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## CHAPTER 214. OFFENSES, PENALTIES, AND SANCTIONS

### Sec. 214.001. Fraudulently Obtaining Benefits or Other Payment

- (a) A person commits an offense if, to obtain or increase a benefit or other payment, either for the person or another person, under this subtitle, the unemployment compensation law of another state, or any act or program of the United States that is administered by the commission, the person:
  - (1) makes a false statement or representation, knowing it to be false; or
  - (2) knowingly fails to disclose a material fact.
- (b) An offense under this section is a Class A misdemeanor.

### Sec. 214.002. Liability for Improperly Obtaining Benefits

- (a) A person who has received improper benefits is liable for the amount of the improper benefits. The commission may recover improper benefits by:
  - (1) deducting the amount of the improper benefits from any future benefits payable to the person; or
  - (2) collecting the amount of the improper benefits for the compensation fund in the same manner provided by Sections 213.031, 213.032, 213.033, 213.035, and 213.051 for the collection of past due contributions.
- (b) In this section, "**improper benefit**" means the benefit obtained by a person:
  - (1) because of the nondisclosure or misrepresentation by the person or by another of a material fact, without regard to whether the nondisclosure or misrepresentation was known or fraudulent; and
  - (2) while:
    - (A) any condition imposed by this subtitle for the person's qualifying for the benefit was not fulfilled in the person's case; or
    - (B) the person was disqualified from receiving benefits.

### Sec. 214.003. Forfeiture or Cancellation of Benefits Paid and Remaining Benefits; Penalty

- (a) If, by willful nondisclosure or misrepresentation of a material fact, whether the nondisclosure or misrepresentation is made by the person or for the person by another, a person receives a

benefit when a condition imposed by this subtitle for the person's qualifying for the benefit is not fulfilled or the person is disqualified from receiving the benefit:

- (1) the person forfeits the:
    - (A) benefit received; and
    - (B) rights to benefits that remain in the benefit year in which the nondisclosure or misrepresentation occurred; and
  - (2) the commission shall require the person to pay a penalty in an amount equal to 15 percent of the amount forfeited under Subdivision (1)(A).
- (b) If a person attempts to obtain or increase benefits by a nondisclosure or misrepresentation as provided by Subsection (a), the commission may cancel the person's right to benefits that remain in the benefit year in which the nondisclosure or misrepresentation occurred.
- (c) A forfeiture, cancellation, or penalty imposed under this section is effective only after the person has been afforded an opportunity for a fair hearing before the commission or its duly designated representative.
- (d) A person who is assessed a penalty by the commission under Subsection (a)(2) is liable for the amount of the penalty. The commission may collect the penalty in the same manner as provided by Sections 213.031, 213.032, 213.033, 213.035, and 213.051 for the collection of past-due contributions. The commission shall deposit a penalty assessed under Subsection (a)(2) in the unemployment compensation fund established under Section 203.021.

**Sec. 214.004. Fraudulently Avoiding Contribution or Payment of Benefits**

- (a) A person commits an offense if the person makes a false representation, knowing it to be false, or knowingly fails to disclose a material fact, to:
- (1) prevent or reduce the payment of benefits to an individual entitled to the benefits;
  - (2) avoid becoming or remaining subject to this subtitle; or
  - (3) avoid or reduce any contribution or other payment required from an employing unit under this subtitle.
- (b) An offense under this section is a Class A misdemeanor.

**Sec. 214.005. Failure or Refusal to Make Contribution or Other Payment**

- (a) A person commits an offense if the person willfully fails or refuses to make a contribution or other payment required from an employing unit under this subtitle.

(b) An offense under this section is a Class A misdemeanor.

**Sec. 214.006. Offenses Regarding Reports and Records**

(a) A person commits an offense if the person willfully fails or refuses to:

- (1) furnish a report required under this subtitle; or
- (2) produce or permit the inspection or copying of records as required under this subtitle.

(b) An offense under this section is a Class A misdemeanor.

**Sec. 214.007. General Offense**

(a) A person commits an offense if the person willfully violates a provision of this subtitle or a rule adopted under this subtitle:

- (1) the violation of which is made unlawful or the observance of which is required under this subtitle; and
- (2) for which a penalty is not otherwise provided by this subtitle or any other applicable statute.

(b) An offense under this section is a Class A misdemeanor.

**Sec. 214.008. Misclassification of Certain Workers; Penalty**

(a) A person who contracts with a governmental entity to provide a service as defined by Section 2155.001, Government Code, shall properly classify, as an employee or independent contractor in accordance with Chapter 201, any individual the person directly retains and compensates for services performed in connection with the contract.

(b) In this subsection, "subcontractor" means a person directly retained and compensated by a person who contracts with a governmental entity to provide a service as defined by Section 2155.001, Government Code. A subcontractor shall properly classify, as an employee or independent contractor in accordance with Chapter 201, any individual the subcontractor directly retains and compensates for services performed in connection with the contract for which the subcontractor is retained.

(c) A person who fails to properly classify an individual as required by Subsection (a) or (b) shall pay to the commission a penalty equal to \$200 for each individual that the person has not properly classified.

(d) The commission may not take action to collect a penalty under this section from a person after the third anniversary of the date on which the violation occurred.

**Sec. 214.009. Recovery of Covered Unemployment Compensation Debt Through Federal Treasury Offset Program**

- (a) In this section, "program" means the federal Treasury Offset Program authorized by 26 U.S.C. Section 6402(f).
- (b) The commission may collect the following covered unemployment compensation debt through the program:
  - (1) a past-due debt for erroneous payment of benefits due to fraud that has become final under law and remains uncollected;
  - (2) a past-due debt for erroneous payment of benefits due to a person's failure to report earnings, even if non-fraudulent, that has become final under law and remains uncollected;
  - (3) a past-due employer contribution owed to the compensation fund for which the commission has determined the person to be liable and that remains uncollected; and
  - (4) any penalties and interest assessed by the commission on a debt described by Subdivision (1), (2), or (3).
- (c) Before submitting covered unemployment compensation debt for recovery under the program, the commission must:
  - (1) notify the debtor by regular United States mail that the commission plans to recover the debt through the offset of any federal tax refund;
  - (2) provide the debtor at least 60 days following the date the notice is provided under Subdivision (1) to present to the commission evidence that all or part of the debt is not:
    - (A) legally enforceable;
    - (B) due to fraud or unreported earnings; or
    - (C) a contribution owed to the compensation fund; and
  - (3) consider any evidence presented by the debtor to determine the amount of debt that is legally enforceable and owed.
- (d) In considering evidence presented by a debtor under Subsection (c), the commission may determine only whether the debtor has demonstrated that the debt is not subject to recovery through the program so that the commission is able to minimize erroneous offsets. The commission may not review the initial determination establishing the debtor's liability.

- (e) The commission shall assess against the debtor the cost of any administrative fee charged by the United States Department of the Treasury for each offset. The commission may add the assessed amount to the covered unemployment compensation debt that is offset under the program.