~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 9, 2022

**S. 1090**

Introduced by Senator Massey

S. Printed 3/9/22--H.

Read the first time March 2, 2022.

**THE COMMITTEE ON**

**LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (S. 1090) to amend Section 41-35-40 of the 1976 Code, relating to an insured worker’s weekly benefit amount, to provide that the Department of Employment and Workforce must annually, 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 before the enacting words and inserting:

/ Whereas, pursuant to Section 41‑27‑40, the General Assembly has the right to amend or repeal all or any part of Chapters 27 through 41 of this Title at any time and there is no vested private right of any kind against such amendment or repeal; and

Whereas, the General Assembly intended to charge the department with the administration of Title 41, Chapters 27 through 41, which includes the enforcement, interpretation, and execution of Section 41‑35‑40; and

Whereas, the General Assembly has known of the department’s enforcement, interpretation, and execution of Section 41‑35‑40 regarding the weekly maximum benefit amounts paid to claimants; and

Whereas, the General Assembly has continuously approved the decades long practice by the department and its predecessor, the Employment Security Commission, of exercising its discretion to set a weekly maximum amount of unemployment benefits that an individual may receive in a week for the legitimate legislative purpose of ensuring the solvency of the unemployment insurance trust fund and that there are adequate funds to pay unemployment insurance benefits to individuals unemployed through no fault of their own; and

Whereas the General Assembly believes that the department’s enforcement, interpretation and execution of Section 41‑35‑40 has been and continues to be reasonable and consistent with the General Assembly’s intent and charge to administer Section 41‑35‑40; and

Whereas, the General Assembly intends to explicitly reaffirm that the department has always had the discretion to establish a maximum amount of unemployment benefits an individual may receive each week; and

Whereas, the General Assembly intends for this act to apply retroactively and govern all claims for unemployment insurance filed on or after July 1, 2007, and to apply to all proceedings disputing the department’s calculation of an unemployed individual’s maximum weekly benefit amount pending on or commenced after the date the enactment of this act. Now, therefore, /

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

/ SECTION 1. A. Section 41‑35‑40 of the 1976 Code is amended to read:

“Section 41‑35‑40. (A) An insured worker’s weekly benefit amount is fifty percent of his weekly average wage, as defined in Section 41‑27‑140, and the weekly benefit amount, if not a multiple of one dollar, must be computed to the next lower multiple of one dollar. However, no insured worker’s weekly benefit amount may be less than forty‑two dollars nor greater than sixty‑six and two‑thirds percent of the statewide average weekly wage most recently computed before the beginning of the individual’s benefit year.

(B) The maximum weekly benefit amount set each year by the department within the range established in subsection (A) must be published on the department’s website.

(C) The procedure for reconsideration of determinations pursuant to Section 41‑35‑640 is the sole and exclusive procedure and remedy for disputing the department’s determination of an insured worker’s weekly benefit amount.”

B. The General Assembly ratifies and affirms that the department has reasonably and faithfully interpreted, executed, and enforced the provisions contained in Section 41‑35‑40 in accordance with its charge of the administration of the statute and the General Assembly’s intent. The provisions of this SECTION shall apply retroactively to govern all claims for unemployment insurance benefits on or after July 1, 2007, so that all such claims are subject to the maximum weekly benefit amount set by the department at the time the claim was filed.

SECTION 2. Section 41‑31‑60(A) of the 1976 Code is amended to read:

“Section 41‑31‑60. (A) If on the computation date upon which an employer’s tax rate is to be computed as provided in Section 41‑31‑40 there is a delinquent report, the tax class twenty rate must be assigned to the employer ~~for the period to which the computation applies~~ until the next computation date or until all outstanding tax reports have been filed.”

SECTION 3. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

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

Renumber sections to conform.

Amend title to conform.

WILLIAM E. SANDIFER III for Committee.

**A** **BILL**

TO AMEND SECTION 41-35-40 OF THE 1976 CODE, RELATING TO AN INSURED WORKER’S WEEKLY BENEFIT AMOUNT, TO PROVIDE THAT THE DEPARTMENT OF EMPLOYMENT AND WORKFORCE MUST ANNUALLY ADJUST THE MAXIMUM WEEKLY BENEFIT AMOUNT BY AN AMOUNT BY THE RATE OF INFLATION AND TO RETROACTIVELY RATIFY AND AFFIRM THE DEPARTMENT OF EMPLOYMENT AND WORKFORCE’S INTERPRETATION AND EXECUTION OF SECTION 41-35-40 OF THE 1976 CODE.

Whereas, it is the policy of the State of South Carolina that its unemployment benefits are intended to lighten the burden of economic insecurity for unemployed workers and their families; and

Whereas, the rate of inflation is increasing at a pace not seen in the United States for at least forty years, making it more difficult for individuals and families to make ends meet; and

Whereas, the spike in inflation has been particularly difficult to absorb by unemployed workers receiving unemployment benefits; and

Whereas, increasing the maximum weekly unemployment benefit amount in order to account for inflation is necessary to lighten the burden of economic insecurity for unemployed workers and their families; and

Whereas, Section 41-35-40 sets the weekly benefit amounts that an employee may receive and allows the Department of Employment and Workforce to set a maximum weekly benefit amount; and

Whereas, there have been questions raised concerning the Department of Employment and Workforce’s execution of, and the General Assembly’s intent regarding, Section 41‑35‑40; and

Whereas, the General Assembly believes that any questions concerning the application of Section 41-35-40 need to be resolved in order to provide certainty to workers and employers; and

Whereas, the interpretation of Section 41-35-40 espoused by those critical of the Department of Employment and Workforce’s execution would lead to the absurd result of allowing for weekly benefit amounts higher than those found in states like California and New York, much less our neighbors in North Carolina and Georgia; and

Whereas, the General Assembly finds that the long-standing interpretation of this statute by the Department of Employment and Workforce is in complete accordance with the unambiguous language contained in Section 41-35-40 and the policy intended by the legislature; and

Whereas, the General Assembly finds that its ratification of the interpretation of the statute given by the Department of Employment and Workforce is important so as to provide certainty that the actions of the department on behalf of our state’s workers and businesses have been in accordance with the intent of the legislature; Now, therefore,

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

SECTION 1. A. Section 41-35-40 of the 1976 Code is amended by adding an appropriately lettered new subsection to read:

“(B) The department must annually adjust the maximum weekly benefit amount set pursuant to the department’s authority as provided in subsection (A) by an amount at least equal to the rate of inflation as measured by the national consumer price index published by the Bureau of Labor Statistics for the most recently completed calendar year prior to the date that the maximum weekly benefit amount goes into effect.”

B. This SECTION takes effect July 1, 2022.

SECTION 2. A. The General Assembly ratifies and affirms that the Department of Employment of Workforce has faithfully executed the provisions contained in Section 41‑35‑40 in accordance with the clear language of the statute and the General Assembly’s intent and that this resolution be applied affirming the intent of the General Assembly be retroactive July 1, 2007.

B. The provisions contained in this SECTION are retroactive to July 1, 2007.

SECTION 3. Section 41-31-60(A) of the 1976 Code is amended to read:

“Section 41-31-60. (A) If on the computation date upon which an employer's tax rate is to be computed as provided in Section 41-31-40 there is a delinquent report, the tax class twenty rate must be assigned to the employer ~~for the period to which the computation applies~~ until the next computation date or until all outstanding tax reports have been filed.”

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

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