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Indicates New Matter

RECALLED

May 17, 2011

**H. 4198**

Introduced by Reps. Bingham, Cooper, White, Cobb‑Hunter and Ott

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Read the first time May 11, 2011.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 41‑31‑35 SO AS TO PROVIDE THAT 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 AND TO PROVIDE THAT ALL NEW EMPLOYERS FOR PURPOSES OF UNEMPLOYMENT COMPENSATION BENEFIT CONTRIBUTIONS REQUIRED OF EMPLOYERS MUST BE CLASSIFIED IN RATE CLASS 12; BY ADDING SECTION 41‑31‑36 SO AS TO PROVIDE THAT 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; BY ADDING SECTION 41‑31‑41 SO AS TO PROVIDE THAT FOR CALENDAR YEARS 2011 AND 2012, RETROACTIVE TO JANUARY 2011, THE STATE SHALL REDUCE STATE UNEMPLOYMENT TAX BASE RATES FOR EMPLOYERS IN TIERS 13 THROUGH 20 BY A SPECIFIED PERCENT, TO PROVIDE THE METHOD TO BE USED TO FUND SUCH REDUCTIONS, AND TO ALSO PROVIDE FOR THE PREMIUMS TO BE PAID BY EMPLOYERS IN TIERS 1 THROUGH 12 FOR CALENDAR YEARS 2011 AND 2012; TO AMEND SECTION 41‑31‑45, RELATING TO ESTIMATES OF THE INCOME NECESSARY TO PAY UNEMPLOYMENT COMPENSATION BENEFITS DURING A CALENDAR YEAR WHEN THE STATE UNEMPLOYMENT INSURANCE TRUST FUND IS IN DEBT STATUS, SO AS TO PROVIDE THE MANNER IN WHICH SUCH ESTIMATES ARE DETERMINED FOR CALENDAR YEARS 2011 AND 2012, AND TO REVISE THE MANNER IN WHICH SUCH ESTIMATES ARE DETERMINED BEGINNING IN JANUARY 2013 AND THEREAFTER WHILE THE TRUST FUND IS IN DEBT STATUS; TO AMEND SECTION 41‑31‑50, RELATING TO THE MANNER IN WHICH EMPLOYER RATE COMPUTATIONS ARE DETERMINED, SO AS TO PROVIDE FOR THE DETERMINATION OF THE RATES NEEDED TO PAY BENEFITS FOR CALENDAR YEARS 2011 AND 2012, RETROACTIVE TO JANUARY 2011, NOT INCLUDING THE ACHIEVEMENT OF SOLVENCY TARGETS, TO FURTHER PROVIDE FOR THE DETERMINATION OF THE RATES NEEDED TO PAY BENEFITS AND ACHIEVE SOLVENCY TARGETS BEGINNING IN JANUARY 2013, AND TO PROVIDE FOR THE MANNER IN WHICH THE RATE FOR CLASS TWENTY MUST BE SET; BY ADDING SECTION 41‑31‑52 SO AS TO PROVIDE FOR THE MANNER IN WHICH BENEFITS FOR SEASONAL WORKERS SHALL BE DETERMINED, CALCULATED, AND PAID; TO AMEND SECTION 41‑31‑55, RELATING TO ADDITIONAL SURCHARGES WHEN THE STATE UNEMPLOYMENT INSURANCE TRUST FUND IS INSOLVENT, SO AS TO PROVIDE FOR WHAT PROVISIONS OF LAW THE STATE SHALL FOLLOW TO SET RATES FOR CLASS TWENTY BEGINNING IN JANUARY 2013 AND TO PROVIDE FOR CERTAIN CREDITS FOR EMPLOYERS IN TIERS 1 THROUGH 12; AND BY ADDING SECTION 41‑31‑65 SO AS TO PROVIDE THAT THE DEPARTMENT SHALL ALLOCATE ALL CREDITS DUE TO ANY EMPLOYER THAT HAS PAID IN EXCESS OF THEIR BALANCE DUE BY JULY 31, 2011.

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

SECTION 1. 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 employers for purposes of unemployment compensation benefit contributions required of employers must be classified in Rate Class 12.”

SECTION 2. 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 3. Article 1, Chapter 31, Title 41 of the 1976 Code is amended by adding:

“Section 41‑31‑41. For calendar years 2011 and 2012, retroactive to January 2011, the state shall reduce state unemployment tax base rates for employers in tiers 13 through 20 by thirty‑two percent by suspending voluntary loan repayment to the federal government as it relates to the state’s Unemployment Insurance Trust Fund.

Employers in tiers 1 through 12 shall pay current premiums already set forth by the department in January 2011, and the department shall set forth the same guidelines and calculations for tiers 1 through 12 in 2012.”

SECTION 4. Section 41‑31‑45(B) of the 1976 Code, as added by Act 234 of 2010, is amended to read:

“(B) For calendar years 2011 and 2012, retroactive to January 2011, the department shall estimate the amount of income necessary to pay benefits for those years. Beginning January 2013 and for each subsequent calendar year during which the state Unemployment Insurance Trust Fund is in debt status, the department ~~must~~ shall 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 years~~ by the end of calendar year 2016. Additional estimates of interest costs ~~shall~~ must be determined concurrently.

(1) Estimates of the revenue needed to pay benefits ~~will~~ must be based on Congressional Budget Office projections for the subsequent calendar year’s total unemployment rate. This total unemployment rate ~~will~~ must 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~~ must be used to adjust the projected total unemployment rate to the rate of insured unemployment.

(3) Estimates of forecasted benefits ~~will~~ must 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~~ must be projected through consultation with officials at the United States Department of Labor.”

SECTION 5. Section 41‑31‑50(1)(b) and (c) of the 1976 Code, as last amended by Act 234 of 2010, is further amended to read:

“(b) For calendar years 2011 and 2012, retroactive to January 2011, the income needed to pay benefits for the calendar year ~~plus any applicable income needed to reach the solvency target~~ must be divided by the estimated taxable wages for the calendar year. The result rounded to the next higher one hundredth of one percent is the average required rate needed to pay benefits ~~and achieve solvency targets~~. Beginning January 2013 and for each subsequent calendar year, the income needed to pay benefits for the calendar year plus any applicable income needed to reach the solvency target must be divided by the estimated taxable wages for the calendar year. The result rounded to the next higher one hundredth of one percent is the average required rate needed to pay benefits and achieve solvency targets.

(c) For calendar years 2011 and 2012, retroactive to January 2011, the rate for class twenty ~~will~~ must be set such that the entire schedule raises the income required to pay benefits for the year~~, as well as the income necessary to move the trust fund toward the solvency target~~, subject to the structure provided in this chapter, as it relates to the thirty‑two percent reduction. However, the rate for class twenty must be at least five and four‑tenths percent. However, beginning January 2013, the rate for class twenty must be set such that the entire schedule raises the income required to pay benefits for the year, as well as the income necessary to move the trust fund toward the solvency target, subject to the structure provided in this chapter.”

SECTION 6. Article 1, Chapter 31, Title 41 of the 1976 Code is amended by adding:

“Section 41‑31‑52. 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 thirty‑six 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 one hundred twenty 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 thirty 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 ten 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, 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, 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 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 Section 41‑35‑50.

(g)(1) All benefits paid to a seasonal worker based on seasonal wages shall be charged, as prescribed in Section 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 Section 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 Section 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 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 7. Section 41‑31‑55 of the 1976 Code, as added by Act 234 of 2010, is amended to read:

“Section 41‑31‑55. (A) In any calendar year in which the state Unemployment Insurance Trust Fund is insolvent, the State shall impose additional surcharges on all employers to pay interest on the outstanding debt. The estimated amount of interest to be paid in the upcoming year ~~will~~ must be divided by the estimated taxable payroll for the calendar year. The result rounded to the next higher one hundredth of one percent is the statewide average surcharge.

(B) The rate for class twenty ~~will~~ must be set so that the entire schedule raises the income required to pay interest surcharges for the year, subject to the structure defined in subsection (A). The rate for each preceding benefit rate class ~~shall~~ must be equal to ninety percent of the rate calculated for the succeeding class, except that the rate class twelve ~~shall~~ must be set at one fourth the rate calculated for rate class twenty.

Beginning January 2013, the State shall follow the provisions set forth by Chapter 31, Title 41, except as and if amended.

(C) Employers in tiers 1 through 12 shall receive credit equivalent to twenty‑one dollars for each worker to offset the additional 2011 FUTA cost. For the subsequent year, employers in tiers 1 through 12 shall receive credit equivalent to forty‑two dollars for each worker to offset the additional 2012 FUTA cost. For two consecutive years as it relates to this section, employers in tiers 13 through 20 shall pay a surcharge to cover credits given to tiers 1 through 12 in 2011 and 2012.”

SECTION 8. Article 1, Chapter 31, Title 41 of the 1976 Code is amended by adding:

“Section 41‑31‑65. The department shall allocate all credits due to any employer that has paid in excess of their balance due by July 31, 2011.”

SECTION 9. This act takes effect upon approval by the Governor.

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