STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

HOUSE BILL NO. 2728 By: Toure

AS INTRODUCED

An Act relating to labor; amending 40 O.S. 1991, Sections 1-208, 1-218 and 2-203, as amended by Sections 1, 4 and 7, Chapter 219, O.S.L. 1993, 2-402, 2-503, as last amended by Section 10, Chapter 340, O.S.L. 1995, 3-203 and 3-503, as amended by Sections 15 and 26, Chapter 219, O.S.L. 1993, 4-508, as last amended by Section 20, Chapter 340, O.S.L. 1995, and 5-102 (40 O.S. Supp. 1995, Sections 1-208, 1-218, 2-203, 2-503, 3-203, 3-503 and 4-508), which relate to the Employment Security Act of 1980; modifying definitions of "employer"and "wages"; defining terms related to filing; modifying method of filing a claim; providing for ineligibility to receive certain unemployment compensation after determination of certain violations; providing for disqualification to receive certain unemployment compensation after determination of certain violations; providing that such ineligibility and disqualification are in addition to other penalties; requiring certain due process and providing procedures for denial or termination of an election for an employer to be subject to this act; modifying period of lien continuance; authorizing the Department of Labor,

the Workers' Compensation Court and the University of Oklahoma to have access to certain confidential information; prohibiting certain disclosure and public inspection of certain records; providing certain exceptions; adding certain penalties; specifying such penalties; providing for codification; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 40 O.S. 1991, Section 1-208, as amended by Section 1, Chapter 219, O.S.L. 1993 (40 O.S. Supp. 1995, Section 1-208), is amended to read as follows:

Section 1-208. EMPLOYER. "Employer" means:

(1) Any employing unit ~~which, after December 31, 1971~~, except as provided under paragraphs ~~(12)~~ (10) and ~~(13)~~ (11) of this section, which,

(a) For some portion of a day, but not necessarily simultaneously, in each of twenty (20) different calendar weeks, whether or not such weeks are or were consecutive within either the current or the preceding calendar year, and for the purpose of this definition if any week includes both December 31 and January 1, the days up to January 1 shall be deemed one (1) calendar week and the days beginning January 1 another such week, has or had in employment one or more individuals, irrespective of whether the same individuals are or were employed in each such day; or

(b) In any calendar quarter, in either the current or preceding calendar year paid for service in employment

wages of One Thousand Five Hundred Dollars ($1,500.00) or more;

(2) Any individual or employing unit, whether or not an employing unit at the time of the acquisition, which acquired substantially all of the organization, trade, business, or assets thereof, of another which at the time of such acquisition was an employer subject to this act; or which acquired a part of the organization, trade, or business of another employing unit which at the time of such acquisition was an employer subject to this act;

(3) Any individual or employing unit, whether or not an employing unit at the time of acquisition, which acquired substantially all of the organization, trade, business, or assets thereof, of another employing unit, if the employment record of such individual or employing unit subsequent to such acquisition, together with the employment record of the acquired unit prior to such acquisition, both within the same calendar year, would be sufficient to constitute an employing unit and employer subject to this act under paragraph (1) of this section; or any individual or employing unit which acquired substantially all of the organization, trade, business, or assets of another employing unit if such employing unit subsequent to such acquisition, and such acquired unit prior to such acquisition, both within the same calendar quarter, together paid for service in employment wages totaling One Thousand Five Hundred Dollars ($1,500.00) or more;

(4) Any employing unit which, together with one or more other employing units, is owned or controlled, by legally enforceable means or otherwise, directly by the same interest, or which owns or controls one or more other employing units, by legally enforceable means or otherwise, and which, if treated as a single unit with such other employing unit, would be an employer under paragraph (1) of this section;

(5) Any employing unit which, having become an employer under paragraphs (1), (2), (3), (4), ~~(9)~~ (8), ~~(12)~~ (10) or ~~(13)~~ (11) of this section has not, under Section 3-202 of this title, ceased to be an employer subject to this act;

(6) For the effective period of its election pursuant to Section 3-203 of this title any other employing unit which has elected to become subject to this act;

(7) ~~Any department of this state and other states and instrumentalities of both thereof for which service in employment, as defined in paragraph (2) of Section 1-210 of this title, is performed after December 31, 1971, except as provided under paragraphs (12) and (13) of this section;~~

~~(8) Any department of the State of Oklahoma for which service in employment, as defined in paragraph (3) of Section 1-210 of this title, is performed after December 31, 1971, and any~~ Any department of the State of Oklahoma ~~and~~, any other ~~states~~ state, and all instrumentalities ~~of both~~ thereof, including any political subdivisions and their instrumentalities, for which service in employment, as defined in paragraph (3) of Section 1-210 of this title, is performed ~~after December 31, 1977~~, except as provided under subsections ~~(12)~~ (10) and ~~(13)~~ (11) of this section;

~~(9)~~ (8) Any employing unit for which service in employment, as defined in paragraph (4) of Section 1-210 of this title, is performed ~~after December 31, 1971~~, except as provided under paragraphs ~~(12)~~ (10) and ~~(13)~~ (11) of this section;

~~(10)~~ (9) For purposes of paragraphs (1), ~~(9)~~ (8), ~~(12)~~ (10) and ~~(13)~~ (11) of this section, employment shall include service which would constitute employment but for the fact that such service is deemed to be performed entirely within another state pursuant to an election under an arrangement entered into in accordance with Section 4-702 of this title by the Commission and an agency charged

with the administration of any other state or federal unemployment compensation law;

~~(11) Any political subdivision of the State of Oklahoma which elected to become an employer and for which service in employment, as authorized and defined by 40 O.S. 1971, Section 238, was performed after December 31, 1971, and prior to January 1, 1978;~~

~~(12)~~ (10) Any employing unit for which agricultural labor as defined in paragraph (5) of Section 1-210 of this title is performed ~~after December 31, 1977~~. In determining whether or not an employing unit for which service other than agricultural labor is also performed is an employer under paragraphs (1), (7), (8), ~~(9) and (13)~~ or (11) of this section, the wages earned or the employment of an employee performing service in agricultural labor ~~after December 31, 1977~~, shall not be taken into account;

~~(13)~~ (11) Any employing unit for which domestic service in employment as defined in paragraph (6) of Section 1-210 of this title is performed ~~after December 31, 1977~~. In determining whether or not an employing unit for which service other than domestic service is also performed is an employer under paragraphs (1), (7), (8)~~, (9)~~ or ~~(12)~~ (10) of this section, the wages earned or the employment of an employee performing domestic service ~~after December 31, 1977,~~ shall not be taken into account; or

~~(14)~~ (12) Any employing unit which is not an employer by reason of any other provisions of this act shall nevertheless be an "employer" if either

(a) within the current or preceding calendar year, service is or was performed, with respect to which such employing unit is liable for any federal tax against which credit may be taken by such employing unit for contributions required to be paid by it into a state unemployment fund, or

(b) such employing unit is required to be an "employer" as a condition for approval of this act for full tax credit to be allowed against the tax imposed by the Federal Unemployment Tax Act, 26 U.S.C., Section 3301 et seq.

SECTION 2. AMENDATORY 40 O.S. 1991, Section 1-218, as amended by Section 4, Chapter 219, O.S.L. 1993 (40 O.S. Supp. 1995, Section 1-218), is amended to read as follows:

Section 1-218. WAGES. "Wages" means all remuneration for services from whatever source, including commissions and bonuses and the cash value of all remuneration in any medium other than cash, and includes dismissal payments which the employer is required by law or contract to make. Gratuities customarily received by an individual in the course of his work from persons other than his employing unit shall be treated as wages received from his employing unit. The reasonable cash value of remuneration in any medium other than cash, and the reasonable amount of gratuities, shall be estimated and determined in accordance with rules prescribed by the Commission. The term wages shall not include:

1. The amount of any payment, with respect to services performed ~~after June 30, 1951~~, to or on behalf of an individual in its employ under a plan or system established by an employing unit which makes provision for individuals in its employ generally, or for a class or classes of such individuals, including any amount paid by an employing unit for insurance or annuities, or into a fund to provide for any such payment, on account of:

a. retirement,

b. sickness or accident disability,

c. medical and hospitalization expenses in connection with sickness or accident disability,

d. death, provided the individual in its employ:

(1) has not the option to receive, instead of provision for such death benefit, any part of such payment, or if such death benefit is insured, any part of the premium or contributions to premiums paid by his employing unit, and

(2) has not the right, under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit, or to receive cash consideration in lieu of such benefit either upon his withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of his services with such employing unit, or

e. a bona fide thrift or savings fund, providing:

(1) such payment is conditioned upon a payment of a substantial sum by such individuals in its employ, and

(2) that such sum paid by the employing unit cannot under the provisions of such plan be withdrawn by an individual more frequently than once in any twelve-month period, except upon an individual's separation from that employment;

2. Any payment made to, or on behalf of, an employee or his or her beneficiary under a cafeteria plan of the type described in 26 U.S.C., Section 125 and referred to in 26 U.S.C., Section 3306(b)(5)(G);

3. Any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under an educational assistance program as described in 26 U.S.C., Section

127 or a dependent care assistance program as described in 26 U.S.C., Section 129 and as referred to in 26 U.S.C., Section 3306(b)(13);

4. The payment by an employing unit, without deduction from the remuneration of the individual in its employ, of the tax imposed upon such individual in its employ under 26 U.S.C. Section 3101 ~~of the Federal Internal Revenue Code~~ with respect to domestic services in a private home of the employer or for agricultural labor ~~performed after December 31, 1980~~;

5. Dismissal payments which the employer is not required by law or contract to make; or

6. The value of any meals and lodging furnished by or on behalf of an employer to an individual in his employ; provided the meals and lodging are furnished on the business premises of the employer for the convenience of the employer.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-224 of Title 40, unless there is created a duplication in numbering, reads as follows:

For the purposes of Sections 2-503, 2-505, 2-603, 2-606, 3-102, 3-106, 3-111, 3-202, 3-203, 3-301, 3-305, 3-310, 3-806, 3-402, 3-805, and 3-809, the terms "file", "files", or "filed" will be defined as follows:

1. Hand-delivered to an office of the Oklahoma Employment Security Commission by the close of business on or before the date due;

2. Telefaxed to an office of the Oklahoma Employment Security Commission by midnight on or before the date due; or

3. Mailed to an office of the Oklahoma Employment Security Commission on or before the date due. Timely mailing will be determined by the postmark.

SECTION 4. AMENDATORY 40 O.S. 1991, Section 2-203, as amended by Section 7, Chapter 219, O.S.L. 1993 (40 O.S. Supp. 1995, Section 2-203), is amended to read as follows:

Section 2-203. CLAIM. An unemployed individual must file a ~~written~~ claim in writing or by telecommunication for benefits with respect to ~~such~~ each week in accordance with such rule as the Commission may prescribe.

With respect to ~~such~~ each week, he or she must provide the Commission with a true and correct statement of all material facts relating to: his or her unemployment; ability to work; availability for work; activities or conditions which could restrict the individual from seeking or accepting full-time employment immediately; applications for or receipt of workers' compensation benefits; employment and earnings; and the reporting of other income from retirement, pension, disability, self-employment, education or training allowances.

SECTION 5. AMENDATORY 40 O.S. 1991, Section 2-402, is amended to read as follows:

Section 2-402. FRAUD. ~~(1)~~ (A) If the Commission determines that any individual has made a false statement or representation or has failed to disclose a material fact in violation of Section 5-102 of this title, such individual shall be ineligible to receive unemployment compensation for the week in which ~~it is so determined~~ that determination is made by the Commission and for the next following fifty-one (51) weeks, and no benefit or base year shall be established during such period of ineligibility. After an individual has been determined to have violated Section 5-102 of this title in a particular benefit year, if the Commission determines that another violation of that section has occurred in any subsequent benefit year, the individual shall be ineligible to receive unemployment compensation for the week in which the subsequent determination is made by the Commission and for the next

following one hundred and three (103) weeks, and no benefit or base year shall be established during such period of ineligibility.

(B) If the Commission makes a determination as described in subsection (A) of this section, the individual shall be disqualified from receiving any unemployment benefits for each week benefits were paid to the individual as a result of a false statement or representation or a failure to disclose a material fact, and the individual shall be deemed overpaid for the entire amount of benefits paid as a result of claimant fraud.

~~(2) Such~~ (C) The ineligibility ~~is~~ and disqualification set forth in subsections (A) and (B) of this section are in addition to the penalty provided by Section 5-102 of this title, and shall be invoked irrespective of whether such individual is prosecuted for violation of Section 5-102 of this title, when the Commission makes such a determination of ineligibility or disqualification. This section shall not apply to a determination made more than two (2) years after such violation occurred.

SECTION 6. AMENDATORY 40 O.S. 1991, Section 2-503, as last amended by Section 10, Chapter 340, O.S.L. 1995 (40 O.S. Supp. 1995, Section 2-503), is amended to read as follows:

Section 2-503. CLAIMS, NOTICES AND OBJECTIONS. A. Claims for benefits shall be made in accordance with such rule as the Commission may prescribe.

B. Promptly after the initial claim is filed the Commission shall give written notice of the claim to the last employer of the claimant for whom he or she worked at least fifteen (15) working days.

C. Promptly after the claim is paid for the fifth week of benefits the Commission shall give written notice of the claim to all other employers of the claimant during his base period. Such notice may be the notice required by Section 3-106 of this title.

D. Notices shall be deemed given when the Commission deposits the same in the United States mail addressed to the employer's last-known address. Notice shall be presumed prima facie to have been given to the employer to whom addressed on the date stated in the written notice.

E. Within ten (10) days after the date of the notice addressed to him or her, an employer may ~~mail to~~ file with the Commission at the address prescribed in the notice, written objections to the claim setting forth specifically the facts which:

1. Make the claimant ineligible for benefits under Sections 2-201 through 2-209 of this title;

2. Disqualify the claimant from benefits under Sections 2-401 through 2-418 of this title; or

3. Relieve such employer from being charged for the benefits wages of such claimant.

SECTION 7. AMENDATORY 40 O.S. 1991, Section 3-203, as amended by Section 15, Chapter 219, O.S.L. 1993 (40 O.S. Supp. 1995, Section 3-203), is amended to read as follows:

Section 3-203. ELECTION BY EMPLOYER. A. An employing unit, not otherwise subject to this act, which files with the Commission its written election to become an employer subject hereto for not less than two (2) calendar years shall, with the written approval of ~~such~~ the election by the Commission, become an employer subject hereto to the same extent as all other employers, as of the date stated in ~~such~~ the approval, and shall cease to be subject hereto as of January 1 of any calendar year subsequent to ~~such~~ the two (2) required calendar years, only if during January of ~~such~~ that year it has filed with the Commission a written application for termination of coverage as provided in this section.

B. Any employing unit for which services that do not constitute employment as defined in this act are performed may file with the Commission a written election that all such services with respect to

which payments are not required under an employment security law of any other state or of the federal government and which are performed by individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment by an employer for all the purposes of this act for not less than two (2) calendar years. Upon the written approval of ~~such~~ the election by the Commission, ~~such~~ the services shall be deemed to constitute employment subject to this act from and after the date stated in ~~such~~ the approval. Such services shall cease to be deemed employment subject hereto as of January 1 of any calendar year subsequent to ~~such~~ the two (2) required calendar years, only if during January of ~~such~~ that year ~~such~~ the employing unit has filed with the Commission a written application for termination of ~~such~~ the coverage.

C. The Commission may terminate the election of an employer or employing unit made pursuant to subsection A or B of this section at any time the Commission determines that the employer or employing unit is not abiding by all requirements of the Employment Security Act of 1980 and the rules for the administration of that act, or if the employer or employing unit that has made an election for coverage becomes delinquent in the payment of its unemployment tax contributions, interest, penalties or fees.

D. If the Commission makes a determination that an application of an employer or employing unit submitted under subsections A or B of this section should be denied, or that a voluntary election should be terminated under subsection C of this section, the Commission shall notify the affected employer or employing unit in writing. The notification of the determination shall be delivered to the employer, or mailed to the employer's last-known address.

E. Within twenty (20) days after the mailing of the notice of determination provided for in this subsection, the employer may file with the Commission or its representative a written protest to the initial determination and request an oral hearing to present

evidence in support of its protest. The Commission or its representative shall, by written notice, advise the employer of the date of hearing, which shall not be less than ten (10) days from the date of the mailing of the written notice. At the discretion of the Commission, the hearing shall be conducted by the Commission, or by a three-member board appointed by the Commission for this purpose. Pursuant to the hearing, the Commission or its representative shall, as soon as practicable:

1. Make an order affirming, modifying or reversing the initial determination;

2. Immediately send to the employer a written notice thereof; and

3. In accordance with the order, notify the employer of any changes in the status of his or her account.

If any employer fails to file its written protest to the initial determination within the period of twenty (20) days, as provided by this subsection, then the initial determination shall be final, and no appeals shall thereafter be allowed.

SECTION 8. AMENDATORY 40 O.S. 1991, Section 3-503, as amended by Section 26, Chapter 219, O.S.L. 1993 (40 O.S. Supp. 1995, Section 3-503), is amended to read as follows:

Section 3-503. FILED WARRANT IS LIEN. The filing of ~~said~~ a warrant in the office of the county clerk of ~~said~~ the county shall constitute and be evidence and notice of the state's lien upon the title to any interest in any real or personal property of the delinquent employer against whom ~~such~~ the warrant is issued. ~~Such~~ The lien shall be in addition to any and all other liens existing in favor of the state to secure the payment of ~~such~~ the unpaid contribution, interest, penalty, fees and costs, and ~~such~~ the lien shall be paramount and superior to all other liens of whatsoever kind or character, attaching to any of ~~said~~ the delinquent employer's property subsequent to the date of ~~such~~ its recording and

shall be in addition to any other lien provided for in this act. This lien on personal and real property shall be permanent and continuing without any requirement for executions under Section 735 of Title 12 of the Oklahoma Statutes or any other similar statute. This lien on personal and real property ~~of~~ in the State of Oklahoma shall continue until the amount of the tax, contribution, penalty, interest and fees are paid. ~~This lien shall continue on real property until released by payment or for a maximum of ten (10) years after the date of its filing.~~

SECTION 9. AMENDATORY 40 O.S. 1991, Section 4-508, as last amended by Section 20, Chapter 340, O.S.L. 1995 (40 O.S. Supp. 1995, Section 4-508), is amended to read as follows:

Section 4-508. INFORMATION TO BE KEPT CONFIDENTIAL - DISCLOSURE. A. Except as otherwise provided by law, information obtained from any employing unit or individual pursuant to the administration of the Employment Security Act of 1980, and determinations as to the benefit rights of any individual shall be held confidential and shall not be disclosed or be open to public inspection in any manner revealing the individual's or employing unit's identity. Any claimant or employer or agent of such person as authorized in writing shall be supplied with information from the records of the Commission, to the extent necessary for the proper presentation of his claim or complaint in any proceeding under the Employment Security Act of 1980, Section 1-101 et seq. of this title, with respect thereto.

B. Upon receipt of written request by any employer who maintains a Supplemental Unemployment Benefit (SUB) Plan, the Commission or its designated representative may release to such employer information regarding weekly benefit amounts paid its workers during a specified temporary layoff period, provided such Supplemental Unemployment Benefit (SUB) Plan requires benefit payment information before Supplemental Unemployment Benefits can be

paid to such workers. Any information disclosed under this provision shall be utilized solely for the purpose outlined herein and shall be held strictly confidential by the employer.

C. The provisions of this section shall not prevent the Commission from disclosing the following information and no liability whatsoever, civil or criminal, shall attach to any member of the Commission or any employee thereof for any error or omission in the disclosure of such information:

1. The delivery to taxpayer or claimant a copy of any report or other paper filed by him pursuant to the provision of the act;

2. The disclosure of information to any person for a purpose as authorized by the taxpayer or claimant pursuant to a waiver of confidentiality. The waiver shall be in writing and shall be notarized;

3. The Oklahoma Department of Commerce may have access to data obtained pursuant to the Oklahoma Employment Security Act of 1980 pursuant to rules promulgated by the Oklahoma Employment Security Commission. The information obtained shall be held confidential by the Department and any of its agents and shall not be disclosed or be open to public inspection. The Oklahoma Department of Commerce, however, may release aggregated data, either by industry or county, provided that such aggregation meets disclosure requirements of the Oklahoma Employment Security Commission;

4. The publication of statistics so classified as to prevent the identification of a particular report and the items thereof;

5. The disclosing of information or evidence to the Attorney General or any district attorney when said information or evidence is to be used by said officials or other parties to the proceedings to prosecute or defend allegations of violations of the act. Said information disclosed to the Attorney General or any district attorney shall be kept confidential by them and not be disclosed except when presented to a court in a prosecution of a violation of

the act, and a violation by the Attorney General or district attorney by otherwise releasing the information shall be a felony;

6. The furnishing, at the discretion of the Commission, of any information disclosed by said records or files to any official person or body of this state, any other state or of the United States who is concerned with the administration of assessment of any similar tax in this state, any other state or the United States;

7. The furnishing of information to other state agencies for the limited purpose of aiding in the collection of debts owed by individuals to said requesting agencies;

8. The release to officials, employees, and agents of the Oklahoma Department of Transportation of information required for use in federally mandated regional transportation planning, which is performed as a part of their official duties;

9. The release to officials, employees and agents of the State Treasurer's office of information required to verify or evaluate the effectiveness of the Oklahoma Small Business Linked Deposit Program on job creation;

10. The release to officials, employees, and agents of the Attorney General ~~or~~, the State Insurance Fund, the Department of Labor or the Workers' Compensation Court for use in investigation of workers' compensation fraud;

11. The release to employees of the Oklahoma State Bureau of Investigation or release to employees of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control for use in criminal investigations and the location of missing persons or fugitives from justice;

12. The release to officials, employees, and agents of the Center of International Trade, Oklahoma State University, of information required for the development of International Trade for employers doing business in the State of Oklahoma; ~~or~~

13. The release to officials, employees, and agents of the Oklahoma State Regents for Higher Education of information required for use in the default prevention efforts and/or collection of defaulted student loans guaranteed by the Oklahoma Guaranteed Student Loan Program. Any information disclosed under this provision shall be utilized solely for the purpose outlined herein and shall be held strictly confidential by the Oklahoma State Regents for Higher Education; or

14. The release to officials, employees, and agents of the Center for Economic and Management Research of the University of Oklahoma, of information required to identify economic trends. The information obtained shall be held confidential by the University and any of its agents and shall not be disclosed or be open to public inspection. The University of Oklahoma may release aggregated data, provided that such aggregation meets disclosure requirements of the Commission.

D. All subpoenas or court orders for production of documents must provide a minimum of twenty (20) days from the date it is served for the Commission to produce the documents. If the date on which production of the documents is required is less than twenty (20) days from the date of service, the subpoena or order shall be considered void on its face as an undue burden or hardship on the Commission.

E. Should any of the disclosures provided for in this section require more than casual or incidental staff time, the Commission may charge the cost of such staff time to the party requesting the information.

F. It is further provided that the provisions of this section shall be strictly interpreted and shall not be construed as permitting the disclosure of any other information contained in the records and files of the Commission.

SECTION 10. AMENDATORY 40 O.S. 1991, Section 5-102, is amended to read as follows:

Section 5-102. FALSE STATEMENT FOR BENEFITS, FAILURE TO DISCLOSE MATERIAL FACT. ~~(1)~~ A. Whoever makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment under this act or under the unemployment compensation law of any state or of the federal government, either for himself or for any other person, shall be guilty of a misdemeanor and shall be punished by a fine of not less than Fifty Dollars ($50.00) nor more than Five Hundred Dollars ($500.00), or by imprisonment for not longer than ninety (90) days, or by both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense for each week of benefits.

~~(2)~~ B. If a person is convicted of the crime described in subsection A in this section in a particular benefit year, and in any subsequent benefit year that person again commits the crime described in subsection A of this section, that person shall be guilty of a misdemeanor and shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00), or by imprisonment for not longer than one hundred and eighty (180) days, or by both fine and imprisonment. Each such false statement or representation or failure to disclose a material fact shall constitute a separate offense for each week of benefits.

C. Upon conviction sentences may be suspended or upon a plea of guilty judgment and sentencing may be deferred only upon the condition of full restitution to the Commission of all benefits so obtained or the excess of any benefits so increased.

SECTION 11. This act shall become effective July 1, 1996.

SECTION 12. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

45-2-8994 MCD