

# HOUSE BILL NO. 5551

November 10, 2021, Introduced by Reps. Hoitenga, Steven Johnson, Bellino, O'Malley, Lightner, Outman, Hauck, Allor and Yaroch 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

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

1 **the issue not later than** 3 years after the receipt of the  
2 improperly paid benefits unless the unemployment agency filed a  
3 civil action in a court within ~~the~~**that** 3-year period. ~~;~~~~the~~  
4 ~~individual made an intentional false statement, misrepresentation,~~  
5 ~~or concealment of material information to obtain the benefits; or~~  
6 ~~the unemployment agency issued a determination requiring~~  
7 ~~restitution within the 3-year period.~~ The time limits in this  
8 section do not prohibit the unemployment agency from pursuing  
9 collection methods to recover the amounts found to have been  
10 improperly paid. Except in a case of an intentional false  
11 statement, misrepresentation, or concealment of material  
12 information, the unemployment agency shall waive recovery of an  
13 improperly paid benefit if repayment would be contrary to equity  
14 and good conscience and shall waive any interest. If the agency or  
15 an appellate authority waives collection of restitution and  
16 interest, except as provided in subdivision (ii), the waiver is  
17 prospective and does not apply to restitution and interest payments  
18 already made by the individual. As used in this subsection,  
19 "contrary to equity and good conscience" means any of the  
20 following:

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

25 (ii) The claimant's average net household income and household  
26 cash assets, exclusive of social welfare benefits, were, during the  
27 6 months immediately preceding the date of the application for  
28 waiver, at or below 150% of the annual update of the poverty  
29 guidelines most recently published in the Federal Register by the

1 United States Department of Health and Human Services under the  
2 authority of 42 USC 9902(2), and the claimant has applied for a  
3 waiver under this subsection. The unemployment agency shall not  
4 consider a new application for a waiver from a claimant within 6  
5 months after receiving an application for a waiver from the  
6 claimant. A waiver granted under the conditions described in this  
7 subdivision applies from the date the application is filed. If the  
8 waiver is granted, the unemployment agency shall promptly refund  
9 any restitution or interest payments made by the individual after  
10 the date of the application for waiver. As used in this  
11 subdivision:

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

14 (B) "Dependent" means that term as defined in section  
15 27(b)(4).

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

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

24 (b) If the unemployment agency determines that a claimant has  
25 intentionally made a false statement or misrepresentation or has  
26 concealed material information to obtain benefits, whether or not  
27 the claimant obtains benefits by or because of the intentional  
28 false statement, misrepresentation, or concealment of material  
29 information, the unemployment agency shall, in addition to any

1 other applicable interest and penalties, cancel his or her rights  
2 to benefits for the benefit year in which the act occurred as of  
3 the date the claimant made the false statement or misrepresentation  
4 or concealed material information, and shall not use wages used to  
5 establish that benefit year to establish another benefit year. A  
6 chargeable employer may protest a claim filed after October 1, 2014  
7 to establish a successive benefit year under section 46(c), if  
8 there was a determination by the unemployment agency or decision of  
9 a court or administrative tribunal finding that the claimant made a  
10 false statement, made a misrepresentation, or concealed material  
11 information related to his or her report of earnings for a  
12 preceding benefit year claim. If a protest is made, the  
13 unemployment agency shall not use any unreported earnings from the  
14 preceding benefit year that were falsely stated, misrepresented, or  
15 concealed to establish a benefit year for a successive claim.  
16 Before receiving benefits in a benefit year established within 4  
17 years after cancellation of rights to benefits under this  
18 subsection, the claimant, in addition to making the restitution of  
19 benefits established under subsection (a), may be liable for an  
20 additional amount as otherwise determined by the unemployment  
21 agency under this act, which may be paid by cash, deduction from  
22 benefits, or deduction from a tax refund. The claimant is liable  
23 for any fee the federal government imposes with respect to  
24 instituting a deduction from a federal tax refund. Restitution  
25 resulting from the intentional false statement, misrepresentation,  
26 or concealment of material information is not subject to the 50%  
27 limitation provided in subsection (a).

28 (c) Any determination made by the unemployment agency under  
29 this section is final unless an application for a redetermination

1 is filed in accordance with section 32a. **However, a determination**  
2 **that a benefit has been improperly paid is not final unless the**  
3 **unemployment agency provides to the claimant notice in the manner**  
4 **as required under this subsection of the claimant's rights to**  
5 **request an in-person or telephone hearing, have counsel present at**  
6 **the hearing, and appeal the determination. The unemployment agency**  
7 **shall not take action to recover an improperly paid benefit or to**  
8 **enforce interest, penalties, or any additional amount assessed**  
9 **under this section unless the unemployment agency provides to the**  
10 **claimant notice in the manner as required under this subsection of**  
11 **the claimant's rights to request an in-person or telephone hearing,**  
12 **have counsel present at the hearing, and appeal the determination.**  
13 **To provide notice under this subsection, the unemployment agency**  
14 **must do both of the following:**

15 (i) Mail the notice via certified mail to the claimant's last  
16 known address.

17 (ii) Do either of the following:

18 (A) Speak with the claimant in person or via telephone about  
19 the claimant's rights.

20 (B) Send the notice via email to the claimant's last known  
21 email address.

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

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

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

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

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

23           (ii) The number of applications for a waiver the unemployment  
24 agency received.

25           (iii) The number of individuals who submitted an application for  
26 a waiver.

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

29           (A) An unemployment agency determination.

- 1 (B) An unemployment agency redetermination.
- 2 (C) An administrative law judge order.
- 3 (D) A Michigan compensation appellate commission order.
- 4 (E) A court order.
- 5 (v) The number of waivers that were denied, tabulated by the
- 6 reason for the denial, by each of the following methods:
- 7 (A) An unemployment agency determination.
- 8 (B) An unemployment agency redetermination.
- 9 (C) An administrative law judge order.
- 10 (D) A Michigan compensation appellate commission order.
- 11 (E) A court order.
- 12 (vi) The total amount of restitution waived.