

SENATE BILL NO. 85

INTRODUCED BY E. BUTTREY

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING ADDITIONAL METHODS FOR COLLECTING DEBTS OWED TO THE UNEMPLOYMENT INSURANCE FUND; AMENDING SECTIONS 39-51-1307 AND 39-51-3206, MCA; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 39-51-1307, MCA, is amended to read:

**"39-51-1307. Collection of unpaid taxes, penalties, and interest by offset.** (1) To collect delinquent taxes, penalties, and interest, the department may direct the offset of any funds due the debtor from the state, except wages subject to the provisions of 25-13-614 and retirement benefits. The department, through the department of revenue, shall provide the debtor with notice of the right to request a hearing on the offset action. A request for hearing must be made within 30 days of the date of the notice.

(2) Subject to approval by the department, reasonable fees or costs of collection incurred by the department of revenue may be added to the amount of the debt, including added fees or costs. The debtor is liable for repayment of the amount of the debt plus fees or costs added pursuant to this subsection. All money collected must be returned to the department to be applied to the debt, except that all fees or costs collected must be retained by the department of revenue. If less than the full amount of the debt is collected, the department of revenue shall retain only a proportionate share of the collection fees or costs.

(3) The department may file a claim for state funds on behalf of the employer if a claim is required before funds are available for offset.

(4) The debt need not be determined to be uncollectible as provided for in 39-51-3207 before being transferred for offset.

(5) The department may direct the offset of funds owed to a person under 26 U.S.C. 6402 if the person owes a covered unemployment insurance tax debt. For the purposes of this subsection, "covered unemployment insurance tax debt" means:

(a) employer contributions, penalties, and interest owed to the unemployment insurance fund for which

1 the department determines a person is liable and which remain uncollected; and  
 2 (b) any costs or processing fees associated with obtaining an offset for a covered unemployment  
 3 insurance tax debt."

4  
 5 **Section 2.** Section 39-51-3206, MCA, is amended to read:  
 6 **"39-51-3206. Collection of benefit overpayments.** (1) A person who receives benefits not authorized  
 7 by this chapter shall repay to the department either directly or, as authorized by the department, by offset of future  
 8 benefits to which the claimant may be entitled, or by a combination of both methods, a sum equal to the amount  
 9 of the overpayment.

10 (2) The department may collect a benefit overpayment and any penalty:  
 11 (a) by having the claimant pay the amount owed directly to the department by check, money order, credit  
 12 card, debit card, or electronic funds transfer;

13 (b) by offsetting the amount of the overpaid benefits owed against future unemployment benefits to be  
 14 received by the claimant; or  
 15 (c) as provided in 39-51-3208.

16 (3) The claimant is responsible for any:  
 17 (a) penalty established in accordance with 39-51-3201; ~~and~~  
 18 (b) costs or processing fees associated with using the repayment methods set out in subsection (2)(a);

19 and  
 20 (c) costs or processing fees associated with obtaining an offset as provided in subsection (7)(a).

21 (4) (a) The department may enter into an agreement with a claimant for:  
 22 (i) ~~for~~ the repayment of any benefit overpayment and penalty ~~provided that~~ if repayment in full is made  
 23 within 5 years of the date that it was established that an overpayment occurred; ~~or~~

24 (ii) a lump-sum repayment to collect a benefit overpayment if the benefit overpayment was not the result  
 25 of a false claim, a misrepresentation, or failure to disclose a material fact by the claimant.

26 (b) The agreement must provide that:  
 27 (i) the lump-sum repayment amount is more than 50% of the amount due; and  
 28 (ii) the remaining unpaid amount of the benefit overpayment is a debt that is forgiven if the claimant does  
 29 not, in conjunction with a claim for unemployment benefits, make a false claim or misrepresentation or fail to  
 30 disclose a material fact during the 2-year period following the claimant's repayment of the lump-sum amount

1 agreed to in subsection (4)(a)(ii).

2 (5) (a) Except as provided in subsection (5)(b), a benefit offset may not exceed 50% of the weekly  
3 benefits to which a claimant is entitled unless the claimant gives ~~written~~ consent.

4 (b) In cases of theft or fraud or when benefit overpayments have been made to winners of a state lottery  
5 as provided in 39-51-3208, benefits may be offset by as much as 100% of the weekly benefits to which a claimant  
6 is entitled.

7 (6) (a) The department may collect any benefit overpayment and penalty by directing the offset of any  
8 funds due the claimant from the state, except future unemployment benefits as provided in subsection (1) and  
9 retirement benefits. The department, through the department of revenue or through the state lottery commission  
10 established in 23-7-201 if overpayment is to be collected as provided in 39-51-3208, shall provide the claimant  
11 with notice of the right to request a hearing on the offset action. A request for hearing must be made within 30  
12 days of the date of the notice.

13 (b) The debt does not have to be determined to be uncollectible before being transferred for offset.

14 (7) (a) The department may direct the offset of funds owed to a person under 26 U.S.C. 6402 if the  
15 person owes a covered unemployment compensation benefit debt.

16 (b) For the purposes of this subsection (7), "covered unemployment compensation benefit debt" means:  
17 ~~——(i) a benefit overpayment and penalty owed because of the erroneous payment of unemployment~~  
18 ~~compensation resulting from fraud, which that has been adjudicated as a debt under Montana law and has~~  
19 ~~remained uncollected for not more than 10 years; and that is owed because of:~~

20 (i) the erroneous payment of unemployment compensation resulting from the person's own fraud; or

21 ~~(ii) employer contributions, penalty, and interest owed to the unemployment trust fund that the department~~  
22 ~~determines are attributable to fraud and that have remained uncollected for not more than 10 years; the person's~~  
23 ~~failure to report earnings, irrespective of whether this failure constitutes fraud.~~

24 (8) If, upon demand of the department, the claimant fails to make the payments provided for in this  
25 section, the unpaid benefit overpayment and associated penalty may be treated as a judgment against the  
26 claimant at the time the payments become due. The department may issue a certificate setting forth the amount  
27 of payment due and direct the clerk of the district court of any county in the state to enter the certificate as a  
28 judgment on the docket pursuant to 25-9-301. From the time the judgment is docketed, it becomes a lien upon  
29 all real property of the claimant. The department may enforce the judgment at any time within 10 years of creation  
30 of the lien.

- 1 (9) The department may waive the benefit overpayment if the department finds that:
- 2 (a) the claimant did not conceal or misrepresent material facts to obtain the overpaid benefits and that
- 3 recovery of the benefit overpayment would cause a long-term financial hardship on the claimant; or
- 4 (b) the overpayment was the result of department error.
- 5 (10) An action for collection of overpaid benefits must be brought within 5 years after the date of the
- 6 overpayment.
- 7 (11) Notwithstanding any other provision of this chapter, the department may recover an overpayment
- 8 of benefits paid to any individual under the laws of this state or another state or under an unemployment benefit
- 9 program of the United States."

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11 NEW SECTION. **Section 3. Effective date.** [This act] is effective July 1, 2015.

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13 NEW SECTION. **Section 4. Retroactive applicability.** [This act] applies retroactively, within the

14 meaning of 1-2-109, to debts incurred on or before [the effective date of this act].

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