

House Bill 785

By: Representatives Fludd of the 64th, Abrams of the 89th, Kendrick of the 93rd, Mitchell of the 88th, and Hugley of the 136th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 8 of Title 34 of the Official Code of Georgia Annotated, relating to
2 employment security, so as to provide that the Commissioner of Labor may establish a
3 self-employment assistance program; to provide a short title; to provide definitions; to
4 establish the maximum allowable amount of weekly self-employment assistance; to
5 determine eligibility; to limit the number of individuals that may receive a self-employment
6 assistance allowance; to provide for a self-employment assistance allowance; to provide for
7 appeal of nonacceptance into a self-employment assistance program; to provide for reports
8 by the Commissioner of Labor; to provide for automatic repeal; to change certain provisions
9 relating to withdrawals from the Unemployment Trust Fund for expenditures under the
10 "Employment Security Law"; to change certain provisions relating to benefits to be paid
11 pursuant to rules and regulations prescribed by the Commissioner; to change certain
12 provisions relating to the procedure for judicial review of final decisions of the Board of
13 Review of the Department of Labor; to provide for related matters; to repeal conflicting laws;
14 and for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

16 style="text-align:center">**PART I**
17 style="text-align:center">**SECTION 1-1.**

18 Chapter 8 of Title 34 of the Official Code of Georgia Annotated, relating to employment
19 security, is amended by adding a new article to read as follows:

20 style="text-align:center">"ARTICLE 11

21 34-8-300.

22 This article shall be known and may be cited as the 'Self-employment Program Act.'

23 34-8-301.

24 As used in this article, unless the context otherwise indicates, the term:

25 (1) 'Regular benefits' means benefits payable to an individual under this chapter
 26 including benefits payable to federal civilian employees and to former members of the
 27 United States armed forces pursuant to Title 5 U.S.C. Chapter 85, other than additional
 28 benefits, extended benefits, extended benefits for dislocated workers, and
 29 self-employment assistance allowances.

30 (2) 'Self-employment assistance activities' means activities approved by the
 31 Commissioner in which an individual participates for the purpose of establishing a
 32 business and becoming self-employed. Such activities shall include but are not limited
 33 to entrepreneurial training, business counseling, and technical assistance.

34 (3) 'Self-employment assistance allowance' means an allowance payable, in lieu of
 35 regular benefits, from the Unemployment Compensation Fund to an individual who meets
 36 the requirements of this article.

37 (4) 'Self-employment assistance program' means a program under which an individual
 38 who meets the requirements of this article is eligible to receive an allowance in lieu of
 39 regular benefits for the purpose of assisting that individual in establishing a business and
 40 becoming self-employed.

41 34-8-302.

42 (a) The Commissioner may establish a self-employment assistance program, provided that
 43 such program meets the following conditions:

44 (1) The eligibility requirements set forth in Code Section 34-8-303 shall apply to the
 45 payment of a self-employment assistance allowance under such program;

46 (2) Initial determinations or redeterminations as to whether or not benefits are payable
 47 shall be made in accordance with the procedure set forth in Code Section 34-8-304;

48 (3) The weekly amount of a self-employment assistance allowance payable to an
 49 individual shall be equal to the weekly benefit amount for regular benefits under Code
 50 Section 34-8-193;

51 (4) An individual shall not receive both a self-employment assistance allowance and
 52 regular benefits for the same week;

53 (5) The aggregate number of individuals receiving self-employment assistance allowance
 54 at any time shall not exceed 5 percent of the number of individuals receiving regular
 55 benefits at that time; provided, however, that the Commissioner is authorized to cease
 56 acceptance or approval of applications for self-employment assistance at any time the
 57 Commissioner, in his or her sole discretion, determines that such percentage limitation
 58 is likely to be exceeded; provided, further, that no self-employment assistance allowance

59 claim previously approved and in valid status at the time of the Commissioner's
 60 determination shall cease or be terminated under the provisions of this Code section;

61 (6) The sum of the self-employment assistance allowance paid under such program and
 62 regular benefits paid under other provisions of this chapter shall not exceed the maximum
 63 amount of benefits established under Code Section 34-8-193 with respect to any benefit
 64 year;

65 (7) The self-employment assistance program shall not result in any cost to the
 66 Employment Security Administration Fund or the Unemployment Trust Fund in excess
 67 of the cost that would be incurred or charged to those funds had the program not been
 68 operated; and

69 (8) The self-employment assistance program is in compliance with any plan approved
 70 by the United States Department of Labor.

71 (b) The Commissioner may adopt rules or regulations necessary to implement the
 72 self-employment assistance program.

73 34-8-303.

74 The following eligibility requirements shall apply to the payment of a self-employment
 75 assistance allowance under this article:

76 (1) An individual may receive a self-employment assistance allowance if that individual:

77 (A) Is eligible to receive regular benefits or would be eligible to receive regular
 78 benefits but for the requirements described in paragraph (2) of this Code section;

79 (B) Is identified by a worker profiling system as an individual likely to exhaust regular
 80 benefits;

81 (C) Has filed an application for participation in a self-employment assistance program
 82 within 45 days of filing an initial application for regular benefits and has provided the
 83 information the Commissioner requires;

84 (D) Has, at the time the application for participation in a self-employment assistance
 85 program is filed, a balance of regular benefits equal to at least nine times the
 86 individual's weekly benefit amount and at least nine weeks remaining in the individual's
 87 benefit year;

88 (E) Has been accepted into a program approved by the Commissioner that will provide
 89 self-employment assistance activities;

90 (F) Is participating in self-employment assistance activities unless such participation
 91 is waived by the department;

92 (G) Is actively engaged on a full-time basis in establishing a business and becoming
 93 self-employed, which may include participation in self-employment assistance
 94 activities; and

95 (H) Has filed a weekly claim for the self-employment assistance allowance and
96 provided the information the Commissioner requires, including a log of
97 self-employment activities; and

98 (2) A self-employment assistance allowance is payable to an individual at the same
99 interval, on the same terms, and subject to the same conditions as regular benefits except
100 that:

101 (A) The requirements of subparagraph (A) of paragraph (3) of Code Section 34-8-194,
102 relating to refusal to accept work, are not applicable to the individual;

103 (B) The requirements of subparagraph (a)(3)(A) of Code Section 34-8-195, relating to
104 availability for work and active search for work, are not applicable to the individual;

105 (C) An individual is considered unemployed for the purposes of Code Section
106 34-8-195; and

107 (D) An individual who fails to participate in self-employment assistance activities or
108 who fails to actively engage on a full-time basis in activities, which may include
109 training, related to establishing a business and becoming self-employed shall be
110 ineligible for self-employment assistance allowances for the week the failure occurs.

111 34-8-304.

112 (a) Employees of the department designated by the Commissioner shall take the initial
113 application for self-employment assistance allowance. An initial determination thereon
114 shall be made promptly and shall include a written determination of whether or not such
115 an allowance is payable, the week the self-employment assistance allowance shall
116 commence, the weekly allowance amount payable, and the maximum duration of such
117 payments.

118 (b) Whenever a determination involves difficult issues of fact or law, the Commissioner
119 may appoint a panel of three administrative hearing officers for hearing and decision. The
120 claimant and any other parties to the determination or redetermination shall be promptly
121 notified in writing of the decision and the reasons therefor.

122 (c) An initial determination or a redetermination shall be final unless a party entitled to
123 notice applies for reconsideration of the determination or appeals the determination within
124 15 days after the notice was mailed to the party's last known address or otherwise delivered
125 to the party. Before a determination becomes final as provided in this Code section, the
126 Commissioner may issue a redetermination if good cause is shown. Such redetermination
127 is subject to further appeal by any party entitled to notice.

128 (d) Any appeal of initial determination or redetermination may be appealed in the same
129 manner as provided for appeals of unemployment compensation determinations set forth
130 in Article 8 of this chapter.

131 34-8-305.

132 (a) Except as provided in subsection (b) of this Code section, the Commissioner shall
 133 report to the standing committees of the General Assembly having jurisdiction over labor
 134 matters on the self-employment assistance program. If the Commissioner has not
 135 established the self-employment assistance program, the report shall include an explanation
 136 why such program has not been established along with a description of the factors
 137 evaluated in making the determination not to implement such program. If the
 138 Commissioner has established the self-employment assistance program, the report shall
 139 include data on the outcomes and successes of the program, the number of individuals
 140 participating in the program, the number of businesses developed under the program, the
 141 cost of operating the program, and any other information the Commissioner deems
 142 beneficial.

143 (b) No report by the Commissioner shall be required if in the preceding year the state's
 144 average annual unemployment rate was at or below 4 percent.

145 34-8-306.

146 This article shall stand repealed in its entirety as of the date when federal law no longer
 147 authorizes self-employment assistance programs."

148

PART II

149

SECTION 2-1.

150 Said chapter is further amended by revising Code Section 34-8-85, relating to withdrawals
 151 from Unemployment Trust Fund for expenditures under the "Employment Security Law,"
 152 as follows:

153 "34-8-85.

154 Moneys shall be requisitioned from this state's account in the Unemployment Trust Fund
 155 solely for the payment of regular benefits and extended benefits, self-employment
 156 assistance allowances, and for refunds pursuant to Code Section 34-8-164 and in
 157 accordance with regulations prescribed by the Commissioner, except that moneys credited
 158 to this state's account pursuant to Section 903 of the federal Social Security Act, as
 159 amended, may be requisitioned and used exclusively as provided in paragraphs (1)
 160 through (5) of this Code section:

161 (1) **Funds for payment of future benefits.** The Commissioner shall from time to time
 162 requisition from the Unemployment Trust Fund amounts, not exceeding the amount
 163 standing in this state's account therein, as deemed necessary by the Commissioner for the
 164 payment of benefits for a reasonable future period. Upon receipt thereof, the

165 Commissioner shall deposit the funds in the benefit account. The benefit account shall
166 be used solely for the payment of regular benefits and extended benefits or refunds upon
167 requisition of the Commissioner as authorized in this Code section. Withdrawal of such
168 funds in the benefit account shall not be subject to any provisions of law requiring
169 specific appropriations or other formal releases of state officers of moneys in their
170 custody. The Commissioner's requisitions for lump sum withdrawals for the payment of
171 individual benefit claims shall not exceed the balance of funds in the Unemployment
172 Trust Fund; and such requisition shall be in an amount estimated to be necessary for
173 benefit payments for such reasonable future period as the Commissioner may by
174 regulation prescribe. Such lump sum amounts, when received by the Commissioner,
175 shall be immediately deposited in the benefit account maintained in the name of the
176 Commissioner in such bank or public depository and under such conditions as the
177 Commissioner determines necessary; provided, however, that such bank or public
178 depository shall be one in which general funds of the state may be deposited, but no
179 public deposit insurance charge or premium shall be paid out of the fund; provided,
180 further, that such moneys shall be secured by the depository bank to the same extent and
181 in the same manner as required by the general laws of this state governing depositories
182 of state funds and that collateral pledged for this purpose or bonds given for this purpose
183 shall be kept separate and distinct from any collateral or bonds pledged or given to secure
184 other funds of the state. The Commissioner or a duly authorized representative of the
185 Commissioner shall be authorized to draw and issue checks on the benefit account for the
186 payment of individual benefit claims. Any balance of moneys requisitioned from the
187 Unemployment Trust Fund which remains unclaimed or unpaid in the benefit account
188 after the expiration of the period for which such sums were requisitioned shall either be
189 deducted from estimates for and may be utilized for the payment of benefits during
190 succeeding periods or, in the discretion of the Commissioner, shall be redeposited with
191 the secretary of the treasury of the United States to the credit of this state's account in the
192 Unemployment Trust Fund as provided in Code Section 34-8-84;

193 **(2) Appropriation of administration expenses.** Moneys credited to the account of this
194 state in the Unemployment Trust Fund by the secretary of the treasury of the United
195 States pursuant to Section 903 of the federal Social Security Act, as amended, may be
196 requisitioned and used in the payment of expenses incurred for the administration of this
197 chapter pursuant to a specific appropriation by the General Assembly, provided that the
198 expenses are incurred and the moneys are requisitioned after the enactment of an
199 appropriations Act which:

200 (A) Specifies the purposes for which such moneys are appropriated and the amount
201 appropriated therefor; and

202 (B) Limits the period within which such moneys may be expended to a period ending
 203 not more than two years after the date of the enactment of the appropriations Act;

204 (3) **Limitation on withdrawals and use of funds.** Moneys credited to the account of
 205 this state pursuant to Section 903 of the federal Social Security Act, as amended, may not
 206 be withdrawn or used except for the payment of benefits or for the payment of expenses
 207 for the administration of this chapter and of public employment offices pursuant to this
 208 Code section;

209 (4) **Records of appropriated funds.** Moneys appropriated for the payment of expenses
 210 of administration pursuant to this Code section shall be requisitioned as needed for the
 211 payment of obligations incurred under such appropriation and, upon requisition, shall be
 212 deposited in the Employment Security Administration Fund, but, until expended, shall
 213 remain a part of the Unemployment Trust Fund. The Commissioner shall maintain a
 214 separate record of the deposit, obligation, expenditure, and return of funds so deposited.
 215 If any moneys so deposited are, for any reason, not to be expended for the purposes for
 216 which they were appropriated, such moneys shall be returned promptly to the secretary
 217 of the treasury of the United States for credit to this state's account in the Unemployment
 218 Trust Fund; and

219 (5) **Appropriations to Department of Labor.** There is authorized to be appropriated
 220 by the General Assembly to the Department of Labor any part of or all moneys credited
 221 to the account of this state in the Unemployment Trust Fund by the secretary of the
 222 treasury of the United States pursuant to Section 903 of the federal Social Security Act,
 223 as amended, and as provided in this Code section; provided, however, that
 224 notwithstanding any other provisions of this Code section to the contrary, moneys
 225 credited with respect to federal fiscal years 1999, 2000, and 2001, and moneys credited
 226 with respect to the special transfer made under Section 903(g) of said Act, shall be used
 227 solely for the administration of the unemployment insurance program in Georgia and are
 228 not subject to appropriations by the General Assembly."

229 **SECTION 2-2.**

230 Said chapter is further amended by revising Code Section 34-8-191, relating to benefits to
 231 be paid pursuant to rules and regulations, as follows:

232 "34-8-191.

233 All benefits and any allowances payable from and out of the Unemployment Compensation
 234 Fund shall be paid as provided in this chapter and through the employment offices of the
 235 department in accordance with such rules and regulations as the Commissioner may
 236 prescribe."

237 **SECTION 2-3.**

238 Said chapter is further amended by revising subsection (b) of Code Section 34-8-220, relating
 239 to appointment of hearing officers to hear and decide appealed decisions, as follows:

240 "(b) Unless an appeal is withdrawn, an administrative hearing officer, after affording the
 241 parties reasonable opportunity for fair hearing, shall affirm or modify the findings of fact
 242 and initial determination or shall make a decision after hearing on issues referred by the
 243 Commissioner pursuant to subsection (b) of Code Section 34-8-192 or subsection (b) of
 244 Code Section 34-8-304. The parties shall be duly notified of such decision, together with
 245 the reasons therefor, which shall be deemed to be the final decision of the Commissioner,
 246 unless within 15 days after the date of notification or mailing of such decision further
 247 appeal is initiated pursuant to subsection (a) of Code Section 34-8-221."

248 **SECTION 2-4.**

249 Said chapter is further amended by revising subsection (a) of Code Section 34-8-223, relating
 250 to procedure for judicial review of final decisions of board of review, as follows:

251 "(a) Any decision of the board of review, in the absence of a reconsideration as provided
 252 in subsection ~~(d)~~ (c) of Code Section 34-8-192 or subsection (c) of Code Section 34-8-304,
 253 shall become final 15 days after the date of notification or mailing. Judicial review shall
 254 be permitted only after any party claiming to be aggrieved thereby has exhausted his or her
 255 administrative remedies as provided by this chapter. The Commissioner shall be deemed
 256 to be a party to any judicial action involving any such decision and shall be represented in
 257 any such judicial action by the Attorney General."

258 **PART III**

259 **SECTION 3-1.**

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