

HOUSE BILL No. 4912

September 7, 2017, Introduced by Reps. Sneller, Love, Gay-Dagnogo, Chirkun, Lasinski, Cochran, Sabo, Faris, Geiss, Elder, Green, Clemente, Sowerby, Chang, Camilleri, Brinks, Moss, Hammoud, Wittenberg, Peterson, Zemke, Dianda and Jones and referred to the Committee on Commerce and Trade.

A bill to amend 1936 (Ex Sess) PA 1, entitled "Michigan employment security act," by amending section 62 (MCL 421.62), as amended by 2016 PA 522.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 62. (a) If the unemployment agency determines that a
2 person has obtained benefits to which that person is not entitled,
3 or a subsequent determination by the agency or a decision of an
4 appellate authority reverses a prior qualification for benefits,
5 the agency may recover a sum equal to the amount received plus
6 interest by 1 or more of the following methods: deduction from
7 benefits or wages payable to the individual, payment by the
8 individual in cash, or deduction from a tax refund payable to the
9 individual as provided under section 30a of 1941 PA 122, MCL
10 205.30a. Deduction from benefits or wages payable to the individual
11 is limited to not more than ~~50%~~**20%** of each payment due the

1 claimant. The unemployment agency shall issue a determination
2 requiring restitution within 3 years after the date of finality of
3 a determination, redetermination, or decision reversing a previous
4 finding of benefit entitlement. Except in the case of benefits
5 improperly paid because of suspected identity fraud, the
6 unemployment agency shall not initiate administrative or court
7 action to recover improperly paid benefits from an individual more
8 than 3 years after the date that the last determination,
9 redetermination, or decision establishing restitution is final.
10 Except in the case of benefits improperly paid because of suspected
11 identity fraud, the unemployment agency shall issue a determination
12 on an issue within 3 years from the date the claimant first
13 received benefits in the benefit year in which the issue arose, or
14 in the case of an issue of intentional false statement,
15 misrepresentation, or concealment of material information in
16 violation of section 54(a) or (b) or sections 54a to 54c, within 3
17 years after the receipt of the improperly paid benefits unless the
18 unemployment agency filed a civil action in a court within the 3-
19 year period ; ~~the individual made an intentional false statement,~~
20 ~~misrepresentation, or concealment of material information to obtain~~
21 ~~the benefits; or the unemployment agency~~ **OR** issued a determination
22 requiring restitution within the 3-year period. The time limits in
23 this section do not prohibit the unemployment agency from pursuing
24 collection methods to recover the amounts found to have been
25 improperly paid. Except in a case of an intentional false
26 statement, misrepresentation, or concealment of material
27 information, the unemployment agency shall waive recovery of an

1 improperly paid benefit if the payment was not the fault of the
2 individual and if repayment would be contrary to equity and good
3 conscience and shall waive any interest. If the agency or an
4 appellate authority waives collection of restitution and interest,
5 except as provided in subdivision (ii), the waiver is prospective
6 and does not apply to restitution and interest payments already
7 made by the individual. As used in this subsection, "contrary to
8 equity and good conscience" means any of the following:

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

13 (ii) The claimant's disposable household income, exclusive of
14 social welfare benefits, is at or below the annual update of the
15 poverty guidelines most recently published in the Federal Register
16 by the United States Department of Health and Human Services under
17 the authority of 42 USC 9902(2), and the claimant has applied for a
18 waiver under this subsection. A waiver granted under the conditions
19 described in this subdivision applies from the date the application
20 is filed.

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) For benefit years beginning on or after October 1, 2000,~~

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

1 by the unemployment agency under this act, which may be paid by
2 cash, deduction from benefits, or deduction from a tax refund. The
3 ~~individual~~**CLAIMANT** is liable for any fee the federal government
4 imposes with respect to instituting a deduction from a federal tax
5 refund. Restitution resulting from the intentional false statement,
6 misrepresentation, or concealment of material information is not
7 subject to the ~~50%~~**20%** limitation provided in subsection (a).

8 (c) Any determination made by the unemployment agency under
9 this section is final unless an application for a redetermination
10 is filed in accordance with section 32a.

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

19 (e) Interest recovered under this section ~~shall~~**MUST** be
20 deposited in the contingent fund.

21 (f) An ~~THE~~ unemployment agency **SHALL NOT MAKE A** determination
22 that a claimant made an intentional false statement,
23 misrepresentation, or concealment of material information that is
24 subject to sanctions under this section ~~shall not be~~ based solely
25 on a computer-identified discrepancy in information supplied by the
26 claimant or employer. An unemployment agency employee or agent must
27 examine the facts and independently determine that the claimant or

1 the employer is responsible for a willful or intentional violation
2 before the **UNEMPLOYMENT** agency makes a determination under this
3 section.

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