

# HOUSE BILL NO. 4435

March 04, 2021, Introduced by Reps. Camilleri, Garza, Shannon, Tyrone Carter, O'Neal, Hope, Hood, Koleszar, Cavanagh, Ellison, Thanedar, Sabo, Steenland, Manoogian, Tate, Liberati, Steckloff, Cherry, Weiss, Puri, Kuppa, Brabec, Breen, Young, Brixie, Stone, Coleman, Bolden, Sneller, Brenda Carter, Aiyash, Pohutsky, Lasinski, Rabhi, Scott, 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 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~~ **not including** social welfare benefits,  
19 ~~were, was,~~ during the 6 months immediately preceding the date of  
20 the application for waiver, at or below ~~150%~~ **200%** of the annual  
21 update of the poverty guidelines most recently published in the  
22 Federal Register by the United States Department of Health and  
23 Human Services under the authority of 42 USC 9902(2), **the**  
24 **claimant's average net household cash assets were, during the 6**  
25 **months immediately preceding the date of the application for**  
26 **waiver, less than \$20,000,** and the claimant ~~has~~ applied for a  
27 waiver under this subsection. The unemployment agency shall not  
28 consider a new application for a waiver from a claimant within 6  
29 months after receiving an application for a waiver from the

1 claimant. A waiver granted under the conditions described in this  
2 subdivision applies from the date the application is filed. If the  
3 waiver is granted, the unemployment agency shall promptly refund  
4 any restitution or interest payments made by the individual after  
5 the date of the application for waiver. As used in this  
6 subdivision:

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

9 (B) "Dependent" means that term as defined in section  
10 27(b) (4) .

11 (C) "Household" means a claimant and the claimant's  
12 dependents.

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

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

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

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

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.