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March 16, 2021

To: Senator Robert Olson

From: Eric Adell, Research Analyst

Re: Overview of Sub. for HB 2196

This memorandum contains a condensed overview of the provisions of Sub. for HB 2196, as amended by the House Committee of the Whole. Additional information may be found in the supplemental note, which can be accessed here.

Unemployment Compensation Modernization and Improvement Council

The bill would create the Unemployment Compensation Modernization and Improvement Council (Council), comprised of six legislative members, six non-legislative members, and the Secretary of Labor. The Council would dissolve and all provisions related to the Council would have no effect three years after the date of its first meeting.

The role of the Council would be to examine and recommend changes to the Unemployment Insurance (UI) system; suggest to the Secretary of Labor rules and regulations necessary to carry out its function; and conduct an audit of the UI system for the purposes of examining the nature, extent, and underlying causes of fraudulent claims and improper payments made from March 15, 2020, through March 31, 2022. In coordination with the Council, the Secretary of Labor would have additional responsibilities pertaining to the creation of a strategy for addressing disruptions in UI claims, reporting certain information to the Council, and for publishing certain information online.

KDOL Information Technology Modernization

The bill would require the Kansas Department of Labor (KDOL) to fully design, implement, and administer a new UI information technology system no later than December 31, 2022. The new system would be required to include, but not be limited to, certain components and features, as specified by the bill, and the Secretary of Labor would be required to implement all program integrity elements and guidance from the U.S. Department of Labor (USDOL) and the National Association of State Workforce Agencies.

The bill would authorize KDOL to execute a Memorandum of Understanding with any state department, agency, or agency division for information required to be shared by the bill. The Secretary of Labor would be required to adopt rules and regulations to carry out the provisions of the bill within 12 months of the effective date of the bill and to provide an annual status update and progress report to the Council.

Employment Security Board of Review Temporary Changes

The bill would provide that the number of members of the Employment Security Board of Review (Board) will be increased from three to six, and the Board would be able to hear and decide cases in panels of three members, with no more than two members belonging to the same political party. This provision would only apply from the effective date of the bill through June 30, 2024, and a member's appointment specifically for this period would not count as a term for purposes of consecutive term limits.

Employment Security Rate Tables Changes

The bill would provide for new solvency and credit adjustment tables for making adjustments to maintain the Employment Security Fund (Trust Fund) balance beginning in rate year 2022. The bill would replace the current uniform solvency rate adjustments to the standard rate schedule with six new solvency rate schedules and six new credit rate schedules providing for adjustments to be made according the experience rating of employers.

Tax Notification

The bill would require the Secretary of Labor to inform a claimant of the federal and state tax consequences related to UI benefits on the initial determination of benefits notice, including explanations of the KDOL income tax withholding agreement form, the tax withholding and elections process, and estimated weekly and maximum withholding amounts.

Unemployment Trust Fund Data Reporting

The bill would require the Secretary of Labor to publish and maintain information for the most recent 20 fiscal years, distributions of taxable wages by experience factor for each fiscal year; summaries of the number of accounts and fiscal year taxable wages for active positive eligible, active ineligible, active negative, and terminated inactive accounts; and the average high-cost benefit rate summary. The Secretary of Labor would be required, for the three years following the effective date of the bill, to annually provide projections of the number and amount of UI claims, the Trust Fund balance, and the amount of employer premiums to be paid, to the House Committee on Commerce, Labor and Economic Development and the Senate Committee on Commerce.

Reemployment and Work Skills Training Services Provisions

The bill would require the Secretary of Labor and the Secretary of Commerce to jointly establish and implement programs providing reemployment and work skills training services to UI benefit recipients. UI claimants failing to participate in reemployment and work skills training programs upon request of the Secretary of Labor would be disqualified from receiving UI benefits. Benefits would be continued or reinstated upon demonstration of compliance or a showing of good cause by the claimant for failure to participate.

The Secretary of Labor would be required to annually report on the status and progress of the reemployment services and work skills training programs to the House Committee on Commerce, Labor and Economic Development and the Senate Committee on Commerce during the first month of each Legislative Session.

Work Refusal Provisions

The bill would require the Secretary of Labor to develop procedures enabling employers to notify KDOL when a UI claimant refuses to return to work or refuses an offer of employment, and determine if an offer of employment is suitable. The Secretary would be required, within ten days of receiving work refusal notification, to notify the claimant of their responsibilities, potential or actual loss of benefits, and instructions for contesting a resulting claim denial.

Unemployment Rate Thresholds for Maximum Benefits

The bill would raise raise the minimum threshold for receiving a maximum of 20 weeks of UI benefits from a 3-month seasonally adjusted average unemployment rate of 4.5 percent to a rate of 5.0 percent for weeks beginning April 1, 2021.

Benefits Disqualification for Fraudulent or Misleading Statements

The bill would shorten the time an individual is to be disqualified from receiving benefits for fraudulent or misleading statements from five years to two years for a first occurrence and add a lifetime disqualification for a second occurrence.

Employer Account Protections and Payment Certification

The bill would require employers to be held harmless and not owe any amount to the State for fraudulent or improperly paid claims. The Secretary of Labor would be required to credit the account of any employer for paid benefits determined to be due to fraud or improper payment; refund reimbursing employers for fraudulent claims paid on their behalf after March 15, 2020; and apply credits to reimbursing employers for any unrecovered charges for prior fraudulent or improperly paid claims. Any determination with respect to the legitimacy of a claim would be subject to appeal and there would be no time limit for disputing a fraudulent claim or related appeals for benefits paid between March 15, 2020, and December 31, 2022. The Secretary would be required to certify using information reported by the USDOL the amounts of improper payments made between March 15, 2020, and December 31, 2022 and to notify the Director of the Budget and the Director of Legislative Research of such certifications.

Federal Coronavirus Relief Aid and State General Fund Transfers

The bill would require $450.0 million in unencumbered discretionary COVID-19 relief funds provided by federal legislation to be transferred from special revenue funds to the Trust Fund during FY 2021 and FY 2022. If the full amount is not transferred, contributing employers would pay contributions as set forth in the standard rate schedule for rate year 2022, with no solvency credit or adjustment. An amount equal to the total of any certified fraudulent or improper payments would be immediately transferred to the Trust Fund from the State General Fund (SGF) or another fund as deemed appropriate by the Governor, with the approval of the State Finance Council. Any improper payment recovered would be deposited into the SGF.

If the amount of certified fraudulent or improper payments between March 15, 2020, and December 31, 2022, is less than the amount transferred, the difference would be transferred from the Trust Fund to the SGF and designated for COVID-19-related purposes. If the amount of such payments is greater than the amount transferred, the difference would be transferred from the SGF to the Trust Fund in five equal installments before FY 2028.

Federal UI Program Restrictions

The bill would specify that any federal UI program established in response to a pandemic is not to be continued using state contributions after the the federal program ends.

Shared Work Program Modifications

The bill would require the Secretary of Labor to create and manage a promotional campaign for the Shared Work Unemployment Compensation Program (Program), which would include educational communications with other state agencies and stakeholders. The eligibility of employees to participate in the program would be expanded from those whose hours of work are reduced by 20 to 40 percent of normal weekly hours to those whose hours of work are reduced by 10 to 50 percent of normal weekly hours.

The bill would clarify that eligibility for UI benefits pursuant to a Program agreement would not be conditioned upon work search or work availability limitations otherwise generally required of UI benefit recipients. The bill would permit negative account employers to be approved for the Program if their most recent calculated reserve ratio has improved from the previous reporting year's reserve ratio.

Other Provisions

The bill would amend the prohibition in current law against professional employer organizations including a client company's owners and officers in the same UI quarterly report as that company's employees.

The bill would exclude from the current definition of "employment" contractual services performed by a petroleum landman. Such services would be defined to include mineral rights management and negotiations, development of minerals, research of public and private property records, and title work.

The bill would require KDOL and the Department for Children and Families (DCF) to enter into a memorandum of understanding to provide for the exchange of information. Upon notification of a UI claimant becoming employed, the Secretary of Labor would be required to notify DCF to determine the claimant's eligibility benefits provided or facilitated by DCF.

The bill would provide that if the contributions paid into the Employment Security Interest Assessment Fund for the purpose of paying interest on unemployment advances provided by the federal government exceed the amount of interest owed, any excess amount shall be transferred to the Trust Fund. The bill would prohibit any expenditures other than the payment of principal and interest on such advances from the federal government.

Effective Date

The effective date of the bill would be upon its publication in the *Kansas Register*.