~~Indicates Matter Stricken~~

Indicates New Matter

AMENDED

June 2, 2010

**S. 1073**

Introduced by Senators Thomas, Leventis and Knotts

S. Printed 6/2/10--H.

Read the first time April 29, 2010.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 18 TO TITLE 37, SO AS TO REQUIRE THOSE WHO ENGAGE IN COLLATERAL RECOVERY TO APPLY FOR LICENSURE WITH THE DEPARTMENT OF CONSUMER AFFAIRS, TO PROVIDE WHAT MUST BE INCLUDED IN AN APPLICATION, TO PROVIDE ELIGIBILITY REQUIREMENTS FOR THOSE WHO ENGAGE IN COLLATERAL RECOVERY, TO PROVIDE LICENSE FEES, TO PROVIDE FOR THE INVESTIGATION OF LICENSE APPLICANTS, TO PROVIDE FOR THE FORM, VALIDITY PERIOD, AND RENEWAL OF ISSUED LICENSES, TO PROVIDE CANCELLATION REQUIREMENTS OF ISSUED LICENSES, TO PROVIDE FOR THE TRAINING OF INTERN COLLATERAL RECOVERERS, TO PROVIDE FOR VIOLATIONS AND ASSOCIATED PENALTIES OF THE CHAPTER, TO PROVIDE FOR THE CONFIDENTIALITY OF REQUIRED INVESTIGATIONS, TO ALLOW THE DEPARTMENT ACCESS TO CERTAIN RECORDS FOR INVESTIGATIONS, TO REQUIRE THE DEPARTMENT TO MAINTAIN CERTAIN STATISTICS, TO PROVIDE INVENTORY AND TITLE REQUIREMENTS, AND TO DEFINE CERTAIN TERMS.

Amend Title To Conform

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

SECTION 1. Section 41‑27‑260 of the 1976 Code, as last amended by Act 146 of 2010, is further amended to read:

“Section 41‑27‑260. The term ‘employment’ as used in Chapters 27 through 41 of this title does not include:

(1) labor engaged in the seafood industry, which is defined as persons employed in the commercial netting, catching, and gathering of seafood, and the processing of such seafood for the fresh market;

(2) casual labor not in the course of the employing unit’s trade or business;

(3) service performed by an individual in the employ of his son, daughter, or spouse and service performed by a child under the age of eighteen in the employ of his father or mother;

(4) service performed in the employ of the United States Government or an instrumentality of the United States immune under the Constitution of the United States from the contributions imposed by Chapters 27 through 41 of this title, except that to the extent that the Congress of the United States permits states to require instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation act, all of the provisions of Chapters 27 through 41 of this title are applicable to those instrumentalities and to services performed for those instrumentalities, in the same manner, to the same extent and on the same terms as to all other employers; provided, that if this State is not certified for a year by the Secretary of Labor or his successors under the Federal Internal Revenue Code, the payments required of those instrumentalities with respect to such year must be refunded by the department from the funds in the same manner and within the same period as is provided in Section 41‑31‑360 with respect to contributions erroneously collected;

(5) service performed after December 31, 1977, in the employ of a governmental entity referred to in Section 41‑27‑230(2)(b), if the service is performed by an individual in the exercise of his duties as:

(a) an elected official or as the appointed successor of an elected official;

(b) a member of a legislative body, or a member of the judiciary of a state or political subdivision;

(c) a member of the State National Guard or Air National Guard;

(d) an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency; or

(e) in a position that, pursuant to the laws of this State, is designated as a major nontenured policymaking or advisory position, or a policymaking position the performance of the duties of which ordinarily does not require more than eight hours per week;

(6) service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of Congress; provided, that the department must enter into agreements with the proper agencies under such act of Congress, which agreements shall become effective ten days after publication of it in the manner provided in Section 41‑29‑130 for general rules, to provide reciprocal treatment to individuals who have after acquiring potential rights to benefits under Chapters 27 through 41 of this title, acquired rights to unemployment compensation under such act of Congress or who have, after acquiring potential rights to unemployment compensation under such act of Congress, acquired rights to benefits under Chapters 27 through 41 of this title;

(7) service other than service performed as defined in Section 41‑27‑230(3) performed in the employ of a corporation, community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), a political campaign on behalf of a candidate for public office, provided, that service performed in the employ of an organization operated for the primary purpose of carrying on a trade or business for profit may not be exempt on the ground that all of its profits are payable to one or more organizations exempt under this paragraph;

(8) service other than service performed as defined in Section 41‑27‑230(3) that is performed in a calendar quarter in the employ of an organization exempt from federal income tax under Section 501(a) (other than an organization described in Section 401(a)) or under Section 521 of the Federal Internal Revenue Code of 1954, if the remuneration for such service is less than fifty dollars;

(9) the term ‘employment’ does not include:

(a) service performed in the employ of a school, college, or university, if the service is performed by:

(i) a student who is enrolled and is regularly attending classes at the school, college or university; or

(ii) the spouse of a student, if the spouse is advised, at the time the spouse commences to perform the service that the employment of the spouse to perform the service is provided under a program to provide financial assistance to the student by his school, college, or university, and the employment is not covered by a program of unemployment insurance;

(b) service performed by an individual under the age of twenty‑two who is enrolled at a nonprofit or public educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full‑time program, taken for credit at the institution, which combines academic instruction with work experience, if the service is an integral part of the program, and the institution has certified this to the employer, except that this subparagraph does not apply to service performed in a program established for or on behalf of an employer or group of employers;

(c) service performed in the employ of a hospital, if the service is performed by a patient of the hospital, as defined in Section 41‑27‑280;

(10) for the purposes of Section 41‑27‑230(2) and (3), ‘employment’ does not include service performed:

(a) in the direct employ of a church, convention, or association of churches or an organization operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church, convention, or association of churches; or

(b) by an ordained, a commissioned, or a licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by the order; or

(c) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age, physical or mental deficiency, or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be absorbed readily in the competitive labor market by an individual receiving rehabilitation or remunerative work; or

(d) before January 1, 1978, for a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution and after December 31, 1977, by an inmate of a custodial or penal institution; or

(e) as part of an unemployment work‑relief or work‑training program assisted or financed in whole or in part by a federal agency, an agency or political subdivision of a state, or an individual receiving work relief or work training, unless a federal law, rule, or regulation mandates unemployment insurance coverage to individuals in a particular work‑relief or work‑training program; or

(f) by an inmate who participates in a project designated by the Director of the Bureau of Justice Assistance pursuant to Public Law 90‑351;

(11) service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(12) service performed as a student nurse in the employ of a hospital or a nurses’ training school by an individual enrolled and regularly attending classes in a nurses’ training school chartered or approved pursuant to state law, and service performed as an intern in the employ of a hospital by an individual who has completed a four‑year course in a medical school chartered and approved pursuant to state law;

(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 ~~department~~ 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 ~~department~~ commission;

(15) service performed in the employ of a foreign government, including service as a consular or other officer or employee or a nondiplomatic representative;

(16) ‘agricultural labor’ as defined by Section 41‑27‑120 and when performed by students who are enrolled and regularly attending classes for at least five months during a particular year at a secondary school or at an accredited college, university, or technical school and also when performed by part‑time persons who do not qualify as students pursuant to this section but who at the conclusion of their agricultural labor would not qualify for benefits pursuant to the provisions of the department;

(17) service performed as a member of a Native American tribal council or service in a fishing rights related activity of a Native American tribe by a member of the tribe for another member of the tribe or by a qualified Native American entity.”

SECTION 2. Section 41‑27‑610 of the 1976 Code, as last amended by Act 146 of 2010, is further amended to read:

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

SECTION 3. Section 41‑29‑70 of the 1976 Code, as last amended by Act 146 of 2010, is further amended to read:

“Section 41‑29‑70. Subject to the provisions of Chapters 27 through 41 of this title, the department may employ or retain on a contract basis other accountants, attorneys, experts, and other persons as may be necessary to perform the department’s duties.”

SECTION 4. Section 41‑29‑170(B)(1)(b) of the 1976 Code, as last amended by Act 146 of 2010, is further amended to read:

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

SECTION 5. Section 41‑29‑180 of the 1976 Code, as last amended by Act 146 of 2010, is further 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 6. Section 41‑29‑250 of the 1976 Code, as last amended by Act 146 of 2010, is further 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 available on its Internet website~~ make this material available on its Internet website.”

SECTION 7. Section 41‑29‑270 of the 1976 Code, as last amended by Act 146 of 2010, is further amended to read:

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

SECTION 8. Section 41‑33‑430 of the 1976 Code, as last amended by Act 146 of 2010, is further amended to read:

“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 administration fund.”

SECTION 9. Section 41‑35‑120(4) of the 1976 Code, as last amended by Act 146 of 2010, is further amended to read:

“(4) Discharge for gross misconduct, and is ineligible for benefits beginning with the effective date of the request and continuing until he has secured employment and shows to the satisfaction of the department that he has performed services in employment as defined by Chapters 27 through 41 of this title and earned wages for those services equal to at least eight times the weekly benefit amount of his claim if he is discharged due to:

(i) wilful or reckless employee damage to employer property that results in damage of more than fifty dollars;

(ii) employee consumption of alcohol or being under the influence of alcohol on employer property in violation of a written company policy restricting or prohibiting consumption of alcohol;

(iii) employee theft of items valued at more than fifty dollars;

(iv) failure to comply with applicable state or federal drug and alcohol testing and use regulations including, but not limited to, 49 C.F.R. part 40 and part 382 of the federal motor carrier safety regulations, while on the job or on duty, and regulations applicable for employees performing transportation and other safety sensitive job functions as defined by the federal government;

(v) employee ~~committing criminal~~ assault or battery of another employee or a customer;

(vi) employee ~~committing criminal~~ abuse of patient or child in his professional care;

(vii) employee insubordination, which is defined as wilful failure to comply with a lawful, reasonable order of a supervisor directly related to the employee’s employment as described in an applicable written job description; or

(viii) employee wilful neglect of duty directly related to the employee’s employment as described in an applicable written job description.”

SECTION 10. Section 41‑39‑30 of the 1976 Code, as last amended by Act 146 of 2010, is further amended to read:

“Section 41‑39‑30. An individual claiming benefits may not be charged a fee in a proceeding under Chapters 27 through 41 of this title by the department or its representatives or by a court or an officer, except an attorney, of it. An individual claiming a benefit in a proceeding before the department or a court ~~must~~ may be represented by an attorney or other duly authorized agent, but an attorney or agent must not charge or receive for this service more than an amount approved by the department. A person who violates a provision of this section, for each offense, must be fined not less than fifty dollars nor more than five hundred dollars, imprisoned for not more than six months, or both.”

SECTION 11. Section 41‑35‑615 of the 1976 Code is repealed.

SECTION 12. This act takes effect upon approval by the Governor.

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