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BILL



ANALYSIS

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House Bill 4408 (as enacted)
Sponsor: Representative Jim Stamas
House Committee: Commerce
Senate Committee: Economic Development

PUBLIC ACT 14 of 2011

Date Completed: 8-3-12

CONTENT

The bill amended the Michigan Employment Security Act to do all of the following:

- Provide for extended unemployment insurance benefits under certain circumstances until four weeks before the last week of unemployment for which 100% Federal sharing was available under the American Recovery and Reinvestment Act (ARRA).
- Reduce from 26 to 20 the maximum number of weeks unemployment insurance benefits are payable to an eligible individual filing an initial claim on or after January 15, 2012.
- Create the "Special Fraud Control Fund" for the prevention, discovery, and collection of unemployment benefit overpayments.
- Require amounts in the Fund to be used first to acquire software with a proven record of detecting and collecting benefit overpayments, and then for administrative costs.
- Require the software to be implemented by September 1, 2011.
- Allow the Unemployment Insurance Agency (UIA) to collect interest on benefit overpayments, and require the interest to be deposited into the Fund.
- Subject a person to administrative fines, in addition to other penalties, for certain knowing violations related to unemployment benefits.
- Double the amount of damages the UIA may obtain for a person's second or subsequent knowing violation.
- Require amounts recovered for knowing violations to be applied to administrative sanctions, damages, and interest, and be credited to the new Fund.

The bill took effect on March 29, 2011.

Extended Benefits

The Act provides for the payment of extended benefits at an individual's weekly extended benefit rate under certain circumstances. An extended benefit period begins with the third week after whichever of the following occurs first:

- A week for which there is a national "on" indicator.
- A week for which there is a Michigan "on" indicator.

The extended benefit period ends with the third week after the first week for which there is both a national "off" indicator and a Michigan "off" indicator. National "on" and "off" indicators are determined by the U.S. Secretary of Labor.

There is a Michigan "on" indicator if the rate of insured unemployment under the Act for the period consisting of that week and the immediately preceding 12 weeks equaled or exceeded 120% of the average of the

insured unemployment rates for the corresponding 13-week period ending in each of the preceding two calendar years, and equaled or exceeded 5%. Under the bill, with respect to compensation for each week of unemployment beginning after December 17, 2010, and ending December 31, 2011, that standard applied to the corresponding 13-week period ending in each of the preceding three, rather than two, calendar years.

In addition, under the bill, for weeks beginning after December 17, 2010, and ending with the week ending four weeks before the last week of unemployment for which 100% Federal sharing was available under ARRA, there was a Michigan "on" indicator for a week in which the average rate of total unemployment in Michigan, seasonally adjusted, as determined by the U.S. Secretary of Labor, for the period consisting of the most recent three months for which data for all states were published before the close of the week equaled or exceeded both 6.5% and 110% of the average rate of total unemployment in Michigan, seasonally adjusted, for the period consisting of the corresponding three-month period in any or all of the preceding three calendar years.

Length of Benefit Eligibility

The Act includes a formula for calculating the number of benefit weeks payable to an individual. Previously, not more than 26 weeks or less than 14 weeks of benefits were payable to an individual in a benefit year. Under the bill, for each eligible individual filing an initial claim on or after January 15, 2012, not more than 20 weeks or less than 14 weeks of benefits are payable to an individual in a benefit year.

Special Fraud Control Fund

The bill created in the Department of Treasury Contingent Fund a separate fund to be known as the "Special Fraud Control Fund (Michigan Employment Security Act)". The Fund consists of money collected or received by the UIA as follows:

- All interest and penalties collected by the UIA under Section 62 from a person who has obtained benefits to which he or she is not entitled.

- All gifts to, interest on, or profits earned by the Special Fraud Control Fund.
- Amounts credited under Section 54(k)(ii) (which the bill added) for amounts recovered from a person who knowingly commits certain violations related to unemployment insurance benefits.

(Sections 62 and 54 are described below.)

The bill specifies that money in the Special Fraud Control Fund is continuously appropriated only to the unemployment agency and may not be transferred or otherwise made available to any other State agency.

All amounts in the Fund had to be used first for the acquisition of packaged software having a proven record of success with the detection and collection of unemployment benefit overpayments. Money in the Fund then must be used for administrative costs associated with the prevention, discovery, and collection of unemployment benefit overpayments, as included in the biennial budget of the UIA and approved by the Legislature.

Two years after the bill's effective date, the UIA must submit a report to the Secretary of the Senate and the Clerk of the House of Representatives, to show how the money from the Fund was used and the results obtained from it.

The initial detection and collection software package had to be implemented by September 1, 2011.

Recovery of Benefits

Under Section 62 of the Act, if the UIA determines that a person has obtained benefits to which he or she is not entitled, it may recover a sum equal to the amount received. The UIA may recover this sum by deduction from benefits payable to the individual, by payment from the individual, or by deduction from a tax refund payable to the individual. Under the bill, the UIA also may recover interest on the amount improperly received. Interest recovered under Section 62 must be deposited into the Special Fraud Control Fund.

Knowing Violations

Section 54 of the Act specifies penalties for any employing unit, claimant, UIA employee, or other person who knowingly makes a false statement or representation, or knowingly or willfully with intent to defraud fails to disclose a material fact, to obtain or increase a benefit or other unemployment payment, to prevent or reduce the payment of benefits to an individual entitled to benefits or to avoid becoming or remaining a subject employer, or to avoid or reduce a contribution or other payment required from an employing unit. Under the bill, the person also will be subject to administrative fines.

Under Section 54, if the amount obtained through a violation described above is less than \$500, the UIA may recover the amount obtained as well as damages equal to two times that amount. Under the bill, for a second or subsequent violation, the UIA may recover damages equal to four times the amount obtained.

The bill requires amounts recovered for violations described above to be credited as follows:

- Deductions from unemployment insurance benefits must be applied solely to the amount of the benefits liable to be repaid.
- All other recoveries must be applied first to administrative sanctions and damages, then to interest, and then to the amount liable to be repaid.

The amounts applied to administrative sanctions, damages, and interest must be credited to the Special Fraud Control Fund.

MCL 421.10 et al.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

To the extent that expenditures on antifraud activities in the UIA are effective, the bill will result in indeterminate savings to the State.

The bill increased penalties for second or subsequent violations in which less than \$500 in benefits is overpaid or less than \$500 in taxes is underpaid. These increased penalties may result in additional revenue

for the UIA. Alternatively, they may serve as a fraud deterrent, which will result in decreased penalty and interest revenue, but also produce savings in the form of lower benefit payments as well as higher unemployment tax revenue.

Penalties and interest recovered from those who either fraudulently receive unemployment benefits or underpay unemployment taxes will be credited to the Special Fraud Control Fund. Revenue from these violations previously was credited to the Contingent Fund, which is used for several things, including: Bureau of Workforce Transformation Program, UIA operations, and interest on Federal Title 12 loans. The bill redirected that revenue into the Special Fraud Control Fund for the purchase of antifraud software, resulting in less available revenue for those programs. Additionally, the bill applies interest to nonfraud overpayments, which will raise some unknown amount of additional revenue that will be credited to the Special Fraud Control Fund.

The U.S. Department of Labor estimated that in calendar year 2009, Michigan had a 7.2% benefit overpayment rate, of which 0.7% was estimated to be fraudulent in nature. The UIA paid out approximately \$3.7 billion in unemployment benefits in 2009, so an estimated \$266.4 million was overpaid, and of that, an estimated \$25.9 million was attributable to fraud. To the extent that software purchased with the Special Fraud Control Fund is effective, the State may save some unknown portion of those overpayments and fraudulent claims.

Finally, the bill made substantial changes to the amount of benefits unemployed workers are entitled to. These changes are detailed in a fall 2011 Senate Fiscal Agency article, ["Unemployment Compensation in Michigan: An Update"](#).

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.