

House Bill 373

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

A BILL TO BE ENTITLED
AN ACT

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

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

18 **SECTION 1.**

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

22 ~~"(4) To make and promulgate such rules or changes in rules as he may deem advisable~~
23 ~~for the prevention of accidents or the prevention of industrial or occupational diseases in~~
24 ~~every employment or place of employment, and such rules or changes in rules for the~~
25 ~~construction, repair, and maintenance of places of employment, places of public~~
26 ~~assembly, and public buildings as he may deem advisable, to render them safe. The~~

27 Commissioner may appoint committees composed of employers, employees, and experts
 28 ~~to suggest rules or changes therein~~ To prescribe such rules and regulations, consistent
 29 with the terms, intent, and purposes of this title, except for Chapter 9 of this title,
 30 necessary for the proper administration and enforcement thereof;"

31 SECTION 2.

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

33 "34-2-15.

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

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

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

39 (A) A conviction of a crime;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

99

SECTION 3.

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

102 "34-8-23.

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

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

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

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

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

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

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

114

SECTION 4.

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

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

127

SECTION 5.

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

130 "34-8-255.

131 (a) Any person who knowingly makes a false statement or misrepresentation as to a
132 material fact or who knowingly fails to disclose a material fact to obtain or increase
133 benefits under this chapter, either for himself or herself or for any other person, or who

134 knowingly accepts benefits under this chapter to which such person is not entitled shall,
 135 upon an appropriate finding by the Commissioner, cease to be eligible for such benefits,
 136 and an overpayment of benefits shall be computed without the application of deductible
 137 earnings as otherwise provided in Code Section 34-8-193: and shall be subject to the
 138 following:

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

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

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

146 (4) Forfeiture of ~~Further, such person shall forfeit~~ all unpaid benefits for any weeks of
 147 unemployment subsequent to the date of the ~~determination issued~~ finding by the
 148 Commissioner ~~covering said act or omission. The~~ such that the ineligibility shall ~~include~~
 149 apply to any unpaid benefits to which the person would otherwise be entitled during the
 150 remainder of ~~any incomplete~~ the calendar quarter in which said ~~determination~~ finding is
 151 made and;

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

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

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

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

165 SECTION 6.

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

168

SECTION 7.

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