

Legislative Analysis



UNEMPLOYMENT INSURANCE AGENCY (UIA) REVISIONS

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House Bill 5165 as introduced
Sponsor: Rep. Joseph Graves

House Bill 5166 as introduced
Sponsor: Rep. Kevin Hertel

House Bill 5167 as introduced
Sponsor: Rep. Wendell L. Byrd

House Bill 5170 as introduced
Sponsor: Rep. Joseph N. Bellino, Jr.

House Bill 5168 as introduced
Sponsor: Rep. Diana Farrington

House Bill 5171 as introduced
Sponsor: Rep. Phil Phelps

House Bill 5169 as introduced
Sponsor: Rep. Beau Matthew LaFave

House Bill 5172 as introduced
Sponsor: Rep. Martin Howrylak

Committee: Oversight
Complete to 10-25-17

BRIEF SUMMARY:

The bills would amend various provisions dealing with the unemployment compensation system within the Michigan Employment Security Act (MCL 421.5a et al.) in the following ways:

- Create a mechanism by which an employer and affected employee could address claims filed by impostors.
- Require the Unemployment Insurance Agency (UIA) to report to the Legislature annually, beginning in 2019, regarding claims submitted by impostors in the preceding calendar year.
- Revise the amount the UIA may recover for fraud to the amount obtained by the fraud for a 1st offense, 1.5 times the amount for a 2nd or subsequent offense, and 4 times the amount for an impostor who committed identity theft.
- Allow access to the Advocacy Assistance Program by employers and claimants alleged to have committed fraud, subject to appropriations, and require the UIA to attempt to recover the fees paid for assistance from the Program.
- Require an applicant for benefits to submit his or her driver license or state ID card number, in addition to a Social Security number, and certain other information as requested.
- Reallocate penalty funds currently deposited into the contingent fund instead to a distribution provided for under Section 54(k) to the unemployment compensation fund, for liability for benefit overpayment, and to the contingent fund.

- Postpone interest accrual for unpaid restitution of benefit overpayments for 1 year.
- Prohibit interest on improperly paid benefits if they are a result of UIA administrative or clerical error and provide that interest payments be refunded.
- Require the UIA to issue a determination regarding an employer’s failure to provide a timely or adequate response to a request for information and a determination regarding a pattern of such failures.
- Clarify provisions regarding what constitutes a “timely” or “adequate” response to a request for information from the UIA.
- Eliminate the requirement that the claimant not be at fault for the UIA to waive recovery of an improperly paid benefit, relying solely on a test of whether recovery would be “contrary to equity and good conscience.”
- Revise the manner in which a claimant’s household income would be calculated in determining whether recovery of an improperly paid benefit met the test of “contrary to equity and good conscience.”
- Require requests for a waiver by a claimant to be made at least 6 months apart.
- Require an annual report to the Legislature regarding waivers granted or denied in the preceding calendar year, beginning in 2019.
- Require a reconsideration of a prior determination or redetermination after the 30-day time period if there is evidence that the prior determination or redetermination was not sent to the interested party’s correct address, and extend the period when a case could be reopened to 3 years if the case involved fraud.
- Require the UIA to use addresses on file with other state departments for voter registration and tax returns, and on file with the U.S. Postal Service, to ascertain the most recent address for an interested party.
- Require an interested party, claimant, or employer to, during a benefit year, notify the UIA of a change in mailing address.

The bills are tie-barred to each other, meaning that no single bill could take effect unless all of the bills in the package were enacted. Each bill’s effective date is included in the detailed summary below.

DETAILED SUMMARY:

HOUSE BILL 5165

House Bill 5165 would add Sections 54f, 54g, and 54h to the act to allow an employer that is an interested party to a claim to report to the Unemployment Insurance Agency (UIA) that the claim is fraudulent because the individual filing the claim is an impostor. The UIA would have to accept reports by mail, fax, and any other means the agency approves, and would have to create a website for employers to submit reports. The process is described below.

A report would have to include all of the following:

- A statement that the claim is believed to be fraudulent because the individual who filed the claim is an impostor and facts and evidence supporting that claim.
- The name and last known address of the affected individual and the affidavit signed by that individual, if available.

- A statement that the report is not being made frivolously and that the information in the report is, to the best of the employer's knowledge, complete and accurate.
- The name, address, email address, telephone number, and signature of the individual submitting the report.

The UIA would also have to include on its website a form for an affected individual to submit an affidavit to an employer or the UIA. The affidavit would have to include all of the following:

- The affected individual's name, address, and social security number.
- A statement that the individual did not file the claim for benefits with the UIA.
- A statement that the information in the affidavit is complete and accurate.
- The individual's signature.

Upon receiving both a report submitted by the employer and the affidavit submitted by the affected individual, the UIA would have to cancel all benefit payments on the claim, make a determination within 2 business days as to whether the claim is fraudulent and whether the impostor committed identity theft, and mail the determination to all interested parties. An affected individual would be an interested party for purposes of this provision and any appeals made under Section 32a of the act. If the UIA determines that the impostor did commit identity theft, the determination must state that the claim is canceled and is null and void.

Upon receiving only a report by an employer or only an affidavit by an affected individual, the UIA would have to do all of the following:

- Notify the impostor by mail that he or she must, within 10 days after the date of the notice, provide proof of his or her identity by providing copies of the acceptable documents as provided in the Form I-9 that fulfills employment verification obligations under federal law.
- If the impostor fails to provide such proof of identity:
 - Cancel all benefit payments and issue a determination of the cancellation to all interested parties.
 - Investigate whether the claim was fraudulent and whether the impostor committed identity theft and, if either were so, mail the determination to all interested parties. If the UIA determines that identity theft had been committed, the determination must state that the claim is canceled and is null and void.
- If the impostor provides proof of his or her identity:
 - Investigate to determine whether the claim was fraudulent and whether the impostor committed identity theft.
 - Make a determination whether the claim was fraudulent or identity theft had been committed and mail the determination to all interested parties.

Interested parties could appeal a determination triggered by a report from an employer, an affected employee, or both. If the UIA were to determine that an impostor committed identity theft to obtain benefits, the UIA would have to, within 60 days after the determination became final, credit the employer's account for the benefits paid to the

impostor but charged to the employer's account. An individual could request, and the UIA would have to provide, any determinations made regarding a claim submitted by an impostor to which the individual was an interested party.

Frivolous reports

An employer who submits a frivolous report or intentionally misrepresents information in a report, or an individual who intentionally misrepresents information in an affidavit, would be subject to the sanctions and penalties provided in Section 54 of the act.

Definitions

"Affected individual" would mean an individual whose identity was or is alleged to have stolen by an impostor.

"Identity theft" would mean that term as defined in Section 24 of the Chapter VII of the Code of Criminal Procedure (MCL 767.24).

"Impostor" would mean an individual who committed or is alleged to have committed identity theft to obtain benefits.

Report by UIA

By January 31 of each year, beginning in 2019, the UIA would have to provide a report regarding claims submitted by impostors to the chairpersons of the standing committees and appropriations subcommittees of the House of Representatives and Senate having jurisdiction over legislation pertaining to employment security. All of the following information from the immediately preceding calendar year must be included in the report in a form that does not identify an individual, claimant, or employer:

- Procedures adopted by the UIA to mitigate the incidence of claims submitted by impostors.
- Total number of frivolous reports submitted by employers or affidavits with intentional misinformation by affected individuals.
- Total number of affidavits submitted by affected individuals and the number determined to contain intentional misinformation.
- Number of determinations made in which the UIA determined that the impostor *did* and *did not* commit identity theft.
- Total amount of benefits paid to impostors and the total amount recovered.

Appointed individual

The director of the UIA would be required to appoint an individual to perform activities that include, but are not limited to, the following:

- Making referrals for criminal, civil, and administrative action and disposition of appropriate cases involving impostors.
- Reviewing administrative policies, practices, and procedures.
- Reviewing UIA procedures adopted to mitigate incidences of impostor claims, and making recommendations to improve them.
- Making recommendations to improve integrity and accountability within the UIA.

- Working with the auditor general to ensure effective and efficient processes within the UIA.

The bill would take effect 90 days after enactment.

HOUSE BILL 5166

House Bill 5166 would amend Section 54 of the act, which deals with the sanctions that can be imposed on those who willfully violate or intentionally fail to comply with the act. Those sanctions can include administrative fines, damages, and other penalties, including imprisonment and community service.

Currently, the act has a 2-tiered penalty structure (for amounts less than \$500 or greater than \$500) for obtaining an amount as a result of making a false statement or representation knowing it to be false or for knowingly and willfully with intent to defraud failing to disclose a material fact, in order to obtain, increase, or decrease a benefit. The bill would delete the two tiers and revise the penalties as follows:

- With some exceptions, the UIA may recover damages equal to the amount obtained by fraud (decreased from the current 2 times for an amount under \$500). For a 2nd or subsequent violation that occurs after the UIA sends proper notice of the original violation to the interested parties, the bill would allow the UIA to recover damages equal to 1.5 times the amount obtained (decreased from 4 times for an amount less than \$500).
- With some exceptions, if the UIA determined or redetermined or an administrative law judge, the Michigan Compensation Appellate Commission, or a court ordered that an impostor committed identity theft, the UIA would be required to attempt to recover from the impostor the amount obtained and could also recover damages equal to 4 times that amount (this penalty currently applies to amounts obtained that equal or exceed \$500).

The bill would also make numerous changes of a technical or editorial nature. The bill would apply to determinations made on or after July 1, 2018.

HOUSE BILL 5167

House Bill 5167 would amend Section 5a of the act, which deals with provisions that require the UIA to implement a program to provide advocacy assistance or consultation to claimants and employers upon request. Currently, employers or individuals accused of fraud under Section 54 are not eligible to receive services from the Advocacy Assistance Program.

The bill would allow access to the Program in cases involving fraud if funding were available as specified in the act. If a final determination or redetermination is made by the UIA, or an administrative law judge, Michigan Compensation Appellate Commission, or a court makes a final order that an employer or claimant who received advocacy assistant

services committed fraud, the UIA would be required to make an effort to recover from the employer or claimant, respectively, an amount equal to the representation fees associated with the services provided.

The bill's provisions would take effect July 1, 2018.

HOUSE BILL 5168

House Bill 5168 would amend Section 28 of the act, which establishes eligibility to receive benefits, to require a person applying for benefits to submit additional information when establishing his or her identity. Currently, an individual who has made a claim for benefits must provide the UIA with his or her Social Security number. Under the bill, the individual would also have to provide all of the following additional information:

- His or her driver license number or state identification card number, and the state that issued the license or ID card, *or* copies of the acceptable documents as provided in the Form I-9 that fulfills employment verification obligations under federal law.
- If requested by the UIA, copies of the acceptable documents as provided in the Form I-9.

The bill would also require the UIA to request, while prohibiting them from requiring, an individual applying for benefits to submit his or her base period employer's unemployment agency account number and federal employer identification number. Further, the UIA would have to use all of the documentation and information provided by an individual applying for benefits to verify the individual's identity before making an initial payment on the claim.

The bill would also make numerous changes of a technical or editorial nature, including deleting an obsolete provision. The bill would take effect 90 days after enactment.

HOUSE BILL 5169

House Bill 5169 would amend Section 15 of the act to reallocate funds collected from penalties and revise the provisions regarding the collection of interest.

Currently both penalties and interest on unpaid contributions or unpaid restitution of benefit overpayments are deposited into the contingent fund. Interest is equal to 1% per month, computed daily beginning on the date on which they are due and payable.

The bill would reallocate funds collected from *penalties* instead in accordance with the distributions under Section 54(k) to the unemployment compensation fund, for liability for benefit overpayment, and to the contingent fund.

The bill also would add the following provisions in regard to interest on unpaid restitution of benefit overpayments:

- Postpones interest accrual until one year after the date on which a UIA determination or redetermination or an order of an administrative law judge, the

Michigan Compensation Appellate Commission, or a court that a claimant owes restitution is final.

- Prohibits UIA from assessing interest for improperly paid benefits that were result of UIA administrative or clerical error and requires that payments for interest assessed in this case must be refunded.
- Provides that interest begins accruing if it is determined that a claimant made an intentional false statement on the date the determination or order is final.

The bill would apply to determinations, redeterminations, and orders made on or after July 1, 2018.

HOUSE BILL 5170

House Bill 5170 would amend Section 20 of the act to modify and clarify provisions regarding benefits paid due to an employer's failure to provide timely or adequate information in response to a request from the UIA.

Under current law, if an employer or an employer's agent has a pattern of failing to respond with timely or adequate information to a UIA request for information regarding a claimant's eligibility and qualification for benefits, any benefits paid to a claimant as a result of the employer's or agent's failure to respond are charged to the employer's account. A pattern is defined as 5 or more failures that constitute 2% or more of the UIA requests directed to that employer during the previous calendar year. An employer can appeal a determination by the UIA to charge the employer's account under these provisions.

HB 5170 would require the UIA to make a determination regarding, and assign a case number to, each employer or agent failure to provide a timely and adequate response to a request for information. The determination could be appealed within 30 days. The determination would have to specify why a response was either not timely or not adequate, state that the employer has 30 days to appeal the determination, and state the number of failures that would constitute a pattern of failure to respond.

Failures to respond for which an employer shows good cause could not be counted in determining a pattern of such failures. Good cause for nonresponse would be defined by the bill to include the following:

- The employer or agent did not have the requested information and could not have gotten it in the time the UIA requested.
- Disclosure of the requested information would threaten the health, morals, or safety of the employee or the employer or agent.
- The employer or agent presents a valid (as determined by UIA) legal or evidentiary objection to the request for information.

Under the bill, by January 11 of each year, beginning in 2019, the UIA would be required to send a determination to every employer that, during the previous calendar year, demonstrated a pattern of failing to respond with timely or adequate information to UIA

requests for information. The determination would be appealable. The determination would be required to include all of the following for each failure to respond that is the basis for the determination of a pattern of such failure:

- The date of the original request for information.
- The name of the claimant and the last 4 digits of his or her social security number.
- Whether the failure was because the response was not timely or because it was not adequate.
- The case number assigned by the UIA to the failure.
- A statement that, if the employer fails to adequately or timely respond in the current calendar year to a UIA request for information about a claimant's qualification or eligibility, the employer's account will not be credited for benefits paid on the claim.
- A statement that the determination is appealable.

HB 5170 would add definitions for the terms "adequate" and "timely" to clarify what counts as a failure to respond:

Adequate: A response to a UIA request for information would be considered adequate if the employer or employer's agent answered each UIA question, provided an explanation for any unanswered questions, or provided a summary of the requested information that would reasonably allow the UIA to make its determination.

Timely: A response to a UIA request for information would be considered timely if it is received by the UIA no more than 10 business days after the date the request itself was mailed or transmitted to the employer or employer's agent.

The bill would take effect January 1, 2018.

HOUSE BILL 5171

House Bill 5171 would amend Section 62 of the act, which addresses the actions to be taken when the unemployment agency determines that a person has obtained benefits he or she is not entitled to, or when the agency or an appellate authority reverses a prior qualification for benefits. The act currently allows the UIA to recover a sum equal to the amount of the benefits that the individual was not eligible to receive, plus interest. However, the agency is required to waive recovery of an improperly paid benefit *if the payment was not the fault of the individual* and if repayment would be contrary to equity and good conscience, and also is required to waive any interest. The bill would delete the italicized text.

Further, the bill would revise the definition of "contrary to equity and good conscience". The act defines the term as any of several listed scenarios; the bill would revise only one. Currently, recovery must be waived if the claimant's disposable household income, exclusive of social welfare benefits, is at or below the current federal poverty guidelines.

The bill would instead require the waiver if 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 of waiver*, at or below 150% of the current federal poverty guidelines. (Italicized text denotes language added by the bill.)

“Cash assets” would mean cash on hand and funds in a checking or savings account. “Dependent” would mean that term as defined in Section 27(b)(4). “Household” would mean a claimant and the claimant’s dependents.

In addition, the UIA could not consider a new application for a waiver from a claimant within 6 months after receiving a waiver request from that claimant. If the waiver were granted, the bill would require the UIA to promptly refund any restitution or interest payments made by the individual after the date of the application for waiver.

Report by UIA

By January 31 of each year, beginning in 2019, the UIA would have to provide a written report regarding waivers issued under the act to the chairpersons of the standing committees and appropriations subcommittees of the House of Representatives and the Senate with jurisdiction over legislation pertaining to employment security. The report would have to include the following information from the preceding calendar year in a form that would not identify an individual, claimant, or employer:

- The procedures relating to waiver that were adopted or used by the UIA.
- The number of applications for a waiver the UIA received.
- The number of individuals who submitted an application.
- The number of waivers that were granted, and the number of waivers denied, tabulated by the reason for the denial, by each of the following methods :
 - A UIA determination.
 - A UIA redetermination.
 - An administrative law judge order.
 - A Michigan Compensation Appellate Commission order.
 - A court order.
- The total amount of restitution waived.

The bill would take effect 90 days after enactment.

HOUSE BILL 5172

House Bill 5172 would amend Section 32a of the act, which addresses instances where a redetermination is made of a claim for unemployment benefits.

The section currently requires the UIA to review any determination upon application by an interested party, or the agency can motion to review any determination, if the request or motion for a review is filed within 30 days after the mailing or personal service of a notice of the determination.

Under current law, the UIA also has discretion to, for good cause, including an administrative clerical error, reconsider a prior determination or redetermination after the 30-day period has expired and issue a redetermination affirming, modifying, or reversing the prior determination or redetermination, or transfer the matter to an administrative law judge. The bill would amend this provision to *require*, instead of *allow*, the UIA to make such redeterminations or transfers. The bill would also include, as examples of good cause for the redetermination, evidence produced by an interested party showing that a prior determination or redetermination had not been sent to the interested party's correct address or an address ascertained from the Department of State, Department of Treasury, or the U.S. Postal Service.

The provision above currently applies only to a request for redetermination that was filed with the UIA, or that was initiated by the UIA with notice to the interested parties, within 1 year after the date of mailing or personal service of the original determination on the disputed issue; under the bill, this date would be extended to 3 years if the original determination involved a finding a fraud.

If a determination or redetermination included a finding that an interested party committed fraud, the UIA would be required, in addition to sending the determination or redetermination to the interested party's address of record, to ascertain from the Department of State, Department of Treasury, and the U.S. Postal Service other known mailing addresses of the interested party. The determination or redetermination would have to be sent to the most recent address.

The bill would also require a claimant, employer, or interested party to notify the UIA of a change in its mailing address during a benefit year.

The bill would take effect July 1, 2018.

FISCAL IMPACT:

House Bill 5165 would likely lead to an indeterminate increase in costs for the Unemployment Insurance Agency (UIA), due to administrative expenses the UIA is likely to incur. The agency would be responsible for reviewing and investigating reports from employers and affected individuals regarding cases where an impostor is believed to have committed identity theft to access unemployment benefits. The UIA would be responsible for compiling and submitting a report regarding impostor claims to the legislators indicated as recipients of the report in the bill. The bill also stipulates that the director shall appoint an individual to essentially conduct oversight of the UIA's functions with regards to cases involving impostors. It is unclear whether a new position would need to be added within the UIA, or whether this individual would be someone already employed by the agency.

House Bill 5166 would amend fines for unemployment cases where fraudulent activity has occurred. Currently, fraudulently obtained amounts less than \$500 are subject to damages equal to 2 times the obtained amount, which are paid to the UIA. A second or subsequent fraudulent violation resulting in a loss of less than \$500 currently is subject to damages

equal to 4 times the amount obtained. If the fraud involves an amount greater than or equal to \$500, then damages are equal to 4 times the amount fraudulently obtained. Under the bill, the amount of damages in fraud cases (regardless of the amount obtained) would be equal to the amount fraudulently obtained for a first violation and equal to 1.5 times the amount fraudulently obtained for second or subsequent violations. In cases of identity theft, the UIA could receive damages equal to four times the amount obtained by the impostor.

Amounts received from damages are distributed in accordance with Section 54. Reductions in damages would result in lower revenues for the unemployment compensation fund and the contingent fund. The exact magnitude of these reductions would depend on the number of cases that are subject to damages and the amount of money involved in each case.

House Bill 5167 would likely have a neutral fiscal impact on the UIA. The bill would make the UIA's advocacy assistance program available in cases involving fraud, to the extent that funding is available. However, if an employer or a claimant that had received advocacy assistance was found to have committed fraud, then the UIA would be able to recover an amount equal to the representation fees associated with the provided service.

House Bill 5168 does not appear to have any significant fiscal impact on the UIA or other units of state or local government.

House Bill 5169 would change the allocation of funds received from penalties and interest on unpaid employer contributions and unpaid restitution of benefit overpayments. The bill would continue to allocate collected interest to the contingent fund, but collected penalties would be allocated to the unemployment compensation fund, the contingent fund, and for liability for benefit overpayment, in accordance with the distributions established in Section 54. The bill would also likely lead to reductions in interest collections on unpaid restitution of benefit overpayments, due to the following changes: interest would only begin accruing 1 year after the date of a final order that a claimant owes restitution; interest would not be collected for improperly paid benefits resulting from an administrative or clerical error made by the UIA; and refunds and waivers would be required for payments previously made and for outstanding balances, respectively. Refund payments for interest already made would presumably be financed from the penalty and interest account in the contingent fund.

House Bill 5170 would have an indeterminate fiscal impact on the UIA, but may result in slight cost increases for administration.

House Bill 5171 would likely cause a minor increase in costs for the UIA, due to costs associated with producing the report regarding the waivers issued under the section. However, the costs would likely be absorbed by existing appropriations.

House Bill 5172 would have an indeterminate impact on the UIA. The bill would allow the UIA to make reconsiderations on determinations involving a finding of fraud for up to 3 years, rather than 1 year. The fiscal impact of lengthening the period would depend on how many cases fell outside the current time limitations and the findings in those

cases. The bill would likely cause a negligible increase in administrative costs associated with ascertaining an interested party's most recent address, for communications regarding fraud determinations and redeterminations.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.