

SENATE BILL REPORT

EHB 1395

As Reported by Senate Committee On:
Commerce & Labor, April 3, 2013

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: Representatives Sells, Manweller, Reykdal, Wylie, Chandler, Condotta, Hunt, Van De Wege, Green, Warnick, Appleton and Morrell; by request of Employment Security Department.

Brief History: Passed House: 3/09/13, 94-3.

Committee Activity: Commerce & Labor: 3/25/13, 4/03/13 [DPA, DNP].

SENATE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass as amended.

Signed by Senators Holmquist Newbry, Chair; Braun, Vice Chair; Conway, Ranking Member; Hewitt, Keiser and King.

Minority Report: Do not pass.

Signed by Senator Hasegawa.

Staff: Mac Nicholson (786-7445)

Background: The unemployment compensation (UC) program is a federal and state program that provides wage replacement benefits to people who became unemployed through no fault of their own. Generally, federal law governs the administration of the basic program, while state law addresses the issue of eligibility for benefits and benefit levels. A state payroll tax levied on employers provides funding for benefits, and a federal tax provides funding for the administration of the program. If state UC laws conform to federal UC laws, states will receive federal funding to administer their UC laws, and employers in those states may credit their state tax against their federal tax. Washington is considered a conforming state.

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.

Recent federal legislation amended a number of federal UC program requirements, posing a conformity risk for states that fail to amend state laws accordingly.

An individual who knowingly makes a false statement or representation in an attempt to obtain unemployment insurance (UI) benefits will be disqualified from benefits for 26 weeks. First-time offenders are not subject to any additional monetary penalties, though repeat offenders are subject to longer disqualification periods and additional penalties calculated as a percentage of the amount of benefits overpaid or deemed overpaid – 26 percent for the second violation, and 50 percent for every additional violation. The additional penalties are deposited in the Employment Security Department's (ESD) penalty and interest account.

Generally all UI benefits paid to claimants must be charged to the experience rating of the employer. However, certain benefit payments are not charged; rather, the benefits are socialized among all rate-paying employers. Benefits paid to an individual later determined to be ineligible are not charged, unless the claim became invalid due to the amendment of a report where the employer failed to report or inaccurately reported hours worked or wages paid.

An individual who receives benefits to which that individual is not entitled is liable for repayment of the amount overpaid. ESD may waive overpayments if the overpayment was not the fault of the claimant and full recovery would be against equity and good conscience.

Summary of Bill (Recommended Amendments): An individual who makes a false statement or representation in an attempt to obtain UC benefits is subject to an additional penalty of 15 percent of the amount of benefits overpaid or deemed overpaid. This additional penalty, as well as the first 15 percent of the penalty imposed on repeat offenders, is deposited in the UI trust fund.

An employer may not be granted benefit charge relief for benefit payments if:

- the benefit payment was made because the employer or their agent failed to respond timely or adequately to a written request for information;
- there is no good cause for the failure to respond as determined by ESD; and
- the employer or their agent has a pattern of such failures.

A pattern exists if the employer failed to respond without good cause leading to the payment of benefits at least three times in the previous two years, or on at least 20 percent of the current claims against the employer.

For employers that use agents, the actions of the agent count when determining whether the employer has a pattern of failing to respond.

When determining whether collection of an overpayment would be against equity and good conscience, ESD must consider whether the employer or their agent failed to respond timely or adequately to a written request for information relating to the claim without good cause.

EFFECT OF CHANGES MADE BY COMMERCE & LABOR COMMITTEE (Recommended Amendments): The committee striking amendment requires a pattern of failures to respond to information requests without good cause before benefit charge relief

will be withheld from the employer. A pattern is three occurrences in the previous two years or on at least 20 percent of the current claims against the employer.

The amendment also provides that when determining whether to grant an overpayment waiver, ESD must consider whether the employer or their agent failed to respond timely or adequately to a written request for information without good cause.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Engrossed House Bill: PRO: This is a federal conformity bill. Two penalties can be imposed for failure to be in conformity, the employer tax credits and ESD's administrative funding. ESD's position was to work with stakeholders, primarily with employers on the employer piece. The goal is a bill to bring Washington into conformity with federal law. ESD defers to the Legislature to make the policy choice. Both this bill and the companion would bring the state into conformity, and this is the last session it can get done. A bill is needed, one way or the other.

CON: The bill was amended late on the floor. The original language regarding the employer pattern was well negotiated with ESD and the business community. This version of the bill wipes out that piece of the bill and makes it a one-strike penalty. Federal law requires a penalty of no relief of benefit charges for employers with a pattern of not responding; one time should not constitute a pattern. Employers should not be penalized if they inadvertently fail to respond. There also may be some legitimate reasons for failure to respond. The bill was agreed to, now it is not. If an employer misses a deadline, they will be charged for the overpayment.

Persons Testifying: PRO: Neil Gorrell, ESD.

CON: Tom Kwieciak, Building Industry Assn. of WA; Kris Tefft, Assn. of WA Business; Patrick Connor, National Federation of Independent Business.