

**STATE OF MICHIGAN
102ND LEGISLATURE
REGULAR SESSION OF 2024**

Introduced by Senator Cavanagh

ENROLLED SENATE BILL No. 981

AN ACT to amend 1936 (Ex Sess) PA 1, entitled “An act to protect the welfare of the people of this state through the establishment of an unemployment compensation fund, and to provide for the disbursement thereof; to create certain other funds; to create the Michigan employment security commission, and to prescribe its powers and duties; to provide for the protection of the people of this state from the hazards of unemployment; to levy and provide for contributions from employers; to levy and provide for obligation assessments; to provide for the collection of those contributions and assessments; to enter into reciprocal agreements and to cooperate with agencies of the United States and of other states charged with the administration of any unemployment insurance law; to furnish certain information to certain governmental agencies for use in administering public benefit and child support programs and investigating and prosecuting fraud; to provide for the payment of benefits; to provide for appeals from redeterminations, decisions and notices of assessments; and for referees and a board of review to hear and decide the issues arising from redeterminations, decisions and notices of assessment; to provide for the cooperation of this state and compliance with the provisions of the social security act and the Wagner-Peyser act passed by the Congress of the United States of America; to provide for the establishment and maintenance of free public employment offices; to provide for the transfer of funds; to make appropriations for carrying out the provisions of this act; to prescribe remedies and penalties for the violation of this act; and to repeal all acts and parts of acts inconsistent with this act,” by amending sections 3, 4, 5, 5a, 5b, 6a, 8, 9, 10, and 10a (MCL 421.3, 421.4, 421.5, 421.5a, 421.5b, 421.6a, 421.8, 421.9, 421.10, and 421.10a), section 3 as amended by 2003 PA 174, section 4 as amended and section 5b as added by 2002 PA 192, section 5 as amended by 1983 PA 164, section 5a as amended by 2017 PA 227, section 6a as amended by 2011 PA 269, section 8 as amended by 1996 PA 535, section 10 as amended by 2016 PA 517, and section 10a as added by 2011 PA 268; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 3. (1) The unemployment insurance agency shall establish policies in conformity with this act to do all of the following:

- (a) Reduce and prevent unemployment.
- (b) Promote the reemployment of unemployed workers throughout this state in every other way that may be feasible.
- (c) Carry on and publish the results of investigations and research studies.
- (d) Investigate, recommend, advise, and assist in the establishment and operation, by municipalities, counties, school districts, and this state, of reserves for public works to be used in times of business depression and unemployment.

(2) As used in this act:

(a) "Bureau", "commission", "unemployment agency", and "unemployment insurance agency" mean the unemployment insurance agency created within the department of labor and economic growth under Executive Reorganization Order No. 2003-1, MCL 445.2011.

(b) "Director" means the director of the unemployment insurance agency.

(c) "Experience account" means an account in the unemployment compensation fund showing an employer's experience with respect to contribution payments and benefit charges under this act, determined and recorded in the manner provided in this act. A reference in this act to an employer's "experience record" or "rating account" shall be construed to include reference to the employer's experience account.

(d) "Nonchargeable benefits account" and "solvency account" mean the account in the unemployment compensation fund maintained as provided in section 17(2) and (3).

Sec. 4. (1) The unemployment insurance agency shall promulgate rules to implement this act under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(2) The unemployment insurance agency shall make available to the public on request statements of all informal rules or criteria of decision, administrative policies, or interpretations, which may be used by the unemployment insurance agency or any of its agents or employees in any manner, except as provided under section 11.

Sec. 5. The director must receive an annual salary and is entitled to the actual and necessary expenses incurred in the discharge of the director's official duties, to be paid from the administration fund. The director shall devote the director's entire time to the duties of the office. The director may appoint employees and assistants as necessary for the proper exercise of the director's official duties and may delegate to those employees or assistants the authority as the director considers reasonable and necessary. Employees and assistants must receive actual and necessary expenses incurred in the discharge of official duties. Compensation and expenses of the director, assistants, and employees must be paid from the administration fund.

Sec. 5a. (1) The unemployment insurance agency shall develop and implement a program to provide, on request, claimant and employer advocacy assistance or consultation. The purpose of the program is to provide information, consultation, and representation to claimants and employers in proceedings conducted by the Michigan office of administrative hearings and rules, the unemployment insurance appeals commission, or both.

(2) The program must be funded from the penalty and interest account in the contingent fund. If the program does not operate or the legislature does not approve a yearly appropriation for the program in an amount at least equal to the maximum yearly expenditure for the program as provided in this subsection, then the provision of section 19(a)(5) reducing the maximum nonchargeable benefits component from 1% to 1/2 of 1% is not effective for a tax year for which the appropriation is not made or in which the program does not operate. The maximum amount of the expenditure for the program each year must not exceed \$1,500,000.00.

(3) The appropriations must be used to finance all costs connected with the program. Costs related to the representation of claimants must not exceed 60% of the maximum expenditure allowed in each fiscal year, and costs related to the representation of employers must not exceed 40% of the maximum expenditure allowed in each fiscal year.

(4) Before an individual provides advocacy assistance services under this section, the individual must apply to the unemployment insurance agency for approval. The unemployment insurance agency shall develop standards for individuals who provide advocacy assistance services including standards relating to knowledge of this act and the practices and procedures of the Michigan office of administrative hearings and rules and the unemployment insurance appeals commission. An individual who is not an attorney may provide advocacy assistance services. The unemployment insurance agency shall develop a schedule for payment of individuals providing advocacy assistance services. Active unemployment insurance agency or state employees shall not provide advocacy assistance services. The only active state or unemployment insurance agency employees involved in the program are those supervising or coordinating the program.

(5) The unemployment insurance agency may include in the program standards regarding the provision of advocacy assistance services in precedent setting cases, multclaimant cases, cases without merit, or regarding other cases or factors as determined by the unemployment insurance agency. However, to the extent that funding is available from the appropriation under subsection (2), the unemployment insurance agency shall not withhold advocacy assistance services in cases involving fraud under section 54. If the unemployment insurance agency makes a final determination or final redetermination or an administrative law judge, the unemployment

insurance appeals commission, or a court makes a final order that an employer or claimant who received advocacy assistant services committed fraud under section 54, the unemployment insurance agency shall make an effort to recover from the employer or claimant, respectively, an amount equal to the representation fees associated with the advocacy assistance services provided to the employer or claimant, respectively.

(6) Individuals who are approved by the unemployment insurance agency to provide advocacy assistance services must enter into a contract with the unemployment insurance agency that states that the payments made based on the schedule established by the unemployment insurance agency are payment in full for all services rendered and expenses incurred and that the claimant or employer who has received the benefit of the services will not be billed for and is not liable for the cost of the services or representation provided. An individual approved by the unemployment insurance agency to provide advocacy assistance services must accept only the fee approved by the unemployment insurance agency for the services and must not accept any other fee for the services from the claimant or the employer.

(7) If a claimant or an employer receives advocacy assistance services beyond an initial consultation, the other party in the case must be immediately notified. The unemployment insurance agency shall include in the program provisions to determine the method and the timeliness by which immediate notice must be provided. The unemployment insurance agency shall not approve the same individual to provide advocacy assistance services for both claimants and employers. The unemployment insurance agency shall clearly designate each individual approved to provide services under this section as representing either claimants or employers. An individual approved by the unemployment insurance agency to provide advocacy assistance services is not entitled to payment under this section for representing the individual's own personal interests. An active state employee shall not represent a claimant or an employer under this program at a hearing conducted by the Michigan office of administrative hearings and rules or the unemployment insurance appeals commission. However, this subsection does not prohibit an employee of the unemployment insurance agency from participating in a case in which the unemployment insurance agency is an interested party or from representing the unemployment insurance agency's interest when acting as an administrator for a federal program as required by federal law.

(8) The unemployment insurance agency shall make an annual report to the legislature on the operation of the program. The first report under this subsection is due within 60 days after the first anniversary date of the beginning of the program. Each report under this subsection must include, but not be limited to, the following for the previous 12-month period:

- (a) Number and type of claimants served.
- (b) Number and type of employers served.
- (c) Costs to the program of the claimants served.
- (d) Costs to the program of the employers served.
- (e) An analysis of the impact of the services provided on the appeal system provided by this act.

Sec. 5b. The director of the unemployment insurance agency is appointed by the governor.

Sec. 6a. (1) Except as otherwise provided in section 11, a writing prepared, owned, used, in the possession of, or retained by the unemployment insurance agency in the performance of an official function is subject to all of the following:

- (a) The freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.
- (b) Sections 284 to 292 of the management and budget act, 1984 PA 431, MCL 18.1284 to 18.1292.
- (c) The Michigan history center act, 2016 PA 470, MCL 399.801 to 399.812.

(2) Electronically stored records must be retained for the same minimum retention period as required for the original record. If an original document is destroyed or disposed of under this section, a reproduction of the document reproduced in a medium pursuant to the records reproduction act, 1992 PA 116, MCL 24.401 to 24.406, is admissible in evidence in the same manner as the original in any proceeding before the unemployment insurance agency, an administrative law judge, the unemployment insurance appeals commission, and in all courts. Information contained on printouts prepared by automatic data processing equipment is also admissible in evidence, if the original documents from which the information was obtained would have been admissible.

Sec. 8. A basic purpose of this act is to lighten the burden of involuntary unemployment on the unemployed worker and the worker's family. In view of this, the maximum weekly benefit rates under section 27(b) are related to the cost of the necessities of life for the various dependency classes recognized in that section. At the same time, the legislature has concluded that the maximum weekly benefit rates established in that section will finance the

most favorable standard of living consistent with maintaining for unemployed individuals generally a proper incentive to seek and accept new work. To maintain this optimum relationship between maximum weekly benefit rates and the standard of living of the unemployed individual, the maximum weekly benefit rates established must be reviewed annually. The unemployment insurance agency shall annually, not later than February 28, compare the United States Consumer Price Index from the United States Department of Labor, Bureau of Labor Statistics, for the preceding December with the corresponding United States Consumer Price Index from the United States Department of Labor, Bureau of Labor Statistics, for the base month. The base month is the month of December preceding the most recent calendar year in which an adjustment of maximum weekly benefit rates is made. If in a calendar year the United States Consumer Price Index from the United States Department of Labor, Bureau of Labor Statistics, for the preceding December has increased or decreased as compared to the base month, the unemployment insurance agency shall determine the percentage of that increase or decrease. The unemployment insurance agency shall then multiply the maximum weekly benefit rate for each dependency class by this percentage. If the product obtained is \$1.00 or more, the unemployment insurance agency shall report that fact to the governor and the legislature.

Sec. 9. (1) The unemployment insurance agency or its duly appointed agents may examine or copy the books, records, and papers of any employing unit relating to any requirement pertaining to this act. Any member of the unemployment insurance agency or its duly authorized agents may issue a subpoena that requires any person to do any of the following:

(a) Appear before the unemployment insurance agency or its duly authorized agents at any reasonable time and place.

(b) Be examined with reference to any matter within the scope of the inquiry or investigation being conducted by the unemployment insurance agency.

(c) Produce any books, records, or papers pertaining to the question involved.

(2) Any member of the unemployment insurance agency or its duly authorized agents may administer an oath or affirmation to a witness in any matter before the unemployment insurance agency, certify to official acts, and take depositions.

(3) If a person disobeys a subpoena, the unemployment insurance agency or the party on whose behalf the subpoena was issued may invoke the aid of any circuit court of this state to require the attendance and testimony of witnesses and the production of books, records, and papers pertaining to the question involved. Any of the circuit courts of this state within the jurisdiction of which the inquiry is carried on may, if the refusal to obey a subpoena continues, issue an order requiring the person to appear before the unemployment insurance agency or its duly authorized agents and to produce books, records, and papers if so ordered and give evidence touching the matter in question. The circuit court may punish any failure to obey its order as a contempt of court.

(4) An individual is not excused from testifying or from producing any books, records, or papers in any investigation, or upon any hearing, when ordered to do so by the unemployment insurance agency or its duly authorized agents, on the ground that the testimony or evidence, documentary or otherwise, may tend to incriminate the individual or subject the individual to a criminal penalty. An individual must not be prosecuted or subjected to any criminal penalty for, or on account of, any transaction made or thing concerning which the individual is compelled, upon the claiming of the individual's privilege to testify. An individual who testifies is not exempt from prosecution and punishment for perjury committed in testifying.

Sec. 10. (1) There is created in the department of treasury a special fund to be known and designated as the administration fund (Michigan employment security act). Any balances in the administration fund at the end of any fiscal year of this state must be carried over as a part of the administration fund and do not revert to the general fund of this state. Except as otherwise provided in subsection (3), all money deposited into the administration fund under this act must be appropriated by the legislature to the unemployment insurance agency to pay the expenses of the administration of this act.

(2) The administration fund must be credited with all money appropriated to the fund by the legislature, all money received from the United States or any agency of the United States for that purpose, and all money received by this state for the fund. All money in the administration fund that is received from the federal government or any agency of the federal government or that is appropriated by this state for the purposes of this act, except money requisitioned from the account of this state in the unemployment trust fund pursuant to a specific appropriation made by the legislature in accordance with section 903(c)(2) of title IX of the social security act, 42 USC 1103, and with section 17(3)(f), must be expended solely for the purposes and in the amounts found necessary by the appropriate agency of the United States and the legislature for the proper and efficient administration of this act.

(3) All money requisitioned from the account of this state in the unemployment trust fund pursuant to a specific appropriation made by the legislature in accordance with section 903(c)(2) of title IX of the social security act, 42 USC 1103, and with section 17(3)(f), must be deposited in the administration fund. Any money that remains unexpended at the close of the 2-year period beginning on the date of enactment of a specific appropriation must be immediately redeposited with the secretary of the treasury of the United States to the credit of this state's account in the unemployment trust fund; or any money that for any reason cannot be expended or is not to be expended for the purpose for which appropriated before the close of this 2-year period must be redeposited at the earliest practicable date.

(4) If any money received after June 30, 1941, from the appropriate agency of the United States under title III of the social security act, 42 USC 501 to 504, or any unencumbered balances in the administration fund (Michigan employment security act) as of that date, or any money granted after that date to this state under the Wagner-Peyser act, as that term is defined in section 12, or any money made available by this state or its political subdivisions and matched by money granted to this state under the Wagner-Peyser act, is found by the appropriate agency of the United States, because of any action or contingency, to have been lost or been expended for purposes other than, or in amounts in excess of, those found necessary by that agency of the United States for the proper administration of this act, the money must be replaced by money appropriated for that purpose from the general funds of this state to the administration fund (Michigan employment security act) for expenditure as provided in this act. Upon receipt of notice of such a finding by the appropriate agency of the United States, the unemployment insurance agency shall promptly report the amount required for replacement to the governor and the governor shall, at the earliest opportunity, submit to the legislature a request for the appropriation of that amount. This subsection does not relieve this state of its obligation with respect to funds received before July 1, 1941, under the provisions of 42 USC 501 to 504.

(5) If any funds expended or disbursed by the unemployment insurance agency are found by the appropriate agency of the United States to have been lost or expended for purposes other than, or in amounts in excess of, those found necessary by that agency of the United States for the proper administration of this act, and if these funds are replaced as provided in subsection (4) by money appropriated for that purpose from the general fund of this state, then the director who approved the expenditure or disbursement of those funds for those purposes or in those amounts, is liable to this state in an amount equal to the sum of money appropriated to replace those funds.

(6) There is created in the department of treasury a separate fund to be known as the contingent fund (Michigan employment security act). All solvency taxes collected under section 19a and all interest on contributions, penalties, and damages collected under this act must be deposited into the contingent fund (Michigan employment security act). All amounts in the contingent fund (Michigan employment security act) and all earnings on those amounts are continuously appropriated without regard to fiscal year for the administration of the unemployment insurance and workforce development programs, including, but not limited to, the development and execution of workforce training programs, and for the payment of interest on advances from the federal government to the unemployment compensation fund under 42 USC 1321, to be expended only if authorized by the unemployment insurance agency. Money deposited from the solvency taxes collected under section 19a must not be used for the administration of the unemployment insurance agency, except for the repayment of loans from the state treasury and interest on loans made under section 19a(3). However, an authorization or expenditure must not be made as a substitution for a grant of federal funds or for any portion of a grant that, in the absence of an authorization, would be available to the unemployment insurance agency. Immediately upon receipt of administrative grants from the appropriate agency of the United States to cover administrative costs for which the unemployment insurance agency has authorized and made expenditures from the contingent fund, those grants must be transferred to the contingent fund to the extent necessary to reimburse the contingent fund for the amount of those expenditures. Amounts needed to refund interest, damages, and penalties erroneously collected must be withdrawn and expended for those purposes from the contingent fund upon order of the unemployment insurance agency. Any amount authorized to be expended for administration under this section may be transferred to the administration fund. An amount not needed for the purpose for which authorized must, upon order of the unemployment insurance agency, be returned to the contingent fund. Amounts needed to refund erroneously collected solvency taxes must be withdrawn and expended for that purpose upon order of the unemployment insurance agency.

Sec. 10a. (1) The obligation trust fund is created as a separate fund in the state treasury. The assets of the obligation trust fund must not be commingled with any other fund and must not be considered part of the general fund of this state.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. All obligation assessments on employers collected under section 26a; all interest on payments, penalties, and damages collected in connection with the obligation assessments made under section 26a; and a portion of the

proceeds of any obligations, as described in section 26a, in amounts specified by the issuer, must be deposited into the obligation trust fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) Money in the obligation trust fund at the close of the fiscal year remains in the fund and does not lapse to the general fund. Money in the fund is continuously appropriated for the purposes specified in section 26a.

(4) The department of labor and economic opportunity is the administrator of the fund for auditing purposes.

(5) The department of labor and economic opportunity shall expend money from the fund only for 1 or more of the following purposes:

(a) To pay obligations, administrative expenses, and associated expenses described in section 26a.

(b) To refund erroneously collected assessments under section 26a.

(c) For any other purpose described in section 26a(1).

Enacting section 1. Sections 3a, 4a, 6, and 6b to 7 of the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.3a, 421.4a, 421.6, and 421.6b to 421.7, are repealed.

Enacting section 2. This amendatory act does not take effect unless Senate Bill No. 40 of the 102nd Legislature is enacted into law.



Secretary of the Senate



Clerk of the House of Representatives

Approved _____

Governor