

Date of Hearing: July 13, 2021
Counsel: Nikki Moore

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

SB 420 (Umberg) – As Amended July 6, 2021

SUMMARY: Establishes the Unemployment Insurance Integrity Enforcement Program to promote coordination with county district attorneys, and federal authorities, to pursue civil and criminal actions to recover funds misappropriated from the Employment Development Department (“EDD” or “the department”), to be administered through a task force with grant money, upon appropriation of funds by the Legislature. Specifically, **this bill:**

- 1) Establishes within the Department of Justice the Unemployment Insurance Integrity Enforcement Program, to be administered by the Attorney General.
- 2) Requires the Attorney General to establish a task force consisting of the Director of Employment Development and five members appointed by the Attorney General.
- 3) Provides that the task force will, prior to pursuing any civil or criminal action pursuant to this part, prepare a cost-benefit analysis considering the likelihood of prevailing on the merits of the case, the likelihood of collecting any of the misappropriated funds subject to the case, and the costs of investigating and litigating the case.
- 4) Provides that, beginning Jan. 1, 2023, and upon appropriation by the Legislature, the Attorney General shall fund a grant program targeted at the successful prosecution and elimination of fraudulent unemployment insurance claims.
- 5) 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 the EDD.
- 6) When available and necessary due to jurisdictional limitations, the task force shall 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 the EDD.
- 7) States that to enable all members of the Unemployment Insurance Integrity Enforcement Program Task Force to access relevant claimant information in 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. Conduct related to information provided pursuant to this subdivision shall not be subject to the criminal sanctions set forth in subdivision (f) of Section 1094.
- 8) Specifies that in determining whether to award a district attorney a grant pursuant to this subdivision, the Attorney General shall consider factors indicating fraudulent unemployment

insurance claims in the district attorney's county, including, but not limited to, the county's level of general criminal activity, population density, claim frequency, number of suspected fraudulent claims, and prior and current evidence of fraudulent activity. States that funding priority shall be given to those grant applications with the greatest potential to reduce unemployment fraud activity and lessen the economic losses from that fraud.

- 9) Requires the Attorney General to prioritize funding under this section for multicounty efforts to investigate and prosecute unemployment insurance fraud activity.
- 10) States that each grantee shall provide the Attorney General with information resulting from the investigations, and clarifies that this section does not prohibit the referral of any cases developed by grantees or the Attorney General to any appropriate prosecutorial entity.
- 11) Provides that a grant under this section shall be awarded on the basis of a single application for a period of three years, and that continued funding of a grant shall be contingent upon a grantee's successful performance, as determined by an annual review by the Attorney General. Provides that the redirection of grant funds under this section be made only for good cause.
- 12) Permits two or more district attorneys to submit a joint application for a grant award under this section.
- 13) Provides that the entirety of the recovered funds shall be returned to the EDD to be appropriated back to the original funding source as required by law.
- 14) Makes legislative findings and declarations related to fraudulent unemployment claims.

EXISTING LAW:

- 1) Establishes the EDD which is responsible for administering the state's unemployment insurance (UI) program, including the payment of unemployment compensation benefits to eligible persons. (Unemp. Ins. Code, §§ 301 et seq.)
- 2) 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. (Unemp Ins. Code, § 2101.)

FISCAL EFFECT: Unknown.

COMMENTS:

- 1) **Author's Statement:** According to the author, "SB 420 empowers local prosecutors' efforts to fight unemployment benefits fraud by expanding the resources available to investigate and prosecute fraud cases in California. It also creates a task force to 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 and provides it access to the information it needs to investigate and prosecute fraud. Lastly, the

bill requires that the task force consider the cost of any action prior to undertaking it.”

- 2) **Fraudulent UI Claims Involving Incarcerated Individuals:** The EDD is responsible for administering the state’s unemployment insurance program which provides partial wage replacement to eligible unemployed Californians.

The COVID-19 pandemic resulted in a surge in the filing of unemployment claims in March 2020 following the issuance of a statewide stay-at-home order. This substantially increased EDD’s workload. At the same time, Congress expanded federal UI benefits and relaxed the eligibility criteria for receiving those benefits through the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). More specifically, the CARES Act extended pandemic unemployment assistance (PUA) to individuals who were not eligible for regular unemployment benefits, including those who had been self-employed, and added \$600 per week to the amount of benefits claimants would have otherwise received under state law.

In dispensing these funds, “the state paid more than 35,000 claims under state prisoners’ names, with one inmate collecting nearly \$49,000... California also paid more than \$421,000 to 133 Death Row inmates.” (Emily Hoven, *Latest Unemployment Scandal: State Paid Inmates \$1B in Fraudulent Claims*, CalMatters, Nov. 25, 2020, available at <https://calmatters.org/newsletters/whatmatters/2020/11/california-edd-fraud-claims-inmates/>.) This discovery put EDD under a national spotlight, and resulted in numerous investigations on various local, state and federal levels.

In Jan. 2021, the State Auditor issued a report about the fraud, noting that EDD was particularly vulnerable to fraud associated with incarcerated individuals because “it lacked a system to crossmatch all incoming claims against incarceration data.” (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, available at <https://www.auditor.ca.gov/reports/2020-628.2/index.html>.)

This occurred because there was no data sharing agreement in place between California Department of Corrections and Rehabilitation (CDCR) and EDD until December 2020 when the Attorney General authorized CDCR to share inmate information with EDD. (*Id.* at p. 29.) The fraudulent claims primarily involved 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. (Shawn Hubler, *Unemployment Scam Using Inmates’ Names Costs California Hundreds of Millions*, New York Times, Nov. 24, 2020, available at <https://www.nytimes.com/2020/11/24/us/california-unemployment-fraud-inmates.html>.) However, some benefits were sent directly to correctional facilities. (*Id.*)

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. (Hubler, *Id.*) Notably, the crosscheck completed by the federal government did not include any of the state’s county jails, state hospitals, or other institutions where people have been civilly committed. (Hubler, *Id.*) 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. (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.) 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." (*Id.* at pp. 29-30.)

3) Summary of Auditor's Recommendations: The State Auditor's report made the following recommendations.

To the Legislature

- To protect against fraudulent UI claims, the Legislature should amend state law to require EDD to regularly cross-match its claims against data from state and local correctional facilities.
- To ensure that EDD effectively protects the integrity of the UI program, the Legislature should amend state law to require EDD to, by January 2022, and biannually thereafter, assess the effectiveness of its fraud prevention and detection tools, eliminate those that are not effective, and reduce duplication in its efforts.

To the EDD

- To ensure that it does not suspend critical safeguards, EDD should plan in advance which UI fraud prevention and detection mechanisms it can adjust during recessions to effectively balance timely payment with fraud prevention.
 - To provide timely access to benefits for legitimate UI claimants with frozen accounts, EDD should immediately obtain and review a comprehensive listing of benefit accounts that are frozen and, by March 2021, begin the process of unfreezing legitimate accounts.
 - To ensure that it can approach UI fraud prevention in a comprehensive and coordinated manner, EDD should do the following:
 - By March 2021, establish a central unit responsible for coordinating all fraud prevention and detection efforts.
 - By May 2021, develop a plan for how it will assess the effectiveness of its fraud prevention and detection tools.
- 4) Investigative Task Force into EDD Fraud:** This bill would establish a task force to further investigate EDD fraud, to be administered by the Attorney General, and to be funded by grant money upon appropriation of the Legislature. The author of this bill plans to seek funds for this task force in 2022, with the bill taking effect in 2023.

Currently, there is a statewide task force established by the Governor, comprised of nine district attorneys and a federal prosecutor that has been working since December to investigate fraudulent unemployment claims involving incarcerated people. As of April 2021, there were 68 arrests, with 1,641 inquiries open. (Patrick McGreevy, *California has opened hundreds of investigations into unemployment fraud involving prisoners*, Los Angeles Times,

April 26, 2021, available at <https://www.latimes.com/california/story/2021-04-26/california-task-force-investigations-unemployment-fraud-prison>.) The Governor's Office of Emergency Services (Cal OES) in partnership with State's Districts Attorney's and the US Attorney's Office were working to investigate and remediate fraud within state and federal unemployment insurance programs. (See *Local, State and Federal Law Enforcement Collaborate to Protect Californians from Unemployment Insurance Fraud*, available at <https://news.cabes.ca.gov/local-state-and-federal-law-enforcement-collaborate-to-protect-californians-from-unemployment-insurance-fraud/>.) The State level coordination taskforce was created at the Direction of Governor Gavin Newsom, who directed California Governor's Office of Emergency Services (Cal OES) to facilitate the joint efforts, with District Attorneys and the US Attorney's Office of multiple local, state and federal law enforcement entities to hold those responsible for PUA/UI accountable to fullest extent possible under the law. (Id.) The full list of organizations participating in this effort includes: Cal OES, California Highway Patrol (CHP), California Attorney General's Office, the California District Attorneys Association, United States Department of Labor-Office of the Inspector General, Federal Bureau of Investigation (FBI), United States Secret Service (USSS), US Attorney's Office, United States Marshalls Service, Federal Bureau of Prisons, CDCR, and the EDD. (Id.) In light of this, is another task force necessary?

- 5) **Argument in Support:** According to the *California Chamber of Commerce*, SB 420 "will add accountability for UI fraud by creating a task force under the Attorney General to pursue and recover improper benefits payments.

"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."

6) **Related Legislation:**

- a) SB 39 (Grove), would require CDCR, at least every 90 days, to provide the names and social security numbers (SSNs) of current inmates to EDD for the purpose of preventing fraudulent unemployment claims. SB 39 is currently pending before the Assembly Appropriations Committee.
- b) AB 12 (Seyarto), would require state agencies to stop sending full SSNs on outgoing mail as soon as feasible. AB 12 is currently pending before the Senate Appropriations Committee.

- c) AB 110 (Petrie-Norris), would require EDD to cross-match claimant information with information provided by CDCR prior to making any payment of unemployment benefits to ensure that the claimant is not an inmate at a state prison. This bill is currently pending before the Senate Labor, Public Employment and Retirement Committee.
- d) AB 56 (Salas), would, among other things, set dates by which state agencies that cannot comply with the prohibition on including SSNs on outgoing mail must submit an annual corrective action plan to the Legislature. AB 56 is currently pending before the Senate Appropriations Committee.
- e) SB 232 (Nielsen), would codify recommendations from the State Auditor's Report related to UI fraud. SB 232 is currently pending before the Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:**Support**

California Chamber of Commerce
California District Attorneys Association

Opposition

None

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