

HOUSE BILL NO. 4902

September 03, 2019, Introduced by Reps. Cherry, Howell, Elder, Sowerby, Clemente, Sneller, Camilleri, Chirkun, Sabo, Lasinski, Brixie, Brenda Carter, Liberati, Tate, Rabhi, Stone, Manoogian, Pohutsky, Kennedy, Shannon, Garza, Hope, Hood, Hertel, Gay-Dagnogo, Witwer, Ellison, Warren, Wittenberg, Kuppa, Pagan, Guerra, Whitsett, Neeley, Bolden, Cambensy, Jones, Hoadley, Garrett, Hammoud, Haadsma, Cynthia Johnson, Coleman, Greig, Anthony, Yancey and Robinson 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 62 (MCL 421.62), as amended by 2017 PA 231.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 62. (a) If the unemployment agency determines that an
2 individual has obtained benefits to which the individual is not
3 entitled, or a subsequent determination by the agency or a decision
4 of an appellate authority reverses a prior qualification for
5 benefits, the agency may recover a sum equal to the amount received
6 plus interest pursuant to section 15(a) by 1 or more of the



1 following methods: deduction from benefits or wages payable to the
2 individual, payment by the individual in cash, or deduction from a
3 tax refund payable to the individual as provided under section 30a
4 of 1941 PA 122, MCL 205.30a. Deduction from benefits or wages
5 payable to the individual is limited to not more than 50% of each
6 payment due the claimant. The unemployment agency shall issue a
7 determination requiring restitution within 3 years after the date
8 of finality of a determination, redetermination, or decision
9 reversing a previous finding of benefit entitlement. Except in the
10 case of benefits improperly paid because of suspected identity
11 fraud, the unemployment agency shall not initiate administrative or
12 court action to recover improperly paid benefits from an individual
13 more than 3 years after the date that the last determination,
14 redetermination, or decision establishing restitution is final.
15 Except in the case of benefits improperly paid because of suspected
16 identity fraud, the unemployment agency shall issue a restitution
17 determination on an issue within 3 years ~~from~~**after** the date the
18 claimant first received benefits in the benefit year in which the
19 issue arose, or in the case of an issue of intentional false
20 statement, misrepresentation, or concealment of material
21 information in violation of section 54(a) or (b) or sections 54a to
22 54c, within 3 years after the receipt of the improperly paid
23 benefits unless the unemployment agency filed a civil action in a
24 court within the 3-year period; the individual made an intentional
25 false statement, misrepresentation, or concealment of material
26 information to obtain the benefits; or the unemployment agency
27 issued a determination requiring restitution within the 3-year
28 period. The time limits in this section do not prohibit the
29 unemployment agency from pursuing collection methods to recover the



1 amounts found to have been improperly paid. Except in a case of an
2 intentional false statement, misrepresentation, or concealment of
3 material information, the unemployment agency shall waive recovery
4 of an improperly paid benefit if repayment would be contrary to
5 equity and good conscience and shall waive any interest. If the
6 agency or an appellate authority waives collection of restitution
7 and interest, except as provided in subdivision (ii), the waiver is
8 prospective and does not apply to restitution and interest payments
9 already made by the individual. As used in this subsection,
10 "contrary to equity and good conscience" means any of the
11 following:

12 (i) The claimant provided incorrect wage information without
13 the intent to misrepresent, and the employer provided either no
14 wage information upon request or provided inaccurate wage
15 information that resulted in the overpayment.

16 (ii) The claimant's average net household income and household
17 cash assets, exclusive of social welfare benefits, were, during the
18 6 months immediately preceding the date of the application for
19 waiver, at or below 150% of the annual update of the poverty
20 guidelines most recently published in the Federal Register by the
21 United States Department of Health and Human Services under the
22 authority of 42 USC 9902(2), and the claimant has applied for a
23 waiver under this subsection. The unemployment agency shall not
24 consider a new application for a waiver from a claimant within 6
25 months after receiving an application for a waiver from the
26 claimant. A waiver granted under the conditions described in this
27 subdivision applies from the date the application is filed. If the
28 waiver is granted, the unemployment agency shall promptly refund
29 any restitution or interest payments made by the individual after



1 the date of the application for waiver. As used in this
2 subdivision:

3 (A) "Cash assets" means cash on hand and funds in a checking
4 or savings account.

5 (B) "Dependent" means that term as defined in section
6 27(b)(4).

7 (C) "Household" means a claimant and the claimant's
8 dependents.

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

16 (b) If the unemployment agency determines that a claimant has
17 intentionally made a false statement or misrepresentation or has
18 concealed material information to obtain benefits, whether or not
19 the claimant obtains benefits by or because of the intentional
20 false statement, misrepresentation, or concealment of material
21 information, the unemployment agency shall, in addition to any
22 other applicable interest and penalties, cancel ~~his or her~~ **the**
23 **claimant's** rights to benefits for the benefit year in which the act
24 occurred as of the date the claimant made the false statement or
25 misrepresentation or concealed material information, and shall not
26 use wages used to establish that benefit year to establish another
27 benefit year. A chargeable employer may protest a claim filed after
28 October 1, 2014 to establish a successive benefit year under
29 section 46(c), if there was a determination by the unemployment



1 agency or decision of a court or administrative tribunal finding
2 that the claimant made a false statement, made a misrepresentation,
3 or concealed material information related to ~~his or her~~ **the**
4 **claimant's** report of earnings for a preceding benefit year claim.

5 If a protest is made, the unemployment agency shall not use any
6 unreported earnings from the preceding benefit year that were
7 falsely stated, misrepresented, or concealed to establish a benefit
8 year for a successive claim. Before receiving benefits in a benefit
9 year established within 4 years after cancellation of rights to
10 benefits under this subsection, the claimant, in addition to making
11 the restitution of benefits established under subsection (a), may
12 be liable for an additional amount as otherwise determined by the
13 unemployment agency under this act, which may be paid by cash,
14 deduction from benefits, or deduction from a tax refund. The
15 claimant is liable for any fee the federal government imposes with
16 respect to instituting a deduction from a federal tax refund.
17 Restitution resulting from the intentional false statement,
18 misrepresentation, or concealment of material information is not
19 subject to the 50% limitation provided in subsection (a).

20 (c) Any determination made by the unemployment agency under
21 this section is final unless an application for a redetermination
22 is filed in accordance with section 32a. **However, a determination**
23 **that benefits have been improperly paid is not final unless the**
24 **unemployment agency has notified the claimant of the right to**
25 **request an in-person or telephone hearing, at the claimant's**
26 **option, to appeal the determination, and to have counsel present at**
27 **the hearing. The unemployment agency shall not take action to**
28 **recover benefits improperly paid or to enforce interest, penalties,**
29 **or any additional amount under this section until after the**



1 claimant has exercised the right to a hearing or has expressly
2 waived that right.

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

11 (e) Interest recovered under this section must be deposited in
12 the contingent fund.

13 (f) The unemployment agency shall not make a determination
14 that a claimant made an intentional false statement,
15 misrepresentation, or concealment of material information that is
16 subject to sanctions under this section based solely on a computer-
17 identified discrepancy in information supplied by the claimant or
18 employer. An unemployment agency employee or agent must examine the
19 facts and independently determine that the claimant or the employer
20 is responsible for a willful or intentional violation before the
21 agency makes a determination under this section.

22 (g) By January 31 each year, beginning in 2019, the
23 unemployment agency shall provide a written report regarding
24 waivers under subsection (a) (ii) to the chairpersons of the standing
25 committees and the appropriations subcommittees of the house of
26 representatives and senate having jurisdiction over legislation
27 pertaining to employment security. The report must include all of
28 the following information from the immediately preceding calendar
29 year in a form that does not identify an individual, claimant, or



1 employer:

2 (i) The procedures relating to waivers that the unemployment
3 agency used or adopted.

4 (ii) The number of applications for a waiver the unemployment
5 agency received.

6 (iii) The number of individuals who submitted an application for
7 a waiver.

8 (iv) The number of waivers that were granted by each of the
9 following methods:

10 (A) An unemployment agency determination.

11 (B) An unemployment agency redetermination.

12 (C) An administrative law judge order.

13 (D) A Michigan compensation appellate commission order.

14 (E) A court order.

15 (v) The number of waivers that were denied, tabulated by the
16 reason for the denial, by each of the following methods:

17 (A) An unemployment agency determination.

18 (B) An unemployment agency redetermination.

19 (C) An administrative law judge order.

20 (D) A Michigan compensation appellate commission order.

21 (E) A court order.

22 (vi) The total amount of restitution waived.

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

