

# Legislative Analysis



## UNEMPLOYMENT INSURANCE CITIZENS' ADVOCATE ACT

Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bill 5549 as introduced**  
**Sponsor: Rep. Steven Johnson**

Analysis available at  
<http://www.legislature.mi.gov>

**House Bill 5550 as introduced**  
**Sponsor: Rep. Pat Outman**

**House Bill 5551 as introduced**  
**Sponsor: Rep. Michele Hoytenga**

**House Bill 5553 as introduced**  
**Sponsor: Rep. Sarah L. Lightner**

**House Bill 5552 as introduced**  
**Sponsor: Rep. Jack O'Malley**

**House Bill 5554 as introduced**  
**Sponsor: Rep. Andrew Fink**

**Committee: Oversight**  
**Complete to 12-1-21**

### **BRIEF SUMMARY:**

House Bill 5552 would create a new act, the Unemployment Insurance Citizens' Advocate Act, which would create the Office of the Unemployment Insurance Citizens' Advocate and provide for the appointment of an unemployment insurance citizens' advocate. The advocate could initiate investigations into actions, determinations, or practices by the Unemployment Insurance Agency (UIA) on his or her own initiative or upon receiving a complaint. Among other things, the bill would describe the authority granted to the advocate; require certain reports to be submitted to the legislature; and allow the Legislative Council to conduct hearings as requested by the advocate, issue subpoenas and administer oaths, and examine the UIA's book and records. The bill also would require the office to maintain confidentiality regarding all matters under investigation and would exempt correspondence between it and a complainant from disclosure under the Freedom of Information Act (FOIA).

House Bills 5549, 5550, 5551, 5553, and 5554 would amend the Michigan Employment Security Act to do all of the following:

- Require a monthly report by the UIA to the Office of the Unemployment Insurance Citizens' Advocate regarding appeals made in the preceding month to an administrative law judge by claimants and employers and the number of appeals by the UIA to the Unemployment Insurance Appeals Commission. (HB 5549)
- Require the UIA to post on the UIA public website each business day the amount of money in the Unemployment Compensation Fund and to notify the state budget officer and the legislative appropriations committees if the amount drops below certain levels. (HB 5550)
- Shorten, from three years to one year, the time frame for the UIA to issue determinations regarding restitution for benefits for which a claimant was not entitled and provide that a determination of improperly paid benefits cannot be final and improperly paid benefits cannot be recovered unless the UIA provided the claimant with notice of certain rights. (HB 5551)

- Require examination and a determination of a claim within 10 business days (or 20 business days if the claim was received during an exigent period). (HB 5553)
- Require the UIA to provide certain items relevant to a hearing before an administrative law judge. (HB 5554)

#### **DETAILED SUMMARY:**

**House Bill 5552** would create the Unemployment Insurance Citizens' Advocate Act and establish the Office of the Unemployment Insurance Citizens' Advocate within the Legislative Council. The council would appoint the unemployment insurance citizens' advocate, who would be the principal executive officer of the office and would serve at the pleasure of the council. Among other things, the bill would do all of the following:

- Establish procedures for approving the office's budget, expending funds, and employing personnel.
- Authorize the advocate to commence an investigation on his or her own initiative or upon a complaint submitted to the office concerning an *administrative act*. The advocate would not be required to conduct an investigation of a complaint, and a complainant would not be entitled to have an investigation conducted by the advocate. (*Administrative act* would include an action, omission, decision, determination, redetermination, recommendation, practice, or other procedure of the UIA.)
- Subject to the council's approval, task the advocate with establishing procedures for receiving and processing complaints, constructing investigations, holding hearings, and reporting the findings of investigations.
- Require the UIA to grant the advocate access to all information, records, and documents in its possession necessary for an investigation, including information required to be provided to an administrative law judge under provisions of HB 5554.
- Allow the advocate to hold informal hearings and to request that an individual appear, before the advocate or at a hearing, to give testimony or produce evidence relevant to an investigation.
- Require the advocate to advise a complainant of all available administrative remedies.
- Require the UIA, upon the advocate's request, to provide a progress report on its processing of the complaint.
- After the UIA takes administrative action on a complaint, allow the advocate to conduct further investigation at the request of the complainant or on his or her own initiative.
- Require the advocate, not later than 10 days after receiving a complaint, to notify the complainant and the UIA if he or she will conduct an investigation or, if not, to notify the complainant in writing with the reasons for the decision.
- Allow the council to hold a hearing if requested by the advocate and allow the council to administer oaths, subpoena witnesses, and examine the books and records of the UIA.
- Require the office to maintain confidentiality regarding all matters under investigation and prohibit disclosure of personal identifying information of a complainant, claimant, or employer to another person except as allowed under the bill as necessary for the advocate to perform his or her duties. The bill also would deem correspondence between the office and a claimant to be confidential and privileged communication and would exempt it from disclosure under FOIA.

- Require the advocate to prepare a report of the findings of an investigation, if any of the following are found, and submit it, along with any recommendations, to the council not later than 30 days completing the investigation:
  - A matter that should be considered by the UIA.
  - An administrative act that should be modified or canceled.
  - A statute or rule that should be altered.
  - An administrative act for which justification is necessary.
  - Any other significant concerns.
- Require the council to send a copy of the report to the UIA and the complainant.
- Require the advocate, before submitting a report to the council that contains a conclusion or recommendation expressly or impliedly criticizing a person or the UIA or before publishing an opinion adverse to a person or the UIA, to take certain actions as specified in the bill.
- Require the advocate to submit any monthly report from the UIA required under House Bill 5549 to the standing committees of the Senate or House of Representatives with oversight of the UIA if the report listed one or more claims of administrative law decisions that had been or not been appealed by the UIA to the Unemployment Insurance Appeals Commission.
- Require the advocate to submit an annual report to the council and the legislature on the conduct of the office that includes information required by the council.
- Prohibit the annual report or a monthly report submitted to the advocate by the UIA that must be submitted to the council and legislature as described above from including or disclosing any personal identifying information of individuals from whom the advocate acquired information during an investigation.
- Prohibit the UIA from penalizing in any way a complainant for filing a complaint, providing information to the council or a legislator, or cooperating with the advocate in the investigation of a complaint.
- Prohibit the UIA or a person from hindering a lawful action of the advocate or employees of the office or willfully refusing to comply with a lawful demand of the office.
- Provide that the authority granted to the advocate would be in addition to all other authority granted by law to any other office or agency relative to a remedy or right of appeal objection for a complainant or a procedure provided for the inquiry into, or investigation of, any matter. Further, the advocate's authority under the bill would not limit or affect any other remedy or right of appeal or objection provided by law and could not be considered to be exclusionary.

**House Bill 5549** would add section 32f to the Michigan Employment Security Act to require the UIA to submit a report to the Office of the Unemployment Insurance Citizens' Advocate that includes, among other things, the following information for the immediately preceding month:

- Certain information related to appeals made to an administrative law judge under section 32a of the act, such as the total number of appeals delineated between appeals made by claimants and appeals made by employers and the total number of appeals that the UIA appealed to the Unemployment Insurance Appeals Commission.
- The average number of days between the date of the administrative law judge's decision and the date the UIA began or resumed paying benefits to the claimant.

- The total number of administrative law judge decisions that were and were not appealed by the UIA to the Unemployment Insurance Appeals Commission.
- The total number of claims for benefits for which an administrative law judge had issued a decision on a matter related to the claim and for which the UIA had not begun paying benefits to the claimant or, if payments had ceased, had not resumed paying the benefits.

No personal identifying information could be included by the UIA in the report.

Proposed MCL 431.32f

**House Bill 5550** would add section 10b to the Michigan Employment Security Act to require the UIA to post and keep posted on its public website the amount of money in the Unemployment Compensation Fund. The UIA would have to update that amount each business day. The UIA would have to notify the state budget director and the Senate and House of Representatives standing committees on Appropriations if either of the following occurs:

- The money in the fund changes from being greater than or equal to \$2.5 billion to being less than \$2.5 billion.
- The money in the fund changes from being greater than or equal to \$500.0 million to being less than \$500.0 million.

Proposed MCL 421.10b

**House Bill 5551** would amend section 62 of the Michigan Employment Security Act, which addresses the actions to be taken when the UIA 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 bill would delete a requirement that the UIA 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.

Currently, with some exceptions, the act allows the UIA to recover the amount of the benefits that the individual was not eligible to receive, plus interest, but requires certain determinations pertaining to restitution to be issued within a three-year time frame. The bill would shorten the period for issuance of the applicable determinations to one year.

Currently, any determination made by the UIA under section 62 is final unless an application for a redetermination is filed in accordance with section 32a of the act. Under the bill, a determination that a benefit has been improperly paid would not be final, and the UIA could not take action to recover an improperly paid benefit or to enforce interest, penalties, or any additional amount assessed, unless the UIA provides to the claimant notice of the claimant's rights to request an in-person or telephone hearing, to have counsel present at the hearing, and to appeal the determination.

The UIA would have to do both of the following to provide the required notice:

- Mail the notice via certified mail to the claimant's last known address.
- Either speak with the claimant in person or via telephone about the claimant's rights or send the notice via email to the claimant's last known email address.

MCL 421.62

**House Bill 5553** would add section 32g to the Michigan Employment Security Act to establish a time frame within which the UIA would be required to examine a claim and make a determination. Currently, the UIA must designate representatives who are required to *promptly* examine claims and make a determination on the facts. Instead, notwithstanding any other provision of the act, the bill would require the UIA to examine a claim for benefits and make a determination on the facts not later than 10 business days after receiving the claim and not later than 20 business days if the claim had been received during an *exigent period*.

*Exigent period* would mean a calendar week in which the total number of claims for benefits received by the UIA is at least 50% greater than the total number of claims for benefits received in the immediately preceding calendar week.

If a determination cannot be made within the required time frames because the claimant or employer did not provide the UIA with necessary information as required by the act, the UIA would have to immediately notify the claimant that a determination was unable to be made and the reasons why.

MCL 431.32 and proposed MCL 431.32g

**House Bill 5554** would add section 32e to the Michigan Employment Security Act to require the UIA, notwithstanding other provisions of the act, to provide certain items to an administrative law judge who is conducting a hearing under the act. The UIA would have to provide all of the following items in the agency's possession that relate to the matter before the judge:

- All correspondence between the UIA and the interested parties, including, but not limited to, letters, emails, determinations, redeterminations, and transcriptions of telephone calls.
- The original and all amended applications for benefits submitted by the claimant.
- All information submitted by the claimant to verify his or her identity.

The UIA could provide an item not listed above that is related to the matter before the administrative law judge. In addition, If the UIA fails to provide the required items, the administrative law judge conducting the hearing would be required to immediately notify the unemployment insurance citizens' advocate of the violation.

Proposed MCL 421.32e

House Bill 5552 is tie-barred to HBs 5549 and 5554. House Bills 5549 and 5554 state that they are tie-barred to HBs 5522 and 5550, respectively, but the provision in each bill also includes a bill request number that appears to indicate that it is instead tie-barred to House Bill 5552. A bill cannot take effect unless each bill to which it is tie-barred is also enacted.

**FISCAL IMPACT:**

**House Bill 5549** would not have an appreciable fiscal impact on the Unemployment Insurance Agency, housed within the Department of Labor and Economic Opportunity (LEO). The bill would require the UIA to submit a monthly report, but the costs for producing such a report would likely be sufficiently offset by existing departmental resources.

**House Bill 5550** would not have an appreciable fiscal impact on the Unemployment Insurance Agency. The reporting required under the bill would likely be sufficiently offset by existing departmental resources.

**House Bill 5552** would increase costs for the Legislative Council by an unknown amount and would have no fiscal impact on local units of government. The amount of increased costs to the Legislative Council would depend on factors concerning the Office of the Unemployment Insurance Citizens' Advocate, such as how many staff members will be required by the legislature and any other legislative expectations. Specifically, increased costs would result from staff salaries, benefits, office space, office supplies, travel, and any other costs incurred for the operation and administration of the Office of the Unemployment Insurance Citizens' Advocate. For context, the FY 2021-22 appropriations for the Legislative Corrections Ombudsman total \$1,022,000, and the office currently includes eight staff members. In FY 2021-22, the Michigan Veterans Facility Ombudsman is appropriated \$319,900, and the office currently has one staff member.

The Unemployment Insurance Agency would likely incur costs responding to complaint investigations. These costs would be directly correlated to the complexity of any complaint. Whether the actions of the office would result in any state fiscal impact subsequent to the resolution of a complaint cannot be estimated and would depend on the nature of the complaint and the agency response.

A fiscal analysis of House Bills 5551, 5553, and 5554 is in progress.

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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.