Department of Legislative Services

Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 90 (Chair, Finance Committee)(By Request - Departmental - Labor, Licensing and Regulation)

Finance Economic Matters

Unemployment Insurance - Recovery of Benefits and Penalties for Fraud

This departmental bill alters the penalties and repayment requirements for claimants who have been found to have fraudulently received unemployment insurance (UI) benefits. The bill only applies to a fraud determination made on or after October 3, 2016. The bill also defines "knowingly" for the purposes of State UI law.

Fiscal Summary

State Effect: The Department of Labor, Licensing, and Regulation (DLLR) can implement the bill with existing budgeted resources. State expenditures (all funds) decrease minimally beginning in FY 2018 from reduced chargeable UI benefits; State revenues (all funds) increase minimally beginning in FY 2018 from reimbursements of fraudulently received UI benefits. The amounts cannot be reliably estimated at this time.

Unemployment Insurance Trust Fund (UITF) Effect: Revenues for UITF increase by \$4.4 million in FY 2018, \$3.6 million in FY 2019, \$2.9 million in FY 2020, and \$2.3 million in FY 2021 from repayments of fraudulently received UI benefits due to increased penalties and the cash repayment requirement. Expenditures (benefits paid) from UITF decrease by \$1.5 million in FY 2018 and by \$1.9 million annually thereafter as claim offset (through benefits paid) is no longer possible for repayment of fraudulent UI claims.

(\$ in millions)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
UITF Rev.	\$0	\$4.4	\$3.6	\$2.9	\$2.3
UITF Exp.	\$0	(\$1.5)	(\$1.9)	(\$1.9)	(\$1.9)
Net Effect	\$0.0	\$5.8	\$5.5	\$4.8	\$4.3

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

Local Effect: Local government expenditures decrease minimally beginning in FY 2018 from reduced chargeable UI benefits; local government revenues increase minimally beginning in FY 2018 from reimbursements of fraudulently received UI benefits. The amounts cannot be reliably estimated at this time

Small Business Effect: DLLR has determined that this bill has a meaningful impact on small business (attached). The Department of Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary/Current Law:

Enhanced Penalties for Fraudulent Violations

Under current law, a person, for that person or another, may not knowingly make a false representation or knowingly fail to disclose a material fact to receive or increase a UI benefit or other payment under Maryland law or an unemployment insurance law of another state, the federal government, or a foreign government. Generally, a violation is a misdemeanor and is subject to a maximum penalty of a $1,000 fine and/or 90 days imprisonment. In addition, the Secretary of Labor, Licensing, and Regulation may recover from the claimant:

- all benefits paid to the claimant for each week for which the false statement or representation was made or for which the claimant failed to disclose a material fact;
- a monetary penalty of 15% of all benefits paid to the claimant for each week for which the false statement or representation was made or for which the claimant failed to disclose a material fact; and
- interest of 1.5% per month on the amount of all benefits paid to the claimant for each week for which the false statement or representation was made or for which the claimant failed to disclose a material fact plus the amount of the monetary penalty accruing from the date that the claimant is notified by the Secretary that the claimant was not entitled to benefits received.

The person is also disqualified from future UI benefits for one year.

Under the bill, a person who knowingly violates Maryland UI law to receive or increase a UI benefit is disqualified from receiving further benefits until (1) the Secretary determines that the UI benefit, the monetary penalty, and the interest have been paid in full or (2) in the Secretary's sole discretion, the UI benefit and interest are uncollectible and the claimant has paid the monetary penalty. The person is disqualified from future UI benefits for one year if the person has had no other knowing violations within the past four years, for two years if the person has had one prior knowing violation, and for three years if the person has had more than one prior knowing violation.

Methods of Recovery

Under current law, subject to specified notification requirements, the Secretary may recover overpaid UI benefits through:

- a deduction from benefits payable to the claimant in the future (including for knowing violations), excluding the monetary penalty and interest assessed for knowing violations; or

- a civil action.

Under the bill, the Secretary may also recover overpaid UI benefits through other reasonable means of collection, including those permitted under State law for the collection of debts owed to the State, or federal law. In addition, for knowing violations, recovery can no longer be made through a deduction from benefits payable to the claimant in the future. There is one limited exception, which would allow recovery by way of claim offset where the offset is made by another state or jurisdiction, which has a cooperative agreement with Maryland authorizing collections of outstanding overpayments through the other jurisdiction's UI program.

Definition of "Knowingly"

Under current law, there is no general definition for "knowingly" in the State UI law. There are definitions that apply to individual sections of the law, and in some sections of the law there is no specific definition.

Under the bill, "knowingly" means, except as otherwise provided in State UI law, having actual knowledge, deliberate ignorance, or reckless disregard for the truth.

Background:

Fraudulent Unemployment Insurance Benefits

DLLR advises that due to the nature of the UI program, which requires prompt payment of benefits when due, it is not possible for the Division of Unemployment Insurance to conduct extensive investigations when benefits determinations are made. The UI program depends on timely and accurate reporting by both claimants and employers to ensure the proper payment of benefits. When claimants misrepresent or conceal facts, including failing to report new employment and wages earned, benefits continue to be paid even though the claimants are no longer unemployed. This results in continued charges to any chargeable employer and payments from UITF to ineligible claimants. The division uses multiple measures to detect fraudulent overpayments; however, some of the measures, including wage cross-matches, require investigative efforts before benefits can be stopped. In addition, recovery of overpayments resulting from fraud requires significant expenditure of agency time and resources.

Under current law, claimants with outstanding overpayments, including fraud overpayments, may be eligible to receive UI benefits on new claims after the disqualification period has been served. The claimant may file for benefits, and benefits that the claimant would have received are used to repay the prior overpayment. *The bill* disqualifies a claimant found to have been overpaid as a result of fraud from receiving any future benefits until the fraud overpayment principal, penalties, and interest have been paid in full or there has been a decision that the principal and interest are uncollectible and the claimant has paid the monetary penalty in full.

Collection of Overpaid Unemployment Insurance Benefits

The bill authorizes the Secretary to recover overpaid UI benefits through "other reasonable means of collection," including those permitted under State law for the collection of debts owed to the State, or federal law. DLLR advises that this provision clarifies the State UI law to reflect and expressly authorize practices authorized under other State and federal statutes that are currently used by the Division of Unemployment Insurance to collect overpayments. For example, certain methods of recovery – including intercepting federal income tax refunds – are required under federal law but are not expressly authorized under the State UI law. The bill provides express authorization for these practices already being used to recover overpaid UI benefits and provides general authority for the use of "reasonable methods of collection" so DLLR is not required to file a civil suit in order to recover overpayments.

State Fiscal Effect: DLLR can implement the bill with existing budgeted resources. State expenditures (all funds) decrease minimally beginning in fiscal 2018 from reduced chargeable UI benefits. The amount cannot be reliably estimated at this time.

State revenues (all funds) increase minimally beginning in fiscal 2018 from cash reimbursements of fraudulently received UI benefits, which reflects that claim offset (through benefits paid) is no longer possible for repayment of fraudulent UI claims. The bill only applies to a fraud determination made on or after October 3, 2016. This estimate assumes cash repayments are not made until after the one-year period of UI benefit disqualification for initial fraudulent UI claims has expired.

UITF Effect: UITF revenues increase from repayments of fraudulently received UI benefits due to increased penalties and the cash repayment requirement beginning in fiscal 2018. DLLR advises that, accounting for an assumed reduction in the rate of UI fraud, this increases UITF revenues by $4.4 million in fiscal 2018, $3.6 million in fiscal 2019, $2.9 million in fiscal 2020, and $2.3 million in fiscal 2021. These estimates are based on the following assumptions:

- the outstanding total fraud balance of almost $44.0 million at the end of fiscal 2015 will remain constant through the bill's October 1, 2016 effective date; and

- the outstanding fraud overpayment balance will decrease by 10% in fiscal 2018, 9% in 2019, 8% in 2020, and 7% in 2021.

The cash repayment requirement also reduces UITF expenditures (benefits paid) by $1.5 million in fiscal 2018 and by $1.9 million annually thereafter, as claim offset (through benefits paid) is no longer possible for repayment of fraudulent UI claims. These estimates are based on the following assumptions:

- cash repayments are not made until after the one-year period of UI benefit disqualification for fraudulent UI claims has expired (the first determination affected by the bill could be October 3, 2016, with an expiration of October 3, 2017); and

- each year, 351 fraudulent UI cases (5% of the fiscal 2015 total), which would have used claim offset to repay the principal owed and received average weekly UI benefits of $325 for 17 weeks, will no longer be filed.

Local Fiscal Effect: Local government expenditures decrease minimally beginning in fiscal 2018 from reduced chargeable UI benefits. The amount cannot be reliably estimated at this time.

Local government revenues increase minimally beginning in fiscal 2018 from cash reimbursements of fraudulently received UI benefits, which reflects that claim offset (through benefits paid) is no longer possible for repayment of fraudulent UI claims. The bill only applies to a fraud determination made on or after October 3, 2016. This estimate assumes cash repayments are not made until after the one-year period of UI benefit disqualification for initial fraudulent UI claims has expired.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Labor, Licensing, and Regulation; Comptroller's Office; Department of Budget and Management; Department of Legislative Services

Fiscal Note History: First Reader - January 18, 2016
kb/ljm Revised - Senate Third Reader - March 21, 2016

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Unemployment Insurance – Overpayments – Recovery and Penalties for Fraud

BILL NUMBER: SB 90

PREPARED BY: Susan Bass, Chief, Policy and Planning, Division of Unemployment Insurance

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

__ WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

_X_ WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

This bill will reduce the unemployment insurance (UI) benefit costs of small employers in the same manner that it will reduce the UI benefit costs of larger employers.

1. Under this legislation claimants who are determined to have received UI benefits fraudulently would not be eligible to collect unemployment insurance (UI) benefits until all principle, penalties had been paid and interest had been paid or there had been an interest settlement.

2. Under the current law, claimants with UI fraud overpayments may repay those overpayments with future benefits for which they are otherwise eligible. The claimant does not receive the benefits, but the employers who are responsible for the charges are charged for the benefits. This legislation, in part, eliminates the ability to repay fraud overpayments in future years' claims using claim offset, thus UI benefits which are currently otherwise payable to former small business employees will not be chargeable to the businesses. Additionally, the individuals would not be eligible to receive benefits after the claim recoupment had been used to repay the overpayment principle. UI benefits could not be paid to this population until they had repaid the overpayment and penalties in cash, or through other collection methods provided for in state and federal law and had served the other more stringent time disqualifications in the proposed legislation

3. It is also assumed that the more stringent penalties for fraud will reduce the number of fraudulent UI benefit payments, thereby preserving funds in the Maryland UI Trust Fund. This would be a factor in computing the unemployment insurance tax rate table to be in effect for any calendar year.