

1 SB201
2 146256-3
3 By Senator Bussman
4 RFD: Business and Labor
5 First Read: 14-FEB-13

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8 SYNOPSIS: Existing law specifies the circumstances
9 under which an individual will be disqualified from
10 receiving partial or total unemployment benefits.

11 This bill would specify the circumstances
12 under which the unemployment compensation account
13 of an employer may be charged for overpayment of
14 unemployment compensation made to a claimant.

15
16 A BILL
17 TO BE ENTITLED
18 AN ACT

19
20 To amend Section 25-4-78, Code of Alabama 1975, as
21 amended by Act 2012-507, 2012 Regular Session, relating to
22 unemployment compensation; to specify the circumstances under
23 which the unemployment compensation account of an employer may
24 be charged for overpayment of unemployment compensation made
25 to a claimant.

26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Section 25-4-78 of the Code of Alabama
2 1975, as amended by Act 2012-507, 2012 Regular Session, is
3 amended to read as follows:

4 "§25-4-78.

5 "An individual shall be disqualified for total or
6 partial unemployment:

7 "(1) LABOR DISPUTE IN PLACE OF EMPLOYMENT. For any
8 week in which his total or partial unemployment is directly
9 due to a labor dispute still in active progress in the
10 establishment in which he is or was last employed. For the
11 purposes of this section only, the term "labor dispute"
12 includes any controversy concerning terms, tenure, or
13 conditions of employment, or concerning the association or
14 representation of persons in negotiating, fixing, maintaining,
15 changing, or seeking to arrange terms or conditions of
16 employment, regardless of whether the disputants stand in the
17 proximate relation of employer and employee. This definition
18 shall not relate to a dispute between an individual worker and
19 his employer.

20 "(2) VOLUNTARILY QUITTING WORK. If he has left his
21 most recent bona fide work voluntarily without good cause
22 connected with such work.

23 "a.1. However, he shall not be disqualified if he
24 was forced to leave work because he was sick or disabled,
25 notified his employer of the fact as soon as it was reasonably
26 practicable so to do, and returned to that employer and
27 offered himself for work as soon as he was again able to work;

1 provided, however, this exception shall not apply if the
2 employer had an established leave-of-absence policy covering
3 sickness or disability and:

4 "(i) The individual fails to comply with same as
5 soon as it is reasonably practicable so to do; or

6 "(ii) Upon the expiration of a leave of absence
7 shall fail to return to ~~said~~ the employer and offer himself
8 for work, if he shall then be able to work, or if he is not
9 then able to work, he fails to so notify his employer of that
10 fact and request an extension of his ~~said~~ leave of absence as
11 soon as it is reasonably practicable so to do.

12 "2. In case of doubt that an individual was sick or
13 disabled, or as to the duration of any such sickness or
14 disability, the director may, or if the employer requests it,
15 the director shall require a doctor's certificate to establish
16 the fact or facts in doubt.

17 "3. An established leave-of-absence policy shall be
18 any leave-of-absence policy covering sickness and disability
19 communicated to the employee by the customary means used by
20 the employer for communicating with his employees.

21 "4. Nothing herein shall be construed or interpreted
22 as authorizing the payment of benefits to any person during,
23 or for, unemployment due to sickness or disability or during
24 any period in which he is on a leave of absence granted in
25 accordance with an established leave-of-absence policy, the
26 duration of which leave was set in accordance with his request
27 or in accordance with a collective bargaining agreement;

1 except, that if such leave of absence is on account of
2 pregnancy and extends beyond the tenth week following
3 termination of such pregnancy, the individual shall not be
4 denied benefits under the provisions of this subdivision (2)
5 beyond such tenth week if she has given the employer three
6 weeks notice of her desire to return to work, is then able to
7 work and has not refused reinstatement to a job which under
8 the provisions of subdivision (5) of this section would be
9 deemed suitable for her.

10 "b. When an individual is disqualified under this
11 subdivision (2):

12 "1. He shall not be entitled to benefits for the
13 week in which the disqualifying event occurs or for any week
14 thereafter until:

15 "(i) He has reentered insured employment or
16 employment of the nature described in subdivisions (5), (6),
17 (7), (8), (9), (10), or (18) of subsection (b) of Section
18 25-4-10; and

19 "(ii) For which employment he has earned wages equal
20 to at least 10 times his weekly benefit amount for the benefit
21 year in which such disqualification is assessed; and

22 "(iii) He has been separated from such employment
23 under nondisqualifying conditions.

24 "2. The total amount of benefits to which he may
25 otherwise be entitled as determined in accordance with
26 Sections 25-4-74 and 25-4-75 shall be reduced by an amount

1 equal to not less than six nor more than 12 times his weekly
2 benefit amount.

3 "3. For the purpose of the experience rating
4 provisions of Section 25-4-54, no portion of the benefits
5 payable to him, based upon wages paid to him for the period of
6 employment ending with the separation to which the
7 disqualification applies, shall be charged to the employer's
8 experience rating account. If the individual has been
9 separated from employment other than his most recent bona fide
10 work under conditions which would have been disqualifying
11 under this subdivision (2) had the separation been from his
12 most recent bona fide work and the employer answers a notice
13 of payment within 15 days after it is mailed to him detailing
14 the facts in connection with the separation, then no portion
15 of any benefits paid to him based upon wages for the period of
16 employment ending in such separation shall be charged to the
17 employer's experience rating account.

18 "4. Any other provision of this chapter to the
19 contrary notwithstanding, effective October 21, 2013, the
20 unemployment compensation account of an employer shall be
21 charged when the unemployment compensation agency determines
22 that an overpayment has been made to a claimant as a result of
23 both of the following:

24 "(i) The overpayment occurred because the employer,
25 or an agent of the employer, failed to respond timely or
26 adequately to a request from the unemployment compensation

1 agency for information relating to an unemployment
2 compensation claim.

3 "(ii) The employer, or an agent of the employer, has
4 established a pattern of failing to respond timely or
5 adequately to a request from the unemployment compensation
6 agency for information relating to an unemployment
7 compensation claim on two or more occasions.

8 "c. An individual shall not be disqualified if he
9 left his employment and immediately returned to work with his
10 regular employer or to employment in which he had prior
11 existing statutory or contractual seniority or recall rights.
12 When this exception is applied, any benefits paid to such
13 individual based upon wages paid for that period of employment
14 immediately preceding the separation to which the exception is
15 applied, which have not been heretofore charged to the
16 employer's experience rating account, shall not be charged to
17 the account of such employer.

18 "d. For separation occurring on or after August 1,
19 2012, adding this amendatory language, an individual shall not
20 be disqualified if he or she left his or her employment to
21 permanently relocate as a result of his or her active duty
22 military-connected spouse's permanent change of station
23 orders, activation orders, or unit deployment orders. When
24 this exception is applied, any benefits paid to the individual
25 based upon wages paid for that period of employment
26 immediately preceding the separation to which the exception is
27 applied, which have not been heretofore charged to the

1 employer's experience rating account, shall not be charged to
2 the account of the employer.

3 "e. For the purposes of this subdivision (2) and
4 subdivision (3) of this section, the commissioner in
5 determining the "most recent bona fide work" shall only
6 consider employment of the nature described in subsection (a)
7 of Section 25-4-10. The commissioner shall also consider the
8 duration of the most recent job or jobs, the intent of the
9 individual and his employer as to the permanence of such work
10 and whether separation from the immediately preceding
11 employment was under conditions which would be disqualifying
12 in the event such immediately preceding employment should be
13 determined to be the most recent bona fide work.

14 "(3) DISCHARGE FOR MISCONDUCT.

15 "a. If he was discharged or removed from his work
16 for a dishonest or criminal act committed in connection with
17 his work or for sabotage or an act endangering the safety of
18 others or for the use of illegal drugs after previous warning
19 or for the refusal to submit to or cooperate with a blood or
20 urine test after previous warning. Disqualification under this
21 paragraph may be applied to separations prior to separation
22 from the most recent bona fide work only if the employer has
23 filed a notice with the commissioner alleging that the
24 separation was under conditions described in this paragraph in
25 such manner and within such time as the director may
26 prescribe.

1 "(i) A confirmed positive drug test that is
2 conducted and evaluated according to standards set forth for
3 the conduct and evaluation of such tests by the U.S.
4 Department of Transportation in 49 C.F.R. Part 40 or standards
5 shown by the employer to be otherwise reliable shall be a
6 conclusive presumption of impairment by illegal drugs. No
7 unemployment compensation benefits shall be allowed to an
8 employee having a confirmed positive drug test if the employee
9 had been warned that such a positive test could result in
10 dismissal pursuant to a reasonable drug policy. A drug policy
11 shall be deemed reasonable if the employer shows that all
12 employees of the employer regardless of position or
13 classification, are subject to testing under the policy, and
14 in those instances in which the employer offers as the basis
15 for disqualification from unemployment compensation benefits
16 the results obtained pursuant to additional testing imposed on
17 some but not all classifications, if the employer can also
18 offer some rational basis for conducting such additional
19 testing. Further, no unemployment compensation benefits shall
20 be allowed if the employee refuses to submit to or cooperate
21 with a blood or urine test as set forth above, or if the
22 employee knowingly alters or adulterates the blood or urine
23 specimen.

24 "(ii) For purposes of paragraph a. and item (i) of
25 paragraph a. of this subdivision, "warning" shall mean that
26 the employee has been advised in writing of the provisions of
27 the employer's drug policy and that either testing positive

1 pursuant to the standards referenced above or the refusal to
2 submit to or cooperate with a blood or urine test as set out
3 in the above referenced standards could result in termination
4 of employment. This written notification as herein described
5 shall constitute a "warning" as used in paragraph a. and item
6 (i) of paragraph a. of this subdivision.

7 "(iii) To the extent that the issue is a positive
8 drug test or the refusal to submit to or cooperate with a
9 blood or urine test, or if the employee knowingly alters or
10 adulterates the blood or urine sample, as distinguished from
11 some other aspect of the employer's drug policy, this
12 disqualification under paragraph a. and item (i) of paragraph
13 a. shall be the only disqualification to apply, in connection
14 with an individual's separation from employment. Other
15 non-separation disqualifications may apply.

16 "When an individual is disqualified under this
17 paragraph:

18 "1. He shall not be entitled to benefits for the
19 week in which the disqualifying event occurs or for any week
20 thereafter until he has reentered insured employment or
21 employment of the nature described in subdivisions (5), (6),
22 (7), (8), (9), (10), or (18) of subsection (b) of Section
23 25-4-10, has earned wages equal at least to 10 times his
24 weekly benefit amount and has been separated from such
25 employment for a nondisqualifying reason.

26 "2. He shall not thereafter be entitled to any
27 benefits under this chapter on account of wages paid to him

1 for the period of employment by the employer by whom he was
2 employed when the disqualifying event occurred.

3 "3. For the purposes of the experience rating
4 provisions of Section 25-4-54:

5 "(i) No portion of any benefits based upon wages
6 paid to the individual for the period of employment by the
7 employer by whom he was employed when the disqualifying event
8 occurred shall be charged to the employer's experience rating
9 account.

10 "(ii) In the case of a separation prior to the
11 separation from the most recent bona fide work, if the only
12 reason disqualification under this paragraph a. was not
13 assessed was the failure of the employer to properly file a
14 timely separation report with the commissioner and the
15 employer files such a report within 15 days after the mailing
16 of a notice of payment, then no portion of any benefits paid
17 based upon the wages paid for the period of employment ending
18 in such prior separation shall be charged to the employer's
19 experience rating account.

20 "b. If he was discharged from his most recent bona
21 fide work for actual or threatened misconduct committed in
22 connection with his work (other than acts mentioned in
23 paragraph a. of this subdivision (3)) repeated after previous
24 warning to the individual. When an individual is disqualified
25 under this paragraph, or exempt from disqualification for a
26 separation under such conditions prior to his most recent bona
27 fide work, the effect shall be the same as provided in

1 paragraph b. of subdivision (2) of this section for
2 disqualification or exemption from disqualification
3 respectively.

4 "c. If he was discharged from his most recent bona
5 fide work for misconduct connected with his work [other than
6 acts mentioned in paragraphs a. and b. of this subdivision
7 (3)]:

8 "1. He shall be disqualified from receipt of
9 benefits for the week in which he was discharged and for not
10 less than the three nor more than the seven next following
11 weeks, as determined by the commissioner in each case
12 according to the seriousness of the conduct.

13 "2. The total amount of benefits to which he may
14 otherwise be entitled as determined in accordance with
15 Sections 25-4-74 and 25-4-75 shall be reduced by an amount
16 equal to the product of the number of weeks for which he shall
17 be disqualified multiplied by his weekly benefit amount.

18 "3. Only one-half of the benefits paid to him based
19 upon wages for that period of employment immediately preceding
20 the separation to which the disqualification applies shall be
21 charged to the employer for the purposes of the experience
22 rating provisions of Section 25-4-54. If the individual has
23 been separated from employment, other than his most recent
24 bona fide work, under conditions which would have been
25 disqualifying under paragraph c. of this subdivision (3), had
26 the separation been from his most recent bona fide work and
27 the employer answers a notice of payment within 15 days after

1 it is mailed to him detailing the facts in connection with the
2 separation, then only one-half of the benefits paid to him for
3 that period of employment immediately preceding the separation
4 shall be charged to the employer for the purposes of the
5 experience rating provisions of Section 25-4-54, unless the
6 employer, or an agent of the employer, failed to respond
7 timely or adequately to written requests pursuant to
8 subparagraph 4. of paragraph b. of subdivision (2).

9 "d. If he has been suspended as a disciplinary
10 measure connected with his work, or for misconduct connected
11 with his work, he shall be disqualified from benefits for the
12 week or weeks (not to exceed four weeks) in which, or for
13 which, he is so suspended and the total amount of benefits to
14 which he may otherwise be entitled shall be reduced in the
15 same manner and to the same extent as provided in subparagraph
16 2 of paragraph c. of this subdivision (3).

17 "(4) REVOCATION OR SUSPENSION OF REQUIRED LICENSE,
18 ETC. For the week in which he has become unemployed because a
19 license, certificate, permit, bond, surety, or insurability
20 which is necessary for the performance of such employment and
21 which he is responsible to maintain or supply has been
22 revoked, suspended or otherwise become lost to him for a cause
23 other than one which would fall within the meaning of
24 subdivision (3) of this section, but one which was within his
25 power to control, guard against, or prevent, and for each week
26 thereafter until:

1 " ~~a. Said~~ The license, certificate, permit, bond, or
2 surety, or insurability, has been restored to him and he has
3 reapplied to his employer for employment; or

4 "b. He has reentered insured employment or
5 employment of the nature described in subdivisions (5), (6),
6 (7), (8), (9), (10), or (18) of subsection (b) of Section
7 25-4-10, whichever is the earlier.

8 "c. Nothing in this subdivision shall be construed
9 as basis for disqualification of an individual who is without
10 fault and who has made a reasonable effort to obtain his or
11 her initial license, certificate, permit, bond, surety, or
12 insurability required for the performance of assigned duties.

13 "(5) FAILURE TO ACCEPT AVAILABLE SUITABLE WORK, ETC.
14 If he fails, without good cause, either to apply for or to
15 accept available suitable work or to return to his customary
16 self-employment when so directed by the commissioner or when
17 he is notified of suitable work or it is offered him through a
18 state employment office or the United States Employment
19 Service, or directly or by written notice or offer to any such
20 employment office or employment service by an employer by whom
21 the individual was formerly employed. Such disqualification
22 shall be for a period of not less than one nor more than 10
23 weeks from the date of failure. This disqualification shall
24 not apply unless the individual has an established benefit
25 year, or is seeking to establish one or is seeking extended
26 benefits at the time he fails without good cause, to do any of
27 the acts set out in this subdivision (5).

1 "a. In determining whether or not any work is
2 suitable for an individual, the commissioner shall consider:

3 "1. The degree of risk involved to his health,
4 safety, and morals, his physical fitness and prior training,

5 "2. His experience and prior earnings,

6 "3. His length of unemployment,

7 "4. His prospects for securing local work in his
8 customary occupation,

9 "5. The distance of the available work from his
10 residence; provided, that no work or employment shall be
11 deemed unsuitable because of its distance from the
12 individual's residence, if such work or employment is in the
13 same or substantially the same locality as was his last
14 previous regular place of employment and if the employee left
15 such voluntarily without good cause connected with such
16 employment.

17 "b. Notwithstanding any other provisions of this
18 chapter, no work shall be deemed suitable and benefits shall
19 not be denied under this chapter to any otherwise eligible
20 individual for refusing to accept new work under any of the
21 following conditions:

22 "1. If the position offered is vacant due directly
23 to a strike, lockout, or other labor dispute;

24 "2. If the wages, hours, or other conditions of the
25 work offered are substantially less favorable to the
26 individual than those prevailing for similar work in the
27 locality; or

1 "3. If as a condition of being employed the
2 individual would be required to join a company union, or to
3 resign from or refrain from joining any bona fide labor
4 organization.

5 "c. Notwithstanding any other provisions of this
6 section, benefits shall not be denied an individual, by reason
7 of the application of the provisions of this subdivision (5),
8 with respect to any week in which he is in training with the
9 approval of the commissioner as described in subdivision
10 (a) (3) of Section 25-4-77.

11 "(6) RECEIPT OF BACK PAY AWARD, ETC. For any week
12 with respect to which he is receiving or has received
13 remuneration in the form of a back pay award. Notwithstanding
14 the provisions of Section 25-4-91 any benefits previously paid
15 for weeks of unemployment with respect to which back pay
16 awards are made shall constitute an overpayment and such
17 amounts shall be deducted from the award by the employer prior
18 to payment to the employee and shall be transmitted promptly
19 to the director by the employer for application against the
20 overpayment and credit to the claimant's maximum benefit
21 amount and prompt deposit into the fund; provided, however,
22 the removal of any charges made against the employer as a
23 result of such previously paid benefits shall be applied to
24 the calendar year and the calendar quarter in which the
25 overpayment is received by the commissioner and no attempt
26 shall be made to relate such a credit to the period to which
27 the award applies. Any amount of overpayment deducted by the

1 employer shall be subject to the same procedures for
2 collection as is provided for contributions by Section
3 25-4-134 of this chapter.

4 "(7) RECEIPT OF OR APPLICATION FOR UNEMPLOYMENT
5 COMPENSATION FROM ANOTHER STATE, ETC. For any week with
6 respect to which, or a part of which, he has received or is
7 seeking unemployment benefits under an unemployment
8 compensation law of any other state or of the United States;
9 provided, that if the appropriate agency of such other state
10 or of the United States finally determines that he is not
11 entitled to such unemployment benefits this disqualification
12 shall not apply.

13 "(8) RECEIPT OF PENSION PAYMENT. For any week with
14 respect to which, or a part of which, an individual has
15 received or has, except for the determination of an exact or
16 specific amount, been determined eligible to receive (during a
17 period for which benefits are being claimed) governmental or
18 other pension, retirement or retired pay, annuity, or similar
19 periodic payment which is based on the previous work of the
20 individual; except, that

21 "a. For weeks of unemployment which begin prior to
22 April 26, 1982, as was prescribed by this subsection prior to
23 such date, and

24 "b. For weeks of unemployment which begin on or
25 after April 26, 1982, the amount of any benefits payable to an
26 individual for any such week which begins in a period with
27 respect to which the disqualifying provisions of this

1 subdivision apply, shall be reduced (but not below zero) by an
2 amount equal to the amount of such pension, retirement or
3 retired pay, annuity, or other payment, which is reasonably
4 attributable to such week, provided, however, such reduction
5 required hereby shall apply to any pension, retirement or
6 retired pay, annuity, or other similar payment only if:

7 "1. Such payment is made under a plan maintained (or
8 contributed to) by a base period employer, and

9 "2. In the case of such a payment not made under the
10 Social Security Act or the Railroad Retirement Act of 1974 (or
11 the corresponding provisions of prior law), services performed
12 for such employer by the individual after the beginning of his
13 base period (or remuneration for such services) affect
14 eligibility for or increase the amount of, such payment.

15 "c. The other provisions of this subdivision to the
16 contrary notwithstanding, beginning with the weeks ending
17 October 7, 1995, the amount of any pension, retirement or
18 retired pay, annuity, or other similar periodic payment under
19 the Social Security Act or the Railroad Retirement Act shall
20 not result in a reduction of benefits under this subdivision.

21 "d. If in accordance with this subdivision (8) any
22 individual is awarded pension payments retroactively covering
23 the same period for which the individual received benefits,
24 the retroactive payments shall constitute cause for
25 disqualification and any benefits paid during such period
26 shall be recovered.

1 "(9) RECEIPT OF OR APPLICATION FOR WORKERS'
2 COMPENSATION. For any week with respect to which, or a part of
3 which, he has received or is seeking compensation for
4 temporary disability under any workers' compensation law;
5 provided, that if it is finally determined he is not entitled
6 to such compensation, this disqualification shall not apply;
7 and provided further, that if such compensation is less than
8 the benefits which would otherwise be due under this chapter,
9 he shall be entitled to receive for such week, if otherwise
10 eligible, benefits reduced by the amount of such payment.

11 "(10) EMPLOYMENT BY PUBLIC WORKS AGENCY, ETC. For
12 any week that such individual is engaged or employed by the
13 Works Progress Administration, the National Youth
14 Administration or any federal or state unit, agency or
15 instrumentality in charge of public works, assistance through
16 public employment or work relief.

17 "(11) SELF-EMPLOYMENT. For any week in which he is
18 self-employed and each week thereafter until he shall
19 establish that he is no longer self-employed.

20 "(12) RECEIPT OF, OR APPLICATION FOR, TRAINING
21 ALLOWANCE, ETC. For any week with respect to which, or a part
22 of which, an individual who is enrolled in a course of
23 training with the approval of the commissioner, within the
24 meaning of subdivision (a) (3) of Section 25-4-77, has applied
25 for, or is entitled to receive, any wage or subsistence or
26 training allowance or other form of remuneration, other than
27 reimbursement for travel expenses, for a course of training

1 under any public or private training program; provided, that
2 if it is finally determined that he is not entitled to such
3 remuneration, this disqualification shall not apply. If the
4 remuneration, the receipt of which is disqualifying under this
5 subdivision (12), is less than the weekly benefits which he
6 would otherwise be due under this chapter he shall be entitled
7 to receive, if otherwise eligible, weekly benefits reduced by
8 the amount of such remuneration. It is further provided that
9 receipt of training allowances under the Trade Readjustment
10 Act shall not be cause for disqualification under this
11 subdivision.

12 "(13) PARTICIPATION IN PROFESSIONAL SPORTS. For any
13 week which commences during the period between two successive
14 sport seasons (or similar periods) to any individual for which
15 benefits claimed are on the basis of any services,
16 substantially all of which consist of participating in sports
17 or athletic events or training or preparing to so participate,
18 if such individual performed such services in the first of
19 such seasons (or similar periods) and there is a reasonable
20 assurance that such individual will perform such services in
21 the later of such seasons (or similar periods).

22 "(14) ALIENS.

23 "a. For any week for which benefits claimed are on
24 the basis of services performed by an alien unless:

25 "1. Such alien is an individual who was lawfully
26 admitted for permanent residence at the time such services

1 were performed, and was lawfully present for purposes of
2 performing such services; or,

3 "2. Such alien was permanently residing in the
4 United States under color of law at the time such services
5 were performed (including an alien who is lawfully present in
6 the United States as a result of the application of the
7 provisions of Section 203(a)(7) or Section 212(d)(5) of the
8 Immigration and Nationality Act); or,

9 3. Such alien was lawfully admitted for temporary
10 residence as provided for under the provisions of Section
11 245A(a) of the Immigration Reform and Control Act of 1986 (PL
12 99-603).

13 "b. Any data or information required of individuals
14 applying for benefits to determine whether benefits are not
15 payable to them because of their alien status shall be
16 uniformly required from all applicants for benefits.

17 "c. In the case of an individual whose application
18 for benefits would otherwise be approved, no determination
19 that benefits to such individual are not payable because of
20 his alien status shall be made except upon a preponderance of
21 the evidence."

22 Section 2. This act shall become effective on the
23 first day of the third month following its passage and
24 approval by the Governor, or its otherwise becoming law.