Jon P. Honeck *Legislative Service Commission*

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Sens. Nein, Mumper, Spada

BILL SUMMARY

APPLICATIONS AND DETERMINATIONS

- Removes the exemption from mass layoff notification requirements for employers who separate a total of 50 or more individuals at two or more business establishments.
- Revises requirements concerning certain information that claimants and employers currently must provide to the Director of Job and Family Services.
- Allows the Director to base determinations on information available instead of facts found.
- Adds a new condition under which the Director must issue a corrected determination and modifies existing limitations concerning conditions under which the Director cannot issue a corrected determination.
- Establishes criteria for use by the Director in the Director's evaluation of the validity of employer eligibility notices.
- Specifies that applicants for unemployment benefits have the right to respond to an employer's eligibility notice before the Director of Job and Family Services makes a determination.
- Allows a claimant to request a fact-finding interview under specified conditions when eligibility issues are raised.
- Makes employers who timely file eligibility notices interested parties to a claim instead of barring employers who fail to timely file from being interested parties.

- Eliminates the requirement that specified notices be mailed and allows instead that they be "sent" in writing thus not specifying the means of transmission.

- Modifies certain notification requirements.

ADMINISTRATIVE APPEALS PROCESS

- Specifies that hearing officers of the Unemployment Compensation Review Commission have an affirmative duty to fully and fairly develop the record when conducting a hearing.

- Specifies that the date of mailing evidence rule applicable to notices mailed by the Director also applies to notices mailed by the Commission.

- Authorizes the use of meter postmarks on mailed appeals and extends the appeal deadline when postmark dates are illegible or missing an additional two days.

- Authorizes the Commission to adopt rules pertaining to alternate methods of filing appeals.

- For hearings conducted under the Commission's jurisdiction, prohibits all persons from imposing a burden of proof upon claimants or employers that is required by courts of law.

- Eliminates a specific requirement that the Commission adopt rules governing the conduct of hearings by telephone.

- Specifies the parameters of the Commission's jurisdiction over appeals.

- Eliminates the prohibition of further appeals placed on appellants who fail to appear for a hearing.

- Allows an appellant to request a hearing regarding good cause for failing to appear when the Commission finds that failure to appear was not for good cause.

- Clarifies that the law's provisions relative to telephone hearings, failure to appear, waiver of hearings, and evening hearings apply to hearings at both the hearing officer and review levels.

- Requires the Commission to schedule hearings by telephone during evening hours when a request for an evening hearing conflicts with a request for an in-person hearing.

- Permits an authorized agent who represents a group of claimants in a mass appeal to receive a notice of hearing, and to waive the providing of hearing notices and hearing decisions on behalf of individual claimants.

- Modifies methods by which an appeal may be removed to the review level and modifies actions the Commission may take in response to a request for review.

- Establishes a mass appeal provision for hearings at the review level by the Commission.

- Allows interested parties an opportunity to submit briefs to the Commission on issues involved in an appeal that the Commission has designated as potentially precedential and modifies other requirements relative to appeals that may potentially establish precedent.

APPEALS TO COURT

- Requires courts to provide for the filing of briefs by the parties.

- Eliminates a provision specifying action a court may take when an appellant fails to take certain steps in the appeal process.

- Modifies provisions regarding the status of the Director and Commission being interested parties in an appeal to the court of common pleas.

- Requires the court of common pleas to provide for the filing of briefs by the parties.

- Requires the clerk of court to serve a copy of the notice of appeal upon all appellees, instead of requiring the appellant to do so by certified mail.

- Modifies the deadline placed on the Commission for filing certified transcripts pertaining to a decision with the clerk of court and requires the Commission to provide a copy of the transcript to any appellee who requests it.

- Eliminates a requirement that an appellant file a statement of the assignments of error presented for review within 60 days of filing the notice of appeal with the court.

- Eliminates an express statement that any interested party has the right to appeal the decision of the court of common pleas as in civil cases.

- Permits a court of common pleas to remand a matter to the Commission for further proceedings under specified conditions.

- Eliminates a provision requiring the court of common pleas to dismiss an appeal when it determines that the time for filing could not be extended.

- Modifies the collateral estoppel rule and res judicata effect relative to the findings and decisions of reviewing courts for appeals under the Unemployment Compensation Law.

- Reorganizes the application and appeal provisions of the Unemployment Compensation Law.

OTHER CHANGES

- Eliminates a provision specifying that reconsideration provisions apply to orders and determinations issued under the fraudulent misrepresentation provisions.

- Requires that the information currently submitted by employers in two separate quarterly reports be merged into one report and correspondingly modifies the threshold parameters for forfeiture penalties for late and improper filing of quarterly reports, and makes other revisions concerning these forfeiture penalties.

- Requires that an employer requesting a waiver of forfeiture provide a written statement showing good cause for failure to timely file a quarterly report within four years after the date the forfeiture penalty was assessed.

- Specifies that for purposes of the Unemployment Compensation Law, determinations concerning the employment of deputy registrars and their employees must be made under that law, notwithstanding a provision specifying that they are independent contractors.

- Permits a delay in changes due to take effect in 2002 relative to the criteria used in determining the validity of an application.

TABLE OF CONTENTS

Reorganization of current R.C. § 4141.28 6
Background 6

APPLICATIONS AND DETERMINATIONS

Filing an application for unemployment compensation benefits 7
Contents and procedures of the application 7
Notification requirements for mass layoffs 8
The Director's determination of the validity of an application 9
Claim for benefits 10
Eligibility notice 10
Corrected determinations 11

ADMINISTRATIVE APPEALS PROCESS

Appeals of benefit rights or claims for benefit determinations 12
Prompt payments 12
Appeals to the Unemployment Compensation Review Commission 13
Hearing officers 13
Hearings conducted by telephone 14
Evening hearings 14
Failure to appear at a hearing 14
Contents of the hearing officer's decision 15
Procedures for hearing appeals to the Commission at the review level 15
Transfer of an appeal to the review level 16
Mass appeals at the review level 16
Use of agents in a mass appeal 16
Precedential appeals at the review level 17
Authority of the Commission at the review level 17
Agent 18
Collateral estoppel 18

APPEALS TO COURT

Appeals 19

OTHER CHANGES

Reconsideration provisions not applicable to fraud provisions 20
Quarterly reports 21
Single report required 21

Forfeitures for late filing 21
Waiver of forfeitures 21
Deputy registrars 22
Potential delay for changes relative to criteria used in determining the validity of an application 22

CONTENT AND OPERATION

Reorganization of current R.C. § 4141.28

The bill reorganizes R.C. § 4141.28, which contains the provisions in the Unemployment Compensation Law (R.C. Chapter 4141.) that specify the procedures for the filing of applications for the determination of benefit rights and claims for benefits and the appeal procedure of the Unemployment Review Commission and the courts. In so doing, the bill outright repeals R.C. § 4141.28 and re-enacts it into three new sections, laying out the retained material in a newly ordered scheme. Thus, while the bill appears to be enacting all new language, many of its provisions actually exist in current law. The bill adds descriptive headings to R.C. § 4141.28 that are part of the law itself. The analysis contains references to the bill in a dual format. References to existing law contain the applicable division references to R.C. § 4141.28 and references to the reorganized format under the bill are written in italics. In addition to reorganizing R.C. § 4141.28 and making numerous technical corrections and clarifications, the bill also makes substantive changes to various provisions of existing law, which changes are described below in essentially the chronological order in which the provisions are found in existing law.

Background

The bill does not change the basic procedures used in filing for unemployment benefits. An individual who applies for unemployment benefits first must file an application for the determination of benefit rights with the Department of Job and Family Services. The employer who discharged the individual may then file an eligibility notice with the Director of Job and Family Services if the employer wishes to challenge the validity of the application for benefit rights. If the Director finds that the application is valid and the individual is eligible for benefits, the individual still must serve a one week waiting period before receiving benefits. An individual must file a separate claim for benefits for each week of eligible unemployment. An individual or an interested party may appeal the Director's initial determination by applying for a redetermination. Appeals from a redetermination are taken to the Unemployment Compensation Review Commission. Initial hearings under the Commission's authority are generally held at the hearing officer level, and appeals may be taken to the review

level. A final determination by the Commission at the review level may be appealed to court.

APPLICATIONS AND DETERMINATIONS

Filing an application for unemployment compensation benefits

Under current law, the Director is required to designate a deputy to receive applications for the determination of benefit rights. The bill removes the requirement that the Director designate a deputy, and states that the applications are to be filed with the Director. (Sec. 4141.28(A); *sec. 4141.28(A), Filings*.)

Current law requires that when a former employee of a state agency, board, or commission that has terminated its operations files an application for the determination of benefit rights or claims for benefits, the former employee must give notice that the agency, board, or commission has terminated its operations. The bill eliminates this requirement (sec. 4141.28(A)). Under current law, however, the Director of Job and Family Services receives notice from the Director of Administrative Services that a state agency has terminated its operations (sec. 125.82, not in the bill).

Contents and procedures of the application

Under current law, in filing an application, an individual must provide either the separation information furnished by the employer under mass layoff provisions, or the name and address of the most recent separating employer for whom the individual performed services and the individual's "written" statement of the reason for separation from the employer. Current law then requires that the Director send notice "in writing" to the employer that the individual has filed an application (sec. 4141.28(B)(1)).

The bill eliminates the provision allowing an individual to provide the information furnished by the employer under a mass layoff situation. Employers are required by the bill to furnish this information to the Director (see "***Notification requirements for mass layoffs***" below). The bill also eliminates the terms "written" and "in writing" from the requirements of the law, allowing alternate means of communication. (*Sec. 4141.28(B), Application for determination of benefit rights*.)

Current law contains exceptions to the requirement that the Director notify the most recent separating employer when an applicant applies for a determination of benefit rights (sec. 4141.28(B)(1)(b)). These exceptions are: (1) when the Director is prohibited by law from revising a previous determination concerning whether the individual may be disqualified from receiving benefits, (2) when the

individual's employer indicates to the Director that the notice is not needed, and (3) when the Director has already received information regarding the separation pursuant to mass layoff provisions (see "***Notification requirements for mass layoffs***" below), and the reason for separation is not disputed (sec. 4141.28(B)(5)). The bill eliminates these exceptions to the notification requirement and allows the Director to establish exceptions by rule. (Sec. 4141.28(B)(1)(b); *sec. 4141.28(B), Application for determination of benefit rights*.)

At the initial stage of the process of determination of benefit rights, current law only allows the Director to request additional information from a "base period employer." The bill expands the Director's authority by allowing the Director to request additional information from *any* employer, *and* from the individual as well. (Sec. 4141.28(B)(1)(b); *sec. 4141.28(B), Application for determination of benefit rights*.)

Current law provides that the Director's request for information as to the reason for unemployment preceding an additional claim must be obtained from a base period employer in the same manner. The bill eliminates this provision. (Sec. 4141.28(B)(1)(b).)

Under current law, these information requests must be mailed by the Director, and dated on the date on which they are mailed. Employers must then mail or deliver a reply within ten working days after the Director mailed and dated the request. The bill removes the reference to mailing without specifying the form of transmission of information. The bill also removes the reference to the employer mailing or delivering the information, and states that the employer must "provide" the information within ten working days after the request is sent. (Sec. 4141.28(B)(1)(b); *sec. 4141.28(B), Application for determination of benefit rights*.)

Notification requirements for mass layoffs

Current law imposes special notice requirements on employers who separate more than 50 individuals at a single business establishment in a seven-day period because of lack of work, and these individuals upon separation are unemployed. Unemployed individuals include those who are laid off indefinitely or for a definite period of seven or more days (see **COMMENT** 1). An employer who separates a total of 50 individuals from two or more business establishments that have effective authority for hiring and separation of employees and for payroll information is exempt from the notice requirement. Under the notice requirement, an employer is required to notify the Director of the dates of separation and the number of individuals being separated, and, in addition, must provide either the Director or the individual being separated with information necessary to determine

the individual's eligibility on forms and in a manner approved by the Director. (Sec. 4141.28(B)(2).)

The bill modifies an employer's notification requirements for a mass layoff in four ways. First, the bill eliminates the specification that these notification provisions apply with respect to individuals who are unemployed. Therefore, in a mass layoff situation, an employer must comply with the notice requirements for *all* individuals who are laid off or separated, including individuals who are laid off for a definite period that is less than seven days.

Second, the bill requires the employer to provide information necessary to determine the individual's eligibility to both the individual and the Director, thereby eliminating the employer's ability under current law to choose which of these persons to notify.

Third, the bill eliminates the requirement that the employer must provide the information on forms and in a manner approved by the Director. It appears that the Director may prescribe proper forms and approve the manner of furnishing this information under the Director's general rule-making authority (sec. 4141.13(B), not in the bill).

Fourth, the bill removes the notification exemption for employers who operate multiple business establishments. Under the bill, an employer who lays off or separates a total of 50 or more individuals in any seven-day period because of lack of work is subject to the mass layoff notice requirement. (Sec. 4141.28(B)(2); *sec. 4141.28(C), Mass layoffs*.)

The Director's determination of the validity of an application

The Director must base a determination of benefit rights under current law on the basis of any facts found by the Director. The bill modifies this requirement by stating that the Director must use "information available" to the Director under the Unemployment Compensation Law. This change appears to allow the Director to make a determination without a formal fact-finding procedure. The bill makes a similar change to the procedures required of the Director in making other determinations. (Sec. 4141.28(C), (D), and (E)(3); *sec. 4141.28(D), (E), and (F), Determination of benefit rights, Claim for benefits, Eligibility notice*.)

After making a determination as to the validity of an application for determination of benefit rights, current law requires the Director to notify the claimant, the claimant's most recent separating employer, and any other employer in the claimant's base period of the determination. The bill modifies this requirement by stating that the Director also must notify any other "interested

parties" of the determination. (Sec. 4141.28(C); *sec. 4141.28(D), Determination of benefit rights*.)

Claim for benefits

Under current law, after a claimant has provided a valid application for benefit rights, the claimant must file a separate claim for benefits for each week of unemployment claimed (sec. 4141.29, not in the bill). Current law specifies that the notice of determination for this claim must be "mailed" to the claimant. The bill eliminates this requirement and specifies that written notice must be "sent" without specifying how the notice must be transmitted to the claimant.

Written notice of the Director's determination granting or denying benefits currently is sent to the claimant, most recent separating employer, and any other employer involved in the determination. Under the bill, written notice is not required to be sent to the claimant if the reason for separation is lack of work and the claim is allowed. Under these circumstances, according to Department officials, the claimant always receives a check.

If the Director identifies an eligibility issue, the bill requires the Director to send notice to the claimant of the issue identified and specify the week or weeks involved. The claimant has a minimum of five business days after the notice is sent to respond to the information included in the notice, and after the time allowed as determined by the Director, the Director must make a determination. The bill allows the claimant's response to include a request for a fact-finding interview when the eligibility issue is raised by an informant or source other than the claimant, or when the eligibility issue, if determined adversely, disqualifies the claimant for the duration of the claimant's period of unemployment. (Sec. 4141.28(D)(1); *sec. 4141.28(E), Claim for benefits*.)

Eligibility notice

Any base period or subsequent employer who has knowledge of the specific facts affecting a claimant's rights to receive benefits for any week may notify the Director in writing of these facts. Current law contains no specific criteria that the Director must use to determine the validity of an eligibility notice, but the Director must use certain criteria because of a federal court order.[1] The bill codifies the criteria that resulted from the court order. Under the bill, to be considered valid, an eligibility notice must be in writing and must meet four conditions:

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[1] Stanley Taylor et al. v. Debra Bowland, Administrator, Ohio Bureau of Employment Services *(1993), U.S. District Court, N.D. Ohio, Eastern Division, Case no. C83-419.*

(1) It must contain a statement that identifies either a source who has firsthand knowledge of the information or an informant who can identify the source;

(2) It must provide specific and detailed information that may potentially disqualify the claimant;

(3) It must provide the name and address of the source or the informant; and

(4) It must appear to the Director to be reliable and credible. (*Sec. 4141.28(F), Eligibility notice*.)

Current law prohibits an employer from being an interested party with respect to a claim for benefits if the employer does not timely file an eligibility notice with respect to that claim. Thus, employers who do not timely file an eligibility notice are excluded even if they may be considered an interested party on other grounds. The bill removes this prohibition and instead states that an employer who timely files an eligibility notice is an interested party to the claim for benefits.

Current law requires the Director to notify the claimant after the Director receives an eligibility notice from an employer, but before the Director issues a determination on the eligibility for benefits. Under the bill, the Director is required in addition to give the claimant an opportunity to respond to the eligibility notice before making a determination. (Sec. 4141.28(E)(3); *sec. 4141.28(F), Eligibility notice*.)

Current law requires the Director to mail the notice of determination to the claimant, the notifying employer, and other interested parties. The bill modifies this requirement by mandating that the Director inform these parties in writing of the determination, but the bill does not specify how the Director must transmit the information. (Sec. 4141.28(E)(3); *sec. 4141.28(F), Eligibility notice*.)

Corrected determinations

Under existing law, if the Director finds within the benefit year that a determination was erroneous due to an error in an employer's report or any typographical or clerical error in the Director's determination, the Director must issue a corrected determination to all interested parties. The bill adds that the Director also must issue a corrected determination due to an error as shown by correct remuneration information received by the Director.

When the Director issues a corrected determination under current law, it takes precedence over and voids the prior determination, provided that no appeal

of the determination has been filed with the Commission. The bill eliminates this condition and instead specifies that the Director cannot issue a corrected determination when the Commission or a court has jurisdiction with respect to that determination. (Sec. 4141.28(G)(2); *sec. 4141.28(G), Corrected determination*.)

ADMINISTRATIVE APPEALS PROCESS

Appeals of benefit rights or claims for benefit determinations

Current law provides that any party notified of the Director's determination may appeal within 21 calendar days after the notice of determination was mailed to the party. The bill eliminates the requirement that the notice be mailed and states that the 21-day period in which an appeal is allowed commences after the written determination is "sent" to the party (sec. 4141.28(G)(1); *sec. 4141.281(A), Appeal filed*).

If the notice is mailed, then the date of the mailing is sufficient evidence that the determination was provided by the Director on that date under current law (sec. 4141.28(H)). The bill specifies that this rule of evidence is also applicable to the mailing of Commission decisions.

Current law provides that if the U.S. postal service is used as the means of delivery of the appeal to the Director, the envelope must have a postmark date as governed by U.S. postal regulations that is on or before the last day of the specified appeal period. The bill modifies this requirement by also authorizing the use of a meter postmark. (Sec. 4141.28(I)(1)(a); *sec. 4141.281(D)(1), Timeliness of appeals*.)

Current law specifies that when a postmark on an appeal is illegible or missing, the appeal is timely filed if it is received no later than the end of the third calendar day following the last day of the specified appeal period. The bill extends this grace period to the fifth day following the last day of the specified appeal period. (Sec. 4141.28(I)(2)(b); *sec. 4141.281(A) and (D)(1), Appeal filed and Timeliness of appeals*.)

Prompt payments

Current law mandates that benefits must be paid promptly if they are allowed by the Director, a hearing officer, the Commission, or a court, but it does not identify specifically who is to make the payment, or who has the responsibility of withholding payment if benefits are denied on appeal. The bill clarifies this provision by stating explicitly that the Director must make prompt payments if benefits are allowed and that the Director must withhold payments if benefits are denied on appeal. (Sec. 4141.28(I)(3); *sec. 4141.28(I), Prompt payments*.)

Appeals to the Unemployment Compensation Review Commission

An appeal from a determination of the Director may be taken to the Unemployment Compensation Review Commission. Hearings before the Commission may be heard at the hearing officer level or the review level. Generally, initial hearings are conducted at the hearing officer level. (Sec. 4141.06; *sec. 4141.281, Conduct of hearings*.) The bill specifies that the Commission has jurisdiction over an appeal on transfer or on direct appeal to the Commission. The Commission retains jurisdiction over the appeal until it is remanded to the Director or a final decision is issued and appealed to court, or the time to request a review of or to appeal a decision of a hearing officer or the commission is expired (sec. 4141.28(J); *sec. 4141.281(C)(1), Jurisdiction*).

Current law provides that all interested parties must be notified of the appeal, but it does not specify who provides the notification. The bill provides that the Commission must provide this notification, and adds another requirement, not found in current law, that all interested parties must be notified of the time and place of the hearing. (Sec. 4141.28(J); *sec. 4141.281(C)(3), Hearing officer level*.)

Under current law, the Director may adopt rules pertaining to alternate methods of filing appeals. The bill authorizes the Commission to do likewise. (Sec. 4141.28(I)(3); *sec. 4141.281(D)(1), Timeliness of Appeals*.)

Hearing officers

The bill modifies the authority exercised by hearing officers in the conduct of a hearing. Under current law, hearing officers must take "any steps in the hearings, consistent with the impartial discharge of their duties, which appear reasonable and necessary to ascertain the facts and determine whether the claimant is entitled to benefits under the law." (Sec. 4141.28(J).) The bill removes this provision, and creates a new standard for the conduct of hearings at both the hearing officer level and the review level that reads in part:

> The principles of due process in administrative hearings shall be applied to all hearings under the authority of the commission. In conducting hearings, all hearing officers shall control the conduct of the hearing, exclude irrelevant or cumulative evidence, and give weight to the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of serious affairs. Hearing officers have an affirmative duty to question parties and witnesses in order to ascertain the relevant facts and to fully and

fairly develop the record. (*Sec. 4141.281(C)(2), Conduct of hearings*.)

The duty to fully and fairly develop the record is not explicitly stated under current law, although it is implied by the instruction to take reasonable and necessary steps to ascertain the facts. The language in the bill appears to indicate that hearing officers are expected to resolve all questions of fact before an appeal reaches the review level.

The bill also creates a new limit for the burden of proof that may be imposed on any party that does not exist in current law. Under the bill, no person may impose a burden of proof upon the claimant or the employer as is required by a court of law. (*Sec. 4141.281(C)(2), Conduct of hearings*.)

Hearings conducted by telephone

Existing law authorizes hearing officers to conduct hearings by telephone. Existing law specifically requires the Commission to adopt rules governing the conduct of hearings by telephone, but the bill removes this requirement (sec. 4141.28(J); *sec. 4141.281(D)(3), Telephone hearings*). Therefore, under the bill, telephone hearings are subject to the same rules of conduct as hearings conducted in person. The Commission could, however, adopt rules for the conduct of telephone hearings under its general rule-making authority (sec. 4141.06).

Evening hearings

Under current law, when a party requests that a hearing be scheduled in the evening due to daytime employment, the Commission must schedule the hearing during hours the party is not employed. The bill specifies that if a conflict concerning a request for an evening hearing and an in-person hearing arises, the Commission must schedule the hearing by telephone during evening hours. (*Sec. 4141.281(D)(4), Evening hearings*.)

Failure to appear at a hearing

Under current law, a hearing officer is required to dismiss the appeal of an appellant who fails to appear at a hearing. The dismissal must be vacated by the hearing officer or by the Commission if the appellant can show that the notice of the hearing was not mailed to the appellant, or if the appellant can show good cause for non-appearance within 14 days after the hearing date. No further appeal may be instituted after this 14-day period has expired.

The bill removes the provision stating that the appellant who fails to show good cause for non-appearance may make no further appeal. It also eliminates the duty of the hearing officer to vacate the dismissal, thus allowing only the

Commission to perform this duty. The bill specifies that if the Commission finds that the appealing party's reason for failing to appear does not constitute good cause for failing to appear, the Commission must send written notice of that finding, and the appealing party may request a hearing to present testimony on the issue of good cause for failing to appear. The appealing party must file a request for a hearing on the issue of good cause for failing to appear within ten days after the Commission sends written notice indicating a finding of no good cause for failing to appear. (Sec. 4141.28(J)(2); *sec. 4141.281(D)(5), No appearance--appellant*.)

If an appellee fails to appear at a hearing, current law specifies that the hearing officer is required to continue with the hearing based on the information in the record, and the non-appearance of the appellee does not preclude a decision in the appellee's favor. The bill removes this provision, although the substantive effect of the provision is implied by existing language retained in the bill requiring the hearing officer to issue a decision based on the evidence of record (sec. 4141.28(J)(1); *sec. 4141.281(D)(6), No appearance--appellee*).

The provision relative to showing that a notice of hearing was not mailed is changed by the bill showing that written notice was not "sent" both for appellants and appellees.

The bill clarifies that the law's provisions relative to telephone hearings, failure to appear, waiver of hearings, and evening hearings apply to hearings at both the hearing officer and review levels. (*Sec. 4141.281(D)(2) to (6).*)

Contents of the hearing officer's decision

Under current law, the hearing officer's decision is required to contain the reasons for the determination. The bill adds the additional requirements that the decision set forth the facts, cite applicable laws, and state the right of an interested party to request a review by the Commission. Current law also indicates that the decision is mailed, but the bill eliminates this provision and states that it must be "sent" in writing to all interested parties. (Sec. 4141.28(L); *sec. 4141.281(C)(2), Conduct of hearings*.)

Procedures for hearing appeals to the Commission at the review level

Under current law, hearing officers or the Commission members who conduct hearings at the review level are not bound by common law or statutory rules of evidence, or by technical or formal rules of procedure. The Commission and hearing officers are required to take any steps in the hearings, consistent with the impartial discharge of their duties, that appear reasonable and necessary to ascertain the facts and determine whether the claimant is entitled to benefits under

the law (sec. 4141.28(M)). The bill revises these standards. The bill provides that all hearings conducted under the authority of the Commission are subject to the same "due process" standards of conduct as hearings at the hearing officer level (see the section entitled "***Hearing officers***" above), and the bill specifies that the standards for hearings at the hearing officer level also apply to the conduct of hearings at the review level.

Transfer of an appeal to the review level

Current law requires the Commission to: (1) decide whether to allow or disallow a timely request for review, (2) disallow a request for review that is not timely filed, and (3) notify all interested parties of a disallowed request (sec. 4141.28(M)). The bill retains the provision described in (1) above and deletes the provisions described in (2) and (3). The bill also adds a requirement that the Commission consider a request for review by an interested party, including the reasons for the request. Additionally, the bill permits the Commission to adopt rules prescribing the methods of making requests for review. (*Sec. 4141.281(C)(5), Commission examination*.)

Current law describes the methods by which an appeal may be removed to the review level. One such method is that a hearing officer refers an appeal to the Commission within 21 days after the hearing officer issues the hearing officer's decision. The bill shortens the time period during which the hearing officer may refer the appeal. Under the bill, the hearing officer must refer the appeal *before* the hearing officer's decision is "sent." (Sec. 4141.28(M)(1)(c); *sec. 4141.281(C)(4), Review level*.)

Mass appeals at the review level

Current law contains no provisions authorizing the consolidation of appeals at the review level except in the case of a labor dispute that involves 25 or more individuals (sec. 4141.281). Under the bill, the Commission may transfer on its own motion a minimum of five pending appeals to the review level if it determines that the appeals have common facts or common issues. This provision includes appeals from claimants separated due to a labor dispute if there are less than 25 claimants involved. The Commission may hear the appeals as a mass appeal. (Sec. 4141.28(B)(2); *sec. 4141.281(C)(9), Mass appeals*.)

Use of agents in a mass appeal

Current law authorizes an agent to execute an appeal from a determination or redetermination of the Director or a decision or order of the Commission on the behalf of any party or group of claimants (sec. 4141.28(O)). The bill specifies that in a case involving a mass appeal, the Commission may allow an authorized agent

to accept notice of hearing on behalf of claimants. The agent also may waive this notice of hearing and the providing of decisions to individual claimants represented by the agent (*sec. 4141.281(C)(9), Mass appeals*).

Precedential appeals at the review level

Another method under current law for removing an appeal to the review level is that the Commission or a hearing officer decides that an appeal is of potentially precedential value (sec. 4141.28(M)(1)(d)). Precedents established by the Commission through its final decisions must be followed by the Director in similar cases (sec. 4141.28(F)).

Under current law, the Commission is required to notify the Director and other interested parties that an appeal is potentially precedential. The bill permits the Commission also to notify any other parties that the Commission determines appropriate (sec. 4141.28(M)(3); *sec. 4141.281(C)(8), Precedential*).

The bill modifies the discretion of the hearing officer to designate an appeal as potentially precedential, so that only the Commission may remove an appeal that it designates as having potentially precedential value. Also, the bill specifies that these appeals must be heard at the review level. The bill also adds a provision that allows all parties to submit briefs on the issues involved in the appeal after the hearing is held. (*Sec. 4141.281(C)(8), Precedential*.)

Current law does not specify whether the Commission is required to designate a decision as precedential after having identified an appeal as potentially precedential before a hearing. The bill allows the Commission to designate a decision as precedential after issuing the decision or at any point in the appeal process even if the Commission does not initially identify the appeal as potentially precedential. (Sec. 4141.28(M)(3); *sec. 4141.281(C)(8), Precedential*.)

Authority of the Commission at the review level

Under current law, when the Commission has accepted an appeal at the review level, it must take one of the following four actions:

(1) Affirm the decision of the hearing officer;

(2) Order that the case be heard or reheard by a hearing officer;

(3) Order that the case be heard or reheard by a hearing officer as a potential precedential decision;

(4) Order that the decision be rewritten.

The bill modifies the second option by allowing the Commission to remand the appeal to the hearing officer level for a rehearing or to hear or rehear the appeal itself at the review level. It modifies the third option by specifying that a potentially precedential decision be heard at the review level instead of indicating only that it be heard or reheard by a hearing officer. The bill also modifies the fourth option by stating that a decision may be rewritten without further hearing at the review level, and that when a further hearing is provided or the decision is rewritten, the Commission may affirm, modify, or reverse the previous decision. (Sec. 4141.28(M)(2); *sec. 4141.281(C)(4), Review level*.)

The bill adds a general description of the Commission's authority at the review level, not contained in current law, by providing that it may affirm, modify, or reverse previous determinations by the Director or at the hearing officer level. These powers, however, are implicit in existing rules (see **COMMENT** 2). At the review level, the Commission may affirm, modify, or reverse a hearing officer's decision or remand the decision to the hearing officer level for further hearing. (*Sec. 4141.281(C)(4), Review level*.)

Agent

Any appeal from a determination or redetermination of the Director or a decision or order of the Commission may be executed on behalf of any party or group of claimants by an agent under existing law. The bill also permits requests for review to be so executed. (Sec. 4141.28(O); *sec. 4141.281(D)(7), Agent*.)

Collateral estoppel

Under existing law, no finding of fact or law, decision, or order of the Director, hearing officer, Commission, or reviewing court is given collateral estoppel or res judicata effect in any separate or subsequent judicial, administrative, or arbitration proceeding, other than a proceeding arising under the Unemployment Compensation Law.[2] Under the bill, this provision does not apply to a finding or decision of a reviewing court. (Sec. 4141.28(Q); s*ec. 4141.281(D)(8), Collateral estoppel*.)

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[2] *The collateral estoppel doctrine means that prior judgment between the same parties on a different cause of action is prevented as to the matters in issue or points controverted, on the determination of which finding or verdict was rendered. Res judicata refers to the rule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties, and as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand, or cause of action.* (Black's Law Dictionary)

APPEALS TO COURT

Under existing law an interested party may appeal a decision of the Commission to the court of common pleas, and the bill specifies that it is the *final* decision that may be appealed. It also specifically states that the final decision, as opposed to any Commission decision, must contain the names and addresses of all interested parties. An interested party must appeal within 30 days after notice of the Commission's decision was mailed, under existing law; but the bill merely specifies was "sent" instead of mailed. (Sec. 4141.28(N)(1); *sec. 4141.282(A), (B), and (D), Thirty-day deadline, Where to file, and Interested parties*.)

If the appellant is an employer, the appellant must file in the court of common pleas in the county where the employer is a resident or has the principal place of business in this state. The bill expands this provision by substituting "*a* principal place of business" for "*the* principal place." (Sec. 4141.28(N)(1); *sec. 4141.282(B), Where to file*.)

The bill eliminates a provision specifying that failure of an appellant to take any step other than timely filing a notice of appeal does not affect the validity of the appeal, but is grounds only for such action as the court deems appropriate, which may include dismissal of the appeal. The bill specifies that the court must provide for the filing of briefs by the parties, whether by local rule, scheduling order, or otherwise. (Sec. 4141.28(N)(1); *sec. 4141.282(C) and (G), Perfecting the appeal and Court briefing schedules*.)

Existing law requires that an appellant mail, by certified mail, a copy of the notice of appeal to the Commission and interested parties, and further requires the appellant to file proof of the mailing of the notice with the clerk within 30 days of filing the notice of appeal. Instead, the bill states that upon filing the notice of appeal with the clerk of court, the clerk, instead of the appellant, must serve, instead of mail, a copy of the notice of appeal upon all appellees, including the Director. Additionally, the bill correspondingly eliminates the requirement that the appellant file proof of mailing the notice. (Sec. 4141.28(N)(1); *sec. 4141.282(E), Service of the notice of appeal*.)

The bill specifies that the Director is always an interested party and requires that the Director be named as an appellee in the notice of appeal. The bill eliminates a provision permitting the Commission to petition the court to be made a party to the appeal. (Sec. 4141.28(N)(1); *sec. 4141.282(D), Interested parties*.)

Existing law requires the Commission, within *30* days of *receipt* of the notice of appeal, to file a certified transcript of the record of the proceedings before the Commission pertaining to the decision with the clerk. The bill instead specifies that the Commission, within *45* days after notice of appeal is *filed*, must

file a certified transcript of the record of the proceedings at issue before the Commission. Additionally, current law requires the Commission to mail a copy of the transcript to the appellant's attorney or to the appellant, if not represented by counsel and the bill allows it to be "provided" instead of mailed and also requires it to be provided to any appellee who requests a copy. (Sec. 4141.28(N)(1); *sec. 4141.282(F), Duties of the Commission*.)

Under existing law, an appellant must file a statement of the assignments of error within 60 days after the filing of the notice of appeal with the court. The bill eliminates this requirement. (Sec. 4141.28(N)(1); *sec. 4141.282(G), Court briefing schedules*.)

Under existing law, if the court finds that the decision was unlawful, unreasonable, or against the manifest weight of the evidence, the court must reverse and vacate the decision or modify the decision and enter final judgment in accordance with that modification. If the court does not find that the decision was unlawful, unreasonable, or against the manifest weight of the evidence, the court must affirm the decision. Under the bill, if the court finds that the decision was unlawful, unreasonable, or against the manifest weight of the evidence, the court must reverse, vacate, or modify the decision, or remand the matter to the Commission. The bill eliminates an express statement that any interested party has the right to appeal the decision of the court as in civil cases. The effect of this is uncertain (see **COMMENT** 3). (Sec. 4141.28(N)(1); *sec. 4141.282(H), Review by the court of common pleas*.)

The bill eliminates a provision requiring the court to dismiss an appeal when the court determines that the time for filing the appeal cannot be extended pursuant to the existing extension provisions. (Sec. 4141.28(N)(2); *sec. 4141.282(H), Review by the court of common pleas*.)

OTHER CHANGES

Reconsideration provisions not applicable to fraud provisions

Current law specifies that the reconsideration and appeal provisions of the Unemployment Compensation Law apply to all orders and determinations issued under the fraudulent misrepresentations provision of that law. The bill provides that only the appeal provisions apply, not the reconsideration provisions. (Sec. 4141.35(C).)

Quarterly reports

Single report required

Under existing law, employers are required to file two specific types of quarterly reports with the Director. An employer who makes periodic payments to the Unemployment Compensation Fund (contributory employer) submits a quarterly contribution report and quarterly report of wages. An employer who reimburses the Unemployment Fund for benefits paid (reimbursing employer) submits a quarterly payroll report and quarterly report of wages.

The bill specifies that effective with the calendar quarter beginning January 1, 2002, employers will be required to submit the same information, by the same deadlines as under current law, but in one quarterly report instead of two. (Sec. 4141.20(D) and (E).)

Forfeitures for late filing

Failure to timely file a quarterly report results under current law in the assessment of a forfeiture penalty amounting to twenty-five one hundredths of one percent of the total remuneration paid by the employer, provided that the forfeiture is at least $30 but not more than $500. Because two reports are required, an employer is assessed two forfeiture penalties if the employer fails to timely file both quarterly reports.

Under the bill, instead of being assessed either one forfeiture penalty for failure to file one quarterly report, or two penalties for failure to file both reports, an employer is assessed one penalty in the amount of twenty-five one hundredths of one percent of the total remuneration reported, as opposed to paid, as under current law, by the employer, provided the amount is at least $50 and is not more than $1,000. Additionally, this forfeiture penalty is assessed for failure to *properly* file the quarterly report as opposed to merely failure to file the report, as under current law. (Sec. 4141.20.)

Waiver of forfeitures

The Director may waive a forfeiture penalty under current law only if the employer provides a written statement showing good cause for failure to file a quarterly report. The bill retains this waiver authorization, but adds a deadline. Under the bill, an employer must provide the written statement within four years after the date the forfeiture penalty was assessed. (Sec. 4141.20.)

Deputy registrars

Current law specifies that deputy registrars operating under the Registrar of Motor Vehicles are independent contractors and that neither they nor their employees are employees of the state, except that this does not affect the status of county auditors as public officials, nor the status of their employees as employees of any county. The bill specifies that for purposes of the Unemployment Compensation Law, determinations concerning the employment of deputy registrars and their employees must be made under that law, notwithstanding the above described provision specifying that they are independent contractors. (Sec. 4503.03(C).)

Potential delay for changes relative to criteria used in determining the validity of an application

Under existing law, effective for applications filed on and after March 3, 2002, applications for the determination of benefit rights will be valid if the individual satisfies the requirements applicable after that date, which differ from those before that date. The bill modifies the timing structure of this provision. The applications this provision applies to under the bill will be those for benefit years beginning on and after December 28, 2003. However, the bill includes a provision that allows the Director of Job and Family Services to specify that that provision is applicable for the determination of benefit rights involving benefit years beginning on or ***before*** December 28, 2003, if the Director determines that the technological systems necessary to effect the purposes of that provision are operational and sufficiently adequate to assure no interruption in the discharge of the duties of the Director and the Department of Job and Family Services. (Sec. 4141.01(R); Section 3.)

COMMENT

1. An individual who is laid off is without work but still is subject to recall by the employer. Current law specifies that the mass layoff notification takes effect if the individuals upon separation are "unemployed" according to R.C. § 4141.01(R)(4), which defines unemployment in the following manner:

> an individual is "unemployed" if, with respect to the calendar week in which such application is filed, the individual is "partially unemployed" or "totally unemployed" as defined in this section or if, prior to filing the application, the individual was separated from the individual's most recent work for any reason which terminated the individual's employee-employer

relationship, or was laid off indefinitely or for a definite period of seven or more days.

2. The Commission's administrative rule on the contents of its decisions states that the Commission or a hearing officer must issue a written decision that "shall affirm, modify or reverse the previous decision." (O.A.C. § 4146-09-1.)

3. Art. IV, Section 3, division (B)(2) of the Ohio Constitution states that courts of appeals have appellate jurisdiction *as may be provided by law* to review and affirm, modify, or reverse final orders or actions of administrative officers or agencies. The bill eliminates the provision of law that makes certain the right to further appeal per this constitutional provision. However, R.C. section 2505.02(B) states that an "order is a final order that may be reviewed, affirmed, modified, or reversed …when it is…(1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment…(3) An order that vacates or sets aside a judgment…." Additionally, R.C. section 2505.03(A) states that "Every final order, judgment, or decree of a court…may be reviewed on appeal by a court of common pleas, a court of appeals, or the supreme court, *whichever has jurisdiction*." These general statutory provisions may be sufficient to ensure a continued right of further appeal, but it is difficult to determine with certainty what the bill's effect is in eliminating the statement that any interested party has the right to appeal the decision of the court of common pleas as in civil cases.

HISTORY

ACTION	DATE	JOURNAL ENTRY	
Introduced	05-01-01	p.	321
Reported, S. Insurance, Commerce & Labor	05-22-01	p.	385
Passed Senate (33-0)	05-30-01	p.	604

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