

HOUSE BILL No. 5171

October 24, 2017, Introduced by Rep. Phelps and referred to the Committee on Oversight.

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~~**AN INDIVIDUAL** has obtained benefits to which ~~that person~~**THE**
3 **INDIVIDUAL** is not entitled, or a subsequent determination by the
4 agency or a decision of an appellate authority reverses a prior
5 qualification for benefits, the agency may recover a sum equal to
6 the amount received plus interest **PURSUANT TO SECTION 15 (A)** by 1 or
7 more of the following methods: deduction from benefits or wages
8 payable to the individual, payment by the individual in cash, or
9 deduction from a tax refund payable to the individual as provided
10 under section 30a of 1941 PA 122, MCL 205.30a. Deduction from

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

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

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

15 (ii) The claimant's ~~disposable~~ **AVERAGE NET** household income
16 **AND HOUSEHOLD CASH ASSETS**, exclusive of social welfare benefits, ~~is~~
17 **WERE, DURING THE 6 MONTHS IMMEDIATELY PRECEDING THE DATE OF THE**
18 **APPLICATION FOR WAIVER**, at or below **150% OF** the annual update of
19 the poverty guidelines most recently published in the Federal
20 Register by the United States Department of Health and Human
21 Services under the authority of 42 USC 9902(2), and the claimant
22 has applied for a waiver under this subsection. **THE UNEMPLOYMENT**
23 **AGENCY SHALL NOT CONSIDER A NEW APPLICATION FOR A WAIVER FROM A**
24 **CLAIMANT WITHIN 6 MONTHS AFTER RECEIVING AN APPLICATION FOR A**
25 **WAIVER FROM THE CLAIMANT.** A waiver granted under the conditions
26 described in this subdivision applies from the date the application
27 is filed. **IF THE WAIVER IS GRANTED, THE UNEMPLOYMENT AGENCY SHALL**

1 PROMPTLY REFUND ANY RESTITUTION OR INTEREST PAYMENTS MADE BY THE
2 INDIVIDUAL AFTER THE DATE OF THE APPLICATION FOR WAIVER. AS USED IN
3 THIS 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) For benefit years beginning on or after October 1, 2000,~~
17 ~~if~~ **IF** the unemployment agency determines that a ~~person~~ **CLAIMANT** has
18 intentionally made a false statement or misrepresentation or has
19 concealed material information to obtain benefits, whether or not
20 the ~~person~~ **CLAIMANT** obtains benefits by or because of the
21 intentional false statement, misrepresentation, or concealment of
22 material information, the ~~person~~ **UNEMPLOYMENT AGENCY** shall, in
23 addition to any other applicable interest and penalties, ~~have~~
24 **CANCEL** his or her rights to benefits for the benefit year in which
25 the act occurred ~~canceled~~ as of the date the claimant made the
26 false statement or misrepresentation or concealed material
27 information, and **SHALL NOT USE** wages used to establish that benefit

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

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

27 (d) The unemployment agency shall take the action necessary to

1 recover all benefits improperly obtained or paid under this act,
2 and to enforce all interest and penalties under subsection (b). The
3 unemployment agency may conduct an amnesty program for a designated
4 period under which penalties and interest assessed against an
5 individual owing restitution for improperly paid benefits may be
6 waived if the individual pays the full amount of restitution owing
7 within the period specified by the agency.

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

10 (f) ~~An~~ **THE** unemployment agency **SHALL NOT MAKE A** determination
11 that a claimant made an intentional false statement,
12 misrepresentation, or concealment of material information that is
13 subject to sanctions under this section ~~shall not be~~ based solely
14 on a computer-identified discrepancy in information supplied by the
15 claimant or employer. An unemployment agency employee or agent must
16 examine the facts and independently determine that the claimant or
17 the employer is responsible for a willful or intentional violation
18 before the agency makes a determination under this section.

19 **(G) BY JANUARY 31 EACH YEAR, BEGINNING IN 2019, THE**
20 **UNEMPLOYMENT AGENCY SHALL PROVIDE A WRITTEN REPORT REGARDING**
21 **WAIVERS UNDER SUBSECTION (A) (ii) TO THE CHAIRPERSONS OF THE**
22 **STANDING COMMITTEES AND THE APPROPRIATIONS SUBCOMMITTEES OF THE**
23 **HOUSE OF REPRESENTATIVES AND SENATE HAVING JURISDICTION OVER**
24 **LEGISLATION PERTAINING TO EMPLOYMENT SECURITY. THE REPORT MUST**
25 **INCLUDE ALL OF THE FOLLOWING INFORMATION FROM THE IMMEDIATELY**
26 **PRECEDING CALENDAR YEAR IN A FORM THAT DOES NOT IDENTIFY AN**
27 **INDIVIDUAL, CLAIMANT, OR EMPLOYER:**

(i) THE PROCEDURES RELATING TO WAIVERS THAT THE UNEMPLOYMENT AGENCY USED OR ADOPTED.

(ii) THE NUMBER OF APPLICATIONS FOR A WAIVER THE UNEMPLOYMENT AGENCY RECEIVED.

(iii) THE NUMBER OF INDIVIDUALS WHO SUBMITTED AN APPLICATION FOR A WAIVER.

(iv) THE NUMBER OF WAIVERS THAT WERE GRANTED BY EACH OF THE FOLLOWING METHODS:

(A) AN UNEMPLOYMENT AGENCY DETERMINATION.

(B) AN UNEMPLOYMENT AGENCY REDETERMINATION.

(C) AN ADMINISTRATIVE LAW JUDGE ORDER.

(D) A MICHIGAN COMPENSATION APPELLATE COMMISSION ORDER.

(E) A COURT ORDER.

(v) THE NUMBER OF WAIVERS THAT WERE DENIED, TABULATED BY THE REASON FOR THE DENIAL, BY EACH OF THE FOLLOWING METHODS:

(A) AN UNEMPLOYMENT AGENCY DETERMINATION.

(B) AN UNEMPLOYMENT AGENCY REDETERMINATION.

(C) AN ADMINISTRATIVE LAW JUDGE ORDER.

(D) A MICHIGAN COMPENSATION APPELLATE COMMISSION ORDER.

(E) A COURT ORDER.

(vi) THE TOTAL AMOUNT OF RESTITUTION WAIVED.

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

Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 99th Legislature are enacted into law:

(a) Senate Bill No. _____ or House Bill No. 5169 (request no.

1 03872'17).

2 (b) Senate Bill No.____ or House Bill No. 5167 (request no.
3 03873'17).

4 (c) Senate Bill No.____ or House Bill No. 5172 (request no.
5 03874'17).

6 (d) Senate Bill No.____ or House Bill No. 5170 (request no.
7 03876'17).

8 (e) Senate Bill No.____ or House Bill No. 5165 (request no.
9 03877'17).

10 (f) Senate Bill No.____ or House Bill No. 5168 (request no.
11 03878'17).

12 (g) Senate Bill No.____ or House Bill No. 5166 (request no.
13 03879'17).