

Act No. 231  
Public Acts of 2017  
Approved by the Governor  
December 20, 2017  
Filed with the Secretary of State  
December 21, 2017  
EFFECTIVE DATE: March 21, 2018

**STATE OF MICHIGAN  
99TH LEGISLATURE  
REGULAR SESSION OF 2017**

**Introduced by Rep. Phelps**

# **ENROLLED HOUSE BILL No. 5171**

AN ACT to amend 1936 (Ex Sess) PA 1, entitled "An act to protect the welfare of the people of this state through the establishment of an unemployment compensation fund, and to provide for the disbursement thereof; to create certain other funds; to create the Michigan employment security commission, and to prescribe its powers and duties; to provide for the protection of the people of this state from the hazards of unemployment; to levy and provide for contributions from employers; to levy and provide for obligation assessments; to provide for the collection of those contributions and assessments; to enter into reciprocal agreements and to cooperate with agencies of the United States and of other states charged with the administration of any unemployment insurance law; to furnish certain information to certain governmental agencies for use in administering public benefit and child support programs and investigating and prosecuting fraud; to provide for the payment of benefits; to provide for appeals from redeterminations, decisions and notices of assessments; and for referees and a board of review to hear and decide the issues arising from redeterminations, decisions and notices of assessment; to provide for the cooperation of this state and compliance with the provisions of the social security act and the Wagner-Peyser act passed by the Congress of the United States of America; to provide for the establishment and maintenance of free public employment offices; to provide for the transfer of funds; to make appropriations for carrying out the provisions of this act; to prescribe remedies and penalties for the violation of this act; and to repeal all acts and parts of acts inconsistent with this act," by amending section 62 (MCL 421.62), as amended by 2016 PA 522.

*The People of the State of Michigan enact:*

Sec. 62. (a) If the unemployment agency determines that an individual has obtained benefits to which the individual is not entitled, or a subsequent determination by the agency or a decision of an appellate authority reverses a prior qualification for benefits, the agency may recover a sum equal to the amount received plus interest pursuant to section 15(a) by 1 or more of the following methods: deduction from benefits or wages payable to the individual, payment by the individual in cash, or deduction from a tax refund payable to the individual as provided under section 30a of 1941 PA 122, MCL 205.30a. Deduction from benefits or wages payable to the individual is limited to not more than 50% of each payment due the claimant. The unemployment agency shall issue a determination requiring restitution within 3 years after the date of finality of a determination, redetermination, or decision reversing a previous finding of benefit entitlement. Except in the case of benefits improperly paid because of suspected identity fraud, the unemployment agency shall not initiate administrative or court action to recover improperly paid benefits from an individual more than 3 years after the date that the last determination, redetermination, or decision establishing restitution is final. Except in the case of benefits improperly paid because of suspected identity fraud, the unemployment agency shall issue a restitution determination on an issue within 3 years from the date the claimant first received benefits in the benefit year in which the issue arose, or in the case of an issue of intentional false statement, misrepresentation, or concealment of material information in violation of section 54(a) or (b) or sections 54a to 54c, within 3 years after the receipt of the improperly paid benefits unless the unemployment agency filed a civil action in a court within the 3-year period; the individual made an intentional false statement, misrepresentation, or concealment of material information to obtain the

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

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

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

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

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

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

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

(b) If the unemployment agency determines that a claimant has intentionally made a false statement or misrepresentation or has concealed material information to obtain benefits, whether or not the claimant obtains benefits by or because of the intentional false statement, misrepresentation, or concealment of material information, the unemployment agency shall, in addition to any other applicable interest and penalties, cancel his or her rights to benefits for the benefit year in which the act occurred as of the date the claimant made the false statement or misrepresentation or concealed material information, and shall not use wages used to establish that benefit year to establish another benefit year. A chargeable employer may protest a claim filed after October 1, 2014 to establish a successive benefit year under section 46(c), if there was a determination by the unemployment agency or decision of a court or administrative tribunal finding that the claimant made a false statement, made a misrepresentation, or concealed material information related to his or her report of earnings for a preceding benefit year claim. If a protest is made, the unemployment agency shall not use any unreported earnings from the preceding benefit year that were falsely stated, misrepresented, or concealed to establish a benefit year for a successive claim. Before receiving benefits in a benefit year established within 4 years after cancellation of rights to benefits under this subsection, the claimant, in addition to making the restitution of benefits established under subsection (a), may be liable for an additional amount as otherwise determined by the unemployment agency under this act, which may be paid by cash, deduction from benefits, or deduction from a tax refund. The claimant is liable for any fee the federal government imposes with respect to instituting a deduction from a federal tax refund. Restitution resulting from the intentional false statement, misrepresentation, or concealment of material information is not subject to the 50% limitation provided in subsection (a).

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

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

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

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

(g) By January 31 each year, beginning in 2019, the unemployment agency shall provide a written report regarding waivers under subsection (a)(ii) to the chairpersons of the standing committees and the appropriations subcommittees

of the house of representatives and senate having jurisdiction over legislation pertaining to employment security. The report must include all of the following information from the immediately preceding calendar year in a form that does not identify an individual, claimant, or employer:

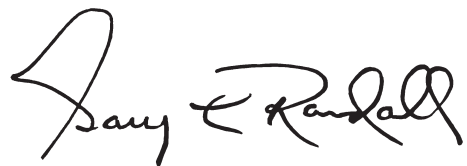
- (i) The procedures relating to waivers that the unemployment agency used or adopted.
- (ii) The number of applications for a waiver the unemployment agency received.
- (iii) The number of individuals who submitted an application for a waiver.
- (iv) The number of waivers that were granted by each of 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) House Bill No. 5165.
- (b) House Bill No. 5166.
- (c) House Bill No. 5167.
- (d) House Bill No. 5168.
- (e) House Bill No. 5169.
- (f) House Bill No. 5170.
- (g) House Bill No. 5172.

This act is ordered to take immediate effect.



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Clerk of the House of Representatives



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Secretary of the Senate

Approved .....

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Governor