and
7 thereafter amounts recovered that are in excess of the amounts
8 obtained or withheld as a result of the violation of subsection (a)
9 shall be credited to the penalty and interest account of the
10 contingent fund. Amounts recovered by the commission under
11 subsections (c), (d), (e), and (f) shall be credited to the penalty
12 and interest account of the contingent fund in accordance with
13 section 10(6).

14 (k) Amounts recovered by the unemployment agency under
15 subsection (b) shall be credited in the following order:

16 (i) From the penalty assessment recovered, an amount equal to
17 15% of any benefit overpayments resulting from fraud shall be
18 credited to the unemployment compensation fund.

19 (ii) For the balance of deductions from unemployment insurance
20 benefits, to the liability for benefit repayment under this
21 section.

22 (iii) For all other recoveries, the balance shall first be
23 credited to the unemployment compensation fund for repayment of any
24 remaining amounts owed, and then to the contingent fund to be
25 applied first to administrative sanctions and damages and then to
26 interest.

27 (l) A person who obtains or withholds an amount of

1 unemployment benefits or payments exceeding \$3,500.00 but less than
2 \$25,000.00 as a result of a knowing false statement or
3 representation or the knowing and willful failure to disclose a
4 material fact is guilty of a felony punishable as provided in
5 subsection (a) (ii) (A) or (iv) (A) or subsection (b) (ii) (A) .

6 **(M) AN UNEMPLOYMENT AGENCY DETERMINATION UNDER THIS SECTION**
7 **SHALL NOT BE BASED SOLELY ON A COMPUTER-IDENTIFIED DISCREPANCY IN**
8 **INFORMATION SUPPLIED BY THE CLAIMANT AND EMPLOYER. AN UNEMPLOYMENT**
9 **AGENCY EMPLOYEE OR AGENT MUST EXAMINE THE SITUATION TO VERIFY THAT**
10 **THE CLAIMANT OR THE EMPLOYER IS RESPONSIBLE FOR A WILLFUL OR**
11 **INTENTIONAL VIOLATION BEFORE THE AGENCY MAKES A DETERMINATION UNDER**
12 **THIS SECTION.**

13 Sec. 62. (a) If the unemployment agency determines that a
14 person has obtained benefits to which that person is not entitled,
15 or a subsequent determination by the agency or a decision of an
16 appellate authority reverses a prior qualification for benefits,
17 the agency may recover a sum equal to the amount received plus
18 interest by 1 or more of the following methods: deduction from
19 benefits or wages payable to the individual, payment by the
20 individual in cash, or deduction from a tax refund payable to the
21 individual as provided under section 30a of 1941 PA 122, MCL
22 205.30a. Deduction from benefits or wages payable to the individual
23 is limited to not more than 50% of each payment due the claimant.
24 The unemployment agency shall issue a determination requiring
25 restitution within 3 years after the date of finality of a
26 determination, redetermination, or decision reversing a previous
27 finding of benefit entitlement. The unemployment agency shall not

1 initiate administrative or court action to recover improperly paid
2 benefits from an individual more than 3 years after the date that
3 the last determination, redetermination, or decision establishing
4 restitution is final. The unemployment agency shall issue a
5 determination on an issue within 3 years from the date the claimant
6 first received benefits in the benefit year in which the issue
7 arose, or in the case of an issue of intentional false statement,
8 misrepresentation, or concealment of material information in
9 violation of section 54(a) or (b) or sections 54a to 54c, within 6
10 years after the receipt of the improperly paid benefits unless the
11 unemployment agency filed a civil action in a court within the 3-
12 year or 6-year period; the individual made an intentional false
13 statement, misrepresentation, or concealment of material
14 information to obtain the benefits; or the unemployment agency
15 issued a determination requiring restitution within the 3-year or
16 6-year period. Except in a case of an intentional false statement,
17 misrepresentation, or concealment of material information, the
18 unemployment agency shall waive recovery of an improperly paid
19 benefit if the payment was not the fault of the individual and if
20 repayment would be contrary to equity and good conscience and shall
21 waive any interest. If the agency or an appellate authority waives
22 collection of restitution and interest, except as provided in
23 subdivision (ii), the waiver is prospective and does not apply to
24 restitution and interest payments already made by the individual.
25 As used in this subsection, "contrary to equity and good
26 conscience" means any of the following:

27 (i) The claimant provided incorrect wage information without

1 the intent to misrepresent, and the employer provided either no
2 wage information upon request or provided inaccurate wage
3 information that resulted in the overpayment.

4 (ii) The claimant's disposable household income, exclusive of
5 social welfare benefits, is at or below the annual update of the
6 poverty guidelines most recently published in the federal register
7 by the United States department of health and human services under
8 the authority of 42 USC 9902(2), and the claimant has applied for a
9 waiver under this subsection. A waiver granted under the conditions
10 described in this subdivision applies from the date the application
11 is filed.

12 (iii) The improper payments resulted from an administrative or
13 clerical error by the unemployment agency. A requirement to repay
14 benefits as the result of a change in judgment at any level of
15 administrative adjudication or court decision concerning the facts
16 or application of law to a claim adjudication is not an
17 administrative or clerical error for purposes of this subdivision.

18 (b) For benefit years beginning on or after October 1, 2000,
19 if the unemployment agency determines that a person has
20 intentionally made a false statement or misrepresentation or has
21 concealed material information to obtain benefits, whether or not
22 the person obtains benefits by or because of the intentional false
23 statement, misrepresentation, or concealment of material
24 information, the person shall, in addition to any other applicable
25 interest and penalties, have his or her rights to benefits for the
26 benefit year in which the act occurred canceled as of the date the
27 claimant made the false statement or misrepresentation or concealed

1 material information, and wages used to establish that benefit year
2 shall not be used to establish another benefit year. A chargeable
3 employer may protest a claim filed after October 1, 2014 to
4 establish a successive benefit year under section 46(c), if there
5 was a determination by the unemployment agency or decision of a
6 court or administrative tribunal finding that the claimant made a
7 false statement, made a misrepresentation, or concealed material
8 information related to his or her report of earnings for a
9 preceding benefit year claim. If a protest is made, any unreported
10 earnings from the preceding benefit year that were falsely stated,
11 misrepresented, or concealed shall not be used to establish a
12 benefit year for a successive claim. Before receiving benefits in a
13 benefit year established within 4 years after cancellation of
14 rights to benefits under this subsection, the individual, in
15 addition to making the restitution of benefits established under
16 subsection (a), may be liable for an additional amount as otherwise
17 determined by the unemployment agency under this act, which may be
18 paid by cash, deduction from benefits, or deduction from a tax
19 refund. The individual is liable for any fee the federal government
20 imposes with respect to instituting a deduction from a federal tax
21 refund. Restitution resulting from the intentional false statement,
22 misrepresentation, or concealment of material information is not
23 subject to the 50% limitation provided in subsection (a).

24 (c) Any determination made by the unemployment agency under
25 this section is final unless an application for a redetermination
26 is filed in accordance with section 32a.

27 (d) The unemployment agency shall take the action necessary to

1 recover all benefits improperly obtained or paid under this act,
2 and to enforce all interest and penalties under subsection (b). The
3 unemployment agency may conduct an amnesty program for a designated
4 period under which penalties and interest assessed against an
5 individual owing restitution for improperly paid benefits may be
6 waived if the individual pays the full amount of restitution owing
7 within the period specified by the agency.

8 (e) Interest recovered under this section shall be deposited
9 in the contingent fund.

10 (F) AN UNEMPLOYMENT AGENCY DETERMINATION THAT A CLAIMANT MADE
11 AN INTENTIONAL FALSE STATEMENT, MISREPRESENTATION, OR CONCEALMENT
12 OF MATERIAL INFORMATION THAT INVOKES SANCTIONS UNDER THIS SECTION
13 SHALL NOT BE BASED SOLELY ON A COMPUTER-IDENTIFIED DISCREPANCY IN
14 INFORMATION SUPPLIED BY THE CLAIMANT AND EMPLOYER. AN UNEMPLOYMENT
15 AGENCY EMPLOYEE OR AGENT MUST EXAMINE THE SITUATION TO VERIFY THAT
16 THE CLAIMANT OR THE EMPLOYER IS RESPONSIBLE FOR A WILLFUL OR
17 INTENTIONAL VIOLATION BEFORE THE AGENCY MAKES A DETERMINATION UNDER
18 THIS SECTION.

19 Enacting section 1. This amendatory act takes effect 90 days
20 after the date it is enacted into law.