

# HOUSE BILL NO. 5265

August 17, 2021, Introduced by Reps. Damoose, Markkanen, LaFave, Wozniak, Bezotte, Rendon, Cavanagh, Howell, Yaroch, Bellino, Outman, Bollin, Steenland and Meerman 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 **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. As used in this  
12 subsection, "contrary to equity and good conscience" means any of  
13 the following:

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

18 (ii) The claimant's average net household income and household  
19 cash assets, exclusive of social welfare benefits, were, during the  
20 6 months immediately preceding the date of the application for  
21 waiver, at or below 150% of the annual update of the poverty  
22 guidelines most recently published in the Federal Register by the  
23 United States Department of Health and Human Services under the  
24 authority of 42 USC 9902(2), and the claimant has applied for a  
25 waiver under this subsection. The unemployment agency shall not  
26 consider a new application for a waiver from a claimant within 6  
27 months after receiving an application for a waiver from the  
28 claimant. A waiver granted under the conditions described in this  
29 subdivision applies from the date the application is filed. If the

1 waiver is granted, the unemployment agency shall promptly refund  
2 any restitution or interest payments made by the individual after  
3 the date of the application for waiver. As used in this  
4 subdivision:

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

7 (B) "Dependent" means that term as defined in section  
8 27(b)(4).

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

11 (iii) The improper payments resulted from an administrative, ~~or~~  
12 clerical, **or, after March 12, 2020 but before July 1, 2021, any**  
13 **other** error by the unemployment agency. A requirement to repay  
14 benefits as the result of a change in judgment at any level of  
15 administrative adjudication or court decision concerning the facts  
16 or application of law to a claim adjudication is not an  
17 administrative or clerical error for purposes of this subdivision.

18 (b) If the unemployment agency determines that a claimant has  
19 intentionally made a false statement or misrepresentation or has  
20 concealed material information to obtain benefits, whether or not  
21 the claimant obtains benefits by or because of the intentional  
22 false statement, misrepresentation, or concealment of material  
23 information, the unemployment agency shall, in addition to any  
24 other applicable interest and penalties, cancel his or her rights  
25 to benefits for the benefit year in which the act occurred as of  
26 the date the claimant made the false statement or misrepresentation  
27 or concealed material information, and shall not use wages used to  
28 establish that benefit year to establish another benefit year. A  
29 chargeable employer may protest a claim filed after October 1, 2014

1 to establish a successive benefit year under section 46(c), if  
2 there was a determination by the unemployment agency or decision of  
3 a court or administrative tribunal finding that the claimant made a  
4 false statement, made a misrepresentation, or concealed material  
5 information related to his or her report of earnings for a  
6 preceding benefit year claim. If a protest is made, the  
7 unemployment agency shall not use any unreported earnings from the  
8 preceding benefit year that were falsely stated, misrepresented, or  
9 concealed to establish a benefit year for a successive claim.  
10 Before receiving benefits in a benefit year established within 4  
11 years after cancellation of rights to benefits under this  
12 subsection, the claimant, in addition to making the restitution of  
13 benefits established under subsection (a), may be liable for an  
14 additional amount as otherwise determined by the unemployment  
15 agency under this act, which may be paid by cash, deduction from  
16 benefits, or deduction from a tax refund. The claimant is liable  
17 for any fee the federal government imposes with respect to  
18 instituting a deduction from a federal tax refund. Restitution  
19 resulting from the intentional false statement, misrepresentation,  
20 or concealment of material information is not subject to the 50%  
21 limitation provided in subsection (a).

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

25 (d) The unemployment agency shall take the action necessary to  
26 recover all benefits improperly obtained or paid under this act,  
27 and to enforce all interest and penalties under subsection (b). The  
28 unemployment agency may conduct an amnesty program for a designated  
29 period under which penalties and interest assessed against an

1 individual owing restitution for improperly paid benefits may be  
2 waived if the individual pays the full amount of restitution owing  
3 within the period specified by the **unemployment** agency.

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

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

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

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

26 (ii) The number of applications for a waiver the unemployment  
27 agency received.

28 (iii) The number of individuals who submitted an application for  
29 a waiver.

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

3           (A) An unemployment agency determination.

4           (B) An unemployment agency redetermination.

5           (C) An administrative law judge order.

6           (D) A Michigan compensation appellate commission order.

7           (E) A court order.

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

10          (A) An unemployment agency determination.

11          (B) An unemployment agency redetermination.

12          (C) An administrative law judge order.

13          (D) A Michigan compensation appellate commission order.

14          (E) A court order.

15          (vi) The total amount of restitution waived.