

The Senate Committee on Insurance and Labor offers the following substitute to HB 117:

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 provide for related matters; to  
8 provide for an effective date; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

10 Chapter 8 of Title 34 of the Official Code of Georgia Annotated, relating to employment  
11 security, is amended by revising Code Section 34-8-43, relating to most recent employer, as  
12 follows:  
13

14 "34-8-43.

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

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

22 (1) The individual was separated from work for a disqualifying reason;

23 (2) The individual was released or separated from work under nondisqualifying  
24 conditions and earned wages of at least ten times the weekly benefit amount of the claim;

25 or

26 (3) The employer files the claim for the individual by submitting such reports as  
27 authorized by the Commissioner.

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

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

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

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

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

44

## SECTION 2.

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

47 "34-8-157.

48 ~~(a) Regular benefits paid with respect to all benefit years that begin on or before December~~  
49 ~~31, 1991, shall be charged against the experience rating account of employers in the~~  
50 ~~following manner:~~

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

58 ~~(2) When the most recent employer, as that term is defined in Code Section 34-8-43, is~~  
59 ~~not a base period employer, a determination shall be made with respect to potential future~~  
60 ~~charges in the event a second benefit year claim is filed. If an individual files a valid~~  
61 ~~claim for unemployment compensation for a second benefit year and is paid~~

62 unemployment compensation, then those benefits will be charged or relieved against the  
 63 experience rating account of such employer as provided in this Code section;

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

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

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

74 ~~(i) Is an interested party because of the individual's loss of other employment;~~

75 ~~(ii) Has provided base period employment and continues to provide employment to  
 76 the same extent as that part-time employment was provided in the base period of the  
 77 individual; and~~

78 ~~(iii) Has furnished timely information pursuant to the regulations of the  
 79 Commissioner; and~~

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

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

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

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

94 ~~(B) In the event the provisions of subparagraph (A) of this paragraph are determined  
 95 by the United States secretary of labor or by a court of competent jurisdiction at a  
 96 subsequent level of appeal, such appeal to be taken at the sole discretion of the  
 97 Commissioner, to be out of conformity with federal law, the provisions of subparagraph  
 98 (A) of this paragraph shall be considered null and void and the provisions of this~~

99 ~~subparagraph shall control. Benefits charged to the account of an employer shall not~~  
 100 ~~exceed the amount of wages paid by such employer during the period beginning with~~  
 101 ~~the base period of the individual's claim and continuing through the individual's benefit~~  
 102 ~~year; provided, however, the portion of such charges for benefits paid which exceed the~~  
 103 ~~amount of wages paid by such employer shall be charged against the experience rating~~  
 104 ~~account of all base period employers in the manner provided in subsection (a) of this~~  
 105 ~~Code section.~~

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

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

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

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

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

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

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

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

135 (ii) The individual separated from the most recent employer under nondisqualifying  
 136 conditions.

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

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

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

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

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

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

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

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

170 (c)(1) Payments of extended benefits as provided in Code Section 34-8-197 shall be  
 171 charged to an employer's experience rating account in the same proportion as regular

172 benefits are charged, except an employer shall be charged for only 50 percent of its  
173 portion of the extended benefits paid for all weeks after the first week of extended  
174 benefits; provided, however, that benefits paid that are attributable to service in the  
175 employ of any governmental entity as described in subsection (h) of Code  
176 Section 34-8-35 shall be financed in their entirety by such governmental entity which is  
177 charged as provided in this Code section.

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

185 (d) The Commissioner shall by regulation provide for the notification of each employer  
186 of charges made against its account at intervals not less frequent than semiannually. The  
187 charges in such notification shall be binding upon each employer for all purposes unless  
188 the employer files a request for review and redetermination in writing. Such request must  
189 set forth the charges to which the employer objects and the basis of the objection. The  
190 request must be made within 15 days of the prescribed notification. Upon such request  
191 being filed, the employer shall be granted an opportunity for a fair hearing. However, no  
192 employer shall have standing in any proceeding to contest the chargeability to its account  
193 of any benefit paid in accordance with a determination, redetermination, or decision  
194 pursuant to Articles 7 and 8 of this chapter, except upon the ground that the services upon  
195 which such benefits were found to be chargeable did not constitute services performed in  
196 employment for the employer and only in the event that the employer was not a party to  
197 such determination, redetermination, or decision, or to any other proceedings under this  
198 chapter in which the character of such services was determined. The employer shall be  
199 promptly notified of the Commissioner's redetermination. The redetermination shall  
200 become final unless a petition for judicial review is filed within 15 days after notice of  
201 redetermination. Such notice shall be mailed or otherwise delivered to the employer's last  
202 known address. The petition for judicial review shall be filed in the Superior Court of  
203 Fulton County or in the superior court of the county of residence of the petitioner. In any  
204 proceeding under this Code section, the findings of the Commissioner as to the facts, if  
205 supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction  
206 of the court shall be confined to questions of law. No additional evidence shall be received  
207 by the court, but the court may order additional evidence to be taken before the  
208 Commissioner. The Commissioner may, after hearing such additional evidence, modify

209 the determination and file such modified determination, together with a transcript of the  
 210 additional record, with the court. Such proceedings shall be heard in a summary manner  
 211 and shall be given precedence over all other civil cases except cases arising under  
 212 Articles 7 and 8 of this chapter and Chapter 9 of this title. An appeal may be taken from  
 213 the decision of the Superior Court of Fulton County or the superior court of the county of  
 214 residence of the petitioner to the Court of Appeals of Georgia in the same manner as is  
 215 provided in civil cases."

216 **SECTION 3.**

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

219 "34-8-164.

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

230 **SECTION 4.**

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

233 "(1)(~~A~~) For the week or fraction thereof in which the individual has filed an otherwise  
 234 valid claim for benefits after such individual has left the most recent employer  
 235 voluntarily without good cause in connection with the individual's most recent work.  
 236 (~~B~~) Good cause in connection with the individual's most recent work shall be  
 237 determined by the Commissioner according to the circumstances in the case; provided,  
 238 however, that the following circumstances shall be deemed to establish such good cause  
 239 and the employer's account shall not be charged for any benefits paid out to an  
 240 individual who leaves an employer:

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

244 ~~to the person who leaves to accompany a spouse reassigned from one military~~  
 245 ~~assignment to another.; or~~

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

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

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

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

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

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

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

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

## 270 SECTION 5.

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

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

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**SECTION 6.**

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

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“(e) Any action to recover an overpayment shall be brought by the Commissioner or an

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authorized representative of the Commissioner within seven years from the release date of

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the notice of determination and overpayment by the department.”

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**SECTION 7.**

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This Act shall become effective upon its approval by the Governor or upon its becoming law

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without such approval.

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**SECTION 8.**

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