

CHAPTER 16

(SB 7)

AN ACT relating to unemployment insurance benefits, making an appropriation therefore, and declaring an emergency.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 341 IS CREATED TO READ AS FOLLOWS:

For the purposes of Sections 1 to 3 of this Act:

- (1) *"National Directory of New Hires" means the database that stores personal and financial data on employed individuals across the country and contains information and data on individuals receiving unemployment compensation;*
- (2) *"New hire records" means the directory of newly hired and rehired employees reported under state and federal law and managed by the federal Office of Child Support Enforcement, Administration for Children and Families, United States Department of Health and Human Services, and the Cabinet for Health and Family Services;*
- (3) *"Office" means the Kentucky Office of Unemployment Insurance;*
- (4) *"Secretary" means the secretary of the Kentucky Labor Cabinet;*
- (5) *"Two-factor authentication" means authentication that requires entry of a username and password followed by entry of another method of identification; and*
- (6) *"Unemployment insurance rolls" means unemployed workers receiving unemployment insurance in Kentucky.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 341 IS CREATED TO READ AS FOLLOWS:

Notwithstanding any state law to the contrary, for unemployment insurance claims filed between January 27, 2020, and December 31, 2020:

- (1) *Upon request of the alleged overpayment recipient, the secretary may waive an overpayment of benefits if he or she finds the overpayment:*
 - (a) *Was made without fault on the part of the recipient; and*
 - (b) *Recovery would be contrary to equity and good conscience;*
- (2)
 - (a) *Requests for waiver of overpayment of benefits under subsection (1) of this section shall be made within thirty (30) days after the date the secretary mails to the alleged overpayment recipient the notification of the overpayment determination via first-class United States Mail. The secretary shall resend any notices of overpayment sent prior to the effective date of this Act. The new notices shall restart the thirty (30) day period for the alleged overpayment recipient to request repayment waiver.*
 - (b) *Notice of the secretary's determination shall include information explaining how the alleged overpayment recipient may request a waiver of overpayment and explain how the alleged overpayment recipient may appeal the secretary's final determination by requesting an appeal of the determination pursuant to KRS 341.420.*
 - (c) *The secretary shall not initiate overpayment recovery until lapse of the thirty (30) day period provided in this subsection.*
 - (d) *Overpayments collected shall be returned to the federal government if the overpayments were paid from Coronavirus Aid, Relief, and Economic Security (CARES) Act dollars and a waiver was not granted pursuant to subsection (1) of this section.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 341 IS CREATED TO READ AS FOLLOWS:

- (1) *To ensure the integrity of the unemployment insurance program, to verify eligibility, to prevent fraudulent filing, and to prevent overpayment of claims, for all claims made after July 1, 2023, the office shall:*

- (a) *Use state or commercially available databases to check new hire records against the state's unemployment insurance rolls on a weekly basis;*
 - (b) *Check state data, federal data, or a commercially available database on a weekly basis;*
 - (c) *Check new hire records against the National Directory of New Hires on a weekly basis;*
 - (d) *Check the unemployment insurance rolls against the Kentucky Department of Corrections list of incarcerated individuals on a weekly basis;*
 - (e) *Enter into a cooperative agreement with the United States Department of Labor's Office of Inspector General to proactively detect and investigate cases of unemployment fraud;*
 - (f) *Review the individual's case and make a final determination of his or her eligibility when the office receives information that an individual who is participating in the unemployment compensation insurance program has had a change in circumstances that may affect his or her eligibility;*
 - (g) *Provide employers with electronic notice of new unemployment claims, access to information about pending unemployment insurance claims, and status of appealed claims via the Kentucky One Stop Business Portal;*
 - (h) *Promulgate, adopt, and implement internal administrative regulations and policies to recover improper overpayments of unemployment benefits;*
 - (i) *Require at least two-factor authentication from every benefit applicant prior to payment of any benefit; and*
 - (j) *Maintain records of any and all applications for waiver of overpayment.*
- (2) *The office shall provide the Office of the Attorney General with all records it requests for the purposes of investigating and prosecuting fraudulent unemployment insurance activity.*
- (3) *The office shall complete an annual report for the Legislative Research Commission which details efforts to recover improper benefit payments, causes of improper unemployment benefit payments, measures implemented to avoid improper benefit payments, summarizes all cases where repayment was not attempted due to a statutory exception, and analyzes any cost savings to the Commonwealth. The office shall provide this report to the Legislative Research Commission annually, no later than October 1 of each year.*

➔Section 4. KRS 341.420 is amended to read as follows:

- (1) The secretary shall appoint one (1) or more impartial referees according to KRS 341.125 to hear and decide appealed claims.
- (2) A party to a determination may file an appeal to a referee as to any matter therein within **thirty (30)**~~fifteen (15)~~ days after the date such determination was mailed to his last known address.
- (3) If benefits are allowed by a determination of the secretary, or a decision of a referee, the commission, the secretary, or a reviewing-court, such benefits shall be paid promptly without regard to the pendency of an appeal or period for filing an appeal therefrom. If a determination or decision allowing benefits is modified or reversed by a subsequent determination or decision, benefits shall be paid or denied for weeks of unemployment thereafter in accordance with such modification or denial. No injunction, supersedeas, stay or other writ or process suspending payment of such benefits shall be issued.
- (4) Unless such appeal is withdrawn, a referee, after affording the parties reasonable opportunity for a fair hearing, shall affirm or modify the determination. The parties shall be duly notified of his decision, together with the reasons therefor, which shall be deemed to be the final decision unless within **thirty (30)**~~fifteen (15)~~ days after the date of mailing of such decision, further appeal is initiated under KRS 341.430.
- (5) No finding of fact or law, judgment, conclusion, or final order made with respect to a claim for unemployment compensation under this chapter may be conclusive or binding in any separate or subsequent action or proceeding in another forum, except proceedings under this chapter, regardless of whether the prior action was between the same or related parties or involved the same facts.

➔Section 5. KRS 341.440 is amended to read as follows:

- (1) The manner in which appeals are presented and hearings and appeals conducted shall be in accordance with regulations prescribed by the secretary for determining the rights of the parties, and such hearings to be conducted in a summary manner. A complete record shall be kept of all proceedings in connection with any

appeal. All testimony at any hearing upon an appeal shall be recorded either stenographically or mechanically, but need not be transcribed unless further appealed. No examiner, referee, or member of the commission shall participate in any hearing in which he is an interested party.

- (2) Witnesses subpoenaed pursuant to proceedings under KRS 341.420 and 341.430 shall be allowed fees in accordance with rates allowed by law. Such fees and all expenses of proceedings before the Office of Unemployment Insurance, Department of Workforce Investment, or commission involving disputed claims shall be deemed a part of the expense of administering this chapter.
- (3) In the absence of an appeal therefrom, decisions of the commission shall become final *thirty-five (35)*~~twenty (20)~~ days after the date they are made.

➔Section 6. Whereas the COVID-19 pandemic has caused significant hardship for unemployment insurance recipients who have previously been overpaid benefits which they are now required to repay, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Signed by Governor March 12, 2021.