

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

1 SB201

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3
4 ENROLLED, An Act,

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

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. Section 25-4-78 of the Code of Alabama
13 1975, as amended by Act 2012-507, 2012 Regular Session, is
14 amended to read as follows:

15 "§25-4-78.

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

18 "(1) LABOR DISPUTE IN PLACE OF EMPLOYMENT. For any
19 week in which his total or partial unemployment is directly
20 due to a labor dispute still in active progress in the
21 establishment in which he is or was last employed. For the
22 purposes of this section only, the term "labor dispute"
23 includes any controversy concerning terms, tenure, or
24 conditions of employment, or concerning the association or
25 representation of persons in negotiating, fixing, maintaining,

1 changing, or seeking to arrange terms or conditions of
2 employment, regardless of whether the disputants stand in the
3 proximate relation of employer and employee. This definition
4 shall not relate to a dispute between an individual worker and
5 his employer.

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

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

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

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

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

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

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

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

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

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

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

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

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

20 "3. For the purpose of the experience rating
21 provisions of Section 25-4-54, no portion of the benefits
22 payable to him, based upon wages paid to him for the period of
23 employment ending with the separation to which the
24 disqualification applies, shall be charged to the employer's
25 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 "(i) The overpayment occurred because the employer,
17 or an agent of the employer, failed to respond timely or
18 adequately to a request from the unemployment compensation
19 agency for information relating to an unemployment
20 compensation claim.

21 "(ii) The employer, or an agent of the employer, has
22 established a pattern of failing to respond timely or
23 adequately to a request from the unemployment compensation
24 agency for information relating to an unemployment
25 compensation claim on two or more occasions.

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

11 "d. For separation occurring on or after August 1,
12 2012, adding this amendatory language, an individual shall not
13 be disqualified if he or she left his or her employment to
14 permanently relocate as a result of his or her active duty
15 military-connected spouse's permanent change of station
16 orders, activation orders, or unit deployment orders. When
17 this exception is applied, any benefits paid to the individual
18 based upon wages paid for that period of employment
19 immediately preceding the separation to which the exception is
20 applied, which have not been heretofore charged to the
21 employer's experience rating account, shall not be charged to
22 the account of the employer.

23 "e. For the purposes of this subdivision (2) and
24 subdivision (3) of this section, the commissioner in
25 determining the "most recent bona fide work" shall only

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

9 "(3) DISCHARGE FOR MISCONDUCT.

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

22 "(i) A confirmed positive drug test that is
23 conducted and evaluated according to standards set forth for
24 the conduct and evaluation of such tests by the U.S.
25 Department of Transportation in 49 C.F.R. Part 40 or standards

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

20 "(ii) For purposes of paragraph a. and item (i) of
21 paragraph a. of this subdivision, "warning" shall mean that
22 the employee has been advised in writing of the provisions of
23 the employer's drug policy and that either testing positive
24 pursuant to the standards referenced above or the refusal to
25 submit to or cooperate with a blood or urine test as set out

1 in the above referenced standards could result in termination
2 of employment. This written notification as herein described
3 shall constitute a "warning" as used in paragraph a. and item
4 (i) of paragraph a. of this subdivision.

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

14 "When an individual is disqualified under this
15 paragraph:

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

24 "2. He shall not thereafter be entitled to any
25 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

1 separation under such conditions prior to his most recent bona
2 fide work, the effect shall be the same as provided in
3 paragraph b. of subdivision (2) of this section for
4 disqualification or exemption from disqualification
5 respectively.

6 "c. If he was discharged from his most recent bona
7 fide work for misconduct connected with his work [other than
8 acts mentioned in paragraphs a. and b. of this subdivision
9 (3)]:

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

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

20 "3. Only one-half of the benefits paid to him based
21 upon wages for that period of employment immediately preceding
22 the separation to which the disqualification applies shall be
23 charged to the employer for the purposes of the experience
24 rating provisions of Section 25-4-54. If the individual has
25 been separated from employment, other than his most recent

1 bona fide work, under conditions which would have been
2 disqualifying under paragraph c. of this subdivision (3), had
3 the separation been from his most recent bona fide work and
4 the employer answers a notice of payment within 15 days after
5 it is mailed to him detailing the facts in connection with the
6 separation, then only one-half of the benefits paid to him for
7 that period of employment immediately preceding the separation
8 shall be charged to the employer for the purposes of the
9 experience rating provisions of Section 25-4-54, unless the
10 employer, or an agent of the employer, failed to respond
11 timely or adequately to written requests pursuant to
12 subparagraph 4. of paragraph b. of subdivision (2).

13 "d. If he has been suspended as a disciplinary
14 measure connected with his work, or for misconduct connected
15 with his work, he shall be disqualified from benefits for the
16 week or weeks (not to exceed four weeks) in which, or for
17 which, he is so suspended and the total amount of benefits to
18 which he may otherwise be entitled shall be reduced in the
19 same manner and to the same extent as provided in subparagraph
20 2 of paragraph c. of this subdivision (3).

21 "(4) REVOCATION OR SUSPENSION OF REQUIRED LICENSE,
22 ETC. For the week in which he has become unemployed because a
23 license, certificate, permit, bond, surety, or insurability
24 which is necessary for the performance of such employment and
25 which he is responsible to maintain or supply has been

1 revoked, suspended or otherwise become lost to him for a cause
2 other than one which would fall within the meaning of
3 subdivision (3) of this section, but one which was within his
4 power to control, guard against, or prevent, and for each week
5 thereafter until:

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

9 "b. He has reentered insured employment or
10 employment of the nature described in subdivisions (5), (6),
11 (7), (8), (9), (10), or (18) of subsection (b) of Section
12 25-4-10, whichever is the earlier.

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

18 "(5) FAILURE TO ACCEPT AVAILABLE SUITABLE WORK, ETC.
19 If he fails, without good cause, either to apply for or to
20 accept available suitable work or to return to his customary
21 self-employment when so directed by the commissioner or when
22 he is notified of suitable work or it is offered him through a
23 state employment office or the United States Employment
24 Service, or directly or by written notice or offer to any such
25 employment office or employment service by an employer by whom

1 the individual was formerly employed. Such disqualification
2 shall be for a period of not less than one nor more than 10
3 weeks from the date of failure. This disqualification shall
4 not apply unless the individual has an established benefit
5 year, or is seeking to establish one or is seeking extended
6 benefits at the time he fails without good cause, to do any of
7 the acts set out in this subdivision (5).

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

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

12 "2. His experience and prior earnings,

13 "3. His length of unemployment,

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

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

24 "b. Notwithstanding any other provisions of this
25 chapter, no work shall be deemed suitable and benefits shall

1 not be denied under this chapter to any otherwise eligible
2 individual for refusing to accept new work under any of the
3 following conditions:

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

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

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

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

20 "(6) RECEIPT OF BACK PAY AWARD, ETC. For any week
21 with respect to which he is receiving or has received
22 remuneration in the form of a back pay award. Notwithstanding
23 the provisions of Section 25-4-91 any benefits previously paid
24 for weeks of unemployment with respect to which back pay
25 awards are made shall constitute an overpayment and such

1 amounts shall be deducted from the award by the employer prior
2 to payment to the employee and shall be transmitted promptly
3 to the director by the employer for application against the
4 overpayment and credit to the claimant's maximum benefit
5 amount and prompt deposit into the fund; provided, however,
6 the removal of any charges made against the employer as a
7 result of such previously paid benefits shall be applied to
8 the calendar year and the calendar quarter in which the
9 overpayment is received by the commissioner and no attempt
10 shall be made to relate such a credit to the period to which
11 the award applies. Any amount of overpayment deducted by the
12 employer shall be subject to the same procedures for
13 collection as is provided for contributions by Section
14 25-4-134 of this chapter.

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

24 "(8) RECEIPT OF PENSION PAYMENT. For any week with
25 respect to which, or a part of which, an individual has

1 received or has, except for the determination of an exact or
2 specific amount, been determined eligible to receive (during a
3 period for which benefits are being claimed) governmental or
4 other pension, retirement or retired pay, annuity, or similar
5 periodic payment which is based on the previous work of the
6 individual; except, that

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

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

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

22 "2. In the case of such a payment not made under the
23 Social Security Act or the Railroad Retirement Act of 1974 (or
24 the corresponding provisions of prior law), services performed
25 for such employer by the individual after the beginning of his

1 base period (or remuneration for such services) affect
2 eligibility for or increase the amount of, such payment.

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

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

15 "(9) RECEIPT OF OR APPLICATION FOR WORKERS'
16 COMPENSATION. For any week with respect to which, or a part of
17 which, he has received or is seeking compensation for
18 temporary disability under any workers' compensation law;
19 provided, that if it is finally determined he is not entitled
20 to such compensation, this disqualification shall not apply;
21 and provided further, that if such compensation is less than
22 the benefits which would otherwise be due under this chapter,
23 he shall be entitled to receive for such week, if otherwise
24 eligible, benefits reduced by the amount of such payment.

1 "(10) EMPLOYMENT BY PUBLIC WORKS AGENCY, ETC. For
2 any week that such individual is engaged or employed by the
3 Works Progress Administration, the National Youth
4 Administration or any federal or state unit, agency or
5 instrumentality in charge of public works, assistance through
6 public employment or work relief.

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

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

1 receipt of training allowances under the Trade Readjustment
2 Act shall not be cause for disqualification under this
3 subdivision.

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

14 "(14) ALIENS.

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

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

21 "2. Such alien was permanently residing in the
22 United States under color of law at the time such services
23 were performed (including an alien who is lawfully present in
24 the United States as a result of the application of the

1 provisions of Section 203(a)(7) or Section 212(d)(5) of the
2 Immigration and Nationality Act); or,

3 3. Such alien was lawfully admitted for temporary
4 residence as provided for under the provisions of Section
5 245A(a) of the Immigration Reform and Control Act of 1986 (PL
6 99-603).

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

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

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

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB201

Senate 10-APR-13

I hereby certify that the within Act originated in and passed the Senate.

Patrick Harris
Secretary

House of Representatives
Passed: 20-MAY-13

By: Senator Bussman