

GOVERNOR'S VETO
AB 1066 (Gonzalez)
As Enrolled September 4, 2020
2/3 vote

SUMMARY:

Provides that if an employer fails to provide employment records requested to resolve a claim for unemployment insurance (UI) benefits by the Employment Development Department (EDD) within 10 days, the employee will be awarded the maximum UI benefit. The bill also permits EDD to delegate its authority to collect unpaid UI taxes to the Attorney General.

Governor's Veto Message:

"This bill would conclusively presume that a claimant is entitled to the maximum benefit amount for the purposes of unemployment insurance if an employer does not furnish requested wage information for the Employment Development Department (EDD) within 10 days after receiving notice.

Current law already entitles a claimant to the maximum benefit amount if the employer does not provide documents responding to a claim within a reasonable time frame.

By conclusively presuming an individual is entitled to the maximum benefit amount after 10 days, this bill will result in significant new borrowing of federal funds to the Unemployment Insurance fund, increasing interest costs borne by the state General Fund. These costs are not included in the 2020 Budget Act and will add cost pressures on state funds that are already strained because of the pandemic."

COMMENTS:

Existing law requires an employer to provide EDD with employment records when requested to make a determination regarding a claim for UI benefits. If an employer fails to provide the requested records after "a reasonable time," the claim determination shall award the maximum UI benefit.

According to the Author:

Companies commit fraud when they do not properly report their workers' wages to the EDD. This includes when employers misclassify their workers as independent contractors instead of employees to avoid paying into the UI Fund. When employers fail to report wage records to EDD and pay unemployment insurance taxes, they retain an unfair competitive advantage and pass off their costs to law-abiding businesses. Since the pandemic began, California was the first state to receive approval for up to \$10 billion in loans from the federal government to cover the rising cost of unemployment insurance benefits. Once the economy recovers, law-abiding businesses will repay the federal UI loan through higher tax contributions. Countless responsible businesses that comply with their employer obligations suffer when they are forced to subsidize companies that skirt the law by not reporting their workers as employees or paying UI taxes. AB 1066 ensures that employers who evade their obligation to pay into the UI Fund are held accountable. If a large business has failed to contribute to the UI Fund, while at least five of their workers have received UI benefits, then AB 1066 states EDD has the authority to delegate to the Attorney General the ability to recover UI contributions, including interest and penalties.

Arguments in Support:

According to the California Labor Federation, "the failure to provide records is not a new problem since employers have failed to furnish wage data in the past. However, the scope of the problem and the length of the delays involved threaten the economic security of tens of thousands of workers who are waiting months to access benefits. Existing law states if an employer fails to provide wage records "within a reasonable time" for EDD to determine a workers' UI benefit amount that it is conclusively presumed that the worker is entitled to the maximum benefit amount, unless the Director determines otherwise...Despite this, many employers still have not provided EDD this information in a timely manner, or in other cases, provided any records at all. Without a clearly defined timeline for this presumption to be applicable, many workers without wage records in the system are left waiting indefinitely for the UI benefits they are entitled to under the law. Some have been waiting for their claims to be resolved as early as March and April of this year."

Arguments in Opposition:

According to the California Chamber of Commerce, "AB 1066, potentially eliminates the opportunity for an employer to present evidence of independent contractor status by imposing an arbitrary 10-day statutory deadline for a business to produce records, or face a "conclusive presumption" that the individual is entitled to benefits, i.e. an employee...Compounding the above concerns about even good-faith businesses facing penalties and losing their appellate opportunities, AB 1066 adds enforcement by the Attorney General against any businesses which have failed to make contributions in the past. But this enforcement itself is problematic. For example, if a worker incorrectly asserts that they were misclassified, and the employer is not quick enough in responding, the employer will now face the potential of the Attorney General pursuing them for allegedly missed contributions – all based on an understandable mistake by a worker seeking benefits. Given the likelihood of confusion around classification under AB 5, adding enforcement isn't appropriate at this time. After the dust settles, and both legislation and initiatives have been resolved, then adding enforcement makes sense. But now, with businesses struggling to survive and ambiguity around classification still being resolved, we do not believe this additional enforcement will serve any benefit."

FISCAL COMMENTS:

The Department of Justice estimates \$3 million per year in costs to be reimbursed by EDD.

VOTES:**ASM INSURANCE: 8-2-4**

YES: Daly, Berman, Calderon, Chu, Cooley, Cooper, Gipson, Kamlager-Dove

NO: Frazier, Voepel

ABS, ABST OR NV: Mayes, Bigelow, Chen, Grayson

ASM APPROPRIATIONS: 12-3-3

YES: Gonzalez, Bloom, Bonta, Calderon, Carrillo, Chau, Eggman, Gabriel, Eduardo Garcia, Maienschein, Quirk, Robert Rivas

NO: Brough, Fong, Obernolte

ABS, ABST OR NV: Bigelow, Diep, Petrie-Norris

ASSEMBLY FLOOR: 51-19-10

YES: Aguiar-Curry, Arambula, Berman, Bloom, Boerner Horvath, Bonta, Burke, Calderon, Carrillo, Cervantes, Chau, Chiu, Chu, Cooper, Daly, Eggman, Friedman, Gabriel, Cristina Garcia, Gipson, Gloria, Gonzalez, Gray, Holden, Irwin, Jones-Sawyer, Kalra, Kamlager-Dove, Limón, Low, Maienschein, McCarty, Mullin, Muratsuchi, Nazarian, O'Donnell, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Salas, Santiago, Mark Stone, Ting, Weber, Wicks, Wood, Rendon

NO: Bauer-Kahan, Brough, Choi, Cunningham, Dahle, Flora, Fong, Frazier, Gallagher, Kiley, Lackey, Levine, Mathis, Melendez, Obernolte, Patterson, Petrie-Norris, Voepel, Waldron

ABS, ABST OR NV: Bigelow, Chen, Cooley, Diep, Eduardo Garcia, Grayson, Mayes, Medina, Blanca Rubio, Smith

SENATE FLOOR: 25-10-5

YES: Allen, Archuleta, Atkins, Beall, Bradford, Caballero, Durazo, Lena Gonzalez, Hertzberg, Hill, Hueso, Jackson, Leyva, McGuire, Mitchell, Monning, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener

NO: Bates, Borgeas, Dahle, Galgiani, Grove, Melendez, Moorlach, Morrell, Nielsen, Wilk

ABS, ABST OR NV: Chang, Dodd, Glazer, Hurtado, Jones

ASM INSURANCE: 8-0-6

YES: Daly, Berman, Calderon, Cooley, Gipson, Grayson, Kamlager, Wood

ABS, ABST OR NV: Mayes, Bigelow, Chen, Cooper, Frazier, Voepel

ASSEMBLY FLOOR: 54-17-8

YES: Aguiar-Curry, Bauer-Kahan, Berman, Bloom, Boerner Horvath, Bonta, Burke, Calderon, Carrillo, Cervantes, Chau, Chiu, Chu, Daly, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gonzalez, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kamlager, Levine, Limón, Low, Maienschein, McCarty, Medina, Mullin, Muratsuchi, Nazarian, O'Donnell, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Smith, Mark Stone, Ting, Weber, Wicks, Wood, Rendon

NO: Bigelow, Brough, Chen, Choi, Cunningham, Megan Dahle, Diep, Flora, Fong, Gallagher, Kiley, Lackey, Mathis, Mayes, Obernolte, Patterson, Waldron

ABS, ABST OR NV: Arambula, Cooley, Cooper, Eggman, Frazier, Gray, Petrie-Norris, Voepel

UPDATED:

VERSION: September 4, 2020

CONSULTANT: Tracy Elwell / INS. / (916) 319-2086

FN: 0003706