

1 SB137
2 135056-1
3 By Senators Bussman, Allen and Whatley
4 RFD: Business and Labor
5 First Read: 07-FEB-12
6 PFD: 02/02/2012

2
3
4
5
6
7
8 SYNOPSIS: Under existing law, penalties for
9 fraudulent misrepresentation to receive
10 unemployment compensation do not include
11 disqualification to receive benefits.

12 This bill would require a 3-year
13 disqualification and would require that fraud
14 overpayment would be paid in cash; would provide
15 that federal and state income intercepts used to
16 satisfy overpayments will be considered cash
17 payments; and would provide for interest at a rate
18 of two percent per month to be assessed on all
19 unpaid fraudulent 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

1 claims for unemployment compensation; to further provide for
2 penalties; and to assess interest on unpaid fraudulent
3 overpayment balances.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. Section 25-4-145 of the Code of Alabama
6 1975, is amended to read as follows:

7 "§25-4-145.

8 "(a) Penalties.

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

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

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

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

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

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

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

26 "(c) Collection of overpayments.

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

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

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

1 subsection (b) of Section 25-4-134 applying to the collection
2 of contributions.

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

8 "(d) Waiver of overpayment; limitations.

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

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

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