AS PASSED BY THE SENATE

May 26, 2011

**H. 3762**

Introduced by Reps. Cooper, White, Bowen, Gambrell, Thayer, Sandifer, D.C. Moss, McLeod, Viers and Clemmons

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Read the first time May 3, 2011.

**A** **BILL**

TO AMEND SECTION 41‑31‑5 OF THE 1976 CODE, RELATING TO DEFINITIONS CONCERNING THE RATE OF CONTRIBUTIONS TO THE UNEMPLOYMENT TRUST FUND, TO MODIFY THE METHOD OF COMPUTATION;

TO AMEND SECTION 41‑31‑20, RELATING TO EMPLOYER’S ACCOUNTS, TO PROVIDE THAT THE DEPARTMENT OF EMPLOYMENT AND WORKFORCE SHALL MAINTAIN A SEPARATE ACCOUNT FOR EACH EMPLOYER AND SHALL ACCURATELY RECORD THE DATA USED TO DETERMINE AN EMPLOYER’S EXPERIENCE FOR THE PURPOSE OF RATE ASSIGNMENT; TO AMEND SECTION 41‑31‑40, RELATING TO BASE RATE COMPUTATION PERIODS, TO LOWER THE NEW EMPLOYER TAX CLASS FROM THIRTEEN TO TWELVE; TO AMEND SECTION 41‑31‑50, RELATING TO BASE RATE DETERMINATIONS, TO CLARIFY EXCLUSIONS TO TAXABLE WAGES AND TO PROVIDE THAT FOR CALENDAR YEAR 2011 AND SUBSEQUENT CALENDAR YEARS, VOLUNTARY PAYMENTS ARE NOT PERMITTED FOR THE PURPOSE OF OBTAINING A LOWER RATE OF REQUIRED CONTRIBUTIONS; TO AMEND SECTION 41‑31‑60, RELATING TO BASE RATES WHERE A DELINQUENT REPORT IS RECEIVED, TO CHANGE REFERENCES TO TAX RATES; TO AMEND SECTION 41‑31‑70, RELATING TO A PROHIBITION ON THE TERMINATION OF THE ACCOUNT OF AN EMPLOYER, TO DELETE A BENEFIT RATIO CALCULATION; TO AMEND SECTION 41‑31‑125, RELATING TO THE ASSIGNMENT OF AN EMPLOYMENT BENEFIT RECORD UPON ACQUISITION OR REORGANIZATION OF AN EXISTING EMPLOYMENT UNIT, TO PROVIDE IF THE EXPERIENCE RATING ACCOUNT OF A PREDECESSOR IS EQUAL TO OR EXCEEDS TAX CLASS THIRTEEN, THIS EXPERIENCE RATING ACCOUNT MUST BE TRANSFERRED TO THE SUCCESSOR EMPLOYER; TO AMEND SECTION 41‑31‑140, RELATING TO LIMITS ON THE TRANSFER OF AN EXPERIENCE RATING ACCOUNT IN CERTAIN CIRCUMSTANCES, TO CLARIFY TIME LIMITS OF APPLICABILITY AND TO PROVIDE FOR FUTURE LIMITS ON TRANSFERS FOR AN EXPERIENCE RATING ACCOUNT; TO AMEND SECTION 41‑31‑670, RELATING TO SPECIAL PROVISIONS FOR ORGANIZATIONS THAT MADE CONTRIBUTIONS PRIOR TO 1969, TO UPDATE REFERENCES TO APPLICABLE TAX FORMULAS AND TO PROVIDE FOR THE MANAGEMENT OF AN ACCOUNT IF THE ORGANIZATION TERMINATES THE ELECTION AVAILABLE UNDER THIS SECTION; TO AMEND SECTION 41‑35‑120, RELATING TO DISQUALIFICATIONS FOR BENEFITS, TO INCREASE THE PENALTY FOR FAILING A DRUG TEST OR BEING TERMINATED FOR GROSS MISCONDUCT AND TO PROVIDE AN ADDITIONAL SOURCE FOR CERTIFYING A LAB THAT MAY PERFORM A DRUG TEST; TO AMEND SECTION 41‑35‑125, RELATING TO BENEFITS FOR INDIVIDUALS UNEMPLOYED AS A RESULT OF DOMESTIC ABUSE, TO REDEFINE THE TERM “DISABILITY”; TO AMEND SECTION 41‑35‑130, RELATING TO PAYMENTS NOT CHARGEABLE TO A FORMER EMPLOYER, TO MAKE THE SECTION APPLICABLE TO BENEFITS PAID AS A RESULT OF A NATURAL DISASTER DECLARED BY THE PRESIDENT OF THE UNITED STATES; TO AMEND SECTION 41‑39‑30, RELATING TO LIMITS ON FEES, TO ELIMINATE THE REQUIREMENT THAT A PERSON APPEARING AT A HEARING UNDER THIS SECTION MUST BE REPRESENTED BY AN ATTORNEY; TO AMEND SECTION 41‑41‑40, RELATING TO THE RECOVERY OF BENEFITS PAID TO A PERSON NOT ENTITLED TO BENEFITS, TO PROVIDE AN ADDITIONAL MEANS FOR ATTEMPTING A COLLECTION UNDER THIS SECTION; TO AMEND SECTION 41‑27‑260, RELATING TO EXEMPTED EMPLOYMENT, TO PROVIDE THE CIRCUMSTANCES UNDER WHICH SERVICES PERFORMED BY A DIRECT SELLER ARE EXEMPT FROM THE PROVISIONS OF CHAPTERS 27 THROUGH 41 OF TITLE 41;

TO AMEND SECTION 41‑31‑50, RELATING TO DETERMINATION OF BASE RATES, TO PLACE A LIMIT ON EMPLOYER BASE TAX RATE FOR TAX YEAR 2011; AND TO AMEND CHAPTER 31, TITLE 41, BY ADDING SECTION 41‑31‑52 TO PROVIDE FOR THE CIRCUMSTANCES UNDER WHICH A SEASONAL WORKER IS ELIGIBLE TO RECEIVE BENEFITS.

Amend Title To Conform

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

SECTION 1. Section 41‑31‑5(1) of the 1976 Code is amended to read:

“(1) ‘Benefit ratio’ means:

(a) for the period of January 1, 2011, through December 31, 2013, the number calculated by dividing the ~~average~~ sum of all benefits charged to an employer during the forty calendar quarters immediately preceding the calculation date by the sum of the employer’s ~~average~~ taxable payroll ~~during~~ for the same period. If fewer than forty but more than ~~four~~ one calendar ~~quarters~~ quarter of data are available, the data from those available calendar quarters shall be used in the calculation. The benefit ratio must be calculated annually ~~on July first~~ using data for quarters filed through June thirtieth of the current year to the sixth decimal place;

(b) from January 1, 2014, the number calculated by dividing the ~~average~~ sum of all benefits charged to an employer during the twelve calendar quarters immediately preceding the calculation date by the sum of the employer’s ~~average~~ taxable payroll ~~during~~ for the same period. If fewer than twelve but more than ~~four~~ one calendar quarters of data are available, the data from those available calendar quarters shall be used in the calculation. The benefit ratio must be calculated annually ~~on July first~~ using data for quarters filed through June thirtieth of the current year to the sixth decimal place.”

SECTION 2. Section 41‑31‑20(A) of the 1976 Code is amended to read:

“(A) The department shall maintain a separate account for each employer and shall ~~credit the account of each with all the contributions paid on his behalf, but~~ accurately record the data used to determine an employer’s experience for the purpose of rate assignments. Nothing in Chapters 27 through 41 of this title shall be construed to grant any employer or individual in his service prior claims or rights to the amounts paid by him into the fund either on his behalf or on behalf of such individuals. Benefits paid to an eligible individual shall be charged, in the amounts provided in Chapters 27 through 41 of this title, against the accounts of his most recent employer. No employer shall be deemed as the most recent employer for the purpose of this section unless the eligible person to whom benefits are paid earned wages in the employ of the employer equal to at least eight times the weekly benefit amount of the eligible claimant.”

SECTION 3. Section 41‑31‑40 of the 1976 Code is amended to read:

“Section 41‑31‑40. Each employer’s base rate for the twelve months commencing January first of any calendar year is determined in accordance with Section 41‑31‑50 on the basis of his record up ~~to July first~~ through June thirtieth of the preceding calendar year, but no employer’s base rate is less than the rate applicable for rate class ~~thirteen~~ twelve until there have been twelve consecutive months of coverage after first becoming liable for contributions under Chapters 27 through 41 of this title. Each employer who completes twelve consecutive calendar months of coverage after first becoming liable for contributions during the current calendar year shall have a base rate computed on the basis of his record up through the next occurring June thirtieth, with that base rate being effective for the next calendar year beginning in January.”

SECTION 4. Section 41‑31‑50 of the 1976 Code is amended to read:

“Section 41‑31‑50. Each employer eligible for a rate computation shall have his ~~base~~ tax rate determined in the following manner:

(1)(a)(i) Annually the department must calculate a contribution rate for each employer qualified for an experience rating. The contribution rate must correspond to the rate calculated for the employer’s benefit ratio class.

(ii) To determine an employer’s benefit ratio rank, the department must list all employers by increasing benefit ratios, from the lowest benefit ratio to the highest benefit ratio. The list must be divided into classes ranked one through twenty. Each class must contain approximately five percent of the total taxable wages, excluding ~~reimbursable employment wage~~ employers with less than twelve months of accomplished liability, employers with outstanding tax liens, delinquent tax class employers, and employers who reimburse the department in lieu of contributions, paid in covered employment during the four completed calendar quarters immediately preceding the computation date. Each employer must be placed in the class that corresponds with the employer’s benefit ratio.

(iii) If an employer’s taxable wages qualify the employer for two separate classes, the employer shall be afforded the class assigned the lower contribution rate. Employers with identical benefit ratios shall be assigned to the same class.

(b) The income needed to pay benefits for the calendar year plus any applicable income needed to reach the solvency target must be divided by the estimated taxable wages for the calendar year. The result rounded to the next higher one‑hundredth of one percent is the average required rate needed to pay benefits and achieve solvency targets.

(c) The rate for class twenty will be set such that the entire schedule raises the income required to pay benefits for the year, as well as the income necessary to move the trust fund toward the solvency target, subject to the structure provided in this chapter. However, the rate for class twenty must be at least five and four‑tenths percent.

(2)(a) If the calculated rate necessary for benefit rate class twenty exceeds five and four‑tenths percent, then the rate for each preceding benefit rate class shall be equal to ninety percent of the rate calculated for the succeeding class, except that rate class twelve shall be set at one‑fourth the rate calculated for class twenty, provided that the rate for class one shall be zero.

(b)(i) If the computed rate necessary for class twenty is less than five and four‑tenths percent, then the rate for class twenty shall be set at five and four‑tenths percent.

(ii) The rate for rate class twelve shall be calculated by multiplying the average tax rate computed in ~~subsection~~ item (1)(b) by twenty, subtracting five and four‑tenths percent, and dividing by nineteen.

(iii) The contribution rate for rate classes eleven through one shall be equal to ninety percent of the rate for the succeeding class, provided that the rate for class one shall be zero.

(iv) The contribution rate for class thirteen shall be equal to one hundred twenty percent of the rate calculated for rate class twelve.

(v) The contribution rate for rate class nineteen shall be set at an amount that allows for average contributions, beginning with class eighteen and ending with class fourteen, that are equal to ninety percent of the preceding class.

(3) For calendar year 2011 and any subsequent calendar year, voluntary payments are not permitted for the purpose of obtaining a lower rate of required contributions.”

SECTION 5. Section 41‑31‑60 of the 1976 Code is amended to read:

“Section 41‑31‑60. (A) If on the computation date upon which an employer’s ~~base~~ tax rate is to be computed as provided in Section 41‑31‑40 there is a delinquent report, ~~a base rate of two and sixty‑four hundredths percent~~ the tax class twenty rate must be assigned to the employer for the period to which the computation applies. ~~If the base rate for the prior year or the computed base rate for the computation period is greater than two and sixty‑four hundredths percent, the higher rate must be assigned until the next computation date.~~

(B) No employer is permitted to pay his unemployment compensation tax at a reduced ~~base~~ tax rate class for any quarter when a tax execution issued in accordance with Section 41‑31‑390 with respect to delinquent unemployment compensation tax for a previous quarter is unpaid and outstanding against the employer. If on the computation date upon which an employer’s ~~base~~ tax rate is computed as provided in Section 41‑31‑40 there is an outstanding tax execution, ~~a base rate of two and sixty‑four hundredths percent~~ the tax class twenty rate must be assigned ~~for the period to which the computation applies. If the base rate for the prior year or the computed base rate for the computation period is greater than two and sixty‑four hundredths percent, the highest base rate must be assigned~~ to the employer until the next computation date or until such time as ~~any~~ all outstanding tax ~~execution has~~ executions have been paid.”

SECTION 6. Section 41‑31‑70 of the 1976 Code is amended to read:

“Section 41‑31‑70. If the department finds that an employer ceased to render employment solely due to the closing of the business because of the entrance of one or more of the owners, officers, partners, or the majority stockholders into the Armed Forces of the United States, or any of its allies, or of the United Nations after January 1, 1951, such employer’s account shall not be terminated; and, if the business is resumed and employment rendered within two years after the discharge or release from active duty in the armed forces of the person or persons, the employer’s experience shall be deemed to have been continuous throughout that period. The benefit ratio of the employer shall be the amount calculated pursuant to Section 41‑31‑5, including benefits paid to any individual during the period the employer was in the armed forces~~, divided by his average annual payroll for the most recent year during the whole of which the employer has been in business and has rendered employment~~. This provision shall not be construed to authorize cash refunds and any adjustments required hereunder shall be only by credit certificate.”

SECTION 7. Section 41‑31‑125(C) of the 1976 Code is amended to read:

“(C) If the experience rating account of the predecessor ~~employer contains a debit balance, defined as an excess of total benefits charged over total contributions paid, the experience rating account of the predecessor employer must be transferred to the successor employer in accordance with the provisions of Section 41‑31‑140~~ is equal to or exceeds tax class thirteen, the experience rating account of the predecessor employer in any event must be transferred to the successor employer in accordance with the provisions of Section 41‑31‑140.”

SECTION 8. Section 41‑31‑140 of the 1976 Code is amended to read:

“Section 41‑31‑140. (A) For the purposes of this section and for tax years 2010 and prior, ‘debit balance’ means the excess of total benefits charged over total contributions made.

(B) For acquisitions that occur in tax years 2010 and prior, no transfer of experience rating accounts, in whole or in part, is permitted under the provisions of Sections 41‑31‑100 to 41‑31‑130 unless all unemployment compensation taxes based on wages paid by the transferring employer prior to the date of the transfer are paid by the transferring employer when due or assumed by the acquiring employer within sixty days from the date he is notified by the department that the transfer cannot be allowed because of unpaid unemployment compensation taxes. If the experience rating account of the predecessor employer contains a debit balance, the experience rating account of the predecessor employer in any event must be transferred to the successor employer in accordance with the provisions of Sections 41‑31‑100 and 41‑31‑120.

(C) Effective for acquisitions occurring in tax years 2011 and later, no transfer of benefit charges or taxable wages, in whole or in part, is permitted pursuant to the provisions of Sections 41‑31‑100 through 41‑31‑130 unless all unemployment compensation taxes based on wages paid by the transferring employer prior to the date of transfer are paid by the transferring employer when due or assumed by the acquiring employer within sixty days from the date he is notified by the department that the transfer cannot be allowed because of unpaid unemployment compensation taxes or outstanding contribution reports. If the predecessor employer has an acquisition year tax class of thirteen or higher, the experience of the predecessor employer in any event must be transferred to the successor employer in accordance with the provisions of Sections 41‑31‑100 and 41‑31‑120.”

SECTION 9. Section 41‑31‑670(B) of the 1976 Code is amended to read:

“(B) Any nonprofit organization which has elected to become liable for payments in lieu of contributions under the provisions of Sections 41‑31‑620 and 41‑31‑630 and thereafter terminates the election shall become an employer liable for the payments of contributions upon the effective date of the termination but no such employer’s ~~base~~ tax rate thereafter may be less than ~~two and sixty‑four hundredths percent~~ tax rate class twelve until there have been twenty‑four consecutive calendar months of coverage ~~after so becoming liable for the payment of contributions. If the employer has been an employer liable for the payment of contributions prior to election to become liable for payments in lieu of contributions, the balance in the experience rating account of the employer as of the termination date of the election to become liable for payments in lieu of contributions is transferred to the new experience rating account then established for the employer~~. Upon termination of the election to reimburse the department in lieu of contributions, if the employer was previously an employer liable for contributions, the previously established contributory account will be reopened.”

SECTION 10. Section 41‑35‑125 of the 1976 Code is amended to read:

“Section 41‑35‑125. (A)(1) Notwithstanding the provisions of Section 41‑35‑120, an individual is eligible for waiting week credit and for unemployment compensation if the department finds that the individual has left work voluntarily or has been discharged because of circumstances directly resulting from domestic abuse and:

(a) reasonably fears future domestic abuse at or en route to the workplace;

(b) needs to relocate to avoid future domestic abuse; or

(c) reasonably believes that leaving work is necessary for his safety or the safety of his family.

(2) When determining if an individual has experienced domestic abuse for the purpose of receiving unemployment compensation, the department must require him to provide documentation of domestic abuse ~~including, but not limited to,~~ such as police or court records or other documentation of abuse from a shelter worker, attorney, member of the clergy, or medical or other professional from whom the individual has sought assistance.

(3) Documentation or evidence of domestic abuse acquired by the department pursuant to this section must be kept confidential unless consent for disclosure is given, in writing, by the individual.

(B)(1) Notwithstanding the provisions of Section 41‑35‑120, an individual is eligible for waiting week credit and for unemployment compensation if the department finds that the individual was separated from employment due to compelling family circumstances.

(2) For the purposes of this subsection:

(a) ‘Immediate family member’ means a claimant’s spouse, parents, or ~~minor~~ dependent children.

(b) ‘Illness’ means a verified ~~disability~~ illness that necessitates the care of the ~~disabled~~ ill person for a period of time that exceeds the amount of time the employer will provide paid or unpaid leave. ~~Disability, includes, but is not limited to, mental and physical disabilities, permanent and temporary disabilities, and partial and total disabilities.~~

(c) ‘Disability’ means a verified disability which necessitates the care of the disabled person for a period of time longer than the employer is willing to grant paid or unpaid leave. Disability encompasses all types of disability, including mental and physical disabilities, permanent and temporary disabilities, and partial and total disabilities.

(d) ‘Compelling family circumstances’ means:

(i) that a claimant was separated from employment with the employer because of the illness or disability of the claimant and, based upon available information, the department finds that it was medically necessary for the claimant to stop working or change occupations;

(ii) the claimant was separated from work due to the illness or disability of an immediate family member; and

(iii) the claimant’s spouse was transferred or employed in another city or state, the family is required to move to the location of that job, the location is outside the commuting distance of the claimants previous employment, and the claimant separates from employment in order to move to the new location with his spouse.

~~(2)~~ ~~Notwithstanding the provisions of Section 41‑35‑120, an individual is eligible for waiting week credit and for unemployment compensation if the department finds that the individual was separated from employment due to compelling family circumstances.~~”

SECTION 11. Section 41‑35‑130 of the 1976 Code is amended to read:

“Section 41‑35‑130. (A) A benefit paid to a claimant for unemployment immediately after the expiration of disqualification for:

(1) voluntarily leaving his most recent work without good cause;

(2) discharge from his most recent work for misconduct; or

(3) refusal of suitable work without good cause must not be charged to the account of an employer.

(B) A benefit paid to a claimant must not be charged against the account of an employer by reason of the provisions of this subsection if the department determines under Section 41‑35‑120 that the individual:

(1) voluntarily left his most recent employment with that employer without good cause;

(2) was discharged from his most recent employment with that employer for misconduct connected with his work; or

(3) subsequent to his most recent employment refused without good cause to accept an offer of suitable work made by that employer if the employer furnishes the department with those notices regarding the separation of the individual from work or the refusal of the individual to accept an offer of work as are required by the law and regulations of the department.

(C) If a benefit is paid pursuant to a decision that is finally reversed in subsequent proceedings with respect to it, an employer’s account must not be charged with a benefit paid.

(D) A benefit paid to a claimant for a week in which he is in training with the approval of the department must not be charged to an employer.

(E) Benefits paid as a result of a natural disaster declared by the President of the United States.

(F) Benefits paid as a result of declaration of emergency declared by the Governor must not be charged to an employer.

(G) The provisions of subsections (A) through ~~(D)~~ (E), all inclusive, with respect to the noncharging of benefits paid must be applicable only to an employer subject to the payment of contributions.

~~(F)~~(H) A benefit paid to a claimant during an extended benefit period, as defined in Article 3, Chapter 35, must not be charged to an employer; except that a ~~non-profit~~ nonprofit organization electing to become liable for payments in lieu of contributions in accordance with Section 41‑31‑620 must reimburse fifty percent of extended benefits attributable to services performed in its employ and that after January 1, 1979, the State or a political subdivision or instrumentality of it as defined in Section 41‑27‑230(2)(b) electing to become liable for payment in lieu of contributions in accordance with Section 41‑31‑620 must reimburse all extended benefits attributable to services performed in its employ.

~~(G)~~(I) A nonprofit organization that elects to make a payment in lieu of a contribution to the unemployment compensation fund as provided in Section 41‑31‑620(2) or Section 41‑31‑810 is not liable to make those payments with respect to the benefits paid to an individual whose base period wages include wages for previously uncovered services as defined in Section 41‑35‑65 to the extent that the unemployment compensation fund is reimbursed for those benefits pursuant to Section 121 of P.L. 94‑566.

~~(H)~~(J) A benefit paid to an individual whose base period wages include wages for previously uncovered services as defined in Section 41‑35‑65 must not be charged against the account of an employer to the extent that the unemployment compensation fund is reimbursed for those benefits pursuant to Section 121 of P.L. 94‑566.

~~(I)~~(K) A benefit paid to an individual pursuant to Section 41‑35‑125 must not be charged to the account of a contributing employer.

~~(J)~~(L) A benefit paid to an individual pursuant to Section 41‑35‑126 must not be charged to the account of a contributing employer.”

SECTION 12. Section 41‑39‑30 of the 1976 Code is amended to read:

“Section 41‑39‑30. An individual claiming benefits may not be charged a fee in a proceeding under Chapters 27 through 41 of this title by the department or its representatives or by a court or an officer, except an attorney, of it. An individual claiming a benefit in a proceeding before the department or a court ~~must~~ may be represented by an attorney or other duly authorized agent, but an attorney or agent must not charge or receive for this service more than an amount approved by the department. A person who violates a provision of this section, for each offense, must be fined not less than fifty dollars nor more than five hundred dollars, imprisoned for not more than six months, or both.”

SECTION 13. Section 41‑41‑40(A) of the 1976 Code is amended to read:

“Section 41‑41‑40. (A)(1) A person who has received a sum as benefits under Chapters 27 through 41 while conditions for the receipt of benefits imposed by these chapters were not fulfilled or while he was disqualified from receiving benefits is liable to repay the department for the unemployment compensation fund a sum equal to the amount received by him.

(2) If full repayment of benefits, to which an individual was determined not entitled, has not been made, the sum must be deducted from future benefits payable to him under Chapters 27 through 41, and the sum must be collectible in the manner provided in Sections 41‑31‑380 to 41‑31‑400 for the collection of past due contributions.

(3) The department may attempt collection of overpayments through the South Carolina Department of Revenue in accordance with Section 12‑56‑10, et seq. If the overpayment is collectible in accordance with Section 12‑56‑60, the department shall add to the amount of the overpayment a collection fee of not more than twenty‑five dollars for each collection attempt to defray administrative costs.

(4) The department may attempt collection of overpayment through the federal Unemployment Compensation Treasury Offset Program (UCTOP). If the overpayment is collectible, the department shall add to the amount of the overpayment a collection fee not to exceed the administrative costs set by this program.

(5) Notwithstanding any other provision of this section, no action to enforce recovery or recoupment of any overpayment may begin after five years from the date of the final determination for nonfraudulent overpayments nor after eight years from the date of the final determination for fraudulent overpayments.”

SECTION 14. Section 41‑27‑260 of the 1976 Code is amended by adding an appropriately numbered new item to read:

“(18) Services performed by a direct seller, provided that:

(a) the individual:

(i) is engaged in the trade or business of selling or soliciting the sale of consumer products, including, but not limited to, services or other intangibles, to any buyer on a buy‑sell basis, a deposit‑commission basis, or any similar basis for resale by the buyer or any other person in the home or otherwise than in a permanent retail establishment; or

(ii) is engaged in the trade or business of selling or soliciting the sale of consumer products, including, but not limited to, services or other intangibles, in the home or otherwise than in a permanent retail establishment;

(b) substantially all the remuneration, whether or not paid in cash, for the performance of the services described in item (a) is directly related to sales or other output, including, but not limited to, the performance of services, rather than to the number of hours worked; and

(c) the services performed by the individual are performed pursuant to a written contract between the individual and the person for whom the services are performed and the contract provides that the individual will not be treated as an employee for federal and state tax purposes.”

SECTION 15. Section 41‑31‑50 of the 1976 Code is amended by adding:

“(3) For tax year 2011, no employer shall have a base tax rate higher than the base tax rate for rate class twelve if during the applicable rate computation period, as defined in Section 41‑31‑5, the employer has been credited with more in tax contributions than have been charged to that employer’s account for benefits.”

SECTION 16. Chapter 31, Title 41 of the 1976 Code is amended by adding:

“Section 41‑31‑52. Effective with claims filed on or after January 1, 2012:

(1) A seasonal pursuit is one which, because of seasonal conditions making it impracticable or impossible to do otherwise, customarily carries on production operations only within a regularly recurring active period or periods of less than an aggregate of thirty‑six weeks in a calendar year. No pursuit shall be considered seasonal until the department makes a determination that the pursuit is seasonal. However, any successor to a seasonal pursuit shall be deemed seasonal unless the successor requests cancellation of the seasonal pursuit status within one hundred twenty days after the acquisition. This provision shall not be applicable to pending cases nor retroactive in effect.

(2) Upon application by a pursuit for seasonal pursuit status, the department shall determine or redetermine whether the pursuit is seasonal and, if seasonal, the pursuit’s active period. The department may, on its own motion, redetermine a seasonal pursuit’s active period. An application for a seasonal determination must be made on forms prescribed by the department and must be made at least thirty days prior to the beginning date of the period of production operations for which a determination is requested.

(3) Whenever the department has determined or redetermined a pursuit to be seasonal, the pursuit shall be notified immediately, and the notice must contain the beginning and ending dates of the pursuit’s active period or periods. Pursuits determined or redetermined to be a seasonal pursuit shall display notices of its seasonal determination conspicuously on its premises in a sufficient number of places to be available for inspection by its workers. The notices shall be furnished by the department.

(4) A seasonal determination must become effective unless an interested party files an application for review within ten days of the beginning date of the first period of production operations to which it applies. An application for review shall be an application for a determination of status.

(5) All wages paid to a seasonal worker during his base period must be used in determining his weekly benefit amount; provided, however, that all weekly benefit amounts so determined shall be rounded to the nearest lower full dollar amount, if not a full dollar amount.

(6)(a) A seasonal worker is eligible to receive benefits based on seasonal wages only for a week of unemployment which occurs, or the greater part of which occurs, within the active period of the seasonal pursuit in which he earned base period wages.

(b) A seasonal worker is eligible to receive benefits based on nonseasonal wages for any week of unemployment which occurs during any active period of the seasonal pursuit in which he has earned base period wages; provided he has exhausted benefits based on seasonal wages. The worker is also eligible to receive benefits based on nonseasonal wages for any week of unemployment which occurs during the inactive period or periods of the seasonal pursuit in which he earned base period wages irrespective as to whether he has exhausted benefits based on seasonal wages.

(c) The maximum amount of benefits which a seasonal worker is eligible to receive, based on seasonal wages, shall be an amount, adjusted to the nearest multiple of one dollar, determined by multiplying the maximum benefits payable in his benefit year, as provided in Section 41‑35‑50, by the percentage obtained by dividing the seasonal wages in his base period by all of his base period wages.

(d) The maximum amount of benefits which a seasonal worker is eligible to receive based on nonseasonal wages shall be an amount, adjusted to the nearest multiple of one dollar, determined by multiplying the maximum benefits payable in his benefit year, as provided in Section 41‑35‑50, by the percentage obtained by dividing the nonseasonal wages in his base period by all of his base period wages.

(e) In no case is a seasonal worker eligible to receive a total amount of benefits in a benefit year in excess of the maximum benefits payable for such benefit year, as provided in Section 41‑35‑50.

(7)(a) All benefits paid to a seasonal worker based on seasonal wages shall be charged, as prescribed in Section 41‑31‑20, against the account of his base period employer who paid him such seasonal wages, and for the purpose of this paragraph such seasonal wages shall be deemed to constitute all of his base period wages.

(b) All benefits paid to a seasonal worker based on nonseasonal wages shall be charged, as prescribed in Section 41‑31‑20, against the account of his base period employer who paid him such nonseasonal wages, and for the purpose of this paragraph such nonseasonal wages shall be deemed to constitute all of his base period wages.

(8) The benefits payable to any otherwise eligible individual shall be calculated in accordance with this section for any benefit year which is established on or after the beginning date of a seasonal determination applying to a pursuit by which such individual was employed during the base period applicable to such benefit year, as if such determination had been effective in such base period.

(9) Nothing in this section shall be construed to limit the right of any individual whose claim for benefits is determined in accordance herewith to appeal from such determination as provided in Section 41‑35‑660.

(10) As used in this section:

(a) ‘Pursuit’ means an employer or branch of an employer.

(b) ‘Branch of an employer’ means a part of an employer’s activities which is carried on or is capable of being carried on as a separate enterprise.

(c) ‘Production operations’ means all the activities of a pursuit which are primarily related to the production of its characteristic goods or services.

(d) ‘Active period or periods’ of a seasonal pursuit means the longest regularly recurring period or periods within which production operations of the pursuit are customarily carried on.

(e) ‘Seasonal wages’ means the wages earned in a seasonal pursuit within its active period or periods. The department may prescribe by regulation the manner in which seasonal wages shall be reported.

(f) ‘Seasonal worker’ means a worker at least twenty‑five percent of whose base period wages are seasonal wages.

(g) ‘Interested party’ means any individual affected by a seasonal determination.

(h) ‘Inactive period or periods’ of a seasonal pursuit means that part of a calendar year which is not included in the active period or periods of such pursuit.

(i) ‘Nonseasonal wages’ means the wages earned in a seasonal pursuit within the inactive period or periods of such pursuit, or wages earned at any time in a nonseasonal pursuit.

(j) ‘Wages’ means remuneration for employment.”

SECTION 17. Section 41‑35‑50 of the 1976 Code is amended to read:

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

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

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

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

SECTION 18. Section 41‑29‑300(B)(2) of the 1976 Code is amended to read:

“(2) The members of the appellate panel must be elected by the General Assembly, in joint session, for terms of four years and until their successors have been elected and qualified, commencing on the first day of July in each presidential election year. Initial elections for members of the appellate panel must be held before May 22, 2010. The seats on the appellate panel are designated as Seat 1, Seat 2, and Seat 3.”

SECTION 19. Section 41‑31‑330(A) of the 1976 Code is amended to read:

“Section 41‑31‑330. (A)(1) If the department finds that an additional contribution is due, that the report was made in good faith, that the understatement of the contribution is not deliberate, then no penalty shall be added because of the understatement. However, except for the time period contained in item (2), the amount of the deficiency shall bear interest at the rate of one percent for each month or fraction of a month that it remains unpaid.

(2) For calendar year 2011, retroactive to January 1, 2011, for months January through June 30 of that year, the amount of deficiency that arises under the circumstances provided in item (1) shall bear interest at the rate of 0.25 percent for each month or fraction of a month that it remains unpaid. However, if the department finds that the understatement is due to the circumstances provided in subsection (B) or (C) then the employer is not entitled to the 0.25 percent interest rate.”

SECTION 20. (A) As soon as practicable after the effective date of this act, the Department of Employment and Workforce is directed to recalculate premium rates. The recalculated premium rates shall be retroactive to January 1, 2011. Employers must be notified of changes in the premiums due and employer accounts must be credited and adjusted as appropriate.

(B) The Department of Employment and Workforce must apply all funds directly appropriated to the department pursuant to Act \_\_\_, R \_\_\_, H. 3700, in such a manner to reduce the amount of income that must be raised pursuant to Section 41-31-45(A)(3) and Section 41-31-45(B).

SECTION 21. This act takes effect upon approval by the Governor.

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