

Legislative Analysis



UNEMPLOYMENT INSURANCE ADVOCATE ACT

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5549 (proposed H-2 substitute)
Sponsor: Rep. Steven Johnson

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5550 (proposed H-1 substitute)
Sponsor: Rep. Pat Outman

House Bill 5551 (proposed H-2 substitute)
Sponsor: Rep. Michele Hoitenga

House Bill 5553 (proposed H-1 substitute)
Sponsor: Rep. Sarah L. Lightner

House Bill 5552 (proposed H-2 substitute)
Sponsor: Rep. Jack O'Malley

House Bill 5554 (proposed H-1 substitute)
Sponsor: Rep. Andrew Fink

Committee: Oversight
Complete to 1-12-21

BRIEF SUMMARY:

House Bill 5552 would create a new act, the Unemployment Insurance Advocate Act, which would create the Office of the Unemployment Insurance Advocate and provide for the appointment of an unemployment insurance advocate who could initiate investigations into actions, determinations, or practices by the Unemployment Insurance Agency (UIA) on his or her own initiative or upon receiving a complaint. Among other things, the bill would describe the authority granted to the advocate; require certain reports to be submitted to the legislature; and allow the Legislative Council to conduct hearings as requested by the advocate, issue subpoenas and administer oaths, and examine the UIA's books and records. The bill also would require the office to maintain confidentiality regarding all matters under investigation and exempt correspondence between it and a complainant from disclosure under the Freedom of Information Act (FOIA).

House Bills 5549, 5550, 5551, 5553, and 5554 would amend the Michigan Employment Security Act to do all of the following:

- Require a quarterly report by the UIA to the office of the advocate regarding appeals made in the preceding month to an administrative law judge by claimants and employers and the number of appeals by the UIA to the Unemployment Insurance Appeals Commission. (HB 5549)
- Require the UIA to submit to the office of the advocate a copy of any monitoring review from the U.S. Department of Labor related to unemployment benefits or taxes, along with the agency's response and corrective action plan. (HB 5549)
- Require the UIA to post on its public website each month the amount of money in the Unemployment Compensation Fund and notify the state budget officer and legislative appropriations committees if the amount drops below certain levels. (HB 5550)
- Shorten, from three years to one year, the time frame for the UIA to issue determinations regarding restitution for benefits for which a claimant was not entitled and provide that a determination of improperly paid benefits cannot be final and improperly paid benefits cannot be recovered unless the UIA provided the claimant

with notice of certain rights. However, if fraud were suspected, the UIA could initiate action to recover the improperly paid benefits or issue a restitution determination at any time. (HB 5551)

- Require examination and a determination of a claim within 15 calendar days (or within 20 calendar days if the claim was received during an exigent period). (HB 5553)
- Require the UIA to provide certain items relevant to a hearing before an administrative law judge (HB 5554) and require the administrative law judge to give those items to interested parties when providing notice of the hearing. (HB 5553)

DETAILED SUMMARY:

House Bill 5552 would create the Unemployment Insurance Advocate Act and establish the Office of the Unemployment Insurance Advocate within the Legislative Council. The council would appoint the unemployment insurance advocate, who would be the principal executive officer of the office and would serve at the pleasure of the council. Among other things, the bill would do all of the following:

- Establish procedures for approving the office's budget, expending funds, and employing personnel.
- Authorize the advocate, on his or her own initiative or upon receipt of a complaint from a *complainant* concerning an *administrative act*, to investigate the status of a claim for benefits or the status of a matter related to an employer's unemployment taxes or to answer a claimant's question regarding eligibility for benefits, the status of a claim for benefits or payment of benefits, the status of a protest or appeal, an employer's unemployment insurance accounts, or general unemployment benefit and tax issues. The advocate would not be required to conduct an investigation of a complaint, and a complainant would not be entitled to have an investigation conducted by the advocate. (*Administrative act* would include an action, omission, decision, determination, redetermination, recommendation, practice, or other procedure of the UIA. *Complainant* would mean a claimant or employer, or a representative of either, who submits a complaint.)
- Subject to the council's approval, task the advocate with establishing procedures for receiving and processing complaints, constructing investigations, holding hearings, and reporting the findings of investigations.
- Require the UIA to grant the advocate access to all information, records, and documents in its possession necessary for an investigation, including information required to be provided to an administrative law judge under provisions of HB 5554. Access would be contingent on the advocate's providing written authorization of representation as required under the Michigan Employment Security Act.
- Allow the advocate to hold informal hearings, in person or via telephone or a virtual meeting technology, and to request that an individual appear before the advocate or at a hearing to give testimony or produce evidence relevant to an investigation. The advocate could not hold a hearing on a complaint that involved a matter that had been protested or appealed and for which a final determination or decision has not been issued by the UIA, administrative law judge, or unemployment insurance appeals commission.
- Require the advocate to advise a complainant of all available administrative remedies.
- Require the UIA, upon the advocate's request, to provide a progress report on its processing of the complaint.

- After the UIA takes administrative action on a complaint, allow the advocate to conduct further investigation at the request of the complainant or on his or her own initiative.
- Require the advocate, not later than 10 days after receiving a complaint, to notify the complainant and the UIA if he or she will conduct an investigation or, if not, to notify the complainant in writing with the reasons for the decision.
- Allow the council to hold a hearing if requested by the advocate and allow the council to administer oaths, subpoena witnesses, and examine the books and records of the UIA.
- Require the office to maintain confidentiality regarding all matters under investigation and prohibit disclosure of personal identifying information of a complainant, claimant, or employer to another person except as allowed under the bill as necessary for the advocate to perform his or her duties. The bill also would deem correspondence between the office and a claimant to be confidential and privileged communication and would exempt it from disclosure under FOIA.
- Require the advocate to prepare a report of the findings of an investigation, if any of the following are found, and submit it, along with any recommendations, to the council not later than 30 days completing the investigation:
 - A matter that should be considered by the UIA.
 - An administrative act that should be modified or canceled.
 - A statute or rule that should be altered.
 - An administrative act for which justification is necessary.
 - Any other significant concerns.
- Require the council to send a copy of the report to the UIA and the complainant.
- Require the advocate, before submitting a report to the council that contains a conclusion or recommendation expressly or impliedly criticizing a person or the UIA or before publishing an opinion adverse to a person or the UIA, to take certain actions as specified in the bill.
- Require the advocate to submit any quarterly report from the UIA required under House Bill 5549 to the standing committees of the Senate and House of Representatives with oversight of the UIA if the report listed one or more claims of administrative law decisions that had been or not been appealed by the UIA to the Unemployment Insurance Appeals Commission.
- Require the advocate to submit to the Senate and House of Representatives oversight committees a U.S. Department of Labor monitoring review, the UIA response to the monitoring review, and the corrective action plan adopted in response to the monitoring review if received from the UIA under HB 5549.
- Require the advocate to submit an annual report to the council and the legislature on the conduct of the office that includes information required by the council.
- Prohibit the annual report or a quarterly report submitted to the advocate by the UIA that must be submitted to the council and legislature as described above from including or disclosing any personal identifying information of individuals from whom the advocate acquired information during an investigation.
- Prohibit the UIA from penalizing in any way a complainant for filing a complaint, providing information to the council or a legislator, or cooperating with the advocate in the investigation of a complaint.
- Prohibit the UIA or a person from hindering a lawful action of the advocate or employees of the office or willfully refusing to comply with a lawful demand of the office.

- Provide that the authority granted to the advocate would be in addition to all other authority granted by law to any other office or agency relative to a remedy or right of appeal objection for a complainant or a procedure provided for the inquiry into, or investigation of, any matter. Further, the advocate's authority under the bill would not limit or affect any other remedy or right of appeal or objection provided by law and could not be considered to be exclusionary.

House Bill 5549 would add section 32f to the Michigan Employment Security Act to require the UIA to submit a report to the Office of the Unemployment Insurance Advocate that includes, among other things, the following information for each calendar quarter:

- Certain information related to appeals made to an administrative law judge under section 32a of the act, such as the total number of appeals delineated between appeals made by claimants and appeals made by employers and the total number of appeals that the UIA appealed to the Unemployment Insurance Appeals Commission.
- The average number of days between the date of the administrative law judge's decision and the date the UIA began or resumed paying benefits to the claimant.
- The total number of administrative law judge decisions that were and were not appealed by the UIA to the Unemployment Insurance Appeals Commission.
- The total number of claims for benefits for which an administrative law judge had issued a decision on a matter related to the claim and for which the UIA had not begun paying benefits to the claimant or, if payments had ceased, had not resumed paying the benefits.

No personal identifying information could be included by the UIA in the report.

No later than 30 days after a monitoring review, or a similar review or report, is issued by the U.S. Department of Labor regarding the UIA or an issue related to unemployment benefits or unemployment taxes in Michigan, the UIA would have to submit a copy of the monitoring review, the agency's response to the monitoring review, and the corrective action plan adopted in response to the monitoring review, as applicable, to the Office of the Unemployment Insurance Advocate.

Proposed MCL 421.32f

House Bill 5550 would add section 10b to the Michigan Employment Security Act to require the UIA to post and keep posted on its public website the amount of money in the Unemployment Compensation Fund. The UIA would have to update that amount each month. The UIA would have to notify the state budget director and the Senate and House of Representatives standing committees on Appropriations if either of the following occurs:

- The money in the fund changes from being greater than or equal to \$2.5 billion to being less than \$2.5 billion.
- The money in the fund changes from being greater than or equal to \$500.0 million to being less than \$500.0 million.

Proposed MCL 421.10b

House Bill 5551 would amend section 62 of the Michigan Employment Security Act, which addresses the actions to be taken when the UIA determines that a person has obtained benefits

he or she is not entitled to or when the agency or an appellate authority reverses a prior qualification for benefits.

The bill would delete a requirement that the UIA issue a determination requiring restitution within three years after the date of finality of a determination, redetermination, or decision reversing a previous finding of benefit entitlement.

Currently, with some exceptions, the act allows the UIA to recover the amount of the benefits that the individual was not eligible to receive, plus interest, but requires certain determinations pertaining to restitution to be issued within a three-year time frame. The bill would shorten the period for issuance of the applicable determinations to one year. However, the bill would retain the current time frame of three years in which the UIA may initiate an administrative or court action to recover improperly paid benefits if the claimant had made an intentional false statement, misrepresentation, or concealed material information and also would retain the UIA's ability to issue a restitution determination after that three-year period if the agency had filed a civil action within the three-year period. In addition, if identity fraud were suspected in a case, the UIA could initiate administrative or court action to recover improperly paid benefits from an individual or issue a restitution determination at any time.

Currently, any determination made by the UIA under section 62 is final unless an application for a redetermination is filed in accordance with section 32a of the act. Under the bill, a determination that a benefit has been improperly paid would not be final, and the UIA could not take action to recover an improperly paid benefit or to enforce interest, penalties, or any additional amount assessed, unless the UIA provides to the claimant notice of the claimant's rights to request an in-person or telephone hearing, to have counsel present at the hearing, and to appeal the determination. The UIA would have to do all of the following to provide the required notice:

- Mail the notice to the claimant's last known address.
- Send the notice to the claimant through the UIA's computer system.
- Either speak with the claimant in person or via telephone about the claimant's rights or send the notice via email to the claimant's last known email address.

MCL 421.62

House Bill 5553 would add section 32g to the Michigan Employment Security Act to establish a time frame within which the UIA must examine a claim and make a determination. Currently, the UIA must designate representatives who are required to *promptly* examine claims and make a determination on the facts. Instead, notwithstanding any other provision of the act, the bill would require the UIA to examine a claim for benefits and make a determination on the facts not later than 15 calendar days after receiving the claim and not later than 20 calendar days if the claim had been received during an *exigent period*.

Exigent period would mean a group of one or more consecutive calendar weeks that immediately follows a *measuring week* if the total number of claims for benefits received by the unemployment agency in each calendar week in the group is at least 50% greater than the total number of claims for benefits received by the UIA in the immediately preceding measuring week.

Measuring week would mean a calendar week in which the total number of claims for benefits received by the UIA is less than 50% of the total number of claims for benefits received by the UIA in the immediately following calendar week.

If a determination could not be made within the required time frames because the claimant or employer did not provide the UIA with necessary information as required by the act, the UIA would have to immediately notify the claimant that a determination was unable to be made and the reasons why.

Administrative law judges conduct hearings under the act, such as an appeal from a redetermination. Under the bill, when providing notice of a hearing to the interested parties, the administrative law judge also would have to provide the items regarding the matter that he or she had received under proposed section 33e (HB 5554). If a new or updated item were received, the administrative law judge would have to immediately provide it to all interested parties.

MCL 431.32 and 431.33 and proposed MCL 431.32g

House Bill 5554 would add section 32e to the Michigan Employment Security Act to require the UIA, notwithstanding other provisions of the act, to provide certain items to an administrative law judge who is conducting a hearing under the act. The UIA would have to provide all of the following items in the agency's possession that relate to the matter before the judge:

- All correspondence between the UIA and the interested parties, including, but not limited to, letters, determinations, redeterminations, and recordings of telephone calls.
- The original and all amended applications for benefits submitted by the claimant.
- All information submitted by the claimant to verify his or her identity.

The UIA could provide an item not listed above that is related to the matter before the administrative law judge. In addition, if the UIA failed to provide the required items, the administrative law judge conducting the hearing would be required to immediately notify the unemployment insurance advocate of the violation.

Proposed MCL 421.32e

House Bill 5552 is tie-barred to HBs 5549 and 5554, and those bills are tie-barred to HB 5552. House Bill 5553 is tie-barred to HB 5554. A bill cannot take effect unless each bill to which it is tie-barred is also enacted.

FISCAL IMPACT:

House Bill 5549 would not have an appreciable fiscal impact on the UIA, housed within the Department of Labor and Economic Opportunity (LEO). The bill would require the UIA to submit quarterly reports and to complete other reporting, but the costs for producing such reports would likely be sufficiently offset by existing departmental resources.

House Bill 5550 would not have an appreciable fiscal impact on the UIA. The reporting required under the bill would likely be sufficiently offset by existing departmental resources.

House Bill 5551 would have an indeterminate net fiscal impact on the UIA. The bill's impact on UIA revenues is indeterminate because the net impact from changes to the time limits when UIA could pursue recoveries of improperly paid benefits would be indeterminate. The impact from lowering the time limit in some cases and eliminating the limit in cases of identity fraud would depend on case volumes and other factors, which cannot be ascertained at present, as they are dependent on future events. The notification requirements under the bill would likely create additional costs for UIA, however, the magnitude of those costs would largely depend on case volumes, which are presently indeterminate.

House Bill 5552 would increase costs for the Legislative Council by an unknown amount and would have no fiscal impact on local units of government. The amount of increased costs to the Legislative Council would depend on factors concerning the Office of the Unemployment Insurance Advocate, such as how many staff members will be required by the legislature and any other legislative expectations. Specifically, increased costs would result from staff salaries, benefits, office space, office supplies, travel, and any other costs incurred for the operation and administration of the Office of the Unemployment Insurance Advocate. For context, the FY 2021-22 appropriations for the Legislative Corrections Ombudsman total \$1,022,000, and the office currently includes eight staff members. In FY 2021-22, the Michigan Veterans Facility Ombudsman is appropriated \$319,900, and the office currently has one staff member.

The UIA would likely incur costs responding to complaint investigations. These costs would be directly correlated to the complexity of any complaint. Whether the actions of the office would result in any state fiscal impact subsequent to the resolution of a complaint cannot be estimated and would depend on the nature of the complaint and the agency response.

House Bill 5553 would have an indeterminate net fiscal impact on the UIA. The bill's impact on UIA revenues is indeterminate because the net impact from changes to the time limits when UIA could pursue recoveries of improperly paid benefits would be indeterminate. The impact from lowering the time limit in some cases and eliminating the limit in cases of identity fraud would depend on case volumes and other factors, which cannot be ascertained at present, as they are dependent on future events. The notification requirements under the bill would likely create additional costs for UIA, however, the magnitude of those costs would largely depend on case volumes, which are presently indeterminate.

House Bill 5554 would not have a significant fiscal impact on the UIA.

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