

HOUSE BILL NO. 4436

March 04, 2021, Introduced by Reps. Cherry, Sowerby, Scott, Clemente, Shannon, Tyrone Carter, O'Neal, Hope, Hood, Koleszar, Cavanagh, Ellison, Thanedar, Sabo, Steenland, Tate, Liberati, Steckloff, Weiss, Puri, Kuppa, Brabec, Breen, Young, Howell, Garza, Manoogian, Camilleri, Brixie, Stone, Coleman, Bolden, Sneller, Brenda Carter, Aiyash, Pohutsky, Lasinski, Rabhi, Whitsett, Jones and Yancey and referred to the Committee on Workforce, Trades, and Talent.

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

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

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

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

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

1 any restitution or interest payments made by the individual after
2 the date of the application for waiver. As used in this
3 subdivision:

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

6 (B) "Dependent" means that term as defined in section
7 27(b)(4).

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

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

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

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

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

1 or any additional amount under this section until after the
2 claimant has exercised the right to a hearing or has expressly
3 waived that right.

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

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

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

23 (g) By January 31 each year, beginning in 2019, the
24 unemployment agency shall provide a written report regarding
25 waivers under subsection (a) (ii) to the chairpersons of the standing
26 committees and the appropriations subcommittees of the house of
27 representatives and senate having jurisdiction over legislation
28 pertaining to employment security. The report must include all of
29 the following information from the immediately preceding calendar

1 year in a form that does not identify an individual, claimant, or
2 employer:

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

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

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

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

18 (A) An unemployment agency determination.

19 (B) An unemployment agency redetermination.

20 (C) An administrative law judge order.

21 (D) A Michigan compensation appellate commission order.

22 (E) A court order.

23 (vi) The total amount of restitution waived.

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