

House Bill 117

By: Representatives Hamilton of the 24th, Pruett of the 149th, Fleming of the 121st, Strickland of the 111th, Kirby of the 114th, and others

**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 change certain provisions relating to employment security; to
3 modify the definition of the term "most recent employer"; to change certain provisions
4 relating to charging regular benefits paid against the experience rating account; to change
5 certain provisions relating to applications for adjustment or refund; to change certain
6 provisions relating to grounds for disqualification of benefits; to correct a cross-reference;
7 to change certain provisions relating to overpayments; to amend Code Section 50-36-1 of the
8 Official Code of Georgia Annotated, relating to requirements, procedures, and conditions for
9 verification of lawful presence within the United States, exceptions, regulations, and criminal
10 and other penalties for violations, so as to provide a method for such verification of lawful
11 presence that may be utilized in conjunction with the electronic filing of an application for
12 unemployment insurance with the Department of Labor; to provide for related matters; to
13 provide for an effective date; to repeal conflicting laws; and for other purposes.

14 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

15 **SECTION 1.**

16 Chapter 8 of Title 34 of the Official Code of Georgia Annotated, relating to employment
17 security, is amended by revising Code Section 34-8-43, relating to most recent employer, as
18 follows:

19 "34-8-43.

20 (a) As used in this chapter and except as otherwise provided in subsection (b) of this Code
21 section, the term 'most recent employer' means, for claims with benefit years that begin on
22 or after July 1, 2015, the last employer for whom an individual worked.

23 (f)(b) As used in this chapter and except as otherwise provided in subsection (b) (a) of this
24 Code section, the term 'most recent employer' means, for claims with benefit years that
25 begin on or before June 30, 2015, the last liable employer for whom an individual worked
26 and:

- (1) The individual was separated from work for a disqualifying reason;
- (2) The individual was released or separated from work under nondisqualifying conditions and earned wages of at least ten times the weekly benefit amount of the claim; or
- (3) The employer files the claim for the individual by submitting such reports as authorized by the Commissioner.

(b) As used in this chapter, the term 'most recent employer' means, for claims with benefit years that begin on or before December 31, 1991, the last liable employer for whom an individual worked and:

(1) From whom the individual was separated from work for a disqualifying reason; or

(2) From whom the individual was released or separated from work under nondisqualifying conditions and earned wages equal to the lesser of \$500.00 or eight times the weekly benefit amount of the claim.

(c) Where no employer in subsection (a) or (b) of this Code section meets the definition of most recent employer from the beginning of the base period to the date the claim is filed, the last liable employer for whom the individual worked shall be considered as the most recent employer for determining eligibility for benefits.

(d) Where periods of employment with the same liable employer fail, independently, to meet the definition of most recent employer in subsection (a) or (b) of this Code section, such periods of employment may be used cumulatively to determine the most recent employer and eligibility for benefits shall be determined by the reason for separation from the last employment with such employer."

SECTION 2.

Said chapter is further amended by revising Code Section 34-8-157, relating to charging regular benefits paid against the experience rating account, as follows:

"34-8-157.

(a) Regular benefits paid with respect to all benefit years that begin on or before December 31, 1991, shall be charged against the experience rating account of employers in the following manner:

(1) Benefits paid to an individual with respect to the individual's current benefit year shall be charged against the accounts of the individual's base period employers. Charges shall be based upon the pro rata share of wages paid to the individual during the base period. To receive relief of charges to its account, an employer shall furnish, in a timely manner, detailed and specific information as to the reason for separation from employment. If a disqualification is imposed on the claim and the employer has properly submitted its information, the account shall be relieved of charges;

(2) When the most recent employer, as that term is defined in Code Section 34-8-43, is not a base period employer, a determination shall be made with respect to potential future charges in the event a second benefit year claim is filed. If an individual files a valid claim for unemployment compensation for a second benefit year and is paid unemployment compensation, then those benefits will be charged or relieved against the experience rating account of such employer as provided in this Code section;

(3) An employer who provided timely response to the department as specified in the regulations of the department may receive relief of charges for benefits paid to an individual under any of the following circumstances:

(A) An employer subject to benefit charges offers otherwise suitable work to the individual and the job is refused solely because the individual has moved his or her place of residence too far to commute to the job location. The employer must provide timely notice to the Commissioner of the job offer as provided by regulations of the Commissioner; or

(B) The individual earned base period wages for part-time employment from an employer who:

- (i) Is an interested party because of the individual's loss of other employment;
- (ii) Has provided base period employment and continues to provide employment to the same extent as that part-time employment was provided in the base period of the individual; and
- (iii) Has furnished timely information pursuant to the regulations of the Commissioner; and

(4) Notwithstanding paragraphs (1) through (3) of this subsection, any employer who has elected to make payments in lieu of contributions is not subject to relief of charges for benefits paid with respect to all benefit years that begin on or before December 31, 1991.

(b)(a) Regular benefits paid with respect to all benefit years that begin on or after January 1, 1992, but prior to July 1, 2015, shall be charged against the experience rating account or reimbursement account of employers in the following manner:

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

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

99 (B) In the event the provisions of subparagraph (A) of this paragraph are determined
100 by the United States secretary of labor or by a court of competent jurisdiction at a
101 subsequent level of appeal, such appeal to be taken at the sole discretion of the
102 Commissioner, to be out of conformity with federal law, the provisions of subparagraph
103 (A) of this paragraph shall be considered null and void and the provisions of this
104 subparagraph shall control. Benefits charged to the account of an employer shall not
105 exceed the amount of wages paid by such employer during the period beginning with
106 the base period of the individual's claim and continuing through the individual's benefit
107 year; provided, however, the portion of such charges for benefits paid which exceed the
108 amount of wages paid by such employer shall be charged against the experience rating
109 account of all base period employers in the manner provided in subsection (a) of this
110 Code section.

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

114 (D) Except as otherwise provided in paragraph (3) of this subsection, for the
115 purposes of calculating an employer's contribution rate, an account of an employer shall
116 not be charged for benefits paid to an individual for unemployment that is directly
117 caused by a presidentially declared natural disaster;

118 (3)(A) An employer shall respond in a timely and adequate manner to a notice of a
119 claim filing or a written request by the department for information relating to a claim
120 for benefits as specified in the rules or regulations prescribed by the Commissioner.

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

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

131 (b)(1) Regular benefits paid with respect to all benefit years that begin on or after
132 July 1, 2015, shall be charged against the experience rating account or reimbursement
133 account of the most recent employer as defined in subsection (a) of Code
134 Section 34-8-43, provided that:

135 (A) The most recent employer is a liable employer, as provided in Code
136 Section 34-8-42; and

137 (B)(i) The most recent employer separated the individual from work under
138 nondisqualifying conditions, or files the claim for the individual by submitting such
139 reports as authorized by the Commissioner; or

140 (ii) The individual separated from the most recent employer under nondisqualifying
141 conditions.

142 (2) Regular benefits to be charged against the experience rating account or
143 reimbursement account of the most recent employer pursuant to paragraph (1) of this
144 subsection shall be charged in the following manner:

145 (A) Benefits paid shall be charged to the account of the most recent employer as
146 defined in Code Section 34-8-43, including those benefits paid based upon insured
147 wages which were earned to requalify following a period of disqualification as provided
148 in Code Section 34-8-194;

149 (B) Except as otherwise provided in subparagraph (E) of this paragraph, benefits
150 charged to the account of an employer shall not exceed the amount of wages paid by
151 such employer during the period beginning with the base period of the individual's
152 claim and continuing though the individual's benefit year;

153 (C) Except as otherwise provided in subparagraph (E) of this paragraph, benefits shall
154 not be charged to the account of an employer when an individual's overpayment is
155 waived pursuant to Code Section 34-8-254;

156 (D) Except as otherwise provided in subparagraph (E) of this paragraph, for the
157 purposes of calculating an employer's contribution rate, an account of an employer shall
158 not be charged for benefits paid to an individual for unemployment that is directly
159 caused by a presidentially declared natural disaster;

160 (E)(i) An employer shall respond in a timely and adequate manner to a notice of a
161 claim filing or a written request by the department for information relating to a claim
162 for benefits as specified in the rules or regulations prescribed by the Commissioner.

163 (ii) Any violation of division (i) of this subparagraph by an employer or an officer or
164 agent of an employer absent good cause may result in the employer's account being
165 charged for overpayment of benefits paid due to such violation even if the
166 determination is later reversed; provided, however, that upon the finding of three
167 violations of division (i) of this subparagraph within a calendar year resulting in an
168 overpayment of benefits, an employer's account shall be charged for any additional
169 overpayment and shall not be relieved of such charges unless good cause is shown;
170 and

171 (F) Benefits paid to individuals shall be charged against the Unemployment Trust Fund
172 when benefits are paid but not charged against an employer's experience rating account
173 as provided in this Code section or when the employer is not a liable employer as
174 provided in Code Section 34-8-42.

175 (c)(1) Payments of extended benefits as provided in Code Section 34-8-197 shall be
176 charged to an employer's experience rating account in the same proportion as regular
177 benefits are charged, except an employer shall be charged for only 50 percent of its
178 portion of the extended benefits paid for all weeks after the first week of extended
179 benefits; provided, however, that benefits paid that are attributable to service in the
180 employ of any governmental entity as described in subsection (h) of Code
181 Section 34-8-35 shall be financed in their entirety by such governmental entity which is
182 charged as provided in this Code section.

183 (2) As provided by 26 U.S.C. Section 3304, only 50 percent of extended benefits paid
184 shall be charged to the individual's employers as described in paragraph (1) of this
185 subsection. However, if the federal government does not reimburse the 50 percent for the
186 first week of extended benefits paid, employers shall be charged 100 percent of such first
187 week of extended benefits paid. When employers have been determined to be relieved
188 from charges, such payments shall be charged against the Unemployment Trust Fund in
189 the appropriate amount.

190 (d) The Commissioner shall by regulation provide for the notification of each employer
191 of charges made against its account at intervals not less frequent than semiannually. The
192 charges in such notification shall be binding upon each employer for all purposes unless
193 the employer files a request for review and redetermination in writing. Such request must
194 set forth the charges to which the employer objects and the basis of the objection. The
195 request must be made within 15 days of the prescribed notification. Upon such request
196 being filed, the employer shall be granted an opportunity for a fair hearing. However, no
197 employer shall have standing in any proceeding to contest the chargeability to its account
198 of any benefit paid in accordance with a determination, redetermination, or decision
199 pursuant to Articles 7 and 8 of this chapter, except upon the ground that the services upon
200 which such benefits were found to be chargeable did not constitute services performed in
201 employment for the employer and only in the event that the employer was not a party to
202 such determination, redetermination, or decision, or to any other proceedings under this
203 chapter in which the character of such services was determined. The employer shall be
204 promptly notified of the Commissioner's redetermination. The redetermination shall
205 become final unless a petition for judicial review is filed within 15 days after notice of
206 redetermination. Such notice shall be mailed or otherwise delivered to the employer's last
207 known address. The petition for judicial review shall be filed in the Superior Court of

208 Fulton County or in the superior court of the county of residence of the petitioner. In any
209 proceeding under this Code section, the findings of the Commissioner as to the facts, if
210 supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction
211 of the court shall be confined to questions of law. No additional evidence shall be received
212 by the court, but the court may order additional evidence to be taken before the
213 Commissioner. The Commissioner may, after hearing such additional evidence, modify
214 the determination and file such modified determination, together with a transcript of the
215 additional record, with the court. Such proceedings shall be heard in a summary manner
216 and shall be given precedence over all other civil cases except cases arising under
217 Articles 7 and 8 of this chapter and Chapter 9 of this title. An appeal may be taken from
218 the decision of the Superior Court of Fulton County or the superior court of the county of
219 residence of the petitioner to the Court of Appeals of Georgia in the same manner as is
220 provided in civil cases."

221 SECTION 3.

222 Said chapter is further amended by revising Code Section 34-8-164, relating to applications
223 for adjustment or refund, as follows:

224 "34-8-164.

225 Applications for an adjustment or a refund of contributions, payments in lieu of
226 contributions, or interest thereon, shall be submitted no later than three years from the date
227 such amounts were assessed. Applications must be in writing. The Commissioner shall
228 determine what amounts, if any, were erroneously collected. Adjustments shall be made
229 against subsequent payments. Refunds will be issued, without interest thereon, when
230 adjustments cannot be made. At the option of the Commissioner, the Commissioner may
231 initiate make any adjustments or refunds deemed appropriate for any amounts erroneously
232 collected where no written request for a refund or an adjustment has been received,
233 provided such amounts were assessed within the last three seven years. Amounts shall be
234 refunded from the fund into which they were deposited."

235 SECTION 4.

236 Said chapter is further amended by revising paragraph (1) of Code Section 34-8-194, relating
237 to grounds for disqualification of benefits, as follows:

238 "(1)(A) For the week or fraction thereof in which the individual has filed an otherwise
239 valid claim for benefits after such individual has left the most recent employer
240 voluntarily without good cause in connection with the individual's most recent work.
241 (B) Good cause in connection with the individual's most recent work shall be
242 determined by the Commissioner according to the circumstances in the case; provided,

however, that the following circumstances shall be deemed to establish such good cause and the employer's account shall not be charged for any benefits paid out to an individual who leaves an employer:

(i) To leaving an employer to accompany a spouse who has been reassigned from one military assignment to another shall be deemed to be for good cause; provided, however, that the employer's account shall not be charged for any benefits paid out to the person who leaves to accompany a spouse reassigned from one military assignment to another.; or

(ii) Due to family violence verified by reasonable documentation demonstrating that:

(I) Leaving the employer was a condition of receiving services from a family violence shelter;

(II) Leaving the employer was a condition of receiving shelter as a resident of a family violence shelter; or

(III) Such family violence caused the individual to reasonably believe that the claimant's continued employment would jeopardize the safety of the claimant or the safety of any member of the claimant's immediate family.

For purposes of this subparagraph, the term 'family violence' shall have the same meaning as in Code Section 19-13-1 and the term 'family violence shelter' shall have the same meaning as in Code Section 19-13-20.

(C) To requalify following a disqualification, an individual must secure subsequent employment for which the individual earns insured wages equal to at least ten times the weekly benefit amount of the claim and then becomes unemployed through no fault on the part of the individual.

(D) Notwithstanding the foregoing, in the Commissioner's determination the When voluntarily leaving an employer, the burden of proof of good work connected cause for voluntarily leaving such work in connection with the individual's most recent work shall be on the individual.

(E) Benefits shall not be denied under this paragraph, however, to an individual for separation from employment pursuant to a labor management contract or agreement or pursuant to an established employer plan, program, policy, layoff, or recall which permits the individual, because of lack of work, to accept a separation from employment;"

SECTION 5.

Said chapter is further amended by revising paragraph (1) of Code Section 34-8-159, relating to specific provisions for payments in lieu of contributions, as follows:

278 "(1) **Date payment due.** Upon approval by the Commissioner, at the end of each
279 calendar quarter or at the end of such other period as determined by the Commissioner,
280 each organization or group of organizations shall be billed for payments in lieu of
281 contributions charged to it during such quarter or other prescribed period in accordance
282 with Code Section 34-8-158. Provisions applicable to contributing employers in
283 subsection (a) of Code Section 34-8-157 under which employers may not be charged do
284 not apply to employers who make payments in lieu of contributions;"

SECTION 6.

286 Said chapter is further amended by revising Code Section 34-8-254, relating to
287 overpayments, by adding a new subsection to read as follows:

288 "(e) Any action to recover an overpayment shall be brought by the Commissioner or an
289 authorized representative of the Commissioner within seven years from the release date of
290 the notice of determination and overpayment by the department."

SECTION 7.

292 Code Section 50-36-1 of the Official Code of Georgia Annotated, relating to requirements,
293 procedures, and conditions for verification of lawful presence within the United States,
294 exceptions, regulations, and criminal and other penalties for violations, is amended by
295 revising subsection (f) as follows:

(f)(1) Except as provided in paragraph (5) of this subsection and in subsection (g) of this Code section, an agency or political subdivision providing or administering a public benefit shall require every applicant for such benefit to:

299 (A) Provide at least one secure and verifiable document, as defined in Code
300 Section 50-36-2, or a copy or facsimile of such document. Any document required by
301 this subparagraph may be submitted by or on behalf of the applicant at any time within
302 nine months prior to the date of application so long as the document remains valid
303 through the licensing or approval period or such other period for which the applicant
304 is applying to receive a public benefit; and

305 (B) Execute a signed and sworn affidavit verifying the applicant's lawful presence in
306 the United States under federal immigration law; provided, however, that if the
307 applicant is younger than 18 years of age at the time of the application, he or she shall
308 execute the affidavit required by this subparagraph within 30 days after his or her
309 eighteenth birthday. Such affidavit shall affirm that:

310 (i) The applicant is a United States citizen or legal permanent resident 18 years of age
311 or older; or

(ii) The applicant is a qualified alien or nonimmigrant under the federal Immigration and Nationality Act, Title 8 U.S.C., 18 years of age or older lawfully present in the United States and provide the applicant's alien number issued by the Department of Homeland Security or other federal immigration agency.

(2) The state auditor shall create affidavits for use under this subsection and shall keep a current version of such affidavits on the Department of Audits and Accounts' official website.

(3) Documents and copies of documents required by this subsection may be submitted in person, by mail, or electronically, provided the submission complies with Chapter 12 of Title 10. Copies of documents submitted in person, by mail, or electronically shall satisfy the requirements of this Code section. For purposes of this paragraph, electronic submission shall include a submission via facsimile, Internet, electronic texting, or any other electronically assisted transmitted method approved by the agency or political subdivision.

(4) The requirements of this subsection shall not apply to any applicant applying for or renewing an application for a public benefit within the same agency or political subdivision if the applicant has previously complied with the requirements of this subsection by submission of a secure and verifiable document, as defined in Code Section 50-36-2, and a signed and sworn affidavit affirming that such applicant is a United States citizen.

(5) The Department of Labor may require any applicant for unemployment insurance filing electronically to satisfy the requirements of paragraphs (1) and (3) of this subsection by providing the number of a verifiable and unexpired driver's license or identification card issued to him or her by this state on or after July 1, 2012, which complies with requirements of paragraph (1) of subsection (g) of this Code section, and his or her social security number. Unless the applicant is exempted under paragraph (4) of this subsection, the applicant's name and the number and expiration date of the applicant's driver's license or identification card shall be verified with the Department of Driver Services and the applicant's social security number shall be verified by the Department of Labor."

SECTION 8.

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

SECTION 9.

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