State of Oregon
Employment Department

BILL:	**SB191**
Committee:	Senate Business and Transportation
Date:	February 7, 2013
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Subject:

Makes changes to ORS 657.310 to redirect an existing fraud penalty to the Unemployment Insurance (UI) Trust Fund, as required by federal law. Also adds the authority for an additional penalty of up to 15% against people who defraud the UI program.

Amends ORS 657.315 to increase the time period for the Employment Department to collect certain UI benefit overpayments.

Introduction:

To stay in conformity with federal law, and avoid potential financial sanctions against the Employment Department and Oregon employers, changes need to be made to ORS 657.315, which provides for a penalty against people who commit fraud in order to receive UI benefits. In addition to making the required changes, SB 191 also permits the Employment Department to impose an additional fraud penalty.

Some benefit overpayments are not caused by fraud and are not the fault of the person who erroneously received benefits. These types of overpayments are collected only by offsetting against future UI benefits the person would otherwise receive. Current law provides for offsetting those overpayments for one year; SB 191 would increase that time period to five years.

Discussion:

Redirecting Existing 15% Fraud Penalty

On October 21, 2011, Congress passed the Trade Adjustment Assistance Extension Act (TAAEA) of 2011 (Public Law 112-40) which requires states to impose a 15% penalty against people who commit fraud to receive UI benefits and requires the penalty to be deposited into the states' UI Trust Fund, used to pay state UI benefits. Although Oregon already has a 15% fraud penalty in ORS 657.310, that penalty currently goes to the Employment Department Special Fraud Control Fund to be used to prevent, detect and recover benefit overpayments. To stay in conformity with federal law, Oregon must redirect its existing 15% fraud penalty so that it is deposited into the UI Trust Fund.

If Oregon is found to be out of conformity with federal law, it could result in financial sanctions against the Employment Department's administrative grant of up to an estimated $109 million per biennium. Oregon employers would also lose a credit they currently receive against their Federal Unemployment Tax Act (FUTA) obligations. The loss of this credit would result in approximately $1.11 billion in additional federal payroll taxes for Oregon employers per biennium.

Additional Fraud Penalty

SB 191 also gives the Employment Department the authority to impose an additional penalty of up to another 15% against people who defraud the UI system. The Department intends these higher sanctions to apply to people who repeatedly commit fraud or who submit falsified documents to commit fraud, and expects to do rulemaking to define the circumstances for these additional penalties.

Unfortunately, some people repeatedly defraud the UI system. In the second half of 2012, approximately 10% of people the Department found to have committed fraud had already previously been found to have defrauded the UI system. The existing sanctions against those who commit fraud do not adequately deter further fraud. Increasing the sanctions against those who engage in more egregious fraudulent acts will act as a stronger deterrent.

Because Oregon must redirect its existing fraud penalty to the UI Trust Fund to stay consistent with federal law, this change results in a loss of approximately $438,000 per year to the Employment Department Special Fraud Control Fund. This reduction will impair the Department's ability to prevent, detect and recover benefit overpayments. The creation of the additional penalty for more egregious fraud cases will mitigate some of this impact, providing an anticipated $200,000 per year into the Special Fraud Control Fund.

Extending Time Period to Offset Certain Overpayments
Oregon law treats overpayments that were not caused by the claimant different for collection purposes. These overpayments can be caused when new information is discovered after someone has already received some benefits, the person initially is determined to be eligible for UI benefits, but that decision is changed after a hearing, or the Department makes an error. These types of overpayments are collected only by offsetting against future benefits the person would otherwise receive. Current law permits offsetting for a period of 52 weeks, after which the overpayment may no longer be collected in any manner.

In 2011, ORS 657.317 was modified to permit the Department to waive recovery of this type of overpayment if recovery would be against equity and good conscience. SB 191 would increase the period for offsetting these overpayments from the current one year to five years to protect the integrity of the UI Trust Fund. If recovering the debt would create a financial hardship to the individual, ORS 657.317 would permit waiver of the recovery throughout that entire time period and would provide a safeguard against undue financial hardship for that individual.

Last year approximately $1.7 million in overpayments were canceled because the 52 week recovery period expired. At a current collection rate of 10% (9,491 overpayment setups, 940 current offsets), the department could recover an additional $170,000 in overpayments per year.

Summary:

SB 191 redirects an existing 15% fraud penalty from the Employment Department Special Fraud Control Fund to the UI Trust Fund. This is required for Oregon to stay consistent with federal law, but will result in reduced funding to combat UI benefit overpayments.

SB 191 also permits the Department to assess up to another 15% penalty for cases of egregious fraud. This will act as a stronger deterrent and minimize the impact of decreased funding for efforts to prevent, detect and recover overpayments.

Finally, SB 191 will also increase the time period during which payments made in error can be offset, from the current 52 weeks to a proposed five years, helping protect the integrity of the UI Trust Fund.