

SUBJECT: Prohibiting a person's receipt of UI benefits while receiving severance pay

COMMITTEE: Economic and Small Business Development — committee substitute recommended

VOTE: 6 ayes — J. Davis, R. Anderson, Miles, Murphy, Reynolds, Sheets

0 nays

1 absent — Vo

WITNESSES: For — (*Registered, but did not testify*: Bill Allaway, Texas Taxpayers and Research Association; Kathy Barber, National Federation of Independent Business; Luke Bellsnyder, Texas Association of Manufacturers; Pamela Bratton, Career Consultants Staffing Services, Meador Staffing Services, Society of Human Resource Management Texas State Council; Cathy Dewitt, Texas Association of Business; Jon Fisher, Associated Builders and Contractors of Texas; Stephanie Gibson, Texas Retailers Association; Bill Longley, Texas Municipal League; Hector Rivero, Texas Chemical Council)

Against — None

On — Rick Levy, Texas AFL-CIO; Steve Riley, Texas Workforce Commission

BACKGROUND: Labor Code, ch. 207, subch. C in the Texas Unemployment Compensation Act establishes numerous exceptions to and disqualifications for unemployment insurance (UI) benefits. Sec. 207.049 lists two forms of remuneration that, while being received, temporarily disqualifies an individual for UI benefits — worker's compensation and wages in lieu of notice. Severance pay is not included in this list and may be received simultaneously with UI benefits. As established in Labor Code, ch. 204, subch. B and subch. C, an experience-rated employer's UI tax rate is generally proportional to the amount the employer has paid in UI benefits over the previous three years.

DIGEST: CSHB 14 would disqualify an individual from receiving UI benefits while receiving severance pay.

The bill would define “severance pay” as dismissal or separation income paid on termination of employment in addition to the employee’s usual earnings from the employer at the time of termination. The term would not include funds received by an employee under a release of claims or settlement agreement between the employee and employer, either based on an alleged violation of the Civil Rights Act of 1991, which relates to employer discrimination against an employee, or pursuant to a claim or cause of action filed in connection with the employment relationship. Remuneration received under a written contract, such as a collective bargaining agreement, negotiated before the date of separation also would not be considered severance pay.

The bill would authorize the Texas Workforce Commission (TWC) to adopt rules as needed to administer the bill’s provisions.

The bill would take effect September 1, 2011, and apply only to a claim for UI benefits filed with TWC on or after the effective date.

**SUPPORTERS  
SAY:**

CSHB 14 would close the double-dipping loophole in current law that allows individuals to collect severance pay and UI benefits simultaneously. Under the bill’s provisions, an employee would have to exhaust severance benefits before collecting UI benefits. This requirement would protect the integrity of the Unemployment Compensation Trust Fund, saving almost \$95 million over five years.

The bill also would reward employers who provided severance pay by helping them keep their UI taxes low. Employees would not lose any right to their earned UI benefits and could collect them for the full length of time permitted by law. They simply could not begin collecting those UI benefits until they finished collecting severance pay.

The committee substitute would provide stronger protection of employees’ property rights than the bill as filed by broadening the kinds of remuneration paid by an employer that would not be considered severance pay for the purposes of the bill’s provisions. The bill would place certain reasonable conditions on the remuneration exempted from consideration as severance pay to ensure the legitimacy of the claims resulting in the remuneration.

OPPONENTS  
SAY:

While the committee substitute would better protect employees' property rights than the bill as filed, CSHB 14 should not place conditions on the exemption of remuneration received under a release of claims or a settlement agreement. To be exempt from treatment as severance pay, such remuneration would have to be either related to an alleged violation of the Civil Rights Act of 1991, which is too narrow a restriction, or pursuant to a claim or cause of action filed, which would promote litigation where it may not be needed. Remuneration paid by an employer to an employee under a release of claims or settlement agreement is frequently due to employer misconduct and should never be considered severance pay.

NOTES:

According to the fiscal note, CSHB 14 would result in an estimated potential savings to the Unemployment Compensation Trust Fund of \$94.7 million over the five year period of fiscal years 2012-2016.