

## UNEMPLOYMENT INSURANCE PRIVACY

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**House Bill 4239**

**Sponsor: Rep. Bob Constan**

**Committee: Labor**

**Complete to 2-20-09**

### A SUMMARY OF HOUSE BILL 4239 AS INTRODUCED 2-10-09

The bill would amend the Michigan Employment Security Act's provisions concerning the circumstances under which otherwise confidential unemployment insurance information can be disclosed. In general, the amendments are consistent with federal regulations (20 CFR 603) and Department of Labor directives.

Generally the act provides that information obtained from employers and individuals is confidential and not subject to disclosure or public inspection, except in certain limited circumstances. House Bill 4239 would clarify that information could not be disclosed, except as otherwise provided, in a manner that reveals particular identifying information about an individual or past or present employer, including when such information could be combined with other publicly available information.<sup>[1]</sup> Additionally, the bill would specify that disclosure of otherwise confidential information is permitted in the following circumstances:

- To agents of "interested parties"<sup>[2]</sup> if the agent provides the Unemployment Insurance Agency with a written authorization or representation from the represented party.<sup>[3]</sup>
- To attorneys retained for purposes related to a claim for unemployment insurance benefits, upon the attorney's assertion that he or she represents the interested party.<sup>[4]</sup>
- To elected public officials in the performance of constituent services, if the official provides evidence that the constituent authorized the disclosure.<sup>[5]</sup>
- To other third parties (not acting as agents), if the third party presents a release from an interested party. The release would have to be signed by the interested party; specify the information to be released; list the individuals who may receive the released information; and state the specific purpose for which the information is sought. The purpose of the release would be limited to providing a service or benefit to the individual subject to the release or in administering or evaluating a public program related to the release. <sup>[6]</sup>

The act permits disclosure of otherwise confidential information to a college, university, or state agency conducting research of a "public service nature." The bill specifies that

the release of otherwise confidential information could be made to a college, university, or state agency acting as a contractor or agent of a public official and conducting research in furtherance of the public official's duties. The bill would require the UIA to enter into a written agreement with a public official ensuring that the agent or contractor maintains the confidentiality of the information provided. If the agreement is violated, it would be terminated and the public official would be subject to the penalties of 90 days imprisonment and/or a fine of \$1,000. [7]

The bill also provides that a recipient of otherwise confidential information would have to utilize such information as contained in the written disclosure agreement with the UIA, and could not subsequently disclose such information to another individual or entity without the prior approval of the UIA.

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[1] 20 CFR 603.4(b) provides that state unemployment insurance laws "must include provision for maintaining the confidentiality of any [unemployment insurance] information which reveals the name or any identifying particular about any individual or any past or present employer or employing unit, or which could foresee-ably be combined with other publicly available information to reveal any such particulars, and must include provision for barring the disclosure of any such information, except as provided in this part."

[2] Rule 201 (R 421.201) generally defines "interested party" to mean any one whose statutory rights or obligations might be affected by the outcome or disposition of the determination, re-determination, or decision. The rule includes specific provisions as to when a claimant, an employer, and the UIA are considered to be interested parties.

[3] 20 CFR 603.5(d) permits disclosure of otherwise confidential information to agents acting for or in place of an individual or employer with a written release (or other form of consent) of the individual or employer being represented.

[4] 20 CFR 603.5(d) permits disclosures of otherwise confidential information to attorneys retained for purposes related to a state's unemployment insurance law, if the attorney asserts that he or she is representing the individual or employer.

[5] 20 CFR 603.5(d) permits disclosure of otherwise confidential information to an elected official performing constituent services, if the official presents reasonable evidence (such as a letter from the individual or employer requesting assistance or a written record of a telephone request from the individual or employer) that the individual or employer has authorized such disclosure.

[6] 20 CFR 603.5(d)

[7] 20 CFR 603.5(e) permits disclosure of otherwise confidential information to a public official for use in the performance of his or her official duties, which includes research related to the law administered by the public official. The regulations, 20 CFR 603.5(f), also note that disclosure of otherwise confidential information to an agent or contractor of a public official in the performance of his or her official duties is also permitted. Discussion of these provisions, in the context of permitting disclosure for research at colleges and universities, is included in the DOL's Notice of Final Rule (71 FR 56830, September 27, 2006), which states "[t]he proposed rule described 'performance of official duties' as administration or enforcement of law or, in the case of the legislative branch oversight of [the UI] law. It also stated that although research by a public official was permitted under this exception, this exception did not include research by an individual at a public or private university. However, it also stated that, where appropriate, a researcher could obtain access to confidential [UI] information under the exceptions provided for in proposed paragraph (f) (agent or contractor of a public official) or proposed paragraph (d)(2) (third party). Under paragraph (f) of the proposed rule, the public official would maintain responsibility for insuring that the confidential [UI] information is safeguarded by its agent (for example, the researcher). The Department continues to believe that there is less risk of unauthorized use or disclosure of confidential UI information if responsibility for safeguarding confidentiality remains within the executive or legislative branches of government."

[8] 20 CFR 603.5(d)

## **FISCAL IMPACT:**

The bill is necessary to ensure the continued receipt of federal funds for the administration of the state's unemployment insurance program (as described later), so it has significant revenue impact.

The bill would have no significant cost implications to the state or local units of government. The bill amends the unemployment insurance disclosure provisions of the Michigan Employment Security Act in a manner consistent with federal regulations (20 CFR 603) and U.S. Department of Labor directives. The regulations contain a number of exceptions to the confidentiality requirements "only if authorized by State law and if such disclosure does not interfere with the efficient administration of the State [unemployment insurance] law."<sup>[8]</sup>

The bill requires a written agreement between the Unemployment Insurance Agency within the Department of Energy, Labor, and Economic Growth, and the public official receiving otherwise confidential information. The department already has a number of disclosure agreements in place, so the costs incurred for developing a written agreement with public officials would be immaterial. Additionally, the bill would impose a penalty of 90 days' imprisonment and/or a fine of \$1,000 on public officials and contractors for improperly disclosing confidential information. This would result in an indeterminate, though likely insignificant, amount of revenue credited to the Contingent Fund, Penalty and Interest Account, which is expended, as provided in Section 10 [MCL 421.10(6)], to pay the administrative expenses of the Unemployment Insurance Agency and to pay interest payments on cash-flow advances (loans) made by the U.S. Department of Labor.

The department has indicated that it has not imposed any penalties for improperly disclosing confidential information; it is assumed that this will continue to be the case. Finally, the bill, in an added Section 11(6), prohibits recipients of confidential information from releasing such information without prior approval from the UIA or from using the information received in a manner inconsistent with the written disclosure agreement. The bill does not specify a penalty for such a violation, although Section 54 [MCL 421.54(a)] of the act imposes a penalty on "a person who willfully violates or intentionally fails to comply with any of the provisions of the act...for which a penalty is not otherwise provided." The applicable penalty under Section 54 appears to be a combination of imprisonment or community service lasting up to one year, although there is no associated fine imposed. Again, however, the department indicates that such violations are rare and, as such, the related costs are not expected to be significant.

The bill does, however, have significant revenue implications for the Department of Energy, Labor, and Economic Growth. In general, Title III of the federal Social Security Act requires that states, as a condition of receiving federal funding for the administration of state unemployment insurance programs, enact UI laws that conform to certain requirements. The U.S. Department of Labor has indicated to the UIA that provisions in the MESA permitting disclosure of UI information to colleges and universities to conduct research of a public service nature does not conform to federal requirements. Current

state law allowing disclosure for research purposes is broader in scope than that permitted by federal regulations (see footnote 7 above). As a result, the bill is necessary to ensure the continued receipt of federal funds for the administration of the state's unemployment insurance program. The Fiscal Year 2008-09 appropriation totals approximately \$136.5 million, which includes funding for UIA administrative costs, bureau and departmental overhead costs, information technology, and the MES Board of Review. Additionally, a state law's conformity with federal requirements is also a necessary condition to enable Michigan employers to receive a credit against federal unemployment taxes that effectively reduces the FUTA rate from 6.2 percent to 0.8 percent on taxable wages.

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