

HOUSE BILL NO. 4438

March 04, 2021, Introduced by Reps. Sneller, Sowerby, Scott, Clemente, Shannon, Garza, Tyrone Carter, O'Neal, Hope, Hood, Koleszar, Cavanagh, Ellison, Sabo, Manoogian, Tate, Liberati, Steckloff, Cherry, Weiss, Puri, Kuppa, Brabec, Breen, Young, Camilleri, Brixie, Rogers, Stone, Coleman, Bolden, Brenda Carter, Aiyash, Pohutsky, Lasinski, Rabhi, Howell, 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%~~20% of
7 each payment due the claimant. The unemployment agency shall issue
8 a 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 the date the claimant
19 first received benefits in the benefit year in which the issue
20 arose, or in the case of an issue of intentional false statement,
21 misrepresentation, or concealment of material information in
22 violation of section 54(a) or (b) or sections 54a to 54c, within 3
23 years after the receipt of the improperly paid benefits unless the
24 unemployment agency filed a civil action in a court within the 3-
25 year period; the individual made an intentional false statement,
26 misrepresentation, or concealment of material information to obtain
27 the benefits; or the unemployment agency issued a determination
28 requiring restitution within the 3-year period. The time limits in
29 this section do not prohibit the unemployment agency from pursuing

1 collection methods to recover the amounts found to have been
2 improperly paid. Except in a case of an intentional false
3 statement, misrepresentation, or concealment of material
4 information, the unemployment agency shall waive recovery of an
5 improperly paid benefit if repayment would be contrary to equity
6 and good conscience and shall waive any interest. If the agency or
7 an appellate authority waives collection of restitution and
8 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 an administrative or
11 clerical error by the unemployment agency. A requirement to repay
12 benefits as the result of a change in judgment at any level of
13 administrative adjudication or court decision concerning the facts
14 or application of law to a claim adjudication is not an
15 administrative or clerical error for purposes of this 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 rights
23 to benefits for the benefit year in which the act occurred as of
24 the date the claimant made the false statement or misrepresentation
25 or concealed material information, and shall not use wages used to
26 establish that benefit year to establish another benefit year. A
27 chargeable employer may protest a claim filed after October 1, 2014
28 to establish a successive benefit year under section 46(c), if
29 there was a determination by the unemployment agency or decision of

1 a court or administrative tribunal finding that the claimant made a
2 false statement, made a misrepresentation, or concealed material
3 information related to his or her report of earnings for a
4 preceding benefit year claim. If a protest is made, the
5 unemployment agency shall not use any unreported earnings from the
6 preceding benefit year that were falsely stated, misrepresented, or
7 concealed to establish a benefit year for a successive claim.

8 Before receiving benefits in a benefit year established within 4
9 years after cancellation of rights to benefits under this
10 subsection, the claimant, in addition to making the restitution of
11 benefits established under subsection (a), may be liable for an
12 additional amount as otherwise determined by the unemployment
13 agency under this act, which may be paid by cash, deduction from
14 benefits, or deduction from a tax refund. The claimant is liable
15 for any fee the federal government imposes with respect to
16 instituting a deduction from a federal tax refund. Restitution
17 resulting from the intentional false statement, misrepresentation,
18 or concealment of material information is not subject to the ~~50%~~
19 **20%** 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.

23 (d) The unemployment agency shall take the action necessary to
24 recover all benefits improperly obtained or paid under this act,
25 and to enforce all interest and penalties under subsection (b). The
26 unemployment agency may conduct an amnesty program for a designated
27 period under which penalties and interest assessed against an
28 individual owing restitution for improperly paid benefits may be
29 waived if the individual pays the full amount of restitution owing

1 within the period specified by the agency.

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

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

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

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

24 (ii) The number of applications for a waiver the unemployment
25 agency received.

26 (iii) The number of individuals who submitted an application for
27 a waiver.

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

1 (A) An unemployment agency determination.

2 (B) An unemployment agency redetermination.

3 (C) An administrative law judge order.

4 (D) A Michigan compensation appellate commission order.

5 (E) A court order.

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

8 (A) An unemployment agency determination.

9 (B) An unemployment agency redetermination.

10 (C) An administrative law judge order.

11 (D) A Michigan compensation appellate commission order.

12 (E) A court order.

13 (vi) The total amount of restitution waived.

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