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COMMITTEE REPORT

March 17, 2015

**S. 407**

Introduced by Senator Bryant

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Read the first time February 4, 2015.

**THE COMMITTEE ON**

**LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (S. 407) to amend Section 41‑27‑265(A) and (B) of the 1976 Code, relating to the corporate officers exemption from unemployment benefits absent employer election, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

THOMAS C. ALEXANDER for Committee.

**A** **BILL**

TO AMEND SECTION 41‑27‑265(A) AND (B) OF THE 1976 CODE, RELATING TO THE CORPORATE OFFICERS EXEMPTION FROM UNEMPLOYMENT BENEFITS ABSENT EMPLOYER ELECTION, TO PROVIDE THAT CORPORATE OFFICERS ARE ELIGIBLE FOR UNEMPLOYMENT BENEFITS UNLESS THE CORPORATION ELECTS TO OPT OUT OF THE COVERAGE AND TO PROVIDE FOR THE OPT OUT PROCESS, TO PROVIDE THAT THE SECTION ALSO APPLIES TO INDIVIDUALS WHO OWN TWENTY‑FIVE PERCENT OR MORE STOCK IN A CORPORATION OR OTHERWISE EXERCISE AN OWNERSHIP INTEREST IN A CORPORATION, TO PROVIDE THAT PERSONS WITH A TWENTY‑FIVE PERCENT OWNERSHIP INTEREST IN ANY OTHER BUSINESS ENTITY FORMED UNDER THE LAWS OF THIS STATE ARE ELIGIBLE FOR UNEMPLOYMENT BENEFITS UNLESS THE BUSINESS ENTITY ELECTS TO OPT OUT OF THE COVERAGE; TO AMEND CHAPTER 41, TITLE 41 TO INCREASE PENALTIES FOR VIOLATIONS OF PROVISIONS CONTAINED IN CHAPTERS 27 THROUGH 41 OF TITLE 41 AND TO DEFINE NECESSARY TERMS.

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

SECTION 1. Section 41‑27‑265(A) and (B) of the 1976 Code is amended to read:

“Section 41‑27‑265. (A)(1) Solely for purposes of this ~~title~~ section, ‘corporate officer’ shall mean ~~services performed by~~ a person appointed or otherwise serving as an officer for a corporation pursuant to Article 4, Chapter 8, Title 33, a person who owns twenty‑five percent or more of the shares of a corporation, or a person who otherwise exercises an ownership interest in a corporation. Solely for the purposes of this title, services performed by a corporate officer shall ~~not~~ be considered services in employment~~. However,~~ unless a corporation ~~may elect~~ elects not to cover ~~not less than~~ all of its corporate officers under ~~subsection (B)~~ item (2). If an employer ~~does not elect~~ elects not to cover its corporate officers under ~~subsection (B)~~ item 2, the employer must notify its corporate officers in writing that they are ineligible for unemployment benefits. However, if the employer fails to provide notice, the individual’s status as a corporate officer is unchanged and the person remains ~~ineligible~~ eligible for unemployment benefits.

~~(B)~~(2) An employer may elect not to cover its corporate officers by providing the department with a written election that all services performed by its corporate officers shall not be deemed to constitute employment for all purposes related to Chapters 27 through 41 of this title for at least two calendar years. Upon written approval of the election by the department, the services shall be deemed to not constitute employment for purposes of Chapters 27 through 41 of this title on and after the date of approval. Services ~~covered~~ excluded from coverage under this subsection shall cease to be deemed employment as of January first of any calendar year subsequent to the two calendar year period, only if the employer files a written application for termination of coverage with the department before January fifteenth of that year.

(B)(1) Solely for the purposes of this title, services performed by a person who has at least a twenty‑five percent ownership interest in a business entity formed pursuant to the laws of this State, other than a corporation, shall be considered services in employment unless the entity elects not to cover a person with at least a twenty‑five percent ownership interest in the entity.

(2) A person who has an ownership interest of at least twenty‑five percent in a business entity formed pursuant to the laws of this State, other than a corporation, may elect not to cover himself by providing the department with a written election that all services performed by the person shall not be deemed to constitute employment for all purposes related to Chapters 27 through 41 of this title for at least two calendar years. Upon written approval of the election by the department, the services shall be deemed not to constitute employment for purposes of Chapters 27 through 41 of this title on and after the date of approval. Services covered under this subsection shall cease to be deemed employment as of January first of any calendar year subsequent to the two calendar year period, only if the employer files a written application for termination of coverage with the department before January fifteenth of that year.”

SECTION 2. Chapter 41, Title 41 of the 1976 Code is amended to read:

“CHAPTER 41

Employment and Workforce‑Offenses, Penalties and Liabilities

Section 41‑41‑10. Whoever makes a false statement or representation knowing it to be false or who knowingly fails to disclose a material fact to obtain or to increase any benefits or other payment under Chapters 27 through 41 of this Title or under an employment security or unemployment compensation law of any other state, the Federal Government, or of a foreign government, either for himself or for any other person, shall be punished by a fine of not less than ~~twenty~~ fifty nor more than ~~one~~ two hundred fifty dollars or by imprisonment for not longer than thirty days and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense.

Section 41‑41‑20. (A) A claimant found by the department knowingly to have made a false statement or who knowingly failed to disclose a material fact when filing a compensable claim to establish his right to or increase the amount of his benefits is ineligible to receive benefits for any week for which the claim was filed and is ineligible to receive further benefits for not less than ten and not more than fifty‑two consecutive weeks as determined by the department according to the circumstances of the case, these weeks to commence with the date of the determination.

(B) If the department finds that a fraudulent misrepresentation has been made by a claimant with the object of obtaining benefits under this chapter to which he was not entitled, in addition to any other penalty or prosecution provided under this chapter, the department may make a determination that there must be deducted from benefits to which the claimant might become entitled during this present benefit year or the next subsequent benefit year, or both, an amount not less than two and a half times his weekly benefit amount and not more than his maximum benefit amount payable in a benefit year, as determined under Chapter 35. This deduction takes effect on the date of the determination. An appeal from this determination must be made in the manner prescribed in Article 5, Chapter 35.

Section 41‑41‑30. Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false or who knowingly fails to disclose a material fact to prevent or reduce the payment of benefits to any individual entitled thereto or to avoid becoming or remaining subject thereto or to avoid or reduce any contribution or other payment required from any employing unit under Chapters 27 through 41 of this Title shall be punished by a fine of not less than ~~twenty~~ fifty nor more than ~~one~~ two hundred fifty dollars or by imprisonment for not longer than thirty days, and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense.

Section 41‑41‑40. (A)(1) A person who has received a sum as benefits under Chapters 27 through 41 while conditions for the receipt of benefits imposed by these chapters were not fulfilled or while he was disqualified from receiving benefits is liable to repay the department for the unemployment compensation fund a sum equal to the amount received by him.

(2) If full repayment of benefits, to which an individual was determined not entitled, has not been made, the sum must be deducted from future benefits payable to him under Chapters 27 through 41, and the sum must be collectible in the manner provided in Sections 41‑31‑380 through 41‑31‑400 for the collection of past due contributions.

(3) The department may attempt collection of overpayments through the South Carolina Department of Revenue in accordance with Section 12‑56‑10, et seq. If the overpayment is collectible in accordance with Section 12‑56‑60, the department shall add to the amount of the overpayment a collection fee of not more than ~~twenty‑five~~ fifty dollars for each collection attempt to defray administrative costs.

(4) The department may attempt collection of overpayment through the federal Unemployment Compensation Treasury Offset Program (UCTOP). If the overpayment is collectible, the department shall add to the amount of the overpayment a collection fee not to exceed the administrative costs set by this program.

(5) Notwithstanding any other provision of this section, no action to enforce recovery or recoupment of any overpayment may begin after five years from the date of the final determination for nonfraudulent overpayments nor after eight years from the date of the final determination for fraudulent overpayments.

(B)(1) A person who is overpaid any amounts as benefits under Chapters 27 through 41 is liable to repay those amounts, except as otherwise provided by this subsection.

(2) Upon written request by the person submitted to the department within the statutory appeal period from the issuance of the determination of overpayment, the department may waive repayment if the department finds that the:

(a) overpayment was not due to fraud, misrepresentation, or wilful nondisclosure on the part of the person;

(b) overpayment was received without fault on the part of the person; and

(c) recovery of the overpayment from the person would be contrary to equity and good conscience.

(3) Decisions denying waiver requests are subject to the appeal provisions of Chapter 35.

(C) A person who has received a sum as benefits under the comparable unemployment law of any other state while conditions imposed by that law were not fulfilled or while he was disqualified from receiving benefits by that law is liable to repay the department for the corresponding unemployment compensation fund of the other state a sum equal to the amount received by him if the other state has entered into an Interstate Reciprocal Overpayment Recovery Agreement with the State and has furnished the department with verification of the overpayment as required by the agreement. Recovery of overpayments under this subsection are not subject to the provisions of subsections (A)(3) and (B).

(D) Upon the determination of fraudulent overpayments by the department, an employer from whose account the overpayment was debited must be credited for the amount of the overpayment regardless of the outcome of the action for recoupment or recovery of the overpayment. This section shall not apply to employers whose accounts are subject to the provisions of Sections 41‑31‑810 or 41‑31‑620.

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~~ thirty‑three 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 41‑41‑50. An employing unit or person who wilfully violates a provision of Chapters 27 through 41 of this title or an order, rule, or regulation under this title, the violation of which is made unlawful or the observance of which is required under the terms of these chapters, is liable to a penalty of ~~one~~ two thousand dollars, to be recovered by the department in an appropriate civil action in a court of competent jurisdiction, and also is guilty of a misdemeanor and, upon conviction, must be punished by a fine of not less than ~~twenty~~ fifty dollars but not more than ~~one~~ two hundred fifty dollars or imprisonment for not longer than thirty days, and each day the violation continues is considered a separate offense.”

SECTION 3. This act takes effect upon approval by the Governor. The provisions contained in SECTION 1 shall retroactively apply to contribution rates calculated and imposed on or after January 1, 2015. Where the application of SECTION 1 would result in the reduction of contribution rates on an employer, the department shall credit that amount against future contributions from that employer until the credit is exhausted.

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