

1 HB611
2 146272-1
3 By Representative Moore (B)
4 RFD: State Government
5 First Read: 11-APR-13

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8 SYNOPSIS: Under existing law, an individual is
9 disqualified for total or partial unemployment
10 compensation if he or she received or has been
11 determined eligible to receive governmental or
12 other pension, retirement or retired pay, annuity,
13 or similar periodic payment that is based upon the
14 individual's previous work; provided, however, that
15 for weeks of unemployment beginning on or after
16 April 26, 1982, the amount of benefits payable to
17 an individual for any week which begins in a period
18 during which the disqualification provision
19 applies, the amount payable to the individual is
20 reduced by an amount equal to the periodic payment
21 only if the payment is made under a plan maintained
22 or contributed to by a base period employer.

23 Under existing law, if, in accordance with
24 the pension payment provision, any individual is
25 awarded pension payments retroactively covering a
26 period during which he or she received unemployment
27 benefits, the retroactive payments shall constitute

1 determined eligible to receive governmental or other pension,
2 retirement or retired pay, annuity, or similar periodic
3 payment that is based upon the individual's previous work
4 shall be reduced only if the payment is made under a plan that
5 is maintained or contributed to by a base period employer, 100
6 percent employer-financed, and not contributed to by the
7 worker; and to clarify that any pension payments retroactively
8 awarded to an individual would constitute disqualification and
9 require recovery of any benefits paid during the
10 disqualification period only if the pension payments were made
11 under a plan that is maintained or contributed to by a base
12 period employer, 100 percent employer-financed, and not
13 contributed to by the worker.

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

15 Section 1. Section 25-4-78, as last amended by Act
16 2012-507, 2012 Regular Session, Code of Alabama 1975, is
17 amended to read as follows:

18 "§25-4-78.

19 "An individual shall be disqualified for total or
20 partial unemployment:

21 "(1) LABOR DISPUTE IN PLACE OF EMPLOYMENT. For any
22 week in which his total or partial unemployment is directly
23 due to a labor dispute still in active progress in the
24 establishment in which he is or was last employed. For the
25 purposes of this section only, the term "labor dispute"
26 includes any controversy concerning terms, tenure, or
27 conditions of employment, or concerning the association or

1 representation of persons in negotiating, fixing, maintaining,
2 changing, or seeking to arrange terms or conditions of
3 employment, regardless of whether the disputants stand in the
4 proximate relation of employer and employee. This definition
5 shall not relate to a dispute between an individual worker and
6 his employer.

7 "(2) VOLUNTARILY QUITTING WORK. If he has left his
8 most recent bona fide work voluntarily without good cause
9 connected with such work.

10 "a.1. However, he shall not be disqualified if he
11 was forced to leave work because he was sick or disabled,
12 notified his employer of the fact as soon as it was reasonably
13 practicable so to do, and returned to that employer and
14 offered himself for work as soon as he was again able to work;
15 provided, however, this exception shall not apply if the
16 employer had an established leave-of-absence policy covering
17 sickness or disability and:

18 "(i) The individual fails to comply with same as
19 soon as it is reasonably practicable so to do; or

20 "(ii) Upon the expiration of a leave of absence
21 shall fail to return to said employer and offer himself for
22 work, if he shall then be able to work, or if he is not then
23 able to work, he fails to so notify his employer of that fact
24 and request an extension of his said leave of absence as soon
25 as it is reasonably practicable so to do.

26 "2. In case of doubt that an individual was sick or
27 disabled, or as to the duration of any such sickness or

1 disability, the director may, or if the employer requests it,
2 the director shall require a doctor's certificate to establish
3 the fact or facts in doubt.

4 "3. An established leave-of-absence policy shall be
5 any leave-of-absence policy covering sickness and disability
6 communicated to the employee by the customary means used by
7 the employer for communicating with his employees.

8 "4. Nothing herein shall be construed or interpreted
9 as authorizing the payment of benefits to any person during,
10 or for, unemployment due to sickness or disability or during
11 any period in which he is on a leave of absence granted in
12 accordance with an established leave-of-absence policy, the
13 duration of which leave was set in accordance with his request
14 or in accordance with a collective bargaining agreement;
15 except, that if such leave of absence is on account of
16 pregnancy and extends beyond the tenth week following
17 termination of such pregnancy, the individual shall not be
18 denied benefits under the provisions of this subdivision (2)
19 beyond such tenth week if she has given the employer three
20 weeks notice of her desire to return to work, is then able to
21 work and has not refused reinstatement to a job which under
22 the provisions of subdivision (5) of this section would be
23 deemed suitable for her.

24 "b. When an individual is disqualified under this
25 subdivision (2):

1 "1. He shall not be entitled to benefits for the
2 week in which the disqualifying event occurs or for any week
3 thereafter until:

4 "(i) He has reentered insured employment or
5 employment of the nature described in subdivisions (5), (6),
6 (7), (8), (9), (10), or (18) of subsection (b) of Section
7 25-4-10; and

8 "(ii) For which employment he has earned wages equal
9 to at least 10 times his weekly benefit amount for the benefit
10 year in which such disqualification is assessed; and

11 "(iii) He has been separated from such employment
12 under nondisqualifying conditions.

13 "2. The total amount of benefits to which he may
14 otherwise be entitled as determined in accordance with
15 Sections 25-4-74 and 25-4-75 shall be reduced by an amount
16 equal to not less than six nor more than 12 times his weekly
17 benefit amount.

18 "3. For the purpose of the experience rating
19 provisions of Section 25-4-54, no portion of the benefits
20 payable to him, based upon wages paid to him for the period of
21 employment ending with the separation to which the
22 disqualification applies, shall be charged to the employer's
23 experience rating account. If the individual has been
24 separated from employment other than his most recent bona fide
25 work under conditions which would have been disqualifying
26 under this subdivision (2) had the separation been from his
27 most recent bona fide work and the employer answers a notice

1 of payment within 15 days after it is mailed to him detailing
2 the facts in connection with the separation, then no portion
3 of any benefits paid to him based upon wages for the period of
4 employment ending in such separation shall be charged to the
5 employer's experience rating account.

6 "c. An individual shall not be disqualified if he
7 left his employment and immediately returned to work with his
8 regular employer or to employment in which he had prior
9 existing statutory or contractual seniority or recall rights.
10 When this exception is applied, any benefits paid to such
11 individual based upon wages paid for that period of employment
12 immediately preceding the separation to which the exception is
13 applied, which have not been heretofore charged to the
14 employer's experience rating account, shall not be charged to
15 the account of such employer.

16 "d. For separation occurring on or after August 1,
17 2012, an individual shall not be disqualified if he or she
18 left his or her employment to permanently relocate as a result
19 of his or her active duty military-connected spouse's
20 permanent change of station orders, activation orders, or unit
21 deployment orders. When this exception is applied, any
22 benefits paid to the individual based upon wages paid for that
23 period of employment immediately preceding the separation to
24 which the exception is applied, which have not been heretofore
25 charged to the employer's experience rating account, shall not
26 be charged to the account of the employer.

1 "e. For the purposes of this subdivision (2) and
2 subdivision (3) of this section, the commissioner in
3 determining the "most recent bona fide work" shall only
4 consider employment of the nature described in subsection (a)
5 of Section 25-4-10. The commissioner shall also consider the
6 duration of the most recent job or jobs, the intent of the
7 individual and his employer as to the permanence of such work
8 and whether separation from the immediately preceding
9 employment was under conditions which would be disqualifying
10 in the event such immediately preceding employment should be
11 determined to be the most recent bona fide work.

12 "(3) DISCHARGE FOR MISCONDUCT.

13 "a. If he was discharged or removed from his work
14 for a dishonest or criminal act committed in connection with
15 his work or for sabotage or an act endangering the safety of
16 others or for the use of illegal drugs after previous warning
17 or for the refusal to submit to or cooperate with a blood or
18 urine test after previous warning. Disqualification under this
19 paragraph may be applied to separations prior to separation
20 from the most recent bona fide work only if the employer has
21 filed a notice with the commissioner alleging that the
22 separation was under conditions described in this paragraph in
23 such manner and within such time as the director may
24 prescribe.

25 "(i) A confirmed positive drug test that is
26 conducted and evaluated according to standards set forth for
27 the conduct and evaluation of such tests by the U.S.

1 Department of Transportation in 49 C.F.R. Part 40 or standards
2 shown by the employer to be otherwise reliable shall be a
3 conclusive presumption of impairment by illegal drugs. No
4 unemployment compensation benefits shall be allowed to an
5 employee having a confirmed positive drug test if the employee
6 had been warned that such a positive test could result in
7 dismissal pursuant to a reasonable drug policy. A drug policy
8 shall be deemed reasonable if the employer shows that all
9 employees of the employer regardless of position or
10 classification, are subject to testing under the policy, and
11 in those instances in which the employer offers as the basis
12 for disqualification from unemployment compensation benefits
13 the results obtained pursuant to additional testing imposed on
14 some but not all classifications, if the employer can also
15 offer some rational basis for conducting such additional
16 testing. Further, no unemployment compensation benefits shall
17 be allowed if the employee refuses to submit to or cooperate
18 with a blood or urine test as set forth above, or if the
19 employee knowingly alters or adulterates the blood or urine
20 specimen.

21 "(ii) For purposes of paragraph a. and item (i) of
22 paragraph a. of this subdivision, "warning" shall mean that
23 the employee has been advised in writing of the provisions of
24 the employer's drug policy and that either testing positive
25 pursuant to the standards referenced above or the refusal to
26 submit to or cooperate with a blood or urine test as set out
27 in the above referenced standards could result in termination

1 of employment. This written notification as herein described
2 shall constitute a "warning" as used in paragraph a. and item
3 (i) of paragraph a. of this subdivision.

4 "(iii) To the extent that the issue is a positive
5 drug test or the refusal to submit to or cooperate with a
6 blood or urine test, or if the employee knowingly alters or
7 adulterates the blood or urine sample, as distinguished from
8 some other aspect of the employer's drug policy, this
9 disqualification under paragraph a. and item (i) of paragraph
10 a. shall be the only disqualification to apply, in connection
11 with an individual's separation from employment. Other
12 non-separation disqualifications may apply.

13 "When an individual is disqualified under this
14 paragraph:

15 "1. He shall not be entitled to benefits for the
16 week in which the disqualifying event occurs or for any week
17 thereafter until he has reentered insured employment or
18 employment of the nature described in subdivisions (5), (6),
19 (7), (8), (9), (10), or (18) of subsection (b) of Section
20 25-4-10, has earned wages equal at least to 10 times his
21 weekly benefit amount and has been separated from such
22 employment for a nondisqualifying reason.

23 "2. He shall not thereafter be entitled to any
24 benefits under this chapter on account of wages paid to him
25 for the period of employment by the employer by whom he was
26 employed when the disqualifying event occurred.

1 "3. For the purposes of the experience rating
2 provisions of Section 25-4-54:

3 "(i) No portion of any benefits based upon wages
4 paid to the individual for the period of employment by the
5 employer by whom he was employed when the disqualifying event
6 occurred shall be charged to the employer's experience rating
7 account.

8 "(ii) In the case of a separation prior to the
9 separation from the most recent bona fide work, if the only
10 reason disqualification under this paragraph a. was not
11 assessed was the failure of the employer to properly file a
12 timely separation report with the commissioner and the
13 employer files such a report within 15 days after the mailing
14 of a notice of payment, then no portion of any benefits paid
15 based upon the wages paid for the period of employment ending
16 in such prior separation shall be charged to the employer's
17 experience rating account.

18 "b. If he was discharged from his most recent bona
19 fide work for actual or threatened misconduct committed in
20 connection with his work (other than acts mentioned in
21 paragraph a. of this subdivision (3)) repeated after previous
22 warning to the individual. When an individual is disqualified
23 under this paragraph, or exempt from disqualification for a
24 separation under such conditions prior to his most recent bona
25 fide work, the effect shall be the same as provided in
26 paragraph b. of subdivision (2) of this section for

1 disqualification or exemption from disqualification
2 respectively.

3 "c. If he was discharged from his most recent bona
4 fide work for misconduct connected with his work [other than
5 acts mentioned in paragraphs a. and b. of this subdivision
6 (3)]:

7 "1. He shall be disqualified from receipt of
8 benefits for the week in which he was discharged and for not
9 less than the three nor more than the seven next following
10 weeks, as determined by the commissioner in each case
11 according to the seriousness of the conduct.

12 "2. The total amount of benefits to which he may
13 otherwise be entitled as determined in accordance with
14 Sections 25-4-74 and 25-4-75 shall be reduced by an amount
15 equal to the product of the number of weeks for which he shall
16 be disqualified multiplied by his weekly benefit amount.

17 "3. Only one-half of the benefits paid to him based
18 upon wages for that period of employment immediately preceding
19 the separation to which the disqualification applies shall be
20 charged to the employer for the purposes of the experience
21 rating provisions of Section 25-4-54. If the individual has
22 been separated from employment, other than his most recent
23 bona fide work, under conditions which would have been
24 disqualifying under paragraph c. of this subdivision (3), had
25 the separation been from his most recent bona fide work and
26 the employer answers a notice of payment within 15 days after
27 it is mailed to him detailing the facts in connection with the

1 separation, then only one-half of the benefits paid to him for
2 that period of employment immediately preceding the separation
3 shall be charged to the employer for the purposes of the
4 experience rating provisions of Section 25-4-54.

5 "d. If he has been suspended as a disciplinary
6 measure connected with his work, or for misconduct connected
7 with his work, he shall be disqualified from benefits for the
8 week or weeks (not to exceed four weeks) in which, or for
9 which, he is so suspended and the total amount of benefits to
10 which he may otherwise be entitled shall be reduced in the
11 same manner and to the same extent as provided in subparagraph
12 2 of paragraph c. of this subdivision (3).

13 "(4) REVOCATION OR SUSPENSION OF REQUIRED LICENSE,
14 ETC. For the week in which he has become unemployed because a
15 license, certificate, permit, bond, surety, or insurability
16 which is necessary for the performance of such employment and
17 which he is responsible to maintain or supply has been
18 revoked, suspended or otherwise become lost to him for a cause
19 other than one which would fall within the meaning of
20 subdivision (3) of this section, but one which was within his
21 power to control, guard against, or prevent, and for each week
22 thereafter until:

23 "a. Said license, certificate, permit, bond, or
24 surety, or insurability, has been restored to him and he has
25 reapplied to his employer for employment; or

26 "b. He has reentered insured employment or
27 employment of the nature described in subdivisions (5), (6),

1 (7), (8), (9), (10), or (18) of subsection (b) of Section
2 25-4-10, whichever is the earlier.

3 "c. Nothing in this subdivision shall be construed
4 as basis for disqualification of an individual who is without
5 fault and who has made a reasonable effort to obtain his or
6 her initial license, certificate, permit, bond, surety, or
7 insurability required for the performance of assigned duties.

8 "(5) FAILURE TO ACCEPT AVAILABLE SUITABLE WORK, ETC.
9 If he fails, without good cause, either to apply for or to
10 accept available suitable work or to return to his customary
11 self-employment when so directed by the commissioner or when
12 he is notified of suitable work or it is offered him through a
13 state employment office or the United States Employment
14 Service, or directly or by written notice or offer to any such
15 employment office or employment service by an employer by whom
16 the individual was formerly employed. Such disqualification
17 shall be for a period of not less than one nor more than 10
18 weeks from the date of said failure. This disqualification
19 shall not apply unless the individual has an established
20 benefit year, or is seeking to establish one or is seeking
21 extended benefits at the time he fails without good cause, to
22 do any of the acts set out in this subdivision (5).

23 "a. In determining whether or not any work is
24 suitable for an individual, the commissioner shall consider:

25 "1. The degree of risk involved to his health,
26 safety, and morals, his physical fitness and prior training,

27 "2. His experience and prior earnings,

1 "3. His length of unemployment,

2 "4. His prospects for securing local work in his
3 customary occupation,

4 "5. The distance of the available work from his
5 residence; provided, that no work or employment shall be
6 deemed unsuitable because of its distance from the
7 individual's residence, if such work or employment is in the
8 same or substantially the same locality as was his last
9 previous regular place of employment and if the employee left
10 such voluntarily without good cause connected with such
11 employment.

12 "b. Notwithstanding any other provisions of this
13 chapter, no work shall be deemed suitable and benefits shall
14 not be denied under this chapter to any otherwise eligible
15 individual for refusing to accept new work under any of the
16 following conditions:

17 "1. If the position offered is vacant due directly
18 to a strike, lockout, or other labor dispute;

19 "2. If the wages, hours, or other conditions of the
20 work offered are substantially less favorable to the
21 individual than those prevailing for similar work in the
22 locality; or

23 "3. If as a condition of being employed the
24 individual would be required to join a company union, or to
25 resign from or refrain from joining any bona fide labor
26 organization.

1 "c. Notwithstanding any other provisions of this
2 section, benefits shall not be denied an individual, by reason
3 of the application of the provisions of this subdivision (5),
4 with respect to any week in which he is in training with the
5 approval of the commissioner as described in subdivision
6 (a) (3) of Section 25-4-77.

7 "(6) RECEIPT OF BACK PAY AWARD, ETC. For any week
8 with respect to which he is receiving or has received
9 remuneration in the form of a back pay award. Notwithstanding
10 the provisions of Section 25-4-91 any benefits previously paid
11 for weeks of unemployment with respect to which back pay
12 awards are made shall constitute an overpayment and such
13 amounts shall be deducted from the award by the employer prior
14 to payment to the employee and shall be transmitted promptly
15 to the director by the employer for application against the
16 overpayment and credit to the claimant's maximum benefit
17 amount and prompt deposit into the fund; provided, however,
18 the removal of any charges made against the employer as a
19 result of such previously paid benefits shall be applied to
20 the calendar year and the calendar quarter in which the
21 overpayment is received by the commissioner and no attempt
22 shall be made to relate such a credit to the period to which
23 the award applies. Any amount of overpayment deducted by the
24 employer shall be subject to the same procedures for
25 collection as is provided for contributions by Section
26 25-4-134 of this chapter.

1 "(7) RECEIPT OF OR APPLICATION FOR UNEMPLOYMENT
2 COMPENSATION FROM ANOTHER STATE, ETC. For any week with
3 respect to which, or a part of which, he has received or is
4 seeking unemployment benefits under an unemployment
5 compensation law of any other state or of the United States;
6 provided, that if the appropriate agency of such other state
7 or of the United States finally determines that he is not
8 entitled to such unemployment benefits this disqualification
9 shall not apply.

10 "(8) RECEIPT OF PENSION PAYMENT. For any week with
11 respect to which, or a part of which, an individual has
12 received or has, except for the determination of an exact or
13 specific amount, been determined eligible to receive (during a
14 period for which benefits are being claimed) governmental or
15 other pension, retirement or retired pay, annuity, or similar
16 periodic payment which is based on the previous work of the
17 individual; except, that

18 "a. For weeks of unemployment which begin prior to
19 April 26, 1982, as was prescribed by this subsection prior to
20 such date, and

21 "b. For weeks of unemployment which begin on or
22 after April 26, 1982, the amount of any benefits payable to an
23 individual for any such week which begins in a period with
24 respect to which the disqualifying provisions of this
25 subdivision apply, shall be reduced (but not below zero) by an
26 amount equal to the amount of such pension, retirement or
27 retired pay, annuity, or other payment, which is reasonably

1 attributable to such week, provided, however, such reduction
2 required hereby shall apply to any pension, retirement or
3 retired pay, annuity, or other similar payment only if:

4 "1. Such payment is made under a plan that is
5 maintained (or contributed to) by a base period employer and
6 100 percent employer-financed and not contributed to by the
7 worker, and

8 "2. In the case of such a payment not made under the
9 Social Security Act or the Railroad Retirement Act of 1974 (or
10 the corresponding provisions of prior law), services performed
11 for such employer by the individual after the beginning of his
12 base period (or remuneration for such services) affect
13 eligibility for or increase the amount of, such payment.

14 "c. The other provisions of this subdivision to the
15 contrary notwithstanding, beginning with the weeks ending
16 October 7, 1995, the amount of any pension, retirement or
17 retired pay, annuity, or other similar periodic payment under
18 the Social Security Act or the Railroad Retirement Act shall
19 not result in a reduction of benefits under this subdivision.

20 "d. If in accordance with this subdivision (8) any
21 individual is awarded pension payments retroactively covering
22 the same period for which the individual received benefits,
23 the retroactive payments shall constitute cause for
24 disqualification and any benefits paid during such period
25 shall be recovered only if the retroactive pension payments
26 were made under a plan that is maintained (or contributed to)

1 by a base period employer, 100 percent employer-financed, and
2 not contributed to by the worker.

3 "(9) RECEIPT OF OR APPLICATION FOR WORKERS'
4 COMPENSATION. For any week with respect to which, or a part of
5 which, he has received or is seeking compensation for
6 temporary disability under any workers' compensation law;
7 provided, that if it is finally determined he is not entitled
8 to such compensation, this disqualification shall not apply;
9 and provided further, that if such compensation is less than
10 the benefits which would otherwise be due under this chapter,
11 he shall be entitled to receive for such week, if otherwise
12 eligible, benefits reduced by the amount of such payment.

13 "(10) EMPLOYMENT BY PUBLIC WORKS AGENCY, ETC. For
14 any week that such individual is engaged or employed by the
15 Works Progress Administration, the National Youth
16 Administration or any federal or state unit, agency or
17 instrumentality in charge of public works, assistance through
18 public employment or work relief.

19 "(11) SELF-EMPLOYMENT. For any week in which he is
20 self-employed and each week thereafter until he shall
21 establish that he is no longer self-employed.

22 "(12) RECEIPT OF, OR APPLICATION FOR, TRAINING
23 ALLOWANCE, ETC. For any week with respect to which, or a part
24 of which, an individual who is enrolled in a course of
25 training with the approval of the commissioner, within the
26 meaning of subdivision (a) (3) of Section 25-4-77, has applied
27 for, or is entitled to receive, any wage or subsistence or

1 training allowance or other form of remuneration, other than
2 reimbursement for travel expenses, for a course of training
3 under any public or private training program; provided, that
4 if it is finally determined that he is not entitled to such
5 remuneration, this disqualification shall not apply. If the
6 remuneration, the receipt of which is disqualifying under this
7 subdivision (12), is less than the weekly benefits which he
8 would otherwise be due under this chapter he shall be entitled
9 to receive, if otherwise eligible, weekly benefits reduced by
10 the amount of such remuneration. It is further provided that
11 receipt of training allowances under the Trade Readjustment
12 Act shall not be cause for disqualification under this
13 subdivision.

14 "(13) PARTICIPATION IN PROFESSIONAL SPORTS. For any
15 week which commences during the period between two successive
16 sport seasons (or similar periods) to any individual for which
17 benefits claimed are on the basis of any services,
18 substantially all of which consist of participating in sports
19 or athletic events or training or preparing to so participate,
20 if such individual performed such services in the first of
21 such seasons (or similar periods) and there is a reasonable
22 assurance that such individual will perform such services in
23 the later of such seasons (or similar periods).

24 "(14) ALIENS.

25 "a. For any week for which benefits claimed are on
26 the basis of services performed by an alien unless:

1 "1. Such alien is an individual who was lawfully
2 admitted for permanent residence at the time such services
3 were performed, and was lawfully present for purposes of
4 performing such services; or,

5 "2. Such alien was permanently residing in the
6 United States under color of law at the time such services
7 were performed (including an alien who is lawfully present in
8 the United States as a result of the application of the
9 provisions of Section 203(a)(7) or Section 212(d)(5) of the
10 Immigration and Nationality Act); or,

11 "3. Such alien was lawfully admitted for temporary
12 residence as provided for under the provisions of Section
13 245A(a) of the Immigration Reform and Control Act of 1986 (PL
14 99-603).

15 "b. Any data or information required of individuals
16 applying for benefits to determine whether benefits are not
17 payable to them because of their alien status shall be
18 uniformly required from all applicants for benefits.

19 "c. In the case of an individual whose application
20 for benefits would otherwise be approved, no determination
21 that benefits to such individual are not payable because of
22 his alien status shall be made except upon a preponderance of
23 the evidence."

24 Section 2. This act shall become effective on the
25 first day of the third month following its passage and
26 approval by the Governor, or its otherwise becoming law.