

**SUBSTITUTE FOR
HOUSE BILL NO. 5552**

A bill to create the office of the unemployment insurance advocate; to provide a process for investigating certain complaints; to provide for the powers and duties of certain state governmental officers and entities; and to provide for penalties and remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act may be cited as the "unemployment insurance
2 advocate act".

3 Sec. 3. As used in this act:

4 (a) "Administrative act" includes an action, omission,
5 decision, determination, redetermination, recommendation, practice,
6 or other procedure of the unemployment agency.

7 (b) "Advocate", unless the context requires otherwise, means

1 the unemployment insurance advocate.

2 (c) "Claimant" means an individual who applies for benefits
3 under the Michigan employment security act.

4 (d) "Complainant" means a claimant or employer who submits a
5 complaint to the advocate under this act. Complainant includes a
6 representative of a claimant or employer who submits a complaint to
7 the advocate under this act.

8 (e) "Council" means the legislative council established under
9 section 15 of article IV of the state constitution of 1963.

10 (f) "Employer" means that term as defined in section 41 of the
11 Michigan employment security act, MCL 421.41.

12 (g) "Michigan employment security act" means the Michigan
13 employment security act, 1936 (Ex Sess) PA 1, MCL 421.1 to 421.75.

14 (h) "Office" means the office of the unemployment insurance
15 advocate created under section 5.

16 (i) "Personal identifying information" means information that
17 could be used to identify an individual, including, but not limited
18 to, the individual's name, initials, email address, Social Security
19 number, telephone number, or home address.

20 (j) "Unemployment agency" means that term as defined in
21 section 3 of the Michigan employment security act, MCL 421.3.

22 Sec. 5. (1) The office of the unemployment insurance advocate
23 is created within the legislative council.

24 (2) The principal executive officer of the office is the
25 unemployment insurance advocate. The council shall appoint the
26 unemployment insurance advocate. The unemployment insurance
27 advocate serves at the pleasure of the council.

28 Sec. 7. The council shall establish procedures for all of the
29 following:

1 (a) Approving the budget of the office.

2 (b) Expending funds of the office.

3 (c) The employment of personnel for the office.

4 Sec. 9. (1) The advocate may, upon his or her own initiative
5 or upon receipt of a complaint from a complainant concerning an
6 administrative act, do any of the following:

7 (a) Investigate the status of a claimant's claim for benefits.

8 (b) Investigate the status of a matter related to an
9 employer's unemployment taxes.

10 (c) Answer a claimant's question regarding any of the
11 following:

12 (i) Eligibility for unemployment benefits.

13 (ii) The status of a claim for benefits or payment of benefits.

14 (iii) The status of a protest or appeal.

15 (iv) An employer's unemployment insurance accounts.

16 (v) General unemployment benefit and unemployment tax issues.

17 (2) Subject to approval of the council, the advocate shall
18 establish procedures for all of the following:

19 (a) Receiving and processing complaints.

20 (b) Conducting investigations.

21 (c) Holding hearings.

22 (d) Reporting the findings of investigations.

23 Sec. 11. (1) Subject to subsection (3), upon request from the
24 advocate, the unemployment agency shall grant the advocate access
25 to all information, records, and documents in the possession of the
26 unemployment agency that the advocate considers necessary to an
27 investigation, including, but not limited to, all of the items
28 listed in section 32e(1) of the Michigan employment security act,
29 MCL 421.32e.

1 (2) Subject to subsection (3), the advocate may do both of the
2 following:

3 (a) Hold informal hearings in person, via telephone, or via a
4 virtual meeting technology.

5 (b) Request that an individual appear before the advocate, or
6 at a hearing, to give testimony or produce documentary or other
7 evidence that the advocate considers relevant to an investigation.

8 (3) The unemployment agency shall not grant the advocate
9 access to information, records, and documents as required under
10 subsection (1) unless the advocate provides to the unemployment
11 agency written authorization of representation as required under
12 section 11 of the Michigan employment security act, MCL 421.11. The
13 advocate shall not hold a hearing on a complaint if the complaint
14 involves a matter that has been protested or appealed and for which
15 the unemployment agency, administrative law judge, or unemployment
16 insurance appeals commission, as applicable, has not issued a final
17 determination or decision.

18 Sec. 13. (1) The advocate shall advise a complainant of all
19 administrative remedies available to the complainant. Upon request
20 from the advocate, the unemployment agency shall provide a progress
21 report concerning the administrative processing of a complaint.
22 After the unemployment agency takes administrative action on a
23 complaint, the advocate may conduct further investigation at the
24 request of the complainant or on his or her own initiative.

25 (2) The advocate is not required to conduct an investigation
26 of a complaint submitted to the advocate. A complainant is not
27 entitled to have an investigation conducted by the advocate.

28 Sec. 15. Upon receiving a complaint under this act and
29 deciding to investigate the complaint, the advocate shall, not

1 later than 10 days after receiving the complaint, notify the
2 complainant and the unemployment agency of the advocate's decision.
3 If the advocate decides not to investigate a complaint, the
4 advocate shall, not later than 10 days after receiving the
5 complaint, notify the complainant, in writing, of the reasons for
6 the advocate's decision.

7 Sec. 17. Upon request from the advocate, the council may hold
8 a hearing. The council may do any of the following:

9 (a) Administer oaths.

10 (b) Subpoena witnesses.

11 (c) Examine the books and records of the unemployment agency.

12 Sec. 19. (1) Subject to subsection (2), correspondence between
13 the office and a complainant is confidential, is privileged
14 communication, and is exempt from disclosure under the freedom of
15 information act, 1976 PA 442, MCL 15.231 to 15.246.

16 (2) Except as otherwise provided in this subsection, the
17 office shall maintain confidentiality regarding all matters under
18 investigation and shall not disclose the personal identifying
19 information of a complainant, claimant, or employer to another
20 person. If disclosure of personal identifying information is
21 necessary for the advocate to perform the duties of the office or
22 to support a recommendation that is based on the results of an
23 investigation, the advocate shall disclose the personal identifying
24 information only to the minimum extent necessary to perform the
25 duties of the office or to support a recommendation.

26 Sec. 21. (1) If the advocate finds any of the following during
27 an investigation, the advocate shall prepare a report of the
28 findings and submit the report, along with any recommendations, to
29 the council not later than 30 days after the advocate completes the

1 investigation:

2 (a) A matter that should be considered by the unemployment
3 agency.

4 (b) An administrative act that should be modified or canceled.

5 (c) A statute or rule that should be altered.

6 (d) An administrative act for which justification is
7 necessary.

8 (e) Any other significant concerns.

9 (2) Subject to section 23, the council shall forward a report
10 prepared and submitted under this section to the unemployment
11 agency and the complainant who submitted the complaint on which the
12 report is based.

13 Sec. 23. Before the advocate submits a report under section
14 21(1) with a conclusion or recommendation that expressly or
15 impliedly criticizes a person or the unemployment agency, the
16 advocate shall consult with that person or the unemployment agency.
17 If the advocate publishes an opinion adverse to a person or the
18 unemployment agency, the advocate shall include in that publication
19 a statement of reasonable length made to the advocate by that
20 person or the unemployment agency in defense or mitigation of the
21 opinion if the person or unemployment agency provides the statement
22 within a reasonable period of time as determined by the council.
23 The advocate may request to be notified by a person or the
24 unemployment agency, within a specified time, of any action taken
25 on a recommendation of the advocate. The advocate shall notify the
26 complainant of the actions taken by the person or unemployment
27 agency.

28 Sec. 25. (1) If the advocate receives a report from the
29 unemployment agency under section 32f(1) of the Michigan employment

1 security act, MCL 421.32f, that lists 1 or more claims that meet
2 all of the conditions described in section 32f(1)(c) of the
3 Michigan employment security act, MCL 421.32f, the advocate shall
4 submit the report to the standing committees of the senate and
5 house of representatives that have oversight of the unemployment
6 insurance agency. If the advocate receives an item from the
7 unemployment agency under section 32f(3) of the Michigan employment
8 security act, MCL 421.32f, the advocate shall submit the item to
9 the senate oversight committee and house of representatives
10 oversight committee.

11 (2) The advocate shall submit to the council and the
12 legislature an annual report on the conduct of the office that
13 includes information required by the council.

14 (3) A report required to be submitted under this section must
15 not include or disclose any personal identifying information of
16 individuals from whom the advocate acquired information during an
17 investigation.

18 Sec. 27. (1) The unemployment agency shall not penalize in any
19 way a complainant for doing any of the following:

20 (a) Filing a complaint.

21 (b) Providing information to the council or a legislator.

22 (c) Cooperating with the advocate in the investigation of a
23 complaint.

24 (2) The unemployment agency or a person shall not do any of
25 the following:

26 (a) Hinder a lawful action of the advocate or employees of the
27 office.

28 (b) Willfully refuse to comply with a lawful demand of the
29 office.

1 Sec. 29. (1) The authority granted to the advocate under this
2 act is in addition to all other authority granted by law to any
3 other office or agency relative to any of the following:

4 (a) A remedy or right of appeal or objection for a
5 complainant.

6 (b) A procedure provided for the inquiry into, or
7 investigation of, any matter.

8 (2) The authority granted to the advocate under this act does
9 not limit or affect any other remedy or right of appeal or
10 objection provided by law and must not be considered to be
11 exclusionary.

12 Enacting section 1. This act does not take effect unless all
13 of the following bills of the 101st Legislature are enacted into
14 law:

15 (a) House Bill No. 5549.

16 (b) House Bill No. 5554.