

1 HB506
2 163987-1
3 By Representative Bracy
4 RFD: Commerce and Small Business
5 First Read: 16-APR-15

8 SYNOPSIS: Under existing law, an individual is
9 disqualified for total or partial unemployment
10 compensation if he or she received or has been
11 determined eligible to receive governmental or
12 other pension, retirement or retired pay, annuity,
13 or similar periodic payment that is based upon the
14 individual's previous work; provided, however, that
15 for weeks of unemployment beginning on or after
16 April 26, 1982, the amount of benefits payable to
17 an individual for any week which begins in a period
18 during which the disqualification provision
19 applies, the amount payable to the individual is
20 reduced by an amount equal to the periodic payment
21 only if the payment is made under a plan maintained
22 or contributed to by a base period employer.

23 Under existing law, if, in accordance with
24 the pension payment provision, any individual is
25 awarded pension payments retroactively covering a
26 period during which he or she received unemployment
27 benefits, the retroactive payments shall constitute

disqualification and any benefits paid during the period shall be recovered.

This bill would clarify that the amount of benefits payable to an individual under these circumstances shall be reduced only if the payment is made under a plan that is maintained or contributed to by a base period employer, 100 percent employer-financed, and not contributed to by the worker.

This bill would clarify that any pension payments retroactively awarded to an individual would constitute disqualification and require recovery of any benefits paid during the disqualification period only if the pension payments were made under a plan that is maintained or contributed to by a base period employer, 100 percent employer-financed, and not contributed to by the worker.

A BILL

TO BE ENTITLED

AN ACT

To amend Section 25-4-78, Code of Alabama 1975, relating to unemployment compensation; to clarify that the amount of benefits payable to an individual who received or has been determined eligible to receive governmental or other

pension, retirement or retired pay, annuity, or similar periodic payment that is based upon the individual's previous work shall be reduced only if the payment is made under a plan that is maintained or contributed to by a base period employer, 100 percent employer-financed, and not contributed to by the worker; and to clarify that any pension payments retroactively awarded to an individual would constitute disqualification and require recovery of any benefits paid during the disqualification period only if the pension payments were made under a plan that is maintained or contributed to by a base period employer, 100 percent employer-financed, and not contributed to by the worker.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 25-4-78 of the Code of Alabama 1975, 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,

1 regardless of whether the disputants stand in the proximate
2 relation of employer and employee. This definition shall not
3 relate to a dispute between an individual worker and his
4 employer.

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

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

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

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

24 "2. In case of doubt that an individual was sick or
25 disabled, or as to the duration of any such sickness or
26 disability, the director may, or if the employer requests it,

1 the director shall require a doctor's certificate to establish
2 the fact or facts in doubt.

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

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

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

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

1 "(i) He has reentered insured employment or
2 employment of the nature described in subdivisions (5), (6),
3 (7), (8), (9), (10), or (18) of subsection (b) of Section
4 25-4-10; and

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

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

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

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

1 employment ending in such separation shall be charged to the
2 employer's experience rating account.

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

9 "(i) The overpayment occurred because the employer,
10 or an agent of the employer, failed to respond timely or
11 adequately to a request from the unemployment compensation
12 agency for information relating to an unemployment
13 compensation claim.

14 "(ii) The employer, or an agent of the employer, has
15 established a pattern of failing to respond timely or
16 adequately to a request from the unemployment compensation
17 agency for information relating to an unemployment
18 compensation claim on two or more occasions.

19 "c. An individual shall not be disqualified if he
20 left his employment and immediately returned to work with his
21 regular employer or to employment in which he had prior
22 existing statutory or contractual seniority or recall rights.
23 When this exception is applied, any benefits paid to such
24 individual based upon wages paid for that period of employment
25 immediately preceding the separation to which the exception is
26 applied, which have not been heretofore charged to the

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

3 "d. For separation occurring on or after August 1,
4 2012, an individual shall not be disqualified if he or she
5 left his or her employment to permanently relocate as a result
6 of his or her active duty military-connected spouse's
7 permanent change of station orders, activation orders, or unit
8 deployment orders. When this exception is applied, any
9 benefits paid to the individual based upon wages paid for that
10 period of employment immediately preceding the separation to
11 which the exception is applied, which have not been heretofore
12 charged to the employer's experience rating account, shall not
13 be charged to the account of the employer.

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

25 "(3) DISCHARGE FOR MISCONDUCT.

26 "a. If he was discharged or removed from his work
27 for a dishonest or criminal act committed in connection with

1 his work or for sabotage or an act endangering the safety of
2 others or for the use of illegal drugs after previous warning
3 or for the refusal to submit to or cooperate with a blood or
4 urine test after previous warning. Disqualification under this
5 paragraph may be applied to separations prior to separation
6 from the most recent bona fide work only if the employer has
7 filed a notice with the commissioner alleging that the
8 separation was under conditions described in this paragraph in
9 such manner and within such time as the director may
10 prescribe.

11 "(i) A confirmed positive drug test that is
12 conducted and evaluated according to standards set forth for
13 the conduct and evaluation of such tests by the U.S.
14 Department of Transportation in 49 C.F.R. Part 40 or standards
15 shown by the employer to be otherwise reliable shall be a
16 conclusive presumption of impairment by illegal drugs. No
17 unemployment compensation benefits shall be allowed to an
18 employee having a confirmed positive drug test if the employee
19 had been warned that such a positive test could result in
20 dismissal pursuant to a reasonable drug policy. A drug policy
21 shall be deemed reasonable if the employer shows that all
22 employees of the employer regardless of position or
23 classification, are subject to testing under the policy, and
24 in those instances in which the employer offers as the basis
25 for disqualification from unemployment compensation benefits
26 the results obtained pursuant to additional testing imposed on
27 some but not all classifications, if the employer can also

1 offer some rational basis for conducting such additional
2 testing. Further, no unemployment compensation benefits shall
3 be allowed if the employee refuses to submit to or cooperate
4 with a blood or urine test as set forth above, or if the
5 employee knowingly alters or adulterates the blood or urine
6 specimen.

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

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

26 "When an individual is disqualified under this
27 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

1 in such prior separation shall be charged to the employer's
2 experience rating account.

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

14 "c. If he was discharged from his most recent bona
15 fide work for misconduct connected with his work [other than
16 acts mentioned in paragraphs a. and b. of this subdivision
17 (3)]:

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

23 "2. The total amount of benefits to which he may
24 otherwise be entitled as determined in accordance with
25 Sections 25-4-74 and 25-4-75 shall be reduced by an amount
26 equal to the product of the number of weeks for which he shall
27 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. 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

1 state employment office or the United States Employment
2 Service, or directly or by written notice or offer to any such
3 employment office or employment service by an employer by whom
4 the individual was formerly employed. Such disqualification
5 shall be for a period of not less than one nor more than 10
6 weeks from the date of failure. This disqualification shall
7 not apply unless the individual has an established benefit
8 year, or is seeking to establish one or is seeking extended
9 benefits at the time he fails without good cause, to do any of
10 the acts set out in this subdivision (5).

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

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

15 "2. His experience and prior earnings,

16 "3. His length of unemployment,

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

19 "5. The distance of the available work from his
20 residence; provided, that no work or employment shall be
21 deemed unsuitable because of its distance from the
22 individual's residence, if such work or employment is in the
23 same or substantially the same locality as was his last
24 previous regular place of employment and if the employee left
25 such voluntarily without good cause connected with such
26 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

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
26 received or has, except for the determination of an exact or
27 specific amount, been determined eligible to receive (during a

1 period for which benefits are being claimed) governmental or
2 other pension, retirement or retired pay, annuity, or similar
3 periodic payment which is based on the previous work of the
4 individual; except, that

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

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

18 "1. Such payment is made under a plan that is
19 maintained (or contributed to) by a base period employer and
20 100 percent employer-financed and not contributed to by the
21 worker, 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
26 base period (or remuneration for such services) affect
27 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 only if the retroactive pension payments were made under a plan that is maintained (or contributed to by a base period employer, 100 percent employer-financed, and not contributed to by the worker.

"(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

1 Works Progress Administration, the National Youth
2 Administration or any federal or state unit, agency or
3 instrumentality in charge of public works, assistance through
4 public employment or work relief.

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

8 "(12) RECEIPT OF, OR APPLICATION FOR, TRAINING
9 ALLOWANCE, ETC. For any week with respect to which, or a part
10 of which, an individual who is enrolled in a course of
11 training with the approval of the commissioner, within the
12 meaning of subdivision (a) (3) of Section 25-4-77, has applied
13 for, or is entitled to receive, any wage or subsistence or
14 training allowance or other form of remuneration, other than
15 reimbursement for travel expenses, for a course of training
16 under any public or private training program; provided, that
17 if it is finally determined that he is not entitled to such
18 remuneration, this disqualification shall not apply. If the
19 remuneration, the receipt of which is disqualifying under this
20 subdivision (12), is less than the weekly benefits which he
21 would otherwise be due under this chapter he shall be entitled
22 to receive, if otherwise eligible, weekly benefits reduced by
23 the amount of such remuneration. It is further provided that
24 receipt of training allowances under the Trade Readjustment
25 Act shall not be cause for disqualification under this
26 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.