



**House
Legislative
Analysis
Section**

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**UNEMPLOYMENT BENEFIT
INCREASE; EXPAND TO INCLUDE
INDIAN TRIBES**

House Bill 5763

**Sponsor: Rep. Randy Richardville
Committee: Employment Relations,
Training and Safety**

Complete to 3-1-02

A SUMMARY OF HOUSE BILL 5763 AS INTRODUCED 2-28-02

House Bill 5763 would amend the Michigan Employment Security Act to increase an individual's maximum weekly benefit rate to \$415, and institute a waiting week. The bill also would extend the program to include Indian tribes.

Benefit rate and waiting week. Currently an individual's maximum weekly benefit rate is \$300. Further and under the law, an eligible individual is paid a weekly benefit rate "with respect to the week for which the individual earns or receives no remuneration." House Bill 5763 would increase the maximum weekly benefit rate to \$415. In addition, the bill specifies that an eligible individual would be paid a weekly benefit rate "for each week that the individual earns or receives no remuneration, beginning one week after the first week that the individual earns or receives no remuneration." The bill further specifies that when a determination, re-determination, or decision was made that benefits were due an unemployed person, the benefits would become payable from the fund one week from the date of that determination, re-determination, or decision. However, under the bill the waiting week would apply to an individual only once each calendar year.

Currently under the law, a person is disqualified from benefit eligibility if he or she leaves work voluntarily without good cause attributable to the employer or employing unit. However, if the individual has an established benefit year in effect and during that benefit year leaves unsuitable work within 60 days after the beginning of that work, the leaving does not disqualify the individual. Under House Bill 5763 these provisions would be retained, but the bill also would specify that an individual who left work voluntarily would be presumed to have left work without good cause attributable to the employer or employing unit. Further, an individual claiming benefits would have the burden of proof to establish that he or she left work voluntarily for good cause that was attributable to the employer or employing unit.

Finally, the law currently specifies that all amounts paid to a claimant by an employing unit or former employing unit for a vacation or a holiday, and amounts paid in the form of retroactive pay, or in lieu of notice are considered remuneration in determining whether an individual is employed, and also in determining his or her benefit payments. However, payments for a vacation or holiday, and payments in the form of termination, separation, severance or dismissal allowances, and bonuses are not considered wages or remuneration. Under House Bill 5763, pay in lieu of notice, severance payments, salary continuation, or other remuneration intended by the

House Bill 5763 (3-1-02)

employing unit as continuing wages as the result of the separation would be considered remuneration.

Indian tribes or tribal units. House Bill 5763 also specifies that an Indian tribe or tribal unit would be liable as an employer, and would be required to pay reimbursements in lieu of contributions under the same terms and conditions as all other reimbursing employers, unless the Indian tribe or tribal unit elected to pay contributions. Under the bill, an Indian tribe or tribal unit that elected to make contributions would file with the unemployment agency a written request before January 1 of the calendar year, or within 30 days of the effective date of the act. The Indian tribe or tribal unit would be required to determine if the election to pay contributions would apply to the tribe as a whole, only to individual tribal units, or to stated combinations of individual tribal units.

Under the bill, an Indian tribe paying reimbursements in lieu of contributions would be billed for the full amount of benefits attributable to service in the employ of the Indian tribe. It would reimburse the fund annually within 30 calendar days after the mailing of the final billing for the immediately preceding calendar year. If the tribe or tribal unit failed to make payments in lieu of contributions, including assessments of interest and penalties within 90 calendar days after the mailing of the notice of delinquency, the tribe would lose that ability immediately, unless the payment in full or collection on the security was received by the unemployment agency by December 1 of that calendar year. An Indian tribe that lost the ability to make payments in lieu of contributions would be made a contributing employer, and would not have the ability to make payments until all contributions, including payments in lieu of contributions, and interest or penalties had been paid. The ability to make payments in lieu of contributions would be reinstated effective the January 1 immediately following the year in which the tribe had paid in full. If an Indian tribe failed to pay in full within 90 days, the unemployment agency would be required to immediately notify the United States Department of Labor and the Internal Revenue Service (IRS) of the delinquency. If the delinquency were satisfied, the unemployment agency would be required immediately to notify the department and the IRS that what was owed had been paid.

Under House Bill 5763, a notice of delinquency would be required to specify that failure to make full payment within 90 days would result in the Indian tribe losing the ability to make payments in lieu of contributions until all that was owed had been paid in full.

Under the bill, any Indian tribe or tribal unit that made reimbursement payments in lieu of contributions would be required to post a security, subject to all of the following conditions: a) a reimbursing tribe or tribal unit would be required to either post the security within 30 days of the effective date of the bill, or by November 30 of the year before the security was required; b) the security would be required to be in the form of a surety bond, irrevocable letter of credit, or other banking device that was acceptable to the unemployment agency, and that provided for payment, on demand, of an amount equal to the security that was required to be posted (however, the bill specifies that the security could be posted by a third-party guarantor); and, d) the amount of the security required would be 4 percent of the employer's estimated total annual wage payments, as determined by the unemployment agency. Under the bill, Indian tribes or tribal units that had a previous wage payment history would be required to file a security that was equal to 4 percent of

the gross wages paid for the 12-month period ending June 30 of the year immediately preceding the year for which the security was required, or 4 percent of the employer's estimated total annual wages, whichever was greater.

The bill specifies that any Indian tribe or tribal unit that was liable for reimbursements in lieu of contributions could form a group account with another tribe or tribal unit.

Definitions. Under the bill, after December 20, 2000, "employer" would include an Indian tribe or tribal unit for which services are performed in employment. Further, after December 20, 2000, "employment" would include service performed in the employ of an Indian tribe or tribal unit, if the service was excluded from employment as that term was defined in the Federal Unemployment Tax Act, chapter 23 of subtitle C of the Internal Revenue Code of 1986, solely by reason of section 3306 (c)(7) of the Federal Unemployment Tax Act, chapter 23 subtitle C of the Internal Revenue Code of 1986, and was not otherwise excluded from the definition of employment under section 43. Under the bill, "Indian tribe" means that term as defined in section 3306(u) of the Federal Unemployment Tax Act, chapter 23 of Subtitle C of the Internal Revenue Code of 1986. "Tribal unit" includes any subdivision, subsidiary, or business enterprise, wholly owned by an Indian tribe. House Bill 5763 also updates references to related federal laws and rules, and also updates the definition of "construction industry."

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