~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

May 9, 2012

**S. 1125**

Introduced by Senators Bright, Bryant, S. Martin, Thomas, Gregory, Knotts, Campbell, Rose, Cromer, Fair, Campsen, Grooms, Peeler and Shoopman

S. Printed 5/9/12--H.

Read the first time March 29, 2012.

**THE COMMITTEE ON LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (S. 1125) to amend Section 41‑35‑120 of the 1976 Code, relating to disqualification for unemployment benefits, to provide that a person discharged from employment for cause is ineligible, 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 deleting all after the enacting words and inserting:

/ SECTION 1. Section 41‑35‑120(2) of the 1976 Code is amended to read:

“(2)(a) Discharge for ~~cause~~ misconduct connected with the employment. If the department finds that he has been discharged for ~~cause~~ misconduct connected with his most recent work prior to filing a request for determination of insured status or a request for initiation of a claim series within an established benefit year, with ineligibility beginning with the effective date of the request, and continuing ~~not less than five nor more than the~~ for the next twenty~~‑six~~ weeks, in addition to the waiting period, with a corresponding and mandatory reduction of the insured worker’s benefits to be calculated by multiplying his weekly benefit amount by ~~the number of weeks of his disqualification~~ twenty. ~~The ineligibility period must be determined by the department in each case according to the seriousness of the cause for discharge~~. ~~A charge of discharge for cause connected with the employment may not be made for failure to meet production requirements unless the failure is occasioned by wilful failure or neglect of duty~~. ~~‘Cause connected with the employment’ as used in this item requires more than a failure in good performance of the employee as the result of inability or incapacity.~~ For the purposes of this item, ‘misconduct’ is limited to conduct evincing such wilfull and wanton disregard of an employer’s interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in the carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent, or evil design, or to show an intentional and substantial disregard of the employer’s interest or of the employee’s duties and obligations to his employer. No finding of misconduct may be made for discharge resulting from an extreme hardship, emergency, sickness, or other extraordinary circumstance.

(b) If the department finds that he has been discharged for unsatisfactory conduct, ordinary negligence in isolated instances, or good‑faith errors in judgment or discretion connected with his most recent work prior to filing a request for determination of insured status or a request for initiation of a claim series within an established benefit year, with ineligibility beginning with the effective date of the request, and continuing not less than five nor more than the next nineteen weeks, in addition to the waiting period, with a corresponding and mandatory reduction of the insured worker’s benefits to be calculated by multiplying his weekly benefit amount by the number of weeks of his disqualification. The ineligibility period must be determined by the department in each case according to the seriousness of the cause for discharge.

(c) Discharge resulting from substandard performance due to inefficiency, inability, or incapacity shall not serve as a basis for disqualification under Sections 41‑35‑120(2)(a) or 41‑35‑120(2)(b).”

SECTION 2. Section 41‑35‑130 is amended by adding a new subsection to read:

“(M)(1) For the purposes of this subsection, ‘most recent bona fide employer’ means the work or employer from which an individual was discharged regardless of work subsequent to his discharge in which he earned less than eight times his weekly benefit amount.

(2) A benefit paid to a claimant must not be charged against the account of an employer if the department determines that the claimant’s most recent bona fide employer discharged him for misconduct connected with his employment. This provision is applicable only to an employer subject to the payment of contributions.”

SECTION 3. Section 41‑41‑40 of the 1976 Code is amended by adding a new subsection to read:

“(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 and 41‑31‑820.”

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

Renumber sections to conform.

Amend title to conform.

WILLIAM E. SANDIFER for Committee.

**A** **BILL**

TO AMEND SECTION 41‑35‑120 OF THE 1976 CODE, RELATING TO DISQUALIFICATION FOR UNEMPLOYMENT BENEFITS, TO PROVIDE THAT A PERSON DISCHARGED FROM EMPLOYMENT FOR CAUSE IS INELIGIBLE FOR BENEFITS FOR TWENTY WEEKS BEGINNING WITH THE DATE THE PERSON FILED A BENEFITS REQUEST.

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

SECTION 1. Section 41‑35‑120(2) of the 1976 Code is amended to read:

“(2) Discharge for ~~cause~~ misconduct connected with the employment. If the department finds that he has been discharged for ~~cause~~ misconduct connected with his most recent work prior to filing a request for determination of insured status or a request for initiation of a claim series within an established benefit year, with ineligibility beginning with the effective date of the request, and continuing ~~not less than five nor more than the next~~ twenty~~‑six~~ weeks~~, in addition to the waiting period, with a corresponding and mandatory reduction of the insured worker’s benefits to be calculated by multiplying his weekly benefit amount by the number of weeks of his disqualification. The ineligibility period must be determined by the department in each case according to the seriousness of the cause for discharge~~. A ~~charge~~ finding of discharge for ~~cause connected with the employment~~ misconduct may not be made for ~~failure to meet production requirements unless the failure is occasioned by wilful failure or neglect of duty~~ discharge resulting from circumstances related to an extreme hardship, emergency, sickness, or other extraordinary circumstance. ~~‘Cause connected with the employment’ as used in this item requires more than a failure in good performance of the employee as the result of inability or incapacity.~~ For the purposes of this item, ‘misconduct’ is limited to conduct evincing such wilfull and wanton disregard of an employer’s interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in the carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent, or evil design, or to show an intentional and substantial disregard of the employer’s interest or of the employee’s duties and obligations to his employer. However, mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies, or ordinary negligence in isolated instances, or good-faith errors in judgment or discretion are not misconduct for the purposes of this item.”

SECTION 2. Section 41-35-130 is amended by adding a new subsection to read:

“(M)(1) For the purposes of this subsection, ‘most recent bona fide employer’ means the work or employer from which an individual was discharged regardless of work subsequent to his discharge in which he earned less than eight times his weekly benefit amount.

(2) A benefit paid to a claimant must not be charged against the account of an employer if the department determines that the claimant’s most recent bona fide employer discharged him for misconduct connected with his employment.”

SECTION 3. Section 41-41-40 of the 1976 Code is amended by adding a new subsection to read:

“(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.”

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

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