~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

January 25, 2012

**H. 4592**

Introduced by Reps. Sandifer, Erickson, Toole, Brady, Gambrell and Bales

S. Printed 1/25/12--H. [SEC 1/26/12 3:46 PM]

Read the first time January 12, 2012.

**THE COMMITTEE ON**

**LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (H. 4592) to amend the Code of Laws of South Carolina, 1976, by adding Section 41‑41‑45 so as to provide a civil penalty for violations of prohibitions against making, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

/ SECTION 1. Chapter 29, Title 41 of the 1976 Code is amended by adding:

“Section 41‑29‑320. (A)(1) The department shall establish a Special Investigations Unit within the department. This unit is primarily responsible for enforcing all laws pertaining to unemployment insurance fraud in conjunction with the Office of the Attorney General pursuant to Section 41‑27‑590.

(2) The Special Investigations Unit shall:

(a) assist in the exchange of information concerning unemployment insurance fraud among appropriate government officials, appropriate law enforcement officials, and itself; and

(b) execute and serve search warrants, arrest warrants, administrative inspection warrants, subpoenas, and summonses as it considers appropriate.

(B) A criminal investigator of the department when performing his duties under this section:

(1) has statewide police powers;

(2) may carry firearms;

(3) may execute and serve search warrants, arrest warrants, administrative inspection warrants, subpoenas, and summonses;

(4) may seize property; and

(5) may make an arrest without a warrant for an offense committed in his presence.”

SECTION 2. Chapter 41, Title 41 of the 1976 Code is amended by adding:

“Section 41‑41‑45. (A) In addition to any criminal liability, any person who is found by a court of competent jurisdiction to have violated Section 41‑41‑10 or Section 41‑41‑30, is subject to a civil penalty for each violation as follows:

(1) a fine of not more than five thousand dollars for a first offense;

(2) a fine of not less than five thousand dollars but not more than ten thousand dollars for a second offense; and

(3) a fine of not less than ten thousand dollars but not more than fifteen thousand dollars for a third and subsequent offense.

(B) A civil penalty imposed pursuant to subsection (A) must be paid to the Director of the Unemployment Insurance Division of the Department of Employment and Workforce and must be shared, as agreed upon in writing, with Director of the Insurance Fraud Division of the Office of Attorney General for use pursuant to subsection (D). A court also may award any related court costs and reasonable attorneys’ fees to these directors.

(C) Nothing in subsections (A) and (B) may be construed to prohibit the Director of the Unemployment Insurance Division of the Department of Employment and Workforce and the person alleged to be guilty of a violation of this article from entering into a written agreement in which the person does not admit or deny the charges but consents to payment of the civil penalty. This written consent agreement may not be used in a subsequent civil or criminal proceeding relating to a violation of this article.

(D) Revenue from the civil penalties imposed pursuant to this section must be used to provide funds for the costs of enforcing and administering the provisions of this article and the Omnibus Insurance Fraud and Reporting Immunity Act.”

SECTION 3. Section 41‑41‑10 of the 1976 Code is amended to read:

“Section 41‑41‑10. (A) Whoever makes a false statement or representation knowing it to be false or who knowingly fails to disclose a material fact to obtain or to increase any benefits or other payment under Chapters 27 through 41 of this title or under an employment security or unemployment compensation law of ~~any other~~ another state, the Federal Government, or of a foreign government, either for himself or for ~~any other~~ another person, ~~shall~~ must be ~~punished by a fine of not less than twenty nor more than one hundred dollars or by imprisonment for not longer than thirty days and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense~~ guilty of a:

(1) misdemeanor, for a first offense, triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22‑3‑540, 22‑3‑545, 22‑3‑550, and 14‑25‑65 when the value of the money obtained or sought to be obtained is two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars or imprisoned not more than thirty days, or both, together with the cost of prosecution;

(2) misdemeanor, for a first offense, if the amount of the economic advantage or benefit received is two thousand dollars or more but less than five thousand dollars. Upon conviction, the person must be fined not less than two thousand or more than ten thousand dollars or imprisoned not more than three years, or both, together with the cost of prosecution;

(3) felony, for a first offense, when the value of the money obtained or sought to be obtained is five thousand dollars or more. Upon conviction, the person must be fined not less than five thousand dollars nor more than twenty thousand dollars, imprisoned not more than ten years, or both, together with the costs of prosecution; and

(4) felony, for a second or subsequent violation, regardless of the amount of the economic advantage or benefit received. Upon conviction, the person must be fined not less than twenty thousand dollars or more than one hundred thousand dollars or imprisoned not more than ten years, or both.

(B) The determination of the degree of an offense under subsection (A) must be measured by the total value of all money obtained or sought to be obtained by the unlawful conduct.

(C) In addition to the criminal penalties provided in subsection (A), a person convicted pursuant to the provisions of this section must be ordered by the court to make full restitution to the Department of Employment and Workforce for any economic advantage or benefit that he obtained as a result of the unlawful conduct.”

SECTION 4. Section 41‑41‑30 of the 1976 Code is amended to read:

“Section 41‑41‑30. (A) Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false or who knowingly fails to disclose a material fact to prevent or reduce the payment of benefits to any individual entitled thereto or to avoid becoming or remaining subject thereto or to avoid or reduce any contribution or other payment required from any employing unit under Chapters 27 through 41 of this title ~~shall be punished by a fine of not less than twenty nor more than one hundred dollars or by imprisonment for not longer than thirty days, and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense~~ or who wilfully fails or refuses to make a contribution or other payment or to furnish a report required by Chapters 27 through 41 of this title, or to produce or permit the inspection or copying of records as required under that chapter is guilty of:

(1) misdemeanor, for a first offense, triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22‑3‑540, 22‑3‑545, 22‑3‑550, and 14‑25‑65 when the value of the money obtained or sought to be obtained is two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars or imprisoned not more than thirty days, or both, together with the cost of prosecution;

(2) misdemeanor, for a first offense, if the amount of the economic advantage or benefit received is two thousand dollars or more but less than five thousand dollars. Upon conviction, the person must be fined not less than two thousand or more than ten thousand dollars or imprisoned not more than three years, or both, together with the cost of prosecution;

(3) felony, for a first offense, when the value of the money obtained or sought to be obtained is five thousand dollars or more. Upon conviction, the person must be fined not less than five thousand dollars nor more than twenty thousand dollars, imprisoned not more than ten years, or both, together with the cost of prosecution; and

(4) felony, for a second or subsequent violation, regardless of the amount of the economic advantage or benefit received. Upon conviction, the person must be fined not less than twenty thousand dollars or more than one hundred thousand dollars or imprisoned not more than ten years, or both.

(B) In addition to the criminal penalties provided in subsection (A), a person convicted pursuant to the provisions of this section must be ordered by the court to make full restitution to the Department of Employment and Workforce for any economic advantage or benefit that he obtained as a result of the unlawful conduct.”

SECTION 5. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 6. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

WILLIAM E. SANDIFER for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 41‑41‑45 SO AS TO PROVIDE A CIVIL PENALTY FOR VIOLATIONS OF PROHIBITIONS AGAINST MAKING FALSE STATEMENTS RELATED TO UNEMPLOYMENT COMPENSATION, TO PROVIDE FOR THE USE OF MONEY RECEIVED FROM FINES CREATED BY THIS PENALTY, AND TO PROVIDE THAT THE DIRECTOR OF THE DEPARTMENT OF EMPLOYMENT AND WORKFORCE MAY NEVERTHELESS ENTER A CERTAIN WRITTEN CONSENT AGREEMENT WITH A PERSON ALLEGED TO BE GUILTY; TO AMEND SECTION 41‑41‑10, RELATING TO OBTAINING OR INCREASING AN EMPLOYMENT SECURITY BENEFIT BY USE OF FALSE STATEMENTS OR FALSE REPRESENTATIONS, OR BY THE FAILURE TO DISCLOSE MATERIAL FACTS, SO AS TO REMOVE CIVIL PENALTIES AND TO IMPOSE CRIMINAL PENALTIES AND A REQUIREMENT OF RESTITUTION; AND TO AMEND SECTION 41‑41‑30, RELATING TO THE PREVENTION OR REDUCTION OF EMPLOYMENT SECURITY BENEFITS OR CONTRIBUTIONS BY AN EMPLOYER, SO AS TO DELETE CIVIL PENALTIES AND TO IMPOSE CRIMINAL PENALTIES.

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

SECTION 1. Chapter 41, Title 41 of the 1976 Code is amended by adding:

“Section 41‑41‑45. (A) In addition to any criminal liability, any person who is found by a court of competent jurisdiction to have violated Section 41‑41‑10 or Section 41‑41‑30, is subject to a civil penalty for each violation as follows:

(1) a fine of not more than five thousand dollars for a first offense;

(2) a fine of not less than five thousand dollars but not more than ten thousand dollars for a second offense; and

(3) a fine of not less than ten thousand dollars but not more than fifteen thousand dollars for a third and subsequent offense.

(B) A civil penalty imposed pursuant to subsection (A) must be paid to the Director of the Unemployment Insurance Division of the Department of Employment and Workforce and must be shared, as agreed upon in writing, with Director of the Insurance Fraud Division of the Office of Attorney General for use pursuant to subsection (D). A court also may award any related court costs and reasonable attorneys’ fees to these directors.

(C) Nothing in subsections (A) and (B) may be construed to prohibit the Director of the Unemployment Insurance Division of the Department of Employment and Workforce and the person alleged to be guilty of a violation of this article from entering into a written agreement in which the person does not admit or deny the charges but consents to payment of the civil penalty. This written consent agreement may not be used in a subsequent civil or criminal proceeding relating to a violation of this article.

(D) Revenue from the civil penalties imposed pursuant to this section must be used to provide funds for the costs of enforcing and administering the provisions of this article and the Omnibus Insurance Fraud and Reporting Immunity Act.”

SECTION 2. Section 41‑41‑10 of the 1976 Code is amended to read:

“Section 41‑41‑10. (A) Whoever makes a false statement or representation knowing it to be false or who knowingly fails to disclose a material fact to obtain or to increase any benefits or other payment under Chapters 27 through 41 of this title or under an employment security or unemployment compensation law of ~~any other~~ another state, the Federal Government, or of a foreign government, either for himself or for ~~any other~~ another person, ~~shall~~ must be ~~punished by a fine of not less than twenty nor more than one hundred dollars or by imprisonment for not longer than thirty days and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense~~ guilty of a:

(1) misdemeanor, for a first offense, triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22‑3‑540, 22‑3‑545, 22‑3‑550, and 14‑25‑65 when the value of the money obtained or sought to be obtained is two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars or imprisoned not more than thirty days, or both, together with the cost of prosecution;

(2) misdemeanor, for a first offense, if the amount of the economic advantage or benefit received is two thousand dollars or more but less than five thousand dollars. Upon conviction, the person must be fined not less than two thousand or more than ten thousand dollars or imprisoned not more than three years, or both, together with the cost of prosecution;

(3) felony, for a first offense, when the value of the money obtained or sought to be obtained is five thousand dollars or more. Upon conviction, the person must be fined not more than five thousand dollars or imprisoned not more than ten years, or both, together with the cost of prosecution; and

(4) felony, for a second or subsequent violation, regardless of the amount of the economic advantage or benefit received. Upon conviction, the person must be fined not less than twenty thousand dollars or more than one hundred thousand dollars or imprisoned not more than ten years, or both.

(B) The determination of the degree of an offense under subsection (A) must be measured by the total value of all money obtained or sought to be obtained by the unlawful conduct.

(C) In addition to the criminal penalties provided in subsection (A), a person convicted pursuant to the provisions of this section must be ordered by the court to make full restitution to the Department of Employment and Workforce for any economic advantage or benefit that he obtained as a result of the unlawful conduct.”

SECTION 3. Section 41‑41‑30 of the 1976 Code is amended to read:

“Section 41‑41‑30. (A) Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false or who knowingly fails to disclose a material fact to prevent or reduce the payment of benefits to any individual entitled thereto or to avoid becoming or remaining subject thereto or to avoid or reduce any contribution or other payment required from any employing unit under Chapters 27 through 41 of this title ~~shall be punished by a fine of not less than twenty nor more than one hundred dollars or by imprisonment for not longer than thirty days, and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense~~ or who wilfully fails or refuses to make a contribution or other payment or to furnish a report required by Chapters 27 through 41 of this title, or to produce or permit the inspection or copying of records as required under that chapter is guilty of:

(1) misdemeanor, for a first offense, triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22‑3‑540, 22‑3‑545, 22‑3‑550, and 14‑25‑65 when the value of the money obtained or sought to be obtained is two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars or imprisoned not more than thirty days, or both, together with the cost of prosecution;

(2) misdemeanor, for a first offense, if the amount of the economic advantage or benefit received is two thousand dollars or more but less than five thousand dollars. Upon conviction, the person must be fined not less than two thousand or more than ten thousand dollars or imprisoned not more than three years, or both, together with the cost of prosecution;

(3) felony, for a first offense, when the value of the money obtained or sought to be obtained is five thousand dollars or more. Upon conviction, the person must be fined not more than five thousand dollars or imprisoned not more than ten years, or both, together with the cost of prosecution; and

(4) felony, for a second or subsequent violation, regardless of the amount of the economic advantage or benefit received. Upon conviction, the person must be fined not less than twenty thousand dollars or more than one hundred thousand dollars or imprisoned not more than ten years, or both.

(B) In addition to the criminal penalties provided in subsection (A), a person convicted pursuant to the provisions of this section must be ordered by the court to make full restitution to the Department of Employment and Workforce for any economic advantage or benefit that he obtained as a result of the unlawful conduct.”

SECTION 4. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 5. This act takes effect upon approval by the Governor.

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