

AMENDED IN SENATE APRIL 7, 2010

AMENDED IN SENATE MARCH 22, 2010

SENATE BILL

No. 1211

Introduced by Senators Romero and Dutton
(Coauthor: Assembly Member Hagman)

February 18, 2010

An act to amend Section ~~634.5~~ of 1379 of, and to add Section 1375.7 to, the Unemployment Insurance Code, relating to unemployment insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 1211, as amended, Romero. Unemployment insurance: benefits: ~~eligibility:~~ overpayments: elected officials.

Under existing law, any person who receives an overpayment of unemployment compensation benefits is liable for the amount overpaid. Existing law also permits the Director of Employment Development to take specified steps to recover overpayment of unemployment compensation benefits and unemployment compensation disability benefits, including filing a civil action against the liable person within one year after certain actions have been taken. Existing law also permits the director to initiate summary judgment proceedings against a liable person to recover overpayment of unemployment compensation benefits due to fraud, misrepresentation, or willful nondisclosure on the part of the recipient.

This bill would require the Director of Employment Development to find an overpayment of unemployment benefits where the individual who received them was an elected official whose claim was based solely on income received as an elected official. This bill would permit the director, in addition to filing a civil action against the liable person for

the overpayment amount, to initiate summary judgment proceedings against such a person to recover these overpayment amounts.

~~Existing law requires every employer, with specified exceptions, to pay contributions to the Unemployment Fund at specified rates, for the purpose of funding unemployment insurance benefits for eligible unemployed workers. Existing law defines “employment” for those purposes and, with respect to certain public entities, exempts from that definition certain services performed by an individual in the exercise of his or her duties as an elected official.~~

~~This bill would specify that an elected official is prohibited from receiving unemployment compensation benefits under those provisions based on his or her income derived from employment as an elected official and would deem an elected official to have constructive knowledge of this provision, as specified. The bill would require the Employment Development Department, by July 1, 2011, to adopt regulations to clarify that the above-described provision governing eligibility for unemployment compensation excludes elected officials from coverage under the unemployment insurance compensation system for purposes of benefit eligibility. The bill would also require the department to revise language in a specified California employment guide with regard to the exclusion of elected officials from unemployment insurance coverage and benefit eligibility, as specified.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.~~

The people of the State of California do enact as follows:

- 1 *SECTION 1. Section 1375.7 is added to the Unemployment*
- 2 *Insurance Code, to read:*
- 3 *1375.7. The director shall find that an individual has been*
- 4 *overpaid unemployment benefits where the individual was an*
- 5 *elected official and the individual’s unemployment insurance claim*
- 6 *was based on income solely derived from his or her employment*
- 7 *as an elected official. An individual who is liable pursuant to this*
- 8 *section shall not be eligible for waiver of the overpayment pursuant*
- 9 *to Section 1375.*
- 10 *SEC. 2. Section 1379 of the Unemployment Insurance Code is*
- 11 *amended to read:*

1 1379. The director, subject to this article, may do any or all of
2 the following in the recovery of overpayments of unemployment
3 compensation benefits:

4 (a) File a civil action against the liable person for the recovery
5 of the amount of the overpayment within one year after any of the
6 following, or, in cases where the individual has been overpaid
7 benefits due to fraud, misrepresentation, or nondisclosure as
8 described in Section 1375.1, within three years of any of the
9 following:

10 (1) The mailing or personal service of the notice of overpayment
11 determination if the person affected does not file an appeal to an
12 administrative law judge.

13 (2) The mailing of the decision of the administrative law judge
14 if the person affected does not initiate a further appeal to the
15 appeals board.

16 (3) The date of the decision of the appeals board.

17 (b) Initiate proceedings for a summary judgment against the
18 liable person. However, this subdivision applies only where the
19 director has found, pursuant to Section 1375, that the overpayment
20 may not be waived because it was due to fraud, misrepresentation,
21 or willful nondisclosure on the part of the recipient *or where the*
22 *director has found an overpayment pursuant to Section 1375.7.*
23 The director may, not later than three years after the overpayment
24 became final, file with the clerk of the proper court in the county
25 from which the overpayment of benefits was paid or in the county
26 in which the claimant resides, a certificate containing all of the
27 following:

28 (1) The amount due, including ~~the~~ *any* assessment made under
29 Section 1375.1, plus interest from the date that the initial
30 determination of overpayment was made pursuant to Section 1376.

31 (2) A statement that the director has complied with all the
32 provisions of this article prior to the filing of the certificate.

33 (3) A request that judgment be entered against the liable person
34 in the amount set forth in the certificate.

35 The clerk, immediately upon the filing of the certificate, shall
36 enter a judgment for the State of California against the liable person
37 in the amount set forth in the certificate.

38 For the purposes of this subdivision only, an overpayment is
39 final and due and payable after any of the following:

1 (A) The liable person has not filed an appeal pursuant to Section
2 1377.

3 (B) The liable person has filed an appeal to the administrative
4 law judge and a decision of an administrative law judge has become
5 final.

6 (C) The liable person has filed an appeal to the appeals board
7 and the decision of the appeals board has become final because
8 the liable person has not sought judicial review within the
9 six-month period provided by Section 410.

10 (c) Reduce or vacate a summary judgment by filing a certificate
11 to that effect with the clerk of the proper court.

12 (d) Offset the amount of the overpayment received by the liable
13 person against any amount of benefits to which he or she may
14 become entitled under this division within six years of the date of
15 the mailing or personal service of the notice of overpayment
16 determination.

17 ~~SECTION 1. Section 634.5 of the Unemployment Insurance~~
18 ~~Code is amended to read:~~

19 ~~634.5. Notwithstanding any other provision of law, no provision~~
20 ~~excluding service from “employment” shall apply to any entity~~
21 ~~defined by Section 605 or to any nonprofit organization described~~
22 ~~by Section 608, except as provided by this section. With respect~~
23 ~~to any entity defined by Section 605 or any nonprofit organization~~
24 ~~described by Section 608, “employment” does not include service~~
25 ~~excluded under Sections 629, 631, 635, and 639 to 648, inclusive,~~
26 ~~or service performed in any of the following:~~

27 ~~(a) In the employ of either of the following:~~

28 ~~(1) A church or convention or association of churches.~~

29 ~~(2) An organization which is operated primarily for religious~~
30 ~~purposes and which is operated, supervised, controlled, or~~
31 ~~principally supported by a church or convention or association of~~
32 ~~churches.~~

33 ~~(b) By a duly ordained, commissioned, or licensed minister of~~
34 ~~a church in the exercise of his or her ministry or by a member of~~
35 ~~a religious order in the exercise of duties required by the order.~~

36 ~~(c) In the employ of any entity defined by Section 605, if the~~
37 ~~service is performed by an individual in the exercise of his or her~~
38 ~~duties as any of the following:~~

39 ~~(1) An elected official. An elected official is prohibited from~~
40 ~~receiving unemployment compensation benefits under this chapter~~

1 based on his or her income derived from employment as an elected
2 official. An elected official is deemed to have constructive
3 knowledge of this section, establishing a prima facie case of fraud,
4 if that elected official collects unemployment compensation
5 benefits pursuant to this division.

6 (2) A member of a legislative body or a member of the judiciary
7 of a state or a political subdivision of a state.

8 (3) A member of the tribal council of an Indian tribe as described
9 by subsection (u) of Section 3306 of Title 26 of the United States
10 Code.

11 (4) A member of a State National Guard or Air National Guard.

12 (5) An employee serving on a temporary basis in case of fire,
13 storm, snow, earthquake, flood, or other similar emergency.

14 (6) An employee in a position that, under or pursuant to state
15 or tribal law, is designated as either of the following:

16 (A) A major nontenured policymaking or advisory position.

17 (B) A policymaking or advisory position, the performance of
18 the duties of which ordinarily does not require more than eight
19 hours per week.

20 (7) (A) Except as otherwise provided in subparagraph (B), an
21 election official or election worker if the amount of remuneration
22 reasonably expected to be received by the individual during the
23 calendar year for services as an election official or election worker
24 is less than one thousand dollars (\$1,000).

25 (B) This paragraph shall not take effect unless and until the
26 service is excluded from service to which paragraph (1) of
27 subdivision (a) of Section 3309 of Title 26 of the United States
28 Code applies by reason of exemption under subdivision (b) of
29 Section 3309 of that act.

30 (d) By an individual receiving rehabilitation or remunerative
31 work in a facility conducted for the purpose of carrying out a
32 program of either:

33 (1) Rehabilitation for individuals whose earning capacity is
34 impaired by age or physical or mental deficiency or injury.

35 (2) Providing remunerative work for individuals who because
36 of their impaired physical or mental capacity cannot be readily
37 absorbed in the competitive labor market.

38 (e) By an individual receiving work relief or work training as
39 part of an unemployment work relief or work training program
40 assisted or financed in whole or in part by any of the following:

1 ~~(1) A federal agency.~~

2 ~~(2) An agency of a state or a political subdivision thereof.~~

3 ~~(3) An Indian tribe, as described by subsection (u) of Section~~
4 ~~3306 of Title 26 of the United States Code.~~

5 ~~(f) By a ward or an inmate of a custodial or penal institution~~
6 ~~pursuant to Article 1 (commencing with Section 2700), Article 4~~
7 ~~(commencing with Section 2760), and Article 5 (commencing with~~
8 ~~Section 2780) of Chapter 5 of, and Article 1 (commencing with~~
9 ~~Section 2800) of Chapter 6 of, Title 1 of Part 3 of the Penal Code,~~
10 ~~Section 4649 and Chapter 1 (commencing with Section 4951) of~~
11 ~~Part 4 of Division 4 of the Public Resources Code, and Sections~~
12 ~~883, 884, and 1768 of the Welfare and Institutions Code.~~

13 ~~(g) By an individual under the age of 18 years in the delivery~~
14 ~~or distribution of newspapers or shopping news, not including~~
15 ~~delivery or distribution to any point for subsequent delivery or~~
16 ~~distribution.~~

17 ~~(h) By an individual in the sale of newspapers or magazines to~~
18 ~~ultimate consumers, under an arrangement that includes the~~
19 ~~following conditions:~~

20 ~~(1) The newspapers or magazines are to be sold by the individual~~
21 ~~at a fixed price.~~

22 ~~(2) The individual's compensation is based on retention of the~~
23 ~~excess of the price over the amount at which the newspapers or~~
24 ~~magazines are charged to the individual, whether or not he or she~~
25 ~~is guaranteed a minimum amount of compensation for the service~~
26 ~~or is entitled to be credited with the unsold newspapers or~~
27 ~~magazines that he or she returns.~~

28 ~~(i) (1) Except as otherwise provided in paragraph (2), as a~~
29 ~~substitute employee whose employment does not increase the size~~
30 ~~of the employer's normal workforce, whose employment is~~
31 ~~required by law, and whose employment as a substitute employee~~
32 ~~does not occur on more than 60 days during the base period.~~

33 ~~(2) This subdivision shall not take effect unless and until the~~
34 ~~United States Secretary of Labor, or his or her designee, finds that~~
35 ~~this subdivision is in conformity with federal requirements.~~

36 ~~(j) As a participant in a national service program carried out~~
37 ~~using assistance provided under Section 12571 of Title 42 of the~~
38 ~~United States Code.~~

39 ~~SEC. 2. Not later than July 1, 2011, the Employment~~
40 ~~Development Department shall adopt regulations to clarify that~~

1 ~~paragraph (1) of subdivision (c) of Section 634.5 of the~~
2 ~~Unemployment Insurance Code excludes elected officials from~~
3 ~~coverage under the unemployment insurance compensation system~~
4 ~~for purposes of benefit eligibility. The department shall also revise~~
5 ~~current language in the California Employment Guide to state that~~
6 ~~an elected official is not eligible to collect unemployment benefits~~
7 ~~based on income earned from his or her service as an elected~~
8 ~~official.~~

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