

CHAPTER 111

(SB 146)

AN ACT relating to unemployment insurance.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 341.190 is amended to read as follows:

- (1) Each employing unit shall keep true and accurate work records of all workers employed by it, of the wages paid by it to each worker, and such other information as the secretary of the Education Cabinet considers necessary for the proper administration of this chapter. The records shall be open for inspection and subject to being copied by the secretary or his or her authorized representatives at any reasonable time and as often as necessary.
- (2) The secretary may require any employing unit to furnish to the cabinet at its central office from time to time information concerning the total amounts of wages paid, total number of persons employed, an individual record of each worker employed, an individual record of each worker whose employment has been terminated or who has been laid off, an individual wage and hour record of each worker employed part time entitled to benefits, and other related matters, including hours worked, which the secretary considers necessary to the effective administration of this chapter.
- (3) Information obtained from an employing unit or individual and other records made by the cabinet in the administration of this chapter are confidential and shall not be published or be open for public inspection, except as provided below:
 - (a) Information **and records** may be made available to public employees in the performance of their duties, but the agency receiving the information **and records** shall assure the confidentiality, as ~~required~~~~provided for~~ in this section, of all information **and records** so released **by entering into a written, enforceable, and terminable agreement with the cabinet and by satisfying the safeguards set forth in the federal confidentiality and disclosure requirements as prescribed by 42 U.S.C. sec. 503, 26 U.S.C. sec. 3304, and 20 C.F.R. Part 603.9;**
 - (b) A claimant or employing unit or his legal representative shall be provided, upon request, information ~~and~~~~or~~ records maintained by the cabinet in the administration of his claim, his reserve account, his reimbursing employer account, or any proceeding under this chapter to which he is a party;
 - (c) **A public official with authority under state or federal law to obtain the information and records by subpoena, other than a clerk of court on behalf of a litigant, shall be provided information and records upon service of a duly issued subpoena;**
 - (d) **A federal official, when required for the purposes of oversight and auditing of the unemployment insurance program, shall be provided information and records;**
 - (e) Statistical information derived from information and records obtained or made by the cabinet may be published, if it in no way reveals the identity of any claimant or employing unit; and
 - (f)~~(d)~~ Nothing in this section shall preclude the secretary or any employee of the cabinet from testifying in any proceeding under this chapter or in any court, or from introducing as evidence information or records obtained or made by the cabinet in an action for violation of state or federal law to which the cabinet is a party or upon order of the court.
- (4) **Disclosures shall be made under subsection (3) of this section only if:**
 - (a) **The disclosure is necessary for the proper administration of the unemployment insurance program;**
 - (b) **No more than an incidental amount of staff time or a nominal processing cost is required to make the disclosure; or**
 - (c) **The cost of providing the information and records is paid by the recipient prior to the disclosure, consistent with federal laws and regulations, except this requirement shall not apply to disclosures made under paragraphs (c) and (f) of subsection (3) of this section if the cabinet attempts without success to recover the cost of disclosure. For disclosures made to public employees under paragraph (a) of subsection (3) of this section, this requirement shall be met if the agency provides a reciprocal**

benefit to the cabinet in the administration of the unemployment insurance program, or if a reasonable reimbursement for the disclosure shall be determined under federal law.

- (5) *Any disclosure or use of information and records that is inconsistent with the provisions of this section shall be subject to the penalty prescribed in subsection (11) of Section 2 of this Act.*
- (6) No information or records held confidential under subsection (3) of this section shall be the subject matter or basis for any suit for slander or libel in any court, but no employer or employee, or his representative, testifying before the commission, the secretary, or any duly authorized representative thereof, shall be exempt from punishment for perjury.
- ➔Section 2. KRS 341.990 is amended to read as follows:
- (1) *Except as otherwise provided in subsection (11) of this section,* any employee of any state agency who violates any of the provisions of KRS 341.110 to 341.230 shall be guilty of a Class B misdemeanor.
- (2) Any person subpoenaed to appear and testify or produce evidence in an inquiry, investigation, or hearing conducted under this chapter who fails to obey the subpoena shall be guilty of a Class B misdemeanor.
- (3) Any subject employer, or officer or agent of a subject employer, who violates subsection (1) of KRS 341.470 shall be guilty of a Class A misdemeanor.
- (4) Any person who violates subsection (2) of KRS 341.470 shall be guilty of a Class A misdemeanor.
- (5) Any person who knowingly makes a false statement or representation of a material fact or knowingly fails to disclose a material fact to the secretary to obtain or increase any benefit under this chapter or under an employment security law of any other state, or of the federal government, either for himself or for any other person, business entity, or organization shall be guilty of a Class A misdemeanor unless the value of the benefits procured or attempted to be procured is one hundred dollars (\$100) or more, in which case he shall be guilty of a Class D felony.
- (6) (a) Any person who knowingly makes a false statement or representation, or who knowingly fails to disclose a material fact to prevent or reduce the payment of benefits to any worker entitled thereto, or to avoid becoming or remaining subject to this chapter, or to avoid or reduce any payment required of an employing unit under this chapter shall be guilty of a Class A misdemeanor unless the liability avoided or attempted to be avoided is one hundred dollars (\$100) or more, in which case he shall be guilty of a Class D felony.
- (b) Any person who willfully fails or refuses to furnish any reports required, or to produce or permit the inspection or copying of records required in this chapter shall be guilty of a Class B misdemeanor. Each such false statement, representation or failure and each day of failure or refusal shall constitute a separate offense.
- (7) In any prosecution for the violation of subsection (5) or (6) of this section, it shall be a defense if the person relied on the advice of an employee or agent of the Office of Employment and Training, Department of Workforce Investment.
- (8) Any person who willfully violates any provision of this chapter or any rule or regulation under it, the violation of which is made unlawful or the observance of which is required under the terms of this chapter, and for which no specific penalty is prescribed in this chapter or in any other applicable statute, shall be guilty of a violation. Each day the violation continues shall constitute a separate offense.
- (9) In addition to the higher rates imposed under KRS 341.540(7), any person, whether or not an employing unit, who knowingly advises or assists an employing unit in the violation or attempted violation of KRS 341.540 or any other provision of this chapter related to determining the assignment of a contribution rate shall be subject to a civil monetary penalty of not less than five thousand dollars (\$5,000).
- (10) Proceeds from all penalties imposed under subsection (9) of this section and KRS 341.540 shall be deposited in the unemployment compensation administration account and shall be expended solely for the cost of administration of this chapter consistent with KRS 341.240.
- (11) *Any person who violates the confidentiality provision in subsection (3) of Section 1 of this Act shall be guilty of a Class A misdemeanor.*

Signed by Governor April 14, 2008.

