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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair  
2021 - 2022 Regular

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**Bill No:** SB 420                      **Hearing Date:** April 27, 2021  
**Author:** Umberg  
**Version:** March 9, 2021  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** GC

**Subject:** *Unemployment insurance: Unemployment Insurance Integrity Enforcement Act*

## HISTORY

Source: Author

Prior Legislation: Unknown

Support: California Chamber of Commerce

Opposition: None known

## PURPOSE

*The purpose of this bill is to: 1) establish the Unemployment Insurance Integrity Enforcement Program within the Department of Justice (DOJ); and 2) require the Attorney General (AG) to establish a task force to coordinate with local prosecutors and the US Attorney's Office to pursue available methods to recover improper benefit payments made by the Employment Development Department.*

*Existing law* establishes the Employment Development Department (department) within the Labor and Workforce Development Agency and sets forth its powers and duties, including administration of the unemployment and disability insurance programs for California and requires the department to pay unemployment compensation benefits from the Unemployment Fund to unemployed individuals meeting requirements. Requires the department to maintain a field investigating staff, whose function includes investigation of violations of the unemployment and disability insurance programs. (Unemp. Ins. Code, § 301 et. seq.)

*This bill* enacts the Unemployment Insurance Integrity Enforcement Act.

*This bill* establishes the Unemployment Insurance Integrity Enforcement Program (Program) within the Department of Justice (DOJ) to be administered by the Attorney General (AG).

*This bill* requires that the AG establish a task force consisting of the State Auditor and five members appointed by the AG.

- With the exception of the State Auditor all members of the task force shall serve at the pleasure of the AG.

- Prior to pursuing any civil or criminal action, the task force shall prepare a cost-benefit analysis, which shall consider the following:
  - The likelihood of prevailing on the merits.
  - The likelihood of collecting any misappropriated funds.
  - The costs of investigations and litigation.

*This bill* requires that the task force shall coordinate closely with county district attorneys to pursue available methods, including both civil and criminal actions, to recover misappropriated funds from the department.

*This bill* specifies that when jurisdiction dictates the task force shall coordinate with the US Attorney and federal law enforcement.

*This bill* provides that the funds recovered by the task force are appropriated to the DOJ for the purpose of paying the costs of the program, and the balance shall go to the Unemployment Fund.

*This bill* makes the following findings and declarations:

- The COVID-19 pandemic created unprecedented challenges for state officials responsible for administering California's unemployment benefits program.
- According to the State Auditor's office (auditor), the number of unemployment insurance claims submitted to the Employment Development Department (department) jumped thirteenfold between April 2019 and April 2020. The department was tasked with providing unemployment benefits to this vast number of unemployed Californians as quickly as possible.
- The volume of claims and speed of processing those claims, combined with the lack of effective fraud controls, resulted in a flood of potentially fraudulent claims. According to the auditor, the department could not identify the claimant for nearly 2.2 million of the 9.5 million claims submitted between March 2020 and late December 2020. The auditor estimated that, due to a lack of fraud detection efforts, the department paid out at least \$10.4 billion to 597,000 unidentified claimants.
- The auditor found that the department's existing processes of detecting fraud have been overwhelmed by the pandemic. For example, during a two-day period in which 1,000 fraudulent claims were detected, the department had two staff persons available to review these potentially fraudulent claims.
- The department's inability to distinguish fraudulent claims from legitimate claims has imposed hardships on many Californians whose unemployment benefits were suspended through no fault of their own. For example, the auditor found that in September 2020, the department directed the Bank of America to freeze 344,000 debit cards issued to benefit claimants, without any plan for unfreezing the accounts of legitimate claimants.
- The department's Investigations Division reported that as of December 10, 2020, it had opened more than 250 criminal investigations related to an estimated \$30 million in fraudulent claims. Based on the number of potentially fraudulent claims made during the pandemic and the difficulty in identifying those responsible for the claims, the auditor found it "highly unlikely" that the department would be able to investigate more than a small fraction of the claims or to recover a significant portion of the lost funds.

- Attorneys General in several states, including Illinois, Massachusetts, and Pennsylvania, are spearheading efforts to hold those making fraudulent claims accountable and to recoup fraudulently obtained unemployment funds.
- In California, local police and prosecutors are undertaking efforts to track down those responsible for making fraudulent unemployment claims and to recover lost funds. Local prosecutors have asked for more resources to investigate unemployment fraud.

## COMMENTS

### 1. Need for This Bill

The COVID-19 pandemic left millions of Californians unemployed and seeking jobless benefits. In addition to benefits paid by the state, unemployed Californians were eligible for federal jobless benefits. In order to quickly get benefits to recipients, the Employment Development Department (EDD) relaxed some of its fraud detection efforts. According to the California State Auditor, other EDD fraud detection systems were overwhelmed by the sheer volume of applicants. Unfortunately, these factors led to losses from fraudulent claims that the Auditor has estimated at \$10.4 billion—an amount expected to grow as more are uncovered.

According to the California State Auditor, as of December 10, 2020, EDD's Investigations Division had opened 250 investigations into an estimated \$30 million in fraudulent claims—a tiny fraction of the \$10.4 billion in fraudulent claims the Auditor estimates were made during the first nine months of the pandemic. Based on the number of potentially fraudulent claims made during the pandemic and the difficulty in identifying those responsible for the claims, the auditor found it “highly unlikely” that the department would be able to investigate more than a small fraction of the claims or to recover a significant portion of the lost funds. Local district attorneys are aware of additional cases, but have said they need more resources in order to effectively pursue them. At least three other state Attorneys General are coordinating efforts to claw back unemployment benefits fraudulently obtained from their respective states.

Therefore, SB 420 will expand the resources available to fight the massive amount of unemployment benefits fraud in California and will serve as a critical focal point for these efforts, which cut across jurisdictional lines. The bill would require the task force to coordinate with local district attorneys and with the United States Attorney's Office to pursue available methods to recover improper benefit payments made from the department.

SB 420 also provides that funds recovered by the task force are to be appropriated to the Department of Justice for the purpose of paying for the costs of the program. Lastly, the bill requires that the task force to consider the cost of any action prior to undertaking it.

## **2. California State Auditor Report 2020-128/628.1 from January 26, 2021**

In September 2020 the Joint Legislative Audit Committee of the California Legislature directed the California State Auditor to conduct an emergency audit<sup>1</sup> of the Employment Development Department's (EDD) response to the effects of the COVID-19 pandemic. In mid-March 2020 unemployment insurance (UI) claims surged to unprecedented levels that persisted through October 2020. The audit found that though it would be unreasonable to expect a flawless response to this historic event, the EDD's inefficient process and lack of advanced planning led to significant delays in its payment of UI claims.

Due to the surge in claims, many of which had to be hand processed, many claims that were ineligible for assistance were processed and paid. Some of these claims may have been active attempts to defraud the UI program, while others may be genuinely confused about the eligibility requirements. The audit found that if a claimant has to repay benefits that the EDD offers installment payment options. For non-fraud repayments, claimants typically have 48-months to repay the amount they owe. With fraudulent claims, the likelihood that EDD could recoup the payments may be very low. For instance in September 2020, the EDD informed the State Auditor that they'd flagged about 250,000 claims as having been filed using suspicious addresses. That may make it difficult to identify the bad actors who filed the claims and were likely because the claims were filed using another person's identity.

## **3. Scope of what is classified as Misappropriated Funds**

This bill establishes a task force to work with EDD, local prosecutors, and federal law enforcement to pursue recovery actions against individuals who have filed improper or "misappropriated" funds from the department. As indicated in the State Auditor's report many, if not most, of the misappropriated funds were paid to people who may have been mistaken by the requirements for qualifications. Only a fraction of the misappropriated funds are attributable to fraud.

This bill would empower the task force to work with local prosecutors and federal law enforcement to recover funds. Some of these funds may have been appropriated to individuals who acted with no criminal intent. Should prosecutors be involved in attempting to recover funds that were not properly distributed to individuals who were not applying fraudulently? Should the bill limit the actions of the task force, and the local prosecutors and law enforcement to fraudulent activities?

Possible amendment: Limit the work of the task force to pursuing criminal or fraudulent actions and not claims that were filed in good-faith due to a misunderstanding.

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<sup>1</sup> <https://www.auditor.ca.gov/reports/2020-128and628.1/index.html>

#### 4. Argument in Support

According to the California Chamber of Commerce:

In the wake of this unprecedented emergency and economic shutdown, we have seen fraudsters steal those benefits from Californians who deserve and need them. According to CalChamber's estimates, this fraud could have totaled as much as \$30 billion, with more than a billion coming from California's UI Fund. As the funders of California's UI Fund, California's employers see this fraud as doubly troubling because we will face increased taxes in the coming decades to repay the present insolvency.

As the Auditor's reports and legislative hearings have shown, the Employment Development Department must now turn to reviewing the benefits it distributed last year and identifying where fraud occurred. According to all accounts, it will be difficult work – but we see **SB 420** as a critical step in the right direction by creating a task force (including the State Auditor) who will pursue cost-effective recovery strategies and incorporating local district attorneys.

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