**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 41‑35‑122 SO AS TO PROVIDE THAT AN EMPLOYER MAY CONFIDENTIALLY NOTIFY THE DEPARTMENT OF EMPLOYMENT AND WORKFORCE WHEN A PROSPECTIVE EMPLOYEE FAILS A DRUG TEST REQUIRED BY THE EMPLOYER AS A CONDITION OF EMPLOYMENT IF THE PROSPECTIVE EMPLOYEE IS RECEIVING UNEMPLOYMENT BENEFITS, TO PROVIDE THE DEPARTMENT SHALL SUSPEND THE BENEFITS OF A PERSON WHO, WHILE RECEIVING BENEFITS, FAILS A DRUG TEST TAKEN AS A CONDITION OF AN APPLICATION FOR EMPLOYMENT, TO PROVIDE THE DEPARTMENT MAY NOT RESTORE THESE SUSPENDED BENEFITS UNTIL THE PERSON HAS SUCCESSFULLY COMPLETED A CERTAIN DRUG TREATMENT PROGRAM AND PASSED A DRUG TEST, TO PROVIDE THE DEPARTMENT MAY NOT PROVIDE OR RESTORE RETROACTIVELY A BENEFIT TO A PERSON FOR A PERIOD IN WHICH HIS BENEFITS ARE SUSPENDED UNDER THIS SECTION, TO PROVIDE THE DEPARTMENT SHALL DEVELOP A CONSENT FORM THAT AN EMPLOYER MAY USE TO OBTAIN THE CONSENT OF A PROSPECTIVE EMPLOYEE TO GIVE THE DEPARTMENT THE RESULTS OF A DRUG TEST REQUIRED BY THE EMPLOYER AS A CONDITION OF EMPLOYMENT, TO PROVIDE THAT THE USE OF THIS CONSENT FORM LIMITS THE LIABILITY OF THE EMPLOYER FOR BREACH OF CONFIDENTIALITY, INVASION OF PRIVACY, INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS, AND DEFAMATION CLAIMS RESULTING FROM THE PROVISION OF THE DRUG TEST RESULTS TO THE DEPARTMENT, AND TO DEFINE A “DRUG TEST”.

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

SECTION 1. Article 1, Chapter 35, Title 41 of the 1976 Code is amended by adding:

“Section 41‑35‑122. (A) An employer may notify the department when a prospective employee fails a drug test required by the employer as a condition to employment if the prospective employee is receiving unemployment benefits provided under this title. The employer must provide this notice in a confidential manner within two business days following the date on which the employer receives the results of the drug test.

(B)(1) The department shall suspend the benefits of a person who, while receiving benefits, fails a drug test taken as a condition of an application for employment, and may not restore these suspended benefits until the person:

(a) successfully completes an outpatient drug treatment program provided by the Department of Alcohol and Other Drug Abuse Services; and

(b) passes a drug test. The cost of this drug test may not be paid by the department and must be paid by the person seeking restoration of benefits.

(2) The department shall suspend benefits as required in item (1) immediately upon receipt of notification by an employer.

(C) The department may not provide or restore retroactively a benefit to a person for a period in which his benefits are suspended pursuant to subsection (A).

(D) The department shall develop a ‘Drug and Alcohol Testing Consent Form’ that an employer may use to obtain the consent of a prospective employee to provide the department with the results of a drug test required by the employer as a condition to employment. When the employer provides these results to the department after a prospective employee has signed the consent form, the employer may not be held liable for breach of confidentiality, invasion of privacy, intentional infliction of emotional distress, and defamation claims in connection with the confidential release of these results to the department.

(E) For the purposes of this section, ‘drug test’ means a test for the legal drugs used unlawfully performed by a laboratory certified by the National Institute on Drug Abuse, the College of American Pathologists, or the State Law Enforcement Division.”

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

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