

1 HB72  
2 134771-6  
3 By Representative DeMarco  
4 RFD: State Government  
5 First Read: 07-FEB-12  
6 PFD: 01/23/2012

1  
2 ENROLLED, An Act,

3 To amend Section 25-4-145 of the Code of Alabama  
4 1975, relating to penalties on fraudulent misrepresentation  
5 claims for unemployment compensation; to further provide for  
6 penalties; to assess interest on unpaid fraudulent overpayment  
7 balances and to amend Section 25-4-31 of the Code of Alabama  
8 1975, relating to separate accounts, to establish a separate  
9 account designated the fraud interest penalty account.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

11 Section 1. ~~Section~~ Sections 25-4-31 and 25-4-145 of  
12 the Code of Alabama 1975, ~~is~~ are amended to read as follows:

13 "§25-4-31.

14 "(a) The director shall designate an employee of the  
15 unemployment compensation agency as treasurer of the fund who  
16 shall pay all vouchers or checks duly drawn upon the fund, in  
17 such manner as the director may prescribe. The director shall  
18 also designate an employee of the unemployment compensation  
19 agency as alternate treasurer who, in case of extended absence  
20 of the treasurer shall, upon written notice from the director,  
21 perform all duties of the treasurer. The treasurer shall  
22 maintain within the fund the following separate accounts: a  
23 clearing account; an unemployment trust fund account; an  
24 unemployment benefit payment account; a fraud interest penalty  
25 account; and such other account or accounts as may be

1 necessary for the payment of any federal unemployment  
2 benefits. All moneys payable to the fund, upon receipt thereof  
3 by the director, shall be forwarded to the treasurer who shall  
4 immediately deposit them in the clearing account. Refunds  
5 payable pursuant to Section 25-4-137 (with the exception of  
6 refunds of interest and penalties collected pursuant to  
7 Sections 25-4-132, 25-4-133, and 25-4-134) may be paid from  
8 the clearing account upon warrants issued by the treasurer, as  
9 aforesaid, under the direction of the director. After  
10 clearance thereof, all other moneys in the clearing account  
11 (with the exception of said interest and penalties collected  
12 pursuant to Sections 25-4-132, 25-4-133, and 25-4-134, and any  
13 other collections required by this chapter to be transferred  
14 to the State Treasury) shall be deposited by warrants issued  
15 as aforesaid, with the Secretary of the Treasury of the United  
16 States of America to the credit of the account of this state  
17 in the unemployment trust fund established and maintained  
18 pursuant to Section 904 of the Social Security Act, any  
19 provisions of law in this state relating to the deposit,  
20 administration, release, or disbursement of moneys in the  
21 possession or custody of this state to the contrary  
22 notwithstanding. The benefit payment account shall consist of  
23 all moneys requisitioned from the state's account in the  
24 unemployment trust fund. Except as otherwise provided in this  
25 section, moneys in the clearing and benefit accounts may be

1 deposited by the treasurer, under the direction of the  
2 director, in any bank or public depository in which general  
3 funds of the state may be deposited but no public deposit  
4 insurance charge or premium shall be paid out of the fund. The  
5 treasurer shall give bond conditioned upon the faithful  
6 performance of his duties as treasurer of the fund in a form  
7 prescribed by statute or approved by the Attorney General, and  
8 in an amount specified by the director and approved by the  
9 Governor. All premiums upon bonds required pursuant to this  
10 section when furnished by an authorized surety company or by a  
11 duly constituted governmental bonding firm shall be paid from  
12 the unemployment administration fund.

13 "(b) Interest and penalties collected pursuant to  
14 Sections 25-4-132, 25-4-133, and 25-4-134 shall be deposited  
15 in the clearing account only for the purpose of transfer to  
16 the special employment security administration fund provided  
17 for in Section 25-4-142, and shall be spent in accordance with  
18 the provisions of said Section 25-4-142.

19 "(c) Funds collected pursuant to the assessment made  
20 against wages paid by employers by Section 25-4-55 and Section  
21 25-4-40.1 shall be deposited in the clearing account only for  
22 the purpose of transfer to the special interest payment fund  
23 and the employment security enhancement fund and shall be  
24 expended in accordance with the said provisions.

25 "§25-4-145.

1           "(a) Penalties.

2           "(1) Whoever willfully makes a false statement or  
3 representation or who willfully fails to disclose a material  
4 fact to obtain or increase any benefit or payment under this  
5 chapter, or under an unemployment insurance law of any other  
6 state or government, either for himself or for any other  
7 person, whether such benefit or payment is actually received  
8 or not, shall be guilty of ~~a misdemeanor and upon such an~~  
9 offense as follows ~~conviction shall be punished by a fine of~~  
10 ~~not less than \$50.00 nor more than \$500.00, or by imprisonment~~  
11 ~~for not longer than 12 months, or by both such fine and~~  
12 ~~imprisonment,~~ and each such false statement or representation  
13 shall constitute a separate and distinct offense.:

14           "a. If the aggregate amount involved in the offense  
15 exceeds two thousand five hundred dollars (\$2,500) in value,  
16 that shall constitute a Class B felony.

17           "b. If the aggregate amount involved in the offense  
18 exceeds five hundred dollars (\$500) but does not exceed two  
19 thousand five hundred dollars (\$2,500), that shall constitute  
20 a Class C felony.

21           "c. If the aggregate amount involved in the offense  
22 does not exceed five hundred dollars (\$500), that shall  
23 constitute a Class A misdemeanor.

1           "d. Upon conviction, sentencing for these offenses  
2           shall follow Sections 13A-5-6, 13A-5-7, and 13A-5-9, as  
3           appropriate.

4           "e. In lieu of fines, any person found guilty under  
5           this section shall be required to pay restitution to the  
6           Department of Industrial Relations in at least the amount of  
7           benefits fraudulently obtained.

8           "(2) Any officer or agent of employer, or any  
9           employer who is an individual, who willfully makes a false  
10          statement or representation to avoid his employer or himself  
11          becoming or remaining subject to this chapter for  
12          contributions, or to reduce any contribution or other payment  
13          required of such employer or him under this chapter, or who  
14          willfully fails or refuses to make any such contributions or  
15          other payments as lawfully required under this chapter, or who  
16          induces any employee to waive any rights under this chapter,  
17          or any officer or agent of an employing unit, or any employing  
18          unit who is an individual, who refuses to furnish any reports  
19          duly required under this chapter or to appear or testify or  
20          produce records as lawfully required hereunder shall, upon  
21          conviction, be punished by a fine of not less than \$50.00 nor  
22          more than \$500.00, or by imprisonment for not longer than 12  
23          months, or by both such fine and imprisonment, and each such  
24          false statement or representation and each day of such failure

1 or refusal, and each such inducement shall constitute a  
2 separate and distinct offense.

3 "(3) If the director finds that any fraudulent  
4 misrepresentation has been made by a claimant with the object  
5 of obtaining benefits under this chapter to which he was not  
6 entitled, then, in addition to any other penalty or  
7 prosecution provided under this chapter, the director may make  
8 a determination that there shall be deducted from any benefits  
9 to which such claimant might become entitled during his  
10 present benefit year and/or next subsequent benefit year, an  
11 amount not less than four times his weekly benefit amount and  
12 not more than the maximum benefit amount payable in a benefit  
13 year, as determined under Sections 25-4-72, 25-4-74 and  
14 25-4-75, at the time the director makes the determination.  
15 Additionally, a disqualification shall be applied for the  
16 52-week period which immediately follows the final date of the  
17 fraud determination or and until the fraud overpayment has  
18 been repaid in cash. For subsequent acts determined as fraud,  
19 the disqualification shall be for the 52 104-week period which  
20 immediately follows the final date of the fraud determination  
21 and until the fraud overpayment has been repaid in cash.  
22 Federal and state income intercepts used to satisfy  
23 overpayments are to be considered as cash payments for the  
24 purposes of this subsection. The director shall notify the  
25 claimant of his findings and determination either by

1 delivering a copy thereof to him or by mailing a copy, postage  
2 prepaid, to his last known address. Unless the claimant shall  
3 appeal from said finding or from said determination, or both,  
4 within seven calendar days after delivery of such notice to  
5 him, or within 15 calendar days after such notice was mailed  
6 to his last known address, postage prepaid, such finding and  
7 determination shall become final. If such claimant shall  
8 appeal from such finding or determination, or both, within the  
9 time specified, the issue or issues shall be referred to an  
10 appeals tribunal for hearing, as in other benefit cases, and  
11 thereafter the procedure shall be the same as set forth in  
12 Article 5 of this chapter.

13 "(4) Any violation of any provisions of this  
14 chapter, for which a penalty is neither prescribed above nor  
15 provided by any other applicable statute, shall be punished by  
16 a fine of not less than \$50.00 nor more than \$500.00, or by  
17 imprisonment for not longer than twelve months, or by such  
18 fine and imprisonment.

19 "(b) Limitation of actions. Prosecution under this  
20 section must be begun within three years from the date of the  
21 commission of the offense or offenses described herein.

22 "(c) Collection of overpayments.

23 "(1) Any individual who has received any sum as  
24 benefits or payments under this chapter while any conditions  
25 for the receipt of benefits or payment imposed by this chapter



1       were not fulfilled by such person, or while he was  
2       disqualified from receipt of benefits; or by reason of  
3       non-disclosure or misrepresentation by him or another of a  
4       material fact (irrespective of whether such non-disclosure was  
5       known or fraudulent) or for any other reason causing him to  
6       receive benefits to which he was not entitled, shall be  
7       required to repay such sum in cash or by offset against any  
8       future benefits if payable or a combination of both.

9               "(2) Such person shall be promptly notified of the  
10       determination of overpayment and the reasons therefor. Unless  
11       such person, within 15 calendar days immediately following the  
12       date such notification was mailed to his last known address,  
13       files an appeal from such determination, such determination  
14       shall be final. Any appeal therefrom pursuant to the  
15       provisions of this chapter shall be limited solely to the  
16       overpayment issue.

17               "(3) If the indebtedness is not paid by such person  
18       within 30 calendar days after the determination has become  
19       final, the director shall proceed to effect collection of the  
20       overpayment and shall have available to him all civil actions  
21       available to him under the laws of this state to collect the  
22       overpayment as well as those provisions contained in  
23       subsection (b) of Section 25-4-134 applying to the collection  
24       of contributions.

1           "(4) All overpayment balances classed as fraudulent  
2           shall accumulate interest at the rate of two percent per month  
3           on unpaid balances and shall be added to the debt balance and  
4           shall be deposited in the fraud penalty account described in  
5           Section 25-4-31.

6           "(5) All overpayment balances classed as fraudulent  
7           shall have an additional minimum penalty of 15 percent  
8           assessed. The penalty shall be deposited into the Unemployment  
9           Insurance Trust Fund in accordance with Section 25-4-31(a).

10           "(d) Waiver of overpayment; limitations.

11           "(1) The director is hereby authorized to waive  
12           overpayments under such procedure and conditions as he may by  
13           regulation prescribe.

14           "(2) The other provisions of this section to the  
15           contrary notwithstanding, no action to enforce recovery or  
16           recoupment of any overpayment shall begin after six years from  
17           the date of the final determination as is provided for in  
18           subsection (c) of this section."

19           Section 2. This act shall become effective on the  
20           first day of the third month following its passage and  
21           approval by the Governor, or its otherwise becoming law.

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Speaker of the House of Representatives

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President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in  
and was passed by the House 16-FEB-12, as amended.

Greg Pappas  
Clerk

Senate	<hr/> 26-APR-12 <hr/>	Amended and Passed
House	<hr/> 01-MAY-12 <hr/>	Concurred in Sen- ate Amendment