AMENDED

April 27, 2011

**H. 3762**

Introduced by Reps. Cooper, White, Bowen, Gambrell, Thayer, Sandifer, D.C. Moss, McLeod and Viers

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Read the first time March 1, 2011.

**A** **BILL**

TO AMEND SECTION 41‑31‑45, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE UNEMPLOYMENT INSURANCE TRUST FUND, SO AS TO PROVIDE THAT IN A YEAR IN WHICH THE FUND IS IN DEBT STATUS, THE DEPARTMENT OF EMPLOYMENT AND WORKFORCE, AMONGST OTHER ESTIMATES, MUST ESTIMATE THE AMOUNT OF INCOME NECESSARY TO REPAY ALL OUTSTANDING FEDERAL LOANS WITHIN EIGHT YEARS.

Amend Title To Conform

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

SECTION 1. Section 41‑31‑45(B) of the 1976 Code, as added by Act 234 of 2010, is amended to read:

“(B) For each calendar year during which the state Unemployment Insurance Trust Fund is in debt status, the department must estimate the amount of income necessary to pay benefits for that year, the amount of income necessary to avoid automatic FUTA credit reductions, and an amount of income necessary to repay all outstanding federal loans within ~~five~~ eight years. Additional estimates of interest costs shall be determined concurrently.

(1) Estimates of the revenue needed to pay benefits will be based on Congressional Budget Office projections for the subsequent calendar year’s total unemployment rate. This total unemployment rate will be adjusted for South Carolina based on the historic relationship between the unemployment rate in South Carolina and the national unemployment rate calculated from 1980 to present.

(2) The historic relationship, calculated from 1980 to present, between the total unemployment rate and the insured unemployment rate in South Carolina will be used to adjust the projected total unemployment rate to the rate of insured unemployment.

(3) Estimates of forecasted benefits will be based upon the prior three year average of the annual number of weeks compensated multiplied by an estimate of the average weekly benefit for the next year.

(4) Estimates of amounts to pay to avoid FUTA credit reductions and amount of repayments on the loan will be projected through consultation with officials at the US Department of Labor.”

SECTION 2. Article 1, Chapter 31, Title 41 of the 1976 Code is amended by adding:

“Section 41‑31‑35. (A) For purposes of unemployment compensation benefit contributions required of employers, if an employer has a positive fund balance for a period of at least one year in its account, it may not be classified in Rate Class 13 or higher. (B) All new employees for purposes of unemployment compensation benefits contributions required of employers must be classified in Rate Class 12.”

SECTION 3. Article 1, Chapter 31, Title 41 of the 1976 Code is amended by adding:

“Section 41‑31‑36. No North American Industry Classification System code 5613 employer base rate may be less than the rate applicable for rate class thirteen until there have been twelve consecutive months of coverage after first becoming liable for contributions under Chapters 27 through 31.

SECTION 4. Notwithstanding any other provision of law, effective with claims filed on or after January 1, 2012:

(a) A seasonal pursuit is one which, because of seasonal conditions making it impracticable or impossible to do otherwise, customarily carries on production operations only within a regularly recurring active period or periods of less than an aggregate of 36 weeks in a calendar year. No pursuit shall be deemed seasonal unless and until so found by the Department: Provided, however, that any successor under to a seasonal pursuit shall be deemed seasonal unless such successor shall within 120 days after the acquisition request cancellation of the determination of status of such seasonal pursuit; provided further that this provision shall not be applicable to pending cases nor retroactive in effect.

(b) Upon application therefor by a pursuit, the Department shall determine or redetermine whether such pursuit is seasonal and, if seasonal, the active period or periods thereof. The Department may, on its own motion, redetermine the active period or periods of a seasonal pursuit. An application for a seasonal determination must be made on forms prescribed by the Department and must be made at least 30 days prior to the beginning date of the period of production operations for which a determination is requested.

(c) Whenever the Department has determined or redetermined a pursuit to be seasonal, such pursuit shall be notified immediately, and such notice shall contain the beginning and ending dates of the pursuit’s active period or periods. Such pursuits shall display notices of its seasonal determination conspicuously on its premises in a sufficient number of places to be available for inspection by its workers. Such notices shall be furnished by the Department.

(d) A seasonal determination shall become effective unless an interested party files an application for review within 10 days after the beginning date of the first period of production operations to which it applies. Such an application for review shall be deemed to be an application for a determination of status.

(e) All wages paid to a seasonal worker during his base period shall be used in determining his weekly benefit amount; provided however, that all weekly benefit amounts so determined shall be rounded to the nearest lower full dollar amount (if not a full dollar amount).

(f)(1) A seasonal worker shall be eligible to receive benefits based on seasonal wages only for a week of unemployment which occurs, or the greater part of which occurs within the active period or periods of the seasonal pursuit or pursuits in which he earned base period wages.

(2) A seasonal worker shall be eligible to receive benefits based on nonseasonal wages for any week of unemployment which occurs during any active period or periods of the seasonal pursuit in which he has earned base period wages provided he has exhausted benefits based on seasonal wages. Such worker shall also be eligible to receive benefits based on nonseasonal wages for any week of unemployment which occurs during the inactive period or periods of the seasonal pursuit in which he earned base period wages irrespective as to whether he has exhausted benefits based on seasonal wages.

(3) The maximum amount of benefits which a seasonal worker shall be eligible to receive based on seasonal wages shall be an amount, adjusted to the nearest multiple of one dollar ($1.00), determined by multiplying the maximum benefits payable in his benefit year, as provided in Section 41‑35‑50, by the percentage obtained by dividing the seasonal wages in his base period by all of his base period wages.

(4) The maximum amount of benefits which a seasonal worker shall be eligible to receive based on nonseasonal wages shall be an amount, adjusted to the nearest multiple of one dollar ($1.00), determined by multiplying the maximum benefits payable in his benefit year, as provided in 41‑35‑50, by the percentage obtained by dividing the nonseasonal wages in his base period by all of his base period wages.

(5) In no case shall a seasonal worker be eligible to receive a total amount of benefits in a benefit year in excess of the maximum benefits payable for such benefit year, as provided in 41‑35‑50.

(g)(1) All benefits paid to a seasonal worker based on seasonal wages shall be charged, as prescribed in 41‑31‑20, against the account of his base period employer who paid him such seasonal wages, and for the purpose of this paragraph such seasonal wages shall be deemed to constitute all of his base period wages.

(2) All benefits paid to a seasonal worker based on nonseasonal wages shall be charged, as prescribed in 41‑31‑20, against the account of his base period employer who paid him such nonseasonal wages, and for the purpose of this paragraph such nonseasonal wages shall be deemed to constitute all of his base period wages.

(h) The benefits payable to any otherwise eligible individual shall be calculated in accordance with this section for any benefit year which is established on or after the beginning date of a seasonal determination applying to a pursuit by which such individual was employed during the base period applicable to such benefit year, as if such determination had been effective in such base period.

(i) Nothing in this section shall be construed to limit the right of any individual whose claim for benefits is determined in accordance herewith to appeal from such determination as provided in 41‑35‑660.

(j) As used in this section:

(1) “Pursuit” means an employer or branch of an employer.

(2) “Branch of an employer” means a part of an employer’s activities which is carried on or is capable of being carried on as a separate enterprise.

(3) “Production operations” mean all the activities of a pursuit which are primarily related to the production of its characteristic goods or services.

(4) “Active period or periods” of a seasonal pursuit means the longest regularly recurring period or periods within which production operations of the pursuit are customarily carried on.

(5) “Seasonal wages” mean the wages earned in a seasonal pursuit within its active period or periods. The Department may prescribe by regulation the manner in which seasonal wages shall be reported.

(6) “Seasonal worker” means a worker at least twenty‑five percent (25%) of whose base period wages are seasonal wages.

(7) “Interested party” means any individual affected by a seasonal determination.

(8) “Inactive period or periods” of a seasonal pursuit means that part of a calendar year which is not included in the active period or periods of such pursuit.

(9) “Nonseasonal wages” mean the wages earned in a seasonal pursuit within the inactive period or periods of such pursuit, or wages earned at any time in a nonseasonal pursuit.

(10) “Wages” mean remuneration for employment.

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

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