

# HOUSE BILL NO. 4372

April 11, 2023, Introduced by Reps. Bierlein, Outman, Bezotte, Kunse, Schuette, Martin, Beson, Kuhn, Hall, Alexander, DeBoyer, Bollin, Harris and Meerman and referred to the Committee on Ethics and Oversight.

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,

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 advocate.

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

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

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

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

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

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

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

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

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

27 (2) The principal executive officer of the office is the  
28 unemployment insurance advocate. The council shall appoint the  
29 unemployment insurance advocate. The unemployment insurance

1 advocate serves at the pleasure of the council.

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

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

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

- 10       (a) Investigate the status of a claimant's claim for benefits.
- 11       (b) Investigate the status of a matter related to an  
12 employer's unemployment taxes.

13       (c) Answer a claimant's question regarding any of the  
14 following:

- 15       (i) Eligibility for unemployment benefits.
- 16       (ii) The status of a claim for benefits or payment of benefits.
- 17       (iii) The status of a protest or appeal.
- 18       (iv) An employer's unemployment insurance accounts.
- 19       (v) General unemployment benefit and unemployment tax issues.

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

- 22       (a) Receiving and processing complaints.
- 23       (b) Conducting investigations.
- 24       (c) Holding hearings.
- 25       (d) Reporting the findings of investigations.

26       Sec. 11. (1) Subject to subsection (3), upon request from the  
27 advocate, the unemployment agency shall grant the advocate access  
28 to all information, records, and documents in the possession of the  
29 unemployment agency that the advocate considers necessary to an

1 investigation, including, but not limited to, all of the items  
2 listed in section 32e(1) of the Michigan employment security act,  
3 MCL 421.32e.

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

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

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

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

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

28 (2) The advocate is not required to conduct an investigation  
29 of a complaint submitted to the advocate. A complainant is not

1 entitled to have an investigation conducted by the advocate.

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

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

12       (a) Administer oaths.

13       (b) Subpoena witnesses.

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

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

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

29       Sec. 21. (1) If the advocate finds any of the following during

1 an investigation, the advocate shall prepare a report of the  
2 findings and submit the report, along with any recommendations, to  
3 the council not later than 30 days after the advocate completes the  
4 investigation:

5 (a) A matter that should be considered by the unemployment  
6 agency.

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

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

9 (d) An administrative act for which justification is  
10 necessary.

11 (e) Any other significant concerns.

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

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

1 agency.

2       Sec. 25. (1) If the advocate receives a report from the  
3 unemployment agency under section 32f(1) of the Michigan employment  
4 security act, MCL 421.32f, that lists 1 or more claims that meet  
5 all of the conditions described in section 32f(1)(c) of the  
6 Michigan employment security act, MCL 421.32f, the advocate shall  
7 submit the report to the standing committees of the senate and  
8 house of representatives that have oversight of the unemployment  
9 insurance agency. If the advocate receives an item from the  
10 unemployment agency under section 32f(3) of the Michigan employment  
11 security act, MCL 421.32f, the advocate shall submit the item to  
12 the senate oversight committee and house of representatives  
13 oversight committee.

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 102nd Legislature are enacted into  
17 law:

18 (a) Senate Bill No. \_\_\_\_\_ or House Bill No. 4370 (request no.  
19 00185'23).

20 (b) Senate Bill No. \_\_\_\_\_ or House Bill No. 4374 (request no.  
21 00190'23).