

## UNEMPLOYMENT INSURANCE AMENDMENTS

Phone: (517) 373-8080  
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**House Bill 4982 (proposed H-5 substitute)**

**Sponsor: Rep. Roger Victory**

**Committee: Oversight and Ethics**

**Complete to 7-13-16**

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

### SUMMARY:

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

**Section 5a** deals with provisions that require the Unemployment Insurance Agency (UIA) to implement a program to provide advocacy assistance or consultation to claimants and employers, upon request. Under House Bill 4982 (H-5), the Unemployment Agency could not exclude a claimant or employer accused of fraud under Section 54 from representation under the advocacy assistance program. This provision would be subject to a state appropriation for that representation that is separate from, and in addition to, the existing appropriation cited in Section 5a, subsection (2). The bill would allow the UIA to recover the costs of providing advocacy assistance services to a claimant or employer found responsible for unemployment compensation fraud under Section 54.

**Section 32** addresses claims for unemployment benefits. House Bill 4982 (H-5) would require the UIA to issue a notification to the claimant of claimant rights and responsibilities within two weeks after the initial benefit payment on a claim and again six months after that. If the claimant selected a preferred form of communication, the notification must be conveyed using that form of communication. Issuing the notification could not delay or interfere with the benefit payment. Generally, the notification would have to inform the claimant:

- If you selected the electronic notification feature, you may change that election to begin receiving notifications by regular mail by logging in to your online account and changing your preference.
- State law permits the UIA to issue determinations requiring the repayment of an overpayment of benefits (as provided in Section 62 of the act).
- Failure to provide updated contact information after benefits have been collected may cause the agency to send requests for information, determinations, and other items, to your last known address.
- If the agency determines you have received an overpayment, you are responsible for repaying the amount, plus interest.
- If the agency determines you have received an overpayment as a result of an intentional misrepresentation, you are responsible for repaying the overpayment, plus interest, plus a penalty of two times the amount of an overpayment less than \$500, or four times the amount of an overpayment of \$500 or more, in addition to other sanctions provided in the act.

- State law provides that unemployment compensation fraud is a crime that may be prosecuted. Unemployment compensation fraud in excess of \$3,500 may be prosecuted as a felony.

**Section 32a** addresses instances where a redetermination is made of a claim for unemployment benefits, and the section allows an appeal of a redetermination to be filed within 30 days after the mailing of the notice of the redetermination. House Bill 4982 (H-5) would make the following amendments.

\*\* Currently, the act specifies that a reconsideration cannot be made unless the request is filed with the UIA, or reconsideration is initiated by the UIA, *within one year* from the date of mailing or personal service of the original determination on the disputed issue. The bill would allow the agency to consider a request for reconsideration filed *within three years* after the date of mailing or personal service of the original determination on the disputed issue, if new information becomes available during the course of an investigation of fraud concerning a claim, and the information, through no fault of the party requesting the reconsideration, was not reasonably available, accessible, or discoverable at the time of the initial determination or redetermination.

\*\*Notwithstanding other provisions regarding appeal periods, if a determination or redetermination includes a finding of fraud with the assessment of a fine, and the claimant or employer does not respond to the first notification, then the agency must send a second notification by certified mail indicating that the claimant or employer has 30 days after the date of mailing to appeal the determination or redetermination before the fine begins to accrue.

**Section 48** delineates when an individual is and is not considered unemployed. House Bill 4982 (H-5) would specify that the UIA would be prohibited from using wages or remuneration reported during the reporting period that includes a week for which benefits are claimed to support an allegation of unemployment compensation fraud or a reduction in those benefits, unless the reporting employer has attributed the compensation to the specific week for which the benefits were claimed or paid.

**Section 54** 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. House Bill 4982 (H-5) would amend this section to specify that a UIA determination could not be based solely on a computer-identified discrepancy in information supplied by the claimant or employer. An agency employee or agent must examine the facts and independently determine that the claimant or the employer is responsible for a willful or intentional violation before the agency makes a determination.

**Section 62** addresses the actions to be taken when the unemployment agency determines that a person has obtained benefits they are not entitled to, or when the agency or an appellate authority reverses a prior qualification for benefits.

House Bill 4982 (H-5) would amend the section to specify that an unemployment agency determination that a claimant made an intentional false statement, misrepresentation, or concealment of material information that invokes sanctions under the section shall not be based solely on a computer-identified discrepancy in information supplied by the claimant and employer. Instead, an agency employee or agent must examine the facts and independently determine that the claimant or the employer is responsible for a willful or intentional violation before the agency makes a determination.

Currently under this section, the UIA must typically 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, except in the case of intentional false statement, misrepresentation, or concealment of material information, when a determination must be issued within *six years*. The bill would require the determination be issued within *three years* in the case of intentional false statement, misrepresentation, or concealment of material information, as well. However, the time limit would not apply to cases when benefits were improperly paid because of identity fraud.

Also, under the bill, the time limits would not prohibit the agency from pursuing collection methods to recover the amounts found to have been improperly paid.

#### **FISCAL IMPACT:**

House Bill 4982 (H-5) would have multiple significant, yet indeterminate, fiscal impacts on the Unemployment Insurance Agency (UIA) within the Department of Talent and Economic Development (TED), generally increasing administrative expenses and/or potentially decreasing the amounts of improperly paid benefits recovered.

Firstly, the UIA would incur indeterminate costs to modify its administrative protocol and information technology program (aka MiDAS) regarding fraud (re)determinations and to send secondary notifications for findings of fraud via certified mail.<sup>1</sup> Specifically, MiDAS does not currently distinguish between (re)determinations for fraud and those for non-fraud-related matters and the UIA would incur DTMB charges to rewrite IT components in order to do so. Furthermore, the UIA would incur additional postage expenses to send out second notifications to those claimants and employers who do not respond during the first 30-day period during which to file an appeal. Finally, the UIA may incur administrative incidentals to incorporate new procedures and process a second 30-day notification period.

Secondly, prohibiting the current exclusion of fraud-related cases from being eligible to receive representation under the Advocacy Program would result in additional claimants and employers seeking and utilizing such representation and, accordingly, additional expenses to provide the representation. However, the bill indicates that the provision of

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<sup>1</sup> During the late summer of 2015, the UIA modified its protocol so that (re)determinations involving potential fraud findings are flagged for review by an employee prior to being sent out to employers or claimants. Thus far, this change of protocol has not substantially increased the UIA's need for human and financial resources, merely adding four or five days to the fraud-related (re)determination process, which is still within federal timeliness standards.

such representation is subject to legislative appropriation (in addition to the statutory appropriation of \$1.5 million) and that the UIA may recover expenses for representation provided to claimant and employers found responsible for fraud, partially offsetting the additional expenses of providing representation.

Thirdly, the UIA would incur additional indeterminate expenses to send notifications pertaining to claimants' rights and responsibilities within two weeks of initial benefit payments and again six months later. The overall cost of these notifications is dependent upon the number of initial claims for benefits and claimant's selected preferred form of communication; email being lower cost than postal mail.

Fourthly, the extension of the time period during which the UIA may reconsider a prior (re)determination from one to three years if new information becomes newly available during the course of fraud investigations, could ultimately result in fewer findings of fraud and thus fewer recoveries of (previously considered improperly) paid benefits.

Lastly, reducing the time period during which the UIA could issue a (re)determination finding of fraud (excluding those involving identity fraud) from six to three years after the receipt of improperly paid benefits would likely decrease the amount of such benefits recovered or, conversely, increase the administrative expenses to investigate and issue the (re)determinations within the shorter timeframe.

Legislative Analyst: Chris Couch  
Fiscal Analyst: Paul B.A. Holland

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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.