



**VERMONT
LEGAL
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Poverty Law Project

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To: Senate Committee on Economic Development, Housing and General Affairs
From: Vermont Legal Aid, Susan Garcia Nofi, Staff Attorney
Re: H.55, Unemployment Fraud Prevention Language
Date: April 15, 2024

As suggested, Vermont Legal Aid is submitting additional written testimony about the UI Fraud Prevention section of H.55.

First, we ask that any amendments to the fraud penalties in the UI statutes not delay a vote on the provisions in H.55 that authorize the Commissioner to waive repayment of nonfraud overpayments. Most other states – including all other New England states – have a waiver provision in their laws, and the U.S. Department of Labor has encouraged states to adopt policies that authorize waivers for nonfraud overpayments. Adding a waiver provision to our UI laws will bring economic relief to Vermonters facing overpayments that were *not* due to fraud and were not their fault.

We support fraud prevention measures generally. The integrity of the UI program and trust fund must be maintained so Vermont can continue supporting jobless workers. However, we are concerned about the substantial additional penalties in H.55. We routinely represent clients whose filing errors – due to good faith misunderstanding of UI terminology or rules – were initially found to be fraud and later overturned on appeal. While every person found to have committed fraud has the right to appeal, not all will appeal the fraud finding within the limited timeframe or have representation.

- **H. 55 would impose two separate monetary penalties for the same offense.** 21 V.S.A. § 1347(c) already imposes a monetary penalty equal to 15% of the overpaid benefit amount, in addition to the required repayment of the overpayment itself. H. 55 mandates “a further administrative penalty of up to \$5,000” in addition to the 15% penalty in § 1347. By contrast, the parallel

provision for employers who give false information to avoid unemployment taxes, 21 V.S.A. § 1369, has only a single penalty of up to \$5,000.

- **H. 55 takes away the Commissioner’s discretion to impose a longer or shorter period of ineligibility based on the severity of the offense.** 21 V.S.A. § 1347(e) already gives Commissioner discretion to impose penalty weeks of up to 26 weeks. H.55 would mandate that the Commissioner “shall” impose a five-year period of ineligibility – in addition to the monetary penalties – across the board. Every fraud overpayment case would receive the same 5-year disqualification, without regard to the nature and extent of the fraud, or the amount of benefits fraudulently claimed. If the Committee makes a policy choice to increase the period of ineligibility following a fraud overpayment, the Commissioner should retain the discretion to assess the appropriate number of penalty weeks depending on the circumstances of each case.

Finally, we note that the Legislature has already taken meaningful action to prevent fraud – allocating the funds needed to modernize Vermont’s UI system. Identity theft, and imposters collecting benefits using stolen identities, ran rampant during the pandemic.¹ Vermont’s current, outdated UI system has limited fraud prevention mechanisms.² Modern, secure technology and identity verification are important tools to prevent fraud before it happens. Vermont’s significant investment in modernizing its UI system will reduce fraud risk even without additional, after-the-fact penalties.

Thank you for your consideration of the above concerns.

¹ See ‘A magnet for rip-off artists’: Fraud siphoned billions from pandemic unemployment benefits, Washington Post, May 15, 2022 <https://www.washingtonpost.com/us-policy/2022/05/15/unemployment-pandemic-fraud-identity-theft/>

² See page 6, *Independent Review of UI Modernization Project*, presented to Joint Information Technology Oversight Committee on January 19, 2024.