

## Department of Planning and Budget 2021 Fiscal Impact Statement

1. **Bill Number:** HB2040

**House of Origin**     Introduced     Substitute     Engrossed  
**Second House**     In Committee     Substitute     Enrolled

2. **Patron:** Hudson

3. **Committee:** Appropriations

4. **Title:** Unemployment compensation; failure to respond; continuation of benefits; repayment of overpayments.

5. **Summary:** Provides that an employer shall be deemed to have established a pattern of failing to respond timely or adequately to written requests for information relating to claims if the Virginia Employment Commission determines that the employer has failed to respond timely or adequately to a written request for information relating to a claim on two or more occasions within a 48-month window and requires such employer to pay a penalty upon the employer's second such failure to respond timely or adequately. Under current law, such pattern is established after four failures, and the penalty is assessed after the third failure. The bill provides that if an employer fails to respond timely or adequately to a written request by the Commission for information relating to a claim, the employer forfeits any appeal rights to that claim.

If a claimant has had a determination of initial eligibility for benefits under this chapter, as evidenced by the issuance of compensation or waiting-week credit, payments shall continue, subject to a presumption of continued eligibility and in accordance with the terms of this subsection, until a determination is made that provides the claimant notice and an opportunity to be heard. When a question concerning continued eligibility for benefits arises, a determination shall be made as to whether it affects future weeks of benefits or only past weeks. With respect to future weeks, presumptive payment shall not be made until, but no later than, the end of the week following the week in which such issue arises, regardless of the type of issue. With respect to past weeks, presumptive payment shall be issued immediately, regardless of the type of issue. Notice shall be given to individuals who receive payments under such presumption that pending eligibility may affect their entitlement to the payment and may result in an overpayment that requires repayment.

For an overpayment of benefits under this chapter, but not under an unemployment benefit program of the United States or of any other state, the individual recipient shall not be liable to repay such sum to the Commission, after an individualized case review, if the Commission determines that: 1. The overpayment was not due to fraud, misrepresentation, or willful nondisclosure on the part of the recipient and its recovery would be against equity and good conscience; 2. The overpayment was a direct result of inducement, solicitation, or coercion on the part of the employer; or 3. The overpayment occurred due to administrative error. For the purposes of this subdivision, "administrative error" means an error committed by the

Commission on an individual claim due to circumstances associated specifically with that claim. "Administrative error" does not include: (i) a programming or technological error, not directly associated with an individual claim, that results in overpayments to a group of claimants or (ii) decisions reversed in the appeals process. For an overpayment of benefits under an unemployment benefit program of the United States, if such program authorizes the Commission to waive the repayment of such overpayment, the Commission shall waive any repayment that it determines qualifies for such waiver.

In each determination by the Commission related to an overpayment, the Commission shall determine if the overpayment is eligible for a waiver pursuant to subsections B and C. Any determination by the Commission that an overpayment is not eligible for a waiver shall be subject to appeal. The Commission shall clearly communicate the potential availability of a waiver to individuals as an appealable issue. A final determination of the waiver request shall occur before initiating overpayment recovery, which shall occur if the Commission determines that no waiver is applicable. To the extent that such programs require a different process for evaluating waivers, the Commission shall implement such process.

Unless the Commission determines that the person has committed an act of fraud, no person who receives benefits under this title for which such person was not entitled shall be required to repay such overpayment if the Commission determines that such overpayment was made because the employer failed to respond timely or adequately to a written request by the Commission for information relating to the claim. The Commission shall provide information about this waiver provision.

If the Commission determines that the person has committed an act of fraud, the Commission shall provide notice of such determination and of the associated requirement of repayment to the claimant. A determination that a person has committed an act of fraud shall be appealable. No determination with respect to benefit overpayments shall be issued until after a determination or decision that finds a claimant ineligible or disqualified for benefits previously paid has become final.

The Commission is enacted to notify each person with unpaid overpayments of benefits in existence prior to July 1, 2021, but not under an employment benefit program of the United States or any other state, that such person may file and qualify for a waiver as amended by this act. The Commission shall notify each person with unpaid overpayments of benefits in existence prior to July 1, 2021, under an unemployment benefit program of the United States or any other state that such person may file and qualify for a waiver as amended by this act, if such programs permit such a waiver. The Commission shall accept each waiver request submitted within 30 days of sending notice after individualized case review if and only to the extent permitted by state and federal law.

6. **Budget Amendment Necessary:** Yes. Item 131. See item 8, below.
7. **Fiscal Impact Estimates:** Preliminary. See Item 8.

**7a. Expenditure Impact: Trust Fund**

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Fund</i>
2021	\$0	n/a
2022	\$93,619,797	Unemployment Insurance Trust Fund
2023	\$6,382,261	Unemployment Insurance Trust Fund
2024	\$6,386,093	Unemployment Insurance Trust Fund
2025	\$6,382,261	Unemployment Insurance Trust Fund
2026	\$6,389,925	Unemployment Insurance Trust Fund
2027	\$6,340,108	Unemployment Insurance Trust Fund

**7b. Expenditure Impact: Operational Costs**

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2021	\$0	0	n/a
2022	\$1,193,726	20	GF
2023	\$250,000	5	GF
2024	\$250,000	5	GF
2025	\$250,000	5	GF
2026	\$250,000	5	GF
2027	\$250,000	5	GF

**7c. Revenue Impact: Pool Tax**

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Fund</i>
2021	\$0	n/a
2022	\$0	n/a
2023	\$17,090,356	Pool Tax
2024	\$34,180,713	Pool Tax
2025	\$34,180,713	Pool Tax
2026	\$17,090,356	Pool Tax
2027	\$0	n/a

- 8. Fiscal Implications:** According to the Virginia Employment Commission (VEC), their available data does not delineate overpayments due to administrative error versus those due to claimant error or amounts recouped due to fraud. The estimated maximum costs are based on the ratio of overpayments and fraud costs in relation to the amount of benefits paid in a year which is 1.92 percent. Previously produced benefit projections are then multiplied by the benefit projections times 1.92 percent, as reflected in the first table. The expenditure for FY 2022 is significantly higher than other years because of the retroactive nature of the bill. The substitute includes an enactment clause that expands the eligibility period. This waiver will allow overpayments over the last seven years to be subject to forgiveness pending a hearing. VEC is required to notify each person with unpaid overpayment of benefits in existence prior to July 1, 2021, under Chapter 6 of Title 60.2 of the Code of Virginia.

VEC calculated the operational costs reflected in the second table by estimating the total number of overpayment cases that would require a hearing. VEC calculated the number of cases a deputy could complete in a month and determined the number of deputies needed to complete the work. The cost was determined by multiplying the number of deputies per month against an average monthly deputy salary. VEC anticipates the need for \$1.2 million

in FY 2022 to support 20 deputies or hearing officers and \$250,000 in ongoing years to support five deputies or hearing officers.

The estimated revenue impact as reflected in the third table represents the additional revenue VEC will collect from employers to repay the UI trust fund for the forgiven overpayments. The Unemployment Insurance Trust Fund is the source of benefit payments and the additional revenue will be deposited to this Fund.

It is anticipated that the pool cost charges, established in § 60.2-532, Code of Virginia, paid by taxable employers will increase. Pool cost charges are charges that are applied to all taxable employers to cover benefit costs that cannot be recovered from an individual employer. An estimated additional 0.12 percent pool tax will be necessary to repay the UI trust fund for the forgiven overpayments.

State agencies are reimbursable employers and do not pay unemployment insurance taxes. When state agencies are liable for unemployment insurance benefits, they must reimburse VEC dollar for dollar for any benefits paid on a claim for which they have liability.

It is anticipated that a legislative appropriation for additional Trust Fund appropriation is not necessary, however, VEC anticipates the need for \$1.2 million in FY 2022 and \$250,000 in ongoing years from the general fund to support deputies or hearing officers to hold the additional hearings that will be necessary to determine eligibility for overpayment forgiveness. While VEC receives federal administrative funds, these funds are supporting the additional workload and service requirements resulting from the pandemic.

The bill also removes the agency's ability to offer payment plans that can be used to help claimants repay the overpayment over time.

**9. Specific Agency or Political Subdivisions Affected:** Virginia Employment Commission; state agencies.

**10. Technical Amendment Necessary:** No.

**11. Other Comments:** None.