



Senate

General Assembly

File No. 447

February Session, 2022

Substitute Senate Bill No. 417

Senate, April 13, 2022

The Committee on Labor and Public Employees reported through SEN. KUSHNER of the 24th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CONCERNING AMNESTY FOR NONFRAUDULENT
UNEMPLOYMENT OVERPAYMENTS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective from passage*) As used in this section and
2 sections 2 to 4, inclusive, of this act:

3 (1) "Affected claimant" means any person: (A) Who, through error,
4 has received any sum as benefits under chapter 567 of the general
5 statutes on and after March 10, 2020, and before December 31, 2021,
6 while any condition for the receipt of benefits imposed by said chapter
7 of the general statutes was not fulfilled in such claimant's case, or has
8 received a greater amount of benefits than was due such claimant under
9 said chapter of the general statutes; (B) whose receipt of such a sum was
10 not due to fraud, wilful misrepresentation or wilful nondisclosure by
11 such claimant or another person; and (C) who has been subject to a final
12 determination of overpayment pursuant to subsection (a) of section 31-
13 273 of the general statutes that required such claimant to repay such sum

14 to the Unemployment Compensation Fund, or from whom such sum is
15 to be recouped by offset from such person's unemployment benefits;

16 (2) "Administrator" means the Labor Commissioner;

17 (3) "Assistance" means moneys payable from the pandemic
18 unemployment nonfraudulent overpayment account, established
19 pursuant to subsection (b) of section 2 of this act, to assist an affected
20 claimant pursuant to sections 2 to 4, inclusive, of this act by: (A)
21 Reimbursing such affected claimant for the amount the affected
22 claimant has repaid to the Unemployment Compensation Fund; or (B)
23 depositing in the Unemployment Compensation Fund the repayment
24 amount that remains outstanding on behalf of the affected claimant.

25 Sec. 2. (NEW) (*Effective from passage*) (a) There is established the
26 Pandemic Unemployment Nonfraudulent Overpayment Program. The
27 program shall offer assistance, within available funds and on a first-
28 come, first-served basis, to affected claimants eligible for assistance
29 under this section, pending verification of eligibility. The program shall
30 be administered by the administrator. The administrator shall accept
31 applications for assistance on and after the effective date of this section.
32 The administrator shall be authorized to: (1) Determine whether an
33 affected claimant meets the requirements for eligibility for assistance
34 under this section and the amount of assistance that should be provided;
35 (2) summon and examine under oath such witnesses that may provide
36 information relevant to the eligibility of an affected claimant; (3) direct
37 the production of, and examine or cause to be produced or examined,
38 such books, records, vouchers, memoranda, documents, letters,
39 contracts or other papers in relation to any matter at issue as the
40 administrator may find proper; and (4) take or cause to be taken
41 affidavits or depositions within or without the state.

42 (b) There is established an account to be known as the "pandemic
43 unemployment nonfraudulent overpayment account" which shall be a
44 separate, nonlapsing account within the General Fund. The account
45 shall contain any moneys required by law to be deposited in the account.
46 Moneys in the account shall be expended by the administrator for the

47 purposes of: (1) Assistance offered under the Pandemic Unemployment
48 Nonfraudulent Overpayment Program; and (2) costs and expenses of
49 operating the program, including the hiring of necessary employees and
50 the expense of public outreach and education regarding the program
51 and fund. Not more than five per cent of the total moneys received by
52 the fund shall be used for any administrative costs, including hiring
53 temporary or durational staff or contracting with a third-party
54 administrator, or other costs and expenses incurred by the administrator
55 or third-party administrator in connection with carrying out the
56 provisions of this section. The administrator shall make all reasonable
57 efforts to limit the costs and expenses of operating the program without
58 compromising affected claimants' access to the program.

59 (c) To apply for assistance from the Pandemic Unemployment
60 Nonfraudulent Overpayment Program, an affected claimant shall
61 submit a claim to the administrator, in such form as required by the
62 administrator. Any such claim shall include: (1) Evidence of a final
63 determination of overpayment pursuant to subsection (a) of section 31-
64 273 of the general statutes that required such affected claimant to repay
65 such overpayment, or such overpayment to be recouped by offset from
66 such affected claimant's unemployment benefits; (2) evidence of the
67 amount that such person has repaid or had offset from such affected
68 claimant's unemployment benefits and the amount that remains
69 outstanding; and (3) any additional information as requested or
70 required by the administrator.

71 (d) Subject to available funds, the amount of assistance offered to an
72 affected claimant shall be the amount that: (1) Such claimant has repaid
73 or had offset from the claimant's unemployment benefits, which shall be
74 reimbursed to the affected claimant; and (2) remains outstanding for
75 repayment by the claimant, which shall be deposited in the
76 Unemployment Compensation Fund on behalf of the affected claimant.

77 (e) The administrator shall promptly review all claims submitted
78 pursuant to this section. The administrator shall evaluate each claim and
79 determine, on the basis of information provided by the affected

80 claimant, or additional information provided by another person at the
81 request of the administrator, whether or not such claim should be
82 approved and, if approved, the amount of assistance offered. The
83 administrator shall provide such determination, in writing, to such
84 affected claimant not later than sixty business days after having received
85 the notice of claim, or, if the administrator requested additional
86 information, not later than ten business days after receiving such
87 additional information. The administrator shall pay any such assistance
88 offered to such affected claimant in the amount and for the duration
89 determined by the administrator, if applicable.

90 (f) An affected claimant may request that a determination made
91 pursuant to subsection (e) of this section be reconsidered by filing a
92 request with the administrator, on a form prescribed by the
93 administrator, not later than twenty business days after the mailing of
94 the notice of such determination. The administrator, not later than three
95 business days after receipt of such request for reconsideration, shall
96 designate an individual to conduct such reconsideration and shall
97 submit to such designated individual all documents relating to such
98 affected claimant's claim. The administrator's designee shall conduct
99 any reconsideration requested by an affected claimant, which shall
100 consist of a de novo review of all relevant evidence, not later than
101 twenty business days after such individual's designation. Such
102 administrator's designee shall issue such designee's decision affirming,
103 modifying or reversing the decision of the administrator not later than
104 twenty business days after the designee's reconsideration of the
105 determination and shall submit such decision in writing to the
106 administrator and the affected claimant. The decision shall include a
107 brief statement of findings that shall specify any assistance to be paid to
108 the affected claimant in accordance with subsection (e) of this section.

109 (g) Any statement, document, information or matter may be
110 considered by the administrator or, on reconsideration, by the
111 administrator's designee, if, in the opinion of the administrator or
112 designee, it contributes to a determination of the claim, whether or not
113 the same would be admissible in a court of law.

114 (h) Notwithstanding sections 4-183 and 51-197b of the general
115 statutes, there shall be no right of appeal by any affected claimant
116 claiming assistance under this section following the final decision of the
117 administrator's designee issued pursuant to subsection (f) of this
118 section.

119 (i) Any assistance provided to an affected claimant under this section
120 shall not be considered income for the purpose of the state's personal
121 income tax law.

122 (j) If a claim is paid to an affected claimant erroneously or as a result
123 of wilful misrepresentation by such affected claimant, the administrator
124 may seek repayment of benefits from the affected claimant having
125 received such compensation and may also, in the case of wilful
126 misrepresentation, seek payment of a penalty in the amount of fifty per
127 cent of the benefits paid as a result of such misrepresentation.

128 (k) On or before January 1, 2023, and at least quarterly thereafter, the
129 administrator shall submit to the joint standing committee of the
130 General Assembly having cognizance of matters relating to labor, in
131 accordance with section 11-4a of the general statutes, a report on the
132 financial condition of the pandemic unemployment nonfraudulent
133 overpayment account established in subsection (b) of this section. Such
134 report shall include: (1) An estimate of the account's value as of the date
135 of the report; (2) the effect of scheduled payments on the account's value;
136 (3) an estimate of the monthly administrative costs necessary to operate
137 the Pandemic Unemployment Nonfraudulent Overpayment Program;
138 and (4) any recommendations for legislation to improve the operation
139 or administration of said program and said account.

140 Sec. 3. (*Effective from passage*) (a) Not later than September 1, 2022, the
141 administrator shall send written notice, by mail, to each person who: (1)
142 Through error, has received any sum as benefits under chapter 567 of
143 the general statutes on and after March 10, 2020, and before December
144 31, 2021, while any condition for the receipt of benefits imposed by such
145 chapter was not fulfilled in such person's case, or has received a greater
146 amount of benefits than was due to said person under said chapter, and

147 whose receipt of such a sum was not due to fraud, wilful
148 misrepresentation or wilful nondisclosure by himself or herself or
149 another person; and (2) did not request a determination of eligibility
150 pursuant to subdivision (1) of subsection (a) of section 31-273 of the
151 general statutes.

152 (b) Such notice shall inform the person: (1) Of his or her option to
153 request a determination of eligibility, pursuant to subdivision (1) of
154 subsection (a) of section 31-273 of the general statutes, for a waiver of
155 the amount owed if it would defeat the purpose of the benefits or be
156 against equity and good conscience; (2) the procedure for requesting
157 such determination of eligibility; (3) that the request shall be made not
158 later than six months after the Labor Department sent the person the
159 notice; (4) that a final determination of eligibility shall be made before
160 the person may apply to the Pandemic Unemployment Nonfraudulent
161 Overpayment Program; and (5) such other information as the
162 administrator deems necessary.

163 (c) Notwithstanding the provisions of section 31-273 of the general
164 statutes, any person who is sent a notice pursuant to subsection (a) of
165 this section shall not be required to repay the amounts owed pursuant
166 to subsection (a) of section 31-273 of the general statutes on and after the
167 date such notice is sent and before the earlier of (1) the date a final
168 determination of eligibility is made in relation to such notice, provided
169 the person requests a determination of eligibility, or (2) six months after
170 the notice is sent to the person if the person has not requested a
171 determination of eligibility by such date.

172 Sec. 4. (*Effective from passage*) The sum of fifty million dollars is
173 appropriated to the Labor Department from the General Fund, for the
174 fiscal year ending June 30, 2023, for purposes of funding the pandemic
175 unemployment nonfraudulent overpayment account, established
176 pursuant to section 2 of this act.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>from passage</i>	New section
Sec. 2	<i>from passage</i>	New section
Sec. 3	<i>from passage</i>	New section
Sec. 4	<i>from passage</i>	New section

Statement of Legislative Commissioners:

In Section 1(2), "Department" was changed to "Commissioner" for clarity; in Section 2(e), "additional information provided at the request of the administrator" was changed to "additional information provided by another person at the request of the administrator," for clarity; in Section 2(h) "Notwithstanding sections 4-183 and 51-197b of the general statutes," was added for clarity; in Section 3(a)(1), "due said" was changed to "due to said" for clarity and proper grammar; in Section 3(b), "commissioner" was changed to "administrator" for consistency; and, in Section 3(c), "provided" was removed for clarity and proper grammar.

LAB *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 23 \$	FY 24 \$
Labor Dept.	GF - Appropriation	50 million	None
Labor Dept.	GF - Cost	2,574,145	2,489,239
State Comptroller - Fringe Benefits ¹	GF - Cost	885,072	907,199
Department of Revenue Services	GF - Precludes Revenue Gain	None	See Below

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill, which establishes the Pandemic Unemployment Nonfraudulent Overpayment Program and requires the Department of Labor (DOL) to administer it, process claims, and award assistance to affected claimants, results in costs of \$3.5 million in FY 23, \$3.4 million in FY 24 and \$3.5 million in FY 25.²

In order to implement the bill's provisions, it is anticipated that DOL would require one Operations Coordinator (\$84,858 for salary and \$34,393 for fringe benefit costs), four Programs & Services Coordinators (\$77,322 for salary and \$31,339 for fringe benefit costs each), six Clerks (\$41,785 for salary and \$13,027 for fringe benefit costs each), and 30

¹The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 40.53% of payroll in FY 23.

²For context, there are currently about 24,000 identified nonfraud cases, and the number will continue to increase.

Employment Security Intermittent Interviewers (\$51,296 for salary and \$20,790 for fringe benefit costs each). There are also associated overhead costs estimated at \$340,400 in FY 23 and \$200,900 in FY 24 and FY 25 for computers, office supplies, etc., as well as mailing costs estimated at \$50,000 annually for FY 23-FY 25.

The bill appropriates \$50 million from the General Fund for the program in FY 23 and allows up to 5% to be used to support administrative costs (up to \$2.5 million). sHB 5037, the revised FY 23 budget bill, as favorably reported by the Appropriations Committee, is under the spending cap by \$4.6 million in FY 23. The appropriation contained in the bill would result in the budget being over the spending cap by \$45.4 million in FY 23.

The bill specifies that payments made under the program are exempt from the state personal income tax, which precludes a revenue gain in FY 24, FY 25, and FY 26.³

The Out Years

State Impact:

Agency Affected	Fund-Effect	FY 25 \$	FY 26 \$	FY 27 \$
Labor Dept.	GF - Cost	2,545,198	None	None
State Comptroller - Fringe Benefits	GF - Cost	929,879	None	None
Department of Revenue Services	GF - Precludes Revenue Gain	See Above	See Above	None

Note: GF=General Fund

Municipal Impact: None

³ This assumes program payments would be fully disbursed by the 2025 income year.

OLR Bill Analysis**sSB 417*****AN ACT CONCERNING AMNESTY FOR NONFRAUDULENT UNEMPLOYMENT OVERPAYMENTS.*****SUMMARY**

This bill creates the Pandemic Unemployment Nonfraudulent Overpayment Program to help certain claimants who non-fraudulently received more unemployment benefits than they were entitled to and now must repay the overpayment. It applies to “affected claimants” who received these benefit overpayments between March 10, 2020, and December 31, 2021, and allows them to apply to the new program to (1) be reimbursed for any repayments they have already made and (2) have funds transferred from the program to the Unemployment Compensation (UC) Fund to meet their outstanding repayment requirements.

The bill requires the Department of Labor (DOL) to administer the program, process claims, and award assistance to affected claimants. It creates the pandemic unemployment nonfraudulent overpayment account to fund the program and appropriates \$50 million to DOL from the General Fund for FY 23 to fund the account. DOL may use up to 5% of the account funds for administrative costs.

Under existing law, an unemployment claimant who receives a non-fraudulent benefit overpayment may ask DOL for an eligibility determination for a waiver from the requirement to repay the overpayment (see BACKGROUND). The bill requires DOL, by September 1, 2022, to notify affected claimants who received these unemployment overpayments, but did not request a repayment waiver, about their option to do so. It temporarily suspends such a claimant’s repayment requirement until DOL makes a waiver determination or six months pass without the claimant requesting one.

EFFECTIVE DATE: Upon passage

PANDEMIC UNEMPLOYMENT NONFRAUDULENT OVERPAYMENT PROGRAM

The bill establishes the program to offer assistance, within available funds, to affected claimants on a first-come, first-served basis and pending eligibility approval.

Affected Claimants & Assistance

Under the bill, someone is an affected claimant if they meet the following criteria:

1. they received through error any unemployment benefits between March 10, 2020, and December 31, 2022, (a) while not meeting a legal condition required for receiving the benefits or (b) in a greater amount than they should have by law;
2. their receipt of the benefit overpayment was not due to fraud, willful misrepresentation, or willful nondisclosure by themselves or anyone else; and
3. they have had a final determination of overpayment made by DOL that required them to either (a) repay the overpayment amount to the UC Fund or (b) have it recouped from their unemployment benefits.

Under the bill, the assistance provided by the program is the moneys paid from the account established by the bill to help an affected claimant by (1) reimbursing the claimant for the amount he or she repaid to the UC Fund or (2) depositing in the UC Fund the repayment amount that remains outstanding on the affected claimant's behalf.

Program Administration

The bill requires DOL to administer the program and accept applications for assistance once the bill becomes effective. It authorizes DOL to do the following:

1. determine whether an affected claimant is eligible for assistance

- and, if so, the amount of assistance that should be provided;
2. summon and examine under oath any witnesses that may provide information relevant to a claimant's eligibility;
 3. direct the production of, and examine or cause to be produced or examined, any books, records, vouchers, memoranda, documents, letters, contracts, or other papers related to any matter at issue that it deems proper; and
 4. take or cause to be taken affidavits or depositions within or outside of the state.

Applications

To apply for assistance, the bill requires an affected claimant to submit a claim to DOL in a form that the department requires. The claim must include the following information:

1. evidence of (a) DOL's final determination of overpayment that requires the claimant to either repay the overpayment or have it recouped from his or her unemployment benefits, (b) the amount the claimant has repaid or had offset from his or her unemployment benefits, and (c) the remaining outstanding amount and
2. any additional information that DOL requests or requires.

Claim Determinations

The bill requires DOL to promptly review the claims and evaluate each one to determine whether it should be approved and, if so, the assistance amount, based on the information the affected claimant provided or additional information DOL requested. DOL must provide a written determination to the affected claimant within 60 business days after receiving the claim notice or, if it requested additional information, within 10 business days after receiving that information.

DOL must pay the program's assistance offered to the affected claimant in the amount and for the time period determined by DOL, if

applicable. Subject to available funds, the amount of assistance offered to the claimant must be the amount that (1) the claimant has repaid or had offset from his or her unemployment benefits and (2) remains outstanding for repayment by the claimant, which must be deposited in the UC Fund on the claimant's behalf.

Under the bill, any assistance provided through the program is not considered income under the state's personal income tax law, corporation tax, or any other tax laws.

Appeals

The bill allows an affected claimant to request reconsideration of a claims determination by filing a request with DOL on a form it prescribes. The request must be filed within 20 business days after the determination notice was mailed. Within three business days after receiving the request, DOL must designate someone to do the reconsideration and give him or her all documents related to the claim. The designee must conduct the requested reconsideration, which must consist of a de novo (i.e., fresh) review of all relevant evidence, within 20 business days after the designation.

The bill requires the designee to issue the decision affirming, modifying, or reversing DOL's decision within 20 business days and submit it in writing to DOL and the affected claimant. The decision must include a short statement of findings that specifies any assistance to be paid to the claimant. An affected claimant cannot further appeal a case beyond this designee's decision.

Under the bill, DOL may consider any statement, document, information, or matter or, on reconsideration, its designee may if, in his or her opinion, it contributes to a determination of the claim, whether or not the same would be admissible in a court.

Overpayments and Fraud

If a claim is paid to an affected claimant mistakenly or due to the claimant's willful misrepresentation, then the bill allows DOL to seek repayment from the affected claimant. For willful misrepresentation,

DOL may also seek a penalty equal to 50% of the assistance paid because of the misrepresentation.

Program Fund

The bill establishes the pandemic unemployment nonfraudulent overpayment account as a separate, nonlapsing account within the General Fund. The account must contain any moneys that the law requires to be deposited in it. Account funds must be spent by DOL to pay for the (1) assistance provided under the program and (2) program's operating costs and expenses, including hiring necessary employees and spending for public outreach and education about the program.

Under the bill, no more than 5% of the total moneys received by the account can be used for administrative costs, including (1) the cost of hiring temporary or durational staff or contracting with a third-party administrator and (2) other connected costs and expenses incurred by DOL or the third-party administrator. The bill also requires DOL to make all reasonable efforts to limit the program's operating costs and expenses without compromising affected claimants' access to it.

Report

Starting by January 1, 2023, the bill requires DOL to submit quarterly reports on the account's financial condition to the Labor and Public Employees Committee. The report must include (1) an estimate of the account's value as of the date of the report; (2) the effect of scheduled payments on the account's value; (3) an estimate of the monthly administrative costs necessary to operate the program; and (4) any legislative recommendations to improve the operation or administration of the program and account.

TEMPORARY SUSPENSION OF REPAYMENT REQUIREMENTS

Notice

The bill requires DOL, by September 1, 2022, to mail written notice to each person who (1) received through error any unemployment benefits between March 10, 2020, and December 31, 2022, (a) while not meeting a condition the law requires for receiving the benefits or (b) in a greater

amount than they should have by law and (2) did not request a determination of eligibility for a repayment waiver as allowed by law. The notice must inform the person about the following:

1. the option to request a determination of eligibility for a repayment waiver;
2. how to request the determination;
3. that the request must be made within six months after DOL sent the notice;
4. that a final determination of eligibility must be made before the person can apply to the program under the bill; and
5. any other information labor commissioner deems necessary.

Suspension of Repayments

Under the bill, anyone who is sent the above notice cannot be required to repay their unemployment benefit overpayment between the date the notice is sent and the earlier of (1) the date the final determination of eligibility for a repayment waiver is made in relation to the notice, if the person requests a determination, or (2) six months after the notice is sent to the person if he or she does not request a determination of eligibility by that date.

BACKGROUND

Repayment Waiver

By law, someone who receives non-fraudulent unemployment benefit overpayments may request a determination of eligibility for a waiver from the repayment requirement. The waiver may be granted if the repayment would defeat the purpose of the benefits or be against equity and good conscience (CGS § 31-273(a)(1)). State regulations further specify that these conditions exists if, among other things, (1) the benefits were overpaid as a direct result of gross administrative error, (2) the person's annualized family income is less than 150% of the federal poverty level, or (3) the benefits were overpaid as a direct result

of an employer's failure to timely or adequately respond to a request for information from DOL about the person's claim (Conn. Agencies Regs., § 31-273-4).

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 9 Nay 4 (03/24/2022)