

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 78

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

1 RELATING TO THE EMPLOYMENT SECURITY LAW; AMENDING SECTION 72-1369, IDAHO
2 CODE, TO CLARIFY THAT FIFTEEN PERCENT OF CERTAIN OVERPAYMENTS MUST BE
3 PAID INTO THE EMPLOYMENT SECURITY FUND AND TO MAKE A TECHNICAL CORREC-
4 TION.
5

6 Be It Enacted by the Legislature of the State of Idaho:

7 SECTION 1. That Section 72-1369, Idaho Code, be, and the same is hereby
8 amended to read as follows:

9 72-1369. OVERPAYMENTS, CIVIL PENALTIES AND INTEREST -- COLLECTION AND
10 WAIVER. (1) Any person who received benefits to which he was not entitled un-
11 der the provisions of this chapter or under an unemployment insurance law of
12 any state or of the federal government shall be liable to repay the benefits
13 and the benefits shall, for the purpose of this chapter, be considered to be
14 overpayments.

15 (2) Civil penalties. The director shall assess the following monetary
16 penalties for each determination in which the claimant is found to have made
17 a false statement, misrepresentation, or failed to report a material fact to
18 the department:

19 (a) Twenty-five percent (25%) of any resulting overpayment for the
20 first determination;

21 (b) Fifty percent (50%) of any resulting overpayment for the second de-
22 termination; and

23 (c) One hundred percent (100%) of any resulting overpayment for the
24 third and any subsequent determination.

25 (3) Any overpayment, civil penalty and/or interest which has not been
26 repaid may, in addition to or alternatively to any other method of collection
27 prescribed in this chapter, including the creation of a lien as provided by
28 section 72-1360, Idaho Code, be collected with interest thereon at the rate
29 prescribed in section 72-1360(2), Idaho Code. The director may also file a
30 civil action in the name of the state of Idaho. In bringing such civil ac-
31 tions for the collection of overpayments, penalties and interest, the di-
32 rector shall have all the rights and remedies provided by the laws of this
33 state, and any person adjudged liable in such civil action for any overpay-
34 ments shall pay the costs of such action. A civil action filed pursuant to
35 this subsection ~~(3)~~ shall be commenced within five (5) years from the date of
36 the final determination establishing liability to repay. Any judgment ob-
37 tained pursuant to this section shall, upon compliance with the requirements
38 of chapter 19, title 45, Idaho Code, become a lien of the same type, duration
39 and priority as if it were created pursuant to section 72-1360, Idaho Code.

40 (4) Collection of overpayments and civil penalties.

41 (a) Overpayments, other than those resulting from a false state-
42 ment, misrepresentation, or failure to report a material fact by the

1 claimant, which have not been repaid or collected, may, at the discre-
2 tion of the director, be deducted from any future benefits payable to
3 the claimant under the provisions of this chapter. Such overpayments
4 not recovered within five (5) years from the date of the final determi-
5 nation establishing liability to repay may be deemed uncollectible.

6 (b) Overpayments resulting from a false statement, misrepresentation,
7 or failure to report a material fact by the claimant which have not been
8 recovered within eight (8) years from the date of the final determina-
9 tion establishing liability to repay may be deemed uncollectible.

10 (c) ~~The first fifteen percent (15%) of a civil penalty assessed pur-~~
11 ~~suant to subsection (2) of this section shall be paid as follows:~~

12 (i) An amount totaling fifteen percent (15%) of the overpayment
13 shall be paid into the employment security fund created in section
14 72-1346, Idaho Code; and

15 (ii) Any additional amounts collected shall be paid into the em-
16 ployment security administrative and reimbursement fund created
17 in section 72-1348, Idaho Code.

18 (5) The director may waive the requirement to repay an overpayment,
19 other than one resulting from a false statement, misrepresentation, or fail-
20 ure to report a material fact by the claimant, and interest thereon, if:

21 (a) The benefit payments were made solely as a result of department er-
22 ror or inadvertence and made to a claimant who could not reasonably have
23 been expected to recognize the error; or

24 (b) Such payments were made solely as a result of an employer misre-
25 porting wages earned in a claimant's base period and made to a claimant
26 who could not reasonably have been expected to recognize an error in the
27 wages reported.

28 (6) Neither the director nor any of his agents or employees shall be li-
29 able for benefits paid to persons not entitled to the same under the provi-
30 sions of this chapter if it appears that such payments have been made in good
31 faith and that ordinary care and diligence have been used in the determina-
32 tion of the validity of the claim or claims under which such benefits have
33 been paid.

34 (7) The director may, in his sole discretion, compromise any or all of
35 an overpayment, civil penalty in excess of the amount required to be paid
36 into the employment security fund pursuant to subsection (4) (c) of this sec-
37 tion, interest or fifty-two (52) week disqualification assessed under sub-
38 sections (1) and (2) of this section and section 72-1366(12), Idaho Code,
39 when the director finds it is in the best interest of the department.