~~Indicates Matter Stricken~~

Indicates New Matter

AMENDED

March 10, 2022

**S. 1090**

Introduced by Senator Massey

S. Printed 3/10/22--H. [SEC 3/11/22 12:04 PM]

Read the first time March 2, 2022.

**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.

Amend Title To Conform

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,

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 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.

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