



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

House Bill 4408 (as passed by the House)
Sponsor: Representative Jim Stamas
House Committee: Commerce
Senate Committee: Economic Development

Date Completed: 3-22-11

CONTENT

The bill would amend the Michigan Employment Security Act to do all of the following:

- **Create the "Special Fraud Control Fund" for the prevention, discovery, and collection of unemployment benefit overpayments.**
- **Require amounts in the Fund to be used first to acquire software with a proven record of detecting and collecting benefit overpayments, and then for administrative costs.**
- **Allow the Unemployment Insurance Agency (UIA) to collect interest on benefit overpayments, and require the interest to be deposited into the Fund.**
- **Subject a person to administrative fines, in addition to current penalties, for certain knowing violations related to unemployment benefits.**
- **Double the amount of damages the UIA may obtain for a person's second or subsequent knowing violation.**
- **Require amounts recovered for knowing violations to be applied to administrative sanctions, damages, and interest and credited to the proposed Fund.**

Special Fraud Control Fund

The bill would create in the Department of Treasury Contingent Fund a separate fund to be known as the "Special Fraud Control Fund (Michigan Employment Security Act)". The Fund would consist of money collected or received by the UIA as follows:

- All interest and penalties collected by the UIA under Section 62 from a person who had obtained benefits to which he or she was not entitled.
- All gifts to, interest on, or profits earned by the Special Fraud Control Fund.
- Amounts credited under Section 54(k)(ii) (which the bill would add) for amounts recovered from a person who knowingly committed certain violations related to unemployment insurance benefits.

(Sections 62 and 54 are described below.)

Money in the Special Fraud Control Fund would be continuously appropriated only to the unemployment agency and could not be transferred or otherwise made available to any other State agency.

All amounts in the Fund would have to be used first for the acquisition of packaged software that had a proven record of success with the detection and collection of unemployment benefit overpayments and then for administrative costs associated with the prevention, discovery, and collection of unemployment benefit overpayments, as included in the biennial budget of the UIA and approved by the Legislature.

Two years after the bill's effective date, the UIA would have to submit a report to the Secretary of the Senate and the Clerk of the House of Representatives, to show how the money from the Fund was used and the results obtained from it.

Recovery of Unentitled Benefits

Under Section 62 of the Act, if the UIA determines that a person has obtained benefits to which he or she is not entitled, it may recover a sum equal to the amount received. The UIA may recover this sum by deduction from benefits payable to the individual, by payment from the individual, or by deduction from a tax refund payable to the individual. Under the bill, the UIA also could recover interest on the amount improperly received. Interest recovered under Section 62 would have to be deposited into the Special Fraud Control Fund.

Knowing Violations

Section 54 of the Act specifies penalties for any employing unit, claimant, UIA employee, or other person who knowingly makes a false statement or representation, or knowingly or willfully with intent to defraud fails to disclose a material fact, to obtain or increase a benefit or other unemployment payment, to prevent or reduce the payment of benefits to an individual entitled to benefits or to avoid becoming or remaining a subject employer, or to avoid or reduce a contribution or other payment required from an employing unit. Under the bill, the person also would be subject to administrative fines.

Under Section 54, if the amount obtained through a violation described above is less than \$500, the UIA may recover the amount obtained as well as damages equal to two times that amount. Under the bill, for a second or subsequent violation, the UIA could recover damages equal to four times the amount obtained.

The bill would require amounts recovered for violations described above to be credited as follows:

- Deductions from unemployment insurance benefits would have to be applied solely to the amount of the benefits liable to be repaid.
- All other recoveries would have to be applied first to administrative sanctions and damages, then to interest, and then to the amount liable to be repaid.

The amounts applied to administrative sanctions, damages, and interest would have to be credited to the proposed Special Fraud Control Fund.

MCL 421.10 et al.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

To the extent that expenditures on antifraud activities in the UIA were effective, the bill would result in indeterminate savings to the State.

The bill would increase penalties for second or subsequent violations in which less than \$500 in benefits was overpaid or less than \$500 in taxes was underpaid. These increased penalties could result in additional revenue for the UIA. Alternatively, they could serve as a fraud deterrent, which would result in decreased penalty and interest revenue, but also

produce savings in the form of lower benefits being paid out as well as higher unemployment tax revenue.

Under the bill, penalties and interest recovered from those who either fraudulently received unemployment benefits or underpaid unemployment taxes would be credited to the proposed Special Fraud Control Fund. Revenue from these violations is currently credited to the Contingent Fund, which is used for several things, including: Bureau of Workforce Transformation Program, UIA operations, and interest on Federal Title 12 loans. (Title 12 loans are money borrowed from the Federal government to pay unemployment benefits; Michigan has an outstanding loan balance of about \$3.9 billion). The bill would redirect that revenue into the Special Fraud Control Fund to purchase antifraud software. Redirecting this revenue would result in less available revenue for the mentioned programs. Additionally, the bill would apply interest to nonfraud overpayments, which would raise some unknown amount of additional revenue that would be credited to the Special Fraud Control Fund.

The U.S. Department of Labor estimates that in calendar year 2009, Michigan had a 7.2% benefit overpayment rate, of which 0.7% was estimated to be fraudulent in nature. The UIA paid out approximately \$3.7 billion in unemployment benefits in 2009, so an estimated \$266.4 million was overpaid, and of that, an estimated \$25.9 million was attributable to fraud. To the extent that software purchased with the Special Fraud Control Fund would be effective, the State could save some unknown portion of those overpayments and fraudulent claims.

Fiscal Analyst: Josh Sefton

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.