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Indicates New Matter

AMENDED

January 25, 2011

**H. 3286**

Introduced by Rep. Bingham

S. Printed 1/25/11--S.

Read the first time January 19, 2011.

**A** **BILL**

TO AMEND SECTION 41‑35‑320, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE PAYMENT OF EXTENDED UNEMPLOYMENT BENEFITS WHEN FEDERALLY FUNDED, SO AS TO CHANGE THE METHOD FOR CALCULATING CERTAIN FUNDING INDICATORS BY BASING THE CALCULATION ON ONE OR MORE THREE‑MONTH PERIODS ENDING THE PRECEDING THREE CALENDAR YEARS.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 41‑27‑260(13) and (14) of the 1976 Code is amended to read:

“(13) service performed by an individual for an employer as an insurance agent or as an insurance solicitor, if this service is performed by the individual for his employer for remuneration solely by way of ~~the~~ commission;

(14) service ~~other than service~~ performed ~~as defined in Section 41‑27‑230(3)~~ by an individual for an employer as a real estate salesman or agent, if this service is performed by the individual for his employer for remuneration solely by way of ~~the~~ commission;”

SECTION 2. Section 41‑27‑410 of the 1976 Code is amended to read:

“Section 41‑27‑410. Effective January 1, 1986, the ~~employment security~~ departmental administrative contingency assessment is an assessment of six one‑hundredths of one percent to be assessed upon the wages as defined in Section 41‑27‑380(2) of all employers except those who have either elected to make payments in lieu of contributions as defined in Section 41‑31‑620 or are liable for the payment of contributions as defined in Section 41‑31‑620 or are liable for the payment of contributions and are classified as a state agency or any political subdivision or any instrumentality of the political subdivision as defined in Section 41‑27‑230(2) ~~or have been assigned a contribution base rate of five and four‑tenths percent~~.”

SECTION 3. Section 41‑27‑610 of the 1976 Code is amended to read:

“Section 41‑27‑610. The failure to do an act required ~~pursuant to a provision~~ by or under the provisions of Chapters 27 through 41 of this title ~~is considered~~ shall be deemed an act committed in part at the office of the department in Columbia.”

SECTION 4. Section 41‑29‑150 of the 1976 Code is amended to read:

“Section 41‑29‑150. An employing unit must keep true and accurate work records containing information the department prescribes. These records must be open to inspection and subject to being copied by the department or its authorized representative at a reasonable time and as often as necessary. The department and the chairman of an appeal tribunal may require from an employing unit a sworn or unsworn report with respect to persons employed by it that he or it considers necessary for the effective administration of Chapters 27 through 41 of this title. Information obtained in this manner or from an individual pursuant to the administration of these chapters, except to the extent necessary for the proper administration of such chapters, shall be held confidential and may not be published or be open to public inspection, other than to the public employees in the performance of their public duties, in any manner revealing the individual’s or employing unit’s identity. However, a claimant or his legal representative at a hearing before an appeal tribunal must be supplied information from these records to the extent necessary for the proper presentation of his claim. An employee or member of the department who violates a provision of this section must be fined not less than twenty dollars or more than ~~two~~ five hundred dollars, imprisoned for not longer than ninety days, or both.”

SECTION 5. Section 41‑29‑170 of the 1976 Code is amended to read:

“Section 41‑29‑170. (A) A claimant or his legal representative must be supplied with information from the records, to the extent necessary for the proper presentation of his claim in a proceeding pursuant to Chapters 27 through 41, subject to restrictions the department may prescribe by regulation.

(B)(1) Upon written request, the department may furnish information obtained through the administration of Chapters 27 through 42 including, but not limited to, the name, address, ordinary occupation, wages, and employment status of a covered worker or recipient of benefits and the recipient’s rights to additional benefits pursuant to Chapters 27 through 41, to:

(a) an agency or agent of the United States charged with the administration of public works or assistance through public employment;

(b) a state agency similarly charged or charged with workforce development or training or with jobs recruitment; ~~and~~

(c) an agency or entity to which disclosure is permitted or required by federal statute or regulation or by state law~~.~~; and

(d) any private or public person or organization when the disclosure is necessary to permit private or public contracting parties to assist in the operation and management of the department in instances where certain departmental functions may be delegated to private or public parties to increase the department’s efficiency or quality of service to the public. The private or public person or organization shall use the information or records solely for the purpose for which the information was disclosed and shall be bound by the same rules of privacy and confidentiality as department employees.

(2) This disclosure is subject to restrictions the department may prescribe by regulation.

(C)(1) The State Employment Office must furnish, upon request of a public agency administering the Temporary Assistance to Needy Families (TANF) or child support programs, a state agency administering food stamp coupons, a state or federal agency administering the new hire directory, or a public housing authority, information in its possession relating to:

(a) an individual who is receiving, has received, or has applied for unemployment insurance;

(b) the amount of benefits being received;

(c) the current home address of these individuals;

(d) whether an offer of work has been refused and, if so, a description of the job and the terms, conditions, and rate of pay;

(e) in the case of requests from a public housing authority, a listing of the current employer and previous employers for the available preceding six calendar quarters;

(f) in the case of requests from the state or federal agency that issues food stamp coupons or the new hire directory, a listing of the current employer and address and previous employers and their addresses, including wage information, for the available preceding six calendar quarters.

The requesting agency is responsible for reimbursing the department for actual costs incurred in supplying the information. This information must be provided in the most useful and economical format possible.”

SECTION 6. Section 41‑29‑180 of the 1976 Code is amended to read:

“Section 41‑29‑180. The department shall endeavor, both for the relief of the clerical work of employers and its own office, to confine reporting to the minimum necessary for the proper administration of the law, and, except for necessary separation, low earnings, special reports or notices, or wage and employment reports required pursuant to Section 41‑29‑140~~, it shall not require reports as to the earnings of individual employees more frequently than quarterly~~.”

SECTION 7. Section 41‑29‑250 of the 1976 Code is amended to read:

“Section 41‑29‑250. The department must:

(A) print and make available for public distribution the text of Chapters 27 through 41 of this title and its:

(1) regulations;

(2) annual reports to the Governor and General Assembly; and

(3) other material the department considers relevant and suitable; ~~and~~ or

(B) ~~furnish this material to a person on request and~~ make ~~it~~ the information required by subsection (A) available on its Internet website.”

SECTION 8. Section 41‑29‑270 of the 1976 Code is amended to read:

“Section 41‑29‑270. Notwithstanding the provisions of Chapters 27 through 41 of this title, the department ~~must~~ may promulgate regulations necessary for the operation of an emergency unemployment compensation system in the event of an enemy attack or natural disaster, as declared by the President of the United States, that disrupts or endangers the department’s usual procedures or facilities”

SECTION 9. Section 41‑31‑10(A) of the 1976 Code is amended to read:

“Section 41‑31‑10. (A) Each employer shall pay contributions equal to ~~five and four‑tenths percent of wages paid by him during each year~~ the tax rate assigned to rate class twenty except as may be otherwise provided in Chapters 27 through 41 of this title. The department must promulgate regulations regarding the methodology by which the allowed prepayment amounts will be calculated and the manner in which they will be credited to the employer’s account.”

SECTION 10. Section 41‑31‑30 of the 1976 Code is amended to read:

“Section 41‑31‑30. The department shall annually classify employers in accordance with their actual experience ~~in the payment of contributions on their own behalf and~~ of the total taxable wages reported and with respect to benefits charged against their accounts to set contribution rates that reflect the employer’s experience. The department shall determine the contribution rate of each employer in accordance with the requirements of Sections 41‑31‑20 to 41‑31‑70.”

SECTION 11. Section 41‑31‑55 of the 1976 Code is amended to read:

“Section 41‑31‑55. (A) In any calendar year in which the state Unemployment Insurance Trust Fund is insolvent, the State shall impose additional surcharges on all contributory employers to pay interest on the outstanding debt. The estimated amount of interest to be paid in the upcoming year will be divided by the estimated taxable payroll for the calendar year. The result rounded to the next higher one hundredth of one percent is the statewide average surcharge.

(B) The rate for class twenty will be set so that the entire schedule raises the income required to pay interest surcharges for the year, subject to the structure defined in subsection (A). The rate for each preceding benefit rate class shall be equal to ninety percent of the rate calculated for the succeeding class, except that the rate class twelve shall be set at one fourth the rate calculated for rate class twenty.

(C) These funds shall be deposited in a special account as provided in Section 41‑33‑810.”

SECTION 12. Articles 3 and 5, Chapter 33, Title 41 of the 1976 Code is amended to read:

“~~Article 3.~~

DEPARTMENT OF EMPLOYMENT AND WORKFORCE SECURITY ADMINISTRATION FUND

Section 41‑33‑410. There is hereby created in the State Treasury a special fund to be known as the ~~employment security~~ Department of Employment and Workforce administration fund. The fund shall consist of any money appropriated by this State in accordance with Section 41‑33‑460; all money received from the United States, or any agency thereof, and all money received from any other source for the administration of Chapters 27 through 41 of this ~~Title~~ title; all money received from any agency of the United States or any other state as compensation for services or facilities supplied to such agency; all amounts received pursuant to any surety bond or insurance policy or from other sources for losses sustained by the ~~employment security~~ Department of Employment and Workforce administration fund or by reason of damage to property, equipment, or supplies purchased from money in such fund; and all proceeds realized from the sale or disposition of any such property, equipment, or supplies which may no longer be necessary for the proper administration of Chapters 27 through 41 of this ~~Title~~ title. Notwithstanding any provision of this section, all money requisitioned and deposited in this fund pursuant to Section 41‑33‑160 shall remain part of the unemployment compensation fund and shall be used only in accordance with the conditions specified in Sections 41‑33‑130 to 41‑33‑160.

Section 41‑33‑420. All money in the ~~employment security~~ Department of Employment and Workforce administration fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as are provided by law for other special funds in the State Treasury, except that money in this fund shall not be commingled with other ~~State~~ state funds, but shall be maintained in a separate account on the books of a depository bank. They shall be secured by such bank or banks by such securities or surety bond as required by law of depositories of ~~State~~ state funds.

Section 41‑33‑430. Money deposited or paid into the fund are appropriated and made available to the department. Money in this fund must be expended solely for the purpose of defraying the cost of the administration of Chapters 27 through 41 of this title and for no other purpose. A balance in the fund may not lapse at any time but continuously must be available to the department for expenditure consistent with Chapters 27 through 41 of this title. The department shall issue its requisition approved by the ~~chairman~~ director or a designated ~~member~~ individual, officer, or agent for payment of the costs of administration to the Comptroller General who shall draw his warrant in the usual form provided by law on the State Treasurer, who shall pay it by check on the ~~employment security~~ Department of Employment and Workforce administration fund.

Section 41‑33‑440. All moneys in the ~~employment security~~ ~~employment security~~ Department of Employment and Workforce administration fund except money received pursuant to Section 41‑33‑160 shall be expended solely for the purposes and in the amounts found necessary by the Secretary of Labor, or his successors, for the proper and efficient administration of Chapters 27 through 41 of this ~~Title~~ title.

Section 41‑33‑450. The State Treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the ~~employment security~~ Department of Employment and Workforce administration fund.

Section 41‑33‑460. Money in the ~~employment security~~ Department of Employment and Workforce administration fund, paid to this State under Title III of the Social Security Act and the Wagner‑Peyser Act, found by the Secretary of Labor, or his successors, because of an action or contingency, to have been lost or expended for a purpose other than, or in an amount in excess of, those found necessary by the Secretary of Labor, for the proper administration of the department’s employment ~~security~~ and workforce program, it is the policy of this State that the money must be replaced by money appropriated for this purpose from the general funds of this State to the ~~employment security~~ Department of Employment and Workforce administration fund for expenditures as provided in Section 41‑33‑430. Funds that have been expended by the department or its agents pursuant to a budget approved by the Secretary of Labor, pursuant to the general standards and limitations promulgated by the Secretary of Labor, before this expenditure, when proposed expenditures have not been specifically disapproved by the Secretary of Labor, must not be considered to require replacement.

Section 41‑33‑470. The department shall report to the State Budget and Control Board in the same manner as is required generally for the submission of financial requirements for the ensuing year and the board shall include in its request for general appropriations presented to the General Assembly at its next regular session a statement of the amounts required for any replacement required by Section 41‑33‑460.

ARTICLE 5.

DEPARTMENT OF EMPLOYMENT ~~SECURITY~~ AND WORKFORCE SPECIAL ADMINISTRATION FUNDS

Section 41‑33‑610. (A) There is created in the State Treasury a special fund to be known as the ~~employment security~~ Department of Employment and Workforce special administration fund, which must consist of all penalties and interest collected on contributions due pursuant to Sections 41‑31‑330 and 41‑31‑350 and interest collected on unpaid contributions pursuant to Section 41‑31‑370. Money in the fund must be deposited, administered, and disbursed pursuant to the provisions of Section 41‑33‑420 applicable to the ~~employment security~~ Department of Employment and Workforce

administration fund.

(B) Money deposited in the special administration fund is appropriated and made available to the department. Money in the fund must be expended solely for:

(1) replacements in the ~~employment security~~ Department of Employment and Workforce administration fund as provided in Section 41‑33‑460;

(2) refunds pursuant to Section 41‑31‑360 of interest erroneously collected; and

(3) special, extraordinary, and incidental expenses incurred in the administration of Chapters 27 through 41 of this title not provided for in the ~~employment security~~ Department of Employment and Workforce administration fund and for which federal funds are not granted by the federal government through the Secretary of Labor or its other agencies.

(C) A balance in the fund shall not lapse at any time, but must be continuously available to the department for expenditure consistent with Chapters 27 through 41 of this title. The department shall issue its requisition approved by its director or his designated officer or agent for the purposes set forth in this section to the Comptroller General who shall draw his warrant in the usual form provided by law on the State Treasurer, who shall pay it by check on the fund.

Section 41‑33‑710. (A) There is created in the State Treasury a special fund to be known as the ~~employment security~~ Department of Employment and Workforce administrative contingency fund, which consists of all assessments collected pursuant to Section 41‑27‑410. Money in the ~~employment security~~ Department of Employment and Workforce administrative contingency fund must be deposited, administered, and disbursed in accordance with the provisions of Section 41‑33‑420 applicable to the ~~employment security~~ Department of Employment and Workforce administration fund.

(B) Money deposited in the ~~employment security~~ Department of Employment and Workforce administrative contingency fund is appropriate and made available to the department. Money in the fund must be expended to:

(1) assist with the reemployment of unemployed workers using the most efficient and effective means of service delivery;

(2) undertake a program or activity that furthers the goal of the department as provided in Chapter 42 of this title;

(3) supplement basic employment security services with special job search and claimant placement assistance designed to assist unemployment insurance claimants to obtain employment;

(4) provide employment services, like recruitment, screening, and referral of qualified workers to agricultural areas where those services have in the past contributed to positive economic conditions for the agricultural industry; and

(5) provide otherwise unobtainable information and analysis to the legislature and program managers about issues related to employment and unemployment.

(C) A balance in the fund does not lapse, but is continuously available to the department for expenditure consistent with Chapter 42 of this title. The department must issue its requisition approved by its director or his designated officer or agent for the purposes set forth in this section to the Comptroller General who shall draw his warrant in the usual form provided by law on the State Treasurer, who shall pay it by check on the fund.

Section 41‑33‑810. (A) There is hereby created in the State Treasury a special fund to be known as the Department of Employment and Workforce interest assessment fund.

(B) The fund shall consist of all assessments collected pursuant to Section 41‑31‑55(A).

(C) All money in the interest assessment fund must be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as are provided by law for other special funds in the State Treasury, except that money in this fund shall not be commingled with other state funds, but shall be maintained in a separate account on the books of a depository bank. They shall be secured by such bank or banks by such securities or surety bond as required by law of depositories of state funds.

(D) All moneys which are deposited or paid into the fund are appropriated and made available to the department. All moneys in this fund shall be expended solely for the purpose of defraying the cost of interest on advances from the federal Unemployment Trust Fund as provided in the Social Security Act Section 1202(b)(3)(A).

(E) Any balances in the fund shall not lapse at any time but shall be continuously available to the department for expenditure consistent with Chapters 27 through 41 of this title. The department shall issue its requisition approved by the executive director or any designated individual, officer, or agent for payment of such costs of interest to the Comptroller General who shall draw his warrant in the usual form provided by law on the State Treasurer, who shall pay it by check on the interest assessment fund.”

SECTION 13. Section 41‑35‑320 of the 1976 Code is amended to read:

“Section 41‑35‑320. (1) For a week in which one hundred percent federal sharing funding is available, there is an ‘on’ indicator for a week:

(a) beginning after March 7, 2009; and

(b) ending four weeks before the last week of unemployment for which one hundred percent federal sharing is available under Section 2005(a) of Public Law No. 111‑5, or an amendment of this provision, without regard to the extension of federal sharing for certain claims as provided under Section 2005(c) of this law.

(2) There is a state ‘on’ indicator for this State for a week in which the United States Secretary of Labor determines that for the period consisting of the most recent three months, the rate of total unemployment, seasonally adjusted, equaled or exceeded six and a half percent, and the average rate of total unemployment for the State, seasonally adjusted, as determined by the United States Secretary of Labor for this period equals or exceeds one hundred ten percent of the average unemployment for the State ~~for either or both~~ in one or more of the corresponding three‑month periods ending in the ~~two~~ three preceding calendar years.

(3)(a) Effective with respect to weeks beginning in a ‘high unemployment period’, Section 41‑35‑440 must be applied by substituting:

(i) ‘eighty percent’ for ‘fifty percent’ in item (1)(a) of that section; and

(ii) ‘twenty’ for ‘thirteen’ in item (1)(b) of that section.

(b) For the purpose of this section, a ‘high unemployment period’ exists during a period in which an extended benefit period would be in effect by substituting ‘eight percent’ for ‘six and a half percent’ in subsection (2).

(4) There is a state ‘off’ indicator for the purpose of this section when a condition of subsection (2) is not satisfied.

(5) Notwithstanding a provision of Section 41‑35‑380, an individual’s ‘eligibility period’ must include an eligibility period provided in Section 2005(b) of Public Law 111‑5 and an amendment of this provision.

(6) The ~~commission~~ department shall implement procedures to allow retroactive claims, but these procedures must conform to conditions of federal funding.”

SECTION 14. Section 41-35-615 of the 1976 Code is amended to read:

“Section 41-35-615. All notices given to an employer concerning a request for determination of insured status, a request for initiation of a claim series in a benefit year, a notice of unemployment, a certification for waiting‑week credit, a claim for benefits, and any reconsideration of a determination must be made by United States mail or electronic mail. The employer may designate with the department its preferred method of notice. If an employer does not make a designation, then notices must be made by United States mail. The employer may not be required to respond to the notice until ~~twelve business~~ ten calendar days, or the next business day if the tenth day falls on a Saturday, Sunday, or state holiday, after the postmark on notices sent via United States Mail or ten ~~business~~ calendar days after the date a notice is sent via electronic mail.”

SECTION 2. This act takes effect upon approval by the Governor.

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