



Senate Fiscal Agency
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BILL ANALYSIS



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House Bill 5165 (Substitute H-1 as passed by the House)
House Bill 5166 (Substitute H-1 as passed by the House)
House Bills 5167, 5168, 5169, 5170, and 5171 (as passed by the House)
House Bill 5172 (Substitute H-1 as passed by the House)
Sponsor: Representative Joseph Graves (H.B. 5165)
Representative Kevin Hertel (H.B. 5166)
Representative Wendell L. Byrd (H.B. 5167)
Representative Diana Farrington (H.B. 5168)
Representative Beau Matthew LaFave (H.B. 5169)
Representative Joseph N. Bellino, Jr. (H.B. 5170)
Representative Phil Phelps (H.B. 5171)
Representative Martin Howrylak (H.B. 5172)

House Committee: Oversight
Senate Committee: Oversight

Date Completed: 11-29-17

CONTENT

Each of the bills would amend the Michigan Employment Security Act.

House Bill 5165 (H-1) would do the following:

- Create a system for an employer or affected individual to report to the Unemployment Insurance Agency (UIA) that a claim for benefits had been filed fraudulently by an impostor.
- Require the UIA to make a determination regarding whether a claim was fraudulent and whether an impostor committed identity theft.
- Require the UIA to cancel all benefits on a claim, after making a determination that the claim was fraudulent.
- Require the UIA to provide to the Legislature an annual written report containing certain information regarding claims submitted by impostors in the preceding year, beginning 2019.

House Bill 5166 (H-1) would revise the amount the UIA may recover for a fraudulent claim.

House Bill 5167 would prohibit the UIA from withholding advocacy assistance services in cases involving fraudulent claims.

House Bill 5168 would do the following:

- Require an applicant for benefits to provide his or her driver license or State ID card and certain other information as requested, in addition to his or her Social Security number.

- **Require the UIA to use all of the documentation and information provided by an applicant to verify his or her identity before making an initial payment on his or her claim.**

House Bill 5169 would do the following:

- **Reallocate to the Unemployment Compensation Fund funds currently paid into the Contingent Fund from penalties collected on unpaid contributions and unpaid restitution of benefit overpayments.**
- **Prohibit the UIA from assessing interest for improperly paid benefits that were the result of a UIA administrative or clerical error, and require any payment made by a claimant for such interest to be refunded.**

House Bill 5170 would do the following:

- **Require the UIA to make a determination regarding an employer's failure to provide a timely and adequate response to a request for information.**
- **Permit an employer to appeal a determination that it had failed to provide a timely or adequate response.**
- **Require the UIA to send a determination to an employer, or its agent, that demonstrated a pattern of failing to provide a timely or adequate response, and require the determination to include certain information, beginning in 2019.**

House Bill 5171 would do the following:

- **Delete a requirement that an individual not be at fault for the UIA to waive recovery of an improperly paid benefit.**
- **Revise the manner in which a claimant's household income is calculated in a determination of whether repayment would be contrary to equity and good conscience.**
- **Require the UIA to provide to the Legislature an annual written report containing certain information regarding waivers, beginning in 2019.**

House Bill 5172 (H-1) would require the UIA to reconsider a prior determination or redetermination after the statutory 30-day period had expired if there were evidence that the prior determination or redetermination was not sent to an interested party's correct address.

The bills are tie-barred to each other. House Bills 5165 (H-1), 5168, and 5171 each would take effect 90 days after enactment. House Bill 5170 would take effect on January 1, 2018. House Bills 5166 (H-1), 5167, and 5172 (H-1) would take effect on July 1, 2018. House Bill 5169 would apply to determinations, redeterminations, and orders made on or after July 1, 2018.

House Bill 5166 would apply to original determinations and redeterminations made on or after July 1, 2018. Original determination or redeterminations made before July 1, 2018, would have to be processed pursuant to the Act as it existed before July 1, 2018.

House Bill 5165 (H-1)

Fraudulent Claim Report

The bill would permit an employer that was an interested party to a claim for benefits, or the employer's agent, to report to the Unemployment Insurance Agency that a claim was

fraudulent because the individual who filed the claim was an impostor. The Agency would have to accept reports submitted by mail, fax, and any other means approved by the UIA and would have to maintain a website for employers to submit reports. A report would have to include all of the following:

- A statement that the employer believed that the claim was fraudulent because the individual who filed it was an impostor and the facts or evidence supporting that belief.
- The name and last known address of the affected individual and, if available, an affidavit signed by the individual.
- A statement that the employer was not making the report frivolously and that the information contained in the report was, to the best of the employer's knowledge, complete and accurate.
- The name, address, electronic mail address, telephone number, and signature of the individual submitting the report.

The bill would define "imposter" as an individual who committed or is alleged to have committed identity theft to obtain benefits. "Affected individual" would mean an individual whose identity was or is alleged to have been stolen by an imposter.

Affidavit

An affected individual could submit an affidavit to an employer or the UIA. The UIA would have to include on its website an affidavit form that contained all of the following:

- The name, address, and Social Security number of the affected individual.
- A statement that the individual did not file the claim for benefits with the UIA.
- A statement that the information in the affidavit was complete and accurate.
- The signature of the affected individual.

UIA Responsibilities

Upon receiving both a report and an affidavit, the UIA would have to do both of the following:

- Make a determination within two business days regarding whether the claim was fraudulent and whether the impostor committed identity theft and mail the determination to all interested parties, and, if the UIA determined that the impostor committed identity theft, state in the determination that the claim was canceled and was null and void.
- Cancel all benefit payments on the claim, after making a determination that the claim was fraudulent.

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

Upon receiving a report or an affidavit, the UIA would have to notify the impostor by mail that, within 10 days after the date of the notice, he or she would have to provide proof of his or her identity by giving the UIA copies of the acceptable documents as provided in the Form I-9 (the employment verification form that fulfills the employment verification obligations under Federal law).

If the impostor did not provide proof of his or her identity, the UIA would have to do all of the following:

- Make a determination that the impostor did not provide proof of his or her identity and cease making payments on the claim until making a determination as required below.

- Conduct an investigation to determine whether the claim was fraudulent and whether the impostor committed identity theft.
- Make a determination regarding whether the claim was fraudulent and whether the impostor committed identity theft and mail the determination to all interested parties, and if the UIA determined that the impostor committed identity theft, state in the determination that the claim was canceled and was null and void.
- Cancel all benefit payments on the claim, after making a determination that the claim was fraudulent.

If the impostor provided proof of his or her identify, the UIA would have to do both of the following:

- Conduct an investigation to determine whether the claim was fraudulent and whether the impostor committed identity theft.
- Make a determination regarding whether the claim was fraudulent and whether the impostor committed identity theft and mail the determination to all interested parties.

An interested party could appeal a determination.

If the UIA determined that an impostor committed identity theft to obtain benefits within 60 days after the determination became final, the UIA would have to credit the employer's account for the benefits paid to the impostor that were charged to the account.

Upon the request of an individual, the UIA would have to provide the individual with an determinations the UIA made regarding a claim submitted by an impostor to which the individual was an interested party.

An affected individual would be an interested party for purposes of those provisions and any appeals made related to a determination.

Sanctions

An employer that submitted a frivolous report or otherwise intentionally misrepresented information in a submitted report, or an individual who intentionally misrepresented information in a submitted affidavit, would be subject to the sanctions and penalties as provided in Section 54 (which House Bill 5166 (H-1) would amend).

Report to the Legislature

By January 31 each year, beginning in 2019, the UIA would have to provide a written report regarding claims submitted by impostors under the Act to the chairpersons of the standing committees and Appropriations subcommittees of the House of Representatives and the Senate having jurisdiction over legislation pertaining to employment security. The report would have to include all of the following information from the immediately preceding calendar year in a form that did not identify an individual, claimant, or employer:

- The procedures the UIA had adopted to mitigate the incidence of claims submitted by impostors.
- The total number of reports submitted and the number of reports submitted that the UIA determined were frivolous or otherwise intentionally misrepresented information.
- The total number of affidavits submitted and the number of affidavits submitted that the UIA determined were frivolous or otherwise intentionally misrepresented information.
- The number of determinations made by the UIA in which it determined that an impostor committed identity theft.

- The number of determinations made by the UIA in which it determined that an impostor had not committed identity theft.
- The total number of benefits paid to impostors and the total amount recovered from impostors.

Director Appointment

The Director of the UIA would have to appoint an individual to perform activities that included, but were 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 procedures the UIA had adopted to mitigate the incidence of claims submitted by impostors, and making recommendations to improve those procedures.
- Making recommendations to improve integrity and accountability within the UIA.
- Working with the Auditor General to ensure effective and efficient processes within the UIA.

House Bill 5166 (H-1)

Section 54 of the Act prescribes sanctions for a person who willfully violates or intentionally fails to comply with the Act.

An employing unit or any other person who makes a false statement or representation knowing it to be false, or knowingly and willingly with intent to defraud fails to disclose a material fact, to obtain or increase a benefit, to prevent or reduce the payment of benefits, or to avoid or reduce a contribution or other payment is punishable as follows:

- If the amount obtained as a result of the knowing false statement or representation or the knowing and willful failure to disclose a material fact is less than \$500, the UIA may recover the amount obtained and may also recover damages equal to two times that amount, and for a second or subsequent violation the UIA may recover damages equal to four times the amount obtained.
- If the amount obtained as a result of the knowing false statement or representation or the knowing and willful failure to disclose a material fact is \$500 or more, the UIA must attempt to recover the amount obtained and may also recover damages equal to four times that amount.

Under the bill, such a violation would, instead, be punishable as follows:

- The Agency could recover the amount obtained as a result of the knowing false statement or representation or the knowing and willful failure to disclose a material fact and also could recover damages equal to two times that amount, and for a second or subsequent violation that occurred after the UIA had sent proper notice of the original violation to the interested parties, the Agency could recover damages equal to 1.5 times the amount obtained.
- If the UIA determined or redetermined or an administrative law judge, the Michigan Compensation Appellate Commission, or a court order that an impostor committed identity theft, the UIA would have to attempt to recover from the impostor the amount obtained and also could recover damages equal to four times that amount

Currently, any employer or any other person failing to submit, when due, a quarterly wage detail report or submitting an incomplete or erroneous report is subject to administrative

finer. Under the bill, any employer who failed to file a corrected report within 14 days after notification of an error by the UIA also would be subject to administrative fines.

Section 54(k) of the Act requires that amounts recovered by the UIA as a result of a knowing false statement or representation or the knowing and willful failure to disclose a material fact be credited in the following order:

- An amount equal to 15% of any benefit overpayments resulting from fraud must be credited to the Unemployment Compensation Fund, from the penalty assessment recovered.
- For the balance of deductions from unemployment insurance benefits, to the liability for benefit repayment.
- For all other recoveries, the balance must first be credited to the Unemployment Compensation Fund for repayment of any remaining amounts owed, and then to the Contingent Fund to be applied first to administrative sanctions and damages and then to interest.

Under the bill, for all other recoveries, after the balance was credited to interest, it would have to be credited to an amount equal to the representation fees associated with advocacy assistance services.

House Bill 5167

Under Section 5a of the Act, for calendar years beginning January 1, 1994, and ending December 31, 1998, the Unemployment Insurance Agency was required to develop and implement a program to provide, upon request, claimant and employer advocacy assistance or consultation. The Agency must develop standards for individuals providing advocacy assistance services. The program must be funded from the penalty and interest account in the Contingent Fund.

The Agency may include in the program standards regarding the provision of advocacy services in precedent-setting cases, multclaimant cases, cases without merit, or regarding other cases or factors as determined by the UIA. Under the bill, however, to the extent that funding was available from an appropriation, the UIA could not withhold advocacy assistance services in cases involving fraud under Section 54. If the UIA made a final determination or final redetermination or an administrative law judge, the Michigan Compensation Appellate Commission, or a court made a final order that an employer or claimant who received advocacy assistance services committed fraud, the UIA would have to make an effort to recover from the employer or claimant, respectively, an amount equal to the representation fees associated with the advocacy assistance services provided to the employer or the claimant, respectively.

House Bill 5168

Under Section 28 of the Act, an unemployed individual is eligible to receive benefits with respect to any week only if the UIA finds that the individual registered for work and has continued to report pursuant to UIA rules; is actively engaged in seeking work; has made a claim for benefits pursuant to Section 32; and has provided the UIA with his or her Social Security number. Under the bill, the individual also would have to provide the following:

- His or her driver license number or state identification card number, and the state that issued the license or ID card number, or copies of the acceptable documents as provided in the Form I-9.
- Copies of the acceptable documents as provided in the Form I-9, if the UIA had requested them.

Also, the UIA would have to request, but could not require, an individual who was applying for benefits to submit the individual base period employer's UIA account number and Federal employer identification number.

The Agency would have to use all of the documentation and information provided by an individual applying for benefits to verify the identity of the individual before making an initial payment on his or her claim.

(Section 32 prescribes the procedures that must be followed when a claim for benefits is made.)

House Bill 5169

Section 15 of the Act requires that interest and penalties collected on unpaid contributions and unpaid restitution of benefit overpayments be paid in to the Contingent Fund, and bear interest at a rate of 1% per month, computed on a day-to-day basis for each day the delinquency is unpaid, beginning that date until payment plus accrued interest is received by the Unemployment Insurance Agency. Interest and penalties collected under Section 15 must be paid into the Contingent Fund. The bill, instead, would require penalties collected to be credited pursuant to Section 54(k).

Additionally, under the bill, the following would apply to interest on unpaid restitution of benefit overpayments:

- Interest would begin accruing one year after the date the UIA's determination or redetermination or an administrative law judge's, the Michigan's Compensation Appellate Commission's, or a court's order that a claimant owed restitution was final, except as provided below.
- If the UIA determined or redetermined or an administrative law judge, the Michigan Compensation Appellate Commission, or a court ordered that a claimant made an intentional false statement, misrepresentation, or concealed information to obtain or increase benefits, interest would begin accruing on the date the UIA's determination or redetermination, or the order was final.
- The Agency could not assess interest for improperly paid benefits that were the result of an administrative or clerical error made by the UIA.

Interest assessed for improperly paid benefits that were the result of an administrative or clerical error made by the UIA would have to be waived, and any payment made by a claimant for such interest would have to be refunded.

House Bill 5170

Under Section 20 of the Act, benefits paid must be charged against the employer's account as of the quarter in which the payments are made. If the Unemployment Insurance Agency determines that any benefits charged against an employer's account were improperly paid, an amount equal to the charge based on those benefits must be credited to the employer's account and a corresponding charge must be made to the nonchargeable benefits account as of the date of the charge. The bill would require that recovery of benefits improperly paid to the claimant be made pursuant to Section 62(a) (which House Bill 5171 would amend).

The Act also provides that if an employer or employer's agent has a pattern of failing to respond with timely or adequate information required or requested under Section 32, benefits paid to a claimant as a result of the agent's failure to provide timely or adequate information must be charged to the employer's account. To demonstrate a pattern sufficient to render the

benefits chargeable, the UIA must document repeated failure to provide a timely or adequate response and must take into consideration the number of instances of failure in relation to the number of requests. The number of failures must be more than four and constitute 2% or more of all the requests directed to the employer during the prior calendar year. A determination that an employer's account must be charged and that the employer's account must not be credited for the benefits payments is applicable in the same manner as other unemployment determinations. Recovery of benefits improperly paid to the claimant must be as provided in Section 62(a).

The bill, instead, provides that if an employer or employer's agent had a pattern of failing to respond with timely or adequate information requested by the UIA regarding a claimant's disqualification from receiving benefits or period of ineligibility, benefits paid to a claimant as a result of the employer's or agent's failure to provide timely or adequate information would have to be charged to the employer's account, which could not be credited. To demonstrate a pattern sufficient to render the benefits chargeable, the number of failures, excluding failures for which an employer or agent had established good cause, during the prior calendar year would have to be five or more and be equal to or greater than 2% of all the requests directed to the employer during the prior calendar year. The Agency would have to make a determination for and assign a case number to each failure to provide a timely or adequate response.

("Adequate" would mean that an employer or employer's agent answered each question of the UIA's request for information, or provided an explanation as to why it did not answer a question, or provided a summary of the requested information to reasonably allow the UIA to make its determination.

"Good cause" would mean any of the following:

- The employer or employer's agent did not possess the information and could not reasonably obtain it by the date requested by the UIA.
- Disclosing the information would endanger the health, morals, or safety of the employer or the employer's agent or employee.
- The employer or employer's agent presented a valid legal or evidentiary objection to the UIA's request for information, as determined by the UIA.

"Timely" would mean that the UIA received a response to its request for information from an employer or employer's agent not later than 10 calendar days, not including a Saturday, Sunday, or legal holiday, after the mailing date or transmittal date of its request.)

Under the bill, a determination could be appealed within 30 days after the date it was issued, but an appeal would be limited to the determination that the employer failed to provide a timely or adequate response in that instance. Each determination made would have to do all of the following:

- Identify and state why a response was not timely or not adequate.
- State that the employer could appeal the determination within 30 days after the date it was issued.
- State the number of failures that constituted a pattern.

By January 11 each year, beginning in 2019, the UIA would have to send to an employer or employer's agent a determination that demonstrated during the previous calendar year a pattern of failing to respond timely or adequately. A determination would apply in the same manner as any other determination made by the UIA, but would be limited to the

determination that the employer demonstrated a pattern of failing to respond timely or adequately. A determination would have to include all of the following for each failure:

- The name of the claimant and the last four digits of the claimant's Social Security number.
- Whether the failure was because the response was not timely or not adequate.
- The date of the UIA's original request for information.
- The case number the UIA assigned to the failure.
- A statement that the employer's account would not be credited for benefits paid on any claim filed during the current calendar year if the employer failed to timely or adequately respond to the UIA's request for information made during the current calendar year regarding a claimant's disqualification from receiving benefits or period of ineligibility.
- A statement that a determination would be appealable in the same manner as any other determination made by the UIA.

House Bill 5171

Under Section 62(a) of the Act, if the Unemployment Insurance Agency determines that an individual has obtained benefits to which he or she is not entitled, or a subsequent determination by the UIA or a decision of an appellate authority reverses a prior qualification of benefits, the UIA may recover a sum equal to the amount received plus interest.

Except in the case of an intentional false statement, misrepresentation, or concealment of material information, the UIA must 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 must waive any interest. The bill would delete the language that conditions the waiver on payment not being the fault of the individual.

"Contrary to equity and good conscience" means one of three scenarios, including a situation in which the claimant's disposable household income, exclusive of social welfare benefits, is at or below the annual update of the poverty guidelines most recently published in the Federal Register by the U.S. Department of Health and Human Services, and the claimant has applied for a waiver. A waiver granted under these conditions applies from the date the application is filed.

The bill, instead, would require the waiver if the claimant's average net household income and household cash assets (cash on hand and funds in a checking or savings account), exclusive of social welfare benefits, were, during the six months immediately preceding the date of the application for waiver, at or below 150% of the annual update of the poverty guidelines. The Agency could not consider a new application for a waiver from a claimant within six months after receiving an application for a waiver from a claimant. If the waiver were granted, the UIA would have to promptly refund any restitution or interest payments made by the individual after the date of the application for waiver.

The bill also would require, by January 31 each year, beginning in 2019, the UIA to provide a written report regarding these waivers to the chairpersons of the standing committees and Appropriations subcommittees of the House of Representatives and the Senate having jurisdiction over legislation pertaining to employment security. The report would have to include all of the following information from the immediately preceding calendar year in a form that did not identify an individual, claimant, or employer:

- The procedures relating to waivers that the UIA used or adopted.
- The number of applications for a waiver the UIA received.
- The number of individuals who submitted an application for a waiver.

- The number of waivers that were granted by a UIA determination or redetermination, an administrative law judge order, a Michigan Compensation Appellate Commission order, and a court order.
- The number of waivers that were denied by a determination, redetermination, or order, tabulated by the reason for the denial.

House Bill 5172 (H-1)

Section 32a of the Act requires the Unemployment Insurance Agency to review any determination upon application by an interested party for review of a determination, upon request for transfer to an administrative law judge for a hearing filed with the UIA within 30 days after the mailing or personal service of a notice of determination, or upon the UIA's own motion within that 30-day period.

The Agency may, for good cause, including an administrative clerical error, reconsider a prior determination or redetermination after the 30-day period has expired and after reconsideration issue a redetermination affirming, modifying, or reversing the prior determination or redetermination, or transfer the matter to an administrative law judge for a hearing. The bill would require the UIA to reconsider a prior determination or redetermination under these circumstances. Also, under the bill, good cause would include evidence produced by an interested party showing that a prior determination or redetermination was not sent to the interested party's correct address or an address ascertained from the Department of State, the Department of Treasury, and the U.S. Postal Services (USPS).

Under the Act, a reconsideration may not be made unless the request is filed with the UIA, or reconsideration is initiated by the UIA with notice to the interested parties, within one year after the date of mailing or personal service or the original determination on the disputed issue. The bill also would prohibit reconsideration if the original determination involved a finding of fraud, within three years after the date of mailing or personal service of the original determination.

Additionally, under the bill, 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, the Department of Treasury, and the USPS other known mailing addresses of the interested party and send the determination or redetermination to the most recent address.

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

Proposed MCL 421.54f-421.54h (H.B. 5165)
MCL 421.54 (H.B. 5166)
421.5a (H.B. 5167)
421.28 (H.B. 5168)
421.15 (H.B. 5169)
421.20 (H.B. 5170)
421.62 (H.B. 5171)
421.32a (H.B. 5172)

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

The bills would increase administrative costs to the Unemployment Insurance Agency (UIA), and decrease revenue for the Penalties and Interest Contingency Fund. The UIA would

experience increased costs as a result of these bills. The UIA would need to develop procedures and investigate fraudulent claims being made by imposters. This would involve minor costs that would be funded from penalties and interest revenue. The UIA also would experience minor costs from issuing reports to the Legislature, as required by the bills. The bills would likely have a positive impact on the advocacy program by allowing it to reclaim the costs associated with providing advocacy services for cases in which a final determination of fraud was made. The bills also would increase the time in which individuals may request a redetermination on a fraud claim to up to three years after the date of the original determination, which would likely increase the number of redetermination requests being made. This increase also would increase the administrative costs to the UIA.

The bills would likely reduce revenue to the Penalties and Interest Contingency Fund in a number of ways, both in the current year of enactment and in the long-term. The first way is by lowering the amount of penalties that can be imposed in fraudulent cases. The second is by expanding the time that interest is applied on unpaid UIA contributions. Finally, the bills could reduce revenue by allowing individuals to request a redetermination on fraudulent cases up to three years from the original determination date, which could increase the number of repayments made out of the Penalties and Interest Contingency Fund. The exact extent of the decrease in revenue is currently unknown, but would likely be significant.

Fiscal Analyst: Cory Savino

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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.