~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

May 26, 2010

**S. 1257**

Introduced by Senator Rose

S. Printed 5/26/10--S.

Read the first time March 4, 2010.

**THE COMMITTEE ON**

**LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (S. 1257) to amend Chapter 5, Title 43 of the Code of Laws of South Carolina, 1976, relating to the state directory of new hires and new hire reporting program, etc., respectfully

**REPORT:**

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

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

/ SECTION 1. Section 63‑17‑1210 of the 1976 Code is amended to read:

“~~(A)~~ ~~By January 1, 1996, the Child Support Enforcement Division of the Department of Social Services shall create and develop an Employer New Hire Reporting program. The Employer New Hire Reporting program shall provide a means for employers to voluntarily assist in the state’s efforts to locate absent parents who owe child support and collect child support from those parents by reporting information concerning newly hired and rehired employees directly to the division.~~

~~(B)~~ ~~The following provisions apply to the Employer New Hire Reporting program:~~

~~(1)~~ ~~An employer doing business in this State may participate in the Employer New Hire Reporting program by reporting to the Child Support Enforcement Division:~~

~~(a)~~ ~~the hiring of a person who resides or works in this State to whom the employer anticipates paying earnings; or~~

~~(b)~~ ~~the rehiring or return to work of an employee who was laid off, furloughed, separated, granted leave without pay, or terminated from employment.~~

~~(2)~~ ~~The Employer New Hire Reporting program applies to a person who is expected to:~~

~~(a)~~ ~~be employed for more than one month’s duration;~~

~~(b)~~ ~~be paid for more than three hundred fifty hours during a continuous six‑month period; or~~

~~(c)~~ ~~have gross earnings of more than three hundred dollars in each month of employment.~~

~~(3)~~ ~~An employer who voluntarily reports under item (1) shall submit monthly reports regarding each hiring, rehiring, or return to work of an employee during the preceding month. The report must contain:~~

~~(a)~~ ~~the employee’s name, address, social security number, date of birth, and salary information; and~~

~~(b)~~ ~~the employer’s name, address, and employer identification number.~~

~~(4)~~ ~~Employers reporting to the Employer New Hire Reporting program shall provide information to the Child Support Enforcement Division by:~~

~~(a)~~ ~~sending a copy of the new employee’s W‑4 form;~~

~~(b)~~ ~~completing a form supplied by the Child Support Enforcement Division; or~~

~~(c)~~ ~~any other means authorized by the Child Support Enforcement Division for conveying the required information, including electronic transmission or magnetic tapes in compatible formats.~~

~~(5)~~ ~~An employer is authorized by this section to disclose the information described in item (3) and is not liable to the employee for the disclosure or subsequent use by the Child Support Enforcement Division of the information.~~

~~(6)~~ ~~Information received by the South Carolina Employment Security Commission from employers which includes information contained in the reports provided for in this section must be transmitted to the Department of Social Services within fifteen working days after the end of each quarter~~. The Employer New Hire Reporting requirements, which are mandatory, are in Section 43‑5‑598.”

SECTION 2. Sections 43‑5‑598 (K), (L), and (M) of the 1976 Code are amended to read:

“(K) Within two business days after the date information regarding a newly hired employee is entered into the state directory of new hires, the department shall transmit a notice to the employer of the employee directing the employer to withhold from the income of the employee an amount equal to the monthly, or other periodic, child support obligation, including any past‑due child support obligation, of the ~~employee~~ new hire, unless the employee’s income is not subject to withholding pursuant to Article 11, Chapter 17, Title 63.

(L) Within three business days after the date information regarding a ~~newly hired employee~~ new hire is entered into the state directory of new hires, the state directory of new hires shall furnish the information to the national directory of new hires.

(M) The state directory of new hires shall include reports received from the Employment Security Commission ~~pursuant to~~ and any other reports received from other departments or agencies as provided for in Section 43‑5‑620. The state directory of new hires shall furnish these reports, on a quarterly basis, to the national directory of new hires by the dates, in the format, and containing the information the Secretary of the United States Department of Health and Human Services specifies in regulations.”

SECTION 3. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 4. This act takes effect upon approval by the Governor.

Renumber sections to conform.

Amend title to conform.

PAUL G. CAMPBELL, JR. for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

**EXPLANATION OF IMPACT:**

The Department of Social Services, the Department of Health and Human Services and the Employment Security Commission indicate that this bill would have no impact on the General Fund of the State or on federal and/or other funds as it merely attempts to clarify conflicting code citations.

*Approved By:*

Harry Bell

Office of State Budget

**A** **BILL**

TO AMEND CHAPTER 5, TITLE 43 OF THE CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE STATE DIRECTORY OF NEW HIRES AND NEW HIRE REPORTING PROGRAM, SO AS TO REPEAL SECTION 43‑5‑598; TO AMEND SECTION 63‑17‑1210, RELATING TO THE STATE DIRECTORY OF NEW HIRES AND THE NEW HIRE REPORTING PROGRAM, SO AS TO DEFINE CERTAIN TERMS, TO REQUIRE THAT BY JULY 1, 2010, THE CHILD SUPPORT ENFORCEMENT DIVISION OF THE DEPARTMENT OF SOCIAL SERVICES CREATE AN EMPLOYER NEW HIRE REPORTING PROGRAM AND A STATE DIRECTORY OF NEW HIRES, TO REQUIRE EMPLOYERS TO REPORT THE EMPLOYMENT OF ALL NEW HIRES WHO RESIDE OR WORK IN SOUTH CAROLINA TO THE STATE DIRECTORY WITHIN TWENTY CALENDAR DAYS OF HIRING, TO REQUIRE THAT THE REPORT MUST CONTAIN THE EMPLOYER’S NAME, ADDRESS, AND FEDERAL IDENTIFICATION NUMBER, AND THE NEW HIRES NAME, ADDRESS, AND SOCIAL SECURITY NUMBER, TO EXEMPT EMPLOYERS FROM HAVING TO FILE REPORTS ON EMPLOYEES OF FEDERAL OR STATE AGENCIES WHO PERFORM INTELLIGENCE OR COUNTERINTELLIGENCE FUNCTIONS, TO PERMIT AN EMPLOYER WITH EMPLOYEES IN MORE THAN ONE STATE TO SELECT A SINGLE STATE FROM WHICH TO TRANSMIT NEW HIRE REPORTS, TO REQUIRE THAT NEW HIRE REPORTS BE MADE ON W‑4 FORMS OR AN EQUIVALENT FORM, TO REQUIRE THAT EMPLOYERS WHO FAIL TO FILE REPORTS ARE SUBJECT TO A TWENTY‑FIVE DOLLAR FINE FOR THE SECOND AND SUBSEQUENT OFFENSE, AND A FIVE HUNDRED DOLLAR FINE FOR EVERY OFFENSE WHERE THE EMPLOYER CONSPIRED WITH THE NEW HIRE NOT TO REPORT THE HIRING OF THE NEW EMPLOYEE, TO PROVIDE THAT THE DEPARTMENT OF SOCIAL SERVICES ENTER THE NEW HIRE REPORTS FILED BY EMPLOYERS INTO STATE DIRECTORY OF NEW HIRES WITHIN FIVE BUSINESS DAYS OF RECEIPT FROM THE EMPLOYER, TO REQUIRE THAT BY OCTOBER 1, 2010, THE DEPARTMENT OF SOCIAL SERVICES MUST CONDUCT AUTOMATED COMPARISONS OF SOCIAL SECURITY NUMBERS REPORTED BY EMPLOYERS WITH SOCIAL SECURITY NUMBERS IN THE RECORDS OF THE STATE CASE REGISTRY, TO REQUIRE THAT WHEN THE COMPARISON REVEALS A MATCH, THE DEPARTMENT OF SOCIAL SERVICES MUST, WITHIN TWO DAYS, NOTIFY THE EMPLOYER OF THE MATCH AND DIRECT THE EMPLOYER TO WITHHOLD FROM THE INCOME OF THE NEW HIRE AN AMOUNT EQUAL TO THE MONTHLY, OR OTHER PERIODIC CHILD SUPPORT OBLIGATION, INCLUDING PAST DUE CHILD SUPPORT OBLIGATIONS, TO PROVIDE THAT WITHIN THREE DAYS OF THE DATA BEING ENTERED INTO THE STATE DIRECTORY OF NEW HIRES THAT THE STATE DIRECTORY MUST FORWARD THE INFORMATION TO THE NATIONAL DIRECTORY OF NEW HIRES, TO PROVIDE THAT THE STATE DIRECTORY OF NEW HIRES MUST INCLUDE REPORTS RECEIVED FROM THE EMPLOYMENT SECURITY COMMISSION AND OTHER DEPARTMENTS, TO PROVIDE THAT THE INFORMATION MAINTAINED IN THE DIRECTORY OF NEW HIRES SHALL BE USED BY THE DEPARTMENT OF SOCIAL SERVICES TO LOCATE INDIVIDUALS FOR PURPOSES OF ESTABLISHING PATERNITY AND ESTABLISHING CHILD SUPPORT OBLIGATIONS AND IT MAY BE DISCLOSED TO A PUBLIC OR PRIVATE AGENCY THAT IS UNDER CONTRACT WITH THE DEPARTMENT OF SOCIAL SERVICES, TO PROVIDE THAT THE DEPARTMENT OF SOCIAL SERVICES SHALL HAVE ACCESS TO THE INFORMATION FOR THE PURPOSE OF VERIFYING ELIGIBILITY FOR CERTAIN STATE ADMINISTERED PROGRAMS, TO PROVIDE THAT THE EMPLOYMENT SECURITY COMMISSION SHALL HAVE ACCESS TO THE INFORMATION REPORTED BY EMPLOYERS FOR PURPOSES OF ADMINISTERING THE EMPLOYMENT SECURITY PROGRAM, TO PROVIDE THAT THE WORKERS’ COMPENSATION COMMISSION SHALL HAVE ACCESS TO THE INFORMATION FOR THE PURPOSE OF ADMINISTERING THE WORKERS’ COMPENSATION PROGRAM, TO PROVIDE THAT AN EMPLOYER WHO DISCLOSES THIS INFORMATION TO THE STATE DIRECTORY OF NEW HIRES IN GOOD FAITH SHALL BE EXEMPT FROM CIVIL OR CRIMINAL LIABILITY, TO REQUIRE THE DEPARTMENT OF SOCIAL SERVICES TO PROMULGATE REGULATIONS, AND TO PROVIDE THAT THIS PROVISION SHALL REMAIN IN EFFECT UNTIL THE FEDERAL PROGRAM MANDATING REPORTING NEW HIRES IS REPEALED; TO AMEND SECTION 63‑3‑530(A)(43), RELATING TO THE DEPARTMENT OF SOCIAL SERVICES’ COLLECTION OF FINES, SO AS TO INCLUDE SECTION 63‑17‑1210 IN THE LIST OF FINES TO BE ENFORCED.

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

SECTION 1. Section 43‑5‑598 of the 1976 Code is repealed.

SECTION 2. Section 63‑17‑1210 of the 1976 Code is amended to read:

“~~(A)~~ ~~By January 1, 1996, the Child Support Enforcement Division of the Department of Social Services shall create and develop an Employer New Hire Reporting program. The Employer New Hire Reporting program shall provide a means for employers to voluntarily assist in the state’s efforts to locate absent parents who owe child support and collect child support from those parents by reporting information concerning newly hired and rehired employees directly to the division.~~

~~(B)~~ ~~The following provisions apply to the Employer New Hire Reporting program:~~

~~(1)~~ ~~An employer doing business in this State may participate in the Employer New Hire Reporting program by reporting to the Child Support Enforcement Division:~~

~~(a)~~ ~~the hiring of a person who resides or works in this State to whom the employer anticipates paying earnings; or~~

~~(b)~~ ~~the rehiring or return to work of an employee who was laid off, furloughed, separated, granted leave without pay, or terminated from employment.~~

~~(2)~~ ~~The Employer New Hire Reporting program applies to a person who is expected to:~~

~~(a)~~ ~~be employed for more than one month’s duration;~~

~~(b)~~ ~~be paid for more than three hundred fifty hours during a continuous six‑month period;~~ ~~or~~

~~(c)~~ ~~have gross earnings of more than three hundred dollars in each month of employment.~~

~~(3)~~ ~~An employer who voluntarily reports under item (1) shall submit monthly reports regarding each hiring, rehiring, or return to work of an employee during the preceding month. The report must contain:~~

~~(a)~~ ~~the employee’s name, address, social security number, date of birth, and salary information;~~  ~~and~~

~~(b)~~ ~~the employer’s name, address, and employer identification number.~~

~~(4)~~ ~~Employers reporting to the Employer New Hire Reporting program shall provide information to the Child Support Enforcement Division by:~~

~~(a)~~ ~~sending a copy of the new employee’s W‑4 form;~~

~~(b)~~ ~~completing a form supplied by the Child Support Enforcement Division;~~ ~~or~~

~~(c)~~ ~~any other means authorized by the Child Support Enforcement Division for conveying the required information, including electronic transmission or magnetic tapes in compatible formats.~~

~~(5)~~ ~~An employer is authorized by this section to disclose the information described in item (3) and is not liable to the employee for the disclosure or subsequent use by the Child Support Enforcement Division of the information.~~

~~(6)~~ ~~Information received by the South Carolina Employment Security Commission from employers which includes information contained in the reports provided for in this section must be transmitted to the Department of Social Services within fifteen working days after the end of each quarter.~~

Section 63‑17‑1210. (A) As used in this section:

(1) ‘Business day’ means a day on which state offices are open for regular business.

(2) ‘Date of hire’ means the first day the employee works for which the employee is entitled to compensation from the payor of income.

(3) ‘Department’ means the Department of Social Services, or its designee.

(4) ‘Employer’ includes a governmental entity and labor organization and means a person doing business in this State for whom an individual performs a service, of whatever nature, as the employee of the person and except that:

(a) if the person for whom the individual performs services does not have control of the payment of wages for the services, the term ‘employer’ means the person having control of the payment of wages; and

(b) in the case of a person paying wages on behalf of a nonresident alien, individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, the term ‘employer’ means that person.

(5) ‘Labor organization’ means an organization in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work. Hiring halls, which refer individuals for jobs with employers, are ‘labor organizations’ to the extent that they exist pursuant to an agreement with an employer engaged primarily in the building and construction industry under Section 8(f)(3) of the National Labor Relations Act.

(6) ‘New hire’ includes an individual newly employed or an individual who has been rehired or has returned to work after being laid off, furloughed, separated, granted leave without pay, or terminated from employment.

(B) By July 1, 2010, the Child Support Enforcement Division of the Department must create and develop an Employer New Hire Reporting program and establish a state directory of new hires which shall contain information supplied in accordance with subsection (C) by employers on each new hire.

(C) Beginning July 1, 2010, employers must report the employment of all new hires who reside or work in this State to the state directory of new hires within twenty calendar days of the employment of the new hire. However, in the case of an employer transmitting reports magnetically or electronically, the reports must be transmitted semi‑monthly, and not less than twelve nor more than sixteen days apart. The report submitted shall contain:

(1) the employer’s name, address, and federal identification number assigned to the employer under Section 6109 of the Internal Revenue Code of 1986; and

(2) the new hire’s name, address, and social security number.

(D) For purposes of this section, an employer must not report information on an employee of a federal or state agency performing intelligence or counterintelligence functions if the head of the agency has determined that reporting pursuant to this section with respect to the employee could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

(E) An employer that has employees who are employed in two or more states and that transmits reports magnetically or electronically may comply with subsection (C) by designating one state in which the employer has employees to which the employer will transmit the report required by subsection (C) and transmitting the report to that state. An employer that transmits reports pursuant to this subsection shall notify the Secretary of the United States Department of Health and Human Services in writing as to which state the employer designates for the purpose of sending reports.

(F) Each report required by subsection (C) must be made on a W4 form or, at the option of the employer, an equivalent form and may be transmitted by first class mail, facsimile, magnetically, or electronically. Magnetic and electronic submissions must be in a format prescribed by the department.

(G) If an employer fails to report the employment of a new hire pursuant to this section, the employer shall be subject to a civil penalty of not more than:

(1) twenty‑five dollars for the second offense and every offense thereafter unless the employer can demonstrate good cause for not reporting, or not timely reporting the employment of the new hire; or

(2) five hundred dollars for each and every offense, if the failure is the result of a conspiracy between the employer and the new hire not to supply the required report or to supply a false or incomplete report.

Fines imposed pursuant to this subsection must be enforced as provided for in Section 63‑3‑530(A)(43) and distributed according to Section 63‑17‑520.

(H) Information must be entered into the data base maintained by the state directory of new hires within five business days of receipt from an employer pursuant to subsection (C).

(I) No later than October 1, 2010, the department shall conduct automated comparisons of the social security numbers reported by employers pursuant to subsection (C) and the social security numbers appearing in the records of the State Case Registry created pursuant to Section 43‑5‑610 for cases being enforced under the federally approved child support program administered by the department.

(J) When an information comparison conducted under paragraph (I) reveals a match with respect to the social security number of an individual in the records of the State Case Registry, the state directory of new hires shall provide the department with the information reported by the employer pursuant to subsection (C).

(K) Within two business days after the date information regarding a new hire is entered into the state directory of new hires, the department shall transmit a notice to the employer of the new hire directing the employer to withhold from the income of the new hire an amount equal to the monthly, or other periodic, child support obligation, including any past due child support obligation, of the new hire, unless the new hire’s income is not subject to withholding pursuant to Article 11, Chapter 17, Title 63.

(L) Within three business days after the date information regarding a new hire is entered into the state directory of new hires, the state directory of new hires shall furnish the information to the national directory of new hires.

(M) The state directory of new hires shall include reports received from the Employment Security Commission and any other reports received from other departments or agencies as provided for in Section 43‑5‑620. The state directory of new hires shall furnish these reports, on a quarterly basis, to the national directory of new hires by the dates, in the format, and containing the information the Secretary of the United States Department of Health and Human Services specifies in regulations.

(N) Information maintained in the state directory of new hires and national directory of new hires may be utilized for these purposes:

(1) The department shall use information received pursuant to subsection (I) to locate individuals for purposes of establishing paternity and establishing, modifying, and enforcing child support obligations and may disclose this information to a public or private agency that is under contract with the department to carry out these purposes.

(2) The department shall have access to information reported by employers pursuant to subsection (C) for purposes of verifying eligibility for these state administered programs:

(a) Temporary Assistance for Needy Families;

(b) Medicaid under Title XIX of the Social Security Act;

(c) food stamps;

(d) unemployment compensation benefits; and

(e) any state program under a plan approved under Title I, X, XIV, or XVI of the Social Security Act.

(3) The Employment Security Commission shall have access to information reported by employers pursuant to subsection (C) for purposes of administering the employment security program.

(4) The Workers’ Compensation Commission or its designee shall have access to information reported by employers pursuant to subsection (C) for purposes of administering the workers’ compensation program.

(O) An employer who in good faith discloses information pursuant to this section is not subject to civil or criminal liability on account of the disclosure.

(P) The department must promulgate regulations to implement the provisions of this subsection. All regulations must be promulgated in accordance with the provisions of Chapter 23 of Title 1 of the South Carolina Code of Laws.

(Q) This section remains in effect until the federal mandate requiring a mandatory new hire reporting program is repealed.”

SECTION 3. Section 63‑3‑530(A)(43) of the 1976 Code is amended to read:

“(43) to enforce an administrative subpoena or subpoena duces tecum issued by the Department of Social Services pursuant to Section 63‑17‑850 and to enforce fines assessed by the department pursuant to Sections 63‑17‑850, 63‑17‑1210, and 63‑17‑2310(C)~~, and 43‑5‑598(G)~~;”

SECTION 4. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 5. This act takes effect upon approval by the Governor.

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