

Enrolled
Senate Bill 191

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CHAPTER

AN ACT

Relating to overpayment of unemployment insurance benefits; creating new provisions; amending ORS 657.310, 657.315, 657.320 and 657.400; limiting expenditures; and declaring an emergency.

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

SECTION 1. 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*] **imposed at a rate prescribed by the director of at least 15, but not greater than 30**, percent of the amount of benefits the individual received [*but*] to which the individual was not entitled.

(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.

(4)(a) 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.

(b) Judgment rendered shall bear interest at the rate provided in subsection (5) of this section. [*The amount collected, not including interest or the penalty, shall be paid into the Unemployment Compensation Trust Fund.*]

(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 **or fraction of a 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.]*

(6)(a) Deductions from unemployment insurance benefits **pursuant to subsection (1)(b) of this section** shall be applied solely to the amount of the benefits liable to be repaid under this section.

(b) All other payments shall be applied first to court costs, then to penalties, then to interest, then to the amount liable to be repaid.

(7)(a) **The following amounts collected under this section shall be paid into the Unemployment Compensation Trust Fund:**

(A) **Amounts in repayment of benefits; and**

(B) **The portion of penalties imposed under subsection (2) of this section that is 15 percent of the amount of benefits received.**

(b) *[Interest and penalties collected under this section]* **The following amounts collected under this section** shall be paid into the Employment Department Special Fraud Control Fund in accordance with the provisions of ORS 657.400:

(A) **Interest other than interest described in paragraph (c) of this subsection; and**

(B) **The portion of penalties imposed under subsection (2) of this section that remains after subtraction of the portion of penalties described in paragraph (a)(B) of this subsection.**

(c) **Interest payable on any portion of benefits that were funded by the federal government shall be paid to the United States Department of Labor.**

(8) **The director shall adopt rules establishing standards and procedures for the repayment of benefits and payment of penalties and interest under this section.**

SECTION 2. ORS 657.315 is amended to read:

657.315. (1) If the Director of the Employment Department decides that an individual has been paid benefits to which the individual is not entitled because of an error not due to the individual providing a false statement or misrepresentation of a material fact or not disclosing a material fact, or because an initial decision to pay benefits is subsequently reversed by a decision finding the individual is not eligible for the benefits, the individual is liable to have the amount deducted from any future benefits otherwise payable to the individual under this chapter for any week or weeks within *[52 weeks]* **five years** following the week in which the decision establishing the erroneous payment became final.

(2) 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 that the individual is liable to have the amount deducted from any future benefits otherwise payable under this chapter for any week or weeks within *[52 weeks]* **five years** following the week in which the decision establishing the erroneous payment became final.

(3) Amounts paid to an individual in excess of the maximum benefits allowable pursuant to this chapter may be recovered in a civil action brought in the name of the director for such purpose.

SECTION 3. ORS 657.320 is amended to read:

657.320. (1)(a) 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 deducted within a period of three years following the date the decision establishing the 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 overpayment together with the record of the overpayment and the resulting shortage, shall be canceled, and the overpayment, excluding any amount chargeable to reimbursable employers, shall be permanently charged to the fund.

(b) Notwithstanding paragraph (a) of this subsection, the overpayment may not be canceled if the debt is being recovered by payments or deductions that were received within the last three months or if repayment of 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 not been waived

under ORS 657.317, paid or deducted from benefits otherwise payable to the individual for any week or weeks within [52 weeks] **five years** following the week in which the decision establishing the overpayment became final, the overpayment together with the record of the overpayment and the resulting shortage, shall be canceled and 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 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 657.400 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] **described** under ORS 657.310 (7)(b).
- (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 5. The amendments to ORS 657.310 by section 1 of this 2013 Act apply to decisions of the Director of the Employment Department issued on or after October 1, 2013.

SECTION 6. Notwithstanding any other law limiting expenditures, the amount of \$869,000 is established for the biennium beginning July 1, 2013, as the maximum limit for payment of expenses from federal funds other than those described in sections 2 and 4, chapter _____, Oregon Laws 2013 (Enrolled House Bill 5009), collected or received by the Employment Department for the administration of the provisions of this 2013 Act.

SECTION 7. This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.

Passed by Senate June 26, 2013

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 28, 2013

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Tina Kotek, Speaker of House

Received by Governor:

.....M,....., 2013

Approved:

.....M,....., 2013

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2013

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Kate Brown, Secretary of State