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By:  Vo H.B. No. 2458

A BILL TO BE ENTITLED

AN ACT

Relating to the forfeiture, recovery, and the reduction of the fraudulent benefit payments in the administration of the Texas Unemployment Compensation Act.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Section 203.201, Labor Code, is amended to read as follows:

Sec. 203.201.  SPECIAL ADMINISTRATION FUND. (a) The unemployment compensation special administration fund is a special fund.

(b)  The special administration fund consists of:

(1)  all interest and penalties collected under this subtitle, other than a penalty to be deposited in the unemployment compensation fund established under Section 203.021 per Section 214.003(d) ~~assessed under Section 214.003(a)(2)~~; and

(2)  any amounts received under any surety bond for losses sustained by the special administration fund.

SECTION 2.  Section 203.202, Labor Code, is amended to read as follows:

Sec. 203.202.  USE OF SPECIAL ADMINISTRATION FUND. (a) Money in the special administration fund may be spent in accordance with this subtitle and may be used:

(1)  to pay the cost of reimbursing the benefit account in the compensation fund for benefits paid to former employees of this state that are based on service for this state, and the cost of construction and purchase of buildings and land necessary for that administration;

(2)  in the administration of Chapters 51, 61, and 62;

(3)  for payment of interest on advances from the federal trust fund;

(4)  as a revolving fund to cover expenditures that are necessary and proper under this subtitle and for which federal funds have been requested but not received, subject to the charging of the expenditures against the federal funds when received;

(5)  to refund a penalty as provided by Section 203.203; ~~and~~

(6)  subject to the provisions of Chapter 2107, Government Code, to pay persons who contract with the commission to collect delinquent unemployment taxes, penalties, and interest owed under this subtitle~~.~~; and

(7)  to cover expenditures related to fraud prevention and investigation, misclassification, as well as the collection of benefits obtained fraudulently and/or forfeited.

(b)  Money in the special administration fund may not be spent in any manner that would permit its substitution for, or a corresponding reduction in, federal funds that would, in the absence of that money, be available to finance expenditures for the administration of this subtitle.

(c)  The commission by a resolution entered in its minutes may authorize to be charged against the special administration fund any expenditure the commission considers proper in the interest of good administration of this subtitle if the resolution states that no other funds are available for the expenditure.

SECTION 3.  Section 207.021, Labor Code, is amended to read as follows:

Sec. 207.021.  Benefit Eligibility Conditions

(a)  Except as provided by Chapter 215, an unemployed individual is eligible to receive benefits for a benefit period if the individual:

(1)  has registered for work at an employment office and has continued to report to the employment office as required by rules adopted by the commission;

(2)  has made a claim for benefits under Section 208.001;

(3)  is able to work;

(4)  is available for work;

(5)  is actively seeking work in accordance with rules adopted by the commission;

(6)  for the individual's base period, has benefit wage credits:

(A)  in at least two calendar quarters; and

(B)  in an amount not less than 37 times the individual's benefit amount;

(7)  after the beginning date of the individual's most recent prior benefit year, if applicable, earned wages in an amount equal to not less than six times the individual's benefit amount;

(8)  has been totally or partially unemployed for a waiting period of at least seven consecutive days; ~~and~~

(9)  participates in reemployment services, such as a job search assistance service, if the individual has been determined, according to a profiling system established by the commission, to be likely to exhaust eligibility for regular benefits and to need those services to obtain new employment, unless:

(A)  the individual has completed participation in such a service; or

(B)  there is reasonable cause, as determined by the commission, for the individual's failure to participate in those services~~.~~;and

(10)  has repaid any unemployment compensation benefits forfeited, with associated penalties, per section 214.003.

SECTION 4.  Section 208.002, Labor Code, is amended to read as follows:

Sec. 208.002.  Initial Claim; Last Work

(a)  When used in connection with an initial claim, "last work" and "person for whom the claimant last worked" refers to ~~:~~

~~(1)  the last person for whom the claimant actually worked, if the claimant worked for that person for at least 30 hours during a week; or~~

~~(2)~~  the employer, as defined by Subchapter C, Chapter 201, ~~or by the unemployment law of any other state,~~ for whom the claimant last worked.

(b)  The commission shall mail a notice of the filing of an initial claim to the person for whom the claimant last worked before the effective date of the initial claim. If the person for whom the claimant last worked has more than one branch or division operating at different locations, the commission shall mail the notice to the branch or division at which the claimant last worked.

(c)  Mailing of a notice under this section to the correct address of the person, branch, or division for which the claimant last worked constitutes notice of the claim to the person.

SECTION 5.  Section 212.006, Labor Code, is amended to read as follows:

Sec. 212.006.  RECOVERY OF BENEFITS PAID. (a) Benefits paid to a claimant that are not in accordance with the final decision shall be:

(1)  refunded by the claimant to the commission; or

(2)  in the discretion of the commission, deducted from future benefits payable to the claimant under this subtitle.

(b)  Benefits paid that are not in accordance with the final decision are also collectible in the manner provided by Sections 213.031, 213.032, 213.033, 213.035, and 213.051 for the collection of past due contributions.

(b-1)  Unemployment compensation benefits forfeited, with associated penalties, per section 214.003, that are not in accordance with the final decision are also collectible from a financial institution in the manner provided by section 213.059. By rule, the commission shall prescribe a base amount which is exempt from levy to recover unemployment compensation benefits forfeited, with associated penalties imposed under section 214.003. Section 207.075(b) is not applicable to benefits and penalties recovered by the Commission under this subsection.

(c)  The commission shall accept payment for benefits refunded by a claimant under Subsection (a)(1) by personal check, cashier's check, money order, debit card, electronic check, or electronic funds transfer. The commission shall accept payment through the mail and by Internet, as applicable. The commission may adopt rules to accept forms of payment not listed in this subsection.

SECTION 6.  Section 214.002, Labor Code, is amended to read as follows:

Sec. 214.002.  LIABILITY FOR IMPROPERLY OBTAINING BENEFITS. (a) A person who has received improper benefits is liable for the amount of the improper benefits. The commission may recover improper benefits by:

(1)  deducting the amount of the improper benefits from any future benefits payable to the person;

(2)  collecting a refund from a claimant; ~~or~~

(3)  collecting the amount of the improper benefits for the compensation fund in the same manner provided by Sections 213.031, 213.032, 213.033, 213.035, and 213.051 for the collection of past due contributions~~.~~; or

(4)  collecting unemployment compensation benefits forfeited, with associated penalties, per Section 214.003, from a financial institution in the manner provided by section 213.059. By rule, the commission shall prescribe a base amount which is exempt from levy to recover the unemployment compensation benefits forfeited, with associated penalties imposed under Section 214.003. Section 207.075(b) is not applicable to benefits and penalties recovered by the Commission under this subsection.

(b)  In this section, "improper benefit" means the benefit obtained by a person:

(1)  because of the nondisclosure or misrepresentation by the person or by another of a material fact, without regard to whether the nondisclosure or misrepresentation was known or fraudulent; and

(2)  while:

(A)  any condition imposed by this subtitle for the person's qualifying for the benefit was not fulfilled in the person's case; or

(B)  the person was disqualified from receiving benefits.

(c)  The commission shall accept payment for benefits refunded by a claimant under Subsection (a)(2) by personal check, cashier's check, money order, debit card, electronic check, or electronic funds transfer. The commission shall accept payment through the mail and by Internet, as applicable. The commission may adopt rules to accept forms of payment not listed in this subsection.

SECTION 7.  Section 214.003, Labor Code, is amended to read as follows:

Sec. 214.003.  Forfeiture or Cancellation of Benefits Paid and Remaining Benefits; Penalty

(a)  If, by willful nondisclosure or misrepresentation of a material fact, whether the nondisclosure or misrepresentation is made by the person or for the person by another, a person receives a benefit when a condition imposed by this subtitle for the person's qualifying for the benefit is not fulfilled or the person is disqualified from receiving the benefit:

(1)  the person forfeits the:

(A)  benefit received; and

(B)  rights to benefits that remain in the benefit year in which the nondisclosure or misrepresentation occurred; and

(2)  the commission shall require the person to pay a penalty in an amount equal to ~~15~~ 50 percent of the amount forfeited under Subdivision (1)(A).

(b)  If a person attempts to obtain or increase benefits by a nondisclosure or misrepresentation as provided by Subsection (a), the commission may cancel the person's right to benefits that remain in the benefit year in which the nondisclosure or misrepresentation occurred.

(c)  A forfeiture, cancellation, or penalty imposed under this section is effective only after the person has been afforded an opportunity for a fair hearing before the commission or its duly designated representative.

(d)  A person who is assessed a penalty by the commission under Subsection (a)(2) is liable for the amount of the penalty. The commission may collect the penalty in the same manner as provided by Sections 212.006 (a)(1), (b), and (b-1) ~~213.031, 213.032, 213.033, 213.035, 213.051~~, and 214.002(a)(2), (a)(3), and (a)(4)~~213.051 for the collection of past-due contributions~~. The commission shall deposit 15 percent of any penalty assessed under ~~Subsection (a)(2)~~ this Section in the unemployment compensation fund established under Section 203.021. The commission shall deposit 35 percent of any penalty assessed under this Section in the unemployment compensation special administration fund established under Subchapter E, Chapter 203, for the purposes described in Section 203.202(a)(7).

SECTION 8.  The change in law made by this Act applies only to a claim for unemployment compensation benefits that is filed with the Texas Workforce Commission on or after the effective date of this Act. A claim filed before the effective date of this Act is governed by the law in effect on the date the claim was filed, and the former law is continued in effect for that purpose.

SECTION 9.  This Act takes effect January 1, 2024.