

SB 161-FN - AS INTRODUCED

2021 SESSION

21-0902

06/11

SENATE BILL ***161-FN***

AN ACT relative to non-fraud overpayments for unemployment benefits.

SPONSORS: Sen. Whitley, Dist 15; Sen. Perkins Kwoka, Dist 21; Sen. Rosenwald, Dist 13; Sen. Prentiss, Dist 5; Rep. Schultz, Merr. 18; Rep. McWilliams, Merr. 27

COMMITTEE: Executive Departments and Administration

ANALYSIS

This bill prohibits the commissioner of the department of employment security from:

I. Charging interest in the settlement of overpaid unemployment compensation where fraud is not an issue.

II. Collecting overpayments of unemployment compensation until a debtor has exhausted all administrative remedies.

III. Collecting overpayments during the state of emergency due to COVID-19, including overpayments that occurred prior to the emergency order.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT relative to non-fraud overpayments for unemployment benefits.

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

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

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

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

12 VI. ***The commissioner shall not seek or require repayment of overpayments of state***
13 ***or federal unemployment benefits by any collection method until a person has***
14 ***exhausted all administrative remedies within the department and is aggrieved by a final***
15 ***decision of the appeal tribunal as reversed, modified, or affirmed by the appellate board***
16 ***after a motion for reconsideration is granted or denied or after the decision on rehearing.***
17 ***The commissioner shall suspend collection activities, including the collection of payments***
18 ***made pursuant to a payment plan, when a person submits a request to waive an***
19 ***overpayment of benefits or a request to adjust an overpayment of benefits by compromise.***
20 ***The commissioner shall not resume collection activities until the person has exhausted all***
21 ***administrative remedies within the department and is aggrieved by a final decision that***
22 ***upholds the denial of a request to waive an overpayment of benefits or a request to adjust***
23 ***an overpayment of benefits by compromise.***

24 2 Department of Employment Security; State of Emergency. During the existence of the state of
25 emergency due to the Novel Coronavirus (COVID-19), first declared by Executive Order 2020-04, the
26 commissioner of the department of employment security shall not collect any non-fraud
27 overpayment of state or federal unemployment benefits, including overpayments that occurred or
28 were established prior to the state of emergency and that remain uncollected.

29 3 Effective Date. This act shall take effect 60 days after its passage.

SB 161-FN- FISCAL NOTE
AS INTRODUCED

AN ACT relative to non-fraud overpayments for unemployment benefits.

FISCAL IMPACT: ☒ State ☐ County ☐ Local ☐ None

STATE:	Estimated Increase / (Decrease)			
	FY 2021	FY 2022	FY 2023	FY 2024
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable
Funding Source:	☐ General ☐ Education ☐ Highway ☒ Other - Unemployment Compensation Trust Fund, Administrative Contingency Fund			

METHODOLOGY:

This bill prohibits the commissioner of the Department of Employment Security from:

- Charging interest in the settlement of overpaid unemployment compensation where fraud is not an issue.
- Collecting overpayments of unemployment compensation until a debtor has exhausted all administrative remedies.
- Collecting over payments during the state of emergency due to COVID-19, including overpayments that occurred prior to the emergency order.

Regarding section 1, paragraph V of the bill, the Department of Employment Security indicates under current law, interest on state overpayments accrues at the rate of 1% per month with few exceptions and whether the overpayment is deemed to be the result of fraud or not. The Commissioner may waive interest of \$50.00 or less if the waiver is deemed to be “for the best interests of the state” and interest does not accrue on overpayments paid within 60 days “from the date of mailing of the final decision creating the overpayment.” The Department states money received from overpayment interest is deposited into the administrative contingency fund (RSA 282-A:140) and not the unemployment compensation trust fund. During Fiscal year 2020, the Department collected over \$3.2 million in overpayments, both fraud and non-fraud, of which \$310,172 was interest. Paragraph V is likely to reduce interest collected and paid to the administrative contingency fund by an indeterminable amount.

Regarding section 1, paragraph VI of the bill, the Department indicates during the pandemic, the Department has ceased pursuing most methods of collections including wage garnishments and

liens. In keeping with federal guidance, the Department is offsetting federal benefits for overpayments to recoup federal program overpayments. The following is an overview of the Department's authority and obligations regarding offsets of benefits paid under the various unemployment insurance programs being administered by the Department during the COVID-19 Crisis:

- Pandemic Emergency Unemployment Compensation. (PEUC). CARES ACT Sec. 2107; UIPL 17-20. The Department must recover PEUC overpayments from future PEUC payments and any other unemployment compensation benefits payable under State or federal law.
- Federal Pandemic Unemployment Compensation (FPUC) CARES Act Sec. 2104; UIPL 15-20. The Department must recover FPUC overpayments from additional FPUC payments to which the individual is entitled and from any other unemployment compensation payments under state or federal law.
- Pandemic Unemployment Assistance (PUA) CARES Act Sec. 2102, incorporating 20 CFR 625: "Disaster Unemployment Assistance ("DUA")); UIPL 16-20. The Department must recover PUA overpayments from future PUA payments and from any compensation payable to the individual under any Federal unemployment compensation law administered by the Department, or from any assistance or allowance payable to the individual with respect to unemployment under any other Federal law administered by the Department.

Proposed section 1, paragraph VI would suspend collection activities when a person submits a request to waive an overpayment of benefits or a request to adjust an overpayment of benefits by compromise. The suspension would remain in effect pending exhaustion of administrative appeals until a final decision that upholds the denial of a request to waive an overpayment of benefits or a request to adjust an overpayment of benefits by compromise.

Overpayment Waivers are permitted under the CARES ACT and the Continued Assistance for Unemployed Workers Act Of 2020 ("CAA"), effective 12/27/20. The waiver process is different than the administrative appeal process in that overpayments shall be waived if the claimant is deemed to be without fault and such repayment would be contrary to equity and good conscience. Regardless of the different waiver processes, States are required to offset federal benefits for overpayments to recoup federal program overpayments pending determination that the overpayment is waived. Thus, given federal guidance, the Department assumes paragraph VI will create a compliance issue and possibly a conformity issue to cease offsetting federal benefits. As is customary with all proposed legislation seeking to amend state law governing the unemployment compensation program, the Department has submitted a request for compliance

and conformity review to the United States Department of Labor (USDOL) and asked that their review be expedited.

Regarding section 2 of the bill, the Department indicates the section would establish new approaches to Department collection during the COVID-19 State of Emergency relative to the recovery of non-fraud overpayment debt resulting from federal and state benefits paid during the State of Emergency or, which occurred prior to the declaration of the COVID-19 State of Emergency and which remain uncollected during the State of Emergency. This would halt all non-fraud collection activity during the COVID-19 State of Emergency. The Department is obligated by Federal law to engage in at least some collections actions, specifically the offset of benefits for fraud and non-fraud unemployment compensation debts. Deviation from Federal requirements could raise conformity issues.

AGENCIES CONTACTED:

Department of Employment Security