

The Senate Committee on Insurance and Labor offered the following substitute to HB 373:

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 to  
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 provide for the form of payment of wages upon the discretion of the  
12 employer; to eliminate certain requirements relating to payment of wages by payroll card  
13 accounts; to change the definition of the term "benefit year"; to provide for such year to  
14 begin on a Sunday so as to establish parity with the benefit year in other states; to increase  
15 the minimum and maximum weekly benefit amounts for employment security; to change  
16 certain provisions relating to the grounds for disqualification of benefits; to change certain  
17 provisions relating to false statements or misrepresentations made to obtain or increase  
18 employment security benefits; to repeal certain provisions relating to the board created to  
19 administer programs for which the state is responsible pursuant to Public Law 105-220; to  
20 provide for related matters; to provide for an effective date; to repeal conflicting laws; and  
21 for other purposes.

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

23 **SECTION 1.**

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

27 ~~"(4) To make and promulgate such rules or changes in rules as he may deem advisable~~  
 28 ~~for the prevention of accidents or the prevention of industrial or occupational diseases in~~  
 29 ~~every employment or place of employment, and such rules or changes in rules for the~~  
 30 ~~construction, repair, and maintenance of places of employment, places of public~~  
 31 ~~assembly, and public buildings as he may deem advisable, to render them safe. The~~  
 32 ~~Commissioner may appoint committees composed of employers, employees, and experts~~  
 33 ~~to suggest rules or changes therein~~ To prescribe such rules and regulations, consistent  
 34 with the terms, intent, and purposes of this title, except for Chapter 9 of this title,  
 35 necessary for the proper administration and enforcement thereof;"

36 **SECTION 2.**

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

38 "34-2-15.

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

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

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

44 (A) A conviction of a crime;

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

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

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

49 (iii) Adjudication or sentence was otherwise withheld or not entered on the charge;  
 50 or

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

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

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

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

59 (b) Notwithstanding any other provisions of law to the contrary, beginning July 1, 2019,  
 60 the Commissioner of Labor shall have the authority to require a criminal background check  
 61 of any individual employed by or performing work for the Department of Labor or  
 62 applying for employment with the Department of Labor and shall require a criminal

63 background check of any such individual with direct access to federal return information  
64 as part of his or her job duties pursuant to the following:

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

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

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

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

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

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

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

95 (g) All information received from GCIC or the Federal Bureau of Investigation shall be  
96 privileged, shall be used exclusively for purposes of employment, and shall not be released  
97 or otherwise disclosed to any other person or agency except to any person or agency which  
98 otherwise has a legal right to inspect the employment file. All such information collected  
99 by the Department of Labor shall be maintained by the Department of Labor pursuant to

100 applicable laws and rules or regulations of GCIC and the Federal Bureau of Investigation.  
 101 Penalties for the unauthorized release or disclosure of any such information shall be as  
 102 prescribed pursuant to applicable laws and rules or regulations of GCIC and the Federal  
 103 Bureau of Investigation."

### 104 SECTION 3.

105 Said title is further amended by revising subsections (b) and (c) of Code Section 34-7-2,  
 106 relating to payment of employee wages by lawful money, checks, or credit transfer and  
 107 selection of payment dates by employer, as follows:

108 "(b) Every person, firm, or corporation, including steam and electric railroads, but not  
 109 including farming, sawmill, and turpentine industries, employing skilled or unskilled  
 110 wageworkers in manual, mechanical, or clerical labor, including all employees except  
 111 officials, superintendents, or other heads or subheads of departments who may be  
 112 employed by the month or year at stipulated salaries, shall, upon the discretion of such  
 113 person, firm, or corporation, make wage and salary payments to such employees or to their  
 114 authorized representatives;

115 (1) By ~~by~~ lawful money of the United States;;

116 (2) By ~~by~~ check;;

117 (3) By credit to a payroll card account; or

118 ~~(3)~~(4) With ~~with~~ the consent of the employee, by authorization of electronic credit  
 119 transfer to his or her account with a bank, trust company, or other financial institution  
 120 authorized by the United States or one of the several states to receive deposits in the  
 121 United States; ~~or~~

122 ~~(4) by credit to a payroll card account.~~

123 Such payments shall be made on such dates during the month as may be decided upon by  
 124 such person, firm, or corporation; provided, however, that the dates so selected shall be  
 125 such that the month will be divided into at least two equal periods; and provided, further,  
 126 that the payments made on each such date shall in every case correspond to the full net  
 127 amount of wages or earnings due the employees for the period for which the payment is  
 128 made.

129 (c) A person, firm, or corporation that elects pursuant to subsection (b) of this Code  
 130 section to make wage and salary payments by using credit to a payroll card account shall  
 131 provide the employee with ~~each of the following:~~

132 ~~(1) A~~ a written explanation of any fees associated with the payroll card account offered  
 133 to the employee. For all employees employed on the date a person, firm, or corporation  
 134 elects to make such wage and salary payments by using credit to a payroll card account,  
 135 such written explanation shall be provided at least 30 days prior to the date such payroll

136 card account is to become available. For any employee hired after the date of such  
 137 election, the written explanation shall be provided at the time of hiring. ~~A form shall be~~  
 138 ~~provided simultaneously with the written explanation of fees allowing employees to opt~~  
 139 ~~out of receiving such payments as credit to a payroll card account as provided in~~  
 140 ~~paragraphs (2) and (3) of this subsection. Such form shall also be made generally~~  
 141 ~~available to employees;~~

142 ~~(2) The ability to opt out of receiving such payments as credit to a payroll card account~~  
 143 ~~by submitting in writing a request for a check; and~~

144 ~~(3) The ability to opt out of receiving such payments as credit to a payroll card account~~  
 145 ~~by providing the proper designation and authorization for an electronic credit transfer."~~

#### 146 SECTION 4.

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

149 "34-8-23.

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

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

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

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

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

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

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

#### 161 SECTION 5.

162 Said title is further amended by revising subsections (b) and (c) of Code Section 34-8-193,  
 163 relating to determination of weekly benefit amount, as follows:

164 "(b) Weekly benefit amount entitlement as computed in this Code section ~~shall be no less~~  
 165 ~~than \$27.00 per week for benefit years beginning on or after July 1, 1983; provided,~~  
 166 ~~however, that for benefit years beginning on or after July 1, 1987, when the weekly benefit~~  
 167 ~~amount, as computed, would be more than \$26.00 but less than \$37.00, the individual's~~  
 168 ~~weekly benefit amount will be \$37.00, and no weekly benefit amount shall be established~~  
 169 ~~for less than \$37.00; provided, further, that for benefit years beginning on or after July 1,~~  
 170 ~~1997, when the weekly benefit amount, as computed, would be more than \$26.00 but less~~

171 ~~than \$39.00, the individual's weekly benefit amount will be \$39.00, and no weekly benefit~~  
172 ~~amount shall be established for less than \$39.00; provided, further, that for benefit years~~  
173 ~~beginning on or after July 1, 2002, when the weekly benefit amount, as computed, would~~  
174 ~~be more than \$26.00 but less than \$40.00, the individual's weekly benefit amount will be~~  
175 ~~\$40.00, and no weekly benefit amount shall be established for less than \$40.00; provided,~~  
176 ~~further, that for benefit years beginning on or after July 1, 2005, when the weekly benefit~~  
177 ~~amount, as computed, would be more than \$26.00 but less than \$42.00, the individual's~~  
178 ~~weekly benefit amount will be \$42.00, and no weekly benefit amount shall be established~~  
179 ~~for less than \$42.00; provided, further, that for benefit years beginning on or after July 1,~~  
180 ~~2007, when the weekly benefit amount, as computed, would be more than \$26.00 but less~~  
181 ~~than \$44.00, the individual's weekly benefit amount will be \$44.00, and no weekly benefit~~  
182 ~~amount shall be established for less than \$44.00; provided, further, that for benefit years~~  
183 ~~beginning on or after July 1, 2019, when the weekly benefit amount, as computed, would~~  
184 ~~be more than \$26.00 but less than \$55.00, the individual's weekly benefit amount will be~~  
185 ~~\$55.00, and no weekly benefit amount shall be established for less than \$55.00.~~

186 (c) Weekly benefit amount entitlement as computed in this Code section shall not exceed  
187 these amounts for the applicable time period:

188 ~~(1) For claims filed on or after July 1, 1990, but before July 1, 1994, the maximum~~  
189 ~~weekly benefit amount shall not exceed \$185.00;~~

190 ~~(2) For claims filed on or after July 1, 1994, but before July 1, 1995, the maximum~~  
191 ~~weekly benefit amount shall not exceed \$195.00;~~

192 ~~(3) For claims filed on or after July 1, 1995, but before July 1, 1996, the maximum~~  
193 ~~weekly benefit amount shall not exceed \$205.00;~~

194 ~~(4) For claims filed on or after July 1, 1996, but before July 1, 1997, the maximum~~  
195 ~~weekly benefit amount shall not exceed \$215.00;~~

196 ~~(5) For claims filed on or after July 1, 1997, but before July 1, 1998, the maximum~~  
197 ~~weekly benefit amount shall not exceed \$224.00;~~

198 ~~(6) For claims filed on or after July 1, 1998, but before July 1, 1999, the maximum~~  
199 ~~weekly benefit amount shall not exceed \$244.00;~~

200 ~~(7) For claims filed on or after July 1, 1999, but before July 1, 2000, the maximum~~  
201 ~~weekly benefit amount shall not exceed \$264.00;~~

202 ~~(8) For claims filed on or after July 1, 2000, but before July 1, 2001, the maximum~~  
203 ~~weekly benefit amount shall not exceed \$274.00;~~

204 ~~(9) For claims filed on or after July 1, 2001, but before July 1, 2002, the maximum~~  
205 ~~weekly benefit amount shall not exceed \$284.00;~~

206 ~~(10) For claims filed on or after July 1, 2002, but before July 1, 2003, the maximum~~  
207 ~~weekly benefit amount shall not exceed \$295.00;~~

208 ~~(11) For claims filed on or after July 1, 2003, but before July 1, 2005, the maximum~~  
 209 ~~weekly benefit amount shall not exceed \$300.00;~~  
 210 ~~(12)(1) For claims filed on or after July 1, 2005, but before July 1, 2006, the maximum~~  
 211 ~~weekly benefit amount shall not exceed \$310.00;~~  
 212 ~~(13)(2) For claims filed on or after July 1, 2006, but before July 1, 2008, the maximum~~  
 213 ~~weekly benefit amount shall not exceed \$320.00; and~~  
 214 ~~(14)(3) For claims filed on or after July 1, 2008, but before July 1, 2019, the maximum~~  
 215 ~~weekly benefit amount shall not exceed \$330.00; and~~  
 216 (4) For claims filed on or after July 1, 2019, the maximum weekly benefit amount shall  
 217 not exceed \$365.00."

218

**SECTION 6.**

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

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

231

**SECTION 7.**

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

234 "34-8-255.

235 (a) Any person who knowingly makes a false statement or misrepresentation as to a  
 236 material fact or who knowingly fails to disclose a material fact to obtain or increase  
 237 benefits under this chapter, either for himself or herself or for any other person, or who  
 238 knowingly accepts benefits under this chapter to which such person is not entitled shall,  
 239 upon an appropriate finding by the Commissioner, cease to be eligible for such benefits,  
 240 and an overpayment of benefits shall be computed without the application of deductible  
 241 earnings as otherwise provided in Code Section 34-8-193: and shall be subject to the  
 242 following:

- 243 (1) A penalty of 15 percent that shall be added to the overpayment and become part of  
 244 the overpayment;
- 245 (2) Interest ~~shall accrue~~ on the unpaid portion of such overpayment that shall accrue at  
 246 a rate of 1 percent per month until repaid to the Commissioner for the Unemployment  
 247 Compensation Fund;
- 248 (3) Repayment of benefits received for any week as specified in the finding by the  
 249 Commissioner; and
- 250 (4) Forfeiture of ~~Further, such person shall forfeit~~ all unpaid benefits for any weeks of  
 251 unemployment subsequent to the date of the ~~determination issued~~ finding by the  
 252 Commissioner ~~covering said act or omission. The such that the~~ ineligibility shall ~~include~~  
 253 apply to any unpaid benefits to which the person would otherwise be entitled during the  
 254 remainder of ~~any incomplete~~ the calendar quarter in which said ~~determination~~ finding is  
 255 made and:
- 256 (A) If the overpayment is established on or before June 30, 2019, during the remainder  
 257 of the next four complete calendar quarters immediately following the date of said  
 258 ~~determination; provided, however, such person shall be required to repay benefits~~  
 259 ~~received for any week as specified in said determination~~ finding; or
- 260 (B) If the overpayment is established on or after July 1, 2019, during a period of the  
 261 next four calendar quarters following the calendar quarter in which such finding is  
 262 made, through and including the last Saturday of the fourth of such calendar quarters.
- 263 (b) ~~No determination may~~ finding pursuant to subsection (a) of this Code section shall be  
 264 made by the Commissioner more than four years after such occurrence, act, or omission.  
 265 Any such ~~determination~~ finding by the Commissioner may be appealed in the same manner  
 266 as provided for the appeal from an initial ~~determination~~ finding in Article 8 of this chapter.
- 267 (c) The provisions of this Code section shall be in addition to, and not in lieu of, any  
 268 provision contained in any ~~of the other Code sections~~ section in this chapter."

269

**SECTION 8.**

270 Said title is further amended in Code Section 34-14-1, relating to the creation of a board to  
 271 administer programs for which the state is responsible pursuant to Public Law 105-220,  
 272 federal composition requirements, meetings, and authorization for the promulgation of rules  
 273 and regulations, by repealing and reserving subsection (b).

274

**SECTION 9.**

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

277

**SECTION 10.**

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