

HOUSE RESEARCH

Bill Summary

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Overview

This bill has two components. Article 1 makes changes to the unemployment insurance system that are specifically designed to improve the solvency of the system and the ability of the trust fund to respond to economic downturns. Article 2 implements policy changes that are not necessarily related to solvency, but are related to the general functioning of the UI system.

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Article 1

Overview

This section primarily implements changes to the ways that employer taxes are calculated and collected. It provides for a different method of calculating the base tax rate, provides for the imposition of surcharges on employer taxes when the balance in the trust fund is especially low, shortens the "experience rating" period in which employers are required to repay the system for their employees' benefits, and lowers the maximum benefit amount available to some employees who do not work consistently through the year.

- 1 1** **Payments.** Provides that if assessments, fees, or surcharges are due from an employer, they are treated the same way as taxes, for the purposes of collection and payment.
- 2** **Computation of tax rates; additional assessments.** This section makes several changes to the way tax rates are computed. It changes the base rate calculation and range, provides for

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consideration of not only the fund balance but also the trend in the balance in setting rates, and provides a surcharge that has the effect of shifting more costs onto employers who actually lay off employees and away from employers who pay only the base rate.

Base rate calculation. Under current law, the base tax rate, which is paid by all taxpaying employers, fluctuates between one-tenth and six-tenths of one percent of taxable wages, based on how much money is in the unemployment insurance trust fund. In other words, when the fund is low, a higher rate is collected. The changes in this rate, under current law, are based on the balance in the fund on June 30 of each year, and are effective for the following calendar year. The statute measures the balance in the fund by reference to flat amounts that are set in law and not indexed - specifically, the base rate is one-tenth of one percent if the fund has at least \$300 million, and for every \$25 million that the fund balance drops below that amount, the tax rate goes up by one-tenth of one percent, until it reaches six-tenths of one percent when the fund has less than \$200 million. Note that in comparison to how much money the fund handles in a year, these amounts are relatively small and the \$25 million "trigger point" increments are close together - the fund paid out over \$1 billion in benefits in 2002.

This section would continue to adjust the rate according to the amount in the fund, but it would measure the fund balance by comparing the amount in the fund on March 31 of any year to the percentage of total wages paid to employees in the previous year. This has the effect of comparing the balance to the fund's "exposure," because the more is being paid in wages, the more the fund may need to pay out in benefits if unemployment rises. The base rate would be one-tenth of one percent if the fund balance were equal to at least .75 percent of the state's total wages paid in covered employment, two-tenths if the fund equaled between .65 and .75 percent of total wages paid, three-tenths if the fund equaled between .55 and .65 percent, and four-tenths if the fund balance dropped below .55 percent of total wages paid. Note that under this calculation, the base rate fluctuates between one-tenth and four-tenths of one percent, rather than between one-tenth and six-tenths under current law. This is, however, subject to the two paragraphs below.

"Falling fund" adjustment. There are two additional adjustments to what employers pay. The first is a so-called "falling fund adjustment," which means that the rate explained in the previous paragraph would be increased by one-tenth of one percent if the fund balance is dropping. In other words, both the balance in the fund and the trend in the fund will be checked, and if the fund is at a set amount and dropping, the rate will be higher than if it is at that same level and is stable or rising. Therefore, the base rate could actually be as high as five-tenths of one percent if the balance is falling.

Surcharge. When the fund is under .55 percent of the state's total wages paid, the bill would impose a surcharge on all employers on the total amount of taxes they pay. The surcharge would be five percent if the fund was between .45 and .55 percent of total wages paid in the previous year, ten percent if the fund was between .35 and .45 percent, or fifteen percent if the fund is less than .35 percent.

Note that the effect of this surcharge is distributed differently than an increase in the base tax rate. All employers who pay taxes (meaning basically all employers other than charitable and

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public employers, who reimburse the system directly rather than paying taxes) pay the same base tax rate, and increasing that rate essentially impacts all of them equally, whether they have layoffs or not. However, employers who actually have layoffs pay, in addition to the base rate, substantial additional taxes based on their "experience rating." A surcharge on total taxes due will effect these employers substantially more than employers who do not actually lay off employees. The effect of the surcharge, therefore, is to shift more of the costs of the system to the employers who actually lay off employees and to reduce the amount by which those employers - the "heavy users" of the system - are subsidized by other employers.

The "falling fund adjustment" would go into effect on January 1, 2005. The remainder of the changes are effective the day following final enactment.

- 3 **Computation of a taxpaying employer's experience rating.** Currently, an employer's "experience rating" is calculated by considering the employer's payroll and its history of layoffs over the previous five years. The effect of this is that an employer taxpaying employer basically pays the system back for the benefits an employee collects over the next five years that the employer pays taxes. This section would change this to a four-year period. The effect of this is that employers will pay the system back for their employees' benefits more quickly, but will not pay any more in the long run.
- 4 **Tax rate for new employers.** Under current law, new employers in their first year of taxpaying are assigned a rate that is based on the general behavior of the entire system over the last five years - they are assigned a sort of "average" experience rating. In keeping with the previous section, this section would base their "average" experience rating on the last four years, rather than the last five years, of the system's behavior. Furthermore, new employers do not currently pay the base tax rate in addition to this average experience rating. Under this section, the base tax rate would be added to their tax rate.
- 5 **Notice of tax rate.** Provides for tax rate notices to also provide notice of assessments, fees, and surcharges.
- 6 **Assessments, fees, and surcharges.** Similar to section 1, provides for the treatment of assessments and fees similarly to taxes.
- 7 **Benefit account requirements and weekly unemployment benefit amount and maximum amount of unemployment benefits.** Current law provides slightly different benefit amount calculations for employees who work steadily at the same wage over the entire year and employees whose wages are concentrated in particular parts of the year. (For employees who make less than about \$17 an hour in their high quarter or more than about \$36,400 in the course of an entire year however it is distributed across quarters, the different calculations don't matter.) This section would reduce the maximum benefit available to individuals who base their benefit eligibility on work in a certain part of the year from 50 percent to 45 percent of the state's average weekly wage.
- 8 **Payments that delay unemployment benefits.** Current law provides that when an employee collects vacation, sick, or severance pay upon separation from employment, those payments can delay the beginning of unemployment benefits for up to four weeks. This section would allow the delay in the onset of benefits to be longer. Essentially, it provides for these payments to be divided by the employee's weekly pay and treated as if they're being paid weekly, no matter how they are actually provided to the employee. So if an employee had been making \$500 per week and received a \$3000 lump sum payment as severance, current law would delay the beginning of benefits for the four-week maximum, whereas this section would divide the \$3000 by the \$500 and treat it as essentially six weeks of continuing pay,

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with benefits delayed for the full six weeks.

As under current law, however, this *does not apply* to vacation pay that is paid out on permanent or indefinite layoff.

- 9 **Maximum benefit amount.** This provision is related to section 7, and provides that from the day following enactment until September 1, 2006, the maximum weekly benefit for employees using the high-quarter calculation is at least \$350. (Under section 7, it is limited to 45 percent of the state's average weekly wage.)

Article 2

Overview

This section makes some policy changes to the way the UI system is operated. Among other things, it changes the definition of "misconduct" in response to a recent Minnesota Supreme Court case, moves the department toward electronic filing of employer wage reports, provides clarification of several provisions.

- 1 1 **Employment.** Provides that owners of a limited liability company who own at least a 25 percent share are not considered employees. This is consistent with the treatment of these individuals under workers' compensation laws.
- 2 **State's average annual and average weekly wage.** Current law provides that a new maximum benefit amount (based on the state's average annual wage) goes into effect each August 1. Because unemployment benefits are paid based on a Sunday-Saturday week, this can result in a new rate becoming effective in the middle of the week. This section would provide that the new level is effective the first Sunday in August.
- 3 **Wage detail report.** Tightens the language requiring employers to conform to the form required by the commissioner in submitting wage detail reports.
- 4 **Electronic transmission of report required.** Requires each employer with at least 50 employees to make wage detail reports electronically as prescribed by the commissioner.
- 5 **Payments.** Technical changes.
- 6 **Interest on past due taxes.** Similar to other parts of the bill in Article 1, provides for assessments and fees due to be charged interest just as unpaid taxes are.
- 7 **Compromise.** This section affects when the commissioner can compromise amounts due from an employer. (This does not affect benefit collection in any way; this relates only to collecting what an employer owes.) It provides that the commissioner may compromise an amount owed if a court of law determines that an applicant took \$500 or more from the employer during employment.
- 8 **Benefit account requirements and weekly unemployment benefit amount and maximum amount of unemployment benefits.** Clarifies that when an employee establishes a benefit account, the weekly benefit amount collected on that account does not increase when the new maximum weekly amount is established in August (see section 2). In other words, once the account starts to run, the maximum stays the same for the run of the account, but if the employee is subsequently employed again and laid off again, he would then collect under the new maximum.
- 9 **Personal identification number; presumption.** The department of economic security assigns applicants personal identification numbers (PINs) that the applicant uses in making application for benefits by phone. Applicants are instructed to protect these PINs. This

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section would provide for a presumption that if the PIN was used in making the application, it was the applicant who used it. This presumption could be rebutted by the applicant with evidence that someone else fraudulently used the number, but it essentially makes it more difficult for applicants to argue that another person obtained and fraudulently used their PIN in applying for benefits. The section provides for the department to warn applicants of this presumption.

10 **Continued biweekly request for unemployment benefits.** Current law allows for weekly or biweekly requests for benefits. The practice is to do biweekly requests, and this section reflects that fact.

11 **Quit.** Employees are generally not eligible for unemployment benefits if they quit employment voluntarily. However, there is an exception in current law for employees for whom an illness or injury makes it medically necessary to quit. For these employees, they must show that they made reasonable efforts to remain in the employment, including informing the employer and requesting accommodation. This section removes the general references to making reasonable efforts to remain in the employment and requires that the employee inform the employer and request an accommodation, and that no reasonable accommodation be available.

The section also clarifies the evidence an applicant can use to show domestic abuse for the purposes of qualifying for an exception that allows benefits to employees who quit their employment as a result of domestic abuse.

12 **Quit defined.** Current law provides that applicants who work for staffing services and have an assignment end are required to contact the staffing service and request another assignment, or they are considered to have quit. This section specifies that the call must be made within five calendar days of the end of the previous assignment. It also states that it is considered a quit if the applicant turns down a suitable offer of a new assignment from the service when offered.

13 **Employment misconduct defined.** Current law provides that employees who are terminated for "misconduct" are not eligible for benefits. In part, the existing definition of misconduct discusses "intentional conduct" that "disregards the standards of behavior the employer has the right to expect of the employee or disregards the employee's duties and obligations to the employer." A recent court decision concluded that the use of the term "disregard" required that in addition to the conduct being intentional, the employee must intend to violate the employer's standards of behavior. The bill would remove this subjective definition of misconduct (which essentially requires specific findings regarding the employee's state of mind) with an objective definition requiring only that the conduct "amount to a serious violation of the standards of behavior that the employer has the right to reasonably expect of the employee" or demonstrate "a substantial lack of concern for the employment."

Note that while the proposed definition does not require that the employee intend to violate the employer's standards as does the existing statutory and case law, it requires that the violation of the employer's reasonable standards of behavior be "serious," which is not a part of current law.

The section also expands on an existing statement in the definition that "inefficiency, inadvertence, [and] simple unsatisfactory conduct" are not misconduct. (The idea is that poor performance is not misconduct.) The bill would add language specifying that a single

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incident that does not have a significant adverse effect on the employer is not misconduct, and nor is conduct that a reasonable employee would have engaged in under the circumstances or conduct that results from a good faith error in judgment where the employee's judgment was required.

Finally, the section provides that conduct resulting from the applicant or the applicant's child being a victim of domestic abuse is not misconduct. (This could apply, for instance, to some instances of absence from the workplace.)

- 14 Application.** Provides that disqualification for refusing offers of employment only applies to offers made during the applicant's benefit year. (A Court of Appeals decision has already stated that this is the case.) This basically means that employees are not disqualified from receiving benefits on the basis of having turned down employment between the time they lose their employment and the time they apply for benefits.
- 15 Judicial review.** Provides that attorneys representing the commissioner in the Court of Appeals must be employees of the department, but removes a requirement that they be classified employees.
- 16 Nonfraud overpayment.** Clarifying language.
- 17 Cancellation of overpayments.** Clarifying language.
- 18 GATE pilot project.** This authorizes the department to participate in a federal pilot program for unemployment benefit recipients, specifically by waiving some eligibility requirements for participants.
- 19 Sunset.** Provides that section 18 sunsets on June 30, 2008.
- 20 Revisor's instruction.** Changes to language; technical.
- 21 Repealer.** Repeals a rule relating to electronic filing that is replaced with statutory language elsewhere in the bill.