

## WAIVER OF REPAYMENT OF CERTAIN IMPROPERLY PAID UNEMPLOYMENT BENEFITS

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**House Bill 5265 (H-3) as reported from committee**  
**Sponsor: Rep. John N. Damoose**  
**Committee: Oversight**  
**Complete to 1-12-22**

Analysis available at  
<http://www.legislature.mi.gov>

**BRIEF SUMMARY:** House Bill 5265 would amend the Michigan Employment Security Act to require waiver of repayment to the Unemployment Insurance Agency (UIA) of an improperly paid benefit if certain conditions apply.

**FISCAL IMPACT:** House Bill 5265 would have an indeterminate fiscal impact on the Department of Labor and Economic Opportunity (LEO), which houses the UIA. By adding beneficiaries of the federal unemployment benefit programs meeting other criteria to the definition of “contrary to equity and good conscience,” the bill would prevent the UIA from pursuing and obtaining repayment of remitted benefits and interest in those cases. The number of cases that this change would theoretically impact would likely number in the hundreds of thousands. The practical impact of this change is difficult to quantify, as existing UIA policy with respect to concerns regarding the federal benefit would be codified by this bill.

### **THE APPARENT PROBLEM:**

In an attempt to help the vast numbers of workers whose employment was disrupted by the impact on many businesses of the COVID-19 pandemic and measures taken to slow the spread of infections, the federal government provided money to the states to provide Pandemic Unemployment Assistance (PUA) under the Coronavirus Aid, Relief, and Economic Security (CARES) Act. PUA provided benefits for individuals who had exhausted regular unemployment benefits, in addition to including persons usually ineligible for benefits, such as, among others, those with an insufficient work history and those who are self-employed. Reportedly, about 3.5 million Michigan residents have applied for unemployment benefits since the pandemic began, with about 1.9 million receiving PUA benefits.

After the federal government conducted a review of PUA benefits being provided by the states, Michigan was notified that four of the criteria being used by the UIA to determine eligibility were no longer deemed valid and that the ruling was retroactive to the beginning of the federal programs. As a result, in late June of 2021, almost 700,000 benefit recipients who had chosen one of those four reasons began to receive letters from the UIA stating that those reasons were no longer considered a legitimate reason for benefit eligibility, that they would have to recertify their eligibility from a new list of reasons, and that, if they were still ruled ineligible, they could owe the state for the money they had received.

The UIA has since rectified the situation and is no longer seeking repayment, but some feel that greater protection could be afforded to affected residents if the policy were codified into law.

## **THE CONTENT OF THE BILL:**

House Bill 5265 would amend section 62 of the Michigan Employment Security Act, which addresses the actions to be taken when the UIA determines that a person has obtained benefits he or she is not entitled to or when the agency or an appellate authority reverses a prior qualification for benefits.

The act currently allows the UIA to recover the amount of the benefits that the individual was not eligible to receive, plus interest. However, except in the case of an intentional false statement, misrepresentation, or concealment of material information, the UIA is required to waive recovery of an improperly paid benefit, as well as any interest, if repayment would be ***contrary to equity and good conscience***.

***Contrary to equity and good conscience*** now means any of three scenarios, including one in which the *improper payments* resulted from an administrative or clerical error by the UIA. The bill would replace *improper payments* in this provision with *improperly paid benefit*.

The bill also would add a fourth scenario to the definition of ***contrary to equity and good conscience***, providing that repayment must be waived if all of the following apply to the improperly paid benefit:

- The improperly paid benefit was made after February 7, 2020, but before September 5, 2021.
- The improperly paid benefit was made under one of the following federal laws:
  - The Coronavirus Aid, Relief, and Economic Security Act, Public Law 116-136.
  - The Continued Assistance for Unemployed Workers Act of 2020 (Division N, Title II, Subtitle A of the Consolidated Appropriations Act, 2021), Public Law 116-260.
  - The American Rescue Plan Act of 2021, Public Law 117-2.
- The individual received the improperly paid benefit solely because he or she met one or more of the four additional, unsupported reasons described in Compliance Finding 7 of the U.S. Department of Labor, Employment and Training Administration, Region 5, Enhanced Desk Monitoring Review of Unemployment Insurance State Administration Grant UI-34722-20-55-A-26, dated February 10, 2021.

MCL 421.62

## **ARGUMENTS:**

### ***For:***

The bill addresses a situation in which people applying for unemployment benefits funded by federal programs to provide relief for those whose employment was negatively affected by the pandemic were initially approved for benefits and then were later told that they had been mistakenly qualified and that the benefits would have to be repaid. About 700,000 people received letters stating that they had to recertify their eligibility under other criteria and that they may have to repay thousands of dollars that had likely already been spent on food, rent, and other essentials. The UIA later adopted a policy providing that, absent fraud, recipients of PUA benefits that were improperly paid would not have to repay the benefits they received. Proponents of the bill argue that amending the statute to create a specific exception waiving

repayment for these beneficiaries would more clearly indicate that any improperly paid PUA benefits are not considered a result of a clerical or administrative error committed by the UIA and would provide protection from any attempts by the UIA to try to recoup money that had been improperly paid. To many, the mistake was made by a state agency, and therefore it should be the state, and not individual benefit recipients, who should be held responsible. The bill would not apply to cases in which people fraudulently collected benefits.

***POSITIONS:***

A representative of the National Federation of Independent Businesses of Michigan testified in support of the bill. (9-15-21)

The following organizations indicated support for the bill:

- Michigan Chamber of Commerce (9-15-21)
- Michigan Manufacturers Association (9-30-21)

Legislative Analyst: Susan Stutzky  
Fiscal Analyst: Marcus Coffin

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.