

SUBJECT: Allowing wage garnishment to recover fraudulently obtained UI benefits

COMMITTEE: Economic and Small Business Development — favorable, without amendment

VOTE: 4 ayes — J. Davis, R. Anderson, Murphy, Sheets

0 nays

3 absent — Vo, Miles, Reynolds

WITNESSES: For — (*Registered, but did not testify*: Kathy Barber, National Federation of Independent Businesses; Jon Fisher, Associated Builders and Contractors of Texas)

Against — Rick Levy, Texas AFL-CIO

On — John Moore, Larry Temple, Texas Workforce Commission

BACKGROUND: Labor Code, ch. 214 regulates offenses, penalties, and sanctions under the Texas Unemployment Compensation Act. Sec. 214.002 defines “improper benefit” as an unemployment insurance (UI) benefit obtained by an unqualified recipient because of nondisclosure or misrepresentation of fact, regardless of whether the nondisclosure or misrepresentation was known or fraudulent. The Texas Workforce Commission (TWC) may recover improper benefits by deducting the amount owed from future UI benefit payments or through various means available to TWC to collect past-due UI contributions from employers.

Fraudulently obtaining a UI benefit is a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000).

Tex. Const., Art. 16, sec. 28 prohibits the garnishment of wages except to enforce court-ordered child support payments or spousal maintenance.

DIGEST: HB 2494 would allow TWC to recover fraudulently obtained UI benefits through garnishment of wages or through any of the means already available to recover improper UI benefits.

The bill would take effect on the date the voters approved HJR 122, which would amend the Texas Constitution to allow the garnishment of wages for recovery of fraudulently obtained UI benefits, and would apply only to benefits obtained through an offense committed on or after the effective date. If HJR 122 were not adopted by the 82nd Legislature and approved by the voters, HB 2492 would have no effect.

**SUPPORTERS
SAY:**

HB 2494 would give TWC a powerful tool to recover and protect taxpayer funds and prevent unjust enrichment of people who abuse the UI system. Given the state's elevated unemployment rate, it is more important than ever to ensure that the limited resources of the unemployment compensation fund go to deserving Texans who legitimately need the benefits. Also, in this weak economy, the state needs to protect its small businesses from the cost to the fund of fraudulent claims.

Over the last five years, unscrupulous operators have collected nearly \$38 million in fraudulently obtained UI benefits. Over roughly the same time period, TWC has been able to recover only about \$10 million through litigation of fraud cases. Currently, the only practical method TWC has to collect these funds is by deducting them from the future UI benefit payments of those who committed the fraud. The agency needs another collection method to recover funds from individuals who have found employment and are no longer applying for UI benefits. Garnishment of wages, as HB 2494 and HJR 122 would authorize, would be just the tool TWC needs. Other states have recognized the value of this tool, including Oregon, Connecticut, Washington, and Maryland. Ultimately, HB 2494 and HJR 122 would let the citizens of Texas decide whether they wanted to grant TWC the authority to protect their unemployment system through wage garnishment.

TWC could absorb the duties and responsibilities of the bill's provisions within existing resources.

**OPPONENTS
SAY:**

Garnishment of wages is such a serious intrusion on an individual's property rights that Texans have constitutionally banned it except in very specific, very personal cases — when a court has ordered someone to support his or her child or former spouse. HB 2494 unjustifiably would elevate this particular kind of debt to a particular state agency to the level of child support and alimony. TWC can and should use the other remedies it already possesses, including prosecution, to recover fraudulently obtained UI benefits.

HB 2494 would not meaningfully improve the condition of the unemployment compensation fund. UI benefits fraud in Texas is minimal. In their 2009 annual performance audit of state UI programs, the U.S. Department of Labor found that the Texas UI system had a fraud rate of just 0.82 percent, far below the national average of 2.05 percent. The Legislative Budget Board has determined that the money the bill would recover would not be enough to make a significant fiscal impact to the state, nor would it be enough to reduce the employer UI tax.

Although it has been suggested that the payout of fraudulent benefits has resulted in higher employer UI taxes, the jump in employer taxes in recent years actually was triggered by the unemployment compensation fund balance falling beneath its statutory floor in July 2009, which was due to the fund's statutorily induced volatility in combination with the national economic downturn. TWC was forced to borrow more than \$1.4 billion from the federal government, an amount that dwarfs even the highest estimates of fraudulent claim loss.

NOTES:

HB 2494 is the enabling legislation for the corresponding proposed constitutional amendment, HJR 122 by Legler, which was reported favorably, without amendment, by the Economic and Small Business Development Committee on April 14. The proposed constitutional amendment would be submitted to voters at the November 8, 2011, election.