

SENATE BILL 1201

By Tracy

AN ACT to amend Tennessee Code Annotated, Title 50,
Chapter 7, relative to employment security.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 50-7-303, is further amended by adding the following language immediately following the existing language of subdivision (a)(2) as a new subdivision (a)(2)(C):

A discharge for dishonesty constituting a crime or any felony or Class A misdemeanor in connection with the claimant's work as shown by the facts, together with the claimant's admission, or as shown by the claimant's conviction of that crime in a court of competent jurisdiction, shall be deemed to be a discharge for misconduct connected with such claimant's work.

SECTION 2. Tennessee Code Annotated, Section 50-7-303(a)(3), is amended by deleting the first sentence of the subdivision in its entirety and by substituting instead the following:

If the administrator finds that the claimant has failed without good cause either to apply for available, suitable work, when so directed by the employment office or the administrator, or to return a potential employer's telephone call to schedule an employment interview, or to accept suitable work when offered, or to return to the claimant's customary self-employment, if any, when so directed by the administrator.

SECTION 3. Tennessee Code Annotated, Section 50-7-303, is amended by deleting subdivision (a)(7) in its entirety and by substituting instead the following:

(7)

(A) For each week with respect to which the claimant has made any false or fraudulent representation or intentionally withheld material information for the purpose of obtaining benefits contrary to this chapter, and an additional thirteen (13) weeks for the first week the representation was made or fact withheld and six (6) weeks for each week thereafter, the additional weeks not to exceed forty-nine (49) weeks, beginning with the week following the week in which such findings were made. In the event an overpayment of benefits results from the application of this disqualifying provision, such overpayment of benefits shall not be chargeable to any employer's account for experience rating purposes;

(B) Each claimant found in violation of this subdivision (a)(7) shall repay to the department's employment security division the overpayment and, as a civil penalty, an amount equal to the overpayment. The over payment is the amount of benefits the claimant received by direct reason of fraud. The proceeds of any civil penalty collected pursuant to this subdivision (a)(7)(B) shall be used to defray the costs of enforcing this chapter.

(C) A claimant is ineligible for future benefits or waiting week credit, and any wage credits earned by the claimant shall be unavailable for purposes of paying benefits, if any amount owed under this subdivision (a)(7) remains unpaid.

SECTION 4. Tennessee Code Annotated, Section 50-7-304(f), is amended by inserting the following language immediately after the first sentence of the subsection:

Before making a determination of a claim or an appeal, the hearing officer, the appeals tribunal and the board of review, as appropriate, shall review relevant employer documentation, which may include personnel files, separation notices and other materials germane to employment.

SECTION 5. Tennessee Code Annotated, Title 50, Chapter 7, Part 3, is amended by adding the following as a new section thereto:

50-7-3__.

(a) If an employee is discharged for failing to notify such employee's employer of absenteeism or tardiness that becomes excessive, and the employer has complied with requirements of subsection (d) with respect to that employee, the employee is ineligible to receive benefits until six (6) weeks have elapsed since the end of the week in which the discharge occurs and the employee earns wages after the week in which the discharge occurs equal to at least six (6) times the employee's weekly benefit rate under § 50-7-301 in employment or other work covered by the unemployment insurance law of any state or the federal government. For the purposes of requalification, the employee's weekly benefit rate shall be the rate that would have been paid had the discharge not occurred.

(b) For purposes of this section, tardiness becomes excessive if an employee is late for six (6) or more scheduled workdays in the twelve-month period preceding the date of the discharge without providing adequate notice to such employee's employer.

(c) For purposes of this section, absenteeism becomes excessive if an employee is absent for two (2) or more scheduled workdays in the twelve-month period preceding the date of the discharge without providing adequate notice to such employee's employer.

(d)

(1) The requalifying requirements under subsection (a) apply only if the employer has a written policy on notification of tardiness or absences that:

(A) Defines what constitutes a single occurrence of tardiness or absenteeism;

(B) Defines what constitutes an excused absence;

(C) Describes the process for providing adequate notice of tardiness or absence; and

(D) Notifies the employee that failure to provide adequate notice of an absence or tardiness may lead to discharge.

(2) The employer shall provide a copy of the written policy to each employee and shall have written evidence that the employee received a copy of that policy.

(3) The employer must have given the employee at least one (1) warning concerning the employee's violation of the employer's written policy within the twelve-month period preceding the date of the discharge.

(4) The employer must apply the written policy uniformly to all of the employees of the employer.

SECTION 6. Tennessee Code Annotated, Section 50-7-709, is amended by deleting subsection (a) in its entirety and by substituting instead the following:

(a) Whoever makes a false statement or representation knowing it to be false or knowingly fails 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, is guilty of unemployment security fraud. A violation of this subsection (a) shall be punished as theft and graded in accordance with § 39-14-105. The determination of the degree of an offense under this subsection (a) shall be measured by the total value of all money obtained or sought to be obtained by the unlawful conduct.

SECTION 7. Tennessee Code Annotated, Section 50-7-711, is amended by deleting the language "commits a Class E felony." at the end of subsection (a) and by substituting instead the following:

is guilty of unemployment security fraud. A violation of this subsection (a) shall be punished as theft and graded in accordance with § 39-14-105. The determination of the degree of an offense under this subsection (a) shall be measured by the total value of all money obtained or sought to be obtained by the unlawful conduct.

SECTION 8. Tennessee Code Annotated, Title 50, Chapter 7, Part 7, is amended by adding the following as a new section:

50-7-7__.

(a) All printed forms provided and required by an employer or the department or otherwise required by law as a condition of payment of benefits, shall contain a statement, permanently affixed to the application or claim form, that clearly states in substance the following:

It is a crime to knowingly provide false, incomplete or misleading information to any party to an unemployment security benefits transaction for the purpose of committing fraud. Penalties include imprisonment, fines and denial of benefits and other sanctions as authorized by law.

(b) The lack of a statement required in this section does not constitute a defense in any criminal prosecution under this part.

SECTION 9. Tennessee Code Annotated, Title 50, Chapter 7, Part 7, is amended by adding the following as a new section:

50-7-7__.

(a) When any law enforcement official or authority, or the department of commerce and insurance, requests information from an employer or any other person

for the purpose of detecting, prosecuting or preventing unemployment security fraud, the employer or other person shall take all reasonable actions to promptly provide the information requested, subject to any legal privilege protecting the information.

(b) Any employer or other person who has reasonable belief that an act violating § 50-7-709, § 50-7-710 or § 50-7-711, will be, is being, or has been committed, shall furnish and disclose any information in its possession concerning the act to the appropriate law enforcement official or authority, or the department of commerce and insurance, subject to any legal privilege protecting the information.

(c) An employer or other person providing information to any law enforcement, regulatory, licensing or other governmental agency under subsection (a) or (b), shall have the right to request information in the possession or control of the agency relating to the suspected violation or to a pattern of related activity, except information that was privileged or confidential under the laws of this state prior to its submission to the agency. In instances where disclosure would not jeopardize an ongoing investigation or prosecution, the agency shall provide the requested information to the employer or other person. The agency may request that the employer or other person keep the disclosed information confidential.

(d) Any person that has a reasonable belief that an act violating this chapter will be, is being, or has been committed or any person who collects, reviews or analyzes information concerning insurance fraud, may furnish and disclose any information in its possession concerning the act to an authorized representative of an insurer that requests the information for the purpose of detecting, prosecuting or preventing insurance fraud.

SECTION 10. This act shall take effect July 1, 2009, the public welfare requiring it.