

Date of Hearing: June 24, 2021

ASSEMBLY COMMITTEE ON INSURANCE
Tom Daly, Chair
SB 420 (Umberg) – As Amended March 9, 2021

SENATE VOTE: 38-0

SUBJECT: Unemployment insurance: Unemployment Insurance Integrity Enforcement Act

SUMMARY: Creates the Unemployment Insurance Integrity Enforcement Program (UIIEP) within the Department of Justice and administered by the Attorney General. Specifically, **this bill:**

- 1) Requires the Attorney General to establish a task force consisting of the State Auditor and five members appointed by the Attorney General.
- 2) Specifies that prior to pursuing any civil or criminal action, the task force must prepare a cost-benefit analysis that considers the following:
 - a) The likelihood of prevailing on the merits of the case;
 - b) The likelihood of collecting any of the misappropriated funds subject to the case; and,
 - c) The costs of investigating and litigating the case.
- 3) Requires the task force to coordinate with county district attorneys to pursue available methods, including both civil and criminal actions, to recover funds misappropriated from the Employment Development Department (EDD).
- 4) Provides, if possible, the task force must coordinate with the United States Attorney's Office and federal law enforcement agencies to pursue available methods, including both civil and criminal actions to recover improper benefit payments made from EDD.
- 5) Provides that funds recovered are legally available and appropriated to the Department of Justice for the purpose of paying for the UIIEP and any balance will be deposited into the unemployment fund.
- 6) Provides definitions for department, program, and task force.
- 7) Makes findings and declarations.

EXISTING LAW:

- 1) Establishes EDD in the Labor and Workforce Development Agency and tasks EDD with responsibility for California's unemployment and disability insurance programs. (Unemployment Insurance Code (UIC), Section 301)
- 2) Provides for the payment of unemployment compensation benefits to eligible unemployed persons. (UIC, section 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. (UIC, Section 2101)
- 4) Makes any person who is overpaid any amount of unemployment compensation benefits, as specified, liable for the amount overpaid. (UIC, Section 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 judgments against the overpayment recipients;
 - e) Enforce collections of judgments against violators; and
 - f) File liens against violators' real and personal property. (UIC, Sections 1375.1 and 1379)
- 6) Requires EDD to maintain a field investigating staff, to investigate violations of the unemployment and disability insurance programs. (UIC, Section 317)
- 7) Requires the Franchise Tax Board (FTB) to aid EDD in the recovery of overpayments. (UIC, Section 1383)
- 8) Specifies the Attorney General's powers and duties and provides that the Attorney General is the state's chief law officer and the head of the Department of Justice. (CA CONST. art. V, Section 13, Government Code (GC) Section 12500 et seq.)
- 9) 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. (GC, Section 12650 et seq.)
- 10) Requires the Attorney General to diligently investigate FCA violations and authorizes the Attorney General to bring civil actions against the violator. (GC, Section 12652)

FISCAL EFFECT: Unknown.

COMMENTS:

- 1) **Author's statement:** According to the author, "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) **Purpose of the bill:** This bill creates a unique approach by creating a task force within the Department of Justice focused on recouping funds that may have been paid by EDD under fraudulent pretenses. AB 420 attempts to address the lack of resources and focus during the pandemic to recoup the benefits paid out by those gaming the system.
- 3) **Background:** A surge in the filing of unemployment claims began in March 2020 following the issuance of a statewide stay-at-home order at the start of the COVID-19 pandemic which resulted in a significant increase in EDD's workload. During the same time period, Congress expanded federal unemployment insurance (UI) benefits and relaxed the eligibility criteria for receiving those benefits through the Coronavirus Aid, Relief, and Economic Security Act.

Beginning in July 2020, EDD criminal investigators began identifying specific cases of UI fraud involving the information of incarcerated individuals and communicating that information to local law enforcement agencies. In late November 2020, nine county district attorneys announced the discovery of widespread UI fraud involving tens of thousands of incarcerated individuals that took place during the first six months of the pandemic. The fraudulent claims primarily involved federal Pandemic Unemployment Assistance (PUA) claims. It was reported that in most cases the payments were sent via prepaid debit cards to addresses used on claims applications (i.e., addresses outside of a correctional facility) with the funds later deposited to inmate accounts in jails and prisons.

The extent of the fraud was uncovered after the U.S. Department of Labor crosschecked federal UI claims data against a list of state prison inmates that it had subpoenaed from the state and identified approximately 35,000 claims involving individuals incarcerated in the state's prisons. EDD estimated that it paid roughly \$810 million in benefits between January 2020 and November 2020 to 45,000 claimants with information that matched incarcerated individuals.¹ Those figures include individuals incarcerated in county jails who were identified after EDD contracted with a private vendor that provided cross-reference inmate data "from prisons and jails in multiple states," including access to "real-time incarceration and arrest records."²

As unemployment claims spiked, so did unemployment insurance fraud at EDD. It has been widely stated, if benefits go out quickly, the percentage of fraud increases. If the process slows down, the more likely EDD can determine the legitimate claims from the illegitimate claims. There has been a massive spike in fraudulent unemployment claims being processed by EDD. As reported earlier this year by the San Francisco Chronicle:

¹ State Auditor, *Employment Development Department: Significant Weaknesses in EDD's Approach to Fraud Prevention Have Led to Billions of Dollars in Improper Benefit Payments*, Report 2020-628.2, p. 27 <http://www.auditor.ca.gov/reports/2020-628.2/index.html> [as of April 1, 2021].

² *Id.* at pp. 29-30.

Opening the floodgates to criminals, California's EDD exhibited "significant missteps and inaction" in handling fraudulent unemployment claims, causing it to pay at least \$10.4 billion to scammers, according to a report from the state auditor issued Thursday.

The total fraud could reach nearly \$30 billion as the state continues to investigate claims, the EDD said this week.

Besides the huge hit to federal and state funds, the fraud could come back to bite hundreds of thousands of Californians whose identities were stolen, the report said. Those victims will be asked to pay taxes on benefits they never received - or to repay the benefits. If they become unemployed, they may be unable to collect benefits.

Daniela Urban, executive director of the Center for Workers' Rights in Sacramento, said she has a client who couldn't receive benefits after being laid off because an imposter had already filed a claim under her name. "She is now living in her car," after fruitlessly trying since July to file for unemployment relief, Urban said.

The state unemployment agency must strive to help identity theft victims but "given the high levels of potentially fraudulent claims and its processes for addressing them, EDD is underprepared to handle this work," the report said.³

4) **Related legislation:**

- a) SB 232 (Nielsen) would provide implementation timelines for EDD to improve its claims processing and fraud prevention processes. Pending before the Assembly Insurance Committee.
- b) 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. This measure is pending before the Assembly Insurance Committee.

5) **Double-referral:** Should this measure pass out of the Assembly Insurance Committee, the measure will move to the Assembly Public Safety Committee.

6) **Suggested Amendments:**

- a) Require EDD Director to serve on the task force and remove the California State Auditor.
- b) Clarify that all recouped money shall be returned to the Unemployment Insurance Fund, by replacing 4805(a) with "The entirety of the recovered funds are to be returned to the Employment Development Department to be appropriated back to the original funding source in accordance with the Federal Unemployment Tax Act and Section 1521."
- c) Clarify sharing of information: To enable the Attorney General and all members of the Unemployment Insurance Integrity Enforcement Program Task Force (commencing with Section 4800) within the Department of Justice access to relevant claimant information in

³ Said, "Jobless pay price for scammers; Agency's failures could mean taxes, loss of benefits for ID theft victims; California EDD's fraud failures could saddle innocent with taxes, penalties," SF Chronicle, Jan. 29, 2021.

order to conduct investigations of potential Unemployment Insurance fraud. The information provided pursuant to this subdivision shall be provided to the extent permitted by federal law and regulations.

REGISTERED SUPPORT / OPPOSITION:**Support**

California Chamber of Commerce

Opposition

None on file.

Analysis Prepared by: Kathleen O'Malley / INS. / (916) 319-2086