S.____, the Protecting Nonprofits from Catastrophic Cash Flow Strain Act

To be introduced by Sens. Scott, Brown, Grassley, and Wyden

The Protecting Nonprofits from Catastrophic Cash Flow Strain Act aims to ensure that nonprofits, state and local governments, and federally recognized Tribes that operate as reimbursing employers under state unemployment insurance (UI) systems can receive the UI relief secured through the CARES Act without bearing onerous cash flow burdens that threaten liquidity.

Background on Reimbursing Employers: Nonprofit organizations, state and local governments, and federally recognized Indian Tribes generally have the option of operating as "reimbursing employers" (also known as "reimbursable employers") under state unemployment insurance systems, meaning that they make "payments in lieu of contributions" to finance benefits attributable to them. Most states periodically bill reimbursing employers for benefits paid out during that period to their former employees. In turn, employers who opt for this payment method are not obligated to pay unemployment insurance payroll taxes.

What the CARES Act did: Sec. 2103 of the CARES Act was intended to provide emergency relief to reimbursing employers by federally financing 50% of the UI obligations for these employers for the period beginning March 13 and ending December 31. However, as interpreted by the Department of Labor (DOL) in guidance issued on April 27, reimbursing employers "must pay their bill in full" before they can receive reimbursement for one-half of their obligation. For many employers, the requirement to pay 100% of the UI bill before securing relief exacerbates the financial impact of historically high claims triggered by the pandemic, increasing the risk of further layoffs, closures, or substantial reductions in services.

What the legislation would do: This legislation would enable states to provide the CARES Act's 50% emergency relief to reimbursing employers without requiring these nonprofits or other entities to pay their full bill first. While the net cost to the employer and the federal government would remain the same, as the employer would still be responsible for paying 50% of its bill and the federal government would still finance the remaining 50%, the procedural fix included in this legislation would significantly mitigate the cash flow concerns for reimbursing employers. For states that have already begun administering Sec. 2103 relief under current law requirements, the legislation includes an explicit safe harbor for claim weeks prior to the date of enactment.

In Practice:

- Under Current Law and Guidance: Former and furloughed employees of a charitable nonprofit file UI claims collectively amounting to $50,000 in a given calendar quarter. The state workforce agency bills the nonprofit for $50,000 at the end of the quarter, at which point the nonprofit must pay the full bill or risk financial penalties. If the employer can pay the full bill, then the state can ultimately reimburse it for $25,000, provided by the federal government for this express purpose.
- Under this Legislation: Before the nonprofit pays any portion of its bill, the state workforce agency uses a federal transfer to the state unemployment trust fund to effectively reduce the bill to $25,000, which the nonprofit can pay without needing to pay the full $50,000 first.

If you have any questions or would like to add your boss as a cosponsor, please reach out to Conor Sheehey at Conor_Sheehey@scott.senate.gov or Nora Todd at Nora_Todd@brown.senate.gov.