

Regular Session, 2014

SENATE BILL NO. 372

BY SENATOR MARTINY

UNEMPLOYMENT COMP. To provide for auditing of employer records for unemployment compensation. (2/3-CA7s2.1) (8/1/14)

AN ACT

To amend and reenact R.S. 23:1660(C), (D), (E), (F), and (G) and to enact R.S. 23:1660(H), relative to unemployment insurance; to provide for audits; to provide for administrative penalties for noncompliance with audits; to provide for reimbursement of administrative penalties; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 23:1660(C), (D), (E), (F), and (G) are hereby amended and reenacted and R.S. 23:1660(H) is hereby enacted to read as follows:

§1660. Employment records and reports; inspection by administrator; confidentiality of records; prohibition against subpoena

* * *

C. (1) If, in response to the administrator's request, an employer refuses to allow an audit of its records; fails to make all necessary records available for audit or inspection; or in response to a fraud investigation, fails to provide a claimant's weekly wage information; the employer may be assessed an administrative penalty of five thousand dollars.

(2) Any notice requesting records as provided for in Paragraph (1) of

1 this Subsection must clearly state that a penalty of up to five thousand dollars
2 may be assessed for the failure to provide the records which are requested by
3 the administrator.

4 (3) Any penalties assessed and collected against the employer shall be
5 credited to the penalty and interest account.

6 (4) Upon the conclusion of an audit pursuant to this Subsection, the
7 administrator may refund the administrative penalty to the employer, minus all
8 administrative costs associated with the audit request.

9 D.(1) Information, statements, transcriptions of proceedings, transcriptions
10 of recordings, electronic recordings, letters, memoranda, and other documents and
11 reports thus obtained, or obtained from any individual, claimant, employing unit, or
12 employer pursuant to the administration of this Chapter, except to the extent
13 necessary for the proper administration and enforcement of this Chapter, shall be
14 held confidential and shall not be subject to subpoena in any civil action or
15 proceeding, nor be published or open to public inspection, other than to public
16 employees in the performance of their public duties, including the office of workers'
17 compensation in any manner revealing the individual's or employing unit's identity.
18 However, if requested, an employing unit or employer shall receive with any "notice
19 to appear for a hearing" a copy of the statement which the claimant made regarding
20 his separation from that employing unit or employer and in the same manner, and on
21 the same subject, the claimant shall receive a copy of the employer's statement.
22 Additionally, any claimant or his duly authorized representative, at a hearing before
23 an appeal referee or the board of review, shall be supplied with information from
24 such records to the extent necessary for the proper presentation of his claim.

25 (2) Any person who violates any provision of this Section shall be fined not
26 less than twenty dollars nor more than five hundred dollars, or imprisoned for not
27 less than ten days nor more than ninety days, or both.

28 ~~D.E.~~ On orders of the administrator, any records or documents received or
29 maintained by him under the provisions of this Chapter, or the rules and regulations

1 promulgated thereunder, may be destroyed under such safeguards as will protect
2 their confidential nature two years after the date on which such records or documents
3 last serve any useful, legal, or administrative purpose in the administration of this
4 Chapter or in the protection of the rights of anyone.

5 ~~EF~~. Any such information, as provided in Subsection C of this Section, that
6 is released to any public employee in the performance of public duties, may be
7 released on a reimbursable basis and shall be used exclusively for execution of
8 intended public duties and shall not, under any circumstance, be accessed and used
9 for any other purpose, subject to sanction of any such public employee under
10 Paragraph (2) of Subsection C of this Section. The administrator and the office of
11 employment security shall not be liable for any violation by any such public
12 employee to whom such information has been disclosed or delegated.

13 ~~FG~~. A state or local child support enforcement agency may provide access
14 to disclosed information to any agent that is under written contract with such agency
15 for purposes of establishing and collecting child support obligations from and
16 locating individuals owing such obligations. Any such designated agent of a state or
17 local child support agency that receives such information shall fully comply with the
18 safeguards established under Subsection E of this Section, subject to sanction under
19 Paragraph (2) of Subsection C of this Section.

20 ~~GH~~.(1) The Governor's Office of Workforce Commission, the division of
21 administration, or any contractor working on behalf of either of them, may be
22 provided employment data obtained pursuant to the administration of this Chapter
23 for any one of the expressly stated following purposes:

24 (a) Compiling statistics which would support performance management and
25 evaluation by program managers of state and federal programs, especially as it
26 relates to employment outcomes.

27 (b) Compiling statistics which would assist in the preparation of common
28 performance reports across agencies.

29 (c) Compiling statistics for education and training research purposes,

1 including longitudinal studies to assist in program improvement and design.

2 (2) Any employment data, provided pursuant to this Subsection, will be
3 confidential. No public employee or contractor acting on behalf of a state agency or
4 employee of such contractor may:

5 (a) Use any data, provided pursuant to this Subsection, for any purpose other
6 than the statistical purposes for which the data is furnished.

7 (b) Make public any of the data, provided pursuant to this Subsection, which
8 would allow the identity of any individual or employing unit to be inferred by either
9 direct or indirect means.

10 (3)(a) Any such data, as provided in this Subsection, that is released to any
11 state agency or any contractor acting on behalf of a state agency pursuant to this
12 Subsection, may be released on a reimbursable basis and shall be used exclusively
13 for execution of intended public duties. Such data shall not, under any circumstance,
14 be accessed and used for any other purpose, subject to sanction as provided for in
15 Subparagraph (c) of this Paragraph of any such employee of such state agency or any
16 contractor acting on behalf of such state agency. The administrator and the office of
17 employment security shall not be liable for any violation by any employee of the
18 Governor's Office of Workforce Commission, the division of administration, or any
19 contractor working on behalf of either of them, to whom such information has been
20 disclosed or delegated in accordance with the provisions of this Subsection.

21 (b) Any such data, as provided in this Subsection, that is received by any state
22 agency or any contractor acting on behalf of a state agency pursuant to this
23 Subsection, must be destroyed within thirty days of completion of its intended
24 purpose as described in this Subsection.

25 (c) Any person who violates any provision of this Subsection shall be fined
26 not less than one thousand dollars nor more than twenty thousand dollars or
27 imprisoned for not less than thirty days nor more than six months, or both.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Carla S. Roberts.

DIGEST

Martiny (SB 372)

Present law provides that each employer shall keep true and accurate employee wage records containing such information as the unemployment benefits administrator may prescribe.

Present law provides that employee wage records shall be open to inspection and be subject to being copied by the administrator or his authorized representatives at any time and as often as may be necessary.

Present law provides that each employer shall keep records of and report to the administrator quarterly the street address of each establishment, branch, outlet, or office of such employer, the nature of the operation, the number of persons employed and the wages paid at each establishment, branch, outlet, or office.

Present law provides that the administrator may require from any employer any sworn or unsworn reports deemed necessary for the effective administration of the unemployment insurance program.

Proposed law retains present law but provides that if, in response to the administrator's request, an employer refuses to allow an audit of its records; fails to make all necessary records available for audit or inspection; or in response to a fraud investigation, fails to provide a claimant's weekly wage information; the employer may be assessed an administrative penalty (i.e., a civil fine) of \$5,000.00.

Proposed law retains present law but provides that any notice requesting such information must clearly state that a penalty (i.e., civil fine) of \$5,000 may be assessed for the failure to provide the information.

Proposed law provides that any penalties so assessed and collected shall be credited to the penalty and interest account held by the unemployment administrator. Once an audit has been resolved, the administrator may refund the administrative penalty less all administrative costs associated with the audit request.

Effective August 1, 2014.

(Amends R.S. 23:1660(C), (D), (E), (F), and (G); adds R.S. 23:1660(H))