

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

1 ENGROSSED

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4 A BILL
5 TO BE ENTITLED
6 AN ACT
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8 To amend Section 25-4-145 of the Code of Alabama
9 1975, relating to penalties on fraudulent misrepresentation
10 claims for unemployment compensation; to further provide for
11 penalties; to assess interest on unpaid fraudulent overpayment
12 balances and to amend Section 25-4-31 of the Code of Alabama
13 1975, relating to separate accounts, to establish a separate
14 account designated the fraud interest penalty account.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

18 "§25-4-31.

19 "(a) The director shall designate an employee of the
20 unemployment compensation agency as treasurer of the fund who
21 shall pay all vouchers or checks duly drawn upon the fund, in
22 such manner as the director may prescribe. The director shall
23 also designate an employee of the unemployment compensation
24 agency as alternate treasurer who, in case of extended absence
25 of the treasurer shall, upon written notice from the director,
26 perform all duties of the treasurer. The treasurer shall
27 maintain within the fund the following separate accounts: a

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

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

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

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

26 "§25-4-145.

27 "(a) Penalties.

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

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

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

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

23 "d. Upon conviction, sentencing for these offenses
24 shall follow Sections 13A-5-6, 13A-5-7, and 13A-5-9, as
25 appropriate.

26 "e. In lieu of fines, any person found guilty under
27 this section shall be required to pay restitution to the

1 Department of Industrial Relations in at least the amount of
2 benefits fraudulently obtained.

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

22 "(3) If the director finds that any fraudulent
23 misrepresentation has been made by a claimant with the object
24 of obtaining benefits under this chapter to which he was not
25 entitled, then, in addition to any other penalty or
26 prosecution provided under this chapter, the director may make
27 a determination that there shall be deducted from any benefits

1 to which such claimant might become entitled during his
2 present benefit year and/or next subsequent benefit year, an
3 amount not less than four times his weekly benefit amount and
4 not more than the maximum benefit amount payable in a benefit
5 year, as determined under Sections 25-4-72, 25-4-74 and
6 25-4-75, at the time the director makes the determination.
7 Additionally, a disqualification shall be applied for the
8 52-week period which immediately follows the final date of the
9 fraud determination or until the fraud overpayment has been
10 repaid in cash. For subsequent acts determined as fraud, the
11 disqualification shall be for the 52-week period which
12 immediately follows the final date of the fraud determination
13 and until the fraud overpayment has been repaid in cash.
14 Federal and state income intercepts used to satisfy
15 overpayments are to be considered as cash payments for the
16 purposes of this subsection. The director shall notify the
17 claimant of his findings and determination either by
18 delivering a copy thereof to him or by mailing a copy, postage
19 prepaid, to his last known address. Unless the claimant shall
20 appeal from said finding or from said determination, or both,
21 within seven calendar days after delivery of such notice to
22 him, or within 15 calendar days after such notice was mailed
23 to his last known address, postage prepaid, such finding and
24 determination shall become final. If such claimant shall
25 appeal from such finding or determination, or both, within the
26 time specified, the issue or issues shall be referred to an
27 appeals tribunal for hearing, as in other benefit cases, and

1 thereafter the procedure shall be the same as set forth in
2 Article 5 of this chapter.

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

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

12 "(c) Collection of overpayments.

13 "(1) Any individual who has received any sum as
14 benefits or payments under this chapter while any conditions
15 for the receipt of benefits or payment imposed by this chapter
16 were not fulfilled by such person, or while he was
17 disqualified from receipt of benefits; or by reason of
18 non-disclosure or misrepresentation by him or another of a
19 material fact (irrespective of whether such non-disclosure was
20 known or fraudulent) or for any other reason causing him to
21 receive benefits to which he was not entitled, shall be
22 required to repay such sum in cash or by offset against any
23 future benefits if payable or a combination of both.

24 "(2) Such person shall be promptly notified of the
25 determination of overpayment and the reasons therefor. Unless
26 such person, within 15 calendar days immediately following the
27 date such notification was mailed to his last known address,

1 files an appeal from such determination, such determination
2 shall be final. Any appeal therefrom pursuant to the
3 provisions of this chapter shall be limited solely to the
4 overpayment issue.

5 "(3) If the indebtedness is not paid by such person
6 within 30 calendar days after the determination has become
7 final, the director shall proceed to effect collection of the
8 overpayment and shall have available to him all civil actions
9 available to him under the laws of this state to collect the
10 overpayment as well as those provisions contained in
11 subsection (b) of Section 25-4-134 applying to the collection
12 of contributions.

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

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

22 "(d) Waiver of overpayment; limitations.

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

26 "(2) The other provisions of this section to the
27 contrary notwithstanding, no action to enforce recovery or

1 recoupment of any overpayment shall begin after six years from
2 the date of the final determination as is provided for in
3 subsection (c) of this section."

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

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on State Government
..... 07-FEB-12

Read for the second time and placed
on the calendar 1 amendment 08-FEB-12

Read for the third time and passed
as amended..... 16-FEB-12

Yeas 78, Nays 15, Abstains 0

Greg Pappas
Clerk