

HOUSE BILL NO. 4051

January 31, 2023, Introduced by Rep. Outman and referred to the Committee on Labor.

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, and by adding section 62a.

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (II) **The continued assistance for unemployed workers act of**
25 **2020, division N, title II, subtitle A of the consolidated**
26 **appropriations act, 2021, Public Law 116-260.**

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

28 (B) **The improperly paid benefit was made after February 7,**
29 **2020 but before September 5, 2021.**

1 (C) The individual received the improperly paid benefit solely
2 because the individual met 1 or more of the 4 additional,
3 unsupported reasons described in compliance finding 7 of the United
4 States Department of Labor, Employment and Training Administration,
5 Region 5, enhanced desk monitoring review of unemployment insurance
6 state administration grant UI-34722-20-55-A-26, dated February 10,
7 2021.

8 (b) If the unemployment agency determines that a claimant has
9 intentionally made a false statement or misrepresentation or has
10 concealed material information to obtain benefits, whether or not
11 the claimant obtains benefits by or because of the intentional
12 false statement, misrepresentation, or concealment of material
13 information, the unemployment agency shall, in addition to any
14 other applicable interest and penalties, cancel his or her rights
15 to benefits for the benefit year in which the act occurred as of
16 the date the claimant made the false statement or misrepresentation
17 or concealed material information, and shall not use wages used to
18 establish that benefit year to establish another benefit year. A
19 chargeable employer may protest a claim filed after October 1, 2014
20 to establish a successive benefit year under section 46(c), if
21 there was a determination by the unemployment agency or decision of
22 a court or administrative tribunal finding that the claimant made a
23 false statement, made a misrepresentation, or concealed material
24 information related to his or her report of earnings for a
25 preceding benefit year claim. If a protest is made, the
26 unemployment agency shall not use any unreported earnings from the
27 preceding benefit year that were falsely stated, misrepresented, or
28 concealed to establish a benefit year for a successive claim.
29 Before receiving benefits in a benefit year established within 4

1 years after cancellation of rights to benefits under this
2 subsection, the claimant, in addition to making the restitution of
3 benefits established under subsection (a), may be liable for an
4 additional amount as otherwise determined by the unemployment
5 agency under this act, which may be paid by cash, deduction from
6 benefits, or deduction from a tax refund. The claimant is liable
7 for any fee the federal government imposes with respect to
8 instituting a deduction from a federal tax refund. Restitution
9 resulting from the intentional false statement, misrepresentation,
10 or concealment of material information is not subject to the 50%
11 limitation provided in subsection (a).

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

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

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

25 (f) The unemployment agency shall not make a determination
26 that a claimant made an intentional false statement,
27 misrepresentation, or concealment of material information that is
28 subject to sanctions under this section based solely on a computer-
29 identified discrepancy in information supplied by the claimant or

1 employer. An unemployment agency employee or agent must examine the
2 facts and independently determine that the claimant or the employer
3 is responsible for a willful or intentional violation before the
4 **unemployment** agency makes a determination under this section.

5 (g) By January 31 each year, beginning in 2019, the
6 unemployment agency shall provide a written report regarding
7 waivers under subsection (a) (ii) to the chairpersons of the standing
8 committees and the appropriations subcommittees of the house of
9 representatives and senate having jurisdiction over legislation
10 pertaining to employment security. The report must include all of
11 the following information from the immediately preceding calendar
12 year in a form that does not identify an individual, claimant, or
13 employer:

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

16 (ii) The number of applications for a waiver the unemployment
17 agency received.

18 (iii) The number of individuals who submitted an application for
19 a waiver.

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

22 (A) An unemployment agency determination.

23 (B) An unemployment agency redetermination.

24 (C) An administrative law judge order.

25 (D) A Michigan compensation appellate commission order.

26 (E) A court order.

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

29 (A) An unemployment agency determination.

- 1 (B) An unemployment agency redetermination.
- 2 (C) An administrative law judge order.
- 3 (D) A Michigan compensation appellate commission order.
- 4 (E) A court order.
- 5 (vi) The total amount of restitution waived.

6 **Sec. 62a. The unemployment agency shall not charge an**
7 **improperly paid benefit described in section 62(a) (iv) to any of the**
8 **following:**

- 9 (a) Any account of an employer.
- 10 (b) The unemployment compensation fund.
- 11 (c) The contingent fund.