SB 42-FN - FINAL VERSION

2023 SESSION

23-0875
05/04

SENATE BILL ***42-FN***

AN ACT relative to overpayment of unemployment compensation.

SPONSORS: Sen. Whitley, Dist 15; Sen. Watters, Dist 4; Sen. D'Allesandro, Dist 20; Sen. Rosenwald, Dist 13; Sen. Carson, Dist 14; Sen. Fenton, Dist 10; Sen. Perkins Kwoka, Dist 21; Sen. Innis, Dist 7; Sen. Prentiss, Dist 5; Sen. Soucy, Dist 18; Sen. Lang, Dist 2; Rep. C. McGuire, Merr. 27; Rep. Adjutant, Graf. 16; Rep. Wolf, Merr. 7; Rep. Wilhelm, Hills. 40

COMMITTEE: Executive Departments and Administration

ANALYSIS

This bill provides that the state shall not charge interest on the collection of an overpayment of unemployment compensation unless the person knowingly or willfully made a false statement in their application for benefits.

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Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT relative to overpayment of unemployment compensation.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Unemployment Compensation; Overpayment Penalties. Amend RSA 282-A:165, IV to read as follows:

IV. The commissioner shall collect any overpayment created under this chapter by civil action in any manner provided for the collection of contributions in RSA 282-A:141-156***, except as provided in paragraph V,*** and shall withhold, in whole or in part as determined by the commissioner, any future benefits payable to the individual and shall credit such amount withheld against the overpayment until it is repaid in full.

2 New Paragraph; Unemployment Compensation; Overpayment Amend RSA 282-A:165 by inserting after paragraph IV the following new paragraph:

V. The commissioner shall not charge interest on overpayments unless the person willfully made a false statement or representation or knowingly failed to disclose a material fact to obtain or increase any benefit or other payment under this chapter, either for oneself or any other person pursuant to RSA 282-A:161 or RSA 282-A:164.

3 Effective Date. This act shall take effect 60 days after its passage.

VETOED July 28, 2023

LBA
23-0875
1/10/23

SB 42-FN- FISCAL NOTE
AS INTRODUCED

AN ACT relative to overpayment of unemployment compensation.

FISCAL IMPACT: **[X] State** **[ ] County** **[ ] Local** **[ ] None**

	Estimated Increase / (Decrease)			
STATE:	**FY 2023**	**FY 2024**	**FY 2025**	**FY 2026**
Appropriation	$0	$0	$0	$0
Revenue	$0	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease
Expenditures	$0	$0	$0	$0
Funding Source:	[ ] General [ ] Education [ ] Highway [X] Other - Administrative Contribution (RSA 282-A:140)			

METHODOLOGY:

This bill provides that the state shall not charge interest on the collection of an overpayment of unemployment compensation unless the person knowingly or willfully made a false statement in their application for benefits.

The Department of Employment Security provided the following information concerning interest charged on collection of an overpayment of unemployment compensation:

- Under existing law, interest on overpaid benefits accrues at the rate of 1% per month with few exceptions. However, an individual is only required to repay the State if the individual is determined to be at fault with respect to the overpayment. If the Department or an employer caused benefits to be overpaid, then the individual is not required to repay the benefits and thus does not accrue any interest.
- While an individual may be determined to be at fault in causing the overpaid benefits, this does not necessarily mean the individual acted fraudulently. To be considered at fault, they must be found to have made a material statement or misrepresentation which they knew or should have known was inaccurate, or have failed or caused another to fail to disclose a material fact that they knew or should have known was material in obtaining benefits.
- In situations where the individual is determined to be at fault and is determined to have acted willfully or intentionally, the situation would be considered fraudulent.
- If the individual is determined to be at fault in causing the benefits to be overpaid, but it is determined this was the result of negligence and not a willful or intentional conduct, the overpaid benefits would be considered non-fraudulent.
- Interest accrues when the individual is at fault in causing the benefits to be overpaid, whether the overpayment is deemed to be the result of fraud or not. There are mitigating

circumstances such as the Commissioner's ability to waive interest that is $50.00 or less if the waiver is deemed to be "for the best interests of the state."

- Interest does not accrue on overpayments paid within 60 days "from the date of mailing of the final decision creating the overpayment."
- As charging interest is generally considered to be a matter of state law, this proposal likely would not raise a conformity issue with the United States Department of Labor.
- The money received from overpayment interest is deposited into the Administrative Contribution fund at RSA 282-A:140. During Fiscal year 2022, the Department collected $91,115 in interest from non-fraud overpaid benefits.

As is customary with all proposed legislation seeking to amend state law governing the unemployment compensation program, once the bill becomes public the Department will submit a request for compliance and conformity review to the United States Department of Labor and ask that their review be expedited.

It is assumed that any fiscal impact would occur after FY 2023.

AGENCIES CONTACTED:

Department of Employment Security