

Amendment No. 1 to HB1760

Matheny
Signature of Sponsor

AMEND Senate Bill No. 1201*

House Bill No. 1760

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 50-7-303(a)(7), is amended by inserting the following language immediately prior to the last sentence of the subsection:

In addition, such claimant shall remain disqualified from future benefits so long as any portion of the overpayment or interest thereon is still outstanding.

SECTION 2. Tennessee Code Annotated, Section 50-7-303(b), is amended by inserting the following language as a new subdivision:

() For purposes of subdivision (a)(2):

(A) "Misconduct" includes, but is not limited to, the following conduct by a claimant:

(1) Willful or wanton disregard of the rights or interests of the employer;

(2) Deliberate violations or disregard of standards of behavior which the employer has the right to expect of an employee;

(3) Carelessness or negligence of such a degree or recurrence to show an intentional or substantial disregard of the employer's interest or to manifest equal culpability, wrongful intent or evil design;

(B) In addition to the provisions of subdivision (A), "misconduct" also includes any conduct by a claimant involving dishonesty related to the claimant's employment that constitutes an essential element of a crime for which the claimant was convicted.

(C) "Misconduct" does not include:

- (1) Inefficiency, or failure to perform well as the result of inability or incapacity;
- (2) Inadvertence or ordinary negligence in isolated instances; or
- (3) Good faith errors in judgment or discretion.

SECTION 3. Tennessee Code Annotated, Title 50, Chapter 7, Part 7, is amended by adding the following language as a new, appropriately designated section:

§ 50-7-7__.

(a) Any person who has received unemployment benefits by knowingly misrepresenting, misstating, or failing to disclose any material fact, or by making a false statement or false representation without a good faith belief as to the correctness of the statement or representation shall, after a determination by the commissioner that such a violation has occurred, be required to repay the amount of benefits received.

(b) In addition to the requirements of subsection (a), the commissioner shall assess interest at a rate of no more than one and one-half percent (1.5%) per month on the total amount due that remains unpaid thirty (30) calendar days after the date on which the commissioner sends notice of the commissioner's determination that a violation has occurred to the last known address of the claimant. For purposes of this subsection "total amount due" includes the unemployment benefits received pursuant to subsection (a).

(c) A pending appeal of the order of the commissioner shall not suspend the assessment of interest on unemployment benefits obtained in violation of this chapter.

(d) Monies received by the department in repayment of unemployment benefits and interest pursuant to subsections (a) and (b) shall first be applied to the unemployment benefits received then to any interest due. Such monies shall be used by the department to defray the costs of deterring, detecting, or collecting overpayments.

SECTION 4. Tennessee Code Annotated, 50-7-709, is amended by deleting the section in its entirety and substituting instead the following:

(a) It is an offense for any person or entity to knowingly make a false statement or representation or fail to disclose a material fact, to obtain or increase any benefit or other payment under this chapter, either for the person's own benefit or for the benefit of any other person.

(b) Each false statement or representation or failure to disclose a material fact constitutes a separate offense.

(c) All prosecutions for offenses defined by this section shall be commenced within two (2) years after the commission of the offense.

(d)

(1) A violation of this section is a Class C misdemeanor.

(2) A second or subsequent violation of this section is a Class E felony, provided that the second or subsequent violation of this section occurs after a conviction has been obtained for the previous violation.

(3) A first or subsequent violation of this section where the person has a prior conviction for a similar offense in another jurisdiction is a Class E felony; provided that the second or subsequent violation occurs after a conviction has been obtained for the previous violation.

(4) The provisions of subdivision (d)(2) or (3) shall only apply if at least one (1) of the required offenses occurs on or after January 1, 2010.

SECTION 5. Tennessee Code Annotated, Section 50-7-710, is amended by deleting the section in its entirety and substituting instead the following:

(a) It is an offense for any person to knowingly make a false statement or representation of a material fact or fail to disclose a material fact with intent to defraud by obtaining or increasing any benefit under the unemployment compensation law of any other state of the United States or of the federal government or of any of its territories, or of a foreign government, either for the person's own benefit or for the benefit of any other person.

(b) Each false statement or representation or failure to disclose a material fact constitutes a separate offense.

(c)

(1) A violation of this section is a Class C misdemeanor.

(2) A second or subsequent violation of this section is a Class E felony, provided that the second or subsequent violation of this section occurs after a conviction has been obtained for the previous violation.

(3) A first or subsequent violation of this section where the person has a prior conviction for a similar offense in another jurisdiction is a Class E felony; provided that the second or subsequent violation occurs after a conviction has been obtained for the previous violation.

(4) The provisions of subdivision (c)(2) or (3) shall only apply if at least one (1) of the required offenses occurs on or after January 1, 2010.

SECTION 6. This act shall take effect January 1, 2010, the public welfare requiring it.