

Senate Bill 14–Prefile

By: Senator Anderson of the 43rd

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 7 of Chapter 8 of Title 34 of the Official Code of Georgia Annotated,
2 relating to employment security benefits, so as to allow applicants for benefits to obtain their
3 personnel files when their claims are contested by their former employers; to provide for
4 definitions; to require the Department of Labor to modify the separation notice; to sanction
5 employers who fail to timely deliver personnel files; to prohibit the admissibility of an
6 uncontested claim; to require the Commissioner of Labor to enact rules or regulations
7 relating to uncontested claims for benefits; to provide for related matters; to provide for an
8 effective date; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 Article 7 of Chapter 8 of Title 34 of the Official Code of Georgia Annotated, relating to
12 employment security benefits, is amended by adding a new Code section to read as follows:

13 "34-8-200.

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

15 (1) 'Claimant' means an individual whose claim for benefits is being contested by the
16 employer who separated the individual from employment.

17 (2) 'Contested claim' means that the employer contends that a claimant cannot establish
18 the existence of any of the statutory grounds set forth in subparagraph (B) of
19 paragraph (2) of Code Section 34-8-194.

20 (3) 'Contesting employer' means an employer who is disputing a separated employee's
21 claim for benefits.

22 (4) 'Contesting employer's representative' means the individual who signed the separation
23 notice on behalf of the employer.

24 (5) 'Deficiency notice' means a claimant's written notice contending that the personnel
25 file that is the subject of the written demand was not timely delivered.

26 (6) 'Mailing address' means a street or route address or post office box address.

27 (7) 'Personnel file' means:

28 (A) The entire unredacted personnel or employment record made or kept by the
29 contesting employer relating to the claimant, including but not limited to records that
30 are required to be maintained under Code Section 34-2-11, in addition to records
31 relating to hiring, promotion, demotion, transfer, layoff, separation, and termination;
32 or

33 (B) A portion of such personnel or employment record made or kept by the contesting
34 employer when a written demand requests such designated portion of the personnel or
35 employment record.

36 This term shall not include any documents separately maintained by an employer in a
37 medical file.

38 (8) 'Proof of delivery' means documentary proof that the contesting employer has sent
39 the claimant's personnel file via the delivery method specified in the written demand.

40 (9) 'Proof of payment' means a copy of a money order receipt, bank transaction, or
41 confirmation of a payment by credit card or debit card.

42 (10) 'Separated employee' means an employee who is separated from employment
43 whether voluntarily or involuntarily.

44 (11) 'Separation notice' means the form that must be completed pursuant to
45 subsection (c) of Code Section 34-8-190 for each employee who leaves an employer's
46 employment regardless of the reason for separation. This term shall not include any
47 forms that are completed for reasons of partial unemployment or mass separation.

48 (12) 'Signed writing' means either an email with the claimant's name in the body of the
49 email or a paper document with the claimant's signature affixed thereto.

50 (13) 'Statutory fee' means payment in the form of a money order, bank transaction, debit
51 card, or credit card in the amount of \$30.00 when the claimant requests delivery of the
52 personnel file via electronic means and \$40.00 when the claimant requests delivery of the
53 personnel file to a mailing address.

54 (14) 'Uncontested claim' means that the employer does not dispute or contest whether the
55 claimant's separation from employment satisfies one or more of the statutory grounds set
56 forth in subparagraph (B) of paragraph (2) of Code Section 34-8-194.

57 (15) 'Written demand' means a signed writing by the claimant that demands a copy of the
58 claimant's personnel file as designated by the claimant and that specifies the method of
59 delivery.

60 (b) Any claimant separated from employment on and after October 1, 2021, shall be
61 entitled to receive from the contesting employer a copy of his or her personnel file.

62 (c) No later than September 30, 2021, the department shall modify the separation notice
63 to include:

64 (1) A section where an employer can indicate whether it is a contested claim or an
65 uncontested claim; and

66 (2) An obvious notation that a claimant is entitled to demand delivery of the claimant's
67 personnel file pursuant to this Code section. Such notation shall advise claimants of the
68 deadline established in subsection (e) of this Code section.

69 (d) On and after October 1, 2021, a completed separation notice that does not indicate
70 whether the employer is contesting the separated employee's claim for benefits shall be
71 deemed to be uncontested.

72 (e) To be entitled to receive his or her personnel file from the contesting employer, the
73 claimant shall send a written demand to the contesting employer's representative. Such
74 written demand shall be sent no later than ten calendar days after receipt of the separation
75 notice.

76 (f) The written demand shall:

77 (1) Indicate whether the claimant desires to receive his or her personnel file in electronic
78 format via email or in paper format via delivery to a mailing address; and

79 (2) Include the applicable statutory fee.

80 (g) Within five business days of receiving the written demand and the applicable statutory
81 fee, the contesting employer shall be required to deliver the claimant's personnel file via
82 the delivery method specified in the written demand and to maintain proof of such delivery.

83 (h) A claimant who contends that a contesting employer failed to timely deliver the
84 claimant's personnel file shall simultaneously send a deficiency notice to the contesting
85 employer's representative and to the department no later than 14 calendar days after the
86 date on which the personnel file was required to be delivered. The deficiency notice shall
87 include proof of payment. A failure to timely and simultaneously send a deficiency notice
88 to the contesting employer's representative and the department or a failure to include proof
89 of payment shall extinguish a claimant's ability under this Code section to obtain his or her
90 personnel file.

91 (i) Within seven business days of receiving the deficiency notice, the contesting employer
92 shall be required to provide proof of delivery to the claimant and to the department. The
93 date of receipt of the deficiency notice shall be deemed to be three business days after the
94 date the claimant sends a copy of the deficiency notice to the contesting employer's
95 representative whether by email or mail.

96 (j) Provided that a claimant's deficiency notice complies with subsection (h) of this Code
97 section, a contesting employer shall be prohibited from applying for reconsideration of the
98 initial determination of benefits pursuant to Code Section 34-8-192 and prohibited from
99 initiating an appeal pursuant to Code Section 34-8-220 if the contesting employer:
100 (1) Fails to produce proof of delivery by the deadline specified in subsection (i) of this
101 Code section; or
102 (2) Proof of delivery establishes that the contesting employer failed to deliver to the
103 claimant the personnel file within the time period established in subsection (g) of this
104 Code section.
105 (k) Neither the existence of the uncontested claim nor the separation notice associated with
106 the uncontested claim shall be admissible against the employer in any court of this state or
107 the United States or before any local, state, or federal administrative agency, other than a
108 proceeding instituted under this chapter.
109 (l) The Commissioner shall promulgate rules and regulations necessary to implement and
110 effectuate the provisions of this Code section, including, but not limited to, one or more
111 rules or regulations addressing the department's processing of uncontested claims."

112 **SECTION 2.**

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

115 **SECTION 3.**

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