

Testimony Before the House Oversight Committee

Supporting the House Bipartisan Package to Reform Michigan's UI System

By Samir Hanna, Clinical Professor, University of Michigan Law School

October 26, 2017

RE:

HB 5165 (Rep. Graves): New ID Theft Verification Structure,
HB 5166 (Rep. Hertel): Fraud Penalty,
HB 5167 (Rep. Byrd): Advocacy Program,
HB 5168 (Rep. Farrington): ID Theft Protections,
HB 5169 (Rep. LaFave): Interest on Overpayments,

HB 5170 (Rep. Bellino): Employer Determination Process,
HB 5171 (Rep. Phelps): Hardship Waivers,
HB 5172 (Rep. Howrylak): Require Claimants, Maintain Current Address with Agency, Ensure Claimants Receive Fraud Notices, Providing for Re-Opening Period for Fraud Cases.

Introduction

Chairman Graves and members of House Oversight Committee, good morning, and thank you for the opportunity to speak before you today. I am Samir Hanna, an attorney and Clinical Professor at the University of Michigan Law School. My colleague Steve Gray, Director of the UM Law School Unemployment Insurance Clinic (UI Clinic), is unable to be here this morning. Steve has been engaged on this issue on behalf of the Michigan Poverty Law Program since 2015. Similarly, I am not speaking today as a representative of the University of Michigan; rather, the staff and students at the UI Clinic provide research, expertise, information, and case examples to lawmakers and other key stakeholders.

First, thank you, Rep. Graves and Rep. Hertel, for your leadership on these critical issues, for bringing so many groups to the table, and for the many hours you and many others in this room dedicated to this effort. Thank you also for allowing UI Clinic law student participation in the workgroup - it has been an invaluable experience for them, and we hope that their contributions have been helpful.

The eight-bill package before you today will address serious flaws in our unemployment insurance system. It advances an ideal, described in the Final Report of the 2017 House Bipartisan Work Group on UI Fraud: "Everyone has a stake in a fair, accurate, and efficient unemployment insurance system; one which is protected against fraud; one with fund balances sufficient to respond to future economic downturns; and one that works for claimants and employers alike."

The Problem

Beginning in 2013, the Michigan Unemployment Insurance Agency (UIA) implemented a computer system that was sold to the agency as a way to dramatically increase the agency's efficiency while reducing the incidence of claimant fraud. While the decision to switch to an automated system was good in theory, in practice, the state bought into a \$47 million computerized data-mining scheme that falsely accused thousands of formerly unemployed individuals of UI fraud.

There were approximately 50,000 fraud determinations made by the Michigan Integrated Data Automated System or "MiDAS," between October 2013 and August 2015, at which point officials acknowledged widespread problems. Officials now acknowledge that the 22,000 fraud determinations made during that period without human oversight had a 93% error rate. For 28,000 determinations made with some human involvement, the error rate, based on partially completed reviews, was closer to 44%, officials say.

People wrongly accused of fraud were subjected to highest-in-the-nation quadruple penalties for overpayments of unemployment benefits they received, along with a 12% monthly interest charge, leaving many laid off workers with tens of thousands of dollars in penalties and interest for crimes that they did not commit.

Many claimants were completely unaware of the fraud charges leveled against them until their wages and tax returns are garnished. Most of our clients didn't receive the original fraud determination and missed their 30-day appeal deadline. When they did appeal, the Agency refused to find "good cause" and claimants were forced to go to a hearing. At the hearing, Administrative Law Judges (ALJs) almost invariably reversed the Agency's no "good cause" determination.

The Agency uses very aggressive collection efforts. State law gives the Agency enormous latitude with their administrative garnishment system, and it is aggressively used, despite the discretion granted the Agency in statute.

Fraud determinations have very serious consequences. Countless clients relate the shame they experience from being found an 'unemployment cheater.' And with the 400% penalties assessed on top of restitution and interest, many report sleepless nights worrying about how they will pay these huge sums. One client of our clinic was fired after her employer learned that she was determined by Agency to have committed fraud, even though shortly after she was completely exonerated at an ALJ hearing.

A Collaborative Process Leads to Consensus on Needed Reforms

Others today have already outlined the provisions of the eight bills in this package, and the extensive, collaborative process which led to their introduction. I will not repeat what has already been shared in my comments. However, attached, please find a detailed review of the bill package, prepared by UI Clinic students Rita Samaan and Sean Higgins, working with Stephanie Gliddon, Director of Public Affairs with the MI AFL-CIO.

Starting a New Chapter

Michigan's UI system has started a new chapter. There are new leaders in the administration: Ms. Wanda Stokes, Director of the Talent Investment Agency, has publicly acknowledged and apologized for the harm done to claimants; the Agency's most recent Acting Director, Mr. Bruce Noll was fully engaged in the bipartisan workgroup, and met individually with claimant advocates; our new UI Agency Director, Ms. Michelle Beebe, has attended each workgroup meeting since moving to Michigan from her home state of Utah, facilitated communications with the US Dept. of Labor during critical steps in the bill drafting process, and has initiated regular advisory meetings open to all claimant advocates. New agency leadership, combined with committed legislative leaders such as Rep. Graves and Rep. Hertel, and the committed stakeholders in this room, make me hopeful that an improved UI system in our state is possible.

In Conclusion

I urge you to support House Bills 5165-5172. Thank you for your time and attention. Please do not hesitate to contact me or Steve with questions or concerns. I would be happy to answer any questions you may have now.

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LEGISLATIVE ANALYSIS:

UIA REFORM BILLS

HB 5165-5172

Bill Number, Sponsor, Issue	What the New Bill Does	Issues With Current Law
HB 5165, Graves New ID Theft Verification Structure	<ul style="list-style-type: none"> • In order to efficiently and effectively combat identity fraud, this bill establishes a new system that will enforce timely reviews of submitted affidavits by either the employer, the worker, or both parties. • Creates an "Inspector General" tasked with reviewing administrative policies, practices, and procedures specifically those that the Unemployment Agency has adopted to mitigate the incidence of claims submitted by impostors. They will also be making recommendations to improve those procedures and to improve integrity and accountability within the Agency. 	The Agency lacked clear procedures to verify imposter theft claims.
HB 5166, Hertel Fraud Penalty	<p>For fraud other than identity fraud:</p> <ul style="list-style-type: none"> • Penalty will be 100% of overpayment for first instance • Penalty will be 150% of overpayment for subsequent instances. • For imposters who commit identity fraud, the penalty will be equal to 400% of the overpayment. 	Michigan's current penalty rate for fraud is up to 400% of the overpayment.
HB 5167, Byrd Advocacy Program	The new law allows claimants accused of fraud to participate in the advocacy program. If a final determination is made that a claimant or employer committed fraud, then the Agency will recover the cost of the representation from the claimant.	The commission provides an advocacy program to provide claimants and employers advocacy assistance. This is not extended to people accused of fraud.
HB 5168, Farrington ID Theft Protections	<ul style="list-style-type: none"> • Claimants must provide the Agency with their social security number and one of the following: driver's license number, state ID number, or verification of identity using I-9 documents. • Agency shall request, but not require, individuals applying for benefits to submit their base period employer's unemployment agency account number and federal employer ID number. • The Agency will verify a claimant's identity before making an initial payment. 	The current law does not require the Agency to use all information provided by individuals applying for benefits to verify identification before making payments on claims.

Bill Number, Sponsor, Issue	What the New Bill Does	Issues With Current Law
HB 5169, LaFave Interest on Overpayments	Three major changes: 1. No interest will be assessed if the overpayment was due to an agency error. 2. Interest begins accruing one year after a final adjudication if there was a non-fraud overpayment not caused by agency error. 3. Interest applies immediately if fraud is found.	Michigan charges 1% monthly interest on all overpayments.
HB 5170, Bellino Employer Determination Process	<ul style="list-style-type: none"> • Defines how the UIA will administer the Employer Noncompliance process. • Employers will be notified each time the UIA believes that they failed to respond, rather than wait for the consolidated annual determination to be issued the following year. • If an employer has demonstrated a pattern of failing to timely or adequately respond to Agency requests for information, benefits paid to a claimant will be charged to the employer's account. 	The Agency's process for employer determinations was confusing, time consuming, and ineffective.
HB 5171, Phelps Hardship Waivers	<ul style="list-style-type: none"> • The Agency must grant a claimant's hardship waiver application if the claimant's average net household income and household cash assets falls below 150% of the Federal Poverty Line. • The claimant may only apply for a waiver once every 6 months. • The Agency must present a written report to the legislature detailing the previous year's statistics on the waivers. 	As of 2013 the Agency must grant a claimant's hardship waiver application if the claimant's disposable household income falls below the Federal Poverty Line. However, the Agency does not currently comply with the 2013 change.
HB 5172, Howrylak Re-opening period for fraud cases	Two-part reform: 1. The Agency will send fraud notices to all known addresses on file with the Agency, Treasury, and Secretary of State. Claimant must keep their address current with the Agency for the entirety of their benefit year. 2. Good cause to reopen will now include incidents where determinations/redeterminations are sent to the wrong address, so long it can be shown that the address was wrong.	<p>Currently, the Agency only sends notifications to last known address, which may or may not be the claimant's current address.</p> <p>The Agency cannot reopen a case after 1 year even if new information becomes available from claimant or employer.</p>

