

2013 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1111

2013 HOUSE STANDING COMMITTEE MINUTES

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

HB 1111
January 15, 2013
Job 17240

☐ Conference Committee

Kristie Hefley

Explanation or reason for introduction of bill/resolution:

Prohibition of noncharging of unemployment compensation benefits attributed to accounts of base period employers

Minutes:

Attached testimony

Hearing opened

0:26 **Darren Brostrom**, Director of Unemployment Insurance with Job Service North Dakota: Supports HB 1111, Refer to attached testimony 1.

5:00 **Representative Kasper**: What is the annual dollar amount we receive as a state from the payments?

Darren Brostrom: 6%

5:53 **Chairman Keiser**: What are examples of these large, third-party groups?

6:10 **Darren Brostrom**: Equifax

Chairman Keiser: Can you give me an example. We have a firm in North Dakota using Equifax or whoever, Claims made, you recognize them and start paying. When you later do an audit, you discover you did not have adequate information, but these people have been receiving a benefit and prior to this you have gone back to the person to recover the overpayment?

7:15 **Brostrom**: That scenario could occur, what we see happening is if a large department store highers Equifax to represent them in all unemployment insurance cases. When someone files a claim for unemployment we gather information from them as to the reason they are separated from employment. As we gather that information that very next day we send a request of information from the employer. In the cases of large, third-party providers that information instead of going to the department store would go to Equifax. It is then their responsibility to work with the employer to get the information and get that back to us. The problem that has arisen is that when they respond to our questions, they respond very broadly. The answers do not answer our questions. We make a second request for

information because we have to by law. When we get it back it's almost always the same. So we end up with a lot of information from the claimant but not the employer. So prior to the first payment being we have made a determination whether they are eligible or ineligible. If they are found eligible payments begin to them. We then have to notify the employer and the claimant about the decision and what's going to happen. If that point if it's a determination of eligibility the third party provider will always appeal it. It's during that appeals process that we set up an appeal over the phone with the employer and the claimant at the same time with a referee, and they always have more information that they should have given us in the first place. Any many times that information will cause us to have to overturn that determination and should not be receiving benefits.

Chairman Keiser: From the Claimant?

9:55 **Brostrom:** Yes.

Chairman Keiser: Charge to company?

Brostrom: No, but we can't always recover the payment.

Chairman Keiser: So that's what this does, you can charge back to the company because of lack of response/information?

Brostrom: Correct.

Representative Becker: 10:37 Timeframe? Any situation where an employer would have to pay back to a year ago?

11:20 **Brostrom:** There would have to be a pattern of not responding, I do not believe we have had a situation like that. As far as our auditing, it is before that year timeframe comes around.

Representative N. Johnson: 12:13 In the case that you have an overpayment, do you first try to recover from the individual, and then if you can't then go after the company if they have a pattern. Or would you just go directly to the company?

12:39 **Brostrom:** We never go after the company. We will always try to recoup those dollars from the claimant. What this really impacts is the charging of those benefits to those employers' accounts. Each employer in the unemployment insurance system has an account where they have paid in taxes and they get a balance that is to determine their tax rate. In cases where an individual is found ineligible for benefits, it just no-charge and if that person should re-qualify within the year. The key here is that we don't go after the employer; there is no act of attempt to collect money. It affects their benefit charges against their account.

14:00 **Representative Kasper:** How long do you try to recoup from the employee before you start the process of going after the employer?

Brostrom: We never stop. Unless the amount is waived, there is a waiver process, in good conscious that we can't collect the money from them. Those we would typically not charge the employers. Collection activity stays on the books until it is resolved, and go through a legal process and we put together a judgment and it's good for 10 years. The charges to the employers account begin immediately if they are found to be at fault for the eligibility.

Support: No more

Opposition:

Neutral:

Hearing closed.

Rep Kasper: Motion to "do pass"

Representative Frantsvog: Seconds

Yes: 15

No: 0

Absent: 0

Chairman Keiser: Compliments about Job Service North Dakota

Carrier: Representative Kasper

Date: 1-15-2013Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1111**

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 CalendarMotion Made By Kasper Seconded By Frantsvog

Representatives	Yes	No	Representatives	Yes	No
Chairman George Keiser	✓		Rep. Bill Amerman	✓	
Vice Chairman Gary Sukut	✓		Rep. Joshua Boschée	✓	
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 0Absent —Floor Assignment Kasper

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

REPORT OF STANDING COMMITTEE

HB 1111: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **DO PASS** (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
HB 1111 was placed on the Eleventh order on the calendar.

2013 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1111

2013 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee

Roosevelt Park Room, State Capitol

HB 1111

February 19, 2013

Job Number 19148

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the prohibition of non-charging of unemployment compensation benefits attributable to the accounts of base period employers

Minutes:

Testimony Attached

Chairman Klein: Opened the hearing.

Darren Brostrom, Director of Unemployment Insurance with Job Service: Written testimony Attached (1).

Chairman Klein: Asked if this happens often.

Darren Brostrom: Said it does happen a lot and it happens a lot with the third party unemployment providers. There are some large organizations nationwide that contract with the huge retailers and often times their communications with their clients is lacking and so when they respond to us with information about unemployment insurance claims, it is often worthless information. They provide us what they can in order to hold their appeal time frames.

Chairman Klein: These third party providers are beyond PEO's?

Darren Brostrom: They are not really PEO's; they're contracting out specifically for unemployment insurance, probably workforce safety.

Senator Andrist: For whatever reason the benefits have been paid improperly and what the bill is doing is saying, the fund has to be repaid from all the employers of the state rather than from the employee that received the money.

Darren Brostrom: Said what the bill does, is when an individual receives unemployment insurance benefits there is an associated charge to the employer of that individual for the benefits paid. If they find out the individual was ineligible, they would find that charge, the money they paid them, to be not chargeable through the employer because it wasn't their fault. That would be charged to the pool. This bill would stop that non-charging so we would not be able to non-charge the employer if it was the employers fault and they had a pattern

of not responding to them. The charge would go against the employer instead of the state wide pool.

Chairman Klein: Said that current law says you can't charge the employer.

Darren Brostrom: Said that it applies to more than the third party it could affect other employers within the state. The federal government pushed the issue because of third parties.

Senator Murphy: Asked if this forces the employer to be more diligent.

Darren Brostrom: Said yes it is meant to cause the employer to respond timely and accurately so the correct decisions can be made and claimants and employers are treated fairly.

Chairman Klein: Asked if there was a time he couldn't collect and does the employer get dinged also.

Darren Brostrom: Said as the funds are collected by a payment plan or tax refund offset, those are applied to the employers account.

Senator Andrist: Asked if he felt the situation is that the employee isn't providing proper information.

Darren Brostrom: Said it could be the employees fault.

Chairman Klein: Closed the hearing.

Senator Andrist: Moved a do pass.

Senator Sinner: Seconded the motion.

Roll Call Vote: Yes - 7 No - 0 Absent - 0

Floor Assignment: Senator Sinner

Date: 02/19/13
Roll Call Vote #: 1

**2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1111**

Senate Industry, Business, and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Andrist Seconded By Senator Sinner

Senators	Yes	No	Senator	Yes	No
Chairman Klein	x		Senator Murphy	x	
Vice Chairman Laffen	x		Senator Sinner	x	
Senator Andrist	x				
Senator Sorvaag	x				
Senator Unruh	x				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Sinner

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

REPORT OF STANDING COMMITTEE

HB 1111: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1111 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

HB 1111

1-15-2013

(1)

HB 1111

House Bill 1111
Testimony of Darren Brostrom
Job Service North Dakota
Before the
House Committee On
Industry, Business and Labor
Representative George Keiser, 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 House Bill 1111 which addresses the relief of charges for employers as it relates to Unemployment Insurance benefits paid.

This bill amends statute to prohibit relieving employers from being charged for their proportionate share of any unemployment benefits paid when it is determined benefits were improperly paid and the employer was found to be at fault for not responding timely or adequately to Job Service requests for claim information. This finding must also be coupled with a determination that the employer has a demonstrated pattern of untimely or inadequate responses to previous requests for information sent by Job Service.

This prohibition on the relief of charges 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 required to establish this non-charging prohibition.

The federal requirement was established primarily as a reaction to large third party Unemployment Insurance providers, typically operating nationally, who have historically provided limited or very poor information when responding to claim related inquiries from the various state Unemployment Insurance programs. The repeated inadequacy of responses has resulted in significant overpayments of benefits to individuals nationwide.

Third party providers based outside of North Dakota provide unemployment services to many large employers. While these providers have automation in place to ensure that they rarely miss response deadlines, they have historically provided very limited, often incorrect or irrelevant, information in relation to the reason for separation of specific individuals. As a result of this, decisions of claimant eligibility are sometimes made with extensive information from the claimant, and minimal employer information. As could be expected, this leads to findings of eligibility when timely and accurate information would have resulted in ineligibility.

After being found eligible, benefit payments begin to claimants. However, in almost all cases, the third party provider will file an appeal of the determination made. It is during the appeal process that these organizations will often provide details relating to the separation from employment that were previously unknown. Oftentimes this additional information results in a reversal of the original determination. When this occurs any benefits already paid become an improper payment called an overpayment. Unless the claimant prevails in any further appeal, the individual must repay the benefits paid. Job Service then incurs the costs associated with collecting the overpaid amounts and the claimant

is required to repay what can be a large dollar amount at a time when they have little or no income.

Another action that is taken in situations where a claimant is found ineligible is that the employer will be coded as non-chargeable for the claim. When this occurs, the benefits paid on that claim do not impact the employer's account or tax rate. Instead, the benefits paid are charged to the statewide employer pool.

The vast majority of employers within the state will not be impacted by this bill. Most employers respond in a timely and adequate manner to requests for information. Additionally, to ensure that employers who mistakenly miss a deadline or provide inaccurate information are not impacted, the bill targets employers who have established a pattern of inadequate responses. Job Service would consider three or more instances of failure to adequately respond within a year as establishing a pattern.

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. In order to meet the requirements of federal law, and to provide time to notify employers of this change, the bill identifies that the effective date of the non-charging provision is applicable to erroneous benefit payments made after October 21, 2013.

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

House Bill 1111
Testimony of Darren Brostrom
Job Service North Dakota
Before the
Senate Committee On
Industry, Business and Labor
Senator Jerry Klein, Chair
February 19, 2013

Mr. Chairman, members of the committee, I am Darren Brostrom, the Director of Unemployment Insurance with Job Service. I am here today in support of House Bill 1111 which addresses the relief of charges for employers as it relates to Unemployment Insurance benefits paid.

This bill amends statute to prohibit the relief of employer benefit charges when it is determined that benefits were improperly paid as a result of an untimely or inadequate employer response to a Job Service request for information.

This prohibition on the relief of charges 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 required to establish this non-charging prohibition.

The federal requirement was established primarily as a reaction to large third party Unemployment Insurance providers, typically operating nationally, who have historically provided limited or very poor information when responding to claim related inquiries from the various state Unemployment Insurance programs.

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While these providers have automation in place to ensure that they rarely miss deadlines, they typically provide very limited, often incorrect or irrelevant information in relation to unemployment insurance claims. As a result of this, decisions of claimant eligibility are sometimes made with extensive information from the claimant, and minimal employer information. As could be expected, this leads to findings of eligibility when timely and accurate information would have resulted in a denial of benefits.

After being found eligible, benefit payments begin to claimants. However, in almost all cases, the third party provider will file an appeal of the determination. It is during the appeal process that these organizations will provide relevant details relating to the claim. Oftentimes this additional information results in a reversal of the original determination. When this occurs, any benefits already paid become an improper payment called an overpayment. Unless the claimant prevails in any further appeal, the individual must repay the benefits they received. Job Service then incurs the costs associated with collecting the overpaid amounts and the claimant is required to repay what can be a large dollar amount at a time when they have little or no income.

Additionally, when a claimant is found ineligible the employer will typically be coded as non-chargeable for the claim. When this occurs, the benefits paid on that claim do not impact the employer's account or tax rate. Instead, the benefits paid are charged to the statewide employer pool.

The vast majority of employers within the state will not be impacted by this bill. Most employers respond in a timely and adequate manner. To protect employers who mistakenly miss a deadline or provide inaccurate information, the bill targets

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employers who have established a pattern of inadequate responses. Job Service would consider three or more instances of failure to adequately respond within a year as establishing a pattern.

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.

In order to meet the requirements of federal law, and to provide time to notify employers of this change, the bill identifies that the effective date of the non-charging provision is applicable to erroneous benefit payments made after October 21, 2013.

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