



# Ohio Legislative Service Commission

## Bill Analysis

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### H.B. 46\*

128th General Assembly  
(As Reported by H. Veterans Affairs)

Reps. Ujvagi, Pryor, Book, Yuko

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## BILL SUMMARY

- Permits an individual who quits work to accompany the individual's spouse on a military transfer to be eligible for unemployment compensation benefits.

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## CONTENT AND OPERATION

### Spousal unemployment benefits--military transfer

(R.C. 4141.29)

#### Background

The Unemployment Compensation Law (R.C. Chapter 4141.) specifies certain conditions that an individual must meet and procedures the individual must follow in order to qualify for unemployment compensation benefits. It also outlines conditions under which an individual who loses a job is disqualified from receiving benefits and specifies conditions under which that individual may remove the disqualification. Generally, an individual qualifies for benefits if the individual files a valid application for benefits, makes a proper claim for benefits, registers at an employment office, and is available and actively searching for work.

An application for determination of benefit rights is valid if the individual filing the application is unemployed, was separated for a nondisqualifying reason, previously was employed by an employer or employers who are subject to the Unemployment

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\* This analysis was prepared before the report of the House Veterans Affairs Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

Compensation Law in at least 20 qualifying weeks<sup>1</sup> within the individual's base period,<sup>2</sup> and has earned or been paid during those qualifying weeks remuneration at an average weekly wage of not less than 27.5% of the statewide average weekly wage (recalculated each calendar year).

### **The bill**

The bill adds the following as a nondisqualifying reason for separation from employment, and therefore permits an individual who otherwise qualifies to be eligible for unemployment compensation benefits: the individual's spouse is a member of the United States armed services, the spouse is the subject of a military transfer, and the individual left employment to accompany the spouse.

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## **COMMENT**

Unemployment compensation is funded through a federal-state partnership.

Federal law requires each state to establish a state unemployment compensation fund that is used to pay unemployment benefits in order for employers in that state to receive tax credit under the Federal Unemployment Tax Act (FUTA).<sup>3</sup>

It appears that, under the federal-state partnership, a state must find some way to pay unemployment benefits. FUTA allows states to determine the amount of unemployment benefits they will pay. However, for a state system to comply with

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<sup>1</sup> A "qualifying week" is any calendar week in an individual's base period with respect to which the individual earns or is paid remuneration in employment subject to the Unemployment Compensation Law. A calendar week with respect to which an individual earns remuneration but for which payment was not made within the base period, when necessary to qualify for benefit rights, may be considered a qualifying week (R.C. 4141.01(O)(1), not in the bill).

<sup>2</sup> "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year, except that if an individual does not have sufficient qualifying weeks and wages in the base period to qualify for benefit rights, the individual's base period is the four most recently completed calendar quarters preceding the first day of the individual's benefit year, which is referred to as the "alternate base period" (R.C. 4141.01(Q), not in the bill). "Benefit year" means the 52-week period beginning with the first day of the week with respect to which the individual first files a valid application for determination of benefit rights, and thereafter the 52-week period beginning with the first day of the week with respect to which the individual next files a valid application for determination of benefit rights after the termination of the individual's last preceding benefit year (R.C. 4141.01(R), not in the bill).

<sup>3</sup> 26 U.S.C. §§ 3302 and 3304.

FUTA, it would appear that the state has to be able to pay whatever unemployment benefit amount the state establishes.<sup>4</sup>

If a state's fund is depleted, federal law permits a state's governor, or the governor's designee, to apply to the U.S. Secretary of Labor to receive a three-month "advance" for the payment of unemployment benefits if the amount of funds in a state's account in the federal Unemployment Trust Fund is insufficient to pay those benefits.<sup>5</sup>

If a state has received a federal advance, the state is more restricted than usual when it comes to making changes to its unemployment compensation system. Essentially, a state cannot take any action, whether legislative, administrative, or judicial, that results or will result in either (1) a reduction in the state's unemployment tax effort or (2) a decrease in the net solvency of the state's unemployment compensation system. The former actions include, but are not limited to, a reduction in the taxable wage base, the tax rate schedule, tax rates, or taxes payable, including surtaxes. The latter comprises actions that result or will result in an increase in benefits without at least an equal increase in taxes, or a decrease in taxes without at least an equal decrease in benefits.<sup>6</sup>

Since Ohio has received an advance from the federal government, and if that advance remains outstanding after specified deadlines have passed, the General Assembly may, in a practical manner, be limited in the unemployment legislation it enacts. Whether the bill will be subject to such a practical limitation will depend upon the Secretary of Labor's determination whether the bill results, or will result, in a net decrease in the solvency of Ohio's Unemployment Compensation Fund. The U.S. Department of Labor, Office of Unemployment Insurance, stated in a letter regarding the bill that the bill does not create any issue with the requirements of the federal Unemployment Compensation Law.

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<sup>4</sup> See 26 U.S.C. § 3304, which requires a state to establish an unemployment compensation fund and to use that fund, with some exceptions, only for the purpose of paying unemployment benefits.

<sup>5</sup> 42 U.S.C. § 1321 and 20 C.F.R. § 606.4. Ohio's Unemployment Compensation Law allows the Director of ODJFS to apply for an advance to the Unemployment Compensation Fund and to do all things necessary or required to obtain, and to arrange for the repayment of, an advance (R.C. 4141.43(F)).

<sup>6</sup> 20 C.F.R. § 606.21(a).

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## HISTORY

### ACTION

### DATE

Introduced  
Reported, H. Veterans Affairs

02-24-09  
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