

SENATE BILL No. 533

September 7, 2017, Introduced by Senators WARREN, KNEZEK, HOPGOOD, ANANICH, CONYERS, GREGORY, BIEDA, JOHNSON and YOUNG and referred to the Committee on Government Operations.

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% of each payment due the claimant.
12 The unemployment agency shall issue a determination requiring

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

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

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

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

20 (iii) The improper payments resulted from an administrative or
21 clerical error by the unemployment agency. A requirement to repay
22 benefits as the result of a change in judgment at any level of
23 administrative adjudication or court decision concerning the facts
24 or application of law to a claim adjudication is not an
25 administrative or clerical error for purposes of this subdivision.

26 (b) ~~For benefit years beginning on or after October 1, 2000,~~
27 ~~if~~-**IF** the unemployment agency determines that a ~~person~~-**CLAIMANT** has

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

1 cash, deduction from benefits, or deduction from a tax refund. The
2 ~~individual~~-CLAIMANT is liable for any fee the federal government
3 imposes with respect to instituting a deduction from a federal tax
4 refund. Restitution resulting from the intentional false statement,
5 misrepresentation, or concealment of material information is not
6 subject to the 50% 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. **A DETERMINATION THAT**
10 **BENEFITS HAVE BEEN IMPROPERLY PAID IS NOT FINAL UNLESS THE**
11 **UNEMPLOYMENT AGENCY HAS NOTIFIED THE CLAIMANT OF THE RIGHT TO**
12 **REQUEST AN IN-PERSON OR TELEPHONE HEARING, AT THE CLAIMANT'S**
13 **OPTION, TO APPEAL THE DETERMINATION, AND TO HAVE COUNSEL PRESENT AT**
14 **THE HEARING. THE UNEMPLOYMENT AGENCY SHALL NOT TAKE ACTION TO**
15 **RECOVER BENEFITS IMPROPERLY PAID OR TO ENFORCE INTEREST, PENALTIES,**
16 **OR ANY ADDITIONAL AMOUNT UNDER THIS SECTION UNTIL AFTER THE**
17 **CLAIMANT HAS EXERCISED THE RIGHT TO A HEARING OR HAS EXPRESSLY**
18 **WAIVED THAT RIGHT.**

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

27 (e) Interest recovered under this section shall ~~shall~~-**MUST** be

1 deposited in the contingent fund.

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

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