



Senate Fiscal Agency
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BILL ANALYSIS



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House Bill 4949 (Substitute S-1 as reported)
House Bill 4950 (Substitute H-3 as reported without amendment)
House Bill 4951 (Substitute H-2 as reported without amendment)
House Bill 4952 (Substitute S-1 as reported)
House Bill 4953 (Substitute S-1 as reported)
House Bill 4954 (as reported without amendment)
Sponsor: Representative Frank Foster (H.B. 4949-4951)
Representative Ken Goike (H.B. 4952-4954)

House Committee: Commerce
Senate Committee: Reforms, Restructuring and Reinventing

CONTENT

The bills would amend the Michigan Employment Security Act with respect to the recovery or repayment of improperly paid benefits; the allocation of monetary sanctions for fraudulent violations; a claimant's disqualification for benefits; an employer's failure to provide timely or adequate information; and the charging of benefits against an employer's account.

House Bill 4949 (S-1) would do the following:

- Permit the Unemployment Insurance Agency (UIA) to recover benefits if the Agency or an appellate authority reversed a prior qualification for benefits.
- Require, rather than permit, the UIA to waive recovery of improperly paid benefits when the payment was not the individual's fault and repayment would be "contrary to equity and good conscience"; and define that term.
- Require benefits to be canceled as of the date a claimant intentionally made a false statement or misrepresentation or concealed material information, rather than when the UIA receives notice of, or begins to investigate, that activity; and allow an employer to protest a claim to establish a successive benefit year in such a case.
- Provide that an individual would be liable for any fee the Federal government imposed with respect to instituting a deduction from a Federal tax refund.

The bill would define "contrary to equity and good conscience" as any of the following:

- The claimant provided incorrect wage information without the intent to misrepresent, and the employer either provided no wage information upon request or provided inaccurate wage information that resulted in the overpayment.
- The claimant's disposable household income, excluding social welfare benefits, was at or below the Federal poverty guidelines, and the claimant had applied for a waiver of recovery.
- The improper payments resulted from an administrative or clerical error by the UIA, which would not include 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 adjudication.

House Bill 4950 (H-3) would require benefits to be charged to an employer's account if the employer had a pattern of failing to respond with timely or adequate information, as requested or required by the UIA, and benefits were paid due to that failure. To

demonstrate a pattern sufficient to make the benefits chargeable, the UIA would have to document repeated failures to provide timely or adequate responses, and would have to consider the number of instances of failure in relation to the number of requests. The number of failures would have to be more than four and constitute at least 2% of all the requests directed to the employer during the prior calendar year.

House Bill 4951 (H-2) would require amounts recovered by the UIA in cases of willful violations to be allocated as follows:

- From the penalty assessment recovered, an amount equal to 15% of any benefit overpayments resulting from fraud would have to be credited to the Unemployment Compensation Fund.
- For the balance of deductions from unemployment insurance benefits, the recovery would have to be credited to the liability for benefit repayment.
- For all other recoveries, the balance would have to be credited first 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 4952 (S-1) provides that, for one year after its effective date, an individual would be considered to have refused an offer of suitable work (which would disqualify him or her from benefits) if a prospective employer required a drug test as a condition of an offer of employment and withdrew the offer because the individual either 1) tested positive for a controlled substance, without a valid prescription issued to the individual by his or her treating physician, or 2) refused to take a drug test.

Also, if an employer notified the UIA of a claimant's possible ineligibility or disqualification beyond the time limits set by Agency rule, the bill would require the claimant to repay benefits that should not have been paid, without interest.

House Bill 4953 (S-1) would delete provisions under which benefits are considered proper payments if the UIA does not receive different information within 10 days after mailing a monetary determination; or if the UIA requests additional information from an employer and fails to receive a response within 10 days. The bill specifies that charges to the employer and payments to the claimant would have to be as described in Section 20(a). (That section, which Senate Bill 4950 (H-3) would amend, requires benefits paid to be charged against an employer's account, and requires an employer's account to be credited if benefits charged against it were improperly paid.)

The bill also would require the UIA to proceed as described in Section 62 (the section House Bill 4949 (S-1) would amend) if a claimant were found ineligible or not qualified upon a redetermination.

Currently, the UIA must investigate to determine whether the claimant obtained benefits for weeks preceding the series of consecutive weeks that include the week covered by the redetermination, improperly as the result of administrative error, false statement, misrepresentation, or nondisclosure of a material fact. If the UIA finds that the claimant obtained benefits under those circumstances, the Agency must proceed under Section 62. The bill would require the UIA to investigate whether the claimant received benefits, and to proceed under Section 62, but would delete the language limiting this to improperly paid benefits.

House Bill 4954 would include in the Unemployment Compensation Fund amounts credited from the recovery of monetary sanctions.

All of the bills are tie-barred to the others.

MCL 421.62 (H.B. 4949)
421.20 (H.B. 4950)
421.54 (H.B. 4951)
421.29 (H.B. 4952)
421.32 (H.B. 4953)
421.26 (H.B. 4954)

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

House Bill 4949 (S-1) would reduce unemployment insurance (UI) benefits paid by the Unemployment Insurance Agency by a likely small amount. This reduction in payments also would lead to a similar reduction in State unemployment tax revenue, as those tax collections are largely based on benefits paid by the UIA.

House Bills 4950 (H-3) and 4953 (S-1) would bring Michigan into conformity with Section 252 of Public Law 112-40, which requires that states establish timeliness and adequacy standards for relieving charges on employers' experience accounts due to improperly paid benefits. According to the UIA, failure to enact such a standard could jeopardize the Federal Unemployment Tax Act (FUTA) tax credits received by 74% of Michigan employers. While this would not necessarily affect the UIA's operations, as the FUTA tax is administered by the U.S. Department of Labor, it would have a large impact on Michigan employers, which could have secondary effects on State and local units of government. Additionally, since State and local units are exempt from FUTA taxes, a credit reduction would not affect them.

House Bills 4951 (H-2) and 4954 would have a positive fiscal impact on the Unemployment Compensation Fund (UCF) and a negative fiscal impact on the Contingent Fund - Penalty and Interest Account (Contingent Fund). The bills would require that an amount equal to 15% of UI benefits fraudulently obtained be first credited to the UCF from any penalty assessments received. Under current law, that 15% would be credited to the Contingent Fund. The UCF may be used only for the payment of UI benefits, whereas the Contingent Fund may be used for UIA administration and payment of Federal UCF advances under Title XII of the Social Security Act, so the bills would generally decrease the amount of revenue available for UIA administration but also very slightly decrease the likelihood that the UIA would need to seek Title XII advances in the future.

The bills also would bring Michigan into conformity with Section 251 of Public Law 112-40, which requires that, from amounts recovered from individuals who fraudulently obtained UI benefits, an amount equal to not less than 15% of the fraudulently obtained benefit be credited to the UCF. The UIA has indicated that failure to make this change in disbursement of fraudulent benefit recoveries could lead to an unknown reduction in the UI administration block grants received by the UIA. These block grants are the primary source of administration funds for the UIA. In the FY 2013-14 budget, approximately \$83.7 million of the UIA's total appropriation of \$89.3 million comes from these block grants.

House Bill 4952 (S-1) would reduce unemployment insurance benefits paid by the Unemployment Insurance Agency by an unknown amount. This reduction in payments also would lead to a similar reduction in State unemployment tax revenue, as those tax collections are largely based on benefits paid by the UIA.

Date Completed: 10-17-13

Fiscal Analyst: Josh Sefton

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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.