

Regular Session, 2012

SENATE BILL NO. 676 (Substitute of Senate Bill No. 437 by Senator Crowe)

BY SENATOR CROWE

UNEMPLOYMENT COMP. Provides for overpayment of benefits and the recovery thereof.
(CA-7s2.1(A)) (8/1/12)

1 AN ACT

2 To amend and reenact R.S. 23:1513(A)(1), 1553(A), 1576, 1601(8), 1713(B) and (C), 1714,
3 and 1726 and to enact R.S. 23:1531.1(E), and to repeal R.S. 23:1713(D), relative to
4 unemployment compensation; to provide for the penalty and interest account; to
5 provide for filing certain documents; to provide for separation notices; to provide for
6 method of calculation regarding the experience-rating account of an employer; to
7 provide for disqualification of employee benefits subsequent to commission of a
8 fraudulent act; to provide for the recovery of overpayment of benefits; to provide for
9 the payment of certain benefits; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 23:1513(A)(1), 1553(A), 1576, 1601(8), 1713(B) and (C), 1714, and
12 1726 are hereby amended and reenacted and R.S. 23:1531.1(E) is hereby enacted to read as
13 follows:

14 §1513. Penalty and interest account

15 A.(1) There is hereby created in the employment security administration fund
16 an account which shall be known as the penalty and interest account. All interest,
17 fines, and penalties, regardless of when ~~the same~~ **they** became due and payable,

1 collected from employers **and claimants** under the provisions of this Chapter
2 subsequent to January 1, 1951, shall, notwithstanding provisions of R.S. 23:1491,
3 1543 and 1551, be paid into this account, **except as otherwise provided by this**
4 **Chapter**, and shall at no time be considered to be a part of the unemployment
5 compensation fund.

6 * * *

7 §1531.1. Electronic filing of contribution and wage reports; **employer registrations**

8 * * *

9 **E. The executive director may require all employers to electronically file**
10 **all registrations and status reports due after January 31, 2014.**

11 * * *

12 §1553. Noncharging of benefits; recoupment; social charge account; social charge
13 tax rate

14 A. Benefits charged after a requalification of a claimant pursuant to the
15 requirements of R.S. 23:1601(1), (2), (3), or (10) shall not be charged against the
16 experience-rating account of an employer ~~who timely filed forms LOES-77,~~
17 ~~LOES-110, LOES-106, or LOES-152 and the separation was determined to be under~~
18 ~~disqualifying conditions~~ **when all of the following pertain:**

19 **(1) The employer timely files a separation notice alleging disqualification.**

20 **(2) Either a response to a notice of claim filed or a response to a notice**
21 **to base period employer is filed.**

22 **(3) The separation of the employee from the employer is determined to**
23 **be under disqualifying conditions.**

24 * * *

25 §1576. Notice of separation

26 ~~Each state board, commission, department, agency, or other employing~~
27 ~~authority of the state, including but not limited to school boards and police juries,~~
28 **employer** shall file with the administrator a notice of separation from service **in a**
29 **form prescribed by the administrator** with respect to each employee who leaves

1 its employ for any cause which may be potentially disqualifying and shall therein
 2 state provide the date of separation, a full explanation of and the cause or causes
 3 therefor, and all requested information about payments made to the separated
 4 employee. The notice shall be mailed, delivered or transmitted to the
 5 administrator and to the separated employee within three days after the date on
 6 which the separation from service occurred.

7 * * *

8 §1601. Disqualification for benefits

9 An individual shall be disqualified for benefits:

10 * * *

11 (8)(a) For the week, or fraction thereof, with respect to which he makes a
 12 false statement or representation knowing it to be false, or knowingly fails to
 13 disclose a material fact in obtaining or increasing benefits, whether or not he is
 14 successful in obtaining or increasing benefits, or ~~thereby~~ otherwise due to his fraud
 15 receives any amount as benefits under this Chapter to which he was not entitled, for
 16 the remainder of the benefit year subsequent to the commission of the
 17 fraudulent act and continuing for the fifty-two weeks which immediately follow
 18 the week in which such determination was made. All benefits paid with respect to
 19 such weeks shall be immediately due and on demand paid in accordance with
 20 department regulations to the administrator for the fund and such individual shall not
 21 be entitled to further benefits until repayment has been made or the claim for
 22 repayment has prescribed. If information indicating a claimant has earned any
 23 unreported wages for weeks claimed is obtained by the administrator, prior to
 24 the administrator rendering a determination on the issue the claimant shall be
 25 notified by mail or other delivery method. The claimant shall have seven days
 26 from the date of mailing to respond, or if notice is not by mail, then the claimant
 27 shall have seven days from the delivery date of such notice to respond.

28 (b) A claim for repayment under this Section shall prescribe against the state
 29 ~~five~~ ten years from the date the administrator determines that repayment is due. This

1 prescription shall be interrupted for the period of time during which an appeal is
2 pending, by the filing of suit for collection by the administrator or by an
3 acknowledgment or partial payment of the indebtedness. Any disqualification
4 decision or determination pursuant to this Paragraph may be appealed in the same
5 manner as from any other disqualification imposed under this Chapter.

6 * * *

7 §1713. Waiver of recovery and recovery of benefits improperly received by
8 beneficiary

9 * * *

10 B. The issue of waiver of the right of recovery of any overpayment of
11 benefits shall be heard upon any appeal of such determination or assessment of
12 overpayment. The appeal referee, board of review, or any court of jurisdiction, ~~or the~~
13 ~~administrator pursuant to the conditions under Subsection C,~~ may waive the right of
14 recovery of any overpaid benefits received by any person who has received such
15 benefits under this Chapter while any conditions for the receipt thereof were not
16 fulfilled in his case, or while he was disqualified from receiving such benefits,
17 ~~provided that the~~ **when all of the following pertain:**

18 **(1) The** receipt of said benefits did not come within the fraud provisions of
19 R.S. 23:1601(8), ~~the~~,

20 **(2) The** overpayment was without fault of the claimant; **In determining**
21 **whether the claimant was at fault, whether the claimant provided inaccurate**
22 **information, failed to disclose a material fact, or knew or should have known**
23 **that he was not entitled to benefits shall be considered, and any such act by the**
24 **claimant shall preclude the granting of a waiver.** ~~and the~~

25 **(3) The** ~~recovery thereof would defeat the purpose of benefits otherwise~~
26 ~~authorized or the recovery thereof would be against equity and good conscience.~~ **In**
27 **determining whether the recovery of the overpayment would be against equity**
28 **and good conscience, whether recovery would render the claimant unable to**
29 **cover ordinary living expenses for six months, and whether the claimant was**

1 **notified that a reversal on appeal would result in an overpayment of benefits**
2 **shall be considered.**

3 C. ~~If a claimant who is assessed an overpayment does not file an appeal of~~
4 ~~such assessment, or if a claimant files an untimely appeal to the appeal referee, he~~
5 ~~may then submit to the administrator a request for waiver of overpayment in~~
6 ~~accordance with the regulations established by the administrator. The administrator~~
7 ~~may waive the right of recovery of any such overpaid benefits received by the~~
8 ~~claimant under the same criteria as above stated in Subsection B. The administrator~~
9 ~~shall issue a notice of determination either granting or denying the request for waiver~~
10 ~~of the overpayment. If the claimant disagrees with the determination, he may file an~~
11 ~~appeal as provided for in R.S. 23:1629 et seq.~~

12 D(1) ~~If the receipt of benefits causing an overpayment is not waived,~~
13 ~~including fraud cases covered under R.S. 23:1601(8), the amount due **Any amount**~~
14 **of benefits for which a person is determined to have been overpaid and the**
15 **overpayment is not waived** shall, in the discretion of the administrator, be either
16 deducted from any benefits payable to the claimant under this Chapter or he shall
17 repay the administrator for the unemployment compensation fund a sum equal to the
18 amount so received by him, and such sum shall be collectible in the manner provided
19 for the collection of past due collections.

20 (2) A claim for repayment of benefits which did not come within the fraud
21 provisions of R.S. 23:1601(8) shall prescribe against the state ~~three~~ **five** years from
22 the date of the expiration of the benefit year of the claim on which the overpayment
23 occurred. This prescription shall be interrupted for the period of time during which
24 an appeal is pending, by the filing of suit for collection by the administrator, by an
25 acknowledgment or partial payment of the indebtedness, or as provided by R.S.
26 23:1741 and 1742.

27 (3) When an overpayment has been assessed in the amount of one hundred
28 dollars or more, upon default, the administrator or his duly authorized representatives
29 may make in any manner feasible, and cause to be recorded in the mortgage records

1 of any parish in which such claimant owns immovable property, a statement under
2 oath showing the amount of the overpayment in default; which statement, when filed
3 for record, shall operate as a lien, privilege, and mortgage on the immovable property
4 of the claimant from the date of such filing.

5 §1714. Penalties

6 **A. A civil penalty shall be assessed if benefits are determined to have**
7 **been overpaid as a result of a fraud disqualification made pursuant to R.S.**
8 **23:1601(8) in the amount of twenty dollars or twenty-five percent, whichever is**
9 **greater, of the total overpayment amount. Except as otherwise provided in**
10 **Subsection C of this Section and any provisions of law in this state relating to**
11 **the deposit, administration, release, or disbursement of money in the possession**
12 **or custody of this state to the contrary notwithstanding, fifteen percent of each**
13 **such overpayment amount recovered shall be deposited with the Secretary of**
14 **the Treasury of the United States of America to the credit of the account of this**
15 **state in the Unemployment Trust Fund established and maintained pursuant to**
16 **42 U.S.C.A. §1101, et seq., as amended, and ten percent of each such**
17 **overpayment amount recovered shall be deposited in the penalty and interest**
18 **account established by R.S. 23:1513 and used to offset collection expenses. A**

19 **B. In all other instances, a** penalty shall be assessed; if ~~legal~~ collection
20 ~~efforts are pursued;~~ **the claimant does not voluntarily repay overpaid benefits**
21 **within thirty days after the claimant's appeal rights have been exhausted and**
22 **the determination becomes final** in the amount of twenty dollars or twenty-five
23 percent, whichever is greater, of the total overpayment debt **unless the claimant has**
24 **entered into a voluntary repayment plan and has timely made all payments**
25 **required thereby.** Penalties collected under this Section shall be **deposited in the**
26 **penalty and interest account established by R.S. 23:1513 and** used to offset
27 collection expenses.

28 **C. No penalties may be withheld from amounts recovered by an offset**
29 **from unemployment compensation benefits.**

* * *

§1726. Legal effect of assessments; when collectible

A. All assessments under this ~~part~~ **Part** shall be tantamount to and the equivalent of judgments of courts. The assessments are final when made subject only to modification by an appeal as provided in R.S. 23:1728 or reassessment as provided in R.S. 23:1725. Assessments are immediately collectible when made and any employer may waive any delays and notices provided for in this ~~part~~ **Part**.

B. No employer against whom an assessment under this Part is in effect and whose right to appeal the assessment is exhausted may submit a bid or proposal for or obtain any contract pursuant to Chapter 10 of Title 38 of the Louisiana Revised Statutes of 1950 and Chapters 16 and 17 of Title 39 of the Louisiana Revised Statutes of 1950. This prohibition shall cease upon payment in full of the amount due under the assessment.

Section 2. R.S. 23:1713(D) is hereby repealed.

The original instrument was prepared by Carla S. Roberts. The following digest, which does not constitute a part of the legislative instrument, was prepared by McHenry Lee.

DIGEST

Crowe (SB 676)

Present law provides that an individual shall be disqualified for unemployment compensation benefits if the administrator of the Louisiana Workforce Commission finds that the employee has left employment from a base period or subsequent employer without good cause attributable to a substantial change made to the employment by the employer.

Present law provides that such disqualification shall continue until such time as the claimant can requalify by demonstrating that he has done the following:

1. Has been paid wages for work, subject to the unemployment insurance law, equivalent to at least 10 times his weekly benefit amount following the week in which the disqualifying separation occurred.
2. Has not left the last employer under disqualifying circumstances.

Present law creates the penalty and interest account within the employment security administration fund into which account is deposited all interest, fines, and penalties collected from employers. Proposed law additionally requires all interest, fines, and penalties collected from claimants to be paid into the account.

Present law authorizes the secretary of the department to require certain employers to file both contribution and wage reports by electronic means. Proposed law further authorizes the secretary to require employers to electronically file all registrations and status reports due

after Jan. 31, 2014.

Proposed law retains present law but provides that benefits charged after a requalification of a claimant shall not be charged against the experience-rating account of an employer when all of the following occur:

1. The employer timely filed a separation notice alleging disqualification.
2. Either a response to a notice of claim filed or a response to a notice to base period employer has been filed.
3. The separation of the employee from the employer was determined to be under disqualifying conditions.

Present law requires each state board, commission, department, agency, or other employing authority of the state, including but not limited to, school boards and police juries, to file with the administrator a notice of separation from service for each employee who leaves its employ for any cause which may be potentially disqualifying and provide the date of separation and the cause therefor. Requires the notice to be mailed or transmitted within three days after the date the separation occurred.

Proposed law retains present law but changes state board, commission, department, agency, or other employing authority of the state to cover all employers and requires them to file with the administrator a notice of separation from service.

Present law provides that an individual shall be disqualified for benefits for the 52 weeks immediately following the week in which it was determined that he committed a fraudulent act relating to obtaining or increasing benefits.

Proposed law retains present law but makes the disqualification applicable to the remainder of the benefit year after the commission of the fraudulent act and then continuing for the 52 weeks following the determination of the fraudulent act.

Proposed law provides that if information indicating a claimant has earned any unreported wages for weeks claimed is obtained by the administrator prior to the administrator rendering a determination on the issue, the claimant shall be notified by mail or other delivery method. Proposed law provides that he shall have seven days from the date of mailing to respond, or if notice is not by mail, then he shall have seven days from the delivery date of such notice to respond.

Present law provides that a claim for repayment shall prescribe against the state five years from the date the determination is made that repayment is due. Proposed law increases the prescriptive period from five years to ten years.

Present law provides that an individual receiving benefit payments to which he was not entitled is liable to repay such benefits. Provides for a waiver of the right of recovery of any overpayment of benefits under certain conditions. Proposed law specifies that if the benefits were not gained through fraud and if the overpayment was not the fault of the claimant and the recovery would be against equity and good conscience, a waiver may be issued.

Present law provides for a three-year prescriptive period for a claim for repayment of benefits which were not gained through fraud. Proposed law increases the prescriptive period to five years.

Present law provides that a penalty shall be assessed if legal collection efforts are pursued, in the amount of \$20 or 25%, whichever is greater, of the total overpayment debt.

Proposed law retains present law but provides that the penalty shall be assessed if the

claimant does not voluntarily repay overpaid benefits within 30 days of the date of mailing of notice of the overpayment.

Proposed law provides that the penalty to be assessed if overpayment of benefits was determined to be due to fraud committed by the employee shall be in the amount of \$20 or 100%, whichever is greater, of the total overpayment debt.

Proposed law requires 15% of any such amounts collected to be deposited with the U.S. Sec. of the Treasury to credit the account of the state in the Unemployment Trust Fund and 10% to be deposited in the penalty and interest account to offset collection expenses. Prohibits withholding penalties from amounts recovered by an offset from unemployment compensation benefits.

Present law provides that the collection of contributions, assessments or penalties which were owed by employers but not properly remitted to the department are tantamount and equivalent to judgment executed by a court.

Proposed law retains present law but prohibits any employer against whom an assessment has been levied from submitting a bid or proposal for any public contracts until full payment of the amount due under the assessment is made.

Effective August 1, 2012.

(Amends R.S. 23:1513(A)(1), 1553(A), 1576, 1601(8), 1713(B) and (C), 1714, and 1726; adds R.S. 23:1531.1(E); repeals R.S. 23:1713(D))

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill

1. Removes provision that allows the administrator to garnish the wages of claimant in cases of overpayment.
2. Technical amendments.