

**SUBSTITUTE FOR
HOUSE BILL NO. 5551**

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
7 following methods: deduction from benefits or wages payable to the
8 individual, payment by the individual in cash, or deduction from a
9 tax refund payable to the individual as provided under section 30a



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



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

24 (i) The claimant provided incorrect wage information without
25 the intent to misrepresent, and the employer provided either no
26 wage information upon request or provided inaccurate wage
27 information that resulted in the overpayment.

28 (ii) The claimant's average net household income and household
29 cash assets, exclusive of social welfare benefits, were, during the



1 6 months immediately preceding the date of the application for
2 waiver, at or below 150% of the annual update of the poverty
3 guidelines most recently published in the Federal Register by the
4 United States Department of Health and Human Services under the
5 authority of 42 USC 9902(2), and the claimant has applied for a
6 waiver under this subsection. The unemployment agency shall not
7 consider a new application for a waiver from a claimant within 6
8 months after receiving an application for a waiver from the
9 claimant. A waiver granted under the conditions described in this
10 subdivision applies from the date the application is filed. If the
11 waiver is granted, the unemployment agency shall promptly refund
12 any restitution or interest payments made by the individual after
13 the date of the application for waiver. As used in this
14 subdivision:

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

17 (B) "Dependent" means that term as defined in section
18 27(b)(4).

19 (C) "Household" means a claimant and the claimant's
20 dependents.

21 (iii) The improper payments resulted from an administrative or
22 clerical error by the unemployment agency. A requirement to repay
23 benefits as the result of a change in judgment at any level of
24 administrative adjudication or court decision concerning the facts
25 or application of law to a claim adjudication is not an
26 administrative or clerical error for purposes of this subdivision.

27 (b) If the unemployment agency determines that a claimant has
28 intentionally made a false statement or misrepresentation or has
29 concealed material information to obtain benefits, whether or not



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



1 limitation provided in subsection (a).

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

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

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

21 (iii) Do either of the following:

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

24 (B) Send the notice via email to the claimant's last known
25 email address.

26 (d) The unemployment agency shall take the action necessary to
27 recover all benefits improperly obtained or paid under this act,
28 and to enforce all interest and penalties under subsection (b). The
29 unemployment agency may conduct an amnesty program for a designated



1 period under which penalties and interest assessed against an
2 individual owing restitution for improperly paid benefits may be
3 waived if the individual pays the full amount of restitution owing
4 within the period specified by the agency.

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

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

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

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

27 (ii) The number of applications for a waiver the unemployment
28 agency received.

29 (iii) The number of individuals who submitted an application for



1 a waiver.

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

4 (A) An unemployment agency determination.

5 (B) An unemployment agency redetermination.

6 (C) An administrative law judge order.

7 (D) A Michigan compensation appellate commission order.

8 (E) A court order.

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

11 (A) An unemployment agency determination.

12 (B) An unemployment agency redetermination.

13 (C) An administrative law judge order.

14 (D) A Michigan compensation appellate commission order.

15 (E) A court order.

16 (vi) The total amount of restitution waived.

