

HOUSE BILL NO. 5552

November 10, 2021, Introduced by Reps. O'Malley, Steven Johnson, Bellino, Hoytenga, Lightner, Outman, Hauck, Yaroch and Allor and referred to the Committee on Oversight.

A bill to create the office of the unemployment citizens' 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 citizens' advocate act".

3 Sec. 3. As used in this act:

4 (a) "Administrative act" includes an action, omission,

1 decision, determination, redetermination, recommendation, practice,
2 or other procedure of the unemployment agency.

3 (b) "Advocate", unless the context requires otherwise, means
4 the unemployment insurance citizens' advocate.

5 (c) "Claimant" means an individual who applies for benefits
6 under the Michigan employment security act, 1936 (Ex Sess) PA 1,
7 MCL 421.1 to 421.75.

8 (d) "Complainant" means a person who submits a complaint to
9 the advocate under this act.

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

12 (f) "Employer" means that term as defined in section 41 of the
13 Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.41.

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

16 (h) "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 (i) "Unemployment agency" means that term as defined in
21 section 3 of the Michigan employment security act, 1936 (Ex Sess)
22 PA 1, MCL 421.3.

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

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

1 Sec. 7. The council shall establish procedures for all of the
2 following:

- 3 (a) Approving the budget of the office.
- 4 (b) Expending funds of the office.
- 5 (c) The employment of personnel for the office.

6 Sec. 9. (1) The advocate may commence an investigation upon
7 his or her own initiative or upon receipt of a complaint from a
8 complainant concerning an administrative act.

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

- 11 (a) Receiving and processing complaints.
- 12 (b) Conducting investigations.
- 13 (c) Holding hearings.
- 14 (d) Reporting the findings of investigations.

15 Sec. 11. (1) Upon request from the advocate, the unemployment
16 agency shall grant the advocate access to all information, records,
17 and documents in the possession of the unemployment agency that the
18 advocate considers necessary to an investigation, including, but
19 not limited to, all of the items listed in section 32e(1).

20 (2) The advocate may do both of the following:

- 21 (a) Hold informal hearings.
- 22 (b) Request that an individual appear before the advocate, or
23 at a hearing, to give testimony or produce documentary or other
24 evidence that the advocate considers relevant to an investigation.

25 Sec. 13. (1) The advocate shall advise a complainant of all
26 administrative remedies available to the complainant. Upon request
27 from the advocate, the unemployment agency shall provide a progress
28 report concerning the administrative processing of a complaint.

29 After the unemployment agency takes administrative action on a

1 complaint, the advocate may conduct further investigation at the
2 request of the complainant or on his or her own initiative.

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

6 Sec. 15. Upon receiving a complaint under this act and
7 deciding to investigate the complaint, the advocate shall, not
8 later than 10 days after receiving the complaint, notify the
9 complainant and the unemployment agency of the advocate's decision.
10 If the advocate decides not to investigate a complaint, the
11 advocate shall, not later than 10 days after receiving the
12 complaint, notify the complainant, in writing, of the reasons for
13 the advocate's decision.

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

16 (a) Administer oaths.

17 (b) Subpoena witnesses.

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

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

23 (2) Except as otherwise provided in this subsection, the
24 office shall maintain confidentiality regarding all matters under
25 investigation and shall not disclose the personal identifying
26 information of a complainant, claimant, or employer to another
27 person. If disclosure of personal identifying information is
28 necessary for the advocate to perform the duties of the office or
29 to support a recommendation that is based on the results of an

1 investigation, the advocate shall disclose the personal identifying
2 information only to the minimum extent necessary to perform the
3 duties of the office or to support a recommendation.

4 Sec. 21. (1) If the advocate finds any of the following during
5 an investigation, the advocate shall prepare a report of the
6 findings and submit the report, along with any recommendations, to
7 the council not later than 30 days after the advocate completes the
8 investigation:

9 (a) A matter that should be considered by the unemployment
10 agency.

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

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

13 (d) An administrative act for which justification is
14 necessary.

15 (e) Any other significant concerns.

16 (2) Subject to section 23, the council shall forward a report
17 prepared and submitted under this section to the unemployment
18 agency and the complainant who submitted the complaint on which the
19 report is based.

20 Sec. 23. Before the advocate submits a report under section
21 21(1) with a conclusion or recommendation that expressly or
22 impliedly criticizes a person or the unemployment agency, the
23 advocate shall consult with that person or the unemployment agency.
24 If the advocate publishes an opinion adverse to a person or the
25 unemployment agency, the advocate shall include in that publication
26 a statement of reasonable length made to the advocate by that
27 person or the unemployment agency in defense or mitigation of the
28 opinion if the person or unemployment agency provides the statement
29 within a reasonable period of time as determined by the council.

1 The advocate may request to be notified by a person or the
2 unemployment agency, within a specified time, of any action taken
3 on a recommendation of the advocate. The advocate shall notify the
4 complainant of the actions taken by the person or unemployment
5 agency.

6 Sec. 25. (1) If the advocate receives a report from the
7 unemployment agency under section 32f(1) of the Michigan employment
8 security act, 1936 (Ex Sess) PA 1, MCL 421.32f, that lists 1 or
9 more claims that meet all of the conditions described in section
10 32f(1)(c) of the Michigan employment security act, 1936 (Ex Sess)
11 PA 1, MCL 421.32f, the advocate shall submit the report to the
12 standing committees of the senate and house of representatives that
13 have oversight of the unemployment insurance agency.

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

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

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

23 (a) Filing a complaint.

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

25 (c) Cooperating with the advocate in the investigation of a
26 complaint.

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

29 (a) Hinder a lawful action of the advocate or employees of the

1 office.

2 (b) Willfully refuse to comply with a lawful demand of the
3 office.

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

7 (a) A remedy or right of appeal or objection for a
8 complainant.

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

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

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

18 (a) Senate Bill No. ____ or House Bill No. 5554 (request no.
19 04420'21).

20 (b) Senate Bill No. ____ or House Bill No. 5549 (request no.
21 04423'21).