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**H. 4086**

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General Bill

Sponsors: Rep. A.D. Young

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Summary: Employment Security Commission

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

5/19/2009 House Introduced and read first time [HJ](file:///h:\HJ%20Archive\2009\05-19-09.docx)‑60

5/19/2009 House Referred to Committee on **Judiciary** [HJ](file:///h:\HJ%20Archive\2009\05-19-09.docx)‑60

**VERSIONS OF THIS BILL**

[5/19/2009](file:///p:\pprever\2009-10\4086_20090519.docx)

**A** **BILL**

TO AMEND SECTION 41‑29‑170, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DISCLOSURE OF CERTAIN INFORMATION TO ENSURE THAT A CLAIMANT, OR HIS LEGAL REPRESENTATIVE, BE SUPPLIED WITH RECORDS IN ORDER TO MAKE A CLAIM, SO AS TO ADD A PROVISION TO PROVIDE UNEMPLOYMENT INFORMATION NECESSARY FOR WORKFORCE IMPROVEMENT AND PROGRAM EVALUATION TO THE AGENCY ADMINISTERING THE WORKFORCE INVESTMENT ACT, AND TO REQUIRE THE COMMISSION TO RESPOND TO A REQUEST FROM AN AGENCY DESIGNATED BY THE GOVERNOR TO ENHANCE ECONOMIC DEVELOPMENT AND CREATE JOBS WITH INFORMATION OBTAINED PURSUANT TO THE PROVISIONS OF CHAPTERS 27 THROUGH 42 CONSIDERED NECESSARY TO THE REQUESTING AGENCY FOR ECONOMIC DEVELOPMENT AND WORKFORCE IMPROVEMENT; TO AMEND SECTION 41‑35‑50, RELATING TO THE MAXIMUM POTENTIAL BENEFITS OF AN INSURED WORKER, SO AS TO CHANGE THE FORMULA FOR CALCULATING THE BENEFIT; TO AMEND SECTION 41‑35‑120, AS AMENDED, RELATING TO DISQUALIFICATION OF BENEFITS, SO AS TO ADD A PROVISION PROVIDING FOR “GROSS MISCONDUCT” AND CONFORMING THE TERM “MOST RECENT BONA FIDE EMPLOYER” TO ITS DEFINITION IN SECTION 41‑35‑110(5), AND TO REQUIRE THE DEDUCTION OF SEVERANCE PAY FROM UNEMPLOYMENT COMPENSATION PAYMENTS.

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

SECTION 1. Section 41‑29‑170 of the 1976 Code, as last amended by Act 203 of 2002, is further amended by adding:

“(D) In response to a request, which contains sufficient individual identifying information, from the agency administering the federal Workforce Investment Act, the commission shall provide information obtained pursuant to the provisions of Chapters 27 through 42 considered necessary for workforce improvement and the evaluation of these programs, including available wage information, to the requesting agency. The costs of providing the information, including the costs of protecting the privacy of individuals and employing units, must be borne by the receiving agency.

(E) In response to a request from an agency designated by the Governor to enhance economic development and create jobs, the commission shall provide information obtained pursuant to the provisions of Chapters 27 through 42 considered necessary for economic development and workforce improvement to the requesting agency. The costs of providing the information, including costs of protesting the privacy of individuals and employing units, must be borne by the receiving agency.”

SECTION 2. Section 41‑35‑50 of the 1976 Code is amended to read:

“Section 41‑35‑50. The maximum potential benefits of ~~any~~ an insured worker in a benefit year are the lesser of:

(1) twenty‑six times his weekly benefit amount~~.~~; or

(2) one‑third of his wages for insured work paid during his base period.

If the resulting amount is not a multiple of one dollar, the amount must be reduced to the next lower multiple of one dollar, except that ~~no~~ an insured worker may not receive benefits in a benefit year unless, subsequent to the beginning of the next preceding benefit year during which he received benefits, he performed ‘insured work’ as defined in Section 41‑27‑300 and earned wages in the employ of a single employer in an amount equal to not less than ~~eight~~ ten times the weekly benefit amount established for the individual in the preceding benefit year.”

SECTION 3. Section 41‑35‑120(1), (2), and (6) of the 1976 Code, as last amended by Act 50 of 2005, is further amended to read:

“(1) Leaving work voluntarily. ‑ If the commission finds that he has left voluntarily, without good cause, his most recent ~~work~~ ~~prior to~~ bona fide employer before 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 until he has secured employment and shows to the satisfaction of the commission that he has performed services in employment as defined by Chapters 27 through 41 of this title and earned wages for ~~such~~ the services equal to at least ~~eight~~ ten times the weekly benefit amount of his claim.

(2) Discharge for cause connected with the employment.

(a)(i) If the commission finds that he has been discharged for cause connected with his most recent ~~work prior to~~ bona fide employer before 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~~ ten 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 commission 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.

(ii) If the commission finds that he has been discharged from his most recent bona fide employer for gross misconduct before 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 for twenty‑six weeks and until he has performed services in employment, as defined by Chapters 27 through 41 of this title, and earned wages for the services equal to at least ten times the weekly benefit amount of his claim. ‘Gross misconduct’ as used in this subsubitem includes, but is not limited to, conduct that causes a substantial monetary or property loss to the employer, fighting on the job, patient or client abuse or life‑endangering neglect, drug use as defined in subitem (b) of this section, working while impaired by alcohol or a legal drug used improperly, or sexual, racial, or religious harassment involving physical acts.

(b) An insured worker is considered to have been discharged for cause pursuant to this item, and is ineligible for benefits if the:

(i) company has communicated a policy prohibiting the illegal use of drugs, the violation of which may result in termination; and

(ii) insured worker fails or refuses to provide a specimen pursuant to a request from the employer, or otherwise fails or refuses to cooperate by providing an adulterated specimen; or

(iii) insured worker provides a blood, hair, or urine specimen during a drug test administered on behalf of the employer, which tests positive for illegal drugs or legal drugs used unlawfully, provided:

(A) the sample was collected and labeled by a licensed health care professional or another individual authorized to collect and label test samples by federal or state law, including law enforcement personnel; and

(B) the test was performed by a laboratory certified by the ~~National Institute on Drug Abuse~~ United States Department of Health and Human Services, the College of American Pathologists or the State Law Enforcement Division; and

(C) any initial positive test was confirmed on the specimen using the gas chromatography/mass spectrometry method, or an equivalent or more accurate scientifically accepted methods approved by the National Institute on Drug Abuse.

(iv) for purposes of this item, ‘unlawfully’ means without a prescription.

(c) If an insured worker makes an admission pursuant to the employer’s policy, which provides that voluntary admissions made before the employer’s request to the employee to submit to testing may protect an employee from immediate termination, then the admission is inadmissible for purposes of this section as long as the:

(A) employer has communicated a written policy, which provides protection from immediate termination for employees who voluntarily admit prohibited drug use before the employer’s request to submit to a test; and

(B) employee makes the admission specifically pursuant to the employer’s policy.

(d) Information, interviews, reports, and drug‑test results, written or otherwise, received by an employer through a drug‑testing program may be used or received in evidence in proceedings conducted pursuant to the provisions of this title for the purposes of determining eligibility for unemployment compensation, including any administrative or judicial appeal.

(6) Voluntary retirement. ‑ If the commission finds that he voluntarily retired from his most recent ~~work~~ bona fide employer with the ineligibility beginning with the effective date of his claim and continuing for the duration of his unemployment and until the individual submits satisfactory evidence of having had new employment and of having earned wages of not less than ~~eight~~ ten times his weekly benefit amount as defined in Section 41‑35‑40. ~~For the purpose of this section ‘most recent work’ means the work from which the individual retired regardless of any work subsequent to his retirement in which he earned less than eight times his weekly benefit amount.~~”

SECTION 4. Section 41‑35‑120 of the 1976 Code, as last amended by Act 50 of 2005, is further amended by adding at the end:

“(7)(a) Separation wages. ‑ A week subsequent to a separation, ~~a~~ layoff, or ~~a~~ reduction‑in‑force, whether announced as ‘voluntary’ or not, in which an individual receives or will receive as a condition of his separation from employment, remuneration from the most recent bona fide employer in the form of:

(i) wages instead of notice;

(ii) terminal leave pay;

(iii) severance pay; or

(iv) dismissal payments by whatever name, regardless of whether the remuneration is voluntary or required by terms of the reduction‑in‑force, a labor contract, or other agreement.

(b) If the remuneration is less than the benefits which would otherwise be due, he is entitled to receive for that week, if otherwise eligible, benefits reduced by the amount of the remuneration pursuant to the calculation provided for in Section 41‑35‑60. In the case of lump sum payments, the payments must be prorated by weeks on the basis of the most recent weekly wage of the individual from the paying employer.”

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

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