**A** **BILL**

TO AMEND CHAPTER 41, TITLE 41 OF THE 1976 CODE, RELATING TO OFFENSES, PENALTIES, AND LIABILITIES, BY ADDING SECTION 41‑41‑45 TO PROVIDE FOR A MANDATORY PENALTY ON FRAUDULENT OVERPAYMENTS IN CONNECTION WITH UNEMPLOYMENT INSURANCE COMPENSATION; TO AMEND CHAPTER 35, TITLE 41, RELATING TO BENEFITS AND CLAIMS, BY ADDING SECTION 41‑35‑135 TO PROVIDE THAT THE DEPARTMENT SHALL NOT RELIEVE THE CHARGE BENEFITS TO AN EMPLOYER’S ACCOUNT WHEN IT DETERMINES THAT THE OVERPAYMENT HAS BEEN MADE TO A CLAIMANT AND THE OVERPAYMENT OCCURRED BECAUSE THE EMPLOYER WAS AT FAULT FOR FAILING TO RESPOND TIMELY OR ADEQUATELY TO A WRITTEN REQUEST OF THE DEPARTMENT FOR INFORMATION RELATING TO AN UNEMPLOYMENT COMPENSATION CLAIM, AND THE EMPLOYER EXHIBITS A PATTERN OF FAILURE TO TIMELY OR ADEQUATELY RESPOND TO REQUESTS FROM THE DEPARTMENT FOR INFORMATION RELATING TO UNEMPLOYMENT COMPENSATION CLAIMS ON THREE OR MORE OCCASIONS WITHIN A SINGLE CALENDAR YEAR; AND TO AMEND SECTION 43‑5‑598, RELATING TO THE DEFINITION OF “NEW HIRE”, TO PROVIDE THAT A NEW HIRE INCLUDES A REHIRED EMPLOYEE WHO HAS BEEN SEPARATED FROM PRIOR EMPLOYMENT FOR AT LEAST SIXTY CONSECUTIVE DAYS.

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) Notwithstanding any other provision of law, if the department determines that an improper payment from its unemployment compensation fund or from any federal unemployment compensation fund was made to any individual due to a false statement or failure to disclose a material fact pursuant to Sections 41‑41‑10 and 41‑41‑20, the department will assess a monetary penalty of twenty‑five percent of the amount of the overpayment.

(1) Fifteen percent of the monetary penalty paid to the department by the individual must be deposited into the unemployment compensation fund.

(2) Ten percent of the monetary penalty paid to the department by the individual must be deposited into a separate and distinct fund to promote unemployment compensation integrity efforts by the department. This fund shall be used in the discretion of the department to further unemployment compensation integrity efforts throughout the department.

(3) The notice of the determination or decision informing the individual of the overpayment must include:

(a) the claimant’s appeal rights;

(b) the penalty amount;

(c) an explanation of the reason for the overpayment; and

(d) the reason the penalty has been applied.

(B) The recovered amounts shall be applied with priority to the principal amount of the overpayment, the first fifteen percent of the penalty to the unemployment compensation fund, and the remaining ten percent to promote unemployment compensation integrity, and then the remaining amounts to interest.

(C) Offset of future unemployment insurance benefits shall not be applied to the monetary penalty or interest associated with an overpayment.

(D) The monetary penalty will be assessed on any fraudulent overpayment determined by the department after October 21, 2013.”

SECTION 2. Chapter 35, Title 41 of the 1976 Code is amended by adding:

“Section 41‑35‑135. (A) Notwithstanding any other provision of law, the department shall not relieve the charge benefits to an employer’s account when it determines that the overpayment has been made to a claimant and it determines that both of the following conditions apply:

(1) the overpayment occurred because the employer was at fault for failing to respond timely or adequately to a written request of the department for information relating to an unemployment compensation claim; and

(2) the employer exhibits a pattern of failure to timely or adequately respond to requests from the department for information relating to unemployment compensation claims on three or more occasions within a single calendar year.

(a) If an employer uses a third‑party agent to respond on its behalf to the department’s request for information relating to an unemployment compensation claim, the agent’s actions on behalf of the employer will be considered when determining a pattern of behavior.

(b) A response is considered untimely if it fails to meet the time as prescribed in the statute or in the regulations.

(c) A response is considered inadequate if it fails to provide sufficient facts to enable the department to make an accurate determination of benefits that do not result in an overpayment. However, a response may not be considered inadequate if the department fails to request the necessary information.

(B) A written request for information may include electronic requests for information.

(C) The department shall charge an employer’s account that meets the conditions of subsection (A) for each week of unemployment compensation that is an overpayment until the department makes a determination that the individual is no longer eligible for unemployment compensation and stops making such payments.

(D) If the claim is a combined wage claim, the determination of not charging for the combined wage claim shall be made by the paying state. If the response from the employer does not meet the criteria established by the paying state for an adequate or timely response, the paying state must promptly notify the transferring state of its determination and the employer must be appropriately charged.

(E) The department may waive the charging of benefits to an employer’s account if the employer can show good cause for his failure to timely or adequately respond. ‘Good cause’ includes, but is not limited to, an error made by the department that results in the notice for request of information relating to an unemployment claim being mailed to the incorrect address, or an unexpected emergency or disaster which made it impossible for an employer to timely or adequately respond. The burden is on the employer to establish good cause.

(F) The department shall charge benefits to an employer’s account pursuant to this section for any overpayment determined by the department after October 21, 2013.”

SECTION 3. Section 43‑5‑598(A)(6) of the 1976 is amended to read:

“**(6) ‘New hire’ includes an individual newly employed or an individual who has been rehired who was separated for at least sixty consecutive days or has returned to work after being laid off, furloughed, separated, granted leave without pay, or terminated from employment for at least sixty consecutive days.”**

SECTION 4. This act takes effect upon approval by the Governor.

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