HOUSE BILL NO. 5316

September 21, 2021. Introduced by Reps. Young, Brixie, Aiyash, Cherry, Sneller, Pohutsky, Breen, Scott, Bolden, Morse, Cavanagh, Brenda Carter, Kuppa, Sabo, Anthony, O'Neal, Thanedar, Hope, Damoose, Rabhi, Brabec, Beeler, Hammoud, Camilleri, Clemente, Sowerby, Cynthia Johnson, LaGrand, Tate, Liberati and Yancey 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 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 agency or a decision
4 of an appellate authority reverses a prior qualification for
5 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.
(iv) The improper payments were payments made under 1 of the
following:
(A) The coronavirus aid, relief, and economic security act,
Public Law 116-136.
(B) The continued assistance for unemployed workers act of
2020, division N, title II, subtitle A of the consolidated
(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.