

1 HB304
2 127438-1
3 By Representative Canfield
4 RFD: Judiciary
5 First Read: 22-MAR-11

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8 SYNOPSIS: Under existing law, penalties for fraudulent
9 misrepresentation to receive unemployment
10 compensation do not include disqualification to
11 receive benefits.

12 This bill would require a 52-week
13 disqualification until the fraud overpayment has
14 been paid in cash; would provide that federal and
15 state income intercepts used to satisfy
16 overpayments will be considered cash payments; and
17 would provide for interest at a rate of two percent
18 per month to be assessed on all unpaid fraudulent
19 overpayment balances.

20
21 A BILL
22 TO BE ENTITLED
23 AN ACT
24

25 To amend Section 25-4-145 of the Code of Alabama
26 1975, relating to penalties on fraudulent misrepresentation
27 claims for unemployment compensation; to further provide for

1 penalties; and to assess interest on unpaid fraudulent
2 overpayment balances.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Section 25-4-145 of the Code of Alabama
5 1975, is amended to read as follows:

6 "§25-4-145.

7 "(a) Penalties.

8 "(1) Whoever willfully makes a false statement or
9 representation or who willfully fails to disclose a material
10 fact to obtain or increase any benefit or payment under this
11 chapter, or under an unemployment insurance law of any other
12 state or government, either for himself or for any other
13 person, whether such benefit or payment is actually received
14 or not, shall be guilty of a misdemeanor and upon such
15 conviction shall be punished by a fine of not less than \$50.00
16 nor more than \$500.00, or by imprisonment for not longer than
17 12 months, or by both such fine and imprisonment, and each
18 such false statement or representation shall constitute a
19 separate and distinct offense.

20 "(2) Any officer or agent of employer, or any
21 employer who is an individual, who willfully makes a false
22 statement or representation to avoid his employer or himself
23 becoming or remaining subject to this chapter for
24 contributions, or to reduce any contribution or other payment
25 required of such employer or him under this chapter, or who
26 willfully fails or refuses to make any such contributions or
27 other payments as lawfully required under this chapter, or who

1 induces any employee to waive any rights under this chapter,
2 or any officer or agent of an employing unit, or any employing
3 unit who is an individual, who refuses to furnish any reports
4 duly required under this chapter or to appear or testify or
5 produce records as lawfully required hereunder shall, upon
6 conviction, be punished by a fine of not less than \$50.00 nor
7 more than \$500.00, or by imprisonment for not longer than 12
8 months, or by both such fine and imprisonment, and each such
9 false statement or representation and each day of such failure
10 or refusal, and each such inducement shall constitute a
11 separate and distinct offense.

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

1 disqualification shall be for the 52-week period which
2 immediately follows the final date of the fraud determination
3 and until the fraud overpayment has been repaid in cash.
4 Federal and state income intercepts used to satisfy
5 overpayments are to be considered as cash payments for the
6 purposes of this subsection. The director shall notify the
7 claimant of his findings and determination either by
8 delivering a copy thereof to him or by mailing a copy, postage
9 prepaid, to his last known address. Unless the claimant shall
10 appeal from said finding or from said determination, or both,
11 within seven calendar days after delivery of such notice to
12 him, or within 15 calendar days after such notice was mailed
13 to his last known address, postage prepaid, such finding and
14 determination shall become final. If such claimant shall
15 appeal from such finding or determination, or both, within the
16 time specified, the issue or issues shall be referred to an
17 appeals tribunal for hearing, as in other benefit cases, and
18 thereafter the procedure shall be the same as set forth in
19 Article 5 of this chapter.

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

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

4 "(c) Collection of overpayments.

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

16 "(2) Such person shall be promptly notified of the
17 determination of overpayment and the reasons therefor. Unless
18 such person, within 15 calendar days immediately following the
19 date such notification was mailed to his last known address,
20 files an appeal from such determination, such determination
21 shall be final. Any appeal therefrom pursuant to the
22 provisions of this chapter shall be limited solely to the
23 overpayment issue.

24 "(3) If the indebtedness is not paid by such person
25 within 30 calendar days after the determination has become
26 final, the director shall proceed to effect collection of the
27 overpayment and shall have available to him all civil actions

1 available to him under the laws of this state to collect the
2 overpayment as well as those provisions contained in
3 subsection (b) of Section 25-4-134 applying to the collection
4 of contributions.

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

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.