

House Bill 373 (AS PASSED HOUSE AND SENATE)

By: Representatives Werkheiser of the 157<sup>th</sup> and Welch of the 110<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

To amend Title 34 of the Official Code of Georgia Annotated, relating to labor and industrial relations, so as to change certain provisions relating to the Department of Labor and to employment security; to authorize the Commissioner of Labor to perform certain functions and prescribe certain rules and regulations; to provide for definitions; to authorize the Commissioner of Labor to conduct fingerprint based criminal background checks of applicants for employment and individuals employed by or performing work for the Department of Labor; to provide a process for conducting such criminal background checks; to allow the Georgia Bureau of Investigation and, as authorized, the Federal Bureau of Investigation to retain fingerprints of such individuals under certain circumstances; to limit the use, dissemination, and liability relating to information obtained from criminal background checks; to provide for the form of payment of wages upon the discretion of the employer; to eliminate certain requirements relating to payment of wages by payroll card accounts; to change the definition of the term "benefit year"; to provide for such year to begin on a Sunday so as to establish parity with the benefit year in other states; to increase the minimum and maximum weekly benefit amounts for employment security; to change certain provisions relating to the grounds for disqualification of benefits; to change certain provisions relating to false statements or misrepresentations made to obtain or increase employment security benefits; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

H. B. 373

### SECTION 1.

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

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

### SECTION 2.

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

"34-2-15.

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

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

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

(A) A conviction of a crime;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **SECTION 3.**

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

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

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

(2) By ~~by~~ check ;

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

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

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

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

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

~~(1)~~ A ~~a~~ written explanation of any fees associated with the payroll card account offered to the employee. For all employees employed on the date a person, firm, or corporation elects to make such wage

and salary payments by using credit to a payroll card account, such written explanation shall be provided at least 30 days prior to the date such payroll card account is to become available. For any employee hired after the date of such election, the written explanation shall be provided at the time of hiring. ~~A form shall be provided simultaneously with the written explanation of fees allowing employees to opt out of receiving such payments as credit to a payroll card account as provided in paragraphs (2) and (3) of this subsection. Such form shall also be made generally available to employees;~~

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

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

#### SECTION 4.

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

"34-8-23.

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

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

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

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

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

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

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

### SECTION 5.

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

~~"(b) Weekly benefit amount entitlement as computed in this Code section shall be no less than \$27.00 per week for benefit years beginning on or after July 1, 1983; provided, however, that for benefit years beginning on or after July 1, 1987, when the weekly benefit amount, as computed, would be more than \$26.00 but less than \$37.00, the individual's weekly benefit amount will be \$37.00, and no weekly benefit amount shall be established for less than \$37.00; provided, further, that for benefit years beginning on or after July 1, 1997, when the weekly benefit amount, as computed, would be more than \$26.00 but less than \$39.00, the individual's weekly benefit amount will be \$39.00, and no weekly benefit amount shall be established for less than \$39.00; provided, further, that for benefit years beginning on or after July 1, 2002, when the weekly benefit amount, as computed, would be more than \$26.00 but less than \$40.00, the individual's weekly benefit amount will be \$40.00, and no weekly benefit amount shall be established for less than \$40.00; provided, further, that for benefit years beginning on or after July 1, 2005, when the weekly benefit amount, as computed, would be more than \$26.00 but less than \$42.00, the individual's weekly benefit amount will be \$42.00, and no weekly benefit amount shall be established for less than \$42.00; provided, further, that for benefit years beginning on or after July 1, 2007, when the weekly benefit amount, as computed, would be more than \$26.00 but less than \$44.00, the individual's weekly benefit amount will be \$44.00, and no weekly benefit amount shall be established for less than \$44.00 ; provided, further, that for benefit years beginning on or after July 1, 2019, when the weekly benefit amount, as computed, would be more than \$26.00 but less than \$55.00, the individual's weekly benefit amount will be \$55.00, and no weekly benefit amount shall be established for less than \$55.00.~~

(c) Weekly benefit amount entitlement as computed in this Code

section shall not exceed these amounts for the applicable time period:

- ~~(1) For claims filed on or after July 1, 1990, but before July 1, 1994, the maximum weekly benefit amount shall not exceed \$185.00;~~
- ~~(2) For claims filed on or after July 1, 1994, but before July 1, 1995, the maximum weekly benefit amount shall not exceed \$195.00;~~
- ~~(3) For claims filed on or after July 1, 1995, but before July 1, 1996, the maximum weekly benefit amount shall not exceed \$205.00;~~
- ~~(4) For claims filed on or after July 1, 1996, but before July 1, 1997, the maximum weekly benefit amount shall not exceed \$215.00;~~
- ~~(5) For claims filed on or after July 1, 1997, but before July 1, 1998, the maximum weekly benefit amount shall not exceed \$224.00;~~
- ~~(6) For claims filed on or after July 1, 1998, but before July 1, 1999, the maximum weekly benefit amount shall not exceed \$244.00;~~
- ~~(7) For claims filed on or after July 1, 1999, but before July 1, 2000, the maximum weekly benefit amount shall not exceed \$264.00;~~
- ~~(8) For claims filed on or after July 1, 2000, but before July 1, 2001, the maximum weekly benefit amount shall not exceed \$274.00;~~
- ~~(9) For claims filed on or after July 1, 2001, but before July 1, 2002, the maximum weekly benefit amount shall not exceed \$284.00;~~
- ~~(10) For claims filed on or after July 1, 2002, but before July 1, 2003, the maximum weekly benefit amount shall not exceed \$295.00;~~
- ~~(11) For claims filed on or after July 1, 2003, but before July 1, 2005, the maximum weekly benefit amount shall not exceed \$300.00;~~
- ~~(12)~~(1) For claims filed on or after July 1, 2005, but before July 1,



2006, the maximum weekly benefit amount shall not exceed \$310.00;

~~(13)~~(2) For claims filed on or after July 1, 2006, but before July 1, 2008, the maximum weekly benefit amount shall not exceed \$320.00; ~~and~~

~~(14)~~(3) For claims filed on or after July 1, 2008, but before July 1, 2019, the maximum weekly benefit amount shall not exceed \$330.00 ; ~~and~~

(4) For claims filed on or after July 1, 2019, the maximum weekly benefit amount shall not exceed \$365.00 ."

### SECTION 6.

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

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

### SECTION 7.

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

"34-8-255.

(a) Any person who knowingly makes a false statement or

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

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

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

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

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

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

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

(b) No determination may finding pursuant to subsection (a) of this Code section shall be made by the Commissioner more than four

years after such occurrence, act, or omission. Any such ~~determination~~ finding by the Commissioner may be appealed in the same manner as provided for the appeal from an initial ~~determination~~ finding in Article 8 of this chapter.

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

#### **SECTION 8.**

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

#### **SECTION 9**

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