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BILL ANALYSIS

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Senate Bill 322
Sponsor: Senator Dave Honigman
Committee: Human Resources, Labor, and Veteran Affairs

Date Completed: 2-24-95

SUMMARY OF SENATE BILL 322 as introduced 2-22-95:

The bill would amend the Michigan Employment Security Act to do all of the following:

- **-- Reduce the weekly benefit rate for those receiving unemployment compensation benefits, and eliminate indexing of the maximum weekly benefit as a percentage of the State average weekly wage.**
- **-- Require that an individual serve a one-week waiting period before being eligible to receive unemployment compensation benefits.**
- **-- Restrict the payment of benefits for a seasonal employee's periods of unemployment.**
- **-- Revise provisions for the payment of unemployment compensation benefits for a week in which an eligible individual earned partial remuneration.**
- **-- Revise some of the conditions under which an individual is disqualified from receiving unemployment compensation benefits, and disqualify certain temporary employees and in-home salespersons from eligibility for benefits.**
- **-- Revise the definition of "credit week".**
- **-- Repeal a section of the Act that provides an alternative calculation for an individual to establish a "benefit year".**
- **-- Reduce the maximum level of the account building component of the tax formula used to calculate an employer's contribution to the Unemployment Compensation (UC) Fund.**
- **-- Decrease the maximum nonchargeable benefits component of the tax formula used to calculate an employer's contribution to the UC Fund, under certain circumstances.**
- **-- For calendar years after 1995, reduce some employers' contribution rates if the UC Fund met certain criteria.**
- **-- In the case of an actual or potential transfer of business, provide for temporary contribution rates, until the Michigan Employment Security Commission (MESC) issued a rate determination.**

Contribution Rates

The Act provides that each employer's contribution rate for each calendar year is the sum of a chargeable benefits component, an account building component, and a nonchargeable benefits component. Each component is determined by a formula specified in the Act.

Account Building Component. The Act specifies that, for calendar years after 1993, and before 1999, the account building component is not to exceed the lesser of .69 of the percentage calculated under the Act's formula, or 3%, if on June 30 of the preceding calendar year, the balance in the UC Fund was less than 50% of the aggregate of all contributing employers' annual payrolls for the 12 months ending March 31, times the cost criterion. The bill would change the maximum account building component to .50 of the percentage calculated under the Act's formula, or 3%, whichever was less, if the UC Fund balance were less than 50% of the aggregate of contributing employers' annual payrolls for the 12 months ending March 31 times the cost criterion. This maximum contribution rate would apply in *all* calendar years after 1993.

"Cost criterion" means the number arrived at as of each computation date (i.e., June 30), through the following calculation: "(i) With respect to each

period of 12 consecutive months starting after 1956, calculate the percentage ratio of the benefits paid during the 12 months to the aggregate amount of the payrolls paid by employers within the most recent calendar year completed before the start of the 12 month-period"; "(ii) Select the largest percentage ratio...to be used as of that computation date".

Nonchargeable Benefit Component. The Act specifies that, for calendar years after 1993, and before 1999, if there are no benefit charges against an employer's account for the 60 months ending as of the computation date and if the Act's advocacy assistance program is funded and operates for that fiscal year, the maximum nonchargeable benefit component cannot exceed one-half of 1%. The bill would apply this provision to *all* calendar years after 1993 and remove the requirement that the advocacy assistance program be funded and operate.

The bill also specifies that, for calendar years after 1993, the maximum nonchargeable benefit component would be .4 of 1%, if there were no benefit charges against an employer's account for 72 months; .3 of 1%, if there were no benefit charges against an employer's account for 84 months; .2 of 1%, if there were no benefit charges against an employer's account for 96 months; and .1 of 1%, if there were no benefit charges against an employer's account for 108 months.

Contribution Rate Reduction. The bill would require that, unless an employer's contribution rate were .1, for calendar years beginning after December 31, 1995, the calculated contribution rate be reduced by 10% or by deducting .1 from the contribution rate, whichever resulted in the lower rate, for employers who had made contributions in accordance with the Act for more than four consecutive years, if the UC Fund balance, excluding money borrowed from the Federal Unemployment Trust Fund, equaled or exceeded 1.2% of the aggregate amount of all contributing employers' annual payrolls for the 12 months ending on the contribution date.

Temporary Contribution Rates. In the case of an actual or potential transfer of business, and until the MESC issued a rate determination to the transferor employer or transferee employer pursuant to the Act, the employer would be liable to pay quarterly contributions for that calendar year at a temporary rate.

For a transferor or transferee employer with a contribution rate based on five or more years of experience, the temporary rate would be the employer's contribution rate most recently determined for the employer. For a transferor or transferee employer with a contribution rate based on at least one year, but less than five years, of experience, the temporary rate would be 2.7% for an employer with a contribution rate based on the first two years of experience, 3.8% for an employer with a contribution rate based on the third year of experience, and 5% for an employer with a contribution rate based on the fourth year of experience. For a transferee employer with no previous contribution experience, the temporary rate would have to be the standard rate as otherwise provided in the Act.

When a rate determination replacing a temporary rate was issued to an employer, it would affect only the contribution rates for the calendar year in which the rate determination was issued. The temporary rate would be final, as to any calendar year before the calendar year to which the temporary rate had applied. If the rate provided in the rate determination for any prior year were more favorable to the employer than was the temporary rate for that prior year, however, the rate provided in the determination would have to be applied retroactively.

Benefits

Weekly Benefit Rate. The Act provides that the weekly benefit rate for an individual, for benefit years beginning before January 1, 1997, is 70% of his or her average after tax weekly wage. The bill would change that rate to 65% of the person's after tax weekly wage.

In addition, the Act specifies that a person's weekly benefit rate cannot exceed 58% of the State average weekly wage. The maximum weekly benefit amount cannot exceed $293, however, for benefit years beginning on or after January 2, 1994, but before January 5, 1997. For benefit years beginning after January 5, 1997, an individual's weekly benefit rate cannot exceed 53% of the State average weekly wage. For benefit years beginning on or after January 4, 1998, but before January 3, 1999, an individual's weekly benefit rate cannot exceed 55% of the State average weekly wage. The bill would delete this indexing of the maximum weekly benefit as a percentage of the State average weekly wage and

provides, instead, that a person's maximum weekly benefit rate could not exceed $293.

Waiting Week. The bill specifies that, in order for an unemployed individual to be eligible for benefits under the Act, the MESC would have to find that, within each benefit year and prior to the first period with respect to which he or she claimed benefits, the individual had served a waiting period of one week of unemployment in which he or she was otherwise eligible for, and entitled, to receive benefits.

Seasonal Em ployment. For weeks of unemployment beginning after the bill's effective date, benefits for seasonal employment would be payable only for weeks of unemployment that occurred during the normal seasonal period of work in the industry in which the person was employed. Benefits could not be paid for seasonal employment for any week of unemployment that began during the period between two successive normal seasonal work periods, to any person who performed the service in the first of those work periods if there were a reasonable assurance that he or she would perform the service for a seasonal employer in the second of the normal seasonal work periods. If benefits were denied for any week solely because of this provision and the individual were not offered an opportunity to perform in the second normal seasonal work period for which reasonable assurance of employment had been given, the person would be entitled to a retroactive payment of benefits for each week that he or she had previously filed a timely claim for benefits. An individual entitled to retroactive benefits could apply for them by mail in accordance with the Michigan Administrative Code (R 421.210).

At least 20 days before the estimated beginning date of a normal seasonal work period, an employer could apply to the MESC in writing for designation as a seasonal employer. At the time of application, the employer would have to display conspicuously a copy of the application on the employer's premises. The MESC would have to determine if the employer were a seasonal employer within 30 days after receiving the application. If the MESC failed to reject an application by the 30-day deadline, the application would be approved and the MESC would have to provide the applicant with a seasonal employer designation. If the employer were determined to be a seasonal employer, the employer would have to display conspicuously on its premises notices furnished by the MESC to notify employees of the determination and the estimated beginning and ending dates of its normal seasonal work period. The notice also would have to specify that an employee would have to apply in a timely manner for unemployment compensation at the end of a first seasonal work period to preserve his or her right to receive retroactive unemployment compensation in the event that he or she was not reemployed by the seasonal employer in the second of the normal seasonal work periods.

The MESC could terminate a seasonal employer designation for cause and would have to terminate the designation upon the designee's request. The termination of a seasonal employer designation would become effective on the first date of a seasonal employment period immediately following the date the MESC provided the employer with written notice of the termination. An employer whose designation was terminated could not reapply for a seasonal employer designation until a complete regularly recurring seasonal employment period had occurred.

If a seasonal employer informed an employee who received assurance of rehiring that, despite the assurance, he or she would not be rehired at the beginning of the employer's next season, the employee would be entitled to receive benefits in the same manner he or she would receive benefits from an employer who was not a seasonal employer.

A successor of a seasonal employer would be considered a seasonal employer unless the successor, within 120 days after acquiring the business, requested that the MESC provide written cancellation of the determination. A determination would be subject to review in the same manner and to the same extent as other determinations under the Act.

"Normal seasonal work period" would mean the period or periods of time determined pursuant to rules promulgated by the MESC during which an individual was employed in season employment. "Seasonal employment" would mean the employment of one or more individuals primarily hired to perform services in an industry that did either of the following:

-- Customarily operated during regularly recurring periods of 40 weeks or less in a period of 52 consecutive weeks.
-- Customarily employed at least 50% of its employees for regularly recurring periods of 40 weeks or less within a period of 52 consecutive weeks.

Periods of Partial Remuneration. The Act provides that each eligible individual must be paid a weekly benefit rate for a week in which he or she earns or receives no remuneration or remuneration of less than one-half his or her weekly benefit rate. An eligible person is paid one-half of his or her weekly benefit rate for a week in which he or she earns or receives remuneration equal to at least one-half but less than the amount of the benefit rate. The Act also specifies that, if within two consecutive weeks in which a person was not unemployed, there was a period of seven or more consecutive days for which he or she did not earn or receive remuneration, that period is considered a week for benefit purposes if a claim for benefits for that period is filed within 30 days after the end of the period.

The bill, instead, provides that an eligible individual would be paid a weekly benefit rate for a week for which he or she received no remuneration. If a person earned or received remuneration that, together with his or her weekly benefit, equaled or exceeded 1-1/2 times his or her weekly benefit rate amount, he or she could not receive benefits for that week. In addition, each eligible individual's weekly benefit rate would be reduced with respect to each week in which he or she earned or received partial remuneration, at the rate of 50 cents for each whole dollar of remuneration earned or received during that week.

Disqualification For Benefits. The Act specifies various conditions that disqualify a person from receiving unemployment compensation benefits. For purposes of requalifying conditions, disqualification for theft or destruction of property is divided into categories of $25 or less and more than $25. The bill would delete this value amount distinction. In order to requalify for benefits, a worker disqualified for theft or property destruction would have to complete 13 requalifying weeks of employment, which currently is required for theft or destruction resulting in loss or damage of over $25.

In addition, the bill would disqualify from eligibility for benefits a person who was employed by a "temporary help firm" if each of the following applied:

-- The firm provided the employee with a written notice before he or she began performing services for the client stating, in substance, that within seven days after completing services for a client, the employee was under a duty to notify the temporary help firm of the completion of those services and that failure to provide notice would constitute a voluntary quit that would affect the employee's eligibility for unemployment compensation.

-- The employee did not notify the temporary help firm that he or she had completed his or her services for the client, within seven days after completion of the assignment.

"Temporary help firm" would mean an employer whose primary business was to provide a client with the temporary services of one or more individuals under contract with the employer.

The bill also would disqualify a person who was discharged for use of a controlled substance after failing a drug test that was administered in a nondiscriminatory manner (i.e., pursuant to a labor-management contract or an employer rule or policy).

In-Home Salespersons. The bill would exclude from the definition of "employment" services performed as a direct seller engaged in the trade or business of selling, or soliciting the sale of, consumer products or services to a buyer on a buy-sell basis in the home or in an establishment other than a permanent retail establishment, if both of the following conditions applied:

-- Substantially all cash or other remuneration paid for services was determined by sales or service performance volume, and not by the number or hours worked.

-- The service was performed pursuant to a written contract that provided that the person was not an employee with respect to the service for Federal tax purposes.

"Credit Week". Currently, with respect to benefit years established before January 1, 1997, "credit week" means a calendar week of an individual's "base period" during which he or she earned wages equal to or greater than 20 times the State minimum hourly wage in effect on the first day of the calendar week in which he or she filed an application for benefits. Under the bill, a credit week would be a calendar week of the base period during which the person earned wages equal to or greater than 30 times the State minimum hourly wage. ("Benefit year" means the period of 52 consecutive calendar weeks beginning with the first calendar week with respect to which the individual files an application for benefits. "Base period", for benefit years beginning before January 1, 1997, means the period of 52 consecutive

weeks ending with the day immediately preceding the first day of the person's benefit year. For benefit years beginning after January 1, 1997, "base period" means the first four of the last five completed calendar quarters before the first day of the person's benefit year.)

Repealer

The bill would repeal a section that provides that, if an individual is not able to establish a benefit year because of insufficient credit weeks, a benefit year may be established if the person has at least 14 credit weeks in his or her base period, and has base period wages in excess of 20 times the State average weekly wage, applicable to the calendar year in which his or her benefit year is established (MCL 421.46a).

MCL 421.19 et al.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The tax reduction provisions of the bill would lower the contribution requirements of State and local governmental units. The actual savings of Federal unemployment taxes also would be determined by the level of benefits paid to past employees and by the number of part-time individuals who have been and would be employed in seasonal positions. Actual savings would vary according to the benefit experience of each governmental unit.

Fiscal Analyst: K. Lindquist