Legislative Summary **LS-378E**

BILL C-2: AN ACT TO AMEND THE EMPLOYMENT INSURANCE ACT AND THE EMPLOYMENT INSURANCE (FISHING) REGULATIONS

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LEGISLATIVE HISTORY OF BILL C-2

HOUSE OF COMMONS		SENATE	
Bill Stage	**Date**	**Bill Stage**	**Date**
First Reading:	2 February 2001	First Reading:	5 April 2001
Second Reading:	13 February 2001	Second Reading:	24 April 2001
Committee Report:	23 March 2001	Committee Report:	3 May 2001
Report Stage:	2 April 2001	Report Stage:	
Third Reading:	4 April 2001	Third Reading:	9 May 2001

Royal Assent: 10 May 2001

Statutes of Canada 2001, c. 5

N.B. Any substantive changes in this Legislative Summary which have been made since the preceding issue are indicated in **bold print.**

Legislative history by Peter Niemczak

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BACKGROUND

Bill C-2: An Act to amend the Employment Insurance Act and the Employment Insurance (Fishing) Regulations was introduced and given First Reading by the Minister of Human Resources Development on 2 February 2001. A similar version of Bill C-2 – titled Bill C-44: An Act to amend the Employment Insurance Act – had been introduced in the 2nd Session of the 36th Parliament, but died on the *Order Paper* with the dissolution of Parliament in October 2000.

In 1996, the government had enacted the *Employment Insurance Act* (hereafter referred to as the Act). This law followed extensive consultations and was designed to address several policy objectives, primarily to:

- make unemployment benefits more "active" (i.e., rely less on income support and more on labour market adjustment);
- enhance employment stability; and
- lower program costs.

With the reintroduction of this measure (Bill C-2, formerly Bill C-44), the government maintains that some of the intended EI reforms have not achieved their 1996 policy objectives. In particular, the government believes that the 1996 reforms have failed to reduce "frequent" EI use. Instead of proposing changes to achieve this objective, the government has opted to modify its pursuit of this policy objective by proposing to eliminate certain program features that relate to a claimant's claim history. Among other changes, the bill also would ease the entrance requirement for parents re-entering the labour market after an extended absence to

raise their children. This change builds on other recent "family-friendly" changes to the Act that were implemented under Bill C-32 (the 2000 Budget Bill), which received Royal Assent on 29 June 2000.(1)

SUMMARY AND ANALYSIS

Clause 1 of the bill would replace subsection 2(5) of the Act, thereby removing the authority to make regulations for establishing how many weeks of regular benefits a claimant was paid for the purposes of section 15 of the Act. This is no longer needed, as the bill would repeal section 15 (clause 5). In its place, clause 1 would add a reference to new subsection 7(4.1), discussed further in clause 4. In addition, regulations pertaining to this clause may have effect with respect to any period before it is proclaimed.

Clause 2 would extend the Canada Employment Insurance Commission's annual monitoring of and reporting on the Act to 2006. Under the current Act, this obligation was to end on 31 December 2001. Moreover, this clause would establish the reporting deadline for each year during the period, 2001 to 2006, as not later than 31 March following the end of each of those years.

Clause 3 would provide a means for calculating maximum yearly insurable earnings (MYIE). Under the current Act, MYIE is set at $39,000 until the end of 2000. Thereafter, it is to be set by the Commission with the approval of the Governor in Council on the recommendations of the Ministers of Human Resources Development and Finance. According to clause 3, MYIE would remain at $39,000 until the calculation, as described below, generates a value exceeding $39,000. This calculation is 52 x A x B where:

> A = the 12-month average (ending on 30 June of the preceding year) of monthly average weekly earnings; and,
>
> B = the ratio of A to the 12-month average (ending 12 months prior to 30 June of the preceding year) of monthly average weekly earnings.

(1) As of 31 December 2000: parental benefits have increased from 10 to 35 weeks of benefits; the entrance requirement for special benefits have dropped from 700 hours to 600 hours of insurable employment; and parents sharing parental benefits now have to serve only one waiting period.

If the amount produced by this calculation exceeds $39,000, then MYIE for that year would be that amount rounded down to the nearest multiple of $100. MYIE for subsequent years would be equal to MYIE in the preceding year, before rounding down to the nearest multiple of $100, multiplied by B. If this amount was not a multiple of $100, it also would have to be rounded down to the nearest multiple of $100. The average weekly earnings referred to in this calculation are the industrial aggregate for the nation as a whole as estimated and published monthly by Statistics Canada.

The calculation, as outlined above, for the year 2000 is estimated to be (52) X ($607.02) X ($607.02 ÷ $602.68) = $31,792.35 (or $31,700 after rounding down to the nearest multiple of $100). This is substantially lower than $39,000 and it is likely to be many years before the current MYIE increases.

Clause 4 would amend section 7 of the Act by adding a new subsection (4.1) which would change the definition of new entrant/re-entrant in the current subsection 7(4) by excluding individuals who have received at least one week of maternity or parental benefits "in the period of 208 weeks preceding the period of 52 weeks before their qualifying period or in other circumstances, as prescribed by regulation, arising in that period of 208 weeks." In other words, this clause would extend the labour force attachment of those individuals who left the labour market to raise a child and received maternity or parental benefits in the four-year period preceding the current two-year look-back period. These individuals would qualify under the normal entrance requirement as opposed to the much tougher qualification requirement for new entrants and re-entrants. This clause would be retroactive to a benefit period beginning on or after 1 October 2000.

Clause 5 would repeal section 15 of the Act, more commonly known as the "intensity" rule. Under the current section 15, claimants who have received 21 to 40, 41 to 60, 61 to 80, 81 to 100 and more than 100 weeks of benefits within the past 260 weeks have their benefit rate reduced to 54%, 53%, 52%, 51% and 50% respectively of weekly insurable earnings. The government maintains that this rule has been ineffective in discouraging repeat use of EI and has had the unintended effect of being simply punitive.[2]

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(2) Human Resources Development Canada, News Release 01-05, 2 February 2001.

Clause 6 would establish the maximum weekly rate of benefit as 55% of MYIE divided by 52. This amendment corresponds to the one proposed by clause 3. And until MYIE increase, maximum weekly benefits would remain at the current level of $413.

Clause 7 would remove the reference to section 15 in subsection 28(6) of the Act relating to a disqualification from receiving benefits. This is consequential to the proposal to repeal section 15 of the Act (clause 5).

Clause 8 would reword section 38(3) to conform to the proposed changes in clause 5 (repealing section 15) and clause 11 relating to a benefit repayment, as discussed below.

Clause 9 would establish a new section 66.1 and would provide that the EI premium rate for the years 2002 and 2003 would be set by the Governor in Council on the recommendation of the Ministers of Human Resources Development and Finance. This proposed amendment would override the premium rate-setting process in the current section 66 of the Act, which requires, to the extent possible, that premiums be set at a level that cover program costs over a business cycle and remain relatively stable over the same period. Although not part of the Bill, a review of the premium rate-setting process is underway and is expected to be completed by 2003.

Clause 10 would make minor wording changes to section 67 that are consequential to the changes proposed in clause 9.

Clause 11 would amend the current benefit repayment provision (i.e., the "clawback") in section 145 of the Act. With one exception, all claimants who were paid regular benefits would be subject to the same benefit repayment provision (i.e., 30% of the lesser of total regular benefits paid to a claimant in the taxation year and the amount by which the claimant's income for the taxation year exceeds 1.25 x MYIE). The one exception would apply to claimants who were paid regular benefits for less than one week in the ten years before a taxation year; they would not be obliged to repay benefits. Regular benefits paid for weeks beginning before 30 June 1996 would not be taken into account when applying this exception. Although described as an amendment favourable to re-entrants, particularly mothers who left the labour market for an extended period to raise children, the ten-year exception presumably would extend to anyone who had not received regular benefits in the ten-year period preceding the taxation year.

Under the amendments proposed in clause 11, "frequent" claimants would no longer have their benefit repayment determined, in part, by their claim history. In addition, no claimant would be required to repay special benefits. The application of this clause would begin in the taxation year 2000.

Clause 12 is a transitional provision stating that the repeal of section 15 of the Act as enacted by clause 5 would apply to claimants for any benefit period established after 1 October 2000. And, for claimants for whom a benefit period had not ended by 30 September 2000, the weekly rate of benefits established under section 14 of the Act (i.e., 55% of weekly insurable earnings) would apply to weeks of benefits paid or payable on or after 1 October 2000. **This clause was amended by the Standing Committee on Human Resources Development and the Status of Persons with Disabilities. The amendment would waive the liability of overpayments arising from the retroactive implementation of the intensity rule in some instances, but not in others.**

Clause 13 is a consequential amendment to section 8 of the *Employment Insurance Regulations*, extending the same treatment to fishers as that provided to an insured person under clause 4 (i.e., exclusion from the definition of new entrants and re-entrants). This clause would apply to a fisher for a benefit period beginning on or after 1 October 2000.

Claude 14 of the bill provides that the *Regulations amending the Employment Insurance (Fishing) Regulations*, made by the Canada Employment Insurance Commission on 23 January 2001 are deemed to come into force on 31 December 2000.

Clause 15 would bring Bill C-2 into force on a day or days to be fixed by order of the Governor in Council.

COMMENTARY

As yet, there has been little discussion of Bill C-2. Some opponents of the bill maintain that the government is retreating from its 1996 structural reforms to EI – particularly in the context of experience-rating benefits under the program. In an effort to reduce "frequent" access to the program, the government decided in 1996 to reduce the benefits of those who regularly collect EI benefits instead of charging employers premiums that reflect their layoff behaviour (i.e., higher premiums for firms that frequently lay off workers). According to a press release from the Honourable Jane Stewart, Minister of Human Resources Development Canada, Bill C-2 is designed, in part, to eliminate those structural reforms that have been ineffective and

in some cases, punitive. Of particular note, the Minister indicated that some reforms have had a punitive effect on seasonal workers and women. Some critics of the bill argue that there is no convincing evidence of ineffectual reforms or adverse effects beyond those contemplated at the time of the reform.

Other critics of the bill maintain that the proposed amendments do not go far enough. They would like to see the qualification requirement and the duration of benefits changed in order to enhance access to EI benefits in regions where fewer employment opportunities exist and the unemployment rate is relatively high.