2013 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2111

2013 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

SB 2111
January 15, 2013
Job Number 17212

☐ Conference Committee

Committee Clerk Signature	Eva Lubelt

Explanation or reason for introduction of bill/resolution:

Relating to a monetary penalty imposed when unemployment compensation benefits are obtained through false statements; and to provide a penalty

Minutes: Attached Testimony

Chairman Klein: Opened the hearing.

Darren Brostrom, Director of Unemployment Insurance with Job Service of North Dakota: Written Testimony (1)

Chairman Klein: Asked if they were being harsher than the federal law.

Darren: Said that currently they have the disqualification period alone, the fifteen percent is not in place. The federal came up with the requirement in 2011 to impose a fifteen percent minimum penalty. They are not opposing going any higher because several states already have a penalty in place, some go as high as fifty to one hundred percent. By leaving the disqualification in place and adding the new minimum fifteen percent to the equation they would be slightly stricter than the federal minimums.

Chairman Klein: Said that they might as well be disqualified if the penalty amount is one hundred percent because they wouldn't be getting anything.

Darren: Said that the piece that would prevent someone from putting a disqualification in, as far as the state, would be to offset benefit payments. If someone owed the program money and would draw unemployment insurance benefits, all those benefits would go toward the debt instead of the person.

Senator Murphy: Asked for a definition of FUTA.

Darren: The Federal Unemployment Tax Act. As employers, you pay seven percent on the first seven thousand dollars of wages. If your state participates in an approved unemployment insurance program you are eligible for a 5.4% reduction in that tax. So employers pay a little over 2%.

Senator Sinner: Asked how difficult it is to collect on payments overpaid on. He asked if some of the money that is collected could be used for collections.

Darren: Said that collecting could be difficult. They do have an in house collecting department that is made up of professional collectors. They collect around 8.9 million dollars a year in overpaid benefits, in taxes due. They do have mechanisms available to them that private collection agencies do not have. Some would be their new hire data base that identifies where an individual works in the country. This bill does not allow the first fifteen percent to be used for anything except benefit payments. If you went to a higher amount they could potentially do that.

Senator Sinner: Said that it was stated that they collect millions of dollars but it was in his testimony that the over resulting overpayment was approximately 263,000 and asked if that was in one year.

Darren: Said yes, the 8.9 million dollars is made up of everything not including fraud. What is quoted in the testimony is strictly fraud. There are overpayments where someone just made a mistake or they make a mistake. In those instances there would be no penalty associated with it. You have to be determined to have committed fraud in order to receive this penalty.

Senator Andrist: Asked what they do in the screening process to make sure a person does qualify so we may better understand how they can defraud you in the first place.

Darren: Said they have many mechanisms in place to try to catch fraud. As far as screening, when they are receiving unemployment benefits they are reporting to us every week and telling us about any earnings that they have and job searches that they have done. In turn we follow up on a percentage of those. The staff does not allow them to follow up on all. They may speak to an employer that they have contacted, they verify wages paid.

Senator Andrist: Asked for an amount that they pay out in fraudulent payments that are not recovered.

Darren: Said they collect about three quarters on average over the whole gamut of benefits that they paid. He said they collected 8.9 million in 2012 and there is around 6 million sitting out there waiting for them to collect. He said they do not have the resources to go after all of those to the extent that they would like to.

Chairman Klein: Asked if the fraud cases were just employee or both.

Darren: Said they have both but this particular bill does not address employer fraud.

Chairman Klein closed the hearing

Senator Murphy motioned for a do pass.

Senator Andrist seconded the motion.

Roll Call Vote: Yes: 6 No :0

Absent: 1

Floor Assignment: Senator Murphy

Roll Call Vote #: 1 Date: 1/15/13

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2111

Senate Industry, Business, and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass

Motion Made By Senator Murphy Seconded By Senator Andrist

Senators	Yes	No	Senator	Yes	No
Chariman Klein	✓		Senator Murphy	✓	
Vice Chairman L Laffen	✓		Senator Sinner	✓	
Senator Andrist	✓				
Senator Sorvaag	✓				
Senator Unruh	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Murphy

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2111: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2111 was placed on the Eleventh order on the calendar.

2013 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2111

2013 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

SB 2111
March 11, 2013
Job 19711

☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Relating to monetary penalty imposed when unemployment compensation benefits are obtained through false statements

Minutes: Attachment 1

Mark Butland, Associate Director of Unemployment Insurance with Job Service North Dakota: Refer to written testimony, attachment 1.

3:05 **Representative Amerman:** Asked for an example of state and federal unemployment compensation.

3:49 **Mark Butland:** Gave an example of federal unemployment benefits.

4:16 **Representative Ruby:** Referenced second page of written testimony. Question on overpayment and amount returned.

4:35 **Mark Butland:** The penalty is 15% of the overpaid amount.

4:55 **Representative Ruby:** Do you also collect some of the overpayment?

5:04 **Mark Butland:** The claimants are required to repay any overpaid amounts, plus the penalty.

5:10 **Representative Ruby:** Are those guilty of the fraud charged criminally?

5:22 **Mark Butland:** We could pursue criminal charges, but we have not done so in quite a few years.

5:45 **Representative M. Nelson:** Is fraud equivalent to making a false statement, or is there fraud in which a person did not make a false statement?

6:06 **Mark Butland:** What we would determine to be fraud would be someone who either makes a misleading statement or omits information in order to obtain benefits they were not

entitled to receive. It is either incorrect information someone gave us knowingly or they knowingly omitted information in order to receive benefits.

6:35 **Representative M. Nelson:** Is omitting something making a false statement, or is that not?

6:51 Mark Butland: We would see the false statement as fraud. Someone who made an error unintentionally would have six months before interest begins to accrue.

7:52 **Representative M. Nelson:** Is the question one of actual intent?

8:02 **Mark Butland:** We are trying to meet the federal requirement for someone who receives benefits they should not have received. Whether they made the statement or withheld information, we consider either one to be fraud.

Representative M. Nelson: So the federal requirement has to do with false statements or with fraud?

Mark Butland: With fraud.

8:50 **Representative Sukut:** How much of the amount shown for overpayments would be collected?

9:10 **Mark Butland:** Gave current data regarding overpaid benefits.

9:32 **Representative Sukut:** If the person is unemployed, how are they able to repay those benefits?

9:44 **Mark Butland:** Summarized ways in which people could repay the outstanding debt.

10:13 **Representative Amerman:** Question on federal mandate

10:53 **Mark Butland:** The federal mandate is a minimum of 15% penalty.

11:14 **Representative M. Nelson:** Page 1, lines 15-16, allows for discretion when the recovery would be contrary to equity and good conscience. Isn't that contrary to the federal law that requires the fine of 15%?

11:38 **Mark Butland:** We do have a process where claimants can apply for a waiver. Summarized process. Made distinction between overpayment in the case of fraud and when it is not fraud. Summarized payment options.

Support:

Opposition:

Neutral:

Motion for a **Do Pass** recommendation made by **Representative Boschee** and seconded by **Representative N. Johnson.**

13:24 **Jake Geiermann, legal intern for the Industry, Business and Labor Committee:** Provided clarification regarding the term *fraud*.

14:32 **Chairman Keiser:** I suspect we want both the omission and the commission to be covered. If you were asked a question and refused to answer, that would be fraud.

14:44 **Jake Geiermann:** I looked at a bit of the case law about actual and constructive fraud. It is largely a question of fact. This language appears to limit it to intentional misrepresentation rather than omission of fact.

Representative Boschee and Representative N. Johnson withdrew motion.

Chairman Keiser: Will hold bill.

2013 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

SB 2111
March 13, 2013
Job 19816

☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Relating to monetary penalty imposed when unemployment compensation benefits are obtained through false statements

Minutes:

No attachments

Representative Ruby: Summarized the topic of the bill. Stated that he thinks we cleared up the question about false statements. False statements include statements actually made or information omitted.

Representative Ruby moved a Do Pass on SB 2111. Representative N. Johnson seconded the motion.

Chairman Keiser: Representative Ruby, please review again the question we had had.

0:46 **Representative Ruby:** Reviewed the question about false statements and fraud and whether the omission of information would be considered fraud. When we spoke with Job Service after the hearing, they clarified that a person receiving benefits needs to recertify weekly that they are unemployed and still in need of the benefits, and they do so online or by phone. When they submit the required information, they are basically making the statement that they are or are not receiving wages. Whether they omit something or make a misstatement, it is covered under the false statements.

Roll call vote on motion for a Do Pass. Motion carried.

Yes = 15
No = 0
Absent = 0

Carrier: Representative Ruby

Date: 3-11-2013

Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2111

House Industry, Business, and Labor Committee

Legislative Council Amendment Number _____

Action Taken: ☑ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider ☐ Consent Calendar

Motion Made By Boschee Seconded By Johnson

Representatives	Yes	No	Representatives	Yes	No
Chairman George Keiser			Rep. Bill Amerman		
Vice Chairman Gary Sukut			Rep. Joshua Boschee		
Rep. Thomas Beadle			Rep. Edmund Gruchalla		
Rep. Rick Becker			Rep. Marvin Nelson		
Rep. Robert Frantsvog					
Rep. Nancy Johnson					
Rep. Jim Kasper					
Rep. Curtiss Kreun					
Rep. Scott Louser					
Rep. Dan Ruby					
Rep. Don Vigesaa					

Total Yes _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

withdrawn

Date: 3-13-2013b

Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2111

House Industry, Business, and Labor Committee

Legislative Council Amendment Number

Action Taken: ☑ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider ☐ Consent Calendar

Motion Made By Ruby Seconded By Johnson

Representatives	Yes	No	Representatives	Yes	No
Chairman George Keiser	✓		Rep. Bill Amerman	✓	
Vice Chairman Gary Sukut	✓		Rep. Joshua Boschee	✓	
Rep. Thomas Beadle	✓		Rep. Edmund Gruchalla	✓	
Rep. Rick Becker	✓		Rep. Marvin Nelson	✓	
Rep. Robert Frantsvog	✓				
Rep. Nancy Johnson	✓				
Rep. Jim Kasper	✓				
Rep. Curtiss Kreun	✓				
Rep. Scott Louser	✓				
Rep. Dan Ruby	✓				
Rep. Don Vigesaa	✓				

Total Yes 15 No 0

Absent

Floor Assignment Ruby

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2111: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **DO PASS** (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2111 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

SB 2111

#1

Senate Bill 2111
Testimony of Darren Brostrom
Job Service North Dakota
Before the
Senate Committee On
Industry, Business and Labor
Senator Jerry Klein, Chair
January 15, 2013

Mr. Chairman, members of the committee, I am Darren Brostrom, the Director of Unemployment Insurance with Job Service North Dakota. I am here today in support of Senate Bill 2111 which addresses monetary penalties assessed to claimants who fraudulently receive Unemployment Insurance benefits.

The monetary penalty created by this bill is a federally mandated requirement that was passed into law as part of the amendments made to the Trade Adjustment Assistance Extension Act of 2011. All states are now required to impose a minimum penalty of 15% of any benefits received as a result of claimant fraud.

North Dakota statute currently addresses claimant fraud via a one year disqualification period for individuals determined to have committed fraud. This means that if an individual fraudulently receives benefits, they are ineligible to receive benefits for one year from the date of the fraud determination, even if they would otherwise be eligible for Unemployment Insurance benefits. Additionally, all fraudulently received benefits must be repaid by the claimant.

Job Service is not proposing a change to the disqualification period. What this means is that individuals found to have fraudulently received benefits would face both a one year disqualification period and a monetary penalty of 15% of any benefits received as a result of the fraud.

On average 210 fraud cases are identified each year, with resulting overpayments amounting to approximately $263,000. At this level of fraud overpayments, $39,450 or $188 per fraudulent claim would be collected in penalty assessments each year. Federal law mandates that the first 15% of any penalty amount assessed and collected be placed entirely into the State Unemployment Insurance Trust Fund and not be used for any other purpose. The State Unemployment Insurance Trust Fund can only be used to pay unemployment insurance benefits.

As a result of the additional funds being placed into the Unemployment Insurance Trust Fund, a positive impact could be seen on Employer Unemployment Insurance Tax Rates, albeit the impact would be very small.

It is important to note that failure to enact this requirement would result in North Dakota's Unemployment Insurance Program being out of compliance with federal law which would mean that our employers would no longer be eligible to receive the 5.4% FUTA tax credit.

Mr. Chairman, this concludes my testimony. At this time I would be happy to answer questions from the committee.

Maren Daley
Executive Director

NEWS

FOR IMMEDIATE RELEASE
November 26, 2012

Contact: Darren Brostrom
701.328-2843
dbrostro@nd.gov

Job Service North Dakota Stops Unemployment Insurance Fraud

Bismarck – Job Service North Dakota stopped a fraud scheme that resulted in the federal conviction of individuals who committed fraud and identity theft posing as North Dakota victims of the 2011 flood disaster.

Joseph Harvey and Anja Kannell were convicted of fraud and identity theft after filing 65 fraudulent Disaster Unemployment Assistance (DUA) claims in the wake of the flooding that occurred throughout the state last year. Harvey and Kannell used stolen names and social security numbers to file fraudulent claims with Job Service North Dakota, the state agency that administers the federal Unemployment Insurance program. Early detection of the scheme limited payments to $2,210 out of a possible $840,000 in North Dakota fraudulent claims.

Job Service North Dakota was alerted to a potential problem in July 2011 when a Minot resident notified the agency of mail received which was addressed to an individual who never lived at that address. This call initiated a Job Service fraud investigation which identified 65 fraudulent claims.

Job Service North Dakota Executive Director, Maren Daley said, "Job Service worked with investigators from the Office of Inspector General to identify the individuals who submitted the fraudulent claims. Fortunately, no North Dakota residents' names or Social Security numbers were compromised."

As result of the investigation, Harvey and Kannell were arrested and prosecuted in federal court." Unemployment Insurance Associate Director, Mark Butland, testified on behalf of Job Service North Dakota in June 2012 before the federal jury in Miami. "Unemployment insurance fraud is a serious offense," Butland said, "and one that Job Service North Dakota takes seriously. In this case, a tip from a concerned citizen initiated a review of all DUA claims that had been filed. Our staff did a thorough investigation and put an end to this fraud scheme in its early stages."

Harvey and Kannell also submitted fraudulent DUA benefit claims in New York and Louisiana, claims against BP as a result of the Deepwater Horizon oil spill in the Gulf of Mexico, and fraudulent tax returns to the IRS.

Harvey and Kannell were sentenced Sept. 26, 2012 to more than 13 years in prison followed by five- and two- year terms of supervised release respectively. They were ordered to pay restitution of more than $832,000 which includes $2,210 to North Dakota's disaster unemployment assistance program.

Report suspected unemployment insurance fraud to Job Service North Dakota at 701-328-4995.

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(1) 3-11-2013
SB2111

Senate Bill 2111
Testimony of Mark Butland
Job Service North Dakota
Before the
House Committee On
Industry, Business and Labor
Representative George Keiser, Chair
March 11, 2013

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As a result of the additional funds being placed into the Unemployment Insurance Trust Fund, a positive impact could be seen on Employer Unemployment Insurance Tax Rates, albeit the impact would be very small.

It is important to note that failure to enact this requirement would result in North Dakota's unemployment insurance program being out of compliance with federal law which would mean that our employers would no longer be eligible to receive the 5.4% FUTA tax credit. This would result in a federal tax increase of $378 per employee per year for all North Dakota employers.

Mr. Chairman, this concludes my testimony. At this time I would be happy to answer questions from the committee.