

HOUSE BILL No. 5208

July 16, 2009, Introduced by Reps. Haveman, Rogers, Genetski, Hansen, Kowall, Proos, Wayne Schmidt, Daley, McMillin, Booher, DeShazor, Kurtz, Bolger, Lori, Tyler, Denby and Moss and referred to the Committee on Labor.

A bill to amend 1936 (Ex Sess) PA 1, entitled "Michigan employment security act," by amending sections 10, 15, 54, and 62 (MCL 421.10, 421.15, 421.54, and 421.62), section 10 as amended by 2003 PA 84, section 15 as amended by 1996 PA 498, section 54 as amended by 2002 PA 192, and section 62 as amended by 1995 PA 125.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 10. (1) There is created in the department of treasury a
2 special fund to be known and designated as the administration fund
3 (Michigan employment security act). Any balances in the
4 administration fund at the end of any fiscal year of this state
5 shall be carried over as a part of the administration fund and
6 shall not revert to the general fund of this state. Except as
7 otherwise provided in subsection (3), all money deposited into the

1 administration fund under this act shall be appropriated by the
2 legislature to the unemployment agency to pay the expenses of the
3 administration of this act.

4 (2) The administration fund shall be credited with all money
5 appropriated to the fund by the legislature, all money received
6 from the United States or any agency of the United States for that
7 purpose, and all money received by this state for the fund. All
8 money in the administration fund that is received from the federal
9 government or any agency of the federal government or that is
10 appropriated by this state for the purposes of this act, except
11 money requisitioned from the account of this state in the
12 unemployment trust fund pursuant to a specific appropriation made
13 by the legislature in accordance with section 903(c)(2) of title IX
14 of the social security act, 42 ~~U.S.C. 1103~~ **USC 1103(C)(2)**, and with
15 section 17(3)(f), shall be expended solely for the purposes and in
16 the amounts found necessary by the appropriate agency of the United
17 States and the legislature for the proper and efficient
18 administration of this act.

19 (3) All money requisitioned from the account of this state in
20 the unemployment trust fund pursuant to a specific appropriation
21 made by the legislature in accordance with section 903(c)(2) of
22 title IX of the social security act, 42 ~~U.S.C. 1103~~ **USC 1103(C)(2)**,
23 and with section 17(3)(f), shall be deposited in the administration
24 fund. Any money that remains unexpended at the close of the 2-year
25 period beginning on the date of enactment of a specific
26 appropriation shall be immediately redeposited with the secretary
27 of the treasury of the United States to the credit of this state's

1 account in the unemployment trust fund; or any money that for any
2 reason cannot be expended or is not to be expended for the purpose
3 for which appropriated before the close of this 2-year period shall
4 be redeposited at the earliest practicable date.

5 (4) If any money received after June 30, 1941, from the
6 appropriate agency of the United States under title III of the
7 social security act, ~~chapter 531, 49 Stat. 620, 42 U.S.C. USC~~ 501
8 to 504, or any unencumbered balances in the administration fund
9 (Michigan employment security act) as of that date, or any money
10 granted after that date to this state under the Wagner-Peyser act,
11 chapter 49, 48 Stat. 113, or any money made available by this state
12 or its political subdivisions and matched by money granted to this
13 state under the Wagner-Peyser act, chapter 49, 48 Stat. 113, is
14 found by the appropriate agency of the United States, because of
15 any action or contingency, to have been lost or been expended for
16 purposes other than, or in amounts in excess of, those found
17 necessary by that agency of the United States for the proper
18 administration of this act, the money shall be replaced by money
19 appropriated for that purpose from the general funds of this state
20 to the administration fund (Michigan employment security act) for
21 expenditure as provided in this act. Upon receipt of notice of such
22 a finding by the appropriate agency of the United States, the
23 commission shall promptly report the amount required for
24 replacement to the governor and the governor shall, at the earliest
25 opportunity, submit to the legislature a request for the
26 appropriation of that amount. This subsection shall not be
27 construed to relieve this state of its obligation with respect to

1 funds received prior to July 1, 1941, under the provisions of title
2 III of the social security act, ~~chapter 531, 49 Stat. 620, 42~~
3 ~~U.S.C.—USC~~ 501 to 504.

4 (5) If any funds expended or disbursed by the commission are
5 found by the appropriate agency of the United States to have been
6 lost or expended for purposes other than, or in amounts in excess
7 of, those found necessary by that agency of the United States for
8 the proper administration of this act, and if these funds are
9 replaced as provided in subsection (4) by money appropriated for
10 that purpose from the general fund of this state, then the director
11 who approved the expenditure or disbursement of those funds for
12 those purposes or in those amounts, shall be liable to this state
13 in an amount equal to the sum of money appropriated to replace
14 those funds. The director shall be required by the governor to post
15 a proper bond in a sum not less than \$25,000.00 to cover his or her
16 liability as prescribed in this section, the cost of the bond to be
17 paid from the general fund of this state.

18 (6) There is created in the department of treasury a separate
19 fund to be known as the contingent fund (Michigan employment
20 security act) into which shall be deposited all solvency taxes
21 collected under section 19a and all interest on contributions,
22 penalties, and damages collected under this act. Except as
23 otherwise provided in subsections (7), (8), ~~and (9)~~, **AND (10)**, all
24 amounts in the contingent fund (Michigan employment security act)
25 and all earnings on those amounts are continuously appropriated
26 without regard to fiscal year for the administration of the
27 unemployment agency and for the payment of interest on advances

1 from the federal government to the unemployment compensation fund
2 under section 1201 of title XII of the social security act, 42
3 ~~U.S.C.—USC~~ 1321, to be expended only if authorized by the
4 unemployment agency. Money deposited from the solvency taxes
5 collected under section 19a shall not be used for the
6 administration of the unemployment agency, except for the repayment
7 of loans from the state treasury and interest on loans made under
8 section 19a(3). However, an authorization or expenditure shall not
9 be made as a substitution for a grant of federal funds or for any
10 portion of a grant that, in the absence of an authorization, would
11 be available to the commission. Immediately upon receipt of
12 administrative grants from the appropriate agency of the United
13 States to cover administrative costs for which the commission has
14 authorized and made expenditures from the contingent fund, those
15 grants shall be transferred to the contingent fund to the extent
16 necessary to reimburse the contingent fund for the amount of those
17 expenditures. Amounts needed to refund interest, damages, and
18 penalties erroneously collected shall be withdrawn and expended for
19 those purposes from the contingent fund upon order of the
20 unemployment agency. Any amount authorized to be expended for
21 administration under this section may be transferred to the
22 administration fund. An amount not needed for the purpose for which
23 authorized shall, upon order of the unemployment agency, be
24 returned to the contingent fund. Amounts needed to refund
25 erroneously collected solvency taxes shall be withdrawn and
26 expended for that purpose upon order of the unemployment agency.

27 (7) **THERE IS CREATED IN THE DEPARTMENT OF TREASURY CONTINGENT**

1 FUND A SEPARATE FUND TO BE KNOWN AS THE SPECIAL FRAUD CONTROL FUND
2 (MICHIGAN EMPLOYMENT SECURITY ACT). THE SPECIAL FRAUD CONTROL FUND
3 SHALL CONSIST OF MONEY COLLECTED OR RECEIVED BY THE UNEMPLOYMENT
4 INSURANCE AGENCY AS FOLLOWS:

5 (A) ALL INTEREST AND PENALTIES COLLECTED UNDER SECTION 62.

6 (B) ALL GIFTS TO, INTEREST ON, OR PROFITS EARNED BY THE
7 SPECIAL FRAUD CONTROL FUND.

8 (C) THE MONEY IN THE SPECIAL FRAUD CONTROL FUND IS
9 CONTINUOUSLY APPROPRIATED ONLY TO THE UNEMPLOYMENT INSURANCE AGENCY
10 AND MAY NOT BE TRANSFERRED OR OTHERWISE MADE AVAILABLE TO ANY OTHER
11 STATE AGENCY.

12 (D) ALL AMOUNTS IN THE SPECIAL FRAUD CONTROL FUND ARE TO BE
13 USED FIRST FOR THE ACQUISITION OF PACKAGED SOFTWARE THAT HAS A
14 PROVEN RECORD OF SUCCESS WITH THE DETECTION AND COLLECTION OF
15 UNEMPLOYMENT BENEFIT OVERPAYMENTS AND THEN FOR ADMINISTRATIVE COSTS
16 ASSOCIATED WITH THE PREVENTION, DISCOVERY, AND COLLECTION OF
17 UNEMPLOYMENT BENEFIT OVERPAYMENTS, AS INCLUDED IN THE BIENNIAL
18 BUDGET OF THE UNEMPLOYMENT INSURANCE AGENCY AND APPROVED BY THE
19 LEGISLATURE. THE UNEMPLOYMENT INSURANCE AGENCY SHALL SUBMIT A
20 REPORT TO THE CLERK OF THE HOUSE OF REPRESENTATIVES AND THE
21 SECRETARY OF THE SENATE AT THE CLOSE OF THE 2-YEAR PERIOD THAT
22 BEGINS ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
23 SUBSECTION, TO SHOW HOW THE MONEY FROM THE SPECIAL FRAUD CONTROL
24 FUND WAS USED AND THE RESULTS OBTAINED FROM THE SPECIAL FRAUD
25 CONTROL FUND.

26 (8) ~~(7)~~—On June 30, 2002, the unemployment agency shall
27 authorize the withdrawal of \$79,500,000.00 from the contingent fund

1 (Michigan employment security act) for deposit into the general
2 fund.

3 (9) ~~(8)~~—At the close of the state fiscal year in 2002 and each
4 year after 2002, all funds in the contingent fund (Michigan
5 employment security act) in excess of \$15,000,000.00 shall lapse to
6 the unemployment trust fund.

7 (10) ~~(9)~~—The unemployment agency shall authorize the
8 withdrawal of \$10,000,000.00 from the contingent fund (Michigan
9 employment security act) for deposit into the general fund for the
10 fiscal year ending September 30, 2004.

11 Sec. 15. (a) Contributions unpaid on the date on which they
12 are due and payable, as prescribed by the commission, shall bear
13 interest at the rate of 1% per month, computed on a ~~day to day~~ **DAY-**
14 **TO-DAY** basis for each day the delinquency is unpaid, from and after
15 that date until payment plus accrued interest is received by the
16 commission. Amounts illegally obtained or previously withheld from
17 payment and damages that are recovered by the commission under
18 section 54(a) and (b) and sections 54a to 54c of this act shall
19 bear interest at the rate of 1% per month, computed on a day-to-day
20 basis for each day the amounts remain unpaid until payment plus
21 accrued interest is received by the commission. The interest on
22 unpaid contributions, exclusive of penalties, shall not exceed 50%
23 of the amount of contributions due at due date. Interest and
24 penalties collected pursuant to this section shall be paid into the
25 contingent fund, **EXCEPT THAT INTEREST AND PENALTIES COLLECTED UNDER**
26 **SECTION 62 SHALL BE PAID INTO THE SPECIAL FRAUD CONTROL FUND.** The
27 commission may cancel any interest and any penalty when it is shown

1 that the failure to pay on or before the last day on which the tax
2 could have been paid without interest and penalty was not the
3 result of negligence, intentional disregard of the rules of the
4 commission, or fraud.

5 (b) The commission may make assessments against an employer,
6 claimant, employee of the commission, or third party who fails to
7 pay contributions, reimbursement payments in lieu of contributions,
8 penalties, forfeitures, or interest as required by this act. The
9 commission shall immediately notify the employer, claimant,
10 employee of the commission, or third party of the assessment in
11 writing by first-class mail. An assessment by the commission
12 against a claimant, an employee of the commission, or a third party
13 under this subsection shall be made only for penalties and interest
14 on those penalties for violations of section 54(a) or (b) or
15 sections 54a to 54c. The assessment, which shall constitute a
16 determination, shall be final unless the employer, claimant,
17 employee of the commission, or third party files with the
18 commission an application for a redetermination of the assessment
19 in accordance with section 32a. A review by the commission or an
20 appeal to a referee or the appeal board on the assessment shall not
21 reopen a question concerning an employer's liability for
22 contributions or reimbursement payments in lieu of contributions,
23 unless the employer was not a party to the proceeding or decision
24 where the basis for the assessment was determined. An employer may
25 pay an assessment under protest and file an action to recover the
26 amount paid as provided under subsection (d). Unless an assessment
27 is paid within 15 days after it becomes final the commission may

1 issue a warrant under its official seal for the collection of an
2 amount required to be paid pursuant to the assessment. The
3 commission through its authorized employees, under a warrant
4 issued, may levy upon and sell the property of the employer that is
5 used in connection with the employer's business, or that is subject
6 to a notice to withhold, found within the state, for the payment of
7 the amount of the contributions including penalties, interests, and
8 the cost of executing the warrant. Property of the employer used in
9 connection with the employer's business shall not be exempt from
10 levy under the warrant. Wages subject to a notice to withhold shall
11 be exempt to the extent the wages are exempt from garnishment under
12 the laws of this state. The warrant shall be returned to the
13 commission together with the money collected by virtue of the
14 warrant within the time specified in the warrant which shall not be
15 less than 20 or more than 90 days after the date of the warrant.
16 The commission shall proceed upon the warrant in all respects and
17 with like effect and in the same manner as prescribed by law in
18 respect to executions issued against property upon judgments by a
19 court of record. The state, through the commission or some other
20 officer or agent designated by it, may bid for and purchase
21 property sold under the provisions of this subsection. If an
22 employer, claimant, employee of the commission, or third party, as
23 applicable, is delinquent in the payment of a contribution,
24 reimbursement payment in lieu of contribution, penalty, forfeiture,
25 or interest provided for in this act, the commission may give
26 notice of the amount of the delinquency served either personally or
27 by mail, to a person or legal entity, including the state and its

1 subdivisions, that has in **ITS** possession or under **ITS** control a
2 credit or other intangible property belonging to the employer,
3 claimant, employee of the commission, or third party, or who owes a
4 debt to the employer, claimant, employee of the commission, or
5 third party at the time of the receipt of the notice. A person or
6 legal entity so notified shall not transfer or make a disposition
7 of the credit, other intangible property, or debt without retaining
8 an amount sufficient to pay the amount specified in the notice
9 unless the ~~commission~~**UNEMPLOYMENT AGENCY** consents to a transfer or
10 disposition or 45 days have elapsed from the receipt of the notice.
11 A person or legal entity so notified shall advise the ~~commission~~
12 **UNEMPLOYMENT AGENCY** within 5 days after receipt of the notice of a
13 credit, other intangible property, or debt, which is in its
14 possession, under its control, or owed by it. A person or legal
15 entity that is notified and that transfers or disposes of credits
16 or personal property in violation of this section is liable to the
17 ~~commission~~**UNEMPLOYMENT AGENCY** for the value of the property or the
18 amount of the debts thus transferred or paid, but not more than the
19 amount specified in the notice. An amount due a delinquent
20 employer, claimant, employee of the ~~commission~~**UNEMPLOYMENT AGENCY**,
21 or third party subject to a notice to withhold shall be paid to the
22 ~~commission~~**UNEMPLOYMENT AGENCY** upon service upon the debtor of a
23 warrant issued under this section.

24 (c) In addition to the mode of collection provided in
25 subsection (b), if, after due notice, an employer defaults in
26 payment of contributions or interest on the contributions, or a
27 claimant, employee of the ~~commission~~**UNEMPLOYMENT AGENCY**, or third

1 party defaults in the payment of a penalty or interest on a
2 penalty, the ~~commission~~-**UNEMPLOYMENT AGENCY** may bring an action at
3 law in a court of competent jurisdiction to collect and recover the
4 amount of a contribution, and any interest on the contribution, or
5 the penalty or interest on the penalty, and in addition 10% of the
6 amount of contributions or penalties found to be due, as damages.
7 An employer, claimant, employee of the ~~commission~~-**UNEMPLOYMENT**
8 **AGENCY**, or third party adjudged in default shall pay costs of the
9 action. An action by the ~~commission~~-**UNEMPLOYMENT AGENCY** against a
10 claimant, employee of the ~~commission~~-**UNEMPLOYMENT AGENCY**, or third
11 party under this subsection shall be brought only to recover
12 penalties and interest on those penalties for violations of section
13 54(a) or (b) or sections 54a to 54c. Civil actions brought under
14 this section shall be heard by the court at the earliest possible
15 date. If a judgment is obtained against an employer for
16 contributions and an execution on that judgment is returned
17 unsatisfied, the employer may be enjoined from operating and doing
18 business in this state until the judgment is satisfied. The circuit
19 court of the county in which the judgment is docketed or the
20 circuit court for the county of Ingham may grant an injunction upon
21 the petition of the ~~commission~~-**UNEMPLOYMENT AGENCY**. A copy of the
22 petition for injunction and a notice of when and where the court
23 shall act on the petition shall be served on the employer at least
24 21 days before the court may grant the injunction.

25 (d) An employer or employing unit improperly charged or
26 assessed contributions provided for under this act or a claimant,
27 employee of the ~~commission~~-**UNEMPLOYMENT AGENCY**, or third party

1 improperly assessed a penalty under this act and who paid the
2 contributions or penalty under protest within 30 days after the
3 mailing of the notice of determination of assessment, may recover
4 the amount improperly collected or paid, together with interest, in
5 any proper action against the ~~commission~~**UNEMPLOYMENT AGENCY**. The
6 circuit court of the county in which the employer or employing unit
7 or claimant, employee of the ~~commission~~**UNEMPLOYMENT AGENCY**, or
8 third party resides, or, in the case of an employer or employing
9 unit, in which is located the principal office or place of business
10 of the employer or employing unit, shall have original jurisdiction
11 of an action to recover contributions improperly paid or collected
12 or a penalty improperly assessed whether or not the charge or
13 assessment has been reviewed by the ~~commission~~**UNEMPLOYMENT AGENCY**
14 or heard or reviewed by a referee or the appeal board. The court
15 shall not have jurisdiction of the action unless written notice of
16 claim is given to the ~~commission~~**UNEMPLOYMENT AGENCY** at least 30
17 days before the institution of the action. In an action to recover
18 contributions paid or collected or penalties assessed, the court
19 shall allow costs to such an extent and in a manner as it may
20 consider proper. Either party to the action shall have the right of
21 appeal, as is now provided by law, in other civil actions. An
22 action by a claimant, employee of the ~~commission~~**UNEMPLOYMENT**
23 **AGENCY**, or third party against the ~~commission~~**UNEMPLOYMENT AGENCY**
24 under this subsection shall be brought only to recover penalties
25 and interest on those penalties improperly assessed by the
26 ~~commission~~**UNEMPLOYMENT AGENCY** under section 54(a) or (b) or
27 sections 54a to 54c. If a final judgment is rendered in favor of

1 the plaintiff in an action to recover the amount of contributions
2 illegally collected or charged, the treasurer of the ~~commission~~
3 **UNEMPLOYMENT AGENCY**, upon receipt of a certified copy of the final
4 judgment, shall pay the amount of contributions illegally collected
5 or charged or penalties assessed from the clearing account, and pay
6 interest as may be allowed by the court, in an amount not to exceed
7 the actual earnings of the contributions as may have been found to
8 have been illegally collected or charged, from the contingent fund.

9 (e) Except for liens and encumbrances recorded before the
10 filing of the notice provided for in this section, all
11 contributions, interest, and penalties payable under this act to
12 the ~~commission~~**UNEMPLOYMENT AGENCY** from an employer, claimant,
13 employee of the ~~commission~~**UNEMPLOYMENT AGENCY**, or third party that
14 neglects to pay the same when due shall be a first and prior lien
15 upon all property and rights to property, real and personal,
16 belonging to the employer, claimant, employee of the ~~commission~~
17 **UNEMPLOYMENT AGENCY**, or third party. The lien shall continue until
18 the liability for that amount or a judgment arising out of the
19 liability is satisfied or becomes unenforceable by reason of lapse
20 of time. The lien shall attach to the property and rights to
21 property of the employer, claimant, employee of the ~~commission~~
22 **UNEMPLOYMENT AGENCY**, or third party, whether real or personal, from
23 and after the date that a report upon which the specific tax is
24 computed is required by this act to be filed. Notice of the lien
25 shall be recorded in the office of the register of deeds of the
26 county in which the property subject to the lien is situated, and
27 the register of deeds shall receive the notice for recording. This

1 subsection ~~shall apply~~ **APPLIES** only to penalties and interest on
2 those penalties assessed by the commission against a claimant,
3 employee of the commission, or third party for violations of
4 section 54(a) or (b) or sections 54a to 54c.

5 If there is a distribution of an employer's assets pursuant to
6 an order of a court under the laws of this state, including a
7 receivership, assignment for benefit of creditors, adjudicated
8 insolvency, composition, or similar proceedings, contributions then
9 or thereafter due shall be paid in full before all other claims
10 except for wages and compensation under the worker's disability
11 compensation act of 1969, ~~Act No. 317 of the Public Acts of 1969,~~
12 ~~being sections 418.101 to 418.941 of the Michigan Compiled Laws~~
13 **1969 PA 317, MCL 418.101 TO 418.941**. In the distribution of estates
14 of decedents, claims for funeral expenses and expenses of last
15 sickness shall also be entitled to priority.

16 (f) An injunction shall not issue to stay proceedings for
17 assessment or collection of contributions, or interest or penalty
18 on contributions, levied and required by this act.

19 (g) A person or employing unit, that acquires the
20 organization, trade, business, or 75% or more of the assets from an
21 employing unit, as a successor ~~defined~~ **DESCRIBED** in section 41(2),
22 is liable for contributions and interest due to the commission from
23 the transferor at the time of the acquisition in an amount not to
24 exceed the reasonable value of the organization, trade, business,
25 or assets acquired, less the amount of a secured interest in the
26 assets owned by the transferee that are entitled to priority. The
27 transferor or transferee who has, not less than 10 days before the

1 acquisition, requested from the ~~commission~~ **UNEMPLOYMENT AGENCY** in
2 writing a statement certifying the status of contribution liability
3 of the transferor shall be provided with that statement and the
4 transferee is not liable for any amount due from the transferor in
5 excess of the amount of liability computed as prescribed in this
6 subsection and certified by the ~~commission~~ **UNEMPLOYMENT AGENCY**. At
7 least 2 calendar days not including a Saturday, Sunday, or legal
8 holiday before the acceptance of an offer, the transferor, or the
9 transferor's real estate broker or other agent representing the
10 transferor, shall disclose to the transferee on a form provided by
11 the ~~commission~~ **UNEMPLOYMENT AGENCY**, the amounts of the transferor's
12 outstanding unemployment tax liability, unreported unemployment tax
13 liability, and the tax payments, tax rates, and cumulative benefit
14 charges for the most recent 5 years, a listing of all individuals
15 currently employed by the transferor, and a listing of all
16 employees separated from employment with the transferor in the most
17 recent 12 months. This form shall specify such other information,
18 as determined by the ~~commission~~ **UNEMPLOYMENT AGENCY**, as would be
19 required for a transferee to estimate future unemployment
20 compensation costs based on the transferor's benefit charge and tax
21 reporting and payment experience with the ~~commission~~ **UNEMPLOYMENT**
22 **AGENCY**. Failure of the transferor, or the transferor's real estate
23 broker or other agent representing the transferor, to provide
24 accurate information required by this subsection is a misdemeanor
25 punishable by imprisonment for not more than 90 days, or a fine of
26 not more than \$2,500.00, or both. In addition, the transferor, or
27 the transferor's real estate broker or other agent representing the

1 transferor, is liable to the transferee for any consequential
2 damages resulting from the failure to comply with this subsection.
3 However, the real estate broker or other agent is not liable for
4 consequential damages if he or she exercised good faith in
5 compliance with the disclosure of information. The remedy provided
6 the transferee is not exclusive, and is not to be construed to
7 reduce any other right or remedy against any party provided for in
8 this or any other act. Nothing in this subsection shall be
9 construed to decrease the liability of the transferee as a
10 successor in interest, or to prevent the transfer of a rating
11 account balance as provided in this act. The foregoing provisions
12 are in addition to the remedies the ~~commission~~**UNEMPLOYMENT AGENCY**
13 has against the transferor.

14 (h) If a part of a deficiency in payment of the employer's
15 contribution to the fund is due to negligence or intentional
16 disregard of the rules of the ~~commission~~**UNEMPLOYMENT AGENCY**, but
17 without intention to defraud, 5% of the total amount of the
18 deficiency, in addition to the deficiency and in addition to all
19 other interest charges and penalties provided herein, shall be
20 assessed, collected, and paid in the same manner as if it were a
21 deficiency. If a part of a deficiency is determined in an action at
22 law to be due to fraud with intent to avoid payment of
23 contributions to the fund, then the judgment rendered shall include
24 an amount equal to 50% of the total amount of the deficiency, in
25 addition to the deficiency and in addition to all other interest
26 charges and penalties provided herein.

27 (i) If an employing unit fails to make a report as reasonably

1 required by the rules of the ~~commission~~ **UNEMPLOYMENT AGENCY**
2 pursuant to this act, the ~~commission~~ **UNEMPLOYMENT AGENCY** may make
3 an estimate of the liability of that employing unit from
4 information it may obtain and, according to that estimate so made,
5 assess the employing unit for the contributions, penalties, and
6 interest due. The ~~commission~~ **UNEMPLOYMENT AGENCY** shall have the
7 power only after a default continues for 30 days and after the
8 ~~commission~~ **UNEMPLOYMENT AGENCY** has determined that the default of
9 the employing unit is willful.

10 (j) An assessment or penalty with respect to contributions
11 unpaid is not effective for any period before the 3 calendar years
12 preceding the date of the assessment.

13 (k) The rights respecting the collection of contributions and
14 the levy of interest and penalties and damages made available to
15 the ~~commission~~ **UNEMPLOYMENT AGENCY** by this section is ~~is~~ **ARE**
16 additional to other powers and rights vested in the ~~commission~~ **in**
17 ~~pursuance of the~~ **UNEMPLOYMENT AGENCY UNDER** other provisions of this
18 act. The ~~commission~~ **UNEMPLOYMENT AGENCY** is not precluded from
19 exercising any of the collection remedies provided for by this act
20 even though an application for a redetermination or an appeal is
21 pending final disposition.

22 (l) A person recording a lien provided for in this section
23 shall pay a fee of \$2.00 for recording a lien and a fee of \$2.00
24 for recording a discharge of a lien.

25 Sec. 54. (a) A person who willfully violates or intentionally
26 fails to comply with any of the provisions of this act, or a
27 regulation of the ~~commission~~ **UNEMPLOYMENT AGENCY** promulgated under

1 the authority of this act for which a penalty is not otherwise
2 provided by this act is ~~punishable~~ **SUBJECT TO SANCTIONS** as provided
3 in subdivision (i), (ii), (iii), or (iv), notwithstanding any other
4 statute of this state or of the United States:

5 (i) If the commission determines that an amount has been
6 obtained or withheld as a result of the intentional failure to
7 comply with this act, the ~~commission~~ **UNEMPLOYMENT AGENCY** may
8 recover the amount obtained as a result of the intentional failure
9 to comply plus damages equal to 3 times that amount.

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

17 (A) If the amount obtained or withheld from payment as a
18 result of the intentional failure to comply is less than
19 \$25,000.00, then 1 of the following:

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

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

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

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

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

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

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

6 (C) If the amount obtained or withheld from payment as a
7 result of the intentional failure to comply is more than
8 \$100,000.00, then 1 of the following:

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

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

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

14 (iii) If the ~~commission~~**UNEMPLOYMENT AGENCY** determines that an
15 amount has been obtained or withheld as a result of a knowing
16 violation of this act, the ~~commission~~**UNEMPLOYMENT AGENCY** may
17 recover the amount obtained as a result of the knowing violation
18 and may also recover damages equal to 3 times that amount.

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

26 (A) If the amount obtained or withheld from payment as a
27 result of the knowing violation is \$100,000.00 or less, then 1 of

1 the following:

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

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

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

7 (B) If the amount obtained or withheld from payment as a
8 result of the knowing violation is more than \$100,000.00, then 1 of
9 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 (b) Any employing unit or an officer or agent of an employing
16 unit, a claimant, an employee of the ~~commission~~ **UNEMPLOYMENT**
17 **AGENCY**, or any other person who makes a false statement or
18 representation knowing it to be false, or knowingly and willfully
19 with intent to defraud fails to disclose a material fact, to obtain
20 or increase a benefit or other payment under this act or under the
21 unemployment compensation law of any state or of the federal
22 government, either for himself or herself or any other person, to
23 prevent or reduce the payment of benefits to an individual entitled
24 thereto or to avoid becoming or remaining a subject employer, or to
25 avoid or reduce a contribution or other payment required from an
26 employing unit under this act or under the unemployment
27 compensation law of any state or of the federal government, as

1 applicable, is **SUBJECT TO ADMINISTRATIVE FINES AND IS** punishable as
2 follows, notwithstanding any other penalties imposed under any
3 other statute of this state or of the United States:

4 (i) If the amount obtained as a result of the knowing false
5 statement or representation or the knowing and willful failure to
6 disclose a material fact is less than \$500.00, the ~~commission~~
7 **UNEMPLOYMENT AGENCY** may recover the amount obtained as a result of
8 the knowing false statement or representation or the knowing and
9 willful failure to disclose a material fact and may also recover
10 damages equal to 2 times that amount. **FOR A SECOND OR SUBSEQUENT**
11 **VIOLATION DESCRIBED IN THIS SUBDIVISION, THE UNEMPLOYMENT AGENCY**
12 **MAY RECOVER DAMAGES EQUAL TO 4 TIMES THE AMOUNT OBTAINED.**

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

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

1 result of the knowing false statement or representation or the
2 knowing and willful failure to disclose a material fact is
3 \$1,000.00 or more but less than \$25,000.00, then 1 of the
4 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 false statement or representation or the
12 knowing and willful failure to disclose a material fact is
13 \$25,000.00 or more, then 1 of the following:

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

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

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

19 (C) If the knowing false statement or representation or the
20 knowing and willful failure to disclose a material fact made to
21 obtain or withhold an amount from payment does not result in a loss
22 to the commission, then a ~~penalty~~ **RECOVERY** shall be sought equal to
23 3 times the amount that would have been obtained by the knowing
24 false statement or representation or the knowing and willful
25 failure to disclose a material fact, but not less than \$1,000.00,
26 and 1 of the following:

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

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

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

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

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

27 (3) ~~When~~-**IF** a report is filed after the prescribed time and it

1 is shown to the satisfaction of the commission that the failure to
2 submit the report was due to reasonable cause, a ~~penalty~~**FINE** shall
3 not be imposed. The assessment of a ~~penalty~~**FINE** as provided in
4 this subsection ~~shall constitute~~**CONSTITUTES** a **FINAL** determination
5 ~~which shall be final~~ unless the employer files ~~with the commission~~
6 an application **WITH THE UNEMPLOYMENT AGENCY** for a redetermination
7 of the assessment in accordance with section 32a.

8 (d) If any ~~commissioner,~~ employee ~~,~~ or agent of the ~~commission~~
9 **UNEMPLOYMENT AGENCY** or member of the appeal board willfully ~~makes a~~
10 ~~disclosure of~~**DISCLOSES** confidential information obtained from any
11 employing unit or individual in the administration of this act for
12 any purpose inconsistent with or contrary to the purposes of this
13 act, or a person who ~~having obtained~~**OBTAINS** a list of applicants
14 for work ~~,~~ or of claimants or recipients of benefits ~~,~~ under this
15 act ~~shall use or permit the~~**USES OR PERMITS** use of that list for a
16 political purpose or for a purpose inconsistent with or contrary to
17 the purposes of this act, he or she is guilty of a misdemeanor ~~and~~
18 ~~upon conviction shall be punished~~**PUNISHABLE** by imprisonment for
19 not more than 90 days ~~,~~ or ~~by a~~ fine of not more than \$1,000.00, or
20 both. Notwithstanding the preceding sentence, if any ~~commissioner,~~
21 ~~commission~~**UNEMPLOYMENT AGENCY** employee, agent of the ~~commission~~
22 **UNEMPLOYMENT AGENCY**, or member of the board of review knowingly,
23 intentionally, and for financial gain, makes an illegal disclosure
24 of confidential information obtained under section 13(2), he or she
25 is guilty of a felony, punishable by imprisonment for not more than
26 1 year and 1 day.

27 (e) A person who, without proper authority from the ~~commission~~

1 **UNEMPLOYMENT AGENCY**, represents himself or herself to be an
2 employee of the commission to an employing unit or person for the
3 purpose of securing information regarding the unemployment or
4 employment record of an individual is guilty of a misdemeanor ~~and~~
5 ~~upon conviction shall be punished~~ **PUNISHABLE** by imprisonment for
6 not more than 90 days ~~, or by~~ a fine of not more than \$1,000.00, or
7 both.

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

18 (g) As used in this section, "person" includes an individual,
19 copartnership, joint venture, corporation, receiver, or trustee in
20 bankruptcy.

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

25 (i) If a determination is made that an individual has violated
26 this section, the individual is subject to the ~~penalty~~ provisions
27 of this section and, ~~where~~ **IF** applicable, the requirements of

1 section 62.

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

11 **(K) AMOUNTS RECOVERED BY THE UNEMPLOYMENT AGENCY UNDER**
 12 **SUBSECTION (B) SHALL BE CREDITED AS FOLLOWS:**

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

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

21 **(l) ~~(k)~~** The revisions in the penalties in subsections (a) and
 22 (b) provided by the 1991 amendatory act that added this subsection
 23 ~~shall~~ apply to conduct that began before April 1, 1992, but that
 24 continued on or after April 1, 1992, and to conduct that began on
 25 or after April 1, 1992.

26 Sec. 62. (1) ~~(a)~~ **UNEMPLOYMENT AGENCY**
 27 determines that a person has obtained benefits to which that person

1 is not entitled, the commission may recover a sum equal to the
 2 amount received **PLUS INTEREST** by 1 or more of the following
 3 methods: ~~(1) deduction~~

4 (A) **DEDUCTION** from benefits payable to the individual. ~~(2)~~
 5 ~~payment~~

6 (B) **PAYMENT** by the individual to the commission in cash. ~~or~~
 7 ~~(3) deduction~~

8 (C) **DEDUCTION** from a tax refund payable to the individual as
 9 provided under section 30a of ~~Act No. 122 of the Public Acts of~~
 10 ~~1941, being section 205.30a of the Michigan Compiled Laws 1941 PA~~
 11 **122, MCL 205.30A.**

12 (2) Deduction from benefits payable to the individual ~~shall be~~
 13 **IS** limited to not more than 20% of each weekly benefit check due
 14 the claimant. The ~~commission~~ **UNEMPLOYMENT AGENCY** shall not recover
 15 improperly paid benefits from an individual more than 3 years, or
 16 more than 6 years in the case of a violation of section 54(a) or
 17 (b) or sections 54a to 54c, after the date of receipt of the
 18 improperly paid benefits unless ~~(1) THE UNEMPLOYMENT AGENCY FILED~~
 19 a civil action ~~is filed in a court by the commission~~ within the 3-
 20 year or 6-year period ~~(2) OR~~ the individual made an intentional
 21 false statement, misrepresentation, or concealment of material
 22 information to obtain the benefits ~~or (3) the commission~~
 23 **UNEMPLOYMENT AGENCY** issued a determination requiring restitution
 24 within the 3-year or 6-year period. ~~Furthermore, except~~ **EXCEPT** in a
 25 case of an intentional false statement, misrepresentation, or
 26 concealment of material information, the commission may waive
 27 recovery of an improperly paid benefit **OR INTEREST** if the payment

1 was not the fault of the individual and if repayment would be
2 contrary to equity and good conscience.

3 (3) ~~(b)~~ For benefit years beginning before ~~the conversion date~~
4 ~~prescribed in section 75~~ **OCTOBER 1, 2000**, if the ~~commission~~
5 **UNEMPLOYMENT AGENCY** determines that a person has intentionally made
6 a false statement or misrepresentation or has concealed material
7 information to obtain benefits, whether or not the person obtains
8 benefits by or because of the intentional false statement,
9 misrepresentation, or concealment of material information, the
10 person shall, in addition to any other applicable **INTEREST AND**
11 penalties, have all of his or her uncharged credit weeks with
12 respect to the benefit year in which the act occurred canceled as
13 of the date the ~~commission~~ **UNEMPLOYMENT AGENCY** receives notice of,
14 or initiates investigation of, the possible false statement,
15 misrepresentation, or concealment of material information,
16 whichever date is earlier. Before receiving benefits in a benefit
17 year established within 2 years after cancellation of uncharged
18 credit weeks under this subsection, the individual, in addition to
19 making the restitution of benefits established under ~~subsection (a)~~
20 **SUBSECTIONS (1) AND (2)**, may be liable to the ~~commission~~
21 **UNEMPLOYMENT AGENCY**, by cash, deduction from benefits, or deduction
22 from a tax refund, for an additional amount as determined by the
23 ~~commission~~ **UNEMPLOYMENT AGENCY** under this act. Restitution
24 resulting from the intentional false statement, misrepresentation,
25 or concealment of material information is not subject to the 20%
26 limitation provided in subsection ~~(a)~~ **(2)**. For benefit years
27 beginning ~~after the conversion date prescribed in section 75~~ **ON OR**

1 **AFTER OCTOBER 1, 2000**, if the ~~commission~~**UNEMPLOYMENT AGENCY**
2 determines that a person has intentionally made a false statement
3 or misrepresentation or has concealed material information to
4 obtain benefits, whether or not the person obtains benefits by or
5 because of the intentional false statement, misrepresentation, or
6 concealment of material information, the person shall, in addition
7 to any other applicable **INTEREST AND** penalties, have his or her
8 rights to benefits for the benefit year in which the act occurred
9 canceled as of the date the ~~commission~~**UNEMPLOYMENT AGENCY** receives
10 notice of, or initiates investigation of, a possible false
11 statement, misrepresentation, or concealment of material
12 information, whichever date is earlier, and wages used to establish
13 that benefit year shall not be used to establish another benefit
14 year. Before receiving benefits in a benefit year established
15 within 2 years after cancellation of rights to benefits under this
16 subsection, the individual, in addition to making the restitution
17 of benefits established under ~~subsection (a)~~**SUBSECTIONS (1) AND**
18 **(2)**, may be liable to the ~~commission~~**UNEMPLOYMENT AGENCY**, by cash,
19 deduction from benefits, or deduction from a tax refund, for an
20 additional amount as otherwise determined by the ~~commission~~
21 **UNEMPLOYMENT AGENCY** under this act. Restitution resulting from the
22 intentional false statement, misrepresentation, or concealment of
23 material information is not subject to the 20% limitation provided
24 in subsection ~~(a)~~**(2)**.

25 **(4)** ~~(e)~~Any determination made by the ~~commission~~**UNEMPLOYMENT**
26 **AGENCY** under this section is final unless an application for a
27 redetermination is filed with the ~~commission~~**UNEMPLOYMENT AGENCY** in

1 accordance with section 32a.

2 (5) ~~(d)~~—The ~~commission~~ **UNEMPLOYMENT AGENCY** shall take the
3 action necessary to recover all benefits improperly obtained or
4 paid under this act **PLUS INTEREST**, and to enforce all penalties
5 under subsection ~~(b)~~—(3).

6 (6) **INTEREST RECOVERED UNDER THIS SECTION SHALL BE DEPOSITED**
7 **IN THE SPECIAL FRAUD CONTROL FUND CREATED IN SECTION 10. THE**
8 **INTEREST SO DEPOSITED SHALL BE EXPENDED FIRST TO ACQUIRE, THROUGH A**
9 **COMPETITIVE BID PROCESS, PACKAGED SOFTWARE THAT HAS A PROVEN RECORD**
10 **OF SUCCESS IN DETECTING AND COLLECTING UNEMPLOYMENT BENEFIT**
11 **OVERPAYMENTS, BEFORE BEING APPLIED TO OTHER ADMINISTRATIVE**
12 **EXPENSES.**