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## SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair  
2021 - 2022 Regular Session

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### **SB 420 (Umberg) - Unemployment insurance: Unemployment Insurance Integrity Enforcement Act**

**Version:** March 9, 2021

**Policy Vote:** L., P.E. & R. 5 - 0, PUB. S. 5  
- 0

**Urgency:** No

**Mandate:** No

**Hearing Date:** May 10, 2021

**Consultant:** Robert Ingenito

**Bill Summary:** SB 420 would require the Attorney General (AG) to establish a program within the Department of Justice (DOJ) and a task force consisting of the AG, the State Auditor, and five members appointed by the AG to pursue available methods, including civil and criminal actions, to recover funds misappropriated from the Employment Development Department (EDD).

**Fiscal Impact:**

- DOJ's administrative costs have yet to be identified. However, the bill's workload would likely require new staff to implement its provisions; consequently, the bill's costs to DOJ would minimally be in the hundreds of thousands of dollars annually. To the extent that the established task force successfully recovers payments related to fraudulent claims, the bill's costs would be offset. Any remaining funds after the task force's costs are fully offset would be deposited into the Unemployment Fund.
- Additionally, the Office of the State Auditor indicates that it would incur annual costs of up to \$75,000 to participate on the task force.

**Background:** In September 2020 the Legislature's Joint Legislative Audit Committee directed the State Auditor to conduct an emergency audit of EDD's response to the effects of the COVID-19 pandemic. After the pandemic began in mid-March 2020, and the economy was shut down in response, 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, deficiencies at EDD led to significant delays in its payment of UI claims.

Due to the pandemic-fueled surge, many UI claims had to be processed by hand, and those 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 have been legitimately filed in error. The audit found that if a claimant has to repay benefits, 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 Auditor that they had flagged about 250,000 claims as having been filed using suspicious addresses, making it challenging those who filed the claims and were likely because the claims were filed using another person's identity.

**Proposed Law:** This bill would, among other things, do the following:

- Establish within DOJ the Unemployment Insurance Integrity Enforcement Program under the AG's administration.
- Require the AG to establish a task force in order to fulfill the program's purpose and staff the task force with the State Auditor and five pleasure appointments by the AG.
- Require the task force to prepare a cost-benefit analysis prior to pursuing any civil or criminal action, as specified.
- Require the task force to coordinate closely with county district attorneys to pursue available methods, including both civil and criminal actions, to recover funds misappropriated from EDD.
- Require the task force to coordinate with the United States Attorney's Office and federal law enforcement agencies when necessary, as specified.
- Appropriate funds recovered under the program to DOJ to pay for the program's costs and requires DOJ to deposit the balance into the Unemployment Fund.
- Continuously appropriate recovered funds for the program costs to DOJ without regard to fiscal year.

**Related Legislation:**

- AB 400 (Petrie-Norris) would create a UI Oversight Board. The bill is currently pending in the Assembly Appropriations Committee.
- AB 12 (Seyarto) would prohibit EDD from including full Social Security numbers in mail to beneficiary. The bill is currently pending in the Assembly Appropriations Committee.
- AB 360 (Patterson) would establish the Unemployment Insurance Reform Project to be administered by the Director of EDD. Under the bill, EDD would be required to comply with various reporting and review processes. The bill is currently pending in the Assembly Insurance Committee.
- SB 58 (Wilk) would (1) prohibit EDD from sending any outgoing United States mail with an individual's social security number (SSN) unless it is replaced with a modified unique identifier or truncated to its last four digits (except as provided), and (2) place certain requirements on EDD related to fraud prevention. The bill is currently pending on the Senate Floor.
- SB 390 (Laird) would require EDD to develop a comprehensive plan to prepare for an increase in unemployment insurance compensation benefits claims due to an economic recession. The bill is currently pending in this Committee.
- SB 232 (Nielsen) would require EDD to meet specified timelines for troubleshooting and improving its claims processing and fraud prevention

processes to ensure efficient customer service and timely unemployment insurance benefits payment. The bill is currently pending in this Committee.

- AB 1296 (Gonzalez, Chapter 626, Statutes of 2019) provided DOJ with greater access to confidential EDD and JSEF data; required DOJ, EDD, and specified tax agencies to collaborate on TRUE investigations; and required DOJ to maintain at least two multiagency TRUE Criminal Enforcement Program investigative teams, as specified

**Staff Comments:** The Auditor indicates that EDD's fraud detection systems were overwhelmed by the sheer volume of applicants during the early months of the pandemic, resulting in losses from fraudulent claims estimated to be \$10.4 billion. To the extent that additional fraudulent claims are confirmed, this amount will grow.

According to the Auditor, as of December 10, 2020, EDD's Investigations Division had opened 250 investigations into an estimated \$30 million in fraudulent claims—0.3 percent 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 concluded that it was highly unlikely that EDD would be able to investigate more than a small fraction of the claims or to recover a significant portion of the lost funds.

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