

HOUSE BILL NO. 6478

November 09, 2022, Introduced by Rep. Steven Johnson 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 2017 PA 231.

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
5 qualification for benefits, the **unemployment** agency may recover a

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

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

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

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

1 months after receiving an application for a waiver from the
2 claimant. ~~A waiver granted under the conditions described in this~~
3 ~~subdivision applies from the date the application is filed. If the~~
4 ~~waiver is granted, the unemployment agency shall promptly refund~~
5 ~~any restitution or interest payments made by the individual after~~
6 ~~the date of the application for waiver. As used in this~~
7 subdivision:

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

10 (B) "Dependent" means that term as defined in section
11 27(b) (4) .

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

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

20 (b) If the unemployment agency determines that a claimant has
21 intentionally made a false statement or misrepresentation or has
22 concealed material information to obtain benefits, whether or not
23 the claimant obtains benefits by or because of the intentional
24 false statement, misrepresentation, or concealment of material
25 information, the unemployment agency shall, in addition to any
26 other applicable interest and penalties, cancel his or her rights
27 to benefits for the benefit year in which the act occurred as of
28 the date the claimant made the false statement or misrepresentation
29 or concealed material information, and shall not use wages used to

1 establish that benefit year 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 to establish a benefit year for a successive claim.
12 Before receiving benefits in a benefit year established within 4
13 years after cancellation of rights to benefits under this
14 subsection, the claimant, in addition to making the restitution of
15 benefits established under subsection (a), may be liable for an
16 additional amount as otherwise determined by the unemployment
17 agency under this act, which may be paid by cash, deduction from
18 benefits, or deduction from a tax refund. The claimant is liable
19 for any fee the federal government imposes with respect to
20 instituting a deduction from a federal tax refund. Restitution
21 resulting from the intentional false statement, misrepresentation,
22 or concealment of material information is not subject to the 50%
23 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
28 recover all benefits improperly obtained or paid under this act,
29 and to enforce all interest and penalties under subsection (b). The

1 unemployment agency may conduct an amnesty program for a designated
2 period under which penalties and interest assessed against an
3 individual owing restitution for improperly paid benefits may be
4 waived if the individual pays the full amount of restitution owing
5 within the period specified by the **unemployment** agency.

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

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

17 (g) By January 31 each year, beginning in 2019, the
18 unemployment agency shall provide a written report regarding
19 waivers under subsection (a) (ii) to the chairpersons of the standing
20 committees and the appropriations subcommittees of the house of
21 representatives and senate having jurisdiction over legislation
22 pertaining to employment security. The report must include all of
23 the following information from the immediately preceding calendar
24 year in a form that does not identify an individual, claimant, or
25 employer:

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

28 (ii) The number of applications for a waiver the unemployment
29 agency received.

1 (iii) The number of individuals who submitted an application for
2 a waiver.

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

5 (A) An unemployment agency determination.

6 (B) An unemployment agency redetermination.

7 (C) An administrative law judge order.

8 (D) A Michigan compensation appellate commission order.

9 (E) A court order.

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

12 (A) An unemployment agency determination.

13 (B) An unemployment agency redetermination.

14 (C) An administrative law judge order.

15 (D) A Michigan compensation appellate commission order.

16 (E) A court order.

17 (vi) The total amount of restitution waived.