

House Bill 1027 (COMMITTEE SUBSTITUTE)

By: Representatives Strickland of the 111th, Hamilton of the 24th, Bryant of the 162nd, and Pruettt of the 149th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 8 of Title 34 and Title 50 of the Official Code of Georgia Annotated,
2 relating to employment security and state government, respectively, so as to change certain
3 processes and procedures affecting unemployment insurance; to change certain provisions
4 relating to the disposition of fines, penalties, and interest collected; to change certain
5 provisions relating to regular benefits paid to be charged against experience rating account;
6 to change certain provisions relating to benefit claims; to change certain provisions relating
7 to review of a decision of a hearing officer by the board of review; to change certain
8 provisions relating to procedures for judicial review; to change certain provisions relating to
9 the process of issuing, quashing, modifying, or withdrawing subpoenas; to change certain
10 provisions relating to overpayments of benefits; to change the penalty amount added to an
11 overpayment as a result of a false statement or misrepresentation; to change certain
12 provisions relating to hearings of the Department of Labor relative to unemployment benefits
13 or overpayment of unemployment benefits; to provide for related matters; to provide for an
14 effective date; to repeal conflicting laws; and for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

17 Chapter 8 of Title 34 of the Official Code of Georgia Annotated, relating to employment
18 security, is amended by revising Code Section 34-8-92, relating to the disposition of fines,
19 penalties, and interest collected, by designating the existing language as subsection (a) and
20 adding a new subsection to read as follows:

21 "(b) Notwithstanding subsection (a) of this Code section, any amounts collected pursuant
22 to Code Section 34-8-255 shall be returned to the Unemployment Compensation Fund to
23 be used exclusively for the purposes of this chapter as required by federal law."

24 **SECTION 2.**

25 Said chapter is further amended by revising subsection (b) of Code Section 34-8-157, relating
 26 to regular benefits paid to be charged against experience rating account, as follows:

27 "(b) Regular benefits paid with respect to all benefit years that begin on or after January 1,
 28 1992, shall be charged against the experience rating account or reimbursement account of
 29 employers in the following manner:

30 (1) Benefits paid shall be charged to the account of the most recent employer, as that
 31 term is defined in Code Section 34-8-43, including benefits paid based upon insured
 32 wages which were earned to requalify following a period of disqualification as provided
 33 in Code Section 34-8-194;

34 (2)(A) Benefits Except as otherwise provided in paragraph (3) of this subsection,
 35 benefits charged to the account of an employer shall not exceed the amount of wages
 36 paid by such employer during the period beginning with the base period of the
 37 individual's claim and continuing through the individual's benefit year.

38 (B) In the event the provisions of subparagraph (A) of this paragraph are determined
 39 by the United States secretary of labor or by a court of competent jurisdiction at a
 40 subsequent level of appeal, such appeal to be taken at the sole discretion of the
 41 Commissioner, to be out of conformity with federal law, the provisions of subparagraph
 42 (A) of this paragraph shall be considered null and void and the provisions of this
 43 subparagraph shall control. Benefits charged to the account of an employer shall not
 44 exceed the amount of wages paid by such employer during the period beginning with
 45 the base period of the individual's claim and continuing through the individual's benefit
 46 year; provided, however, the portion of such charges for benefits paid which exceed the
 47 amount of wages paid by such employer shall be charged against the experience rating
 48 account of all base period employers in the manner provided in subsection (a) of this
 49 Code section.

50 (C) Benefits Except as otherwise provided in paragraph (3) of this subsection, benefits
 51 shall not be charged to the account of an employer when an individual's overpayment
 52 is waived pursuant to Code Section 34-8-254.

53 (D) ~~Notwithstanding any other provision of this subsection to the contrary~~ Except as
 54 otherwise provided in paragraph (3) of this subsection, for the purposes of calculating
 55 an employer's contribution rate, an account of an employer shall not be charged for
 56 benefits paid to an individual for unemployment that is directly caused by a
 57 presidentially declared natural disaster;

58 (3)(A) ~~An employer's account may be charged for benefits paid due to the employer's~~
 59 ~~failure to respond in a timely manner to the notice of claim filing even if the~~

60 ~~determination is later reversed on appeal~~ An employer shall respond in a timely and
 61 adequate manner to a notice of a claim filing or a written request by the department for
 62 information relating to a claim for benefits.

63 (B) Any violation of subparagraph (A) of this paragraph by an employer or an officer
 64 or agent of an employer absent good cause may result in the employer's account being
 65 charged for overpayment of benefits paid due to such violation even if the
 66 determination is later reversed; provided, however, that upon the finding of three
 67 violations of subparagraph (A) of this paragraph within a calendar year resulting in an
 68 overpayment of benefits, an employer's account shall be charged for any additional
 69 overpayment and shall not be relieved of such charges unless good cause is shown; and

70 (4) Benefits paid to individuals shall be charged against the Unemployment Trust Fund
 71 when benefits are paid but not charged against an employer's experience rating account
 72 as provided in this Code section."

73 **SECTION 3.**

74 Said chapter is amended by revising paragraphs (1) and (2) of subsection (d) of Code Section
 75 34-8-193, relating to benefit claims, as follows:

76 "(d)(1) Except as otherwise provided in this subsection, the maximum benefits payable
 77 to an individual in a benefit year shall be the lesser of:

78 (A) Fourteen times the weekly benefit amount, if this state's average unemployment
 79 rate is at or below 6.5 percent, with an additional weekly amount added for each 0.5
 80 percent increment in this state's average unemployment rate above 6.5 percent up to a
 81 maximum of 20 times the weekly benefit amount if this state's average unemployment
 82 rate equals or exceeds 9 percent; or

83 (B) One-fourth of the base period wages.

84 If the amount computed is not a multiple of the weekly benefit amount, the total will be
 85 adjusted to the nearest multiple of the weekly benefit amount. The duration of benefits
 86 shall be extended in accordance with Code Section 34-8-197.

87 (2) In addition to and subsequent to payment of all benefits otherwise allowed under
 88 paragraph (1) of this subsection ~~and without restriction with respect to an individual's~~
 89 ~~benefit year, for claims filed on or after January 1, 2010~~ whenever the average rate of
 90 total unemployment in this state, seasonally adjusted, as determined by the United States
 91 secretary of labor, for the period consisting of the most recent three months for which
 92 data for all states are published before the close of such week equals or exceeds 11
 93 percent, weekly unemployment compensation shall be payable under this subsection to
 94 any individual who is unemployed, has exhausted all rights to regular unemployment

95 compensation under the provisions of Article 7 of this chapter, and is enrolled and
 96 making satisfactory progress, as determined by the Commissioner, in a training program
 97 approved by the department, or in a job training program authorized under the Workforce
 98 Investment Act of 1998, Public Law 105-220, and not receiving similar stipends or other
 99 training allowances for nontraining costs. Each such training program approved by the
 100 department or job training program authorized under the Workforce Investment Act of
 101 1998 shall prepare individuals who have been separated from a declining occupation, as
 102 designated by the department from time to time, or who have been involuntarily and
 103 indefinitely separated from employment as a result of a permanent reduction of
 104 operations at the individual's place of employment, for entry into a high-demand
 105 occupation, as designated by the department from time to time. The amount of
 106 unemployment compensation payable under this subsection to an individual for a week
 107 of unemployment shall be equal to the individual's weekly benefit amount for the
 108 individual's most recent benefit year less deductible earnings, if any. The total amount
 109 of unemployment compensation payable under this subsection to any individual shall be
 110 equal to 14 times the individual's weekly benefit amount for the individual's most recent
 111 benefit year, if this state's average unemployment rate is at or below 6.5 percent, with an
 112 additional weekly amount added for each 0.5 percent increment in this state's average
 113 unemployment rate above 6.5 percent up to a maximum of 20 times the weekly benefit
 114 amount if this state's average unemployment rate equals or exceeds 9 percent. The
 115 provisions of subsection (d) of Code Section 34-8-195 shall apply to eligibility for
 116 benefits under this subsection. Except when the result would be inconsistent with other
 117 provisions of this subsection, all other provisions of Article 7 of this chapter shall apply
 118 to the administration of the provisions of this subsection."

119 **SECTION 4.**

120 Said chapter is further amended by revising Code Section 34-8-221, relating to review of
 121 decision of hearing officer by the board of review, as follows:

122 "34-8-221.

123 (a) The board of review may on its own motion affirm, modify, or set aside any decision
 124 of an administrative hearing officer on the basis of the evidence previously submitted in
 125 such case or direct the taking of additional evidence or may permit any of the parties to
 126 such decision to initiate further appeals before the board of review. The board of review
 127 shall promptly notify the parties to any proceedings of its findings and decision. The
 128 decision of the board shall ~~be~~ become final 15 days from the date the decision is mailed to
 129 the parties.

130 (b) The board of review may, in its discretion and on its own motion, reconsider its ~~final~~
 131 decision at any time within 15 days ~~of the release of the final decision of the board from~~
 132 the date the decision is mailed to the parties. The board shall notify all concerned parties
 133 of its intent to reconsider a final decision. Such notice shall stay the process of judicial
 134 review until a final decision is released by the board.

135 (c) The quorum for the board of review shall be two members. No meeting of the board
 136 shall be scheduled when it is anticipated that less than two members will be present, and
 137 no hearing shall be held nor decision released by the board in which less than two members
 138 participated.

139 (d) In the event only two members are able to vote on a case and one member votes to
 140 affirm the decision of the administrative hearing officer but the other member votes to
 141 reverse the decision or remand the case for another hearing, the decision of the
 142 administrative hearing officer shall stand affirmed.

143 (e) The Commissioner shall provide the board of review and the office of administrative
 144 appeals with proper facilities and assistants for the execution of their functions."

145 **SECTION 5.**

146 Said chapter is further amended by revising Code Section 34-8-223, relating to procedures
 147 for judicial review, as follows:

148 "34-8-223.

149 (a) Any decision of the board of review, in the absence of a reconsideration as provided
 150 in subsection ~~(d)~~ (b) of Code Section ~~34-8-192~~ 34-8-221, shall become final 15 days after
 151 the date of notification or mailing. Judicial review shall be permitted only after any party
 152 claiming to be aggrieved thereby has exhausted his or her administrative remedies as
 153 provided by this chapter. The Commissioner shall be deemed to be a party to any judicial
 154 action involving any such decision and shall be represented in any such judicial action by
 155 the Attorney General.

156 (b) Within 15 days after the decision of the board of review has become final, any party
 157 aggrieved thereby may secure judicial review by filing a petition against the Commissioner
 158 in the superior court of the county where the employee was last employed. In the event the
 159 individual was last employed in another state, such appeal shall be filed in Fulton County,
 160 Georgia. Any other party to the proceeding before the board of review shall be made a
 161 respondent. The petition, which need not be verified but which shall state specifically the
 162 grounds upon which a review is sought, shall be served upon the Commissioner ~~or upon~~
 163 ~~such person as the Commissioner may designate, or upon his or her designee within 30~~
 164 days from the date of filing. Such service upon the Commissioner shall be made by

165 certified mail or statutory overnight delivery, return receipt requested; hand delivery; or in
 166 a manner prescribed by the law of this state for service of process to Georgia Department
 167 of Labor, Unemployment Insurance Legal Section, Suite 826, 148 Andrew Young
 168 International Boulevard, N.E., Atlanta, GA 30303-1751. Such ~~and such~~ service shall be
 169 deemed completed service on all parties, but there shall be left with the party so served
 170 upon the Commissioner or his or her designee as many copies of the petition as there are
 171 respondents. The Commissioner shall mail one such copy to each such respondent. Within
 172 30 days after the service of the petition, the Commissioner shall certify and file with the
 173 superior court all documents and papers and a transcript of all testimony taken in the
 174 matter, together with the board of review's findings of fact and decision therein. The
 175 Commissioner shall not be required to furnish any person with a copy of the
 176 aforementioned documents, papers, or transcripts or the original of these items prior to the
 177 Commissioner's filing these items with the court. The Commissioner may also, in his or
 178 her discretion, certify to such court questions of law involved in any decision. As a guide
 179 for future interpretation of the law, when the Commissioner is aggrieved by any decision
 180 of the board of review or deems such decision contrary to the law and no other party enters
 181 an appeal therefrom, the Commissioner may, within 20 days after such decision has
 182 become final, appeal and certify to the superior court questions of law therein involved.
 183 The court shall consider and determine the same and enter a decree accordingly, which
 184 shall be subject to further appeal by the Commissioner. In any judicial proceeding under
 185 this Code section, the findings of the board of review as to the facts, if supported by
 186 evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the court
 187 shall be confined to questions of law. Such actions and the questions so certified shall be
 188 heard in a summary manner and shall be given precedence over all other civil cases except
 189 cases to which the state is a material party and cases arising under Chapter 9 of this title.
 190 An appeal may be taken from the decision of the superior court to the Court of Appeals in
 191 the same manner as is provided in civil cases but not inconsistent with this chapter. No
 192 bond shall be required for entering an appeal."

193 **SECTION 6.**

194 Said chapter is further amended by revising Code Section 34-8-253, relating to obedience to
 195 subpoena required and self-incrimination, as follows:

196 "34-8-253.

197 (a) No person shall be excused from attending and testifying or from producing books,
 198 papers, correspondence, memoranda, and other records before the Commissioner, the board
 199 of review, ~~an~~ the chief administrative hearing officer, or ~~any~~ their duly authorized

200 ~~representative of any of them~~ representatives or in obedience to ~~the~~ a subpoena of any of
 201 issued by them in any cause or proceeding before the Commissioner, the board of review,
 202 ~~or an administrative hearing officer~~ on the ground that the testimony or evidence,
 203 documentary or otherwise, required of ~~him or her~~ a person may tend to incriminate ~~him or~~
 204 ~~her~~ or subject ~~him or her~~ such person to a penalty or forfeiture. However, no ~~individual~~
 205 person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any
 206 transaction, matter, or thing concerning which the ~~individual~~ person is compelled, after
 207 having claimed the privilege against self-incrimination, to testify or produce evidence,
 208 documentary or otherwise, except that such ~~individual~~ person testifying shall not be exempt
 209 from prosecution and punishment for perjury committed in testifying.

210 (b) The Commissioner, the board of review, the chief administrative hearing officer, or any
 211 duly authorized representative of any of them may quash, modify, or withdraw a subpoena
 212 issued by them."

213 **SECTION 7.**

214 Said chapter is further amended by revising Code Section 34-8-254, relating to overpayments
 215 of benefits, as follows:

216 "34-8-254.

217 (a) Any person who has received any sum as benefits under this chapter while any
 218 conditions for the receipt of benefits imposed by this chapter were not fulfilled or while the
 219 person was disqualified from receiving benefits shall, in the discretion of the
 220 Commissioner; ~~either~~

221 (1) Be ~~be~~ liable to have such sums deducted from any future benefits payable to such
 222 person under this chapter, with no single deduction to exceed 50 percent of the amount
 223 of the payment from which such deduction is made; and; ~~or~~

224 (2) Be ~~shall be~~ liable to repay the Commissioner for the Unemployment Compensation
 225 Fund a sum equal to the amount so received by ~~him~~ such person. Such sum shall be
 226 collectable in the manner provided by law for the collection of debts or any other method
 227 of collection specifically authorized by this chapter.

228 (b) For the purpose of collecting overpaid benefits when the ~~individual~~ person who owes
 229 the payment resides or is employed outside ~~the State of Georgia~~ this state, the
 230 Commissioner may enter into an agreement with one or more private persons, companies,
 231 associations, or corporations providing debt collection services; provided, however, the
 232 Commissioner shall retain legal responsibility and authority for the collection of
 233 overpayments of benefits and any debt collection agency shall function merely as an agent
 234 of the Commissioner for this purpose. The agreement may provide, at the discretion of the

235 Commissioner, the rate of payment and the manner in which compensation for services
 236 shall be paid. The Commissioner shall provide the necessary information for the contractor
 237 to fulfill its obligations under the agreement. Any funds recovered shall be transmitted
 238 promptly to the Commissioner for deposit into the Unemployment ~~Trust~~ Compensation
 239 Fund.

240 ~~(c)(1) Except as provided in paragraph (2) of this subsection, the~~ The Commissioner
 241 may waive the repayment of an overpayment of benefits if the Commissioner determines
 242 such repayment to be inequitable.

243 (2) If any person receives such overpayment because of false representations or willful
 244 failure to disclose a material fact by such individual person, inequity shall not be a
 245 consideration and the person shall be required to repay the entire overpayment; provided,
 246 however, that penalty and interest plus all applicable penalty and interest amounts. Such
 247 penalty amounts shall not be waived. Interest accrued on the overpayment are is subject
 248 to waiver if the Commissioner determines such waiver to be in the best interest of ~~the~~ this
 249 state.

250 (d) Any person who has received any sum as benefits under this chapter and is
 251 subsequently awarded or receives back wages from any employer for all or any portion of
 252 the same period of time for which such person has received such benefits shall be liable,
 253 in accordance with subsection (a) of this Code section, to repay a sum equal to the benefits
 254 paid during the period for which such back wages were awarded, ~~as follows~~ and the
 255 employer shall be:

256 ~~(1) An employer shall be authorized~~ Authorized to deduct from an award of back wages
 257 ~~the an amount of equal to all~~ unemployment benefits received by such person under this
 258 chapter with respect to the same period of time. The employer shall remit the amount
 259 deducted to the Commissioner for the Unemployment Compensation Fund. Upon receipt
 260 of such payment the Commissioner shall then make appropriate adjustments in the
 261 unemployment contributions experience rating account of the employer as otherwise
 262 provided in this chapter; ~~and or~~

263 ~~(2) If the employer is a governmental entity or nonprofit organization that has elected to~~
 264 ~~make payments in lieu of contributions in accordance with Code Section 34-8-158 and~~
 265 ~~the employee is subsequently awarded or otherwise receives payment of back wages for~~
 266 ~~any period of time for which the employee received benefits under this chapter, said~~
 267 ~~employer shall be entitled~~ Entitled to a setoff against the award of back wages in an
 268 amount equal to all benefits paid to the employee during the period for which such back
 269 wages are awarded or received, if such employer is a governmental entity or nonprofit
 270 organization that has elected to make payments in lieu of contributions in accordance

271 with Code Section 34-8-158 and the employee is subsequently awarded or otherwise
 272 receives payment of back wages for any period of time for which such employee received
 273 benefits under this chapter."

274 **SECTION 8.**

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

277 "34-8-255.

278 Any person who knowingly makes a false statement or misrepresentation as to a material
 279 fact or who knowingly fails to disclose a material fact to obtain or increase benefits under
 280 this chapter, either for himself or herself or for any other person, or who knowingly accepts
 281 benefits under this chapter to which such person is not entitled shall, upon an appropriate
 282 finding by the Commissioner, cease to be eligible for such benefits and an overpayment of
 283 benefits shall be computed without the application of deductible earnings as otherwise
 284 provided in Code Section 34-8-193. A penalty of ~~10~~ 15 percent ~~may~~ shall be added to the
 285 overpayment and become part of the overpayment. Interest shall accrue on the unpaid
 286 portion of such overpayment at a rate of 1 percent per month until repaid to the
 287 Commissioner for the Unemployment Compensation Fund. Further, such person shall
 288 forfeit all unpaid benefits for any weeks of unemployment subsequent to the date of the
 289 determination issued by the Commissioner covering said act or omission. The ineligibility
 290 shall include any unpaid benefits to which the person would otherwise be entitled during
 291 the remainder of any incomplete calendar quarter in which said determination is made and
 292 the next four complete calendar quarters immediately following the date of said
 293 determination; provided, however, such person shall be required to repay benefits received
 294 for any week as specified in said determination. No determination may be made by the
 295 Commissioner more than four years after such occurrence, act, or omission. Any such
 296 determination by the Commissioner may be appealed in the same manner as provided for
 297 the appeal from an initial determination in Article 8 of this chapter. The provisions of this
 298 Code section shall be in addition to, and not in lieu of, any provision contained in any of
 299 the other Code sections in this chapter."

300 **SECTION 9.**

301 Title 50 of the Official Code of Georgia Annotated, relating to state government, is amended
 302 by revising paragraph (1) of Code Section 50-13-2, relating to definitions relative to
 303 administrative procedure, as follows:

304 "(1) 'Agency' means each state board, bureau, commission, department, activity, or
 305 officer authorized by law expressly to make rules and regulations or to determine
 306 contested cases, except the General Assembly; the judiciary; the Governor; the State
 307 Board of Pardons and Paroles; the State Financing and Investment Commission; the State
 308 Properties Commission; the Board of Bar Examiners; the Board of Corrections and its
 309 penal institutions; the State Board of Workers' Compensation; all public authorities
 310 except as otherwise expressly provided by law; the State Personnel Board; the
 311 Department of Administrative Services or commissioner of administrative services; the
 312 Technical College System of Georgia; the Department of Labor when conducting
 313 hearings related to unemployment benefits or overpayments of unemployment benefits;
 314 the Department of Revenue when conducting hearings relating to alcoholic beverages,
 315 tobacco, or bona fide coin operated amusement machines or any violations relating
 316 thereto; the Georgia Tobacco Community Development Board; the Georgia Higher
 317 Education Savings Plan; any school, college, hospital, or other such educational,
 318 eleemosynary, or charitable institution; or any agency when its action is concerned with
 319 the military or naval affairs of this state. The term 'agency' shall include the State Board
 320 of Education and Department of Education, subject to the following qualifications:

321 (A) Subject to the limitations of subparagraph (B) of this paragraph, all otherwise valid
 322 rules adopted by the State Board of Education and Department of Education prior to
 323 January 1, 1990, are ratified and validated and shall be effective until January 1, 1991,
 324 whether or not such rules were adopted in compliance with the requirements of this
 325 chapter; and

326 (B) Effective January 1, 1991, any rule of the State Board of Education or Department
 327 of Education which has not been proposed, submitted, and adopted in accordance with
 328 the requirements of this chapter shall be void and of no effect."

329 **SECTION 10.**

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

332 **SECTION 11.**

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