

Enrolled Senate Bill 196

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CHAPTER

AN ACT

Relating to unemployment insurance fraud; creating new provisions; and amending ORS 657.215, 657.310, 657.320, 657.396, 657.400 and 657.822.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 657.215 is amended to read:

657.215. An individual is disqualified for benefits for a period not to exceed [26] **52** weeks whenever the Director of the Employment Department finds that the individual has willfully made a false statement or misrepresentation, or willfully failed to report a material fact, to obtain any benefits under this chapter. The length of [such] **the** period of disqualification and the time when [such] **the** period begins shall be determined by the director in the discretion of the director, according to the circumstances in each case. During each week of disqualification so imposed, an individual must meet all the eligibility requirements of this chapter. Any disqualification imposed under this section may be applied to any week claimed but remaining unpaid on the date of the disqualifying decision under this section but not to exceed [three] **five** years from the date of the decision. The director may cancel [such] **the** disqualification wholly or in part as the director deems proper and equitable.

SECTION 2. ORS 657.310 is amended to read:

657.310. (1) If the Director of the Employment Department decides that an individual received any benefits under this chapter to which the individual is not entitled because the individual, regardless of the individual's knowledge or intent, made or caused to be made a false statement or misrepresentation of a material fact, or failed to disclose a material fact, the individual is liable:

(a) To repay the amount of the benefits to the director for the Unemployment Compensation Trust Fund; or

(b) To have the amount of the benefits deducted from any future benefits otherwise payable to the individual under this chapter.

(2) In addition to the liability described in subsection (1) of this section, an individual who has been disqualified for benefits under ORS 657.215 is liable for a penalty in an amount equal to 15 percent of the amount of benefits the individual received but to which the individual was not entitled.

[2)] **(3)** A decision of the director under this section does not authorize the recovery of the amount of any benefits paid to an individual until the decision is final and the decision specifies:

(a) That the individual, by reason of the false statement, misrepresentation or nondisclosure, is liable to repay the amount to the Unemployment Compensation Trust Fund;

- (b) The nature of the false statement, misrepresentation or nondisclosure; and
- (c) The week or weeks for which the benefits were paid.

[(3)] (4) Any amount subject to recovery **and any penalty due** under this section may be collected by the director in a civil action against the individual brought in the name of the director. Judgment rendered shall bear interest at the rate provided in subsection [(4)] (5) of this section. The amount collected, not including interest **or the penalty**, shall be paid into the Unemployment Compensation Trust Fund.

[(4)] (5) Interest on any amount liable to be repaid under this section shall be paid and collected at the same time repayment of benefits is made by the individual to the Unemployment Compensation Trust Fund, at the rate of one percent per month beginning on the first day of the month following 60 days after the finality of the administrative decision establishing the overpayment. In computing interest under this subsection, a fraction of a month is counted as a full month.

[(5)] (6) Deductions from unemployment insurance benefits shall be applied solely to the amount of the benefits liable to be repaid under this section. All other payments shall be applied first to court costs, **then to penalties**, then to interest, then to the amount liable to be repaid.

[(6)] (7) Interest **and penalties** collected under this section shall be paid into the Employment Department Special Fraud Control Fund in accordance with the provisions of ORS 657.400.

SECTION 3. ORS 657.320 is amended to read:

657.320. (1) If any amount paid to an individual as benefits, for which the individual has been found liable under the provisions of ORS 657.310 to repay or to have deducted from benefits payable, has neither been repaid nor so deducted within a period of three years following the date the decision establishing the [*improper payment*] **overpayment** became final, and is equal to or is less than the state maximum weekly benefit amount or determined by the Director of the Employment Department to be uncollectible, the [*same*] **overpayment** together with the record [*thereof*] **of the overpayment** and the resulting shortage, shall be canceled, and [*such amount*] **the overpayment**, excluding any amount chargeable to reimbursable employers, shall be permanently charged to the fund. However, [*such amount shall*] **the overpayment may** not be canceled if the debt is being recovered by payments or deductions [*which*] **that** were received within the last three months nor if repayment of [*such*] **the overpayment** is required under ORS 657.213.

(2) If an amount paid to an individual as benefits, for which the individual has been found liable under the provisions of ORS 657.315 (1) to have deducted from benefits payable, has neither been repaid nor so deducted from benefits otherwise payable to the individual for any week or weeks within 52 weeks following the week in which the decision establishing the [*improper payment*] **overpayment** became final, the [*same*] **overpayment** together with the record [*thereof*] **of the overpayment** and the resulting shortage, shall be canceled and [*such amount*] **the overpayment**, excluding any amount chargeable to reimbursable employers, shall be permanently charged to the fund.

(3) When in the judgment of the director the best interests of the Employment Department are served in an effort to settle accounts, the director may waive, reduce or compromise any part or all of the interest **or penalty** charged pursuant to ORS 657.310. The director may determine that the amount of interest **or penalty** due and unpaid is uncollectible, and write [*such*] **the** amount off. In making the determination that interest **or a penalty** is uncollectible, the director shall consider, among other factors:

- (a) The administrative costs of continued collection efforts in relation to the amount due;
- (b) The accessibility of the debtor for effective collection actions; and
- (c) The debtor's financial condition and ability to pay the amount due, both current and projected.

SECTION 4. ORS 657.396 is amended to read:

657.396. (1) In any case in which the Director of the Employment Department may bring a civil action for the collection of amounts liable to be repaid under ORS 657.310, [*or*] interest on those amounts **or penalties**, the director may instead:

(a) Assess a collection charge of \$5 if the [sum of the] amount liable to be repaid, **the** [or] interest then due **or the penalty** exceeds \$10.

(b) Issue a warrant under official seal directed to the sheriff of any county of the state commanding the sheriff to levy upon and sell the real and personal property of the individual found within that county, for the payment of the amount liable to be repaid with the added interest, **penalty**, collection charge and the sheriff's cost of executing the warrant, and to return [such] **the** warrant to the director and pay to the director the money collected by virtue [thereof] **of the warrant** by a time to be [therein] specified **in the warrant**, but not less than 60 days from the date of the warrant.

(2) The sheriff shall, within five days after the receipt of the warrant, record with the clerk of the county a copy [thereof] **of the warrant**, and thereupon the clerk shall enter in the County Clerk Lien Record the name of the individual mentioned in the warrant[,] and the amount liable to be repaid, interest, **penalty** and collection charge for which the warrant is issued and the date when [such] **the** copy is recorded. Thereupon the amount of the warrant so recorded shall become a lien upon the title to and interest in property of the individual against whom it is issued in the same manner as a judgment that creates a judgment lien under ORS chapter 18. The sheriff thereupon shall proceed upon the same in all respects, with like effect and in the same manner prescribed by law in respect to executions issued against property upon the judgment of a court of record, and shall be entitled to the same fees for services in executing the warrant, to be added to and collected as a part of the warrant liability.

(3) In the discretion of the director, a warrant of like terms, force and effect may be issued and directed to any agent authorized by the director to collect amounts liable to be repaid and in the execution [thereof] **of the warrant** the agent shall have all the powers conferred by law upon sheriffs, but is entitled to no fee or compensation in excess of actual expenses paid in the performance of [such] **the agent's** duty.

(4) If a warrant is returned not satisfied in full, the director [shall have] **has** the same remedies to enforce the claim for amounts due, [and] interest **and penalty** against the individual as if the director had recovered judgment against the individual for the amount liable to be repaid, [and] interest **and penalty**.

(5) Interest upon the amounts liable to be repaid **and the penalty** as set forth in the warrant shall be paid and collected at the rate prescribed in ORS 657.310.

SECTION 5. ORS 657.400 is amended to read:

657.400. (1) There is established in the State Treasury, separate and distinct from the General Fund, the Employment Department Special Fraud Control Fund. The **Employment Department Special Fraud Control** Fund shall consist of moneys collected or received by the Employment Department as follows:

(a) All interest **and penalties** collected under ORS 657.310.

(b) All gifts to, interest on or profits earned by the Employment Department Special Fraud Control Fund.

(2) The moneys in the Employment Department Special Fraud Control Fund are continuously appropriated only to the Employment Department[,] and may not be transferred or otherwise made available to any other state agency.

(3) All amounts in the Employment Department Special Fraud Control Fund are to be used for administrative costs associated with the prevention, discovery and collection of unemployment benefit overpayments, as included in the biennial budget of the Employment Department and approved by the Legislative Assembly.

SECTION 6. ORS 657.822 is amended to read:

657.822. (1) There is established in the State Treasury, separate and distinct from the General Fund, the Employment Department Special Administrative Fund. The Employment Department Special Administrative Fund shall consist of moneys collected or received by the Employment Department as follows:

(a) All interest collected under ORS 657.515.

(b) All fines and penalties collected pursuant to this chapter, **except as provided in ORS 657.400.**

(c) All gifts to or interest on or profits earned by the Employment Department Special Administrative Fund.

(2) The moneys in the Employment Department Special Administrative Fund are continuously appropriated to the Employment Department, and may not be transferred or otherwise made available to any other state agency, to pay the expenses of the Secretary of State incurred in performing the audit of the Employment Department and such other expenses as may be included in the biennial budget of the Employment Department and approved by the Legislative Assembly for payment from the Employment Department Special Administrative Fund. On July 1 of every odd-numbered year, any amounts in the Employment Department Special Administrative Fund that have not been appropriated in the biennial budget of the Employment Department approved by the Legislative Assembly shall be transferred to the State Unemployment Compensation Benefit Reserve Fund created by ORS 657.845.

SECTION 7. ORS 657.822, as amended by section 16, chapter 183, Oregon Laws 2005, is amended to read:

657.822. (1) There is established in the State Treasury, separate and distinct from the General Fund, the Employment Department Special Administrative Fund. The Employment Department Special Administrative Fund shall consist of moneys collected or received by the Employment Department as follows:

(a) All interest collected under ORS 657.515.

(b) All fines and penalties collected pursuant to this chapter, **except as provided in ORS 657.400.**

(c) All gifts to or interest on or profits earned by the Employment Department Special Administrative Fund.

(2) The moneys in the Employment Department Special Administrative Fund are continuously appropriated to the department, and may not be transferred or otherwise made available to any other state agency, to pay the expenses of the Secretary of State incurred in performing the audit of the department and such other expenses as may be included in the biennial budget of the department and approved by the Legislative Assembly for payment from the fund. On July 1 of every odd-numbered year, any amounts in the Employment Department Special Administrative Fund that have not been appropriated in the biennial budget of the department approved by the Legislative Assembly shall be transferred to the Unemployment Compensation Trust Fund.

SECTION 8. The amendments to ORS 657.215, 657.310, 657.320, 657.396, 657.400 and 657.822 by sections 1 to 7 of this 2007 Act apply only to claims for unemployment compensation benefits filed on or after the effective date of this 2007 Act.

Passed by Senate February 26, 2007

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Secretary of Senate

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President of Senate

Passed by House April 4, 2007

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Speaker of House

Received by Governor:

.....M,....., 2007

Approved:

.....M,....., 2007

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Governor

Filed in Office of Secretary of State:

.....M,....., 2007

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Secretary of State