

Legislative Analysis



UNEMPLOYMENT INSURANCE PACKAGE

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House Bill 4949 (Substitute H-4)

House Bill 4950 (Substitute H-3)

House Bill 4951 (Substitute H-2)

Sponsor: Rep. Frank Foster

House Bills 4952-4954, without amendment

Sponsor: Rep. Ken Goike

Committee: Commerce

Complete to 9-24-13

A SUMMARY OF HOUSE BILLS 4949-4954 AS REPORTED FROM COMMITTEE

Each of the bills would amend the Michigan Employment Security Act (MESA), which deals with unemployment insurance. The bills are all tie-barred to each other, meaning none can take effect unless all are enacted.

House Bill 4949 would amend Section 62 in several ways.

** Currently, the act allows the state unemployment agency (UIA) to recover a sum equal to amounts received plus interest when it determines that a person has obtained benefits to which he or she is not entitled. The bill would clarify that the provision also applies when "a subsequent determination by the agency or a decision of an appellate authority reverses a prior qualification for benefits."

** The bill also would amend a provision that says a person will have his or her rights to benefits for a given benefit year canceled in cases where the person has intentionally made a false statement or misrepresentation or has concealed material information to obtain benefits. Under the bill, the rights to benefits for a benefit year would be canceled as of the date the "claimant made the false statement or misrepresentation or concealed material information." (Currently, the cancelation of rights to benefits occurs as of the date the agency receives notice of, or initiates investigation of, a possible false statement or misrepresentation or concealment of material information.)

Under the bill, a chargeable employer could protest a claim filed after October 1, 2014 to establish a successive benefit year [under Section 46(c)] if there was a determination by the unemployment agency or decision of a court or administrative tribunal finding that the claimant made a false statement, made a misrepresentation, or concealed material information related to his or her report of earnings for a preceding benefit year claim. If a protest was made, any unreported earnings from the preceding benefit year that were falsely stated, misrepresented, or concealed could not be used to establish a benefit year for a successive claim.

** Currently, the act says the UIA, except in a case of an intentional false statement, misrepresentation, or concealment of material information, "may" waive the 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."

The bill would amend the provision to change the "may" to "shall" and to define "contrary to equity and good conscience." That phrase would mean any of the following:

- The claimant provided incorrect wage information without the intent to misrepresent, and the employer provided either no wage information upon request or provided inaccurate wage information that resulted in the overpayment.
- The claimant's disposable household income, exclusive of social welfare benefits, is at or below the annual update of the federal poverty guidelines, and the claimant applied for a waiver based on that.
- The improper payments resulted from an administrative or clerical error by the UIA. A requirement to repay benefits as the result of a change in judgment at any level of administrative adjudication or court decision concerning the facts or application of law to a claim adjudications is not an administrative or clerical error for the purposes of this provision.

House Bill 4950 would amend Section 20 to specify that if an employer or employer's agent has a pattern of failing to respond with timely or adequate information as required and requested under Section 32, benefits paid to a claimant as a result of such failure would be charged to that employer's account. (Section 32 deals with the responsibility of an employer to notify the unemployment agency of a possible disqualifying separation within 30 days of the separation.)

To demonstrate a pattern sufficient to render the benefits chargeable, the UA must document repeated failure to provide timely or adequate responses 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 shall be charged and that the employer's account shall not be credited for the benefit payments would be appealable in the same manner as other unemployment determinations. Recovery of benefits improperly paid to the claimant would be as provided elsewhere in Section 62 (which is the section amended by House Bill 4949, described above.)

House Bill 4953 would make a complementary amendment to Section 32 related to the bill above.

House Bill 4951 would amend Section 54 to rewrite the section that specifies where amounts recovered from investigations of certain offenses are to be credited. Under Subsection (b) of that section, administrative fines and other penalties, including

imprisonment, can be imposed in cases where a person makes a false statement or representation knowing it to be false, or knowingly and willfully with intent to defraud fails to disclose a material fact in order to: (1) obtain or increase a benefit or payment, (2) prevent or reduce the payment of benefits to a person entitled to benefits, (3) avoid becoming or remaining a subject employer, or (4) avoid or reduce a contribution or other payment required from an employing unit. This applies to employers, employees, and officials with the state agency.

The bill would specify that amounts recovered by the unemployment agency related to the violations described above would be credited in the following order:

- From the penalty assessment recovered, an amount equal to 15% of any benefit overpayments resulting from fraud would be credited to the Unemployment Compensation Fund.
- For the balance of deductions from unemployment insurance benefits, to the liability for benefit repayment.
- For all other recoveries, the balance would 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.

House Bill 4954 would amend Section 26 to make a complementary amendment referring to Section 54 (described above).

House Bill 4952 would amend Section 29, which deals with the disqualification of individuals from receiving benefits. It amends the section in two ways. First, it specifies that an individual is considered to have "refused an offer of suitable work" if the prospective employer requires a drug test as a condition of a job offer and the employer withdraws the offer after either (1) the individual tests positive for a controlled substance and lacks a valid, documented medical prescription for the controlled substance from a treating physician; or (2) the individual refuses without good cause to submit to the drug test.

Second, the bill would specify that if the employing unit submits notice to the unemployment agency of possible ineligibility or disqualification beyond the time limits prescribed by agency rule, "and the unemployment agency concludes that the payments should not have been paid, the claimant shall repay the benefits paid during the entire period of ineligibility or disqualification." (The quoted language is added by the bill.) The agency, however, could not charge interest on such repayments. This new language replaces a provision that says that when the employing unit submits such late notice, then "the notice shall not form the basis of a determination of ineligibility or disqualification for a claim period compensated before the receipt of the notice by the unemployment agency." The current provision would be deleted.

BACKGROUND INFORMATION:

For an overview of the Unemployment Insurance system in Michigan, including the benefits provided to workers and the taxes levied on employers to support the system, see Fiscal Focus: Unemployment Insurance in Michigan, issued in November 2012 by the House Fiscal Agency. The document can be found on the HFA website at: http://www.house.mi.gov/hfa/PDFs/Unemployment%20Insurance%20Nov2012_Fiscal%20Focus.pdf

FISCAL IMPACT:

House Bill 4949

HB 4949 would reduce unemployment insurance benefit payments, resulting in marginally reduced state unemployment tax collections, to the extent that benefits are improperly paid between the date at which claimants made false statements or misrepresented or concealed material information and the date at which the UIA received notice of or initiated investigations of possible false statements or misrepresented or concealed material information.

House Bills 4950 & 4953

HB 4950 would not have a significant fiscal impact on the Unemployment Trust Fund but would likely redistribute how state unemployment taxes are collected (from charging employers' experience accounts to generating revenue through the nonchargeable benefits component) to the extent that HB 4950 narrows the criteria under which employers' experience accounts can be charged for benefits improperly paid as a result of employers' failure to provide timely or adequate information required or requested by the UIA.

HB 4950 would satisfy federal conformity requirements pursuant to Section 252 of Public Law 112-40, enacted on October 21, 2011, which requires the establishment of timeliness and adequacy standards for relieving charges from employers' experience accounts relating to improperly paid benefits. If the state does not satisfy this conformity requirement by October 21, 2013, it risks approximately 74% of employers (those with the lowest UI tax rates/least unemployment experience) losing some portion of federal unemployment tax credits.

House Bills 4951 & 4954

HB 4951 would have a positive fiscal impact on the Unemployment Compensation Fund, from which unemployment insurance benefits are paid, and an equivalent negative fiscal impact on the Contingent Fund, which partially supports administration of the UIA and payment of interest on advances from the federal government, to the extent that amounts generated by assessed penalties equal to 15% of benefit overpayments resultant from fraud would be required to be deposited into the Unemployment Compensation Fund rather than the Contingent Fund as under current law.

HB 4951 would satisfy federal conformity requirements pursuant to Section 251 of Public Law 112-40, enacted on October 21, 2011, which requires that an amount equal to

15% of erroneous benefit payments due to fraud must be deposited into states' accounts in the Unemployment Trust Fund. If the state does not satisfy this conformity requirement by October 21, 2013, it risks losing an indeterminate portion of federal grants to administer the unemployment insurance program.

House Bill 4952

HB 4952 would reduce unemployment insurance benefit payments, resulting in reduced charges to employers' experience accounts, to the extent that claimants test positive for controlled substances without a medical prescription or refuse without good cause to submit to the test. It is unknown how many claimants would be disqualified from receiving benefits due to failing or refusing drugs tests; yet, Michigan-specific data from the 2010-11 National Surveys on Drug Use and Health suggests that approximately 800,000 individuals age 18 and up (10.7% of the relevant population) used illicit drugs during the past month.

Additionally, HB 4952 could further reduce charges to employers' experience accounts to the extent that the UIA concludes, subsequent to the expiration of time limits prescribed in UIA administrative rule, that benefits should not have been paid to ineligible or disqualified claimants, who would be required to repay benefits improperly paid during the entire period of claimants' ineligibility or disqualification. However, HB 4952 may have no fiscal impact as subsection 32(d) of the MESA states that the issuance of each benefit check shall be considered a determination and Section 32a stipulates a 30-day period for redeterminations and that redeterminations made subsequent to the 30-day period do not apply to a compensable periods for which benefits were paid or are payable unless benefits were obtained as a result of an administrative clerical error, a false statement, or nondisclosure or misrepresentation of a material fact by claimants. There do not appear to be time limits prescribed by UIA administrative rule.

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