

HOUSE BILL NO. 4371

April 11, 2023, Introduced by Reps. Schmaltz, Outman, Bezotte, Kunse, Schuette, Martin, Beson, Kuhn, Hall, Alexander, DeBoyer, Bollin, Harris and Meerman and referred to the Committee on Ethics and Oversight.

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

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

1 recover improperly paid benefits from an individual or issue a
2 restitution determination at any time. In the case of an issue of
3 intentional false statement, misrepresentation, or concealment of
4 material information in violation of section 54(a) or (b) or
5 sections 54a to 54c, within the unemployment agency shall initiate
6 administrative or court action to recover improperly paid benefits
7 from an individual or issue a restitution determination on the
8 issue not later than 3 years after the receipt of the improperly
9 paid benefits; unless however, the unemployment agency may issue a
10 restitution determination on the issue after that 3-year period if
11 the unemployment agency filed a civil action in a court within ~~the~~
12 that 3-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
**16 period. The time limits in this section do not prohibit the
17 unemployment agency from pursuing collection methods to recover the
18 amounts found to have been improperly paid. Except in a case of an
19 intentional false statement, misrepresentation, or concealment of
20 material information, the unemployment agency shall waive recovery
21 of an improperly paid benefit if repayment would be contrary to
22 equity and good conscience and shall waive any interest. If the
23 agency or an appellate authority waives collection of restitution
24 and interest, except as provided in subdivision (ii), the waiver is
25 prospective and does not apply to restitution and interest payments
26 already made by the individual. As used in this subsection,
27 "contrary to equity and good conscience" means any of the
28 following:********

29 (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 average net household income and household
5 cash assets, exclusive of social welfare benefits, were, during the
6 6 months immediately preceding the date of the application for
7 waiver, at or below 150% of the annual update of the poverty
8 guidelines most recently published in the Federal Register by the
9 United States Department of Health and Human Services under the
10 authority of 42 USC 9902(2), and the claimant has applied for a
11 waiver under this subsection. The unemployment agency shall not
12 consider a new application for a waiver from a claimant within 6
13 months after receiving an application for a waiver from the
14 claimant. A waiver granted under the conditions described in this
15 subdivision applies from the date the application is filed. If the
16 waiver is granted, the unemployment agency shall promptly refund
17 any restitution or interest payments made by the individual after
18 the date of the application for waiver. As used in this
19 subdivision:

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

22 (B) "Dependent" means that term as defined in section
23 27(b)(4).

24 (C) "Household" means a claimant and the claimant's
25 dependents.

26 (iii) The improper payments resulted from an administrative or
27 clerical error by the unemployment agency. A requirement to repay
28 benefits as the result of a change in judgment at any level of
29 administrative adjudication or court decision concerning the facts

1 or application of law to a claim adjudication is not an
2 administrative or clerical error for purposes of this subdivision.

3 (b) If the unemployment agency determines that a claimant has
4 intentionally made a false statement or misrepresentation or has
5 concealed material information to obtain benefits, whether or not
6 the claimant obtains benefits by or because of the intentional
7 false statement, misrepresentation, or concealment of material
8 information, the unemployment agency shall, in addition to any
9 other applicable interest and penalties, cancel his or her rights
10 to benefits for the benefit year in which the act occurred as of
11 the date the claimant made the false statement or misrepresentation
12 or concealed material information, and shall not use wages used to
13 establish that benefit year to establish another benefit year. A
14 chargeable employer may protest a claim filed after October 1, 2014
15 to establish a successive benefit year under section 46(c), if
16 there was a determination by the unemployment agency or decision of
17 a court or administrative tribunal finding that the claimant made a
18 false statement, made a misrepresentation, or concealed material
19 information related to his or her report of earnings for a
20 preceding benefit year claim. If a protest is made, the
21 unemployment agency shall not use any unreported earnings from the
22 preceding benefit year that were falsely stated, misrepresented, or
23 concealed to establish a benefit year for a successive claim.
24 Before receiving benefits in a benefit year established within 4
25 years after cancellation of rights to benefits under this
26 subsection, the claimant, in addition to making the restitution of
27 benefits established under subsection (a), may be liable for an
28 additional amount as otherwise determined by the unemployment
29 agency under this act, which may be paid by cash, deduction from

1 benefits, or deduction from a tax refund. The claimant is liable
2 for any fee the federal government imposes with respect to
3 instituting a deduction from a federal tax refund. Restitution
4 resulting from the intentional false statement, misrepresentation,
5 or concealment of material information is not subject to the 50%
6 limitation provided in subsection (a).

7 (c) Any determination made by the unemployment agency under
8 this section is final unless an application for a redetermination
9 is filed in accordance with section 32a. **However, a redetermination**
10 **that a benefit has been improperly paid is not final unless the**
11 **unemployment agency provides to the claimant notice in the manner**
12 **as required under this subsection of the claimant's rights to**
13 **request an in-person or telephone hearing, have counsel present at**
14 **the hearing, and appeal the redetermination. The unemployment**
15 **agency shall not take action to recover an improperly paid benefit**
16 **or to enforce interest, penalties, or any additional amount**
17 **assessed under this section unless the unemployment agency provides**
18 **to the claimant notice in the manner as required under this**
19 **subsection of the claimant's rights to request an in-person or**
20 **telephone hearing, have counsel present at the hearing, and appeal**
21 **the redetermination. To provide notice under this subsection, the**
22 **unemployment agency must do all of the following:**

23 (i) Mail the notice to the claimant's last known address.

24 (ii) Send the notice via the unemployment agency's computer
25 system to the claimant.

26 (iii) Do either of the following:

27 (A) Speak with the claimant in person or via telephone about
28 the claimant's rights.

29 (B) Send the notice via email to the claimant's last known

1 **email address.**

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

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

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

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

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

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

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

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

9 (A) An unemployment agency determination.

10 (B) An unemployment agency redetermination.

11 (C) An administrative law judge order.

12 (D) A Michigan compensation appellate commission order.

13 (E) A court order.

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

16 (A) An unemployment agency determination.

17 (B) An unemployment agency redetermination.

18 (C) An administrative law judge order.

19 (D) A Michigan compensation appellate commission order.

20 (E) A court order.

21 (vi) The total amount of restitution waived.