
THIRD READING

Bill No: SB 420
Author: Umberg (D)
Amended: 3/9/21
Vote: 27

SENATE LABOR, PUB. EMP. & RET. COMMITTEE: 5-0, 3/22/21
AYES: Cortese, Ochoa Bogh, Durazo, Laird, Newman

SENATE PUBLIC SAFETY COMMITTEE: 5-0, 4/27/21
AYES: Bradford, Ochoa Bogh, Kamlager, Skinner, Wiener

SENATE APPROPRIATIONS COMMITTEE: 7-0, 5/20/21
AYES: Portantino, Bates, Bradford, Jones, Kamlager, Laird, Wieckowski

SUBJECT: Unemployment insurance: Unemployment Insurance Integrity
Enforcement Act

SOURCE: Author

DIGEST: This bill requires the Attorney General (AG) to establish a program within the 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.

ANALYSIS:

Existing law:

- 1) Establishes the Employment Development Department (EDD) in the Labor and Workforce Development Agency and charges EDD with responsibility for California's unemployment and disability insurance programs (Unemployment Insurance Code § 301).

- 2) Provides for the payment of unemployment compensation benefits to eligible unemployed persons, as specified (UIC § 1251 et seq.)
- 3) Makes it a violation to willfully make a false statement or representation, to knowingly fail to disclose a material fact, or to use a false name, false social security number, or other false identification to obtain, increase, reduce, or defeat any benefit or payment, whether for the maker or for any other person, as specified (UIC § 2101).
- 4) Makes any person who is overpaid any amount of unemployment compensation benefits, as specified, liable for the amount overpaid (UIC § 1375).
- 5) Requires EDD to do the following:
 - a) Assess an amount equal to 30 percent of any overpayment against a person who receives a benefit overpayment through fraud;
 - b) Seek recovery of the overpayment and assessed amount;
 - c) File civil actions to recover overpayments;
 - d) Seek summary judgements against the overpayment recipients;
 - e) Enforce collections of judgments against violators; and
 - f) File liens against violators' real and personal property (UIC §§ 1375.1 and 1379).
- 6) Requires EDD to maintain a field investigating staff, to investigate violations of the unemployment and disability insurance programs (UIC § 317).
- 7) Requires the Franchise Tax Board (FTB) to aid the department in the recovery of overpayments, as specified (UIC § 1383).
- 8) Designates the EDD director as chairperson of the Joint Enforcement Strike Force on the Underground Economy (JESF) and charges JESF with combating the underground economy and conducting enforcement activities regarding labor, tax, insurance, and licensing law violators operating in the underground economy. JESF includes EDD, FTB, the Department of Justice (DOJ), and other agencies tasked with coordinating state and local agencies (UIC § 329).
- 9) Sets forth the AG's powers and duties and provides that the AG is the state's chief law officer and the head of the DOJ. (CA CONST. art. V, § 13, Government Code § 12500 et seq.).

- 10) Establishes the False Claims Act (FCA) and makes it a violation for a person to knowingly present or cause to be presented a fraudulent claim to the state for payment or services, as specified (GC 12650 et seq.).
- 11) Requires the AG to diligently investigate FCA violations and authorizes the AG to bring civil actions against the violator (GC § 12652).
- 12) Requires the Department of Justice, at a minimum, to maintain two multi-agency Tax Recovery in the Underground Economy (TRUE) Criminal Enforcement Program investigative teams, formerly known as the Tax Recovery and Criminal Enforcement Task Force, in Sacramento and Los Angeles. Statute requires the investigative teams to continue their collaboration for the recovery of lost revenues to the state by investigating and prosecuting criminal offenses in the state's underground economy (GC § 15926).

This bill:

- 1) Establishes, within DOJ, the Unemployment Insurance Integrity Enforcement Program under the AG's administration.
- 2) Requires the AG to establish a task force in order to fulfill the program's purpose and staffs the task force with the State Auditor and five members appointed by the Attorney General. The five appointed members shall serve at the AG's pleasure.
- 3) Requires the task force to prepare a cost-benefit analysis prior to pursuing any civil or criminal action, as specified.
- 4) Requires 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.
- 5) Requires the task force to coordinate with the United States Attorney's Office and federal law enforcement agencies when necessary, as specified.
- 6) Appropriates 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.

- 7) Appropriates, continuously, recovered funds for the program costs to DOJ without regard to fiscal year.
- 8) Specifies that the DOJ's recovery of costs shall not foreclose the Attorney General from any other actions allowed by law.
- 9) Makes several legislative findings and declarations related to EDD's processing of unemployment claims during the Covid-19 pandemic and the State Auditor's findings regarding the scope of potentially fraudulent unemployment claims.

Comments

Need for the 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 get benefits quickly to recipients, the Employment Development Department (EDD) relaxed some of its fraud detection efforts. According to the California State Auditor, the sheer volume of applicants overwhelmed other EDD fraud detection systems. Unfortunately, these factors led to losses from fraudulent claims that the Auditor has estimated at \$10.4 billion—an amount expected to grow.

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.

Related/Prior Legislation

AB 12 (Seyarto 2021) prohibits EDD from including full Social Security numbers in mail to beneficiary.

AB 360 (Patterson 2021) establishes the Unemployment Insurance Reform Project to be administered by the Director of Employment Development. Under the

bill, the Employment Development Department would be required to comply with various reporting and review processes.

AB 400 (Petrie-Norris 2021) creates a UI Oversight Board.

SB 390 (Laird 2021) requires EDD to develop a comprehensive plan to prepare for an increase in unemployment insurance compensation benefits claims due to an economic recession.

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

FISCAL EFFECT: Appropriation: Yes Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee,

- 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.

SUPPORT: (Verified 5/20/21)

California Chamber of Commerce

OPPOSITION: (Verified 5/20/21)

None received

ARGUMENTS 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.

Prepared by: Glenn Miles / L., P.E. & R. / (916) 651-1556
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