

A BILL

To provide States with flexibility in using unemployment fund moneys for purposes of reducing erroneous payments from such fund and increasing collections; to require penalties for claimant fraud and employer fault; to expand the recovery of erroneous payments and collection of unpaid contributions through offsets from Federal income tax refunds, to improve State administration, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Unemployment Compensation Program Integrity Act of 2010”.

SEC. 2. PERMISSIBLE USES OF UNEMPLOYMENT FUND MONEYS FOR PROGRAM INTEGRITY PURPOSES.

(a) WITHDRAWAL STANDARD IN THE INTERNAL REVENUE CODE.—Section 3304(a)(4) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(a)(4)) is amended—

(1) in subparagraph (F), by striking “and” after the semicolon;

(2) by inserting after subparagraph (G) the following new subparagraphs—

“(H) of those payments of benefits from a State’s unemployment fund that are determined to have been made in error and are subsequently recovered by the State, the State may, immediately following receipt of such recovered amount, deposit a percent of such recovered amount, as specified in State law (but not to exceed 5 percent) in a fund from which moneys may be withdrawn for—

“(i) the payment of costs of deterring, detecting, and collecting erroneous payments to individuals;

“(ii) purposes relating to the misclassification of employees as independent contractors, implementation of provisions of State law implementing Section 303(k) of the Social Security Act, or other provisions of State law relating to employer fraud or evasion of contributions; or

(iii) payment to the Secretary of the Treasury to the credit of the state’s account in the Unemployment Trust Fund; and

“(I) of those payments of contributions (or payments in lieu of contributions) that are collected as a result of an investigation and assessment by the State agency, the State may, immediately following receipt of such payments, deposit a percent of such payments, as specified in State law (but not to exceed 5 percent) in a fund (which may be the same fund referenced in subparagraph (H)) from which moneys may be withdrawn for the purposes specified in clauses (i) through (iii) of subparagraph (H);”.

(b) DEFINITION OF UNEMPLOYMENT FUND.—Section 3306(f) of the Internal Revenue Code of 1986 (26 U.S.C. 3306(f)) is amended by striking all that follows “(exclusive of expenses of administration)” and inserting “, except as otherwise provided in section 3304(a)(4), title III of the Social Security Act, or any other provision of Federal law.”.

(c) WITHDRAWAL STANDARD IN SOCIAL SECURITY ACT.—Section 303(a)(5) of the Social Security Act (42 U.S.C. 503(a)(5)) is amended by striking all that follows “, exclusive of expenses of administration,” and inserting “except as otherwise provided in this section, section 3304(a)(4) of the Internal Revenue Code of 1986, or any other provisions of Federal law; and”.

(d) IMMEDIATE DEPOSIT REQUIREMENTS.—

(1) INTERNAL REVENUE CODE REQUIREMENT.— Section 3304(a)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(a)(3)) is amended to read as follows—

“(3) all money received in the unemployment fund shall immediately upon such receipt be paid over to the Secretary of the Treasury to the credit of the Unemployment Trust Fund established by section 904 of the Social Security Act (42 U.S.C. 1104), except for—

“(A) refunds of sums erroneously paid into such fund;

“(B) refunds paid in accordance with the provisions of section 3305(b); and

“(C) amounts deposited in a State fund in accordance with subparagraph (H) or subparagraph (I) of paragraph (4);”.

(2) SOCIAL SECURITY ACT REQUIREMENT.— Section 303(a)(4) of the Social Security Act (42 U.S.C. 503(a)(4)) is amended by striking the parenthetical and inserting in its place “(except as otherwise provided in this section, section 3304(a)(3) of the Internal Revenue Code of 1986, or any other provisions of Federal law)”.

(e) APPLICATION TO FEDERAL PAYMENTS.—

(1) **IN GENERAL.**— As a condition for administering any of the unemployment compensation programs of the United States described in paragraph (2) as an agent of the United States, the State shall, with respect to erroneous payments made under such programs by the State, use the authority provided under subparagraph (H) of section 3304(a)(4) of the Internal Revenue Code of 1986 in the same manner as such authority is used with respect to erroneous payments made under the State unemployment compensation law. With respect to erroneous Federal payments recovered consistent with the authority under subparagraph (H) of such section, the State shall immediately deposit the same percentage of the recovered payments into the same State fund as provided in the State law implementing that section.

(2) **DEFINITION.**— For purposes of this subsection, an “unemployment compensation program of the United States” means—

(A) unemployment compensation for Federal civilian employees under 5 U.S.C. 8501, et seq.;

(B) unemployment compensation for ex-servicemembers under 5 U.S.C. 8521, et seq.;

(C) trade readjustment allowances under sections 231-233 of the Trade Act of 1974;

(D) disaster unemployment assistance under 42 U.S.C. 5177(a);

(E) any Federal temporary extension of unemployment compensation;

(F) any other Federal program providing for the payment unemployment compensation; and

(G) any Federal program which increases the weekly amount of unemployment compensation payable to individuals.

SEC. 3. MANDATORY PENALTY ASSESSMENT ON FRAUD CLAIMS.

(a) **IN GENERAL.**—Section 303(a) of the Social Security Act (42 U.S.C. 503(a)) is amended—

(1) in paragraph (10), by striking the period and inserting “; and”; and

(2) by adding the following new paragraph—

“(11)(A) At the time the State agency determines an erroneous payment

from its unemployment fund was made to an individual due to fraud committed by such individual, the assessment of a penalty on the individual in an amount of not less than 15 percent of the amount of the erroneous payment, and

“(B) The immediate deposit of all assessments paid pursuant to subparagraph (A) in a fund in the State from which moneys may be withdrawn for the purposes specified in clauses (i) through (iii) of section 3304(a)(4)(H) of the Internal Revenue Code of 1986, which may be the same fund as the fund established under subparagraphs (H) or (I) of such section 3304(a)(4) of the Internal Revenue Code of 1986 .”.

(b) APPLICATION TO FEDERAL PAYMENTS.— As a condition for administering any of the unemployment compensation programs of the United States (as defined in section 2(e)(2) of this Act) as an agent of the United States, if the State determines that an erroneous payment was made by the State to an individual under any such program due to fraud committed by such individual, the State shall assess a penalty on such individual and deposit any such penalty received in the same manner as the State assesses and deposits such penalties under provisions of State law implementing section 303(a)(11) of the Social Security Act as added by subsection (a).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to erroneous payments established after the end of the 2-year period beginning on the date of the enactment of this Act, except that a State may amend its State law to apply to erroneous payments established before the end of such period.

SEC. 4. PROHIBITION ON NONCHARGING DUE TO EMPLOYER FAULT.

(a) IN GENERAL.—Section 3303 of the Internal Revenue Code (26 U.S.C. 3303) is amended by striking subsections (f) and (g) and inserting after subsection (e) the following new subsection—

“(f) A State law shall be treated as meeting the requirements of subsection (a)(1) only if such law provides that an employer’s account shall not be relieved of charges relating to a payment from the State unemployment fund if the State agency determines that the payment was made because the employer, or an agent of the employer, was at fault for failing to respond timely or adequately to the request of the agency for information relating to the claim for compensation and if the employer or agent has established a pattern of failing to respond timely or adequately to such requests.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall be effective for erroneous payments established after the end of the 2-year period beginning on the date of the enactment of this Act.

SEC. 5. COLLECTION OF PAST-DUE, LEGALLY ENFORCEABLE STATE DEBTS.

(a) **UNEMPLOYMENT COMPENSATION DEBTS.**—Section 6402(f) of the Internal Revenue Code (26 U.S.C. 6402)) is amended—

- (1) in the heading, by striking “RESULTING FROM FRAUD”,
- (2) by striking paragraphs (3) and (8) and redesignating paragraphs (4) through (7) as paragraphs (3) through (6), respectively;
- (3) in paragraph (3)(A),, as so redesignated, by striking “by certified mail with return receipt”;
- (4) in paragraph (3)(B), as so redesignated, by striking “due to fraud” and inserting “is not a covered unemployment compensation debt”;
- (5) in paragraph (3)(C), as so redesignated, by striking “ due to fraud ” and inserting “ is not a covered unemployment compensation debt”;
- (6) in paragraph (4)(A), as so redesignated —
 - (A) by inserting “or the person’s failure to report earnings” after “due to fraud”, and
 - (B) by striking “for not more than 10 years”, and
- (7) in paragraph (4)(B), as so redesignated —
 - (A) by striking “due to fraud”, and
 - (B) by striking “for not more than 10 years”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall be effective as to refunds payable under section 6402 of the Internal Revenue Code of 1986 on or after the date of enactment.

SEC. 6 TREATMENT OF SHORT-TIME COMPENSATION PROGRAMS.

(a) **GENERAL RULE.**—Section 3306 of the Internal Revenue Code of 1986 (26 U.S.C. 3306) is amended by adding at the end the following new subsection:

“(v) **SHORT-TIME COMPENSATION PROGRAM.**—For purposes of this chapter, the term ‘short-time compensation program’ means a program under which—

“(1) the participation of an employer is voluntary;

“(2) an employer reduces the number of hours worked by employees in lieu of temporary layoffs;

“(3) such employees whose workweeks have been reduced by at least 10 percent, and by not more than the percentage, if any, that is determined by the State to be appropriate, are eligible for unemployment compensation;

“(4) the amount of unemployment compensation payable to any such employee is a pro rata portion of the unemployment compensation which would be payable to the employee if such employee were totally unemployed;

“(5) such employees are not required to meet the availability for work or work search test requirements while collecting short-time compensation benefits, but are required to be available for their normal workweek;

“(6) eligible employees may participate in an employer-sponsored training program to enhance job skills if such program has been approved by the State agency;

“(7) the State agency shall require an employer to certify that the employer will continue to provide health benefits, and retirement benefits under a defined benefit plan (as defined in section 414(j)) and contributions under a defined contribution plan (as defined in section 414(i)) to any employee whose workweek is reduced under the program under the same terms and conditions as though the workweek of such employee had not been reduced;

“(8) the State agency shall require an employer (or an employers’ association which is party to a collective bargaining agreement) to submit a written plan describing the manner in which the requirements of this subsection will be implemented and containing such other information as the Secretary of Labor determines is appropriate;

“(9) in the case of employees represented by a union, the appropriate official of the union has agreed to the terms of the employer’s written plan and implementation is consistent with employer obligations under the National Labor Relations Act; and

“(10) only such other provisions are included in the State law as the Secretary of Labor determines appropriate for purposes of a short-term compensation program.”.

(b) **EFFECTIVE DATE.**— The amendments made by subsection (a) shall take effect upon the date enactment of this Act, except that, if a State is administering a short-time compensation

program as of the date of enactment and the State law cannot be administered consistent with such amendments, such State shall have not later than 2-years after the date of enactment to amend its law to be consistent with such amendments.

(c) CONFORMING AMENDMENTS.—

(1) Subparagraph (E) of section 3304(a)(4) of such Code (26 U.S.C. 3304(a)(4)(E)) is amended to read as follows:

“(E) amounts may be withdrawn for the payment of short-time compensation under a short-time compensation program (as defined under section 3306(v));”.

(2) Subsections (b) through (d) of section 401 of the Unemployment Compensation Amendments of 1992 (26 U.S.C. 3304 note) are repealed.

SEC. 7. STATE USE OF COMPENSATING BALANCES AND INTEREST EARNED ON CLEARING ACCOUNT TO PAY ASSOCIATED BANKING COSTS.

(a) IMMEDIATE DEPOSIT REQUIREMENT.—Section 3304(a)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(a)(3)), as amended by section 2(d)(1) of this Act, is further amended—

(1) in subparagraph (B), by striking “and” after the semicolon;

(2) in subparagraph (C), by inserting “and” after the semicolon;

(3) by adding at the end the following new subparagraph:

“(D) such portion of the money as may be necessary to generate earnings credit or actual interest earnings sufficient to pay reasonable charges for banking services related to such money and for services provided by a bank in connection with the receipt and processing of direct remittances from employers;”.

(b) WITHDRAWAL STANDARD.—Section 3304(a)(4) of such Code (26 U.S.C. 3304(a)(4)), as amended by section 2 of this Act, is further amended—

(1) in subparagraph (H), by striking “and” after the semicolon;

(2) in subparagraph (I), by inserting “and” after the semicolon; and

(3) by adding at the end the following new subparagraph:

“(J) earnings credit or actual interest earnings on money not immediately paid over to the Secretary of the Treasury pursuant to paragraph (3) may be used to pay reasonable charges for banking services related to money received in the unemployment fund and for services provided by a bank in connection with the receipt and processing of direct remittances from employers;”.

(c) CONFORMING AMENDMENT.—Section 1201(a)(3) of the Social Security Act (42 U.S.C.1321(a)(3)), is amended—

(1) in subparagraph (B), by striking “and” after the comma;

(2) in subparagraph (C), by striking the period and inserting “, and”; and

(3) by adding after subparagraph (C) the following new subparagraph—

“(D) any amounts set aside to pay reasonable charges for banking services consistent with paragraphs (3) and (4) of section 3304(a) of the Federal Unemployment Tax Act shall not be taken into account for purposes of subparagraph (B).”.

SEC. 8. REPORTING OF FIRST DAY OF EARNINGS TO DIRECTORY OF NEW HIRES.

(a) ADDITION OF REQUIREMENT.—Section 453A(b)(1)(A) of the Social Security Act (42 U.S.C. 653a(b)(1)(A)) is amended by inserting “the date services for remuneration were first performed by the employee,” after “of the employee,”.

(b) CONFORMING AMENDMENT; REPORTING FORMAT AND METHOD.—Section 453A(c) of the Social Security Act (42 U.S.C. 653a(c)) is amended by inserting “, to the extent practicable,” after “Each report required by subsection (b) shall”.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.— Subject to paragraph (2), the amendments made under this section shall take effect six months after the date of enactment of this Act.

(2) COMPLIANCE TRANSITION PERIOD.— If the Secretary of Health and Human Services determines that State legislation (other than legislation appropriating funds) is required in order for a State plan under part D of title IV of the Social Security Act to meet the additional requirements imposed by the amendment under subsection (a), the plan shall not be regarded as failing to meet such requirements before the first day of the second calendar quarter beginning after the close of the first regular session of the State legislature that begins after the effective date of such amendment. If the State has a

2-year legislative session, each year of the session is deemed to be a separate regular session of the State legislature.

SEC. 9. DEDUCTION OF OBLIGATIONS FOR CUSTODIAL PARENTS.

(a) AUTHORIZATION TO DEDUCT SUPPORT FOR CUSTODIAL PARENTS FROM UNEMPLOYMENT COMPENSATION.—

(1) IN GENERAL.—Section 303(e) of the Social Security Act (42 U.S.C. 503(e)) is amended as follows—

(A) by striking “child support obligations” wherever it occurs and inserting “support obligations” and

(B) in the last sentence of paragraph (1), by striking “only includes obligations” and inserting “is limited to obligations established with respect to a child or a custodial parent of such child”.

(2) TECHNICAL AMENDMENT.—Section 303(e)(2)(A)(iii)(III) (42 U.S.C. 503(e)(2)(A)(iii)(III)) is amended by striking “section 462(e)” and inserting “section 459(i)(5)”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to weeks of unemployment beginning after the end of the 2-year period beginning on the date of the enactment of this Act, except that a State may amend its State law to provide for deducting and withholding amounts from unemployment compensation in accordance with the amendment made by this section before the end of such period.

SEC. 10. ADVISORY COUNCIL ON UNEMPLOYMENT COMPENSATION.

(a) IN GENERAL.— Subsections (a) through (c) of section 908 of the Social Security Act (42 U.S.C. 1108 (a)-(c)) are amended to read as follows—

“(a) ESTABLISHMENT.—The Secretary of Labor may periodically establish an advisory council to be known as the Advisory Council on Unemployment Compensation (referred to in this section as the “Council”).

“(b) FUNCTION.—Each Council shall, to the extent directed by the Secretary of Labor, evaluate specific aspects of the unemployment compensation program, which may include the purpose, goals, effects on economic stabilization (including countercyclical effects), coverage, trust fund solvency, administrative performance, payment integrity and any other aspects of the program as the Secretary of Labor deems necessary.

“(c) MEMBERS.—

“(1) PRESIDENTIAL APPOINTMENTS.--Each Council shall consist of 9 members appointed by the President.

“(2) VACANCY.—A vacancy in any Council shall be filled by appointment in accordance with paragraph (1).

“(3) CHAIRMAN.—The President shall designate a member of the Council to serve as its Chairman.”.

(b) REPORT.—Subsection (f) of section 908 of the Social Security Act (42 U.S.C. 1108 (f)) is amended to read as follows—

“(f) REPORT.— The Council shall submit, at such times as the Secretary of Labor may specify, to the President through the Secretary of Labor reports setting forth its findings and any recommendations the Council determines are appropriate.”.

SEC. 11. AMENDMENT TO THE FEDERAL-STATE EXTENDED BENEFITS PROGRAM.

(a) IN GENERAL.—Section 202(a)(3)(E) of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304(a)(11), preceding note) is amended by striking clause (ii) and inserting the following:

“(ii) the individual maintains tangible evidence that he has engaged in such an effort during such week, and

“(iii) the individual provides such tangible evidence to the state agency upon request. “The Secretary shall prescribe requirements for state agencies to randomly audit a minimum number of claims each week to determine compliance with this subparagraph.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to weeks of unemployment beginning after the end of the 2-year period beginning on the date of the enactment of this Act, except that a State may amend its State law to provide for the administration of the federal-state extended benefits program in accordance with the amendments made by this section before the end of such period.

SEC. 12. REGULATIONS.

The Secretary of Labor may prescribe any operating instructions or regulations necessary to carry out the provisions of this Act and the amendments made by this Act, to the extent that responsibility for their administration is vested in the Secretary of Labor.

SEC. 13. EFFECTIVE DATES.

Except as otherwise provided, the amendments made by this Act shall be effective on the date of enactment of this Act.