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BILL  ANALYSIS

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Senate Bill 209 (as introduced 2-10-09)  
Sponsor: Senator Jud Gilbert, II  
Committee: Commerce and Tourism

Date Completed: 2-10-09

### **CONTENT**

**The bill would amend the Michigan Employment Security Act to do all of the following:**

- Allow disclosure of confidential information to public officials in the performance of their official duties, and public officials' agents and contractors.**
- Allow disclosure of confidential information to a college, university, or State agency acting as a contractor or agent of a public official.**
- Require the Unemployment Insurance Agency (UIA) to enter into a written enforceable agreement with a public official that ensured the confidentiality of information released to a college, university, or State agency acting as the official's contractor or agent.**
- Subject a public official to a criminal penalty if the confidentiality agreement were violated.**
- Allow the disclosure of information to an interested party's agent, under certain circumstances.**
- Prohibit a recipient of confidential information from redisclosing it without the UIA's written permission.**

#### Disclosure to Public Officials, Agents, & Contractors

Currently, information obtained from any employer or individual under the Act and determinations as to the benefit rights of any individual are confidential and may not be disclosed or open to public inspection, except to public employees in the performance of their official duties under the Act, in any manner that reveals the individual's or employer's identity. The bill also would allow disclosure to public officials in the performance of their official duties, and agents or contractors of public officials. The bill would prohibit information from being disclosed in a manner that revealed any identifying particulars about an individual or a past or present employer or that could be combined with other publicly available information to reveal identifying particulars.

In addition, the Act allows the Employment Security Commission to make information that it obtains available to colleges, universities, and public agencies of the State for use in connection with research projects of a public service nature. The bill would refer to a college, university, or agency of the State that was acting as a contractor or agent of a public official and conducting research that assisted the public official in carrying out the duties of the office. The bill would require the UIA to enter into a written, enforceable agreement with the public official that held him or her responsible for ensuring that the

agent or contractor maintained the confidentiality of the information. If the agreement were violated, it would be terminated and the public official could be subject to penalties that apply under Section 54(f) of the Act to a person associated with a college, university, or public agency who discloses confidential information. (Under Section 54(f), a person associated with a college, university, or public agency who makes use of any information obtained from the Commission in connection with a research project of a public service nature, in a manner that reveals the identity of any individual or employing unit, or for any purpose other than use in connection with that research project, is guilty of a misdemeanor punishable by up to 90 days' imprisonment and/or a maximum fine of \$1,000.)

#### Disclosure to Interested Parties' Agents

Under the Act, information in the Commission's possession that may affect a claim for benefits or a charge to an employer's experience account must be available to interested parties. The bill also would require that the information be made available to interested parties' agents, if the agents gave the UIA a written authorization of representation from the party represented. A written authorization of representation would not be required in any of the following circumstances:

- The request was made by an attorney who was retained for purposes related to a claim for unemployment benefits, upon the attorney's assertion that he or she represented the interested party.
- The request was made by an elected official performing constituent services and he or she presented reasonable evidence that the identified individual authorized the disclosure.
- The request was made by a third party who was not acting as an agent for an interested party and he or she presented a release from an interested party for the information.

A release presented by a third party would have to be signed by an interested party; specify the information to be released and all individuals who could receive it; and state the specific purpose for which the information was sought, that files of the State could be accessed to obtain the information, and that the information sought would be used only for the purpose indicated. The specified purpose would have to be limited to that of providing a service or benefit to the individual signing the release or carrying out administration or evaluation of a public program to which the release pertained.

#### Redisclosure Prohibition

The bill specifies that a recipient of confidential information could use the disclosed information only for purposes authorized by law and consistent with an agreement entered into with the UIA. The recipient could not redisclose the information to any other individual or entity without the UIA's written permission.

MCL 421.11

Legislative Analyst: Patrick Affholter

#### **FISCAL IMPACT**

The bill would bring the State into conformity with Federal law regarding the confidentiality of unemployment data. The U.S. Department of Labor Employment and Training Administration has notified the State that it is not in compliance with Federal law on this issue. Implementing the conforming provisions in the bill would have a minimal cost to the Unemployment Insurance Agency within the Department of Energy, Labor, and Economic Growth. If the State's noncompliance continues, however, it is possible that the State will be subject to Federal penalties. The Federal revenue that supports the cost of administering the Agency could be reduced. This funding totals \$136.5 million in FY 2008-09. In addition, the Federal unemployment tax rate paid by Michigan employers could be increased.

Currently, the Federal Unemployment Tax Act (FUTA) tax rate of 6.2% (paid on the first \$7,000 of taxable wages per employee) is reduced to 0.8% for Michigan employers due to the 5.4% FUTA tax credit awarded to states that are in compliance with Federal law. If Michigan remains out of compliance, this credit could be reduced or eliminated.

To the extent that public officials were convicted of violating a confidentiality agreement, local units would incur the costs of incarceration in local facilities. Public libraries would receive penal fine revenue.

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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.