

HOUSE BILL No. 5167

October 24, 2017, Introduced by Rep. Byrd and referred to the Committee on Oversight.

A bill to amend 1936 (Ex Sess) PA 1, entitled
"Michigan employment security act,"
by amending section 5a (MCL 421.5a), as amended by 1993 PA 311.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5a. (1) For calendar years beginning January 1, 1994 and
2 ending December 31, 1998, the ~~commission~~**UNEMPLOYMENT AGENCY** shall
3 develop and implement a program to provide, upon request, claimant
4 and employer advocacy assistance or consultation. The purpose of
5 the program ~~shall be~~**IS** to provide information, consultation, and
6 representation to claimants and employers relating to the referee
7 or board of review appeal levels, or both.

8 (2) The program ~~shall~~**MUST** be funded from the penalty and
9 interest account in the contingent fund. If the ~~advocacy~~ program
10 does not operate or the legislature fails to approve a yearly

1 appropriation for the ~~advocacy~~ program in an amount at least equal
 2 to the maximum yearly expenditure for the program as provided in
 3 this subsection, then the provision of section 19(a)(5) reducing
 4 the maximum nonchargeable benefits component from 1% to 1/2 of 1%
 5 ~~shall~~ **IS** not ~~be~~ effective for ~~the~~ **A** tax year for which the
 6 appropriation is not made or in which the ~~advocacy~~ program does not
 7 operate. For fiscal years beginning on and after October 1, 1994,
 8 the maximum amount of the expenditure for the program each year
 9 ~~shall~~ **MUST** not exceed \$1,500,000.00.

10 (3) The appropriations ~~shall~~ **MUST** be used to finance all costs
 11 connected with the program. ~~Not~~ **COSTS RELATED TO THE REPRESENTATION**
 12 **OF CLAIMANTS MUST NOT** exceed 60% of the maximum expenditure allowed
 13 in each fiscal year, ~~shall be used for costs related to~~
 14 ~~representation of claimants and~~ **COSTS RELATED TO THE REPRESENTATION**
 15 **OF EMPLOYERS MUST** not ~~to~~ exceed 40% of the maximum expenditure
 16 allowed in each fiscal year. ~~shall be used for costs related to~~
 17 ~~representation of employers.~~

18 (4) An ~~BEFORE AN~~ individual ~~who desires to provide~~ **PROVIDES**
 19 advocacy assistance services ~~shall~~ **UNDER THIS SECTION, THE**
 20 **INDIVIDUAL MUST** apply to the ~~commission~~ **UNEMPLOYMENT AGENCY** for
 21 approval. The ~~commission~~ **UNEMPLOYMENT AGENCY** shall develop
 22 standards for individuals providing advocacy assistance services
 23 including standards relating to knowledge of this act and the
 24 practices and procedures at the referee and board of review appeal
 25 levels. ~~Advocacy assistance services~~ **AN INDIVIDUAL WHO IS NOT AN**
 26 **ATTORNEY** ~~may be provided by individuals other than attorneys.~~
 27 **PROVIDE ADVOCACY ASSISTANCE SERVICES.** The ~~commission~~ **UNEMPLOYMENT**

1 **AGENCY** shall develop a schedule for payment of individuals
 2 providing advocacy assistance services. ~~Individuals providing~~
 3 ~~advocacy assistance services shall not be active commission~~ **ACTIVE**
 4 **UNEMPLOYMENT AGENCY** or state employees **SHALL NOT PROVIDE ADVOCACY**
 5 **ASSISTANCE SERVICES**. The only active state or ~~commission~~
 6 **UNEMPLOYMENT AGENCY** employees involved in the program shall be
 7 those supervising or coordinating the program. ~~but who shall not~~
 8 ~~provide direct advocacy assistance services.~~

9 (5) The ~~commission~~ **UNEMPLOYMENT AGENCY** may include in the
 10 program standards regarding the provision of advocacy assistance
 11 services in precedent setting cases, multiclaimant cases, cases
 12 without merit, or regarding other cases or factors as determined by
 13 the ~~commission~~ **UNEMPLOYMENT AGENCY**. **HOWEVER, TO THE EXTENT THAT**
 14 **FUNDING IS AVAILABLE FROM THE APPROPRIATION UNDER SUBSECTION (2),**
 15 **THE UNEMPLOYMENT AGENCY SHALL NOT WITHHOLD ADVOCACY ASSISTANCE**
 16 **SERVICES IN CASES INVOLVING FRAUD UNDER SECTION 54. IF THE**
 17 **UNEMPLOYMENT AGENCY MAKES A FINAL DETERMINATION OR FINAL**
 18 **REDETERMINATION OR AN ADMINISTRATIVE LAW JUDGE, THE MICHIGAN**
 19 **COMPENSATION APPELLATE COMMISSION, OR A COURT MAKES A FINAL ORDER**
 20 **THAT AN EMPLOYER OR CLAIMANT WHO RECEIVED ADVOCACY ASSISTANT**
 21 **SERVICES COMMITTED FRAUD UNDER SECTION 54, THE UNEMPLOYMENT AGENCY**
 22 **SHALL MAKE AN EFFORT TO RECOVER FROM THE EMPLOYER OR CLAIMANT,**
 23 **RESPECTIVELY, AN AMOUNT EQUAL TO THE REPRESENTATION FEES ASSOCIATED**
 24 **WITH THE ADVOCACY ASSISTANCE SERVICES PROVIDED TO THE EMPLOYER OR**
 25 **CLAIMANT, RESPECTIVELY.**

26 (6) Individuals who are approved by the ~~commission~~
 27 **UNEMPLOYMENT AGENCY** to provide advocacy assistance services shall

1 **ENTER INTO A** contract with the ~~commission~~**UNEMPLOYMENT AGENCY** that
 2 **STATES THAT** the payments made pursuant to the schedule established
 3 by the ~~commission~~**UNEMPLOYMENT AGENCY** shall be ~~ARE~~ payment in full
 4 for all services rendered and expenses incurred and that the
 5 claimant or employer who has received the benefit of the services
 6 shall ~~WILL~~ not be billed for ~~or be~~**AND IS NOT** liable for the cost
 7 of the services or representation provided. An individual approved
 8 by the ~~commission~~**UNEMPLOYMENT AGENCY** to provide advocacy
 9 assistance services shall ~~only receive~~**ACCEPT ONLY** the fee approved
 10 by the ~~commission~~**UNEMPLOYMENT AGENCY** for ~~these~~**THE** services and
 11 shall not ~~receive~~**ACCEPT** any other fee for ~~these~~**THE** services from
 12 the claimant or the employer.

13 (7) If ~~either~~ a claimant or an employer receives advocacy
 14 assistance services beyond an initial consultation, the other party
 15 in the case shall ~~shall~~**MUST** be immediately notified. ~~of that fact.~~ The
 16 ~~commission~~**UNEMPLOYMENT AGENCY** shall include in the program
 17 provisions to determine the method and the timeliness by which
 18 immediate notice shall ~~shall~~**MUST** be provided. ~~to the other party.~~ The
 19 ~~commission~~**UNEMPLOYMENT AGENCY** shall not approve the same
 20 individual to provide advocacy assistance services for both
 21 claimants and employers. The ~~commission~~**UNEMPLOYMENT AGENCY** shall
 22 clearly designate each individual approved to provide services
 23 ~~pursuant to~~**UNDER** this section as representing either claimants or
 24 employers. An individual approved by the ~~commission~~**UNEMPLOYMENT**
 25 **AGENCY** to provide advocacy assistance services shall ~~shall~~**IS** not be
 26 entitled to payment under this section for representing ~~his or her~~
 27 **THE INDIVIDUAL'S** own personal interests. ~~No~~**AN** active state

1 employee shall **NOT** represent a claimant or an employer under this
 2 program at the referee or board of review appeal levels. However,
 3 this subsection ~~shall~~**DOES** not be construed to prevent ~~prevent~~**PROHIBIT** an
 4 employee of the ~~commission~~**UNEMPLOYMENT AGENCY** from participating
 5 in a case in which the ~~commission~~**UNEMPLOYMENT AGENCY** is an
 6 interested party or ~~if the employee is~~**FROM** representing the
 7 ~~commission's~~**UNEMPLOYMENT AGENCY'S** interest when acting as an
 8 administrator for a federal program as required by federal law.

9 (8) The ~~commission~~**UNEMPLOYMENT AGENCY** shall make an annual
 10 report to the legislature on the operation of the ~~advocacy~~
 11 ~~assistance~~ program. The first report under this subsection ~~shall be~~
 12 **IS** due within 60 days after the first anniversary date of the
 13 beginning of the program. Each report under this subsection ~~shall~~
 14 **MUST** include, but **IS** not ~~be~~ limited to, the following for the
 15 previous 12-month period:

16 (a) Number and type of claimants served.

17 (b) Number and type of employers served.

18 (c) Costs to the program of the claimants served.

19 (d) Costs to the program of the employers served.

20 (e) An analysis of the impact of the services provided on the
 21 appeal system provided by this act.

22 Enacting section 1. This amendatory act takes effect July 1,
 23 2018.

24 Enacting section 2. This amendatory act does not take effect
 25 unless all of the following bills of the 99th Legislature are
 26 enacted into law:

27 (a) Senate Bill No. _____ or House Bill No. 5169 (request no.

1 03872'17).

2 (b) Senate Bill No.____ or House Bill No. 5172 (request no.
3 03874'17).

4 (c) Senate Bill No.____ or House Bill No. 5170 (request no.
5 03876'17).

6 (d) Senate Bill No.____ or House Bill No. 5165 (request no.
7 03877'17).

8 (e) Senate Bill No.____ or House Bill No. 5168 (request no.
9 03878'17).

10 (f) Senate Bill No.____ or House Bill No. 5166 (request no.
11 03879'17).

12 (g) Senate Bill No.____ or House Bill No. 5171 (request no.
13 03880'17).