

HOUSE BILL REPORT

SB 5355

As Reported by House Committee On: Labor & Workforce Development

Title: An act relating to implementing the unemployment insurance integrity provisions of the federal trade adjustment assistance extension act of 2011.

Brief Description: Implementing the unemployment insurance integrity provisions of the federal trade adjustment assistance extension act of 2011.

Sponsors: Senators Holmquist Newbry, Conway, Kohl-Welles and Keiser; by request of Employment Security Department.

Brief History:

Committee Activity:

Labor & Workforce Development: 3/19/13, 4/2/13 [DPA].

Brief Summary of Bill (As Amended by Committee)

- Subjects individuals who commit unemployment claimant fraud for the first time to an additional penalty of 15 percent of benefits overpaid.
- Prohibits relief from benefit charges and credit for benefit payments when benefits were paid because an employer failed to respond timely or adequately to the Employment Security Department's information requests without good cause and the employer has a pattern of such failures.

HOUSE COMMITTEE ON LABOR & WORKFORCE DEVELOPMENT

Majority Report: Do pass as amended. Signed by 9 members: Representatives Sells, Chair; Reykdal, Vice Chair; Manweller, Ranking Minority Member; Condotta, Assistant Ranking Minority Member; Green, Holy, Moeller, Ormsby and Short.

Staff: Joan Elgee (786-7106).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The unemployment compensation system provides partial wage replacement for workers who are unemployed through no fault of their own. Eligible unemployed workers receive benefits based on their earnings in their base year. The Employment Security Department (Department) administers this system.

Under the Federal Trade Adjustment Assistance Extension Act of 2011, states must meet certain requirements to remain in conformity with federal law. States not in conformity risk the loss of federal administrative funding and the loss of federal tax credits that employers receive for payment of state unemployment taxes.

When an individual receives benefits he or she is not entitled to receive, the Department issues an overpayment assessment and the individual must repay the amount overpaid. The Commissioner of the Department may waive an overpayment if the overpayment was not the individual's fault and the recovery would be against equity and good conscience. Rules adopted by the Department provide that repayment is against equity and good conscience if repayment would deprive the individual of basic necessities. In addition, the Department may consider a number of factors, including whether the employer contributed to the overpayment by providing inaccurate or untimely information.

An individual who obtains benefits fraudulently is disqualified from receiving benefits for a number of weeks depending on how many times the individual has been disqualified, in addition to being liable for repayment of the benefits. An individual disqualified for a second time is also subject to a penalty of 25 percent of the benefits overpaid and a third disqualification results in an additional penalty of 50 percent of the benefits overpaid.

The State Unemployment Trust Fund is composed of amounts paid by employers, amounts received from the federal government, and specified other moneys. Moneys in this fund may be used only to pay unemployment benefits. The Administrative Contingency Fund is composed of fines and penalties as well as specified other revenue. Moneys in this fund are used for administrative expenses.

Most employers pay contributions (payroll taxes) to finance unemployment benefits. The tax rate for these employers, known as "contribution paying employers," is experience rated so that the rate is determined, in part, by the benefits paid to its employees. Some benefits, however, are pooled within the unemployment system or "socialized." An employer may request relief from charging if, for example, the employer discharged the employee for certain misconduct or the employee left the employment voluntarily for reasons not attributable to the employer. Some employers, such as the state and certain nonprofit corporations that have elected to do so, make payments in lieu of contributions and are known as "reimbursable employers." Reimbursable employers reimburse the Department for benefits paid to former employees and the Department credits employers when overpayments are collected.

Summary of Amended Bill:

An additional penalty of 15 percent of benefits overpaid applies to a first time disqualification for benefits. Fifteen percent of all penalties for benefits overpaid is deposited into the State Unemployment Trust Fund.

Relief from benefit charges is not available and reimbursable employers may not be credited for benefits if benefits were paid because the employer or employer's agent failed to respond timely or adequately without good cause to the Department's written information requests and the employer or its agent has a pattern of such failures. A pattern is shown if the failures without good cause occurred the greater of at least three times in the previous two years or in 20 percent of the total current claims against the employer. If an agent is used, a pattern is established based on each individual client employer. "Adequately" means providing accurate information of sufficient quantity and quality that would allow a reasonable person to determine eligibility for benefits.

When determining whether recovery of an overpayment would be against equity and good conscience, the Department must consider whether the employer or the employer's agent failed to respond timely and adequately to a written information request for information relating to the claim or claims without establishing good cause for the failure.

Amended Bill Compared to Original Bill:

The amendment adds the provision requiring the Department to consider whether the employer failed to respond to the Department's information request relating to the claim in determining whether recovery of an overpayment would be against equity and good conscience.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect on October 20, 2013.

Staff Summary of Public Testimony:

(In support) The Department's administrative funding, which is more than \$100 million per year, is at risk if the employee piece does not pass. If the employer piece does not pass, employer tax credits worth hundreds of millions of dollars per year are at risk. Small businesses need certainty. The bill should be kept alive.

It was a long, difficult process for employers to work with the Department on the employer piece of the bill. The contents of the bill have been public since at least December and the process was transparent. Concerns are being raised only recently. There are questions regarding why only the employer piece should be opened up.

(In support with amendment(s)) Conformity is supported and the bill could be supported if amended like the House of Representatives (House) bill. Employer failures to respond are

costly, lengthy, and inefficient. The failures also cause a hardship on workers because workers may find out they do not qualify for benefits, which results in an overpayment. Few employers will meet the pattern of failures requirement. The true federal goal is limiting overpayments and the amendment on the House bill will get employers to cooperate. Employers should pay attention to communications from the Department. Even with the amendment, the Commissioner would still have to consider whether an employer had good cause for failing to respond. Under the bill, claimants will now have a 15 percent penalty and do not get three chances; it is a matter of fairness to treat employers similarly.

The labor community was not part of the negotiations on the employer language and should be at the table. The labor community wanted to work thoughtfully.

(Opposed) None.

Persons Testifying: (In support) Neil Gorrell, Employment Security Department; Kris Tefft, Association of Washington Business; Bruce Beckett, Washington Restaurant Association; and Gary Smith, Independent Business Association.

(In support with amendment(s)) Jeff Johnson and Teresa Mosqueda, Washington State Labor Council, AFL-CIO; and Mark Lampson, Unemployment Law Project.

Persons Signed In To Testify But Not Testifying: None.