

Department of Legislative Services
 Maryland General Assembly
 2013 Session

FISCAL AND POLICY NOTE

House Bill 354

(Chair, Economic Matters Committee)(By Request -
 Departmental - Labor, Licensing and Regulation)

Economic Matters

Finance

Unemployment Insurance - Recovery of Benefits - Monetary Penalty for Fraud

This departmental bill authorizes the Department of Labor, Licensing, and Regulation (DLLR) to impose an additional monetary penalty on claimants who fraudulently obtain Unemployment Insurance (UI) benefits. The monetary penalty is equal to 15% of the amount of fraudulent benefits received, as determined under current law. The monetary penalty may be recovered in the same manner and is subject to interest as specified in current law for the recovery of fraudulent benefits; however, the penalty may not be recovered by deducting the amount due from future UI benefits payable to the claimant.

The bill applies to benefit determinations establishing overpayments issued on or after the bill's October 1, 2013 effective date.

Fiscal Summary

State Effect: DLLR can implement the bill with existing resources. The bill helps ensure conformity with recently enacted federal legislation, thereby preventing the loss of federally provided UI administrative funds.

Unemployment Insurance Trust Fund (UITF) Effect: Revenues to UITF increase by \$690,000 due to imposition of the penalty specified by the bill. Future year estimates reflect annualization and forecasted changes in UI benefits. No effect on expenditures.

(in dollars)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
UITF Rev.	\$690,000	\$760,000	\$690,000	\$670,000	\$680,000
Expenditure	0	0	0	0	0
Net Effect	\$690,000	\$760,000	\$690,000	\$670,000	\$680,000

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: DLLR has determined that the bill has no or minimal impact on small businesses (attached). The Department of Legislative Services (DLS) concurs with this assessment.

Analysis

Current Law: The Secretary of Labor, Licensing, and Regulation may recover benefits paid to a claimant if (1) the claimant was not unemployed or was retroactively awarded wages or (2) a redetermination of the claim concludes that the claimant was not otherwise eligible for benefits.

If a claimant knowingly made a false statement, misrepresentation, or failed to disclose a material fact in order to obtain or increase benefits, the Secretary may recover all benefits paid for each applicable week plus a monthly interest penalty of 1.5% assessed from the date of denial notification. The Secretary is required to (1) make a determination to recover benefits within three years of the payment(s) and (2) notify the claimant of the recovery amount due, the weeks for which benefits are being recovered, and the legal basis for the determination.

Benefits may be recovered by deducting the amount due from future benefits payable to the claimant, except for any interest assessed. The Secretary may also recover benefits by pursuing a civil action or through applicable State and federal offset programs. Fines, interest, or penalties recovered by the Secretary are distributed to the Special Administrative Expense Fund.

In addition to making restitution, an individual who fraudulently obtained or increased benefits is (1) disqualified from receiving benefits for one year and (2) guilty of a misdemeanor and subject to maximum penalties of 90 days imprisonment and/or a \$1,000 fine.

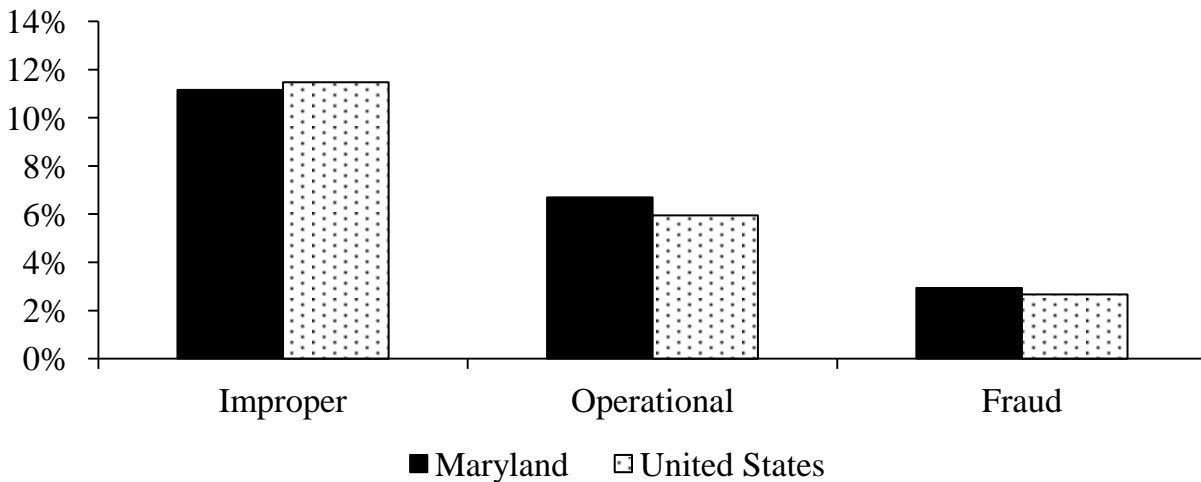
Background: The Trade Adjustment and Assistance Extension Act of 2011 required states to enact certain changes to UI programs as a condition of federal administrative grants. Specifically the Act required states to (1) assess penalties in cases where UI overpayments resulted from fraud and (2) charge employers in cases where they failed to respond in a timely manner to a request for information that led to an overpayment. These changes must be made by October 21, 2013. DLLR advises that this bill implements the first requirement and another departmental bill, HB 583 of 2013, proposes to implement the second requirement. If the State does not enact this federal-conformity legislation, the U.S. Department of Labor would determine the State is out of conformity with federal law. This would lead to the loss of about \$55 million in federally provided UI administrative funds as well as Maryland employers' federal

unemployment tax credits. Based on UI benefits authorized at the time and the forecasted amount of UI benefits, the U.S. Congressional Budget Office estimated that the Act will decrease unemployment compensation outlays by a total of \$669 million in federal fiscal 2012 through 2021.

The Benefit Accuracy Measurement (BAM) program of the U.S. Department of Labor is designed to determine the accuracy of paid and denied claims in UI programs. For claims that were overpaid, underpaid, or improperly denied, BAM determines the cause of and the party responsible for the error, the point in the UI claims process at which the error was detected, and actions taken by the agency and employers prior to the error. For erroneous paid claims, BAM determines the amount of benefits the claimant should have received. Improper payments constitute the broadest measure of overpayments and include fraud, nonfraud recoverable and nonrecoverable overpayments, and agency actions taken to reduce future benefits. BAM also calculates an operational rate for each state – overpayments that the state is reasonably expected to recover.

In fiscal 2010 through 2012, BAM estimated that, on average, 2.94% of all UI benefits paid in Maryland were fraudulent. Of the fraudulent claims in calendar 2011, about three-quarters was due to benefit year earnings issues with the remaining amount due to work search issues. **Exhibit 1** shows the average improper, operational, and fraudulent rate of fiscal 2010 through 2012 UI benefits paid in Maryland and the United States.

Exhibit 1
Improper, Operational, and Fraud Rates
UI Benefits
Fiscal 2010-2012 Average



Source: U.S. Department of Labor; Department of Legislative Services

DLLR established for recovery in fiscal 2011 a total of \$48.0 million in overpayments. Of this amount \$19.4 million or 40.75% has been recovered.

UITF Effect: The bill authorizes DLLR to impose an additional monetary penalty on claimants who fraudulently obtain UI benefits. The bill specifically excludes these penalties from being deposited in the Special Administrative Expense Fund but does not specify where they are to be deposited. Thus, DLS assumes the revenues are deposited in UITF. As a result, UITF revenues increase by an estimated \$690,000 in fiscal 2014, which reflects the bill's October 1, 2013 effective date. Future years reflect annualization and the following facts and assumptions:

- In fiscal 2010 through 2012, 2.94% of all UI benefits paid in Maryland were fraudulent.
- About one-half of the penalties imposed are collected.
- The amount of UI benefits paid in future years is forecasted to decrease.

However, to the extent UI benefits remain constant in future years, revenue increases will be greater than estimated. DLLR estimates that revenues will increase by about \$960,000 on an annual basis beginning in fiscal 2014.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Economy.com; U.S. Congressional Budget Office; U.S. Department of Labor; Department of Labor, Licensing, and Regulation; Department of Legislative Services

Fiscal Note History: First Reader - February 25, 2013
mc/ljm

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Unemployment Insurance – Monetary Penalty for Fraud Overpayments

BILL NUMBER: HB 354

PREPARED BY: Department of Labor, License and Regulation

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

This legislation will not have an immediate impact on small business. Ultimately, the fraud penalty imposed should be a deterrent to fraud in connection with unemployment insurance claims. If fraud is reduced, it would work to the benefit of the Unemployment Insurance Trust Fund. In addition, all monies collected as a result of the fraud penalty must be deposited into the Fund to be used for the payment of benefits. To the extent that the extra monies increase the solvency of the Trust Fund, the tax rate for all Maryland employers could be reduced on a long term basis. However, there will be no immediate impact on small businesses.