SB201

146256-4

By Senator Bussman

RFD: Business and Labor

First Read: 14-FEB-13
ENROLLED, An Act,

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§25-4-78.

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

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

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

"a.1. However, he shall not be disqualified if he was forced to leave work because he was sick or disabled, notified his employer of the fact as soon as it was reasonably practicable so to do, and returned to that employer and offered himself for work as soon as he was again able to work; provided, however, this exception shall not apply if the employer had an established leave-of-absence policy covering sickness or disability and:

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

"(ii) Upon the expiration of a leave of absence shall fail to return to said the employer and offer himself for work, if he shall then be able to work, or if he is not then able to work, he fails to so notify his employer of that fact and request an extension of his said leave of absence as soon as it is reasonably practicable so to do.
"2. In case of doubt that an individual was sick or disabled, or as to the duration of any such sickness or disability, the director may, or if the employer requests it, the director shall require a doctor's certificate to establish the fact or facts in doubt.

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

"4. Nothing herein shall be construed or interpreted as authorizing the payment of benefits to any person during, or for, unemployment due to sickness or disability or during any period in which he is on a leave of absence granted in accordance with an established leave-of-absence policy, the duration of which leave was set in accordance with his request or in accordance with a collective bargaining agreement; except, that if such leave of absence is on account of pregnancy and extends beyond the tenth week following termination of such pregnancy, the individual shall not be denied benefits under the provisions of this subdivision (2) beyond such tenth week if she has given the employer three weeks notice of her desire to return to work, is then able to work and has not refused reinstatement to a job which under the provisions of subdivision (5) of this section would be deemed suitable for her.
"b. When an individual is disqualified under this subdivision (2):

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

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

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

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

2. The total amount of benefits to which he may otherwise be entitled as determined in accordance with Sections 25-4-74 and 25-4-75 shall be reduced by an amount equal to not less than six nor more than 12 times his weekly benefit amount.

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

10 "4. Any other provision of this chapter to the
11 contrary notwithstanding, effective October 21, 2013, the
12 unemployment compensation account of an employer shall be
13 charged when the unemployment compensation agency determines
14 that an overpayment has been made to a claimant as a result of
15 both of the following:
16
17 "(i) The overpayment occurred because the employer,
18 or an agent of the employer, failed to respond timely or
19 adequately to a request from the unemployment compensation
20 agency for information relating to an unemployment
21 compensation claim.
22
23 "(ii) The employer, or an agent of the employer, has
24 established a pattern of failing to respond timely or
25 adequately to a request from the unemployment compensation
26 agency for information relating to an unemployment
27 compensation claim on two or more occasions."
"c. An individual shall not be disqualified if he
left his employment and immediately returned to work with his
regular employer or to employment in which he had prior
existing statutory or contractual seniority or recall rights.
When this exception is applied, any benefits paid to such
individual based upon wages paid for that period of employment
immediately preceding the separation to which the exception is
applied, which have not been heretofore charged to the
employer's experience rating account, shall not be charged to
the account of such employer.

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

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

"(3) DISCHARGE FOR MISCONDUCT.

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

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

"(ii) For purposes of paragraph a. and item (i) of paragraph a. of this subdivision, "warning" shall mean that the employee has been advised in writing of the provisions of the employer's drug policy and that either testing positive pursuant to the standards referenced above or the refusal to submit to or cooperate with a blood or urine test as set out
in the above referenced standards could result in termination of employment. This written notification as herein described shall constitute a "warning" as used in paragraph a. and item (i) of paragraph a. of this subdivision.

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

"When an individual is disqualified under this paragraph:

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

"2. He shall not thereafter be entitled to any benefits under this chapter on account of wages paid to him
for the period of employment by the employer by whom he was
employed when the disqualifying event occurred.

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

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

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

"b. If he was discharged from his most recent bona
fide work for actual or threatened misconduct committed in
connection with his work (other than acts mentioned in
paragraph a. of this subdivision (3)) repeated after previous
warning to the individual. When an individual is disqualified
under this paragraph, or exempt from disqualification for a
separation under such conditions prior to his most recent bona
fide work, the effect shall be the same as provided in
paragraph b. of subdivision (2) of this section for
disqualification or exemption from disqualification
respectively.

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

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

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

"3. Only one-half of the benefits paid to him based
upon wages for that period of employment immediately preceding
the separation to which the disqualification applies shall be
charged to the employer for the purposes of the experience
rating provisions of Section 25-4-54. If the individual has
been separated from employment, other than his most recent
bona fide work, under conditions which would have been
disqualifying under paragraph c. of this subdivision (3), had
the separation been from his most recent bona fide work and
the employer answers a notice of payment within 15 days after
it is mailed to him detailing the facts in connection with the
separation, then only one-half of the benefits paid to him for
that period of employment immediately preceding the separation
shall be charged to the employer for the purposes of the
experience rating provisions of Section 25-4-54, unless the
employer, or an agent of the employer, failed to respond
timely or adequately to written requests pursuant to
subparagraph 4. of paragraph b. of subdivision (2).

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

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

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

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

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

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

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

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

"2. His experience and prior earnings,

"3. His length of unemployment,

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

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

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

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

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

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

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

"(6) RECEIPT OF BACK PAY AWARD, ETC. For any week with respect to which he is receiving or has received remuneration in the form of a back pay award. Notwithstanding the provisions of Section 25-4-91 any benefits previously paid for weeks of unemployment with respect to which back pay awards are made shall constitute an overpayment and such
amounts shall be deducted from the award by the employer prior to payment to the employee and shall be transmitted promptly to the director by the employer for application against the overpayment and credit to the claimant’s maximum benefit amount and prompt deposit into the fund; provided, however, the removal of any charges made against the employer as a result of such previously paid benefits shall be applied to the calendar year and the calendar quarter in which the overpayment is received by the commissioner and no attempt shall be made to relate such a credit to the period to which the award applies. Any amount of overpayment deducted by the employer shall be subject to the same procedures for collection as is provided for contributions by Section 25-4-134 of this chapter.

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

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

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

"b. For weeks of unemployment which begin on or
after April 26, 1982, the amount of any benefits payable to an
individual for any such week which begins in a period with
respect to which the disqualifying provisions of this
subdivision apply, shall be reduced (but not below zero) by an
amount equal to the amount of such pension, retirement or
retired pay, annuity, or other payment, which is reasonably
attributable to such week, provided, however, such reduction
required hereby shall apply to any pension, retirement or
retired pay, annuity, or other similar payment only if:

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

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

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

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

"(9) RECEIPT OF OR APPLICATION FOR WORKERS' COMPENSATION. For any week with respect to which, or a part of which, he has received or is seeking compensation for temporary disability under any workers' compensation law; provided, that if it is finally determined he is not entitled to such compensation, this disqualification shall not apply; and provided further, that if such compensation is less than the benefits which would otherwise be due under this chapter, he shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such payment.
"(10) EMPLOYMENT BY PUBLIC WORKS AGENCY, ETC. For any week that such individual is engaged or employed by the Works Progress Administration, the National Youth Administration or any federal or state unit, agency or instrumentality in charge of public works, assistance through public employment or work relief.

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

"(12) RECEIPT OF, OR APPLICATION FOR, TRAINING ALLOWANCE, ETC. For any week with respect to which, or a part of which, an individual who is enrolled in a course of training with the approval of the commissioner, within the meaning of subdivision (a)(3) of Section 25-4-77, has applied for, or is entitled to receive, any wage or subsistence or training allowance or other form of remuneration, other than reimbursement for travel expenses, for a course of training under any public or private training program; provided, that if it is finally determined that he is not entitled to such remuneration, this disqualification shall not apply. If the remuneration, the receipt of which is disqualifying under this subdivision (12), is less than the weekly benefits which he would otherwise be due under this chapter he shall be entitled to receive, if otherwise eligible, weekly benefits reduced by the amount of such remuneration. It is further provided that
receipt of training allowances under the Trade Readjustment Act shall not be cause for disqualification under this subdivision.

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

"(14) ALIENS.

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

"1. Such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, and was lawfully present for purposes of performing such services; or,

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

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

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

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

Section 2. This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law.
President and Presiding Officer of the Senate

Speaker of the House of Representatives

Patrick Harris
Secretary

House of Representatives
Passed: 20-MAY-13

By: Senator Bussman