

By: Representative Sanford

To: Appropriations

HOUSE BILL NO. 1431

1 AN ACT TO AMEND SECTION 71-5-19, MISSISSIPPI CODE OF 1972, TO
 2 PROVIDE THAT IF A PERSON DISAGREES THAT AN OVERPAYMENT OF BENEFITS
 3 HAS OCCURRED OR THAT THE OVERPAYMENT WAS THROUGH NO FAULT OF THE
 4 PERSON, HE OR SHE SHALL HAVE THE RIGHT TO APPEAL TO THE DEPARTMENT
 5 OF EMPLOYMENT SECURITY; TO PROVIDE THAT THE DEPARTMENT OF
 6 EMPLOYMENT SECURITY SHALL WAIVE THE RIGHT OF RECOVERY OF ANY
 7 OVERPAID BENEFITS RECEIVED BY ANY PERSON WHO HAS RECEIVED BENEFITS
 8 UNDER THIS CHAPTER WHEN CERTAIN CONDITIONS ARE MET; AND FOR
 9 RELATED PURPOSES.

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

11 **SECTION 1.** Section 71-5-19, Mississippi Code of 1972, is
 12 amended as follows:

13 71-5-19. (1) Whoever makes a false statement or
 14 representation knowing it to be false, or knowingly fails to
 15 disclose a material fact, to obtain or increase any benefit or
 16 other payment under this chapter or under an employment security
 17 law of any other state, of the federal government or of a foreign
 18 government, either for himself or for any other person, shall be
 19 punished by a fine of not less than One Hundred Dollars (\$100.00)
 20 nor more than Five Hundred Dollars (\$500.00), or by imprisonment
 21 for not longer than thirty (30) days, or by both such fine and



22 imprisonment; and each such false statement or representation or
23 failure to disclose a material fact shall constitute a separate
24 offense.

25 (2) Any employing unit, any officer or agent of an employing
26 unit or any other person who makes a false statement or
27 representation knowing it to be false, or who knowingly fails to
28 disclose a material fact, to prevent or reduce the payment of
29 benefits to any individual entitled thereto, or to avoid becoming
30 or remaining subject hereto, or to avoid or reduce any
31 contribution or other payment required from any employing unit
32 under this chapter, or who willfully fails or refuses to make any
33 such contribution or other payment, or to furnish any reports
34 required hereunder or to produce or permit the inspection or
35 copying of records as required hereunder, shall be punished by a
36 fine of not less than One Hundred Dollars (\$100.00) nor more than
37 One Thousand Dollars (\$1,000.00), or by imprisonment for not
38 longer than sixty (60) days, or by both such fine and
39 imprisonment; and each such false statement, or representation, or
40 failure to disclose a material fact, and each day of such failure
41 or refusal shall constitute a separate offense. In lieu of such
42 fine and imprisonment, the employing unit or representative, or
43 both employing unit and representative, if such representative is
44 an employing unit in this state and is found to be a party to such
45 violation, shall not be eligible for a contributions rate of less
46 than five and four-tenths percent (5.4%) for the tax year in which



47 such violation is discovered by the department and for the next
48 two (2) succeeding tax years.

49 (3) Any person who shall willfully violate any provision of
50 this chapter or any other rule or regulation thereunder, the
51 violation of which is made unlawful or the observance of which is
52 required under the terms of this chapter and for which a penalty
53 is neither prescribed herein nor provided by any other applicable
54 statute, shall be punished by a fine of not less than One Hundred
55 Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00),
56 or by imprisonment for not longer than sixty (60) days, or by both
57 such fine and imprisonment; and each day such violation continues
58 shall be deemed to be a separate offense. In lieu of such fine
59 and imprisonment, the employing unit or representative, or both
60 employing unit and representative, if such representative is an
61 employing unit in this state and is found to be a party to such
62 violation, shall not be eligible for a contributions rate of less
63 than five and four-tenths percent (5.4%) for the tax year in which
64 the violation is discovered by the department and for the next two
65 (2) succeeding tax years.

66 (4) (a) An overpayment of benefits occurs when a person
67 receives benefits under this chapter:

68 (i) While any conditions for the receipt of
69 benefits imposed by this chapter were not fulfilled in his case;

70 (ii) While he was disqualified from receiving
71 benefits; or



72 (iii) When such person receives benefits and is
73 later found to be disqualified or ineligible for any reason,
74 including, but not limited to, a redetermination or reversal by
75 the department or the courts of a previous decision to award such
76 person benefits.

77 (b) Any person receiving an overpayment shall, in the
78 discretion of the department, be liable to have such sum deducted
79 from any future benefits payable to him under this chapter and
80 shall be liable to repay to the department for the Unemployment
81 Compensation Fund a sum equal to the overpayment amount so
82 received by him; and such sum shall be collectible in the manner
83 provided in Sections 71-5-363 through 71-5-383 for the collection
84 of past-due contributions. In addition to Sections 71-5-363
85 through 71-5-383, the following shall apply to cases involving
86 damages for overpaid unemployment benefits which have been
87 obtained and/or received through fraud as defined by department
88 regulations and laws governing the department. By definition,
89 fraud can include failure to report earnings while filing for
90 unemployment benefits. In the event of fraud, a penalty of twenty
91 percent (20%) of the amount of the overpayment shall be assessed.
92 Three-fourths (3/4) of that twenty percent (20%) penalty shall be
93 deposited into the unemployment trust fund and shall be used only
94 for the purpose of payment of unemployment benefits. The
95 remainder of that twenty percent (20%) penalty shall be deposited
96 into the Special Employment Security Administrative Fund.



97 Interest on the overpayment balance shall accrue at a rate of one
98 percent (1%) per month on the unpaid balance until repaid and
99 shall be deposited into the Special Employment Security
100 Administration Fund. All interest, penalties and damages
101 deposited into the Special Employment Security Administration Fund
102 shall be used by the department for administration of the
103 Mississippi Department of Employment Security. If the person
104 disagrees that an overpayment of benefits has occurred or that the
105 overpayment was through no fault of the person, he or she shall
106 have the right to appeal to the department.

107 (c) The issue of waiver of the right of recovery of any
108 overpayment of benefits shall be heard upon any appeal of such
109 determination or assessment of overpayment. The department shall
110 wave the right of recovery of any overpaid benefits received by
111 any person who has received benefits under this chapter when all
112 of the following conditions are met:

113 (i) The receipt of the benefits does not meet the
114 fraud provisions of this chapter;

115 (ii) The overpayment was without fault of the
116 person or was entirely the fault of the department; and

117 (iii) The recovery of the benefits would be
118 against equity and good conscience.

119 (c) Any such judgment against such person for
120 collection of such overpayment shall be in the form of a
121 seven-year renewable lien. Unless action be brought thereon prior



122 to expiration of the lien, the department must refile the notice
123 of the lien prior to its expiration at the end of seven (7) years.
124 There shall be no limit upon the number of times the department
125 may refile notices of liens for collection of overpayments.

126 (d) All warrants issued by the department for the
127 collection of any unemployment tax or for an overpayment of
128 benefits imposed by statute and collected by the department shall
129 be used to levy on salaries, compensation or other monies due the
130 delinquent employer or claimant. No such warrant shall be issued
131 until after the delinquent employer or claimant has exhausted all
132 appeal rights associated with the debt. The warrants shall be
133 served by mail or by delivery by an agent of the department on the
134 person or entity responsible or liable for the payment of the
135 monies due the delinquent employer or claimant. Once served, the
136 employer or other person owing compensation due the delinquent
137 employer or claimant shall pay the monies over to the department
138 in complete or partial satisfaction of the liability. An answer
139 shall be made within thirty (30) days after service of the warrant
140 in the form and manner determined satisfactory by the department.
141 Failure to pay the money over to the department as required by
142 this section shall result in the served party being personally
143 liable for the full amount of the monies owed and the levy and
144 collection process may be issued against the party in the same
145 manner as other debts owed to the department. Except as otherwise
146 provided by this section, the answer, the amount payable under the



147 warrant and the obligation of the payor to continue payment shall
148 be governed by the garnishment laws of this state but shall be
149 payable to the department.

150 (5) The department, by agreement with another state or the
151 United States, as provided under Section 303(g) of the Social
152 Security Act, may recover any overpayment of benefits paid to any
153 individual under the laws of this state or of another state or
154 under an unemployment benefit program of the United States. Any
155 overpayments subject to this subsection may be deducted from any
156 future benefits payable to the individual under the laws of this
157 state or of another state or under an unemployment program of the
158 United States.

159 **SECTION 2.** This act shall take effect and be in force from
160 and after July 1, 2022.

