~~Indicates Matter Stricken~~

Indicates New Matter

AMENDED

May 15, 2013

**H. 3751**

Introduced by Rep. Sandifer

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Read the first time April 24, 2013.

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**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO CONFORM WITH FEDERAL MANDATES ENACTED BY THE UNITED STATES CONGRESS IN THE TRADE ADJUSTMENT ASSISTANCE EXTENSION ACT OF 2011; BY ADDING SECTION 41‑41‑45 SO AS TO PROVIDE THE DEPARTMENT OF EMPLOYMENT AND WORKFORCE SHALL IMPOSE A PENALTY ON FRAUDULENT OVERPAYMENTS OF UNEMPLOYMENT BENEFITS; BY ADDING SECTION 41‑33‑910 SO AS TO CREATE THE DEPARTMENT OF EMPLOYMENT AND WORKFORCE INTEGRITY FUND AND PROVIDE FOR ITS SOURCE AND USE; BY ADDING SECTION 41‑35‑135 SO AS TO PROVIDE THE DEPARTMENT SHALL CHARGE THE ACCOUNT OF AN EMPLOYER WHEN THE EMPLOYER FAILS TO RESPOND TIMELY OR ADEQUATELY TO A REQUEST BY THE DEPARTMENT FOR INFORMATION CONCERNING A CLAIM FOR UNEMPLOYMENT BENEFITS WHEN THE EMPLOYER HAS DEMONSTRATED A PATTERN OF FAILING TO TIMELY OR ADEQUATELY RESPOND TO THESE REQUESTS; AND TO AMEND SECTION 43‑5‑598, AS AMENDED, RELATING TO DEFINITIONS CONCERNING THE SOUTH CAROLINA EMPLOYABLES PROGRAM ACT, SO AS TO REVISE THE DEFINITION OF “NEW HIRE” TO APPLY WHERE THE SEPARATION OF AN EMPLOYEE FROM EMPLOYMENT IS FOR AT LEAST SIXTY CONSECUTIVE DAYS.

Whereas, the United States Congress enacted the Trade Adjustment Assistance Extension Act of 2011 on October 21, 2011, and this act, among other things, imposed three mandatory integrity requirements on the unemployment insurance program of each state; and

Whereas, this mandate requires states to impose a monetary penalty on claimants whose fraudulent acts resulted in overpayments; prohibit states from providing relief from charges to an employer’s unemployment insurance account when the actions of an employer or an agent of an employer have led to an improper payment, and requires employers to report to a State Directory of New Hires information on employees the employer has rehired after at least a sixty‑day separation; and

Whereas, the State of South Carolina seeks to comply with this mandate by enacting necessary and appropriate changes to our statutory law. Now, therefore,

Amend Title To Conform

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

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

“Section 41‑41‑45. (A) Notwithstanding any other provision of law, if the department determines that an improper payment from its unemployment compensation fund or from any federal unemployment compensation fund was made to any individual due to a false statement or failure to disclose a material fact pursuant to Sections 41‑41‑10 and 41‑41‑20, the department will assess a monetary penalty of twenty‑five percent of the amount of the overpayment.

(B) The notice of the determination or decision informing the individual of the overpayment must include:

(1) the claimant’s appeal rights;

(2) the penalty amount;

(3) an explanation of the reason for the overpayment; and

(4) the reason the penalty has been applied.

(C) The recovered amounts shall be applied with priority to:

(1) the principal amount of the overpayment to the unemployment compensation fund;

(2) sixty percent of the monetary penalty to the unemployment compensation fund;

(3) the remaining forty percent of the monetary penalty to promote unemployment compensation integrity; and

(4) any remaining amounts to interest.

(D) Offset of future unemployment insurance benefits shall not be applied to the monetary penalty or interest associated with an overpayment.

(E) The monetary penalty will be assessed on any fraudulent overpayment determined by the department after October 21, 2013.”

SECTION 2. Chapter 35, Title 41 of the 1976 Code is amended by adding:

“Section 41‑35‑135. (A) Notwithstanding any other provision of law, the department shall not relieve the charge benefits to an employer’s account when it determines that the overpayment has been made to a claimant and it determines that both of the following conditions apply:

(1) the overpayment occurred because the employer was at fault for failing to respond timely or adequately to a written request of the department for information relating to an unemployment compensation claim; and

(2) the employer exhibits a pattern of failure to timely or adequately respond to requests from the department for information relating to unemployment compensation claims on three or more occasions, or three percent of requests made, within a single calendar year, whichever is greater; provided:

(a) If an employer uses a third‑party agent to respond on its behalf to the department’s request for information relating to an unemployment compensation claim, the agent’s actions on behalf of the employer will be considered when determining a pattern of behavior.

(b) A response is considered untimely if it fails to meet the time as prescribed in the statute or in the regulations.

(c) A response is considered inadequate if it fails to provide sufficient facts to enable the department to make an accurate determination of benefits that do not result in an overpayment. However, a response may not be considered inadequate if the department fails to request the necessary information.

(B) In all cases where the department contacts, or attempts to contact, an employer via telephone concerning a claim for benefits, it must document the contact, or attempt to contact, the employer and provide the documentation to the employer upon request. The documentation must contain the name of the department’s staff contacting, or attempting to contact, the employer, the date, time, and whether the department’s staff spoke with the employer, and the name of the person with whom the department’s staff spoke, if anyone.

(C) A written request for information may be made by electronic mail provided, the employer has opted for notice by electronic mail pursuant to Section 41-35-615.

(D) The department shall charge an employer’s account that meets the conditions of subsection (A) for each week of unemployment compensation that is an overpayment until the department makes a determination that the individual is no longer eligible for unemployment compensation and stops making such payments.

(E) If the claim is a combined wage claim, the determination of not charging for the combined wage claim shall be made by the paying state. If the response from the employer does not meet the criteria established by the paying state for an adequate or timely response, the paying state must promptly notify the transferring state of its determination and the employer must be appropriately charged.

(F)(1) The department must waive the charging of benefits to an employer’s account when the department finds the employer failed to timely or adequately respond due to good cause.

(2) For the purposes of this section, ‘Good cause’ may include, but is not limited to, an error made by the department that results in the employer’s error, or a natural disaster, emergency, or similar event, or an illness on the part of the employer, the employer’s agent of record, or the employer’s staff charged with responding to inquiries. The burden is on the employer to establish good cause.

(G) Determinations of the department prohibiting the relief of charges pursuant to this section shall be subject to appeal pursuant to procedures contained in Chapter 35, Title 41.

(H) The department shall charge benefits to an employer’s account pursuant to this section for any overpayment determined by the department after October 21, 2013.”

SECTION 3. Section 43‑5‑598(A)(6) of the 1976 Code is amended to read:

**“(6) ‘New hire’ includes an individual newly employed or an individual who has been rehired who was separated for at least sixty consecutive days or has returned to work after being laid off, furloughed, separated, granted leave without pay, or terminated from employment for at least sixty consecutive days.”**

SECTION 4. A. Title 41, Chapter 33 of the 1976 Code is amended by adding:

“Section 41‑33‑910. (A) There is created in the State Treasury a special fund to be known as the Department of Employment and Workforce integrity fund.

(B) The fund shall consist of monetary penalties collected pursuant to Section 41‑41‑45(C)(3) for the purpose of promoting unemployment compensation integrity. The Department of Employment and Workforce integrity fund shall be used for the purpose of preserving the integrity of the unemployment compensation fund. These efforts may include, but are not limited to, identifying overpayments, verifying eligibility, determining status, and updating technology and education tools to support integrity activities.

(C) All money collected in the integrity 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 must not be commingled with other state funds, but must be maintained in a separate account on the books of a depository bank. These funds must be secured by the bank by securities or surety bonds as required by law of depositories of state funds.

(D) All money that is deposited or paid into the fund is appropriated and made available to the department. All money in this fund must be expended solely for the purpose of promoting unemployment insurance integrity efforts by the department as provided in Section 41‑41‑45.

(E) All balances in this fund must not lapse at any time but must be continuously available to the department by expenditure consistent with Chapters 27 through 41 of the title. The department shall issue its requisition, which must be approved by the executive director or any designated officer, agent, or other individual for payment of the 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 integrity fund.”

B. The provisions of this SECTION take effect October 1, 2013.

SECTION 5. The Department of Employment and Workforce must, as soon as practicable, fully implement an on-line, employer pre-filing program that allows employers to address potential claims for benefits by one of the employer’s former employees. The department must report progress on implementation upon request by the Chairman of the Senate Labor, Commerce, and Industry Committee or the Chairman of the House Labor, Commerce, and Industry Committee.

SECTION 6. This act takes effect upon approval by the Governor.

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