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BILL ANALYSIS



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Senate Bill 806 (as enacted)
Sponsor: Senator Jack Brandenburg
Senate Committee: Finance
House Committee: Commerce

PUBLIC ACT 269 of 2011

Date Completed: 12-29-11

CONTENT

The bill amended the Michigan Employment Security Act to do the following:

- Increase the taxable wage base from \$9,000 to \$9,500, but reduce it to \$9,000 for nondelinquent employers when the balance in the Unemployment Compensation Fund reaches \$2.5 billion.
- Phase in a reduction of the experience rating period from five to three years.
- Allow certain employers with 25 or fewer employees to apportion their first-quarter contributions.
- Phase in a requirement for all employers to file quarterly wage reports electronically.
- Revise criteria that apply to seasonal employment.
- Provide for an employer's account not to be charged for a week and the remaining weeks in a benefit year if a claimant reports earnings at least equal to the employer's weekly benefit charges for that individual.
- Require claimants to be actively engaged in seeking work, and to report details of the work search, in order to qualify for benefits.
- Provide that claimants will be considered unavailable for work if they fail to communicate with a chargeable employer or the Unemployment Insurance Agency (UIA), or cannot be reached by mail or phone.
- Provide that, after a claimant has received benefits for 50% of a benefit year, work will not be considered unsuitable because it is outside of his or her training or experience if it pays at least 120% of the weekly benefit amount.
- Until October 1, 2015, require benefits to be reduced by 40 cents, rather than 50 cents, for each dollar of remuneration a claimant earns or receives, and provide that total earnings and benefits may not exceed 1-3/5, rather than 1.5, times the weekly benefit amount.
- Include theft, absenteeism, and the loss of a job requirement, in the grounds for disqualification for benefits.
- Designate as a felony certain criminal violations that involve benefits or payments over \$3,500 but less than \$25,000.
- Include officers and directors in provisions that prohibit willful violations.
- Increase the administrative fine for employers' noncompliance with reporting requirements.
- Increase from 20% to 50% the amount that may be deducted from benefits or wages for improperly collected benefits, and otherwise revise restitution provisions.
- Authorize the UIA to conduct an amnesty program for the recovery of improperly paid benefits.
- Allow the UIA to obtain restitution of benefit overpayments by various methods, including administrative garnishment.
- Establish a new test for whether services are employment, effective January 1, 2013.
- Allow a business entity to ask the UIA to determine whether services

are in covered employment, and provide that only wages paid after the determination will be used for benefit qualifying purposes, and penalties will accrue only on contributions based on those wages.

- Permit the UIA to disclose information to law enforcement agencies for criminal investigations.**
- Require a lottery prize of \$1,000 or more to be remitted to the UIA for the amount the winner owes to the Agency.**
- Eliminate the Special Fraud Control Fund.**
- State that a reference in the Act to transmission or receipt by mail includes any form of electronic transmission or receipt approved by the UIA.**
- Delete a requirement that, at the close of each fiscal year, money in the Contingent Fund in excess of \$15.0 million lapse to the Unemployment Trust Fund.**

The bill also made changes to reflect Executive Orders 2011-4 and 2011-6, which created the Michigan Administrative Hearing System and the Michigan Compensation Appellate Commission, respectively. The bill repealed Sections 35 and 36 of the Act, which provided for the board of review and appeals to referees and the board.

The bill took effect on December 19, 2011.

The following detailed description of the bill is broadly categorized by provisions that affect employers' contributions; claimants' eligibility and disqualifications; penalties and recoveries; and the UIA.

Employers

Employer Contribution Rate

The Act requires the UIA to determine the contribution rate of each contributing employer for each calendar year according to calculations specified in the Act. The calculations take into account wages paid by the employer over a five-year experience rating period.

Under the bill, the five-year experience rating period will apply to an employer that was a contributing employer before January 1, 2012, and does not convert from a

reimbursing employer to a contributing employer on or after that date. A four-year experience rating period will apply to an employer that becomes a contributing employer during 2012, and a three-year experience rating period will apply to an employer that becomes a contributing employer on or after January 1, 2013.

The bill also revises the calculation of the chargeable benefits component of an employer's contribution. For 2012, the calculation will be based on the amount of benefits charged to the employer's experience account and the employer's taxable payroll within a 48-month period (instead of 60 months); and for 2013 and future years, the calculation will be based on the amount charged to the experience account and payroll within a 36-month period.

Taxable Wage Limit

The Act establishes a "taxable wage limit" (or base) for the purpose of determining the amount of contributions due from an employer.

Beginning with the 2012 calendar year, the bill increases the taxable wage limit from \$9,000 to \$9,500. If the balance in the Unemployment Compensation Fund at the beginning of a year equals or exceeds \$2.5 billion, however, and the UIA projects that the balance will remain at or above that level for the remainder of the quarter and the entire next quarter, the taxable wage limit for that quarter and the next quarter will be \$9,000 for an employer that is not delinquent in the payment of unemployment contributions, penalties, or interest.

Apportioned Employer Contributions

The bill requires the UIA to allow a contributing employer that employs 25 or fewer individuals during the pay period that includes January 1, 2012, or during the corresponding pay period in each subsequent calendar year, and that incurred 50% or more of its total previous year's contribution obligation in the first quarter of that year, to pay its contributions due in the following year through quarterly payments that distribute the payment of the first quarter's obligation equally over the four quarters in that year.

The first quarterly payment must include 25% of the obligation incurred in that quarter. The second, third, and fourth quarterly payments each must include the obligation incurred in that quarter plus 25% of the first quarter's obligation.

To avoid interest and penalties that otherwise would apply to those payments, the employer must notify the UIA of the election to make apportioned payments with the first quarter's payment, and then timely file each quarter's payment in the amounts prescribed.

These provisions will apply to contributions beginning in the 2013 tax year.

Quarterly Wage Report; Electronic Filing

The Act requires each employer to file a quarterly wage report with the UIA. The bill requires an employer to file the quarterly reports by an electronic method approved by the UIA. The schedule for implementing this requirement will be based on the number of employees an employer has on January 1, 2013, as shown below:

<u># of Employees</u>	<u>Implementation Date</u>
25 or more	First quarter of 2013
6 to 24	First quarter of 2014
1 to 5	First quarter of 2015

Upon the application of an employer with five or fewer employees, the UIA director may grant additional time if he or she determines that electronic filing would cause economic hardship for the employer.

An employer that complies with these electronic filing requirements will not be required to file periodically to disclose contributions under the Act.

Also, under the bill, if the UIA discovers an error in a report that was filed timely, the Agency must give the employer written notification. If the employer provides corrected information within 14 days, the administrative fine prescribed in the Act for a late, incomplete, or erroneous report will not apply.

Seasonal Employment

Under the Act, unemployment benefits based on services by a seasonal worker

performed in seasonal employment are payable only for weeks of employment that occur during the normal seasonal work period. Benefits are not payable to an individual based on services performed in seasonal employment for any week of unemployment that begins during the period between two successive normal seasonal work periods if the individual performs the services in the first of those periods and there is a reasonable assurance that he or she will perform the services for a seasonal employer during the second period. An employer may apply to the UIA for designation as a seasonal employer.

The previous definition of "seasonal employer" referred to an employer, other than an employer in the construction industry, whose operations and business "are substantially engaged" in seasonal employment. The bill refers to an employer whose operations and business "require employees" in seasonal employment. The bill specifies that a seasonal employer designation need not correspond to a category assigned under the North American Classification System of the U.S. Office of Management and Budget.

The definition of "seasonal employment" also included employment of one or more individuals to perform services in an industry, other than the construction industry, that customarily operates during regularly recurring periods of 26 weeks or less in any 52-consecutive-week period. The bill generally retains this provision but omits the requirement that the industry "customarily operate" during periods of 26 weeks or less.

The previous definition also included employment in an industry, other than the construction industry, that customarily employs at least 50% of its employees for regularly recurring periods of 26 weeks or less within a period of 52 consecutive weeks. The bill deleted that provision.

Benefit Charges: Claimant Earnings

The Act requires the UIA to maintain in the Unemployment Compensation Fund a nonchargeable benefits account and a separate experience account for each employer.

Previously, if benefits for a week of unemployment were charged to two or more base period employers, the share of the benefits allocated and charged to a contributing employer had to be charged to the nonchargeable benefits account if the claimant during that week earned remuneration with that employer that equaled or exceeded the amount of benefits charged to the employer. The bill deleted this provision.

Under the bill, before January 1, 2014, if a base period contributing employer notifies the UIA that it paid gross wages to a claimant in a week at least equal to the employer's benefit charge for the claimant for that week, the UIA must issue a monetary redetermination noncharging the account of the employer for that week and for the remaining weeks of the benefit year for benefits payable to the claimant that otherwise would be charged to the employer's account.

For benefit years beginning on or after January 1, 2014, benefits payable to an individual for a week and for each remaining payable week in the benefit year must be charged to the nonchargeable benefits account if either of the following occurs:

- The individual reports gross earnings in a week with a contributing base period employer at least equal to the employer's benefit charges for the individual for the week.
- A contributing base period employer timely protests a determination charging benefits to its account for a week in which the employer paid an individual gross wages at least equal to the employer's charges for benefits paid to the individual for that year.

Covered Employment; UIA Determination

Under Section 42 of the Act, services performed by an individual for remuneration are not employment subject to the Act, unless the individual is under the employer's control or direction as to the performance of the services both under a contract for hire and in fact. Under the bill, this will apply before January 1, 2013.

On and after that date, services will be employment if they are performed by an individual whom the UIA determines to be in

an employer-employee relationship using the 20-factor test announced by the Internal Revenue Service in Revenue Ruling 87-41, 1 C.B. 296. An individual from whom an employer is required to withhold Federal income tax will be prima facie considered to perform services in employment under the Act.

The bill added Section 42a to provide that, if a business entity requests the UIA to determine whether one or more individuals performing services for the entity in Michigan are in covered employment, the Agency must issue a determination of coverage of services performed by those individuals and any others performing similar services under similar circumstances. If the UIA determines that the services are in covered employment and the Agency receives the request before January 1, 2013, wages paid for those services will be qualifying wages to determine benefit entitlement with respect to the first four of the last five calendar quarters ending before the date of the determination. Benefits paid based on amounts determined to be wages in those quarters, that are otherwise chargeable to the experience account of a contributing employer, must be charged instead to the nonchargeable benefits account. Penalties and interest will accrue only on contributions or reimbursements in lieu of contributions that are assessed based on wages paid on or after the date of the determination. Beginning on January 1, 2013, services will be determined in employment according to the applicable provision of Section 42.

Professional Employer Organizations

The bill revised the rate calculation for client employers of a professional employer organization (PEO). Under the bill, for a client employer that is a contributing employer, this calculation depends, in part, on whether the client employer reported no employees or no payroll to the UIA for 12 or more quarters, or whether the client employer was a client employer of the PEO for less than 12 full quarters. Previously, these periods of time were eight or more quarters, or less than eight full quarters, as applicable.

The Act requires either the PEO that reports wages or the PEO's client employers to file a quarterly wage detail report and a quarterly

contribution payment. Under the bill, if a client entity or a PEO leases some of its employees from the PEO but retains the remainder of its employees, the PEO must report the leased employees under the client entity's UIA account number, and the client entity must report the retained employees under a UIA-assigned subaccount number.

Other Employer Provisions

Under the bill, if an employer has not had workers in covered employment after 12 or more consecutive calendar quarters, and the employer again becomes liable for contributions, the employer must be considered as newly liable for contributions for purposes of the rate calculation. Previously, this applied if an employer did not have workers in covered employment after eight or more consecutive quarters.

The Act's definition of "employer" includes a person that acquires another business that was subject to the Act, and a person that becomes a transferee of business assets under certain circumstances. Under the bill, such an employer will not be assigned the new employer rate, but the employer's most recent prior rate as a predecessor employer will be assigned to its account.

The Act requires certain amounts to be credited to an employer's nonchargeable benefits account. Under the bill, these amounts include benefits otherwise chargeable to the account of an employer when the benefits are payable solely on the basis of combining wages paid by a Michigan employer with wages paid by a non-Michigan employer under the Interstate Arrangement for Combining Employment and Wages under Federal regulations.

The amounts credited to an employer's nonchargeable benefits account previously included any positive balance remaining in the employer's experience account after the employer ceased to be subject to the Act. If the employer became subject to the Act again within six years, the employer could apply within 60 days to have the UIA transfer the positive balance credited to the employer's new experience account. Under the bill, instead, if an employer has a positive or a negative balance transferred after ceasing to be subject to the Act, and becomes subject to the Act again within six years, the UIA must transfer the positive or

negative balance to the employer's new experience account.

The Act previously required an employer's contribution rate to be reduced if the balance in the Unemployment Compensation Fund, excluding money borrowed from the Federal Unemployment Trust Fund, was at least 1.2% of the aggregate amount of all contributing employers' payrolls for a 12-month period. The bill deleted this requirement.

Claimants

Actively Seeking Work

The Act requires an individual to meet various criteria in order to receive benefits. These include requirements that the individual has registered for work and is seeking work. The bill requires an individual to be "actively engaged" in seeking work.

For benefit years beginning on or after January 1, 2013, to be actively engaged in seeking work, an individual must conduct a systematic and sustained search for work in each week he or she is claiming benefits, using any of the following methods to report details of the work search:

- Reporting at monthly intervals on the UIA's online reporting system.
- Filing a written report with the UIA by mail or fax by the end of the fourth week after the end of the week in which the individual engaged in the work search.
- Appearing at least monthly in person at a Michigan Works Agency office to report.

Each method requires the individual to report the name and physical or online location of each employer where work was sought, and the date and method by which work was sought with each employer.

The work search will be subject to random audit by the UIA.

Availability for Work

The Act requires an individual to be able and available to perform suitable full-time work of a character that he or she is qualified to perform by past experience or training, that is generally similar to work for which the individual has previously received wages,

and for which he or she is available full-time.

The bill provides that an individual will be considered unavailable for work under any of the following circumstances:

- The individual fails during a benefit year to notify or update a chargeable employer with telephone, electronic mail, or other information sufficient to allow the employer to contact the individual about available work.
- The individual fails, without good cause, to respond to the UIA within 14 days after a notice to contact the Agency is mailed or a phone message requesting a return call is left, whichever is later.
- Unless the claimant shows good cause for failure to respond, mail sent to the individual's address of record is returned as undeliverable and the telephone number of record has been disconnected or changed or is otherwise no longer associated with the individual.

The bill also requires an individual to appear at a location of the UIA's choosing for evaluation of eligibility for benefits, if required.

Under the Act, an individual is disqualified from receiving benefits if he or she failed without good cause to apply for available suitable work after receiving notice from the UIA of the availability of that work. Under the bill, an individual will be disqualified if he or she failed without good cause to apply "diligently" after receiving that notice, or failed to apply for work with employers that could reasonably be expected to have suitable work available.

Suitability of Work

Under the bill, beginning January 15, 2012, after an individual has received benefits for 50% of the benefit weeks in his or her benefit year, work will not be considered unsuitable because it is outside of the individual's training or experience, or unsuitable as to pay rate if the following apply: the pay rate for that work meets or exceeds the minimum wage, the pay rate is at least the prevailing mean wage for similar work in the locality for the most recent full calendar year for which data are available, and the pay rate is 120% or more of the individual's weekly benefit amount.

Disqualification Due to Leaving Work

Except as otherwise provided, an individual is disqualified from receiving benefits if he or she left work voluntarily without good cause attributable to the employer.

Under the bill, an individual will be considered to have voluntarily left work without good cause attributable to the employer if he or she is absent from work for at least three consecutive work days without contacting the employer.

An individual who becomes unemployed as a result of negligently losing a requirement for the job also will be considered to have voluntarily left work without good cause attributable to the employer.

The Act provides that an individual claiming benefits has the burden of proof to establish that he or she left work involuntarily or for good cause attributable to the employer. Under the bill, an individual claiming to have left work involuntarily for medical reasons must have done all of the following before the leaving:

- Secured a medical professional's statement that continuing in the current job would be harmful to the individual's physical or mental health.
- Unsuccessfully attempted to secure alternative work with the employer.
- Unsuccessfully attempted to be placed on a leave of absence with the employer to last until the individual's mental or physical health would no longer be harmed by the current job.

If an individual files a new claim for benefits and reports the reason for separation from a base period employer as a voluntary leaving, he or she will be presumed to have voluntarily left without good cause attributable to the employer and will be disqualified unless the individual provides substantial evidence to rebut the presumption.

Qualification Despite Leaving Work

Under the Act, certain individuals are not disqualified from receiving benefits even though they left work. These include an individual who has an established benefit year in effect and during that benefit year leaves unsuitable work within 60 days after

beginning it. A person who is the spouse of a full-time member of the U.S. armed forces also is not disqualified if the leaving is due to the military duty reassignment of that member to a different geographic location.

Under the bill, benefits paid under these circumstances may not be charged to the experience account of the employer the individual left, but must be charged to the nonchargeable benefits account.

Also, under the bill, an individual who is concurrently working part-time for one employer and for another employer will not be disqualified if he or she voluntarily leaves the part-time work while continuing work with the other employer. The portion of the benefits paid under this provision that otherwise would be charged to the experience account of the part-time employer may not be charged to that employer's account, but must be charged to the nonchargeable benefits account.

Under the Act, an individual is not disqualified from receiving benefits if he or she leaves work to accept permanent full-time work with another employer and performs services for that employer. The bill extends this to an individual who leaves work to accept a referral to another employer from the individual's union hiring hall.

Disqualification Due to Theft

Under the bill, an individual will be disqualified from receiving benefits due to theft from the employer that results in the employee's conviction of theft or a lesser included offense within two years of the date of the discharge.

An individual who is disqualified because of theft will have to complete 26 requalifying weeks in order to requalify for benefits; and will be subject to a reduction in benefits.

Drug Testing

The grounds for disqualification include discharge for illegally ingesting a controlled substance on the employer's premises; refusing to submit to a drug test that was required to be administered in a nondiscriminatory manner; and testing positive on a drug test that was administered in a nondiscriminatory manner.

Previously, if the worker disputed the result of the testing, a generally accepted confirmatory test had to be administered and had to indicate a positive result before the worker was disqualified.

Under the bill, instead, if the worker disputes the test result and if a generally accepted confirmatory test has not been administered on the same sample previously tested, then a generally accepted confirmatory test must be administered on that sample. If that test also indicates a positive result, the worker who was discharged as a result of the test result will be disqualified. A report by a drug testing facility showing a positive result will be conclusive unless there is substantial evidence to the contrary.

Individual Considered Unemployed

Previously, an individual was considered unemployed for any week of less than full-time work if the remuneration payable to the individual was less than his or her weekly benefit rate.

Under the bill, an individual will be considered unemployed for any week of less than full-time work if the remuneration is less than 1.5 times his or her weekly benefit rate. For payable weeks of benefits beginning after the bill's effective date and before October 1, 2015, however, an individual will be considered unemployed for any week or less of full-time work if the remuneration payable is less than 1-3/5 times his or her weekly benefit rate.

Benefit Reduction for Remuneration

The Act requires the weekly benefit rate of an eligible individual to be reduced with respect to each week in which he or she earns or receives remuneration. Previously, the rate had to be reduced by 50 cents for each whole dollar earned or received. The bill lowers the reduction to 40 cents for each dollar earned or received until October 1, 2015, when it will return to 50 cents.

The Act also provides that an individual who receives or earns partial remuneration may not receive a total of benefits and earnings that exceeds his or her weekly benefit amount by a certain amount. Previously, the total could not exceed 1.5 times the weekly benefit amount. The bill increased

the multiplier to 1-3/5. Previously, for each dollar of total benefits and earnings over 1.5 times the individual's weekly benefit amount, benefits had to be reduced by \$1. The bill requires benefits to be reduced by \$1 for each dollar of total benefits and earnings over 1-3/5 times the individual's weekly benefit amount. Beginning October 1, 2015, the cap on total benefits and earnings will return to 1.5 times the weekly benefit amount, and the reduction in benefits will return to \$1 for each dollar by which total benefits and earnings exceed 150% of the weekly benefit amount.

With regard to these provisions, the bill requires the UIA to report the following information annually to the Legislature:

- The number of individuals whose weekly benefit rate was reduced at the rate of 40 or 50 cents for each whole dollar of remuneration earned or received over the preceding calendar year.
- The number of individuals who received or earned partial remuneration at or above the applicable limit of 1.5 or 1-3/5 times their weekly benefit amount for any week or weeks during the prior year.

Penalties & Recoveries

Criminal Penalties

The Act prescribes sanctions for a person who willfully violates or intentionally fails to comply with any provisions of the Act, or a regulation of the UIA promulgated under the Act, for which a penalty is not otherwise provided by the Act. Under the bill, this reference to a person includes a claimant for unemployment benefits, an employing entity, or an owner, director, or officer of an employing entity.

The Act also prescribes sanctions for an employing unit or an officer or agent of an employing unit, a claimant, an employee of the UIA, or any other person who knowingly makes a false statement or representation, or knowingly and willfully with intent to defraud fails to disclose a material fact, to obtain or increase a benefit or other payment, prevent or reduce the payment of benefits, avoid becoming or remaining a subject employer, or avoid or reduce a contribution or other payment required from an employing unit. The bill extends these

sanctions to an owner or director of an employing unit.

The Act allows the UIA to recover the amount obtained or withheld as a result of a knowing or willful violation plus damages equal to two, three, or four times that amount, depending on the violation. The UIA also may refer the matter to the prosecuting attorney. The recovery sought must include the amount obtained or withheld as a result of the violation, if the UIA did not make its own determination, as well as specified penalties based on that amount.

The penalties sought by a prosecutor must include imprisonment and/or community service for up to one year if the amount obtained or withheld as a result of an intentional violation is less than \$25,000; if the amount obtained or withheld as a result of a knowing violation is \$100,000 or less; or if the amount obtained or withheld from payment as a result of a knowing false statement or representation, or knowing and willful failure to disclose a material fact, is \$1,000 or more but less than \$25,000. Under the bill, these penalties apply subject to redesignation as a felony.

Specifically, a person who obtained or withheld an amount of unemployment benefits or payments exceeding \$3,500 but less than \$25,000 as a result of a knowing false statement or representation or the knowing and willful failure to disclose a material fact will be guilty of a felony punishable as provided above.

Administrative Fine: Failure to Report

The Act requires the assessment of an administrative fine if an employing unit, an officer or agent of an employing unit, or any other person fails to submit a required report on time. The bill extends this to an owner or director of an employing unit.

The fine for failure to submit contribution reports is 10% of the contributions due on the reports but not less than \$5 or more than \$25. The fine for other reports is \$10, except the fine for failure to submit a quarterly wage detail report previously was \$25 per report.

Under the bill, a person who fails to submit a quarterly wage detail report when due or

who submits an incomplete or erroneous report will be subject to an administrative fine of \$50 for each untimely report, incomplete report, or erroneous report if the report is filed within 30 days after the due date. The fine will be \$250 if the report is filed more than one calendar quarter after it was due, and an additional \$250 for each additional quarter that the report is late. No penalty will apply, however, if the employer files a corrected report within 14 days after notification of an error by the UIA.

Benefits Improperly Paid

If the UIA determines that a person has obtained benefits to which he or she is not entitled, the Agency may recover the amount received plus interest by 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. Previously, deduction from benefits or wages could not exceed 20% of each payment due the claimant, although restitution resulting from an intentional false statement, misrepresentation, or concealment of material information was not subject to this limit.

The bill increased the maximum amount of a deduction to 50% of each payment (with the same exception for restitution resulting from an intentional false statement, misrepresentation, or concealment of material information). The bill also requires the UIA to issue a determination requiring restitution within three years after the date of finality of a determination, redetermination, or decision reversing a previous finding of benefit entitlement.

Previously, the UIA could not recover improperly paid benefits from an individual more than three years, or more than six years in the case of certain criminal violations, after the date the improperly paid benefits were received, unless the Agency filed a civil action within the three- or six-year period, the individual made an intentional false statement, misrepresentation, or concealment of material information to obtain benefits, or the UIA issued a determination requiring restitution within the three- or six-year period. The bill rewrote these provisions, specifying that the UIA may not initiate an administrative or court action to recover

improperly paid benefits from an individual more than three years after the date that the last determination, redetermination, or decision establishing restitution is final.

The bill requires the UIA to issue a determination on an issue within three years from the date the claimant first received benefits in the benefit year in which the issue arose or, in the case of an intentional false statement, misrepresentation, or concealment, within six years after the receipt of the improperly paid benefits, unless the Agency filed a civil action within the three- or six-year period, the individual made an intentional false statement, misrepresentation, or concealment of material information to obtain benefits, or the UIA issued a determination requiring restitution within the three- or six-year period.

Under the Act, except in the case of an intentional false statement, misrepresentation, or concealment of material information, the UIA may waive recovery of an improperly paid benefit and must waive interest if the payment was not the individual's fault and if repayment would be inequitable. Under the bill, if the Agency or an appellate authority waives collection of restitution and interest, the waiver will be prospective and will not apply to restitution and interest payments already made by the individual.

The Act prescribes additional sanctions, including cancellation of the right to benefits for the benefit year, for an individual who obtains benefits as a result of an intentional false statement, misrepresentation, or concealment of material information. Previously, before receiving benefits in a benefit year established within two years after the right to benefits was canceled, the individual could be liable for an amount in addition to making restitution. The bill retained this provision but extended an individual's liability to four years after the right to benefits was canceled.

The bill allows the UIA to 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 specified period.

Interest

The bill states that nothing in the Act authorizes the assessment or collection of interest on a penalty imposed under the Act.

Unemployment Insurance Agency

Information Disclosure

The Act limits the disclosure of information that is in the UIA's possession. Information obtained in connection with the administration of the Act may be made available for purposes appropriate to the operation of a public employment service. The bill also refers to an unemployment compensation program.

In addition, the Act allows the UIA to make that information available to agencies of other states and departments of this State. Under the bill, the UIA also may make the information available to Federal, State, and local law enforcement agencies in connection with a criminal investigation involving the health, safety, or welfare of the public.

The bill allows the information to be released only upon assurance by the entity receiving it that the entity will reimburse the cost of providing the information and will not disclose it except to the individual or employer that is the subject of the information, an attorney or agent of that person, or a prosecuting attorney for or on behalf of the entity receiving the information.

The Act also allows the UIA to release identity and benefit information about an individual to the U.S. Department of Housing and Urban Development (HUD) and a State or local public housing agency responsible for verifying eligibility for a housing assistance program administered by HUD. The bill also allows the UIA to release this information to an entity contracting with a State or local public housing agency to provide public housing, and to any other agency responsible for verifying eligibility for a HUD-administered housing assistance program.

Restitution of Overpayments; Garnishment

In addition to the restitution recoupment methods otherwise authorized (deduction

from benefits or wages, payment of cash, and deduction from a tax refund), the bill allows the UIA to obtain restitution due from a claimant as a result of a benefit overpayment that has become final, by any of the following methods:

- Levy of a bank account belonging to the claimant.
- Entry into a wage assignment with the claimant.
- Issuance of an administrative garnishment of the claimant's wages.

To obtain an administrative garnishment, the UIA must notify the claimant of the intention to issue a garnishment on the claimant's employer, and the amount determined to be due from the claimant. The notice must include a demand for immediate payment of the amount due, a statement that it is not subject to appeal, and a statement that the claimant may, within 30 days of issuance of the notice, object to the garnishment by giving the UIA information, with supporting documentation, that he or she does not owe the stated amount.

At least 30 days after issuing the notice, the UIA must notify the claimant's employer to withhold from the claimant's earnings the amount shown on the notice plus accrued interest. The employer must comply with the notice and continue to withhold the amount shown until the garnishment amount plus accrued interest has been satisfied and the UIA releases the garnishment.

The UIA's administrative garnishment will have priority over any subsequent garnishment or wage assignment. The amount subject to garnishment for any pay period must be decreased by any other irrevocable and previously effective assignment of wages or other garnishment amount served on the employer before the UIA's garnishment notice is served. The amount of the UIA's garnishment may not exceed 25% of the balance.

Within 10 days of the date of the UIA's notice to withhold wages, the employer must notify the Agency of the amount of any irrevocable and previously effective assignment of wages or garnishment actions. Within 10 days after the end of each pay period in which wages have to be

withheld under the administrative garnishment, the employer must pay the UIA the amount withheld. Within 10 days after the claimant is no longer employed by the employer, the employer must notify the UIA.

Interest, Assessment, Lien

Under the Act, contributions that are unpaid when due must bear interest at the rate of 1% per month, although the interest may not exceed 50% of the amount of contributions due. The bill extends these provisions to unpaid restitution of benefit overpayments.

The Act allows the UIA to make assessments against an employer, claimant, UIA employee, or third party who fails to pay contributions, reimbursement payments in lieu of contributions, penalties, forfeitures, or interest. Under the bill, this also applies to failure to pay restitution of benefit overpayments.

Under the Act, unless an assessment is paid within 15 days after it becomes final, the UIA may issue a warrant for the collection of an assessed amount, and may levy upon and sell the property of the employer for the payment of contributions. The bill also allows the UIA to place a lien on any bank account of the claimant or employer.

Lottery Prize

The bill requires the State Lottery Bureau, before payment of a prize of \$1,000 or more under the Lottery Act, to determine whether the prize winner has a current liability for restitution of unemployment benefits, penalty, or interest assessed by the UIA and the amount of the prize owing to the UIA, and to remit that amount to the Agency.

Fraud Control Fund; Amounts Recovered

The Act established the Special Fraud Control Fund within the Contingent Fund, and required the following to be deposited in the Fraud Control Fund: interest and penalties collected under the Act; gifts to, interest on, and profits earned by the Fund; and administrative sanctions, damages, and interest on amounts recovered for violations involving fraud. After the purchase of software for the detection and collection of benefit overpayments, money in the Fund

could be used for administrative costs associated with the prevention, discovery, and collection of overpayments.

The bill deleted all of these provisions. The amounts recovered for fraudulent violations that were required to be credited to the Fraud Control Fund instead must be credited to the Contingent Fund.

Previously, in regard to recoveries for fraudulent violations, deductions from benefits had to be applied to the amount liable for repayment. Otherwise, the recoveries had to be applied first to administrative sanctions and damages, then to interest, and then to the amount liable to be repaid. The bill instead requires recoveries to be applied first to repayment amounts owed, which must be deposited in the Unemployment Compensation Fund; then to administrative sanctions and damages; and then to interest.

The Act also provides for collection of interest on improperly paid benefits. The bill requires the interest to be deposited in the Contingent Fund, instead of the Fraud Control Fund.

Hearings & Appeals

The bill provides that the UIA is an interested party in a matter before an administrative law judge, the Michigan Compensation Appellate Commission, or a court, but notice of a hearing need not be given to the Agency for a hearing before an administrative law judge or the Commission.

The bill requires a protest or appeal to be signed or verified in a manner prescribed by administrative rule, and to be transmitted to the UIA by mail, facsimile, or other electronic method approved by the Agency. If a party submits an unsigned or unverified protest or appeal, the UIA must notify the party of the defect that prevents the Agency from accepting the protest or appeal.

The bill specifies that the testimony at a hearing before an administrative law judge or the Michigan Compensation Appellate Commission, must be recorded but need not be transcribed unless requested by the majority of the Commission panel assigned to hear the claim. An interested party may request a copy of a hearing transcript and

be provided with one, but the interested party will be responsible for the cost.

Other UIA Provisions

Previously, the Act allowed the destruction or disposal of documents that the UIA had retained for at least two years, and allowed the Agency director to have a reproduction, summary, or compilation made. The bill, instead, allows the UIA to destroy or dispose of a document as soon as practicable after it has been electronically captured and preserved in an information retrieval system. An electronically stored record must be retained for the same minimum retention period as required for the original record.

The Act requires the UIA to provide each employer with copies or listings of the benefit checks charged against that employer's account. Under the bill, an employer determined to be a successor employer also must begin receiving the listings effective for weeks beginning after the determination of successorship is mailed.

The bill deleted a provision under which the UIA director had to be required by the Governor to post a bond of at least \$25,000 to cover his or her liability for funds that were lost or unnecessarily spent.

MCL 421.6a et al.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill will generally have a positive fiscal impact on the State's finances. Certain aspects of the bill will result in the payment of a lower amount of unemployment insurance (UI) benefits, and others will result in increased revenue.

One of the principal fiscal effects the bill will have is increasing State Unemployment Tax Act (SUTA) tax revenue by approximately 5.6%. The bill increases the taxable wage base for employees from \$9,000 to \$9,500. For calendar year 2012, the Unemployment Insurance Agency had estimated that it would collect approximately \$1.33 billion in SUTA revenue. Under the bill, this number will increase to approximately \$1.40 billion, or an increase of \$74.5 million annually.

The bill also specifies that employers with positive experience account balances will have their taxable wage base reduced to \$9,000 once the Unemployment Compensation Fund (UCF) balance reaches \$2.5 billion. Currently, the UCF's balance is effectively zero, as the UIA has used SUTA collections in excess of benefit payments to repay Michigan's substantial Federal unemployment debt. The State may use SUTA tax revenue only for two things: payment of unemployment insurance benefits and repayment of Federal unemployment loans.

Under the law, a recipient of UI benefits is required to be willing and able to perform suitable work. The bill describes additional actions that will cause a recipient to be considered unavailable for work. Also, under the bill, a recipient who has received benefits for 50% of the benefit weeks in his or her benefit year will be unable to turn down work that does not match his or her training or experience, as long as the pay rate is at least 120% of the individual's weekly benefit amount. These two factors will have an indeterminate, but likely positive effect on the UCF, as they will make it somewhat more difficult for claimants to remain eligible for unemployment benefits, thereby reducing benefits paid from the UCF.

In addition, the bill allows the UIA to: conduct an amnesty program for the recovery of improperly paid benefits, recover improper payments by various methods, including administrative garnishment, and deduct up to 50% of a recipient's benefit check for the repayment of improperly paid benefits. The U.S. Department of Labor has reported that during the period from July 1, 2008, to June 30, 2011, the UIA made approximately \$676.1 million in improper payments out of a total of \$7.85 billion in regular State payments. Of the improper payments, the Michigan Auditor General reported that \$89.7 million was recovered. To the extent that the new flexibility granted in the bill is effective, some of the gap between improper payments and recoveries may be closed.

Under the bill, the Lottery Bureau will have to determine whether the winner of a prize of \$1,000 or more has any liability with the UIA before issuing the prize. If a liability is found, the Bureau will have to use the prize

to repay that liability before paying the winner whatever amount might remain. The fiscal impact of this requirement is indeterminate; it will likely lead to the repayment of some individual UI liabilities, but it also will result in a small increase in administrative costs for the Lottery Bureau.

The bill eliminates the direction to the Special Fraud Control Fund of interest charges paid by UI benefit recipients who receive improper benefits. This revenue will be credited instead to the Penalty and Interest Account of the Contingent Fund. Figures for how much revenue will be transferred in this manner are not available at this time, but the revenue may be used for a variety of UI-related expenses including the payment of interest on Michigan's Federal unemployment loans.

Finally, the bill eliminates a requirement that the balance of the Contingent Fund in excess of \$15.0 million be transferred to the UCF at the end of each fiscal year. The Contingent Fund receives revenue primarily from penalties and interest, and removing this transfer requirement will allow the Fund to accumulate a balance. This balance may be used for a greater variety of spending than if the same revenue were credited to the UCF. For example, Contingent Fund revenue can be used to pay for interest expenses on Michigan's Federal unemployment loans, while the UCF cannot.

Fiscal Analyst: Josh Sefton

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.