

House Bill 373 (AS PASSED HOUSE AND SENATE)

By: Representatives Werkheiser of the 157th and Welch of the 110th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 34 of the Official Code of Georgia Annotated, relating to labor and industrial
2 relations, so as to change certain provisions relating to the Department of Labor and to
3 employment security; to authorize the Commissioner of Labor to perform certain functions
4 and prescribe certain rules and regulations; to provide for definitions; to authorize the
5 Commissioner of Labor to conduct fingerprint based criminal background checks of
6 applicants for employment and individuals employed by or performing work for the
7 Department of Labor; to provide a process for conducting such criminal background checks;
8 to allow the Georgia Bureau of Investigation and, as authorized, the Federal Bureau of
9 Investigation to retain fingerprints of such individuals under certain circumstances; to limit
10 the use, dissemination, and liability relating to information obtained from criminal
11 background checks; to provide for the form of payment of wages upon the discretion of the
12 employer; to eliminate certain requirements relating to payment of wages by payroll card
13 accounts; to change the definition of the term "benefit year"; to provide for such year to
14 begin on a Sunday so as to establish parity with the benefit year in other states; to increase
15 the minimum and maximum weekly benefit amounts for employment security; to change
16 certain provisions relating to the grounds for disqualification of benefits; to change certain
17 provisions relating to false statements or misrepresentations made to obtain or increase
18 employment security benefits; to provide for related matters; to provide for an effective date;
19 to repeal conflicting laws; and for other purposes.

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

21 **SECTION 1.**

22 Title 34 of the Official Code of Georgia Annotated, relating to labor and industrial relations,
23 is amended in Code Section 34-2-6, relating to specific powers and duties of the
24 Commissioner, by revising paragraph (4) of subsection (a) as follows:

25 ~~"(4) To make and promulgate such rules or changes in rules as he may deem advisable~~
26 ~~for the prevention of accidents or the prevention of industrial or occupational diseases in~~

27 ~~every employment or place of employment, and such rules or changes in rules for the~~
 28 ~~construction, repair, and maintenance of places of employment, places of public~~
 29 ~~assembly, and public buildings as he may deem advisable, to render them safe. The~~
 30 ~~Commissioner may appoint committees composed of employers, employees, and experts~~
 31 ~~to suggest rules or changes therein~~ To prescribe such rules and regulations, consistent
 32 with the terms, intent, and purposes of this title, except for Chapter 9 of this title,
 33 necessary for the proper administration and enforcement thereof;"

34 SECTION 2.

35 Said title is further amended by adding a new Code section to read as follows:

36 "34-2-15.

37 (a) As used in this Code section, the term:

38 (1) 'Criminal background check' means a search of the criminal records maintained by
 39 GCIC and the Federal Bureau of Investigation to determine whether an individual has a
 40 criminal record.

41 (2) 'Criminal record' means any of the following:

42 (A) A conviction of a crime;

43 (B) An arrest, charge, and sentencing for a crime when:

44 (i) A plea of nolo contendere was entered to the charge;

45 (ii) First offender treatment without adjudication of guilt pursuant to the charge was
 46 granted; or

47 (iii) Adjudication or sentence was otherwise withheld or not entered on the charge;

48 or

49 (C) An arrest and charge for a crime if the charge is pending, unless the time for
 50 prosecuting such crime has expired pursuant to Chapter 3 of Title 17.

51 (3) 'Direct access' means having, or expecting to have, duties that involve contact with
 52 or review of certain information.

53 (4) 'Federal return information' shall have the same meaning as provided for the term
 54 'return information' in 26 U.S.C. Section 6103.

55 (5) 'GCIC' means the Georgia Crime Information Center established under Article 2 of
 56 Chapter 3 of Title 35.

57 (b) Notwithstanding any other provisions of law to the contrary, beginning July 1, 2019,
 58 the Commissioner of Labor shall have the authority to require a criminal background check
 59 of any individual employed by or performing work for the Department of Labor or
 60 applying for employment with the Department of Labor and shall require a criminal
 61 background check of any such individual with direct access to federal return information
 62 as part of his or her job duties pursuant to the following:

63 (1) All such individuals shall be required upon request of the Commissioner of Labor to
64 furnish fingerprints in such form and of such quality as GCIC and the Federal Bureau of
65 Investigation deem acceptable for submission;

66 (2) Upon receipt of such fingerprints, GCIC shall search its own records and promptly
67 transmit such fingerprints to the Federal Bureau of Investigation for a search of the
68 bureau's records. GCIC shall notify the Department of Labor in writing of any criminal
69 record or if there is no such finding; and

70 (3) The Commissioner of Labor shall make a determination regarding the employment
71 of an individual and the nature of his or her job responsibilities after reviewing the results
72 of such individual's criminal background check.

73 (c) An individual who has submitted fingerprints pursuant to this Code section may
74 request an inspection, modification, correction, or supplementation of his or her criminal
75 record information pursuant to Code Section 35-3-37, if he or she believes such
76 information to be inaccurate, incomplete, or misleading.

77 (d) The Department of Labor shall perform criminal background checks either under
78 agreement with GCIC or contract with GCIC and the appropriate law enforcement agencies
79 which have access to GCIC and Federal Bureau of Investigation information to have such
80 agencies perform criminal background checks for the Department of Labor. The
81 Department of Labor and such appropriate law enforcement agencies may charge
82 reasonable fees for performing criminal background checks.

83 (e) If the Department of Labor is participating in the federal program described in
84 subparagraph (a)(1)(F) of Code Section 35-3-33, the Georgia Bureau of Investigation and
85 the Federal Bureau of Investigation shall be authorized to retain fingerprints obtained
86 pursuant to this Code section for such program and the Department of Labor shall notify
87 the individual whose fingerprints were taken of the parameters of such retention.

88 (f) Neither GCIC, the Commissioner of Labor, the Department of Labor, any law
89 enforcement agency, nor the employees of the Commissioner of Labor or any such entities
90 shall be responsible for the accuracy of information nor have any liability for defamation,
91 invasion of privacy, negligence, or any other claim provided in connection with any
92 dissemination of information or determination based thereon pursuant to this Code section.

93 (g) All information received from GCIC or the Federal Bureau of Investigation shall be
94 privileged, shall be used exclusively for purposes of employment, and shall not be released
95 or otherwise disclosed to any other person or agency except to any person or agency which
96 otherwise has a legal right to inspect the employment file. All such information collected
97 by the Department of Labor shall be maintained by the Department of Labor pursuant to
98 applicable laws and rules or regulations of GCIC and the Federal Bureau of Investigation.
99 Penalties for the unauthorized release or disclosure of any such information shall be as

100 prescribed pursuant to applicable laws and rules or regulations of GCIC and the Federal
 101 Bureau of Investigation."

102 **SECTION 3.**

103 Said title is further amended by revising subsections (b) and (c) of Code Section 34-7-2,
 104 relating to payment of employee wages by lawful money, checks, or credit transfer and
 105 selection of payment dates by employer, as follows:

106 "(b) Every person, firm, or corporation, including steam and electric railroads, but not
 107 including farming, sawmill, and turpentine industries, employing skilled or unskilled
 108 wageworkers in manual, mechanical, or clerical labor, including all employees except
 109 officials, superintendents, or other heads or subheads of departments who may be
 110 employed by the month or year at stipulated salaries, shall, upon the discretion of such
 111 person, firm, or corporation, make wage and salary payments to such employees or to their
 112 authorized representatives;

113 (1) By ~~by~~ lawful money of the United States;:

114 (2) By ~~by~~ check;:

115 (3) By credit to a payroll card account; or

116 ~~(3)~~(4) With ~~with~~ the consent of the employee, by authorization of electronic credit
 117 transfer to his or her account with a bank, trust company, or other financial institution
 118 authorized by the United States or one of the several states to receive deposits in the
 119 United States; ~~or~~

120 ~~(4) by credit to a payroll card account.~~

121 Such payments shall be made on such dates during the month as may be decided upon by
 122 such person, firm, or corporation; provided, however, that the dates so selected shall be
 123 such that the month will be divided into at least two equal periods; and provided, further,
 124 that the payments made on each such date shall in every case correspond to the full net
 125 amount of wages or earnings due the employees for the period for which the payment is
 126 made.

127 (c) A person, firm, or corporation that elects pursuant to subsection (b) of this Code
 128 section to make wage and salary payments by using credit to a payroll card account shall
 129 provide the employee with ~~each of the following~~:

130 ~~(1)~~ ~~A~~ a written explanation of any fees associated with the payroll card account offered
 131 to the employee. For all employees employed on the date a person, firm, or corporation
 132 elects to make such wage and salary payments by using credit to a payroll card account,
 133 such written explanation shall be provided at least 30 days prior to the date such payroll
 134 card account is to become available. For any employee hired after the date of such
 135 election, the written explanation shall be provided at the time of hiring. ~~A form shall be~~

136 ~~provided simultaneously with the written explanation of fees allowing employees to opt~~
 137 ~~out of receiving such payments as credit to a payroll card account as provided in~~
 138 ~~paragraphs (2) and (3) of this subsection. Such form shall also be made generally~~
 139 ~~available to employees;~~

140 ~~(2) The ability to opt out of receiving such payments as credit to a payroll card account~~
 141 ~~by submitting in writing a request for a check; and~~

142 ~~(3) The ability to opt out of receiving such payments as credit to a payroll card account~~
 143 ~~by providing the proper designation and authorization for an electronic credit transfer."~~

144 SECTION 4.

145 Said title is further amended by revising Code Section 34-8-23, relating to the definition of
 146 benefit year, as follows:

147 "34-8-23.

148 (a) As used in this chapter, the term 'benefit year' with respect to any individual means:

149 (1) For all valid claims filed on or before June 30, 2019, the one-year period beginning
 150 with the day on which a valid claim is filed; and

151 (2) For all valid claims filed on or after July 1, 2019, the 52 weeks:

152 (A) Beginning on the Sunday the claim is filed, if the claim is filed on a Sunday; or

153 (B) Beginning on the Sunday prior to the day the claim is filed, if the claim is filed on
 154 any day other than a Sunday.

155 (b) In the case of a combined wage claim pursuant to Code Section 34-8-80, the benefit
 156 year shall be that of the paying state.

157 (c) Benefits may only be paid during the applicable benefit year, unless ~~there is an~~
 158 ~~extended benefits period~~ is in effect as provided in Code Section 34-8-197."

159 SECTION 5.

160 Said title is further amended by revising subsections (b) and (c) of Code Section 34-8-193,
 161 relating to determination of weekly benefit amount, as follows:

162 "(b) Weekly benefit amount entitlement as computed in this Code section ~~shall be no less~~
 163 ~~than \$27.00 per week for benefit years beginning on or after July 1, 1983; provided,~~
 164 ~~however, that for benefit years beginning on or after July 1, 1987, when the weekly benefit~~
 165 ~~amount, as computed, would be more than \$26.00 but less than \$37.00, the individual's~~
 166 ~~weekly benefit amount will be \$37.00, and no weekly benefit amount shall be established~~
 167 ~~for less than \$37.00; provided, further, that for benefit years beginning on or after July 1,~~
 168 ~~1997, when the weekly benefit amount, as computed, would be more than \$26.00 but less~~
 169 ~~than \$39.00, the individual's weekly benefit amount will be \$39.00, and no weekly benefit~~
 170 ~~amount shall be established for less than \$39.00; provided, further, that for benefit years~~

171 ~~beginning on or after July 1, 2002, when the weekly benefit amount, as computed, would~~
 172 ~~be more than \$26.00 but less than \$40.00, the individual's weekly benefit amount will be~~
 173 ~~\$40.00, and no weekly benefit amount shall be established for less than \$40.00, provided,~~
 174 ~~further, that for benefit years beginning on or after July 1, 2005, when the weekly benefit~~
 175 ~~amount, as computed, would be more than \$26.00 but less than \$42.00, the individual's~~
 176 ~~weekly benefit amount will be \$42.00, and no weekly benefit amount shall be established~~
 177 ~~for less than \$42.00; provided, further, that for benefit years beginning on or after July 1,~~
 178 ~~2007, when the weekly benefit amount, as computed, would be more than \$26.00 but less~~
 179 ~~than \$44.00, the individual's weekly benefit amount will be \$44.00, and no weekly benefit~~
 180 ~~amount shall be established for less than \$44.00; provided, further, that for benefit years~~
 181 ~~beginning on or after July 1, 2019, when the weekly benefit amount, as computed, would~~
 182 ~~be more than \$26.00 but less than \$55.00, the individual's weekly benefit amount will be~~
 183 ~~\$55.00, and no weekly benefit amount shall be established for less than \$55.00.~~

184 (c) Weekly benefit amount entitlement as computed in this Code section shall not exceed
 185 these amounts for the applicable time period:

186 ~~(1) For claims filed on or after July 1, 1990, but before July 1, 1994, the maximum~~
 187 ~~weekly benefit amount shall not exceed \$185.00;~~

188 ~~(2) For claims filed on or after July 1, 1994, but before July 1, 1995, the maximum~~
 189 ~~weekly benefit amount shall not exceed \$195.00;~~

190 ~~(3) For claims filed on or after July 1, 1995, but before July 1, 1996, the maximum~~
 191 ~~weekly benefit amount shall not exceed \$205.00;~~

192 ~~(4) For claims filed on or after July 1, 1996, but before July 1, 1997, the maximum~~
 193 ~~weekly benefit amount shall not exceed \$215.00;~~

194 ~~(5) For claims filed on or after July 1, 1997, but before July 1, 1998, the maximum~~
 195 ~~weekly benefit amount shall not exceed \$224.00;~~

196 ~~(6) For claims filed on or after July 1, 1998, but before July 1, 1999, the maximum~~
 197 ~~weekly benefit amount shall not exceed \$244.00;~~

198 ~~(7) For claims filed on or after July 1, 1999, but before July 1, 2000, the maximum~~
 199 ~~weekly benefit amount shall not exceed \$264.00;~~

200 ~~(8) For claims filed on or after July 1, 2000, but before July 1, 2001, the maximum~~
 201 ~~weekly benefit amount shall not exceed \$274.00;~~

202 ~~(9) For claims filed on or after July 1, 2001, but before July 1, 2002, the maximum~~
 203 ~~weekly benefit amount shall not exceed \$284.00;~~

204 ~~(10) For claims filed on or after July 1, 2002, but before July 1, 2003, the maximum~~
 205 ~~weekly benefit amount shall not exceed \$295.00;~~

206 ~~(11) For claims filed on or after July 1, 2003, but before July 1, 2005, the maximum~~
 207 ~~weekly benefit amount shall not exceed \$300.00;~~

208 ~~(12)~~(1) For claims filed on or after July 1, 2005, but before July 1, 2006, the maximum
 209 weekly benefit amount shall not exceed \$310.00;
 210 ~~(13)~~(2) For claims filed on or after July 1, 2006, but before July 1, 2008, the maximum
 211 weekly benefit amount shall not exceed \$320.00; ~~and~~
 212 ~~(14)~~(3) For claims filed on or after July 1, 2008, but before July 1, 2019, the maximum
 213 weekly benefit amount shall not exceed \$330.00; ~~and~~
 214 (4) For claims filed on or after July 1, 2019, the maximum weekly benefit amount shall
 215 not exceed \$365.00."

216 **SECTION 6.**

217 Said title is further amended by revising division (2)(B)(iii) of Code Section 34-8-194,
 218 relating to grounds for disqualification of benefits, as follows:

219 "(iii) The discharge occurred because of absenteeism and the absences were caused
 220 by illness of the claimant or a family member, unless the claimant has without
 221 justification failed to notify the employer or the absence for such illness which led to
 222 discharge followed a series of absences, the majority of which were attributable to
 223 fault on the part of the claimant in direct violation of the employer's attendance policy
 224 ~~and regarding which the claimant has been advised in writing, prior to any of the~~
 225 ~~absences, that unemployment benefits may be denied due to such violations of the~~
 226 ~~employer's policy on attendance~~; provided, however, that no waiver of an employee's
 227 rights under the federal Family and Medical Leave Act of 1993, as amended, or any
 228 other applicable state or federal law shall be construed under this division;"

229 **SECTION 7.**

230 Said title is further amended by revising Code Section 34-8-255, relating to the effect of false
 231 statements and misrepresentations made to obtain or increase benefits, as follows:

232 "34-8-255.

233 (a) Any person who knowingly makes a false statement or misrepresentation as to a
 234 material fact or who knowingly fails to disclose a material fact to obtain or increase
 235 benefits under this chapter, either for himself or herself or for any other person, or who
 236 knowingly accepts benefits under this chapter to which such person is not entitled shall,
 237 upon an appropriate finding by the Commissioner, cease to be eligible for such benefits,
 238 and an overpayment of benefits shall be computed without the application of deductible
 239 earnings as otherwise provided in Code Section 34-8-193: and shall be subject to the
 240 following:

241 (1) A penalty of 15 percent that shall be added to the overpayment and become part of
 242 the overpayment.;

243 ~~(2) Interest shall accrue~~ on the unpaid portion of such overpayment that shall accrue at
 244 a rate of 1 percent per month until repaid to the Commissioner for the Unemployment
 245 Compensation Fund;

246 (3) Repayment of benefits received for any week as specified in the finding by the
 247 Commissioner; and

248 ~~(4) Forfeiture of~~ Further, such person shall forfeit all unpaid benefits for any weeks of
 249 unemployment subsequent to the date of the ~~determination issued~~ finding by the
 250 Commissioner ~~covering said act or omission. The~~ such that the ineligibility shall ~~include~~
 251 apply to any unpaid benefits to which the person would otherwise be entitled during the
 252 remainder of ~~any incomplete~~ the calendar quarter in which said ~~determination~~ finding is
 253 made and:

254 (A) If the overpayment is established on or before June 30, 2019, during the remainder
 255 of the next four complete calendar quarters immediately following the date of said
 256 ~~determination; provided, however, such person shall be required to repay benefits~~
 257 ~~received for any week as specified in said determination~~ finding; or

258 (B) If the overpayment is established on or after July 1, 2019, during a period of the
 259 next four calendar quarters following the calendar quarter in which such finding is
 260 made, through and including the last Saturday of the fourth of such calendar quarters.

261 (b) No determination may finding pursuant to subsection (a) of this Code section shall be
 262 made by the Commissioner more than four years after such occurrence, act, or omission.
 263 Any such ~~determination~~ finding by the Commissioner may be appealed in the same manner
 264 as provided for the appeal from an initial ~~determination~~ finding in Article 8 of this chapter.

265 (c) The provisions of this Code section shall be in addition to, and not in lieu of, any
 266 provision contained in any of the other Code sections section in this chapter."

267 **SECTION 8.**

268 This Act shall become effective upon its approval by the Governor or upon its becoming law
 269 without such approval.

270 **SECTION 9**

271 All laws and parts of laws in conflict with this Act are repealed.