

SUBSTITUTE FOR  
HOUSE BILL NO. 5265

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 **unemployment** agency  
4 or a decision of an appellate authority reverses a prior  
5 qualification for benefits, the **unemployment** agency may recover a  
6 sum equal to the amount received plus interest pursuant to section  
7 15(a) by 1 or more of the following methods: deduction from  
8 benefits or wages payable to the individual, payment by the  
9 individual in cash, or deduction from a tax refund payable to the

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

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

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

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

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

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

5 (C) "Household" means a claimant and the claimant's  
6 dependents.

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

14 (iv) **All of the following apply to the improperly paid benefit:**

15 (A) **The improperly paid benefit was made under 1 of the**  
16 **following:**

17 (I) **The coronavirus aid, relief, and economic security act,**  
18 **Public Law 116-136.**

19 (II) **The continued assistance for unemployed workers act of**  
20 **2020, division N, title II, subtitle A of the consolidated**  
21 **appropriations act, 2021, Public Law 116-260.**

22 (III) **The American rescue plan act of 2021, Public Law 117-2.**

23 (B) **The improperly paid benefit was made after February 7,**  
24 **2020 but before September 5, 2021.**

25 (C) **The individual received the improperly paid benefit solely**  
26 **because the individual met 1 or more of the 4 additional,**  
27 **unsupported reasons described in compliance finding 7 of the United**  
28 **States Department of Labor, Employment and Training Administration,**  
29 **Region 5, enhanced desk monitoring review of unemployment insurance**

1 **state administration grant UI-34722-20-55-A-26, dated February 10,**  
2 **2021.**

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.

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

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

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

29 (g) By January 31 each year, beginning in 2019, the

1 unemployment agency shall provide a written report regarding  
2 waivers under subsection (a) (ii) to the chairpersons of the standing  
3 committees and the appropriations subcommittees of the house of  
4 representatives and senate having jurisdiction over legislation  
5 pertaining to employment security. The report must include all of  
6 the following information from the immediately preceding calendar  
7 year in a form that does not identify an individual, claimant, or  
8 employer:

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

11 (ii) The number of applications for a waiver the unemployment  
12 agency received.

13 (iii) The number of individuals who submitted an application for  
14 a waiver.

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

17 (A) An unemployment agency determination.

18 (B) An unemployment agency redetermination.

19 (C) An administrative law judge order.

20 (D) A Michigan compensation appellate commission order.

21 (E) A court order.

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

24 (A) An unemployment agency determination.

25 (B) An unemployment agency redetermination.

26 (C) An administrative law judge order.

27 (D) A Michigan compensation appellate commission order.

28 (E) A court order.

29 (vi) The total amount of restitution waived.